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Gubernatorial Approvals

Upon notification of approval by the Governor of an agency's proposed PERMANENT rulemaking action, the agency must submit a notice of such gubernatorial approval for publication in the *Register.*

For additional information on gubernatorial approvals, see 75 O.S., Section 303.2.

TITLE 90. ~~EXECUTIVE AND LEGISLATIVE BOND OVERSIGHT COMMISSIONS~~COUNCIL OF BOND OVERSIGHT
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #03-1089]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. General Provisions
90:1-1-1. [AMENDED]
90:1-1-2. [AMENDED]
90:1-1-3. [AMENDED]
90:1-1-4. [AMENDED]
Subchapter 3. General Operations of the ~~Commissions~~ Council
90:1-3-1. [AMENDED]
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Subchapter 5. Procedures for Adoption, Amendment and Repeal of Rules
90:1-5-1. [AMENDED]
Subchapter 7. Requests for Declaratory Rulings
90:1-7-1. [AMENDED]
Subchapter 9. Severability and Interpretation
90:1-9-2. [AMENDED]

GUBERNATORIAL APPROVAL:
May 12, 2003

[OAR Docket #03-1089; filed 6-2-03]

TITLE 90. ~~EXECUTIVE AND LEGISLATIVE BOND OVERSIGHT COMMISSIONS~~COUNCIL OF BOND OVERSIGHT
CHAPTER 10. ADMINISTRATION OF THE OKLAHOMA BOND OVERSIGHT AND REFORM ACT

[OAR Docket #03-1090]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. General Provisions
90:10-1-1. [AMENDED]
90:10-1-2. [AMENDED]
90:10-1-3. [DELETED]
90:10-1-4. [AMENDED]
Subchapter 3. Application Procedure ~~for Applicants Subject to Commission Approval of Obligations~~ [AMENDED]
90:10-3-1. [AMENDED]
90:10-3-3. [AMENDED]
90:10-3-4. [AMENDED]
90:10-3-5. [AMENDED]
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Subchapter 5. Fees
10:10-5-1. [AMENDED]
90:10-5-2. [AMENDED]
Subchapter 7. Evaluation Standards and Criteria
90:10-7-1. [AMENDED]
90:10-7-2. [AMENDED]
90:10-7-3 [AMENDED]
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90:10-7-5. [AMENDED]
Subchapter 9. Reporting
90:10-9-1. [AMENDED]
90:10-9-2. [AMENDED]
Subchapter 11. Credit Enhancement Reserve Fund Applications
90:10-11-1. [AMENDED]
90:10-11-2. [AMENDED]

GUBERNATORIAL APPROVAL:
May 12, 2003

[OAR Docket #03-1090; filed 6-2-03]

TITLE 90. ~~EXECUTIVE AND LEGISLATIVE BOND OVERSIGHT COMMISSIONS~~COUNCIL OF BOND OVERSIGHT
CHAPTER 15. ADMINISTRATION OF THE OKLAHOMA PRIVATE ACTIVITY BOND ALLOCATION ACT

[OAR Docket #03-1091]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. General Provisions
90:15-1-1. [AMENDED]
90:15-1-2. [AMENDED]
90:15-1-3. [AMENDED]
Subchapter 3. General Operations of the State Bond Advisor
90:15-3-1. [AMENDED]
90:15-3-2. [AMENDED]
Subchapter 7. Ceiling Pools and Allocations to Pools
90:15-7-1. [AMENDED]
90:15-7-2. [REVOKED]
90:15-7-3. [REVOKED]
90:15-7-4. [REVOKED]
90:15-7-5. [REVOKED]
90:15-7-6. [REVOKED]
90:15-7-7. [REVOKED]
90:15-7-8. [REVOKED]
90:15-7-9. [REVOKED]
Subchapter 9. Application and Logging Procedures
Part 1. Application
90:15-9-1. [AMENDED]
90:15-9-4. [AMENDED]
90:15-9-5. [AMENDED]
Part 3. Register Logging
90:15-9-7. [AMENDED]
90:15-9-8. [REVOKED]
90:15-9-9. [REVOKED]
90:15-9-10. [REVOKED]
90:15-9-11. [REVOKED]
90:15-9-12. [REVOKED]
90:15-9-13. [REVOKED]
90:15-9-14. [REVOKED]
90:15-9-15. [REVOKED]
Subchapter 11. Consolidated Pool and Register
90:15-11-1. [AMENDED]
90:15-11-2. [AMENDED]
Subchapter 13. Carryforward Applications
90:15-13-2. [AMENDED]
GUBERNATORIAL APPROVAL:
May 12, 2003

[OAR Docket #03-1091; filed 6-2-03]

TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

[OAR Docket #03-1027]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
Part 1. General
165:5-1-4. Office location; office hours; records [AMENDED]
165:5-1-5. Filing of documents [AMENDED]
Subchapter 5. Dockets
165:5-5-1. Dockets; identifying initials [AMENDED]
Subchapter 7. Commencement of a Cause
Part 1. General
165:5-7-1. General application and notice requirements [AMENDED]
Part 3. Oil and Gas
165:5-7-14. ~~Enhanced recovery gross production tax exemption~~ Tax exemptions pursuant to OAC 165:10, Subchapter 21 [AMENDED]
165:5-7-27. Enhancement or addition of injection and disposal wells [AMENDED]
Subchapter 9. Subsequent Pleadings
165:5-9-2. Subsequent pleadings [AMENDED]
165:5-9-6. Continuances [AMENDED]
Subchapter 11. Prehearing Procedures
165:5-11-2.1. Initial screening conference ("ISC") [NEW]
Subchapter 13. Initial and Appellate Proceedings
165:5-13-2.1. Appointment of Public Utility Referee [NEW]
165:5-13-4. Report of the Administrative Law Judge [AMENDED]
Subchapter 19. Contempt
165:5-19-2. Waiver or reduction of fines and penalties upon small business [NEW]
GUBERNATORIAL APPROVAL:
May 16, 2003

[OAR Docket #03-1027; filed 5-23-03]

TITLE 165. CORPORATION COMMISSION CHAPTER 55. TELECOMMUNICATIONS SERVICES

[OAR Docket #03-1028]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
165:55-1-4. Definitions [AMENDED]
Subchapter 3. Certificates, Reports and Records
Part 1. Certificates of Convenience and Necessity
165:55-3-1. Certificate of Convenience and Necessity [AMENDED]
Part 5. Record Requirements
165:55-3-22. Records to be provided to the Commission [AMENDED]
Subchapter 5. Rates and Tariffs
Part 3. Approval and Notice Requirements
165:55-5-10. Tariff approval and revisions to tariffs [AMENDED]

165:55-5-10.2. Promotional offerings [AMENDED]
165:55-5-10.3. Customer-specific contracts under ICB pricing [AMENDED]
Part 5. Tariff Structure and Composition
165:55-5-21. Composition of tariffs [AMENDED]
Part 7. Miscellaneous Tariff Requirements
165:55-5-34. Data and information on proposed tariff revisions [AMENDED]
Subchapter 7. Directories, Telephone Numbers, and Customer-Provided Equipment
165:55-7-2.1. 211 Services [NEW]
Subchapter 9. Customer Billing and Deposits
Part 1. Billing and Payment Requirements
165:55-9-3. Due date and penalty [AMENDED]
Subchapter 11. Service Denial, Suspension and Disconnection
Part 3. Suspension and Disconnection Procedures
165:55-11-13. Reconnection [AMENDED]
Subchapter 13. Operating and Maintenance Requirements
Part 3. Service Standards
165:55-13-10. Minimum service standards [AMENDED]
Part 5. Service Quality Standards
165:55-13-20. Responsibility for adequate and safe service [AMENDED]
Subchapter 15. Notification of Transactions Affecting Customers or Business Operations
165:55-15-5. Cessation of business in Oklahoma [AMENDED]
Subchapter 17. Facilitation of Local Exchange Competition
165:55-17-3. Designation of service territory [AMENDED]
165:55-17-13. Interconnection of networks [AMENDED]
165:55-17-30. Customer choice [NEW]

GUBERNATORIAL APPROVAL:
May 16, 2003

[OAR Docket #03-1028; filed 5-23-03]

TITLE 165. CORPORATION COMMISSION CHAPTER 56. RESELLERS OF INTEREXCHANGE TELECOMMUNICATIONS SERVICES

[OAR Docket #03-1029]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 5. Tariffs
165:56-5-2. Information to be included in tariffs [AMENDED]
165:56-5-5. Revisions to tariffs [AMENDED]

GUBERNATORIAL APPROVAL:
May 15, 2003

[OAR Docket #03-1029; filed 5-23-03]

TITLE 165. CORPORATION COMMISSION CHAPTER 59. OKLAHOMA UNIVERSAL SERVICE AND LIFELINE

[OAR Docket #03-1030]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. General Provisions
165:59-1-4. Definitions [AMENDED]
Subchapter 3. Oklahoma Universal Service Fund
Part 5. Administration of the OUSF
165:59-3-30. Administration of the Fund [AMENDED]
Part 9. Requests for OUSF Funding
165:59-3-62. Procedures for requesting funding from the OUSF [AMENDED]

GUBERNATORIAL APPROVAL:
May 15, 2003

[OAR Docket #03-1030; filed 5-23-03]

TITLE 165. CORPORATION COMMISSION CHAPTER 65. WATER SERVICE UTILITIES

[OAR Docket #03-1031]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. General Provisions
165:65-1-2. Definitions [AMENDED]
165:65-1-5. Relief from rules of this Chapter and rules by utilities [AMENDED]
Subchapter 3. Plant, Equipment, and Facilities
165:65-3-1. Construction and maintenance of plant, equipment, and facilities [AMENDED]
165:65-3-2. Extent of system in which utility shall maintain service [AMENDED]
Subchapter 5. Water Quality, Testing, and Pressure
165:65-5-2. Water analyses and records [AMENDED]
Subchapter 7. Meter Requirements and Testing
Part 1. General Provisions
165:65-7-4. Information as to reading of meters [AMENDED]
Part 3. Testing
165:65-7-11. Periodic and routine tests [AMENDED]
Subchapter 11. Customer Service
Part 1. Deposits and Billing
165:65-11-3. Deposits and interest [AMENDED]

Part 3. Disconnection of Service [AMENDED]
165:65-11-10. Disconnection of service by a consumer [AMENDED]
165:65-11-11. Disconnection of service by a utility [AMENDED]
165:65-11-12. Insufficient reasons for disconnection of service [REVOKED]
165:65-11-13. Notice of disconnection of service [AMENDED]
165:65-11-14. Commission notification procedure for elderly and/or ~~handicapped~~ consumers with disabilities [AMENDED]
165:65-11-15. Delays to disconnection of residential service [AMENDED]
165:65-11-16. Reconnection of service [AMENDED]
165:65-11-17. Mediation [AMENDED]
165:65-11-18. Commission review [AMENDED]
165:65-11-19. Utilities encouraged to keep current lists of utility assistance programs [NEW]

GUBERNATORIAL APPROVAL:
May 16, 2003

[OAR Docket #03-1031; filed 5-23-03]

TITLE 165. CORPORATION COMMISSION CHAPTER 75. COTTON GIN UTILITIES

[OAR Docket #03-1032]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 3. Applications
165:75-3-1. Filing of application [AMENDED]
165:75-3-2. Notification [AMENDED]
165:75-3-4. New gins [AMENDED]
165:75-3-5. Dormant gins [AMENDED]
165:75-3-6. Dismantled gins [AMENDED]

GUBERNATORIAL APPROVAL:
May 16, 2003

[OAR Docket #03-1032; filed 5-23-03]

TITLE 460. DEPARTMENT OF MINES CHAPTER 2. RULES OF PRACTICE AND PROCEDURE FOR THE COAL RECLAMATION ACT OF 1979

[OAR Docket #03-1078]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 9. Review of Section 776 and 777 Notices of Violation and Orders of Cessation
460:2-9-4 [AMENDED]

GUBERNATORIAL APPROVAL:
May 15, 2003

[OAR Docket #03-1078; filed 5-29-03]

TITLE 460. DEPARTMENT OF MINES CHAPTER 10. NON-COAL RULES AND REGULATIONS

[OAR Docket #03-1079]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 9. General Requirements for Permits and Applications
460:10-9-5 [AMENDED]
Subchapter 15. Non-Coal Mining Permit Applications Requirements for Reclamation and Operations Plan
460:10-15-3 [AMENDED]

GUBERNATORIAL APPROVAL:
May 15, 2003

[OAR Docket #03-1079; filed 5-29-03]

TITLE 460. DEPARTMENT OF MINES CHAPTER 20. THE PERMANENT REGULATIONS GOVERNING THE COAL RECLAMATION ACT OF 1979

[OAR Docket #03-1080]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 33. Requirements for Permits for Special Categories of Mining
460:20-33-12 [AMENDED]

GUBERNATORIAL APPROVAL:
May 15, 2003

[OAR Docket #03-1080; filed 5-29-03]

TITLE 460. DEPARTMENT OF MINES CHAPTER 25. OKLAHOMA EXPLOSIVES AND BLASTING REGULATIONS

[OAR Docket #03-1081]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 9. Permit Revisions and Renewals
460:25-9-5 [AMENDED]

Subchapter 10. Permit Exemptions
460:25-10-9 [AMENDED]
460-25-10-10 [AMENDED]
460:25-10-12 [AMENDED]

GUBERNATORIAL APPROVAL:
May 15, 2003

[OAR Docket #03-1081; filed 5-29-03]

TITLE 460. DEPARTMENT OF MINES CHAPTER 30. COAL COMBUSTION BY-PRODUCT STANDARDS

[OAR Docket #03-1082]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Chapter 30. Coal Combustion By-Product Standards [NEW]

GUBERNATORIAL APPROVAL:
May 15, 2003

[OAR Docket #03-1082; filed 5-29-03]

TITLE 530. OFFICE OF PERSONNEL MANAGEMENT CHAPTER 10. MERIT SYSTEM OF PERSONNEL ADMINISTRATION RULES

[OAR Docket #03-2028]

RULEMAKING ACTION:
Notice of gubernatorial approval

RULES:
Subchapter 1. General Provisions
Part 1. General Provisions
530:10-1-2. [AMENDED]
530:10-1-6. [AMENDED]
Subchapter 3. Affirmative Action and Equal Employment Opportunity
Part 2. Discrimination Complaints Investigations
530:10-3-22. [AMENDED]
Part 5. Noncompliance, Investigations, Hearings, and Remedies
530:10-3-52. [AMENDED]
Subchapter 7. Salary and Payroll
Part 1. Salary and Rates of Pay
530:10-7-14. [AMENDED]
530:10-7-16. [NEW]
530:10-7-22. [AMENDED]
Subchapter 13. Reduction-in-Force
Part 1. General Provisions for Reduction-in-Force
530:10-13-2. [AMENDED]
Part 7. Priority Consideration for Reemployment
530:10-13-70. [AMENDED]
Subchapter 17. Employee Performance Management System and Career Enhancement Programs
Part 3. Employee Performance Management System
530:10-17-31. [AMENDED]
Part 17. State Work Incentive Program
530:10-17-173. [AMENDED]
Subchapter 23. Employee Recognition [NEW]
Part 1. General Provisions [NEW]
530:10-23-1. [NEW]
530:10-23-2. [RESERVED]
530:10-23-3. [NEW]
Appendix B. Schedule of Annual and Sick Leave Accrual Rates and Accumulation Limits [NEW]

GUBERNATORIAL APPROVAL:
May 15, 2003

[OAR Docket #03-2028; filed 6-5-03]

TITLE 565. OKLAHOMA BOARD OF PRIVATE VOCATIONAL SCHOOLS CHAPTER 10. LICENSURE AND REGULATION OF PRIVATE VOCATIONAL SCHOOLS AND REPRESENTATIVES

[OAR Docket #03-2027]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 5. Fees
565:10-5-1 [AMENDED]
565:10-5-4 [AMENDED]
565:10-5-4.1 [NEW]
565:10-5-4.2 [NEW]
565:10-5-5 [AMENDED]
Subchapter 7. Facilities and Equipment
565:10-7-1 [AMENDED]
Subchapter 9. Surety Bonds
565:10-9-1 [AMENDED]
565:10-9-5 [AMENDED]
Subchapter 11. School Operation
565:10-11-1 [AMENDED]
565:10-11-4 [AMENDED]
565:10-11-6 [AMENDED]
Subchapter 19. Penalty
565:10-19-2 [NEW]
Subchapter 23. Seminars, Workshops, and Short Courses
565:10-23-10 [NEW]
Subchapter 27. Financial Statements and Financial Stability
565:10-27-2 [AMENDED]

GUBERNATORIAL APPROVAL:
May 8, 2003

[OAR Docket #03-2027; filed 6-5-03]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

[OAR Docket #03-1070]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. Academic Scholars Program
610:25-1-3. General principals for operation of program [AMENDED]
610:25-1-4. Eligibility Requirements and Term of Scholarship Award [AMENDED]
610:25-1-7. Fiscal aspects of program [AMENDED]
Subchapter 23. Oklahoma Higher Learning Access Program (OHLAP)
610:25-23-2. Eligibility of participants [AMENDED]
610:25-23-3. Applications [AMENDED]
610:25-23-4. Program requirements [AMENDED]
610:25-23-5. Securing OHLAP benefits [AMENDED]
610:25-23-8. Administrative responsibilities [AMENDED]
GUBERNATORIAL APPROVAL:
May 19, 2003

[OAR Docket #03-1070; filed 5-30-03]

TITLE 655. SECRETARY OF STATE
CHAPTER 10. ADMINISTRATIVE RULES ON RULEMAKING

[OAR Docket #03-2059]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 7. Preparation of Documents
Part 5. Notice Documents
655:10-7-26 [AMENDED]
Subchapter 13. Correction of Errors
655:10-13-3 [AMENDED]
GUBERNATORIAL APPROVAL:
May 13, 2003

[OAR Docket #03-2059; filed 6-5-03]

TITLE 655. SECRETARY OF STATE
CHAPTER 25. NOTARY PUBLIC

[OAR Docket #03-2060]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions [AMENDED]
Subchapter 3. Revocation, Resignation and Death [AMENDED]
Subchapter 5. ~~Journal and~~ Seal [AMENDED]
Subchapter 7. Change of Name and Address [REVOKED]
Subchapter 9. Availability of Information [REVOKED]
GUBERNATORIAL APPROVAL:
May 13, 2003

[OAR Docket #03-2060; filed 6-5-03]

TITLE 715. TEACHERS' RETIREMENT SYSTEM
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #03-1024]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
715:1-1-4. [AMENDED]
GUBERNATORIAL APPROVAL:
May 15, 2003

[OAR Docket #03-1024; filed 5-22-03]

TITLE 715. TEACHERS' RETIREMENT SYSTEM
CHAPTER 10. GENERAL OPERATIONS

[OAR Docket #03-1025]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. Membership Provisions
715:10-1-4. [AMENDED]
715:10-1-7. [AMENDED]
Subchapter 5. Establishing Other Service Credits
715:10-5-15. [AMENDED]
715:10-5-32. [REVOKED]
Subchapter 11. Withdrawal from Membership and Refund of Deposits
715:10-11-2. [AMENDED]
Subchapter 13. Contributions for Membership Service
715:10-13-3.1. [AMENDED]

715:10-13-9. [AMENDED]
Subchapter 15. Service Retirement
715:10-15-18. [AMENDED]
715:10-15-22. [AMENDED]
Subchapter 17. Post-Retirement Employment
715:10-17-1. [AMENDED]
715:10-17-5. [AMENDED]
715:10-17-6. [AMENDED]
715:10-17-7. [AMENDED]
Subchapter 19. Tax-Sheltered Annuity Program
715:10-19-8. [AMENDED]

GUBERNATORIAL APPROVAL:
May 15, 2003

[OAR Docket #03-1025; filed 5-22-03]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 5. FEES

[OAR Docket #03-2001]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. General Provisions
785:5-1-16. Fees required in other matters [AMENDED]

GUBERNATORIAL APPROVAL:
May 1, 2003

[OAR Docket #03-2001; filed 6-2-03]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 20. APPROPRIATION AND USE OF STREAM WATER

[OAR Docket #03-2002]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 3. Application Requirements and Processing
785:20-3-2. General application requirements [AMENDED]
785:20-3-8. Revisions and corrections to applications [AMENDED]
Subchapter 5. Notice, Hearings and Board Actions
785:20-5-5. Factors relating to statutory elements for application approval [AMENDED]
Subchapter 7. Permits
785:20-7-3.1. Contents of permits to divert water from Barren Fork Creek [NEW]

GUBERNATORIAL APPROVAL:
May 1, 2003

[OAR Docket #03-2002; filed 6-2-03]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 30. TAKING AND USE OF GROUNDWATER

[OAR Docket #03-2003]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. General Provisions
785:30-1-4. Requirement for water right [AMENDED]
Subchapter 3. Permit Application Requirements
785:30-3-1. General application requirements [AMENDED]

GUBERNATORIAL APPROVAL:
May 1, 2003

[OAR Docket #03-2003; filed 6-2-03]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 35. WELL DRILLER AND PUMP INSTALLER LICENSING

[OAR Docket #03-2004]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. General Provisions
785:35-1-2. Definitions [AMENDED]
785:35-1-4. Violations and penalties [AMENDED]
785:35-1-6. Well Drillers and Pump Installers Advisory Council [AMENDED]
Subchapter 3. Licensing and Certifications
785:35-3-2. Expiration and renewal of licenses and certifications [AMENDED]
Subchapter 5. General Requirements to Maintain Licenses and Operator Certifications
785:35-5-1. General requirements for licenses [AMENDED]
785:35-5-2. General requirements for certified operators [AMENDED]
Subchapter 7. Minimum Standards for Construction of Wells
785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observation wells, ~~heat exchange wells,~~ and water well test holes [AMENDED]

785:35-7-1.1. Minimum standards for construction of heat exchange wells [NEW]
Subchapter 11. Plugging and Capping Requirements for Wells and Test Holes
785:35-11-2. Plugging requirements for site assessment observation wells, monitoring wells and geotechnical borings [AMENDED]

GUBERNATORIAL APPROVAL:
May 1, 2003

[OAR Docket #03-2004; filed 6-2-03]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 50. FINANCIAL ASSISTANCE

[OAR Docket #03-2005]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 8. Rural Economic Action Plan (REAP) Grant Program Requirements and Procedures
785:50-8-5. REAP grant priority point system [AMENDED]

GUBERNATORIAL APPROVAL:
May 1, 2003

[OAR Docket #03-2005; filed 6-2-03]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 50. FINANCIAL ASSISTANCE

[OAR Docket #03-2006]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 9. Clean Water State Revolving Fund Regulations
Part 1. General Provisions
785:50-9-5. Purpose [AMENDED]
785:50-9-7. Applicability to projects [AMENDED]
785:50-9-8. Authority [AMENDED]
785:50-9-9. Definitions [AMENDED]
Part 3. General Program Requirements
785:50-9-21. Eligible project [AMENDED]
785:50-9-23. Clean Water SRF Project Priority System [AMENDED]
785:50-9-35. Loan closing [AMENDED]
Part 7. SRF Environmental Review Process
785:50-9-60. Requirement of environmental review [AMENDED]

GUBERNATORIAL APPROVAL:
May 1, 2003

[OAR Docket #03-2006; filed 6-2-03]

Gubernatorial Disapprovals

Upon notification of disapproval by the Governor of an agency's proposed PERMANENT rulemaking action, the agency must submit a notice of such gubernatorial disapproval for publication in the *Register.*

For additional information on gubernatorial disapprovals, see 75 O.S., Section 303.2

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 99. SECONDHAND TOBACCO SMOKE

[OAR Docket #03-1055]

RULEMAKING ACTION:

Gubernatorial disapproval

RULES:

Chapter 99. Secondhand Tobacco Smoke [NEW]

GUBERNATORIAL APPROVAL:

Written disapproval received May 15, 2003

[OAR Docket #03-1055; filed 5-28-03]

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 rule[s] . . . . [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 715. TEACHERS' RETIREMENT SYSTEM
CHAPTER 10. GENERAL OPERATIONS

[OAR Docket #03-1026]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 1. Membership Provisions
715:10-1-4 [AMENDED]
Subchapter 11. Withdrawal from Membership and Refund of Deposits
715:10-11-2 [AMENDED]
AUTHORITY:
Board of Trustees; 70 O.S. Section 17-101, et seq., especially Section 17-106
DATES:
Adoption:
January 22, 2003
Approved by Governor:
March 5, 2003
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:
None
FINDING OF EMERGENCY:
The rules will provide a more efficient administration of the System. A compelling public interest requires these emergency rules.
ANALYSIS:
The change to **OAC 715:10-1-4** is necessary to amend the rule to comply with a Private Letter Ruling from the Internal Revenue Service based upon House Bill 1754 of the 2001 Legislative Session. This rule will allow support personnel who voluntarily terminated their membership in the Teachers' Retirement System of Oklahoma while still employed to rejoin the Retirement System.

The change to **OAC 715:10-11-2** is necessary to amend the rule to comply with a Private Letter Ruling from the Internal Revenue Service based upon House Bill 1754 of the 2001 Legislative Session. This rule will allow support personnel who voluntarily terminated their membership in the Teachers' Retirement System of Oklahoma while still employed to rejoin the Retirement System.
CONTACT PERSON:
Jacqueline Scott Shannon, Public Information Director/Rules Liaison, 2500 N. Lincoln Blvd., 5th Floor, Oklahoma City, Oklahoma, 73105, (405) 521-4743.

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. MEMBERSHIP PROVISIONS

715:10-1-4. Optional TRS membership

The following employees are eligible to be members of the Teachers' Retirement System at their option:

(1) "Classified" employees regularly employed in the public, state-supported educational institutions of Oklahoma at any time during the five-year (5-year) period from July 1, 1938 to June 30, 1943.

(2) "Non-classified" employees employed by the public, state-supported educational institutions in Oklahoma for twenty (20) hours or more per week at a rate of compensation comparable to other persons employed in similar positions.

(3) "Classified" employees regularly employed in the public, state-supported educational institutions who have reached age fifty-five (55) at the time of employment.

(4) An employee on official sabbatical leave receiving at least one-half pay from the employing school or institution. Contributions for such employment shall be at a rate commensurate with the salary earned as a regular full-time employee in the last preceding school year. "Official sabbatical" means paid leave granted by the governing board of the employing school or institution. The member must elect to participate and make contributions to TRS at the time of the sabbatical. Sabbatical leave cannot be purchased by the member at a later date.

(5) Any member absent from the teaching service who is eligible to continue membership under special provisions of 70 O.S. 17-116.2, provided that such employee continues to be employed by a governmental agency.

(6) A visiting professor from another state or nation.

(7) Classified and Non-Classified members employed after retirement. (See OAC 715:10-17-13).

(8) Full-time non-classifed optional personnel who have previously opted out of TRS under OAC 715:10-11-2 may revoke their election and return to TRS participation; however, such member is not eligible to redeposit the account withdrawn under OAC 715:10-11-2 or purchase

credit for service performed after termination of membership and re-instatement of membership.

SUBCHAPTER 11. WITHDRAWAL FROM MEMBERSHIP AND REFUND OF DEPOSITS

715:10-11-2. Withdrawal of optional membership while still employed

A non-classified optional member may voluntarily terminate TRS membership while continuing employment in the public schools of Oklahoma, if:

(1) Proper application is made to TRS. Withdrawal may be made no earlier than two (2) months after date of application and no earlier than the receipt by TRS of the final deposit to the member's account.

(2) The financial officer of the employing school certifies the effective date of the member's last contributions and the date payment will be remitted to TRS.

(3) Any member who withdraws under the conditions listed here ~~cannot~~ may rejoin the Teachers' Retirement System ~~while employed in a non-classified optional employee position,~~ under the provision of OAC 715:10-1-4(8). ~~nor can a~~ A member who terminates membership under this rule cannot redeposit contributions withdrawn under this rule at a later date, even if the individual ~~becomes employed as a classified mandatory membership position which requires~~ returns to membership in TRS. The member will also forfeit any right to purchase ~~any Oklahoma, military, out-of-state or other~~ service performed prior to the ~~mandatory~~ re-entry date, and will forfeit any unused sick leave accumulated from the date of termination of membership under this rule and prior to the ~~mandatory~~ re-entry date.

(4) A member's contributions cannot be terminated, by either the member or the employer, without termination of TRS membership. Any member who ceases contributions while still employed in an optional position shall be deemed to have become an ineligible member of TRS, and will have forfeited all rights to retirement benefits provided by TRS.

(5) An employer may prevent its employees from withdrawing, under this rule, if the employer has a negotiated labor agreement, or formalized IRS plan, prohibiting such terminations and withdrawals.

(6) After-tax contributions can be refunded to an optional member prior to separation from service. Pre-tax contributions cannot be refunded until the member terminates employment. Following termination of employment, TRS should be contacted for the proper form to be completed for return of pre-tax contributions. Upon completion of the verification form by the school and the mandatory four-month waiting period, payment of the balance of the account will be made at the same time as regular withdrawals.

[OAR Docket #03-1026; filed 5-22-03]

Permanent Final Adoptions

An agency may promulgate rules on a permanent basis upon "final adoption" of the proposed new, amended, or revoked rules. "Final adoption" occurs upon approval by the Governor and the Legislature, or upon enactment of a joint resolution of approval by the Legislature. Before proposed permanent rules can be reviewed and approved/disapproved by the Governor and the Legislature, the agency must provide the public an opportunity for input by publishing a Notice of Rulemaking Intent in the *Register.*

Permanent rules are effective ten days after publication in the *Register*, or on a later date specified by the agency in the preamble of the permanent rule document.

Permanent rules are published in the *Oklahoma Administrative Code*, along with a source note entry that references the *Register* publication of the permanent action.

For additional information on the permanent rulemaking process, see 75 O.S., Sections 303, 303.1, 303.2, 308 and 308.1.

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 10. PERSONNEL

[OAR Docket #03-1056]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Breath-Alcohol Analysis
40:10-3-1. [AMENDED]
40:10-3-2. [AMENDED]
40:10-3-3. [AMENDED]
40:10-3-4. [AMENDED]
40:10-3-5. [AMENDED]
40:10-3-8. [NEW]
40:10-3-9. [NEW]
40:10-3-10. [NEW]
40:10-3-11. [NEW]
40:10-3-12. [NEW]
Subchapter 5. Breath Sample Collection Personnel
40:10-5-1. [AMENDED]
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Board of Tests for Alcohol and Drug Influence; 40 O.S.,§§ 759et seq
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Amending wording to limit only law enforcement personnel. New rules covering Independent Breath-Alcohol Analysis for those not law enforcement. Changing the word Supervisor to Specialist in all categories.
CONTACT PERSON:
McBeth Sample, Jr., State Director of Tests for Alcohol and Drug Influence, Department of Public Safety, Building No. 9, 3600 North MLK Blvd., Oklahoma City, Oklahoma 73111, 405-425-2460.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. , SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 3. BREATH-ALCOHOL ANALYSTS

40:10-3-1. Qualifications and requirements for breath-alcohol operators (initial permits)

Qualifications and requirements for breath-alcohol operators (initial permits) are as follows:

(1) Residence within State of Oklahoma at time of application.

(2) Must be a duly qualified Law Enforcement Officer and/or other qualifiedemployee of a recognized Law Enforcement agency, whose duties include performance or training of Breath-Alcohol Analysis Testing and/or attending a CLEET certified academy.

(~~2~~3) Minimum age of 21 years.

(~~3~~4) Good moral character.

(~~4~~5) Graduation from a state-accredited high school, or satisfactory passing of the "General Education Development Test", or equivalent educational background.

(~~5~~6) Satisfactory completion, within 1 year prior to application for an Operator permit, of a course of instruction in breath-alcohol analysis acceptable to the Board of Tests for Alcohol and Drug Influence and meeting the recommendations of the National Safety Council's Committee on Alcohol and Other Drugs.

(~~6~~7) Establishment, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, of the applicant's competence to perform chemical analysis of breath for alcohol.

40:10-3-2. Qualifications and requirements for breath-alcohol ~~supervisors~~ specialist (initial permit)

Qualifications and requirements for breath-alcohol ~~supervisors~~ specialist (initial permits) are as follows:

(1) Residence within State of Oklahoma at time of application.

(2) Must be a duly qualified Law Enforcement Officer and/or other qualified employee of a recognized Law Enforcement agency, whose duties include performance or training of Breath-Alcohol Analysis Testing.

(~~2~~3) Minimum age of 21 years.

(~~3~~4) Good moral character.

(~~4~~5) Graduation from a state-accredited high school, or satisfactory passing of the "General Education Development Test", or equivalent educational background.

(~~5~~6) Possession of a valid Breath-Alcohol Analysis Operator Permit issued by the Board of Tests for Alcohol and Drug Influence or establishment, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, or equivalent qualifications in breath-alcohol analysis.

(~~6~~7) Satisfactory completion, within 1-year prior to application for a ~~Supervisor~~Specialist permit, of a course of instruction in breath-alcohol analysis ~~supervision~~specialist acceptable to the Board of Tests for Alcohol and Drug Influence and meeting the recommendations of the National Safety Council's Committee on Alcohol and Other Drugs.

(~~7~~8) Establishment, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, of the applicant's competence to perform and to ~~supervise~~ the performance of administrative maintenance ~~of~~ on ~~chemical analysis of breath for alcohol~~ breath testing equipment.

40:10-3-3. Qualifications and requirements for breath-alcohol operators (renewal permits)

~~(a)~~ **Qualifications.** Qualifications for breath-alcohol operators (renewal permits) are as follows:

(1) Residence within State of Oklahoma at time of application.

(2) Must be a duly qualified Law Enforcement Officer and/or other qualified employee of a recognized Law Enforcement agency, whose duties include performance or training of Breath-Alcohol Analysis Testing.

(~~2~~3) Minimum age of 21 years.

(~~3~~4) Good moral character.

((~~4~~)(5)) Graduation from a state-accredited high school, or satisfactory passing of the "General Education Development Test," or equivalent education background.

(~~5~~6) Possession of a valid Breath-Alcohol Analysis Operator Permit issued by the Board of Tests for Alcohol and Drug Influence within the preceding year upon compliance with

(A) Qualifications and Requirements for Initial Issuance of such Permits then in force, or

(B) Qualifications and Requirements for Renewal of such Permits then in force.

~~(b)~~ ~~**Requirements.** Requirements for breath-alcohol operators (renewal permits) are as follows:~~

(~~1~~7) Satisfactory completion, within one (1) year prior to renewal of the Operator Permit, ~~of~~ a requalification or retraining course of instruction in breath alcohol analysis ~~acceptable to the Board of Tests for Alcohol and Drug Influence; or establishment, to the satisfaction of the Board, of equivalent qualifications.~~ as applicable, consisting of such instruction as deemed applicable and necessary by the State Director of Tests for Alcohol and Drug Influence in consultation with other Board certified Instructors.

(~~2~~8) Establishment within one (1) year prior to renewal of the Operator Permit, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, of the applicant's competence to perform chemical analysis of breath for alcohol.

~~(c)~~ ~~**Requalification training.** Requalification for Breath-Alcohol Analysis Operator training shall consist of a minimum of four hours which includes at least the following subject matter and components:~~

~~(1) Orientation, examination of applications and confirmation of permit numbers.~~

~~(2) Discussion of:~~

~~(A) National and State standards including alcohol safety countermeasures.~~

~~(B) Operational procedures and techniques.~~

~~(C) Proper utilization of record forms.~~

~~(D) Questions and answers session.~~

~~(3) Examinations~~

~~(A) Written.~~

~~(B) Laboratory. Perform a minimum of three unknown alcohol reference analyses under supervision of a monitor.~~

40:10-3-4. Qualifications and requirements for breath-alcohol ~~supervisors~~ Specialist (renewal permits)

Qualifications and requirements for breath-alcohol ~~supervisors~~ specialist (renewal permits) are as follows:

(1) Residence within State of Oklahoma at time of application.

(2) Must be a duly qualified Law Enforcement Officer and/or other qualified employee of a recognized Law Enforcement agency, whose duties include performance or training of Breath-Alcohol Analysis Testing

(~~2~~3) Minimum age of 21 years.

(~~3~~4) Good moral character.

(~~4~~5) Graduation from a state-accredited high school, or satisfactory passing of the "General Education Development Test," or equivalent education background.

(~~5~~6) Possession of a valid Breath-Alcohol Analysis Supervisor Permit issued by the Board of Tests for Alcohol and Drug Influence within the preceding year upon compliance with:

(A) the Qualifications and Requirements for Initial Issuance of such Permits then in force, or

(B) the Qualifications and Requirements for Renewal of such Permits then in force.

(~~6~~7) Satisfactory completion, within one (1) year prior to renewal of the ~~Supervisor~~ Specialist Permit, ~~of~~ a requalification or retraining course of instruction in breath alcohol analysis and breath alcohol analysis ~~supervision acceptable to the Board of Tests for Alcohol and Drug Influence; or establishment, to the satisfaction of the Board, of equivalent qualifications.~~ operation and administrative

maintenance as applicable, consisting of such instruction as deemed applicable and necessary by the State Director of Tests for Alcohol and Drug Influence in consultation with other Board certified Instructors.

(~~7~~8) Establishment, within one (1) year prior to renewal of the ~~Supervisor~~ Specialist Permit, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, of the applicant's competence to perform and to ~~supervise~~ the performance of administrative maintenance ~~of~~ on ~~chemical analysis of breath for alcohol~~ breath testing equipment.

40:10-3-5. Reinstatement of expired breath-alcohol analysis permits

Persons who otherwise meet the qualifications and requirements for issuance of a renewal Breath-Alcohol Analysis Operator or Breath-Alcohol Analysis ~~Supervisor~~ Specialist Permit, respectively, but whose initial or renewal Permit has expired because of failure satisfactorily to complete a timely requalification course of instruction acceptable to the ~~Board~~ State Director of Tests for Alcohol and Drug Influence may regain eligibility for active and valid Permit status, for good cause and in the discretion of this Board, by the following Permit Reinstatement procedure.

(1) Documentation that a valid Breath-Alcohol Analysis Operator or Breath-Alcohol Analysis ~~Supervisor~~ Specialist Permit was issued to the applicant under authority of this Board, of the issue and expiration dates of said Permit, and that said Permit had not been revoked for cause.

(2) Completion of a designated application form for Permit Reinstatement, inclusive of all required information.

(3) Must be a duly qualified Law Enforcement Officer and/or other qualified employee of a recognized Law Enforcement agency, whose duties include performance or training of Breath-Alcohol Analysis Testing.

(~~3~~4) Satisfactory completion of a requalification or retraining course of instruction in breath-alcohol analysis operation and/or breath-alcohol analysis ~~supervision~~ , specialist as applicable, consisting of such theoretical and practical instruction and laboratory practice as deemed applicable and necessary by the State Director of Tests for Alcohol and Drug Influence in consultation with the instructional staff.

(~~4~~5) Establishment, by written and practical examination, to the satisfaction of the ~~Board~~ State Director of Tests for Alcohol and Drug Influence of the applicant's respective competence to perform, or to conduct administrative maintenance on breath-alcohol testing devices . ~~perform and supervise performance of, analysis of breath for alcohol~~.

40:10-3-8. Qualifications and requirements for Independent breath-alcohol operators (initial permits)

Qualifications and requirements for breath-alcohol Independent operators (initial permits) are as follows:

(1) Residence within State of Oklahoma at time of application.

(2) Minimum age of 21 years.

(3) Good moral character.

(4) Graduation from a state-accredited high school, or satisfactory passing of the "General Education Development Test", or equivalent educational background.

(5) Satisfactory completion, within 1 year prior to application for an Operator permit, of a course of instruction in breath-alcohol analysis acceptable to the Board of Tests for Alcohol and Drug Influence and meeting the recommendations of the National Safety Council's Committee on Alcohol and Other Drugs.

(6) Establishment, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, of the applicant's competence to perform chemical analysis of Independent breath for alcohol.

40:10-3-9. Qualifications and requirements for Independent breath-alcohol Specialist (initial permit)

Qualifications and requirements for Independent breath-alcohol Specialist (initial permits) are as follows:

(1) Residence within State of Oklahoma at time of application.

(2) Minimum age of 21 years.

(3) Good moral character.

(4) Graduation from a state-accredited high school, or satisfactory passing of the "General Education Development Test", or equivalent educational background.

(5) Possession of a valid Independent Breath-Alcohol Analysis Operator Permit issued by the Board of Tests for Alcohol and Drug Influence.

(6) Satisfactory completion, within 1-year prior to application for a Specialist permit, of a course of instruction in independent breath-alcohol analysis specialist acceptable to the State Director of Tests for Alcohol and Drug Influence and meeting the recommendations of the National Safety Council's Committee on Alcohol and Other Drugs.

(7) Establishment, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, of the applicant's competence to perform administrative maintenance of chemical analysis of independent breath for alcohol.

40:10-3-10. Qualifications and requirements for Independent breath-alcohol operators (renewal permits)

Qualifications. Qualifications for Independent breath-alcohol operators (renewal permits) are as follows:

(1) Residence within State of Oklahoma at time of application.

(2) Minimum age of 21 years.
(3) Good moral character.
(4) Graduation from a state-accredited high school, or satisfactory passing of the "General Education Development Test," or equivalent education background.
(5) Possession of a valid Independent Breath-Alcohol Analysis Operator Permit issued by the Board of Tests for Alcohol and Drug Influence within the preceding year upon compliance with:
(A) Qualifications and Requirements for Initial Issuance of such Permits then in force, or
(B) Qualifications and Requirements for Renewal of such Permits then in force.
(6) Satisfactory completion, within one (1) year prior to renewal of the Independent Operator Permit, of a requalification course of instruction in independent breath alcohol analysis acceptable to the State Director of Tests for Alcohol and Drug Influence.
(7) Establishment within one (1) year prior to renewal of the Independent Operator Permit, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, of the applicant's competence to perform chemical analysis of breath for alcohol.

40:10-3-11. Qualifications and requirements for Independent breath-alcohol Specialist (renewal permits)

Qualifications and requirements for Independent breath-alcohol Specialist (renewal permits) are as follows:
(1) Residence within State of Oklahoma at time of application.
(2) Minimum age of 21 years.
(3) Good moral character.
(4) Graduation from a state-accredited high school, or satisfactory passing of the "General Education Development Test," or equivalent education background.
(5) Possession of a valid Independent Breath-Alcohol Analysis Specialist Permit issued by the Board of Tests for Alcohol and Drug Influence within the preceding year upon compliance with
(A) the Qualifications and Requirements for Initial Issuance of such Permits then in force, or
(B) the Qualifications and Requirements for Renewal of such Permits then in force.
(6) Satisfactory completion within one (1) year prior to renewal of the Independent-Specialist Permit, of a requalification course of instruction in breath alcohol analysis and administrative maintenance of breath alcohol devices acceptable to the State Director of Tests for Alcohol and Drug Influence.
(7) Establishment, within one (1) year prior to renewal of the Independent Specialist Permit, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, of the applicant's competence to perform and to the Administrative Maintenance of breath testing devices .

40:10-3-12. Reinstatement of expired independent breath-alcohol analysis permits

Persons who otherwise meet the qualifications and requirements for issuance of a renewal Independent Breath-Alcohol Analysis Operator or Independent Breath-Alcohol Analysis Specialist Permit, respectively, but whose initial or renewal Permit has expired because of failure satisfactorily to complete a timely requalification course of instruction acceptable to the State Director of Tests for Alcohol and Drug Influence may regain eligibility for active and valid Permit status, for good cause and in the discretion of this Board, by the following Permit Reinstatement procedure.
(1) Documentation that a valid Independent Breath-Alcohol Analysis Operator or Independent Breath-Alcohol Analysis Specialist Permit was issued to the applicant under authority of this Board, of the issue and expiration dates of said Permit, and that said Permit had not been revoked for cause.
(2) Completion of a designated application form for Independent Permit Reinstatement, inclusive of all required information.
(3) Satisfactory completion of a requalification or retraining course of instruction in independent breath-alcohol analysis operation and/or independent breath-alcohol analysis specialist, as applicable, consisting of such theoretical and practical instruction and laboratory practice as deemed applicable and necessary by the State Director of Tests for Alcohol and Drug Influence in consultation with the instructional staff.
(4) Establishment, by written and practical examination, to the satisfaction of the Board of Tests for Alcohol and Drug Influence of the applicant's respective competence to perform, or to perform and conduct administrative maintenance of breath testing devices.

SUBCHAPTER 5. BREATH SAMPLE COLLECTION PERSONNEL

40:10-5-1. Qualifications for the collection of specimens of breath for determination of their alcohol concentration

Every individual possessing a valid unexpired permit, issued by the Board of Tests for Alcohol and Drug Influence, to perform tests for alcohol on specimens of breath as Breath-Alcohol Analysis Operator or ~~Supervisor~~ Specialist is hereby declared to be qualified to collect specimens of breath from human subjects for the determination of the alcohol concentration thereof, by direct or delayed analysis. Every valid unexpired permit issued by this Board for the performance of tests for alcohol on specimens of breath shall be deemed, and is declared to be, a valid permit for the collection, by its holder, of specimens of breath from human subjects for the determination of the alcohol concentration thereof by direct or delayed analysis.

[OAR Docket #03-1056; filed 5-29-03]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 20. SPECIMENS

[OAR Docket #03-1073]

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ANALYSIS:
Revoking Breath Retention Samples required with the Breathalyzer (Obsolete Equipment).
CONTACT PERSON:
McBeth Sample, Jr., State Director of Tests for Alcohol and Drug Influence, Department of Public Safety, Building No. 9, 3600 North MLK Blvd., Oklahoma City, Oklahoma 73111, 405-425-2460.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. , SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

40:20-1-4. Collection, retention, and transfer of specimens of breath-alcohol [REVOKED]

~~Collection, retention and storage, transfer, and subsequent (delayed) analysis of retained breath-alcohol specimens, under the provisions of 47 O.S., Sections 751-759 and 3 O.S., Section 303 and 63 O.S., Section 4210A, shall be performed as set forth in this Section.~~

~~(1) **Collection of breath-alcohol specimens.**~~

~~(A) Whenever a test of breath is performed at the direction of a law enforcement officer for the purpose of determining the alcohol concentration thereof, hereafter termed "direct breath-alcohol analysis," the alcohol contents of a breath sample shall be collected during or in association with such direct breath-alcohol analysis except when such test is performed by means of an automated analyzer as designated by the Board. The resulting specimen is hereafter termed "retained breath-alcohol specimen."~~

~~(B) For collection of retained breath-alcohol specimens, one (1) or more breath samples consisting substantially of expired alveolar air shall be collected by means of an approved breath-alcohol apparatus or device and with breath-alcohol retention devices or traps approved and specified for said purpose by the State Director of Tests for Alcohol and Drug Influence. The collection and transfer of such breath specimens shall be performed in accordance with operating procedures prescribed by the State Director of Tests for Alcohol and Drug Influence. Collection of the retained breath-alcohol specimen shall be immediately preceded by continuous observation of the subject for a period of at least fifteen (15) minutes, during which time the subject shall not have ingested alcohol or alcoholic beverages or other liquids, regurgitated, vomited, eaten, or smoked. Such continuous observation may be carried out by the breath-alcohol analysis operator or supervisor collecting the retained breath-alcohol specimen or by any other qualified person.~~

~~(C) Each retained breath-alcohol specimen shall be placed into a sealed envelope or other suitable sealed container, approved by the State Director of Tests for Alcohol and Drug Influence, and bearing or containing at least the following information:~~

~~(i) Full name of the subject from whom the retained breath-alcohol specimen was obtained~~

~~(ii) Date, time, and location where the specimen was obtained~~

~~(iii) Name of the law enforcement agency (and unit thereof, if needed for further identification) responsible for obtaining and storing the specimen~~

~~(iv) Legible signature and Permit number of the Breath-Alcohol Analysis Operator or Supervisor who collected the specimen.~~

~~(2) **Retention and storage of retained breath-alcohol specimens.**~~

~~(A) Each retained breath-alcohol specimen, in its sealed envelope or other sealed container, shall be kept and stored by the law enforcement agency for sixty (60) days from the date of collection, unless dispatched prior thereto to an approved Forensic Alcohol Laboratory as provided in this Section. After the expiration of sixty (60) days from the date of such collection, all such retained breath-alcohol specimens, other than those dispatched to an approved Forensic Alcohol Laboratory as provided in this Section, shall be promptly and safely destroyed by the law enforcement agency.~~

~~(B) Retained breath-alcohol specimens shall be stored and kept in accordance with policies, practices, or procedures established by the law enforcement agency responsible for obtaining and storing these~~

~~specimens. Storage may be at room temperature, or at normal refrigerator temperature (approximately 4°C); and shall be carried out in such manner and by such means as to maintain the identity and integrity of specimens, to exclude tampering with and unauthorized access to or exchange or loss of specimens, and to provide the requisite security for evidentiary purposes.~~

~~(C) Neither the tested person, nor any agent or attorney of such person, shall have access to the retained breath-alcohol specimen while it is in the custody of the law enforcement agency.~~

~~(3) **Transfer of retained breath-alcohol specimens.**~~

~~(A) Upon proper direction by the tested person or such person's agent to the law enforcement agency, received in accordance with such agency's policies, practices and procedures and within sixty (60) days from the date of collection of the retained breath-alcohol specimen, the law enforcement agency shall promptly send or deliver the retained breath-alcohol specimen obtained from such person to any Forensic Alcohol Laboratory which is approved by the Board of Tests for Alcohol and Drug Influence and was selected by such person or such person's agent.~~

~~(B) The law enforcement agency may accomplish the transfer of the retained breath-alcohol specimen to the Forensic Alcohol Laboratory by use of the U. S. Postal Service, personal delivery, or by any other appropriate means; provided, that neither the tested person nor any agent of such person shall have access to the retained breath-alcohol specimen during the transfer process, or thereafter.~~

[OAR Docket #03-1073; filed 5-29-03]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 30. ANALYSIS OF ALCOHOL IN BREATH

[OAR Docket #03-1074]

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40:30-1-3.1. [NEW]
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ANALYSIS:
Revoking Breathalyzer Model 900 and Model 900A. Amending Intoxilyzer 5000-D to say enhanced Intoxilyzer 5000-D. A new section for Independent Breath Alcohol analysis with the Model 5000-D Intoxilyzer. Revoking retained breath-alcohol specimens required by the Breathalyzer (Obsolete Equipment, Revoked).
CONTACT PERSON:
McBeth Sample, Jr., State Director of Tests for Alcohol and Drug Influence, Department of Public Safety, Building No. 9, 3600 North MLK Blvd., Oklahoma City, Oklahoma 73111, 405-425-2460.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. , SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

40:30-1-2. Breath-alcohol analysis with the Breathalyzer Model 900 and Model 900A [REVOKED]

~~(a) **Approved method.** Analysis of breath specimens for the determination of the alcohol content therein by means of the Model 900 and Model 900A Breathalyzer (manufactured by National Draeger, Inc., Pittsburgh, PA 15230 or its predecessors or successors), is hereby approved as a method or technique for analysis of breath specimens for alcohol; and the said devices are hereby approved for that purpose.~~

~~(b) **Operating procedure(s).** Each such analysis shall be performed in compliance with Operating Procedure(s) prescribed and approved by the State Director of Tests for Alcohol and Drug Influence.~~

~~(c) **Analysis.** Each such analysis shall include the following steps:~~

~~(1) Continuous observation of the subject whose breath is to be tested, for a period of at least fifteen (15) minutes prior to the collection of the first breath specimen, during which observation period the subject shall not have ingested alcohol or alcoholic beverages or any other substance, regurgitated, vomited, or smoked. Such observation may be carried out by the breath-alcohol analyst or by any other qualified person.~~

~~(2) Analysis for alcohol of one (1) or more specimens of breath consisting substantially of expired alveolar air.~~

~~(3) A blank analysis preceding analysis of each breath specimen.~~

~~(4) Analysis for alcohol of at least one suitable reference or control sample of known alcohol concentration, such as air equilibrated at a known temperature with a~~

~~solution of known ethyl alcohol content in an alcoholic breath simulator device approved by this Board. The results of each such control analysis must coincide with the corresponding vapor-alcohol concentration target value within one hundredths gram per two hundred and ten liters (± 0.01g/210 L).~~

~~(5) The operator or supervisor performing each such analysis shall properly complete a Breath-Alcohol Analysis Record and Report (or equivalent) form prescribed and approved by the State Director of Tests for Alcohol and Drug Influence. One (1) copy of each such written report form shall be forwarded promptly to the Oklahoma Department of Public Safety and to other agencies and persons listed on the form.~~

~~(d) **Reporting results.** The results of each such breath-alcohol analysis shall be reported in terms of the concentration of alcohol in the subject's breath, in grams of alcohol per two hundred and ten liters of breath (g/210 L), truncated to two (2) decimal places.~~

~~(e) **Breath-alcohol specimen retention.** Each such analysis shall be preceded by collection and retention of a breath-alcohol specimen as prescribed by Section 40:20-1-4.~~

~~(f) **Maintenance.** Maintenance shall be performed as follows on the above listed equipment at least once during each thirty (30) day period and not later than thirty (30) days since the last prior such maintenance, or after the testing of twenty five (25) subjects, whichever occurs first, by a person possessing a valid Breath Alcohol Analysis Supervisor permit issued by this Board:~~

~~(1) A thorough inspection of the equipment for cleanliness and determination that it is in proper operating condition shall be performed.~~

~~(2) The reference ethyl alcohol solution in the alcoholic breath simulator device shall be replaced with new solution and one (1) or more verification analyses performed with the new solution. Each verification analysis shall be performed in accordance with the Operating Procedure(s) prescribed by the State Director of Tests for Alcohol and Drug Influence. The result of each such verification analysis must coincide with the corresponding vapor-alcohol concentration target value within one hundredths gram per two hundred and ten liters (± 0.01g/210 L).~~

~~(3) The results of said verification analyses, the date of inspection, and a written record of the inspection and maintenance performed shall be entered in the applicable portions of the Log of Tests for Alcoholic Influence/Breath Alcohol Analysis Supervisor Service Report (or equivalent) form prescribed and approved by the State Director of Tests for Alcohol and Drug Influence. One (1) copy of each such completed written inspection and maintenance record form shall be forwarded to the Oklahoma Department of Public Safety and to other agencies and persons listed on the form.~~

40:30-1-3. Breath-alcohol analysis with the <u>enhanced</u> Intoxilyzer Model 5000-D

(a) **Approved method.** Analysis of breath specimens for the determination of the alcohol content therein by means of the of the Model 5000-D (manufactured by CMI, Inc., Owensboro, Kentucky 42301 or its successors), is hereby approved as a method or technique for analysis of breath specimens for alcohol.

(b) **Operating procedure(s).** Each such analysis shall be performed in compliance with Operating Procedure(s) prescribed and approved by the State Director of Tests for Alcohol and Drug Influence.

(c) **Analysis.** Each such analysis shall include the following steps:

(1) Continuous observation of the subject whose breath is to be tested, for a period of at least fifteen (15) minutes prior to the collection of the first breath specimen, during which observation period the subject shall not have ingested alcohol or alcoholic beverages or any other substance, regurgitated, vomited, or smoked. Such observation may be carried out by the breath-alcohol analysis Operator or Supervisor or by any other qualified person.

(2) Analysis for alcohol of two (2) or more specimens of breath consisting substantially of expired alveolar air.

(3) A blank analysis preceding analysis of each breath specimen.

(4) Analysis for alcohol of at least one suitable reference or control sample of known alcohol concentration, such as air equilibrated at a known temperature with a reference solution of known ethyl alcohol content in an alcoholic breath simulator device approved by this Board. The results of each such control analysis must coincide with the corresponding vapor-alcohol concentration target value within <u>plus or minus</u> one-hundredths gram per two hundred and ten liters (± 0.01g/210 L).

(5) The operator performing each such analysis shall properly provide complete a Breath-Alcohol Analysis Record and Report form prescribed and designated by the State Director of Tests for Alcohol and Drug Influence, and shall promptly forwarded one (1) copy thereof to the Oklahoma Department of Public Safety, and to other agencies and persons listed on the form.

(d) **Reporting results.** The results of each such breath-alcohol analysis shall be reported in terms of the concentration of alcohol in the subject's breath, in grams of alcohol per two hundred and ten liters of breath (g/210 L), truncated to two (2) decimal places. Results of duplicate breath alcohol analyses, on the same subject on the same occasion, which are within three-hundredths grams per two hundred and ten liters of breath (± 0.03 g/210L) shall be deemed to be in acceptable agreement and mutually confirmatory and substantiative. All such results shall be reported, but actions and interpretation of the results of such duplicate analyses shall be based upon the lowest such breath-alcohol result obtained.

(e) **Maintenance** Maintenance shall be performed as follows on the above listed equipment at least once during each thirty (30) day period and not later than thirty (30) days since the last prior such maintenance, or after the testing of twenty

five (25) subjects, whichever occurs first, by a person possessing a valid Breath Alcohol Analysis ~~(Supervisor)~~ (Specialist) permit issued by this Board:

(1) A thorough inspection of the equipment for cleanliness and determination that it is in proper operating condition shall be performed.

(2) The reference ethyl alcohol solution in the alcoholic breath simulator device shall be replaced with new solution and one (1) or more verification analyses performed with the new solution.

Each verification analysis shall be performed in accordance with the Operating Procedure(s) prescribed by the State Director of Tests for Alcohol and Drug Influence. The result of each such verification analysis must coincide with the corresponding vapor-alcohol concentration target value within plus or minus one-hundredths gram per two hundred and ten liters (± 0.01g/210 L).

(3) ~~Results of said verification analyses,~~ The administrative maintenance performed, shall include; results of said verification analyses, date of inspection, and a written record of the inspection ~~and maintenance preformed shall be~~ will be entered in the applicable portions of the Intoxilyzer 5000-D Log of Tests and Maintenance Record ~~for Alcohol Influence/Breath Alcohol Analysis Supervisor Service Report~~ (or equivalent) form prescribed and designated by the State Director of Tests for Alcohol and Drug Influence. ~~One (1) copy of each such completed written inspection and maintenance record form shall be forwarded to the Oklahoma Department of Public Safety and to other agencies and persons listed on the form.~~

40:30-1-3.1. Independent Breath-alcohol analysis with the Intoxilyzer Model 5000-D

(a) **Approved method.** Analysis of breath specimens for the determination of the alcohol content therein by means of the of the Independent Model 5000-D (manufactured by CMI, Inc., Owensboro, Kentucky 42301 or its successors), is hereby approved as a method or technique for analysis of independent breath specimens for alcohol.

(b) **Operating procedure(s).** Each such analysis shall be performed in compliance with Operating Procedure(s) prescribed and approved by the State Director of Tests for Alcohol and Drug Influence.

(c) **Analysis.** Each such analysis shall include the following steps:

(1) Continuous observation of the subject whose breath is to be tested, for a period of at least fifteen (15) minutes prior to the collection of the first breath specimen, during which observation period the subject shall not have ingested alcohol or alcoholic beverages or any other substance, regurgitated, vomited, or smoked. Such bservation may be carried out by the breath-alcohol analysis Operator or Supervisor or by any other qualified person.

(2) Analysis for alcohol of two (2) or more specimens of breath consisting substantially of expired alveolar air.

(3) A blank analysis preceding analysis of each breath specimen.

(4) Analysis for alcohol of at least one suitable reference or control sample of known alcohol concentration, such as air equilibrated at a known temperature with a reference solution of known ethyl alcohol content in an alcoholic breath simulator device approved by this Board. The results of each such control analysis must coincide with the corresponding vapor-alcohol concentration target value within plus or minus one-hundredths gram per two hundred and ten liters (± 0.01g/210 L).

(5) The operator performing each such analysis shall provide a copy of the Intoxilyzer printout with each test attached to the Log of Tests and Maintenance Report prescribed and designated by the State Director of Tests for Alcohol and Drug Influence, and shall promptly forwarded one (1) copy of the print out thereof and within 10 days of the solution change, to the Administrative Offices of the Board of Tests for Alcohol and Drug Influence.

(d) **Reporting results.** The results of each such breath-alcohol analysis shall be reported in terms of the concentration of alcohol in the subject's breath, in grams of alcohol per two hundred and ten liters of breath (g/210 L), truncated to two (2) decimal places. Results of duplicate breath alcohol analyses, on the same subject on the same occasion, which are within three-hundredths grams per two hundred and ten liters of breath (± 0.03 g/210L) shall be deemed to be in acceptable agreement and mutually confirmatory and substantiative. All such results shall be reported, but actions and interpretation of the results of such duplicate analyses shall be based upon the lowest such breath-alcohol result obtained.

(e) **Maintenance.** Administrative Maintenance shall be performed as follows on the above listed equipment at least once during each thirty (30) day period and not later than thirty (30) days since the last prior such maintenance, or after the testing of twenty five (25) subjects, whichever occurs first, by a person possessing a valid Breath Alcohol Analysis Specialist permit issued by this Board:

(1) A thorough inspection of the equipment for cleanliness and determination that it is in proper operating condition shall be performed.

(2) The reference ethyl alcohol solution in the alcoholic breath simulator device shall be replaced with new solution and one (1) or more verification analyses performed with the new solution. Each verification analysis shall be performed in accordance with the Operating Procedure(s) prescribed by the State Director of Tests for Alcohol and Drug Influence. The result of each such verification analysis must coincide with the corresponding vapor-alcohol concentration target value within plus or minus one-hundredths gram per two hundred and ten liters (± 0.01g/210 L).

(3) The administrative maintenance perfor med, shall include; results of said verification analyses, the date of inspection, and a written record of the inspection will be entered in the applicable portions of the Intoxilyzer 5000-D Log of Tests and Maintenance Record (or equivalent) form prescribed and approved by the State Director of Tests for Alcohol and Drug Influence. One (1) copy of each such completed written inspection and maintenance

record form shall be forwarded to the Administrative Offices of the Board, within 10 days of the solution change.

40:30-1-4. Analysis of retained breath-alcohol specimens [REVOKED]

~~(a) **Approved methods.** Analysis of retained breath-alcohol specimens for alcohol may be carried out by any method or procedure approved by the Board of Tests for Alcohol and Drug Influence to determine the alcohol concentration of specimens of blood, modified as necessary for applicability to retained breath-alcohol specimens. Such analysis may also be carried out by any other appropriate gas chromatographic method of analysis for alcohol which employs flame ionization detector(s), direct injection of a liquid sample or injection of an equilibrated headspace sample, electronic integration of the chromatogram peaks or areas, a suitable internal standard, and simultaneous calibrators or reference standards.~~

~~(b) **Reporting results.** The results of analyses of retained breath-alcohol specimens shall be reported in terms of the concentration of alcohol in the subject's breath, in grams of alcohol per two hundred ten (210) liters of breath (g/210 L), truncated to two (2) decimal places. Results of analyses of retained breath-alcohol specimens which are within three hundredths (± 0.03) g/210 L of the results of the corresponding direct breath-alcohol analysis performed on the same subject shall be deemed to be in acceptable agreement with and confirmatory and substantiative of such direct breath-alcohol analysis results, as a scientifically acceptable tolerance.~~

~~(c) **Other requirements.** Analysis of a retained breath-alcohol specimen shall be carried out only and in its entirety in the Forensic Alcohol Laboratory, approved by the Board of Tests for Alcohol and Drug Influence, to which such retained breath-alcohol specimen was originally sent or delivered by the law enforcement agency responsible for its collection and storage. Such analysis shall be performed by a person holding a currently valid Forensic Alcohol Analysis Permit issued by authority of the Board of Tests for Alcohol and Drug Influence.~~

[OAR Docket #03-1074; filed 5-29-03]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 35. ANALYSIS OF ALCOHOL IN BLOOD

[OAR Docket #03-1075]

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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
Revoking methods that are obsolete.
CONTACT PERSON:
McBeth Sample, Jr., State Director of Tests for Alcohol and Drug Influence, Department of Public Safety, Building No. 9, 3600 North MLK Blvd., Oklahoma City, Oklahoma 73111, 405-425-2460.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. , SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

40:35-1-2. Approved methods for blood-alcohol analysis [REVOKED]

~~The Board of Tests for Alcohol and Drug Influence hereby declares the following, identified by reference sources and successors thereto incorporated herein by reference, to be satisfactory techniques for performance of chemical tests for alcohol in specimens of blood.~~

~~(1) **The Dubowski gas chromatographic method (manual).** Dubowski, K. M., "Ethanol-Type C Procedure," in METHODOLOGY FOR ANALYTICAL TOXICOLOGY, ed. by Irving Sunshine, Cleveland, CRC Press, Inc., 1975, pp. 149-154.~~

~~(2) **The Dubowski gas chromatographic method (automated).** Dubowski, K. M.: MANUAL FOR ANALYSIS OF ETHANOL IN BIOLOGICAL LIQUIDS, Report No. DOT-TSC-NHTSA-76-4 (HS-802 208), U. S. Department of Transportation, National Highway Traffic Safety Administration, Washington, DC 20590, January 1977. (Available from NTIS, Springfield, Virginia 22161).~~

~~(3) **The Dubowski modification of the enzymatic oxidation method.** Dubowski, K. M., "Enzymatic Procedure," in ALCOHOL AND THE IMPAIRED DRIVER, 2nd ed., ed. by Committee on Medicolegal Problems, American Medical Association, Chicago, American Medical Association, 1973, pp. 87, 89-91.~~

~~(4) **The Wallace and Dahl gas chromatographic method.** Wallace, J. E. and Dahl, E. V., "Rapid Vapor Phase Method for Determining Ethanol in Blood and~~

~~Urine by Gas Chromatography," Am. J. Clin. Path. 46; 152-154 (1960).~~

[OAR Docket #03-1075; filed 5-29-03]

TITLE 90. ~~EXECUTIVE AND LEGISLATIVE BOND OVERSIGHT COMMISSIONS~~COUNCIL OF BOND OVERSIGHT
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #03-1092]

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PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
90:1-1-1. [AMENDED]
90:1-1-2. [AMENDED]
90:1-1-3. [AMENDED]
90:1-1-4. [AMENDED]
Subchapter 3. General Operations of the ~~Commissions~~Council
90:1-3-1. [AMENDED]
90:1-3-2. [AMENDED]
90:1-3-3. [AMENDED]
90:1-3-4. [AMENDED]
90:1-3-5. [AMENDED]
90:1-3-6. [AMENDED]
90:1-3-7. [AMENDED]
Subchapter 5. Procedures for Adoption, Amendment and Repeal of Rules
90:1-5-1. [AMENDED]
Subchapter 7. Requests for Declaratory Rulings
90:1-7-1. [AMENDED]
Subchapter 9. Severability and Interpretation
90:1-9-2. [AMENDED]
AUTHORITY:
62 O.S., Section 695.8(A)(4), Executive and Legislative Bond Oversight Commissions; 62 O.S., Section 695.11A., Council of Bond Oversight-Validation of actions and obligations-Members-Quorum-Vacancy
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90:1-1-3. [AMENDED]
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Subchapter 3. General Operations of the ~~Commissions~~Council
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90:1-3-6. [AMENDED]
90:1-3-7. [AMENDED]
Subchapter 5. Procedures for Adoption, Amendment and Repeal of Rules
90:1-5-1. [AMENDED]
Subchapter 7. Requests for Declaratory Rulings
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Subchapter 9. Severability and Interpretation
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03-69
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
On September 24, 2002, the Oklahoma Supreme Court ruled that the Oklahoma Legislative Bond Oversight Commission violated the separation of powers doctrine of the Oklahoma Constitution. As a result of this ruling, the powers, duties, and responsibilities of both the Executive and Legislative Bond oversight Commissions devolve upon the Council of Bond Oversight (as provided by the Oklahoma Bond Oversight and Reform Act). The proposed Rules are needed in order for the Council of Bond Oversight and the State Bond Advisor's office to efficiently and effectively administer the Oklahoma Bond Oversight and Reform Act, the Oklahoma Private Activity Bond Allocation Act and other relevant statutes. Since the Executive and Legislative Bond Oversight Commissions are obsolete a name change is required in the rules in order for the State Bond Advisor's Office to operate. Also, included is the correction of the official office address and telephone numbers.
CONTACT PERSON:
Lorie Collier, State Bond Advisor's Office, 5900 North Classen Court, Oklahoma City, Oklahoma 73118, 405/602-3100, Facsimile: 405/848-3314, E-mail: lcollier@oksba.org

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

90:1-1-1. Purpose and scope

The ~~Executive Bond Oversight Commission and the Legislative Bond Oversight Commission are Commissions of the State of Oklahoma~~ Council of Bond Oversight was created to implement the Oklahoma Bond Oversight and Reform Act found at 62 O.S., Section 695.1 et~~.~~ seq. The ~~Commissions have been charged with the duty of~~ Council is responsible for providing systematic oversight ~~in regard to issuances of indebtedness~~ of debt issuances by State Governmental Entities. ~~In order to provide guidelines for all state governmental entities which are subject to oversight under the terms of the Act and which wish to issue debt obligations, t~~The rules of this Chapter establish the operations of the ~~Commissions~~ Council in order to facilitate the business of the ~~Commissions~~ Council and State Bond Advisor and of such entities.

90:1-1-2. Statutory definitions

The following terms are defined in ~~62 O.S., Section 695.3~~ 62 O.S. 695.1 et.seq.:

~~(1) Executive Commissions~~
~~(2) Legislative Commissions~~
~~(3) Commissions~~
(1) Council
~~(4) State Governmental Entity~~
(2) State Governmental Entity
~~(5) Local Government Entity~~
(3) Local Governmental Entity
~~(6) Purpose~~
(4) Purpose

90:1-1-3. Clarification of certain definitions

(a) "Authorized and Proper Public Functions or Purposes". The ~~Commissions are~~ Council is ~~mandated~~ directed to make determinations regarding the public purpose for which obligations are to be issued by State Governmental ~~entities~~Entities in accordance with Title 60 of the Oklahoma Statutes, Sections 176, et seq, the Oklahoma Public Trust Act (the "Public Trust Act"). The Public Trust Act authorizes obligations to be issued for authorized and proper public functions or purposes. Limitations imposed in regard to public purpose as set out in the Public Trust Act and imposed as a result of statutory language therein may be specified by indenture documents that are the charter documents for a particular entity and/or in statutory language pertaining to a particular Issuer or bond issue in other federal or state laws. Specific prohibitions in Title 60 in regard to the definition of a "proper public purpose" can be found at Section 177.2 and Section 178.4 of that title. In order to provide systematic oversight, in determining "public purpose", the ~~Commissions~~ Council shall review the end sought to be reached and the means to be used in reaching that end in order to promote the public health, safety, morals, security, prosperity and general welfare and contentment of all citizens.

(b) "Authorized Public Functions or Purposes" include functions or purposes which are authorized by law. State governmental entities will be limited to ~~their~~ the authority given them by the State Constitution or state statutes. State beneficiary trusts will be limited to the~~ir~~ authority stated in their charter or trust indenture if the function and purpose is one which the State could be authorized to perform.

(c) "Proper Public Function or Purpose" are those functions and purposes which are authorized public functions or purposes. Such public functions or purposes are proper if they benefit a large class of the public, lessen the burdens of government or are deemed proper by the State Constitution.

90:1-1-4. Additional definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"The Act" means the Bond Oversight and Reform Act, 62 O.S., Section 695.1 et.seq. when used in Chapter 1 of this title.

"Applicant" means the State or Local Governmental Entity making application to the ~~Commissions~~ Council for approval and/or with respect to the reporting requirements specified in these rules.

"Open Meeting Act" means the Oklahoma Open Meeting Act , 25 O.S. Section 301, et. seq.

"Open Records Act" means the Oklahoma Open Records Act, 51 O.S. Section 24 A.1. et seq.

SUBCHAPTER 3. GENERAL OPERATIONS OF THE ~~COMMISSIONS~~COUNCIL

90:1-3-1. Official office

The ~~Office~~Offices of the ~~Executive and Legislative Bond Oversight Commissions~~ Council of Bond Oversight ~~as well as~~ and the State Bond Advisor are located at ~~is 301 Northwest 63rd Street, Suite 225~~ 5900 N. Classen Court, Oklahoma City, Oklahoma ~~73116~~ 73118. The telephone number is (405) ~~521-6198~~ 602-3100 and telecopier number is (405) 848-3314. The office hours are from 8:00 a.m. to 5:00 p.m. Central Time, Monday through Friday, except legal holidays.

90:1-3-2. Meetings of the ~~Commissions~~Council

Section 695.6(A) of the Act requires the ~~Commissions~~ Council to meet at least once a month on the last Thursday of each month or on another day at the call of ~~agreed upon by~~ the ~~Chairs~~ Chair of the ~~Commissions~~ Council. A schedule of meetings may be obtained upon request of the office.

90:1-3-3. Executive sessions

The ~~Commissions~~ Council may hold executive sessions at such meetings as is permitted by the ~~Oklahoma~~ Open Meeting Act.

90:1-3-4. Notice of meetings

Notice of regular and special meetings will be given in accordance with the provisions of the ~~Oklahoma~~ Open Meeting Act ~~supra~~.

90:1-3-5. Agenda items

The State Bond Advisor prepares an agenda on behalf of the ~~Commissions~~ Council for each meeting of the ~~Commissions~~ Council. The agenda is filed and posted in accordance with the ~~Oklahoma~~ Open Meeting Act, supra. Members of the public may request the ~~Commissions~~ Council to place matters on the agenda for a meeting. The Council may adopt such procedures from time to time as it deems necessary for the orderly and efficient conduct of meetings.

90:1-3-6. Confidential or commercially sensitive information

Any information submitted to the ~~Commissions~~ Council which may be kept confidential by the applicant shall be kept confidential by the ~~Commissions~~ Council.

90:1-3-7. Open records

The records of the Council are subject to the Open Records Act. All requests for the public records of the ~~Commissions~~ Council will be made through the State Bond Advisor who will be charged with making the public records of the ~~Commissions~~ Council available for inspection by or copying to the requesting party during normal hours. The ~~Commissions~~ Council will charge $0.25 per page for each copy of a public record made upon written request. The State Bond Advisor will decide if the request is for a record not otherwise made confidential under Oklahoma Law. The State Bond Advisor is authorized to discuss this decision with the Office of the Attorney General of the State of Oklahoma as may become necessary. Except information that is confidential or commercially sensitive as described in 90:1-3-6, or specifically kept confidential under Oklahoma or federal law, all documents or other records of the ~~Commissions~~ Council will be open for public inspection and copying.

SUBCHAPTER 5. PROCEDURES FOR ADOPTION, AMENDMENT AND REPEAL OF RULES

90:1-5-1. Procedures for adoption, amendment and repeal of rules

(a) The ~~Commissions~~ Council may adopt, amend or repeal a rule on ~~their~~ its own initiative, and may adopt, amend or repeal a rule at the request or recommendation of the State Bond Advisor.

(b) The ~~Commissions~~ Council may on ~~their~~ its own motion, conduct hearings on proposed new rules, amendments or repeal of rules.

(c) Any interested person may petition the ~~Commissions~~ Council, requesting the adoption, amendment, or repeal of a rule. All such petitions shall be in writing, and be filed with the principal office. The petition shall include the name and address of the petitioning party and shall state clearly and concisely all matters pertaining to the requested action and the reasons for the request.

(d) The time and location of hearings shall be stated in the notice as required under the ~~Oklahoma~~ Open Meeting~~s~~ Act and shall be conducted in accordance with the Administrative Procedures Act.

(e) Any person who is interested or affected by proposed actions may appear at the hearing. An appearance may be made individually, by an attorney, or by an authorized agent.

(f) Prior to the adoption, amendment or repeal of a rule, the ~~Commissions~~ Council shall afford any interested person a reasonable opportunity to submit data, views and arguments either oral or written. If the rule under consideration affects the substantive rights of any person, the ~~Commissions~~ Council shall grant any person or entity a reasonable opportunity to participate in an oral hearing if requested by the person or entity.

SUBCHAPTER 7. REQUESTS FOR DECLARATORY RULINGS

90:1-7-1. Requests for declaratory rulings

(a) Any interested person or entity may petition the ~~Commissions~~ Council for a declaratory order as to the applicability of any rule of the ~~Commissions~~ Council.

(b) The petition must identify the rule questioned, the date on which such rule became effective, and shall set forth the contents of the rule. The petition shall contain a brief statement of the issue or issues raised by the rule which cause such a request to be made and a statement of the petitioner's personal interest in the ruling of the ~~Commissions~~ Council and how a ruling of the ~~Commissions~~ Council would affect those interests.

(c) Upon receipt of the petition for declaratory ruling the ~~Commissions~~ Council shall consider the petition and within a reasonable time following receipt thereof, either deny the petition in writing, stating its reasons for denial, or issue a declaratory ruling on the matter(s) contained in the petition.

SUBCHAPTER 9. SEVERABILITY AND INTERPRETATION

90:1-9-2. Interpretation of Title

This Title and procedures are adopted to simplify procedure, avoid delays, save expenses and facilitate implementation of the Oklahoma Bond Oversight and Reform Act and the Oklahoma Private Activity Bond Allocation Act by the ~~Bond Oversight Commissions~~ Council of Bond Oversight and the State Bond Advisor. To that end, this Title will be given a fair and impartial construction. This Title shall be cumulative to the Oklahoma Administrative Procedures Act [75 O.S., Section 250 et seq.].

[OAR Docket #03-1092; filed 6-2-03]

TITLE 90. ~~EXECUTIVE AND LEGISLATIVE BOND OVERSIGHT COMMISSIONS~~COUNCIL OF BOND OVERSIGHT

CHAPTER 10. ADMINISTRATION OF THE OKLAHOMA BOND OVERSIGHT AND REFORM ACT

[OAR Docket #03-1093]

RULEMAKING ACTION:

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90:10-1-2. [AMENDED]
90:10-1-3. [REVOKED]
90:10-1-4. [AMENDED]

Subchapter 3. Application Procedure ~~for Applicants Subject to Commission Approval of Obligations~~ [AMENDED]
90:10-3-1. [AMENDED]
90:10-3-3. [AMENDED]
90:10-3-4. [AMENDED]
90:10-3-5. [AMENDED]
90:10-3-6. [AMENDED]
90:10-3-7. [AMENDED]
90:10-3-8. [AMENDED]
Subchapter 5. Fees
10:10-5-1. [AMENDED]
90:10-5-2. [AMENDED]
Subchapter 7. Evaluation Standards and Criteria
90:10-7-1. [AMENDED]
90:10-7-2. [AMENDED]
90:10-7-3. [AMENDED]
90:10-7-4. [AMENDED]
90:10-7-5. [AMENDED]
Subchapter 9. Reporting
90:10-9-1. [AMENDED]
90:10-9-2. [AMENDED]
Subchapter 11. Credit Enhancement Reserve Fund Applications
90:10-11-1. [AMENDED]
90:10-11-2. [AMENDED]

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SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 1. General Provisions
90:10-1-1. [AMENDED]
90:10-1-2. [AMENDED]
90:10-1-3. [AMENDED]
Subchapter 3. Application Procedure ~~for Applicants Subject to Commission Approval of Obligations~~ [AMENDED]
90:10-3-1. [AMENDED]
90:10-3-3. [AMENDED]
90:10-3-4. [AMENDED]
90:10-3-5. [AMENDED]
90:10-3-6. [AMENDED]
90:10-3-7. [AMENDED]
90:10-3-8. [AMENDED]
Subchapter 5. Fees
10:10-5-1. [AMENDED]
Subchapter 7. Evaluation Standards and Criteria
90:10-7-1. [AMENDED]
90:10-7-2. [AMENDED]
90:10-7-3. [AMENDED]
90:10-7-4. [AMENDED]
90:10-7-5. [AMENDED]
Subchapter 9. Reporting
90:10-9-1. [AMENDED]
90:10-9-2. [AMENDED]
Subchapter 11. Credit Enhancement Reserve Fund Applications
90:10-11-1. [AMENDED]
90:10-11-2. [AMENDED]

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N/A

ANALYSIS:
On September 24, 2002, the Oklahoma Supreme Court ruled that the Oklahoma Legislative Bond Oversight Commission violated the separation of powers doctrine of the Oklahoma Constitution. As a result of this ruling, the powers, duties, and responsibilities of both the Executive and Legislative Bond Oversight Commissions devolve upon the Council of Bond Oversight (as provided by the Oklahoma Bond Oversight and Reform Act). The proposed Rules are needed in order for the Council of Bond Oversight and the State Bond Advisor's office to efficiently and effectively administer the Oklahoma Bond Oversight and Reform Act, the Oklahoma Private Activity Bond Allocation Act and other relevant statutes. Since the Executive and Legislative Bond Oversight Commissions are obsolete a name change is required in the rules in order for the State Bond Advisor's Office to operate. Also, included is the correction of the official office address and telephone numbers.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

90:10-1-1. Purpose and scope

The Council of Bond Oversight was ~~Executive Bond Oversight Commission and the Legislative Bond Oversight Commission are Commissions of the State of Oklahoma~~ created to implement the Oklahoma Bond Oversight and Reform Act found at 62 O.S., Section 695.1 et.seq. ("the Act") The ~~Commissions~~ Council is responsible for ~~have been charged with the duty of providing systematic~~ oversight ~~in regard to issuances of obligations~~ of debt issuance by State ~~state~~ Governmental ~~governmental~~ Entities ~~entities~~ and certain Local Governmental Entities as provided in 62 O.S., Section 695.9(C) . To implement the Act, ~~In order to provide guidelines for all State Governmental Entities which are subject to oversight under the terms of the Act and which wish to issue obligations~~, the rules of this Chapter establish time frames, methods, criteria for evaluation, fees, and information required on application forms for such entities in order to facilitate the business of the Council ~~Commissions~~ and State Bond Advisor and of such entities.

90:10-1-2. Statutory definitions

The following terms are defined in 62 O.S., Section 695.3 et~~.~~ seq.:

~~(1) Executive Comission~~
~~(2) Legislative Commission~~
~~(3) Commissions~~
(1) Council of Bond Oversight
~~(4) State Governmental Entity~~
(2) State Governmental Entity
~~(5) Local Governmental Entity~~
(3) Local Governmental Entity
~~(6) Purpose~~
(4) Purpose

90:10-1-3. Clarification of certain terms [REVOKED]

~~(a) "Authorized and Proper Public Functions or Purposes". The Commissions are mandated to make determinations regarding public purpose for which obligations are to be issued by State Governmental Entities in accordance with Title 60 of the Oklahoma Statutes, Sections 176, et seq, the Oklahoma Public Trust Act (the "Public Trust Act"). The Public Trust Act authorizes obligations to be issued for authorized and proper public functions or purposes. Limitations imposed in regard to public purpose as set out in the Public Trust Act and imposed as a result of statutory language therein may be specified by indenture documents that are the charter documents for a particular entity and/or in statutory language pertaining to a particular Issuer or bond issue in other federal or state laws. Specific prohibitions in Title 60 in regard to the definition of a "proper public purpose" can be found at Section 177.2 and Section 178.4 of that title. In order to provide systematic oversight, in determining "public purpose", the Commissions shall review the end sought to be reached and the means to be used in reaching that end in order to promote the public health, safety, morals, security, prosperity and general welfare and contentment of all citizens.~~

~~(b) "Authorized Public Functions or Purposes" include functions or purposes which are authorized by law. State governmental entities will be limited to their authority given them by the State Constitution or state statutes. State beneficiary trusts will be limited to their authority in their charter or trust indenture if the function and purpose is one which the State could be authorized to perform.~~

~~(c) "Proper Public Function or Purpose" are those functions and purposes which are authorized public functions or purposes. Such public functions or purposes are proper if they benefit a large class of the public, lessen the burdens of government or are deemed proper by the State Constitution.~~

90:10-1-4. Additional definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"~~The~~ Act" means the Bond Oversight and Reform Act, 62 O.S., Section 695.1 et~~.~~ seq.

"Applicant" means the State or Local Governmental Entity making application to the ~~Commissions~~ Council for approval and/or with respect to the reporting requirements specified in these rules.

"The Committee" means the Program Development and Credit Review Committee established pursuant to Title 74, Section 5062.6a.

"Formal preliminary action" means Board or Agency adoption of an inducement resolution or obligation resolution.

"Issued" or **"Closed"** shall have the meaning provided in 62 O.S., Section 695.23 (11).

"Lease purchase" means an agreement by which a party pays the owner of tangible property for the right to use the property, and the party also obtains the right or option to purchase the property. If the option to purchase the property in a lease agreement is only the option to purchase the property for equal to or greater than the fair market value of the property, with no credit given to the lessee for prior lease payments, such an agreement shall not be considered an "obligation" for purposes of the "Act". It shall further mean lease agreements where the state governmental entity has the contractual right to occupy the premises for no consideration or nominal consideration after making lease payments for a period of time, whether or not the state governmental entity has an option to purchase or acquire the property. It shall also mean lease agreements where the lease payments are paid to a political subdivision, trust authority or similar entity, and the payments are used to solely retire a debt or obligation of the political subdivision, trust authority or similar entity.

"Obligations" means revenue or tax-supported bonds, certificates, lease purchase agreements, note, debenture, loan or other evidence of indebtedness of a state or local governmental entity with a maturity longer than 12 months or a maturity which encompasses more than one (1) fiscal year, regardless of whether such obligations are subject to annual governmental appropriations.

"Plurality of persons" means at least three persons or firms as well as any firm or person who has contacted the issuer and requested to be placed on the mailing list for Request for Proposals. [62 O.S., Section 695.7(C)]

SUBCHAPTER 3. APPLICATION PROCEDURE~~FOR APPLICANTS SUBJECT TO COMMISSION APPROVAL OF OBLIGATIONS~~

90:10-3-1. General

(a) ~~As an oversight body, the~~The Council ~~Commissions~~ needs sufficient information to make informed decisions regarding the nature, purpose, necessity and legality of proposed financing and they need access to any other information required for decisions in special circumstances. In general, the ~~Commissions~~ Council will not require primary source data but rather require that such information be made available to them in special circumstances. The ~~Commissions~~ Council will require an applicant to collect and evaluate information from borrowers or beneficiaries of obligation financing, and rely on the competent performance of the issuer boards, staffs,

or members of financing teams to perform competent due diligence on a financing.

(b) ~~Many obligation financings are~~ Some complex transactions ~~that~~ may involve multi-stage processes. ~~Some information~~Information available to an issuer may be general at the beginning of the process and become more specific ~~refined~~ as the transaction progresses. For this reason, application approval may occur in two steps ~~will rest on a two-step phased approach~~: provisional approval and final approval.

90:10-3-3. Provisional Approval Application form information

The Request for Provisional Approval form shall be provided by the State Bond Advisor, and shall include but not be limited to the following:

(1) **Proposed ~~obligation~~ issue.** ~~This category requires general~~ An applicant must submit information regarding the anticipated amount, schedule and structure for the bond issue. ~~In addition, this category includes~~ An applicant must also include information regarding professionals selected for the bond issue along with their quoted fees and expenses.

(2) **Project information.** ~~In this category the~~The Application must provide the name and address of the borrower as well as a one page description of the purpose, nature and need for the project.

(3) **Outstanding obligation information.** ~~This category requires~~ An applicant must provide information on the status of its ~~the Applicant's~~ outstanding obligations and anticipated issuances. This information will ~~become part of the Commission's data base regarding state governmental entities' issuance activities and~~ enable the ~~Commissions~~ Council to make decisions on individual applications ~~issues~~ within a broader context.

90:10-3-4. Final approval form

(a) The Request for Final Approval form shall be provided by the State Bond Advisor, and shall include but not be limited to the following:

(1) **Material changes.** The Applicant is required to list and explain any material changes from the information provided on the issuer's Provisional Approval form that have taken place since the date of provisional approval.

(2) **Project information.** The Applicant is required to provide more detailed information on the status of the project, including the anticipated construction draw schedule and the estimated completion date. Descriptions of any collateral pledged for the borrowing, the revenue stream dedicated for repayment of the loan, and any credit enhancement provider are also required.

(3) **Attachments.** The following attachments are required:

(A) Evidence of provisional approval from the ~~Commissions~~ Council unless the applicant elects to apply for provisional and final approval simultaneously, pursuant to 90:10-3-4(b).

(B) Letter from issuer certifying that due diligence has been completed.

(C) Letter from issuer's attorney or bond counsel stating that they have reviewed the proposed transaction and it will comply with state and federal law.

(D) Copy of the document that authorizes the bond issue. Such documentation would include enabling act, legislation, resolution or ordinance from the issuer's governing board, and/or other documentation authorizing the obligation.

(E) Letter from the issuer stating that there are no conflicts of interest between the Applicant, any borrowers, service providers affiliated with the issuance, or any other participants in the transaction.

(F) Form of Opinion Letter from Bond Counsel regarding the valid authorization and tax status of the issue. The ~~Commissions~~ Council may approve an application pending receipt of bond counsel opinion letter; however, the letter must be received prior to closing.

(G) In the case of obligations backed by the Credit Enhancement Reserve Fund, the report prepared by the Program Development and Credit Review Committee and the Credit Enhancement Reserve Fund Supplemental Information form.

(H) Preliminary Official Statement, Offering Circular or Private Placement Memorandum. This information may be submitted in draft form, provided the issuer identifies any missing information or data that is incomplete and/or subject to change.

(I) Letter from issuer's attorney or bond counsel stating that there is no litigation pending or threatened relating to outstanding or proposed obligations or the issuer's authority to enter into any agreements necessary to complete the proposed transaction.~~the issuer is not currently involved in litigation regarding any outstanding obligations~~.

(b) In addition to the above, the State Bond Advisor may require an issuer to submit any other materials or information deemed by the State Bond Advisor to be necessary to consideration of the application.

(c) An issuer may elect to apply for final and provisional approval simultaneously. An application must include ~~complete~~ both the provisional and final approval request forms and all required supporting documentation and be submitted ~~submit~~ together in accordance with the provisions of 90:10-3-2.

90:10-3-5. State Bond Advisor review of request for proposals and approval of fees

(a) State and Local Governmental Entities subject to the provisions of Section 695.7(C) of the Act, must submit request for proposals to the State Bond Advisor for review and comment. The State Bond Advisor shall have seven days from the date requests for proposals are submitted to provide written or oral comment to the applicant, State or Local Government Entity, prior to an applicant's use of a request for proposals. Requests for proposals shall make provision for the submission of cost information in a format approved by the State Bond Advisor.

Applicants shall also provide to the State Bond Advisor copies of final Requests for Proposals. One copy of each response to a request for proposals shall be provided to the State Bond Advisor within seven days of its receipt. ~~and responses to such requests~~. State or Local Governmental Entities subject to Section 695.7(C) of the Act shall prepare a written statement indicating the basis for selections, and make such statement available on request to the ~~Commissions~~ Council.

(b) State or Local Governmental Entities subject to the provisions of Section 695.7(C) of the Act, must submit fee approval requests in such form as the State Bond Advisor may require at any time. The State Bond Advisor shall approve or disapprove the fees and expenses for goods and services requisite or deemed desirable in the issuance of obligations, including, but not limited to the following:

(1) Underwriter's Discount:
  (A) Management Fee
  (B) Expenses
  (C) Underwriting
  (D) Average Takedown
(2) Bond Counsel or Tax Counsel
(3) Trustee/Paying Agent (new money and escrow agent)
(4) Financial Advisor
(5) Financial Printer
(6) Credit Enhancement
(7) Cash Flow Validation
(8) Bond Pricing
(9) Investment Contracts
(10) Remarketing Agent
(11) Escrow Verification Agent

(c) Unless otherwise provided by law, the provisions of (a) and (b) of this section shall be applicable to an applicant, regardless of whether or not the applicant directly engages such services or such services are engaged by another party to a financing transaction.

(d) State and Local Governmental Entities subject to the Act may request proposals for services in connection with multiple issuances if the services will be performed and completed in a 12 month period and where each issue is part of a single program or related plan of financing as determined by the State Bond Advisor. The 12 month period will begin at the date of first issuance. The State Bond Advisor may extend any engagement under this section if he determines that a change in the financing team would result in unnecessary delays and/or additional cost.

90:10-3-6. Program approval

The ~~Commissions~~ Council recognizes that certain potential applicants may not wish to incur time and expense in developing programs or plans of financing without first obtaining tentative approval of the general purpose and intent of the program. Such potential applicants may request such approval from the ~~Commissions~~ Council prior to taking formal preliminary action on any specific issuance without making the formal application for approval under 62 O.S., Section 695.9.

90:10-3-7. Lease Purchase Request for Approval form

(a) State governmental entities requesting approval of a lease purchase obligation must complete and submit the Lease Purchase Request for Approval form provided by the State Bond Advisor to the ~~Commissions~~ Council. The Request for Provisional Approval form and Request for Final Approval form are not applicable to lease purchase agreement applications. Such a submission shall be governed by the filing periods and procedures at 90:10-3-2. The Lease Purchase Request for Approval form is comprised of:

(1) **Proposed lease purchase agreement.** ~~This category requests~~ The applicant must provide information regarding the anticipated amount, financing terms, equipment or real property description and budget implications of the proposed lease purchase. An analysis of the method of financing must be obtained from the State Bond Advisor if the amount of the financing is $1 million or greater, or if determined by the State Bond Advisor and Director of Central Purchasing to be in the best interest of the issuer. Requests for negotiated sale of such lease obligations must be approved by the State Bond Advisor. [Title 74 O.S., Sections 85.4(G) and 85.4(I)]

(2) **User information.** The applicant must provide a description of the purpose, nature and need for the lease purchase.

(3) **Attachments.** The attachments requested include:
  (A) Letter from body approving lease purchase agreement. (Examples: Regents, Regents for Higher Education, Commission, Board, etc.)
  (B) Letter indicating whether litigation is pending or threatened concerning the applicant's ~~or not applicant is currently involved in litigation concerning~~ outstanding and/or proposed obligations.
  (C) If the applicant is a College or University, it must complete the Outstanding Lease Purchase Information form provided by the State Bond Advisor.
  (D) Where applicable, each applicant must provide a ~~Completed~~completed Department of Central Services Central Purchasing or Construction & Properties Requisition, Justification, etc.
  (E) If lease purchasing computer or telecommunications equipment, the application must include a letter from Office of State Finance Information Services Division stating compliance with budget request; as well as the provisions of Title 62 O.S., Sections 41.5(m) and 41.5(j).
  (F) For lease purchase requests of equipment related to an energy savings program (including those done through the Oklahoma Development Finance Authority's Master Lease Program), the following documentation must be provided with an application.
    (i) Any ~~Proposed~~ proposed Master Agreement; including, but not limited to, Guaranteed Savings Contract, Construction Draw Schedule, and Maintenance Agreement.

(ii) Any performance-based energy contract relating to the proposed lease obligation. ~~Performance Bond for at least 25% of the outstanding balance of the lease obligation under the energy savings contract(s)~~. Any such contract ~~The performance bond~~ should be structured to allow the State adequate remedies ~~coverage~~ in the event of an Energy Services Company's (Vendor's) default under the terms of the contract(s).

(iii) Any~~any~~ other bonds or guarantees to be entered into by the applicant in connection with the proposed lease obligation.

(b) Refer to 74 O.S., Section 85.4 for statutory limitations and requirements of ~~state~~State ~~governmental~~Governmental ~~entities~~Entities entering into lease purchase agreements. The provisions of (a)(1) of this section do not exempt any application for lease purchase financing from the provisions of the statutes referenced.

(c) Applicants proposing to lease purchase equipment or real property with a cost of $1 million or more, must consult with the State Bond Advisor as to the most cost-effective method of financing. Title 74 O.S., Section 85.4 authorizes negotiated financings when determined by the Council of Bond Oversight ~~Commission~~ to be more cost-effective than competitive bidding through the Department of Central Services Central Purchasing Division. All provisions of the Bond Oversight and Reform Act apply to such negotiated financings. Prior to submitting an application for approval of a lease purchase of $1 million or greater cost, an applicant should send notification to the State Bond Advisor. This notification shall include the following information, in order to determine the method of financing:

(1) Description of equipment and/or real property;

(2) Desired term of financing;

(3) Cost of equipment and/or real property;

(4) Source of funding of lease payments; and

(5) If equipment, letter from Director of Central Purchasing quoting interest rates which could be obtained through competitive bidding. The Director of Central Purchasing will contact at least three (3) certified leasing companies for interest rate quotations. The State Bond Advisor shall notify the issuer of the recommended method of financing. Issuers should give the State Bond Advisor at least two weeks to perform such analysis.

~~(d) Title 61 O.S., Section 610 authorizes state entities to enter into shared energy savings contracts. The Bond Oversight Commissions will review lease purchase applications related to these contracts for the following:~~

~~(1) All savings projected to be used to retire lease payments shall be guaranteed;~~

~~(2) All savings must be tracked and audited by the energy services company;~~

~~(3) The energy services company shall provide evidence of a performance bond, payable to the applicant, equal to at least 25% of the applicants outstanding financial obligation. The performance bond shall be for the term of the lease agreement, as well as any other contracts associated with the shared energy savings program.~~

~~(4) A lease term no longer than ten years is recommended. The Bond Oversight Commissions will consider longer terms on a case by case basis. [Title 74 O.S., Section 85.4(I)(4)(b)]~~

~~(5) Energy savings contracts shall not permit the energy savings company to carry forward savings above the guaranteed amount from one year(s) to a future year(s) shortfall.~~

90:10-3-8. Substantial changes to Council of Bond Oversight ~~Commission~~ approved applications

(a) The following shall be considered substantial changes to the nature of an obligation and shall require the issuer to submit a new application to the ~~Commissions~~ Council for approval:

(1) a change in the mode of the obligation from fixed rate to variable rate;

(2) an increase of more than 10% in the amount of variable rate obligations to be issued;

(3) an extension of the final maturity of the proposed issue;

(4) a change in the security pledge, excluding any decision by the issuer to utilize widely accepted credit enhancement techniques; and/or

(5) any other change the State Bond Advisor deems substantial.

(b) A change in the amount of the obligation~~,~~ shall not be deemed substantial if the amount of the proposed increase is not greater than 10% of the authorization ~~original amount of the obligation~~.

(c) If the amount of the change of an approved obligation is between 10% and 20% of the authorization ~~original amount approved~~, the State Bond Advisor shall, in his discretion, determine whether or not such change is substantial. The State Bond Advisor shall prepare a memorandum for the Council ~~Bond Oversight Commission members~~ stating reasons as to why the increase is not considered a substantial change and does not need to be returned to the Council ~~Bond Oversight Commissions~~ for approval.

(d) Any change in the amount of the obligation greater than 20% of the original amount approved shall be deemed a substantial change and must be resubmitted to the ~~Commissions~~ Council.

(e) All increases in the amount of obligations backed by the Credit Enhancement Reserve Fund shall be deemed substantial changes. For purposes of applications to approve obligations backed by the Credit Enhancement Reserve Fund, any resubmission of a previously approved application shall not constitute an "appeal" pursuant to 62 O.S., Section 695.9(B)(2).

(f) Approval shall expire one hundred eighty (180) days after such approval. ~~Provided, if~~If such approval expires, nothing shall prevent the State Governmental Entity from submitting a new application for Council approval~~. refiling with the Commissions for approval of such financing and, if granted, any one subsequent approval of such financing shall be valid for a period, not to exceed one hundred eight (180) days, as determined by the Commissions~~.

(g) Applicants having received approval may request and the Oklahoma State Bond Advisor may grant, at the Oklahoma State Bond Advisor's discretion, a single one-hundred-eighty-day extension. Any request for an extension must be made at least five (5) business days prior to the expiration of the original approval. Applicants failing to request an extension in this manner may re-file with the ~~Commissions~~ Council.

SUBCHAPTER 5. FEES

90:10-5-1. Fee payment requirements

(a) Applicants must pay a fee to the ~~Commissions~~ Council if their submitted application is approved by the ~~Commissions~~ Council or if their application is deemed approved by operation of law, but only if the financing subject to an application is issued and closed. The State Bond Advisor may enter into written agreements with issuers to provide for periodic payment if the approved obligation will be in the form of draws or a line of credit. The State Bond Advisor may waive fee payment if the issue is a conduit financing with a state entity loan program financed with bond proceeds.

(b) The fee shall be paid to the ~~Commissions~~ Council by means of a check or negotiable instrument upon receipt of an invoice from the official office of the ~~Commissions~~ Council and shall be paid within two weeks.

90:10-5-2. Fee schedule

(a) Fees (calculated by multiplying the ~~will be paid according to the following schedule~~ principal amount times the applicable fee, as shown in the table below):

~~Size of Issuance/Obligation~~**Principal Amount**	**Fee** (expressed as basis points times principal amount of issuance or obligation)
$200,00 or less	No Fee
Greater than $200,000 up to and including $2 million	5 basis points (.0005)
Next $3 million	3 basis points (.0003)
Next $10 million	2 basis points (.0002)
Over 15 million	1 basis point (.0001) ~~(on amount over $15 million)~~

(b) Examples reflecting the calculation of fees are:

(1) The fee for a $205,000 lease purchase obligation is calculated as follows:

$205,000 x .0005 = $102.50 (fee due)

(2) The fee for a $5,500,000 bond issue or lease purchase obligation is calculated as follows:

$2,000,000 x .0005	=	$1,000
$3,000,000 x .0003	=	$ 900
$500,000 x .0002	=	$ 100
Fee due =		$2000

SUBCHAPTER 7. EVALUATION STANDARDS AND CRITERIA

90:10-7-1. General

The Council is ~~Commissions are~~ mandated to make determinations regarding public purpose for which obligations are to be issued by State or Local Governmental Entities subject to Section 695.8 of the Act, in accordance with Title 60 of the Oklahoma Statutes, Sections 176, et seq, the Oklahoma Public Trust Act (the "Public Trust Act"). The Public Trust Act authorizes that obligations may be issued for authorized and proper public purpose. Limitations imposed in regard to public purpose as set out in the Public Trust Act and imposed as a result of statutory language therein may be specified by indenture documents that are the charter documents for a particular entity and/or in statutory language pertaining to a particular Issuer in other federal or state laws. Specified prohibitions in Title 60 in regard to the definition of a "proper public purpose" are previously set out in the definition section of this Chapter.

90:10-7-2. Legal compliance

Bearing the criteria of this Chapter in mind and within the limitations set thereby, the ~~Commissions~~ Council may consider ~~each application from issuers in regard to~~ the following items:

(1) **Compliance with state laws.** All issuances must be in compliance with applicable state laws.

(2) **Compliance with applicable Federal Laws, Rules, and Regulations ~~Compliance.~~** Compliance with federal laws a~~e~~ffecting environment, taxes, and other aspects of a particular program or project ~~that may apply~~.

(3) **Compliance with trust indenture or enabling statutes of issuer.** The application and proposed project or program must be in compliance with the enabling document or statutes regarding each issuer subject to ~~Commission~~ Council approval.

(4) **Eligibility.** The user of the proceeds for the proposed project or program must be eligible for the assistance sought.

90:10-7-3. Authorized and proper public function or purpose

(a) ~~In determining whether the obligations proposed will carry out an authorized and proper public function or purpose, the Commissions will evaluate if the structure of the issuance or proposed program is designed to carry out these functions and purposes and that the obligations will be issued in the most economical manner. The Commissions may give consideration to the relationship between the proposed project or program and the overall needs within the State of Oklahoma in order to evaluate whether the proposed project or program will serve a public purpose and benefit the public interest~~

~~and welfare.~~ In its review of applications, the Council will determine whether the proposed obligations carry out an authorized and proper public function or purpose. The Council may consider the structure of the proposed transaction, the method of sale, and the extent to which the obligations will serve the purposes of the project or program and promote the interests and public welfare of the State of Oklahoma.

(b) In the case of proposed refunding and advance refunding bond issues, the ~~Executive and Legislative Bond Oversight Commissions~~ Council of Bond Oversight will interpret public purpose to be the extent to which the financing will achieve one or more of the following objectives:

(1) a net present value savings;

(2) changes to restrictive covenants in financing documents; and/or

(3) a restructuring of existing obligations in the event of fiscal distress that will provide relief from such distress.

(c) To ensure that an issue will achieve a public purpose, the ~~Commissions~~ Council may approve financing requests subject to the satisfaction of certain conditions, in accordance with 90:10-7-5(b).

90:10-7-4. Criteria applicability

The general criteria set forth in this subchapter ~~are intended to constitute and~~ shall constitute general guidelines and standards for application review and consideration by the ~~Commissions~~ Council. In all instances, each individual application must be reviewed and considered on its own merit. The criteria and standards set forth shall accordingly, be interpreted and applied ~~so as~~ to allow sufficient flexibility in the ultimate exercise of the ~~Commissions~~ Council's judgement and discretion.

90:10-7-5. Documentation of ~~Commission~~Council action

(a) The ~~Commissions~~ Council shall provide a written determination by means of a statement signed by the State Bond Advisor reflecting the decision of the ~~Commissions~~ Council with respect to ~~their~~ its consideration of any application. Such statement shall be copied and sent to the applicant. If the application is disapproved, the statement will indicate the reason(s) for this determination.

(b) The ~~Commissions~~ Council may make ~~their~~ its provisional or final approvals contingent upon certain conditions being met or material submitted. The ~~Commission~~ Council may delegate the authority to determine if these conditions have been met or the sufficiency of the material to the State Bond Advisor on an application by application basis. The ~~Commissions~~ Council may also delegate to the State Bond Advisor the authority to sign, on behalf of the ~~Commissions~~ Council, written statements setting forth the ~~Commissions~~ Council's actions on applications to the ~~Commissions~~ Council.

(c) The ~~Commissions~~ Council may grant ~~provide~~ conditional ~~approvals on provisional or~~ final approval in cases where additional information is needed. ~~application requests citing information or data that must be provided before approval is deemed complete~~. In such a conditional approval, the ~~Commissions~~ Council may require ~~that~~ the issuer ~~must~~ to appear before the ~~Commissions~~ Council at a later time to present additional information before final approval. ~~and/or~~ Where a delay until the next Council meeting would be detrimental to the issuer, the Council may authorize the State Bond Advisor to determine if ~~this~~ the additional information provided is sufficient to meet the stated requirements of the ~~Commissions~~Council.

~~(d) In the event the Executive Bond Oversight Commission and the Legislative Bond Oversight Commission provide conditional approval(s) which contain differing conditions, the issuer must satisfy all conditions contained in both approvals. If conditional approvals are provided that include conflicting conditions, the issuer may not proceed with the financing until the Commissions provide approvals which do not contain conflicting provisions. The State Bond Advisor shall determine if such conditions are conflicting.~~

(d~~e~~) In the case of disapproval, except of proposed obligations supported by the Credit Enhancement Reserve Fund, the applicant may request rehearing or reconsideration of the disapproval by submitting a new application to the ~~Commissions~~ Council along with an explanation of the basis for the appeal or reconsideration within ten (10) days of disapproval.

(e~~f~~) If a previously disapproved application is reconsidered, the ~~Commissions~~ Council shall first vote on whether or not to reconsider the application. Only if the ~~Commissions~~ Council affirmatively votes to reconsider such an application shall the ~~Commissions~~ Council proceed to vote on the merits of the proposed financing.

SUBCHAPTER 9. REPORTING

90:10-9-1. Closing documentation to the State Bond Advisor

(a) Prior to closing, issuers subject to Council approval must obtain the State Bond Advisor's approval of all fees and expenses paid or to be paid in connection with the transaction. Such approval shall be obtained on a form provided for that purpose by the State Bond Advisor. For the approval of any fees or expenses that may not be known prior to closing, the issuer shall make arrangements with the State Bond Advisor for formal approval of such fees and expenses when final information is available. Such post-closing approval will become a part of the official record of the transaction.

(~~a~~b) In the case of State or Local Governmental Entity obligations subject to ~~Commission~~ Council approvals, the following documents shall be submitted to the State Bond Advisor within thirty days of the closing of a bond issue or obligation transaction:

(1) Official Notice of Sale, Official Statement, Private Placement memorandum or other applicable document indicating the conditions, amortization, pricing, and terms of a bond or Certificate of Participation sale; or

(2) a copy of an executed lease purchase agreement along with amortization schedules. For all certificated lease obligations, whether sold publicly or privately

placed, the issuer shall provide a schedule showing the dates of repayment for all certificates.

(~~b~~c) Within two working days of a bond closing, a ~~state~~State or ~~local~~Local ~~governmental~~Governmental ~~entity~~Entity subject to ~~Commissions~~ Council approval shall notify the State Bond Advisor in writing and/or orally of such closing including, but not limited to, the date and amount of issuance.

90:10-9-2. Local governmental entities

(a) Local Governmental Entity issuers whose obligations are not subject to ~~Commissions~~Council approval~~s~~, must file a copy of the Official Statement, Offering Circular or Private Placement Memorandum within ten days following the date funds become available to the issuer from the sale of the obligations. ~~If one of the aforementioned documents was not prepared in connection with the obligation~~ In addition, the Local Governmental Entity must also complete and file the Notice by Local Governmental Entity form provided by the State Bond Advisor. This form shall include, but not be limited to the following:

(1) issue information including size, dated date, delivery date and maturity schedule;

(2) interest rates and reoffering yields; and

(3) call provisions~~.~~; and

(4) a listing of the fees paid by the issuer, or by any third party on behalf of the issuer, for services rendered in connection with the issuance or sale of the obligations, whether or not such fees are paid with proceeds of the obligations.

SUBCHAPTER 11. CREDIT ENHANCEMENT RESERVE FUND APPLICATIONS

90:10-11-1. General

~~The provisions of this subchapter are not applicable to Credit Enhancement Reserve Fund applications approved by the Commissions, including extensions of such approvals, prior to June 9, 1990~~. When~~ever~~ the Oklahoma Development Finance Authority ("ODFA") submits an application for approval of a ~~request to cover one of its obligations under the~~ Credit Enhancement Reserve Fund ("Fund") financing, the ~~Commissions~~ Council shall evaluate the application for approval of the issuance of the ODFA's underlying obligation, and the request for coverage by the Fund, as two (2) separate matters. The issuance of the underlying obligation shall be evaluated using the criteria and standards contained in Subchapter 7 [90:10-7]. The Application for the granting of credit enhancement by the Fund shall be considered by the ~~Commissions~~ Council using the standards and criteria of this subchapter.

90:10-11-2. Evaluation standards and criteria

(a) Pursuant to Section 5063.4 (F) of Title 74 and Section 695.8 (A)(4) of Title 62, the ~~Commissions~~ Council is ~~are~~ given the authority to approve or disapprove the granting of credit enhancement on any obligation of the ODFA, to the extent they are to be enhanced or supported by the Fund. Because the granting of credit enhancement from the Fund carries with it a pledge to issue general obligation bonds of the State of Oklahoma to be paid by the taxpayers of Oklahoma, it is necessary for the ~~Commissions~~ Council to adopt standards and criteria with which to evaluate such applications. When evaluating applications for the granting of credit enhancement by the Fund, the ~~Commissions~~ Council shall consider the following:

(1) ~~Has~~Whether the ODFA adopted sufficient rules, policies, and regulations to insure that it can adequately perform its statutory duties relating to the management of the Fund and the evaluation of obligations proposed to be covered by the Fund consistent with 5063.3(A) and 5063.4 of Title 74 of the Credit Enhancement Reserve Fund Act~~?~~.

(2) Whether~~Determine if~~ rules, regulations, and policies governing the Credit Enhancement Reserve Fund program adequately and sufficiently fulfill the intents and purposes of the Credit Enhancement Reserve Fund Act. In making this determination, the ~~Commissions~~ Council shall review the findings of the Program Development and Credit Review Committee [74 O.S., Section 5062.6a].

(3) With respect to individual applications for ~~Commission~~ Council approval, in making a determination to approve or disapprove such applications, the ~~Commissions~~ Council shall consider a written report for each application prepared by the Committee. While the ~~Commissions~~ Council ~~hall~~ shall consider the information contained in reports filed by the Committee, the ~~Commissions~~ Council shall not be bound to accept the conclusions reached by the Committee in making its determination to approve or disapprove an application. The individual reports shall include:

(A) a determination by the Committee regarding the extent to which an application complies with Rules Regarding the Administration of the Credit Enhancement Reserve Fund as implemented by the Oklahoma Development Finance Authority; and

(B) the assignment of a credit rating indicating the level of~~r~~ risk associated with each application.

(b) The ~~Executive and Legislative Bonds~~ Council of Bond Oversight ~~Commissions~~ may establish maximum compensation levels to be paid to individuals and firms acting in a fiduciary capacity in connection with Credit Enhancement Reserve Fund Program financings, as provided in 62 O.S. 695.8A.4.c. ~~The Executive and Legislative Bond Oversight Commissions may set such compensation levels for a one-year period and such compensation will be applicable to all individuals and firms participating in the program for that period. Providers of such services selected prior to making application may be employed subject to the established maximum compensation levels. Prior to December 31 of each year, the Executive and Legislative Bond Oversight Commissions shall review market conditions and set new compensation levels for the program. Provided, such compensation levels may not exceed the compensation levels obtained by the Oklahoma Development Finance Authority through its most recent invitation to bid for the services of individuals and~~

~~firms acting in a fiduciary capacity in connection with Credit Enhancement Reserve Fund Program Financing.~~

[OAR Docket #03-1093; filed 6-2-03]

TITLE 90. ~~EXECUTIVE AND LEGISLATIVE BOND OVERSIGHT COMMISSIONS~~COUNCIL OF BOND OVERSIGHT
CHAPTER 15. ADMINISTRATION OF THE OKLAHOMA PRIVATE ACTIVITY BOND ALLOCATION ACT

[OAR Docket #03-1094]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
90:15-1-1. [AMENDED]
90:15-1-2. [AMENDED]
90:15-1-3. [AMENDED]
Subchapter 3. General Operations of the State Bond Advisor
90:15-3-1. [AMENDED]
90:15-3-2. [AMENDED]
Subchapter 7. State Ceiling Pools and Allocations to Pools
90:15-7-1. [AMENDED]
90:15-7-2. [REVOKED]
90:15-7-3. [REVOKED]
90:15-7-4. [REVOKED]
90:15-7-5. [REVOKED]
90:15-7-6. [REVOKED]
90:15-7-7. [REVOKED]
90:15-7-8. [REVOKED]
90:15-7-9. [REVOKED]
Subchapter 9. Application and Logging Procedures
Part 1. Application
90:15-9-1. [AMENDED]
90:15-9-4. [AMENDED]
90:15-9-5. [AMENDED]
Part 3. Register Logging
90:15-9-7. [AMENDED]
90:15-9-8. [REVOKED]
90:15-9-9. [REVOKED]
90:15-9-10. [REVOKED]
90:15-9-11. [REVOKED]
90:15-9-12. [REVOKED]
90:15-9-13. [REVOKED]
90:15-9-14. [REVOKED]
90:15-9-15. [REVOKED]
Subchapter 11. Consolidated Pool and Register
90:15-11-1. [AMENDED]
90:15-11-2. [AMENDED]
Subchapter 13. Carryforward Applications
90:15-13-2. [AMENDED]
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ANALYSIS:
On September 24, 2002, the Oklahoma Supreme Court ruled that the Oklahoma Legislative Bond Oversight Commission violated the separation of powers doctrine of the Oklahoma Constitution. As a result of this ruling, the powers, duties, and responsibilities of both the Executive and Legislative Bond Oversight Commissions devolve upon the Council of Bond Oversight (as provided by the Oklahoma Bond Oversight and Reform Act). The proposed Rules are needed in order for the Council of Bond Oversight and the State Bond Advisor's office ot efficiently and effectively administer the Oklahoma Bond Oversight and Reform Act, the Oklahoma Private Activity Bond Allocation Act and other relevant statutes. Since the Executive and Legislative Bond Oversight Commissions are obsolete a name change is required in the rules in order for the State Bond Advisor's Office to operate. Also, included is the correction of the official office address and telephone numbers.
CONTACT PERSON:
Lorie Collier, State Bond Advisor's Office, 5900 North Classen Court, Oklahoma City, Oklahoma 73118, 405/602-3100, Facsimile: 405/848-3314, E-mail: lcollier@oksba.org

PURSUANT TO THE ACTOINS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

90:15-1-1. Purpose and scope

The State Bond Advisor is responsible for implementing the Oklahoma Private Activity Bond Allocation Act found at 62 O.S., Section 695.21 et seq. The State Bond Advisor is

engaged by the ~~Executive and Legislative Bond Oversight Commissions~~ Council of Bond Oversight. This Chapter is issued pursuant to the rulemaking authority of the ~~Executive and Legislative Bond Oversight Commissions~~ Council of Bond Oversight. In order to provide guidelines to local and state bond issuers which are subject to the Act and wish to issue Private Activity bonds or Mortgage Credit Certificates subject to annual volume ceilings pursuant to federal law, this Chapter establishes pools and registers, including the Consolidated Pool and the Carryforward register, from which certain types of private activity bonds or mortgage credit certificates may be issued, allocation procedures, time frames, and information required on application forms provided by the State Bond Advisor for such entities in order to facilitate the business of the State Bond Advisor and such entities.

90:15-1-2. Statutory definitions

The following terms are defined in 62 O.S., Section 695.23:

(1) Application for state ceiling allocation
~~(2) Beginning Agricultural Producer Pool~~
~~(3) Carryforward~~
~~(4) Confirmation~~
~~(5) Consolidated Pool~~
~~(6) Economic Development Pool~~
~~(7) Exempt facility bonds~~
~~(8) Exempt Facility Pool~~
~~(9) Final certification of final certificate~~
~~(10) Internal Revenue Code~~
~~(11) Issued~~
~~(12) Issuer or issuing authority~~
~~(13) Local issuer~~
~~(14) Local Issuer Single Family Pool~~
~~(15) Mortgage credit certificate election~~
~~(16) Mortgage credit certificates~~
~~(17) Oklahoma Housing Finance Agency Pool~~
~~(18) Private activity bonds or bonds~~
~~(19) Qualified small issue~~
~~(20) Qualified Small Issue Pool~~
~~(21) Qualified student loan bonds~~
~~(22) State~~
~~(23) State Bond Advisor~~
~~(24) State ceiling~~
~~(25) State issuer~~
~~(26) State Issuer Pool~~
~~(27) Student Loan Pool~~
(2) Carryforward
(3) Confirmation
(4) Consolidated Pool
(5) Exempt facility bonds
(6) Final certification or final certificate
(7) Internal Revenue Code
(8) Issued
(9) Issuer or issuing authority
(10) Local issuer
(11) Mortgage credit certificate election
(12) Mortgage credit certificates
(13) Private activity bonds or bonds
(14) Qualified small issue
(15) Qualified student loan bonds
(16) State
(17) State Bond Advisor
(18) State ceiling
(19) State issuer

90:15-1-3. Additional definitions

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

"Accepted allocation" means an allocation made and not rejected by the applicant within ten (10) days.

"Act" shall refer to the Oklahoma Private Activity Bond Allocation Act [62 O.S., Section 695.21 et seq. as amended].

"Allocation" means a portion of the state's volume ceiling. An issuer receives an allocation upon receipt of a written confirmation of an allocation by the State Bond Advisor.

"Beneficiary" means the person, firm or other entity on whose behalf obligations are issued and used.

"Chronological order" for purposes of administering the Act, means the order in which applications are received, as evidenced by the date and time stamp recorded on each application by the State Bond Advisor. All completed applications received prior to or at 8:00 a.m. on the first business day of each year shall all be recorded as having been received at the same time.

"Completed application" means a completed Private Activity State Ceiling Allocation Application, provided by the State Bond Advisor, and all required attachments and supporting information, as determined by the State Bond Advisor.

"Identical beneficial use" means obligations issued for the acquisition, construction or rehabilitation of the same facilities serving the same geographic area or population.

"Issuer's agents or representatives" means legal counsel, underwriters or financial advisors employed by an issuer to sell bonds or assist with filing or administering mortgage credit certificate programs.

"Open Records Act" means the Oklahoma Open Records Act, 51 O.S. Section 24A.1. et seq.

"Partial confirmation" means a confirmation in an amount less than a requested allocation.

"Permanent status on a register" means an application, as determined by the State Bond Advisor, that is complete and meets the requirements, where appropriate, of 90:15-9-2 through 90:15-9-4.

"Pools", unless otherwise noted, refer to the various pools created by the Act. ~~Economic Development Pool, Qualified Small Issue Pool, Beginning Agricultural Producer Pool, Student Loan Pool, Exempt Facility Pool, Local Issuer Single Family Pool, Oklahoma Housing Finance Agency Pool and State Issuer Pool~~.

"**Project**", unless otherwise noted, means a bond, the proceeds of which are used for discrete purposes and/or a single facility.

"Provisional status on a register" means the date and time of receipt of an application prior to a determination of

completeness, or where appropriate, a determination of demand pursuant to 90:15-9-2 through 90:15-9-4.

"Register" means a record of entries made of applications according to the chronological order of applications. Confirmations shall be issued based on an application's chronological order on a register, provided only applications classified as permanent shall establish chronological order. Registers shall be established for each of the pools created by the Act, ~~Economic Development, Small Issue, Exempt Facility, Student Loan, Oklahoma Housing Finance Agency, State Issuer, Local Issuer Single Family, and Consolidated Pools~~ as well as carryforward applications. Registers will be used to track the status of applications from the time of application through the issuance of any confirmations, and receipt of final confirmations.

SUBCHAPTER 3. GENERAL OPERATIONS OF THE STATE BOND ADVISOR

90:15-3-1. Official office

The Office of the State Bond Advisor is located at ~~301 Northwest 63rd Street, Suite 225~~ 5900 N. Classen Court, Oklahoma City, Oklahoma ~~73116~~ 73118. The telephone number is (405) ~~521-6198~~ 602-3100 and the facsimile number is (405) 848-3314. The official office hours are from 8:00 a.m. to 5:00 p.m. Central Time, Monday through Friday, except legal holidays.

90:15-3-2. Records

(a) **Open Records.** All requests for the public records of the ~~Commissions~~ Council will be made through the State Bond Advisor who will be charged with making the public records of the ~~Commission~~ Council available for inspection by or copying to the requesting party during normal hours. The ~~Commission~~ Council will charge $0.25 per page for each copy of a public record made upon written request, except as provided in (b) of this section. The State Bond Advisor will decide if the request is for a record not otherwise made confidential under the Open Records Act and other Oklahoma Law. The State Bond Advisor is authorized to discuss this decision with the Office of the Attorney General of the State of Oklahoma as may become necessary. Except information that is confidential or commercially sensitive as described above, or specifically kept confidential under Oklahoma or federal law, all documents or other records of the ~~Commission~~ Council will be open for public inspection and copying.

(b) **Confirmation records.** The State Bond Advisor will keep continuous and cumulative records to track bond issuances and/or mortgage credit certificate elections that use a portion of the state's annual volume ceiling. The State Bond Advisor shall not award any new confirmations, if such confirmations would cause the state's volume ceiling to be exceeded. Records will include:

(1) final certification of actual bond issuances and mortgage credit certificate elections subject to confirmations;

(2) confirmations of allocations of the volume ceiling for bonds or mortgage credit certificates which have not been closed or elections filed (i.e. confirmations pending final certifications); and;

(3) confirmations of carryforward assignments to issuers.

(c) **Fee for confirmation records.** State or local issuers may obtain a copy of these records upon written request and payment of a $15 fee. Fees collected shall be deposited to the General Revenue Fund.

SUBCHAPTER 7. STATE CEILING POOLS AND ALLOCATIONS TO POOLS

90:15-7-1. General scope and applicability; calculation of deadlines and time periods

(a) For the period of January 1st to September 1st at 5:00 p.m. of each calendar year, the Act establishes ~~eight state ceiling~~ various pools from which allocations can be made. The provisions of this Subchapter apply to this time period. Each pool represents a categorical set-aside of the state ceiling for one or more types of private activity bonds or mortgage credit certificates. ~~The percentages indicated for each pool represent a percentage of the annual state ceiling amount~~.

(b) The State Bond Advisor shall accept applications for allocation of private activity cap beginning at 8:00 a.m. on the first business day of each calendar year. All applications received on or before 8:00 a.m. on the first business day of each calendar year shall be logged as having been received at the same time. As a convenience to applicants, the State Bond Advisor may review applications prior to 8:00 a.m. on the first business day of each year to ensure that such applications are complete. However, no such application will be logged or recorded as having been received until 8:00 a.m. on the first business day of the applicable year.

(~~b~~c) If any prescribed dates of this Chapter or the Act fall upon non-official business days, then the official business day that such action will take place will be the last official business day before a deadline and/or the first official business day following a new time period prescribed by this Chapter.

(~~c~~d) If federal law fails to extend any of the tax-exempt programs related to the private activity bond cap allocation, the amounts that would be allocated to the respective pools may be used for other qualified private activity bonds on a first-come, first-served basis. All other provisions of this Chapter and the Act will be applicable.

90:15-7-2. Qualified Small Issue Pool [REVOKED]

~~(a) Eighteen and seventy-five one hundredths percent (18.75%) of the first $170 million of the State's annual ceiling is reserved for the Qualified Small Issue Pool from January 1 through September 1 of each calendar year. This pool is reserved for qualified small issue bond projects undertaken by either state or local issuers. [62 O.S., §695.24(A)(1)(2)]~~

~~(b) Allocations of the state ceiling to state and local issuers from the Qualified Small Issue Pool shall be done on a first-come, first-serve basis. [62 O.S., §695.24(A)(2)]~~

90:15-7-3. Exempt Facility Pool [REVOKED]

~~(a) Eight percent (8%) of the first $170 million of the State's annual ceiling is reserved for exempt facility bonds from January 1 through September 1 of each calendar year. Allocations of the state ceiling to state and local issuers from the Exempt Facility Pool shall be done on a first-come, first-serve basis. [62 O.S., §695.24(B)(1)(2)]~~

~~(b) Enterprise zone bonds are exempt facility bonds subject to the private activity bond volume cap. The amount that can be issued for a business in any one zone is capped at $3 million. The maximum that any one business can use is $20 million. The amount available for enterprise zone bond allocations is limited to the allocation amount available from the Exempt Facility Pool.~~

90:15-7-4. Student Loan Pool [REVOKED]

~~(a) The first Thirty Million Dollars ($30,000,000) of any portion of the state ceiling which is in excess of One Hundred Seventy Million Dollars ($170,000,000) shall be reserved and placed in the Student Loan Pool.~~

~~(b) Of the State Ceiling up to the amount of One Hundred Seventy Million ($170,000,000), six and twenty-five one-hundredths percent (6.25%) shall be reserved and placed in the Student Loan Pool.~~

~~(c) For the period January through September 1 of each calendar year, the Student Loan Pool shall be allocated to qualified student loan bonds issued by eligible State issuers, on a first-come, first-served basis.~~

~~(d) Student loan bond issuers are eligible for confirmations from the Consolidated Pool and Carryforward register consistent with Subchapters governing such Pool and register(s).~~

90:15-7-5. State Issuer Pool [REVOKED]

~~(a) Six percent (6%) of the state first $170 million of the state ceiling is reserved for the State Issuer Pool from January 1 through September 1 of each calendar year. [62 O.S, §695.24(D)(1)]~~

~~(b) State Issuers may receive confirmations from the State Issuer Pool for Qualified Small Issue bonds. All allocations are made on a first-come, first-served basis. [62 O.S, §695.24(D)(1)]~~

90:15-7-6. Local Issuer Single Family Pool [REVOKED]

~~(a) After allocations of the state ceiling to the Qualified Small Issue Pool, the Beginning Agricultural Producer and Exempt Facility Pools, the Student Loan Pool, the State Issuer Pool and the Oklahoma Housing Finance Agency Pool; the balance of the state ceiling shall be reserved and placed in the Local Issuer Single Family Pool.~~

~~(b) For the period commencing January 1 of each calendar year through September 1 of the same year, the Local Issuer Single Family Issuer Pool shall be allocated first, Fifteen Million Dollars ($15,000,000) to any public trust created to provide single family housing having a county with a population in excess of three hundred thousand (300,000) as it sole beneficiary and which has issued tax exempt single family housing revenue bonds in the amount of at least Four Hundred Million Dollars ($400,000,000). The balance of this pool shall be allocated to single family projects undertaken by other local issuers in counties with populations of three hundred thousand (300,000) or less, with no single local issuers or project to receive an allocation in excess of Seven Million Five Hundred Thousand Dollars ($7,500,000) from the Local Issuer Single Family Pool. An issuer which has not received any allocation from the State Issuer Pool and has a single family project limited in jurisdiction to twenty counties or less, each of which has a population of three hundred thousand (300,000) or less, shall be considered a local issuer for the purposes of this paragraph.~~

90:15-7-7. Beginning Agricultural Producer Pool [REVOKED]

~~(a) The lesser of two million seven hundred fifty thousand ($2,750,000) or 50% of the 8% state ceiling allocation to the Exempt Facility Pool is reserved for the Beginning Agricultural Producer Pool from January 1 through September 1 of each calendar year. [62 O.S, §695.24(B)(2)]~~

~~(b) Allocations from the Beginning Agricultural Producer Pool shall be made on a first-come, first-served basis. [62 O.S, §695.24(B)(2)]~~

90:15-7-8. Oklahoma Housing Finance Agency Pool [REVOKED]

~~(a) For the period January 1 through September 1 of each calendar year, fourteen and seventy-five one hundredths percent (14.75%) of the first $170 million of the State ceiling shall be reserved and placed in the Economic Development Pool.~~

~~(b) The amounts available from this pool shall be allocated to qualified single family bonds, multifamily bonds or mortgage credit certificates issued by the Oklahoma Housing Finance Agency; provided, twenty-five percent (25%) of the allocation from this pool shall be set aside for at least three (3) months for the origination of single family loans in counties with populations of three hundred thousand (300,000) or less.~~

90:15-7-9. Economic Development Pool [REVOKED]

~~(a) The second Thirty Million Dollars ($30,000,000) of any portion of the state ceiling which is in excess of One Hundred Seventy Million Dollars ($170,000,000.00) shall be reserved and placed in the Economic Development Pool.~~

~~(b) For the period January 1 through September 1 of each calendar year, allocations from this pool may be made only upon the recommendation of the Director of the Oklahoma Department of Commerce and following review and approval of the Council of Bond Oversight. In order to approve the recommendation, the Council of Bond Oversight must find that the~~

~~project for which an allocation is requested will result in the creation of manufacturing jobs in Oklahoma or will in some other way contribute to an economic development objective of the State. The term A manufacturing jobs@, as used in this paragraph, means jobs created by manufacturing facilities as that term is defined in subparagraphs a, b and c of paragraph 1 of subsection B of Section 2902 of Title 68 of the Oklahoma Statutes.~~

SUBCHAPTER 9. APPLICATION AND LOGGING PROCEDURES

PART 1. APPLICATION

90:15-9-1. Application submission

(a) Unless otherwise noted, the provisions of this Subchapter are applicable to the ~~eight~~ various pools created by the Act. Each calendar year, a state or local issuer must make application for a confirmation of the state ceiling on the Private Activity State Ceiling Allocation Application form provided by the State Bond Advisor, requiring the following:

(1) The name and mailing address of the issuer, the beneficiary and jurisdiction thereof, the name of the presiding officer of the issuer and the respective pool from which an allocation is requested;

(2) The name and mailing address or other definitive description of the location of the project or bonds and the purpose for which an allocation of the state ceiling is requested, the name and mailing address of both the initial owner or operator of the project, where applicable, and an appropriate person from whom information regarding the project or bonds can be obtained, and the name and address of the person to whom the confirmation should be sent;

(3) The amount of the state ceiling which the issuer is requesting;

(4) A statement of bond counsel for the issuer that the proposed issue requires, pursuant to Section 103, Section 146 or such other applicable sections of the Internal Revenue Code, an allocation of a portion of the state ceiling;

(5) Where applicable, the intention to exchange single family mortgage bond authority for mortgage credit certificates [62 O.S., Section 695.25, as amended]; and

(6) For applications against the Student Loan Pool, documentation supporting demand, as described in 90:15-9-3; and

(7) Single-family mortgage and mortgage credit certificate applications must provide documentation supporting demand as described in 90:15-9-2.

(b) No applications are grandfathered from a prior calendar year. Except for supplemental, appeal, and carryforward applications, an applicant may submit only one application of the same beneficiary for the identical beneficial use. For example, a single applicant may submit only one qualified small issue application on behalf of an identified company, although other applications may be submitted for other companies. A single applicant may submit only one application for the same project, such as an identified exempt facility project, although other applications may be submitted for different exempt facility projects. Single family mortgage and mortgage credit certificate program applications from the same applicant or serving the same geographic area shall be considered identical for purposes of this section ~~and sections of this Chapter governing maximum allocations available to issuers from the Oklahoma Housing Finance Agency and Local Issuer Single Family Pools~~.

(1) Applications will be accepted by mail, courier, fax, or hand delivery during official office hours. For issuers electing to file an application by facsimile, an original application must be filed by the end of the third business day following the facsimile transmission.

(2) Applications will be date and time stamped at the time of receipt and provisionally placed on one or more pool registers pursuant to this Subchapter and the Act. For applications submitted by facsimile, in the event that an original application has not been received by the end of the third business day following facsimile transmission, the State Bond Advisor may reject the issuance of allocation. In the case of applications determined to be complete by the State Bond Advisor, pursuant to (b)(4), (b)(5) and (b)(6) of this section, the provisionally logged time and date of receipt shall be recorded as the permanent date and time of receipt, provided the determination of complete and demand, where appropriate, are solely based on the content of applications and attachments first submitted by an applicant; i.e. contents of application provisionally logged. Two or more applications received at the same time by mail or otherwise, shall be date and time stamped identically. In the case of identically date and time stamped applications achieving permanent status, such applications will be logged identically on appropriate registers. ~~In the case of identically logged applications, uncommitted state ceiling available on any register shall be split equally between such applications, unless the requested allocations from one or more identically logged applications is less than the amount an equal division would yield in which case the other applicants would be eligible for an allocation greater than that derived from an equal division~~.

(3) One additional information submission is permitted as a basis for reversing an office determination that an application is incomplete. If such submission of additional information is sufficient to cause a determination of the application to be complete, the permanent chronological order will be determined according to the date of the additional information submission rather than the original application date.

(4) Hand delivered applications for all registers, including the Consolidated Pool and Carryforward register, will be provisionally date and time stamped when received. ~~based on the person delivering the application's place in line at the entrance to the official office of the State Bond Advisor~~. If a person hand delivers two or more applications at the same time the person may establish the

chronological order of such applications for purposes of time and date stamping. Otherwise, multiple applications received at the same time will be time stamped identically and allocations will be made in accordance with (b)(2) of this section.

(5) The State Bond Advisor may reject incomplete applications based on the adequacy of information submitted on the Private Activity State Ceiling Allocation Application form referenced in (a) of this section and required attachments:

(A) Attachment I for qualified small issue and exempt facility bond applicants is a resolution of the issuer that constitutes official action as defined by the Federal Tax Code. All other qualified private activity bond applicants must include a resolution of the issuer approving the issuance of the bonds.

(B) Attachment II requires a final resolution of the beneficiary of the issuer evidencing its approval of the issuance of the issuer's obligations not a TEFRA public hearing and certification if the issuer is a municipal or county public trust. If an issuer is a public trust having the state as its beneficiary then a TEFRA certification signed by the Governor of the state evidencing his/her approval of the issuance of the issuer's obligations is required.

(6) Notwithstanding other Subchapters and sections of this Chapter, the state ceiling allocation request amount logged on any pool register, including the Consolidated Pool and Carryforward register, shall not exceed the lesser of the requested allocation, the maximum allocation available to an applicant from a pool or register, including the Consolidated Pool and Carryforward register, or as limited by state or federal law. ~~However, for purposes of the Consolidated Pool register pursuant to Subchapter 11 of this Chapter, where appropriate, a notation will be made on registers described in this section indicating the full amount of a requested allocation, if such amount is greater than the eligible amount logged from a pool from which it was transferred to the Consolidated Pool register, which amount may be transferred, if eligible, to the Consolidated Pool register~~.

90:15-9-4. Rejection of applications following insufficient demand determination; appeals

(a) The State Bond Advisor shall have five (5) days in which to send a denial following a determination of insufficient demand for single-family mortgage revenue bond, mortgage credit certificate, or student loan bond applications. The notice will contain the reason(s) for such determination. Such applications shall be removed from the appropriate pool(s) for purposes of establishing chronological order.

(b) The Bond Advisor shall determine the extent to which demand is demonstrated for single family mortgage bonds, mortgage credit certificate programs and student loan bonds, which amount may be less than a requested confirmation. In such cases, a confirmation notice will be sent to the applicant for the demand amount so determined and a denial notice for the difference of the request. The portion of the request that is denied may be appealed by making an additional information submission or an appeal application.

(c) An applicant may appeal such denials by submitting a new application to the ~~Executive and Legislative Bond Oversight Commissions~~ Council of Bond Oversight, through the State Bond Advisor's Office, along with an explanation justifying why the State Bond Advisor's denial should not be sustained. Such appeal applications will be ~~date and~~ stamped with ~~at~~ the date and time of receipt and provisionally placed on the appropriate pool register(s). The appeal will be placed on the agenda for the next ~~Executive and Legislative Bond Oversight Commissions~~ Council of Bond Oversight meeting in a manner consistent with the requirements for preparation of such agendas.

(d) By affirmative action of the Council of Bond Oversight ~~Commissions~~, an application denied by the State Bond Advisor may be accepted and the ~~Commissions~~ Council may order the State Bond Advisor to issue a confirmation, subject to availability of state ceiling in the appropriate pool(s). For chronological ordering purposes, such appeal applications ~~transition~~ shall be converted to permanent status on pool(s) registers, including the Consolidated Pool and Carryforward register, at the time of Council of Bond Oversight ~~Commission~~ approval based upon the date and time of receipt of the appeal application. Any allocations made from the date of an appeal application to the date of Council of Bond Oversight ~~Commission~~ approval shall not be rescinded.

90:15-9-5. Applications accepted to permanent status; issuance of confirmations; Final Certification

(a) Upon a determination of receipt of a completed application by the State Bond Advisor and demand, where appropriate, the State Bond Advisor will transfer applications on pool register(s) from provisional to permanent status. In the case of applications determined to be complete by the State Bond Advisor, pursuant to 90:15-9-1(b)(5), the provisionally logged time and date of receipt shall be recorded as the permanent date and time of receipt, provided the determination of completeness and demand, where appropriate, are solely based on the content of applications and attachments first submitted by an applicant.

(b) Confirmations of the state ceiling shall be issued by the State Bond Advisor based on the chronological order of applications classified as permanent on registers established for each pool including the Consolidated Pool and the Carryforward register. Within five business days of classification of an application as permanent, the State Bond Advisor shall send an applicant a confirmation of a requested allocation of the state ceiling, provided the amount of state ceiling requested is available from a pool or register, or give notice of a denial of a confirmation and the reasons therefor~~e~~.

(c) Applications determined to be incomplete shall not be logged for chronological ordering purposes until an application is considered complete. Within five business days of a determination by the State Bond Advisor that an application is incomplete, the State Bond Advisor shall give notice to an

applicant of such a determination and the reasons therefore. If an applicant submits additional information addressing the causes of an incomplete application determination within five business days following receipt of such information, the State Bond Advisor shall give notice to the applicant:

(1) accepting the application as complete and transferring the application to permanent status, or

(2) give notice of the continued rejection of an application and the reasons therefore.

(d) If there is not sufficient uncommitted state ceiling capacity in a pool to issue a confirmation in the full amount of a requested application, except as limited by 90:15-9-1(b)(6), the State Bond Advisor shall issue a partial confirmation to the extent uncommitted state ceiling capacity from a pool is available. In such cases, the difference between the amount of a partial confirmation and requested allocation of the state ceiling shall retain its chronological status on a pool register in the event additional state ceiling capacity on a register becomes available.

(e) An applicant to which a partial confirmation is issued, may reject such confirmation within ten business days of issuance. Such rejections must be made in writing to the State Bond Advisor. A notification by an applicant rejecting a partial confirmation shall act to maintain an applicant's chronological status on a pool register(s) in the full amount of the state ceiling request, except as limited by 90:15-9-1(b)(6). Future confirmations to applicants that have rejected a partial confirmation within ten days will only be made only when confirmations in excess of one dollar ($1.00) of the original allocation can be made. A confirmation, including a partial confirmation, may be rejected by an issuer after ten days, however, the confirmation amount will be removed from the appropriate pool register(s). Confirmation will be issued pursuant to specific applications only. Confirmations cannot be transferred from one applicant to another and/or to a different project(s) or program.

(f) All confirmations issued by the State Bond Advisor from pools, including the Consolidated Pool, shall be effective for the earlier of ~~75~~ 120 days from the date of issuance of the confirmation by the State Bond Advisor, or until 9:00 a.m. on December 20th of each calendar year. Within this time period, issuers to whom confirmations have been issued shall file the Final Certification of Private Activity Bond Issuance or Mortgage Credit Certificate (MCC) Program Election form provided by the State Bond Advisor, with the State Bond Advisor evidencing use of a confirmation through issuance of bonds or the filing of mortgage credit certificate elections. The Final Certification shall require the following:

(1) Name of government issuer;

(2) Project name;

(3) Type of qualified private activity bond or mortgage credit certificate election;

(4) Amount of state ceiling or carryforward used; and

(5) Date of bond issuance or mortgage credit certificate election filed or carryforward election filed.

(g) If an issuer fails to file the Final Certification form within the required time period, the confirmation:

(1) ceases to be effective;

(2) the amount of state ceiling allocated pursuant to the confirmation with respect to an application shall be removed from the appropriate pool register(s); and

(3) the confirmation amount shall be returned to the ~~revolve back to the appropriate~~ pools/registers from which it was derived for purposes of reallocation, except that ~~revolving~~ state ceiling amounts recaptured in this manner ~~available~~ after September ~~2nd~~ 1st and prior to 9:00 a.m. on December 20th shall revolve to the Consolidated Pool and thereafter to the end of the calendar year to the Carryforward register.

PART 3. REGISTER LOGGING

90:15-9-7. Assignment of applications to pool registers

(a) A register shall be established for each pool created by the Act.

(b) Each applicant must indicate the pool or pools from which it is requesting an allocation and the application must include a statement from the applicant's bond counsel that the project or program is eligible for an allocation from the requested pool or pools.

(c) The State Bond Advisor shall make no independent determination of an applicant's eligibility under federal or state law. The State Bond Advisor may consult with the Oklahoma Attorney General concerning an applicant's eligibility.

(d) Each application for an allocation of the state ceiling shall be placed on appropriate register(s).

(e) An application for an allocation from any pool may not exceed the amount available in that pool. However, where permitted by law, a project or program application may be recorded on more than one pool register.

90:15-9-8. Qualified Small Issue Pool register [REVOKED]

~~(a) Applications for a confirmation of the state ceiling for small issue bonds shall be placed on the Qualified Small Issue Pool register. Confirmations shall be issued based on the chronological order of permanent status applications. If a confirmation in the full amount of a requested allocation can be issued, the application will only be placed on the Qualified Small Issue Pool register.~~

~~(b) For purposes of this Subchapter, the Qualified Small Issue Pool shall be considered allocated once initial confirmations total the amount of state ceiling reserved for the Qualified Small Issue Pool.~~

~~(c) If a confirmation for a requested allocation cannot be issued in the full amount of an application request from the Qualified Small Issue register, the application shall be processed according to the following procedure:~~

~~(1) if a partial confirmation can be issued from the Qualified Small Issue Pool register, pursuant to 90:15-9-5 and the issuer rejects the confirmation, the issuer will retain its chronological position for the full amount of an allocation request on the Qualified Small Issue register only, since this pool will not have been initially allocated;~~

~~(2) if a State issuer accepts the partial confirmation, the difference between the partial confirmation and requested allocation amount shall be placed on the State Issuer Pool register on behalf of the State issuer as well as the Qualified Small Issue register;~~

~~(3) if a partial confirmation is issued to a State issuer and accepted from the Qualified Small Issue register and a partial confirmation from the State Issuer Pool register is rejected, the difference between the requested allocation and Qualified Small Issue register partial confirmation shall be retained on the Small Issue and State Pool registers; (4) if partial confirmations are issued to a State issuer from both the Qualified Small Issue and State registers, and both such confirmations are accepted by the applicant, the difference between the sum of the Small Issue and State Pool partial confirmations and the requested allocation shall be placed on both the Qualified Small Issue and State Pool registers;~~

~~(4) if the Qualified Small Issue Pool has been initially fully allocated at the time of receipt of a complete application from a State issuer, the requested allocation shall be simultaneously logged on the Qualified Small Issue and State Issuer or registers.~~

90:15-9-9. Exempt Facility register [REVOKED]

~~Confirmations shall be issued based on the chronological order of permanent status applications.~~

90:15-9-10. Student Loan Bond register [REVOKED]

~~Student loan bond issuers may only access an allocation of the state ceiling for student loan bonds from the Student Loan Bond register from January 1st through September 1st at 5:00pm of each calendar year. Applications shall be processed based on the chronological order of permanent status applications entered on the register. Student loan bond issuers are eligible for confirmations from the Consolidated Pool and Carryforward register consistent with Subchapters and sections governing such.~~

90:15-9-11. Local Issuer Single Family Pool register [REVOKED]

~~Local single family issuers may make applications for a confirmation of the State ceiling from the Local Issuer Single Family Pool for any type of single family bond or mortgage credit certificate program. Local Single Family Issuers are eligible for confirmations from the Consolidated Pool and Carryforward Register consistent with Subchapters and sections governing such.~~

90:15-9-12. Beginning Agricultural Producer Pool register [REVOKED]

~~Beginning Agricultural Producer issuers may only receive an allocation of the state ceiling from the Beginning Agricultural Producer Pool register from January 1 through September 1 at 5:00pm of each calendar year. Applications shall be processed based on the chronological order of permanent status applications entered on the register. Beginning Agricultural Producer issuers are eligible for confirmations from the Consolidated Pool and Carryforward register consistent with Subchapters and sections governing such, as well as the Act.~~

90:15-9-13. State Issuer Pool register [REVOKED]

~~State issuers which have issued in excess of Seventy-five Million Dollars ($75,000,000) in qualified small issue bonds may receive an allocation of the state ceiling from either the Qualified Small Issue Pool or the State Issuer Pool. Allocations will only be issued from the State Issuer Pool for qualified small issue projects undertaken by eligible State issuers.~~

90:15-9-14. Economic Development Pool register [REVOKED]

~~Confirmations will only be issued to those issuers and for those projects which meet the requirements of 90:15-7-9.~~

90:15-9-15. Oklahoma Housing Finance Agency Pool register [REVOKED]

~~The Oklahoma Housing Finance Agency may receive allocations from this Pool for the purpose of issuing either single family bonds, multifamily bonds or mortgage credit certificates. The Oklahoma Housing Finance Agency is eligible for confirmations from the Consolidated Pool and Carryforward Register consistent with Subchapters and sections governing such.~~

SUBCHAPTER 11. CONSOLIDATED POOL AND REGISTER

90:15-11-1. Establishment of Consolidated Pool and register

(a) All pools and registers established and maintained pursuant to Subchapter 9 of this Chapter and the Act terminate at 5:00 p.m. on September 1st of each calendar year. After 8:00 a.m. on September 2nd to 9:00 a.m. on the date designated in the Act a Consolidated Pool and register is established and maintained for purposes of issuing confirmations.

(b) All uncommitted state ceiling amounts remaining in the Pools established by the Act, as of 5:00 p.m. on September 1st of each calendar year, are transferred to the Consolidated Pool on September 2nd of each calendar year. Uncommitted state ceiling amounts represent the difference between the sum of the individual state ceiling pool set-aside amounts and outstanding confirmations plus final certifications. In addition, any committed state ceiling amounts from the pools that become uncommitted after September 1st through the term of the Consolidated Pool are transferred to the Consolidated Pool.

90:15-11-2. Outstanding requests and new applications

(a) All eligible outstanding state ceiling allocation requests from the Pools logged with permanent status are transferred to

the Consolidated Pool register on September 2nd of each calendar year. Such outstanding requests shall be chronologically logged and entered on the Consolidated Pool register based on the date and time an application was logged on the pools from which it was transferred (i.e. date and time of permanent status classification). New applications may also be submitted.

(b) New applications may be submitted for any type of private activity bond or mortgage credit certificate program but only after 8:00 a.m. on September 2nd through ~~November 30th~~ December 19th of each calendar year during official office hours. Unless otherwise provided for in this Subchapter, the provisions of Part 1 of Subchapter 9 apply to such new applications.

SUBCHAPTER 13. CARRYFORWARD APPLICATIONS

90:15-13-2. Preference

Regardless of the chronological order of carryforward applications, issuers or projects with more than $20 million of outstanding carryforward issuance authority as of the date of application for carryforward, shall not be eligible for a Carryforward confirmation until all other application requests are satisfied. Pursuant to this section, issuers making application with more than $20 million of outstanding carryforward issuance authority as of the date of application shall not be eligible for additional carryforward confirmations until 9:00 a.m. on December 30th of each calendar year or the next to last official business day of the calendar year.

[OAR Docket #03-1094; filed 6-2-03]

TITLE 92. OKLAHOMA PROFESSIONAL BOXING COMMISSION
CHAPTER 10. RULES FOR BOXING AND OTHER ACTIVITES

[OAR Docket #03-1035]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
92:10-1-1. through 92:10-1-2. [AMENDED]
92:10-1-4. through 92:10-1-6. [AMENDED]
Subchapter 3. Boxing and Kickboxing Participants
92:10-3-5. through 92:10-3-6. [AMENDED]
92:10-3-8. [AMENDED]
92:10-3-11. through 92:10-3-13. [AMENDED]
Subchapter 5. Professional Boxing and Kickboxing Events
92:10-5-7. [AMENDED]
92:10-5-10. [AMENDED]
92:10-5-13. [AMENDED]
92:10-5-15. [AMENDED]
Subchapter 7. Elimination Tournaments
92:10-7-1. through 92:10-7-2. [AMENDED]
92:10-7-4. [AMENDED]
Subchapter 11. Mixed Martial Arts [NEW]
92:10-11-1. through 92:10-11-9. [NEW]

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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
These rules amend licensing procedures and qualifications for all promoters and participants of boxing, kickboxing, elimination tournaments, and professional wrestling. These rules create licensing procedures, qualifications, and adequate safety measures for mixed martial arts competitions. The rules also increases the amount of required insurance promoters provide for the protection of licensed participants and expands testing for illegal substances.
CONTACT PERSON:
Stephen Bashore, Administrator, Oklahoma Professional Boxing Commission, Room 1213, State Department of Health Building, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299; Tel. (405) 271-5243.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O. S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

92:10-1-1. Purpose

The purpose of this Chapter is to implement the Oklahoma Professional Boxing Act and to protect, maintain and improve

the safety and welfare of the participants of professional boxing, wrestling, ~~and~~ kickboxing, elimination tournaments, and mixed martial arts, as well as the general public.

92:10-1-2. Definitions

The definitions found at 3A O.S. § 602 shall apply to this Chapter. The following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Professional Boxing Act, 3A O.S. §§ 601 et seq.

"Administrator" means the administrator of professional boxing licensing representing the "Oklahoma Professional Boxing Commission."

"Announcer" means a person responsible for announcing the names of the officials, the participants, their correct weight, the decisions of the referee and judges during an event.

"Commission" means the Oklahoma Professional Boxing Commission or its designee, including the Administrator.

"Down" means when any part of a participant's body, except the participants' feet, touches the ring floor or when the participant is hanging helplessly over the ropes as a result of a legal blow as rules by the referee.

"Drug" means a controlled substance.

"Elimination Tournament" means a bout in which the participants lack training in boxing skills. Such participants shall engage in the use of boxing techniques using fists only where the objective is to win by decision, knockout (KO) or technical knockout (TKO).

"Event" means "contest" or "exhibition" including a match, bout, contest, show, or tournament where sparring, boxing, kickboxing, wrestling, elimination tournaments and the martial arts, takes place.

"Mandatory 8 count" means a required count of eight (8) that is given by a referee to a participant who has been knocked down.

"Mixed Martial Arts" means unarmed combat involving the use, subject to any applicable limitations set forth in this chapter, of combinations of techniques from different disciplines of boxing, kickboxing, wrestling, and the martial arts, including, without limitation, grappling, kicking and striking.

"No Decision" means boxing or sparring where a decision is not rendered.

"Official" means referees, judges, matchmakers, managers, second(s), announcers, timekeepers and physicians involved in events.

"Referee" means the person in charge of enforcing these rules during an event.

"Ring Official" means any individual who performs an official function during the progress of an event including but not limited to timekeepers, judges, referees, and attending physicians.

"Second" means any person aiding, assisting, or advising a participant during a boxing, ~~or~~ kickboxing, elimination tournament, or mixed martial arts event or exhibition.

"State Athletic Tax" means the tax of five percent (5%) of the gross receipts, pursuant to the Act, of any person, organization, corporation or association holding a license or permit under the Act derived from admission charges connected with or incidental to the holding of any event in this state.

"Timekeeper" means a person responsible for keeping accurate time during each event and also responsible for the knockdown count for boxing, ~~and~~ kickboxing, elimination tournaments, and mixed martial arts event or exhibition.

"Wrestling" means any form of fighting or combat between two or more participants where such participants deliver blows to an opponent's body, execute throws to an opponent's body, or apply holds to the opponent's body, except boxing and kickboxing.

92:10-1-4. Licenses process

(a) All participants must apply for and be issued a license before participating in an event.

(b) Each applicant for a license shall request an official application from the Commission. The Commission will not process any application for a license that does not contain the proper fee and all information required from the applicant. All licenses expire on June 30 of each year following the date of issuance.

(c) Each participant shall consistently use the same name in events. Each participant shall provide the Commission with the participant's legal name and the name to be used in events, if any. A participant shall not wear any type of body piercing, hard contact lenses, dentures, or removable dental work during a bout. A participant with dental braces may compete if the participant wears a fitted mouthpiece covering the entire brace.

(d) The license fees shall be:

(1) Professional Promoter - $200.00
(2) Participant Fee - $20.00
(3) ~~Boxing/Kickboxing~~ Referee - $25.00
(4) ~~Boxing/Kickboxing~~ Judge - $25.00
(5) Matchmaker - $100.00
(6) Second - $10.00
(7) Announcer - $10.00
(8) Timekeeper - $20.00
(9) Telecast Promoter - $100.00
~~(10) Trainer - $10.00~~
(~~11~~10) Vendor- $50.00

(e) Applicants must provide a residence or business address at the time of application and inform the Commission in writing of any change of address.

(f) Applicants shall provide the Commission with identification showing proof of age.

(g) Any person whose license is lost or stolen may obtain a replacement from the Commission.

(h) No license ~~or permit~~ issued under the Act or these rules shall be transferable.

~~(i) Boxing and kickboxing participants shall provide the Commission with two (2) photos.~~

92:10-1-5. Sanctioning permits

(a) Each event at which charge is made or collected for admittance, for boxing, wrestling, kickboxing, ~~or~~ elimination

tournaments ~~event~~s, and mixed martial arts events must apply for and receive a sanctioning permit.

(b) The promoter shall obtain a separate sanctioning permit for each event from the Commission before each event. The request for the sanctioning permit must be received by the Commission before the event.

(c) The Commission will not approve sanctioning permits between human participants and non-humans or between males and females.

(d) The fee for sanctioning an event for boxing, kickboxing, or wrestling shall be $25.00.

(e) No licensed promoter, official or participant shall serve in any capacity at events for which the Commission has denied a sanctioning permit.

(f) The notice of sanction issued by the Commission shall comply with the requirements of the Act.

92:10-1-6. Promoters

(a) No person, association, partnership, corporation, or organization shall promote any professional event without obtaining a license from the Commission.

(b) A boxing or kickboxing promoter shall:

(1) Provide the following proof of insurance:

(A) Medical benefit policy in the amount of at least ~~$2,500~~ $10,000 for each participant,

(B) Death benefit policy in the amount of at least ~~$2,500~~ $10,000 for each participant and,

(2) Provide surety bond, cash, certificate of deposit, or other forms of security acceptable to the Commission in the amount of $5,000. The Commission may increase the ~~bond~~ security as circumstances warrant.

(3) Not hold a license as a second, ~~boxer,~~ referee, timekeeper, or judge.

(c) Promoters shall have a contract with each participant and shall maintain copies for two years.

(d) Each promoter shall supervise the conduct of the promoter's employees, and shall be directly responsible for them to the Commission for violations of the Act and of this chapter.

(e) The Commission hereby deems any violations by any employee or representative of a promoter as a violation by the promoter.

(f) Before the Commission issues a promoter's license, the promoter shall:

(1) Submit a completed application form with the required fee.

(2) Have reached the age of 18.

(3) Provide the Commission with evidence that the applicant possesses knowledge of the responsibilities involved in the promotion under the Act and this Chapter and has the ability and intent to comply therewith.

(g) Promoters shall be responsible to the Commission for all events held and for meeting all deadlines for permit applications.

(h) Promoters are responsible for ensuring the maintenance of adequate public safety at all events. Failure to ensure adequate public safety may result in cancellation of an event, discipline against a promoter's license and denial of future permits for events. The promoter or venue shall provide evidence of a general liability insurance policy for the purposes of boxing, kickboxing, elimination tournaments, and mixed martial arts events. ~~to adequately protect the participants, the officials, and the attending public.~~

(i) The promoter is responsible for ensuring that no bottled drinks unless poured into paper cups by vendors at the time of sale, or glass ashtrays are permitted in any facility where any event is being held. If the event is staged out-of-doors, paper cups also must be used on the site of the event.

(j) Promoters and all licensed individuals and organizations associated with the events shall be familiar with the Act and Chapter 1 and 10 of Title 92 of the Oklahoma Administrative Code. Any questions or interpretations should be referred to the Commission. If an immediate decision is required, it should be referred to the inspector present.

(k) No one shall interfere with the inspectors' duties, use foul language, or threaten physical harm.

(l) The promoter shall be responsible performance of requirements of the Act and of the rules in this chapter at each event.

(m) For the purposes of mixed martial arts, ~~Boxing~~ boxing, elimination tournaments, and kickboxing ~~Kickboxing~~ events, arrange for an ambulance to be on site at each event with emergency medical personnel and proper resuscitation equipment.

(n) The ringside area shall be under the jurisdiction of the Commission for the use of designated working officials, participants, seconds, judges, referees, physicians, announcer, media representatives, and Commission representatives. Promoters are responsible to see that the working area is controlled and free of nonessential individuals. The inspectors shall be provided in each corner of a participant.

SUBCHAPTER 3. BOXING AND KICKBOXING PARTICIPANTS

92:10-3-5. Matchmakers

(a) ~~A licensed matchmaker is required to be present at all boxing and kickboxing events.~~ In boxing ~~and kickboxing~~, the promoter and matchmaker shall not be the same person.

(b) If the matchmaker is employed by the promoter, both the matchmaker and the promoter are jointly responsible for matches made ~~sanctioning permit applications, bond, insurance, license fees, taxes and assessments,~~ and compliance with applicable state laws, including the Act, and the rules in this chapter.

(c) The duties of the matchmaker shall include arranging the event, matching the participants as to weight and experience and ensuring that all the required equipment is in its place. While the events are in progress, the matchmaker shall cooperate with the inspector and is responsible to the Commission for the actions of the promoter.

92:10-3-6. Boxing and kickboxing referees

(a) The referee is the sole arbiter of a bout and is the only individual authorized to stop a bout. The referee is charged

with the enforcement of all Commission rules that apply to the conduct of the event and the conduct of the participant and participant's second(s) while the participant is in the ring. Before the Commission issues a referee's license, the applicant must certify that the applicant has read the Act and these rules. The Commission may require that the applicant take and pass a written test, to be conducted by the Commission covering the Act, this Chapter, and the rules of the sport as published by national or international sanctioning bodies for the sport of boxing, as designated by the Commission. Referees shall not wear spectacles, unless they are of the sport-style goggles or contacts, while refereeing.

(b) Before starting each bout, the referee shall check with each judge and the timekeeper to determine if each is ready. He will also obtain the name of the chief second in each corner. The referee shall require that the chief second control the activities in that participant's corner under the rules of this chapter.

(c) The Commission shall name the referee and its decision shall be final.

(d) The referee shall stop an event if the referee deems advisable when:

(1) The physical condition of one (1) or both of the participants requires stopping,

(2) One (1) of the participants is clearly outclassed by the opponent,

(3) The referee decides that a participant is not making a best effort, or

(4) For any other reason the referee deems sufficient.

(e) In the event of ~~serious~~ cuts or injuries, the referee shall summon the ringside physician for a recommendation regarding the potential health risk to the participant.

(f) The referee shall inspect the gloves and hand wraps of the participants in all events and make sure that no foreign substances detrimental to an opponent have been applied to the gloves or bodies of the participants. In preliminary events to the main event when the participants' gloves are adjusted in the dressing rooms, the referee will inspect the gloves, hand wraps and bodies of the participants.

(g) The referee shall warn the chief second of violations of any rules relating to seconds. If the chief second does not comply with the requirements of the referee, the referee shall warn the chief second that further violations will result in disqualification of the participant, referral to the Commission for action for the suspension or discipline of the second's license, and removal of the chief second and other officials in violation of the rules from the ring for the remainder of the event at the discretion of the referee.

(h) The referee shall instruct judges to mark their scorecards accordingly when assessing a foul upon one (1) of the participants. The referee shall deliver the scorecards to the inspector. When picking up the scorecards from the judges, the referee shall see to it that the cards are computed, winners name is circled and the judge's name is entered. If not, the judges should be instructed to complete the scorecards correctly.

(i) The referee shall ensure that an event moves to its proper completion. It should be stopped or completed, not delayed, except in cases of damaging fouls. Delaying or avoiding tactics, or both, should be avoided and the participant who employs these tactics should be penalized in the scoring.

92:10-3-8. Suspension procedures for boxers

(a) The Commission will notify the Association of Boxing Commissions, or its designee, of any determination or final order suspending or revoking a license or permit of a boxer or boxing event.

(b) The Commission shall immediately suspend the license of any boxer required to be licensed pursuant to the Professional Boxing Safety Act of 1996 due to:

(1) Recent knockout or series of consecutive losses, un-sportsmanlike conduct,

(2) An injury, requirement for a medical procedure, or physician denial of certification,

(3) Failure of a drug test,

(4) The use of false aliases, or falsifying, or attempting to falsify, official identification cards or documents, or

(5) Suspension or revocation of license by the Association of Boxing Commission or a state boxing commission.

92:10-3-11. Timekeepers

(a) No licensed timekeeper shall act as a timekeeper at any boxing, mixed martial arts, elimination tournament, or kickboxing match in this State unless the match is held in accordance with the rules in this Chapter.

(b) The timekeeper shall have during the performance of the timekeeper's duties a bell and at_least two (2) stopwatches. In addition, the timekeeper shall have a whistle, and a hammer or wooden mallet.

(c) The timekeeper shall be located within his arm length of the bell in a seat designated by the Commission. No match shall begin or continue unless the timekeeper is in his designated seat.

(d) The timekeeper shall not use the whistle, bell, or other instrument during the progress of a round except in the manner and at the time authorized in this Chapter.

(e) Ten seconds before the beginning of each round, the timekeeper shall give warning to the seconds of each participant by blowing the whistle. Ten seconds before the end of each round, the timekeeper shall give warning by pounding three times on the ring floor or the table where the timekeeper is stationed.

(f) If directed by the referee, the timekeeper shall take time out.

(g) The timekeeper shall strike the bell to signify the beginning and ending of each round.

(h) If a match ends before the scheduled number of rounds, the timekeeper shall inform the referee and the Commission of the exact duration of the match.

(i) The timekeeper shall be familiar with and perform such other duties as set forth these Rules.

(j) In the event that an automatic time keeping machine is available, it may be used, provided
however, that manual time keeping is maintained in the event of equipment failure.

~~(k) The timekeeper shall have during the performance of the duties a knockdown watch that shall be examined and checked as to accuracy for each match by the Commission.~~

92:10-3-12. Announcers

(a) Boxing, mixed martial arts, eliminations tournaments, and kickboxing events must have a licensed announcer.

(b) Announcers shall announce the names of the officials, the participants, the participants' correct weights, the decisions of the referee and judges. Promoters shall provide equipment and facilities for announcing.

(c) Introductions and announcements made to the general public must include, the statement "Sanctioned by the Oklahoma Professional Boxing Commission."

(d) At the end of each event, the inspector shall deliver the score cards to the announcer who shall announce the results and immediately return the cards to the inspector.

(e) No promoter shall permit any individual to act as an announcer without an announcer's license.

92:10-3-13. Seconds

(a) No licensed second shall act as a second at any boxing, mixed martial arts, elimination tournaments, or kickboxing match in this State unless the match is held in accordance with the rules of this Chapter.

(b) Seconds must be at least eighteen (18) years of age.

~~(c) No second shall have any financial or pecuniary interest in the opponent of his participant.~~

(c~~d~~) Each participant shall be allowed no more than four seconds, one of whom shall be designated the chief second. The chief second shall be in charge of the participant's corner and be responsible for the conduct of all seconds, and shall be held responsible for any violation committed by any second.

(d~~e~~) The chief second of any participant shall have at the ringside a stool, a pair of scissors, a towel, a clean water bucket, a container of drinking water and/or electrolyte drinks, and tape and bandages.

(e~~f~~) First aid and other ring equipment of a second shall in all cases and at all times before, during, and after use, be available for inspection by the physician and the Commission whose decision shall be final as to the propriety of its use.

(f~~g~~) Seconds shall not ~~coach or in any way assist a participant during a round, or~~ by word or action attempt to heckle or annoy his participant's opponent. Seconds ~~shall remain seated in place and silent during the fight period of any round and~~ shall not knock or pound on the ring floor.

(g~~h~~) No second shall attempt to render aid to a participant who has been counted out during the course of a match before the physician has examined the participant.

(h~~i~~) If any second enters the ring during any bout ~~fight period of any match, he shall be immediately ejected by the referee, and the referee shall order the match to continue~~ the participant of that second shall lose the bout by disqualification. If a second mounts the ring apron during any bout, the participant of that second shall lose the bout by technical knockout (TKO).

(i~~j~~) The excessive or undue spraying of water on any fighter between rounds is prohibited.

(j~~k~~) Only one second shall be allowed in the ring. No second shall enter the ring until the bell indicates the end of a round. The second shall leave the ring at the sound of the timekeeper's whistle, which indicates ten (10) seconds remain before the start of the next round. Prior to the beginning of each round, the entire ring platform and ropes shall be cleared of all obstructions, including buckets, stools, towels, and other articles; and none of these articles shall again be placed on the ring platform until the bell has sounded indicating the end of the round.

SUBCHAPTER 5. PROFESSIONAL BOXING AND KICKBOXING EVENTS

92:10-5-7. Use or administration of any substance

(a) The use or administration of drugs, stimulants, or non-prescription preparations by or to a participant during a contest is prohibited, except as provided in subsection (c) and (d) of this section.

(b) ~~The giving of substances other than water to a participant during the course of the contest is prohibited~~. Participants may consume electrolyte drinks or water during the course of a contest. A licensed second or participant shall have an inspector and/or the Commission examine and approve electrolyte drinks before they are administered. The administering of substance other than electrolyte drinks and/or water to a participant during a contest is prohibited.

(c) Discretionary use of petroleum jelly, and nothing else shall be allowed on the face, arms, or any other part of the participant's body. The excessive use of petroleum jelly is strictly prohibited and the referee shall cause any excessive petroleum jelly to be removed.

(d) In case of a cut, only the topical use of the following is allowed: a solution of adrenaline 1/1000, avetine, and thrombin.

(e) The ringside physician shall monitor the use and application of any foreign substances administered to a participant before or during a contest. The chief second shall surrender to the Commission or the physician, immediately upon request, any substance for laboratory analysis.

92:10-5-10. Contests

(a) Beginning one (1) minute before the first round begins, only the referee, participants, and the chief second may be in the ring. The referee shall clear the ring of all other individuals.

(b) Once a contest has begun, only referees, participants, second, judges, physicians, and the announcer and announcer's assistants, inspectors, or the Commission shall be allowed in the ring.

(c) The referee and/or Commission may order that the ring and technical area be cleared at any time, either before, during or after a contest, of any individual not authorized to be present in those areas.

(d) The referee may stop a bout at any time if individuals refuse to clear the ring and technical area, dispute a decision by an official, or seek to encourage spectators to object to a decision either verbally, physically, or by engaging in disruptive

conduct. If the individual involved in disruptive conduct or encouraging disruptive conduct is the second of a participant, the referee may order points deducted from that participant's score or disqualify the participant. If the conduct occurred after the decision was announced, the Commission may change the decision, declare no contest, or take disciplinary action pursuant to the rules of this chapter, including immediate suspension of the participant's or official's license pending a hearing, and immediate expulsion from the event.

92:10-5-13. Drug testing

(a) At the request of the Commission or its authorized representative or the ringside physician, a participant or assigned official shall submit to a test of body fluids to determine the presence of drugs, or a test measuring the presence of alcohol. The promoter shall be responsible for any costs associated with ~~of~~ testing. At the request of the Commission or the ringside physician, a participant shall submit to a test of body fluids to determine the presence of anabolic steroids.

(b) A laboratory test that results in a finding of the presence of a drug, ~~or~~ alcohol, anabolic steroids, or the refusal of a participant or assigned official to submit to the test shall be grounds for a summary suspension of the participant or official's license as provided for by the Commission.

(c) If the test results in a finding of the presence of a drug, ~~or~~ alcohol, or anabolic steroids, or if the participant is unable or refuses to provide a sample of body fluids for such a test, a complaint shall be filed under the procedures of the Commission. If a determination is made that the participant or official is subject to disciplinary action, the Commission shall impose the following penalties:

~~(1) For a first violation, suspension for 30 days .~~

~~(2) For a second violation, a 6-month suspension.~~

~~(3) For a third violation, revocation of license for one (1) calendar year.~~

(1) A monetary fine in an amount to be determined by the Commission and/or;

(2) A suspension from competing to be determined by the Commission.

(d) At the completion of a suspension or monetary fine ordered by the Commission in accordance with the provisions of this section based on a finding of the presence of drugs, a participant or official shall submit to a test of body fluids. ~~in the presence of a representative of the Commission.~~ The results of the test shall be negative for all drugs tested before a participant is allowed to compete again or an official is assigned to officiate again.

~~(e) A participant who is disciplined pursuant to the provisions of this rule and who was the winner of a contest shall be disqualified and the decision of the contest shall be changed to "no contest."~~

~~(f) The results of a contest shall remain unchanged if a participant who is disciplined pursuant to the provisions of this section was the loser of this contest.~~

92:10-5-15. Championship and non-championship bouts

(a) Non-championship bout(s) shall not be less than four (4) scheduled rounds and shall not exceed ten (10) scheduled rounds. The number of rounds allowed in a non-championship bout shall be determined by each participant's number of bouts. Each round in a non-championship contest shall be three (3) minutes duration, and a one (1) minute rest period between each round.

(b) Each championship contest will be scheduled for twelve (12) rounds, of three (3) minute duration, and one (1) minute rest period between each round.

(c) For the purposes of kickboxing, participants shall execute kicks, which are attempts to land hard on a target area of the opponent's body with the intent to do damage. Non-championship kickboxing bouts shall not be less than three (3) scheduled rounds and shall not exceed ten (10) scheduled rounds. Championship kickboxing bouts shall not exceed twelve (12) rounds.

(d) All of the following shall apply to championship and non-championship bouts:

(1) The referee is the sole arbiter of a bout and is the only individual authorized to stop a contest.

(2) All participants are required to wear a mouthpiece during the competition. The round cannot begin without the mouthpiece. If the mouthpiece is dislodged during the competition, the referee will call time and replace the mouthpiece at the first opportune moment, without interfering with the immediate action. Points may be deducted by the referee if her or she feels the mouthpiece is being purposely ejected from the participant's mouth.

(3) All bouts shall be scored by three judges.

(4) Mandatory eight count after knockdowns shall be standard procedure in all bouts.

(5) A participant shall receive a twenty (20) second count if he is knocked out of the ring and onto the floor. The participant is to be unassisted by his seconds.

(6) If a participant sustains an injury from a fair blow and the injury is severe enough to terminate the bout, the injured participant will lose by TKO.

(7) Injuries sustained by accidental fouls:

(A) If an accidental foul causes an injury severe enough for the referee to stop the bout immediately, the bout will result in a ~~technical draw~~ no decision if stopped before four (4) completed rounds.

(B) If an accidental foul causes an injury severe enough for the referee to stop the bout immediately, after four (4) completed rounds, the bout will result in a technical decision awarded to the participant who is ahead on the score cards at the time the bout is stopped.

(8) A participant who is hit with an accidental low blow must continue after a reasonable amount of time but no more than five (5) minutes or the participant shall lose the bout.

(9)Injuries sustained by intentional fouls:

(A) If an intentional foul causes an injury, and the injury is severe enough to terminate the bout immediately, the participant causing the injury shall lose by disqualification.

(B) If an intentional foul causes an injury and the bout is allowed to continue, the referee will notify the authorities and deduct two (2) points from the participant who caused the foul. Point deductions for intentional fouls shall be mandatory.

(C) If an intentional foul causes an injury and the injury results in the bout being stopped in a later round, the injured participant shall win by a technical decision if he/she is ahead on the score cards or the bout shall result in a technical draw if the injured participant is behind or even on the score cards.

(10) If a participant injures himself/herself while attempting to intentionally foul his/her opponent, the referee shall not take any action in his/her favor, and this injury will be the same as one produced by a fair blow.

(11) I f the referee feels that a participant has conducted himself/herself in an unsportsman-like manner, the referee may stop the bout and disqualify the offending participant.

(12) Partial or incomplete rounds will be scored. However, any point deduction(s) occurring during this partial round will be deducted from the final score of the completed rounds.

SUBCHAPTER 7. ELIMINATION TOURNAMENTS

92:10-7-1. General provisions

(a) Sections 3-1, 3-6, 3-7, 3-9, 3-11, 3-13, 3-14 [except (g)], 5-3, 5-6, 5-7, 5-9, 5-10, 5-12, 5-13 shall apply to elimination tournaments, unless otherwise noted.

(b) Before the start of an event, the Commission shall check all participants and promoters, for lice nses issued by Commission. Any individual without a current license issued by the Commission shall not participate in the event.

~~(c) Elimination Tournament means a bout in which the participants lack training in boxing skills. Such participants shall engage in the use of boxing techniques using fists only where the objective is to win by decision, knockout (KO) or technical knockout (TKO).~~

92:10-7-2. Promoter responsibility

(a) In lieu of the requirements of section 92:10-1-6, the promoter shall:

(1) Complete an application provided by the Commission.

(2) Provide a surety bond, cash, certificate of deposit or other forms of security acceptable to the Commission in the amount of $5,000. The Commission may increase the security as circumstances warrant.

(3) Provide medical insurance in the amount of at least ~~$2,500~~ $10,000 and provide a death benefit policy in the amount of at least ~~$2,500~~ $10,000 for each participant.

(4) Submit a $50 permit fee.

(b) The promoter must:

(1) Arrange for an ambulance to be on site at each event with emergency medical personnel and proper resuscitation equipment.

(2) Provide 16 oz. boxing gloves that shall be worn by all participants.

(3) Provide headgear which shall be worn be all participants.

~~(4) Provide a general liability insurance policy to protect the public, officials, and participants.~~

(~~5~~4) Provide adequate security at each event.

(~~6~~5) Arrange spectator seating six (6) feet from the ring apron.

(c) The promoter may act as a matchmaker for the purposes of arranging bouts.

(d) Promoters of elimination tournaments may request the Commission to not accept any participant due to conduct or safety. Upon approval of the request by the Commission, the participant in question shall be banned from participating in the event.

92:10-7-4. Participant responsibilities and requirements

(a) Each participant shall:

(1) Be at least eighteen (18) years of age, male participants must wear a groin protector and a mouthpiece during all bouts.

(2) Provide the Commission with one form of photo identification with date of birth.

(3) Complete an application form provided by the Commission.

(4) Submit the required license fee of $20.

(5) Provide two photographs.

(b) A participant may not participate if the participant has:

(1) been a competitor in professional boxing, kickboxing, or mixed martial arts competition;

(2) been a winner of more than five (5) of any combination of amateur boxing, kickboxing, or elimination tournament events in the past five (5) years or more than three (3) in the past twelve (12) months, unless the event is restricted to winners of previous events.

(c) Each participant shall submit to and complete a pre-bout medical examination performed by a Commission appointed ringside physician before the elimination tournament begins. The physicals shall be performed at the location of the event unless an alternate location is approved by the Commission.

(d) No participant shall be allowed to participate if he is under the influence of alcohol or drugs. The Commission may require elimination tournament participants to submit to an alcohol breathalyzer test at any time.

(e) A participant shall not wear any type of body piercing, hard contact lenses, dentures, or removable dental work during a bout. A participant with dental braces may compete if the participant wears a fitted mouthpiece covering the entire brace.

SUBCHAPTER 11. MIXED MARTIAL ARTS

92:10-11-1. General provisions

In addition to Subchapter 1, except paragraphs, 92:10-1-4 (5), 92:10-1-5 (d), Subchapter 3, except paragraphs, 92:10-3-1, 92:10-3-2, 92:10-3-3, 92:10-3-5, 92:10-3-6, 92:10-3-7, 92:10-3-8, 92:10-3-15, 92:10-3-16, and Subchapter 5, except paragraphs, 92:10-5-1, 92:10-5-3, 92:10-5-4, 92:10-5-5, 92:10-5-11, 92:10-5-12, 92:10-5-14, 92:10-5-15, all mixed martial arts events shall comply with this Subchapter.

92:10-11-2. Contests and exhibitions

(a) A licensed promoter must submit a $50 sanctioning permit fee.

(b) Mixed martial arts contests and exhibitions may be held in a ring or in a fenced area. A ring used for a contest or exhibition of mixed martial arts must meet the following requirements:

(c) The ring must be no smaller than 16 feet square and no larger than 32 feet square within the ropes.

(d) The ring floor must extend at least 12 inches beyond the ropes. The ring floor must be padded with ensolite or another similar closed-cell foam. Padding must extend beyond the ring ropes and over the edge of the platform, with a top covering of canvas, duck or similar material tightly stretched and laced to the ring platform. Material that tends to gather in lumps or ridges must not be used.

(e) The ring platform must not be more than 5 feet above the floor of the building unless approved by the Commission and must have suitable steps for the use of the participants.

(f) Ring posts shall be made of metal, not more than 3 inches in diameter. Ring posts must be at least 18 inches away from the ring ropes.

(g) There must be five ring ropes, not less than 1 inch in diameter and wrapped in soft material.

(h) There must not be any obstruction or object, including, without limitation, a triangular border, on any part of the ring floor.

(i) A fenced area used in a contest or exhibition of mixed martial arts must meet the following requirements:

(1) The fenced area must be circular or have at least eight equal sides and must be no smaller than 16 feet wide and no larger than 32 feet wide.

(2) The floor of the fenced area must be padded with ensolite or another similar closed-cell foam, with a top covering of canvas, duck or similar material tightly stretched and laced to the platform of the fenced area. Material that tends to gather in lumps or ridges must not be used.

(3) The platform of the fenced area must not be more than 5 feet above the floor of the building and must have suitable steps for entrance.

(4) Fence posts must be made of metal, not more than 6 inches in diameter, extending from the floor of the building to between 4 and 7 feet above the floor of the fenced area, and must be properly padded.

(5) The fencing used to enclose the fenced area must be made of a material that will prevent a participant from falling out of the fenced area or breaking through the fenced area onto the floor of the building or onto the spectators, including, without limitation, chain link fence coated with vinyl.

(6) Any metal portion of the fenced area must be covered and padded in a manner approved by the Commission and must not be abrasive to the participants.

(7) The fenced area must have at least one entrance.

(8) There must not be any obstruction on any part of the fence surrounding the area in which the participants are to be competing.

(j) Spectator seats shall not be closer than six feet (6') from the outside edge of the apron of the ring, unless otherwise determined and approved by the Commission. The ringside area shall be under the jurisdiction of the Commission for the use of designated working officials, participants, seconds, judges, referees, physicians, announcer, media representatives, and Commission representatives. Promoters are responsible to see that the working area is controlled and free of nonessential individuals. The inspectors shall be provided in each corner of a participant.

(k) Except with the approval of the Commission:

(1) A non-championship contest or exhibition of mixed martial arts must not exceed three rounds in duration.

(2) A championship contest of mixed martial arts must be five rounds in duration.

(3) A period during a contest or exhibition of mixed martial arts must be 5 minutes in duration. A period of rest following a round during a contest or exhibition of mixed martial arts must be 1 minute in duration.

92:10-11-3. Mixed Marital Arts Participants

(a) Participants must wear shorts.

(b) Participants may not wear shoes or any padding on the feet during a contest or exhibition.

(c) For contest or exhibitions, each participant must wear gloves that weigh not less than four (4) ounces and not more than eight (8) ounces.

92:10-11-4. Classes and Weight Categories

(a) Except with the approval of the Commission, the classes for the participants competing in contests or exhibitions of mixed martial arts and the weights for each class are shown in the following schedule:

(1) Flyweight up to 125 lbs.
(2) Bantamweight over 125 to 135 lbs.
(3) Featherweight over 135 to 145 lbs.
(4) Lightweight over 145 to 155 lbs.
(5) Welterweight over 155 to170 lbs.
(6) Middleweight over 170 to 185 lbs.
(7) Light Heavyweight over 185 to 205 lbs.
(8) Heavyweight over 205 to 265 lbs.
(9) Super Heavyweight all over 265 lbs.

(b) Participants shall not fight outside their weight classification without approval of the Commission and both participants agree to compete at the weight differential.

92:10-11-5. Weigh-in

(a) Within 36 hours before an event, or as otherwise determined by the Commission to benefit the safety and health of the participants, the Commission, or an inspector shall weigh in each participant. The weigh-in shall occur in the presence of other participants to the extent practicable.

(b) Only those participants who have been approved for the event shall be permitted to weigh in.

92:10-11-6. Pre-bout physicals

(a) Within 36 hours before an event, each participant shall be given medical examination by a medical doctor (MD) or doctor of osteopathy (DO). The physician shall be appointed by Commission. The examination shall include the following:

(1) Blood pressure,
(2) Head,
(3) Eyes,
(4) Ears,
(5) Nose,
(6) Throat,
(7) Lungs,
(8) Chest,
(9) Heart,
(10) Abdomen, and
(11) Orthopedic.

(b) If upon examination a participant is determined to be unfit for competition, the participant shall be prohibited from competing and the Commission or an inspector shall be notified.

(c) The physician shall certify, in writing, those participants who are in good physical condition to compete.

(d) An event shall not begin until a physician is present. The physician shall not leave until the decision in the final event has been announced and all injured boxers have been attended to.

(e) The physician shall sit near the steps that lead into the ring or an opening to the fenced area and the event shall not begin until the physician is seated. The physician shall remain at that location for the entire event.

(f) Each participant shall remain at the event site until released by the physician.

92:10-11-7. Fouls

(a) The following acts constitute fouls in a contest or exhibition of mixed martial arts:

(1) Butting with the head.
(2) Eye gouging of any kind.
(3) Biting.
(4) Hair pulling.
(5) Fish hooking.
(6) Groin attacks of any kind.
(7) Putting a finger into any orifice or into any cut or laceration on an opponent.
(8) Small joint manipulation.
(9) Striking to the spine or the back of the head.
(10) Striking downward using the point of the elbow.
(11) Throat strikes of any kind, including, without limitation, grabbing the trachea.
(12) Clawing, pinching or twisting the flesh.
(13) Grabbing the clavicle.
(14) Kicking the head of a grounded opponent.
(15) Kneeing the head of a grounded opponent.
(16) Stomping a grounded opponent.
(17) Kicking to the kidney with the heel.
(18) Spiking an opponent to the canvas on his head or neck.
(19) Throwing an opponent out of the ring or fenced area.
(20) Holding the shorts or gloves of an opponent.
(21) Spitting at an opponent.
(22) Engaging in any un-sportsmanlike conduct that causes an injury to an opponent.
(23) Holding the ropes or the fence.
(24) Using abusive language in the ring or fenced area.
(25) Attacking an opponent on or during the break.
(26) Attacking an opponent who is under the care of the referee.
(27) Attacking an opponent after the bell has sounded the end of the period of a contest or exhibition.
(28) Flagrantly disregarding the instructions of the referee.
(29) Timidity, including, without limitation, avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece or faking an injury.
(30) Interference by the corner.
(31) Throwing in the towel during competition.

(b) The Commission shall appoint all referees and judges.

(c) If a participant fouls his opponent during a contest or exhibition of mixed martial arts, the referee may penalize him by deducting points from his score, whether or not the foul was intentional. The referee may determine the number of points to be deducted in each instance and shall base his determination on the severity of the foul and its effect upon the opponent:

(1) When the referee determines that it is necessary to deduct a point or points because of a foul, the referee shall warn the offender of the penalty to be assessed.
(2) The referee shall, as soon as is practical after the foul, notify the judges and both participants of the number of points, if any, to be deducted from the score of the offender.
(3) Any point or points to be deducted for any foul must be deducted in the round in which the foul occurred and may not be deducted from the score of any subsequent round.
(4) A participant may not be declared the winner of a contest or exhibition of mixed martial arts on the basis of his claim that his opponent fouled him by hitting him in the groin. If a participant falls to the floor of the ring or fenced area or otherwise indicates that he is unwilling to continue because of a claim of being hit in the groin, the contest or exhibition must be declared to be a technical knockout in favor of the participant who is willing to continue.

(d) If a contest or exhibition of mixed martial arts is stopped because of an accidental foul, the referee shall determine whether the participant who has been fouled can continue or not. If the participant's chance of winning has not been

seriously jeopardized as a result of the foul and if the foul did not involve a concussive impact to the head of the participant who has been fouled, the referee may order the contest or exhibition continued after a recuperative interval of not more than 5 minutes. Immediately after separating the participants, the referee shall inform the Commission of his determination that the foul was accidental.

(e) If the referee determines that a contest or exhibition of mixed martial arts may not continue because of an injury suffered as the result of an accidental foul, the contest or exhibition must be declared a no contest if the foul occurs during:

(1) The first two rounds of a non-championship contest or exhibition; or

(2) The first three rounds of a championship contest or exhibition.

(3) If an accidental foul renders a participant unable to continue the contest or exhibition after:

(4) The completed second round of a non-championship contest or exhibition; or

(5) The completed third round of a championship contest or exhibition,the outcome must be determined by scoring the completed rounds and the round during which the referee stops the contest or exhibition.

(f) If an injury inflicted by an accidental foul later becomes aggravated by fair blows and the referee orders the contest or exhibition stopped because of the injury, the outcome must be determined by scoring the completed rounds and the round during which the referee stops the contest or exhibition.

(g) Each judge of a contest or exhibition of mixed martial arts that is being judged shall score the contest or exhibition and determine the winner through the use of the following system:

(1) The 10 point must system.

(2) The better participant of a round receives 10 points and his opponent proportionately less.

(3) If the round is even, each receives 10 points.

(4) No fraction of points may be given.

(5) Points for each round must be awarded immediately after the end of the period of an exhibition or contest in the round.

(h) After the end of the contest or exhibition, the announcer shall pick up the scores of the judges from the Commission.

(i) The majority opinion is conclusive and, if there is no majority, the decision is a draw.

(j) When the Commission has checked the scores, the Commission shall inform the announcer of the decision. The announcer shall inform the audience of the decision over the speaker system.

92:10-11-8. Results of Contests or Exhibitions

(a) A contest of mixed martial arts may end under the following results: Submission by:

(1) Physical tap out.

(2) Verbal tap out.

(b) Knockout or Technical knockout by the referee stopping the contest.

(c) Decision via the scorecards, including:

(1) Unanimous decision.

(2) Split decision.

(3) Majority decision.

(d) Draw, including:

(1) Unanimous draw.

(2) Majority draw.

(e) Technical decision.

(f) Technical draw.

(g) Disqualification.

(h) Forfeit.

(i) No contest.

92:10-11-9. Technical Knockouts and Knockouts

(a) A participant who lost a bout by technical knockout shall be suspended for a minimum of 30 calendar days.

(b) A participant who lost a bout by knockout shall be suspended for a minimum of 45 calendar days.

(c) The physician shall administer post bout evaluations and recommend testing if deemed necessary.

[OAR Docket #03-1035; filed 5-27-03]

TITLE 135. COMMISSION ON CHILDREN AND YOUTH
CHAPTER 1. GENERAL COURSE AND METHOD OF OPERATION

[OAR Docket #03-2020]

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PERMANENT final adoption
RULES:
Subchapter 1. General Course and Method of Operation
135:1-1-3 [AMENDED]
135:1-1-4 [AMENDED]
135:1-1-6 [AMENDED]
135:1-1-7 [REVOKED]
135:1-1-9 [REVOKED]
135:1-1-10 [REVOKED]
Subchapter 3. Additional Powers and Duties
135:1-3-3 [AMENDED]
135:1-3-4 [AMENDED]
AUTHORITY:
Commission on Children and Youth; 10 O.S. § 601.1
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ANALYSIS:
The proposed changes delete obsolete language; update existing provisions with reference to the newly created Community Partnership Boards in accordance with legislative changes made at Laws 200, ch. 302; adding a new provision clarifying the convening of special meeting; and add a provision regarding the authority of the Director to convene issue-specific task groups as provided for at 10 O.S. 2001 § 601.5(B).
CONTACT PERSON:
Debbie K. McCowan, Oklahoma Commission on Children and Youth, (405) 606-4913.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. GENERAL COURSE AND METHOD OF OPERATION

135:1-1-3. Meetings and quorum

(a) The Commission shall hold at least four (4) quarterly meetings each year which shall be approved by a majority vote of the Commission at the last regular meeting of the calendar year. Special meetings may be called by the Chair or by a majority of the members of the Commission. Eight (8) or more members shall constitute a quorum for any regular or special meeting of the Commission. Official business of the Commission shall be conducted through a concurring vote of a majority of the members present. The Commission shall comply with all requirements of the Oklahoma Open Meeting Act.

(b) A majority of the total members of the Commission may call a special meeting in the following manner. A member who desires a special meeting shall make a request to the Director. The member shall specify the date and time of the requested meeting. The Director shall notify all members individually of the request. Each member so notified will then have the opportunity to also make the same request. If a majority of the members request the meeting, then the Director shall post the meeting and notify all members.

135:1-1-4. Director

The day to day operations of the Commission shall be conducted through a Director who shall be appointed for a term of two (2) years, and may be reappointed. Such Director may be dismissed only for cause.

(1) **Qualifications of Director.**

(A) The person appointed as Director shall have completed curriculum requirements for a law degree or a master's degree in business or public administration, social work, corrections, guidance and counseling, psychology, sociology, criminal justice, or shall have the requirements for a master's degree in a closely related field, or shall meet the minimum requirements listed in this Section.

(B) The applicant for director shall have at least four (4) years professional level experience in an agency or institution which provides services for children or have at least four (4) years professional level experience in closely related work. Two (2) years of the four (4) must be in a supervisory and/or administrative capacity; or two (2) additional years of professional level experience may be substituted for the required master degree provided the bachelor's degree is in one of the above listed areas.

(C) In addition, the Director shall have considerable knowledge and skill in planning and coordinating services for children and youth; in establishing and maintaining an effective working relationship with others; in presenting comments and opinions clearly and logically both orally and in writing; in maintaining a high degree of objectivity; and shall understand the operation of administrative agencies.

(D) It is recommended that the Director shall have thorough knowledge of the juvenile process and its components in Oklahoma. It is further recommended that the Director be aware of national developments and concerns regarding the juvenile justice system.

(E) The Director should have experience in budget and appropriation responsibilities and be knowledgeable regarding standards and guidelines affecting the operation of facilities and institutions in Oklahoma. The Director should possess the ability to work well with many and divergent interest groups to affect change where indicated in the juvenile system and to assure a climate for progressive planning, coordinating, developing and implementing services for children and families.

(2) **Duties of Director.** In addition to the duties set out in 10 O.S. § 601.5, the Director shall:

(A) Keep members of the Commission advised on pending legislation that may affect the organization and authority of the Commission and other matters relating to children and youths; ~~and,~~

(B) Make periodic reports to members of the Commission on the activities of the Director and other staff persons; and,

(C) Director may periodically convene issue specific task groups for the purpose of improving services for Children and Youth. Reports of tasks groups shall be provided to the Commission, Governor, Speaker of House of Representatives, President Pro Tempore of the Senate and Directors of state agencies affected by the report.

(3) **Staff positions and qualifications.** The Director shall be responsible for filling vacant, funded positions included in fulltime equivalent positions in the agency's current appropriation as may be amended by the Contingency Review Board. All hirings, promotions, transfers, and terminations shall be reported to the Commission.

135:1-1-6. Office of Planning and Coordination for Services to Children and Youth

The Office of Planning and Coordination for Services to Children and Youth was established by 10 O.S. § 601.6 (a) to coordinate the planning of services for Oklahoma's children, support the ~~Oklahoma Planning and Coordinating Council for Services to Children and Youth~~, development of Community Partnership Boards, and produce such reports and documentation as directed by statute and the identified needs of children, youth, and families in the State of Oklahoma.

135:1-1-7. Serious and Habitual Juvenile Offender Implementation Task Force [REVOKED]

~~The Serious and Habitual Juvenile Offender (SHJO) Implementation Task Force was established by 10 O.S. § 1160.5 et seq. to develop interagency agreements, propose guidelines, and monitor implementation of the statewide Serious and Habitual Juvenile Offender Program.~~

135:1-1-9. Interagency Coordinating Council for Special Services to Children and Youth [REVOKED]

~~The Interagency Coordinating Council for Special Services to Children and Youth was established by 10 O.S. § 601.45 et seq. in order to provide for related services to children with disabilities ages three to twenty-one.~~

SUBCHAPTER 3. ADDITIONAL POWERS AND DUTIES

135:1-3-3. Evaluation and review of services to children and youth

The Commission shall, with the assistance of the ~~Oklahoma Planning and Coordinating Council for Services to Children and Youth~~ Community Partnership Boards, evaluate and review the development and quality of services to children and youth as set out in 10 O.S. § 601.9.

135:1-3-4. ~~Regional and district planning boards~~ Community Partnership Boards

The Oklahoma Commission on Children and Youth shall establish ~~regional and district planning and coordination boards~~ Community Partnership Boards for services to children and youth as set out in 10 O.S. § 601.11.

[OAR Docket #03-2020; filed 6-4-03]

TITLE 135. COMMISSION ON CHILDREN AND YOUTH
CHAPTER 10. PROGRAMS, BOARDS, AND COUNCILS: OPERATION AND ADMINISTRATION

[OAR Docket #03-2021]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Oklahoma Planning and Coordinating Council for Services to Children and Youth [REVOKED]
135:10-7-1. [REVOKED]
135:10-7-2. [REVOKED]
Subchapter 9. ~~Regional and District Planning and Coordination Boards for Services to Children and Youth~~Community Partnership Boards [AMENDED]
135:10-9-1 [AMENDED]
135:10-9-2 [AMENDED]
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ANALYSIS:
The proposed changes delete obsolete language and update existing provisions with references to the newly created Community Partnership Boards in accordance with legislative changes made at Laws 2000, ch. 302.
CONTACT PERSON:
Debbie K. McCowan, Oklahoma Commission on Children and Youth, (405) 606-4913.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 7. OKLAHOMA PLANNING AND COORDINATING COUNCIL FOR SERVICES TO CHILDREN AND YOUTH [REVOKED]

135:10-7-1. Membership and staffing [REVOKED]

~~The membership and staffing of the Oklahoma Planning and Coordinating Council for Services to Children and Youth is established in 10 O.S. § 601.7.~~

135:10-7-2. Meetings [REVOKED]

~~The Oklahoma Planning and Coordinating Council for Services to Children and Youth shall meet a minimum of four times a year.~~

SUBCHAPTER 9. ~~REGIONAL AND DISTRICT PLANNING AND COORDINATION BOARDS FOR SERVICES TO CHILDREN AND YOUTH~~COMMUNITY PARTNERSHIP BOARDS

135:10-9-1. Membership

Membership of ~~district and regional Planning and Coordination Boards for Services to Children and Youth~~ Community Partnership Boards is established in 10 O.S. § 601.11.

135:10-9-2. ~~Regional and District~~ Community Partnership Board plans

~~Regional and district~~ Community Partnership Board plans shall comply with 10 O.S. § 601.12.

[OAR Docket #03-2021; filed 6-4-03]

TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS
CHAPTER 1. ADMINISTRATIVE ORGANIZATION AND OPERATIONS

[OAR Docket #03-1064]

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Oklahoma Board of Chiropractic Examiners; 59 O.S., § 161.2
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed chapter 1 revisions include changes to definitions for continuing education, job title change for Executive Secretary to Executive Director, definition of relocation of practice, and defining of Scope of practice.
CONTACT PERSON:
Beth Scott, Executive Director, 201 N.E. 38th Terrace, Suite 3, Oklahoma City, Oklahoma 73105, 405-524-6223.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 308.1 (A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

140:1-1-2. Definitions

The following words and terms when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Accredited Chiropractic College" means a chiropractic educational institution, which is accredited by the Commission of Accreditation of the Council on Chiropractic Education.

"Act" means the Oklahoma Chiropractic Act, 59 O.S. 1991, §§ 161.1et seq.

"APA" means the Oklahoma Administrative Procedures Act, 75 O.S. 1991, §§ 250 et seq.

"Advisory Committee" means the committee appointed by the Board to advise and assist the Board in the investigation of the qualifications for licensure, complaints as to the conduct of chiropractic physicians, and for such other matters as the Board may delegate to them.

"Applicant" means any person submitting an applicant for licensure to the Board

"Board" means the Board of Chiropractic Examiners.

"Chiropractic" means the science and art that teaches health in anatomic relation and disease or abnormality in anatomic disrelation, and includes hygienic, sanitary and therapeutic measures incident thereto in humans.

"Chiropractic physician or licensee" means a person who holds an original license to practice chiropractic in this state.

"Continuing education requirements" means attendance by a licensee at a minimum of ~~two (2) days~~ (16) sixteen hours of Chiropractic education seminars as required for a renewal license.

(A) Eight (8) hours of the sixteen required by law must be clinical in nature, and the other remaining eight (8) may consist of practice management, philosophy, and or any other non-clinical topics.

(B) Four (4) hours of continuing education may be acquired out of state with first having obtained a pre-approval from the Board of Chiropractic Examiners.

(C) Three (3) hours of continuing education may also be acquired by attending a National Chiropractic Meeting.

"Emergency meeting" means a meeting of the Board which is called pursuant to Open Meeting Act based upon exigent circumstances which require expedited attention by the Board to the matters concerned.

"Examination" means the process used by the Board prior to the issuance of an original license to test the qualifications.

"Executive ~~Secretary~~ Director" means the Executive ~~Secretary~~ Director of the Board.

"Final order" means an order made by the Board pursuant to the APA and which is subject to judicial review.

"Individual proceeding" means the formal process employed by the Board to provide a hearing for a licensee of the Board accused of a violation of the Act and in which the Board may take action against such person's original license to practice chiropractic in this state.

"Licensure" means the Board's process with respect to the grant, denial, renewal, revocation, or suspension of an original or renewal license.

"Order" means a formal or official decision of the Board including but not limited to, final orders.

"Original license" means a license, which grants initial authorization to practice chiropractic in this state issued by the Board to an applicant found by the Board to meet the requirements for licensure in the Act,

(A) by examination pursuant to § 161.7 of the Act and 140:10-3-1 through 140:10-3-4; or

(B) by reciprocity pursuant to § 161.9 of the Act and 140:10-3-5.

"Party" means a person or agency named and participating or properly seeking and entitled by law to participate in an individual proceeding.

"Person" means any individual, association, governmental subdivision, or public or private organization of any character other than an agency.

"Reciprocity" means the ability of an applicant to obtain Oklahoma Licensure on the following conditions:

(A) The applicant is of good moral character;

(B) The requirements for licensure in the state, country, territory or province in which the applicant is licensed are deemed by the Board to be equivalent to the requirements for obtaining an original license by examination in this state at the date of such license;

(C) The applicant has no disciplinary matters pending against him or her in any other state, country, territory, or province;

(D) The licensee being reciprocated was obtained by examination in the state, country, territory or province wherein it was issued, or was obtained by examination of the National Board of Chiropractic Examiners;

(E) The applicant passes an oral interview and a practical examination given by the Board; and

(F) The applicant meets all other requirements of the Oklahoma Chiropractic Practice Act.

"Regular meetings" means regular meetings of the Board held at such times and places as scheduled by the Board and includes continued and reconvened meetings as may be allowed pursuant to the Open Meetings Act. Provided, however, that continued and reconvened meetings shall be as limited by the Open Meeting Act.

"Relocation of practice" means the ability for an applicant to obtain a chiropractic license on the following conditions:

(A) The applicant is of good moral character;

(B) The applicant shall submit documentary evidence that they have been in active practice for five (5) years immediately preceding the date of the application;

(C) The applicant has had no disciplinary action pending against their license in any other state, country, or province;

(D) The licensee requesting relocation of practice shall comply with the jurisprudence assessment examination administered by the Board of Chiropractic Examiners of this state.

(E) The applicant may be requested to appear before the Board for a personal interview, and;

(F) The applicant shall meet all other requirements set forth in the Oklahoma Chiropractic Practice Act.

"Renewal license" means a license issued by the Board on or before the first day of January of each year to a licensee, which authorizes the license to practice chiropractic in this state for the succeeding calendar year.

"Revocation" means the recalling, annulling or rendering inoperative or original license or renewal license, or both, by the Board, after notice and opportunity for a hearing in an individual proceeding.

"Rule or rules" means the rules of the Board promulgated pursuant to the APA or its successor statutes.

"Rule-making" means the process employed by the Board for the promulgation of a rule.

"Scope of practice" means chiropractic is the science and art that teaches health in anatomic relation and disease or abnormality in anatomic disrelation, and includes hygienic, sanitary and therapeutic measures incident thereto in humans. The scope of practice of chiropractic shall include those diagnostic and treatment services and procedures, which have been taught by an accredited chiropractic college and have been approved by the Board of Chiropractic Examiners. Such diagnostic and treatment services and procedures shall include the following: Chiropractic physicians may examine, analyze and diagnose the human body to correct, relieve or prevent diseases and abnormalities by the use of any physical, chemical, electrical, or thermal method; use or order diagnostic radiologic imaging; use or order laboratory testing; and use any other method of

examination for diagnosis and analysis taught by an accredited chiropractic college and approved by the Board of Chiropractic Examiners. In addition, Chiropractic physicians may adjust, manipulate and treat the human body by manual, mechanical, chemical, electrical or natural methods; by the use of physiotherapy; meridian therapy; by utilizing hygienic, sanitary and therapeutic measures; by the administration of naturopathic and homeopathic remedies, by the application of first aid or by performing any other treatment taught by an accredited chiropractic college and approved by the Board of Chiropractic Examiners. Nothing in this rule shall permit a Chiropractic Physician to prescribe legend drugs, beyond injectable nutrients, as is currently the law in Title 59 Section 161.12 of the Oklahoma Statutes.

"Secretary-Treasurer" means the Secretary-Treasurer of the Board.

"Special meeting" means all meetings of the Board other than regular or emergency meetings.

"Suspension" means temporary discontinuance or cessation, with an expectation of reinstatement, of an original license or renewal license, or both by the Board after notice and opportunity for a hearing as required in an individual proceeding

[OAR Docket #03-1064; filed 5-29-03]

TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS
CHAPTER 10. LICENSURE OF CHIROPRACTIC PHYSICIANS

[OAR Docket #03-1065]

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02-1596
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N/A
ANALYSIS:
The proposed chapter 10 revisions include changing "reciprocity" to "relocation of practice" in respect to the application process for licensure in Oklahoma. This rule was an emergency rule, and was approved for permanent rule making March 20, 2003.
CONTACT PERSON:
Beth Scott, Executive Director, 201 N.E. 38th Terrace, Suite 3, Oklahoma City, Oklahoma 73105, (405) 524-6223

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 3. APPLICATION, EXAMINATION AND LICENSING

140:10-3-5. Application for an original license by ~~reciprocity~~ relocation of practice

(a) An application to the Board for an original license by ~~reciprocity~~ relocation of practice to practice chiropractic in this state shall be made on a form created and approved by the Board and ~~pass an oral interview and a practical examination,~~ the applicant may also be required to appear before the Board for a personal interview, and shall be assessed a jurisprudence examination.

(b) The Board may, in its discretion, refuse to grant an original license by ~~reciprocity~~ relocation of practice to any applicant and may require the applicant to take the oral examination required by the Act.

(c) The applicant shall be signed and verified under oath by the applicant. The application shall include:

(1) A passport photo attached to the appropriate page of the application. ~~an original, un-retouched black and white photograph of the applicant, taken within six (6) months prior to the date of submission of the application, showing the applicant's head and shoulders, front view, which photograph shall be approximately two inches (2"x2") in size.~~

(2) the affidavits of two (2) chiropractic physicians who are not related under
financial obligation to the applicant and which state that the applicant is of good moral character;

(3) a copy of the applicant's high school ~~diploma~~ final transcripts, or equivalent,
certified as being true and correct copy.

(4) a copy of the applicant's pre-chiropractic college or university transcript or
transcripts, certified:

(A) by an official of the issuing college or university as being true and correct; and

(B) by an official of the University of Oklahoma as containing at least sixty (60) hours of college credit accepted by the University of Oklahoma;

(5) a copy of the applicant's diplomas from an accredited chiropractic college, certified by an official of the issuing college as being true and correct;

(6) Submit documentary evidence to the Board that the applicant has been in active practice for five (5) years immediately preceding the date of the application.~~A copy of the applicant's current license to practice chiropractic in another state, country, territory, or province, certified by an officer of the issuing licensure board as being a true and correct copy; and~~

(7) a money order, certified check or cashiers check payable to the Board, in the amount of Three Hundred Dollars ($300.00), as payment of the application fee. Such fee is not refundable under any circumstances.

(d) Except as otherwise approved in writing by the Board, an application and all accompanying documents must be completed as set forth in the Act and the application ~~and received by the Board no later than thirty (30) days prior to the date of the next s scheduled examination in order for the applicant to take such examination.~~

(e) All documents accompanying an application for an original license by ~~reciprocity~~ relocation of practice, that are written in any language other than English shall be translated, at the expense of the applicant, into the English language and certified under seal of the proper consulate. The translation shall be submitted with the application.

(f) All applicant's must submit a certified copy of his/her birth certificate and/or naturalization papers if they were born any where other than the United States.

(~~f~~g) The review of each application for an original license by ~~reciprocity~~ relocation of practice shall be conducted by the Board, and notice of the approval or disapproval thereof shall be given by the Secretary-Treasurer in the same manner as for an application for an original license by examination.

(~~g~~h) A fraudulent or false statement as to any material fact which is contained in any application for an original license by ~~reciprocity~~ relocation of practice, or the failure to provide any requested information shall constitute sufficient cause for the disapproval of the application.

~~(h) An applicant of an original license by reciprocity shall not be required to take the written portion to the examination administered by the Board, but shall be required to pass only an oral interview and the practical portion of such examination~~

[OAR Docket #03-1065; filed 5-29-03]

TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS
CHAPTER 15. SPECIAL CERTIFICATES AND MISCELLANEOUS PROVISIONS

[OAR Docket #03-1066]

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PERMANENT final adoption

RULES:
Subchapter 8. Animal Chiropractic Diagnosis and Treatment
140:15-8-1 [NEW]
140:15-8-2 [AMENDED]

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Oklahoma Board of Chiropractic Examiners; 59 O.S., § 161.2

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October 8, 2002
Register publication:
20 Ok Reg 15
Docket number:
02-1391

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
The proposed chapter 15 revisions include clarification for certification requirements and educational criteria for Animal Chiropractic and continuing education to maintain that certification through the board annually.

CONTACT PERSON:
Beth Scott, Executive Director, 201 N.E. 38th Terrace, Suite 3, Oklahoma City, Oklahoma 73105, (405) 524-6223.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 8. ANIMAL CHIROPRACTIC DIAGNOSIS AND TREATMENT

140:15-8-1. Certificate of a chiropractor and animal chiropractic diagnosis and treatment

(a) A chiropractic physician may engage in the practice of animal chiropractic diagnosis and treatment if certified to do so by the Board. A licensed chiropractic physician may provide chiropractic treatment to an animal without being certified in animal chiropractic diagnosis and treatment if the animal has been referred to the chiropractic physician by a licensed veterinarian.

(b) "Animal chiropractic diagnosis and treatment" means treatment that includes vertebral subluxation complex (vcs) and spinal manipulation of nonhuman vertebrates. The term "animal chiropractic diagnosis and treatment" shall not be construed to allow the:

(1) use of x-rays,
(2) performing surgery,
(3) dispensing or administering of medications, or
(4) performance of tradition veterinary care

(c) The Board is charged by statute to establish educational criteria for certification standards in animal chiropractic diagnosis and treatment. According, the Board states that the following educational criteria will be applied to any licensed chiropractic physician who requests certification in animal chiropractic diagnosis and treatment. The criteria shall include education and training in:

(1) Anatomy, including sacropelvic, thoracolumbar, cervical, and extremity;
(2) Equine and canine adjustments;
(3) Topographical laborartory
(4) Chiropractic basics, including history and systems review, subluxation, and vertebral subluxation complex;
(5) Veterinary basics, including anatomy as it relates to restraint and positioning, physiology and pharmacology, metabolic and contagious diseases, and lameness;
(6) Chiropractic and neurological diagnosis
(7) Radiology and biomechanics
(8) Proficiency in basic techniques
(9) Pathology
(10) Podiatry, including lower limb dissection;
(11) Chiropractic and veterinary philosophy; and
(12) Professional ethics and legalities;
(13) Identification of animals

(d) Any licensed chiropractic physician requesting certification in animal chiropractic diagnosis and treatment shall have completed no less than 150 hours of education and training education as set forth above.

(e) Any chiropractic physician engaged in the practice of animal chiropractic shall maintain complete and accurate records and/or patient files in their office for a minimum of three years.

140:15-8-2. Continuing education hours

Each Chiropractor certified in animal chiropractic diagnosis and treatment applying for renewal of a license related to animal chiropractic diagnosis and treatment shall have completed a minimum of (6) hours annually, in addition to the required ~~twelve (12)~~ sixteen (16) hours of the Act. The continuing education course attended for ~~purposed~~ purposes of satisfying this rule shall be approved by the Board prior to attendance by the chiropractic physician

[OAR Docket #03-1066; filed 5-29-03]

TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

[OAR Docket #03-2009]

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165:5-1-4. Office location; office hours; records [AMENDED]
165:5-1-5. Filing of documents [AMENDED]
Subchapter 5. Dockets
165:5-5-1. Dockets; identifying initials [AMENDED]
Subchapter 7. Commencement of a Cause
Part 1. General
165:5-7-1. General application and notice requirements [AMENDED]
Part 3. Oil and Gas
165:5-7-14. ~~Enhanced recovery gross production tax exemption~~Tax exemptions pursuant to OAC 165:10, Subchapter 21 [AMENDED]
165:5-7-27. Enhancement or addition of injection and disposal wells [AMENDED]
Subchapter 9. Subsequent Pleadings
165:5-9-2. Subsequent pleadings [AMENDED]
165:5-9-6. Continuances [AMENDED]
Subchapter 11. Prehearing Procedures
165:5-11-2.1. Initial screening conference ("ISC") [NEW]
Subchapter 13. Initial and Appellate Proceedings
165:5-13-2.1. Appointment of Public Utility Referee [NEW]
165:5-13-4. Report of Administrative Law Judge [AMENDED]
Subchapter 19. Contempt
165:5-19-2. Waiver or reduction of fines and penalties upon small business [NEW]
AUTHORITY:
Oklahoma Corporation Commission, Article IX, § 18 of the Oklahoma Constitution; 75 O.S. § 501 *et seq.*
DATES:
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None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
OAC 165:5-1-4 is amended to clarify that all documents, including orders, mailed to the Court Clerk or Office of Administrative Proceedings require the submission of a self-addressed postage paid envelope for the return of a copy of the file-stamped or processed document. OAC 165:5-1-5 is amended to provide that the Office of Administrative Proceedings will contact the person submitting a facsimile if the original document is not received within four days of receipt of the facsimile. OAC 165:5-5-1 is amended to provide that the Commission shall enter an order transferring an application to the proper docket when filed on an improper docket and that the order transferring the

application to the proper docket shall be sent to all parties of record by the applicant.

OAC 165:5-7-1 is amended to provide as follows: the docket identifying initials and year prefix are to be included in the caption of an application; all applications, except for motor carrier and public utility applications, shall be accompanied by a notice of hearing; and all notices of hearing shall conform to Appendix A of Chapter 5. OAC 165:5-7-14 is amended to reflect the statutory changes regarding production tax exemptions. OAC 165:5-7-27 is amended to remove redundant language regarding publication of notices for applications relating to injection, disposal or commercial wells.

OAC 165:5-9-2 is amended to provide as follows: all motions shall be set by a Notice of Hearing; the title of the response or objection to a motion shall refer to the motion being considered; responses or objections filed to motions which already have been set for hearing shall not require a Notice of Hearing; no amended application shall be filed which changes the legal description of the lands involved or the caption in the original application; the applicant may dismiss an application prior to the record being opened; dismissal of a cause shall only occur by submitting a proposed order dismissing cause to the Office of Administrative Proceedings; and the Office of Administrative Proceedings may post causes for dismissal on a disposition docket with 15 days notice to parties of record for failure to timely submit an order or for failure to set a cause on a date certain. OAC 165:5-9-6 is amended to allow the Director of Administrative Proceedings or an Administrative Law Judge to recommend dismissal of a cause if the applicant has failed to set a continued cause on a day certain for a period more than 30 days after the last recorded hearing date.

OAC 165:5-13-4 is amended to provide that an Administrative Law Judge, upon the request of a Commissioner, shall appear at any scheduled signing agenda, Commission hearing or public deliberation to respond to questions from the Commissioners concerning the proposed order or report of the Administrative Law Judge.

In addition, the Commission is proposing to add three new sections to Chapter 5. OAC 165:5-11-2.1 is added to establish an initial screening conference to determine which public utility causes will be set for hearing before the Commissioners. OAC 165:5-13-2.1 is added to provide for the appointment of a referee by the Commissioners to hear designated public utility causes. Pursuant to 75 O.S. § 506, OAC 165:5-19-2 is added to provide for the waiver or reduction of fines and penalties upon small business.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 15, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. GENERAL

165:5-1-4. Office location; office hours; records

(a) **Principal office.** The principal office of the Oklahoma Corporation Commission is in the Jim Thorpe Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105. The mailing address is P. O. Box 52000, Oklahoma City, Oklahoma, 73152-2000.

(b) **Regional service areas.** The Commission has two regional service areas described as the Eastern Regional Service Area and the Western Regional Service Area. The Eastern Regional Service Area shall consist of the land east of Oklahoma State Highway 99. The Western Regional Service Area shall consist of the land west of that highway. The establishment of these regional service areas shall not limit the services available from either regional service office.

(c) **Eastern regional service office.** In the Eastern Regional Service Area, the Commission maintains a regional service office located at 440 South Houston, Suite 114, Tulsa, Oklahoma, 74127.

(d) **Western regional service office.** In the western regional service area, the Commission's principal office serves as the regional service office.

(e) **Telephonic communication service.** The Office of Administrative Proceedings shall develop and maintain a system for providing telephonic communication service for all hearings.

(f) **Office hours.** For each regional service office or other office described in (a) through (d) of this Section, office hours shall be from 8:00 a.m. to 4:30 p.m., each day except Saturday, Sunday, and any legal holiday proclaimed by the Governor or official agency closing. Public records may be viewed during regular office hours. Copies of public records may be obtained from 8:00 a.m. to 4:00 p.m.

(g) **Exercise of Commission authority.** The Commission, or any person exercising its authority, may meet and exercise its official powers and functions at any location in the State of Oklahoma.

(h) **Oil and gas filings.** Applications for oil and gas development, administrative applications, and any other related oil and gas matters may be filed in any regional service office.

(i) **Central records.** The central record of all filings with all regional service offices shall be maintained in the regional service office of the Corporation Commission located in Oklahoma City.

(j) **Court Clerk.** Every ~~communication in writing to the Commission~~ document submitted for filing shall be addressed to the Court Clerk at a regional service office, unless the Commission directs otherwise. All persons mailing documents, including orders, to the Court Clerk or Office of Administrative Proceedings shall enclose a self-addressed postage paid envelope large enough for the return of a filed stamped or processed copy. Failure to enclose a self-addressed postage paid envelope will result in a filed stamped or processed document not being returned. Every oil and gas related document tendered for filing shall be deposited with or mailed to the Court Clerk at a regional service office. All documents related to other matters shall be deposited with or mailed to the Court Clerk at the western regional service office. All documents shall be deemed received upon the date file-stamped by that office, subject to the provisions of 165:5-1-5(f). Filing of any document shall not be complete except upon payment of all applicable fees required by law or by the rules of this Chapter. Filing of any document with the Court Clerk shall be deemed filing with the Secretary.

165:5-1-5. Filing of documents

(a) **Document form.** Documents filed with the Court Clerk may be printed, typewritten or reproduced by any legible method. Documents shall be on either 8 1/2" x 14" or 8 1/2" x 11" paper. Quotations shall be indented.

(b) **Filing refused.** The Court Clerk is authorized to refuse to accept for filing any document containing defamatory, scurrilous or improper language, or otherwise in violation of any of

the rules of this Chapter. In case of such refusal, upon request, the document shall be presented to the Commission for ruling on acceptability for filing.

(c) **Signed original; copies.** A signed original of every document shall be filed for use of the Commission, with additional copies as may be required by the Court Clerk. The requirements of this subsection shall not be jurisdictional. All documents, except notices of hearing, signed by an attorney shall contain the name of the State Bar Association to which the attorney belongs and his/her State Bar Association number.

(d) **Requirement conflicts.** Wherever any provision of the Constitution or laws of Oklahoma makes a requirement as to notice or procedure which exceeds or conflicts with any provision of the rules of this Chapter, the former shall govern.

(e) **Informal communications.** Nothing in the rules of this Chapter shall prohibit informal inquiry or complaint to the Commission by mail or in person, which matters shall be handled administratively by the staff in an effort to secure amicable adjustment or agreement among affected persons. No official order shall be issued as a result of any informal proceedings.

(f) **Facsimile transfers.** The Court Clerk shall accept pleadings submitted by facsimile transfer during regular Commission business hours pending payment of appropriate filing fee and submission of a proper original and requisite copies within five (5) calendar days of the filed facsimile, in accordance with the provisions of 165:5-1-6(a). New applications must be transferred and completed prior to 4:00 p.m. of each business day. A facsimile shall be deemed filed on date of receipt, unless the proper original is not timely received and/or the appropriate filing fee is not paid. When the original documents are not received within five (5) calendar days of receipt of the facsimile and/or the appropriate filing fee is not timely paid, the facsimile will be destroyed and the original documents will not be deemed timely filed. If the original is not received within four (4) days of receipt of the facsimile, the Office of Administrative Proceedings will attempt to contact the person submitting the facsimile.

SUBCHAPTER 5. DOCKETS

165:5-5-1. Dockets; identifying initials

(a) **Subject matter dockets.** Subject matter dockets shall be maintained by the Court Clerk, with identifying initials preceding the docket number as follows:

(1) General docket ~~(Gen)~~ (GD)
(2) Motor carrier docket (MC)
(3) Conservation docket (CD)
(4) Pollution docket (PD)
(5) Natural Gas Policy Act docket (US)
(6) Rulemaking docket (RM)
(7) Enforcement docket (EN)
(8) Transportation docket (TD)
(9) Public Utility docket (PUD)
(10) Petroleum Storage Tank docket (PSD)
(11) State fund plugging docket (SF)
(12) Consumer Services docket (CS)
(13) Oil and Gas Citation docket (OGC)
(14) Petroleum Storage Tank Division Citation docket (PSC)

(b) **Docket assignment.** Every cause shall be assigned a docket number by the Court Clerk, and all documents filed in the cause shall bear the docket number, including the year prefix. The Court Clerk shall:

(1) File-stamp each document received with the date of receipt.
(2) Record every document filed in the cause.
(3) Maintain a complete file of all original documents filed in every cause.

(c) **Improper docketing.** If the Commission, an Administrative Law Judge, or the Court Clerk determines that an application has been filed on an improper docket as set forth in (a) of this Section, the Commission ~~or an ALJ~~ shall~~, without hearing but after notice to all parties of record,~~ enter an order transferring the application to the proper docket. The Office of Administrative Proceedings shall send the order transferring the application to the proper docket to the applicant, who shall be responsible for sending the order to all parties of record.

(d) **Procedural dockets.** In addition to the subject matter dockets described in (a) of this Section, the Commission may, from time to time, designate procedural dockets.

SUBCHAPTER 7. COMMENCEMENT OF A CAUSE

PART 1. GENERAL

165:5-7-1. General application and notice requirements

(a) **Scope.** Except where otherwise specifically provided in this Subchapter, including the Petroleum Storage Tank Division at OAC 165:5-21-3, the provisions of this Section shall govern the commencement of a cause filed with the Commission and over which the Commission may exercise jurisdiction, including applications for declaratory rulings as to the applicability of any rule or order of the Commission.

(b) **Form.** Every cause shall be commenced by:

(1) An application.
(2) A complaint.
(3) An order of the Commission commencing a cause.

(c) **Caption.** The application or complaint shall be headed by a caption, which shall contain:

(1) The heading, "Before the Corporation Commission of Oklahoma".
(2) The applicant.
(3) The relief sought. In the case of a conservation docket or pollution docket cause, the statement shall contain the legal description of the lands involved in the cause.
(4) The docket identifying initials, year prefix, and cause number, pursuant to OAC 165:5-5-1.
(5) The title of the document.
(6) In the case of an enforcement docket cause, the caption shall contain the name(s) of the respondent(s).

(d) **Body.** The body of the application or complaint shall consist of five numbered paragraphs, if applicable, as follows:

(1) **Applicants and respondents identified.** The applicant shall be identified, including name, address, and telephone number of his attorney or designated representative and the nature of the applicant's interest in the subject matter of the cause; and the name and address of each person (if any) named as respondent.

(2) **Allegation of facts.** The allegation of fact stated in the form of ultimate facts, without unnecessary detail, upon which the right to relief is based. The allegations will be stated in numbered subparagraphs as necessary for clarity.

(3) **Legal authority.** Citations of statutes, rules, orders, and decided cases authorizing the relief sought; including, in the case of a complaint, the laws, rules, regulations, or orders alleged to have been violated. Statutes shall be cited by title and section. Rules and orders of the Commission shall be cited by number. Decided cases shall be cited by citation to official reports. Quotations from legal authorities shall not be required.

(4) **Relief sought.** A brief statement of the provisions of the order, authority, or other relief sought. An application relating to oil and gas conservation shall seek only one type of relief. Formal prayer for relief shall not be required.

(5) **Specify order to be affected.** An application to vacate, alter, modify, or amend an order shall state the specific order in the body which is sought to be vacated, altered, modified, or amended.

(e) **Certification.** The application shall be signed by the applicant, or an authorized agent of the applicant, or by the attorney for the applicant, and shall set out the address and telephone number of the person so signing it. The person signing the application shall be deemed, on signing same, to be certifying that:

(1) He has read the application.

(2) To the best of his knowledge, information, and belief formed after reasonable inquiry the facts and allegations contained in the application are true and correct.

(3) The application is not filed to harass or to cause unnecessary delay or needless expense.

(f) **Manner of service.** A document may be served on a party of record by regular mail or in person, except where the rules of this Subchapter or a statute requires a specific mode of service, which shall be followed. Service on a corporation may be by delivery to the registered corporate agent, or by delivery to the principal place of business of the corporation. For purposes of this Section, a corporation may designate its principal place of business by filing a notice thereof with the Court Clerk. When an attorney has appeared of record for a person, all subsequent service shall be on the attorney. Service by mail shall be complete on the date of mailing except where otherwise provided in this Subchapter; provided, that a person may be granted appropriate relief upon showing that a document so served was not received, or delivery thereof was delayed.

(g) **Service of an application.** Except as hereinafter provided in this Subchapter, every application and notice of hearing stating the date on which the cause is set for hearing in which a person is named a respondent shall be served by regular mail on each respondent named therein and Commission staff counsel by the person filing the application. Thereafter, every document shall be served by the person filing it by regular mail upon all parties of record or, where the record has not been opened, upon the applicant and all named respondents.

(h) **Certificate of service.** Except where an affidavit of mailing is required by law or by this Subchapter, a certificate of service shall be filed following or with the filing of every document. The certificate of service shall contain a list of the persons served and the certification that on the date stated a copy of the document was mailed, postage prepaid, or delivered to each person listed.

(i) **Service not jurisdictional.** Service prescribed by the rules of this Subchapter shall not be jurisdictional except where so provided by the Constitution or by statute. Failure to comply with the provisions of this Section as to mailing and service of notice shall not deprive the Commission of jurisdiction of the application or complaint, but shall be grounds for such appropriate relief as the Commission may order.

(j) **Publication of notice.** Every application, except ~~as determined by the Secretary of the Commission or~~ as provided in this Chapter for motor carrier and public utility applications, shall be accompanied by a notice of hearing, which date shall be set by the Commission. The notice of hearing shall be published as provided in the rules of this Subchapter.

(k) **Signatures.** The notice of hearing of an application shall be signed by the Secretary certifying to the Commissioners' signatures.

(l) **Content of notice.** The notice shall specify:

(1) The time, date, and place of hearing.

(2) Briefly the general nature of the order, rule, regulation or other relief sought.

(3) In oil and gas causes, where applicable, the names or description of all common sources of supply affected by the order sought; or that the entire state would be affected.

(4) Who to contact for additional information.

(m) **Form of notice.** The notice ~~for all oil and gas causes~~ shall conform substantially to the form shown in Appendix A to this Chapter.

(n) **Notice by publication.**

(1) When a cause other than an oil and gas or Petroleum Storage Tank Division cause is commenced, the applicant shall cause the notice of hearing prescribed in (j) through (l) of this Section to be published in one or more newspapers of general circulation, on dates and for periods as required by law, or this Subchapter, or as the Commission shall order.

(2) In oil and gas causes, unless otherwise provided in this Subchapter, the notice of hearing shall be published one time at least fifteen (15) days prior to the hearing in a newspaper of general circulation published in Oklahoma County, Oklahoma and in a newspaper of general circulation published in each county in which the lands embraced in the application are located.

(3) Publication shall be at the expense of the applicant, and shall be made in a newspaper which has met the statutory requirements for publication of legal notices. Written proof of publication shall be filed in the cause.

(4) Proof of publication shall be established by an original proof of publication.

(o) **Effective date prior to date of issuance of order.** No order may be made effective prior to its date of issuance without evidence placed into the record that the approval of such effective date is necessary. An effective date prior to the date of issuance of the order shall be requested in the application and placed in the special relief paragraph of the notice of hearing.

(p) **Notice of motor carrier motions and applications.** Notice of all motor carrier motions and applications shall be printed on the Commission docket as prescribed by law for circulation to the public.

PART 3. OIL AND GAS

165:5-7-14. ~~Enhanced recovery gross production tax exemption~~ Tax exemptions pursuant to OAC 165:10, Subchapter 21

(a) **Form of application.**

(1) Each application under OAC 165:10-21, Part ~~7~~ 13 shall be filed with the Court Clerk on an OCC Form 1139 with the exhibits required by OAC 165:10-21, Part 13.

(2) Each application under OAC 165:10-21, Parts 6, 7, 8, 9, 11 and 14, shall be filed with the Court Clerk on an OCC Form 1534 with the exhibits required by the provisions of OAC 165:10-21, which pertain to each specific gross production tax exemption.

(3) Each application under OAC 165:10-21, Part 14A shall be filed with the Court Clerk on an OCC Form 1535 with the exhibits required by the provisions of OAC 165:10-21, which pertain to sales tax exemptions for electricity sold to operate reservoir dewatering projects.

(b) **Referral to Conservation Division.** Upon filing of the application with required exhibits, the Commission shall refer the matter to the Conservation Division for the purpose of reviewing the application and making findings and recommendations by report to the Commission.

(c) **Notice.** No notice shall be required.

(d) **Right to hearing if application recommended for denial or modification.** If the Conservation Division recommends denial or modification of the application, then the applicant may move for a hearing de novo within ten (10) days after the date of report denying the application.

(e) **Appeal.** Any person adversely affected by the report of the Conservation Division may appeal said report subject to requirements of OAC 165:5-13-5.

165:5-7-27. Enhancement or addition of injection and disposal wells

(a) Each application for the approval of a newly drilled or newly converted injection well or disposal well shall be filed at the UIC Department on Form 1015 and shall be verified by a duly authorized representative of the operator.

(b) The application for the approval of an enhanced recovery injection or disposal well or wells shall be accompanied by:

(1) Plat.

(A) Noncommercial. A plat showing the location and total depth of the well or wells and each abandoned, producing or drilling well, and dry hole within one-quarter (1/4) mile of the enhanced recovery injection well or disposal well, and identifying the surface owner of the land on which the enhanced recovery injection or disposal well is to be located, and each operator of a producing leasehold within one-quarter (1/4) mile of each enhanced recovery injection or disposal well.

(B) Commercial disposal well. A plat showing the location and total depth of the well or wells and each abandoned, producing or drilling well and dry hole within one-half (1/2) mile of the disposal well, and identifying the surface owner of the land on which the disposal well is to be located, and each operator of a producing leasehold within one-half (1/2) mile of each disposal well.

(2) If the well has been drilled, a copy of the Completion Report (Form 1002A) and any available electric or radioactivity log of the well.

(3) A schematic diagram of the well showing:

(A) The total depth or plugback depth of the well.

(B) The depth of the injection or disposal interval indicating both the top and bottom.

(C) The geological name of the injection or disposal zone.

(D) The depths of the tops and bottoms of the casing and cement to be used in the well.

(E) The size of the casing and tubing, and the depth of the packer.

(4) Information showing that injection into the proposed zone will not initiate fractures through the overlying strata which could enable the injection fluid or formation fluid to enter fresh water strata.

(A) When the fluid injection rate is 1,000 barrels per day or less, or equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 200 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.

(B) When the fluid injection rate is greater than 1,000 barrels per day or equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 500 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.

(C) If the overlying strata is less than required in (A) and (B) of this paragraph, the Commission may administratively approve injection provided a finding is made that such injection will not initiate fractures through the overlying strata into the fresh water strata. Applicant is required to furnish the Commission

sworn evidence and data in support of such findings. The Commission, when issuing an order approving fluid injection, shall consider the following:

(i) Maximum injection rate.

(ii) Maximum surface injection pressure.

(iii) Injection fluid.

(iv) The lithology and rock characteristics of the injection zones and overlying strata.

(5) Proposed operating data:

(A) Daily injection rates and pressures.

(B) Geologic name, depth, and location of injection fluid source.

(C) Qualitative and quantitative analysis of fresh water from two (2) or more fresh water wells within one (1) mile of the proposed enhanced recovery injection or disposal well showing location of wells and dates samples were taken, or statement why samples were not submitted. The analysis shall include at a minimum chloride, sodium, and total dissolved solids.

(D) Qualitative and quantitative analysis of representative sample of water to be injected. The analysis shall include at a minimum chloride, sodium, and total dissolved solids.

(c) A copy of the application for approval of injection or disposal of water or other substances in a well shall be served by the applicant by regular mail or delivered to the owner of the surface of the land on which the injection or disposal well is to be located and to each operator of a producing leasehold within one-half (1/2) mile of the well location.

(d) Notice of an application relating to injection, disposal or commercial wells shall be published one time for injection and noncommercial disposal wells and two times for a commercial disposal well in a newspaper of general circulation published in Oklahoma City, Oklahoma, and in a newspaper of general circulation published in each county in which land embraced in the application are located. The notice shall include:

~~(1) For injection and disposal wells, notice shall be published one time in a newspaper of general circulation published in Oklahoma City, Oklahoma and in a newspaper of general circulation published in each county in which lands embraced in the application are located.~~

~~(2) For commercial disposal wells, notice shall be published two times in a newspaper of general circulation published in Oklahoma City, Oklahoma, and two times in a newspaper of general circulation published in each county in which lands embraced in the application are located.~~

~~(3) The notice requirements for this Section shall include:~~

(~~A~~1) PD number.

(~~B~~2) Name and address of applicant.

(~~C~~3) Location of proposed well to nearest 10 acre tract.

(~~D~~4) Well name.

(~~E~~5) The geological name of the injection formation.

(~~F~~6) The top and bottom of the injection interval.

(~~G~~7) Maximum injection pressures.

(~~H~~8) Maximum B/D or MCF/D injection rate.

(~~I~~9) The type of well (injection, disposal, commercial).

(e) If a written objection to the application is filed within fifteen (15) days after the application is published for injection and noncommercial disposal wells or thirty (30) days after the last publication date for commercial disposal wells, or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Manager of Underground Injection Control who shall file his report and make his recommendations.

(f) Optionally, the operator can file a Unit-wide Application for Injection (Form 1015U) that fulfills all the requirements of (b) through (e) of this Section. Upon review and approval, the operator receives a Unit-wide order that allows the operator to file a traditional, individual well application (Form 1015) and if it fits the Unit-wide criteria, the UIC order can be issued immediately without additional area of review, notice, or protest period.

SUBCHAPTER 9. SUBSEQUENT PLEADINGS

165:5-9-2. Subsequent pleadings

(a) **Reply.** No documents shall be required other than the application and responses thereto. Reply to a response shall be permitted but shall not be required.

(b) **Motions.** All other objections to or requests for action or relief shall be by motion, with service by regular mail as provided in this subsection, stating in concise language the action or relief sought and the facts and circumstances upon which the right thereto is based.

(1) All motions shall be set on a regularly scheduled motion docket by a Notice of Hearing to be heard by an Administrative Law Judge unless determined otherwise by a prehearing/scheduling agreement or a prehearing/scheduling order. All motions filed after a cause has been set before the Commission or assigned to an Administrative Law Judge on the merits shall be set as directed by the Commission or the assigned Administrative Law Judge. The filing of a motion may not automatically delay the hearing on the merits.

(A) Prior to the record being opened on the merits or a prehearing/scheduling agreement filed or a prehearing/scheduling order issued, notice shall be given by the movant by serving at least five (5) days prior to the date set for hearing by regular mail a copy of the motion and notice on each respondent.

(B) After the record in the cause has been opened on the merits or a prehearing/scheduling agreement has been filed or a prehearing/scheduling order has been issued, notice shall be given by the movant by serving, at least five (5) days prior to the date set for hearing, by regular mail, a copy of the motion and notice to all parties of record.

(2) Such motions may be appealed in accordance with the provisions of OAC 165:5-13-5(a)(1) except as provided in (A) and (B) of this paragraph.

(A) In oil and gas related matters, all decisions on motions filed after the cause has been assigned to an Administrative Law Judge shall be considered in the Report of the Administrative Law Judge unless the Administrative Law Judge directs otherwise.

(B) In all other matters, the decisions on motions filed after a scheduling agreement has been filed or a scheduling order has been issued in a cause shall be considered in the Report of the Administrative Law Judge unless the Commission or Administrative Law Judge directs otherwise.

(c) **Response/objection to motions.** Any ~~adverse~~ person may file and serve a response or objection to any motion at any time before the motion is heard. The title of the response or objection shall refer to the motion being considered. Responses or objections filed to motions which already have been set for hearing shall not require a Notice of Hearing.

(d) **Amendment.** Amendment of a document may be permitted at any time upon such terms as are just. An amendment may take the form of a substitute document, an amendment or supplement, deletion of language, or correction by interlineation. Response may be made to an amended document, but shall not be required. An amended application ~~may be filed in a conservation or pollution cause and~~ is acceptable where notice is given according to the statutes or rules under which the original application was filed. Provided, however, no amended application shall be filed ~~that~~ which changes the applicant's name, ~~or~~ the type of relief requested, the legal description of the lands involved or the caption in the original application~~.~~;instead, any such changes from the original application shall require the filing of a new application in accordance with Subchapter 5 of this Chapter.

(e) **Dismissal.** The applicant may dismiss the application with or without prejudice at any time prior to the record being opened in said cause by submitting a proposed order dismissing the cause to the Office of Administrative Proceedings. Such dismissal shall not dismiss the cause as to affirmative relief sought by any respondent and, upon the appearance at the time of hearing of any respondent who has failed to receive notice of the dismissal or who has requested affirmative relief, such respondent may enter any evidence into the record and may be granted any relief which the Commission or Administrative Law Judge deems appropriate.

(1) At any time prior to the record being opened in a cause, a respondent may file a motion to dismiss in the same manner as provided in (b) of this Section.

(2) After the record has been opened in a cause, the cause may be dismissed by agreement of all parties of record or recommended for dismissal with or without prejudice by the Commission or Administrative Law Judge upon the Commission's or Administrative Law Judge's own motion or upon motion of any party of record. A motion to dismiss filed hereunder shall comply with the provisions of (b) of this Section; provided that, in a cause where a motion to dismiss has been filed, notice shall be served on each respondent in the cause.

(3) Upon five (5) days notice to parties of record, the Commission may entertain motions to dismiss for any of the following reasons:

(A) Failure to prosecute.

(B) Unnecessary duplication of proceedings or res judicata.

(C) Withdrawal.

(D) Moot question or obsolete applications.

(E) Lack of jurisdiction.

(F) Failure to submit a proposed order in a timely manner.

(G) For other good cause shown.

(4) Upon posting by the Office of Administrative Proceedings fifteen (15) days notice on a disposition docket, and mailing notice to all parties of record to a cause, the Commission may dismiss causes for any of the following reasons:

(A) Failure to submit a proposed order to the Administrative Law Judge or the Commission within thirty (30) days after the recommendation date or as directed by the Administrative Law Judge or the Commission.

(B) Failure to set a cause on a day certain.

165:5-9-6. Continuances

(a) **General.** The Commission or Administrative Law Judge before whom a cause is set may continue or adjourn a hearing at any time for any period, with or without notice or motion. Continuances may be granted for good cause shown, or by agreement of all parties of record at the hearing. A stipulation of a continuance among all parties of record ordinarily will be approved, unless the Commission determines that the public interest requires otherwise. A continuance in a cause may be granted in advance of the date for hearing of the cause in the following ways:

(1) As provided in OAC 165:5-9-2(b)(1); or

(2) The applicant in a cause may request a continuance at least five (5) days in advance of a hearing date from the Docket Clerk or, if the cause has been assigned for hearing, the Commission or assigned Administrative Law Judge. Upon approval of a continuance date, the applicant shall send a notice of continuance stating the continuance date to the Docket Clerk and if the cause has been assigned for hearing, the Commission or assigned Administrative Law Judge. Notice of the continuance date shall be served on all respondents or, if a prehearing/scheduling agreement has been filed or a prehearing/scheduling order has been issued in the cause, notice of the continuance date shall be served on all parties of record. The notice of continuance must be sent by regular mail at least five (5) days prior to the date of the hearing. Such cause shall be continued on the docket without the necessity of the appearance of the applicant at the time of hearing.

(b) **Contested motion for continuance.** A contested motion for continuance on the day set for hearing of the cause shall be heard by the Commission or Administrative Law

Judge. Such decision may be noted as part of the order of the Commission or Initial Report of the Administrative Law Judge if requested by a party of record.

(c) **More than two continuances.** In those cases where two (2) continuances have previously been granted, upon the granting of each additional continuance, written notice of such continuance shall be served by regular mail by the person requesting such continuance on all respondents or, if a prehearing/scheduling agreement has been filed or a prehearing/scheduling order has been issued in the cause, notice of the continuance date shall be served on all parties of record at least five (5) days prior to the date the continued cause is set for hearing. The movant shall provide proof of mailing such notice at the time of hearing. This subsection shall not apply to matters assigned to before the Commission or an Administrative Law Judge unless the Commission or Administrative Law Judge deems or orders otherwise.

(d) **Day certain.** Every continuance shall be to a day certain. If an applicant has failed to set a continued cause on a day certain for a period more than thirty (30) days after last recorded hearing date as shown from the Commission's docket records, the Director of the Office of Administrative Proceedings or an Administrative Law Judge may recommend dismissal of the cause to the Commission, pursuant to OAC 165:5-9-2(e)(4); and the Commission may dismiss the cause without prejudice by an Order Dismissing Cause.

SUBCHAPTER 11. PREHEARING PROCEDURES

165:5-11-2.1. Initial Screening Conference ("ISC")

(a) The following public utility causes may be set before the Commission for screening to determine if the Commission will retain that cause or refer the cause to an Administrative Law Judge for hearing. The Initial Screening Conference may apply to the following public utility causes:

(1) Applications for general rate change.

(2) Applications involving utility restructuring and/or competitive issues.

(3) Other causes as may be decided by the Commission.

(b) The conference will be conducted as an on-the-record proceeding, open to the public and will convene to consider:

(1) Whether the ultimate outcome of a cause is judicial or legislative in nature.

(2) Identification of preliminary issues of law and fact including any policy issues.

(3) Discussion of the Public Utility Division staff's participation in the cause and designation of advisory/deliberating counsel and counsel assigned to represent the Public Utility Staff.

(4) Whether the cause will be heard by the Commission or a Public Utility Referee or referred to an Administrative Law Judge for hearing.

(5) Any procedural matters including notice requirements.

(6) Any other matters that may assist in the disposition of the cause.

(c) Deliberating counsel shall give notice of the time and place of the Initial Screening Conference to the Public Utility Division Director, the Attorney General, all parties of record, and any respondents named in the application not less than five (5) days prior to the Initial Screening Conference.

(d) Actions taken at the Initial Screening Conference may be embodied in a preliminary procedural order, which order shall control subsequent proceedings in the cause and shall be binding on all parties of record unless otherwise ordered by the Commission.

(e) The application for causes identified in subsection (a) of this Section, which are filed by Wednesday 4 p.m., will be set on the next regularly scheduled Initial Screening Conference, unless otherwise directed by the Commission.

SUBCHAPTER 13. INITIAL AND APPELLATE PROCEEDINGS

165:5-13-2.1. Appointment of Public Utility Referee

(a) In Public Utility cases, the Commission may determine that a cause is of such public interest that the Commission may sua sponte appoint a Public Utility Referee to serve as the Hearing Officer with and/or for the Commission conducting the hearing process in the cause.

(b) The Public Utility Referee shall confer with and assist the Commissioners on all matters regarding the pending cause.

(c) The Public Utility Referee may assist the Commission in conducting the hearing of the cause in accordance with all other provisions of this Chapter; except that all provisions of this Chapter providing for appeals of any nature are not applicable.

(d) Upon conclusion of the hearing of the cause, the Commissioners may seek the assistance of the Public Utility Referee in reaching a determination in the cause.

165:5-13-4. Report of Administrative Law Judge

(a) At the conclusion of a hearing before an Administrative Law Judge, such officer shall, at the earliest practicable date, file a written report in the proceeding. The report shall contain the following:

(1) Names of parties of record and their attorneys.

(2) Brief statement of facts establishing jurisdiction of the cause.

(3) Brief summary of the evidence of each party of record who offered evidence.

(4) The pertinent facts as found by the officer upon consideration of all evidence offered.

(5) Recommended conclusions of law and recommendations as to action to be taken or relief to be granted or denied.

(6) In oil and gas conservation causes and pollution causes, such report shall be prepared only when a party of record in the hearing before the Administrative Law Judge has formally, either orally or in writing, protested the granting of the application, or, in the judgment of the Administrative Law Judge, the issuance of a report is required.

(b) The Administrative Law Judge shall send a copy of the report by regular mail to each party of record.
(c) At the expiration of ten (10) days after the report is filed, if no appeal is filed, the Commission shall enter such order as shall be deemed appropriate upon consideration of the report.
(d) In any conservation or pollution cause in which the Administrative Law Judge has recommended that an order issue, but the approval of staff counsel or technical staff is withheld after all efforts have been exhausted to resolve technical or legal problems with the applicant and Administrative Law Judge, the Administrative Law Judge shall issue a report in accordance with this Section, allowing any person time to file an appeal.
(e) Upon request by a Commissioner, an Administrative Law Judge shall appear at any scheduled signing agenda, Commission hearing or public deliberation to respond to questions from the Commissioners concerning the proposed order or report of the Administrative Law Judge.

SUBCHAPTER 19. CONTEMPT

165:5-19-2. Waiver or reduction of fines and penalties upon small business

(a) **Fines and penalties may be waived against small business.** Pursuant to 75 O.S. § 506, any fine or penalty levied against a small business pursuant to the contempt procedure provided in this Subchapter may be waived or reduced by the Commission if:

(1) The small business corrects the violation within thirty (30) days of receiving a complaint, summons and notice of citation for contempt, or other form of citation; or

(2) The violation was the result of an excusable misunderstanding of the Commission's interpretation of a rule.

(b) **Circumstances when no waiver or reduction may occur.** A waiver or reduction of a fine or penalty may not occur under any of the following circumstances:

(1) A small business has been notified of the violation of a statute or Commission rule by the Commission pursuant to proper procedure and has been given a prior opportunity to correct the violation on a prior occasion;

(2) A small business fails to exercise good faith in complying with the statute or Commission rule;

(3) A violation involves willful or criminal conduct;

(4) A violation results in serious health, safety, or environmental impact; or

(5) The penalty or fine is assessed pursuant to a federal law or regulation and for which no waiver or reduction is authorized by the federal law or regulation.

(c) **Small business defined.** For the purposes of the waiver or reduction of a fine or penalty pursuant to 75 O.S. § 506, the term "small business" means a for-profit enterprise consisting of fifty (50) or fewer full-time or part-time employees.

[OAR Docket #03-2009; filed 6-4-03]

TITLE 165. CORPORATION COMMISSION CHAPTER 55. TELECOMMUNICATIONS SERVICES

[OAR Docket #03-2010]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
165:55-1-4. Definitions [AMENDED]
Subchapter 3. Certificates, Reports, and Records
Part 1. Certificates of Convenience and Necessity
165:55-3-1. Certificate of Convenience and Necessity [AMENDED]
Part 5. Record Requirements
165:55-3-22. Records to be provided to the Commission [AMENDED]
Subchapter 5. Rates and Tariffs
Part 3. Approval and Notice Requirements
165:55-5-10. Tariff approval and revisions to tariffs [AMENDED]
165:55-5-10.2. Promotional offerings [AMENDED]
165:55-5-10.3. Customer-specific contracts under ICB pricing [AMENDED]
Part 5. Tariff Structure and Composition
165:55-5-21. Composition of tariffs [AMENDED]
Part 7. Miscellaneous Tariff Requirements
165:55-5-34. Data and information on proposed tariff revisions [AMENDED]
Subchapter 7. Directories, Telephone Numbers, and Customer-Provided Equipment
165:55-7-2.1. 211 Services [NEW]
Subchapter 9. Customer Billing and Deposits
Part 1. Billing and Payment Requirements
165:55-9-3. Due date and penalty [AMENDED]
Subchapter 11. Service Denial, Suspension and Disconnection
Part 3. Suspension and Disconnection Procedures
165:55-11-13. Reconnection [AMENDED]
Subchapter 13. Operating and Maintenance Requirements
Part 3. Service Standards
165:55-13-10. Minimum service standards [AMENDED]
Part 5. Service Quality Standards
165:55-13-20. Responsibility for adequate and safe service [AMENDED]
Subchapter 15. Notification of Transactions Affecting Customers or Business Operations
165:55-15-5. Cessation of business in Oklahoma [AMENDED]
Subchapter 17. Facilitation of Local Exchange Competition
165:55-17-3. Designation of service territory [AMENDED]
165:55-17-13. Interconnection of networks [AMENDED]
165:55-17-30. Customer choice [NEW]
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None
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ANALYSIS:

OAC 165:55-1-4 corrects the definition of "SWBT" to reflect the correct name of Southwestern Bell Telephone Company as Southwestern Bell Telephone Company, L.P. d/b/a SBC Oklahoma.

OAC 165:55-3-1 adds language to require an applicant seeking a Certificate of Convenience and Necessity to affirm that, prior to going out of business, the applicant will provide notice to any 911 Database Management Service Provider, pursuant to OAC 165:55-15-5.

OAC 165:55-3-22 deletes language referring to revisions to service territories; that language is moved to a more appropriate section.

OAC 165:55-5-10(b)(1) deletes the reference to directory assistance and operator services in the language that revisions to non-competitive tariffs of IXCs shall become effective on a streamlined basis unless suspended, and adds language to specify the time frame for tariff revisions for those services, with the exception of local directory assistance and local operator services. OAC 165:55-5-10(i) adds language to require the Commission to consider certain factors when considering rate increases as well as rate decreases. OAC 165:55-5-10(p) is added to allow local exchange companies that are not regulated under an alternative regulatory plan to file optional service tariffs on a more streamlined basis.

OAC 165:55-5-10.2 adds language requiring the targeted customer service class to be included with the promotion information provided to the Commission.

OAC 165:55-5-10.3 adds language to require that ICBs shall be submitted to the Public Utility Division no later than 30 days after the agreement is signed by both the customer and the telecommunications service provider.

OAC 165:55-5-21 adds the requirement of a title sheet to the current list of required items.

OAC 165:55-5-34 adds language which requires that a copy of the existing tariff page(s) with the requested changes denoted, shall be filed with the application, and shall be sent to the Attorney General, but need not be sent to the service list. OAC 165:55-5-34(d) adds language to allow a telecommunications service provider to make tariff comparison information available to the Commission Staff and the Office of the Attorney General by providing the information necessary to locate the tariffs of other states on the telecommunication service provider's Internet website.

OAC 165:55-7-2.1 is added to designate 211 as the number to call for community information and referral service, and provides guidance for that service.

OAC 165:55-9-3 is amended to change the past due date for bills from 12 days to 15 days after the bill is mailed.

OAC 165:55-11-13(c) adds language which specifies that, unless an order of the Commission is required, service must be restored within certain time frames after the reason for suspension or disconnection has been remedied.

OAC 165:55-13-10 adds a provision to the minimum service requirements to require that end-users have access to 211 service, where available.

OAC 165:55-13-20(f) adds language to require that temporary drops or temporary cable placements be permanently placed within a specific time frame.

OAC 165:55-15-5 adds language to require that notice of discontinuance be sent by a LEC to the 911 database management service provider, and specifies the information that notice must contain.

OAC 165:55-17-3 adds language to clarify that a service territory may be changed only by order of the Commission, and that applications for change to an existing service territory shall be accompanied by tariff pages reflecting the proposed new service territory.

OAC 165:55-17-13 adds the requirement that when an amendment to an interconnection agreement is filed, the cause number, effective date and order number of the original interconnection agreement or the subsequent amendment that is being modified must be included in the application.

OAC 165:55-17-30 is added to specify that where choices are available, customers have the right to choose a telecommunications service provider, and also prohibits exclusive contracts with managers or owners of multi-tenant dwellings.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 15, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

165:55-1-4. Definitions

The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Access line" means the facility provided and maintained by a telecommunications service provider which permits access to and/or from the public switched network.

"Access service" means any tariffed wholesale service provided by one LEC to another LEC, CLEC, interexchange carrier certificated by the Commission or an end-user that allows for access to the local exchange telecommunications network, excluding local interconnection arrangements.

"Applicant for telecommunications service" means any person, partnership, cooperative corporation, corporation, or lawful entity requesting service(s) from a telecommunications service provider.

''Authorized carrier'' means any telecommunications carrier that submits a change, on behalf of an end-user, in the end-user's selection of a provider of telecommunications service with the end-user's authorization verified in accordance with the procedures specified in this Chapter.

"Base rate area" means the developed area within each exchange service area designated in the tariffs of the telephone company or if not so designated, an area within one-half (1/2) mile radius of the serving central office.

"Basic local service" means all residential and business telecommunications voice and/or relay service which meets the standards set forth in 165:55-13-10, including lines beyond the first line into a residence or business.

"Billing agent" means an entity which provides bills to an end-user for services received from a telecommunications service provider.

"Billing and collection service" means the wholesale service provided by a TSP or IXC for the processing and delivery of customer bills, on behalf of a third party.

"Bona Fide Request" means a written request delivered to a telecommunications service provider requesting services and interconnection provided for in this Chapter.

"CIC" means carrier identification code which identifies a provider of toll services by a three- or four-digit number.

"Campus" means multiple buildings located on a single tract or area of land or on adjacent and abutting tracts of land where all the buildings and land are subject to majority ownership by the same person. A campus may be intersected or traversed by public thoroughfares provided that the segments created would be continuous in the absence of the thoroughfare. A tract or tracts of land used for farming and/or ranching shall not be considered a "campus."

"Carrier of last resort" means a telecommunications service provider as designated by the Commission pursuant to OAC 165:55-17-29.

"Central office" means an operating unit of a telecommunications service provider by which connections are established between end-users' lines and between end-users' lines and trunks or toll lines.

"Circuit" or **"Channel"** means one communication path between two (2) or more points suitable for transmitting information.

"Class of service" or **"Customer class"** means a description of service furnished to an end-user in terms of type of rate, location, and use.

"CLEC" means a Competitive Local Exchange Carrier.

''Clear and conspicuous'' means notice that would be apparent to the reasonable consumer.

"Commission" means the Oklahoma Corporation Commission.

"Competitive Local Exchange Carrier" ("competitive LEC") means, with respect to an area or exchange(s), a telecommunications service provider that is certificated by the Commission to provide local exchange services in such area or exchange(s) within the State of Oklahoma after July 1, 1995.

"Competitive Provider" means an entity providing the same or equivalent services through the use of its own or leased facilities including resellers. The service must satisfy the Commission's rules of minimum service standards regardless of whether the provider is regulated by the Commission.

"Competitive service" means a telecommunications service determined by the Commission to be subject to effective competition for a relative geographic and service(s) market, after notice and hearing.

"Competitive Test" means an evaluation by the Commission to determine after notice and hearing, for a particular service on an exchange by exchange basis, the existence of competition among an ILEC, a non-affiliated facilities based Competitive Provider, and one (1) other non-affiliated Competitive Provider. Such exchanges shall be the same as those on file with the Commission on the date of approval of the Transition Plan.

"Competitively neutral" means not advantaging or favoring one person over another.

"Cramming" means the placement of unauthorized, misleading, or deceptive charges on a customer's telephone bill for products or services that were never ordered by the customer.

"Customer" means any person, firm, partnership, cooperative corporation, corporation, or lawful entity that receives regulated telecommunications services supplied by any telecommunications service provider or IXC.

"Customer trouble report" means any oral or written report given to a telecommunications service provider's repair service by an end-user of telephone services relating to a physical defect or difficulty or dissatisfaction with the provision of the telecommunications service provider's regulated services. Each trouble report shall count as a separate report regardless of whether subsequent reports relate to the same physical defect, difficulty, or dissatisfaction with the provision of the telecommunications service provider's regulated services.

"Demarcation point" means the physical location at which responsibility for operating and maintaining facilities passes from one person to another.

"Deniable charge" means a charge for those regulated services for which nonpayment may result in a disconnection of basic local service.

"Dialing parity" means that a person that is not an affiliate of a telecommunications service provider is able to provide telecommunications services in such a manner that end-users have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications service provider of the end-user's designation from among two (2) or more telecommunications service providers.

"Directory" means the published listing of all telephone numbers, other than those requested by the end-user not to be published, for all end-users in a service area regardless of the local exchange telecommunications service provider selected by the end-user.

"Disconnection of service" means an arrangement made by the end-user or TSP for permanently discontinuing service by terminating the contract and/or removing the telephone service from the end-user's premises.

"Eligible telecommunications carrier" ("ETC") means a telecommunications service provider as designated by the Commission pursuant to OAC 165:55-17-29 and 47 U.S.C. §§ 254 and 214(e).

"End-user" means the customer to whom a telephone number is assigned.

"Enhanced service" means a service that is delivered over communications transmission facilities that: (1) change the content, format, code or protocol of transmitted information; (2) provide the customer new or restructured information; or (3) involve end-user interaction with information stored in a computer.

"Exchange" means a geographic area established by an incumbent LEC as filed with and/or approved by the Commission for the administration of local telecommunications service in a specified area which usually embraces a city, town, or village and its environs. It may consist of one or more central offices together with associated plant used in furnishing telecommunications service in that area.

''Executing carrier'' means any telecommunications carrier that effects a request that an end-user's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

"Facilities" means all the plant and equipment of a telecommunications service provider including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the regulated business of any telecommunications service provider.

"Facilities-based provider" means an entity providing telecommunications services predominately through the use of its own facilities, including UNEs, and other technologies capable of meeting all local telecommunications service requirements while complying with the Commission's quality of service rules.

"FCC" means the Federal Communication Commission.

"Five Year Period" means the initial five (5) year period, commencing the date of an ILEC's notification of its election into the Oklahoma Plan.

"Incumbent Local Exchange Company" ("incumbent LEC") means, with respect to an area or exchange(s), any telecommunications service provider furnishing local exchange service in such area or exchange(s) within the State of Oklahoma on July 1, 1995, pursuant to a Certificate of Convenience and Necessity or grandfathered authority.

"ILEC" means an Incumbent Local Exchange Company.

"Individual Case Basis" ("ICB") means a condition, pursuant to the provisions of the tariff, in which the rates and charges for an offering are developed based on the circumstances of each customer.

"Initial Tariffs" means the first tariffs approved after, or in conjunction with, the granting of a Certificate of Convenience and Necessity.

"Interexchange telecommunications carrier" ("IXC") means any person, firm, partnership, corporation, or other entity, except incumbent LECs, resellers, or OSPs engaged in furnishing regulated interexchange telecommunications services under the jurisdiction of the Commission.

"Interexchange telecommunications service" means telecommunications service provided between locations within different certified telephone exchange service areas.

"InterLATA call" means any call which is originated in one LATA and terminated in another LATA.

"Interstate call" means any call which is originated in one state and terminated within the boundaries of another state.

"IntraLATA call" means any call which is originated and terminated within the boundaries of the same LATA, regardless of whether such call crosses LATA boundaries prior to reaching its termination point.

"Intrastate call" means any call which is originated and terminated within the boundaries of the State of Oklahoma, regardless of whether such call crosses state boundaries prior to reaching its termination point.

"LATA" means Local Access and Transport Area as defined in the Code of Federal Regulations, Title 47 Part 53.3.

"Less than Minimum Service Provider" means a CLEC which offers local exchange service that does not meet all minimum service standards, as set forth in OAC 165:55-13-10.

"Letter of Agency" ("LOA") means the written authorization that gives permission to change the customer's telecommunications services and/or the customer's provider or to share that customer's network information with representatives or associates of the telecommunication company.

"Local Exchange Service" means a switched and/or dedicated telecommunications service which originates and terminates within an exchange or an exchange service territory. Local exchange service may be terminated by a telecommunications service provider other than the telecommunications service provider on whose network the call originated. The local exchange service territory defined in the originating provider's tariff shall determine whether the call is local exchange service.

"Local interconnection arrangements" means a contract for interconnection, including resale, as governed by section 251 of the Communications Act of 1934 (47 U.S.C. §251), as amended, the Federal Communication Commission rules and the rules of the Commission.

"Local operator services" means the automatic or live assistance provided to a customer, which enables the customer to arrange for billing or completion of a local call. Local operator services may include, but are not limited to, line status verification, busy line verification, emergency interrupt, and calls to emergency numbers (e.g., 911).

"Long run incremental cost" ("LRIC") means the long run forward-looking additional cost caused by providing all volume-sensitive and volume-insensitive inputs required to provide the total demand associated with a service or network element offered as a service, using economically efficient current technology efficiently deployed. LRIC also equals the cost avoided, in the long run, when a service or network element offered as a service is no longer produced. LRIC excludes costs directly and solely attributable to the production of other services or network elements offered as services, and unattributable costs which are incurred in common for all the services supplied by the firm. The long run means a period long enough so that the cost estimates are based on the assumption that all inputs are variable.

"Near reservation" means those areas or communities adjacent or contiguous to reservations which are designated by the Commissioner of Indian Affairs upon recommendation of the local Indian Bureau Superintendent, which recommendation shall be based upon consultation with the tribal governing body of those reservations, as locales appropriate for the extension of financial assistance and/or social services, on the basis of such general criteria as: (1) number of Indian people native to the reservation residing in the area, (2) a written designation by the tribal governing body that members of their tribe and family members who are Indian residing in the area, are socially, culturally and economically affiliated with their tribe and reservation, (3) geographical proximity of the area to the reservation, and (4) administrative feasibility of providing an adequate level of services to the area. The Commissioner of Indian Affairs shall designate each area and publish the designations in the Federal Register.

"Network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions and capabilities that are provided by means of such facility or equipment, including end-user numbers, databases, signaling systems and information sufficient for billing and collection or used in the transmission, routing or other provision of a telecommunications service.

"Network interface" means the normal demarcation point separating the telecommunications service provider's regulated facilities and equipment from the unregulated facilities, equipment, or systems provided by the end-user. The provision of the network interface is the responsibility of the telecommunications service provider.

''New service provider'' means a service provider that did not bill the end-user for service during the service provider's last billing cycle. This definition excludes service providers which bill the customer solely on a per transaction basis.

"New services" means any service(s), except access services or interconnection services, for which a rate element does not presently exist, which does not replace an existing tariff, and that enlarges the range of service options available to end-users.

"Nonbasic service" means any telecommunication service not included in basic local service, local interconnection arrangements and/or access service.

"Non-deniable charge" means a charge for those not-regulated services for which nonpayment shall not result in a disconnection of basic, local service.

"Not-regulated service" means the offering of service(s) where the rates and/or terms and conditions for such service(s) are not-regulated by the Commission. These would include any services offered from FCC tariffs such as interstate service offerings, and any taxes, fees and surcharges applicable to those services, as well as any intrastate services not contained in tariffs approved by the Commission.

"Number Portability" means the ability of end-users of telecommunications services to retain, within the same wire center, their existing telecommunications number without impairment of quality, reliability or convenience when switching from one telecommunications service provider to another.

"Oklahoma Plan" means an alternative regulation plan which conforms to Part 11 of Subchapter 5 of this Chapter.

"Packaging" means the sale of two or more services offered by or in conjunction with the services of a TSP to a customer of a TSP for a single price.

"Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

"Rates" means all tariffed charges assessed by a TSP or IXC.

"Regulated telecommunications service" means the offering of telecommunications service(s) directly to the public where the rates and/or terms and conditions for such service(s) are regulated by the Commission. These would include services offered from intrastate tariffs approved by the Commission including any taxes, fees and surcharges applicable to those services, and interstate services when the Commission is enforcing the FCC slamming rules.

"Reservation" means any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

"Rural telephone company" means a LEC to the extent that such entity:

(A) Provides telecommunications service to any local exchange study area that does not include either:

(i) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the U.S. Bureau of Census; or,

(ii) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the U.S. Bureau of Census as of August 10, 1993.

(B) Provides local exchange service, including exchange access, to fewer than 50,000 access lines;

(C) Provides local exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or,

(D) Has less than fifteen percent (15%) of its access lines in communities of more than 50,000 on the date of enactment of the Federal Telecommunications Act of 1996.

"RUS" means the Rural Utility Services.

"Service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Service shall not include the provision of nontelecommunications services, including but not limited to the printing, distribution, or sale of advertising in telephone directories, maintenance of inside wire, customer premises equipment and billing and collection, nor does it include the provision of mobile telephone service, enhanced services and other not-regulated services.

"Service interruption" means service outage, total failure, or complete loss of service due to a trouble condition in the facilities of a telecommunications service provider.

"Service provider" means any entity that offers a product or service to a customer, the charge for which appears on the bill of the billing agent. This definition shall include only providers that have continuing relationships with the end-user that will result in periodic charges on the end-user's bill, unless the service is subsequently canceled.

"Service territory" means a geographic area served by a telecommunications service provider.

"Slamming" means the unauthorized switching of an end-user's telecommunications service provider or presubscribed IXC.

"Submitting carrier" means any telecommunications carrier that requests on the behalf of an end-user that the end-user's telecommunications carrier be changed and seeks to provide retail services to the end-user. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

"Suspension of service" means an arrangement made at the initiative of the TSP for temporarily discontinuing service without terminating the contract or removing the telephone service from the customer's premises.

"SWBT" means Southwestern Bell Telephone Company, L.P. d/b/a SBC Oklahoma.

"Tariff" means all or any part of the body of rates, tolls, charges, classifications, and terms and conditions of service relating to regulated services offered, the conditions under which offered and the charges therefore, which have been filed with and approved by the Commission.

"Telecommunications" means the transmission, between or among points specified by the user of voice or data information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications carrier or Company" means a telecommunications service provider ("TSP") or an interexchange telecommunications carrier ("IXC").

"Telecommunications service provider" ("TSP") means all authorized providers of local exchange service, whether an incumbent LEC or a competitive LEC.

"Telephone bill" means a billing agent's invoice, issued in compliance with this Chapter, for products or services rendered by itself and by a service provider(s), if any.

"Telephone company" or **"Company"** means any person, firm, partnership, corporation, or other entity engaged in furnishing regulated local exchange telephone services under the jurisdiction of the Commission on July 1, 1995, pursuant to a Certificate of Convenience and Necessity or grandfathered authority.

"Transitional commitments" means the commitments made by an ILEC in the State of Oklahoma pursuant to Part 9 or Part 11 of Subchapter 5 of this Chapter.

''Unauthorized carrier'' means any telecommunications carrier that submits a change, on behalf of an end-user, in the end-user's selection of a provider of telecommunications service but fails to obtain the end-user's authorization verified in accordance with the procedures specified in this Chapter.

''Unauthorized change'' means a change in an end-user's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this Chapter.

"Unbundled network element" ("UNE") means a component of the ILEC's telecommunications network utilized to provide telecommunications services.

"Unbundling" means to provide to any telecommunications service provider nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory.

"Unfilled application" means a firm application by an end-user for new service or a different class of service which has not yet been accomplished.

"Wire Center" means a geographic area normally served by a central office.

"Zone" means a service territory described as such by an incumbent LEC.

SUBCHAPTER 3. CERTIFICATES, REPORTS, AND RECORDS

PART 1. CERTIFICATES OF CONVENIENCE AND NECESSITY

165:55-3-1. Certificate of Convenience and Necessity

(a) **Requirement for Certificate of Convenience and Necessity.** No telecommunications service provider or IXC shall furnish telecommunications service to any end-user in the State of Oklahoma without first having secured a Certificate of Convenience and Necessity from the Commission.

(b) **Application for Certificate of Convenience and Necessity.** An application for a certificate to provide service in the State of Oklahoma shall be made pursuant to and in conformance with the requirements of Oklahoma law and any additional requirements set forth in this Chapter. An original and eight (8) copies of the application for Certificates of Convenience and Necessity shall be filed at the Commission's Office of the Court Clerk. A filing fee pursuant to the Commission's Rules of Practice, OAC 165:5, shall be required.

(c) **Application requirements for Certificate of Convenience and Necessity.** Every telecommunications service provider or IXC making application to the Commission for a Certificate of Convenience and Necessity to provide telecommunications services in the State of Oklahoma shall be required to demonstrate its financial, managerial and technical ability to provide the requested telecommunications services in the State of Oklahoma. An application for a Certificate of Convenience and Necessity shall include information and attachments which are certified as true and correct by an officer of any corporate applicant, or an authorized representative of an unincorporated applicant.

(1) The application shall contain the following information:

(A) The complete name, including any and all trade name(s) under which business will be conducted pursuant to 18 O.S. (1991) § 1140, corporate or other headquarters street address and names/addresses of principal or corporate officers of the entity proposing to sell telecommunications service to the public in the State of Oklahoma. The telephone number and, if applicable, the toll-free number will also be included.

(B) If different from those provided pursuant to subparagraph (1)(A) of this Section, the names and address(es) of all officers and corporate or primary offices of the applicant for a Certificate of Convenience and Necessity located in the State of Oklahoma and the name(s) and address(es) of senior management personnel responsible for Oklahoma operations.

(C) A written affirmation, signed before a Notary Public by someone with authority to bind the corporation or entity, containing the following statements:

(i) That the information contained in the application is true and correct;

(ii) That the applicant is familiar with and will comply with all federal and state laws, and the rules and orders of this Commission;

(iii) That for each area or exchange(s) an applicant proposes to serve, the applicant agrees to offer the provisioning of service to all end-users within that area or exchange(s) on a nondiscriminatory basis;

(iv) That the applicant understands the Commission's contempt authority;

(v) That the applicant will contribute to the Oklahoma Universal Service Fund pursuant to OAC 165:59;

(vi) That the applicant will comply with the provisions of 165:55-13-10.1 and will include a statement to this effect in its tariffs;

(vii) That the applicant either provides only data service, or that prior to commencing to provide local exchange service the applicant will comply with the requirements of 17 O.S. § 131 and will collect and disburse the 9-1-1 fee as required by 63 O.S. § 2814. Such affirmation should also include a statement that applicant will provide proof to the Commission of such compliance within 30 days following Applicant's initial provisioning of local service;

(viii) That the applicant understands that before it ceases, discontinues, or curtails operations and/or service, it must file with the Commission and provide each affected customer, in the manner required by the Commission, notice of the intended action, and must also provide notice to any 911 Database Management Service Provider, pursuant to OAC 165:55-15-5;

(ix) A statement that the applicant is not currently under investigation, either in this state or in another state or jurisdiction, for violation of any deceptive trade or consumer protection law or regulation, if that is the case;

(x) A statement that the applicant has not been fined, sanctioned or otherwise penalized either in this state or in another state or jurisdiction for violation or any consumer protection law or regulation, if that is the case; and

(xi) If either of the statements required in (ix) and (x) above is untrue, a detailed explanation of the circumstances of the investigation or fine, sanction, or penalization including a detailed description of the cause(s), the number of customers involved, and current status of the proceeding.

(2) The attachments to the application shall include the following:

(A) Copies of the applicable Articles of Incorporation, and/or partnership agreement, and/or Joint Venture agreement and, where they exist, by-laws of the applicant for a Certificate of Convenience and Necessity and any entity owning a whole or controlling interest in the applicant for a Certificate of Convenience and Necessity.

(B) A copy of the applicable certificate, issued by Oklahoma's Secretary of State, to transact business in the State of Oklahoma.

(C) A copy of the Corporate Trade Name Report, issued by Oklahoma's Secretary of State, shall be provided for each and every trade name utilized by the telecommunications service provider or IXC, i.e. a "d/b/a".

(D) Proof that the third-party surety bond, surety bond or letter of credit required in subsection (f) of this Section has been obtained, if applicable.

(E) Documentation indicating the applicant's organizational structure and ownership such as:

(i) For corporations, partnerships and/or joint ventures, the applicant's stockholders annual reports and SEC 10Ks for the last three (3) years, if applicable, or, if the company is not publicly traded, its financial statements for the last three (3) years, if available, or other documentation as may be requested by the Commission.

(ii) A sole proprietor shall provide financial statements for the last three (3) years, if available, or other documentation as may be requested by the Commission.

(F) A brief description of its history of providing the requested telecommunications service, or other telecommunications services, in order to demonstrate its managerial experience. The history shall include a list of the geographic areas in which it previously provided service and/or is currently providing service and such other documentation as may be requested by the Commission. Applicants for a Certificate of Convenience and Necessity without prior experience shall list the experience of each principal officer, partner, or the sole proprietor in order to demonstrate its managerial ability, and/or provide other documentation as may be requested by the Commission.

(G) A description of the applicant's experience in providing telecommunications services in order to demonstrate its technical abilities. In the case of applicants for a Certificate of Convenience and Necessity without prior experience, the applicant shall provide documentation which supports its technical abilities or other documentation as may be requested by the Commission.

(H) The name, address and toll-free telephone number that an end-user may contact concerning repairs and maintenance, complaints, billing questions, refunds and any other customer service-related inquiries.

(I) The contact name, address and telephone number of the individual with overall responsibility for repairs and maintenance, complaints, billing questions, refunds, and any other customer service-related inquiries. This will be the principal contact for the Commission's Consumer Services Division regarding complaints involving the telecommunications service provider.

(J) The contact name, address and telephone number of the principal contact to be utilized by the Commission's Public Utility Division regarding any questions which are not related to customer service.

(K) A list of all other states, if any, where:

(i) The applicant is authorized to operate;

(ii) Authorization to operate is pending;

(iii) A request for authorization has been denied, including the reason stated for denial, with a certified copy of the denial document attached; and/or,

(iv) Authorization has been revoked, with a certified copy of the revocation document attached.

(L) A complete set of proposed initial tariffs which include the terms and conditions of service and all rates and charges for each service classification in a format consistent with Subchapter 5 of this Chapter or a statement that the applicant will file tariffs pursuant to OAC 165:55-3-3.

(M) A description of the applicant's proposed service territory.

(N) A description of the deposit, if the applicant intends to collect deposits, and disconnection rules to be applied to end-users by the applicant, all of which shall conform to Subchapters 9 and 11 of this Chapter.

(O) A statement setting forth the accounting system to be utilized by the applicant (the FCC-approved Uniform System of Accounts or another accounting system) and a Chart of Accounts.

(P) A listing of the complete name(s), including any trade name(s), corporate or primary headquarters street address(es) and names/addresses of principal officers of any affiliates and/or subsidiaries providing telecommunications and/or other services to the entity making the application proposing to sell the requested telecommunications service to the public in the State of Oklahoma, unless otherwise ordered by the Commission.

(Q) A copy of the applicant's proposed complaints report form which is consistent with OAC 165:55-3-23. The complaint report form and complaint codes suggested by the Director of the Consumer Services Division are included as Appendix A and Appendix B, respectively, to this Chapter.

(R) A copy of the applicant's proposed letter of authorization to be used by the telecommunications service provider to obtain written authorization from an end-user to switch telecommunications service providers or a copy of the text of the proposed script of the verification, which must be approved by the Director of the Public Utility Division, consistent with OAC 165:55-19-1.

(S) A statement regarding whether the applicant intends to utilize the services of a billing agent to issue bills to end-users.

(3) The Public Utility Division Staff may issue data requests for additional information during its initial review of an application.

(4) The final contract(s), if any, between telecommunications service providers shall be provided to the Public Utility Division as soon as such contract(s) become available. Protective relief may be sought pursuant to 51 O.S.§ 24A.22.

(d) **Notice requirements.** Applicants for a Certificate of Convenience and Necessity shall provide Notice of the Application to be given by mail or personal service to the Attorney General of the State of Oklahoma and to any telecommunications service provider possessing a Certificate of Convenience and Necessity applicable to the area sought to be served by the applicant.

(e) **Approval requirement.** The Commission shall approve or deny such application within one hundred twenty (120) days of the date the application is filed. No Certificate of Convenience and Necessity shall be granted except by order of the Commission, after notice and hearing.

(f) **Surety requirements for an applicant for Certificate of Convenience and Necessity.** To insure the protection of the applicant's end-users, the applicant, that intends to collect deposits from end-users, for a Certificate of Convenience and Necessity shall maintain a third-party surety bond, surety bond or irrevocable letter of credit, as may be determined by the Commission during the certification process, as set forth in this subsection.

(1) An applicant that does not have at least one million dollars ($1,000,000) net book value invested in telephone plant and/or telephone facilities located in Oklahoma shall be required to post and maintain a third-party surety bond, surety bond or irrevocable letter of credit in, at a minimum, an amount sufficient for the indemnification of one hundred ten percent (110%) of its projected customer deposits.

(2) The third-party surety bond, surety bond or irrevocable letter of credit shall be maintained as long as the telecommunications service provider is furnishing telecommunications services in the State of Oklahoma pursuant to this Chapter, unless modified or released pursuant to Commission order.

(3) The Commission may modify the requirements of this subsection for good cause shown, after such notice and hearing, if any, as the Commission may require.

(g) **Transferability of certificates.** Any certificate granted under this section shall not be transferable without prior approval of the Commission and shall continue in effect until further order of the Commission.

PART 5. RECORD REQUIREMENTS

165:55-3-22. Records to be provided to the Commission

(a) **Annual report of operations.** Each telecommunications service provider and IXC shall provide to the Director of the Public Utility Division an annual report, in a format developed by the Director of the Public Utility Division and approved by the Commission after notice and hearing, not later than May 1 of the year following the reporting year. In addition, each telecommunications service provider shall provide a copy of the annual report required to be filed with the FCC or RUS provided that, if the telecommunications service provider's annual report includes operations outside Oklahoma, the information as to Oklahoma Corporation Commission-jurisdictional operations shall be separately reported. Where the FCC or RUS annual report form is not used, the report provided to the Public Utility Division shall be in the form approved by the Commission. Each IXC shall submit

its annual Report to Stockholders to the Director of the Public Utility Division no later than May 1 of each year.

(b) **Proof of third-party surety bond, surety bond or irrevocable letter of credit.** Where applicable, not later than May 1 of each year, each telecommunications service provider and IXC which does not have at least one million dollars ($1,000,000) net book value invested in telecommunications plant and/or telecommunications facilities located in the State of Oklahoma, shall provide annually, to the Director of the Public Utility Division, proof of the continuing existence and sufficiency of the required third-party surety bond, surety bond or irrevocable letter of credit providing coverage at a level of at least 110% of customer deposits. Such proof shall be in a format developed by the Director of the Public Utility Division and approved by the Commission.

(c) **Exchange maps.** Each telecommunications service provider shall provide the Director of the Public Utility Division two (2) copies of updated exchange maps when the boundaries of an exchange(s) are changed. The maps and descriptions shall be in sufficient detail to permit the location of exchange boundaries on the ground, and be consistent with the format set forth in this subsection.

(1) Each exchange map provided after the effective date of this Chapter shall conform to the following:

(A) One exchange service area per sheet.

(B) Each map shall be on eight and one-half by eleven inches (8.5" x 11") (or larger sheet which folds down to eight and one-half by eleven inches (8.5" x 11"), twenty pounds (20 lbs.) or heavier, white paper).

(C) Each township and range will be specified along the side of the map and as a minimum each corner section will be numbered.

(D) The outline of the exchange service area will be a heavy black line with an "E" every one inch (1") or two inches (2") along the boundary.

(E) The name of adjacent incumbent LEC exchanges will be indicated on the exchange map to identify their relative location.

(2) When said boundary map changes involve more than one telephone exchange and more than one incumbent LEC, the changes involved shall be coordinated between the incumbent LECs concerned and a "Joint Application" submitted. After an order is issued by the Commission, the incumbent LECs shall submit revised exchange maps containing the revised territory, the new certificate number, the cause number, the order number, and the date of the order approving the change. A copy of each current exchange map shall be made available for review to any interested person upon reasonable notice containing:

(A) Application number.

(B) Maps showing the changes in contrasting colors.

(C) Metes and bounds of changes.

(D) Proposed orders (one for each exchange) with complete metes and bounds of the revised exchange(s).

(d) **Competitive LEC service territories maps.** Each competitive LEC shall maintain up-to-date maps showing its service territory. The maps and descriptions shall be in sufficient detail to establish the location of incumbent LEC exchange boundaries on the ground. Each map provided shall conform to the format set out in OAC 165:55-3-22(c)(1).

~~(1)~~ Two (2) copies of each map shall be provided to the Director of the Public Utility Division.

~~(2) Revisions to the competitive LEC service territories will be accomplished through tariff filings pursuant to OAC 165:55-5-10.~~

(e) **Contracts and agreements.** A copy of each contract between telecommunications service providers, or between a telecommunications service provider and an IXC affecting regulated services or rates, (including, but not limited to, toll settlement agreements, agreements for extended area service, and similar contracts), shall be provided to the Director of the Public Utility Division prior to its effective date. Such a contract will be deemed approved unless the Commission, within ten (10) days after submission, shall by order suspend effectiveness of the agreement, pending notice and hearing. The requirements of this subsection shall be applicable to all contracts and agreements except those entered into pursuant to the requirements of Subchapter 17 of this Chapter.

(f) **Contact names.** Each telecommunications service provider and IXC shall notify, in writing, the Director of the Public Utility Division and the Director of the Consumer Services Division within thirty (30) days of a change in the company-designated contacts for Public Utility Division and Consumer Services Division issues.

(1) The update shall include the name(s), address(es) and/or telephone number(s) of the designated individual(s).

(2) The contact name(s) provided pursuant to this subsection shall be the individual(s) primarily responsible for:

(A) Providing customer service;

(B) Repair and maintenance;

(C) Answering complaints;

(D) Authorizing and/or furnishing refunds to customers; and,

(E) Tariff issues.

(g) **Other information.** Each telecommunications service provider and IXC shall promptly furnish such other information as the Commission Staff may request, unless otherwise ordered by the Commission.

(h) **Annual affirmation and proof of compliance with 911 Emergency Number Act.** Each telecommunications service provider shall provide to both the Director of the Public Utility Division and the Attorney General an annual written affirmation, signed before a Notary Public by an individual granted with the authority to bind the corporation or entity, affirming compliance with its obligations set forth in 63 O.S. § 2814. Upon request by either the Director of the Public Utility Division or the Attorney General of the State of Oklahoma, the telecommunications service provider shall provide supporting documentation of compliance. This subsection shall not apply to telecommunications service providers providing data service only.

SUBCHAPTER 5. RATES AND TARIFFS

PART 3. APPROVAL AND NOTICE REQUIREMENTS

165:55-5-10. Tariff approval and revisions to tariffs

(a) Unless provided otherwise in this Chapter or provided by the laws of the State of Oklahoma, no tariff, or amendment thereto, which would change rates and charges for any regulated non-competitive service, or establish new rates for regulated non-competitive service not previously offered, shall be effective, except by order of the Commission after such notice and hearing, if any, as directed by the Commission.

(b) Notwithstanding the provisions of subsection (a) of this Section:

(1) Revisions to the ~~directory assistance, operator services and~~ noncompetitive interexchange service(s) tariffs of IXCs shall become effective, without Commission order, thirty (30) days after the date of filing said revisions, unless the Commission orders suspension of said tariff revisions pursuant to OAC 165:55-5-13. With the exception of local directory assistance and local operator services, revisions to interLATA and intraLATA directory assistance and operator services of IXCs and telecommunications service providers shall become effective, without Commission order, on the date specified on the revised tariff sheets, after the IXC or telecommunications service provider has delivered three (3) copies of the revised tariff sheets to the Director of the Public Utility Division. The effective date shall be no earlier than the date the revised tariff pages are delivered to the Public Utility Division.

(2) Revisions to the price components of competitive service(s), as such service(s) are determined competitive by the Commission pursuant to OAC 165:55-5-10.1(a), shall become effective after three (3) copies of the revised tariff pages have been provided to the Director of the Public Utility Division. The effective date of the tariff revision shall be stated on the face of the revised tariff page(s), which may be dated no earlier than the date provided to the Director of the Public Utility Division.

(3) Revisions to tariffs for any competitive service, which contain a combination of price and nonprice components shall become effective pursuant to OAC 165:55-5-10.1(f).

(4) Decreases to the tariff rates of a telecommunication service provider, other than for basic local exchange service, switched access service or toll, shall become effective, without Commission order, thirty (30) days after the date of filing said revisions, unless the Commission orders suspension of said tariff revisions pursuant to OAC 165:55-5-13.

(5) Revisions to the toll service tariffs of telecommunications service providers shall become effective, without Commission order, thirty (30) days after the date of filing said revisions, unless the Commission orders suspension of said tariff revisions pursuant to OAC 165:55-5-13.

(6) The filing of new service offering(s) of telecommunications service providers shall become effective, without Commission order, forty-five (45) days after the date of filing said new service offering(s), unless the Commission orders suspension of said tariff(s) pursuant to OAC 165:55-5-13.

(7) Increases to the noncompetitive tariff rates of telecommunications service providers, other than for basic local exchange service, switched access service, or toll service, shall become effective, without Commission order, sixty (60) days after the date of filing said revisions, unless the Commission orders suspension of said tariff revision(s) pursuant to OAC 165:55-5-13.

(8) Any revision or addition to noncompetitive nonprice terms and conditions of a telecommunications service provider shall become effective, without Commission order sixty (60) days after the date of filing such new or revised terms and conditions, unless the Commission orders the suspension of said tariff revisions pursuant to OAC 165:55-5-13.

(9) Any tariffed service, utilizing ICB pricing, or amendment thereto, shall become effective without Commission order according to the terms of the agreement with the customer and/or the provider's tariffs.

(10) New service offerings, by companies whose services have been deemed competitive by the Commission pursuant to OAC 165:55-5-10.1(a), shall become effective after three (3) copies of the tariff page(s) have been provided to the Director of the Public Utility Division. The effective date of the tariff revision shall be stated on the face of the revised tariff page(s) and may be dated no earlier than the date provided to the Director of the Public Utility Division.

(c) When tariff revisions within the same application of a telecommunications service provider would become effective within different time frames pursuant to multiple paragraphs of subsection (b) of this Section, such tariff revisions shall become effective without Commission order pursuant to the time frame set forth in the paragraph with the longer time frame, unless the Commission orders the suspension of said tariff revisions pursuant to OAC 165:55-5-13.

(d) If a tariff revision of a telecommunications service provider would become effective without Commission order pursuant to subsection (b) of this Section, but the telecommunications service provider fails to cite the specific authority for the revision by subsection and paragraph, the tariff revision shall become effective without Commission order, sixty (60) days after the date of filing said tariff revisions, unless the Commission orders the suspension of said tariff revisions pursuant to OAC 165:55-5-13.

(e) The Public Utility Division may issue data requests for additional relevant information during its review of the requested revision(s).

(f) No proposed or revised tariff of a telecommunications service provider relating to basic local exchange service or switched access service shall become effective without Commission order.

(g) The filing of an amended application shall restart the time periods set forth in this Section.

(h) The burden of proof to show that a proposed or revised tariff is just and reasonable shall be upon the company proposing the new or revised tariff.

(i) In reviewing a proposed or revised tariff, the Commission will protect against anti-competitive behavior and the abuse of monopoly power by rejecting proposed rate changes or proposed terms and conditions that result in predatory, anti-competitive or discriminatory pricing and provisioning or which would result in the subsidization of competitive service(s) with revenues from noncompetitive services. In reviewing rate increases and/or decreases, the Commission will consider the following factors, at a minimum:

(1) The incremental cost of the service;

(2) The potential impact on competition;

(3) The potential impact on end-users generally; and,

(4) Such other factors as the Commission may determine, after notice and hearing.

(j) Unless otherwise ordered by the Commission, all proposed rates must cover the long run incremental cost of the service, including imputation where ordered by the Commission.

(k) For purposes of this Section, the Commission shall allow an ILEC or CLEC that serves less than seventy-five thousand (75,000) access lines as of July 1, 1997, at the option of the company, to adopt the cost studies approved by the Commission for an ILEC or CLEC that serves seventy-five thousand (75,000) or more access lines or to adopt the surrogate cost studies approved by the FCC.

(l) Nothing in these rules is intended to modify, affect or nullify the responsibilities of the Commission or providers of telecommunications services as required by state or federal antitrust laws or the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

(m) Not later than fifteen (15) days after either an order approving the tariff revisions issued, or after the tariff(s) become effective without suspension, an original and two (2) copies of the approved tariff, which conforms to OAC 165:55-5-20, shall be provided to the Public Utility Division.

(n) In order to facilitate timely review in tariff revisions causes, pursuant to OAC 165:55-5-10(b), each telecommunication service provider and IXC shall answer, within ten (10) business days from the date of receipt, all data requests issued, unless an objection is filed or the parties agree in writing to a different response time.

(o) Failure to comply with subsection (m) of this Section may result in the filing of a Motion to Cease and Desist regarding the offering(s) of the revised tariff.

(p) Unless operating under the requirements of an alternative regulatory plan established by a Commission order pursuant to OAC 165:55-5-50, any telecommunications service provider may increase, decrease or otherwise modify any or all of its rates, charges, or terms and conditions of service for existing optional local exchange services and new optional local exchange services by submitting its tariffs to the Director of the Public Utility Division. Tariffs for new optional local exchange services shall be effective the day following the day such tariffs are submitted to the Director. Changes to tariffs for existing optional local exchange services shall be deemed approved ten (10) business days following the day such tariffs are submitted to the Director, unless suspended by Commission order.

165:55-5-10.2. Promotional offerings

(a) Promotional offerings are intended to be limited-duration programs, not to exceed three hundred sixty-five (365) consecutive days, that are beneficial to the targeted and/or qualified customers. Promotional offerings are not intended to replace the telecommunications service provider's or IXC's obligation to seek approval of permanent rates and charges.

(b) Telecommunications service providers and IXCs may, during promotional periods, offer customers special rate incentives. The telecommunications service provider or IXC shall notify the Director of the Public Utility Division, by letter, specifying the service(s) offered, terms of the promotion, location, ~~and~~ dates of each promotion period, and class of customer targeted by promotion.

(c) Promotional offerings of services that have been determined to be competitive shall become effective on the date specified in the Notice to the Director of the Public Utility Division which may be dated no earlier than the date the Notice is provided to the Director of the Public Utility Division.

(d) Notification of a promotional offering regarding a non-competitive service shall be provided fifteen (15) days prior to the initial offering of the campaign.

(e) Any promotional offering of a non-competitive service found not to be in the best interest of the targeted and/or qualified customer(s) will be rejected by the Director of the Public Utility Division and returned to the telecommunications service provider or IXC with a brief explanation of the reason for the rejection. Notice of the rejection will be sent to the applicant within fifteen (15) days after the Commission's receipt of the notification letter.

(f) Promotions may be repeated, provided the initial promotion and extension do not exceed three hundred sixty-five (365) consecutive days in length. If the promotion has been offered for three hundred sixty-five (365) consecutive days, then the same promotion cannot be offered for one hundred eighty (180) days from the date the promotion ended.

165:55-5-10.3. Customer-specific contracts under ICB pricing

(a) A telecommunications service provider shall have the authority to enter into customer-specific contracts for tariffed services offered for which the rates and charges are developed as an ICB. Customer specific contracts may include, but are not limited to:

(1) Central office based services;

(2) High-speed private line services;

(3) Customized services that are unique because of size or configuration, provided that such customized services shall not include basic local telecommunications services; and

(4) Any other service for which the Commission has authorized the telecommunications service provider to enter into customer-specific contracts pursuant to this Section.

(b) Any customer-specific contract, for which the rates and charges are developed as an ICB for TSPs that have competitive providers certificated by the Commission and providing services within the TSP's territory, shall be submitted with the information in subsection (c) to the Director of the Public Utility Division no later than thirty (30) days after the agreement is ~~made with the customer~~ signed by both the customer and the telecommunications service provider.

(c) Concurrent with the submission of the customer-specific contract, each telecommunications service provider shall deliver to the Public Utility Division Staff:

(1) Tracking No. of the ICB;

(2) Customer Name;

(3) Description of the service;

(4) Aggregate monthly rate;

(5) Aggregate nonrecurring charge(s);

(6) Proposed installation date and service expiration date;

(7) Early termination liability, if applicable, and formula used to determine the liability;

(8) Any special terms and conditions particular to the ICB;

(9) Detailed cost justification, including, but not limited to, cost studies and/or incremental costs and/or detailed documentation demonstrating that the rates included in the customer-specific contract yield revenues that are equal to or greater than the customer-specific long run incremental costs of the service; and

(10) Statement or showing that a competitive provider is actively providing services.

(d) The Public Utility Division may issue requests for additional relevant information during its review of the contract. Each telecommunications service provider shall answer, within ten (10) business days from the date of receipt, all requests issued; unless an objection is filed or the parties agree in writing to a different response time.

(e) After a rate element has been provided within an ICB with identical rates, terms and conditions five (5) times, concurrent with the sixth request for the rate element, the telecommunications service provider shall file an application for a tariff revision. This subsection would not apply to ICBs filed in response to a competitive offer pursuant to subsection (b) of this section.

PART 5. TARIFF STRUCTURE AND COMPOSITION

165:55-5-21. Composition of tariffs

The tariff shall contain sections setting forth:

(1) A table of contents.

(2) A preliminary statement containing a brief description of the tariff's application.

(3) A list of the exchanges or description of service territories in which service is provided.

(4) The rate schedules.

(5) The service rules and regulations.

(6) Title sheet.

PART 7. MISCELLANEOUS TARIFF REQUIREMENTS

165:55-5-34. Data and information on proposed tariff revisions

(a) Except as otherwise provided for in OAC 165:55-5-35, concurrent with the filing of proposed tariff revisions for noncompetitive and new services, as provided in OAC 165:55-5-10(b) and 165:55-5-10.1(d), with the exception of OAC 165:55-5-10(b)(9), each IXC and telecommunications service provider shall deliver to the Public Utility Division Staff and Office of the Attorney General:

(1) A copy of the Notice required by OAC 165:55-5-11(d) that will be sent to the end-users affected by any increased rate;

(2) A customer impact study which shows the number of Oklahoma customers affected, and the dollar and percentage impacts of the proposed change(s) on Oklahoma customers' rates;

(3) The total revenue impact in Oklahoma of the proposed change(s);

(4) If the Oklahoma-specific information required by paragraphs (2) and (3) of this subsection is unavailable, a statement that so states; and

(5) The rationale for the proposed tariffs~~; and,~~.

(~~6~~b) Consistent with OAC 165:55-5-20(a), ~~A~~ a copy of the existing tariff page(s) with the requested change(s) denoted shall be filed with the application, and shall be included in the copy sent to the Attorney General, but need not be included with copies of the tariff revision sent to the service list.

(~~b~~c) The information addressed in paragraphs (2), (3) and (4) in subsection (a) of this Section will be accepted, but not required to be provided, from IXCs.

(d) In addition to the foregoing information~~,~~ and concurrent with the filing of a proposed rate increase or proposed new service offering, ~~all~~ unless provided on-line and available for public viewing, the telecommunications service ~~providers~~ provider shall deliver to the Public Utility Division Staff a comparison of the proposed tariff and the tariffs of the applicant in effect in Arkansas, Kansas, Missouri and Texas, to the extent the provider operates in such states. The telecommunications service provider shall provide the URL, section, and page number where the tariffs may be viewed, if available on the Internet website.

(~~d~~e) The Public Utility Division may issue data requests for additional relevant information during its review of the requested revision(s). Each telecommunication service provider and IXC shall answer, within ten (10) business days from the date of receipt, all data requests issued, unless an objection is filed or the parties agree in writing to a different response time.

(~~e~~f) Failure to provide the information required by this Section at the time of filing may result in the proposed tariff revision(s) and/or new service offering(s) being suspended pursuant to OAC 165:55-5-13 and, if suspended, the tariff revision(s) and/or new service offering(s) shall not be placed into effect under any circumstances, until further order of the Commission.

SUBCHAPTER 7. DIRECTORIES, TELEPHONE NUMBERS, AND CUSTOMER-PROVIDED EQUIPMENT

165:55-7-2.1. 211 Services

(a) **Scope and purpose.** This Section applies to the assignment, provision, and termination of 211 service. Through this Section, the Commission intends to enhance the ability of the public to access services that provide free information and referral to community resources in situations that are not immediately life-endangering, but still represent a serious but less urgent threat to basic human needs and individual's health or welfare.

(b) **Definitions.** The following words and terms, when used in this Chapter, shall have the following meanings unless the context indicates otherwise:

(1) **"Alliance of Information and Referral Systems (AIRS)"** means a professional organization whose mission is to unite and serve the field and to advance the profession of information and referral as a vital means of bringing people and services together. AIRS has developed national quality standards and methods of evaluating information and referral services.

(2) **"211 Call Center"** means a free 24-hour telephone information and referral service for a specified geographical area or region that connects people in need with health and human service agencies and programs that can provide assistance.

(3) **"Community resource"** means a for-profit or non-profit resource that provides health or human services in a designated geographic area.

(4) **"Information and referral service"** means a free service whose primary purpose is to maintain information about human service resources in the community and to link people who need assistance with appropriate service providers and/or to supply descriptive information about the agencies or organizations which offer services.

(5) **"211 service"** means a telecommunications service provided by a telecommunications service provider to a 211 Call Center through which the end-user of a public phone system has the ability to access information and referral services.

(c) **Requirements of a 211 Call Center.** An entity desiring to be a 211 Call Center shall meet the following requirements:

(1) Ensure 24-hour, seven day a week operations.

(2) Ascribe to the AIRS standards for information and referral and have a plan in place to become accredited by AIRS.

(3) Serve the area or region designated by the 211 Call Center in consultation with telecommunications service provider.

(4) Agree to provide information and referral service consistent with the national standards set out by the AIRS and this Section.

(5) Agree to use the 211 service exclusively for the distribution of information and referral, and not use the service for commercial advertisements.

(6) Provide information and referral service to a caller without charging a fee on either a per-call or per-use basis.

(d) **Provision of 211 service to a 211 Call Center.** Upon request, a telecommunications service provider shall provide 211 service within a specific geographic area or region to an entity which has self certified that it meets the requirements as set out in subsection (c) above; has been certified by the statewide 211 Advisory Committee as the 211 Call Center for that geographic area or region; and has provided maps or other identifying information to the Commission sufficient to identify the area it will serve. In the event that two or more entities request 211 service as the 211 Call Center for the same geographic area or region, the statewide 211 Advisory Committee shall resolve the dispute.

(e) **Fee.** The telecommunications service provider shall charge the 211 Call Center tariffed rates for tariffed services.

SUBCHAPTER 9. CUSTOMER BILLING AND DEPOSITS

PART 1. BILLING AND PAYMENT REQUIREMENTS

165:55-9-3. Due date and penalty

Unless otherwise authorized by the Commission, bills shall be payable immediately upon receipt and past due ~~twelve (12)~~ fifteen (15) days after the date of the telecommunications service provider mailing or after any deferred payment date previously established either by oral or written agreement between an end-user and the telecommunications service provider. The date after which the bill is past due shall be stated on the bill. If the bill is not paid when past due, the telecommunications service provider may apply late payment charges on any unpaid balance for regulated telecommunications services as provided in its filed, approved tariffs. Payment shall not be considered late if it is received by the due date at an authorized office.

SUBCHAPTER 11. SERVICE DENIAL, SUSPENSION AND DISCONNECTION

PART 3. SUSPENSION AND DISCONNECTION PROCEDURES

165:55-11-13. Reconnection

(a) Where service to any end-user has been refused or disconnected as authorized by 165:55-11-11, the telecommunications service provider shall not be required to connect or reconnect service except by order of the Commission and, if so ordered, only upon the terms and conditions specified in the order.

(b) When service to any end-user has been suspended or disconnected pursuant to this Subchapter, upon reconnection, the telecommunications service provider shall be authorized to make a reconnection charge prescribed in its approved tariffs.

(c) Except in those instances where an order of the Commission is required prior to reconnection, once the reason for suspension or disconnection has been remedied, the telecommunications service provider shall restore service as ~~soon as possible~~ follows:

(1) For suspensions, ILECs shall restore service as soon as possible, but in no circumstances shall that time exceed two (2) business days;

(2) For disconnections, ILECs shall restore service in accordance with the provisions of OAC 165:55-13-1 applicable for installation of new service; and

(3) For suspensions and disconnections, CLECs shall restore service in accordance with the provisions of OAC 165:55-13-1 applicable for installation of new service.

SUBCHAPTER 13. OPERATING AND MAINTENANCE REQUIREMENTS

PART 3. SERVICE STANDARDS

165:55-13-10. Minimum service standards

(a) The purpose of this Section is to create a uniform standard governing the minimum component telephone services for all telephone end-users.

(1) Each telecommunications service provider providing local exchange service shall make available to each local exchange end-user within its service territory the following service features:

(A) Individual line service on a local access line at uniform rates for end-users of a given class within the exchange without mileage or zone charges;

(B) Dual tone multi-frequency signaling;

(C) The telecommunications service provider shall install ninety percent (90%) of the following circuits within ninety (90) days of the date of the service order:

(i) Circuits necessary to provide interoffice capability at minimum speeds of fifty-six (56) kilobits per second;

(ii) For RUS borrowers, for RUS loans executed after February 13, 1996, all new facilities will be required, as built or with additional equipment, to provide transmission and reception data at a rate no lower than one (1) megabit per second. The deployment of new facilities shall be scheduled in a way to where advanced services will be implemented in a uniform manner with both rural and nonrural areas receiving services at the same time. New facilities which do not use system powering shall be required to use an alternative powering source for voice telephone service during electrical utility power outages;

(D) Availability of custom calling features (e.g., call waiting, call forwarding, etc.);

(E) Emergency telephone number services capable of automatic number identification, automatic location identification and call routing facilities to facilitate public safety response; e.g., Enhanced 911 Service, where the local government agency serving the end-user has in place a Public Safety Answering Point;

(F) Lifeline and Link-up Programs pursuant to OAC 165:55-13-14 and 165:55-13-14.1;

(G) Equal access to interexchange long-distance service;

(H) Access to telecommunications relay services by dialing 711;

(I) Access to Directory assistance service; ~~and,~~

(J) Access to operator services; and~~.~~

(K) Access to 211 service, where available.

(2) Any telephone company incapable of providing the technologies and service features listed in (a)(1)(F) and (a)(1)(G) of this Section at the date of the amendment of this Section shall begin immediate efforts to attain compliance with this Section and shall file network development schedules with the Commission pursuant to this part.

(3) Upon replacement of facilities incapable of providing the technologies and service feature listed in this Chapter at the date of the effectiveness of this Section, the telecommunications service provider shall replace such facilities with those technologies capable of providing Custom Local Area Signaling Services (CLASS).

(4) Incumbent LECs that incur additional investment as a result of this Section may seek recovery through a general review of the company's rates for regulated telecommunications services.

(5) A Less than Minimum Service Provider that seeks authority to offer service which does not comply with all of the minimum service standards set forth in this Section shall specifically state in its application for a certificate of convenience and necessity the minimum service standards with which it will not comply.

(b) This Part is not intended to supersede the currently effective rates or prescribe prospective rates for telecommunications services affected by this Part.

PART 5. SERVICE QUALITY STANDARDS

165:55-13-20. Responsibility for adequate and safe service

(a) A telecommunications service provider is responsible for providing adequate and efficient telephone service to every end-user served by it.

(b) A telecommunications service provider that uses its own local exchange facilities to provide service shall install and maintain its system so as to render safe, efficient, and continuous service, and shall keep all of its lines, equipment, and facilities in a good state of repair.

(c) The recommendations contained in the 2002 Edition of the National Electrical Code (NEC) and the 1997 Edition of the National Electrical Safety Code (NEC) are hereby adopted as the minimum standards governing the installation, construction, and maintenance of communication lines. The recommendations contained in the 2002 NEC will apply on a prospective basis effective July 1, 2002. Local and municipal electrical codes shall not apply to the installation of telecommunications facilities.

(d) The telecommunications service provider using its own facilities to provide service shall meet or exceed the following minimum standards for the physical cable going to the customer.

(1) Loop current - 20 ma and above;

(2) Loop loss - Engineered for -8 dBrn, but not to exceed -10 dBrn;

(3) Loop noise - 20 dBrnC or less;

(4) Power influence - 89 dBrnC or less.

(e) The dominant criteria for these standards is voice grade service quality. Even if the acceptable numeric criteria is met and an end-user still experiences voice grade service problems, corrective action will be indicated.

(f) All telecommunications service providers, that install temporary drops and temporary cables as interim facilities to ensure service to customers pending permanent placement of those facilities, are required to:

(1) Permanently remove, bury, or install drops and temporary cables within thirty (30) days of the date the temporary drop or temporary cable was installed. Provided, however, when permanent placement is deemed not feasible by the telecommunications service provider, within such thirty (30) day period, due to construction projects, development projects, other circumstances beyond the control of the telecommunications service provider, or as otherwise agreed to by the customer, the telecommunications service provider shall permanently remove, bury, or install the temporary drop or temporary cable as quickly as practicable, but in no circumstances shall that time exceed ninety (90) days without notification and justification being provided to the Director of the Consumer Services Division prior to expiration of the ninety (90) day period.

(2) Keep records of all temporary drops and temporary cables in each of its exchanges. The records shall include, at a minimum: the date the temporary drop or temporary cable was installed; the location of the temporary drop or temporary cable, including sufficient information to reasonably allow the temporary drop or temporary cable to be located; the estimated date the temporary drop or temporary cable will be permanently removed, buried, or installed; and, the date the temporary drop or temporary cable was removed, buried, or installed.

SUBCHAPTER 15. NOTIFICATION OF TRANSACTIONS AFFECTING CUSTOMERS OR BUSINESS OPERATIONS

165:55-15-5. Cessation of business in Oklahoma

(a) At least thirty (30) days before the effective date of the cessation of the provisioning of telecommunications service(s) in the State of Oklahoma, a telecommunications service provider or IXC shall file an original and eight (8) copies of an application for withdrawal of its Certificate of Convenience and Necessity and cancellation of its tariffs and provide Notice of such filing to the Attorney General of the State of Oklahoma.

(b) An application for withdrawal shall include as attachments the following information, which must be certified as true and correct by an officer of any corporate applicant, or an authorized representative of an unincorporated applicant:

(1) The contact person who will be responsible for concluding all outstanding business with the Commission and customers;

(2) A statement regarding the amount of any outstanding customer deposits and the date refund checks will be sent to customers; and,

(3) The date of withdrawal.

(c) Notice of discontinuance shall be sent at least thirty (30) days prior to the date that service will cease by regular mail to all of the customers of the telecommunications service provider or IXC. The notice shall be in a form approved by the Director of the Public Utility Division, and shall give the exact date that service will cease and contain information as to the procedure for any refunds due customers.

(d) Notice of discontinuance will be sent at least thirty (30) days prior to the date service will cease, by certified mail, to any 9-1-1 Database Management Service Provider within the exchanges served by the applicant. Notice shall include:

(1) The exact date the applicant will cease to do business in Oklahoma.

(2) A statement that until the date applicant ceases to do business in Oklahoma, the applicant will continue to submit transactions to the 9-1-1- Database Management Service Provider for transferring and keeping up-to-date customer's information.

(3) A statement that the applicant will unlock or release all 9-1-1 records effective with its termination date, thereby enabling the migration of existing 9-1-1 records with a telephone number ported by the customer to a different telecommunications service provider.

(~~d~~e) Unless provided otherwise in this Chapter, no application for withdrawal and/or cancellation of an existing Certificate of Convenience and Necessity and tariff shall be granted except by Order of the Commission, after such notice and hearing, if any, as directed by the Commission.

(~~e~~f) The Commission Staff may file an application to cancel an existing Certificate of Convenience and Necessity and tariff, at the company's request and at the option of the Commission Staff. The request may be in the form of a letter to the Director of the Public Utility Division. The letter will conform with OAC 165:55-15-5 (b) and (c).

SUBCHAPTER 17. FACILITATION OF LOCAL EXCHANGE COMPETITION

165:55-17-3. Designation of service territory

(a) The Commission shall determine whether a competitive LEC's service territory is in the public interest at the time the competitive LEC seeks certification or proposes changes to its service territory. In determining whether the proposed service territory meets the public interest, the Commission shall consider factors, including but not limited to, the existence and location of the competitive LEC's facilities, the number of potential customers to be served and the potential impact on universal service.

(b) No service territory shall be changed except by Order of the Commission after such notice and hearing, if any, as directed by the Commission. Applications for change to an existing service territory shall be accompanied by revised tariff pages reflecting the proposed new service territory.

165:55-17-13. Interconnection of networks

(a) Local exchange telecommunications networks shall be interconnected, where technically feasible, so that end-users of any telecommunications service provider can seamlessly send and/or receive calls without any diminution in service quality regardless of the telecommunications service provider selected by the end-user or the called party. Such interconnection shall be made available, when requested by a competing telecommunications service provider, on an unbundled basis equally and on a nondiscriminatory basis.

(b) A telecommunications service provider shall make available any interconnection, service, or network element, provided under an agreement to which it is a party and which has been approved by the Commission pursuant to OAC 165:55-17-7, to any other requesting telecommunications service provider upon the same terms and conditions as those provided in the agreement.

(c) Interconnection issues not addressed or resolved by these rules, shall be addressed and resolved through the negotiation and arbitration process provided for in OAC 165:55-17-5 and OAC 165:55-17-7, in a manner consistent with the Federal Telecommunications Act of 1996 and FCC regulations prescribed thereto.

(d) When filing an amendment to an interconnection agreement, the effective date, order number and cause number of the original interconnection agreement or the subsequent amendment that is being modified must be included.

(e) When filing an application for approval of an agreement or an amendment to an existing interconnection agreement, a processed copy will be provided to the Court Clerk, the Director of the Public Utility Division and any other party to the agreement. The copy to the Director of the Public Utility Division may be contained on compact disk or 3.5 inch diskette, formatted in an IBM compatible form using Microsoft Word for Windows, Word Perfect, or compatible software.

165:55-17-30. Customer choice

(a) Where choices are available, every customer shall have the right to choose his or her telecommunications service provider.

(b) A telecommunications service provider shall not enter into a contract with the owner or manager of multi-tenant dwellings to exclusively provide telecommunication services to the exclusion of other telecommunications service providers.

[OAR Docket #03-2010; filed 6-4-03]

TITLE 165. CORPORATION COMMISSION CHAPTER 56. RESELLERS OF INTEREXCHANGE TELECOMMUNICATIONS SERVICES

[OAR Docket #03-2011]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Tariffs
165:56-5-2. Information to be included in tariffs [AMENDED]
165:56-5-5. Revisions to tariffs [AMENDED]
AUTHORITY:
Oklahoma Corporation Commission, Article IX, § 18 of the Oklahoma Constitution, 75 O.S. § 501 *et seq.*
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SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
OAC 165:56-5-2 adds the requirement of a title sheet to the current list of required items.

OAC 165:56-5-5 adds language which requires that a copy of the existing tariff page(s) with the requested changes denoted, shall be filed with the application, and is renumbered accordingly.

CONTACT PERSON:

Elizabeth Ryan (405) 521-2256

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 15, 2003:

SUBCHAPTER 5. TARIFFS

165:56-5-2. Information to be included in tariffs

The tariff shall include the following information:

(1) Table of contents.

(2) Symbols for changes in tariff.

(3) Applicability of the tariff.

(4) Accessibility and availability of tariff. Each reseller shall, upon request by an end-user, provide a copy of any relevant portion of this Chapter, and/or the applicable portion of the requested tariff(s) to such customer, at a reasonable charge.

(5) Detailed billing and collection information.

(6) Detailed credit requirements and deposit information.

(7) Detailed information regarding disconnection by reseller of customer/past due accounts.

(8) Detailed information regarding handling of complaints and disputed charges.

(9) All services provided by the reseller and a detailed explanation of each.

(10) A schedule of all rates and charges applicable to services provided in Oklahoma.

(11) Title sheet.

165:56-5-5. Revisions to tariffs

(a) Once a certificate of convenience and necessity has been granted by the Commission, revisions to tariffs shall be made by filing an application, including an original and eight (8) copies, styled as a Notice and Filing of Tariff Revisions with the Commission's Court Clerk's office accompanied by the applicable filing fee. The Notice and Filing of Tariff Revisions shall conform with the Commission's Rules of Practice, OAC 165:5.

(b) Revisions to tariffs for directory assistance, operator services, terms and conditions of service and noncompetitive services shall become effective without Commission order thirty (30) days after the date of filing said Notice and Filing, unless suspended by Commission order pursuant to OAC 165:56-5-6.

(c) Revisions to tariffs for competitive services provided by a reseller, as such services(s) are determined competitive by the Commission pursuant to OAC 165:56-5-5.2, shall become effective after three (3) copies of the revised tariff pages have been provided to the Director of the Public Utility Division. The effective date of the tariff revision shall be stated on the face of the revised tariff pages, which shall be dated no earlier than the date provided to the Director of the Public Utility Division.

(d) Revisions to tariffs for any competitive services, which contain a combination of price and nonprice components, shall become effective pursuant to OAC 165:56-5-5.2(f).

(e) The Notice and Filing of Tariff Revisions shall be provided to the Attorney General of the State of Oklahoma, all IXCs, LECs and those other certificated resellers, which have made written request to the reseller, in a manner prescribed by the Director of the Public Utility Division and shall conform with the Commission's Rules of Practice and the provisions of this Chapter.

(1) Any written request required by this subsection shall be made directly to the reseller.

(2) An applicant may require reimbursement of the postage and nonlabor-related cost of copying from the party(ies) requesting information pursuant to this Section. However, under no circumstances shall reimbursement be required from the Attorney General of the State of Oklahoma.

(f) Simultaneous with the filing of the proposed tariff revisions, the reseller shall deliver to the Public Utility Division Staff:

(1) A copy of the Notice required by OAC 165:56-5-12 that will be sent to the end-users affected by any increased rate; and,

(2) The rationale for the proposed tariffs~~; and,~~.

(~~3~~g) A copy of the existing tariff page(s) with the requested change(s) denoted shall be filed with the application and shall be included in the copy sent to the Attorney General, but need not be included with copies of the tariff revision sent to the service list.

(~~g~~h) Failure to provide the information required by this Section at the time of filing may result in the proposed tariff revision(s) and/or new service offering(s) being suspended pursuant to OAC 165:56-5-6 and, if suspended, the tariff revision(s) and/or new service offering(s) shall not be placed into effect under any circumstances, until further order of the Commission.

(~~h~~i) The filing of an amended application shall restart the time period set forth in subsection (b) of this Section.

(~~i~~j) The burden of proof to show that a proposed or revised tariff is just and reasonable shall be upon the company proposing the new or revised tariff.

(~~j~~k) Not later than fifteen (15) days after an order approving the tariff revision is issued, or after the tariff(s) become effective without suspension, an original and two (2) copies of the approved tariff(s) which conform to OAC 165:56-5-3 shall be provided to the Public Utility Division.

(~~k~~ l) In order to facilitate timely review, in streamlined tariff revision causes, each reseller shall answer, within ten (10) business days from the date of receipt, all data requests issued; unless an objection is filed or the parties agree in writing to a different response time.

(~~l~~m) Failure to comply with subsection (j) of this Section may result in the filing of a Motion to Cease and Desist regarding the offering(s) of the revised tariff.

(~~m~~n) The Public Utility Division may issue data requests for additional information during its review of the requested revision(s).

[OAR Docket #03-2011; filed 6-4-03]

TITLE 165. CORPORATION COMMISSION CHAPTER 59. OKLAHOMA UNIVERSAL SERVICE AND LIFELINE

[OAR Docket #03-2012]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
165:59-1-4. Definitions [AMENDED]
Subchapter 3. Oklahoma Universal Service Fund
Part 5. Administration of the OUSF
165:59-3-30. Administration of the Fund [AMENDED]
Part 9. Requests for OUSF Funding
165:59-3-62. Procedures for requesting funding from the OUSF [AMENDED]
AUTHORITY:
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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
The Commission proposes to modify the definition of "Not-for-profit hospital" set forth in OAC 165:59-1-4 to be consistent with modifications made by the 2002 Legislature to 17 O.S. § 139.102. Also, there is a proposal to amend OAC 165:59-3-30 by adding a new paragraph five (5) relating to the administration of the Oklahoma Universal Service Fund ("OUSF"), and renumbering the rule accordingly. Additionally, the Commission proposes to amend OAC 165:59-3-62, by deleting the requirement in subsection (d) of directly notifying all telecommunications carriers of the filing of an application requesting funds. In order to ease the financial and operational burden of the individual notification by the applicant to each contributing telecommunications carrier to the OUSF, a sentence was added to permit notice to be provided by the posting of the notification on the Commission's website within a defined period of time.

CONTACT PERSON:
David Dykeman (405) 521-2322

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 15, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

165:59-1-4. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Access line" means the facility provided and maintained by a telecommunications service provider which permits access to or from the public switched network.

"Administrator" means the person(s) or entity(ies) responsible for administering the Oklahoma Universal Service Fund and/or the Oklahoma Lifeline Fund.

"Bona fide request" means a written request delivered to a telecommunications carrier requesting services provided for in this Chapter.

"Carrier of Last Resort" means a telecommunications service provider as designated by the Commission pursuant to OAC 165:55-17-29.

"Commercial mobile radio service provider" means a carrier who provides wireless telecommunications services.

"Commission" means the Oklahoma Corporation Commission.

"Competitive local exchange carrier" ("Competitive LEC" or "CLEC") means, with respect to an area or exchange, a telecommunications service provider that is certificated by the Commission to provide local exchange services in that area or exchange within the State of Oklahoma after July 1, 1995.

"Competitively neutral" means not advantaging or favoring one person over another.

"Customer" or **"Subscriber"** means any person, firm, partnership, cooperative corporation, corporation or lawful entity that receives telecommunications services.

"Eligible local exchange telecommunications service provider" means any incumbent LEC that was designated as an eligible local exchange telecommunications service provider pursuant to OAC 165:55-17-29 and any telecommunications service provider that has been determined to be an eligible local exchange telecommunications service provider pursuant to OAC 165:59-3-14.

"End-User Common Line Charge" means the flat rate monthly interstate access charge required by the Federal Communications Commission that contributes to the cost of local service.

"Enhanced service" means a service that is delivered over communications transmission facilities and that uses computer processing applications to:

(A) Change the content, format, code, or protocol of transmitted information;

(B) Provide the customer new or restructured information; or,

(C) Involve end-user interaction with information stored in a computer.

"Enhanced service provider" means a provider of enhanced service.

"Exchange" means a geographic area established by an incumbent local exchange telecommunications provider as filed with or approved by the Commission for the administration of local telecommunications service in a specified area which usually embraces a city, town, or village and its environs and which may consist of one or more central offices together with associated plant used in furnishing telecommunications service in that area.

"Facilities" means all the plant and equipment of a telecommunications service provider, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the regulated business of any telecommunications service provider.

"FCC" means the Federal Communications Commission.

"High cost area" means an area where actual costs exceed Commission- or Legislatively-authorized rates for Primary Universal Services.

"Incumbent local exchange telecommunications service provider" or "Incumbent local exchange carrier" or "ILEC" means, with respect to an area or exchanges, any telecommunications service provider furnishing local exchange service in such area or exchanges within this state on July 1, 1995, pursuant to a certificate of convenience and necessity or grandfathered authority.

"Internet" means the international research-oriented network comprised of business, government, academic and other networks.

"Lifeline Service Program" means the federal and state program designed to keep low-income subscribers on the telecommunications network.

"Local exchange telecommunications service" means a regulated switched or dedicated telecommunications service which originates and terminates within an exchange or an exchange service territory. Local exchange telecommunications service may be terminated by a telecommunications service provider other than the telecommunications service provider on whose network the call originated. The local exchange service territory defined in the originating provider's tariff shall determine whether the call is local exchange service.

"Local exchange telecommunications service provider" or "telecommunications service provider" or "TSP" means a company holding a certificate of convenience and necessity from the Commission to provide local exchange telecommunications service.

"Network" includes a telecommunications service provider's or telecommunication carrier's facilities used to originate and terminate traffic.

"Not-for-profit hospital" means:

(A) A hospital established as exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C. Section 501(c)(3); or

(B) ~~a municipal, county or state government owned,~~ A not-for-profit hospital owned by a municipality, county, or the state, that is primarily funded by county, state or federal support, ~~which is~~ located ~~within the~~ in this state, ~~State of Oklahoma~~ and is devoted primarily ~~for~~ to the maintenance and operation of facilities for the diagnosis, treatment or care of patients admitted overnight or longer in order to obtain medical care, surgical care or obstetrical care.

"Oklahoma High Cost Fund" or "HCF" means the fund established by the Commission in Cause Nos. PUD 950000117 and 950000119.

"Oklahoma Lifeline Fund" or "OLF" means the fund established and required to be implemented by the Commission pursuant to 17 O.S. Supp. 1997 § 139.105.

"Oklahoma Universal Services" means Primary Universal Service and Special Universal Services as defined herein.

"Oklahoma Universal Service Fund" or "OUSF" or "Fund" means the fund established and required to be implemented by the Commission pursuant to 17 O.S. Supp. 1997 § 139.106.

"OneNet" means the telecommunications network which is operated by the Oklahoma Office of State Finance for the purpose of providing, within this State, telecommunications services to governmental and educational entities and to medical entities of the kind previously served by the Oklahoma Telemedicine Network.

"Person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character, or any other entity.

"Primary Universal Service" means an access line and dial tone provided to the premises of residential or business customers which provides access to other lines for the transmission of two-way switched or dedicated communication in the local calling area without additional, usage-sensitive charges, including:

(A) A primary directory listing;

(B) Dual-tone multifrequency signaling;

(C) Access to operator services;

(D) Access to directory assistance services;

(E) Access to telecommunications relay services for the hearing impaired;

(F) Access to nine-one-one service where provided by a local governmental authority or multijurisdictional authority; and,

(G) Access to interexchange long distance services.

"Public library" means a library or library system that is freely open to all persons under identical conditions, and which is supported in whole or in part by public funds. Public Libraries shall not include libraries operated as part of any university, college, school museum, the Oklahoma Historical Society or county law libraries.

"Public school" means all free schools supported by public taxation, and shall include grades kindergarten through twelve.

"Regulated telecommunications service" means the offering of telecommunications for a fee directly to the public where the rates for such service are regulated by the Commission. Regulated telecommunications service does not include the provision of nontelecommunications services, including, but not limited to, the printing, distribution, or sale of advertising in telephone directories, maintenance of inside wire, customer premises equipment, and billing and collection service, nor does it include the provision of wireless telephone service, enhanced service, and other unregulated services, including services not under the jurisdiction of the Commission, and services determined by the Commission to be competitive.

"Reimbursement" means remuneration from the OUSF pursuant to OAC 165:59-3-60 for Primary Universal Services and OAC 165:59-7 for Special Universal Services. Reimbursement also means remuneration from the Oklahoma Lifeline Fund pursuant to OAC 165:59-9, for the Lifeline Service Program.

"Service territory" means a geographic area served by a telecommunications service provider.

"Special Universal Services" means:

(A) One incoming, toll-free phone number and up to a total of five access lines, provided free of charge to a not-for-profit hospital, public school building wherein classrooms are contained, public library, or county seat, in order to allow incoming, toll-free calls from any location within the geographic area of Oklahoma served by said entity.

(B) One access line, with the ability, to connect to an Internet service provider at 56 kbps, provided free of charge to a public school building wherein classrooms are contained or a public library within the State, or the equivalent credit of a 56 kbps access line, as set forth in 17 O.S. § 139.109 and Subchapter 7 herein.

(C) One telecommunications line or wireless connection, provided free of charge to a not-for-profit hospital within the State, sufficient for providing such telemedicine services as the hospital is equipped to provide.

"State" means the State of Oklahoma.

"Tariff" means all or any part of the body of rates, tolls, charges, classifications, and terms and conditions of service relating to regulated services offered, the conditions under which such services are offered and the charges therefor, which have been filed with the Commission and have become effective.

"Telecommunications" means the transmission, between or among points specified by the user, of voice or data information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications Act of 1996" means the Federal legislation cited as 47 U.S.C. Section 151 *et. seq*.

"Telecommunications carrier" means a person that provides telecommunications service in this state.

"Telecommunications service" means the offering of telecommunications for a fee.

"Telemedicine" means the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, or exchange of medical education information by means of audio, video, or data communications. Telemedicine is not a consultation provided by telephone or facsimile machine.

"U.S.C." means United States Code.

"Universal service area" or "service area" means a geographic area established by the Commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the FCC and the Commission, after taking into account recommendations of a Federal-State Joint Board instituted under 47 U.S.C. Section 410(c), establish a different definition of service area for such company.

"Unregulated services" means telecommunications services not regulated by the Commission.

"Wire center" means a geographic area normally served by a central office.

SUBCHAPTER 3. OKLAHOMA UNIVERSAL SERVICE FUND

PART 5. ADMINISTRATION OF THE OUSF

165:59-3-30. Administration of the Fund

(a) The Commission will appoint the OUSF Administrator, which shall be the Public Utility Division of the Commission.

(b) The Public Utility Division, as the appointed Administrator, may as necessary, contract with a third party having no conflict of interest in the provisioning of telecommunications services, for the provisioning of administrative functions.

(c) The Administrator is expressly authorized to bring actions before the Commission to enforce the provisions of this Chapter and the Oklahoma Telecommunications Act of 1997.

(d) The OUSF Administrator or contracted agent shall act under the supervision of the Commission, in order to administer the OUSF in accordance with the rules and procedures approved by the Commission and consistent with the Oklahoma Telecommunications Act of 1997.

(e) The Administrator's and/or contracted agent's general duties shall include:

(1) Receiving, distributing, and accounting for funds paid into the OUSF;

(2) Providing funding to eligible telecommunications providers from the OUSF;

(3) Managing the daily operations and affairs of the OUSF;

(4) Monitoring and assuring contribution/payment compliance as well as conducting periodic audits of contributors to the OUSF to ensure that the contributors are accurately reporting and making proper payments to the OUSF;

(5) Monitoring and assuring that all federal and state universal service funds received, for primary and special universal services, by any entity are used for the provision, maintenance and/or upgrading of facilities and services for which the support is intended.

(~~5~~6) Performing any periodic audits of the OUSF deemed necessary by the Administrator and/or the Commission;

(~~6~~7) Informally resolving disputes;

(~~7~~8) Reviewing all Requests for OUSF Funding within time frames identified in this Chapter and making a recommendation to the Commission for approval, modification or denial of such requests; and,

(~~8~~9) Performing any other duties as required by law or this Chapter or as ordered by the Commission.

PART 9. REQUESTS FOR OUSF FUNDING

165:59-3-62. Procedures for requesting funding from the OUSF

(a) An eligible telecommunications carrier or provider of Special Universal Services requesting funds from the OUSF shall file a "Request for OUSF Funding" with the Commission Court Clerk's Office. On the date of filing the Request for OUSF Funding, the eligible telecommunications carrier or provider of Special Universal Services shall deliver a filed copy of the Request to the Administrator for processing.

(b) It is the intention of the Commission that each funding request will be reviewed on a case-by-case basis. Part 9 of Subchapter 3 does not purport to predetermine the merits of any funding request. The eligible local exchange telecommunications service provider shall make every reasonable and timely effort to obtain funding from alternative funding sources designated to support universal service. However, such efforts shall not delay the company's ability to pursue funding from the OUSF.

(c) If an eligible local exchange telecommunications service provider receives funding from alternative funding sources for an investment or expense already reimbursed by the OUSF, the company shall reduce the amount of any prospective funding request from the OUSF by an equivalent amount. Under no circumstances will double recovery be allowed.

(d) Concurrent with the filing of the Request for OUSF Funding, the eligible telecommunications carrier who is requesting funding from the OUSF shall provide copies of its Request for OUSF Funding, and notice of the Request for OUSF Funding, to the Director of the Public Utility Division~~,~~ and to the Attorney General ~~and to each telecommunications carrier in the State of Oklahoma which is a contributor to the OUSF~~. In addition, the eligible telecommunications carrier, which is requesting funding shall provide ~~copies of its~~ notice of the Request for OUSF Funding to the ~~Attorney General, and to such~~ contributors to the OUSF~~, upon request~~. The notice requirement to each telecommunications carrier in the State of Oklahoma which is a contributor to the OUSF, shall be accomplished by providing an electronic copy of such notification to the Fund Administrator on the date the eligible telecommunications provider files its Request for OUSF Funding at the Commission's Court Clerk's office for posting on the OCC website. The OUSF Administrator will then place the notification on the OCC website within five (5) business days. The Administrator shall provide a list of the contributors to the OUSF, upon request by an eligible telecommunications carrier.

(e) Within ninety (90) days after receipt of the completed Request for OUSF Funding, the Administrator shall review, determine the accuracy of the request, and advise the provider requesting the OUSF funds of the determination of eligibility. Simultaneously with the Administrator or contracted agent advising the provider, the Administrator or contracted agent shall provide the written determination to the Commission and post it to the Commission's website.

(f) Any adversely affected party shall have fifteen (15) days to file a request for reconsideration by the Commission of the determination made by the Administrator. Upon filing a request for reconsideration, the matter will be set for hearing before the Commission *en banc*.

(g) The Commission will, within thirty (30) days from the request for reconsideration, or if no request for reconsideration is made, thirty (30) days from the Administrator's determination, issue an order on the Request for OUSF Funding, the Administrator's or contracted agent's determination regarding the Request for OUSF Funding and any request for reconsideration. The Commission shall give notice to the provider making the Request for OUSF Funding, the Attorney General, the Administrator or contracted agent, and all parties requesting reconsideration of the time and place for hearing.

(h) If no request for reconsideration of the Administrator's determination is filed, an order will be issued by the Commission approving the request without further notice and/or hearing.

(i) If the Commission does not issue an order within the time frames set forth in this Section, the request shall be deemed approved, on an interim basis, subject to refund, with interest at a rate determined by the Commission. Any refund shall include interest at a rate of not more than the interest rate established by the Commission on customer deposits and shall accrue for a period not to exceed ninety (90) days from the date the funds were received by the requesting eligible provider.

(j) The Administrator or contracted agent shall ensure that all OUSF funds have been received and are on deposit in a sufficient manner so as to pay requests for OUSF funding for primary Universal Services as ordered by the Commission, or as may be deemed approved in accordance with State law. The Administrator or contracted agent shall provide the approved funding to the requesting eligible local exchange telecommunications service provider after issuance of a Commission order approving payment or the request is deemed approved, whichever occurs sooner.

(k) Any Request for OUSF Funding will be returned to the requesting party and deemed denied if the appropriate forms are not used or said forms are not completed in a satisfactory manner. The appropriate forms may be obtained from the Public Utility Division of the Commission.

(l) Unless good cause is shown, any request for OUSF funding should be made within twelve (12) months from the date the requesting telecommunications carrier can determine the impact of occurrence of the circumstance giving rise to the request.

[OAR Docket #03-2012; filed 6-4-03]

TITLE 165. CORPORATION COMMISSION CHAPTER 65. WATER SERVICE UTILITIES

[OAR Docket #03-2013]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
165:65-1-2. Definitions [AMENDED]
165:65-1-5. Relief from rules of this Chapter and rules by utilities [AMENDED]
Subchapter 3. Plant, Equipment, and Facilities
165:65-3-1. Construction and maintenance of plant, equipment, and facilities [AMENDED]
165:65-3-2. Extent of system in which utility shall maintain service [AMENDED]
Subchapter 5. Water Quality, Testing, and Pressure
165:65-5-2. Water analyses and records [AMENDED]
Subchapter 7. Meter Requirements and Testing
Part 1. General Provisions
165:65-7-4. Information as to reading of meters [AMENDED]
Part 3. Testing
165:65-7-11. Periodic and routine tests [AMENDED]
Subchapter 11. Customer Service
Part 1. Deposits and Billing
165:65-11-3. Deposits and interest [AMENDED]
Part 3. Disconnection of Service [AMENDED]
165:65-11-10. Disconnection of service by a consumer [AMENDED]
165:65-11-11. Disconnection of service by a utility [AMENDED]
165:65-11-12. Insufficient reasons for disconnection of service [REVOKED]
165:65-11-13. Notice of disconnection of service [AMENDED]
165:65-11-14. Commission notification procedure for elderly and/or ~~handicapped~~ consumers with disabilities [AMENDED]
165:65-11-15. Delays to disconnection of residential service [AMENDED]
165:65-11-16. Reconnection of service [AMENDED]
165:65-11-17. Mediation [AMENDED]
165:65-11-18. Commission review [AMENDED]
165:65-11-19. Utilities encouraged to keep current lists of utility assistance programs [NEW]
AUTHORITY:
Oklahoma Corporation Commission, Article IX, § 18 of the Oklahoma Constitution, 75 O.S. § 501 *et seq.*
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Failure of the Legislature to disapprove the rules resulted in approval on May 23, 2003.
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May 23, 2003
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SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
The amendments to the Water Utility Rules make them more consistent with the disconnection provisions of the electric and gas rules. Sufficient reasons for disconnection have been expanded. The current section regarding insufficient reasons for disconnection, OAC 165:65-11-12, has been revoked; the language was incorporated in OAC 165:65-11-11. The revised rules also provide greater protection for consumers prior to disconnection by requiring deferred payment plans, notification regarding assistance programs, and provisions to protect elderly and disabled consumers. The amended rules further include changes regarding deposits and interest on deposits that make the rules consistent among electric, gas and water utilities. Deposits shall not include membership fees in cooperatives.

There following changes were made throughout the rules on various subjects: the definition of legal holiday has been expanded; water service cannot be denied to a consumer where the previous consumer owes a balance at the same location; the water utilities must be able to locate their lines consistent with law; water utilities must be able to provide appropriate authority for their use of groundwater or surface water; water utilities may operate and maintain privately owned lines if granted permission by the owner of the private line; the subsection which allows consumers to read their own meters has been deleted; meter accuracy standards have been increased; other water systems have been added to the list of possible purchasers of water service, whose water may be disconnected for nonpayment; the section addressing elderly and/or consumers with disabilities has been amended and broadened and additional notice provisions have been added; the maximum temperature provision for disconnection during hot weather has been lowered; once a disconnection problem has been remedied, the company will be required to provide a written statement to the consumer of the recommended procedures for safe and reliable water; and many grammatical and non-substantive changes have been made throughout the rules.
CONTACT PERSON:
Miles Halcomb (405) 522-1072

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 15, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

165:65-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Affiliate" means any person, entity, or business section, or division that directly or through one or more intermediaries, controls, is controlled by, or is under common control with the entity in question. Control includes but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct a direction of the management or policies of a person or entity. Control may be exercised through management, ownership of voting securities or other right to vote, by contract or otherwise. A voting

interest or ownership of five percent (5%) or more creates a presumption of control.

"Attorney General" means the Oklahoma Attorney General.

"Business day" means Monday through Friday, excluding all legal holidays, which have been declared legal holidays by law or proclamation of the Governor of Oklahoma, or those days on which mail is not delivered.

"Commission" means the Oklahoma Corporation Commission.

"Complaint" means an oral, electronic or written communication by an interested party requesting an investigation or corrective action regarding the provision of water services.

"CSD" means the Consumer Services Division of the Oklahoma Corporation Commission.

"Consumer" means any person, firm, corporation, municipality, or agency, other political subdivision of the United States or the State of Oklahoma receiving any type of water service. Any reference to a "customer" or "end-user" contained in a tariff, or in this Chapter, shall be deemed to mean a "consumer," unless the context clearly indicates otherwise.

"Corporation Commission" means the Oklahoma Corporation Commission.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Distribution" or "Distribution service" means the transportation of water services through a utility's distribution facilities bundled with any one or more of the services of billing, metering, customer service and similar services.

"Distribution main" means a distribution line that serves as a common source of supply to service lines.

"Distribution system" means any pipeline, meter, metering station, valve, regulator, regulating station and/or delivery station, which receives water from any water supply source for service to one or more consumers.

"Gallon" means one U.S. Standard gallon, containing 231 cubic inches and weighing 8.333 pounds.

"Interested party" means any individual or entity with appropriate authority to act on behalf of a particular consumer or group of consumers or any other party involved in, or affected by, the provision of water services.

"Legal holiday" means only those days declared legal holidays by law or proclamation of the Governor of Oklahoma, or those days on which mail is not delivered, or banks are closed, such as Columbus Day.

"Meter" means any device that measures the quantity of water transferred from one party to another.

"Pipe" means any tubing used in the gathering, transmission or distribution of water, which meets the specifications of the DEQ.

"Premises" means any piece of land or real estate, or any building or other structure or portion thereof, or any facility where water service is furnished to a consumer.

"Prudency review" means, for purposes of this Chapter, a comprehensive review that examines as fair, just and reasonable, a utility's practices and policies and judgment regarding an investment or expense at the time the investment was made or expense was incurred; including direct or indirect maximization of its positive impacts and mitigation of adverse impact upon its ratepayers, without consideration of its ultimate used and useful nature.

"P.s.i.g." means pounds per square inch gauge.

"PUD" means the Public Utility Division of the Oklahoma Corporation Commission.

"Regulator" means a device used to reduce the water pressure.

"Residence" means any dwelling unit containing kitchen appliances, permanent sewer or septic facilities and water service. A weekend cabin and a mobile home are residences when used as such. An individual room in a hotel or motel is not a residence.

"Service line" means a line that branches off a distribution main or distribution line in order to transport water from the common source of supply to utility meters or to a consumer's piping, whichever is farther downstream, or the connection to a consumer's piping if there is no utility meter.

"Subdivision" means any land, wherever located, whether improved or unimproved, contiguous or not, which is divided into lots or proposed to be divided, for the purpose of disposition pursuant to a common promotional scheme or plan of advertising.

"Tariff" means every rate schedule, or provision thereof, and all terms, conditions, rules and regulations for furnishing water service filed with the Commission and approved by the Director of the Public Utility Division.

"Temporary service" means every rate schedule, or provision thereof, and all terms, conditions, rules and regulations for furnishing water service filed with the Commission and approved by the Director of the Public Utility Division.

"Uniform System of Accounts (USOA)" applicable to water utilities published by the National Association of Regulatory Utility Commissioners (NARUC) or other uniform system acceptable to the Commission may be adopted by a utility.

"Utility" means and includes any corporation, association, company, individual, and the trustees, lessees, or receivers, successors or assigns of any of them, (but shall not include a city, town or other body politic) that now or hereafter may own, operate, or manage any plant or equipment, or any part thereof, directly or indirectly, for public use, for the transmission and distribution of water by pipeline.

165:65-1-5. Relief from rules of this Chapter and rules by utilities

(a) Whenever compliance with any of the rules requirement in this Chapter would result in unreasonable hardship or excessive expense to the utility or the consumer, the Commission may waive or modify the requirements of this Chapter, consistent with federal and/or state law, upon application of any interested party and after notice and hearing. Such application shall set forth the specific rule or rules sought to be waived and the reasons for requesting such waiver.

(b) A utility may decline to serve a consumer or prospective consumer until he such person has complied with all applicable state and municipal regulations governing water service and this Chapter.

(c) A utility may prescribe rules and regulations for furnishing service not inconsistent with this Chapter. No such rules shall be valid until filed with and approved by the Commission. A utility may refuse or discontinue service for noncompliance with its service rules only in cases where its rules as approved specifically so provide. Service shall not be refused to a consumer where a balance is owed by a previous consumer at the same location.

(d) For good ~~causeshown~~ cause shown, the Commission may grant temporary relief from the requirements of this Chapter pending hearing.

SUBCHAPTER 3. PLANT, EQUIPMENT, AND FACILITIES

165:65-3-1. Construction and maintenance of plant, equipment, and facilities

(a) **Water plant and system construction and maintenance.** Each utility shall construct and maintain its entire water plant and system in such condition as will enable it to furnish safe, adequate and reliable service subject only to emergency conditions beyond its control.

(b) **Construction, installation, and maintenance of systems.** Transmission and distribution systems, including transmission mains and pipe lines, distribution mains, pumps, valves, storage tanks, meters, equipment, etc., shall be constructed, installed, and maintained in accordance with all applicable rules and orders of the Commission and DEQ. Utilities must be able to locate water lines consistent with the requirements of 63 O.S. § 142.1 *et seq.*

(c) **Statement regarding plant, equipment, and facilities.** Each utility shall file with the Commission annually a statement regarding its plant, equipment, and facilities in such form as the Commission may require. Utilities other than those that purchase water shall provide appropriate authority for their use of water (U.S. Corps of Engineers, Oklahoma Water Resources Board, and/or other appropriate authority). All water service utilities that withdraw groundwater or divert stream water must hold a water right from the Oklahoma Water Resources Board before placing water to use.

(d) **Plans, surveys, and permits.** Each utility shall file with the Commission a certified copy of all plans and surveys of its waterworks which have been filed with the DEQ. A description of the source from which the water supply is derived shall be filed with the Commission, and no new or different source of supply shall be used until a certified copy of the certificate of the DEQ approving the use of the new or different supply has been filed with the Commission. No utility shall sell water or extend water service to a consumer until certified copies of all permits required to be issued by the DEQ to the utility are filed with the Commission.

(e) **Depth of mains.** Water mains, except mains used exclusively for temporary or seasonal service, shall be installed below the normal frost line or otherwise protected to prevent freezing in accordance with DEQ.

(f) **Dead ends.** Insofar as practicable the utility shall design its distribution system so as to avoid dead ends on its mains. Where dead ends exist, under circumstances that adequate water circulation does not exist, the utility shall provide hydrants or valves for the purpose of flushing the mains. Mains without adequate circulation shall be flushed every ninety (90) days, or more often if necessary, to maintain the proper quality of the water. Records shall be kept of the date, place and duration of flushing mains; and such records shall be used as a guide to determine the necessary frequency of flushing of the same mains thereafter.

(g) **Segmentation of systems.** The design of water mains or systems hereafter constructed shall contain valves at intervals throughout the system to facilitate repairs and minimize interruptions of service to consumers.

(h) **Grid systems.** Whenever feasible, the distribution system shall be laid out in a properly segmented grid so that in case of breaks or repairs the interruption of service to the consumers can be kept at a minimum.

(i) **Fire protection service.** Specifications, location, installation, and the responsibility for the maintenance of fire hydrants, public and private fire protection facilities and connecting mains, and the ownership of such facilities shall be subject to negotiation between the utility and the municipality served. Fire hydrants and public and private fire protection facilities shall conform to the requirements of the city where installed or in the absence of city requirements, to the rules and orders of the Commission.

(j) **Valves.** Each utility shall inspect the principal mainline valves on its distribution system at least once every two (2) years. A record of each valve shall be kept showing the size, type, location, date of inspection and the results thereof.

165:65-3-2. Extent of system in which utility shall maintain service

(a) Each utility shall operate and maintain in safe, efficient, and proper condition all the facilities and instrumentalities used in connection with the transmission, distribution, regulation, measurement, and delivery of water to any consumer up to and including the point of delivery into the piping owned by the consumer. ~~Unless otherwise agreed by the utility and the consumer, the point of delivery shall be at the outflow side of the meter.~~

(b) A water utility may operate and maintain any privately owned lines utilized by the utility for transmission and distribution of water, if granted such permission by the owner of the private line.

(~~b~~c) No residential meter shall be installed inside a residence.

(~~c~~d) The meter shall be set at the nearest feasible point to the property or curb line of the consumer.

(~~d~~e) All mains, water lines, pipes, and equipment owned by the consumer from the outflow side of the meter shall be maintained in a safe, efficient, and proper condition by and at the expense of the consumer. The utility shall have the right to inspect a new installation prior to furnishing service and the right to inspect an existing installation under reasonable conditions. Service may be refused or discontinued until the provisions of this Chapter are complied with.

(~~e~~f) Each water utility, for each locality, which it serves, shall provide an office or agent where the consumer may pay bills

and conduct any other necessary business with a representative of the utility. Such office shall be open for business during reasonable business hours at least five (5) days per week.

(~~f~~g) The utility shall provide in the telephone directory for each area it serves a telephone listing by which the utility personnel can be notified at any time during a twenty-four (24) hour day period of any utility service deficiency or emergency. If utility personnel are not available to accept the call and the call is recorded, the utility shall contact the consumer to confirm receipt of the call within two (2) hours.

SUBCHAPTER 5. WATER QUALITY, TESTING, AND PRESSURE

165:65-5-2. Water analyses and records

(a) The result of all tests made by the DEQ and tests made by the utility shall be kept on file in the office of the utility for public inspection for a period of at least three (3) years. These records shall show when, where, and by whom the test was made. The standard methods of testing specified by the DEQ shall govern the collection and examination of the water tested.

(b) Whenever tests disclose the presence of bacillus coli, or any bacterial count, the utility must immediately take all steps necessary to make its water supply comply with the water quality standards prescribed by the DEQ.

(c) The water supply system, including wells, pumping equipment, treatment works, mains, and service pipes shall be maintained at all times in a sanitary condition.

(d) No physical connection between the water distribution system of a utility and that of any other water supply or system shall be permitted, unless each water supply and the inter-connection thereof is approved by the DEQ.

(e) The growth of algae in the water at the source of supply in reservoirs or other basins, and in the water mains shall be controlled by proper treatment.

(f) Any driven or drilled well furnishing water for domestic purposes shall be equipped with suitable casing and well head equipment, and the utility shall maintain the tightness of the well at the surface of the ground sufficient to prevent the infiltration of any water other than that produced from the ~~waterbearing~~ water bearing strata tapped by the well in accordance with the rules of the DEQ.

(g) The utility shall follow all DEQ rules, except where the Commission rules provide a higher standard.

SUBCHAPTER 7. METER REQUIREMENTS AND TESTING

PART 1. GENERAL PROVISIONS

165:65-7-4. Information as to reading of meters

(a) **Meter reading records.** The meter reading records shall show:

(1) Consumer's name, address, and rate schedule symbol.

(2) Identifying number or description of the meter.

(3) Meter readings and dates thereof.

(4) If the reading has been estimated.

(5) Any applicable multiplier or constant.

(b) **Information to customers.** Each utility supplying metered service shall adopt a means of informing its consumers as to the method of reading meters, either by printing on its bills a description of the method of reading meters, by distributing booklets or folders describing the method, or by notice to the effect that the method will be explained at the office of the utility upon application. Meter reading information shall be sent at least annually to each consumer.

(c) **Meter reading information.** Each service meter shall be read by the utility~~, or a utility may by its rules prescribe a procedure for reading of meters by consumers~~.

(1) **Information required.** Each service meter shall indicate clearly the number of gallons of water registered by the meter. Where water is measured in cubic feet or where the quantity is determined by calculation from recording devices, the utility upon request shall supply the consumer with sufficient information to make clear the method by which the quantity is determined.

(2) ~~**Meters read by the utility**~~ **Meter reading.** Each service meter shall be read by the utility at approximate monthly intervals at least ten (10) times a year on approximately the same day of each meter reading period. If for reasons beyond the control of the utility it is impossible to read a meter for two (2) successive monthly billing periods, it will be permissible for the utility to submit an estimated bill based upon past service records the amount of such estimated bill to be adjusted as necessary when access to the meter is obtained.

~~(3) **Meters read by the consumer.** For each utility whose normal procedure is to have its consumers regularly read their own meters, the procedure for meter reading by the consumer shall provide for meter reading at approximately monthly intervals or annually, if an annual rate applies. The Commission may, after notice, order, and hearing, require a utility to implement a meter reading program whenever the evidence would indicate that it would be in the best interest of the utility to read meters on either an annual or semiannual basis. When the consumer fails to furnish meter readings, the utility may submit an estimated bill based on the consumer's previous usage and other available information, the amount of such estimated bill to be adjusted, as necessary, when the next actual reading is obtained. No more than two (2) consecutive estimated bills may be rendered without the utility reading the meter. When by reason of a consumer's failure to furnish meter reading, the utility reads the meter, it may charge the service fee for reading the meter prescribed in its approved tariffs.~~

(~~4~~3) **Access to meters and other property.** The utility shall at all reasonable ~~timeshave~~ times have access to meters, service connections, and other property owned by it on the consumer's premises for purpose of meter reading

and maintenance. Refusal on the part of the consumer to provide reasonable access for the purpose of meter reading shall be deemed sufficient cause for discontinuance of service on the part of the utility, after notice as provided in this Chapter for discontinuance of service for nonpayment of bills. The utility shall provide its employees with a means of identification in order to claim the right of access.

(~~5~~4) **Alternative reading periods.** Upon application of the utility and after notice and hearing, the Commission may authorize the reading of meters less frequently than monthly and prescribe conditions and procedures therefore.

(~~6~~5) **Special meter reading request.** Whenever a special meter reading is required following a request by a consumer, the utility shall not make a charge for the special meter reading, whether or not its applicable tariff authorizes a charge for a special meter reading, unless the consumer has requested and received special meter reading within the previous twelve (12) month period.

PART 3. TESTING

165:65-7-11. Periodic and routine tests

(a) Each utility shall adopt the following periodic and routine test and repair schedule of its meters:

~~SIZE OF METER INCHES~~	~~INTERVAL BETWEEN TEST YEARS~~
~~1 inch and smaller~~	~~10~~
~~1 1/2 inches and 2 inches~~	~~6~~
~~3 inches~~	~~4~~
~~4 inches and larger~~	~~2~~

(1) 1 inch and smaller meters: 10-year interval between test years

(2) $1\frac{1}{2}$ inch and 2 inch meters: 6-year interval between test years

(3) 3 inch meters: 4-year interval between test years

(4) 4 inch and larger meters: 2-year interval between test years

(b) If the meters of a utility are maintained in compliance with the provisions of the schedule in (a) of this Section, and if at least ninety percent (90%) of the meters tested register an accuracy of not less than ~~ninety-six~~ ninety-eight percent (~~96%~~ 98%) nor more than one hundred two percent (102%) during a three (3) year period, the utility, upon application and after notice and hearing, may be granted an extension in the time interval between test years.

(c) If the water meter testing program of a utility does not meet the standards prescribed in subsection (b) of this Section over a three (3) year period, the time interval between test years may be reduced by the Commission after notice and hearing. Change in ownership or assets of the water utility shall not change the requirements for periodic testing of active meters being utilized by the utility.

(d) All meters and/or associated metering devices, when tested, shall be adjusted as closely as practicable to the condition of zero (0) error.

(e) All tolerances of this Chapter are to be interpreted as maximum permissible variations from the condition of zero (0) error. In making adjustments no advantage shall be taken of the prescribed tolerance limits.

(f) The utility shall maintain a record of the most recent test of each meter.

SUBCHAPTER 11. CUSTOMER SERVICE

PART 1. DEPOSITS AND BILLING

165:65-11-3. Deposits and interest

(a) Each utility shall prepare and submit a plan containing criteria for deposits to the Commission for approval. The plan shall include criteria for residential and nonresidential consumers with residential being defined in each utility's tariff.

(1) The residential plan shall conform to all subsections of this Section.

(2) The nonresidential plan shall conform to all subsections of this Section except (b), (c), (d), and (j).

(b) No utility shall require a deposit of a residential consumer who has received the same or similar type and classification of service for twelve (12) consecutive months and service was not terminated for nonpayment nor was payment late more than twice nor was a check for payment dishonored. The twelve (12) month service period shall have been within eighteen (18) months prior to the application for new service. The utility plan may establish other relevant criteria, which will qualify the consumer for nonpayment of a deposit.

(c) No utility shall require a deposit more than one-sixth (1/6) of the estimated annual bill ~~of the consumer.~~ The utility may allow smaller deposits to be made, in conformance with relevant, objective criteria written in the utility's plan. The utility plan may allow consumers to pay deposits in installments.

(d) A utility may require an advance deposit as a condition of service for consumers other than those consumers addressed in (b).

(~~d~~e) A present consumer may be required to post a deposit as a condition of continued service if undisputed charges have become delinquent, with delinquent meaning a payment not received on or before the due date as posted on the bill, in two (2) of the last twelve (12) billing periods or if the consumer has had service disconnected during the last twelve (12) months or has presented a check that has been subsequently dishonored.

(~~e~~f) Interest on cash deposits shall be paid ~~on cash deposits~~ by the utility at no less than the rate calculated as follows:

(1) For all consumer deposits returned within one (1) year or less, the interest rate shall be established on the 1st day of January ~~for~~ of each year to equal the average of the weekly percent annual yields of one (1) year U.S. Treasury Securities for September, October, and November of the

preceding year. The interest rate shall be rounded to the nearest basis point.

(2) For all consumer deposits held by the utility for more than one (1) year, the interest rate shall be established the 1st day of January for each year to equal the average of the weekly percent annual yields of 10 year U.S. Treasury Securities for September, October, and November of the preceding year. The interest rate shall be rounded to the nearest basis point. The utility may pay the average of one (1) year Treasury Security, as referenced in ~~(e)~~ (f) (1) of this Section, for the first year the deposit is held.

(3) Provided, however, that after the interest rate is initially established pursuant to this subsection, the interest rate(s) shall not change unless the application of the formula in ~~(e)~~ (f)(1) and/or (2) results in a change in interest rate(s) that is/are greater than two hundred (200) basis points.

(4) The Director of the Public Utility Division shall calculate the interest rate(s) as pursuant to ~~(e)~~ (f)(1) and (2) of this Section, and shall mail notice to the utility company by December 15th of each year, only if a change in the rate(s) is/are necessary pursuant to subsection ~~(e)~~ (f), otherwise the current interest rate(s) will remain in effect.

(~~f~~g) If refund of deposits is made within thirty (30) days of receipt of deposit, no interest payment is required. If the utility retains the deposit more than thirty (30) days, payment of interest shall be made retroactive to the date of deposit. No interest shall accrue on a deposit after discontinuance of service.

(~~g~~h) The deposit shall cease to draw interest on the date it is returned or credited to the consumer's account.

(~~h~~i) The utility plan shall provide the date of payment of interest and whether the interest shall be paid by negotiable instrument or by credit against current billing.

(~~i~~j) Each consumer posting a cash deposit shall receive a nonassignable receipt in writing at the time of making the deposit or within the ten (10) days thereafter. When a consumer pays a deposit as a portion of a water service bill, payment of the bill shall serve as a receipt ~~for payment~~ of the deposit. If the deposit is not paid by the due date, the amount of the deposit will become a part of the past due amount owed and monies paid shall be applied to the oldest past due amount. The utility plan shall provide reasonable means whereby a depositor who applies for the return of his/her deposit, or any ~~balance~~ deposit to which he/she is entitled, but who is unable to produce the original receipt may not be deprived of ~~this~~ his/her deposit or balance.

(~~j~~k) The utility shall automatically refund the deposit for residential service, with accrued interest, after twelve (12) ~~months~~ months' satisfactory payment of undisputed charges and where payment was not late more than twice; provided, however, that service has not been disconnected within the twelve (12) month period. Payment of a charge shall be deemed satisfactory if received on or prior to the date the bill is due. Payment of a charge shall be deemed not satisfactory if made by a check subsequently dishonored. The utility plan shall provide for the review of all deposits at least annually and shall provide ~~that~~ whether refunds will be paid by negotiable instrument, upon request of the consumer, provided, the consumer's bill is not delinquent, or by credit against current ~~bill~~ billing.

(~~k~~l) The amount of the deposit, with accrued interest, shall be applied to any unpaid charges at the time of the discontinuance of service. The balance, if any, shall be returned to the consumer within thirty (30) days following the settlement of the consumer's account, either in person or by mailing it to the consumer's last known address.

(~~l~~m) The utility shall provide payment of accrued interest for all consumers annually by negotiable instrument or by credit against current billing.

(~~m~~n) The utility may withhold refund of return of the deposit, pending the resolution of a dispute with respect to charges secured by such deposit.

(~~n~~o) The utility company shall keep records to show:

(1) The name, account number and address of each depositor~~, and account number~~.

(2) The amount of the deposit and date received.

(3) Each transaction concerning the deposit.

(~~o~~p) Such records shall be retained for two (2) years after deposit and/or interest is refunded or applied.

(~~p~~q) Upon the sale or transfer of any public utility or operating units thereof, the seller shall file with the application ~~for~~ of transfer a verified list of all consumers from whom a deposit is being held, the date such deposit was made, the amount thereof, and the unpaid interest thereon. The information provided shall be treated as confidential and shall not be available for public inspection unless ordered by the Commission after notice and hearing.

(r) Deposits shall not include membership fees in cooperatives.

(~~q~~s) The deposit made by the consumer with the utility at the time of application for water service shall not constitute an advance payment to cover service bills, but for all purposes it is to be considered as security for the payment of monthly bills or other proper charges.

PART 3. DISCONNECTION OF SERVICE

165:65-11-10. Disconnection of service by a consumer

A consumer may be required to give up to five (5) days written notice, excluding legal holidays, Saturdays and Sundays, of intention to have service disconnected or to have the account closed and shall be responsible for all charges for service until the expiration thereof. This 5-day written notice provision may be waived by the utility. Such disconnection or closing of the account does not relieve the consumer of obligations incurred prior to disconnection. At the time the consumer requests disconnection or closing of the account, the utility will advise the consumer of any reconnection and service fees, if any reconnection and or service fee applies pursuant to the utility's approved tariffs.

165:65-11-11. Disconnection of service by a utility

(a) **Sufficient reasons for disconnection of service.** A utility may disconnect service to a consumer ~~after notice pursuant to this Subchapter~~ for any of the following reasons:

(1) Nonpayment of all or any portion of undisputed utility bills or a utility bill which is no longer disputed or for which the Commission's dispute process has been completed.

(2) Failure to comply with the terms and conditions of a settlement agreement or any type of deferred payment agreement or a Commission order.

(3) Failure to post a deposit as prescribed in OAC 165:65-11-3.

(4) Failure to make application for service.

(5) Misrepresentation of identity or facts for the purpose of obtaining service or use of an alias, trade name, business name, relative's name or another person's name as a device to escape payment of an unpaid obligation for utility service provided to the consumer.

(6) Violation of any rule or regulation of the Commission or Commission-approved rule of the utility.

(7) Refusal to grant access at reasonable times for the purpose of installation, inspection, maintenance, replacement, or reading of utility equipment installed upon the premises of the consumer, or maintaining any obstruction that would deny access for these purposes.

(8) Potential adverse effect of the service required by the consumer on the service of other consumers of the utility, provided the consumer has been notified and given ~~are~~ a reasonable opportunity to correct the adverse effect.

(9) A consumer provides false or misleading information to the utility in order to avail the consumer of the provisions applicable to the financial assistance delay, deferred payment agreement or Commission notification procedure for elderly and/or handicapped consumers.

(10) Where negligent or wasteful use of water exists on a consumer's premises, which adversely affects the general service, the utility may discontinue the service if the conditions are not corrected. Where such waste threatens the supply to a substantial number of other consumers, service may be discontinued immediately after notice.

(11) Abandonment of the premises served.

(12) Upon request of the consumer pursuant to OAC 165:65-11-10.

(13) ~~The utility may disconnect service twenty-four (24) hours after providing notice for violations of (3) through (9) of this subsection.~~ Causing injury or threatening to cause injury to an employee of the utility or the family of an employee of the utility or the property of the utility for the purpose of preventing a utility employee from engaging in activities authorized by law or in retaliation for such activities.

(14) Whenever the utility has reason to believe that continued service will create a condition on the consumer's premises that is dangerous to persons or property.

(15) Violation of the utility's rules regarding the operation of nonstandard equipment or unauthorized attachments, if the consumer was notified first and given a reasonable opportunity to comply with the rules.

(16) Violation of federal, state, or local laws or regulations through use of the service.

(17) Causing damage to utility property.

(18) A condition exists which poses a health or safety hazard.

(19) Unauthorized use of water service accomplished through bypassing of the utility's measuring equipment or tampering with pipes, meters, or other utility equipment.

(20) The utility may disconnect service twenty-four (24) hours after providing notice for violations of (3) through (9) of this subsection.

~~(b) A utility may disconnect service without notice for any of the following reasons:~~

~~(1) Unauthorized use of water accomplished through bypassing of the utility's measuring equipment or tampering with pipes, meters, or other utility equipment.~~

~~(2) Whenever the utility has reason to believe that continued service will create a condition on the consumer's premises that is dangerous to persons or property.~~

~~(3) Causing injury or threatening to cause injury to an employee of the utility or the family of an employee of the utility or the property of the utility for the purpose of preventing a utility employee from engaging in activities authorized by law or in retaliation for such activities.~~

(b) **Insufficient reasons for disconnection of service.** A utility shall not disconnect service to a consumer for any of the following reasons:

(1) Failure to pay for a different kind or classification of service from that requested.

(2) Failure to pay a bill correcting a previous under billing, due to misapplication of rates, unless the utility offers the consumer a deferred payment agreement as provided elsewhere in this Chapter.

(3) Failure of a previous owner or occupant at the premises or user of the service to pay an unpaid or delinquent account, except where the previous occupant remains an occupant or user of the utility service.

(4) Failure of a consumer to pay any portion of an estimated billing which the consumer disputes, except where the consumer fails to allow a utility representative access to the meter.

(5) If a current consumer in good standing who accepts an additional household member owing a previous bill to the utility unless that additional household member is listed on the lease arrangements or another utility service as a responsible party, or unless the household member shared service with the subscriber at a different or same location.

(6) If a consumer or potential consumer for a previously unpaid account from a different utility beyond the boundaries of the utility's service territory.

(7) Pending verification, service cannot be withheld or disconnected from a consumer whose name was used to obtain service at another location without the consumer's permission or knowledge.

(8) Nonpayment of an amount past due for more than three (3) years if the utility cannot substantiate the charges with a copy of the consumer's complete billing history reflecting usage, consumption and relevant charges.

(9) Failure to pay a past due amount to another utility.

(c) **Effective period of notice.** A utility may disconnect service on the date specified in the notice or within thirty (30) days thereafter, during regular business hours, so long as the disconnection does not occur within the last two (2) hours of the business day; nor shall service be disconnected on a holiday, nor after noon (12:00 p.m.) on Fridays until Monday morning.

(d) **Documentation of reason(s).** The utility shall provide documentation to the consumer indicating the reason(s) that service is being withheld or disconnected.

165:65-11-12. Insufficient reasons for disconnection of service [REVOKED]

~~A utility shall not disconnect service to a consumer for any of the following reasons:~~

~~(1) Failure to pay for a different kind or classification of service.~~

~~(2) Failure to pay a bill correcting a previous underbilling, due to misapplication of rates, unless the utility offers the consumer a deferred payment agreement as provided elsewhere in this Chapter.~~

~~(3) Failure of a previous owner or occupant of the premises, or user of the service to pay an unpaid or delinquent account, except where the previous occupant remains an occupant or user of the utility service.~~

~~(4) Failure of a consumer to pay any portion of an estimated billing which the consumer disputes, except where the consumer fails to allow a utility representative access to the meter or the consumer regularly reads the consumer's own meter and fails to supply a current meter reading.~~

~~(5) If a current consumer in good standing who accepts an additional household member owing a previous bill to the utility unless that additional household member is listed on the lease arrangements or another utility service as a responsible person, or unless the household member shared service with the subscriber at a different or same location.~~

~~(6) If a consumer or potential consumer has a previously unpaid account from a different utility beyond the boundaries of the utility's service territory.~~

~~(7) Pending verification, service cannot be withheld from a consumer whose name was used to obtain service at another location without the consumer's permission or knowledge.~~

~~(8) Nonpayment of an account past due to the same utility for previous service rendered for more than three (3) years prior to the date of application for service if the utility cannot substantiate the charges with a copy of the consumer's complete billing history reflecting usage, consumption and relevant charges.~~

~~(9) Failure to pay a past due amount to another utility.~~

165:65-11-13. Notice of disconnection of service

(a) **Twenty-four hour notice.** Except as otherwise specifically provided for in this Subchapter (165:65-11-11), service shall be disconnected only after at least twenty-four (24) hours written notice has been given to the consumer by leaving a copy of such notice with the consumer or by leaving a copy of such notice in a conspicuous place at the premises where service is provided. This notice shall be in writing and state the reason for the action, the amount due, if applicable, the company to contact in bold print, the contact telephone number, in bold print, and the telephone number of the CSD.

(b) **Residential notice.** When service to a residential consumer is to be disconnected for nonpayment of a bill for utility service or failure to make a security deposit after a reasonable time, the utility company shall give at least ten (10) days written notice from the date of mailing to the consumer. Said written notice shall be mailed by the utility company to the consumer's billing address, unless the mail is returned from that address as undeliverable, in which case the notice may be delivered to the premises at which the service was rendered.

(1) Notice will be deemed delivered to the consumer three (3) business days after mailing by the utility company, which shall not extend the ten (10) days written notice from the date of mailing to the consumer written notice requirement above.

(2) A notice of disconnection shall contain the following information:

(A) The words "DISCONNECTION NOTICE" OR "CUT OFF NOTICE" in bold print no smaller than one-fourth inch (1/4") tall.

(B) The name and address of the consumer.

(C) A statement of the reason for the proposed disconnection of service.

(D) The date on or after which service will be disconnected unless appropriate action is taken.

(E) The telephone number in bold print of the utility company where the consumer may make an inquiry.

(F) The approved charges for reconnection.

(G) A statement that the consumer must contact the utility company regarding the disconnection, prior to contacting the Commission's CSD.

(H) The address and telephone number of the Commission's CSD, in print size which is smaller than the print size used for the utility company's telephone number.

(I) A statement that advises the consumer of the availability of a deferred payment agreement.

(J) A statement that advises the consumer of the elderly/handicapped notification.

(K) A statement that advises the consumer of the availability of the 20-day financial aid assistance delay.

(L) A statement that advises the consumer there are agencies providing assistance to consumers for their utility bills as well as provide the location of pay agents upon the consumer's request.

(3) The utility company shall notify the consumers in writing, at least annually, of the name and address of the authorized payment agencies, if other than the utility company's offices, where consumers may make payments.

(c) **Commission as intermediary.** Unless otherwise directed by the CSD, the utility company shall not contact the

consumer regarding the consumer's account after the Commission has notified the utility company of a complaint or inquiry from the consumer. The Commission shall be the intermediary between the utility and the consumer until the resolution of the problem has been completed.

(d) **Third party notice.** A utility shall permit residential consumers to designate a consenting individual or agency to receive the applicable notice of disconnection.

(e) **Tenant notice.** Where a master metered apartment complex, building, or trailer court is subject to disconnection, the written notice to the consumer shall also be posted in a common area of the premises at least ten (10) days prior to disconnection of service. The utility may contract with tenants for residential service.

(f) **Commercial or business notice.** ~~Nonresidential service~~ Service of nonresidential customers or other water systems shall be disconnected for nonpayment of all or any portion of an undisputed utility bill or failure to comply with the provisions of a deferred payment agreement only after at least five (5) business days written notice has been mailed to the consumer by the utility or after the notice is left in a conspicuous place at the premises where service is provided.

165:65-11-14. Commission notification procedure for elderly and/or ~~handicapped~~ consumers with disabilities

(a) At any time prior to disconnection of service, the Commission notification procedure shall be available to those elderly and/or ~~handicapped~~ consumers with disabilities who have notified the utility in writing that they wish to be included in the following Commission notification procedure:

(1) A utility shall notify the Commission's CSD by telephone at least five (5) days prior to disconnection.

(2) Such notification shall be confirmed in writing by the utility and mailed or faxed to the Commission's CSD the same day as the telephone notification. Written confirmation shall contain at a minimum:

(A) The name, address, telephone number, and account number of the involved parties.

(B) The words "NOTICE", "SERVICE SUBJECT TO CUTOFF" AND "~~SENIOR CITIZEN / HANDICAPPED~~ ELDERLY and/or CONSUMER WITH DISABILITIES" should be conspicuously placed on the notice in bold, capitalized letters.

(C) ~~Scheduled~~ The scheduled date for disconnection.

(D) The unpaid balance amount.

(E) The name and telephone number of a contact person at the utility.

(3) The utility shall delay disconnection of service to the elderly and/or ~~handicapped consumer's~~ consumers with disabilities ~~service~~ for five (5) additional days upon request of the Commission's CSD.

(4) Elderly and/or ~~handicapped~~ consumers with disabilities are those consumers who have notified the utility in writing that they wish to be included in the Commission notification procedure available to them and who:

(A) ~~have~~ Have a permanent impairment which substantially limits ~~their~~ the disabled consumer's ability to pay for utility service; or

(B) ~~who are over~~ Are sixty-five (65) years of age or older.

(b) The utility shall notify the consumer or other person responsible for the bill, during the initial application for service, annually thereafter, and at any time disconnection is imminent, of this additional notification procedure.

(~~5~~c) The utility may require verification of the consumer's qualifications.

(~~b~~d) The Commission notification procedure is in addition to the other requirements set forth in this ~~Section~~ Subchapter, which the utility shall meet prior to disconnection of service.

165:65-11-15. Delays to disconnection of residential service

(a) **Limitations on disconnection.** After notice and hearing, the Commission may issue an order that may include limitations on disconnection of residential utility service.

(b) **Temporary ban on disconnections.** The Commission shall have the authority to order a temporary ban on any or all disconnections during periods of extremely severe weather or when circumstances exist such that disconnection could create a situation dangerous to the life or health of consumers or to property.

(c) **Severe weather.**

(1) If the high temperature is actually, or predicted to be, 32 degrees Fahrenheit or below on the day of disconnection or the nighttime low is predicted to be 20 degrees Fahrenheit or less, the utility shall suspend its disconnection of service if the water service is used for heating purposes.

(2) If the service is utilized for cooling and the temperature is actually, or predicted to be, ~~103~~ 101 degrees heat index or higher on the day of disconnection, the utility shall suspend its disconnection of service activity.

(3) Nothing in this Section shall prohibit a utility from establishing a higher temperature threshold for residential heating purposes below which it will not discontinue utility service or from establishing a lower temperature threshold for residential cooling purposes above which it will not discontinue utility service. The utility may continue to disconnect utility service for unauthorized use of the utility's measuring equipment or tampering with pipes, meters, or any other utility equipment or obtaining service without contract.

(d) **Financial assistance delay.** When a residential consumer has applied for and is awaiting financial assistance, including social security income, from a federal, state, or local social service agency, and the utility has initiated written notice of disconnection, it shall delay disconnection of service for a period of at least twenty (20) days from the date when such notice was either delivered or mailed to the premises where service is rendered, provided:

(1) The reason for disconnection is for nonpayment of the utility bill.

(2) The consumer has notified the utility that the consumer has applied for and is awaiting financial assistance.

(3) Verification from the involved agency must be provided in a form as prescribed by the utility upon its request.

(4) If the expected financial assistance is less than the amount owed for services, the utility may require the consumer to enter into a deferred payment agreement as prescribed in (e) of this Section.

(5) Under no condition is the utility required to furnish service to the consumer unless there is reasonable expectation of payment for such service except where other rules of this Commission apply.

(e) **Deferred payment agreement.** The utility shall be required to offer a deferred payment agreement before disconnecting service for any bill or account balance in excess of fifty dollars ($50.00) when a residential consumer is unable to pay an account in full. The utility shall not disconnect service for nonpayment of a bill if the consumer enters into a deferred payment agreement with the utility. The utility may mail a confirmation of the terms of the deferred payment agreement if it is made orally. A deferred payment agreement may be entered into by the consumer up to, but not including, the day of disconnection. Except where payment assistance for the total amount of the bill is pending, ~~The~~ the utility may require a reasonable partial payment in accordance with paragraph one (1) of this subsection, at the time the deferred payment agreement is ~~entered into~~ made.

(1) Deferred payment agreement means a just and reasonable agreement offered by the utility and agreed to by the consumer which provides for the payment of all future bills during the period of agreement by the due date and the payment of the balance of any outstanding bills in reasonable installments based upon:

(A) Consideration of the consumer's gross income less employer deductions.

(B) Size of the delinquent account.

(C) Consumer's ability to pay.

(D) Consumer's payment history with the utility.

(E) Length of time and reasons why the debt has not been paid.

(F) Other extraordinary expenses of the consumer.

(G) Loss of income through unemployment or illness.

(H) Any other relevant factors concerning the circumstances of the consumer.

(2) The payments under such an agreement need not be equal in amount.

(3) The consumer shall initiate, ~~prior to breach,~~ a renegotiation prior to breach of the deferred payment agreement. The deferred payment agreement shall be renegotiated if ~~the consumer's~~ financial circumstances ~~conditions change~~, such as loss of income through unemployment or illness, or any other relevant factors concerning the circumstances of the consumer, change during the payment period.

(4) If a consumer fails to comply with the terms of the deferred payment agreement, the consumer will be subject to disconnection without further notice, so long as the disconnection date on the first and second notice has not been passed. If the disconnection date has passed, the utility shall provide at least twenty-four (24) hours notice of disconnection to the consumer.

(5) Under no condition is the utility required to furnish service to the consumer unless there is a reasonable expectation of payment for such service except where other rules of this Commission apply.

(f) **False information.** If a consumer provides false or misleading information to the utility in order to avail the consumer of the provisions applicable to the financial assistance delay, deferred payment agreement, or Commission notification procedure for elderly and/or consumers with disabilities, the false information shall be grounds for disconnection of service by the utility.

(~~f~~g) **Consumer liability.** ~~Continuance~~ Reconnection or continuance of service under this Section shall not in any way relieve the consumer of the consumer's liability, ~~obligations or responsibilities~~ incurred for utility service.

165:65-11-16. Reconnection of service

(a) A utility shall reconnect service upon the consumer's request as soon as the reason for disconnection of service has been eliminated. The utility shall give ~~priority~~ precedence to reconnection of service when disconnection was the fault of the utility; ~~When disconnection of service was the fault of the consumer,~~ the utility shall reconnect service in the normal course of its reconnection workload, as soon as possible but no later than twenty-four (24) hours, after the consumer eliminates the reason for disconnection and requests reconnection, when disconnection of service was the fault of the consumer. If the reason for disconnection is unauthorized use of water accomplished through bypassing the utility's measuring equipment or tampering with the pipes, meters, or other utility equipment, the utility may, prior to reconnecting service, require a reasonable payment for estimated service rendered or may refuse to reconnect service until ordered by the Commission. A utility may require payment of a reconnection charge when disconnection of service was the fault of the consumer, if such a charge is provided in the utility's tariffs.

(b) When the disconnection of service was for nonpayment of service, and disconnection took place on a Friday morning, service shall be restored as soon as possible, but no later than twenty-four (24) hours from when the consumer eliminates the reason for disconnection and requests reconnection, subject to an intervening Act of God.

(c) Once the customer has remedied the disconnection problem, the company shall provide a written statement to the customer of the recommended procedures the customer should undertake to insure the customer has safe and reliable water.

(~~c~~d) Reconnection or continuance of service under this Section shall not in any way relieve the consumer of ~~his~~ the consumer's liability incurred for utility service.

165:65-11-17. Mediation

(a) Whenever there is a dispute between the utility and the consumer as to the following, the matter may be brought by either ~~utility or customer~~ party to the Commission's CSD:

(1) The existence of elderly or handicapped status.

(2) The question of financial assistance or guarantee of payment by a federal, state or local social service agency.

(3) The provisions of a deferred payment agreement.

(4) The terms and conditions of payment of any part of a bill as rendered.

(5) The proper interpretation of this Chapter.

~~(6) Any other area of dispute.~~

(b) The CSD shall review the matter and issue an informal review decision in writing setting forth the terms and conditions for continued service, disconnection of service, or deferred payment plan agreement. If it is the desire of the consumer, ~~the consumer~~ they may be represented by a third party, if the consumer is available for verification. If the dispute can be resolved by telephone with the ~~entity or consumer~~ party seeking review, the review decision need not be in writing unless requested by either party. During any period of time when a disconnection dispute is before the Commission or in mediation, the utility shall suspend disconnection procedures.

(c) If the CSD is unable to resolve the dispute to the mutual satisfaction of the ~~utility and the consumer~~ parties, either party may file a complaint with the Commission for final determination.

(d) Whenever the consumer informs the utility that the consumer disputes a charge for service, the utility shall investigate the dispute promptly and thoroughly, and make a diligent effort to reach a mutually satisfactory settlement. If the consumer is dissatisfied with the decision of the utility, the consumer may report the dispute to the CSD. Upon written complaint by the consumer to the Commission, disconnection of service shall be held in abeyance provided the consumer pays the portion of the bill which is not in dispute.

165:65-11-18. Commission review

The utility's disconnect notice, service violation disconnection notice, and any notice or form used by the utility to comply with the requirements of this ~~Part~~ Subchapter shall be submitted to the Commission for approval. Upon approval, the forms or notice shall become a part of the utility's approved tariff.

165:65-11-19. Utilities encouraged to keep current lists of utility assistance programs

(a) **Compilation.** The utilities are strongly encouraged to compile a list with the names, addresses, and phone numbers of known payment assistance programs, including information regarding any bilingual services offered, that are applicable to each service area within the utility's areas of operation. The list should include but is not limited to: local, state, federal, and tribal water assistance programs. The list should also include public/private charitable organizations offering or known to offer water payment assistance, which have given prior consent to their inclusion on this list. The utilities are encouraged to use due diligence in compiling and updating this information, with updates to occur on an annual basis. However, the Commission encourages the addition of new assistance programs to the list, as the information becomes available.

(b) **Availability.** The utility shall give a copy of this list to any consumer who asks for such assistance.

(c) **Liability.** The offer of any such list under this Section is meant as an informative resource only, in order for the utility to better assist its consumers. Failure of the consumer to gain funding in full or in part, from any of the proffered resources under this Section shall not result in any liability to the utility.

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TITLE 165. CORPORATION COMMISSION CHAPTER 75. COTTON GIN UTILITIES

[OAR Docket #03-2014]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Applications
165:75-3-1. Filing of application for cotton gin license [AMENDED]
165:75-3-2. ~~Notification~~Notice [AMENDED]
165:75-3-4. New gins [AMENDED]
165:75-3-5. Dormant gins [AMENDED]
165:75-3-6. Dismantled gins [AMENDED]

AUTHORITY:
Oklahoma Corporation Commission, Article IX, § 18 of the Oklahoma Constitution, 75 O.S. § 501 *et seq.*

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None

INCORPORATIONS BY REFERENCE:
None

ANALYSIS:
The revisions to the Cotton Gin Utility Rules simplify and clarify the procedures to be used by a cotton gin utility to obtain permission from the Oklahoma Corporation Commission to acquire dormant status or to obtain permission to dismantle a cotton gin. The cotton gin utility may send an affidavit by certified letter affirming the same information that would have been provided through an application process. The use of a letter request as opposed to an affidavit provides a streamlined process for approval of dormant gins or for dismantling a cotton gin. The Director of the Public Utility Division may grant the relief requested as an administrative matter if no objection to the letter request is received after notice is given. The Director of the Public Utility

Division may determine that an application and hearing are necessary for a cotton gin to acquire dormant status or dismantle based upon a determination that an objection or protest exists with regard to the letter request.

CONTACT PERSON:

Miles Halcomb (405) 522-1072

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 15, 2003:

SUBCHAPTER 3. APPLICATIONS

165:75-3-1. Filing of application for cotton gin license

A cotton gin license for maintenance and operation of a cotton gin utility and written authority required to be obtained from this Commission by the terms of this Chapter shall be granted or denied only after an application ~~therefor~~ has been filed with the Commission and a hearing ~~duly~~ held ~~thereon~~. An applicant shall show in his application and at the hearing ~~in support thereof~~ the applicable ~~primary factors enumerated in~~ requirements of this Chapter.

165:75-3-2. ~~Notification~~Notice

~~Upon the filing of an application or letter request (for dormant gins or dismantling of gins) in due form, which are hereinafter provided and shall include the names and addresses of any person or persons, or corporation maintaining and operating a cotton gin in any locality of this State which is, or will be directly affected by competition of the applicant or requesting party, as well as a representative list of patrons affected thereby, the Director of the Public Utility Division shall give notice of the filing of said application or letter request and the time and place of hearing thereon to such parties and others as appear to be interested therein.~~

(a) **Notice required upon application for license.** An applicant shall give notice of the filing of an application for a license for maintenance and operation of a cotton gin utility by publication once a week for two consecutive weeks in a newspaper of general circulation in the county in which the cotton gin is to be located. An applicant shall also mail notice to all other cotton gin operators within a thirty (30) mile radius of the applicant's proposed operating location. The notice shall be in a form approved by the Director of the Public Utility Division and shall include the name of the entity seeking a license, the cause number, the relief requested in the application, the area to be served, the phone number of the individual to contact for additional information, and the date, time and place of the hearing on the merits.

(b) **Notice required upon application or letter request of a cotton gin utility to dismantle or go dormant.** An applicant filing an application or submitting a letter request to dismantle or go dormant shall give notice of the request by posting notice in three conspicuous places within the county in which the cotton gin is located. The notice shall be in a form approved by the Director of the Public Utility Division, and shall include the name of the applicant, the relief requested, the date the notice is posted, the name of the individual to contact for additional information, and the statement that protests or objections must be submitted in writing to the Director of the Public Utility Division of the Oklahoma Corporation Commission, P. O. Box 52000, Oklahoma City, OK 73152-2000, on or before an identified date. The applicant must allow no less than a thirty (30) day time period for the submission of written objections or protests.

165:75-3-4. New gins

(a) No corporation, company, firm, or individual shall be permitted to operate and maintain a cotton gin utility without first having secured a license from this Commission after notice and hearing. Separate license shall be obtained for each gin battery.

(b) Applicant seeking a cotton gin license shall satisfactorily show the following primary factors:

(1) Name of individual, partnership, or corporation and if a corporation, information concerning its organization;

(2) A complete description of the proposed plant and its facilities, including number of gin stands, number of saws per stand, power, etc., and a statement in full of the cleaning equipment to be used;

(3) Convenience and necessity for a gin at the proposed location;

(4) Names and addresses of all corporations, companies, firms, or individuals operating cotton gin utilities within a thirty (30) mile radius of the proposed gin site which are or will be in direct competition therewith;

(5) Responsibility, reliability, qualifications, and capacity of applicant to perform ginning services and to afford all reasonable facilities, conveniences, and services to the public; and

(6) Willingness to be governed by this Chapter.

165:75-3-5. Dormant gins

(a) No corporation, company, firm, or individual in this State shall allow a cotton gin utility to remain dormant during any ginning season without first obtaining written permission and authority from this Commission. Written permission and authority may be granted by the Director of the Public Utility Division, without notice and hearing, if there have been no objections or protests submitted. In the event that a written protest or objection is received by the Director of the Public Utility Division, a hearing before an Administrative Law Judge will be scheduled, and notice of the hearing will be issued by the Public Utility Division. A new request must be made each year.

(b) Any individual or entity seeking authority to allow a gin to remain dormant must show the following primary factors:

(1) Name of gin, location, and license number;

(2) Owner of gin;

(3) Each cotton gin together with name and address of owner within a thirty (30) mile radius;

(4) A statement of reasons for making application to remain dormant;

(5) Name and address of ten (10) cotton farmers now patronizing gin; and

(6) Convenience and necessity does not require operation of gin during coming season.

(c) Such request shall be made by certified mail on or before August 1 each year and shall be accompanied by an affidavit attesting to the six (6) primary factors listed above.

165:75-3-6. Dismantled gins

(a) No corporation, company, firm, or individual in this State shall be permitted to dismantle a cotton gin now licensed to operate without permission and authority from this Commission. Written permission and authority may be granted by the Director of the Public Utility Division, without notice and hearing, if there have been no written objections or protests submitted. In the event that a written protest or objection is received by the Director of the Public Utility Division, a hearing before an Administrative Law Judge will be scheduled, and notice of the hearing will be issued by the Public Utility Division.

(b) Any individual or entity seeking authority to dismantle a gin shall show the following primary factors:

(1) Name and location of gin;

(2) Owner of gin;

(3) Name and address of owner of each cotton gin within thirty (30) mile radius of applicant's gin;

(4) Name and address of 10 cotton farmers now patronizing gin; and

(5) Convenience and necessity no longer requires the gin at its present location.

(c) Such request shall be made by certified mail and shall be accompanied by an affidavit attesting to the five (5) primary factors listed above.

[OAR Docket #03-2014; filed 6-4-03]

TITLE 170. DEPARTMENT OF CORRECTIONS
CHAPTER 25. COMMUNITY SENTENCING

[OAR Docket #03-2024]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
170:25-1-4. [AMENDED]
Subchapter 3. Application and Approval
170:25-3-1 [AMENDED]
170:25-3-3 [AMENDED]
Subchapter 5. Plan Administration
170:25-5-1 [AMENDED]
170:25-5-2 [AMENDED]
170:25-5-3 [AMENDED]
Subchapter 9. Fiscal Management
170:25-9-5 [AMENDED]
170:25-9-6 [NEW]
Subchapter 11. Revocation to Department of Corretions
170:25-11-1

AUTHORITY:
Oklahoma Department of Corrections, 22 O.S. § 988.1 et seq.

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N/A

ANALYSIS:
The Oklahoma Community Sentencing Act (Title 22, Section 987.1 et.seq. of the Oklahoma Statutes) provides for a statewide sentencing system comprised of local community sentencing systems. The rules provide standards for development and operation o f the local sentencing systems.

CONTACT PERSON:
Justin Jones, Deputy Director, Community Corrections, 3700 Classen Boulevard, Suite 110, Oklahoma City, Oklahoma, 73118.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTION AS SET FORTH IN 75 O.S., SECTION 308.1A, WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

170:25-1-4. Funding ~~formula~~ method

~~(a)~~ The Deputy Director, Community Sentencing Division, will submit to the Legislature a statewide budget based upon all Local Planning Council budgets. In the event appropriations are insufficient to meet all of the requested budgets, ~~the funding formula will be applied to the total appropriations to determine the amount of funding available to each Local Planning Council. In the event the funding formula is applied, the Deputy Director will notify each Local Planning Council of the amount of funding available. The Local Planning Councils will submit modified plans and budgets within 30 days of receipt of notice.~~ the Deputy Director will allocate a percentage of the funds made available by the legislature to each local sentencing system. Funds will be disbursed based on data reflecting local and statewide felony convictions, the characteristics of offenders receiving a community sentence and the sentencing practices of the courts.

~~(b) The funding formula is as follows: The actual number of offenders, by planning council, sentenced during the previous fiscal year that would have been eligible to be sentenced to a community sentence. Each Local Planning Council offender~~

~~total will be a percentage of the state total. This percentage will be multiplied by the appropriated amount for the Statewide System.~~

SUBCHAPTER 3. APPLICATION AND APPROVAL

170:25-3-1. Submission of local plan

(a) When a Local Planning Council is established, the chairman will notify the Division in writing of the names, addresses, and occupations of the members, and such other information as the Division may require. Multi-county planning councils will advise the Division of the geographic areas contained within their local system. The Local Planning Council will notify the Division in writing of any changes in membership or geographic area.

(b) Each Local Planning Council will submit a copy of its local rules and procedures to the Division prior to submission of the plan.

(c) Each Local Planning Council seeking funds will submit a detailed Plan to the Division on or before ~~December 15~~ February 1 of each fiscal year. The Deputy Director will prescribe the format for the Plans. The Plan format will allow Planning Councils to demonstrate conformance with the goals and funding priorities for the Community Sentencing Act.

(d) Any Plans requiring more funding than is allocated to the Local System will be returned to the Local Planning Council for modification in accordance with funds available. The Division will notify the Local Planning Council within 45 days of any recommended modifications.

(e) Plans which do not include all information required by law, or which do not comply with the format prescribed by the Deputy Director, or to the goals and provisions of the Community Sentencing Act will be returned to the Local Planning Council for modification.

170:25-3-3. Departmental evaluation, additional criteria, and onsite evaluation

(a) The Local Planning Council and all service providers contracting for services pursuant to the Plan will maintain records relating to community sentence offenders and will make such records available to the Department for the purpose of inspection, evaluation, and audit.

(b) Service providers contracting for the provision of services for community sentence offenders pursuant to the Plan will~~, upon 24 hour written notice,~~ allow Division representatives to inspect the premises of any establishment providing services and allow access to employees, offenders, and offender records for the purpose of evaluating services provided.

(c) Local Planning Councils and service providers will obtain any necessary waivers from offenders to allow the Division to evaluate services provided.

(d) Public, private, and non-profit agencies entering into agreements to provide services, sanctions, housing, and confinement to community sentence offenders will meet all legal requirements mandated by local, state, and federal authorities to ensure the health, safety and welfare of community sentence offenders.

(e) Records of inspections, audits, certification, and licensure of staff that affects the health, and safety, and welfare of offenders will be made available to the Division for review.

(f) Service providers who have demonstrated deficiencies in services or facilities will be reported to the Deputy Director by the local administrator. The Deputy Director will advise the Local Planning Councils and the service provider of any deficiencies and require corrective action or termination of the contract if the health, safety, or welfare of community sentence offenders is in jeopardy.

SUBCHAPTER 5. PLAN ADMINISTRATION

170:25-5-1. Performance based evaluation

The Department will utilize a performance based evaluation of each program. ~~that is provided pursuant to Plans.~~ All service agreements ~~Plans~~ will specify evaluation standards. Evaluations will be used to determine how closely a treatment program meets known principles of effective correctional treatment. Completed evaluations will be provided to the court and the Local Planning Council for review. Failure of the program to meet evaluation standards or failure of the program to undergo evaluation will result in discontinuation of the program. In the event a program is terminated prior to evaluation, it may not be utilized thereafter until an ~~evaluation has been conducted~~ corrective action is approved by the Deputy Director.

170:25-5-2. Expansion or modification of plan

(a) The Division will notify Local Planning Councils whenever funding in addition to regular legislative appropriations becomes available to expand Plans. Local Planning Councils may then submit proposals to the Division for expanded plans.

(b) All Plans submitted for approval will be reviewed to ensure that the proposed budget is adequate to support the Local System during the Plan Year. If the Division determines the proposed budget will not be adequate, the Plan will be returned to the Local Planning Council for modification. ~~If the funding appropriated by the Legislature does not fully fund the proposed plan, the Division will allow Local Planning Councils 45 days to make modifications.~~

(c) Modification of Plans during a Plan Year shall require the approval of a majority of the total membership of the Local Planning Council. Modifications during the Plan Year will be in writing and will not be effective until submitted and approved by the Deputy Director. Modifications during the Plan Year will specify the reasons for any changes and will comply in all respects with the requirements for submission of the original plan.

(d) The Chief Judge of the Judicial District may create a multi-county sentencing system from single county systems within the same judicial district during a Plan Year by filing notification of the change with the Division and submitting a modified Plan.

170:35-5-3. Medical treatment and payment of costs in funded local systems

(a) The Department will pay all required medical expenses for community sentence offenders confined as part of a disciplinary sanction. The Department will reimburse health care providers under contract with the county for all necessary medical expenses or reimburse the county if the county has made payment to the provider.

(b) Whenever an offender who is confined by the court as part of a disciplinary sanction requires extensive medical treatment, the court may enter an order for transfer of the offender to the Department for treatment. In such cases, the Division will notify the ~~Medical Director~~ Deputy Director of Medical Services of the Department. The Division will obtain the approval of any medical services prior to any movement of the offender and will advise the court of the approved medical arrangements. The Deputy Director of Medical Services will notify the Division upon completion of medical treatment. In the event time remains on the disciplinary sanction, the Division will arrange for the return of the offender to the facility which was holding the offender prior treatment.

SUBCHAPTER 9. FISCAL MANAGEMENT

170:25-9-5. Penalties

Whenever a Local Planning Council withdraws resources from a program which was in existence prior to January 1, 2000, there will be assessed a penalty equal to the value of the resources which have been withdrawn. The Division will deduct the value of the resources withdrawn from the current year budget and will notify the Local Planning Council in writing.

170:25-9-6. Waiver of supervision fees

The service providing supervision to community sentenced offenders may ask the court to reduce or waive the supervision fee for a 90-day period any time during the course of supervision if a legitimate hardship can be verified. The reduction in fees will be reviewed by the provider every 90 days to verify that the hardship continues to exist unless the hardship can be determined to be permanent. The service provider will report all waivers or reduction of fees to the Local Administrator within ten working days of action.

SUBCHAPTER 11. REVOCATION TO DEPARTMENT OF CORRECTIONS

170:25-11-1. Revocation to Department of Corrections

Whenever the court revokes a community sentence and imposes a sentence to Department custody, the sheriff will take the offender into custody and will arrange for reception to prison at the Lexington Assessment and Reception Center in the same manner as other offenders sentenced to Department custody. The sheriff will receive the statutory rate of reimbursement from the Department for the time such offenders are in jail awaiting reception.

[OAR Docket #03-2024; filed 6-5-03]

TITLE 195. BOARD OF DENTISTRY CHAPTER 1. ORGANIZATION, OPERATION, AND PURPOSES

[OAR Docket #03-1083]

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RULES:
195:1-1-3 [AMENDED]
195:1-1-6 [AMENDED]
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ANALYSIS:
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CONTACT PERSON:
Linda C. Campbell, Executive Director, (405)524-9037

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

195:1-1-3. Rules promulgated by the Board

In keeping with its authority and purposes, this Board has promulgated separate schedules of rules which are: Internal Operation and Procedure; Examination and Licensing of Dentists, Dental Hygienists, and Dental Specialists; Rules and Regulations for Dental Assistants, ~~Dental Nurses~~, Dental Hygienists, and Dentists; Official Board Interpretations and Declaratory Rulings and Resolutions; Public Rules of Hearings and Procedures of the Board.

195:1-1-6. Public inspection of certain records

(a) All public records of the Board shall be made available for public inspection at the office during regular office hours. Copies of public records of the Board ~~may~~ shall be made and certified ~~by the Principal Administrative Officer~~ upon pre-payment of the copying fee set forth in the fee schedule enacted by the board.

(b) Records of the board are subject to mandatory privilege of confidentiality shall not be released to the public unless ordered by a court of competent jurisdiction. The Principal Administrative Officer of the Board may, upon request, allow record subject to a permissive privilege of confidentiality to be open for public review and copying.

(c) Copies of complaints received by the Board ~~regarding licensees of the board~~ shall be kept confidential pursuant to Title 51 Oklahoma Statutes. In the event a complaint from a citizen results in an individual proceeding, the respondent of the individual proceeding shall be provided a copy of the citizen complaint ~~with any portion therof not related to the individual proceeding deleted from the copy. The respondent shall be provided only the portion of the citizen complaint which relates to allegations made in the individual proceeding~~ and any exculpatory information.

[OAR Docket #03-1083; filed 6-2-03]

TITLE 195. BOARD OF DENTISTRY
CHAPTER 2. INTERNAL OPERATIONS AND PROCEDURES

[OAR Docket #03-1084]

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195:2-1-4 [REVOKED]
195:2-1-5 [AMENDED]
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CONTACT PERSON:
Linda C. Campbell, Executive Director, (405)524-9037

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

195:2-1-3. ~~Dental hygiene advisory members~~ Appointment of Advisory Members

~~Pursuant to Title 59 O.S. 328.17, the Board may appoint one dental hygienist to assist the Board in an advisory capacity on matters pertaining to dental hygiene portions of the Dental Act.~~

~~(1) Preceding the appointment the Board will request that the Dental Hygiene Association submit a list of names, not less than three, from which list the appointment may be made.~~

~~(2) The appointment shall be for a term of two years. In the event of death or resignation prior to expiration of said term another appointment may be made from a new list submitted by the Dental Hygiene association which appointee shall serve the balance of the unexpired term.~~

~~(3) The appointee must at all times be and remain a hygienist with a current dental hygiene certificate.~~

~~(4) The appointee shall assist only in an advisory capacity and shall not have a vote on matters acted upon by the Board.~~

(a) The president shall have authority to appoint advisory members as he deems necessary, with Board approval.

(b) The appointee shall assist only in an advisory capacity and shall not have a vote on matters acted upon by the Board.

195:2-1-4. Nomination and appointment of dental laboratory advisory members [REVOKED]

~~(a) Upon the expiration of the term of office of an Advisory Board Member, a request will be made to the Oklahoma Dental Laboratory Association, requesting that nominations for such office be forwarded to the Board of Governors within twenty (20) days.~~

~~(b) Such nominees are to be residing in and operating regular dental labs in the District in which such vacancy exists.~~

~~(c) Subsequently, appointment of such Advisory Board Member may be made by the Board of Governors from among those persons nominated.~~

195:2-1-5. Annual meeting of the Board

The annual Meeting of the Board will be held in ~~June~~ the second quarter, each calendar year. At this time reports of the proceedings of the Board since the last annual meeting, reports of officers, and committees, and recommendations of

the Board shall be received. The newly elected or appointed Board Members will be installed and Board officers will be elected.

[OAR Docket #03-1084; filed 6-2-03]

TITLE 195. BOARD OF DENTISTRY CHAPTER 3. COMPLAINTS, INVESTIGATIONS AND HEARINGS

[OAR Docket #03-1085]

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RULES:
195:3-1-2 [AMENDED]
195:3-1-3 [AMENDED]
195:3-1-4 [AMENDED]
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CONTACT PERSON:
Linda C. Campbell, Executive Director, (405)524-9037

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

195:3-1-2. Investigations

(a) Any person may file a written and signed complaint with the Board alleging that another person has sought to practice or has illegally practiced dentistry or dental hygiene or has violated the Act or rules of the Board. Staff ~~may~~ shall require all ~~complainant(s)~~ complaints to ~~reduce oral complaints to writing~~. have a witnessed or notarized signature of the complainant. The complainant(s) should state all known facts upon which the allegations are based. Staff may inquire of the complainant for any additional information relative to the complaint.

(b) Upon receipt of a complaint, the president of the Board shall appoint two Board members to act as a review panel during the investigation of the complaint. The review panel members shall not be from the same geographical region as that of the person named in the complaint or have a pecuniary interest in the outcome of the complaint. The review panel members may meet informally with staff to coordinate an investigation. The review panel ~~may~~ shall also use services of the ~~assigned Board~~ staff and attorney selected for the investigation to determine legal sufficiency of the complaint. During the investigation, staff and the review panel may use any investigative mechanism authorized in the Act.

195:3-1-3. Initiation of individual proceedings; settlement agreement

(a) If the review panel determines that it is more likely than not that a violation of the Act or rules of the Board has occurred and that the person named in the complaint has more likely than not committed the violation, the review panel may recommend in writing to the Board that the Board initiate an individual proceeding against the person named in the complaint. The written recommendation shall contain the allegations made against the person named in the complaint and shall be presented to the Board.

(b) The Board shall examine the allegations made in the written recommendation from the review panel and shall make a determination of whether or not to authorize issuance of a formal statement of complaint. The staff shall take appropriate action to issue the Statement of Complaint and serve the person charged in the complaint.

(c) The review panel may elect not to recommend to the Board that an individual proceeding be initiated against the person named in the complaint.

(1) If after discussion the review panel is not in agreement that it is more likely than not that a violation of the Act or Rules of the Board has occurred, the review panel shall dismiss the complaint and direct the principal administrative officer of the Board to give written notification of the dismissal to the complainant and to the person named in the complaint within 10 days of dismissal, by certified mail, returned receipt.

(2) The review panel may elect to secure a settlement agreement with the person named in the complaint. The settlement agreement will contain language that the person named in the Complaint will not violate provisions of the Act or the rules of the Board in the future. The settlement agreement may also contain language indicating the alleged violation of the Act or rules of the Board by the person named in the complaint.

(d) Any settlement agreement made by a review panel must receive final review and approval by the Board. The settlement agreement shall remain part of the investigative file and may only be used against the person involved if the person violates the settlement agreement. The settlement agreement is subject to the Oklahoma Open Records Act.

195:3-1-4. Statement of complaint and notice of hearing; setting of hearing date, emergency hearings

(a) The Complaint issued by the Board shall set forth all allegations of violations of the Act. The Complaint shall be reviewed by the ~~assigned~~ selected Board attorney prior to service upon the respondent. An individual proceeding shall be initiated by the filing of the Complaint with the Board.

(b) The Board shall also cause to be prepared a "Notice of Hearing" which shall specify; the time, place, and nature of the hearing; the legal authority under which it is to be conducted; reference to statutory provisions involved. Service of notice may be in person or by certified mail. Service of notice shall be complete upon personal service, upon receipt by the Board of the card showing receipt of certified mail by the respondent.

(c) At the time the Board authorizes issuance of a Complaint, or at other appropriate times, the Board shall set a tentative hearing date, which shall be no less than thirty (30) days after issuance of the Complaint.

(d) In the event the review panel determines that an emergency exists for which the immediate suspension of a license is necessary, the review panel shall so advise the president of the Board. Upon concurrence, ~~of~~ the president of the Board, ~~the president~~ may convene a hearing of the Board pursuant to Title 75 Oklahoma Statutes to summarily suspend such license. If the Board finds by clear and convincing evidence that public health, safety or welfare imperatively requires emergency action and incorporates a finding regarding the emergency in its order, summary suspension of a license may be ordered pending final outcome of the proceeding instituted. The Board shall comply with all notice requirements of the Administrative Procedures Act and immediately set the matter for full hearing before the Board in compliance with the Administrative Procedures Act and the Dental Act.

[OAR Docket #03-1085; filed 6-2-03]

TITLE 195. BOARD OF DENTISTRY CHAPTER 10. EXAMINATION AND LICENSING OF DENTISTS, DENTALHYGIENISTS, AND DENTAL SPECIALISTS

[OAR Docket #03-1086]

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RULES:
Subchapter 1. Examination for Dentists
195:10-1-2 [AMENDED]
195:10-1-3 [AMENDED]
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195:10-3-2 [AMENDED]
195:10-3-3 [AMENDED]
Subchapter 5. Reciprocity and Criteria Approval
195:10-5-2 [AMENDED]
Subchapter 7. Issuance of Temporary Licenses to Dental Hygienists, Faculty Permits, and Dental Intern Permits
195:10-7-2 [AMENDED]
Subchapter 9. Recognition of Specialties
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CONTACT PERSON:
Linda C. Campbell, Executive Director, (405)524-9037

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. EXAMINATION FOR DENTISTS

195:10-1-2. Eligibility to take examination and application procedure

All persons desiring to practice dentistry in the State of Oklahoma shall be required to pass satisfactorily an examination before receiving a license. An applicant, to be acceptable for examination for a license to practice dentistry in Oklahoma, must fulfill the following requirements:

(1) Make application to the Board in writing. Forms are available upon request, from the Office of the Board.

(2) Be twenty-one years of age or over.

(3) Return the completed application, at least thirty (30) days prior to the announced dates for the examination. The application must be accompanied by a certified check or United State Postal Money Order to pay the examination fee as required by the Board ~~of Governors~~, but not to exceed Two Hundred Dollars ($200).

(4) No application will be accepted less than thirty (30) days prior to the announced dates for the examination.

(5) After the application has been processed and the applicant has been notified to appear before the Board for examination, and should the applicant fail to appear for

the examination, his or her file and fee will be considered forfeited. Should the applicant file for a subsequent examination, such applicant will be considered a new applicant, and the fee for such examination will be as for other new applicants. A new application must be submitted each time an applicant expresses a desire to be examined.

(6) If the applicant has not completed his or her last term in Dental School prior to making application, the Dean of the School should certify that he or she is a candidate for graduation, in order that the application can be processed. No applicant will be allowed to take the examination until the Secretary of the Board has in possession a photostatic copy of the applicant's diploma.

(7) Applicants who are licensed and practicing dentistry in another state must present with the application a photostatic copy of his or her degree and a statement or certificate signed by the Secretary of the State Dental Board of the state in which he or she is licensed that the applicant is engaged in the actual, lawful, practice of dentistry.

(8) The Board ~~of Governors of Registered Dentists of Oklahoma~~ recognizes only those applicants who are students or graduates of Dental Schools in the United States or Canada, approved, conditionally, or provisionally approved by the Commission on Dental Accreditation of the American Dental Association, and the applicant must have or will receive a D.D.S. or D.M.D. Degree from that school.

(9) Applicant must attach a recent passport type photograph of self in place so designated on application blank.

(10) Applicant must present with application, a transcript of his or her grades received during his or her academic years of training in dental school.

(11) Applicant will appear for personal interview, as requested by the Board.

(12) Applicants qualifying for an examination formulated and administered by the Board who fail to make the required grade will not be issued a license, but may retake the examination. The additional examinations will require a fee as set by the Board.

(13) Should an applicant fail the second clinical examination before further re-examination the Board may require evidence of additional education. After the third examination, the Board may deny the applicant further examination.

(14) If the applicant successfully passes the examination and is licensed to practice dentistry in Oklahoma, he or she will be required to pay an annual registration fee each year, or his or her license will be cancelled as provided by law.

(15) A copy of the State Dental Act of Oklahoma and Rules and Regulations promulgated by the Board will be mailed to applicant with letter of notification to appear for the Oklahoma examination.

(16) Applicants must show proof of malpractice insurance pertaining to acts performed at, during or for the clinical examination.

(17) Applicants must furnish their own patients, instruments, and materials.

(18) Address communications to the current address of the BOARD OF ~~GOVERNORS OF REGISTERED DENTISTS~~, DENTISTRY Oklahoma City, Oklahoma.

195:10-1-3. Contents of examination

The examination for a license to practice dentistry in Oklahoma will consist of:

(1) **Theoretical examination.**

(A) A theoretical examination which will be written and will usually consist of questions on the subjects of:

(i) Operative Dentistry,
(ii) Pharmacology, Prosthodontics,
(iii) Oral Surgery/Anesthesia,
(iv) Orthodontics/Pedodontics,
(v) Oral Path/Radiology,
(vi) Endodontics/Periodontics,
~~(vii)~~ ~~Anantomic~~ Anatomic Sciences,
(viii) Biochem/Physiology,
(ix) Microbiology/Pathology, and
(x) Dental Anatomy.

(B) A ~~minimum grade of 75%~~ passing score will be required to be obtained on each subject of the theoretical examination or the applicant will not be licensed to practice dentistry in the State of Oklahoma.

(C) The Board may accept results of the Joint Commission on National Dental Examinations in lieu of its theoretical examination.

(2) **Written examination on the State Dental Act and the Board's rules.** A ~~grade of 70%~~ passing score as determined by the Board is required on a written examination on the State Dental Act of Oklahoma and the rules promulgated by the Board.

(3) **Clinical examination.**

(A) Clinical examinations may be conducted by a national or regional testing agency recognized by the Board ~~will be conducted~~ or at times and places determined appropriate by the Board and depending upon numbers of applications received.

~~(B)~~ ~~An~~ A passing score ~~average of 70%~~ must be obtained in the recognized clinical examination(s) to be eligible for licensure.

SUBCHAPTER 3. EXAMINATION FOR DENTAL HYGIENISTS

195:10-3-2. Eligibility to take examination and application procedure

All persons desiring to practice dental hygiene in Oklahoma shall be required to pass satisfactorily an examination before receiving a Certificate of Ability to practice. An applicant, to be acceptable for examination for a Certificate of Ability to practice dental hygiene in Oklahoma, must fulfill the following requirements:

(1) Make application to the Board in writing. Forms are available upon request from the Office of the Board.

(2) Applicant must be eighteen years of age or over.

(3) Return the completed application at least thirty (30) days prior to the announced dates of the examination. The application must be accompanied by a Certified Check or United States Postal Money Order in an amount as set by the Board but not to exceed $100.

(4) No application will be accepted for processing less than thirty (30) days before the announced dates of the examination.

(5) After an application has been processed and the applicant notified to appear before the Board for examination, and should the applicant fail to appear for the examination, his or her file and fee will not be returned, and the fee will be considered forfeited and any temporary permit terminated. Should the applicant file for a subsequent examination, such applicant will be considered a new applicant and the fee for such examination will be as for other new applicants. New applications must be submitted each time an applicant expresses a desire to be examined.

(6) If the applicant has not completed his or her last term in Dental Hygiene School prior to making application, the Dean of the Dental School or Director of the Dental Hygiene School should certify that he or she is a candidate for graduation in order that the application can be processed. No applicant will be allowed to take the examination until the Secretary of the Board has in possession, a photostatic copy of his or her Dental Hygiene Certificate of Graduation or diploma.

(7) An applicant who is not graduating from a Dental Hygiene School the year in which making application must present with the application a photostatic copy of his or her certificate and a statement or certificate signed by the Secretary of the State Dental Board of the state in which he or she is registered stating the applicant is in good standing.

(8) The Board recognizes only those applicants who are students or graduates of a Dental Hygiene School in the United States or Canada approved, conditionally or provisionally approved by the Commission on Dental Accreditation of the American Dental Association, and the applicant must have, or will receive a Dental Hygiene Certificate from that school.

(9) Applicant must attach a recent passport type photograph of self in place so designated on the application blank.

(10) Applicant must present with application a transcript of grades received during his or her academic years of training in Dental Hygiene School.

(11) Applicant will appear for personal interview, as requested by the Board.

(12) Applicants must furnish their patients, instruments and material. Applicants must show proof of malpractice insurance pertaining to acts performed at, during or for the examination.

(13) Applicants qualifying for an examination formulated and administered by the Board who fail to make the required grade will not be issued a Certificate of Ability, but may retake the examination. The additional examinations will require a fee as set by the Board.

(14) Should an applicant fail the second clinical examination before further re-examination the Board may require evidence of additional education. After the third examination, the Board may deny the applicant further examination.

(15) If the applicant successfully passes the examination and is granted a Certificate of Ability to practice dental hygiene in the State of Oklahoma, he or she will be required to pay an annual registration fee each year or his or her Certificate of Ability will be cancelled as provided by law.

(16) A copy of the State Dental Act of Oklahoma and Rules and Regulations promulgated by the Board will be mailed to applicant with application.

(17) All communications should be addressed to the current address of the BOARD OF DENTISTRY, ~~GOVERNORS OF REGISTERED DENTISTS~~, Oklahoma City, Oklahoma.

195:10-3-3. Contents of examination

The examination for a ~~license~~certificate of ability to practice ~~dentistry~~dental hygiene in Oklahoma will consist of:

(1) **Theoretical examination.**

(A) A written theoretical examination which will ~~be written and will~~ usually consist of questions on the subjects of:

(i) ~~Operative Dentistry~~General Anatomy,

(ii) ~~Pharmacology, Prosthodontics~~Dental Anatomy,

(iii) ~~Oral Surgery/Anesthesia~~Physiology,

(iv) ~~Orthodontics/Pedodontics~~Histology,

(v) ~~Oral Path/Radiology~~Pathology,

(vi) ~~Endodontics/Periodontics~~Radiology,

(vii) ~~Anantomic Sciences~~Chemistry,

(viii) ~~Biochem/Physiology~~Nutrition,

(ix) Microbiology~~/Pathology, and~~

(x) ~~Dental Anatomy.~~Pharmacology,

(xi) Dental Materials,

(xii) Preventive Dentistry

(xii) Local Anesthesia, and

(xiv) Community Dental Health, as applied to the functions a dental hygienist may carry out in practice.

(B) ~~A minimum grade of 75%~~ A passing score will be required to be obtained on ~~each subject of~~ the theoretical examination or ~~the~~ applicant will not be ~~licensed~~granted a Certificate of Ability to practice ~~dentistry~~Dental Hygiene in ~~the State of~~ Oklahoma.

(C) The Board may accept results of the Joint Commission on National Dental Examinations in lieu of its theoretical examination.

(2) **Written examination on ~~the~~ State Dental Act and ~~the~~ Board's rules.** A ~~grade of 70%~~ passing score as determined by the Board is required on a written examination on the State Dental Act of Oklahoma and ~~the rules~~Rules and Regulations promulgated by the Board.

(3) **Clinical examination.**

(A) Clinical examinations may be conducted by a national or regional testing agency recognized by the Board ~~will be conducted~~ or at times and places determined appropriate by the Board and depending upon numbers of applications received.

(B) ~~An average of 70%~~ A passing score must be obtained in the recognized clinical ~~examination~~examination(s) to be eligible for ~~licensure~~a certificate of ability to practice dental hygiene.

SUBCHAPTER 5. RECIPROCITY AND CRITERIA APPROVAL

195:10-5-2. Requirements for reciprocal licensure

(a) The Board of Dentistry of the State of Oklahoma pursuant to the State Dental Act may license without examination any person who has been duly licensed to practice dentistry or dental hygiene in any state or territory of the United States, if said person produces satisfactory evidence to the Board that he or she has the required education and training and is in good standing, and does meet every other requirement set forth in the State Dental Act and as may be set forth by this board.

(b) The applicant must:

(1) Have been in active practice for at least five (5) years (two (2) for dental hygienists) immediately prior to making application (can include internship, residency, military, teaching, at the discretion of the Board).

(2) Have completed required application form with all supporting data and certification of licensure in good standing from all states licensed.

(3) Have paid required fee (non-refundable).

(4) Have passed at least one practical examination for licensure that is equivalent to the examination required by Oklahoma.

(5) Have taken and passed the Oklahoma Jurisprudence Examination.

(6) Have completed or satisfied any other requirements as may be set by the Board.

(7) Have successfully completed the National Board examinations administered by the Joint Commission on National Dental Examinations.

(8) Meet all requirements of the State Dental Act.

(9) Submit proof of a Federal registration in good standing for prescribing, dispensing, or administering controlled dangerous substances, if applicant is a dentist.

(10) Submit recent color passport type photograph.

(11) Have all time units accounted for.

(12) Application must also include copy of diploma, National Board examination grades and transcript of dental and/or dental hygiene school grades.

~~(13) Ten~~ Three letters of recommendation from professional associates, i.e.: Associations, Boards, including letters from employers and associates listed under Practice History (Section 6 of the application). These letters should be mailed directly to the Board.

(c) The applicant may be requested to appear for personal interview.

SUBCHAPTER 7. ISSUANCE OF TEMPORARY LICENSES TO DENTAL HYGIENISTS, FACULTY PERMITS, AND DENTAL INTERN PERMITS

195:10-7-2. Requirements for the issuance of temporary licenses

Temporary licenses to practice dental hygiene may be issued by the Board at its discretion to Dental Hygienists under the following terms and conditions:

(1) **Requirements for application.** An applicant for a temporary license to practice dental hygiene in Oklahoma shall file an application with the Board to take the next clinical examination required by the Board. Applicant must enclose with his or her application:

(A) National Board scores.

(B) Copy of Dental Hygiene Certificate of diploma from an accredited dental hygiene program.

(C) Submit a certificate verifying the results of the examination given to the applicant by the state or jurisdiction in which such applicant was heretofore issued a license to practice dental hygiene and a copy of the current license in good standing from the state.

(C) Must furnish proof of active practice in the two years preceding application.

(D) Must submit four ~~(4)~~ (3) letters of recommendation.

(E) Submit an official transcript of dental hygiene school.

(2) **Issuance of a temporary license, expiration date.** After examination of the documents submitted with the application, if the Board finds that the applicant successfully passed the examination given by the other state or jurisdiction, is in good standing, and that the nature and extent of the examination given by the other state was equivalent to the clinical examination required by the Board, then the Board may issue to the applicant a temporary license to practice dental hygiene in the State of Oklahoma. Such temporary license shall expire as of the date the next clinical examinations required by the Board.

(3) **Fee.** A fee as set by the Board shall be charged for the issuance of a temporary license.

(4) **Examination on State Dental Act and Rules.** Applicants for a temporary license must come to the Board's office and pass a test regarding the content of the State Dental Act and Rules before a temporary license will be issued.

(5) **Personal Interview.** Applicant may be requested to appear for personal interview with the Board and/or its designated agent.

(6) The issuance of a temporary license gives said dental hygienist the same rights and privileges as a license in good standing, therefore, the responsibilities will be the same as one who holds a permanent license to practice dental hygiene; such dental hygienist will be liable and governed by all rules as one who holds an active license in good standing to practice dental hygiene.

SUBCHAPTER 9. RECOGNITION OF SPECIALTIES

195:10-9-2. Specialties recognized by the Board and qualifying requirements

The Board ~~of Governors of the Registered Dentists of Oklahoma~~ will at its discretion, recognize only those specialties as approved by the Commission on Dental Accreditation of the American Dental Association (Title 59 O.S. 328.22). The following specialties are recognized and defined by the Board, and any member of the Registered Dentists of Oklahoma, who holds a license to practice Dentistry, must fulfill the listed requirements to be allowed to take the examination.

(1) **Oral and maxillofacial surgery.**

(A) **Definition:** The diagnosis, surgical and adjunctive treatment of diseases, injuries and defects involving both the functional and esthetic aspects of the hard and soft tissues of the oral and maxillofacial region.

(B) **Requirements:** Certificate of satisfactory completion of advanced training program in Oral Surgery approved by the Commission on Dental Accreditation of the American Dental Association and in a hospital approved by the Council on Hospital and Institutional Dental Service of the American Dental Association. This training program shall be for a minimum of three (3) years.

(2) **Orthodontics.**

(A) **Definition:** The diagnosis, prevention, interception and treatment of all forms of malocclusion of the teeth and associated alterations in their surrounding structures; the design, application, and control of functional and corrective appliances; and the guidance of the dentition and its supporting structures to attain and maintain optimum occlusal relations in physiologic and esthetic harmony among facial and cranial structure.

(B) **Requirements:** Two academic years of graduate training in a school approved or provisionally approved by the Commission on Dental Accreditation of the American Dental Association.

(3) **Pediatric Dentistry.**

(A) **Definition:** The practice and teaching of comprehensive preventive and therapeutic oral health care of children from birth through adolescence. It shall be construed to include care for special patients beyond the age of adolescence who demonstrate mental, physical and/or emotional problems.

(B) **Requirements:** Two academic years of graduate study in a school approved or provisionally approved by the Commission on Dental Accreditation of the American Dental Association.

(4) **Periodontics.**

(A) **Definition:** The science and art dealing with the health and disease of the investing and supporting structures of the teeth and oral mucous membrane and with their treatment.

(B) **Requirements:** Two academic years of graduate training in Periodontics in a school or other institution approved or provisionally approved by the Commission on Dental Accreditation of the American Dental Association.

(5) **Prosthodontics.**

(A) **Definition:** Prosthodontics is that branch of dentistry pertaining to the restoration and maintenance of oral functions, comfort, appearance and health of the patient by the restoration of the natural teeth and/or the replacement of missing teeth and contiguous oral and maxillofacial tissues with artificial substitutes:

(i) Removable Prosthodontics - is that branch of prosthodontics concerned with replacement of teeth and contiguous structures for edentulous or partially edentulous patients by artificial substitutes that are removable from the mouth.

(ii) Fixed Prosthodontics - is that branch of prosthodontics concerned with the replacement and/or restoration of teeth by artificial substitutes that are not removable from the mouth.

(iii) Maxillofacial Prosthetics - is that branch of prosthodontics concerned with the restoration and/or replacement of stomatognathic and associated facial structures by artificial substitutes that may or may not be removed.

(B) **Requirements:** Successful completion of a two (2) year Prosthodontics Specialty Program resulting in a masters degree or certification approved or provisionally approved by the Commission on Dental Accreditation of the American Dental Association.

(6) **Endodontics.**

(A) **Definition:** The branch of dentistry which is concerned with the etiology, prevention, diagnosis and treatment of the diseases and injuries that affect the pulp and periapical tissues.

(B) **Requirements:** Applicant must be a diplomate of the American Board of Endodontics or be certified as having successfully completed at least an eighteen-month graduate training program in endodontics, which is recognized and accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the American Association of Endodontists.

(7) **Oral pathology.**

(A) **Definition:** The art and science which deals with the nature of oral diseases, through study of its causes, its processes, and its effects, together with the associated alterations of oral structure and function.

(B) **Requirements:** Two years or six quarters of graduate study in a school approved or provisionally approved by the Commission on Dental Accreditation of the American Dental Association.

(8) **Oral and Maxillofacial Radiology**

(A) **Definition:** The specialty of dentistry and discipline of radiology concerned with the production and interpretation of images and data produced by all

modalities of radiant energy that are used for the diagnosis and management of diseases, disorders and conditions of the oral and maxillofacial region.

(B) **Requirements:** Two years of graduate study in a school approved or provisionally approved by the Commission on Dental Accreditation of the American Dental Association.

(9) **Dental Public Health**

(A) **Definition:** The science and art of preventing and controlling dental diseases and promoting dental health through organized community efforts. It is that form of dental practice which serves the community as a patient rather than the individual. It is concerned with the dental health education of the public, with applied dental research, and with the administration of group dental care programs as well as the prevention and control of dental diseases on a community basis.

(B) **Requirements:** A two-year dental public health program must encompass a minimum of two academic years in duration or a one-year dental public health program must encompass a minimum of twelve (12) months in duration with the applicant's possession of the degree of M.P.H. or a comparable degree. The advanced study program shall be a school approved or provisionally approved by the Commission on Dental Accreditation of the American Dental Association.

[OAR Docket #03-1086; filed 6-2-03]

TITLE 195. BOARD OF DENTISTRY CHAPTER 15. DUTIES FOR DENTAL ASSISTANTS AND THE RULES REGULATING THE PRACTICE OF DENTAL HYGIENE

[OAR Docket #03-1087]

RULEMAKING ACTION:
PERMANENT final adoption.
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These amendments and revocations are clean up action for all rules.
CONTACT PERSON:
Linda C. Campbell, Executive Director, (405)524-9037

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

195:15-1-6.1. Advanced procedures for dental hygienists

(a) It is the determination of the Board that certain procedures may be performed by a dental hygienist who has satisfactorily completed a course of study regarding the performance of such procedures. Pursuant to 59 O.S., Section 328.34, the Board hereby establishes two (2) advanced procedures for dental hygienists with definitions, requirements, and course guidelines as follows:

(1) Nitrous Oxide.

(A) Definition: A dental hygienist authorized by the Board to perform this advanced procedure may administer nitrous oxide.

(B) Requirement: Satisfactory completion of a course of study in nitrous oxide analgesia, consisting of a minimum of 12 hours, approved by the Board.

(C) Course Guidelines:

(i) Minimum standards for courses to train dental hygienists to administer nitrous oxide are as follows:

(I) The instruction level shall meet level 3 of the Board's Guide to Curriculum Development for Advanced Procedures.

(II) Instruction shall be provided in a properly equipped setting and under he supervision of an education program approved by the Board.

(III) The minimum length of the course shall be 12 hours.

(IV) The faculty-student ratio of not in excess of 1 to 10 for classroom training and 1 to 10 for clinical and laboratory training shall be maintained.

(V) The course shall train students in basic C.P.R. This requirement may be waived for students with current C.P.R. training.

(VI) Each student shall be provided at least 15 minutes of contact with each patient during clinical training.

(VII) Faculty shall be qualified licensed dentists or licensed dental hygienists with at least

one year of advanced education in comprehensive pain and anxiety control.

(VIII) When not medically inappropriate, each student shall be afforded the opportunity to experience the effects of nitrous oxide.

(IX) The course provider shall create and maintain records on each student, including test score of clinical testing, in the clinical test for a one (1) year period. The director of the educational portion of the program shall sign a statement in the scholastic record attesting to the student's proficiency in advanced procedures.

(ii) The course shall be designed and conducted to provide each student with a thorough knowledge of nitrous oxide-oxygen inhalation sedation and its use in dentistry. Upon completion of the course, each student shall be able to apply this knowledge to administer nitrous oxide-oxygen inhalation to dental patients as indicated.

(iii) The course instruction shall include:

(I) Background information, including:

a. A history of nitrous oxide-oxygen inhalation sedation;

b. Instruction in the philosophy and psychology of nitrous oxide-oxygen inhalation sedation;

c. Instruction in the definitions and descriptions of the physiological and psychological aspects of pain and anxiety;

d. Instruction of the stages of drug-induced central nervous system depression through all levels of consciousness and unconsciousness with special emphasis made in the distinction between the conscious and unconscious state;

e. Instruction on the anatomy and physiology of respiration;

f. Instruction on the pharmacology and physiological effects of nitrous oxide as used as analgesia. This instruction shall include among other things, its physical properties, effects, action, side effects, absorption, excretion, and toxicity;

g. Instruction in the advantages and disadvantages of inhalation sedation with nitrous oxide.

(II) Students shall be trained in aspects of patients assessment, to include:

a. Taking and reviewing a thorough health history;

b. Taking the patient's vital signs;

c. Evaluating implications of the use of nitrous oxide based upon the patient's health history;

d. Evaluating the indications and contraindications of nitrous oxide.

(III) Students shall be trained in the proper administration of nitrous oxide, to include:

a. The description and use of inhalation equipment;

b. The introduction of nitrous oxide to a patient;

c. Precautions for the successful introduction of nitrous oxide to a patient;

d. Patient monitoring, with particular attention made to monitoring patient vital signs and reflexes related to consciousness;

e. Determining dosages and needs of a patient;

f. Possible reactions of patients under nitrous oxide;

g. How to return a patient to pre-sedation status and instruction in post-operative care;

h. Hazards of nitrous oxide sedation for the patient and operator;

i. The recognition, prevention and management of complications and life threatening situations involving nitrous oxide;

j. Potential health hazards of trace anesthetics and techniques for the elimination of trace anesthetics.

(IV) Students shall be instructed in pertinent legal aspects of the administration of nitrous oxide sedation.

(V) The clinical experience of the course shall include:

a. Assessment of the patient's status;

b. The use of different types of nitrous oxide-oxygen machines;

c. Introduction of sedation to a patient;

d. Monitoring the patient;

e. Returning the patient to pre-sedation status;

f. Post operative care of the patient and instruction to the patient.

(iv) Upon completion of the course, students shall be evaluated by course presenters by written examination. The examination shall cover both the didactic and clinical portions of the course. The passing grade is set at 70%. Each student's written examination shall be maintained by the course provider for a minimum of one (1) year following the completion of the examination. Each course provider shall, prior to beginning a course, allow a member of the Board or its designee to review the examination.

(v) Each course provider shall, within thirty (30) days after completion of a course, submit to the Board a list of the names of each student at the course and each student's final grade in the course.

(vi) Courses offered pursuant to this rule are subject to unannounced audits by the Board. Any Board member or designee of the Board shall be provided full access to course materials or the

classroom or clinic during instruction. Failure to provide access pursuant to this provision may subject the provider to invalidation of course results.

(2) Local Anesthesia.

(A) Definition: A dental hygienist authorized by the Board to perform this advanced procedure may administer local anesthesia.

(B) Requirement: Satisfactory completion of a course of study in local anesthesia, consisting of a minimum of 20 $\frac{1}{2}$ hours, approved by the Board.

(C) Course Guidelines:

(i) Minimum standards for courses to train dental hygienists to administer local anesthesia are as follows:

(I) The instruction level shall meet level 4 of the Board's Guide to Curriculum Development for Expanded Functions.

(II) Instruction shall be provided in a properly equipped setting and under the supervision of an educational program approved by the Board.

(III) The course shall train students in basic C.P.R. This requirement may be waived for students with current C.P.R. training.

(IV) The course provider shall conduct formal clinical testing of the student's ability to perform the advanced procedure involved. A Board proctor shall be allowed by the course provider to attend the course the first time it is offered and at random times, as determined by the Board, thereafter.

(V) The course provider shall create and maintain records on each student, including test score of clinical testing, in the clinical test for a one (1) year period. The director of the educational portion of the program shall sign a statement in the scholastic record attesting to the student's proficiency in advanced procedures.

(VI) The minimum length of the course shall be 20 1/2 hours of instruction.

(VII) Each student in the course shall perform at least 5 patient infiltration and ten mandibular ~~or~~ ~~nerve~~ block injections on ~~each~~ patients.

(VIII) When not medically inappropriate, each student shall be afforded the opportunity to experience the effects of local anesthesia.

(IX) A faculty-student ratio of not in excess of 1 to 6 shall be maintained for clinical instruction.

(X) Faculty shall be licensed dentists and licensed dental hygienists who are currently employed or have been employed in a dental or dental hygiene school and have experience in teaching this advanced procedure.

(ii) The course shall be designed and conducted to provide each student with a thorough knowledge of local anesthesia and local anesthetic injection techniques and their uses in dental hygiene. Upon completion of the course, each student shall be able to apply this knowledge to safely administer local anesthetics to dental patients as indicated.

(iii) Course instruction shall include:

(I) Background information, including:

a. Introduction and objectives of the course;

b. History of local anesthesia;

c. Instruction in the philosophy and psychology of the use of local anesthesia;

d. A review of the physiology of nerve conduction;

e. A review of regional anatomy;

f. A survey of local anesthetic agents on nerve conduction;

g. A review of the metabolism and excretion of local anesthetics;

h. Instruction on the toxicity of local anesthetic drugs;

i. Instruction on the clinical manifestations of toxic reactions;

j. Instruction on the treatment of toxic reactions;

k. Instruction on allergic reactions to local anesthetic drugs;

l. Instruction on the clinical manifestations of allergic reactions;

m. Instruction on the treatment of allergic reactions to local anesthetics;

n. Instruction regarding vasoconstrictor drugs used in local anesthetics;

o. Instruction on the clinical manifestations of toxic reactions to vasoconstrictor drugs used in local anesthesia;

p. Instruction on the treatment of toxic reactions to vasoconstrictors used in local anesthesia;

q. Instruction on drug interactions related to local anesthesia; and

r. Instruction on the technical aspects of syringe and cartridge care.

(II) Students shall be trained in aspects of patient status assessment to include:

a. Taking and recording a thorough health history, including vital signs;

b. Assessing the implications of health history problems related to local anesthesia;

c. Evaluating the indications and contraindications for the use of local anesthesia drugs.

(III) Students shall be trained in the proper administration of local anesthesia, including:

a. The use of syringes;

b. The selection of anesthetic solutions;

c. The identification of anatomic landmarks;

d. The application of proper depth;
e. The insertion of the needle to the proper depth;
f. Performing an aspiration technique;
g. The depositing of the anesthetic solution at the proper rate;
h. Maintaining a sterile field throughout a procedure;
i. Accurately evaluating the effectiveness of an anesthetic;
j. Reinjecting when necessary;
k. Estimating the highest safe dosage of local anesthesia according based upon the weight and/or age of the patient.

(IV) Students shall be instructed in pertinent legal aspects of the administration of local anesthetics.

(V) The clinical experience of the course shall include:
a. Evaluating the patient's health status;
b. Taking the patient's vital signs;
c. Administering local anesthetic infiltrations;
d. Administering local anesthetic nerve blocks;
e. Monitoring the patient's physical status while under the effects of local anesthetics;

(VI) Course work shall be provided in post-anesthetic care.

(iv) Upon completion of the course, students shall be evaluated by course presenters by written examination. The examination shall cover both the didactic and clinical portions of the course. The passing grade is set at 70%. Each student's written examination shall be maintained by the course provider for a minimum of one (1) year following the completion of the examination. Each course provider shall, prior to beginning a course, allow a member of the Board or its designee to review the examination.

(v) Each course provider shall, within thirty (30) days of completion of a course, submit to the Board a list of the names of each student at the course and each student's final grade in the course.

(vi) Courses offered pursuant to this rule are subject to unannounced audits by the Board. Any Board member or designee of the Board shall be provided full access to course materials or the classroom or clinic during instruction. Failure to provide access pursuant to this provision may subject the provider to invalidation of course results.

(b) An application by a dental hygienist for authorization to perform an advanced procedure shall be made on a form prescribed by the Board.

(c) The advanced procedures specified in (a) may be performed by a dental hygienist only on a patient of record and only under the direct or indirect supervision of a dentist.

(d) The advanced procedures specified in (a) may be performed only by a dental hygienist who is authorized by the Board or a dentist.

(e) Advanced procedures permitted for dental hygienists who graduate from accredited dental hygiene programs in Oklahoma which provide Board approved instruction, will automatically be authorized after licensure.

[OAR Docket #03-1087; filed 6-2-03]

TITLE 195. BOARD OF DENTISTRY
CHAPTER 25. RULES FOR CONTINUING DENTAL EDUCATION

[OAR Docket #03-1088]

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PERMANENT final adoption.
RULES:
195:25-1-2 [AMENDED]
195:25-1-7 [AMENDED]
195:25-1-8 [AMENDED]
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
These amendments and revocations are clean up action for all rules.
CONTACT PERSON:
Linda C. Campbell, Executive Director, (405)524-9037

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

195:25-1-2. Continuing education required

(a) Pursuant to Title 59 O.S. 328.18, the Board shall require continuing education as a prerequisite for renewal of registration of dentists and dental hygienists. Any course is acceptable

that contributes to updating and maintaining the knowledge and skills of the dentist and dental hygienist in the treatment of the individual dental patient.

(b) Courses directly related to provision of services and patient care shall be considered for credit. Courses dealing substantially with other subjects of professional concern are ~~OUTSIDE THE SCOPE OF THE CONTINUING DENTAL EDUCATION PROGRAM.~~ outside the scope of the continuing dental education program. Such courses or programs would include money management, investments, and professional organizational business meetings. However, the Board may allow exception as specified in Category D.

(c) Proof of CPR course provided by the American Heart Association/ Health Care Provider Level or the American Red Cross/Professional Rescuer shall be required for every licensed dentist and dental hygienist once in each three (3) year reporting cycle.

195:25-1-7. Categories of continuing education

At least 50% of the continuing education requirement must be from Category A and/or B. Not more than 50% of the requirement can be obtained from Category C. A description of the categories of education programs is outlined below:

(1) **Category A.**

(A) Formalized structured learning situations at colleges or universities at regular undergraduate or college course levels will be allowed one (1) hour credit for each hour in attendance. Regular university or college courses are evaluated at semester hour, i.e.: A dentally related three (3) hour college credit course will be allowed three (3) hours of continuing education credit.

(B) Any university may co-sponsor a program within the State of Oklahoma. They must send a copy of the letter to the Board ~~of Governors of Registered Dentists~~.

(C) Programs sponsored by the Veterans Administration or Armed Forces, given at a government facility, will be granted hour for hour credit without university co-sponsorship.

(2) **Category B.**

(A) Formalized Meetings: Meetings of the following recognized groups will be granted hour for hour credit for the scientific portions of their programs:

(i) National professional organizations and their components

(ii) University sponsored professional Alumni clinical meetings

(iii) Organized Dental or Dental Hygiene Study Club Meetings

(iv) Seminars - sponsored by recognized Dental/Dental Hygiene constituent societies

(B) Advanced Study: Graduate study, internships, residencies. Dentists or hygienists engaged in acceptable full-time programs will fulfill their continuing education requirements for each calendar year in which they are actively participating in such programs by nature of these activities, and will have no additional formal requirements for that year. However, persons so engaged must notify the Board.

(3) **Category C.**

(A) Publishing Papers - Presenting Clinics - Lecturing - Teaching: these activities will be granted six (6) hours credit for each hour of the original presentation, and hour for hour credit for additional presentation of the same material. Full or part-time teaching will receive credit for the semester credit hours. One (1) hour credit can be recorded for every 18 hours of clinical instruction.

(B) Self-Instructional Programs - Study Tapes - Correspondence Programs: These programs will be granted one (1) credit for every three (3) hours of self-study activities. The dentists or dental hygienists must submit a certificate of registration from the sponsoring institution, organization or study club or have the participation in the course verified by the sponsoring agency in a manner specified by the Board ~~of Governors of Registered Dentists~~ Continuing Education Committee to be considered for approval.

(4) **Category D.** Exceptions: Exceptions will be considered at the discretion of the Board.

(A) No more than six (6) hours of the sixty (60) hour requirement for dentists can be from practice management type courses.

(B) No more than three (3) hours of the thirty (30) hour requirement for dental hygienists can be from practice management type courses.

195:25-1-8. Procedure for reporting continuing education hours

(a) **Form for reporting.** Continuing education credits must be reported on a form specified and furnished by the Board ~~of Governors of Registered Dentists~~, Oklahoma City, Oklahoma.

(b) **Time for forwarding form.** Forms must be forwarded to the Board office within three (3) weeks after completion of the continuing education course.

(c) **Hours beyond requirement.** Continuing education hours acquired beyond the requirement cannot be credited to the next reporting period.

(d) **Requirement for individuals licensed in the midst of a reporting cycle.** Those individuals who are licensed in the midst of a reporting cycle will have a pro-rated requirement, beginning July 1 following the date of licensure. Dentists must accumulate twenty (20) hours per year and dental hygienists ten (10) hours per year until the end of the reporting period.

[OAR Docket #03-1088; filed 6-2-03]

TITLE 304. STATE USE COMMITTEE CHAPTER 10. OPERATIONAL PROCEDURES

[OAR Docket #03-2037]

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304:10-1-8 [AMENDED]
304:10-1-10 through 304:10-1-11 [AMENDED]
304:10-1-12 [NEW]
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ANALYSIS:
Amendments to 304:10-1-2 through 304:10-1-11 clarify, revise and update rule information pertaining to the operational procedures of the State Use Committee, which include definitions; procedures for qualification of individuals or agencies by the Committee; procedures for determination of fair market price for products and services; compilation and approval of the procurement schedule, procedures to file a grievance or protest with the Committee; annual meetings of the Committee; and reports required by the Committee. 304:10-1-12 establishes payment of the contract levy required by 74 O.S., Section 3004.1, be made to the Department of Central Services no less than quarterly.
CONTACT PERSON:
Gerry Smedley, Administrative Programs Officer, (405) 522-6597, Department of Central Services, Administration, 2401 N. Lincoln Boulevard, Suite 206, Oklahoma City, OK 73105.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

304:10-1-2. Definitions

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

"~~**Blind person**" means a person having a visual acuity not to exceed 20/200 in the better eye, with correcting lenses, or visual acuity greater than 20/200 but with limitation in the field of vision such that the widest diameter of visual field subtends an angle no greater than 20 degrees.~~

"~~**Committee**" means the State Use Committee.~~

"**Agency**" means a qualified nonprofit agency for the severely handicapped.

"**Contracting ~~Officer~~ officer**" means the person employed by the Department of Central Services as a contracting officer in the Purchasing Division, appointed by the State Purchasing Director with the advice of the Committee and designated specifically to solicit, develop, and negotiate contracts with agencies and individuals.

"**FEI**" means Federal Employer Identification.

"**Individual**" means a person with a severe disability.

"**IRS**" means the Internal Revenue Service.

"~~**Qualified nonprofit agency for the severely handicapped**" means a nonprofit agency which is certified as a sheltered workshop by the Wage and Hour Division of the U.S. Department of Labor and employing severely disabled persons who constitute at least 75% of the personnel engaged in direct production of products or services offered by the agency for procurement by this state.~~

"~~**Severely disabled person**" means an individual under a physical or mental disability constituting a substantial handicap to employment and preventing the person from engaging in normal competitive employment and includes any blind person.~~

"**Substantial handicap to employment**" means a residual, limiting physical or mental condition resulting from an injury, disease, or congenital defect which so limits the person's mobility, communication, self-care, self-direction, work tolerance, or work skills that the person is unable to engage in normal competitive employment over an extended period of time.

"**The Act**" means the provisions of 74 O.S. ~~1991~~, Section 3001 et seq. which relate to the purchase of ~~goods~~ products and services from ~~the severely disabled~~ individuals and agencies.

304:10-1-3. Qualifications

~~Prior to being awarded any contracts for goods or services under the provisions of the Act, a severely disabled person or nonprofit agency providing employment to people with severe disabilities shall be qualified by the Committee to insure compliance with the Act.~~

~~(1) A severely disabled person must show that he/she meets the definition of a severely disabled person by the following method:~~

~~(A) Submission to the Committee of:~~

~~(i) A copy of the application and supporting documentation submitted to the Social Security Administration (SSA) for determination of disability, as well as the final determination from SSA.~~

~~(ii) If not included with information provided under 304:10-1-3-(1)-(A)-(1), a narrative report, prepared by a physician, or in the case of mental disabilities, a psychiatrist or psychologist licensed~~

~~in the State of Oklahoma, fully describing the nature of the infirmity or other condition constituting a substantial handicap to employment; and supporting medical records; and~~

~~(iii) Prior work history and any other vocational assessments or documentation requested by the Committee establishing that the severely disabled individual is no longer able to maintain gainful employment; and~~

~~(B) Submission of an affidavit that the severely disabled person will perform 75% of the work needed to produce the products or services offered for procurement by the state; and~~

~~(C) If any of the work will be performed by or subcontracted to any other person or entity, the exact nature and amount of work shall be set out in detail. In no event shall the subcontract be for more than 25% of the work required under the contract.~~

~~(2) A nonprofit agency providing employment to people with severe disabilities must show that it meets the definition of a qualified nonprofit agency for the severely handicapped by submission of the following:~~

~~(A) A tax-exempt FEI number issued by the IRS, or a certificate from the IRS verifying that the entity has met the requirements for nonprofit status as defined by the IRS; and,~~

~~(B) Submission of an affidavit, signed by the Chief Executive Officer of the agency, that 75% of the personnel engaged in direct production of the products or services offered by the agency for procurement by the state are people with severe disabilities, and~~

~~(C) If any of the work will be performed by or subcontracted to any other person or entity, the exact nature and amount of work shall be set out in detail. In no event shall the subcontract be for more than 25% of the work required under the contract.~~

~~(3) Beginning July 1, 1998, and every two years thereafter, a severely disabled person or nonprofit agency providing employment to people with severe disabilities which has been qualified by the Committee shall be required to provide evidence to the Committee of continued ability to qualify as follows:~~

~~(A) A nonprofit agency providing employment to people with severe disabilities shall furnish a current sheltered workshop certificate from the Department of Labor.~~

~~(B) A severely disabled person shall furnish a work history for the previous two years and a current doctor's statement as to the status of the condition which constitutes a substantial handicap to employment, including any changes in that condition since the date of last qualification.~~

~~(4) If at any time a severely disabled person or nonprofit agency providing employment to people with severe disabilities fails to qualify, the Committee shall have the right to remove the products or services from the procurement schedule.~~

(a) **Qualification by Committee.** To ensure compliance with the Act, the Committee shall qualify individuals and agencies prior to contract award to the individual or agency.

(b) **Individual qualification.** An individual shall apply for qualification to the Committee and submit the following documents:

(1) To indicate the individual meets the statutory definition of a severely disabled person, the individual shall provide:

(A) a copy of the application and supporting documentation the individual submitted to the Social Security Administration for determination of disability and a copy of the final disability determination from the Administration;

(B) a narrative report, prepared and signed by a person licensed in the state of Oklahoma as a physician describing physical disabilities, or a psychiatrist or psychologist describing mental disabilities. The report shall fully describe the nature of the disability constituting a substantial handicap to employment with supporting medical records; and

(C) any additional information the Committee may require related to work history, vocational assessments and work related documents.

(2) an affidavit that the individual will perform 75% of the work to produce the products or services the individual offers for procurement by the state; and

(3) a statement which describes the nature and extent as expressed in a percentage of work a subcontractor, other person or entity may perform to produce the products or services.

(c) **Agency qualification.** An agency shall apply for qualification to the Committee and submit the following documents that indicate the agency meets the statutory definition of a qualified nonprofit agency for the severely handicapped:

(1) a tax-exempt FEI number issued by the IRS, or a certificate from the IRS verifying that the entity meets the requirements for nonprofit status as defined by the IRS; and,

(2) a statement describing the nature and extent as expressed in a percentage of the work a subcontractor, other person or entity may perform to produce the products or services the agency provides per a contract the Committee awards.

(3) a copy of certification as a sheltered workshop issued by the U. S. Department of Labor.

(4) a current copy of the agency's certificate of insurance for worker's compensation insurance.

(d) **Continuation of qualification.** On January 31st of each year succeeding initial qualification by the Committee, an individual or agency shall provide evidence to the Committee of continued ability to qualify as follows:

(1) An agency shall submit:

(A) a current copy of certification as a sheltered workshop from the U.S. Department of Labor; and

(B) a report for products and services on the Committee's procurement schedule indicating total agency

labor hours in direct production by disabled workers and total agency labor hours in direct production by non-disabled workers during the previous calendar year.

(C) a current copy of the agency's certificate of insurance for worker's compensation insurance.

(2) An individual shall submit:

(A) a work history for the previous calendar year that indicates the number of hours the individual worked and the number of hours a subcontractor or other individuals worked in direct production of the products and services on the Committee's procurement schedule; and

(B) a current physician, psychiatrist or psychologist statement indicating the current status of the condition which constitutes a substantial handicap to employment, which shall include changes in the condition since the previous date of qualification by the Committee.

(e) **Failure to meet qualifications.** Whenever an individual or agency fails to meet qualifications, the Committee may:

(1) Remove the individual or agency products and services from the procurement schedule; or,

(2) Revoke the qualification of the individual or agency.

(f) **Notice of failure to meet qualifications.** The Committee shall direct the contracting officer to send written notice to an individual or agency at least thirty days prior to the effective date of the action taken pursuant to subsection (e) of this section.

304:10-1-4. Determination of fair market price

The contracting officer shall recommend a fair market price ~~shall be determined~~ for products and services in the manner described in this section.

(1) The ~~Contracting Officer~~ contracting officer shall prepare a current market analysis to determine the fair price for the products or services requisitioned or used by state agencies utilizing internal as well as external sources and established pertinent criteria. When appropriate ~~and /or available~~, the criteria may include, but not be limited to:

(A) A survey of comparable private contracts for like ~~goods~~ products and services;

(B) Research of other governmental entities within and outside the State of Oklahoma;

(C) Comparison, when appropriate, of wholesale and retail pricing of like commodities.

(2) Based on the ~~research~~ data described in OAC 304:10-1-4 (1), the ~~Contracting Officer~~ contracting officer shall recommend a fair market price with supporting documentation to the Committee for consideration.

(3) The Committee shall, by majority vote, approve, modify, amend or disapprove the recommended fair market price.

(4) ~~The price, as approved by~~ Whenever the Committee ~~in OAC 304:10-1-4(3)~~ establishes a price, the price shall become the fair market price.

(5) If the product or service is one for which the pricing does not vary ~~from~~ by state agency ~~to agency~~ or location, the fair market price as approved, modified, or amended, shall remain in effect until the Committee establishes a new fair market price. Any state agency contracts the Committee approves for ~~these goods~~ the products and services at the fair market price shall be awarded by the ~~Contracting Officer~~ contracting officer.

(6) If the product or service is one for which the price does vary depending on the state agency or location, the Committee shall approve, by majority vote, each contract for ~~such~~ the product or service.

(7) In the event of an emergency ~~situation~~, with approval of the ~~Director of Central~~ State Purchasing Director, the ~~Contracting Officer~~ contracting officer ~~shall have the authority to~~ may ~~approve and~~ award a contract to ~~a qualified severely disabled~~ an individual or ~~qualified nonprofit~~ agency for a maximum period of ~~four (4)~~ three (3) months without prior Committee approval, but subject to Committee approval ~~within that period of time~~ at the next regular Committee meeting. ~~If not acted upon, the contract would terminate at the end of four (4) months.~~

(A) If the Committee approves the contract, the contract shall terminate at the end of the contract period.

(B) If the Committee disapproves or does not act upon the contract, the contract shall terminate within 30 days of the meeting date.

~~(8) The contract in (7) of this Section would be effective only if a Committee meeting is not held on its regularly scheduled date, and it is determined to be in the best interest of the State of Oklahoma and the severely disabled individual or nonprofit agency.~~

304:10-1-5. Procurement schedule

(a) **Compilation of procurement schedule.** The ~~Contracting Officer~~ contracting officer shall ~~submit to the Committee on an annual basis~~ maintain and publish a current list of all products and services offered by ~~qualified severely disabled persons~~ individuals and ~~qualified nonprofit~~ agencies ~~for the severely disabled~~.

(b) **Approval of procurement schedule.** The Committee shall approve items on the list or delete items from the list, consistent with the provisions of the Act, and shall designate the final list of approved items as the Procurement Schedule by majority vote. If additional products or services are offered by ~~qualified persons~~ individuals or agencies, the Committee may add ~~suitable items~~ products and services to the ~~designated~~ Procurement Schedule by majority vote.

304:10-1-8. Grievances

(a) **Filing a protest or grievance.** Any party who is aggrieved may file a written protest or grievance with the Chairperson of the Committee within fifteen (15) days of the aggrieved action.

(b) **Investigation of protest or grievance.** The Chairperson may assign a protest or grievance to a subcommittee to investigate and make recommendations to the Committee for resolving the grievance.
(c) **Protest process.** All protests shall be handled in accordance with the provisions of the Administrative Procedures Act. ~~which is set forth in 75 O.S. 1991, Section 250 et seq~~. [75 O.S., Section 250 et seq.]
(d) **Committee response to protest or grievance.** The Committee shall respond in writing to the protesting or grieving party within ~~a reasonable time~~ ninety (90) days of receipt of the protest or grievance.

304:10-1-10. Meetings
(a) **Number of regular meetings.** The Committee shall conduct a minimum of six meetings per year, in compliance with the Open Meeting ~~Law~~ Act. The schedule for regular meetings will be adopted at the last regular meeting of each calendar year. ~~The schedule for the meetings of the upcoming year must be filed with the Secretary of State by December 15th~~.
(b) **Special meetings.** Special meetings shall be called by the Committee Chairperson.
(c) **Quorum.** A majority of all current members of the Committee shall constitute a quorum.
(d) **Request for notices of meeting.** Upon written request, the Committee Vice-Chairperson shall notify any person, agency or contractor, at least ten days prior to meeting dates, and shall make available the minutes of all meetings.

304:10-1-11. Reports
(a) **Failure to provide reports or documentation.** Any reports or documentation requested from an individual or agency by the Committee through the ~~Contracting Officer~~ contracting officer, shall be completed within thirty (30) days of the date requested. The Committee ~~shall have the right to~~ may cancel contracts of otherwise qualified ~~severely disabled~~ individuals or ~~qualified nonprofit~~ agencies who fail to ~~comply~~ provide reports, documentation or information required by utilization terms of a contract.
(b) **Sales to political subdivisions other than the state.** An individual or agency shall provide a quarterly report of purchases made by a political subdivision, excluding state agencies, from a contract the Committee awards. The report shall include:
(1) the name and address of each political subdivision;
(2) total amount of sales made to each political subdivision.
(c) **Notice of contract cancellation.** The Committee shall direct the contracting officer to send written notice to an individual or agency at least thirty days prior to the cancellation date of a contract pursuant to subsection (a) of this section.

304:10-1-12. Contract levy
(a) **Payment due date.** The percentage of the acquisition price for products or services as mandated by 74 O.S., Section 3004.1 shall be paid no less than quarterly to the Department of Central Services.
(b) **Delinquent accounts.** State agencies that are delinquent sixty (60) days or more with payment to the Department shall be considered in arrears. Written notice of the delinquency and outstanding balance will be sent to the agency appointing authority.

[OAR Docket #03-2037; filed 6-5-03]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 4. CERTIFICATE OF NEED HEARINGS

[OAR Docket #03-1036]

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INCORPORATION BY REFERENCE:
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ANALYSIS:
The proposed amendments establish a process for review of construction plans after approval of a Certificate of Need. The process allows for submission of preliminary and final plans, and establishes deadlines for review by the Department. The amendments are proposed to comply with Section 2 of Enrolled House Bill No. 2604 of the Second Session of the 48th Oklahoma Legislature.
CONTACT PERSON:
Darlene Simmons, Director, Health Facility Systems, Protective Health Services, telephone: 405-271-6868; electronic mail: darlene@health.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

310:4-1-11. Effectiveness of issued Certificates of Need

No Certificate of Need shall be issued to any person other than the person making application for same. No Certificate of Need may be transferred in whole or part to another person. Any transfer of a Certificate of Need renders the certificate invalid.

(1) The review process for plan review is as follows and shall not exceed a total time of twelve (12) months from preliminary or initial plan submittal to include approval by the Department. A plan submittal which does not satisfy requirements for approval within twelve (12) months shall render the certificate of need void.

(A) Preliminary plans and outline specifications shall be submitted to the Department within six (6) months after approval of a Certificate of Need. The plans and specifications shall include sufficient information to establish the following: scope of project; project location; required fire-safety and exiting criteria; building-construction type, compartmentation showing fire and smoke barriers, bed count and services; the assignment of all spaces, areas, and rooms for each floor level, including the basement.

(B) A proposed construction document shall be submitted that includes final drawings and specifications adequate for proposed contract purposes. All final plans and specifications shall be appropriately sealed and signed by an architect registered by the State of Oklahoma. All construction modifications of approved documents are subject to review and approval, and shall be submitted timely.

(C) All construction project submittals shall be reviewed and approved or disapproved within 30 calendar days after receipt by the Department.

(~~1~~2) Commencement of construction for a new or relocated facility, or for an addition to an existing facility, shall be evidenced by the following:

(A) a building permit, if one is required by local government;

(B) proof of excavations for foundations, footings or pilings; and

(C) proof of an incurred financial obligation in the form of an invoice for the excavation work, dated not later than the required construction start date.

(~~2~~3) For a new or relocated facility, the Department shall visit the new or relocated facility site. The applicant shall agree to be present or represented at the site at the time of the visit.

(~~3~~4) For a construction project which does not involve the addition of space, the start of construction shall be demonstrated with a building permit, if one is required locally, and an invoice for construction work done at the facility.

(~~4~~5) Completion of a facility structure or modification shall include at least the completion of exterior walls, all interior load-bearing members, and the facility roof. The Department shall visit the facility site within fifteen (15) working days after receiving a written request from the applicant to confirm the completion of the structure.

[OAR Docket #03-1036; filed 5-28-03]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 105. VITAL STATISTICS

[OAR Docket #03-1037]

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Subchapter 1. Purpose, Forms and Fees
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ANALYSIS:
The fee increase is established to maintain conformity in the Vital Records System and to maintain a fee system for the issuance of birth records that is consistent with the average nationwide fee schedule.
CONTACT PERSON:
John Burks, Sr., State Registrar, (405) 271-2224

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. PURPOSE, FORMS AND FEES

310:105-1-3. Fees for services and certified copies

Except as otherwise provided in law or regulation, the following schedule of fees is adopted for services provided, certified copies of Vital Records, or for a search of files when no copy is made:

(1) Search of files and issuance of one (1) certified copy if record is found:

(A) Birth Certificates - ~~$5.00~~$10.00; additional certified copies requested - ~~$5.00~~$10.00 per copy.

(B) Death Certificates - $10.00; additional certified copies requested - $10.00 per copy.

(2) Delayed Registration:

(A) Initial search of files - ~~$5.00~~$10.00

(B) Certified copies after establishment of delayed registration - ~~$5.00~~$15.00 ($15.00 fee includes a $5.00 processing fee and credit for initial $10.00 search fee.)

(3) Birth record substitution:

(A) Adoptions:

(i) Search of records - ~~$5.00~~$10.00

(ii) Certified copy after substitution - ~~$5.00~~$15.00 ($15.00 fee includes a $5.00 processing fee and credit for initial $10.00 search fee.)

(B) Legitimations:

(i) Search of records - ~~$5.00~~$10.00

(ii) Certified copy after substitution - ~~$5.00~~$15.00 ($15.00 fee includes a $5.00 processing fee and credit for initial $10.00 search fee.)

(C) Certificate of Foreign Born:

(i) Search of records - ~~$5.00~~$10.00

(ii) Certified copy after preparation of and/or substitution of record - ~~$5.00~~$15.00 ($15.00 fee includes $5.00 processing fee and credit for initial $10.00 search fee.)

(4) Amendments to Vital Records and Paternities:

(A) Initial search of birth records - ~~$5.00~~$10.00

(B) Certified copies of birth certificates after amended or paternity completed - ~~$5.00.~~ $15.00 ($15.00 fee includes $5.00 processing fee and credit for initial $10.00 search fee.)

(C) Search of records and certified copies of amended death certificates - $10.00.

(5) Valid, legal photo I.D. by applicant or individual attesting for applicant required for issuance of birth, death, and stillbirths.

[OAR Docket #03-1037; filed 5-28-03]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 205. ALARM INDUSTRY

[OAR Docket #03-1039]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. License Requirements
310:205-3-2 [AMENDED]
310:205-3-3 [AMENDED]
310:205-3-4 [AMENDED]
310:205 Appendix A [REVOKED AND REENACTED]
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Subchapter 3. License Requirements
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310:205 Appendix A [REVOKED AND REENACTED]
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"n/a"
ANALYSIS:

The proposal amends Subchapter 3 of the present Alarm Industry Regulations. The current rule requires the company to place the state issued company license number on all letterhead stationery, business cards, bids, estimates, printed advertisements, yard signs and in all electronic media advertisements. The proposed change requires the state issued license number to be included on invoices, statements, contracts and vehicles where the company name is displayed.

"Burglar alarm company manager" as defined by 310:205-1-2 of the Alarm Industry Regulations "means an officer or manager of a company, corporation, partnership or proprietorship, with the authority to bind the company by contract, who shall provide direct supervision over the function and local operations of such alarm industry business or a branch thereof." "Fire alarm company manager" has a similar definition. 310:205-3-3(C) states, "Each manager shall be responsible for all activities of the company with the State of Oklahoma." The industry recognizes that it is virtually impossible for the alarm company managers who are the licensed company manager for as many as eight (8) companies to competently meet the intent of the current Alarm Industry Rules and the Alarm Industry Act. The proposed rule recommended by the Oklahoma Burglar and Fire Alarm Association and approved by the Oklahoma Automatic Fire Alarm Association makes the current regulations enforceable by requiring burglar and fire alarm company managers to meet one of two options: (1) be the single alarm company manager for only one company for which he is a full time employee, or (2) have a majority interest in all of the companies for which he is the manager. The proposed rule also allows burglar and fire alarm companies to operate branch offices across the state and requires the company to keep information about the branch offices current with the Department.

Some alarm companies program the alarm system using an installer's lockout code to prevent unauthorized access to the alarm system. Consumers and alarm companies have complained that some alarm companies will not remove the code from customer owned equipment after their contract for monitoring services has expired. If this code is not removed, another alarm company cannot reprogram the system for monitoring by the new company, rendering the system worthless. This rule requires alarm companies to remove their lockout code from systems that are customer owned when requested to do so.

Citizens in the state of Oklahoma have complained that some alarm contracts contain a "consumer trap". Most alarm contracts automatically renew. In order to cancel, some contracts require the customer to notify the alarm company ninety days prior to the termination of contract (or any renewal period thereafter) or the contract is automatically renewed for one or more years. The proposed rules are intended to help the consumer understand the terms of the contract by requiring that all of the terms of the contract standout on the face of the contract or in a separate disclosure statement. This rule also requires the licensed company representative who sold the agreement to write his name and state issued license number on the contract/agreement.

The National Training School who provides certification for unlimited fire alarm technicians and managers has upgraded their training programs to meet current requirements. The proposed rule makes changes to the rules to allow the Department to accept the new NTS/NBFAA certifications as approved by the Alarm Industry Committee.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A) WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 3. LICENSE REQUIREMENTS

310:205-3-2. License fees, period and display, and examination alternatives or prerequisites

(a) **Initial license fees.** The following fees apply to alarm industry licensure:

(1) Alarm Company License - $200.00; license issued after February 1, but before the end of the State fiscal year - $125.00

(2) Alarm Company Manager - $50.00

(3) Alarm Technician/Alarm Technician Trainee - $25.00

(4) Alarm Salesperson - $25.00

(5) Re-Examination, Per Attempt - $25.00

(b) **License period.**

(1) A license shall expire on June 30, 1991, and each year thereafter, and may be renewed without penalty during the month of July. Beginning on August 1, a license may be renewed by paying double the renewal fee.

(2) Initial application for Alarm Technician Trainees shall be submitted within three (3) working days of employment to the Department. This registration shall be contingent on a security background investigation. All individuals employed for any length of time shall have application and finger prints submitted to employer prior to employment.

(3) A license which has been expired for more than two (2) years shall not be renewed. An individual may obtain a valid license by successful completion of the appropriate examination and/or certification and other licensure requirements.

(c) **Re-examination.** Any applicant initially failing to pass the appropriate examination, if required, shall not be permitted to take the same category examination for at least thirty (30) days, and thereafter any such applicant failing to pass the examination shall not be permitted to take a subsequent examination for at least ninety (90) days.

(d) **Company license display.** The state issued company license number shall be placed on all letterhead stationery, business cards, <u>invoices, statements, contracts,</u> bids, estimates and printed advertisements, and shall be included in electronic media advertisements. Decals and yard signs shall display the state issued company license number. <u>The state issued license number shall be located on all vehicles that display the alarm company name.</u>

(e) **Personal license display.** Each Manager, Technician, Technician Trainee, or Salesperson, shall possess the state issued card any time the person is working. The card shall be shown when requested.

(f) **Certification.**

(1) An applicant for an alarm license may submit certification or proof of passing the appropriate examination(s) from a nationally recognized organization as a prerequisite to, or as a substitute for, an alarm examination administered by the Department as provided for in Sections 310:205-3-3, 310:205-3-4 or 310:205-3-7 of this Chapter.

(2) In order to qualify, certification submitted by an applicant for alarm licensure shall be from an organization that issues national certification to individuals in the alarm industry and is based on successful completion of an examination which determines if the applicant is sufficiently knowledgeable in alarm systems or technical subfields of alarm systems to plan, install, repair, alter, maintain, service, sell, inspect, advertise, and monitor alarm systems or technical subfields of alarm systems according to nationally acceptable code standards.

(3) The Department shall accept certification from an organization if the certification standards have been verified by the Alarm Industry Committee to include that the certifying organization:

(A) shall conduct certification activities which are national in scope;

(B) shall be administratively independent in matters pertaining to certification. Administratively independent means that all policy decisions relating to certification matters are the sole decision of the certifying organization and not subject to approval by any other body or the membership of an affiliated body, and that all financial matters related to the operation of the certifying organization are segregated from those of the parent or any affiliated organization;

(C) shall demonstrate that the organization staff possesses the knowledge and skills necessary to conduct the certification or recertification programs or that non-staff consultants and professionals are available to sufficiently supplement staff knowledge and skills;

(D) shall use reliable testing mechanism(s) to evaluate individual knowledge that is objective, fair to all candidates, job-related, and based on the knowledge and skills needed to function in the alarm industry or technical subfield of the alarm industry;

(E) shall establish pass/fail levels that protect the public determining if the applicant is sufficiently knowledgeable in alarm systems to design, install, service, and sell alarm systems or technical subfields of the alarm industry that meet applicable code standards, and that are generally acceptable in the psychometric community as being fair and reasonable; and

(F) shall publish and make available to the Department general descriptive materials on the procedures used in examination construction and validation, all eligibility requirements and determination procedures, and the procedures for examination administration including exam dates and locations, fees, reporting of results, recertification requirements, and grievance or appeals procedures.

310:205-3-3. Burglar alarm license requirements

Licensing requirements for the burglar alarm industry are as follows:

(1) **Company.**

(A) Each burglar alarm company shall employ an Oklahoma licensed burglar alarm company manager. After January 1, 2003, all burglar alarm companies applying for initial licensure and/or any burglar alarm company which changes its burglar alarm company manager or ownership shall comply with section 310:205-3-3(2)(C) of this chapter. After July 1, 2003, all burglar alarm companies will comply with section 310:205-3-3(2)(C) of this chapter.

(B) A licensed burglar alarm technician or manager shall be on site for any work being performed.

(C) A burglar alarm company may operate branch offices provided each branch office has the same name and ownership of the parent company. The company will notify the department of the physical address and telephone number for each branch office and will keep this information current with the department.

(D) The alarm company shall remove access and "lockout" codes from the alarm system after the legal termination of the monitoring agreement on customer-owned equipment upon the receipt of a written request from the owner to remove such codes.

(E) The customer shall be given a copy of all documents at the time of the sale and the company shall maintain a copy of all of the documents. All monitoring and/or lease contracts shall include, as a minimum, the following information: the initial term of the agreement, the renewal term of the agreement, the terms for notification of cancellation of the agreement as well as the costs involved of all the terms of the agreement, the company name and the state issued license number, the sales representative's name and state issued license number, and the customer's name and address. The minimum information described above shall be disclosed in one of the following two ways:

(i) Printed on the front or face of the written contract in not less than twelve (12) point bold type and at least two (2) points larger than the rest of type size of the remaining text in the written contract; or,

(ii) On a separate disclosure form appended to the written contract and dated, and signed by the customer and the licensed alarm company representative who made the sale.

(2) **Manager.**

(A) Each application for licensure as a manager shall include verification of at least eight thousand (8,000) hours of experience in the burglar alarm business.

(B) Each licensed burglar alarm company manager shall pass an examination administered by the Department which qualifies him and determines if the applicant is sufficiently knowledgeable in burglar alarms to plan, install, repair, alter, maintain, service, sell, inspect, advertise, and monitor burglar alarm systems according to acceptable code standards.

(C) Each licensed burglar alarm company manager shall be responsible for all activities of the burglar alarm company within the State of Oklahoma.

(D) Each licensed burglar alarm company manager shall have a security background verification.

(E) A burglar alarm company manager shall be the burglar alarm company manager of only one burglar alarm company, where he or she must be a full time employee; otherwise a burglar alarm company manager shall hold majority ownership in any burglar alarm company for which he or she is the licensed burglar alarm company manager.

(3) **Technician.**

(A) Each technician shall work for a licensed burglar alarm company and under the supervision of a burglar alarm company manager.

(B) Each technician shall pass an examination administered by the Department which determines if the applicant is sufficiently knowledgeable in burglar alarms to design, install, service, and sell burglar alarm systems that meet applicable code standards when installed; or in lieu of examination by the Department, an applicant for a license as a burglar alarm technician shall submit proof of Level 1 certification by NBFAA/NTS or proof of certification by another organization that offers national certification to individuals in the burglar alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter.

(C) Each technician shall have a security background verification.

(4) **Technician trainee.**

(A) A technician trainee shall be employed by a licensed Oklahoma burglar alarm company.

(B) A technician trainee shall work under the direct supervision of a licensed burglar alarm company manager or a burglar alarm technician.

(C) There shall be no more than three (3) technician trainees per burglar alarm company manager or burglar alarm technician per job site.

(D) Each technician trainee shall have security background verification.

(5) **Salesperson.**

(A) Each salesperson shall work for a licensed burglar alarm company and under the supervision of a burglar alarm company manager.

(B) Each salesperson shall pass an examination administered by the Department which determines if the applicant is sufficiently knowledgeable in burglar alarms to design and sell burglar alarm systems that meet applicable code standards when installed; or in lieu of examination by the Department, an applicant for a license as a burglar alarm salesperson may submit proof of Level 1 certification by NBFAA/NTS or proof of certification by another organization that offers national certification to individuals in the burglar alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter.

(C) Each salesperson shall have a security background verification.

310:205-3-4. Fire alarm license requirements

Licensing requirements for the fire alarm industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed fire alarm company manager. After July 1, 2002, all fire alarm companies applying for initial licensure or any fire alarm company which changes managers or ownership shall comply with section 310:205-3-4 (2)(H) of this chapter. After July 1, 2003, all fire alarm companies will comply with section 310:205-3-4 (2)(H) of this chapter.

(B) A licensed fire alarm technician or manager shall be on site for any work being performed.

(C) A company whose manager only holds a limited fire alarm manager license shall be issued a limited fire alarm company license.

(D) A company whose manager holds an unlimited fire alarm manager license shall be issued an unlimited fire alarm company license.

(E) A company with a limited fire alarm company license shall only offer to, or engage in the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarms for use in Residential Building and manufactured housing.

(F) A company with an unlimited fire alarm company license may offer to, or engage in the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarm systems for any residential or commercial use.

(G) Any equipment installed by a company as part of a fire alarm system shall be listed by Underwriters Laboratories, Factory Mutual or any other nationally recognized testing entities for such purpose.

(H) A fire alarm company may operate branch offices provided each branch office has the same name and ownership of the parent company. The company will notify the department of the physical address and telephone number for each branch office and will keep this information current with the department.

(I) A properly licensed fire alarm technician or manager of a properly licensed alarm company shall perform the initial testing, inspection, or certification of the entire fire alarm system, and that licensed alarm company shall assume full responsibility for the installation of the alarm system.

(2) **Manager.**

(A) Each application for licensure as a fire alarm manager shall include verification of at least eight thousand (8,000) hours of experience in the fire alarm business.

(B) Each manager shall pass an examination administered by the Department which qualifies him and determines if the applicant is sufficiently knowledgeable in fire alarms to plan, install, repair, alter, maintain, service, sell, inspect, advertise, and monitor fire alarm systems according to acceptable code standards.

(C) Each licensed company manager shall be responsible for all activities of the company within the State of Oklahoma.

(D) Each licensed company manager shall have a security background verification.

(E) A manager with a limited fire alarm manager license shall only offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarm systems for use in Residential Building and manufactured housing.

(F) A manager with an unlimited fire alarm manager license may offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarm systems for any residential or commercial use.

(G) An applicant for initial licensure as, or renewal of, an unlimited, fire alarm manager license shall submit proof of NICET II, technical subfield Fire Alarm Systems, certification, NBFAA/NTS Level IIB certification or certification by another organization that offers national certification to individuals in the fire alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter. After July 1, 2002, an applicant for initial licensure as an unlimited fire alarm manager license shall submit proof of NICET II, technical subfield Fire Alarm Systems, certification; or NBFAA/NTS Level IIB Fire Systems

Installation Standards, certification NBFAA/NTS Level IIB Controls & Communications, certification and Level IIA Advanced Electronics, certification; or NBFAA/NTS Level IIB Fire Systems Installation Methods and Level IIA Advanced Electronics, certification; or proof of certification by another organization which offers national certification to individuals in the fire alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter. After July 1, 2003, an applicant for initial licensure as, or renewal of, an unlimited fire alarm manager license shall submit proof of NICET II, technical subfield Fire Alarm Systems, certification; or NBFAA/NTS Level IIB Fire Systems Installation Standards, certification, NBFAA/NTS Level IIB Controls & Communications, certification and Level IIA Advanced Electronics, certification; or NBFAA/NTS Level IIB Fire Systems Installation Methods and Level IIA Advanced Electronics, certification or proof of certification by another organization which offers national certification to individuals in the fire alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter.

(H) A fire alarm company manager ~~will have a 50% or greater ownership in the company for which he is the manager or shall be the manager of only one company where he is a full time employee of the company.~~ shall be the fire alarm company manager of only one fire alarm company, where he or she must be a full time employee; otherwise a fire alarm company manager shall hold majority ownership in any fire alarm company for which he or she is the licensed fire alarm company manager.

(3) **Technician.**

(A) Each technician shall work for a licensed fire alarm company and under the supervision of a fire alarm company manager.

(B) Each technician's application shall include verification of experience in the fire alarm industry by a licensed fire alarm company manager.

(C) Each technician shall pass an examination administered by the Department which determines if the applicant is sufficiently knowledgeable in fire alarms to design, install, service, and sell fire alarm systems that meet applicable code standards when installed.

(D) Each technician shall have a security background verification.

(E) Each technician shall perform or supervise only fire alarm work within the fire alarm license category for which the fire alarm company is licensed.

(F) An initial applicant for a limited technician license shall be issued a limited license after successful completion of the appropriate technician examination; or in lieu of examination by the Department, an applicant for a license as a limited fire alarm technician shall submit proof of Level 1 certification by NBFAA/NTS or proof of certification by another organization that offers national certification to individuals in the limited fire alarm industry in accordance with subsection 310:205-3-2(f) of this chapter.

(G) A technician with a limited technician license shall only install, repair, alter, maintain, service, sell, or inspect fire alarm systems for use in Residential Building.

(H) A technician with an unlimited technician license may install, repair, alter, maintain, service, sell, or inspect fire alarm systems for any residential or commercial use.

(I) Beginning July 1, 2000, an applicant for an initial unlimited technician license, or an applicant for renewal of an unlimited technician license, may be issued an unlimited technician license after successful completion of the appropriate technician examination and submission of proof of passing the examinations required for NICET II certification, subfield Fire Alarm Systems; or proof of NBFAA/NTS Level IIB Fire Systems Installation Standards, NBFAA/NTS Level IIB Controls and Communications, certification, and NBFAA/NTS Level IIA Advanced Electronics, certification; or NBFAA/NTS Level IIB Fire Systems Installation Methods and Level IIA Advanced Electronics, certification; or proof of certification by another organization which offers national certification to individuals in the fire alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter.

(4) **Technician trainee.**

(A) A technician trainee shall be employed by a licensed Oklahoma fire alarm company.

(B) A technician trainee shall work under the direct supervision of a licensed fire alarm company manager or a fire alarm technician.

(C) There shall be no more than three (3) technician trainees per fire alarm company manager or fire alarm technician per job site.

(D) Each technician trainee shall have a security background verification.

(E) Each technician trainee shall only install, repair, alter, maintain, service, sell, or inspect fire alarm systems within the fire alarm license category for which the supervisor is licensed.

(5) **Salesperson.**

(A) Each salesperson shall work for a licensed fire alarm company and under the supervision of a fire alarm company manager.

(B) Each salesperson shall pass an examination administered by the Department which determines if the applicant is sufficiently knowledgeable in fire alarms to design and sell fire alarm systems that meet applicable code standards when installed.

(C) Each salesperson shall have a security background verification.

(D) An applicant for an initial limited salesperson license shall be issued a limited license after

successful completion of the appropriate salesperson examination; or in lieu of examination by the Department, an applicant for a license as a limited fire alarm salesperson shall submit proof of certification by NBFAA/NTS or proof of certification by another organization that offers national certification to individuals in the limited fire alarm industry in accordance with subsection 310:205-2-3(f) of this chapter.

(E) Each salesperson shall design and sell only fire alarm systems in the license category for which the fire alarm company is licensed.

(F) An initial applicant for an unlimited salesperson license shall be issued an unlimited license after successful completion of the appropriate salesperson examination or submission of proof of NICET II certification, subfield Fire Alarm Systems, or NBFAA/NTS Practical Fire Alarm certification or certification by another organization which offers national certification to individuals in the fire alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter.

APPENDIX A. TABLE OF ALARM INDUSTRY LICENSE REQUIREMENTS [REVOKED]

APPENDIX A. TABLE OF ALARM INDUSTRY LICENSE REQUIREMENTS [NEW]

License Category	Alarm Company Manager	Alarm Technician	Alarm Technician Trainee	Alarm Salesperson
Burglar Alarm Company	4. Eight Thousand Hours Experience 5. Exam* 6. Security Verification	3. Exam* or NBFAA/NTS Level I or Other National Certification 4. Security Verification	Security Verification	3. Exam* or NBFAA/NTS Level I or Other National Certification 4. Security Verification
Limited Fire Alarm Company (Residential Building & manufactured housing Only)	4. Eight Thousand Hours Experience 5. Exam* 6. Security Verification	4. Verified Experience 5. Exam* or NBFAA/NTS Level I or Other National Certification ~~,~~ 6. Security Verification	Security Verification	3. Exam* or NBFAA/NTS Level I Certification 4. Security Verification
Unlimited Fire Alarm Company (All buildings)	5. Eight Thousand Hours Experience. 6. Exam* 7. NICET II technical subfield Fire Alarm Systems or **(a)** NBFAA/NTS Level IIB Fire Systems Installation Standards **and (b)** Controls & Communications **and (c)** Advanced Electronics or NBFAA/NTS Level IIB Fire Systems Installation Methods or Other National Certification. 8. Security Verification	5. Verified Experience 6. Exam* 7. NICET II, subfield Fire Alarm Systems or **(a)** NBFAA/NTS Level II Fire Systems Installation Standards, **(b)** Controls & Communications **and (c)** Advanced Electronics or NBFAA/NTS Level IIB Fire Systems Installation Methods or Other National Certification 8. Security Verification	Security Verification	3. Exam* or NICET II or NBFAA/NTS Practical Fire Alarm or Other National Certification, 4. Security Verification
Monitoring Company	Security Verification	License or Register Not Applicable	License or Register Not Applicable	License or Register Not Applicable
Vehicle Alarm Company	Security Verification	License or Register Not Applicable	License or Register Not Applicable	License or Register Not Applicable

License Category	Alarm Company Manager	Alarm Technician	Inspector
Limited Fire Sprinkler Company	NICET II, technical subfield of automatic sprinkler systems layout	National Fire Sprinkler Association Certification for residential multipurpose piping systems	N/A
Unlimited Fire Sprinkler Company	NICET Level Three or Other National Certification or Registered Professional Engineer	3. Verified Experience 4. Exam*	July 1, 2002 Sprinkler Manager or Sprinkler Technician License. After July 1, 2004 NICET Level II certification sub-field of Inspection & Testing of Water-Based Systems After July 1, 2005 NICET Level III certification or certification sub-field of inspection & Testing of water-Based Systems

*State qualifying examination given by OSDH.

[OAR Docket #03-1039; filed 5-28-03]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 400. LICENSED MARITAL AND FAMILY ~~THERAPIST REGULATIONS~~ THERAPISTS

[OAR Docket #03-1040]

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ANALYSIS:
The amendments to Subchapter 5 provide for requirements regarding assessments, interviews, consultations, custody evaluations, reports, or expert testimony made by Licensed Marital and Family Therapists and candidates for licensure as Licensed Marital and Family Therapists. The amendments to Subchapter 17 provide for maintaining the confidentiality of complaints as well as the identity of the person(s) filing the complaint.
CONTACT PERSON:
Nena West, Director, Professional Counselor Licensing, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-6030; facsimile: (405) 271-1918; electronic mail: nenaw@health.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 5. RULES OF PROFESSIONAL CONDUCT

310:400-5-3. Professional competence and integrity

(a) LMFTs are dedicated to maintaining high standards of professional competence and integrity.

(b) LMFTs are presumed to have violated high standards of integrity or competence if they:

(1) are convicted of a felony;

(2) are convicted of a misdemeanor (related to their qualifications or functions);

(3) engage in conduct which could lead to conviction of felonies, or misdemeanors related to their qualifications or functions;

(4) have their licenses or certificates suspended or revoked; or

(5) are no longer competent to practice marital and family therapy because they are impaired due to physical or mental causes or the abuse of alcohol or other substances.

(c) LMFTs shall seek appropriate professional assistance for their own personal problems or conflicts that are likely to impair their work performance and their clinical ~~judgment~~judgment.

(d) LMFTs, as teachers and supervisors, are dedicated to maintaining high standards of scholarship and presenting information that is accurate.

(e) LMFTs shall remain abreast of new developments in family therapy knowledge and practice through both educational activities and clinical experiences.

(f) LMFTs shall not engage in sexual or other harassment or exploitation of clients, students, trainees, supervisees, employees, colleagues, research subjects, or actual or potential witnesses or complainants in ethical proceedings.

(g) LMFTs shall not attempt to diagnose, treat, or advise on problems outside the recognized boundaries of their competence.

(h) LMFTs shall prevent the distortion or misuse of their clinical and research findings.

(i) LMFTs are aware that, because of their ability to influence and alter the lives of others, they must exercise special care when making public their professional recommendations and opinions through testimony or other public statements.

(j) LMFTs shall protect the welfare of the client by storing and/or destroying, when appropriate, client files.

(k) LMFTs shall not, under normal circumstances, offer professional services to clients concurrently receiving services from another professional except with the knowledge of the professional.

(l) LMFTs shall display their original, current license certificate in a prominent place in the primary location of their practice.

(m) LMFTs shall keep the Department updated regarding changes in mailing address, phone number and place of employment. Failure to do so may place the license in jeopardy due to missed renewal notices and other important communications.

(n) LMFT candidates and licensees may not perform forensic services, which include, but are not limited to, assessments, interviews, consultations, custody evaluations, reports, or expert testimony, except under the following conditions:

(1) LMFT candidates and licensees must demonstrate competence by certification, education or experience in the subject matter relevant to the issues in question and must certify in writing that they have complied with all applicable provisions of the Rules and Regulations described in Sections 310:400-5-1(i), 310:400-5-2(d) and 310:400-5-3(e),(g),(h),(i), and (n) of this Chapter.

(2) LMFT candidates and licensees shall prepare a written report and include a separate section therein containing the author's findings and conclusions relative to their analysis. Additionally, the candidate or licensee must provide to the person who is the subject of their forensic analysis, and such other person or persons who may be directly adversely affected by the findings and conclusions made by the candidate or licensee, a copy of the written report at no cost to the person or persons entitled to receive a copy of the written report pursuant to this section. The copy(ies) must be provided at least ten (10) days prior to the report's publication unless otherwise required by law or court order.

(3) LMFT candidates and licensees shall maintain written records, in a form or format that is legible or readable to third persons, of all contacts and information received and used in the preparation of their report.

(4) LMFT candidates and licensees must conduct a thorough examination of the person who is the subject of their forensic analysis, and such other person or persons who may be directly adversely affected by the findings and conclusions made by the candidate or licensee, and must utilize a "face-to-face" interview of the person who is the subject of the forensic analysis, or any other such person who may be directly adversely affected by the findings and conclusions made by the candidate or licensee.

(5) LMFT candidates and licensees must base their findings and conclusions only upon information gained by appropriate and lawful means.

(6) LMFT candidates and licensees who provide counseling services for a client shall limit their role to fact witness in forensic matters involving that client, unless otherwise required by law or court order.

SUBCHAPTER 17. ENFORCEMENT

310:400-17-2.1. Complaints

(a) Any person may file a complaint against an LMFT or a person practicing marital and family therapy. A person wishing to report a complaint or alleged violation against a licensee or person practicing marital and family therapy may notify the Department in writing, by telephone, or by a personal visit. The Department will determine whether the complaint alleges a possible violation of the Act or this chapter. The Department may present the complaint to the Advisory Board for consultation.

(b) LMFTs are encouraged to file complaints when they have knowledge of other LMFTs who have violated the LMFT Act or regulations.

(c) The complaint and the identity of the complainant shall be confidential and shall not be available for public inspection, until such time that the complaint becomes a part of the public record of an administrative hearing.

[OAR Docket #03-1040; filed 5-28-03]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 403. LICENSED BEHAVIORAL PRACTITIONERS

[OAR Docket #03-1041]

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Subchapter 7. Rules of Professional Conduct
310:403-7-2 [AMENDED]
Subchapter 15. Supervised Experience Requirement
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ANALYSIS:
The amendments to Subchapter 7 provide for requirements regarding assessments, interviews, consultations, custody evaluations, reports, or expert testimony made by Licensed Behavioral Practitioners and candidates for licensure as Licensed Behavioral Practitioners. The amendments to Subchapter 15 provide for supervision requirements to be completed by LBP applicants who apply for licensure after December 31, 2001, after the grandfathering period. The supervision requirement is established in the LBP Act.
CONTACT PERSON:
Nena West, Director, Professional Counselor Licensing, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-6030; facsimile: (405) 271-1918; electronic mail: nenaw@health.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 7. RULES OF PROFESSIONAL CONDUCT

310:403-7-2. Competence

(a) **Behavioral health services.** LBPs shall practice only within the boundaries of their competence, based on their education, training, supervised experience, state and national professional credentials, and appropriate professional experience.

(b) **Testing.** LBPs shall know the limits of their competence and shall therefore perform only those testing and assessment services for which they have been trained. LBPs shall be familiar with related standardization and proper application and security of any technique utilized. LBPs using computer-based test interpretations shall be trained in the construct being measured and the specific instrument being used prior to using this type of computer application. LBPs shall ensure the proper use of assessment techniques by persons under their supervision.

(c) **Specialty.** LBPs shall not represent themselves as specialists in any aspect of behavioral health services, unless so designated by the Board.

(d) **Research.**

(1) LBPs shall plan, design, conduct, and report research only in a manner consistent with current, pertinent ethical principles put forth in the "Ethical Standards and Code of Conduct" governing Northamerican Association of Masters in Psychology (NAMP), federal and state laws, rules, and scientific standards governing research with human subjects.

(2) The research principles of the NAMP "Ethical Standards and Code of Conduct" are as follows:

(A) Principle 8: Research with Human and Animal Participants

(i) 8.1 Relevant research. The Masters in Psychology shall only undertake research pertaining to human subjects when such research contributes to psychology as a science and humankind in general. On the premise of this forethought, one conducts the research with the utmost concern for the dignity and welfare of their research participants.

(ii) 8.2 Informed consent in research. The Masters in Psychology shall make certain that research participants fully understand the conditions and comprehend the general nature of the research when requesting informed consent. Research that involves deception on the part of the researcher should in general be avoided, unless the perceived outcomes far exceed any perceived minimal adverse reactions and in either case a debriefing session suitable to the research will always be conducted.

(B) Principle 10: Teaching, Training & Research Publication

(i) 10.1 Candidness in research techniques. The Masters in Psychology shall make every effort to make available any and all appropriate materials supporting research materials and to readily disseminate results for replication.

(ii) 10.2 Proper supervision. The Masters in Psychology shall maintain proper supervision of their employees, subordinates, supervisees, and research assistants in the delegation of duties and shall make every ethically appropriate effort to ensure that only those individuals competent to perform such services do so.

(e) **Impairment.** LBPs shall not offer or render professional services when their physical, mental or emotional problems are likely to harm clients or other associates. LBPs shall seek assistance for such problems, and, if necessary, limit, suspend, or terminate their professional responsibilities.

(f) **Evaluations.** LBP candidates and licensees may not perform forensic services, which include, but are not limited to, assessments, interviews, consultations, custody evaluations, reports, or expert testimony, except under the following conditions:

(1) LBP candidates and licensees must demonstrate competence by certification, education or experience in the subject matter relevant to the issues in question and must certify in writing that they have complied with all applicable provisions of the Rules and Regulations described in Sections 310:403-7-1, 310:403-7-2(a)(f), and 310:403-7-7(f)(1)(2)(3) of this Chapter.

(2) LBP candidates and licensees shall prepare a written report and include a separate section therein containing the author's findings and conclusions relative to their analysis. Additionally, the candidate or licensee must provide to the person who is the subject of their forensic analysis, and such other person or persons who may be directly adversely affected by the findings and conclusions made by the candidate or licensee, a copy of the written report at no cost to the person or persons entitled to receive a copy of the written report pursuant to this section. The copy(ies) must be provided at least ten (10) days prior to the report's

publication unless otherwise required by law or court order.

(3) LBP candidates and licensees shall maintain written records, in a form or format that is legible or readable to third persons, of all contacts and information received and used in the preparation of their report.

(4) LBP candidates and licensees must conduct a thorough examination of the person who is the subject of their forensic analysis, and such other person or persons who may be directly adversely affected by the findings and conclusions made by the candidate or licensee, and must utilize a "face-to-face" interview of the person who is the subject of the forensic analysis, or any other such person who may be directly adversely affected by the findings and conclusions made by the candidate or licensee.

(5) LBP candidates and licensees must base their findings and conclusions only upon information gained by appropriate and lawful means.

(6) LBP candidates and licensees who provide counseling services for a client shall limit their role to fact witness in forensic matters involving that client, unless otherwise required by law or court order.

SUBCHAPTER 15. SUPERVISED EXPERIENCE REQUIREMENT

310:403-15-1. Supervised experience

All applicants for licensure after December 31, ~~2004~~2001 shall complete the supervised experience required by the Act before being licensed.

[OAR Docket #03-1041; filed 5-28-03]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 405. LICENSED PROFESSIONAL ~~COUNSELOR REGULATIONS~~ COUNSELORS

[OAR Docket #03-1042]

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ANALYSIS:
The amendments to Subchapter 3 provide for requirements regarding assessments, interviews, consultations, custody evaluations, reports or expert testimony made by Licensed Professional Counselors and candidates for licensure as Licensed Professional Counselors.
CONTACT PERSON:
Nena West, Director, Professional Counselor Licensing, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-6030; facsimile: (405) 271-1918; electronic mail: nenaw@health.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 3. RULES OF PROFESSIONAL CONDUCT

310:405-3-2. Competence

(a) **Counseling.** LPCs shall practice only within the boundaries of their competence, based on their education, training, supervised experience, state and national professional credentials, and appropriate professional experience.

(b) **Testing.** LPCs shall know the limits of their competence and shall therefore perform only those testing and assessment services for which they have been trained. LPCs shall be familiar with related standardization and proper application and security of any technique utilized. LPCs using computer-based test interpretations shall be trained in the construct being measured and the specific instrument being used prior to using this type of computer application. LPCs shall ensure the proper use of assessment techniques by persons under their supervision.

(c) **Specialty.** LPCs shall not represent themselves as specialists in any aspect of counseling, unless so designated by the Board.

(d) **Research.** LPCs shall plan, design, conduct, and report research only in a manner consistent with current American Counseling Association Code of Ethics and Standards of

Practice, pertinent ethical principles, federal and state laws, rules, and scientific standards governing research with human subjects.

(e) **Impairment.** LPCs shall not offer or render professional services when such services are impaired by physical, mental or emotional problems. LPCs shall seek assistance for problems, and, if necessary, limit, suspend, or terminate their professional responsibilities.

(f) **Evaluations.** LPC candidates and licensees may not perform forensic services, which include, but are not limited to, assessments, interviews, consultations, custody evaluations, reports, or expert testimony, except under the following conditions:

(1) LPC candidates and licensees must demonstrate competence by certification, education or experience in the subject matter relevant to the issues in question and must certify in writing that they have complied with all applicable provisions of the Rules and Regulations described in Sections 310:405-3-1, 310:405-3-2(a)(f), and 310:405-3-5(f)(1)(2)(3) of this Chapter.

(2) LPC candidates and licensees shall prepare a written report and include a separate section therein containing the author's findings and conclusions relative to their analysis. Additionally, the candidate or licensee must provide to the person who is the subject of their forensic analysis, and such other person or persons who may be directly adversely affected by the findings and conclusions made by the candidate or licensee, a copy of the written report at no cost to the person or persons entitled to receive a copy of the written report pursuant to this section. The copy(ies) must be provided at least ten (10) days prior to the report's publication unless otherwise required by law or court order.

(3) LPC candidates and licensees shall maintain written records, in a form or format that is legible or readable to third persons, of all contacts and information received and used in the preparation of their report.

(4) LPC candidates and licensees must conduct a thorough examination of the person who is the subject of their forensic analysis, and such other person or persons who may be directly adversely affected by the findings and conclusions made by the candidate or licensee, and must utilize a "face-to-face" interview of the person who is the subject of the forensic analysis, or any other such person who may be directly adversely affected by the findings and conclusions made by the candidate or licensee.

(5) LPC candidates and licensees must base their findings and conclusions only upon information gained by appropriate and lawful means.

(6) LPC candidates and licensees who provide counseling services for a client shall limit their role to fact witness in forensic matters involving that client, unless otherwise required by law or court order.

[OAR Docket #03-1042; filed 5-28-03]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 515. COMMUNICABLE DISEASE AND INJURY REPORTING

[OAR Docket #03-1043]

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RULES:
310:515-1-3. Diseases to be reported immediately [AMENDED]
310:515-1-4. Additional diseases, conditions, and injuries to be reported [AMENDED]
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ANALYSIS:
This rule requires certain diseases be reported to the Oklahoma State Department of Health. Reporting of disease is required by Oklahoma statute, 63 O.S. 1991, Section 1-503. The purpose of disease reporting is to protect the public health.
CONTACT PERSON:
Lauri Smithee, M.E.S., M.S., Director, Communicable Disease Division, Oklahoma State Department of Health, 1000 NE 10th, Oklahoma City, OK 73117-1299, ph (405) 271-4060, fax (405) 271-6680, or e-mail LaurieS@health.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

310:515-1-3. Diseases to be reported immediately

The following diseases must be reported by any health practitioner or laboratory personnel to the Oklahoma State Department of Health by telephone (405-271-4060 or 800-234-5963) or fax (405-271-6680 or 800-898-6734) immediately upon suspicion, diagnosis, or testing. It is acceptable to report by telephone at anytime, including after hours, weekends, and holidays. It is also acceptable to report

by fax during regular office hours (8am through 5pm, Monday through Friday, excluding holidays).

(1) Anthrax (*Bacillus anthracis*).

(2) Bioterrorism - suspected disease.

(~~2~~3) Botulism (*Clostridium botulinum*).

(~~3~~4) Brucellosis (*Brucella* spp.).

~~(4) Cholera (*Vibrio cholerae*).~~

(5) Diphtheria (*Corynebacterium diphtheriae*).

(6) *Haemophilus influenzae* invasive disease.

(7) Hepatitis A (Anti-HAV-IgM +).

(8) Measles (Rubeola).

(9) Meningococcal invasive disease (*Neisseria meningitidis*).

(10) Outbreaks of apparent infectious disease. An outbreak of an apparent infectious disease is a cluster ~~(two (2) or more)~~ of cases from different households of potentially infectious disease of known or unknown etiology. The cases would have a similar clinical syndrome but laboratory testing would be pending or inconclusive. Examples of such outbreaks include but are not limited to a cluster of cases of gastrointestinal illness, respiratory illness, or rash illness of unknown etiology.

(11) Plague (*Yersinia pestis*).

(12) Poliomyelitis.

(13) Rabies.

(14) Smallpox.

(15) Tularemia (*Francisella tularensis*).

(16) Typhoid fever (*Salmonella typhi*).

(17) Viral hemorrhagic fever.

310:515-1-4. Additional diseases, conditions, and injuries to be reported

The following diseases, conditions and injuries must be reported by physicians, laboratories, and hospitals (by infection control practitioners, medical records personnel, and other designees) to the Oklahoma State Department of Health as dictated in the following subsections:

(1) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be telephoned, faxed, or mailed to the Oklahoma State Department of Health (OSDH) within one (1) business day of diagnosis or positive test as specified in the OSDH Disease Reporting Manual.

(A) Acid Fast Bacillus (AFB) positive smear.

(B) AIDS (Acquired Immunodeficiency Syndrome).

(C) Arboviral infections.

(D) Campylobacteriosis (*Campylobacter* spp.).

(E) Congenital rubella syndrome.

(F) Cryptosporidiosis (*Cryptosporidium parvum*).

(G) Cyclosporiasis (*Cyclospora cayetanensis*).

(H) Dengue Fever.

(I) *E. coli O157, O157:H7,* or a shiga-like toxin producing *E.coli* (EHEC infections).

(J) Ehrlichiosis (*Ehrlichia* spp.).

(K) Encephalitis.

(L) Giardiasis (*Giardia lamblia*).

(M) Hantavirus pulmonary syndrome.

(N) Hemolytic Uremic syndrome, postdiarrheal.

(O) Hepatitis B (acute or chronic, HBsAg+ and/or anti-HBc-IgM+).

(P) Hepatitis C (confirmed by RIBA or PCR only).

(Q) Hepatitis, acute unspecified.

(R) Human Immunodeficiency Virus (HIV) infection.

(S) Legionellosis (*Legionella pneumophila*).

(T) Leprosy (Hansen's Disease).

(U) Leptospirosis (*Leptospira interrogans)*.

(V) Listeriosis (*Listeria monocytogenes*).

(W) Lyme disease (*Borrelia* spp.).

(X) Malaria (*Plasmodium* spp.).

(Y) Mumps.

(Z) Pertussis (*Bordetella pertussis*).

(AA) Psittacosis (*Chlamydia psittaci*).

(BB) Rocky Mountain Spotted Fever (*Rickettsia rickettsii*).

(CC) Rubella.

(DD) Salmonellosis (*Salmonella* spp.).

(EE) Shigellosis (*Shigella* spp.).

(FF) *Streptococcus*, group A invasive disease.

(GG) *Streptococcus pneumoniae*, invasive disease.

(HH) Syphilis (*Treponema pallidum*).

(II) Tetanus (*Clostridium tetani*).

~~(JJ) Toxic Shock Syndrome.~~

(~~KK~~JJ) Trichinosis (*Trichinella spiralis*).

(~~LL~~KK) Tuberculosis (*Mycobacterium tuberculosis*).

(~~MM~~LL) Unusual disease or syndrome. An unusual disease or syndrome is a case of a rare, possibly infectious disease of known or unknown etiology. Laboratory testing may be pending or inconclusive. Examples of such unusual syndromes or atypical disease presentations include but are not limited to: unexplained adult respiratory distress syndrome, hemorrhagic fever, vesicular rash illness, or an illness associated with an unusual pattern of illness or death among animals.

(MM) *Vibrio* spp. infections including cholera.

(NN) Yellow Fever.

(2) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be mailed to the Oklahoma State Department of Health (OSDH) within one (1) month of diagnosis or positive test as specified in the OSDH Disease Reporting Manual.

(A) CD4 Cell Count < 500 (by laboratories only).

(B) Chlamydia infections (*Chlamydia trachomatis*).

(C) Cruetzfeldt-Jakob disease.

(~~C~~D) Gonorrhea (*Neisseria gonorrheae*).

(~~D~~E) Pelvic Inflammatory Disease (PID).

(3) **Occupational or Environmental diseases.**

(A) Blood Lead Levels. Laboratories must report results greater than 10 ug/dL within one (1) week and results less than 10 ug/dL within one (1) month. Health care providers must report results 20 ug/dL

or greater within twenty-four (24) hours and results 10-19 ug/dL within one (1) week.

(4) **Injuries (hospitalized and fatal cases only).**

(A) Burns.

(B) Drownings and Near Drownings.

(C) Traumatic Brain Injuries.

(D) Traumatic Spinal Cord Injuries.

[OAR Docket #03-1043; filed 5-28-03]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 641. EMERGENCY MEDICAL SERVICES

[OAR Docket #03-1044]

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Subchapter 3. Ambulance Services
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Part 3. Ambulance Services
310:641-3-15 [AMENDED]
Part 5. Ground Transport Vehicles
310:641-3-20 [AMENDED]
310:641-3-23 [AMENDED]
Part 7. Air Ambulances
310:641-3-31 [AMENDED]
Part 9. Specialty Care
310:641-3-41 [AMENDED]
Part 23. Emergency Medical Services Regions
310:641-3-110 [AMENDED]
Subchapter 5. Personnel Licenses and Certification
Part 3. Emergency Medical Personnel Licenses
310:641-5-14 [AMENDED]
310:641-5-16 [REVOKED]
Subchapter 7. Training Programs
Part 3. Training Programs
310:641-7-10 [AMENDED]
310:641-7-11 [AMENDED]
310:641-7-12 [AMENDED]
310:641-7-13 [AMENDED]
310:641-7-14 [AMENDED]
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The rule change is intended to add definitions, modify the ambulance licensure requirements to establish 'enroute' time requirements, allow more flexible staffing using 'emergency medical dispatch' screening, update vehicle specifications, update mandatory equipment lists, establish accreditation requirements for Air Ambulances, modify relicensure criteria consistent with the National Registry of EMT's, require certification for all EMT training programs and define those requirements, remove pass ratio requirements for instructors and establish lab assistant and instructor refresher requirements.
CONTACT PERSON:
R. Shawn Rogers, Director, Emergency Medical Services, Protective Health Services, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-4027; electronic mail: shawnr@health.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 3. AMBULANCE SERVICES

PART 1. GENERAL PROVISIONS

310:641-3-2. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"ACLS" means Advanced Cardiac Life Support.

"Act" means the "Oklahoma Emergency Response Systems Development Act".

"Advanced Life Support (ALS) Emergency Medical Services Training Program" means an organization approved by the Department to conduct the following ALS training: Emergency Medical Technician Intermediate, Emergency Medical Technician Intermediate Refresher, Emergency Medical Technician Paramedic, Emergency Medical Technician Paramedic Refresher, Continuing Education at the Emergency Medical Technician Intermediate and Paramedic levels, and such other courses of instruction that may be designated by the Department.

"ATLS" means Advanced Trauma Life Support.

"Basic Life Support (BLS) Emergency Medical Services Training Program" means an organization approved by the Department to conduct the following BLS training: First Responder, First Responder Refresher, Emergency Medical Technician Basic, Emergency Medical Technician Basic Refresher, Continuing Education at the Emergency Medical

Technician Basic level, and such other courses of instruction that may be designated by the Department.

"BLS" means Basic Life Support, and includes cardiopulmonary resuscitation (CPR) and utilization of Semi-Automated advisory defibrillator (SAAD).

"BTLS" means Basic Trauma Life Support.

"Board" means the State Board of Health.

"Certificate" means any certification or certificate issued by the Department, pursuant to the Act, or this Chapter.

"Clinical Coordinator" means the individual designated in writing by a training program as responsible for coordination and supervision of clinical experiences.

"Clinical Experience" means all supervised learning experiences required and included as part of a training course in which the student provides or observes direct patient care. This includes vehicular experiences with a licensed ambulance service.

"Council" means the Oklahoma Emergency ~~Medical Services~~Response Systems Development Advisory Council.

"Department" means the State Department of Health.

"**Distance Learning**" is classroom instruction of didactic portions of curriculum which requires simultaneous participation of the instructor and students but does not require the students to be physically present in the same location as the instructor.

"**Distributive Education**" is instructional delivery of didactic portions of curriculum which is independent of time and place.

"DOT" means the United States Department of Transportation.

"Division" means the Emergency Medical Services Division.

"Emergency medical personnel" means all certified and licensed personnel which provide emergency medical care for an ambulance service.

"EMS" means Emergency Medical Services.

"Emergency medical technician" EMT means an individual licensed by the Department as Basic, Intermediate, Advanced Cardiac, or Paramedic.

"EMT-AC" means Emergency Technician-Advanced Cardiac as licensed pursuant to the Act, or this Chapter.

"EMT-B" means Emergency Medical Technician-Basic as licensed pursuant to the Act, or this Chapter.

"EMT-I" means Emergency Medical Technician-Intermediate as licensed pursuant to the Act, or this Chapter.

"EMT-P" means Emergency Medical Technician-Paramedic as licensed pursuant to the Act, or this Chapter.

"Emergency transfer" means the movement of an acutely ill or injured patient from the scene to a health care (pre-hospital),or the movement of an acutely ill or injured patient from one health care facility to another health care facility (inter-facility).

"License" means any license issued by the Department, pursuant to the Act, or this Chapter.

"National Registry" means the National Registry of Emergency Medical Technicians, Columbus Ohio.

"Non-emergency transfer" means the movement of any patient in an ambulance other than an emergency transfer.

"PALS" means Pediatric Advanced Life Support.

"PHTLS" means Prehospital Trauma Life Support.

"Preceptor" means an individual with education, experience and expertise in healthcare and approved by a training program to supervise and provide instruction to EMS students during clinical experiences.

"Program Administrator" means the individual designated in writing by a training program as responsible for all aspects of EMS training.

"Program Coordinator" means the individual designated in writing by a training program as responsible for all aspects of a specified course(s) or EMS program. This individual shall have at least two (2) years experience of full-time equivalent employment as a healthcare practitioner.

"Response time" means the time from which a call is received by dispatch until the time the ambulance arrives at the scene, unless the call is scheduled in advance.

"Stretcher aid van" *means any ground vehicle which is or should be approved by the State Commissioner of Health, which is designed and equipped to transport individuals on a stretcher or gurney type apparatus[63 O.S. § 1-2503].*

"Stretcher aid van patient" *means any person who is or will be transported in a reclining position on a stretcher or gurney, who is medically stable, non-emergent and does not require any medical monitoring equipment or assistance during transport[63 O.S. § 1-2503].*

"Training" means that education which is received through training programs as authorized by emergency medical services rule and regulation for training programs (Subchapter 7 of this Chapter).

"Transfer" means the movement of a patient in an ambulance.

PART 3. AMBULANCE SERVICES

310:641-3-15. Ground ambulance service - personnel staffing

(a) Each ground ambulance service, except for specialty care and stretcher aid vans, shall have on staff an adequate number of emergency medical personnel and a sufficient number of ambulances available in order to ~~respond~~be enroute to 90% of all emergency calls within five (5) minutes of the time the call is received in dispatch ~~which require~~at the highest level of care for which the service is licensed. ~~A minimum of four (4) personnel; of which at least two (2) are emergency medical technicians licensed at the highest level of care the service is licensed to provide, are required to operate one unit twenty four (24) hours per day for three hundred sixty five (365) days per year., with a total number of calls equal to or less than three hundred sixty five (365) per year.~~

(1) ~~If an ambulance service exceeds this base, it shall have on its staff an additional number of emergency medical technicians licensed at the highest level of care the service is licensed to provide, to meet the following criteria:~~The request for emergency medical services shall be considered "received in dispatch" as soon as sufficient

information has been received to allow appropriate response, i.e., location of the emergency and nature of the call.

~~(A) One (1) additional emergency medical technician for each increment of three hundred sixty five (365) calls above the base, per year. Resultant fractions shall be rounded to the next higher whole number, and/or;~~

~~(B) One (1) additional emergency medical technician for each ambulance vehicle in excess of the first vehicle.~~

(2) ~~Minimum staffing may be adjusted upon a written request by the service. A determination shall be based upon review and final decision of the Department, if the staffing criteria exceeds the actual demand and operation for an ambulance service.~~Staff licensed below the level of the ambulance service may be utilized provided the request for service has been screened by a Department approved emergency medical dispatch system, or if the patient is to be transported from a higher to a lower level of care, or if the transport is physician approved and scheduled in advance. No ambulance may be dispatched with less than a Basic level attendant.

(b) Under no circumstance during the transport of an ambulance patient shall the attendant be less than a licensed emergency medical technician basic;

(c) In addition to the requirement of licensed emergency medical technicians, each ground ambulance service shall have drivers who, at a minimum, are certified as a First Responder.

(1) The number of drivers shall be determined by the staffing formula given in Section 310:641-3-15.

(2) All drivers of a ground ambulance service shall successfully complete an emergency vehicle operator course approved by the Department. Emergency vehicle operators shall successfully complete a refresher course approved by the Department every two (2) years.

(d) In an unique and unexpected circumstance, including a disaster, the minimum driver requirement may be altered to facilitate a transport of an ambulance patient. The attendant, who is in charge of the vehicle while a patient is on board, may request a law enforcement officer or a firefighter, familiar with the operation of an authorized emergency vehicle, to drive the vehicle. If this option is utilized, a written report of the circumstances, reason, and any other pertinent information regarding the call shall be forwarded to the Division within ten (10) working days. Abuse and/or re-occurring incidents of this nature shall require a reassessment of the service's staff and staffing patterns. The service may be required to obtain additional personnel or other action by the Department may result.

(e) Only emergency personnel authorized by this Act, except for a physician, shall be utilized by an ambulance service for pre- hospital, or on-scene, patient care and transport. In some cases, involving inter-hospital transfer of an ambulance patient(s), a physician, registered nurse or licensed practical nurse may be required to assist the emergency medical technician because the medical care required exceeds the level of the ambulance service personnel. If this option is utilized, written orders by a physician, and/or documentation of orders given via radio or telephone contact with a physician, shall become a part of the ambulance patient run report.

PART 5. GROUND TRANSPORT VEHICLES

310:641-3-20. New vehicles

(a) A used vehicle which has new ownership, or a new vehicle which is of first registration, either leased, contracted for, or purchased on or after July 18, 1991, shall conform to the General Service Administration (GSA) specifications KKK-A-1822, as amended and as in effect at the time of manufacture. These requirements shall not apply to stretcher aid vans.

(b) Copies of the GSA KKK-A-1822, and their respective dates of effect, may be obtained from the Department. These several specifications are as follows:

(1) KKK-A-1822, effective January 2, 1974;

(2) KKK-A-1822A, effective April 1, 1980;

(3) KKK-A-1822B, effective June 1, 1985;

(4) KKK-A-1822C, effective January 1, 1990;

(5) KKK-A-1822D, effective November 1, 1994; ~~and~~

(6) KKK-A-1822E, effective June 1, 2002; and

(~~6~~7) any future GSA KKK-A-1822 specification, as may be issued.

(c) The business name, and/or a logo of the licensed ambulance service shall be placed on each side and the rear of the vehicle, and shall be at least three (3") inch high letters.

(d) The phrase "unless otherwise specified" shall mean that only the options printed within the respective KKK-A-1822 document are available for this purpose, specification, substitution, or option.

(e) Specification KKK-A-1822 1.1.3 which requires the ambulance manufacture, or vendor who sells the vehicle, to furnish to the purchaser(s) a "Star of Life" certificate label, which shall be affixed in the oxygen compartment.

(f) Any vehicle initially placed in service after a purchase, lease, contract and/or remount shall be inspected, and approved and permitted under Section 310:641-3-22(e) of this Chapter, by the Department prior to utilization.

(g) Any part of a ground ambulance vehicle which is remounted by a professional remounting service shall meet the KKK-A-1822 specifications. This includes the proper placement, or replacement, of the "Star of Life" certification label in the oxygen compartment of the finished vehicle, before it can be utilized again as an ambulance in this State.

(h) A copy of the "letter of certification", as described in specification KKK-A-1822 4.3.5, shall be submitted to the Department. Certification documentation of test verification shall be accepted only if performed by an independent testing facility, qualified to perform such tests. A list of approved manufacturers, salesmen and dealers who meet the provisions of the Oklahoma Motor Vehicle Commission, shall be compiled annually and be made available from the Department upon request to any interested party.

(i) The purchaser of any ambulance vehicle which violates this section shall be responsible for corrective action, if the

vehicle is accepted before receipt of the Department approval and permit.

(j) If, while awaiting delivery of a new, remounted, or refurbished ambulance vehicle, a manufacturer or dealer provides a licensed ambulance service with an ambulance vehicle on temporary loan or lease, such temporarily loaned or leased ambulance vehicle shall comply with Federal Ambulance Specification KKK-A-1822 in effect at the time of manufacture, and shall be properly inspected and permitted by the Department prior to utilization as an ambulance in accordance with Section 310:641-3-20(f). An exception to the KKK standard may be made by the Department as to the color of such temporarily loaned or leased ambulance vehicle. Such temporary permit shall be in force for a period not to exceed one-hundred-twenty (120) days.

310:641-3-23. Equipment for ground transport vehicles

(a) Each ambulance vehicle, except for stretcher aid vans, shall carry the following:

(1) ~~A~~In addition to the on-board suction unit, a functioning portable suction apparatus with wide-bore tubing (1/4"), rigid and soft suction catheters for adults, children and infants, which may be electronically, manual or oxygen powered;

(2) ~~An~~A minimum of two (2) each, single use adult, pediatric and infant bag-valve mask resuscitators with an adult, child, and infant clear masks;

(3) Oropharyngeal airways, set or a minimum of one (1) of each size for adult (size 7,8,or 9), child (size 3,4,5,or 6), and infant (sizes 0,1,or 2), -- nasal pharyngeal airways are optional;

(4) Portable and wall mounted oxygen sets, with variable flow regulators and adequate length tubing, and an extra bottle of portable oxygen;

(5) ~~Oxygen masks in~~A minimum of two (2) each adult, child, and infant ~~sizes~~ size oxygen masks, and a minimum of two (2) adult nasal cannulas ~~for adults~~;

~~(6) Bite sticks, clean and single plastic wrapped;~~

~~(7) Pocket mask with one-way valve and oxygen inlet;~~

(~~8~~6) Bandaging materials, as follows:

(A) Two (2) burn sheets, clean, wrapped, and marked in plastic bag does which not need to be sterile;

(B) Fifty (50) sterile 4"x4" dressings;

(C) Six (6) sterile 6"x8" or 8"x10" dressings;

(D) Ten (10) roller bandages, ~~soft (kerlex, kling or equivalent) and/or elastic (2" or larger)~~ 2" or larger, such as kerlix, kling, or equivalent;

(E) Four (4) rolls of tape (1/2" and larger);

(F) Four (4) sterile occlusive dressings, 3" x 8" or larger;

(G) Eight (8) triangular bandages, and;

(H) One (1) pair of bandage scissors must be on the ambulance or must be a required personal carry item for the EMS crew.

(~~9~~7) Fracture immobilization devices, as follows:

(A) One (1) traction splint for lower extremity, with limb support slings, padded ankle hitch, padded pelvic support, traction strap;

(B) Upper and lower extremity splints for joint above and below fracture (such as pneumatic, wire ladder, wood, cardboard);

(C) Short spine board or vest type immobilizer, including straps and accessories;

(D) Two (2)~~Long~~long spine board including straps and ~~accessories~~ head immobilization device;

(E) Two (2)~~Rigid~~rigid or adjustable extrication collars in large, medium, small adult sizes, and pediatric sizes for children ages 2 years or older and ~~infants~~ one (1) infant collar. Collars shall not be foam or fiber filled.

(~~10~~8) Miscellaneous medical equipment, as follows:

(A) Portable blood pressure set in adult, child, and infant sizes;

(B) Stethoscope;

(C) Obstetrical kit, sterile with towels, 4"x4" dressing, umbilical tape, bulb syringe, clamps, sterile gloves, aluminum foil, and blanket;

(D) Universal communicable disease precaution equipment including gloves, mask, goggles, gown, and other universal precautions;

(E) Blood-glucose measurement equipment per local medical direction and Department approval;

(F) Semi-automatic advisory defibrillator (SAAD)

(~~11~~9) Other mandatory equipment, as follows:

(A) Trash receptacle ~~containment,~~ which shall include ~~twelve (12)~~ a sufficient number of replacement bags and ~~container (contaminated medical supplies shall display the "biological hazard" emblem)~~ a receptacle for containment of medical wastes that displays the "biological hazard" emblem~~;~~.

(B) Two way radio communication equipment on ~~UHF and/or~~ VHF; with a minimum of 155.340 MHz for hospital communications.

(C) One (1) sturdy, lightweight, all-level cot for the primary patient;

(D) A crash stable side or center mounting ~~litter (cot)~~ cot fastener and/or anchorage assembly of the quick release type;

(E) At least three (3) strap type restraining devices (chest, hip, and knee), and compliant shoulder harness shall be provided per stretcher, cot, and litter (not less than two (2") inches wide, nylon, easily removable for cleaning, two (2) piece assembly with quick release buckles)

(F) Patient run reports;

(G) Two (2) fire extinguishers, mounted with quick release in cab and patient compartment (each dry powder, ABC, five (5#) pound);

(H) Two (2) operable ~~Flashlight~~flashlights;

(I) All ambulance equipment and supplies shall be maintained in accordance with OAC 310:641-3-60. Additionally, sterility shall be maintained on all sterile packaged items.

(J) Digital or strip type thermometers and single use probes.

(K) Six (6) instant cold packs.

(b) Intermediate equipment, in addition to the basic equipment ~~listed, as follows~~ the ALS ambulance shall carry the following:

(1) Intravenous administration equipment in a sufficient quantity to treat multiple patients requiring this level of care;

(2) Intraosseous administration equipment ~~per~~ if approved by local medical ~~direction~~ control;

(3) Appropriate quantities of sterile fluid as approved by local medical control;

(~~3~~4) Esophageal obturator airway~~, mask, thirty five (35) cc syringe and laryngoscope handle, blades), straight sizes 0, 1, and 2, and sizes 3 and 4, straight or curved~~, and at least two (2) each endotracheal tubes sizes 3.0 - 5.0 mm uncuffed and 5.5 - 8.0 mm cuffed ~~(2 each)~~, ten (10)cc syringe, and ~~stylettes (pediatric and adult), forceps in adult, pediatric and infant sizes~~ stylettes in both pediatric and adult sizes and forceps in adult, pediatric and infant sizes;

(4~~5~~) Blood sampling equipment if approved by local medical control~~, and~~;

(~~5~~6) ~~An Occupational Health and Safety Administration (OSHA) approved "sharps" container~~One (1) Occupational Safety and Health Administration (OSHA) approved sharps container~~.~~;

(7) Pulse oximetry device if approved by local medical control; and

(8) End tidal CO2 monitoring device.

(c) Paramedic equipment, ~~in addition to the intermediate equipment listed, as follows~~ in addition to the required basic and intermediate equipment, the ALS ambulance will carry the following:

(1) Cardiac monitor/defibrillator ~~(with tape write out)~~ with printout, defibrillator pads, quick-look paddles, EKG leads, chest attachment pads ~~(telemetry radio capability is optional), re-calibrated every twelve (12) months,~~. Telemetry capability is optional. Monitor must be re-calibrated every twelve months and;

(2) Drugs (pre-load when available) approved by medical control, including those which are compatible with the ~~standards set by~~ recommendations of the American Heart Association's Emergency Cardiac Care Committee, as reflected in the Advanced Cardiac Life Support and Pediatric Advanced Life Support guidelines. Expired medications shall be immediately removed.

(d) Extrication equipment shall be available for each ambulance service by either mutual aid assistance with a fire department, other ambulance service, rescue squad, or carried in total on the service's vehicle.

(1) All ambulance vehicles shall carry the following equipment:

(A) Three (3) reflectors (triangular) or battery ~~flares~~ powered warning lights;

~~(B) One (1) wrench (12" adjustable crescent type);~~

~~(C) Two (2) screwdrivers (12" flat and 12" phillips head);~~

~~(D) One (1) hacksaw (12" blade);~~

~~(E) One (1) pliers (12" vice grip type);~~

~~(F) One (1) seatbelt cutter;~~

~~(G) One (1) wrecking bar (24" handle);~~

(~~H~~B) ~~Hard hat (ANSI Z 89.1), one (1) per occupant~~Two (2) OSHA approved hard hats, with goggles or face shield; and

(~~I~~C) Gauntlet leather gloves, ~~one (1) pair per occupant~~two (2) pair of heavy work gloves; and

(D) One (1) spring-loaded window punch.

(2) All ambulance services shall have available either on board the ambulance or through mutual aid agreement with a fire department rescue unit, the following ~~additional~~ extrication equipment:

(A) One (1) hammer (3# to 5# with 15" handle);

(B) One (1) fire ax, flat head

(C) One (1) crowbar, (51" pinch point)

(D) One (1) bolt cutter (minimum 18")

(E) One (1) power jack, portable, hydraulic or pneumatic, and one (1) spreader tool kit, hand powered, at least of four (4) ton capacity and one (1) air gun kit, air cutting tools, (250psi with cylinder and chisels); "Jaws of Life" may be substituted

(F) One (1) shovel, pointed blade

(G) One (1) tin snip, double action (at least 8")

(H) Two (2) ropes, synthetic, kernmantle (50' x 3/4")

(I) Protective goggles, one (1) per occupant

(J) Two (2) utility knives, curved blade

(K) Two (2) lights, portable, battery operated;

(L) One (1) blanket (large 5'x 6' for patient protection during extrication)

(M) Two (2) baling hooks;

(N) One (1) spring loaded window punch;

(O) Twelve (12) blocks, hardwood shoring, (2"x4"x12" blocks with rope handles);

(P) Four (4) blocks, hardwood cribbing, (4"x4"x12" blocks with rope handles);

(Q) Four (4) blocks, hardwood cribbing, (wedge shaped with rope handles);

(R) One (1) come-along (2 ton, chain type and two (2) pull chains, alloy steel, rescue type (10' at least with grab hooks and rings);

(S) Two (2) extrication straps, synthetic fabric, (9' with quick release buckles)

(T) One (1) loop sling, extrication, (1" wide nylon or equal x 6' circumference with closure ring)

(e) **Optional equipment:**

~~(1) Pulse oximetry device per local medical direction~~.

(~~2~~1) Portable battery powered ventilator per local medical direction.

(~~3~~2) Pneumatic anti shock garment (PASG), compartmentalized (legs and abdomen separate), control valves (closed/open), inflation pump per local medical direction.

PART 7. AIR AMBULANCES

310:641-3-31. Air medical service

(a) Air medical services shall be developed and maintained, at all times, to provide medical treatment, stability and transportation to ambulance patients. This care shall meet the needs of the ambulance patient, and the capability of the medical crew and aircraft.

(b) Air medical services shall be under the direction of a physician as indicated in section 310:641-3-35 of this rule.

(c) Air medical service should be available twenty-four (24) hours per day, but extenuating exceptions which shall be granted are inclement weather, aircraft maintenance, mandatory crew rest, or non-availability of aircraft and/or medical crew.

(d) Air medical service shall operate within the statewide emergency medical response system, coordinating all responses with the appropriate local emergency resources.

(e) Air medical utilization protocols shall be developed by all licensed ambulance and certified first response agencies and submitted for approval by the Department.

PART 9. SPECIALTY CARE

310:641-3-41. Application

(a) In addition to the application for initial ambulance service license, the applicant for specialized mobile intensive care shall be required to submit such additional information to support the following:

(1) Critical care category - such as coronary, neonate, burn, spinal, and such other categories as the Department finds to be in the public interest.

(2) Staffing patterns - staff may be physicians, registered nurses, emergency medical technician paramedic, and other health care professionals all with specialty care training in the critical care category. A specialty care ambulance service based in another state may have as its medical director a physician who is not licensed to practice in the State of Oklahoma but is fully licensed in good standing in the home state of the specialty care ambulance service. The specialty care ambulance service medical director shall meet all other qualifications listed in ~~Section~~ OAC 310:641-3-35(a).

(3) A listing of equipment and supplies for the specialty category for which a license may be issued.

(4) Training and education which is provided to the staff for the specialty care category. Copies of curriculum and training hours should be attached for review.

(5) Any other information which the Department may find essential or necessary to complete the review of the specialty application for license.

(b) The application for specialized mobile intensive care shall be reviewed by the Medical Direction Subcommittee of the Oklahoma Emergency ~~Medical Services~~Response Systems Development Advisory Council, for recommendation to the Department.

PART 23. EMERGENCY MEDICAL SERVICES REGIONS

310:641-3-110. Emergency medical services regions

(a) Region(s), established pursuant to Section ~~1-2403(16)~~1-2503(16) of the Act shall not be recognized, without Department approval for this purpose. Pursuant to Title 74, O.S., Section 1001, et seq., the "Interlocal Cooperation Act", Section 1006 of this Title, the Department shall exercise authority granted to approve or disapprove all matters within its jurisdiction, in addition to and in substitution for the requirement of submission to and approval by the Attorney General.

(b) The Department shall recognize regions, which comply with the law and this Chapter.

SUBCHAPTER 5. PERSONNEL LICENSES AND CERTIFICATION

PART 3. EMERGENCY MEDICAL PERSONNEL LICENSES

310:641-5-14. Renewal requirements

(a) An application for the renewal of all emergency medical technician licenses shall be submitted to the Department on or before March 31st, of the license expiration year if renewal is desired. A notice of expiration and application for renewal shall be mailed to each licensee, at the address of record. Licensees are solely responsible for meeting all requirements for renewal.

(1) Applicants for renewal shall submit, on an application form provided by the Department, true, correct, and complete information as to eligibility and character. Incorrect or incomplete documentation shall be cause for rejection.

(2) Requirements for renewal, in general, include current and continuous certification in basic life support (BLS), specified hours of continuing education, refresher training, and continued skill competency. In the case of EMT-I and EMT-P, skill competency shall be verified by a physician, and for EMT-P, advanced cardiac life support (ACLS) shall be documented.

(3) The EMT-B renewal requires the licensee to:

(A) Complete a ~~Department approved~~twenty-four (24) hour basic refresher course ~~of at least twenty four (24) hours~~adhering to Department standards. Ten (10) hours of the refresher may be completed through distributive education as defined at OAC 310:641-3-2. Effective March 31, 2000, all licensed EMT-B shall have completed the Department of Transportation 1994 National Standard EMT-Basic Transitional curriculum. The transitional curriculum may be completed in lieu of the basic refresher course;

(B) Complete at least forty eight (48) hours of Department approved continuing education training. Twenty-four (24) hours of continuing education may be obtained through distributive education as defined in OAC 310:641-3-2. The maximum number of hours allowed for any one topic is twelve

(12) hours. Department pre-approved continuing education includes any subject covered in the National Standard EMT Basic course, and the following topics -- pneumatic trousers, shock management, communications, hypothermia and other environmental injuries, air ambulance emergency care, child abuse, sexual assault, industrial accidents, explosion injuries, electrical hazards, neonatal care/SIDS, domestic violence, crime scene response, athletic injuries, rappelling, hazardous materials, crisis intervention, protective breathing apparatus, farm machinery extrication, medical terminology, radioactive materials, medico-legal aspects, and special rescue (diving, aerial, mountain). Bio-terrorism, EMS Geriatrics, PALS, and Pediatric Education for the Prehospital Provider (PEPP) courses will be allowed the number of hours specified on the course completion certificate up to 16 hours. Successful completion of the following National Standard courses-- PHTLS (16hrs), BTLS (16hrs), Auto Extrication (16hrs), Emergency Driving (12hrs), and/or Dispatcher Training (12hrs):-- with the specified number of hours shown above may be applied to Continuing Education. These topics may be presented utilizing critiques, didactic sessions, practical drills, workshops, seminars, or other approved in-service training sessions. Any topic which is not specified above shall require prior written approval from the Division. Successful completion of a Department approved ~~Intermediate or~~ Paramedic course shall fulfill the refresher and all continuing education requirements for the EMT Basic;

(C) Maintain basic life support (BLS) ~~course~~certification for health care providers, current through March 31 of licensure expiration ~~each year of the licensed period~~. The BLS course shall adhere to the current standards of the American Heart Association CPR for the Health Care Provider, ~~or~~ the American Red Cross CPR for the Professional Rescuer, the National Safety Council CPR for the Health Care Provider, or Department approved equivalent ~~and;~~. BLS/CPR training shall not be applied toward the forty-eight (48) hours of required continuing education training for Basic EMT's.

(D) Complete the Department renewal application with all required documentation and fee.

(4) The EMT-I renewal requires the licensee to:

(A) Complete a ~~Department approved~~thirty-six (36) hour intermediate refresher course ~~of thirty-six (36) hours, which shall consist of twenty-four (24) hours of EMT-B refresher and twelve (12) hours consistent with the advanced procedures of the EMT-I;~~ adhering to Department standards. Ten (10) hours of the refresher may be completed through distributiive education as defined in OAC 310:641-3-2. Refresher course modules met by successfully completing ACLS (initial course), ATLS, PHTLS, BTLS, PALS, or PEPP courses disqualify these courses from being applied to continuing education hours.

(B) Complete at least thirty six (36) hours of Department approved continuing education training. Eighteen (18) hours of continuing education may be obtained through distributive education as defined at OAC 310:641-3-2. The maximum number of hours allowed for any one topic is twelve (12) hours. Department pre-approved continuing education includes any subject covered in the National Standard EMT Basic, EMT Intermediate, and/or EMT Paramedic course, and the following topics: -- air ambulance emergency care, sexual assault, industrial accidents, explosion injuries, electrical hazards, crime scene response, communications, athletic injuries, rappelling, hazardous materials, crisis intervention, domestic violence, protective breathing apparatus, farm machinery extrication, medical terminology, radioactive materials, and special rescue (diving, aerial, mountain). Bio-terrorism, EMS Geriatrics, PALS, and PEPP courses will be allowed the number of hours specified on the course completion certificate up to sixteen (16) hours. Successful completion of the following National Standard courses:-- PHTLS (16hrs), BTLS (16hrs), Auto Extrication (16hrs), Emergency Driving (12hrs) and/or Dispatcher Training (12hrs)-- with the specified number of hours shown above may be applied to Continuing Education. These topics may be presented utilizing critiques, didactic sessions, practical drills, workshops, seminars, or other approved inservice training sessions. Any topic which is not specified above shall require prior written approval from the Division. Successful completion of a Department approved Paramedic course shall fulfill the refresher and all continuing education requirements for the EMT Intermediate;

(C) ~~Maintain basic life support (BLS) course for health care providers, each year of the licensed period. The BLS course shall adhere to the current standards of the American Heart Association or the American Red Cross or Department approved equivalent~~ Maintain basic life support (BLS) certification for health care providers, current through March 31 of licensure expiration. The BLS course shall adhere to the current standards of the American Heart Association CPR for the Health Care Provider, the American Red Cross CPR for the Professional Rescuer, the National Safety Council CPR for the Health Care Provider or Department approved equivalent. BLS/CPR training shall not be applied toward the thirty-six (36) hours of required continuing education training for Intermediate EMT's;

(D) Complete a skills review and maintenance verification for EMT-I by medical control, and;

(E) Complete the Department renewal application with all required documentation and fee.

(5) The EMT-P renewal requires the licensee to:

(A) Complete a ~~Department approved~~forty-eight (48) hour paramedic refresher course ~~of forty-eight (48) hours;~~adhering to Department standards. Ten (10) hours of the refresher may be completed through distributive education as defined at OAC 310:641-3-2. Refresher course modules met by successfully completing ACLS (initial course), ATLS, PHTLS, BTLS, PALS, or PEPP courses disqualify these courses from being applied to continuing education hours.

(B) Complete at least twenty four (24) hours of Department approved continuing education training. Twelve (12) hours of continuing education may be obtained through distributive education as defined at 310:641-3-2. The maximum number of hours allowed for any one topic is twelve (12) hours. Department pre-approved continuing education includes any subject covered in the National Standard EMT Paramedic course, and the following topics: -- air ambulance emergency care, sexual assault, industrial accidents, explosion injuries, electrical hazards, crime scene response, athletic injuries, hazardous materials, crisis intervention, domestic violence, hypothermia and other environmental injuries, protective breathing apparatus, farm machinery extrication, medico-legal aspects, radioactive materials, and special rescue (diving, aerial, mountain). Bio-terrorism, EMS Geriatrics, PALS, and PEPP courses will be allowed the number of hours specified on the course completion certificate up to sixteen (16) hours. Successful completion of the following National Standard courses:-- Auto Extrication (16hrs), Emergency Driving (12hrs),PALS (16 hrs.) and/or Dispatcher Training (12hrs)-- with the specified number of hours shown above may be applied to Continuing Education. These topics may be presented utilizing critiques, didactic sessions, practical drills, workshops, seminars, or other approved inservice training sessions. Any topic which is not specified above shall require prior written approval from the Division;

(C) ~~Maintain basic life support (BLS) certification for health care providers, each year of the licensed period. The BLS course shall adhere to the current standards of the American Heart Association, or the American Red Cross or Department approved equivalent~~Maintain basic life support (BLS) certification for health care providers, current through March 31 of licensure expiration. The BLS course shall adhere to the current standards of the American Heart Association CPR for the Health Care Provider, the American Red Cross CPR for the Professional Rescuer, the National Safety Council CPR for the Health Care Provider or Department approved equivalent. BLS/CPR training shall not be applied toward the twenty-four (24) hours of required continuing education training for paramedics;

(D) Complete biennial certification requirements for Advanced Cardiac Life Support (ACLS), in accordance with the American Heart Association. If a structured ACLS course is not available, the medical control may affirm, in writing, that ACLS skills and knowledge has been demonstrated;

(E) Complete a skills review and maintenance verification for EMT-P by medical control, and;

(F) Complete the Department renewal application with all required documentation and fee.

(b) Emergency medical technicians shall declare and provide documents on any felony conviction since their last issuance of a license. Denial of renewal, based on a change of character, is the same as contained within Paragraph 310:641-5-11(a)(5).

(c) The fee for renewal is ten ($10.00) dollars for EMT-B, fifteen ($15.00) for EMT-I, and twenty ($20.00) for EMT-P. Concurrent national registration is not included within the Oklahoma emergency medical technician renewal. Fees shall be in an acceptable form made payable to the Oklahoma State Department of Health - Emergency Medical Services Division (OSDH/EMS).

(d) An applicant may request a review of adverse decisions, made within this section, by applying in writing within thirty (30) calendar days after the notice of rejection. Review, by the Department, shall be held in accordance with the Administrative Procedures Act, otherwise the decision shall be considered final to both parties.

310:641-5-16. Inactive status [REVOKED]

~~(a) Qualified and valid Oklahoma emergency medical technician licensees may apply for and be granted an "Inactive" status. This status is for individuals who desire to retain their emergency medical technician license, but who are no longer active in the direct delivery of patient care. The period to hold an "Inactive" status, and then return to "Active" is limited to two (2) years, or one period of the license, and as long as the issued licensee complies with the requirements of Section 310:641-5-14. To qualify and maintain this "Inactive" status, the licensee shall:~~

~~(1) State, in a written notice to the Department, the intention to become "Inactive";~~

~~(2) Complete all educational requirements for renewal, in accordance with Section 310:641-5-14;~~

~~(3) To return to an "Active" status the applicant shall provide in writing a request for same, documentation of the re-establishment of direct delivery of patient care and a skills verification form signed by the EMS agency medical director. This can be accomplished at any time during the "Inactive" period.~~

~~(b) Any person holding an "Inactive" status shall not perform patient care as a licensed emergency medical technician, except at the level of First Responder.~~

SUBCHAPTER 7. TRAINING PROGRAMS

PART 3. TRAINING PROGRAMS

310:641-7-10. Training programs

(a) All training programs shall be in compliance with the requirements of this Subchapter.

(b) Each training program shall submit to the Department an application for approval to conduct emergency medical services training. The application shall be on forms provided by the Department. Training programs must be currently certified to teach EMS in Oklahoma before beginning courses.

(c) Training programs approved for training may include colleges, universities, junior colleges, technology centers, or other institutions acceptable to the Department.

(d) An institution may apply for certification as a Basic ~~Life Support~~EMT program, an Intermediate EMT Program or ~~an Advanced Life Support~~a Paramedic program or ~~both~~a combination of any of these levels. A separate certificate will be issued for each training level.

(e) Training programs shall use ~~only~~ Department approved curricula for all approved courses of instruction.

(f) An application for certification as a training program constitutes agreement to participate in a Department quality assurance program.

(g) Records shall be available for inspection by Department representatives at any time.

310:641-7-11. Training program applications

(a) The application for approval to conduct emergency medical services training shall be made on forms provided by the Department and shall include but is not be limited to the following:

(1) Name of the training program, address, telephone number and fax number;

(2) Level of program to be conducted;

(~~2~~3) The name of the Program Administrator and a Curriculum Vitae which includes address, telephone number, fax number and an electronic-mail address;

(4) The name of the Program Coordinator and Curriculum Vitae that includes address, telephone number, fax number and an electronic mail address;

(~~3~~5) The name of the Medical Director and a Curriculum Vitae which includes address, telephone number, fax number and an electronic-mail address, copies of Oklahoma State medical license and Oklahoma Bureau of Narcotics and Dangerous Drugs permit;

(6) Notarized affidavit attesting that the program will be conducted according to the Act and rules;

(7) Copies of student grievance/appeal policy;

(8) List of all instructors and individual vitae for each with copies of required documentation of instructor qualifications;

(~~4~~9) Copies of all current agreements for the use of equipment and facilities needed to conduct courses; ~~and~~

(~~5~~10) ~~A list~~Copies of all current agreements for clinical experience locations required to conduct courses~~.~~;

(11) Current copies of inventories of equipment and supplies, dated and signed by the representative of the program taking the inventory;

(12) Copies of course plans (syllabi) and curriculum objectives for the course; and

(13) Site applications for additional sites of instruction with required attachments.

(b) Department personnel may make site visits, inspections or observations, to determine the training program's ability to conduct emergency medical services training in accordance with the Act and rules.

(c) The program administrator, program coordinator or at least one paramedic level instructor shall be an Advanced Cardiac Life Support (ACLS) instructor for ~~an Advanced Life Support~~a Paramedic training program.

310:641-7-12. Training program renewal

(a) Training programs continuing ~~in the~~to conduct emergency medical services training ~~program~~ shall submit an application for renewal, at least sixty (60) days prior to the expiration of their certificate, on forms provided by the Department.

(b) Documentation with the request for renewal shall include changes in information pertaining to the program administrator, coordinator, and/or medical director, copies of current clinical agreements, copies of current facility/equipment agreements, current equipment and supply inventory with date and signature, changes to emergency medical services instructors affiliated with the training program, current site applications and any other pertinent information requested by the Department.

310:641-7-13. Training program responsibilities

(a) Each training program sponsoring emergency medical services training shall be responsible for course completion, respond to student complaints, and resolve student grievances.

(b) Each training program conducting emergency medical services training shall use the United States Department of Transportation, National Highway Traffic Safety Administration (USDOT, NHTSA) curricula and curricula supplements as adopted by the Department. Each training program which desires to use a curriculum not approved by the Department shall submit the curriculum to the Department for approval prior to use in any course.

(c) Each training program is responsible for quality assurance of its training, and shall disseminate all Department training updates to the students and instructors.

(d) Each training program shall inspect and verify that each class facility used for any course at any locations is adequate for instructional purposes prior to scheduling a course at the location.

(e) Each training program shall ensure that all Department required equipment is in good, safe and operational condition. Sufficient quantities shall be made available for each course conducted. Equipment for original First Responder, Basic EMT, Intermediate EMT, and Paramedic Courses must be dedicated for training purposes. Equipment cannot be in

service on an emergency vehicle at the time it is to be used in the classroom. Equipment shall be available for inspection by Department representatives at any time.

(f) Each training program shall ensure that an instructor/student ratio of 1:10 is maintained during all practical classroom lab activities.

(g) Each training program shall ensure that a preceptor supervises each student during scheduled clinical experiences.

(h) Each training program shall issue a course completion certificate and/or course transcript, to each student successfully completing an approved course.

(i) Each training program shall assist all of their students eligible for National Registration with the completion of all required applications.

(j) Each training program shall administer a final written and practical examination for each course conducted.

(k) The training program shall require instructors to follow the Department approved course syllabus, use lesson plans and provide instruction for all course objectives.

(l) For all courses which require a practical examination, as specified in OAC 310:641-5-11(9), the training program shall follow the National Registry Practical Examination Standards.

(m) Records for each course offered shall be maintained by the training program for at least three (3) years. Records shall include at a minimum attendance records, clinical experience summaries, student evaluations, student grades a record of lab assistants and their documentation of qualifications and practical examination skill evaluations.

~~(n) A training program may request the Department to conduct an Advanced Life Support National Registry examination at the training program for the program students. This request shall be made to the Department in writing not less than eight (8) weeks prior to the requested examination date.~~

310:641-7-14. Training program approval

(a) Any application for approval or renewal submitted by an applicant pursuant to the Act, shall constitute authorization for any inspection or investigation by the Department.

~~(b) Training programs shall maintain a successful National Registry of Emergency Medical Technicians pass ratio of seventy (70) percent.~~

~~(1) The pass ratio shall be calculated separately for each level of certification if a program provides training at more than one level.~~

~~(2) For each level of certification, the pass ratio shall be calculated by totaling the number of candidates from the three most recently completed courses who have taken the examination and passed on the first attempt, and dividing by the total number of candidates who completed the same courses and took the examination.~~

~~(3) After a new course is completed, the program shall recalculate the pass ratio after a majority of the candidates from the course are tested by totaling the newly tested candidates from the course with those from the previous two most recently completed courses as described in 310:641-7-14(b)(2).~~

(~~c~~b) A training program in compliance with all requirements shall be issued a training program certificate by the Department for a two (2) year period ~~with an expiration date of August 31. The initial period of certification may be less than two (2) years~~.

(~~d~~c) The Department may deny, refuse to renew, revoke, suspend or place on probation any emergency medical services training program that is not in compliance with the Act or rules.

(~~e~~d) The Department may deny, refuse to renew, revoke, suspend, place on probation and/or fine any emergency medical services training program which has a history of noncompliance, or is in violation of the Act or rules. This shall include an intentional or negligent act materially affecting the health or safety of a student.

(~~f~~e) Failure to permit a Department authorized officer or employee the right to conduct an inspection or investigation as deemed necessary by the Department to determine the state of compliance with the provisions of the Act and rules shall be just cause for adverse action.

(~~g~~f) The Department may deny a program permission to use an instructor or lab assistant who is in violation of the Act or rules.

310:641-7-15. Course approval

(a) Each training program shall submit a written course application to the Department on forms provided by the Department. The application shall be submitted at least thirty (30) days prior to the course start date and shall include, but not be limited to:

(1) Course information including type of course, location, start and end date, class session days and times, course coordinator, clinical coordinator and instructors, final practical examination date, and time and location;

(2) Course outline including date and time, topic, curriculum division and section number, instructor and location if different than those listed on the application for each class session; and

(3) A list of locations, anticipated number of students per location and site coordinator for each location, if multiple locations via distance learning technology are used.

(b) A course application submitted by a training program in good standing which meets all course requirements will be issued a course authorization number by the Department.

(c) Persons other than certified emergency medical services instructors recognized as experts in a specific area may instruct in an emergency medical services course. The content and effectiveness of the presentation remain the responsibility of the training program and primary emergency medical services instructor.

(d) For each course conducted by a training program the following shall be submitted to the Department:

(1) An initial student roster within twenty-one (21) days of the course start date;

(2) A final student roster within twenty-one (21) days of the course end date. This roster shall only identify students who have successfully completed all course requirements; and

(3) An addendum to the final student roster for students who successfully complete all course requirements after the final roster was submitted. All course requirements

shall be completed by students within three (3) months of the course end date. Addendum rosters shall be submitted to the Department within twenty-one (21) days of student completion date.

(e) The Department may conduct quality management visits to any training program. Visits may include, but not be limited to class visits, instructor evaluations, student surveys, review of required records, and visits to clinical experience sites.

(f) The Department may invalidate all or any portion of a course conducted where a violation of the Act or rules has been substantiated.

(g) For course approval requests submitted that do not meet the requirements of ~~310:641-5-15(a)~~OAC 310:641-7-15(a) the Department may provide approval if non-approval would be detrimental to the interest of the public health and safety.

PART 5. INSTRUCTOR QUALIFICATIONS

310:641-7-20. Instructor requirements

(a) **State Certified Emergency Medical Service Instructor.**

(~~a~~1) A register of approved emergency medical services instructors shall be maintained by the Department. Each instructor candidate shall submit to the Department an application for initial and renewal instructor certification. The application shall be on forms provided by the Department and accompanied by current documentation of qualification.

(~~b~~2) An instructor certificate shall be issued to each qualified applicant.

(~~c~~3) Qualifications for instructor certification include:

(~~1~~A) Affiliation with an approved training program, licensed ambulance service or certified first response agency;

(~~2~~B) Two (2) years of direct field experience in emergency medical services within the previous five (5) years which meets or exceeds the level of training being taught; and

(~~3~~C) Current training as a Basic Life Support Instructor (CPR) ~~by the~~ in accordance with American Heart Association (AHA) Instructor, American Red Cross Professional Rescuer Instructor, or National Safety Council CPR for the Health Care Provider Instructor ~~or the American Red Cross~~standards. At the paramedic level, the instructor shall be an American Heart Association, Advanced Cardiac Life Support (ACLS) provider and a Pediatric Advanced Life Support (PALS), Pediatric Emergency Medicine (APLS) or (PEPP) certified provider.

(4) Successful completion of a Department certified Instructor Training Course.

(b) **Emergency Medical Service Lab Assistant.**

(1) A file of qualified Lab Assistants shall be maintained by each certified training program, licensed ambulance service or certified first response agency including documentation of qualification.

(2) Qualifications for lab assistants include:

(A) Affiliation with an approved training program, licensed ambulance service or certified first response agency;

(B) Two (2) years of current experience in medical services which meets or exceeds the level of training being assisted or evaluated; and

(C) Any certification required for the skill being assisted or evaluated.

(c) **Emergency Medical Service Instructor Educator.**

(1) Instructor Training Courses shall be taught by a state certified Instructor Educator.

(2) A register of approved emergency medical services instructor educators shall be maintained by the Department. Each instructor educator candidate shall submit to the Department an Instructor Educator addendum to the Instructor Certification Application for initial and renewal instructor educator certification. The application shall be on forms provided by the Department and accompanied by current documentation of qualification.

(3) An instructor educator certificate shall be issued to each qualified applicant.

(4) Qualifications for Instructor educator include:

(A) Affiliation with an approved training program

(B) Current Oklahoma licensure as a Basic EMT or higher.

(C) Five (5) years experience as a EMS field provider.

(D) Current certification as an Oklahoma EMS Instructor

(E) Completion of the NHTSA/DOT EMS Instructor Training Course;

(F) Successful completion of teaching at least 3 major (initial) EMT courses at the Basic level or higher;

(G) Attendance at all mandatory meetings with the Department and other Instructor Educators.

(d) The Department may approve temporary instructors based on guidelines approved by the Council.

310:641-7-21. Instructor approval and renewal

(a) Any application for approval or renewal submitted by an applicant pursuant to the Act and rules, shall constitute authorization for any inspection or investigation by the Department.

(b) The Department may deny, refuse to renew, revoke, suspend or place on probation any instructor or instructor educator for reasons which include, but are not limited to:

~~(1) Failure to maintain a successful National Registry of Emergency Medical Technicians pass ratio of seventy (70) percent.~~

~~(A) The pass ratio shall be calculated separately for each level of certification if an instructor provides training at more than one level.~~

~~(B) For each level of certification, the instructor's pass ratio shall be calculated by totaling the number of candidates from the three most recently completed courses who have taken the examination and passed on the first attempt, and dividing by the total number~~

~~of candidates who completed the same courses and took the examination.~~

~~(C) After a new course is completed, the instructor's pass ratio shall be recalculated after a majority of the candidates from the course are tested by totaling the newly tested candidates from the course with those from the previous two most recently completed courses as described in 310:641-7-14(b)(2);~~

(~~2~~1) Failure to attend Department required workshops;

(~~3~~2) Failure to follow Department rules;

(~~4~~3) Failure to maintain professional license or certification qualifications;

(~~5~~4) Falsification of any training document, or;

(~~6~~5) Failure to obtain ~~sixteen (16) hours of instructor continuing education during the two (2) year certification period~~ required continuing education hours:

(A) Sixteen (16) hours of instructor continuing education during the two (2) year certification period for EMS instructors.

(B) Attendance at mandatory OSDH meetings for EMS instructor educators.

[OAR Docket #03-1044; filed 5-28-03]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 655. HEALTH MAINTENANCE ORGANIZATIONS AND PREPAID HEALTH PLANS

[OAR Docket #03-1045]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 25. Protection Against Insolvency
310:655-25-1 [AMENDED]
310:655-25-11 [REVOKED]
310:655-25-12 [NEW]
Subchapter 29. Discontinuation of HMO
310:655-29-2 [AMENDED]
Subchapter 39. Powers of Health Maintenance Organizations
310:655-39-1 [AMENDED]
310:655-39-2 [NEW]
Subchapter 47. Reimbursement of Claims
310:655-47-6 [NEW]
310:655-47-7 [NEW]
310:655-47-8 [NEW]
310:655-47-9 [NEW]
310:655-47-10 [NEW]
310:655-47-11 [NEW]
310:655-47-12 [NEW]
Subchapter 53. Examinations [NEW]
310:655-53-1 [NEW]
310:655-53-2 [NEW]
310:655-53-3 [NEW]
310:655-53-4 [NEW]
310:655-53-5 [NEW]
Subchapter 55. [RESERVED]
Subchapter 57. Risk Based Capital [NEW]
310:655-57-1 [NEW]
310:655-57-2 [NEW]
310:655-57-3 [NEW]
310:655-57-4 [RESERVED]
310:655-57-5 [NEW]
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Incorporating rules:
310:655-57-3
Availability:
The incorporated standards are available for viewing at Managed Care Systems, Room 1011, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299. Copies of the standards are available for purchase via the Internet at www.naic.org, or by writing to: NAIC Executive Headquarters, 2301 McGee Street, Suite 800, Kansas City, MO 64108-2604.
ANALYSIS:
These amendments modify the rules to raise the minimum net worth to $1.5 million dollars to be phased in over a three year period; and procedures for claims against the deposit. These amendments specify the enrollment period for replacement coverage. The requirements for reimbursement of claims are modified to provide for a claims payment report, to address elements of a clean claim, disclosure requirements and procedures for claims, penalties for failure to pay promptly, criteria to determine date of claim receipt and prohibitions against contract language limiting provider rights. Standards and procedures are added for examinations and risk based capital.
CONTACT PERSON:
Ms. Lajuana Wire, Director, Managed Care Systems, Tel. (405) 271-6868, e-mail: lajuana@health.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF: JULY 11, 2003:

SUBCHAPTER 25. PROTECTION AGAINST INSOLVENCY

310:655-25-1. Net worth requirement

The minimum net worth requirement for an HMO or a prepaid health plan is as follows:

(1) An HMO or a prepaid health plan shall maintain a net worth of at least ~~seven hundred fifty thousand (750,000)~~ one million five hundred thousand (1,500,000) dollars. An HMO or prepaid health plan may meet one or more of the exceptions in (2) of this subsection.

(2) An HMO or prepaid health plan may have a net worth less than ~~seven hundred fifty thousand (750,000)~~ one million five hundred thousand (1,500,000) dollars if the plan demonstrates that it:

(A) Is a branch of a governmental entity that ensures the plan's financial obligations shall be met;

(B) Has been a health service provider of long standing in the community and has resources adequate to meet the plan's level of risk; or

(C) Provides services under a governmental contract that ensures payment of financial obligations and continuity of services in the event of insolvency.

(3) Before the Department authorizes an HMO or prepaid health plan to operate with a net worth less than ~~seven hundred fifty thousand (750,000)~~ one million five hundred thousand (1,500,000) dollars, the HMO or prepaid health plan shall agree to raise its net worth to ~~seven hundred fifty thousand (750,000)~~ one million five hundred thousand (1,500,000) dollars if the conditions that originally allowed for a reduction of net worth cease to exist.

(4) The Department shall take into consideration any recommendation from the State Insurance Commissioner prior to making a final decision on a request for reduction of the minimum net worth requirement. The Department will advise the State Insurance Commissioner of any action taken as a result of any recommendation, and if no action is taken or if not all of the recommendation is acted upon, the Department shall advise the State Insurance Commissioner of the reason(s) for no or partial action.

(5) The net worth requirement of this Subchapter is phased in as follows:

(A) As of December 31, 2003, each HMO shall have a net worth of one million (1,000,000) dollars;

(B) As of December 31, 2004, each HMO shall have a net worth of one million two hundred fifty thousand (1,250,000) dollars; and

(C) As of December 31, 2005, and thereafter each HMO shall have a net worth of one million five hundred thousand (1,500,000) dollars.

(6) In no case shall this be construed to require an HMO to maintain a net worth that is greater than the net worth otherwise required by this Chapter.

310:655-25-11. Financial examination [REVOKED]

~~(a) Each HMO shall arrange to have a financial examination conducted at least once every three (3) years by a certified financial examiner in good standing with the Society of Financial Examiners sponsored by the National Association of Insurance Commissioners. The reasonable costs of such examination shall be borne by the HMO.~~

~~(b) In lieu of such examination, the Department may accept the report of an examination made by the regulatory authority of another state if the condition of the Oklahoma HMO is addressed in the examination report. Nothing in this section shall be construed to require unnecessary duplication of financial examinations by independent auditors or examiners.~~

~~(c) The HMO shall forward to the Department a complete and unaltered copy of the final report within five (5) working days after the HMO receives the report from the examiner.~~

~~(d) The Department shall forward of copy of the final report to the State Insurance Commissioner. The Department shall take into consideration any recommendation from the State Insurance Commissioner prior to making a final decision. The Department will advise the State Insurance Commissioner of any action taken as a result of any recommendation, and if no action is taken or if not all of the recommendation is acted upon, the Department shall advise the State Insurance Commissioner of the reason(s) for no or partial action.~~

310:655-25-12. Claims against deposit

(a) Upon rehabilitation or liquidation of an HMO, the rehabilitator shall develop procedures for accepting claims against the deposit.

(b) Such procedures shall include steps for accomplishing financial, legal and administrative functions related to the disbursement of the deposit.

(c) Such procedures are subject to approval by the Commissioner.

SUBCHAPTER 29. DISCONTINUATION OF HMO

310:655-29-2. Replacement coverage

(a) Whenever any HMO becomes insolvent, bankrupt, dissolved, discontinued or otherwise ceases doing business, all other HMOs that participated in the enrollment process with the ceasing HMO at a group's last regular enrollment period shall offer such group's enrollees of the ceasing HMO a thirty-day enrollment period commencing ~~upon~~ at least thirty (30) days prior to the date of cessation of business. Each HMO shall offer such enrollees of the ceasing HMO the same coverage and rates that it had offered to the enrollees of the group at its last regular enrollment period.

(b) Any HMO entering into a separate agreement with the ceasing HMO for the conversion of enrollees, shall offer conversion to all enrollees of the ceasing HMO.

SUBCHAPTER 39. POWERS OF HEALTH MAINTENANCE ORGANIZATIONS

310:655-39-1. Powers of an HMO

The powers of an HMO include, but are not limited to, the following:

(1) The purchase, lease, construction, renovation, operation or maintenance of hospitals, medical facilities, or

both, and their ancillary equipment, and such property as may reasonably be required for its principal office or for such purposes as may be necessary in the transaction of the business of the HMO.

(2) Transactions between affiliated entities, including loans and the transfer of responsibility under all contracts (provider, subscriber, etc.) between affiliates or between the HMO and its parent.

(3) The furnishing of health care services through providers, provider associations or agents for providers which are under contract with or employed by the HMO.

(4) The contracting with any person for the performance on its behalf of certain functions such as marketing, enrollment and administration.

(5) The contracting with an insurance company licensed in this state, or with a hospital or medical service corporation authorized to do business in this state, for the provision of insurance, indemnity or reimbursement against the cost of health care services provided by the HMO.

(6) The offering of other health care services, in addition to comprehensive health care services. Selected services may be offered by an HMO on a prepaid basis to groups which provide comprehensive health services to employees through alternative health care plans.

(7) The joint marketing of products with an insurance company licensed in this state or with a hospital or medical service corporation authorized to do business in this state as long as the company that is offering each product is clearly identified.

(8) The offering of an option which allows the enrollee to choose and receive services from a non-participating provider, as specified in OAC 310:655-7. The HMO must provide adequate assurances to the Department that offering this option will not impair the financial condition of the HMO.

(9) An HMO shall file notice, with adequate supporting information, with the Department and the State Insurance Commissioner prior to the exercise of any power granted in OAC ~~310:655-39-1(a)(1),(2),(4) and (5)~~ 310:655-39-1(1),(2) and (4) which may affect the financial soundness of the HMO. The Department shall disapprove such exercise of power, upon the recommendation of the State Insurance Commissioner, if it would substantially and adversely affect the financial soundness of the HMO and endanger its ability to meet its obligations. The Department shall have 30 days from the date of receipt to make a determination on acceptability.

310:655-39-2. Transactions between affiliates

Notices filed under OAC 310:655-39-1(2) shall include:

(1) A description of the transaction;

(2) The reason(s) for the transaction;

(3) The value of the transaction;

(4) The source of funds, if a loan or loan repayment;

(5) A statement from the financial institution as to the availability of funds;

(6) A copy of the written agreement between the affiliates detailing the terms and conditions of the transaction; and

(7) A copy of the Board of Directors action approving the transaction.

SUBCHAPTER 47. REIMBURSEMENT OF CLAIMS

310:655-47-6. Claims payment report

(a) Each HMO or prepaid health plan shall file with the Department and the State Insurance Commissioner within forty-five (45) days following the close of the first three calendar quarters, and on or before the last day of February of each year for the previous year a periodic report on compliance with provisions in Titles 36 and 63 of the Oklahoma Statutes regarding reimbursement of claims within certain time periods.

(b) Each report shall be accompanied by a statement signed by a member of the Board of Directors or executive management attesting to the accuracy of the report.

(c) Any HMO or prepaid health plan that delegates any claim payment functions shall require the delegated entity(ies) to prepare the required report for claims the entity processes, to include the required attestation.

(d) Each HMO or prepaid health plan shall collect and submit all required report(s) as a complete package.

(e) These reports shall be in such form and context as directed by the Department.

310:655-47-7. Elements of a clean claim

(a) Required clean claim elements. A provider submits a clean claim by providing the required data elements specified in OAC 310:655-47-4 to an HMO along with any attachments and additional elements, of which the provider has been properly notified pursuant to OAC 310:655-47-7.

(b) Attachments. The Center for Medicare and Medicaid Services has developed a variety of manuals that identify various attachments required of different providers for specific services. An HMO may use the appropriate Medicare standards for attachments in order to properly process claims for certain types of services. An HMO shall only require as attachments information that is either contained in or in the process of being incorporated into a patient's medical or billing record maintained by the provider. Before any attachments may be required, the HMO shall satisfy the notification procedures set forth in OAC 310:655-47-7.

(c) Additional clean claim elements. Additional elements beyond the required data elements and attachments may be required. Before any additional clean claim elements may be required, the HMO shall satisfy the notification procedures set forth in OAC 310:655-47-7. An HMO shall only require as additional clean claim elements information that is either contained in or in the process of being incorporated into a patient's medical or billing record maintained by the provider.

310:655-47-8. Disclosure requirements

(a) An HMO shall not require an attachment or an additional element unless it has given the provider the disclosure mandated by this Section at least sixty (60) calendar days before requiring the attachment or additional element as an element of the clean claim.

(b) An HMO shall not revise its requirements for data elements, attachments or additional elements unless it has given the provider the disclosure mandated by this Section at least sixty (60) calendar days before requiring the data element, attachment or additional element.

(c) The HMO shall not require claims filed during the sixty (60) day period after receipt of the disclosure to include the required attachment or additional element identified in the disclosure.

(d) Methods of disclosure may include one or more of the following:

(1) A written notice to all affected providers.

(2) Updated revisions to the provider manual or other document that sets forth the claims filing procedures; or

(3) Amendments to provider contracts that specify clean claim elements.

(e) If the provider contract requires mutual agreement of the parties as the sole mechanism for requiring attachments or additional elements, then the written notice specified in this Section shall not supersede the requirement for mutual agreement.

(f) All notices shall identify with specificity the attachment(s) or additional elements(s) required for a clean claim.

(g) The disclosure required by this Section shall be presumed received by the provider in the manner provided in OAC 310:655-47-11(e).

310:655-47-9. Disclosure of processing procedures

(a) In contracts with providers, or in the provider manual or other document that sets forth the procedure for filing claims as required by OAC 310:655-47-4, or by any other method mutually agreed upon by the contracting parties, an HMO shall disclose to its providers:

(1) The mailing address, including a physical address, where claims are to be sent for processing whether it be the address of the HMO, a delegated claims processor, or any other entity, including a clearing house or a repricing company designated by the HMO to receive claims;

(2) The telephone number to which providers' questions and concerns regarding claims may be directed; and

(3) The mailing address, including physical address, of any separate claims processing centers for specific types of services, if applicable.

(b) An HMO shall provide no less than sixty (60) calendar days prior written notice of any changes of address for submission of claims, and of any changes of delegation of claims payment functions, to all affected providers with whom the HMO has contracts. Except an HMO may provide less than sixty (60) days notice in situations beyond the control of the HMO.

(c) After a change of claims payment address or a change in delegation of claims payment functions, an HMO shall not premise the denial of a clean claim upon a provider's failure to file a clean claim within any contracted time period for claim filing, unless timely written notice has been given to the provider.

(d) If an HMO has delegated its claims processing functions to a third party, the delegation agreement must provide that the claims processing entity shall comply with the requirements of this Subchapter and applicable law. Any delegation agreement or provision may not be construed to limit the HMO's authority or responsibility to comply with all applicable statutory and regulatory requirements.

310:655-47-10. Failure to promptly pay

(a) An HMO that fails to comply with the requirements in Titles 36 and 63 of the Oklahoma Statutes regarding reimbursement of claims and with this Subchapter shall pay the greater of:

(1) The penalty amount for late payment referred to in applicable provisions in Titles 36 and 63 of the Oklahoma Statutes; or

(2) The contracted penalty rate for late payment set forth in the contract between the provider and the HMO.

(b) Failure to pay the correct amount on a clean claim in accordance with the contract or denial of a clean claim for which payment should have been made that results in a failure to comply with the requirements of applicable provisions in Titles 36 and 63 of the Oklahoma Statutes and this Subchapter is considered a violation and may be subject to administrative penalties as set forth in OAC 310:655-49.

(c) Any amount previously paid or any charge for a non-covered service shall be deducted from the payment.

310:655-47-11. Date of claim receipt

(a) A provider and an HMO may agree by contract to establish a procedure to create a rebuttable presumption regarding the date of claim receipt.

(b) If a provider and HMO do not by contract agree to a method for the establishment of a rebuttable presumption, then the procedures set forth in subsections (c) through (e) of this Section shall be used to establish a rebuttable presumption to demonstrate the date of claim receipt.

(c) The provider shall maintain a claims summary report to identify each claim and identify the batch to which multiple claims were a part. The claims summary report shall be used as a means of confirming the number of claims submitted.

(d) The summary report shall accompany each batched filing, except for electronic submissions.

(e) The provider shall submit a claim or a multiple claim batch by one of the following methods, as appropriate:

(1) United States mail first class. Claim(s) submitted by United States mail first class will be considered received on the seventh business day after the date the claim(s) was placed in the mail;

(2) Certified mail. Claim(s) submitted by certified mail will be considered received on the date the delivery receipt is signed;

(3) Overnight delivery. Claim(s) submitted by overnight delivery will be considered received on the date the delivery receipt is signed;

(4) Electronically. Claim(s) submitted electronically will be considered received on the date of verification of receipt by the HMO or the HMO's clearinghouse. Claims are to be accompanied by any system-generated proof of transmission. If the HMO or its clearinghouse do not confirm receipt or reject the transmission within 24 hours of submission, the provider or the provider's clearinghouse shall provide the confirmation date conditional upon the provider or the provider's clearinghouse verifying the claim(s) contained the correct payor identification;

(5) Facsimile. Claim(s) submitted by facsimile will be considered received on the date of the facsimile confirmation, or if the transmission occurs after the HMO's working hours, on the HMO's next working day; or

(6) Hand delivery. Claim(s) submitted by hand delivery will be considered received on the date the delivery receipt is signed.

310:655-47-12. Terms of contracts

Contracts between HMOs and providers shall not include terms that:

(1) Exceed the maximum number of days established for reimbursement of claims pursuant to applicable provisions in Titles 36 and 63 of the Oklahoma Statutes;

(2) Requires the provider to contact the HMO to inquire about the status of a claim; or

(3) Waive the provider's right to recover reasonable attorney fees, if such provider is the prevailing party in litigation, pursuant to applicable provisions in Titles 36 and 63 of the Oklahoma Statutes.

SUBCHAPTER 53. EXAMINATIONS

310:655-53-1. Definitions

When used in this Subchapter, the following word shall have the following meaning unless the context clearly indicates otherwise:

"Examiner" means any individual or firm having been authorized by the Department to conduct an examination.

310:655-53-2. Nature and frequency of examinations

(a) The Department or an examiner may conduct an examination of any HMO as often as the Department deems appropriate but shall at a minimum, conduct an examination not less frequently than once every three (3) years. In scheduling and determining the nature, scope and frequency of the examinations, the Department shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, or reports of public accountants.

(b) For purposes of completing an examination of any HMO under this Subchapter, the Department may examine or investigate any person, or the business of any person, insofar as such examination or investigation is, in the sole discretion of the Department, necessary or material to the examination of the HMO.

(c) The Commissioner may authorize any employee of the Department to exercise the Department's authority under this Subchapter.

310:655-53-3. Appointment of examiner

(a) Upon determining that an examination should be conducted, the Department shall appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners as supplemented by rules of the Department. The Department may also employ such other guidelines or procedures, as the Department may deem appropriate.

(b) Every HMO or person from whom information is sought, including all of its officers, directors, employees and agents, shall provide to the Department and examiners timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business and affairs of the HMO being examined. The officers, directors, employees and agents of the HMO or person shall facilitate such examination and aid in such examination so far as it is in their power to do so. The refusal of any HMO, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension, revocation or nonrenewal of any license or authority held by the HMO to engage business subject to the Department's jurisdiction.

(c) When making an examination under this Subchapter, the Department may retain attorneys, appraisers, independent actuaries, independent certified public accountants or an accounting firm or individual holding a permit to practice public accounting, certified financial examiners or other professionals and specialists as examiners, the cost of which shall be borne by the HMO which is the subject of the examination.

(d) Nothing contained in this Subchapter shall be construed to limit the Department's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or HMO work papers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the Department may deem appropriate.

(e) The Department shall forward of copy of the final report to the State Insurance Commissioner. The Department shall take into consideration any recommendation from the State Insurance Commissioner prior to making a final determination. The Department will advise the State Insurance Commissioner of any action taken as a result of any recommendation, and if no action is taken or if not all of the recommendation is acted upon, the Department shall advise the State Insurance Commissioner of the reason(s) for no or partial action.

310:655-53-4. Payment of charges

Any HMO or person examined under the provisions of this Subchapter shall pay the proper charges incurred in such

examination, including the actual expense of the Department or the expenses and compensation of an authorized representative and the expense and compensation of assistants and examiners employed therein.

310:655-53-5. Report of examination

(a) The examiner shall prepare a report based upon the findings of the examination. This report shall include recommendations for follow-up actions and corrective actions.

(b) Two (2) copies of the report shall be submitted to the Department within fifteen (15) days after the conclusion of the examination unless otherwise approved by the Department.

SUBCHAPTER 55. [RESERVED]

SUBCHAPTER 57. RISK BASED CAPITAL

310:655-57-1. Purpose

The purpose of this Subchapter is to require a minimum level of capital appropriate to the underwriting, financial, investment risks and other business and relevant risks assumed by an HMO.

310:655-57-2. Phase in of risk-based capital

For risk-based capital reports required to be filed in 2003, the phase in provisions of the model act referenced in OAC 310:655-57-3 shall apply.

310:655-57-3. Adoption by reference

The Department adopts by reference the 1999 National Association of Insurance Commissioners (NAIC)Risk-Based Capital (RBC) for Health Organizations Model Act and the Managed Care Organizations Risk-Based Capital Report including Overview and Instructions for companies which includes the RBC formula and the required diskettes. All HMOs subject to this Section are required to file the diskettes with the Department and NAIC in accordance with and by the due date specified in the RBC instructions.

310:655-57-4. [RESERVED]

310:655-57-5. Actions of department

The Department, subject to the phase-in provisions in OAC 310:655-57-2, may take the following actions against an HMO that fails to maintain the authorized control level risk-based capital in the RBC Report as calculated in accordance with the RBC instructions:

(1) order the HMO to cease writing new business;

(2) place the HMO in supervision or conservation;

(3) find the HMO to be impaired as provided by OAC 310:655-25-9;

(4) apply any sanctions provided by law or rule.

310:655-57-6. Limitations

In no event shall the requirements of this Subchapter reduce the amount of net worth, capital and/or surplus otherwise required by law, rule or order of the Commissioner.

[OAR Docket #03-1045; filed 5-28-03]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 664. HOME CARE ADMINISTRATOR CERTIFICATION

[OAR Docket #03-1046]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Initial Certificate Process
310:664-3-3 [AMENDED]
310:664-3-6 [AMENDED]
Subchapter 7. Requirements for Examination
310:664-7-1 [AMENDED]
310:664-7-2 [AMENDED]
Subchapter 9. Continuing Education Requirements
310:664-9-2 [AMENDED]
310:664-9-3 [AMENDED]
310:664-9-4 [AMENDED]
Subchapter 11. Renewal of Certification
310:664-11-1 [AMENDED]
310:664-11-2 [AMENDED]
Subchapter 13. Enforcement
310:664-13-4 [AMENDED]

AUTHORITY:
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"n/a"

ANALYSIS:
The proposed amendments establish a 3-month time limit after completion of a preparedness program for an individual to take the certification examination. The amendments establish a 6-month time limit for an individual to apply for a certificate after passing the administrator preparedness examination. Additional requirements are established for an individual who fails to comply with examination and application time limits, or who fails to successfully complete the examination. The types of courses that qualify for continuing education credit are clarified. Limits are placed on continuing

education credits for courses with a clinical emphasis. Documentation requirements for proof of continuing education are specified and clarified. Additional proof of continuing education hours earned are specified for an applicant who fails to timely renew certification. Annual fees are required for an applicant who does not timely renew. Procedures for requesting an inactive certificate are clarified. The amendments provide for denial of a certificate for any administrator who alters or allows alteration of a certificate. Grounds for sanctions against an administrator's certificate are amended to include the administrator's misrepresentation or alteration of a certificate.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF: JULY 11, 2003:

SUBCHAPTER 3. INITIAL CERTIFICATE PROCESS

310:664-3-3. Certificate by completion of the OHCAPA

An individual who has successfully completed the Department-approved preparedness program and the OHCAPA or who is otherwise deemed to meet the preparedness program standards and passed the OHCAPA may apply for a home care administrator certificate. An individual shall apply for an initial home care administrator certificate within six (6) months after passing the OHCAPA. Failure to submit an application during the required time frame will result in the individual having to meet the deeming criteria and repeating the OHCAPA. The individual shall apply on the Department form. The application shall include, but not be limited to, the following information:

(1) Name, complete home mailing address, and telephone number, of the applicant;

(2) A copy of the results of a criminal arrest check conducted by the OSBI completed within sixty (60) days prior to the date of the application;

(3) Evidence of successful completion of the OHCAPA; and

(4) A non-refundable fee of fifteen dollars ($15.00) per month from the date of application until July 31.

310:664-3-6. Provisional certificate

(a) An individual may function as an administrator no longer than six (6) months with a provisional certificate, provided that one (1) of the deeming criteria as specified in OAC 310:664-3-4 has been acknowledged by the Department.

(b) An individual shall apply on the Department form which shall include, but not be limited to, the following:

(1) Name, complete home mailing address, and telephone number;

(2) The name and address of the agency where employed;

(3) A copy of written authorization by the administrator or member of the governing board allowing the individual to temporarily function as the administrator;

(4) Evidence of meeting the deeming criteria specified in OAC 310:664-3-4;

(5) A one (1) time, non-refundable fee of one hundred dollars ($100.00); and

(6) A copy of the results of a criminal arrest check conducted by the OSBI within sixty (60) days prior to submission of the application.

(c) The Department shall notify the applicant of its decision within thirty (30) days from receipt of the application.

(d) Any individual that alters any administrator certificate or allows alteration of any administrator certificate shall be denied a home care administrator certificate upon application.

SUBCHAPTER 7. REQUIREMENTS FOR EXAMINATION

310:664-7-1. Oklahoma Home Care Administrator Preparedness Assessment

(a) The Oklahoma Home Care Administrator Preparedness Assessment (OHCAPA) shall be Department approved and offered at least quarterly.

(b) The OHCAPA may be administered at a state vocational technical institution, state institution of higher education, or a professional testing and evaluation center in the State.

(c) An individual shall sit for the OHCAPA within three (3) months after completing a preparedness program or being deemed. Failure to take the OHCAPA during the three (3) month time frame will require the individual to resubmit another application for the deeming process and a non-refundable fee of fifty dollars ($50). The Department may grant an applicant an exception or extension if such requirement causes an undue hardship for the applicant due to unusual circumstances or illness.

(~~c~~d) Each approved OHCAPA exam developer shall provide the Department with the following:

(1) Written job analysis studies to determine the pool of test questions;

(2) Test question validation studies;

(3) Test administration and scoring procedures;

(4) Capabilities of providing examination results in the proper format to the Department within thirty (30) days of examination;

(5) Assurances of test security;

(6) A report following each test administration which specifies:

(A) Date of administration of the OHCAPA;

(B) Name and examination score for each examinee; and

(C) Name of the preparedness program which each examinee completed and the pass percentages for each preparedness program course.

(~~d~~e) Each approved OHCAPA exam developer shall provide the examinee with the following:

(1) A notice showing pass or fail results;

(2) A notice specifying the areas of failure; and

(3) A notice stating that three (3) OHCAPA challenges were not successful and completion of the preparedness program shall be required prior to another attempt to pass the OHCAPA.

(~~e~~f) The Department may withhold approval of an OHCAPA examiner when one (1) or more of the following has been determined to occur:

(1) Insufficient security measures in administration of testing;

(2) Impropriety or tampering by OHCAPA examiners or by non-authorized persons;

(3) Failure to provide the Department with examination results or reports pursuant to OAC 310:664-7-1(A)(B)(C); and

(4) Allowing another entity not approved by the Department to score the examination.

310:664-7-2. Successful completion of the OHCAPA

(a) An individual shall score at least seventy percent (70%) to pass the OHCAPA.

(b) An individual may retake the examination a total of three (3) times without completing or repeating a preparedness program.

(~~b~~c) Upon written notice from the OHCAPA examiner of passing the OHCAPA, the individual may apply for a home care administrator certificate by following the procedure pursuant to OAC 310:664-3-3.

SUBCHAPTER 9. CONTINUING EDUCATION REQUIREMENTS

310:664-9-2. Number of hours required

(a) A home care administrator shall complete and furnish documentation to the Department of at least twelve (12) hours of continuing education each year by July 31. The continuing education must be acceptable and verifiable per the requirements addressed at OAC 310:664-9-3 and OAC 310:664-9-4.

(b) No more than six (6) hours of continuing education accrued through home study shall be acceptable.

(c) No continuing education is required for the first renewal.

310:664-9-3. Acceptable continuing education

(a) Continuing education curricular content is acceptable to the Department when it:

(1) Approximates any of the academic areas pursuant to OAC 310:664-5-4;

(2) Includes content which assists administrators in improving of professional competencies; or

(3) Occurs in a graduate or undergraduate course, seminar, workshop, conference, or professional association for the purpose of enhancing professional competency. Excludes independent reading and informal meetings that are informational in nature and are offered as a public service and not for the offering of continuing education.

(b) An acceptable instructor is an individual who has:

(1) Experience in home care administration; or

(2) Expertise in teaching and instructional methods suitable to the subject presented; or

(3) Academic qualifications and experience for the subject.

(c) If a home care administrator requires continuing education to renew additional credentials specific to clinical practice, no more than six (6) of the required twelve (12) hours for renewing a home care administrator certification may have a clinical emphasis.

310:664-9-4. Documentation of attendance

(a) A home care administrator shall submit with the application verification of attendance documents for at least twelve (12) hours of continuing education. Acceptable documents include at least one (1) of the following:

(1) A continuing education validation form furnished by the presenter or a certificate of attendance and an agenda;

(2) A letter on the sponsoring presenter's letterhead giving the name of the program, location, dates, subject taught, total number of hours attended, participant's name and presenter's name and credentials; or

(3) An official college transcript showing courses completed with credit issued or audit credit.

(b) Only continuing education accrued in the preceding certificate renewal period is acceptable.

(c) Submission of fraudulent continuing education hours shall be the cause for disciplinary action and may result in suspension or revocation of the certificate.

(d) Documentation of home study shall include proof of registration for and completion of continuing education hours or units supplied by the provider of the home study education materials.

SUBCHAPTER 11. RENEWAL OF CERTIFICATION

310:664-11-1. Certification renewal process

(a) A home care administrator is responsible for filing for certificate renewal before the expiration date.

(b) Each certificate shall expire on each July 31 following its issuance.

(c) Failure to renew by October 31st shall result in presumed non

renewal of certificate and the individual shall not provide services as a home care administrator until and unless the individual files an application and meets requirements for renewal as follows.

(1) If the individual applies within one year after expiration of the certificate, the individual shall provide proof of successful completion of twelve (12) hours of continuing education completed prior to the expired year;

(~~1~~2) If the individual applies within two years after expiration of the certificate, the individual shall provide proof of successful completion of 12 hours of continuing

education for the previous expired year and an additional twelve (12) hours of continuing education for the current year in which renewal is requested;

(~~2~~3) If the individual applies more than two years but not more than five years after expiration of the certificate, the individual shall be required to pass the OHCAPA; and

(~~3~~4) If the individual applies more than five years after expiration of the certificate, the individual must successfully complete a preparedness program and the OHCAPA to be reinstated.

(d) The renewal application shall include, but not be limited to, the following:

(1) Documentation of the continuing education as specified in OAC 310:664-9-4;

(2) Renewal fee of fifty dollars ($50.00) payable to the Department;

(3) Disclosure of any felony conviction since the previous application for certification or renewal;

(4) If the renewal is filed on or after August 31 and on or before September 30, a penalty of twenty-five dollars ($25.00) payable to the Department; and

(5) If the renewal is filed on or after October 1 and before October 31, a penalty of fifty dollars ($50.00) payable to the Department. An applicant shall submit $50.00 each year up to $100.00 for failing to renew within a two (2) year time frame as addressed at OAC 310:664-11-1(1) and (2).

310:664-11-2. Inactive status

(a) A certificate may be placed on inactive status by written request by July 31, while the certificate is active and not expired. After five (5) years, such individual must meet the requirements addressed at OAC 310:664-3-1 and successfully pass the OHCAPA to ~~be reinstated~~ become a certified home care administrator.

(b) When a certificate is placed on inactive status, the certificate shall be returned to the Department.

(c) Active status may be re-established upon submitting a completed renewal application, payment of a renewal fee prorated for one (1) year, and the submission of twelve (12) hours continuing education acquired since August 1st.

SUBCHAPTER 13. ENFORCEMENT

310:664-13-4. Denial, revocation, non-renewal and suspension

The Department may deny an initial certificate application, renewal application or may deny, suspend, or revoke a home care administrator certificate upon proof of any of the following:

(1) Obtaining or attempting to obtain a home care administrator certificate by fraud or deceit;

(2) Conviction of a felony or a conviction of a crime involving violation of any narcotic or drug control law. The record of a conviction or a copy certified by the Clerk of the Court or by the Judge in whose court the conviction is entered, is conclusive evidence of the conviction or the OSBI criminal arrest checks indicating a felony conviction;

(3) Judicial determination of incompetence;

(4) Submission of fraudulent credential documents or records of employment;

(5) Submission of fraudulent continuing education records;

(6) Failure to comply with any provision of this Chapter or continual non-compliance with the provision of the Home Care Act; ~~or~~

(7) Abuse or neglect of a client or misappropriation of a client's property~~.~~;

(8) Representation as a certified home care administrator when not currently certified as a home care administrator; or

(9) Altering any administrator certificate or allowing alteration of any administrator certificate.

[OAR Docket #03-1046; filed 5-28-03]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 670. JAIL STANDARDS

[OAR Docket #03-1047]

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RULES:
Subchapter 1. General Provisions
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Subchapter 3. Standards for Lockup Facilities
310:670-3-1 [AMENDED]
Subchapter 5. Standards for Jail Facilities
310:670-5-1 [AMENDED]
310:670-5-2 [AMENDED]
310:670-5-3 [AMENDED]
310:670-5-4 [AMENDED]
310:670-5-5 [AMENDED]
310:670-5-6 [AMENDED]
310:670-5-7 [AMENDED]
310:670-5-8 [AMENDED]
310:670-5-9 [AMENDED]
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310:670-5-11 [AMENDED]
Subchapter 7. Standards for Jails Holding Juveniles
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ANALYSIS:
This proposal amends Subchapters 1, 3, 5 and 7 of the present Jail Standards Regulations to protect the health, safety and welfare of staff and prisoners as well as improve environmental conditions.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

310:670-1-2. Definitions

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

"ACA" means American Correctional Association.

"Central control" means the central point within the facility where security activities are monitored and controlled.

"Dayroom" means space for activities that is situated immediately adjacent to the prisoners' sleeping area and separated from the sleeping area by a wall.

"Department" means Oklahoma State Department of Health.

"Facility administrator" means sheriff, police chief, city manager, private contractor or a designee thereof charged with maintaining and operating a holding facility, lockup facility, or jail facility.

"Grievance" means a circumstance or action considered unjust.

"Holding facility" means a facility that shall hold a person no longer than twelve (12) hours. A holding facility is not required to meet the standards for jails, so long as a trained employee of the responsible county, city or town is available to render aid to, or release any confined person in the event aid or release is required because of a health or life endangering emergency.

"Hot meal" means a measure of food served and eaten at one sitting prepared in accordance with OAC 310:256 and served at a palatable temperature range of 110° - 120° F. (43.3° - 48.8° C.).

"Indigent prisoner" means a prisoner who has a total receipt of or a balance of less than $15.00 from the first day through the last of the preceding month.

"Jail facility" means a facility that may hold a person for an indefinite period of time.

"Juvenile" means a person who is subject solely to the jurisdiction of a juvenile court or who is subject to the provisions of 10 O.S. Sections 7306-2.5 or 7306-2.6.

"Last locked/secure door" means the last secure barrier between staff and the prisoner.

"Life endangering situations" means a suicide attempt, or obvious serious injury or illness, which in the evaluation of the staff requires an immediate response.

"Living quarters" means beyond the last locked/secure door.

"Lockup facility" means a facility that may hold a person no longer than ten (10) days. It is usually operated by a town or city for the temporary detention of persons awaiting arraignment. Persons who need to be detained longer than ten (10) days shall be transferred to a jail.

"New construction" means a facility with final plans approved after January 1, 1992.

"Prisoner" means any individual, whether in pretrial, sentenced or unsentenced status who is confined in a jail facility.

"Substantial remodeling" means the cost to repair/replace is at least fifty (50) percent of the cost to replace the facility.

"Trained jailer" means a person whose training, education and/or experience specifically qualifies him or her to perform the duties indicated in the job description and the jail standards. The individual performing the duties must be trained in appropriate laws, codes, standards, policies and procedures.

310:670-1-3. Implementation and inspection

A local ~~jail~~facility administrator shall develop and implement written policies and procedures pertaining to the daily management and operation of the facility. Each facility shall develop and maintain an operations manual sufficient to demonstrate compliance with the standards in Section 1 of Subchapter 3 of this Chapter, or Section 1 of Subchapter 5 of this Chapter.

SUBCHAPTER 3. STANDARDS FOR LOCKUP FACILITIES

310:670-3-1. Basic standards

The facility administrator shall develop and implement written policies and procedures for the operation of a lockup facility which shall include and address at a minimum, the following:

(~~a~~1) Arrest and commitment papers shall be verified.

(~~b~~2) A prisoner shall be searched during admission.

(~~c~~3) A prisoner's property shall be inventoried and property shall be stored in a ~~safe area~~secure location.

(~~d~~4) Medical screening shall be performed on all prisoners~~,~~ and documented and shall include at a minimum, the following information:

(A) Communicable diseases (i.e. HIV/STD, HEPATITIS, TB);
(B) Alcohol and drug abuse and treatment;
(C) Allergies;
(D) Injuries;
(E) Illnesses;
(F) Medication; and
(G) Suicide risks or attempts;

(~~e~~5) A first aid kit shall be available at locations designated by the facility administrator.

(~~f~~6) Two (2) completed, documented, local or collect telephone calls shall be allowed at time of booking or after a reasonable length of time as determined by the administrator or designee. The administrator or designee shall document a prisoner's refusal to make calls. In facilities where prisoners have unlimited access to operational telephones, a prisoner's refusal to make telephone calls is not required to be documented.

(~~g~~7) Clean bedding and personal hygiene items shall be available and provided at the facility.

(~~h~~8) Shower facilities shall be available with hot and cold running water at a ratio of at least one (1) shower for every twenty (20) prisoners.

(~~i~~9) Continual supervision shall be provided by a trained employee.

(~~j~~10) Hourly visual sight checks shall be ~~made~~conducted and documented.

(~~k~~11) ~~Prisoners shall be separated with no visual contact between sexes.~~Male and female prisoners shall be housed separately with no visual contact between the two genders.

(~~l~~12) The facility shall comply with federal, state and local ~~sanitation and~~ health, life safety and fire safety codes. ~~along with reasonably acceptable safety precautions, i.e., obvious hazardous situations that would allow injury to prisoners or staff.~~

(~~m~~13) ~~A~~Each prisoner shall be provided at least three (3) ~~adequate~~ meals each twenty-four (24) hours ~~during posted meal times, at least two (2) of which shall be hot.~~that meet the national recommended allowance for basic nutrition. At least two (2) hot meals shall be provided daily. There shall not be more than fourteen (14) hours between the breakfast and the evening meals.

(~~n~~14) Minimum Fire Safety Requirements:

(~~1~~A) **Automatic smoke detection.** ~~The number and spacing of individual detection devices shall be determined by the State Fire Marshal.~~The facility shall be equipped with a smoke detection system and a sprinkler system that complies with the Fire Safety Code and is approved by the Fire Marshal.

(~~2~~B) **Bedding.** Polyurethane foam mattresses, pads and pillows are prohibited. ~~Cotton mattresses~~Mattresses that are ~~certified fire retardant are recommended~~in compliance with the Fire Safety Code shall be used.

(~~3~~C) **Emergency lighting.** ~~Each facility shall have, at least, a hand lantern and two (2) two-celled flashlights in operating condition and located in the immediate lockup area.~~Each facility shall have emergency lighting that meets the minimum standards in the Life Safety and Fire Safety Codes.

(~~4~~D) **Supervision of prisoners.** Jailer posts shall be located and staffed close enough to the lockup area to permit jailers to hear and respond promptly to calls for ~~help~~assistance, ~~prevent disorders and respond quickly to emergencies~~and provide immediate response to emergencies.

(~~5~~E) **Exits.** ~~There shall be at least one (1) designated emergency exit in the facility that is approved by the State Fire Marshal which permits prompt evacuation of prisoners and staff in an emergency.~~There shall be designated and marked emergency evacuation exits that comply with the Fire Safety Code.

(~~o~~15) Prisoners held over ~~forty-eight (48)~~twenty-four (24) hours shall be issued and required to wear a clean set of jail clothing to include at least shirt and trousers or coveralls and footwear. A prisoner shall receive a complete change of clothing at least one (1) time each week. Prisoner street clothing shall be placed in prisoner property.

(~~p~~16) A trained jailer shall be on duty on each floor where prisoners are confined ~~or the facility may have either closed circuit TV, or a video camera and an intercommunication system to aid in monitoring prisoners.~~unless the facility is equipped with:

(A) Viewing access to all areas of the facility through closed circuit TV system; and
(B) An intercommunication system between the cell/living area and jailer post/control center to communicate with and monitor prisoners.

(~~q~~17) Any lockup facility constructed or substantially remodeled after ~~November 1, 1985~~January 1, 1992 shall meet the requirements of ~~Section 11 of Subchapter 5 of this Chapter except subsections G, H and M of Section 11 of Subchapter 5 of this Chapter.~~OAC 310:670-5-11 except 310:650-5-11(b) (7), (8), and (13).

SUBCHAPTER 5. STANDARDS FOR JAIL FACILITIES/DETENTION CENTER

310:670-5-1. Admission, release and records

The following admission and release procedures shall be followed. A facility shall have written policies and procedures for the reception, orientation and release of prisoners.

(1) The admission process of new prisoners shall include at least the following:

(A) Verification of arrest or commitment papers;
(B) Complete search of the individual ~~admitted~~upon entering the facility;
(C) Medical/mental health screening by qualified, trained personnel in compliance with the Oklahoma Nurse Practice Act, Title 59 of the Oklahoma Statutes; Section 567.1 et seq.;
(D) Procedures to ensure orientation and understanding of facility rules;
(E) Issue bedding, clothing, and footwear; and

(F) Classification and assignment to a housing unit.

(2) Positive identification shall be made of the arresting or committing officer, including verification of the officer's authority to make the commitment.

(3) Each newly admitted prisoner shall be permitted to complete at least two (2) local or collect telephone calls during the admission process or after a reasonable length of time as determined by the administrator. These telephone calls shall be documented and a prisoner's refusal to make telephone calls shall be documented. In facilities, where prisoners have unlimited access to operational telephones, a prisoner's refusal to make telephone calls is not required to be documented.

(4) The types of personal property prisoners may retain in their possession during ~~incarceration~~confinement shall be specified in ~~the~~a facility's policies and procedures. Secure storage ~~of all other prisoner~~for property not authorized to be in the prisoner's possession, to include civilian street clothing shall be provided.

(5) A written itemized inventory shall be made of all personal property of a newly admitted prisoner.

(6) Before a prisoner is released, positive identification shall be made of the ~~releasee~~individual and authority for release shall be verified.

(7) After the ~~releasee~~individual is positively identified, the prisoner's personal property shall be returned. The items shall be compared with the inventory list and~~, if everything is in order,~~ the prisoner shall sign for the returned property ~~returned~~ upon release.

(8) A ~~jail~~ logbook or computer ~~print-out~~record shall be maintained on all prisoners admitted to the facility.~~for any reason.~~ The ~~log~~logbook or ~~print-out~~computer record shall include at least the following:

(A) Name of the prisoner;
(B) Date and time of admission;
(C) Date and time of release;
(D) Offense ~~charged~~charges;
(E) Arrest number;
(F) Date of birth;
(G) Race; and
(H) ~~Sex~~Gender~~.~~;
(I) Social security number;
(J) Booking and intake number.

(9) An intake form shall be completed for every person admitted to a facility. The intake form shall be placed in the prisoner's file and shall contain at least the following information:

(A) Date and time of admission;
(B) Name and aliases of prisoner;
(C) Address;
(D) Name and title of arresting or delivering officer and employing agency;
(E) Charges;
(F) Date of birth;
(G) Race;
(H) ~~Sex~~Gender;
(I) Height;
(J) Weight ~~by scales~~(verified by scale);
(K) Eye color;
(L) Hair color;
(M) ~~Special medical comment~~Scars, tattoos and other identifying markings;
(N) ~~Name and relationship of next of kin~~Special medical and mental health comment-data and recommendations;
(O) ~~Address and phone number of next of kin; and~~Name, relationship, address and phone number of emergency contact; and
(P) Court judgment and sentence if sentenced prisoner.

(10) ~~Prisoner records~~Records shall be safeguarded from unauthorized ~~and improper~~ disclosure. Written policies and procedures shall ~~provide~~specify the process that prisoners and former prisoners are allowed ~~reasonable~~ access to their records.

(11) ~~Prisoner~~Individual records shall be maintained and kept current ~~on~~for each prisoner which shall contain at least the following information:

(A) Intake information;
(B) Commitment papers and court order;
(C) Reports of disciplinary actions or unusual occurrences;
(D) Medical, mental health and dental orders issued by the ~~medical~~health care authority;
(E) ~~Medical screening data; and~~A medical screening shall be performed and documented on all prisoners, and shall contain at a minimum the following information:
(i) Communicable diseases (i.e., HIV/STD, Hepatitis, TB);
(ii) Alcohol and drug abuse and treatment;
(iii) Allergies;
(iv) Injuries;
(v) Illnesses;
(vi) Medications;
(vii) Suicide risk or attempts;
(F) Photographs or video imaging~~.~~; and
(G) Personal property inventory.

310:670-5-2. Security and control

The facility administrator shall develop and implement written policies and procedures for the safety, security and control of staff, prisoners and visitors. Policies and procedures shall~~,~~ address at least ~~address~~ the following:

(1) A central control center shall be maintained to ~~ensure order and security~~coordinate the facility's internal and external security network. The control center shall be staffed twenty-four (24) hours-a-day. The control center or other location may be designated by the facility administrator and shall be responsible for prisoner counts~~, for~~and key control. ~~and for coordinating the facility's internal and external security network.~~

(2) There shall be a prisoner count at ~~each~~the beginning of each shift change. The prisoner count shall be documented.

(3) There shall be at least one (1) visual sight check every hour ~~and it~~which, shall ~~be documented. This shall~~ include all areas of each cell and such sight checks shall be documented.

(4) All security perimeter entrances, control center doors, cell block doors and doors opening into a corridor shall be locked except when used for authorized entry and exit. ~~admission or exit of employees, prisoners or visitors.~~ Staff members shall know which doors should be locked and under what circumstances they should be opened.

(5) No ~~staff member~~one person shall be permitted to enter a prisoner's ~~living area,~~cell or other area in which a prisoner is confined, past the last locked door, without ~~the~~ backup assistance. ~~of another staff member.~~ At least one (1) staff member shall be of the same ~~sex~~gender as the prisoner except in life endangering situations. Life endangering situations are defined as a suicide attempt, or obvious serious injury or illness ~~of a prisoner~~ which, in the ~~opinion~~evaluation of staff, requires an immediate ~~attention~~response. ~~Anytime a decision is made to enter the living area without appropriate backup assistance, the action shall be documented.~~Prior to breaching the last locked/secure door, central control or another staff member who can provide assistance will be notified. Documentation shall ~~show~~reflect the reason for the decision and a permanent record of the event shall be maintained.

(6) A weekly ~~inspection of all security facilities and hardware shall be required~~security device inspection shall be performed and priority corrective action taken on any discrepancy. ~~Results of the inspection shall be submitted immediately in writing to the facility administrator. Defective security equipment shall be replaced or repaired immediately.~~A weekly inspection report shall be submitted to the facility administrator.

(7) Searches of facilities and prisoners to control contraband shall be unannounced and at irregular intervals. These searches shall be documented.

(8) The availability, control and use of firearms, ammunition, chemical agents and related security ~~devices~~equipment shall be sufficient to meet needs. The level of authority required for access to, and use of, security ~~devices~~equipment shall be ~~stated~~ specified in policy and procedure. Chemical agents shall be used only ~~at the direction~~with the authorization of the facility administrator or designee. Jailers shall be trained in the use of chemical agents as prescribed by the manufacturer's specification.

(9) Firearms, ammunition, chemical agents and related security equipment shall be stored in a secure but readily accessible depository located outside the prisoner living ~~areas~~area. The facility may adopt policy and procedures that authorize trained and certified jailers to be equipped with chemical agent and non-lethal weapons while on duty.

(10) Firearms, chemical agents and related security equipment shall be inventoried at least one (1) time each month to determine their condition and expiration dates. ~~Weapons~~ Firearms shall be cleaned and fired ~~regularly~~annually and repairs shall be made as needed.

(11) In an emergency situation, supervision of armed personnel is essential and only weapons/firearms authorized by the administrator shall be used.

(12) Personnel discharging firearms or using chemical agents shall submit a written report to the facility administrator documenting the nature of the incident and the identity of the personnel and prisoners involved.

~~(13)~~ All persons, employees and prisoners involved in an incident where a weapon or chemical agent or force was used shall receive an immediate ~~physical inspection,~~medical examination and/or treatment. ~~and, if affected by the action, receive medical examination and treatment.~~

(~~14~~13) Except in emergency situations, a weapon shall not be permitted in the ~~security~~secure area. There shall be a system of checking ~~weapons~~firearms and ammunition for temporary ~~safe~~ secure storage outside the secure perimeter.

(~~15~~14) All keys shall be issued from a ~~central control area,~~ secure location designated by the jail administrator, and a log shall be used to record the number of each key, location of the lock and the number of keys to each lock. The key control system shall include a current accounting of the location and ~~possessor of~~authorized person to have each key. Keys shall be returned to the control center or a secure issue location at each shift change. ~~and there~~There shall be at least one (1) duplicate key to each lock that is maintained in a secure location ~~where~~inaccessible to prisoners. ~~are unable to gain possession of them.~~

(~~16~~15) Tools and utensils such as ~~hacksaws~~ hacksaw blades, welding equipment, ~~butcher knives~~culinary, barber shears and all sharps of similar-type equipment ~~of this nature~~ shall be ~~locked up and distributed~~secured, issued and used in accordance with ~~a~~ prescribed ~~system~~policy and procedure. ~~The system shall provide for checking in and out and for supervising their use at all times.~~ The control system shall also provide for ~~tools~~this type of tool and equipment brought into the facility by outside ~~maintenance~~authorized persons.

(~~(17)~~(16)) Prisoners shall not possess flammable, toxic or caustic materials unless they are under supervision of qualified personnel. Such materials shall be stored in secure areas that are inaccessible to prisoners.

(~~18~~17) A ~~job description~~post order shall be prepared for each ~~job~~post or duty assignment to be performed, and it shall specify the procedure to be followed for completing the assignment.

(~~19~~18) There shall be written procedures for dealing with an escape. These procedures shall be available to all personnel and shall provide for sounding an alarm, alerting officials, mobilizing resources and ending the alert. Following an escape, the staff shall prepare an analysis of the escape and defects in the security system shall be corrected immediately.

(~~20~~19) There shall be written procedures that specify what actions to take in emergency situations, i.e., fire, disturbances, and taking hostages. The procedures shall

specify areas of responsibility, the staff to be involved, when and what authorities shall be notified, how the problem may be contained and what shall be done after the incident ends. Emergency housing and supervision of prisoners shall be provided.

(~~21~~20) Staff shall be ~~familiar with,~~knowledgeable of and ~~shall be~~ trained in the ~~execution~~implementation of the emergency plans.

(~~22~~21) An emergency ~~power unit~~auxiliary power generator or ~~battery operated~~battery-operated system that meets fire and life safety codes shall be provided to maintain ~~lights~~lighting and essential equipment in an emergency. ~~Flashlights shall not be acceptable.~~

(~~23~~22) All emergency equipment shall be ~~checked~~inspected at least one (1) time each month and ~~be repaired or replaced~~ corrective action taken as needed. These ~~checks~~inspections shall be documented.

(~~24~~23) The use of physical force by staff shall be restricted to instances of justifiable self-protection, protection of others, protection of property and prevention of an escape, and shall be only to the degree necessary. A written report shall be prepared and submitted to the administrator following the use of physical force. ~~Immediate medical attention shall be provided to the prisoner or staff involved in an incident where physical force was used.~~ All persons, employees, and prisoners involved in an incident where a weapon, chemical agent, or physical force was used shall receive an immediate physical inspection, and if affected by the action, shall receive a medical examination and treatment.

(~~25~~24) Instruments of restraint such as handcuffs, leg irons, restraint chairs, restraint beds and straitjackets, shall not be applied longer than ~~absolutely necessary~~authorized by policy and procedure and equipment manufacturers specifications. Prisoners placed in restraints shall not be left without ~~proper~~required supervision. Instruments of restraint shall be used only as follows:

(A) As a precaution against escape during transfer;

(B) For medical/mental health reasons, by direction of the designated medical authority~~;~~ and jail facility administrator or designee; and

(C) To prevent prisoner self-injury, injury to others or property damage, and then only with the approval of the jail administrator or designee.

(~~26~~25) Guidelines for transporting prisoners shall emphasize safety and security and shall be available to all staff involved in transporting prisoners.

(~~27~~26) All entrances and exits to the facility shall be secure. ~~There shall be secure arrangements between prisoner areas and access to the street.~~

(~~28~~27) In case of a death or an escape with injury, the Department shall be notified immediately.

(~~29~~28) ~~Notify the~~The Department shall be notified no later than the next working day if any of the following ~~unusual~~ incidents occur:

(A) Extensive damage to jail property;

(B) ~~Injury~~Serious injury to staff or prisoner defined as life threatening or requiring transfer to outside medical facility;

(C) Escape~~.~~;

(D) Serious suicide attempt, defined as life threatening or requiring transfer to outside medical facility.

(~~30~~29) ~~Any trusty~~Trusties shall be either locked down or confined to the facility when not engaged in a job assignment. No trusty shall be permitted outside the facility ~~after 6:00 p.m.~~ without supervision.

310:670-5-3. Supervision of prisoners

(a) The movement of prisoners from one location to another shall be ~~regulated~~controlled and supervised by staff.

(b) Staff shall provide twenty-four (24) hour supervision of prisoners.

(c) Jailer posts shall be located and staffed to monitor all ~~prisoners~~prisoner activity either physically or electronically and close enough to the living areas to respond immediately to calls for ~~help~~ assistance, ~~quell disorders~~ and respond to emergency situations. A jailer shall be on duty at all times ~~on~~at each ~~floor~~location where prisoners are confined or the ~~facility shall have either~~observation shall be conducted by closed circuit TV~~,~~. ~~or a video camera and an intercommunication system to aid in the monitoring of the prisoners.~~The location shall be equipped with an intercommunication system that terminates in a location that is staffed twenty-four (24) hours-a-day and is capable of providing an emergency response.

(d) There shall be sufficient staff to perform all assigned functions relating to security, ~~control,~~ custody and supervision of prisoners. ~~The staffing plan~~Staff assignments shall provide for backup assistance for all employees entering ~~prisoner living areas~~ locations where prisoners are confined.

(1) Facilities, which house twenty (20) or less prisoners at all times shall have on site, a minimum of one(1) jailer and one (1) other employee who has successfully completed the twenty-four (24) hour training course.

(2) Facilities, which house more than twenty (20) prisoners shall have on site, one (1) dispatcher or control center operator and one jailer, with proper backup.

(e) All prisoners shall be searched thoroughly when entering or leaving the security area.

(f) Policies and procedures shall specify a system for the supervision of female prisoners by male staff and supervision of male prisoners by female staff.

(g) Staff members are not permitted in opposite ~~sex~~gender living quarters unless accompanied by a staff member of the same ~~sex~~ gender as the prisoner. ~~Living quarters are defined as beyond the last locked door.~~

(h) ~~Prisoners~~A prisoner shall be prohibited from supervising, controlling, exerting or assuming any authority over another prisoner.

(i) The name and telephone number of the practicing attorneys and bonds persons in the area shall be posted conspicuously near the telephone used by ~~the~~ prisoners. This can be a telephone book.

(j) Direct supervision of prisoners shall be permitted if the facility has policies and procedures in place to ensure the safety

of employees, prisoners and visitors and if the physical plant design lends itself to direct supervision operation.

310:670-5-4. Prisoner rules and discipline

(a) Written facility rules shall list all chargeable offenses, and the range of sanctions and disciplinary procedures to be followed and shall be ~~posted throughout the facility~~made available to prisoners.~~If more than forty (40) prisoners are committed to the facility in any twelve (12) month period, who cannot speak or read English, copies of the facility rules shall be provided in that language. Staff shall assist illiterate prisoners in understanding the rules.~~A rule book that contains all chargeable offenses, range of sanctions, and disciplinary procedures is provided to each prisoner upon booking and is translated into those languages spoken by the significant number of prisoners. When a literacy or language problem prevents a prisoner from understanding the rule book, a staff member shall assist the prisoner.

(b) All persons who deal with prisoners shall be familiar with the rules of prisoner conduct, and the approved sanctions. To prevent discrepancies among staff in interpretations, in-service training shall be conducted as often as necessary by direction of the administrator.

(c) Employees shall prepare a disciplinary report when they have reason to believe that a prisoner has committed a ~~major~~ violation of rules ~~or several minor violations~~.

(d) Disciplinary reports prepared by staff shall include at least the following:

(1) Specific rules violated;

(2) A formal statement of the charge;

(3) Any unusual prisoner behavior;

(4) Any staff or prisoner witness;

(5) Disposition of any physical evidence;

(6) Any immediate action taken, including the use of force; and

(7) ~~Staff member's signature and the date~~Date and time of the report ~~is made~~.

(e) Administrative due process procedures shall be followed for ~~major~~all rule violations. ~~or a series of minor rule violations.~~ A chairperson or a committee ~~of three (3) or more~~ may be appointed by the administrator to hear the charges and make a decision on appropriate action to be taken. Due process procedures shall include at least the following elements:

(1) Written rules that specify offenses and sanctions;

(2) Prisoner has been made aware of the rules and sanctions;

(3) Prisoner receives written notice of the charges and time of hearing prior to the hearing;

(4) Prisoner is present at the hearing and hears evidence, except for confidential information or presents unruly behavior or waives that right in writing;

(5) Prisoner has the right to make his own statement;

(6) Prisoner has the right to call relevant witnesses;

(7) Prisoner may be assisted by a willing prisoner or staff member of his choosing;

(8) The decision shall be based solely on the evidence and shall be rendered in writing;

(9) Record shall be made of the hearing;

(10) ~~Prisoner may appeal the decision to the committee;~~ Decision shall be reviewed by the facility administrator or designee;

(11) ~~Decision shall be reviewed by the facility administrator; and~~A prisoner shall have the right to appeal the decision of the facility administrator or designee to the next level of authority;~~and~~

(12) If a prisoner is found not guilty, ~~the finding shall be entered into his file~~the disciplinary report and all associated documents shall be removed from the prisoner's file;

(13) If a prisoner is found guilty, the findings shall be maintained in the prisoner's file.

(f) ~~For minor rule violations the following procedures shall be followed:~~

~~(1) Prisoner is informed of the specific charges of misconduct;~~

~~(2) Prisoner is given opportunity to explain or deny the charges;~~

~~(3) Prisoner is notified if a report of violation is placed in his file;~~

~~(4) Prisoner may request a review of the appropriateness of disciplinary action; and~~

~~(5) If a prisoner is found not guilty, the finding shall be entered into the prisoner's file.~~

~~(g)~~ If a prisoner allegedly commits an act covered by statutory law, the case ~~shall~~may be ~~submitted in writing to the appropriate official~~referred to the appropriate court or law enforcement officials for prosecution.

(~~h~~g) There shall be a written ~~prisoner grievance~~policy and procedure to respond to prisoner ~~complaints~~requests to staff and grievances.

310:670-5-5. Classification and segregation

The facility administrator shall develop and implement written policies and procedures for the classification and segregation of prisoners. The classification plan shall ensure the safety of prisoners and staff. The following criteria shall ensure an adequate classification and reclassification system.

(1) Prisoners of opposite sex shall be housed separately. Separation shall be by substantial architectural arrangements which permit no sustained visual contact.

(2) If detention of a juvenile is authorized, such juveniles shall be housed completely separate from adults. Separation shall be by substantial architectural arrangements which permit no visual contact with adult prisoners.

(3) Prisoners considered to be a threat to other prisoners or staff~~.~~

~~(A)~~ ~~Prisoners~~ shall be housed separately from other prisoners ~~if they are considered to be a threat to other prisoners or staff~~ for the following reasons:

(i) Prisoner's past criminal history;

(ii) The nature and severity of the charges pending against the prisoner;

(iii) Prisoner's behavior while in the facility; and

(iv) Other relevant reasons as directed by the administrator.

(~~B~~4) ~~These prisoners~~Prisoners may be double-celled or confined to ~~barrack-style~~dormitory-style housing if the floor space meets the square footage requirements. These prisoners shall be afforded the same living conditions and privileges as those occupying the general population. Any exception regarding conditions and privileges shall be defined by the administrator.

(~~4~~5) Prisoners who are intoxicated or under the influence of a controlled substance shall be housed separately from other prisoners until such time as ~~they return to standard conduct~~the medical authority or the jail administrator determines their suitability for placement into general population or other appropriate housing.

(~~5~~6) Prisoners who are mentally ill shall be separated from other prisoners. Every effort shall be made to contact a local hospital, clinic or mental health facility for the detention of the mentally ill.

(~~6~~7) Unsentenced prisoners shall be separated from sentenced prisoners, to the extent possible, and shall be permitted whatever confinement is least restrictive unless prisoner behavior or other security considerations dictate otherwise.

(~~7~~8) Classification and segregation shall not be done solely on the basis of race, color, creed or national origin.

310:670-5-6. Safety, sanitary and ~~hygienic~~hygiene standards

The administrator shall develop and implement ~~written~~ policies and procedures for the safety and maintenance of ~~cleanliness and~~ sanitation throughout the facility. These shall include at least the following:

(1) The facility shall comply with state and local sanitation and health codes, as well as ~~reasonably acceptable safety precautions~~the Life Safety code.

(2) There shall be a housekeeping plan for the facility that includes a cleaning schedule with specific duties. Cleaning activities performed by prisoners shall be supervised at all times.

(3) Floors shall be kept clean, dry and free of hazardous substances.

(4) ~~Toilets and washbasins in all living areas shall be cleaned at least daily.~~Prisoners shall be provided with cleaning materials daily to clean showers, washbasins and toilets.

(5) ~~Living area floors, walls and built-in bunks shall be cleaned at least once each week.~~

~~(6)~~ If smoking is permitted in the facility, ~~the~~ receptacles shall be provided for disposal of smoking materials. Receptacles shall be emptied and cleaned at least daily.

(~~7~~6) Upon admission or after commitment by the court, each prisoner shall be issued ~~appropriate~~ personal hygiene ~~equipment~~ items to include~~, at least,~~ soap, towel, toilet paper~~.~~, ~~Shaving equipment,~~ toothbrush and toothpaste~~, and feminine~~Feminine hygiene articles shall be provided upon request. Razors ~~shall be marked with the prisoner's name~~are issued to each prisoner upon request, and ~~shall be~~ collected ~~and stored after each use but shall not be kept in the cells~~immediately after use and disposed of or stored as specified by facility policy and procedures. Prisoners shall not share razors. With the exception of toilet paper and feminine hygiene items, prisoners who are not indigent and have funds in their prisoner account may be required to purchase hygiene items from the jail facility.

(~~8~~7) Clean bedding shall be issued to each prisoner who is ~~to stay~~confined overnight in the facility. A standard issue of bedding shall include:

(A) An approved mattress with a cleanable surface; and

(B) Enough clean blankets to provide comfort under the existing weather conditions.

(~~9~~8) Prisoners held over ~~forty-eight (48)~~twenty-four (24) hours shall be issued a clean set of appropriately sized jail clothing to include, at least, shirts and trousers, ~~or~~ coveralls and footwear.

(~~10~~9) A prisoner shall be given an opportunity to receive a complete change of clothing at least one (1) time each week.

(~~11~~10) Clean bedding and towels shall be ~~furnished~~offered at least one (1) time each week.

(~~12~~11) Laundry services shall be sufficient to permit regular exchange of all prisoner clothing, bedding and towels.

(~~13~~12) Blankets and mattresses shall be cleaned or sanitized before reissue.

(~~14~~13) Issuance of all clothing and bedding shall be documented and prisoners shall be held accountable for these items.

(~~15~~14) The supply of bedding, ~~linen~~linens and clothing shall exceed that required for the facility's maximum prisoner rated population capacity.

(~~16~~15) Under extreme circumstances it may be necessary for the administrator to ~~remove~~authorize the removal of linens, clothing and bedding from a prisoner. Such action may be taken only as a measure to protect the prisoner from self-injury, to protect ~~other~~others ~~prisoners~~ or to ~~protect~~prevent facility ~~furnishings~~damages. Such actions shall be documented and reviewed at least daily by jail administration. A paper gown or another appropriate garment may be provided as appropriate.

(~~17~~16) Sufficient ~~facilities~~showers shall be provided in housing ~~areas~~units to ~~permit~~provide prisoners the opportunity to bathe at least three (3) times each week. Prisoners working in food service shall be required to bathe daily.

(~~18~~17) Haircuts shall be available to prisoners ~~upon request~~ based on arrangements specified in facility policy and procedures. ~~The facility shall provide haircuts for indigent prisoners.~~

(~~19~~18) The potable water supply shall meet all state and local ~~requirements regarding~~ water quality standards. ~~The facility shall provide both hot and cold running water.~~Hot and cold water shall be provided in showers and washbasins.

((~~20~~)(19)) Any condition conducive to harboring or breeding insects, rodents or other vermin shall be eliminated immediately. Licensed pest control professionals shall be ~~used when necessary~~contracted to perform pest

control on a scheduled basis specified in the facility policy and procedure.

(~~21~~20) Liquid and solid wastes shall be collected, stored and disposed of in a manner that avoids nuisance and hazards and protects the health and safety of prisoners and staff. Garbage shall be stored in rust resistant, water-tight, rodent-proof and easily cleanable containers with tight fitting lids. Biomedical waste shall be stored and destroyed in compliance with state and federal requirements.

(~~22~~21) The facility's fire prevention policies and procedures shall ensure the safety of staff, prisoners and visitors. These shall include, but not be limited to an adequate fire protection service; a system of fire inspection and testing of equipment and documentation on a weekly basis; and the availability of fire hoses or extinguishers at appropriate locations throughout the facility. The facility shall have an automatic fire alarm and heat and smoke detection system approved by the Oklahoma State Fire Marshal.

(~~23~~22) There shall be noncombustible receptacles for smoking and separate containers for other refuse in prisoner living quarters and in other locations throughout the facility. Receptacles for smoking materials and containers for trash shall be fire retardant and approved for use in a jail facility.

(~~24~~23) The facility shall have a written evacuation plan in the event of fire or major emergency. Prisoners shall be instructed on emergency procedures.

(~~25~~24) There shall be a reliable means to permit prompt release of prisoners from locked areas in case of emergency. The route of evacuation ~~and subsequent disposition and housing of prisoners~~ shall be ~~planned and~~ posted in conspicuous locations throughout the facility.

(~~26~~25) Facility furnishings, walls, ceilings and floors shall be constructed of material ~~approved for fire safety by the Oklahoma State Fire Marshal~~that meets the Oklahoma Fire Safety Code.

(~~27~~26) Heating systems shall be capable of maintaining a temperature of at least sixty-five (65) degrees Fahrenheit. Open-faced or un-vented heaters are not permitted.

(~~28~~27) Air circulation and ventilation shall be capable of maintaining a temperature of at least eighty-five (85) degrees Fahrenheit or lower. If temperature exceeds eighty-five (85) degrees Fahrenheit, positive air movement shall be provided by use of fans, coolers, or air conditioning units. New facilities or substantially remodeled facilities shall be equipped with central air conditioning or individual air conditioning units which are capable of maintaining a temperature of eighty-five (85) degrees Fahrenheit.

310:670-5-7. Food services and dietary requirements

The jail administrator shall ~~develop a written food service plan that provides a wholesome and adequate diet. Food service areas and food service personnel shall~~ comply with ~~the *Food Service Establishment Regulations*, OAC 310:255.~~OAC 310:256.

(1) Each ~~Prisoners~~prisoner shall be provided at least three (3) meals each twenty-four (24) hours~~,~~ that meet the national recommended allowance for basic nutrition. At least two (2) hot meals shall be provided daily~~ of which shall be hot~~. There shall not be more than fourteen (14) hours between the breakfast and evening meals.

(2) Special diets shall be available for prisoners upon a physician's or dentist's authorization. Special diets shall be planned and prepared by one who is skilled in preparing special diets according to a physician's or dentist's authorization. Special diets shall conform as closely as possible to the food served other prisoners.

(3) If it is a requirement of a prisoner's religious beliefs that the prisoner adhere to dietary practices, reasonable provision shall be made for such diets from meals that are currently being served.

(4) A uniform record keeping system shall be developed to record the items served for each meal.

(5) Food shall not be used as a reward or disciplinary action, nor shall the menu be varied for the same reason.

(6) All meals shall be served under the direct supervision of staff. ~~to ensure that favoritism, careless serving and waste are avoided.~~ A prisoner's refusal to eat shall be documented at each meal and reported to jail administration.

(7) Any prisoner assigned to food service shall be closely supervised and shall maintain a high degree of personal hygiene. Each prisoner, providing food service or acting as a food employee, shall be screened for communicable diseases. Each prisoner, providing food service or acting as a food employee, shall wear a hairnet or hat, beard guard, and gloves while preparing and serving food.

(8) Ice machines that are available to the prisoners shall be dispenser-type.

(9) Menus shall be reviewed and approved in advance by a registered dietician.

310:670-5-8. Medical care and health services

Adequate medical care shall be provided in a facility. The administrator shall develop and implement written policies and procedures for complete emergency medical and health care services. Policies and procedures shall include at least the following:

(1) The administrator shall be responsible for the facility's medical services and shall develop, with the assistance of a designated medical authority, the facility's health care plan. Security restrictions shall be considered in the development of the plan, and any medical personnel included in the plan shall have their responsibilities regulated by written job descriptions. The health care plan shall cover at least the standards outlined in this section.

(2) Medical triage screening shall be performed on all prisoners immediately upon admission to the facility and before being placed in the general population or housing area. Those individuals who appear to have a significant medical or psychiatric problem, or who may be a suicide risk, shall be transported to the supporting medical facility as soon as possible. They shall be housed separately in a location where they can be observed frequently by the

staff at least until the appropriate medical evaluation has been completed. If after stringent evaluation by the highest-ranking mental health professional, in conjunction with a senior detention supervisor, these prisoners may be authorized to share the same cell.

(A) Medications in the possession of the prisoner at the time of the booking, whether prescription or over-the-counter shall be logged, counted and secured. Prescription medications shall be provided to the prisoner as directed by a physician or designated medical authority. The prisoner shall be observed to ensure the prisoner takes the medication. Neither prescription or over-the-counter medications shall be kept by a prisoner in a cell with the exception of prescribed nitroglycerin tablets and prescription inhalers. Over-the-counter medications shall not be administered without a physician's approval~~,~~. ~~unless the facility is using pre-packaged medication.~~

(B) Medical reception information shall be recorded on a printed screening form approved by the designated medical authority which shall include inquiry into:

(i) Current illnesses and health problems including medications taken and any special health requirements;

(ii) Behavioral observation, including state of consciousness and mental status;

(iii) Notation of body deformities, trauma markings, i.e., bruises, lesions, ease of movement, and jaundice;

(iv) Condition of skin and visible body orifices, including infestations; and

(v) Disposition/referral of prisoners to qualified medical personnel on an emergency basis.

(3) Delousing procedures shall be developed in coordination with the designated medical authority and used whenever vermin are detected.

(4) Prisoners are informed upon admission to the facility about the procedures for gaining access to medical and health care services. These procedures shall be posted in a conspicuous place.

(5) Each facility shall have a plan and provide twenty-four (24) hour emergency medical and dental care. Emergency plans shall at least include arrangements for:

(A) ~~Arrangements for the~~The use of one (1) or more hospital emergency rooms or other appropriate health care facility;

(B) ~~Arrangements for the~~The use of an emergency medical vehicle; and

(C) ~~Arrangements for an~~An emergency on-call physician and dentist when the emergency health care facility is not located in a nearby community.

(6) If the need is indicated by the medical screening at booking, prisoners held for forty-eight (48) hours or more, shall undergo a medical examination which shall be conducted by licensed medical personnel.

(7) Sick call, conducted by a physician and/or other licensed medical personnel, shall be available to each prisoner within forty-eight (48) hours of a valid written request. ~~Request forms shall be provided by staff.~~Qualified medical personnel will see each prisoner within 48 hours of triage, unless a more immediate visit is indicated.

(8) If medical services are delivered in the facility, adequate space, equipment, supplies and materials as determined by the designated medical authority, shall be provided for primary health care delivery.

(9) ~~A first~~First aid ~~kit,~~kits approved by the designated medical authority, shall be available in each facility. They shall be located in an area(s) also approved by the designated medical authority.

(10) Referral sources shall be identified in advance by the designated medical authority or administrator.

(11) The administration of medications, and the date, time and place of medical encounters shall be documented.

(12) Copies of the medical record, or a discharge summary if any, shall accompany a prisoner upon transfer to another facility.

(13) Any remaining medications shall accompany the prisoner ~~when the prisoner is transferred~~upon transfer to another facility or ~~released~~upon release. The amount of medications provided shall be documented. The count at that time shall be logged.

(14) Staff shall wear disposable gloves when dealing with possible exposure to a prisoner's body fluids.

(15) Biomedical waste shall be stored and destroyed in compliance with state and federal requirements.

(16) Sharps, i.e., needles, lancets~~, razors~~and scalpels shall be disposed of in a puncture-proof container.

(17) ~~Razors shall not be shared by prisoners.~~

~~(18)~~ Staff shall receive a TB skin test as a part of the pre-employment evaluation and each twelve (12) months as long as the test is negative. Individuals with positive skin tests shall be referred to the local health department or personal physician for evaluation. Employees will also be offered hepatitis B vaccination within one month of employment, at no cost to the employee.

(18) Universal precautions shall be used at all times by all employees.

310:670-5-9. Mail and visitation

Written policies and procedures shall govern prisoner correspondence. Policies and procedures shall include at least the following:

(1) There shall be no limitations on the volume of mail a prisoner may send or receive as long as the prisoner provides postage. The facility shall provide postage, one (1) time per week, for prisoners who do not have funds for correspondence with their attorney, court officials, elected officials, and next of kin.

(2) The number of approved correspondents for a prisoner shall be unlimited. A facility shall allow prisoners access to publications to the extent that such access is consistent with ~~order and~~ security.

(3) Incoming and outgoing prisoner mail shall not be read except when such correspondence, in the opinion of the administrator, poses a threat to safety and security.

(4) Incoming prisoner mail from court officials, the prisoner's attorney and elected public officials ~~may~~shall be opened and inspected for contraband only in the presence of the prisoner.

(5) Outgoing prisoner mail to court officials, the prisoner's attorney and elected public officials shall not be opened.

(6) Cash, checks or money orders received from incoming mail shall be removed and credited to the prisoner's account. Contraband shall be removed if it is discovered in either incoming or outgoing mail. Contraband shall be considered anything not ~~permitted at time of admission, in commissary or permitted to be brought by visitors~~authorized to be in a prisoner's possession.

(7) Outgoing mail shall be collected and sent daily except Sundays and holidays and incoming mail shall be delivered to prisoners within twenty-four (24) hours of its arrival at the facility.

(8) The number of visitors a prisoner may receive and the length of visits shall be limited only by facility security, visitation, space and schedules.

(9) Licensed attorneys and ministers shall be allowed additional visitation privileges and accommodations, which ensure privacy and are consistent with security.

(10) Policies and procedures shall allow special visits for persons who have come long distances.

(11) Visitors shall register upon entry to the facility and may be searched.

(12) Visitation by a person under age 18 may be permitted if the visitor is a member of the prisoner's immediate family and if a parent or legal guardian accompanies the visitor.

310:670-5-10. Training and staff development

The administrator shall develop policies and procedures for staff orientation and training. The training program shall be supervised by a designated employee. A facility with more than one-hundred (100) employees shall employ a full-time person for staff orientation and training. Policies and procedures shall include at least the following:

(1) A new employee shall receive orientation and training prior to job assignment by the employing agency.

(2) Any employee who works in direct contact with prisoners during the first year of their employment shall receive at least twenty-four (24) hours of training that covers at least the following:

(A) Security procedures;

(B) Supervision of prisoners;

(C) Report writing and documentation;

(D) Prisoner rules and regulations;

(E) Grievance and disciplinary procedures;

(F) Rights and responsibilities of prisoners;

(G) Emergency procedures;

(H) First aid and cardiopulmonary resuscitation; and

(I) Requirements of this Chapter.

(3) After the first year of employment, an employee who works in direct contact with prisoners shall receive at least the following training. This training shall be in addition to any requirements for completion of first aid and cardiopulmonary resuscitation. Before training begins a training schedule shall be ~~sent~~provided to the Department for approval, listing subjects, number of hours, date, time, location and instructor.

(A) Four (4) hours review of the required training items.

(B) Eight (8) hours training provided by the administrator; content and instructors shall be selected by the administrator.

(C) A test shall be given by the Department that covers this Chapter.

(4) A documentation log shall be sent to the Department for each person who completes the required training.

(5) Training may be given through other programs that have first been reviewed and approved by the Department.

(6) A passing score on the test given by the Department shall be seventy (70) percent or higher. Any person scoring less than seventy (70) percent shall not be considered to have satisfactorily completed training and may retest as necessary for a period of up to one year.

310:670-5-11. Physical plant

(a) **Existing facilities.**

(1) The reception and release area shall be located inside the security perimeter, but outside the prisoner living quarters. There shall be a secure weapons storage area outside of the custody perimeter.

(2) All cells and living areas shall have at least forty (40) square feet of floor space for the initial prisoner and at least twenty (20) square feet of floor space for each additional prisoner occupying the same cell. Double-celling of prisoners is permitted if there is at least sixty (60) square feet of floor space for two (2) persons.

(3) The facility shall have at least one (1) special purpose cell to provide for the temporary detention of prisoners under the influence of alcohol or dangerous substances or for persons who are uncontrollably violent or self-destructive. These cells shall be designed to prevent injury. ~~A prisoner shall be moved to the regular living area as soon as the prisoner returns to standard conduct.~~

(4) The housing and activity areas shall provide, at least the following:

(A) Lighting of at least twenty (20) foot candles;

(B) One (1) toilet and one (1) washbasin, with hot and cold running water, in every ~~single or multiple occupancy~~ cell or dormitory at a ratio of at least one (1) toilet and one (1) washbasin to twenty (20) prisoners; and

(C) A shower with non-skid floors and with hot and cold running water, at a ratio of at least one (1) shower to twenty (20) prisoners in the housing areas.

(5) There shall be sufficient floor drains to ensure a sanitary facility.

(6) There shall be ~~at least one (1) designated exit that is approved by the Oklahoma State Fire Marshal,~~designated and marked emergency evacuation exits that comply with the Fire Safety Code which permits prompt evacuation of prisoners and staff in an emergency.

(7) A county may provide a ~~barrack-style~~dormitory-style jail to accommodate up to ~~minimum~~medium-security prisoners. ~~A barrack-style jail~~It shall be equipped with washbasins, toilets and showers with hot and cold running water at a ratio of at least one (1) washbasin, one (1) toilet and one (1) shower to twenty (20) prisoners. A ~~barrack-style~~dormitory-style jail shall meet all requirements for a jail ~~facilities~~facility.

(b) **New facilities and substantial remodeling of facilities ~~(after November 1, 1985)~~(after January 1, 1992).** Plans for the construction of a new facility or the substantial remodeling of an existing facility shall be submitted to the Department ~~to determine if the facility will meet the requirements of this Chapter. Substantial remodeling shall be defined as being at least fifty (50) percent of the cost to replace the facility~~for approval.

(1) A new jail facility shall be geographically accessible to criminal justice and community agencies.

(2) The reception and release area shall be located inside the security perimeter but outside prisoner living quarters. The reception and release area shall have the following components:

(A) Sally port;

(B) Secure weapons storage, outside the jail custody perimeter;

(C) Temporary holding rooms with adequate seating for its rated capacity, toilets and washbasins;

(D) Booking area;

(E) Medical examination room;

(F) Shower facilities;

(G) Secure area for prisoner personal property storage;

(H) Telephone access;

(I) Interview room; and

(J) General administration space.

(3) Cells ~~and detention rooms~~ shall be constructed and arranged to allow direct natural light ~~to~~into each ~~cell and detention room~~area.

(4) Windows shall ~~constitute at least eight (8) percent of the detention floor area~~conform to ACA standards.

(5) All areas shall provide for at least twenty (20) foot candles of light.

(6) Each cell and detention room shall have at least forty (40) square feet of floor space for the initial prisoner, and at least twenty (20) square feet of floor space for each additional prisoner occupying the same cell. Double-celling is permitted if there is at least sixty (60) square feet of floor space for two (2) persons. Each room or cell shall have:

(A) One (1) toilet and one (1) washbasin with hot and cold running water, for every single or double occupancy cell or dormitory at a ratio of at least one (1) toilet and one (1) washbasin to twenty (20) prisoners.

(B) Bunks and storage as indicated by square feet.

(7) A county may provide a ~~barrack-style~~dormitory-style jail to accommodate minimum security prisoners. A ~~barrack-style~~dormitory-style jail shall be equipped with washbasins, toilets and showers with hot and cold running water at a ratio of at least one (1) washbasin, one (1) toilet and one (1) shower to twenty (20) prisoners. A ~~barrack-style~~dormitory-style jail shall meet all requirements for jail facilities.

(8) There shall be a dayroom area for each living unit containing at least thirty-five (35) square feet of floor space per prisoner for the maximum number of prisoners who use the dayroom at one time. It shall be separate and distinct from the sleeping area but immediately adjacent and accessible ~~therefrom~~.

(9) Living areas shall be planned and organized to permit segregation of prisoners according to existing laws, and the facility's classification plan.

(10) Each facility shall have at least one (1) special purpose cell or room to provide for the temporary detention of persons under the influence of alcohol or dangerous substances, or for persons who are uncontrollably violent or self-destructive. Such cells shall be designed and located to ~~minimize~~prevent injury to confined persons.

(11) There shall be showers with hot and cold running water at a ratio of at least one (1) shower to twenty (20) prisoners in the housing areas.

(12) There shall be sufficient floor drains to ensure a sanitary facility.

(13) ~~The~~If the facility ~~shall maintain~~maintains an arsenal it shall be located outside the prisoner area accessible only to authorized persons for secure storage, care and issuance of weapons, firearms, ammunition, chemical agents and other related security equipment. ~~The arsenal shall be inaccessible to all unauthorized persons but readily accessible to staff.~~

(14) Space shall be provided for the secure storage of ~~large~~ items ~~of a prisoner's personal property that a newly admitted prisoner may have in the prisoner's possession~~ a prisoner has in his possession at the time of booking.

(15) Space shall be provided for administrative, professional and clerical staff, including conference rooms, storage room for records, public lobby and toilet facilities.

(16) There shall be ~~at least one (1)~~ designated and marked emergency ~~exit~~exits that ~~is approved by the Oklahoma State Fire Marshal~~comply with the Fire Safety Code which permits prompt evacuation ~~of prisoners and staff in an emergency~~.

(17) In areas not specifically covered by these standards, new buildings and buildings undergoing extensive remodeling shall generally meet requirements of the state-adopted building code and *National Fire Protection Association,* Life Safety Code (current edition) and the plans shall be approved by the State Fire Marshal.

(c) **Temporary tent jails.** The Department must approve the establishment and design of this type of facility. The State Fire Marshal must approve it. A county may erect a tent jail which is temporary in nature, to meet the needs of the county

for confining ~~minimum-security~~minimum-security prisoners. A tent jail shall not detain juveniles and shall maintain continuous, physical and architectural separation of male and female prisoners. A tent jail shall not be required to meet minimum requirements for a jail facility but shall provide at least the following:

(1) **Accommodations.**

(A) Basic daily living needs;

(B) Medical needs;

(C) Shelter from inclement weather;

(D) Freedom from obvious safety hazards;

(E) Fire extinguishers as recommended by the Oklahoma State Fire Marshal; and

(F) General comfort consistent with security and control of prisoners.

(2) **Security.**

(A) Tents erected inside a fenced area suitable for guarding and controlling prisoners; and

(B) Permit prisoners to have visitors consistent with security requirements.

SUBCHAPTER 7. STANDARDS FOR JAILS HOLDING JUVENILES

310:670-7-1. Standards for jails holding ~~juveniles~~ juvenile offenders

(a) A juvenile shall be incarcerated only in a county or city jail authorized by the Oklahoma State Department of Health. A juvenile shall not be detained in any holding facility or lockup facility. This requirement does not preclude juveniles being held in non-secure areas until a parent or other responsible party arrives to take custody of the juvenile.

(b) Prior to a juvenile being placed in an eligible jail, permission shall be obtained from the appropriate judicial or juvenile bureau authority. A record of permission shall be maintained at the facility.

(c) Sight checks of juvenile prisoner living areas shall be performed at least one (1) time each hour. The check shall include all areas of each cell and the prisoners shall be visually observed. Checks shall be documented in writing on a form provided by the administrator.

(d) An adult prisoner who is assigned trusty status shall not be permitted visual contact with a juvenile prisoner~~ unless under direct supervision of a staff member~~. A ~~juvenile prisoner's meals~~ staff member shall ~~be served by a staff member~~serve a juvenile prisoner's meals.

(e) In addition to existing visitation privileges, juvenile prisoners shall be permitted visits from authorized juvenile agency personnel. Visits from family members, who are unable to visit during normal visiting hours shall be allowed so long as arrangements for them are made in advance, with the administrator, and provided they do not jeopardize security. Each facility that holds a juvenile shall have written policies and procedures for such visits.

(f) A juvenile prisoner shall be able to communicate with staff members at all times. This can be either by voice or electronic means. If electronic systems are used, there shall be a backup plan to insure communication ability is maintained.

(g) No staff member shall be permitted to enter a juvenile prisoner living area i.e., past the last locked door, without backup assistance being available from another staff member. At least one (1) staff member shall be of the same sex as the juvenile prisoner except in life endangering situations. Life endangering situations are defined as a suicide attempt, obvious injury or illness, which in the opinion of staff, requires immediate attention. Anytime a decision is made to enter the living area without appropriate backup assistance as defined above, the action shall be documented. Documentation shall show the reason for the decision and a permanent record shall be maintained.

(h) A juvenile charged with a crime which would constitute a felony if committed by an adult, or a juvenile who is an escapee from a juvenile training school or from a Department of Human Services group home, may be detained in any certified jail, police station or similar law enforcement office for a period of six (6) hours or less for identifying, processing or arranging for transfer to a juvenile detention facility or alternative program.

[OAR Docket #03-1047; filed 5-28-03]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 675. ~~REGULATIONS FOR LICENSURE OF~~ NURSING AND SPECIALIZED FACILITIES

[OAR Docket #03-1048]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
310:675-1-2 [AMENDED]
310:675-1-5 [NEW]
Subchapter 3. Licenses
310:675-3-2.1 [AMENDED]
310:675-3-3.1 [AMENDED]
310:675-3-4.1 [AMENDED]
310:675-3-5 [AMENDED]
310:675-3-5.1 [AMENDED]
310:675-3-8 [NEW]
Subchapter 7. Administration
310:675-7-4 [AMENDED]
310:675-7-5.1 [AMENDED]
310:675-7-6.1 [AMENDED]
310:675-7-16.1 [AMENDED]
310:675-7-20 [NEW]
Subchapter 9. Resident Care Services
310:675-9-4.1 [AMENDED]
310:675-9-5.1 [AMENDED]
Subchapter 13. Staff Requirements
310:675-13-12 [AMENDED]
Subchapter 15. Temporary Manager or Receiver [AMENDED]
310:675-15-3 [AMENDED]
310:675-15-8 [AMENDED]
310:675-15-11 [AMENDED]
310:675-15-12 [AMENDED]
310:675-15-15 [AMENDED]

310:675-15-16 [AMENDED]
310:675-15-17 [NEW]
Subchapter 17. Inspection Protocols
310:675-17-3 [NEW]

AUTHORITY:
Oklahoma State Board of Health: 63 O.S. Sections 1-1901 et seq. and Oklahoma Sessions Law 2002, Ch. 230.

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INCORPORATION BY REFERENCE:
Incorporated Standards:
42 Code of Federal Regulations, Sections 483.20, 488.410, 488.415, and 488.424
Incorporating rules:
310:675-9-5.1
310:675-15-8
Availability:
The incorporated standards are available for viewing at the Long Term Care Service, 10th Floor, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299. Additionally, the incorporated standards are available at no charge via the Internet at http://www.gpo.gov/nara/cfr/index.html

ANALYSIS:
The proposed amendments modify the definitions in Subchapter 1 to implement the provisions of Enrolled House Bill No. 2604 of the Second Session of the 48th Oklahoma Legislature. Subchapter 3 is amended to include applications and procedures for suspended licenses, and to reduce paperwork for license renewals when a facility has undergone no change. Forms for suspended licenses and for notices of change are described. Procedures for notifying the Department of changes are specified. Subchapter 7 is amended to describe a report form for allegations of abuse, neglect, or misappropriation of resident property by a nurse aide, which nursing facilities will be required to use when reporting to the Department any abuse, neglect or misappropriation by a nurse aide. The requirement for notice to a complainant prior to an inspection is deleted to ensure that inspections are unannounced. Quality assessment requirements are amended to be consistent with federal regulations. Financial solvency standards are added pursuant to House Bill 2604. Subchapter 9 is amended to specify minimum levels of supplies required, also pursuant to House Bill 2604. Resident assessment requirements are amended to be consistent with federal regulations for assessments and data submission.

Subchapter 13 is amended to make staffing levels consistent with current state law. The amendments to Subchapter 15 require the accrual method of accounting to standardize financial reports from temporary managers. Temporary manager appointment procedures are expanded to include references to federal requirements. Modifications are made to the language on bonds to allow for lesser amounts based on the assets under control of the temporary manager. Requirements relating to issuance of a license to a facility under temporary management are clarified. Conditions under which the Department will seek appointment of a receiver are clarified, and provisions are made for maintenance of a list of receivers. References to the Administrative Law Judge are revised to refer to the Commissioner of Health, to be consistent with the law. Requirements relating to status conferences are revised to provide for submission of monthly reports. Subchapter 17 is amended to implement and formalize the guidance on plans of correction as published in the federal "State Operations Manual."

A new section, 310:675-1-5, establishes rules and criteria for transfer of residents initiated by the Department in emergency situations, as required in 63 O.S. Section 1-1929. Section 310:675-7-4 is amended to modify rules and criteria for transfer of residents initiated by a nursing facility, as required in 63 O.S. Section 1-1928. The medical grounds for involuntary transfers or discharges are clarified, and facility documentation requirements are specified. A facility is prohibited from using a discharge to a hospital as a basis for refusing to readmit to the first available semiprivate bed. The contents of the notice that a facility must provide are reformatted and expanded. Failure to provide required notice results in denial of the right to discharge the resident. Provisions are made for the resident to file a verbal request for hearing. Hearing procedures are specified. The types of orders that the administrative law judge may issue are specified.

CONTACT PERSON:
Dorya Huser, Chief, Long Term Care Service, Protective Health Services, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-6868; electronic mail: doryah@health.state.ok.us.

Contacts regarding the provisions in Sections 310:675-1-5, 310:675-7-4, or 310:675-7-20 should be directed to Suzanne Nichols, Director, Office of Accountability Systems, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-4200; electronic mail: suzanne@health.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF: JULY 11, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

310:675-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means Title 63 of the Oklahoma Statutes, Sections 1-1901 and following as amended also known as the Nursing Home Care Act.

"Allied health professional" means one of the following persons: physician assistant, physical, speech, or occupational therapist, occupational therapy assistant, physical therapy assistant, or qualified social worker.

"Attendant" means the person having control of an animal/pet visiting or in residence in a facility.

"Approval" means the mandatory state government process by which an agency or program is reviewed, and publicly proclaimed, to render a service worthy of note.

"CEP" means the nurse aide competency evaluation program.

"Certification" means the process by which a non-governmental agency, or association, or governmental agency attests that an individual or facility has met certain predetermined standards specified by the certifying body.

"Certified medication aide" means a person who has passed a Department approved program for administering medications.

"Certified nurse aide" means any person who provides, for compensation, nursing care or health-related services to residents of a facility, who is not a licensed health professional and has completed a Department approved training and competency program.

"Charge nurse" means a registered nurse or licensed practical nurse responsible for supervising nursing services on a specific shift.

"Chemical restraints" means the use of a medication for the purpose of discipline, convenience, or in an emergency situation to control mood or behavior and not required to treat the resident's symptoms.

"Consultant registered nurse" means a registered nurse who provides consultation to the director of nursing and administrator concerning the delivery of nursing care for all residents in the facility.

"Denial" means a decision made by the appropriate body to disapprove an application.

"Direct care staff" means nursing, activity, social and therapy staff.

"Director of nursing" means either a registered nurse or licensed practical nurse, who has the authority and responsibility to administer nursing services within the facility.

"Emergency" means, for the purposes of Title 63 O.S. Section 1-1912, a serious, potentially life-threatening or life-endangering situation in which immediate action is necessary to ensure the health, safety, or welfare of residents, and for which the facility:

(A) does not have a plan acceptable to the Department to ensure health, safety or welfare of residents; or

(B) refuses to remedy the situation.

"Health related services" means any medically directed service provided by any person in a facility that may include but is not limited to, the following:

(A) Positioning and turning of residents.
(B) Self-help skill training.
(C) Assistance with prosthetic/assistive devices.
(D) Medication administration.
(E) Nutrition and hydration.
(F) Monitoring of resident vital signs.
(G) Catheter and nasogastric care.
(H) Behavior modification programs.
(I) Administering a medically related care plan
(J) Restorative services.

"In charge" and **"supervision"** means the administrator must have the requisite authorization from the licensee to make those purchases and incur those necessarily attendant debts in order to comply with the rules promulgated by the Board and all pertinent state statutes.

"Inservice education" means activities intended to assist the individual to acquire, maintain, and/or increase competence in fulfilling the assigned responsibilities specific to the employer's expectations.

"Licensed health professional" means one of the following: a physician; dentist, podiatrist, chiropractor, physician assistant, nurse practitioner; pharmacist; physical, speech, or occupational therapist; registered nurse, licensed practical nurse; licensed or certified social worker; or licensed/registered dietician.

"Licensed nurse" means a registered nurse or a licensed practical nurse who is currently licensed by the Oklahoma Board of Nursing.

"Licensed pharmacist" means a person who is a graduate of an accredited pharmacy program and is currently licensed by the Oklahoma Board of Pharmacy.

"Licensed practical nurse" means a person who is a graduate of a state approved practical nursing education program, or who meets other qualifications established by the Oklahoma Board of Nursing, and is currently licensed by the Oklahoma Board of Nursing.

"Licensure" means the process by which the Department grants to persons or entities the right to establish, operate, or maintain any facility.

"Manager" or "supervisor" means the person or entity which performs administrative services for the licensee. The manager or supervisor is not legally responsible for the decisions and liabilities of the licensee, and does not stand to gain or lose financially as a result of the operation of the facility. The manager is paid a fee or salary for services, and the primary remuneration shall not be based upon the financial performance of the facility.

"Misappropriation of resident's property" means the taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident, without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of resident's property.

"Nurse aide" means any person providing nursing or nursing related services to residents in a facility, but does not include an individual who is a licensed health professional, or who volunteers to provide such services without monetary compensation.

"Nurse aide trainee" means any person who has been employed by a facility to provide nursing care or health related services, and is enrolled in but has not completed a Department approved training and competency program.

"Orientation" means the training for a particular job activity given to all employees.

"Perishables" means food supplies, to include dietary supplements and intravenous feedings, medical supplies, and medications.

"Physical restraints" means any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that the resident cannot remove easily, that is not used for the purpose of therapeutic intervention or body alignment as determined by resident assessment and care planning, and which restricts the resident's desired freedom of movement and access to his or her body.

"Qualified nutritionist" is a Department approved person who holds a baccalaureate with major studies in food and nutrition, dietetics, or food service management; has one year

experience in the dietetic service of a health care institution; and participates in continuing education annually.

"Registered/licensed dietitian" means a person who is registered as a dietitian by the American Dietetic Association and licensed by the Oklahoma Board of Medical Licensure and Supervision.

"Registered nurse" means a person who is a graduate of a state approved registered nursing education program, and who is currently

licensed by the Oklahoma Board of Nursing.

"Registry" means a Department maintained list of individuals who have successfully completed a nurse aide training and competency evaluation program, or a competency evaluation program, approved by the Department.

"Revoke" means to rescind approval of a previous action.

"Specialized facility" means any facility which offers or provides inpatient long-term care services on a twenty-four hour basis to a limited category of persons requiring such services, including, but not limited to, a facility providing health or habilitation services for developmentally disabled persons, infants and/or children, or Alzheimer's and dementia residents.

"Standards of nursing practice" means an authoritative statement that describes a level of care or performance common to the profession of nursing by which the quality of nursing practice can be judged. Standards of nursing practice include both standards of care and standards of professional performance.

"Standards of care" means a description of a competent level of care demonstrated by a process of accurate assessment and diagnosis, planning, appropriate interventions, and predicted patient outcomes. (Appendix B of this Chapter.)

"Standards of professional performance" means a description of a competent level of behavior in the professional role including activities related to quality assurance, education, consultation, research, ethics, resource utilization, accountability, peer review, and interdisciplinary collaboration.

"Suspended license" means a license that is issued for a period not to exceed three years to a facility which has temporarily closed or ceased operations.

"Training and competency evaluation program" means a program approved by the Department to instruct and evaluate individuals to act as nurse aides.

"Transfer" means the move of a resident from one facility to another facility.

"Intra-facility transfer" means the moving of a resident from one room to another within a facility.

"Transfer of ownership" means a change of substantial, or controlling interest, in the ownership of a facility. A change of less than five percent (5%) of the interest of the owner does not constitute a transfer of ownership unless it also results in a change of control of the owner.

"Willful violation" means:

(A) a pattern of violation of the direct-care staffing requirement;

(B) a violation of the direct-care staffing requirement in which the facility knew or should have known staffing would be insufficient to meet the requirement yet took no action to avert the violation; or

(C) the reporting of materially inaccurate or misleading information of direct-care staffing to the Health Care Authority.

310:675-1-5. Relocation of a resident by the Department in emergency

(a) The Department may relocate a resident in an emergency when:

(1) The Department determines that the resident is in immediate jeopardy which cannot be rectified without relocation; or

(2) The facility has substantial quality of care non-compliance with the rules and/or certification standards and when actual harm has occurred in the facility; or

(3) The facility is unable to meet the needs of the resident.

(b) The Department may order the removal of all the residents to close the facility.

(c) The Department shall involve the resident and the resident's family or representative in the decision to relocate the resident; however, the Department may move the resident without the consent of the resident or the family if necessary to preserve the health, welfare or safety of the resident. If the resident does not consent, then if possible a member of the Adult Protective Services staff must agree in writing that the resident needs to be moved.

(d) The Department shall give written notice to the resident and to the facility of the reasons for the discharge or transfer if the resident or the resident's families do not agree to transfer the resident.

(e) If the resident has no specific preference, the Department shall relocate the residents to the nearest facility capable of care for the resident if acceptable to the resident.

(f) Should a resident be aggrieved by the decision of the Department to relocate or transfer that resident, the Department shall conduct a hearing before relocating the resident unless to do so will fail to preserve the health, welfare or safety of the resident.

(g) The hearing will be conducted following Chapter 2 of this title and the Administrative Procedures Act.

(h) The hearing will be conducted at the facility, and will be attended by the Administrative Law Judge and the Department's legal counsel. The Department will maintain a record on the case as it would for another individual proceeding.

(i) The Administrative Law Judge shall make this case a priority and shall issue a written opinion within one working day from the close of the hearing.

(j) The Administrative Law Judge's order shall include findings of fact, conclusions of law and an order that the transfer was according to law or not.

(k) The order may be appealed to District Court as in any other individual proceeding under the Administrative Procedures Act.

SUBCHAPTER 3. LICENSES

310:675-3-2.1. Deadlines for filing

The license application shall be filed in accordance with the following deadlines.

(1) The application for an initial license of a new facility shall be filed at least thirty days before beginning operations.

(2) The application for an initial license, following a transfer of ownership or operation, shall be filed at least thirty days before the final transfer. In the case of the appointment of a receiver as operator, this thirty day advance filing requirement may be waived if the Commissioner finds that an emergency exists which threatens the welfare of the facility residents. If an emergency is found to exist, the receiver shall file the license application before beginning operation of the facility.

(3) The application for renewal of license of an existing facility, with no transfer of ownership or operation, shall be filed by the renewal date specified on the existing license.

(4) An application for a suspended license, with no transfer of ownership or operation, shall be filed within thirty (30) days of relocation of all residents or the date the facility ceases operation.

310:675-3-3.1. Where to file

(a) ~~The~~Each initial, renewal or suspended license application, and each Notice of Change requesting an increase in beds, and the applicable license fee shall be delivered~~,~~ or sent to the Department at the address specified on the application or notice form. The effective date of filing shall be the date the application or notice and any required fee are received. No initial or renewal license or increase in licensed beds shall bear an effective date of issuance that is earlier than the effective date of filing.

(b) The completed application forms and the license fee shall not be given to Department personnel at the facility site.

310:675-3-4.1. Forms

The applicant for a license shall file application forms as follows:

(1) For an initial license of a new facility, or for an existing facility following a transfer of ownership or operation, the applicant shall file these forms: License Application; Disclosure Statement of Owner, Lessee and Manager, with Detail Attachment and Affirmation Attachment; and the Staffing Projection and Professional Certification.

(2) For renewal or suspension of a current license, the applicant shall file the License Application form. ~~If the current owner or manager differs from that reported on the last application for a license, and the difference does not constitute a transfer of ownership or operation, then the applicant shall file also a Disclosure Statement of Owner, Lessee and Manager, with Detail Attachment and Affirmation Attachment.~~ The application forms shall provide for the facility to file an abbreviated report if no change has been made since the time of the last application.

310:675-3-5. Suspension/revocation of license

(a) The period for an extension granted pursuant to 63 O.S. Supp. 2002 Section 1-1906.1(H)(2) shall not exceed three (3) years.

(b) During the period of suspension, the licensee shall file a Periodic Report for Suspended License that demonstrates the facility's progress towards reopening the facility or the extenuating or unusual circumstances for requesting the extension of the suspended license, in the form of, but not limited to: contract for sale, contract with real estate agent or builder, or a pending Certificate of Need application.

(c) The facility shall file periodic reports at least once every six months. The Department shall send a notice to each facility's contact, at least thirty (30) days prior to the due date of the periodic report.

310:675-3-5.1. Description of forms

(a) The forms used to apply for a facility license are the following.

(1) The License Application for a Nursing or Specialized Facility (Form 953-A) requests: identification of the type of license; the name and address of the facility; the administrator's name; the number and type of beds; the applicant's name; confirmation of changes in the owner, lessee or manager; a zoning statement for new facilities; and an affidavit attesting to the information provided.

(2) The Disclosure Statement of Owner, Lessee and Manager for a Nursing or Specialized Facility (Form 953-B) requests: the names and types of legal entities for the owner, lessee and manager; and an affidavit attesting to the information provided.

(3) The Detail Attachment (Form 953-C) supplements the Disclosure Statement (Form 953-B) and requests the following: the names and addresses of any persons holding at least a five percent (5%) interest in the entity which owns, operates, or manages.

(4) The Affirmation Attachment (Form 953-D) supplements the Disclosure Statement (Form 953-B) and requests the following: the names and addresses of individuals, members, officers and/or registered agents for the applicant; and an affirmation from each of the above concerning their age, character and health.

(5) The Staffing Projection and Professional Certification for a Nursing or Specialized Facility (Form 953-E) requests: a projected staffing pattern; and a certification from the director of nursing, the physician on call for medical emergencies, and the pharmacist providing consultation and emergency pharmacy services.

(6) The Periodic Report for Suspended License (Form 953-F) requires: the name and address of the facility; the applicant's name and address, contact person and address; report of progress in reopening the facility; request for extension based on extenuating circumstances; and an affidavit attesting to the information provided.

(b) The Notice of Change requests information on the name and address of the facility; the administrator; the number and type of beds; the applicant; and confirmation of changes in the owner, lessee or manager.

310:675-3-8. Notice of change

(a) If, after issuance of a license and before a renewal application is due, changes occur so that information previously submitted in a facility's license application is no longer correct, the facility shall notify the Department. Notice is required of changes to the following information:

(1) Facility identification including facility business name, mailing address, telephone number or facsimile number;

(2) Changes in licensed bed capacity, including proposed increases;

(3) The administrator; and

(4) Owner, lessee or manager disclosure information that does not otherwise necessitate an initial license.

(b) The facility shall file the Notice of Change form with the Department on or before the effective date of the change, with the following exceptions.

(1) When a change is unexpected or beyond the control of the facility, the facility shall provide notice to the Department within five (5) working days after the change.

(2) For an increase in licensed bed capacity, the facility shall file the notice of change prior to the requested license amendment date. The notice of change shall be accompanied by the $10 per-bed license fee pursuant to 63 O.S. Section 1-1905(A), prorated by the number of beds to be added and the proportion of time remaining on the license until expiration. Prior to occupying additional beds, the facility shall obtain an amended license from the Department.

SUBCHAPTER 7. ADMINISTRATION

310:675-7-4. Resident transfer or discharge

(a) **Reasons for transfer or discharge.** Involuntary transfer or discharge of a resident may be initiated by a facility only for one or more of the following:

(1) Medical reasons, including needs that the facility is unable to meet, as documented by the attending physician, in consultation with the medical director if the medical director and attending physician are not the same person.

(2) The resident's safety, or for the safety of other residents, as documented by the clinical record. The facility shall show through medical records that:

(A) the resident has had a comprehensive assessment by an interdisciplinary team and alternative measures have been attempted unsuccessfully; or

(B) the resident is a danger to himself, herself or other resident as documented by the medical record and the facility is not capable of managing that resident.

(3) The non-payment of charges for the resident's care as documented by the facility's business records for services for more than 30 days.

(b) **Procedures.** Procedures for involuntary transfer or discharge by the facility are as follows:

(1) Written notice shall be provided at least ten days in advance of the transfer or discharge date to the resident, resident's legal representative, person responsible for payment of charges for the resident's care, if different from any of the foregoing, and the Department.

(2) The ten day requirement shall not apply when an emergency transfer is mandated by the resident's health care needs and is in accordance with the attending physician's written orders and medical justification; or the transfer or discharge is necessary for the physical safety of other residents as documented in the clinical record. The facility shall not use a discharge to a hospital as a reason for failing to re-admit a resident after release from the hospital to the first available bed in a semi-private room. Such action shall be considered to be an involuntary discharge subject to all the requirements of this section, unless the discharge was required by the Department.

(3) The written notice shall include ~~a full explanation of the reasons for the transfer or discharge, and shall include information verifying that the resident's representative, or person responsible for payment of the resident's care, who is aggrieved by the facility's decision, may file a written request with the Department for a hearing. Such request shall be filed within five days following receipt of the notice of transfer or discharge.~~:

(A) A full explanation of the reasons for the transfer or discharge;

(B) The date of the notice;

(C) The date notice was given to the resident and the resident's representative;

(D) The date by which the resident must leave the facility; and

(E) Information that the resident's representative or person responsible for payment of the resident's care who is aggrieved by the facility's decision, may file within ten (10) days of notice a written request for a hearing with the Department by sending a letter to the Hearing Clerk, Oklahoma State Department of Health, 1000 NE Tenth Street, Oklahoma City, OK 73117.

(4) Failure of the facility to give the notice as substantially specified above shall result in an order without hearing from the Department denying the right of the facility to discharge the resident.

(~~4~~5) If a written request for a hearing is properly filed by an eligible aggrieved party, the Department shall convene a hearing within ten working days of receipt of the request. The request may be in the form of a letter or a formal request for hearing from the resident or resident's representative. In the event that the resident is unable to write, a verbal request made to the hearing clerk shall be sufficient. The Department shall reduce the verbal request to writing and send a copy to the resident. The request

should state the reason for the discharge and attach a copy of the letter from the facility.

(6) During the pendency of the hearing, the facility shall not discharge the resident unless the discharge was required by the Department or is an emergency situation. If the resident relocates from the facility but wants to be readmitted, the Department may proceed with the hearing and the facility shall be required to readmit the resident to the first available bed in a semi-private room if the discharge is found not to meet the requirements of the Nursing Home Care Act and OAC 310:675.

(7) The Department shall provide the Administrative Law Judge and the space for the hearing. The parties, including the resident and the facility, may be represented by counsel or may represent themselves.

(8) The hearing shall be conducted at the Oklahoma State Department of Health building unless there is a request for the hearing to be held at the facility or at another place. Providing the hearing room in such a case shall be the responsibility of the parties. The Department shall maintain a record on the case as it does for any other individual proceeding.

(~~5~~9) The hearing shall be conducted in accordance with the Department's procedures, Chapter 2 of this Title. The Administrative Law Judge's order shall include findings of fact, conclusions of law and an order as to whether or not the transfer or discharge was according to law. If a facility receives federal funds for services, it shall also comply with the certification standards. The more restrictive rule toward the facility shall be applied.

(10) If the Administrative Law Judge finds that the discharge was not according to law, the Department shall review, investigate and issue deficiencies as appropriate.

(11) If the discharge is according to law, the order shall give the facility the right to discharge the resident.

(12) The scope of the hearing may include:

(A) Inadequate notice;

(B) Discharge based on reason not stated in the law;

(C) Sufficiency of the evidence to support the involuntary discharge; or

(D) The finding of emergency.

(~~6~~13) The ~~hearing officer~~ Administrative Law Judge shall render a written decision within ten working days of the close of the record.

(~~7~~14) If the ~~hearing officer~~ Administrative Law Judge sustains the facility, ~~the resident shall have five days from the date of the receipt of the hearing officer's decision to complete the transfer or discharge.~~ the facility may proceed with the discharge. If the ~~hearing officer~~ Administrative Law Judge finds in favor of the resident, the facility shall withdraw its notice of intent to transfer or discharge the resident. The decision of the ~~hearing officer~~ Administrative Law Judge shall be final and binding on all parties unless appealed under the Administrative Procedures Act.

(c) **Room relocation**

(1) If a facility wants to relocate a resident from one room to another, the facility shall give the resident at least forty-eight hours written notice. The notice shall include the cost of transferring the resident's telephone, if applicable.

(2) If the resident or the resident's representative~~,~~ agrees in writing to the relocation, the relocation may take place in less than forty-eight hours.

(3) No hearing is required if the resident requests or agrees to relocation from one room to another.

310:675-7-5.1. Reports to state and federal agencies

(a) The facility shall report communicable diseases to the Department as specified by the Board.

(b) The facility shall report deaths by unusual occurrence, such as accidental deaths or deaths other than by natural causes, and deaths that may be attributed to a medical device, according to applicable state and federal laws. The facility shall also report such deaths to the Department.

(c) The facility shall report to the Department allegations of resident abuse, neglect or misappropriation of residents' property. The facility shall report allegations of resident abuse, neglect, or misappropriation of residents' property by licensed personnel to the appropriate licensing board.

(d) The facility shall report unusual incidents, such as missing residents, abuse and neglect of residents, to the Department and to other appropriate agencies.

(e) All reports to the Department shall be made by telephone or facsimile within twelve hours of the reportable incident. An initial report of the incident shall be mailed or faxed to the Department within five working days after the incident. The final report shall be filed with the Department when the full investigation is complete.

(f) The facility shall report to the Department allegations of abuse, neglect, or misappropriation of resident property by a nurse aide by submitting a completed Nurse Aide Abuse, Neglect, Misappropriation of Resident Property Form (ODH Form 718), which requires the following:

(1) facility name, address, and telephone;

(2) facility type;

(3) date;

(4) reporting party name or administrator name;

(5) employee name and address;

(6) employee certification number;

(7) employee social security number;

(8) employee telephone number;

(9) termination action and date;

(10) other contact person name and address; and

(11) facts of abuse, neglect, or misappropriation of resident property.

310:675-7-6.1. Complaints

(a) **Complaints to the facility.** The facility shall make available to each resident or the resident's representative a copy of the facility's complaint procedure. The facility shall ensure that all employees comply with the facility's complaint

procedure. The facility's complaint procedure shall include at least the following requirements.

(1) The facility shall list in its procedures and shall require to be posted in a conspicuous place outside the administrator's office area the following information:

(A) The names, addresses and telephone numbers of facility staff persons designated to receive complaints for the facility;

(B) Notice that a good faith complaint made against the facility shall not result in reprisal against the person making the complaint; and

(C) Notice that any person with a complaint is encouraged to attempt to resolve the complaint with the facility's designated complaint staff, but that the person may submit a complaint to the Department without prior notice to the facility.

(2) If a resident, resident's representative or facility employee submits to the administrator or designated complaint staff a written complaint concerning resident abuse, neglect or misappropriation of resident's property, the facility shall comply with the Protective Services for Vulnerable Adults Act, Title 43A O.S. Sections 10-101 through 10-110.

(b) **Complaints to the Department.** The following requirements apply to complaints filed with the Department.

(1) The Department shall provide to each facility a notice identifying the telephone number and location of the Department's central call center to which complaints may be submitted. The facility shall post such notice in a conspicuous place outside the administrator's office area.

(2) Any person may submit a complaint to the Department in writing, by phone, or personally. The Department shall reduce to writing a verbal complaint received by phone or in person.

(3) If the complainant is a facility resident, the resident's representative, or a current employee of the facility, the Department shall keep the complainant's identity confidential. For other complainants the Department shall ask the complainant's preference regarding confidentiality.

(4) The Department shall receive and triage complaints at a central call center. The complaints shall be classified and investigated according to the following priorities:

(A) A complaint alleging a situation in which the facility's noncompliance with state or federal requirements relating to nursing facilities has caused or is likely to cause serious injury, harm, impairment or death to a resident shall be classified as immediate jeopardy and shall be investigated by the Department within two (2) working days;

(B) A complaint alleging minimal harm or more than minimal harm to a resident but less than an immediate jeopardy situation shall be classified as actual harm and shall be investigated by the Department within ten (10) working days; and

(C) A complaint alleging other than immediate jeopardy or actual harm to a resident but that represents a repeated or ongoing violation shall be classified as a continuing complaint and investigated within twenty-five (25) days; and

(D) A complaint alleging other than immediate jeopardy or actual harm to a resident shall be classified as a primary complaint and shall be investigated within thirty (30) days.

(5) In addition to scheduling investigations as provided in paragraph (4) of this subsection, the Department shall take necessary immediate action to remedy a situation that alleges a violation of the Nursing Home Care Act, any rules promulgated under authority of the Act, or any federal certification laws or rules, if that situation represents a serious threat to the health, safety and welfare of a resident.

(6) In investigating complaints, the Department shall:

(A) Protect the identity of the complainant if a current or past resident or resident's representative or designated guardian or a current or past employee of the facility by conforming to the following:

(i) The investigator shall select at least three (3) records for review, including the record of the resident identified in the complaint. The three records shall be selected based on residents with similar circumstances as detailed in the complaint if possible. All three (3) records shall be reviewed to determine whether the complaint is substantiated and if the alleged deficient practice exists; and

(ii) The investigator shall interview or observe at least three (3) residents during the facility observation or tour, which will include the resident referenced in the complaint if identified. If no resident is identified, then the observations used of the three residents shall be used to assist in either substantiating or refuting the complaint;

(B) Review the facility's quality indicator profile using resident assessments filed pursuant to OAC 310:675-9-5.1 to determine whether the facility has been "flagged", if the complaint involves resident abuse, pressure ulcers, weight loss or hydration;

(C) Review surveys completed within the last survey cycle to identify tendencies or patterns of non-compliance by the facility;

(D) Attempt to contact the State or Local Ombudsman ~~and the complainant, if identified,~~ prior to the survey; and

(E) Interview the complainant, the resident, if possible, and any potential witness, collateral resource or affected resident.

(7) The Department shall limit the complaint report to the Health Care Financing Administration Form 2567 if applicable and the formal report of complaint investigation.

(A) The Form 2567 shall be issued to the facility within ten (10) business days after completion of the investigation.

(B) The formal report of complaint investigation shall be issued to the facility and the complainant, if

requested, within ten (10) business days after completion of the investigation. The formal report of investigation shall include at least the following:

(i) Nature of the allegation(s);

(ii) Written findings;

(iii) Deficiencies, if any, related to the complaint investigation;

(iv) Warning notice, if any;

(v) Correction order, if any; and

(vi) Other relevant information.

310:675-7-16.1. Quality assessment and assurance

(a) The facility shall maintain a quality assessment and assurance committee to address facility and resident's needs.

(b) The committee shall include the director of nursing, a physician designated by the facility, and at least one other appropriate staff.

(c) The quality assessment and assurance committee shall meet at least quarterly to identify quality assessment and assurance activities.

(d) The committee shall develop and implement appropriate plans of action to correct identified quality deficiencies.

(e) The Department shall not require disclosure of the records of the committee unless such disclosure is related to the committee's compliance with the requirements of this section.

(f) Good faith attempts by the committee to identify and correct quality deficiencies shall not be used as a basis for sanctions.

310:675-7-20. Financial solvency and reports

(a) The facility shall maintain financial solvency sufficient to ensure its operation as evidenced by maintaining financial resources adequate to operate the facility for at least a period of forty-five (45) days and by the timely payment of obligations including but not limited to:

(1) Employee payrolls;

(2) Amounts owed to consultants, medical directors, vendors, suppliers, and utility service providers;

(3) Taxes and provider fees; and

(4) Leases, rents and mortgages.

(b) The owner shall report to the Department the occurrence of financial events as required in 63 O.S. Section 1-1930.1.

(1) The owner shall:

(A) File a written report within 24 hours of the reportable event; or

(B) Make an oral report by telephone within 24 hours of the reportable event, and file written confirmation within five days of the reportable event.

(2) Notice of a judgment against the facility or any of the assets of the facility or the licensee shall be required from the date the judgment becomes final.

(3) The owner shall include information in the written notification to accurately identify the event, including but not limited to:

(A) The date of each action or event;

(B) The name of each person involved in the event, including each legal entity, governmental agency, financial institution or trustee, and each employee whose regular payroll check has not been honored;

(C) The amount of each judgement, lien, payroll, or tax payment related to the event; and

(D) The style of the case and index or docket numbers as applicable.

(F) Bankruptcy or appointment of trustee by the bankruptcy court.

(4) Financial resources *needed to operate the facility for a period of at least 45 days* [63:1-1930.1(A)(4)] are determined by:

(A) Projected facility revenues shall be based upon *the current number of occupied beds in the facility, multiplied by the current daily Medicaid reimbursement rate, multiplied by forty-five (45) days* [63:1-1930.1(A)(4)].

(B) Projected revenue may be decreased based on known or reasonably anticipated declines in numbers of occupied beds or in the daily Medicaid reimbursement rate.

(C) The provisions of 63:1-1930.1(B)(4) shall not be interpreted to require a facility to maintain unencumbered liquid assets in the amount equivalent to current occupied beds at the daily Medicaid reimbursement rate for 45 days. The purpose of 63:1-1930.1(B)(4) is to provide the Department with advance notice when the owner becomes aware that the financial condition of a facility is likely to jeopardize current operations within 45 days.

(5) Notification provided by the owner pursuant to 63:1-1930.1 does not relieve the owner of the obligation to provide *ninety (90) days' notice prior to voluntarily closing a facility or closing any part of a facility, or prior to closing any part of a facility if closing such part will require the transfer or discharge of more than ten percent (10%) of the residents* [63:1-1930].

SUBCHAPTER 9. RESIDENT CARE SERVICES

310:675-9-4.1. Supplies and equipment

(a) There shall be a sufficient quantity of supplies and, equipment in working condition, to meet the residents' medical, nursing, nutritional, social and activity needs.

(b) The minimum level of supplies including but not limited to food and other perishables is a three (3) day supply.

310:675-9-5.1. Assessment and care plans

(a) A resident assessment and an individual care plan shall be completed and implemented for each resident. The care plan shall indicate the resident's current status and accurately identify the resident's needs.

(b) The written resident assessment and care plan shall be reviewed and updated, at least quarterly, and as needed when the resident's condition indicates.

(c) Efforts shall be made to include the resident and resident's representative in development and implementation of the care planning process.

(1) **Resident assessment**

(A) The facility shall conduct, initially and periodically, a comprehensive, accurate, standardized, reproducible assessment for each ~~resident~~resident's functional capacity.

(B) ~~All residents~~Each resident shall have an assessment coordinated or conducted by a registered nurse.

(C) Each individual completing a portion of the assessment shall sign, date, and certify the accuracy of that portion.

(D) ~~Assessments~~An assessment shall be completed within fourteen days after admission of the resident. ~~Assessments for consultation services may be completed within thirty days of admission.~~

(E) The resident assessment shall include a minimum data set (MDS) ~~in a form prescribed by the Commissioner~~in the form required under 42 CFR 483.20. Each facility accurately shall complete~~, record, encode and electronically transmit~~ the MDS ~~at least monthly to the Department~~ for ~~all residents~~each resident in the facility, regardless of age, diagnosis, length of stay or payment category.

(F) The MDS ~~transmitted to the Department~~form shall ~~include at least~~require the following, as applicable:

(i) Admission assessment;

(ii) Annual assessment;

(iii) Significant change in status assessment;

(iv) Significant correction of prior full assessment;

(v) Significant correction of prior quarterly assessment;

(vi) Quarterly review; and

(vii) A subset of items upon a resident's transfer, reentry, discharge, and death.

(2) Individual care plan

(A) An individual care plan shall be developed and implemented for each resident to reflect the resident's needs.

(B) The care plan shall be developed by an interdisciplinary team that includes a registered nurse with responsibility for the resident, and other appropriate staff in disciplines determined by the resident's needs.

(C) The care plan shall include measurable objectives and timetables to meet the resident's medical, nursing, mental and psychosocial needs identified in the assessment.

(D) The care plan shall be available to appropriate personnel providing care for the resident.

(E) An initial care plan shall be completed at the time of admission. The individualized care plan shall be completed within twenty-one days after admission.

(F) A care plan shall be completed within seven ~~working~~ calendar days after the completion of the assessment.

SUBCHAPTER 13. STAFF REQUIREMENTS

310:675-13-12. Direct care staffing

(a) Each facility shall maintain at least the minimum direct-care-staff-to-resident ratios specified ~~as follows.~~

~~(1) *From September 1, 2000, through August 31, 2001, all nursing facilities subject to the Nursing Home Care Act, in addition to other state and federal requirements related to the staffing of nursing facilities, shall maintain the following minimum direct-care-staff-to-resident ratios:*~~

~~(A) *from 7:00 a.m. to 3:00 p.m., one direct-care staff to every eight residents;*~~

~~(B) *from 3:00 p.m. to 11:00 p.m., one direct-care staff to every twelve residents; and*~~

~~(C) *from 11:00 p.m. to 7:00 a.m., one direct-care staff to every seventeen residents.*~~

~~(2) *From September 1, 2001, through August 31, 2002, all nursing facilities subject to the Nursing Home Care Act, in addition to other state and federal requirements related to the staffing of nursing facilities, shall maintain the following minimum direct-care-staff-to-resident ratios:*~~

~~(A) *from 7:00 a.m. to 3:00 p.m., one direct-care staff to every seven residents;*~~

~~(B) *from 3:00 p.m. to 11:00 p.m., one direct-care staff to every ten residents; and*~~

~~(C) *from 11:00 p.m. to 7:00 a.m., one direct-care staff to every sixteen residents.*~~

~~(3) *On and after September 1, 2002, all nursing facilities subject to the Nursing Home Care Act, in addition to other state and federal requirements related to the staffing of nursing facilities, shall maintain the following minimum direct-care-staff-to-resident ratios:*~~

~~(A) *from 7:00 a.m. to 3:00 p.m., one direct-care staff to every six residents;*~~

~~(B) *from 3:00 p.m. to 11:00 p.m., one direct-care staff to every eight residents; and*~~

~~(C) *from 11:00 p.m. to 7:00 a.m., one direct-care staff to every fifteen residents.*~~

~~(4) *For purposes of this subsection:*~~

~~(A) *"direct care staff" means any nursing or therapy staff who provides direct, hands-on care to residents in a nursing facility; and*~~

~~(B) *prior to September 1, 2002, activity and social services staff who are not providing direct, hands-on care to residents may be included in the direct care staff to resident ratio in any shift. On and after September 1, 2002, such persons shall not be included in the direct care staff to resident ratio. [63:1-1925.2]*~~ in the Act at 63:1-1925.2.

(b) A licensed nurse shall be on duty eight hours a day, seven days a week on the day shift.

(c) If the director of nursing is a licensed practical nurse, a registered nurse shall be employed for at least eight hours per week as a consultant.

(d) There shall be a licensed nurse on duty twenty-four hours per day; provided however, that a facility licensed as a specialized facility for the developmentally disabled shall only be required to provide 24 hour nursing when it has a resident

who has a medical care plan. The department may waive this requirement when the facility demonstrates it has been unable, despite diligent effort, to recruit licensed nurses. The Department shall determine that a waiver of this requirement will not endanger the health or safety of the residents.

(e) There shall be at least one certified medication aide on duty when any shift is not covered by a licensed nurse.

~~(f) All direct care staff ratios shall be based on the daily census.~~

(~~g~~f) At least two direct care staff persons shall be on duty and awake at all times regardless of the number of residents.

(~~h~~g) Willful violation of the requirements regarding direct-care staff shall be determined based on a review of facility staffing records and interviews with staff, residents, resident family members and/or guardians, and other parties which may have information relevant to the investigation. The determination by the Department of Health will include, but will not be limited to, the following factors:

(1) The nature, circumstances and gravity of the violations;

(2) The repetitive nature of the violations at the facility or others operated by the same or related entities;

(3) The previous degree of difficulty in obtaining compliance with the rules at the facility or others operated by the same or related entities; and

(4) Any substantial showing of good faith in attempting to achieve continuing compliance with the provisions of the Nursing Home Care Act.

SUBCHAPTER 15. TEMPORARY MANAGER OR RECEIVER

310:675-15-3. Power and duties of temporary manager

(a) The temporary manager shall have the power and duty to:

(1) be oriented to the facility's conditions, including uncorrected deficiencies;

(2) hire, terminate, or reassign staff;

(3) obligate facility funds;

(4) alter facility procedures;

(5) manage the facility in order to correct deficiencies in the facility's operation;

(6) assure health and safety of the facility's residents while corrections are being made;

(7) oversee the facility's orderly closure, if necessary;

(8) maintain confidentiality of facility information; and

(9) Pay all usual and customary operating expenses incurred during the managership in an orderly business fashion.

(b) A temporary manager shall not:

(1) Commingle the funds of one facility with the funds of another;

(2) Loan the funds derived from the operation of the facility; ~~or~~

(3) Contract with any entity in which he has any ownership interest or in which he serves as an officer or director or in which a person related to him by blood or marriage has an ownership interest or in which the family member serves as an officer or director unless the ~~Administrative Law Judge~~ Commissioner reviews and approves the contract as on common terms within the industry~~.~~; or

(4) Use a method of accounting other than the accrual method unless approved in advance in writing by the Commissioner. The temporary manager's use of any other accounting method not approved by the Commissioner is a material breach of the temporary manager's fiduciary duty.

(c) The temporary manager shall report to the ~~Administrative Law Judge~~Commissioner on a monthly basis as specified in OAC 310:675-15-12. The report shall include at least the following:

(1) Resident census and staffing levels at the facility during the last month;

(2) A statement of income and expenses during the last month using the accrual method of accounting, unless the Commissioner approves the use of another accounting method;

(3) A financial statement of the residents' trust funds;

(4) A list of all persons provided to the facility by the temporary manager and, if any were not included in the original application, current information as required in OAC 310:675-15-1;

(5) Any changes needed in the approved work plan; and

(6) The specific number of hours the temporary manager and each person employed by the temporary manager was in the facility and a list of the services provided to the facility.

(d) The temporary manager shall provide a preliminary work plan to the Department within 5 business days of assuming control of the facility and a final plan within 14 days. The Department shall review the plan and make any recommended changes at the first status conference.

(e) The temporary manager shall contract with the owner of the building and the licensee in which the facility is being operated. Those contract(s) shall be presented at the first status conference. The Department shall have the opportunity to evaluate the contract and make suggestions. The ~~Administrative Law Judge~~ Commissioner must approve or reject the contract by the second status conference.

(f) If immediate jeopardy exists in the facility, the first status conference shall be conducted on or before the fourteenth day of control by the temporary manager.

(g) In using the accrual method of accounting, the temporary manager shall recognize revenue in the period earned whether actually received or not. Additionally, the temporary manager shall recognize expenses when incurred and matched with the related revenue of the period, whether such expenses are actually paid or not.

310:675-15-8. Procedures for appointment

(a) Prior to appointing a temporary manager the Department shall contact the Office of the Long Term Care Ombudsman to advise of the likely appointment, and to request information from that office concerning the temporary manager's record of involvement with the Ombudsman.

(b) Failure of the Office of the Long Term Care Ombudsman to respond by the deadline shall not prohibit the Commissioner from appointing the temporary manager.
(c) The Department shall comply with applicable requirements in 42 CFR Sections 488.410, 488.415 and 488.424 when appointing a temporary manager to correct deficiencies or remove an immediate jeopardy to resident health or safety in a facility pursuant to Title XVIII or XIX of the Social Security Act.

310:675-15-11. Bond

(a) A temporary manager ~~shall~~may be required to obtain a bond in the amount of up to $100,000.00 or 150% of the average revenue of the facility for the last three full months before placement of the temporary manager, whichever is greater, as necessary to ensure that the assets relinquished by the facility to the temporary manager are used for the benefit of residents.
(b) A bond shall be posted upon appointment and payable to the Department.
(c) The requirement for the amount of the bond may be ~~changed~~ established and modified from time to time by the ~~Administrative Law Judge from time to time~~ Commissioner based on the amount of revenue ~~in the hands of~~ and other financial assets relinquished by the facility to the temporary manager.

310:675-15-12. Monthly status conference

(a) Whenever a temporary manager is appointed, the ~~Administrative Law Judge~~Commissioner shall ~~schedule monthly status conferences.~~ establish a schedule for the submission and review of monthly reports. Each monthly report shall be filed in the Department by the temporary manager not later than 25 days following the end of each month. The temporary manager shall send a copy of each report to the licensee and owner of the facility. ~~The licensee and facility owner shall be notified of the conferences and offered an opportunity to participate. At each conference the Department and the Temporary Manager shall present a report on the temporary managership.~~
(b) The temporary manager shall provide:
(1) All information to be submitted as specified in OAC 310:675-15-3.
(2) Progress report or amendments to a plan of correction for outstanding deficiencies or violations of the law;
(3) Any desired amendments to the management plan and reasons therefore;
(c) The Department shall present to the Commissioner, the temporary manager, and the licensee and owner:
(1) An independent report on the status of the facility based on a visit to the facility by a team sufficient to evaluate the current status.
(2) Recommendations on any changes to the management plan;
(d) The ~~Administrative Law Judge~~Commissioner may schedule ~~additional~~ hearings for presentations and decisions on differences between the Department and the Temporary Manager ~~that are not resolved during the monthly status conferences~~.

310:675-15-15. License

Upon the temporary manager's appointment, compliance with the bonding provisions of section 15-11 above, and submittal of a license application, the Department shall issue a ~~temporary~~ license to the ~~Temporary Manager~~facility identifying the temporary manager. Such license shall not create any property rights with the temporary manager and shall terminate with termination of the managership.

310:675-15-16. Final accounting

(a) Within 30 days of the end of a temporary managership for any reason, the temporary manager shall file a written final accounting with the Department. The temporary manager shall use the accrual method of accounting, unless the Commissioner finds good cause for the temporary manager to use another method of accounting. The accounting shall include all documents specified in the "Administrative Order Removing the Temporary Manager and Revoking the Conditional License" which is issued by the Commissioner of Health.
(b) No funds shall be paid to the former licensee, the owner of the building or the new licensee without the express consent of the ~~Department~~ Commissioner. The ~~Department~~ Commissioner shall issue an order for distribution of any excess operating revenue over expenses at the close of the managership.
(c) The temporary manager shall continue to report to the Department until released by the ~~Administrative Law Judge~~ Commissioner.

310:675-15-17. Receiver

(a) The Department may petition the court to place a facility under control of a receiver pursuant to 63:1-1930.2, instead of or in addition to appointing a temporary manager.
(b) Any person may submit a written request to the Department to be included as a receiver on the list maintained by the Department pursuant to 63 O.S. Section 1-1930.3. A person's inclusion on the receiver list shall not be represented as an approval or qualification by the Department to operate a facility. The list provided by the Department to the court may include information on the requirements for a facility license.

SUBCHAPTER 17. INSPECTION PROTOCOLS

310:675-17-3. Acceptable Plan of Correction

(a) All facilities having deficiencies must submit an acceptable plan of correction within *ten (10) working days after receipt of notice of violation* [63:1-1914.A.]. An acceptable plan of correction must:
(1) Address how corrective action will be accomplished for those residents and/or clients found to have been affected by the deficient practice.

(2) Address how the facility will identify other residents and/or clients having the potential to be affected by the same deficient practice. Plans of correction specific to residents identified on the deficiency statement are acceptable only where the deficiency is determined to be unique to that resident and not indicative of a possible systemic problem.

(3) Address what measures will be put into place or systemic changes made to ensure that the deficient practice will not recur.

(4) Indicate how the facility plans to monitor its performance to make sure that solutions are sustained. The facility shall develop a plan for ensuring that correction is achieved and sustained. This plan must be implemented, and the corrective action evaluated for its effectiveness. The plan of correction shall be incorporated into the quality assurance system. At the revisit, the quality assurance plan shall be reviewed to determine the earliest date of compliance. If there is no evidence of quality assurance being implemented, the earliest correction date will be the date of the revisit.

(5) Include dates when corrective action will be completed for each violation. The corrective action completion dates shall not *exceed sixty (60) days* [63:1-1914.A.] from receipt of notice of violation.

(6) Be signed by the administrator.

(b) Upon written request from the facility, the Department may extend the time period within which the violations are to be corrected *where correction involves substantial structural improvement* [63:1-1914.A.].

(c) The department shall provide written notice of the acceptance or rejection of a plan of correction. If the Department finds that the plan of correction does not meet the requirements for an acceptable plan of correction as specified in OAC 310:675-17-3(a) the Department shall provide *notice of the rejection and the reason for the rejection to the facility. The facility shall have ten (10) working days after receipt of the notice of rejection in which to submit a modified plan. If the modified plan is not timely submitted, or if the modified plan is rejected, the Department shall impose a plan of correction, which the facility shall follow* [63:1-1914.A.].

(d) Acceptance of the plan of correction by the Department does not absolve the facility of the responsibility for compliance should the implementation not result in correction and compliance. Acceptance indicates the Department's acknowledgment that the facility indicated a willingness and ability to make corrections adequately and timely.

(e) *If the violation has been corrected prior to submission and approval of a plan of correction, the facility may submit a report of correction in place of a plan of correction* [63:1-1914.B.]. The report of correction shall address those requirements specified in OAC 310:675-17-3(a).

(f) As specified in 63 O.S. § 1-1914.C., facilities may request an extended correction time.

(g) As specified in 63 O.S. § 1-1914.D., facilities may contest any Department action under this section.

[OAR Docket #03-1048; filed 5-28-03]

TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY
CHAPTER 30. RESIDENTIAL RENTAL MULTIFAMILY BOND PROGRAM RULES

[OAR Docket #03-1077]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 2. General Provisions
330:30 2-1 [AMENDED]
330:30 2-2 [AMENDED]
330:30 2-3 [REVOKED]
330:30 2-3.1 [NEW]
330:30 2-4 [REVOKED]
330:30 2-4.1 [NEW]
330:30 2-5 [REVOKED]
330:30 2-5.1 [NEW]
330:30 2-6 [REVOKED]
330:30 2-6.1 [NEW]
330:30 2-7 [REVOKED]
330:30 2-7.1 [NEW]
330:30 2-8 [REVOKED]
330:30 2-8.1 [NEW]
330:30 2-9 [REVOKED]
330:30 2-9.1 [NEW]
330:30 2-10 [NEW]
330:30 2-11 [NEW]
Subchapter 4. ~~Processing Procedures~~Application and Processing Procedures [AMENDED]
330:30 4-1 [REVOKED]
330:30 4-1.1 [NEW]
330:30 4-2 [REVOKED]
330:30 4-2.1 [NEW]
330:30 4-3 [REVOKED]
330:30 4-3.1 [NEW]
330:30 4-4 [REVOKED]
330:30 4-4.1 [NEW]
330:30 4-5 [REVOKED]
Subchapter 6. Applications and Information Requirements [REVOKED]
330:30 4-6 [REVOKED]
330:30 6-1 [REVOKED]
330:30 6-2 [REVOKED]
330:30 6-3 [REVOKED]
330:30 6-4 [REVOKED]
330:30 6-5 [REVOKED]
Subchapter 8. Fees and Expenses
330:30 8-1 [AMENDED]
330:30 8-2 [AMENDED]
330:30 8-3 [AMENDED]
330:30 8-4 [AMENDED]
330:30 8-5 [AMENDED]
330:30 8-6 [AMENDED]
330:30 8-7 [AMENDED]
Subchapter 10. Evaluation Criteria and Approval Requirements [REVOKED]
330:30 10-1 [REVOKED]
330:30 10-2 [REVOKED]
330:30 10-3 [REVOKED]
Subchapter 12. Compliance and Reporting Requirements
330:30 12-1 [REVOKED]
330:30 12-2 [AMENDED]
330:30 12-3 [AMENDED]
330:30 14-1 [AMENDED]

AUTHORITY:

These Chapter 30 Rules are authorized by the Board of Trustees of OHFA, the Amended Trust Indenture, and the Bylaws of OHFA;

DATES:

Comment Period:

January 14, 2003 through February 14, 2003

Public Hearings:

February 14, 2003

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March 21, 2003
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May 1, 2003
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Final Adoption:
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Effective:
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SUPERSEDED EMERGENCY ACTIONS:
na
INCORPORATIONS BY REFERENCE:
na
ANALYSIS:
OHFA conducts programs, transactions and activities relating to the financing of residential multifamily rental property and cooperatives with tax exempt debt and/or taxable debt. The Rules are intended to provide Sponsors and Owners seeking bond financing through the issuance of multifamily revenue bonds by OHFA with guidance in preparing an application for OHFA's consideration and in operating projects approved for financing. The Rules establish certain minimum criteria for evaluating proposed projects and other Program requirements. The Rules do not interpret or reference any related rules or statute.
CONTACT PERSON:
Phillip Elzo, Agency Liaison, 100 NW 63rd, Suite 200, Oklahoma City, OK 73116, (405) 419-8275

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 2. GENERAL PROVISIONS

330:30-2-1. Purpose

(a) The rules of this Chapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S., Section 250 et seq. This Chapter shall be applicable to OHFA programs, transactions and activities relating to the financing of residential ~~Multifamily~~ multifamily rental ~~property and cooperatives~~ projects with tax exempt debt and/or taxable debt.

(b) The Trustees ~~of OHFA~~ reserve the right~~, by their resolution(s),~~ to adopt, from time-to-time, ~~to adopt~~ priorities ~~to be accomplished~~ for ~~OHFA's~~ financing of multifamily projects pursuant to this Chapter, and to establish additional criteria for evaluating proposed ~~projects~~ Projects and ~~, their Sponsors,~~ Borrowers~~, Affiliates and Owners~~ in regard to ~~the goals, priorities and criteria established by the resolution(s) of OHFA Trustees, and applicable to such Projects. Such applicable resolution(s)~~ such priorities. Any such priorities and/or criteria shall be provided to each party inquiring about ~~obtaining~~ OHFA financing ~~of a proposed project~~ pursuant to this Chapter~~, and to each Sponsor who files an Initial Application pursuant to this Chapter~~ and will be posted on the website of OHFA.

330:30-2-2. Definitions

Masculine words, whenever used in this Chapter, shall include the feminine and neuter, and the singular includes the plural, unless otherwise specified. The following words or terms, when used in this Chapter shall have the following meaning, unless the context clearly indicates otherwise.

~~**"Administrative Fee"** means an OHFA administrative fee which is paid on an annual basis or more frequently in accordance with theterms of the Project loan documents, in accordance with the provisions of 330:30-8-5.~~

"Affiliates", **"Affiliate of"**, or **"Person affiliated with"** ~~a specific Person, is a~~ means any Person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with the Person specified.

~~**"Assumption Transfer Fee"** means the fee to be paid to OHFA in accordance with 330:30-8-7.~~

"Applicant" means the Person and each Affiliate of such Person, filing an Application with OHFA seeking financing under this Chapter.

"Application" means the application, in the form which OHFA may prescribe, from time to time at any of the processing stages set forth in this Chapter, including all exhibits and other materials filed in support hereof, or in connection with, financing under this Chapter.

"Bond Indenture" or "Bond Trust Indenture" means the indenture of trust or other contract pursuant to which OHFA issues bonds or other forms of indebtedness to secure proceeds with which to finance the Project loan to be financed by OHFA pursuant to this Chapter.

~~**"Bond Purchase Agreement"** means the contract pursuant to which OHFA agrees to issue bonds or other forms of indebtedness for the purpose of funding the Project loan to be financed by OHFA.~~

~~**"Bond Purchase Commitment"** means an offer or agreement pursuant to which a Person commits to OHFA to purchase the bonds or other forms of indebtedness from OHFA, the funds from which are to be used for the financing of a Project to be financed by OHFA.~~

"Borrower" ~~or **"Eligible Borrower"**~~ means ~~the entity exercising or proposed to exercise control over a Project or a proposed Project, which shall be the entity financially responsible to OHFA for such Project, and which meets the requirements for an Eligible Borrower contained in this Chapter~~ the Person holding title to the Project and that is financially responsible to OHFA for repayment of the related mortgage loan secured by the Property.

~~**"Building Loan Agreement"** means a loan agreement between a Borrower or Owner of a proposed Project and OHFA providing for the loan of funds by OHFA to the Borrower or Owner for the purpose of construction or rehabilitation of a Project to be financed by OHFA pursuant to this Chapter.~~

~~**"Certificate of Occupancy"** means a certificate from the Borrower in substantially the form to be provided by OHFA and generally certifying that the Project has been completed~~

~~and is ready for occupancy, or is being occupied by one or more tenants and declaring that the construction or rehabilitation of the Project has been substantially completed in accordance with the requirements of the Loan Documents pertaining to the Project.~~

~~**"Change of Substantial Control of Sponsor"** means any act, occurrence, event, transaction, sale, merger, consolidation, or other change of any direct or indirect interest in a Project or the management, ownership or operation of a Project financed by OHFA pursuant to this Chapter.~~

"Closing" means the ~~consummating events of~~ execution and delivery of the OHFA ~~Bonds~~ bonds and the loan documents pursuant to, and in accordance with, the ~~final resolution~~ Final Resolution of the OHFA Trustees ~~pertaining to the proposed financing of the proposed Project~~.

"Code" means the United States Internal Revenue Code of 1986, as amended and supplemented, and any rules or regulations promulgated or adopted thereunder.

~~**"Compliance Fee"** means the fee to be paid to OHFA as reasonable compensation to OHFA for its ongoing compliance review activities to attempt to assure that all of the obligations of the Sponsor(s), Borrower(s), Owner(s) under all of the loan documents relating to OHFA's financing of a Project are being fulfilled and to assure, in appropriate cases, that the requirements of the Code and rules and regulations promulgated thereunder are being satisfied on an ongoing basis.~~

"Conditional Commitment Resolution" means the ~~Financing~~ Resolution duly approved and adopted by the Trustees authorizing the issuance of debt obligations to provide financing for ~~the~~ a Project~~, with such resolution setting forth~~ and establishing any conditions or requirements precedent to ~~Financing Approval (Closing)~~ such issuance. This Resolution may be combined with the Final Resolution.

~~**"Conditional Commitment Fee"** means the fees and expenses called for by 330:30-8-3 in regard to a particular proposed Project.~~

~~**"Conditional Commitment Stage"** means that stage of processing of a proposed Project financing covered by 330:30-4-5.~~

~~**"Conditional Commitment Expense Escrow Payment"** means the payment called for by 330:30-8-3(c), as the same pertains to a proposed Project.~~

"Control (of Project, Borrower, Owner or Sponsor)" (including the terms **"Controlling", "Controlled by",** and **"under common Control with"**) means the possession, direct or indirect, or the power to direct or cause the direction of the management and policies of ~~a person~~ any other Person, whether through ~~the ownership of voting securities, by contract or otherwise, unless the power is the result solely of an official position with or corporate office held by the person~~ ownership, contract, agreement, understanding, designation, office or position held in or with the other Person or in or with any other Person, or by coercion, or otherwise. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing five percent (5%) ~~or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact by providing to OHFA an affidavit to that effect~~ in such other Person.

~~**"Cooperatives (or multi-family cooperatives)"** means a corporation where the stockholders are entitled to occupancy of real estate (i.e., apartments) through proprietary leases or other like arrangements.~~

~~**"Credit Enhancement"** means insurance, surety, letter of credit, corporate guarantee, or any other form of financial guarantee acceptable to OHFA to provide security for debt obligations issued by OHFA.~~

~~**"Credit Enhancer"** means a Person which provides a Credit Enhancement.~~

~~**"Development Plan"** means the plan of the Sponsor(s), Owner(s), or Borrower(s) to be submitted pursuant to 330:30-6-2(a)(4) describing in detail with supporting data proposed to be used by them to acquire and construct or rehabilitate residential rental units as a Project proposed by them to be financed by OHFA pursuant to this Chapter.~~

~~**"Development Plan Addendum"** means the addendum or addition to the Development Plan submitted pursuant to 330:30-6-3(d)(4) for a proposed Project permitted to be submitted to OHFA during the Conditional Commitment Stage of processing by OHFA of the proposed Project financing by OHFA pursuant to this Chapter.~~

"Development Team" means the Applicant, Borrower, Sponsor and developer, and the Affiliatesand principals of each, and the Project architect, general contractor, appraiser and market analyst and property manager.

~~**"Eligible Residents"** means persons or families residing in Oklahoma, who (as determined by OHFA from time to time under the requirements of this Chapter and/or the Code) cannot afford to pay the rental amounts at which private enterprise, unaided by appropriate assistance, is providing a substantial supply of decent, safe, and sanitary housing.~~

~~**"Environmental Review"** means a thorough investigation by a qualified person or firm for the purpose of assessing whether a proposed Project site, including any existing facilities thereon, contains or has present any materials or activities representing an environmental risk under federal or state laws relating to the environment, pertaining to such things as contaminated soil, contaminated ground water, surface spills and off-site damage, presence of hazardous waste or presence of hazardous building materials, and other dangerous or hazardous substances or activities.~~

~~**"Environmental Review Certificate"** means a certificate by a person or firm qualified under state or federal law to issue an opinion letter or representation as to the environmental condition of a Project site, including buildings and improvements thereto, proposed to be financed by OHFA pursuant to this Chapter.~~

~~**"Expense Escrow Payment"** means the payment by the Sponsor(s), Borrower(s), and Owner(s) of the Conditional Expense Escrow amount called for by 330:30-8-3(c) in regard to a proposed Project.~~

~~**"Financial Feasibility Plan"** means the Plan of the Sponsor(s), Owner(s), or Borrower(s) to be submitted pursuant to 330:30-6-2(a)(5).~~

~~**"Financial Feasibility Addendum"** means an addendum or amendment to the Financial Feasibility Plan submitted pursuant to 330:30-6-3(d)(6).~~

~~**"Financing Approval Fees"** means the fees and expenses to be paid to OHFA during the Financing Approval Stage of processing of a proposed financing by OHFA of a Project pursuant to 330:30-8-4.~~

~~**"Financing Approval Stage"** means the processing by OHFA of a proposed financing of a Project subsequent to the issuance of a Financing Resolution in regard to a proposed Project by OHFA Trustees, and as provided for 330:30-10-3.~~

~~**"Financing Documents"** means the Bond Indenture, the Project Loan Documents, and any and all other documentation required by OHFA to be included in the financing of a Project.~~

~~**"Financing Plan"** means the Plan of the Sponsor(s), Owner(s), or Borrower(s) to be submitted pursuant to 330:30-6-2(a)(6).~~

~~**"Financing Plan Addendum"** means an addendum or amendment to the Financing Plan submitted pursuant to 330:30-6-3(d)(5) for a proposed Project permitted to be submitted to OHFA during the Conditional Commitment Stage.~~

"Final Resolution" or "Financing Resolution" means ~~a resolution~~ the final Resolution duly approved and adopted by the Trustees ~~pursuant to 330:30-4-6, which authorizes the sale of bonds or other debt obligations of OHFA to fund the financing of a proposed Project~~ approving a Project and its financing by OHFA, which resolution may be combined with or represented by any other resolution pertaining to the Project and its financing by OHFA, except the Inducement Resolution.

"Governmental Unit" means the State of Oklahoma or any department, agency, division or branch thereof, including counties, cities and towns, and public corporations, ~~including~~ redevelopment agencies and housing development corporations, and public trusts having as their beneficiary the State of Oklahoma or any county, city or town within the State of Oklahoma, and the United States government and any department, division, agency or branch of the federal government and including special governmental corporations ~~such as Farmers National Mortgage Association, Government National Mortgage Association, Resolution Trust Corporation, Office of Thrift Supervision, etc~~.

~~**"Inducement Application"** means a package of documents and information submitted by the Sponsor(s), Owner(s), Borrower(s) or Principal(s), together with a completed form of Inducement Application pursuant to 330:30-4-4.~~

~~**"Inducement Application Fee"** means the fee to be paid to OHFA pursuant to 330:30-8-2 at the time of submission to OHFA of an Inducement Application package pursuant to 330:30-4-4.~~

~~**"Inducement Application Stage"** means the stage of processing of a proposed Project financing covered by 330:30-6-2 which may commence upon the formal adoption of an Inducement Resolution by the OHFA Trustees.~~

"HUD" means the United States Department of Housing and Urban Development.

"Inducement Resolution" means ~~a~~ the initial resolution adopted by the OHFA Trustees ~~pursuant to 330:30-4-4~~ pertaining to a specific Project which must be approved and adopted by the OHFA Trustees at a separate meeting not less thant thirty days prior to the adoption of the Final Resolution..

~~**"Initial Application"** means a package of documents and information submitted by the Sponsor(s), Owner(s), Borrower(s) or Principal(s), together with a completed form of Initial Application pursuant to 330:30-4-4.~~

~~**"Initial Application Conference"** means a conference between representatives of OHFA and representatives of the Sponsor(s) of a proposed Project to discuss the Initial Application.~~

~~**"Initial Application Fee"** means the fee to be paid to OHFA at the time of submission to OHFA of an Initial Application package pursuant to 330:30-4-3 and 330:30-8-1.~~

~~**"Initial Application Stage"** means the stage of processing of a proposed Project financing covered by 330:30-6-1.~~

~~**"Institutional Investors"** means a Person such as a bank, mutual fund, bond fund, pension fund, insurance company or other financial institution of similar character that invests funds in bonds, mortgages, or mortgage-backed securities.~~

~~**"Loan Agreement"** means an agreement setting out the terms and conditions pursuant to which OHFA may loan to a Borrower funds to provide the financing for a proposed Project proposed to be financed by OHFA pursuant to this Chapter.~~

"Loan Documents" ~~shall mean the Mortgage, Mortgage Note, Regulatory Agreement, Loan Agreement and all other documents and instruments which may be executed and delivered by the Borrower(s) or Owner(s) to evidence and secure the indebtedness of the Borrower(s) and/or Owner(s) with respect to the Project Loan for a Project being financed by OHFA pursuant to this Chapter.~~ means and includes the loan agreement, mortgage, mortgage note, security agreements, UCC financing statements, guaranty(ies), letters of credit, pledges, title insurance policy or title opinion and the Regulatory Agreement.

~~**"Low-Income Housing Tax Credits"** means federal income tax credits which may be made available by OHFA under its low-income housing tax credit program pursuant to Section 42 of the Code.~~

~~**"Management and Marketing Plan"** means the Plan of the Sponsor(s), Owner(s), or Borrower(s) to be submitted pursuant to 330:30-6-2(a)(7).~~

~~**"Management and Marketing Plan Addendum"** means an addendum or amendment to the Management and Marketing Plan for a proposed Project submitted to OHFA during the Conditional Commitment Stage pursuant to 330:30-6-3-(d)(7).~~

~~**"Mortgage"** means a formal document executed by the Owner(s) of the Project and Project Site, pledging that property as security for payment of a debt, and performance of the Borrower"s obligation, to OHFA; the security instrument securing OHFA for the payment by the Borrower of the Borrower"s indebtedness to OHFA resulting from OHFA financing a Project pursuant to this Chapter.~~

~~**"Mortgage Credit Plan"** means the package of credit information to be submitted to OHFA pursuant to 330:30-6-2(a)(2).~~

~~**"Mortgage Credit Plan Addendum"** means the addendum or amendment to the Mortgage Credit Plan submitted pursuant to 330:30-6-3(d)(2).~~

~~**"Mortgage Loan Note"** or **"Mortgage Note"** means the promissory note executed by the Borrower(s) and/or Owner(s) secured by a Mortgage on the Project and Project Site evidencing the indebtedness to OHFA created by OHFA"s financing a Project pursuant to this Chapter.~~

~~**"Non-Profit Organization"** means a group organized for reasons other than making a profit under a charter approved under the Code. Residential units within the Project can be rented on a non-profit basis or the Sponsor(s) can create an individual, cooperative, or condominium ownership of a proposed Project. Included within this term are corporations or other entities qualifying for 501(c)(3) treatment under the Code and governmental units.~~

~~**"Note"** means the Mortgage Loan Note.~~

~~**"Notice of Intent to Proceed"** means that notice by the Sponsor(s), Borrower(s) or Owner(s) to OHFA pursuant to 330:30-4-5(a), which shall have the effect of commencing the Conditional Commitment Stage.~~

~~**"Official Statement"** means an offering document circulated by OHFA or its representatives and relating to an issue or proposed issue by OHFA of securities, the sale proceeds of which are or will be used to finance a Project.~~

"OHFA" means Oklahoma Housing Finance Agency.

"Owner" ~~or **"Principal"** means any officer, director, general or limited partner of a Borrower, and any Person having a direct or beneficial ownership of more than five percent (5%) of the equity in any Project, and any other Person having the ability to control the Borrower or the management or operations of the Project, and includes the Person or Persons who shall succeed to the legal or beneficial ownership of all or any part of the Project or the Project Site in accordance with the provisions of the Project Loan Agreement, jointly and severally; provided that if legal title to the Project shall be held in trust, the term "Owner" shall also include the trustee of such trust, not individually but solely in its fiduciary capacity and the owner of the beneficial interest and power of direction under the trust agreement creating such trust, jointly and severally~~ means the Borrower.

"Person" means an individual, corporation, ~~a~~ partnership, ~~an~~ association, ~~a~~ joint stock company, ~~a~~ trust, ~~an~~ unincorporated organization, or any ~~similar~~ other legally recognized entity (or any combination of the foregoing acting in concert)~~, but shall not include any securities broker performing no more than the usual and customary brokers function~~.

~~**"Pre-Inducement Conference"** means a conference between OHFA staff, its counsel and financial advisor and other professionals and representatives of the Sponsor(s), Borrower(s) and Owner(s) and their Principals and members of their project development team, for the purpose of reviewing the Inducement Application and materials submitted in connection therewith for the proposed financing by OHFA of a proposed Project pursuant to this Chapter.~~

~~**"Principal"** means Owner.~~

"Priorities" means the general goals and objectives of OHFA established from time to time by ~~formal Resolution of the OHFA~~ the Trustees to use as criteria in ~~screening~~ evaluating and/or ranking proposed Projects ~~and establishing processing preferences~~.

"Project" means a ~~qualified~~ residential rental Project ~~as defined by the Code,~~ to be funded by OHFA pursuant to this Chapter, generally made up of a building or structure containing one or more similarly constructed units not used on a transient basis together with any functionally related and subordinate facilities. ~~A Project may consist of detached housing, row houses, high-rises, or the residential portion of a mixed-use Project. Multiple buildings are part of the same Project only if such buildings:~~

~~(A) have similarly constructed units,~~

~~(B) are proximate, i.e., located on a single tract of land, defined to mean any parcel or parcels of land which are contiguous except for the interposition of a road, street, stream or similar property, and~~

~~(C) are owned by the same person and are financed pursuant to a common plan, i.e., all such buildings are provided by the same issue or several issues subject to a common Bond Indenture.~~

~~**"Project Facilities"** means the buildings, structures and other improvements to be constructed or rehabilitated with the financing by OHFA in accordance with this Chapter, and includes all fixtures and other property owned by the Owner(s) and located on or used in connection with, such buildings, structures and other improvements and the Project.~~

~~**"Project Loan Documents"** means the Mortgage, Mortgage Note, the financing statement and any other evidence of indebtedness acquiredby OHFA and related to the financing for the Project.~~

~~**"Project Plan"** means the plan to be submitted pursuant to 330:30-6-2(a)(3).~~

~~**"Project Plan Addendum"** means the addendum or addition to the Project Plan for a proposed Project submitted pursuant to 330:30-6-3(d)(3).~~

~~**"Project Site"** means the tract of land or real estate upon which the Project and Project Facilities are located or are to be located.~~

~~**"Public Agency"** see Governmental Unit.~~

~~**"Real Estate Purchase Contract"** means a written proposal by a buyer to purchase real estate that becomes binding upon the acceptance of the seller.~~

~~**"Reasonable Public Notice"** means such notice as meeting the notice requirements prescribed by the Tax Equity and Fiscal Responsibility Act (TEFRA) under the Code.~~

"Regulatory Agreement" means an agreement of the Owner(s) of the Project and Project Site for the benefit of OHFA and other interested parties whereby the Project and Project Site are restricted as to the use thereof for housing lower income families, which restrictions are imposed for a time certain regardless of change of ownership of the Project and Project Site and are deemed to be covenants running with the land under Oklahoma law. ~~Such agreement shall be in the form provided by OHFA for the proposed Project and Project Site in accordance with this Chapter.~~

"Resolution" means the formal action duly taken, approved and adopted by the Trustees.

~~**"Security Holder"** of a specified person means one who owns any security of such person, including common stock, preferred stock, debt obligations, partnership interests, and any other security convertible into or evidencing the right to acquire any of the foregoing.~~

"Sponsor" ~~or **"Eligible Sponsor"** of a project for which OHFA financing is requested~~ means the person, persons, group, association, or other entity, regardless of description, which prepares and submits the ~~Initial~~ Application for the Project on behalf of the Applicant.

~~**"State Volume Cap"** means the annual limitation upon the new issue volume of private activity Bonds or other forms of indebtedness which may be issued by public agencies in the State of Oklahoma including OHFA, pursuant to Section 146 of the Code which is applicable to so-called "tax exempt" bond financing by OHFA of proposed Projects pursuant to this Chapter.~~

~~**"Tenant Certifications"** means certifications in a form to be provided by OHFA certifying as to the income, number of family members and other relevant information pertaining to tenants occupying units in a Project financed by OHFA intended to disclose whether or not the Project is in compliance with the Regulatory Agreement in favor of OHFA.~~

"Staff" means the Staff of OHFA.

"State" means the State of Oklahoma.

"Trustee Bank" means the bank selected by OHFA to act as trustee under the Bond Indenture executed by OHFA in connection with OHFA's financing of a Project pursuant to this Chapter.

"Trustees" means the Board of Trustees of OHFA.

330:30-2-3. Owners of Project; Borrowers [REVOKED]

~~(a) A Sponsor may file an Initial Application without then knowing or having identified the ultimate entity or entities which will become the Borrower(s), Owner(s) and Principal(s) of a proposed Project.~~

~~(b) Borrowers, Owners and Principals eligible to apply for OHFA financing of a Project under this Chapter include, among others, one or more of the following:~~

~~(1) one or more individuals;~~

~~(2) a business corporation;~~

~~(3) a limited liability corporation;~~

~~(4) a general or limited partnership;~~

~~(5) a public or private trust;~~

~~(6) a federal, state or local governmental unit or agency or other entity controlled by such a unit or agency;~~

~~(7) a charitable organization, the business operations of which are exempt from federal income tax under Section 501(c)(3) of the Code; or~~

~~(8) a cooperative housing corporation, the shareholders of which are required to be residents of the project owned by the cooperative and financed by OHFA, and meet the requirements of Section 103(K) (9) of the Code.~~

~~(c) Each Borrower/Owner must meet all of the requirements set forth in (1) through (4) of this subsection.~~

~~(1) If the Borrower/Owner is a business entity, the entity shall be in good standing and be qualified to do business in Oklahoma.~~

~~(2) The Borrower/Owner shall have all necessary legal and corporate authorizations to incur the obligations relating to the loan requested.~~

~~(3) The Borrower/Owner shall demonstrate creditworthiness and repayment ability acceptable to OHFA.~~

~~(4) The Borrower/Owner shall demonstrate, in a manner acceptable to OHFA, that it is capable of and can reasonably be expected to achieve successful completion of its proposed project.~~

~~(d) No Sponsor, Borrower, Owner, or Principal, or any one of the Sponsors, Borrowers, Owners, Principals, or any of their Affiliates, or any person that has been or will be paid directly or indirectly remuneration for obtaining, or from the proceeds of, financing by OHFA of the Project, shall eligible to obtain OHFA financing of a Project if that person has been, within the preceding five (5) years, or is currently:~~

~~(1) convicted of any crime or offense; or~~

~~(2) subject to any administrative order or judgment; or~~

~~(3) suspended or expelled from membership in, or suspended or barred from association with a member of, any securities exchange or self regulating association, or suspended, barred or had any license revoked by any federal or state agency or local governmental unit, in regard to any federal or state statute, rule, regulation, executive or administrative order, or any local governmental ordinance, rule or regulation designed to protect consumers or any federal or state agency or local governmental unit established to protect consumers against unlawful practices involving insurance, securities, commodities or commodity futures, real estate or any interest therein, franchises, business opportunities, consumer goods, benefits under any federal state or local governmental unit program, or other services offered by federal, state or local governmental units or by private entities.~~

330:30-2-3.1. Trustee evaluations

(a) In evaluating whether to authorize the issuance of OHFA debt obligations for the purpose of financing a Project, the Trustees shall take into consideration all of the criteria for disapproval set out in **330:30-2-4.1.** and the following:

(1) The extent to which there exists a documented need for rental or cooperative housing units affordable by moderate, low or very low income residents or by individuals having special needs within the primary market area to be served by the proposed Project.

(2) The extent to which the proposed Project is expected to meet or satisfy the need for such housing;

(3) Whether there is any material negative impact upon the community in the general area of the Project.

(4) The availability of suitable credit enhancement to increase the security or creditworthiness of the proposed OHFA debt obligations;

(5) The proposed method of sale or placement of the OHFA debt obligations and the institutional or retail (private individual) nature of the expected purchaser(s);

(6) The amount of OHFA debt financing relative to total Project development cost;

(7) The underwriting criteria applied by the credit enhancer or the proposed purchaser of the debt obligations; and

(8) Such other criteria as the Trustees, in their discretion, deem appropriate to further effectuate the public purpose objectives of OHFA and/or to better ensure the credit quality of OHFA debt obligations.

(b) The Trustees have complete and absolute discretion to disapprove or fail to approve the issuance of any debt obligation for the financing of any proposed Project. No Sponsor, Applicant, Borrower, Development Team member or any third party shall have any recourse against OHFA or any of its Trustee, employees, representatives, attorneys, financial advisors or other consultants for any such disapproval or failure to approve.

330:30-2-4. Loan purposes, terms and requirements [REVOKED]

~~(a) OHFA may finance Projects by one or more of the following:~~

~~(1) Construction mortgage loans;~~

~~(2) Rehabilitation mortgage loans; and~~

~~(3) Permanent mortgage loans.~~

~~(b) Other lenders may participate with OHFA in the making of loans to finance Projects in accordance with this Chapter.~~

~~(c) Before closing a construction loan for a Project for which OHFA does not provide permanent financing, the Borrower shall provide evidence of a permanent loan commitment from a lender approved by OHFA and containing terms satisfactory to OHFA.~~

~~(d) Subject to any limitations imposed by the Code, OHFA financing of a Project may include costs associated with undertaking the acquisition, construction, or rehabilitation of the project, including without limitation the following:~~

~~(1) Appraisals and market studies;~~

~~(2) Architectural and engineering design inspection and supervision;~~

~~(3) Bonds, permits and fees;~~

~~(4) Carrying costs during construction, including construction period interest, real estate taxes and property insurance;~~

~~(5) Financing fees and charges imposed by OHFA or the applicable Credit Enhancer; and~~

~~(6) Legal, processing, packaging and marketing fees and charges.~~

~~(e) OHFA may lend up to one hundred percent (100%) of the approved replacement cost of any Project to a nonprofit or governmental entity and up to ninety percent (90%) of such cost to a profit motivated entity, provided that the Financing Plan demonstrates that the financing of the Project is sound with such costs included, and provided that such costs are not prohibited by any applicable law, rule or regulation. "Replacement cost" for this purpose means development costs including those costs of construction, carrying charges during the development or renovation period, financing costs, and professional fees approved by OHFA, plus the market value of the land upon which the project is to be constructed. Such lending is subject to the provisions of 330:30-2-4(o), and the following:~~

~~(1) If there is an identity of interest between the Borrower(s), Owner(s), or Principal(s) and the general contractor, or any subcontractor, a reasonable profit and risk allowance is an amount not to exceed ten percent (10%) of the reasonable development costs less the development costs related to the acquisition of land and existing structures and reasonable financing and other costs not directly related to the construction or rehabilitation; or~~

~~(2) If there is no identity of interest between the Borrower(s), Owner(s), or Principals(s) and the general contractor, or any subcontractor, in an amount not to exceed ten percent (10%) of the development costs less the sum of the land acquisition costs, other development costs directly relating to the land acquisition, and the amount of all contracts for labor and materials.~~

~~(f) OHFA loans shall be subject to the following term limitations:~~

~~(1) Loans for permanent financing of projects may be for terms up to (forty) 40 years, provided that the Financing Plan and/or Financing Plan Addendum demonstrates that the financing of the Project is sound with such costs included, and provided that such costs are not prohibited by any applicable law, rule or regulation. Economic feasibility of financing a Project ordinarily will be determined on a thirty (30) year term, or the term of the lease, whichever is shorter.~~

~~(2) The term of construction loans may not exceed two (2) years unless a longer period shall be specifically approved by OHFA due to extenuating circumstances.~~

~~(g) OHFA may charge interest on construction and permanent loans at a rate that, together with reserves, fees and charges by OHFA, covers the costs of issuance and interest that it pays on the revenue notes, bonds, or other obligations issued to raise the funds for loans and the allowable expenses of OHFA, including general operating and administration expenses of OHFA over the term of the loan. Any funds or residual values remaining upon retirement of the OHFA debt obligation shall remain the sole and exclusive property of OHFA, unless such retention is prohibited by applicable laws, rules or regulations or otherwise provided for by mutual agreement of OHFA and the Borrower or Owner.~~

~~(h) All loans shall be secured by a mortgage on the Project or other security acceptable to OHFA. Unless specifically approved by the OHFA Trustees, any such mortgage to OHFA shall be a first lien on the land and improvements, or on the leasehold interest in the land and a fee interest in the improvements, provided the same is authorized by applicable laws, rules and regulations.~~

~~(i) The Borrower(s)/Owner(s) shall comply with the following insurance requirements relating to a Project proposed to be financed by OHFA.~~

~~(1) **Multi-peril insurance.** Both during and after construction the Borrower(s)/Owner(s), at the Borrower(s)/Owner(s)'s expense, shall maintain fire and extended coverage insurance upon the Project and/or~~

~~other security, if appropriate, which includes such endorsements as OHFA may require, such as collapse, explosion, loss of rents and vandalism.~~

~~(2) **Liability insurance.** The Borrower(s)/Owner(s) shall maintain comprehensive general liability insurance with such endorsements as OHFA may require both during construction and upon occupancy of a Project.~~

~~(3) **Flood insurance.** If the Project is located on real property which is in the one hundred (100) year flood plain as designated by the United States Department of Housing and Urban Development, the Project shall be covered by a flood plain insurance policy.~~

~~(4) **Title insurance.** The Borrower(s)/Owner(s) shall provide a standard American Land Title Association Loan Policy 1970, as amended, to OHFA for an amount equal to the maximum principal amount of the loan, insuring OHFA that title to the building and the real property on which the building is located on the date of the construction loan closing is vested in the Borrower(s)/Owner(s), and containing only standard exceptions and encumbrances approved by OHFA.~~

~~(5) **Other insurance.** The Borrower(s)/Owner(s) shall provide at construction loan closing such other Insurance, including builder's risk, boiler insurance, comprehensive automobile liability, and broad form worker's compensation as may be required by OHFA.~~

~~(6) **Terms and conditions.** Each insurance policy shall meet the following minimum requirements:~~

~~(A) Be written by companies licensed in Oklahoma which are reputable and financially sound in the estimation of OHFA;~~

~~(B) Be in force at the time of the construction loan closing;~~

~~(C) Name OHFA as loss payee and named insured mortgagee as its interest may appear in a standard mortgagee endorsement attached to or printed in the policy;~~

~~(D) Not be terminable without written notice to OHFA; and~~

~~(E) Contain terms and coverage satisfactory to OHFA.~~

~~(j) Loans may not be assumed except with the prior written consent of OHFA, or prepaid except to the extent permitted by any applicable loan documents. All loan documents must contain 'due on sale' language in form satisfactory to OHFA's counsel in accordance with 330:30-14-1.~~

~~(k) Borrowers/Owners shall pay or cause to be paid any servicing fees, loan insurance premiums, or late charges that OHFA or the Credit Enhancer may require and that are permitted by State law.~~

~~(l) OHFA may require the Borrower/Owner to deposit monthly with OHFA one-twelfth (1/12) of the annual amount of real estate taxes, insurance, mortgage insurance premiums, a reserve for asset replacement, and other expenses of the project.~~

~~(m) OHFA may require a Borrower to create, under the control of OHFA, by cash or by irrevocable letter of credit, a development contingency fund in an amount equal to two and one-half percent (2.5%) of the mortgage loan amount to cover any deficiency in the construction or rehabilitation of the Project. Such fund shall be retained by OHFA for a period of eighteen (18) months following the completion of construction or rehabilitation to cover operatingdeficiencies, repairs and cost increases or overruns, if any.~~

~~(n) OHFA shall require the following instruments or guarantees to secure its loans:~~

~~(1) Such sureties or guarantees of the loan as may be determined necessary by OHFA;~~

~~(2) Cash or an unconditional, irrevocable letter of credit from a financial institution approved by OHFA to meet working capital, operating deficit, and off-site improvement completion requirements;~~

~~(3) Payment and performance bonds for all construction contracts each in an amount equal to one hundred percent (100%) of the contract price, or alternatively, cash or an irrevocable letter of credit equal to twenty five percent (25%) of the contract price, (for FHA insured multi family rental projects, compliance with FHA requirements for completion assurance normally will be accepted);~~

~~(4) Guarantees of completion; and~~

~~(5) Escrows of syndication proceeds when appropriate.~~

~~(o) OHFA shall prescribe the form and content of all loan documents. The loan documents shall contain any terms and conditions that OHFA considers advisable. The loan documents shall include, but shall not necessarily be limited to, all of the following documents described below, as well as any additional documents OHFA may require:~~

~~(1) A Mortgage Note or other agreement whereby the Borrower is obligated to repay the loan;~~

~~(2) A Deed of Trust, Security Agreement, and Assignment of Rents, or other suitable security document, which is a recorded instrument securing OHFA's interest in the Project;~~

~~(3) A Building Loan Agreement which specifies the details for the construction of the Project, including, but not limited to those relating to construction draws, remedies, releases, terms of construction, insurance and construction completion assurances required to satisfy OHFA that the Borrower/Owner will complete all items which are incomplete due to weather or other conditions beyond the Borrower/Owner's control; and~~

~~(4) A Regulatory Agreement which establishes the duties and obligations of the Borrower/Owner regarding reserves for replacement, construction surplus funds, occupancy, sale or rental, and operation and maintenance of the project in the public interest. The Regulatory Agreement may, at the discretion of OHFA, limit the profit and rate and return on investment of a Borrower/Owner either directly or by control of rentals or limited income occupancy requirements imposed by applicable State or federal requirements. In the case of loans insured by the Federal Housing Administration, or other loans made under this program at the OHFA's discretion, certain regulatory provisions with respect to State occupancy requirements may appear in an unrecorded occupancy agreement.~~

~~(p) For any Project to be financed by the issuance of Bonds, the interest on which is intended to be excluded from gross income under the Code, the Borrower(s) shall be responsible to insure that all applicable requirements of the Code concerning the design, construction and operation of the Project, and the use of any proceeds of such Bonds, are and remain satisfied for the requisite period of time.~~

330:30-2-4.1. Criteria for Application and/or Applicant disapproval

(a) Applications may be disapproved at any stage of processing, for any of the following reasons, in addition to any other specific reason(s) which may be established by the Trustees during the review process:

(1) At the discretion of the OHFA Trustees;

(2) The financing of such Project involves a risk to OHFA that its current or future financing ability or reputation in the credit markets may generally be adversely affected;

(3) The financing of such Project is determined not to be cost-effective in terms of its proposed utilization of OHFA financing capacity and/or other financial resources;

(4) Failure to cooperate with Staff or to submit any information required by this Chapter, any Resolution of the Trustees or by Staff and/or OHFA advisors at any stage of processing;

(5) Failure to adequately demonstrate, to OHFA's satisfaction, in its discretion, the need for additional housing in the related market;

(6) Failure to adequately demonstrate, to OHFA's satisfaction, in its discretion, that the proposal is consistent with OHFA's public purposes and priorities;

(7) Failure to adequately demonstrate, to OHFA's satisfaction, in its discretion, that the proposed financing plan is reasonable and appropriate for the Project and market conditions;

(8) Failure to adequately demonstrate, to OHFA's satisfaction, in its discretion, that the Applicant and the other Development Team members have the good character, reputation, integrity, honesty, experience, resources and capacity to successfully execute the related financing plan and development plan and to properly manage the Project;

(9) The information filed at the inducement stage varies materially from the information contained in the initial Application;

(10) The information filed at the conditional commitment and/or financing stage varies materially from the information filed in the initial Application and/or the inducement stage; or

(11) Any condition for Closing has not been satisfied.

(b) Any Applicant, Sponsor, developer or any other Development Team members or any of their Affiliates or principals or any person that has been or will be paid directly or indirectly remuneration for obtaining, or from the proceeds of, financing by OHFA of the Project, shall not be eligible to obtain OHFA financing hereunder if that Person has been, within the preceding seven (7) years:

(1) convicted of any felony, crime or offense; or

(2) subject to any administrative order or judgment; or

(3) suspended or expelled from membership in, or suspended or barred from association with a member of, any securities exchange or self regulating association, or suspended, barred or had any license revoked by any federal or state agency or local governmental unit, in regard to any federal or state statute, rule, regulation, executive or administrative order, or any local governmental ordinance, rule or regulation designed to protect consumers or any federal or state agency or local governmental unit established to protect consumers against unlawful practices involving insurance, securities, commodities or commodity futures, real estate or any interest therein, franchises, business opportunities, consumer goods, benefits under any federal state or local governmental unit program,or other services offered by federal, state or local governmental units or by private entities.

(4) have been involved in uncured financing defaults, foreclosures, or have been placed on HUD's list of debarred contractors;

(5) have uncorrected or repeated instances of nonperformance or non-compliance under any federally or state assisted housing programs in any jurisdiction; or

(6) have had a receiver appointed for any multifamily residential rental housing project in which the Development Team member was a Sponsor, Owner or developer; or

(7) have been removed as a General Partner of a owner of multifamily residential rental housing.

330:30-2-5. Eligible projects [REVOKED]

~~(a) To qualify as an Eligible Project for an OHFA loan, a Project shall meet the following requirements.~~

~~(1) The Project shall provide dwelling units to be used primarily for year-round residential purposes, either as rental units or units owned or to be owned by a cooperative.~~

~~(2) The Project must be owned, operated and managed by Borrowers, Owners, Principals and Affiliated parties, none of whom are not eligible pursuant to the requirements of 330:30-2-3(d).~~

~~(3) The Project shall comply, if necessary, with the public notice, public hearing and public approval requirements of the applicable provisions of the Code.~~

~~(4) Before Closing, the Borrower/Owner shall secure any required permits from the State of Oklahoma and the political subdivision in which the Project is located.~~

~~(5) Project conforms or will conform to all applicable State and local laws, ordinances, codes, rules, and regulations, including zoning, building and housing regulations.~~

~~(6) The Project is economically feasible and creditworthiness of the Borrower(s) and Owner(s) is demonstrated, such that the OHFA loan reasonably can be expected to be paid in full in accordance with its terms.~~

~~(7) The Project has or will have, assuming reasonable maintenance, and supported by an adequate replacement reserve on an on-going basis, a remaining useful life of a~~

~~term longer than the term of the financing and satisfactory to the OHFA.~~

~~(8) The Project complies or will comply with requirements established by OHFA with respect to the number of residential units which are occupied, or available to be occupied, by Eligible Residents.~~

~~(9) If a Project is funded with the proceeds of federally tax-exempt securities and/or Low-Income Housing Tax Credits, the project shall comply with all requirements of the Code or other federal regulations which apply to the project in connection with the funding of such Project and OHFA's rules.~~

~~(10) The Project is consistent with and promotes the purposes of the Code and this Chapter.~~

~~(b) The Trustees of OHFA may, at their sole discretion, disapprove, or decline to approve, an Eligible Project for OHFA financing, whenever, based upon their assessment of the overall merit of the Project (including its creditors and the capabilities and reputation of its Sponsor(s), Borrower(s), Owner(s), and Principal(s) and their respective Affiliate(s), or the merit thereof relative to competing Eligible Projects (including their creditors, Sponsor(s), Borrower(s), Owner(s), Principal(s), and their Affiliates), or housing alternatives:~~

~~(1) The financing of such Project involves a risk to OHFA that its current or future financing ability or reputation in the credit markets may generally be adversely affected;~~

~~(2) The financing of such Project is considered to be not cost effective in terms of its proposed utilization of OHFA financing capacity and/or other financial resources; or~~

~~(3) Any of the criteria for disapproval found in 330:30-4-2 are determined to be present or operative.~~

330:30-2-5.1. Owners of Project; Borrowers

(a) Eligible Borrowers may include, among others, one or more of the following:

(1) one or more individuals;

(2) a business corporation;

(3) a limited liability corporation;

(4) a general or limited partnership;

(5) a public or private trust;

(6) a Governmental Unit or agency or other entity controlled by a Governmental Unit;

(7) a charitable organization, the operations of which are exempt from federal income tax under Section 501(c)(3) or 501(c)(4) of the Code; or

(8) a cooperative housing corporation, the shareholders of which are required to be residents of the Project owned by the cooperative and meet the requirements of Section 103(K)(9) of the Code and these Rules.

(b) Each Borrower must meet all of the requirements set forth in (1) through (4) of this subsection:

(1) If the Borrower is a business entity, the entity must be in good standing and be qualified to do business in Oklahoma under Oklahoma laws and these Rules.

(2) The Borrower must have all necessary legal and corporate authorizations to incur the obligations relating to the loan requested.

(3) The Borrower must demonstrate creditworthiness and repayment ability acceptable to OHFA.

(4) The Borrower must demonstrate, in a manner acceptable to OHFA, that it is capable of and can reasonably be expected to achieve successful completion of its proposed Project.

330:30-2-6. Certifications [REVOKED]

~~Each Sponsor, Borrower, Owner, and Principal applying for OHFA financing under the rules established by this Chapter shall provide the following representations and certifications in conjunction with any such Application:~~

~~(1) A verified conflict of interest statement, substantially in the form to be provided by OHFA, showing that each Sponsor, Borrower, Owner and Principal and each of their respective Affiliates has used due diligence to ascertain whether any Trustee, employee, attorney, or consultant for the agency or any of their Affiliates, as defined by Title 60, Oklahoma Statutes, 175.3 and 178.8, and this Chapter has any direct or indirect interest with the Sponsor(s), Borrower(s), Owner(s), or Principal(s), the Project, (including, but not limited to, providing labor, services, consultation, goods, supplies or materials for the Project or to or for Sponsor(s), Borrower(s), Owner(s), or Principal(s)) or other parties affiliated with the project or with the placement of the bonds or other debt instrument proposed to be issued by the Agency to provide financing for the project;~~

~~(2) A statement that the Sponsor(s), Borrower(s), Owner(s), or Principal(s) acknowledges and understands the penalty under State law for submitting false information in its Application or in other materials submitted to OHFA relating to such Application; and~~

~~(3) A representation letter, in a form to be provided by OHFA, from the Borrower(s) and each Owner(s) and Principal(s) concerning whether any of the Sponsor(s), Borrower(s), Owner(s), Principal(s) or their Affiliates are not eligible under the criteria set out in 330:30-2-3(d).~~

330:30-2-6.1. Financing purposes, terms and requirements

(a) OHFA may finance Projects through construction and/or permanent mortgage loans.

(b) OHFA may participate with other institutions in the making of loans to finance Projects under this Chapter.

(c) Before closing a construction loan for a Project for which OHFA will not provide 100% of the permanent financing, the Borrower must provide evidence of a permanent loan commitment from a lender approved by OHFA on terms satisfactory to OHFA.

(d) Subject to any limitations imposed by the Code for Projects for which any tax exempt financing is sought, OHFA financing may include all reasonable and approved development and project costs.

(e) OHFA may lend up to one hundred percent (100%) of the approved development and project costs of any Project, provided that the related financing plan demonstrates that of the Project is financially feasible and viable, and provided that such costs are not prohibited by any applicable law, rule or regulation.

(f) OHFA loans shall be subject to the following term limitations:

(1) Loans for permanent financing of projects may be for terms up to (forty) 42 years, if supported by the financing plan and approved by the Trustees;

(2) Construction loans may not exceed two (2) years unless a longer period shall be specifically approved by the Trustees due to extenuating circumstances.

(g) OHFA may (but is not required to) establish and charge an interest rate on construction and permanent loans such that interest on such loans, together with other reserves, fees and charges paid by OHFA, if any, shall be sufficient to cover the costs of issuance and interest that OHFA pays on the revenue notes, bonds, or other obligations issued to raise the funds for loans and the allowable expenses of OHFA, including general operating and administration expenses of OHFA over the term of the loan. Any funds or residual values remaining upon retirement of the OHFA debt obligation shall remain the sole and exclusive property of OHFA, unless such retention is prohibited by applicable laws, rules or regulations or as otherwise specifically provided for by mutual agreement of OHFA and the Borrower.

(h) OHFA shall prescribe the form and content of all Closing documents, including without limitation, the bond and loan documents, construction facility documents and the Regulatory Agreement. The Regulatory Agreement may, at the discretion of OHFA, limit the profit and rate of return on investment of a Borrower/Owner either directly or by control of rentals or limited income occupancy requirements imposed by applicable State or federal requirements. In the case of loans insured by the Federal Housing Administration, or other loans made under this program at the OHFA's discretion, certain regulatory provisions with respect to State occupancy requirements may appear in an unrecorded occupancy agreement.

(i) Loans may not be assumed or prepaid without the prior written consent of OHFA. All loan documents must contain a 'due on sale' clause.

(j) Borrowers must pay or cause to be paid any servicing fees, loan insurance premiums, or late charges that OHFA or the credit enhancer may require and that are permitted by State law.

(k) OHFA may require the Borrower to periodically deposit with OHFA or its designated depository amounts to be applied toward the real estate taxes, hazard insurance premiums, mortgage insurance premiums, reserves for asset replacement and other expenses of the Project.

(l) OHFA may require a Borrower to fund, under the control of OHFA, by cash or by irrevocable letter of credit, a development contingency fund in an amount equal to a specified percentage of the mortgage loan amount to cover any deficiency in the construction or rehabilitation of the Project. Such fund shall be retained by OHFA for a period of time following the completion of construction or rehabilitation to cover operating deficiencies, repairs and cost increases or overruns, if any.

(m) OHFA may require the following instruments or guarantees, in addition to the Mortgage Loan Documents, to secure its construction/rehabilitation loans:

(1) Such sureties or guarantees of the loan as may be determined necessary by OHFA;

(2) Cash or an unconditional, irrevocable letter of credit from a financial institution approved by OHFA to meet working capital, operating deficit, development contingency funds and off-site improvement completion requirements;

(3) Payment and performance bonds for all construction contracts each in an amount equal to one hundred percent (100%) of the contract price, or alternatively, cash or an irrevocable letter of credit equal to twenty five percent (25%) of the contract price. (For FHA-insured multi-family rental projects, compliance with FHA requirements for completion assurance normally will be acceptable to OHFA);

(4) Guarantees of completion by the Owner(s), Borrower(s) and/or such other Persons as deemed by OHFA, in its discretion, to be credit worthy to make such Guarantees;

(5) Escrows of syndication proceeds when deemed by OHFA, in its discretion, to be necessary or appropriate.

(n) For any Project to be financed by the issuance of Bonds, the interest on which is intended to be excluded from federal income tax under the Code, the Borrower shall be responsible to insure that all applicable requirements of the Code concerning the design, construction and operation of the Project, and the use of any proceeds of such Bonds, are and remain satisfied for the requisite period of time.

330:30-2-7. Credit enhancement requirements [REVOKED]

~~(a) Credit Enhancement techniques or mechanisms include, but are not limited to:~~

~~(1) mortgage insurance (including mortgage pool insurance or payment guarantees);~~

~~(2) bond insurance;~~

~~(3) collateral pledges;~~

~~(4) surety or other third party guarantees;~~

~~(5) letters of credit; or~~

~~(6) combinations thereof.~~

~~(b) Credit Enhancement techniques or mechanisms may be employed in connection with the issuance of debt by OHFA to achieve one or more of the following objectives, among others:~~

~~(1) to obtain a rating from a nationally recognized bond rating service;~~

~~(2) to secure a bond purchase commitment from a purchaser or investor;~~

~~(3) to reduce the interest rate or total borrowing costs associated with debt instrument; and~~

~~(4) to provide for the purchase of the debt by a certain class or classes of investors.~~

~~(c) Credit Enhancement may be provided:~~

~~(1) upon issuance of debt obligations by OHFA, or~~

~~(2) upon application or disbursement of the proceeds of the debt obligations, whether occurring in installments (as with construction related draw-downs) or in a lump sum (as upon completion of construction).~~

~~(d) The form and structure of Credit Enhancement utilized in connection with any OHFA debt obligation must be approved by formal action of OHFA by its Trustees.~~

~~(e) All debt obligations of OHFA which are to be initially offered to the general public and/or which may be purchased by the general public in subsequent, secondary market transactions must be credit enhanced in a manner acceptable to OHFA.~~

~~(f) OHFA may authorize the issuance of debt obligations which are not the subject of a Credit Enhancement commitment if the purchasers of such debt obligations are limited to one or more institutional investors who acknowledge in an investment letter in a form acceptable to OHFA bond or general counsel that they:~~

~~(1) understand and acknowledge the financial risks involved;~~

~~(2) have financial resources sufficient to enable them to assume the risks associated with the purchase of the debt obligations; and~~

~~(3) agree to restrict the secondary market resale of such obligations to other institutional investors which provide an investment letter meeting the requirements of this paragraph,~~

~~(4) and will accept delivery of the obligations containing a legend to such effect.~~

330:30-2-7.1. Insurance

The Borrower must comply with the following insurance requirements relating to a Project proposed to be financed by OHFA.

(1) **Multi-peril insurance.** Both during and after construction the Borrower, at Borrower's expense, must maintain fire and extended coverage insurance upon the Project and/or other security, if appropriate, which includes such endorsements as OHFA may require, such as collapse, explosion, loss of rents and vandalism.

(2) **Liability insurance.** The Borrower must maintain comprehensive general liability insurance with such endorsements as OHFA may require both during construction and upon occupancy of a Project.

(3) **Flood insurance.** If the Project is located in a one hundred (100) year flood plain as designated by the United States Department of Housing and Urban Development (HUD), the Project must be covered by a flood plain insurance policy.

(4) **Title insurance.** The Borrower must provide a standard American Land Title Association Loan Policy-1970, as amended, containing only standard exceptions and encumbrances approved by OHFA.

(5) **Other insurance.** The Borrower must provide at construction loan closing such other Insurance, including builder's risk, boiler insurance, comprehensive automobile liability, and broad form worker's compensation as may be required by OHFA.

(6) **Terms and conditions.** Each insurance policy must meet the following minimum requirements:

(A) Be written by companies licensed in Oklahoma and acceptable to OHFA;

(B) Be in force at the time of the construction loan closing;

(C) Name OHFA as loss payee and named insured mortgagee as its interest may appear in a standard mortgagee endorsement attached to or printed in the policy;

(D) Not be terminable without written notice to OHFA; and

(E) Contain terms, endorsements and coverage satisfactory to OHFA.

330:30-2-8. Income eligibility of residents [REVOKED]

~~(a) OHFA shall establish limits on the annualized income of individuals, families or households which constitute or shall constitute Eligible Residents of an Eligible Project, such limits taking into consideration factors including:~~

~~(1) The availability, cost and condition of alternative housing within the market area of the project;~~

~~(2) The economic feasibility of the project;~~

~~(3) The amount of total income available to meet housing needs;~~

~~(4) The ability of individuals or families to compete successfully for housing the private, unsubsidized housing market; and~~

~~(5) Standards and definitions established for pertinent federal housing programs.~~

~~(b) OHFA may establish income eligibility limits on the basis of family or household size.~~

~~(c) OHFA may establish income eligibility limits for a particular Project which are more restrictive than those generally applicable to projects in the same region or market area.~~

330:30-2-8.1. Eligible Projects

(a) In order to qualify for bond financing, a proposed project must be multifamily (in excess of one unit) residential rental housing. At a minimum, the rental housing must contain cooking facilities, including a refrigerator and stove/microwave in good working order and bathing facilities. The Project must comply with all applicable federal, State and local laws. A Project may consist of detached housing, row houses, high-rises, or the residential portion of a mixed-use Project. Multiple buildings are part of the same Project only if such buildings:

(1) have similarly constructed units,

(2) are proximate, i.e., located on a single tract of land, defined to mean any parcel or parcels of land which are contiguous except for the interposition of a road, street, stream or similar property, and are owned by the same person and are financed pursuant to a common plan, i.e., the financing of all such buildings are provided by the same bond issue or several bond issues subject to a common Bond Indenture.

(b) The economic feasibility of the Project and the independent creditworthiness of the Borrower must demonstrate that the OHFA loan can be reasonably expected to be paid in full in accordance with its terms. In this regard the Borrower has the affirmative burden of demonstrating both the economic feasibility of the Project and the creditworthiness of the Borrower to the satisfaction of the OHFA Trustees prior to their approval of a Final Resolution.

(c) The Project has or will have, assuming reasonable maintenance and availability of an adequate asset replacement reserves on an on-going basis, a remaining useful life at least equal the term of the related OHFA debt applications.

(d) If a Project is funded in whole or in part by other State or federal programs (for example, HOME Investment Partnership Program, Internal Revenue Code Section 42 housing tax credits, State Housing Trust Fund) the Project must meet all requirements and qualifications of those programs.

330:30-2-9. Non-discrimination requirements [REVOKED]

~~(a) Discrimination on the basis of race, color, religion, national origin, sex, marital status, physical or mental handicap, or age (except for projects for elderly persons which are in compliance with the Fair Housing Act Amendments of 1988 and as amended) may not exist in selling, leasing, or otherwise providing dwelling accommodations or in any other aspect of the development, administration, or operation of any project or undertaking financed or assisted in whole or part under the Fair Housing Act, or in any aspect of employment by any sponsor or contractor in the construction, repair, or maintenance of any Project financed by OHFA.~~

~~(b) In regard to each Project financed by OHFA, each Sponsor, Borrower and Owner must comply with:~~

~~(1) Titles VI and VII of the Civil Rights Act of 1964, as amended, and Title VIII of the Civil Rights Act of 1968, as amended; and~~

~~(2) All applicable State laws, executive orders, rules and regulations and local governmental ordinances, rules and regulations pertaining to any form of discrimination.~~

~~(c) Covenants implementing these requirements, including affirmative action measures, shall be included in the Regulatory Agreement and other appropriate agreements between OHFA and the Borrower(s)/Owner(s) or other appropriate parties.~~

330:30-2-9.1. Credit enhancement requirements

(a) Credit enhancement techniques or mechanisms include, but are not limited to:

(1) mortgage insurance (including mortgage pool insurance or payment guarantees);

(2) bond insurance;

(3) collateral pledges;

(4) surety or other third party guarantees;

(5) letters of credit; or

(6) combinations thereof.

(b) Credit enhancement techniques or mechanisms may be employed in connection with the issuance of debt by OHFA to achieve one or more of the following objectives, among others:

(1) to obtain a rating from a nationally recognized bond rating service;

(2) to secure a bond purchase commitment from a purchaser or investor;

(3) to reduce the interest rate or total borrowing costs associated with the debt obligations; and

(4) to provide for the purchase of the debt by a certain class or classes of investors.

(c) Credit enhancement may be provided:

(1) upon issuance of debt obligations by OHFA, or

(2) upon application or disbursement of the proceeds of the debt obligations, whether occurring in installments (as with construction-related draw downs) or in a lump sum (as upon completion of construction).

(d) The form and structure of credit enhancement utilized in connection with any OHFA debt obligation must be approved by formal action of the Trustees.

(e) All debt obligations of OHFA which are to be initially offered to the general public and/or which may be purchased in a transaction not exempt from registration under the securities laws, rules and regulations of the federal government or any state government in subsequent secondary market transactions must be credit enhanced in a manner acceptable to OHFA, in its complete discretion.

(f) All debt obligations of OHFA which are to be initially offered to the general public and/or which may be purchased by the general public in subsequent, secondary market transactions must be credit enhanced in a manner acceptable to OHFA or be rated by a nationally recognized rating agency as being investment grade without Credit Enhancement.

(g) OHFA may authorize the issuance of debt obligations which are not the subject of a Credit Enhancement commitment if the purchasers of such debt obligations are limited to one or more institutional investors who execute an investment letter in a form acceptable to OHFA and acknowledging each of the following (unless specifically exempted by OHFA from one or more of these required acknowledgements):

(1) That such investor(s) understand and acknowledge the financial risks involved;

(2) That such investor(s) have financial resources sufficient to enable them to assume the risks associated with the purchase of the debt obligations;

(3) That such investor(s) agree to restrict the secondary market resale of such obligations to other institutional investors who will provide an investment letter meeting the requirements of this paragraph; and

(4) That such investor(s) will accept delivery of the obligations containing a legend to such effect.

330:30-2-10. Income eligibility of residents

(a) OHFA shall establish limits on the annualized income of individuals, families or households that will constitute eligible residents, such limits shall take into consideration such factors as may be required by the Code and such additional factors as OHFA may in its complete discretion, deem to be relevant to a

Project, which may include, but are not necessarily be limited to the following:

(1) The availability, cost and condition of alternative housing within the market area of the Project site;

(2) The economic feasibility of the Project;

(3) The amount of total individual and family income available to meet housing needs in the market area of the Project site;

(4) unsubsidized housing market in the market area of the Project site; and

(5) Standards and definitions established for pertinent federal housing programs.

(b) OHFA may establish income eligibility limits on the basis of family or household size and/or may establish income eligibility limits for a particular Project which are more restrictive than those generally applicable to similar projects in the same region or market area, or more restrictive than the requirements imposed by federal statue or regulation.

330:30-2-11. Compliance with Applicable laws

(a) The Applicant and other members of the Development Team and the Affiliates of each, must comply with all applicable federal, state and local laws, rules, regulations and ordinances, including but not limited to, the applicable sections of the Internal Revenue Code and regulations, the Oklahoma Landlord Tenant Act, Titles VI and VII of the Civil Rights Act of 1964, as amended and Title VIII of the Civil Rights Act of 1968. No member of the Development Team or the Affiliates of each shall discriminate on the basis of race, creed, religion, national origin, ethnic background, age, sex, familial status, or disability or handicap in connection with the employment of any person associated with any member of the Development Team or in the construction, marketing or leasing of the Project.

(b) Any issuance of debt by OHFA is subject to compliance with all applicable state and federal laws and all rules and regulations promulgated thereunder and all local ordinances, rules and regulations applicable to the Project, its financing, or any portion or aspect thereof.

(c) The Applicant and all members of the Development Team and the Affiliates of each must be in compliance with, and good standing under, any OHFA program in which any may participate.

SUBCHAPTER 4. ~~PROCESSING PROCEDURES~~APPLICATION AND PROCESSING PROCEDURES

330:30-4-1. Processing stages [REVOKED]

~~(a) Sponsors, Borrowers and Owners, applying for financing of a proposed Project from OHFA must submit, for OHFA's review, the documents required by this Chapter in the following stages:~~

~~(1) Initial Application Stage;~~

~~(2) Inducement Application Stage;~~

~~(3) Conditional Commitment Stage; and~~

~~(4) Financing Approval Stage.~~

~~(b) Each Stage of processing is more fully described in 330:30-4 and 330:30:30-6.~~

~~(c) Sponsors wishing to accelerate the review and consideration of their proposed Projects may, at their option, initially request, and submit all of the information and fees required for processing at the Inducement Application Stage, including both the Initial Application and the Inducement Application and required materials. In such cases, OHFA will review the submission as though the Application was at the Inducement Application Stage, thereby combining the Initial Application Stage and the Inducement Application Stage. However, if the Initial Application does not support the eligibility of the Project for financing pursuant to this Chapter or results in a determination that the Project's priority for processing in accordance with the priorities, standards and criteria established by the Trustees do not warrant processing at the Inducement Application Stage at such time, such processing may be deferred and the Sponsor so advised. All requirements of both the Initial Application Stage and the Inducement Application Stage, including fees, must be satisfied notwithstanding the fact that an accelerated review approach is requested by the Sponsor.~~

330:30-4-1.1. Preliminary matters (Pre-application)

(a) Prior to submission of an application, it is advisable for the Applicant to schedule a meeting with OHFA's Executive Director or his designees to present a brief overview of the proposed Project. Any technical aspects of the Project or its proposed financing should be explained to the Staff of OHFA at this meeting. Staff should be advised of any anticipated difficulties or contingencies the Applicant expects.

(b) The Applicant should, prior to submission of an Application, assemble the Development Team. The Development Team should be identified for Staff at a pre-application conference.

(c) While Applications may be submitted at any time, it is essential to discuss any proposal with Staff to establish a timeline consistent with other transactions of OHFA. Applicants seeking an allocation of bond issuance authority under the State's annual private activity bond volume cap must take into consideration the State's approval process for such allocations.

(d) OHFA requires adequate time to review any proposal. No proposal will be taken to the Trustees unless the Staff has had adequate review time. Generally, this means that an Application (or any supplements to the Application) must be submitted at least thirty (30) days prior to any required action by the Trustees.

(e) Applicants seeking funding from other programs administered by OHFA must submit applications for such funding at least thirty (30) days prior to consideration of a Conditional Commitment Resolution by the Trustees.

330:30-4-2. Criteria for disapproval [REVOKED]

~~Applications may be disapproved, or may not obtain approval, at any stage of processing, for any of the following reasons, in addition to any other specific reason(s) which may be established during the course of any stage:~~

~~(1) At the discretion of the OHFA Trustees.~~

~~(2) Failure to submit a complete Initial Application package, a complete Inducement Application package, or a complete Conditional Commitment package, as required by this Chapter.~~

~~(3) Failure to adequately demonstrate, to OHFA's satisfaction, in its discretion, the need for additional housing in the related market. (See 330:30-6-1(9))~~

~~(4) Failure to adequately demonstrate, to OHFA's satisfaction, in its discretion, that the proposal is consistent with OHFA's public purposes. (See 330:30-2-1(b))~~

~~(5) Failure to adequately demonstrate, to OHFA's satisfaction, in its discretion, that the proposed Financing Plan is reasonable and appropriate for the Project and market conditions.~~

~~(6) Failure to adequately demonstrate, to OHFA's satisfaction, in its discretion, that all the Sponsor(s), the Owner(s) and the development team members have the good character, reputation, integrity, honesty, experience, resources and capacity to successfully execute the Financing and Development Plans and to properly manage the Project. (See 330:30-2-3(d))~~

~~(7) The Sponsor has failed to comply with any request by OHFA for additional information in regard to the Initial Application package, or has failed to meet with OHFA staff upon their request.~~

~~(8) The information contained in the Inducement Application package varies materially from the information contained in the Initial Application package.~~

~~(9) The information contained in the Conditional Commitment package varies materially from the information contained in the Initial Application package and the Inducement Application package.~~

~~(10)Any condition for Closing has not been satisfied.~~

330:30-4-2.1. Processing Stages

(a) There are four phases or stages in OHFA's review of multifamily bond applications: Initial Application Stage; Inducement Application Stage; Conditional Commitment State and Financing Approval Stage. The Initial Application Stage and Inducement Application Stage Applications may be combined; however, the Inducement Resolution may not be combined with any other Resolution.

(1) **Initial Application Stage.** The primary objective of this review is to preliminarily assess the extent to which:

(A) the Development Plan addresses a need for housing (including special needs housing) in the related market and is consistent with the public purpose objectives and priorities of OHFA;

(B) the reasonableness of the Applicant's preliminary plan of financing and

(C) the capacity, experience and performance history of the Applicant and the Development Team. The Applicant must provide evidence that the Applicant and Applicant's Development Team have the capacity and experience to develop, construct, market and manage multifamily residential rental projects. If a Project receives Staff preliminary approval, the Applicant will be notified and informed of any additional requirements for the Trustees to consider the Application for an Inducement Resolution. OHFA's notice to the Applicant will establish a timeline for filing additional or supplemental information. If the initial Application is disapproved, OHFA will so notify the Applicant.

(2) **Inducement Application Stage.**

(A) This stage consists of a more detailed review and preliminary underwriting of the Project by OHFA. The primary objectives of this stage are to more thoroughly evaluate the extent to which the proposed Project will serve the market area and targeted populations and will be economically feasible and viable. OHFA will review the ability of the Applicant to obtain a credit enhancement commitment and/or a bond purchase commitment, as applicable and whether the implementation of the undertaking is dependent upon identified contingencies (e.g., receipt of a State volume cap reservation, award of Affordable Housing Tax Credits, an award of HOME Investment Housing Partnership funding, the award of grants or loans from private or governmental sources, or other material contingencies). OHFA will also evaluate the Development Team and determine whether any of the criteria for disapproval are present.

(B) Following OHFA's review, only Applicants meeting the all requirements of these Rules and any additional requirement of OHFA will be submitted to the Trustees for their consideration for approval of an Inducement Resolution.

(C) If a reservation of tax-exempt bonding authority from the State's volume cap is required, the Applicant must apply at this point. Applicants requiring a volume cap reservation must obtain same before they may proceed.

(D) During the Inducement Application Stage, a Public Hearing must be conducted by OHFA after reasonable public notice, for the purpose of receiving and evaluating comments in support of and/or in opposition to the proposed Project.

(3) **Conditional Commitment Stage.**

(A) During the Conditional Commitment Stage, the Applicant and OHFA, together with their respective legal and financial advisors or consultants, must prepare all documents and financial analyses required to enable OHFA to adopt a Financing Resolution. The Trustees may combine the Conditional Commitment Resolution and Financing Resolution, conditioning same upon such conditions precedent as the Trustees deem, in their discretion, necessary to Closing.

(B) During this stage, working in cooperation with Staff and OHFA's advisors, all information previously provided must be updated and supplemented, to the extent necessary. Failure to comply with this requirement may result in the denial of the Application.

(C) The Applicant/Borrower must prepare a mortgage credit package acceptable to OHFA containing sufficient information to enable OHFA to evaluate and underwrite the financial capacity of the Applicant to successfully execute the proposed financing plan and development plan. These requirements shall include generally, as applicable:

(i) a written representation regarding the nature, extent and availability of its own capital, bank credit lines, governmental grants or other sources of funds to meet or cover working capital requirements, equity contributions contemplated by the Applicant(s)'s Financing Plan, or Project cost overruns should they occur;

(ii) references from bankers, attorneys, accountants or other persons or firms having had prior business relationships with the Applicant(s), plus references of public agencies, as applicable;

(iii) current certified financial statements for all general partners or corporate Applicant and Borrower. At OHFA's option, current certified financial statements may also be required for each of the Applicant(s), and each of the proposed guarantors or other credit enhancement providers;

(iv) if applying for OHFA financing without credit enhancement, audited financial statements for each of the Applicant(s) for each of the three fiscal years preceding the date of the Inducement Application, or from the inception of each of the Applicant(s)whichever time period is shorter, supplemented by unaudited financial statements for each of the subsequent accounting periods and the written representation(s) of each of the Applicant(s) that no material adverse changes in financial position have occurred since the date of the most recent audited financial statements submitted.

(vi) Any additional financial information requested by OHFA, its Trustees or advisors.

(4) **Financing Approval Stage.**

(A) The Financing Approval Stage commences on the date on which the Trustees adopt a Financing Resolution. During this stage of processing, the Applicant is required to meet all of the conditions and requirements set forth in the OHFA Financing Resolution relating to the Project and all related matters leading to the issuance of OHFA debt obligations to provide financing for the Project. The fees payable to OHFA by or on behalf of the Applicant at the Financing Approval Stage shall be payable by the Applicant at Closing and prior to issuance of any debt obligations by OHFA.

(B) OHFA shall not be obligated to close on the financing on a Project unless the Chairman, or the Vice-Chairman, in their respective complete discretion, are satisfied that all the requirements and standards imposed by federal and Oklahoma laws, rules and regulations and local ordinances, rules, regulations, and other applicable restrictions, and this Chapter, and the terms and conditions of all resolutions adopted by the OHFA Trustees pertaining to the Project have been, and at the time of the Closing remain, fully completed and satisfied.

(C) The final terms and conditions of OHFA debt obligations issued to provide financing for a multi-family residential rental Project or cooperative must be reflected in the financing documents relating to the transaction, which financing documents mayinclude, among others:

(i) bond trust indenture;

(ii) loan agreement;

(iii) regulatory agreement;

(iv) mortgage loan note and mortgage; and

(v) guarantees of completion and/or contractor bonds.

(D) The financing documents must reflect in all material respects the financing plan, development plan and other aspects of the proposed Project as described in the Application, as amended and supplemented and as approved by the Trustees in the related Commitment and/or Financing Resolution.

(b) Fees must be paid in the amount and at the times set forth in 330:30-8 unless waived or deferred by OHFA.

330:30-4-3. Initial application stage [REVOKED]

~~(a) Any prospective Sponsor representing any charitable organization or group, governmental unit or public trust, may, at its option, request a preapplication conference with OHFA prior to submission of its Initial Application in order to discuss any aspect of its proposed Project and to identify any contingencies, issues or impediments which may adversely affect its decision to submit an Initial Application. OHFA may, at its option, grant such a preapplication conference to other eligible Sponsors.~~

~~(b) The Initial Application Stage of processing commences on the date on which a Sponsor's complete Initial Application package, including the applicable Initial Application Fee, is received by OHFA. The fees payable to OHFA by or on behalf of the Sponsor at the Initial Application Stage, are set out in 330:30-8-1.~~

~~(c) All information required, as set forth in 330:30-6-1, must be submitted with the Initial Application or the Initial Application will be returned to the Sponsor.~~

~~(d) The Initial Application Stage of processing consists of a preliminary review of certain basic information regarding the proposed Project and its Sponsor and Owners. The primary objective of this review is to assess the extent to which:~~

~~(1) the Development Plan for a proposed project addresses a need for housing (including special needs housing) in the related market and is consistent with the public purpose objectives and priorities of OHFA [(See 330:30-2-1(b)];~~

~~(2) the preliminary Financing Plan as called for by 330:30-6-1 for the Project is deemed to be reasonable and appropriate;~~

~~(3) the Sponsor(s) and their development team have the good character, reputation, integrity, honesty, experience, resources and capacity as required by 330:30-2-3(d) to formulate a successful Financing Plan and Development Plan and for management of the Project; and~~

~~(4) the Development Plan would burden the resources of the community, such as schools, public utilities, traffic and public transportation.~~

~~(e) During the Initial Application Stage, OHFA staff may request an Initial Application Conference with the Sponsor to review and clarify any aspect of the proposed Project, and/or any of the matters set out in this Section, and/or any of the information submitted.~~

~~(f) The Initial Application Stage is terminated by OHFA's written notice to the Sponsor advising that OHFA has either:~~

~~(1) Approved the Initial Application and authorized the Sponsor to submit an Inducement Application; or~~

~~(2) Disapproved the Initial Application for further processing.~~

~~(g) Upon receipt of notice from OHFA that the Initial Application has been approved for further review, the Sponsor is authorized to submit an Inducement Application. If the Initial Application is disapproved, OHFA shall not accept or process an Inducement Application; however, the Sponsor may submit a new Initial Application package to initiate a new review by OHFA staff.~~

~~(h) OHFA shall allocate available staff and other resources to the processing of Projects in accordance with the priorities of OHFA as provided for in 330:30-2-1(b) of this Chapter. Upon notification from OHFA that the Initial Application has been approved, the Sponsor will be notified of its priority status. The Sponsor or Borrower may request a review of its priority status at any time based upon substantial modifications to the Financing and Development Plan to further the priorities of OHFA.~~

330:30-4-3.1. Conferences with OHFA

During any stage or phase of the Application process, the staff of OHFA may request one or more conferences with the Applicant and/or Sponsor and/or any Development Team member to review and clarify any aspect of the proposed Project and/or any of the information submitted.

330:30-4-4. Inducement application stage- [REVOKED]

~~(a) The Inducement Application Stage of processing commences on the date on which a Sponsor's complete Inducement Application package, including the applicable Inducement Application Fee, is received by OHFA. The fee required to be paid to OHFA by or on behalf of the Sponsor at the Inducement Application Stage is set forth in 330:30-8-2.~~

~~(b) OHFA's processing at the Inducement Application Stage consists of a detailed review of the required information regarding the proposed Project and its Sponsor(s), Borrower(s), Owner(s), Principal(s), and affiliated parties. The primary objectives of this review are to more thoroughly evaluate the extent to which:~~

~~(1) the proposed Project will serve moderate, low or very low income persons or families or, with or without regard to income, serve persons having special needs;~~

~~(2) the proposed Project will be economically viable;~~

~~(3) the design of the proposed Project is consistent with local community standards, and applicable laws, rules, regulations, ordinances and restrictions;~~

~~(4) the Sponsor(s), Borrower(s), Owner(s) and affiliated parties is likely to obtain a credit enhancement commitment or a bond purchase commitment, as applicable;~~

~~(5) the implementation of the undertaking is dependent upon identified contingencies (e.g., receipt of a State Volume Cap allocation, award of Low Income Housing Tax Credits, award of grants from private or governmental sources, or other material contingencies);~~

~~(6) the Sponsor(s), Borrower(s), Owner(s) and affiliated parties and development team are capable of successfully completing the Financing Plan and Development Plan and managing the Project;~~

~~(7) the Sponsor(s), Borrower(s), Owner(s) and affiliated parties are of good character, reputation and integrity and meet the letter and spirit of integrity and background standards required by this Chapter. [See 330:30-2-3(d)]; and~~

~~(8) whether all the criteria of 330:30-4-2 are present.~~

~~(c) The information submission requirements at the Inducement Application Stage of processing are set forth in 330:30-6-2.~~

~~(d) During the Inducement Application Stage, OHFA staff may request a Pre-Inducement Conference with the Sponsor(s), Borrower(s), Owner(s) and affiliated parties to review and clarify any aspect of the proposed Project and/or any of the objectives set out in this Chapter, and/or any of the information submitted in the Inducement Application.~~

~~(e) The Inducement Application Stage is terminated through a written notice advising the Sponsor(s), Borrower(s), Owner(s) and affiliated parties that OHFA has either:~~

~~(1) approved the Inducement Application by formally adopting an Inducement Resolution; or~~

~~(2) disapproved the Inducement Application.~~

~~(f) Upon receipt of notice from OHFA that the Inducement resolution has been formally adopted by OHFA Trustees, the Sponsor(s), Borrower(s), Owner(s) and their Affiliates may proceed under the Conditional Commitment Stage. If the Inducement Application is disapproved by OHFA, or if no Inducement Resolution is formally adopted by OHFA Trustees within 180 days from the date of receipt of the Inducement Application by OHFA, the Inducement Application shall be deemed disapproved, and in either case, OHFA shall not continue to process the application.~~

~~(g) Prior to OHFA giving notice that the Inducement Resolution has been adopted, the proposed Borrower (or, if permitted by OHFA, the Sponsor or a financially responsible Owner or Principal) shall enter into an agreement with OHFA providing the terms and conditions pursuant to which OHFA will provide~~

~~financing for the Project and providing for the party entering into such agreement with OHFA to be responsible for all costs incurred in continuing with the proposed Project.~~

330:30-4-4.1. Basic Application requirements

(a) The content of the initial Application and the information required to be submitted during the various processing stages will be established at the pre-application and subsequent conferences. Applicants are advised to consult with OHFA respecting the acceptable format for presentation of data. Unless specifically waived by OHFA, the following must be provided to OHFA no less than (30) days prior to the consideration of a Conditional Commitment Resolution by the Trustees, except as noted:

(1) **Project name**;

(2) **Borrower.** The legal name and tax identification number for the Borrower should be provided. Any person or entity having an ownership interest in the Borrow must be identified and the nature and percentage ownership disclosed. For example, if the Borrower is a limited partnership, the identity of the general partner(s) and their relative ownership interests must be disclosed. In the event the general partner is a limited liability company or partnership, the members and their relative ownership and voting positions must be disclosed. OHFA reserves the right to require additional information if the disclosures provided are deemed inadequate.

(A) the Borrower must be formed under the laws of the State of Oklahoma. All formation documents and a certificate of good standing from the State of Oklahoma should be provided.

(B) the formation documents for the general partner, if applicable, together with a certificate of good standing from the State of Oklahoma.

(C) the initial Application may be filed by the Sponsor; however, the Borrower and Borrower's general partner must be identified and the appropriate formation documents, contacts, etc. filed not less than thirty days prior to the consideration of an Inducement Resolution by the Trustees unless a different timetable is agreed to by OHFA.

(3) **Development Team.** Provide the name, mailing address, telephone number, facsimile number and e-mail address of the primary contact or representative of the Applicant and Sponsor, Borrower (if identified) and each member of the Development Team.

(A) Resumes of the Development Team members and a summary of the multifamily and affordable housing development, ownership and management experience of each should be included. Applicants should include a list of all bond-financed or affordable housing developments in which any Development Team member participated, during the prior **five** years, including the particular nature of team member's role in each (i.e., owner, developer, manager, etc.) and in the case of bond-financed transactions the name of the issuer, issue size, and date of issue. Any delinquencies or defaults or uncured noncompliance must be disclosed. Any changes to the Development Team at any time must be disclosed and the Application supplemented.

(B) If a not-for-profit organization will have a direct or indirect ownership interest in the Project identify and provide a history of the organization. Describe how such organization will be involved in the Project (i.e., specific areas of responsibility) and how the organization will function as part of the development team. Formation documents and proof of not-for-profit status should be provided.

(4) **Certifications and Affidavits.** Each Applicant (and other members of the Development Team) must provide the following certifications and affidavits in conjunction with the Application:

(A) A verified conflict of interest statement, in the form to be provided by OHFA;

(B) A statement that each Development Team member understands the penalty under State law for submitting false information in its Application or in other materials submitted to OHFA;

(C) An Affidavit, in the form to be provided by OHFA, attesting the affiliant is not ineligible under the criteria set out in 330:30-2-4;

(D) Anti-collusion affidavit; and

(E) Indemnity Letter (Applicant, Sponsor and developer), in the form to be provided by OHFA, holding OHFA and its Trustees, employees, representatives, attorneys, financial advisors and other consultants harmless for anything that could go awry. The Indemnity Letter must acknowledge that the Trustees have complete and absolute discretion to disapprove or fail to approve the issuance of any debt obligation at any point during the Application process.

(5) **Market Study.** The market study must comply in all respects with the market analysis required under OHFA's Affordable Housing Tax Credit Program. The market study must include all projects receiving any form of federal or state assistance or subsidies, bond and tax credit projects, both operating and not yet placed in service, located in the Project's market area. The study must provide the current vacancy rate for each project, compare the rents, amenities, unit sizes, bedroom sizes and populations served for these projects. The market study must be supplemented to incorporate any projects in the Project's market area which have been approved for federal or state assistance or subsidies, including bond financing, tax credits, HOME and Housing Trust Fund financing since the date of the initial preparation of the market study.

(6) **Project Plan.** A Project Plan consists of a description of the proposed Project, including the following:

(A) Street address, legal site description and site maps to locate the Project within its respective submarket and within the larger market area;

(B) Photographs of street scenes and adjacent property;

(C) Current or proposed site plans showing the location of all buildings, site entrances/exits, driveways and parking areas, easements, recreational facilities and other significant features;

(D) Configuration (number/type of buildings, number of units categorized by number of bedrooms/bathrooms and square footage) supplemented by recent photographs, artist renderings or representative photos/renderings of the interior of the residential units plus floor plan layouts of each unit configuration.

(E) Type of construction and design, with recent photographs, artist renderings or representative photos/renderings of each type of building configuration;

(F) Shared facilities and amenities, documented with recent photographs, artist renderings or representative photos/renderings of such facilities/amenities, including Project entrance(s), driveways and parking areas, recreational facilities, congregate dining facilities, etc.;

(G) For existing Projects, a written description (supplemental by photos where appropriate) of the physical condition of the site and the Project with particular specific descriptions of each of the following: uninhabitable units, structural deficiencies, major building system deficiencies, surface water control problems, etc., together with the Applicant(s) estimate of costs of renovations, on a line by line basis and

(H) target population.

(7) **Preliminary Operating Information.** Preliminary Project operating information including:

(A) Schedule of current and proposed rents by unit type; and

(B) Fifteen year pro forma revenue and expense analysis to evidence the basis for an estimate of stabilized net operating income (NOI) before debt service, prepared or approved in writing by a member of the AICPA.

(8) **Development Plan.** A Development Plan is a written description of the plan to acquire and construct or rehabilitate the Project, including:

(A) Current ownership of the property;

(B) Nature of the current site control, including evidence thereof (e.g., a copy of a option topurchase, signed by each party necessary to effectuate the same, etc.);

(C) Current zoning of the property and proposed zoning if a change is needed to implement the Development Plan, together with a written status report on the zoning change request, if applicable;

(D) Proposed construction and/or rehabilitation plans to be completed, including staging and major building systems affected; and

(E) Proposed timetable for completion of each of the major steps in the Development Plan.

(9) **Financial Feasibility Plan.** The Financial Feasibility Plan that must include, at a minimum, the following information:

(A) For existing Projects, a schedule indicating current occupancy rates by unit type and for the Project overall, together with a schedule of current rents and other sources of Project revenues;

(B) Schedule of proposed rents (both 'opening' or initial rents as well as stabilized rents) by unit type;

(C) Schedule of operating and maintenance expenses for most recent twelve (12) month period (for existing Projects only) and as Projected for stabilized operations during a stabilization period that, unless good cause can be shown, shall not exceed twelve (12) months after completion of construction or rehabilitation, whichever is applicable;

(D) A signed appraisal, prepared within the last twelve months on an 'as-rehabilitated or 'as-built' basis;

(E) Copy of all feasibility analyses prepared by or behalf of the Borrower or other third-party; and

(F) Fifteen year pro forma revenue and expense analysis evidencing sufficient net operating income (NOI) to support the mortgage loan amount requested, after allowance for appropriate debt service coverage.

(10) **Financing Plan.** A Financing Plan containing a written description of the Applicant(s)'s plan to fund the costs of acquiring and constructing and/or rehabilitating the Project, including:

(A) Schedule of total development cost including current estimates or allowances for each significant component of hard costs and soft costs;

(B) Detailed statement of proposed sources of funds to acquire and construct/rehabilitate the Project, including (as appropriate) bridge loan financing, Owner equity, proceeds from syndication of equity including each other Housing Assistance items that are being or may be sought from OHFA, or other similar governmental units, i.e., Affordable Housing Tax Credits, HOME funds, Housing Trust Funds, Community Action Bloc Grants, etc.;

(C) Detailed statement of proposed sources of funds to permanently finance the Project following construction or rehabilitation, including (as appropriate) Owner equity, OHFA financing, mortgage debt from other sources, proceeds of equity syndication, including but not necessarily limited to, each other Housing Assistance items that are being or may be sought from OHFA, or other similar governmental units, i.e., Affordable Housing Tax Credits, HOME funds, Housing Trust Funds, Community Action Bloc Grants, etc.;

(D) Identification of proposed source(s) of credit enhancement (if any) supported by letters of interest, letters of intent or commitments from the related provider(s), if available; and

(E) Identification of proposed purchaser(s) of OHFA debt obligations (if not credit enhanced) supported by letters of interest, letters of intent or

commitments from the proposed purchaser(s), if available.

(11) **Management/Marketing Plan.** A Management and Marketing Plan including the following information:

(A) For existing Projects, to the extent such information is available to the Applicant(s) at the time of Inducement Application, current resident profile by income and household size together with a discussion of resident displacement which could occur in order to effect rehabilitation or repairs, or to comply with imposed income limitations;

(B) Target market by income and household size;

(C) Primary and secondary market draw areas;

(D) Overview of proposed marketing strategy, particularly regarding the strategy to achieve and maintain low income occupancy requirements; and

(E) Overview of the proposed management plan for the property.

(12) **Supplemental Information.** Any and all additional information OHFA may require in order to analysis the Project at any stage of its review.

(b) The Applicant shall submit an original and five (5) copies of the Application in a three-ring binder utilizing an index and corresponding tabs. Applications must be complete and consistent with all supporting documentation. OHFA may permit the submission of copies of the Application on diskettes. Prior permission of OHFA is required for a diskette submission. A printed copy with appropriate signatures must also be submitted.

(c) Any amendment or changes to information filed with OHFA must be disclosed immediately. This is a continuing disclosure requirement. Any amendments or changes not immediately brought to the attention of OHFA, in writing, may result in the Application being rejected.

330:30-4-5. Conditional commitment stage [REVOKED]

~~(a) The Conditional Commitment Stage commences on the date on which the complete Notice of Intent to Proceed with the implementation of the proposed Financing Plan and Development Plan, together with the applicable Conditional Commitment Fee and Conditional Commitment Expense Escrow Payment, are received by OHFA from the Sponsor(s), Borrower(s), Owner(s) and their Affiliates. The fees payable to OHFA at the Conditional Commitment Stage are as set forth in 330:30-8-3.~~

~~(b) OHFA's processing at the Conditional Commitment Stage includes a review by OHFA and its legal and financial advisors and consultants of all relevant aspects of a proposed Project and its related Financing Plan, Development Plan and the background of the Sponsor(s), Borrower(s), Owner(s), Principal(s), and their Affiliates. The primary objectives of this review are to provide reasonable assurance to OHFA and the Sponsor(s), Borrower(s), and Owner(s) that:~~

~~(1) all the requirements of 330:30-4-3 and 330:30-4-4 have been satisfied.~~

~~(2) there are no material contingencies which would preclude the Development Plan and related Financing Plan from being implemented;~~

~~(3) the Development Plan and related Financing Plan, when implemented, will comply with all applicable Code provisions, federal laws and Regulations and State law requirements and this Chapter; and~~

~~(4) the Sponsor(s), Borrower(s), Owner(s), Principal(s) and their Affiliates are of good character, reputation and integrity and meet the letter and spirit of integrity and background standards required by this Chapter. [(See Subparagraph 330:30-2-3(d))]~~

~~(c) During the Conditional Commitment Stage, the Sponsor(s), Borrower(s), Owner(s), Principal(s) and their Affiliates and OHFA, together with their respective legal and financial advisors or consultants, shall prepare all documents and financial analyses required to enable OHFA to adopt a Financing Resolution as described below.~~

~~(d) The information submission requirements at the Conditional Commitment Stage of processing are set forth in 330:30-6-3.~~

~~(e) The Conditional Commitment Stage is terminated by:~~

~~(1) OHFA's adoption of a Financing Resolution authorizing the issuance of debt obligations to provide financing for the Project, such Resolution setting forth any conditions or requirements precedent to Financing Approval (Closing); or~~

~~(2) OHFA's disapproval of the proposal in its discretion, with or without cause or reason; or~~

~~(3) failure of OHFA Trustees to adopt a Financing Resolution within 180 days of the date of commencement of the Conditional Commitment Stage, or such longer time as the OHFA Trustees may approve by formal resolution.~~

330:30-4-6. Financing approval stage [REVOKED]

~~(a) The Financing Approval Stage commences on the date on which OHFA's Trustees adopt a Financing Resolution.~~

~~(b) During the Financing Approval Stage of processing, the Sponsor(s), Borrower(s), and Owner(s) are required to meet all of the conditions and requirements set forth in the OHFA Financing Resolution relating to the Project and all related matters leading to the issuance of OHFA debt obligations to provide financing for the Project.~~

~~(c) The fee payable to OHFA by or on behalf of the Sponsor(s), Borrower(s) and Owner(s) at the Financing Approval Stage are set forth in 330:30-8-4 and shall be payable by the Sponsor(s), Borrower(s) 2nd Owner(s) at Closing, upon issuance of the OHFA debt obligations.~~

~~(d) OHFA shall not be obligated to close a financing on a Project unless the Chairman, or the Vice-Chairman, in their respective complete discretion, are satisfied that all the requirements and standards imposed by federal and Oklahoma laws, rules and regulations and local ordinances, rules, regulations, and other applicable restrictions, and this Chapter, and the terms and conditions of all resolutions adopted by the OHFA Trustees pertaining to the Project have been, and at the time of the Closing remain, fully completed and satisfied.~~

SUBCHAPTER 6. APPLICATIONS AND INFORMATION REQUIREMENTS [REVOKED]

330:30-6-1. Initial application stage [REVOKED]

~~The Sponsor of a proposed project requesting financing from OHFA shall submit the following information to OHFA at the commencement of the Initial Application Stage of processing.~~

~~(1) A completed Initial Application in the form prescribed by OHFA and containing the following information:~~

~~(A) Project name;~~

~~(B) Identity of the Sponsor, and, if then known, each of the Borrower(s), Owner(s), Principal(s), their Affiliates and other members of the development team (developer, architect, general contractor, Sponsor's appraiser, property manager);~~

~~(C) If Sponsor is a corporation or partnership, a certificate of good standing from the state of incorporation and the State of Oklahoma;~~

~~(D) The identity of all directors, officers, Principals, general partners, limited partners, and Affiliates of the Sponsor, and if known, of the Borrower(s), and Owner(s), and the proportionate ownership share of each in the proposed Project. Any and all subsequent changes in Affiliates, directors, officers, Principals, and general and limited partners of any of the Sponsor(s), Borrower(s), Owner(s), Principal(s) and their Affiliates at any processing stage shall be reported to OHFA;~~

~~(E) Name, mailing address, telephone number, social security number, federal tax ID number and facsimile number of the primary contact or representative of the Sponsor(s), and if known, each Borrower(s), Owner(s) and their Affiliates, including other members of the development team; and~~

~~(F) A brief summary of the multifamily dwelling development, ownership, and operations experience of the Sponsor(s) and each member of the development team, and if known, of the Borrower(s), Owner(s) and their Affiliates.~~

~~(2) A physical description of the proposed Project, including:~~

~~(A) Project location (street address and site map, if available);~~

~~(B) Configuration (number/type of buildings, number of units categorized by number of bedrooms/bathrooms and square footage);~~

~~(C) Type of construction and design (documented with photos or artist renderings, if available); and~~

~~(D) Shared facilities and amenities.~~

~~(3) A brief narrative description of the Development Plan, containing the following information:~~

~~(A) If there is not site control or if a specific site has not yet been identified, indicate the availability of suitable sites and the expected means of gaining ownership control of the property to be acquired and constructed or rehabilitated;~~

~~(B) If a specific site or property has been identified, indicate the nature and extent to which the Sponsor has site control (e.g., option to purchase, etc.);~~

~~(C) Summary of proposed terms of purchase by the Sponsor and Owners;~~

~~(D) Proposed construction and/or rehabilitation to be completed;~~

~~(E) Target market for the Project upon completion of rehabilitation or construction; and~~

~~(F) Preliminary timetable for property acquisition and execution of the Development Plan.~~

~~(5) A brief narrative description of the Preliminary Financing Plan, containing the following information:~~

~~(A) Schedule of total development cost broken down by major soft cost and hard cost categories;~~

~~(B) Proposed source(s) of debt and equity funds to acquire and construct and/or rehabilitate the Project;~~

~~(C) Proposed source(s) of debt and equity funds to provide permanent financing for the Project;~~

~~(D) Proposed source(s) of credit enhancement, if any; and~~

~~(E) Proposed purchaser(s) of OHFA debt obligations if not credit enhanced.~~

~~(6) Preliminary project operating information including:~~

~~(A) Schedule of current and proposed rents by unit type; and~~

~~(B) Pro forma revenue and expense analysis to evidence the basis for an estimate of stabilized net operating income (NOI) before debt service.~~

~~(7) An analysis of housing affordability based on a comparison between proposed rents and utility allowances and the income levels of the individuals constituting the primary target market for the Project.~~

~~(8) Completed affidavits of each of the Sponsors, and if known, of the Borrower(s), Owner(s) and their Affiliates, including each member of the development team using the form to be provided by OHFA. If the Borrowers and Owners have not been identified, the affidavits should state such facts. [See 330:30-2-3(d)].~~

~~(9) A brief narrative assessment (supported whenever possible by reference to available secondary data sources) of the need and market (effective demand) within the community to be served by the Project for the type(s) of housing units to be provided. This requirement may be satisfied by providing a copy of a Project feasibility report or appraisal, if available.~~

~~(10) A brief narrative assessment of the impact the Project would be expected to have on the community in the general area of the Project, including environment, schools, traffic, utilities, water usage, garbage and trash, and other services in the area.~~

330:30-6-2. Inducement application stage [REVOKED]

~~(a) The Sponsor(s), Borrower(s) and Owner(s) of a proposed Project requesting financing from OHFA shall submit the following information to OHFA at the commencement of the Inducement Application Stage:~~

~~(1) A completed Inducement Application in the form prescribed by OHFA and containing the following information:~~

~~(A) Project name;~~

~~(B) Identity of each Sponsor(s), Borrower(s), Owner(s) and their Affiliates, including members of the development team (developer, architect, general contractor, property manager, Sponsor's appraiser), if known;~~

~~(C) The identity of all Affiliates, directors, officers, Principals, general partners, and limited partners of the Sponsor(s), Borrower(s) and Owner(s) and the interest of each in the proposed Project. All subsequent changes in Affiliates, directors, officers, Principals, and general and limited partners of the Sponsor(s), Borrower(s) and Owner(s) shall be reported to OHFA;~~

~~(D) Name, mailing address, telephone number, social security number, federal tax ID number and facsimile number of the primary contact or representative of each of the Sponsor(s), Owner(s), Borrower(s), and their respective Affiliates including members of the development team;~~

~~(E) A statement of qualifications for each member of the development team, including a description of relevant experience in developing ownership, management and operation of affordable multifamily housing projects with or without bond financing;~~

~~(F) List of all bond-financed transactions completed since 1980 as Principal, including issuer, issue size and date of issue, plus notations regarding any delinquencies or defaults on the related project loan as well as the bonds.~~

~~(G) Completed affidavits of each of the Sponsor(s), Borrower(s), Owner(s), the Affiliates, and each member of the development team, using the form to be provided by OHFA. [See 330:30-2-3(d)].~~

~~(H) Such additional information as may be necessary to satisfy the requirements of 330:30-6-1.~~

~~(2) A Mortgage Credit Plan containing sufficient information to enable OHFA to evaluate the financial capacity of the Sponsor(s), Borrower(s) and/or the Owner(s) to successfully execute its proposed Financing Plan and Development Plan, including as applicable:~~

~~(A) A written representation regarding the nature, extent and availability of its own capital, bank credit lines, governmental grants or other sources of funds to meet or cover working capital requirements, equity contributions~~
~~contemplated by the Sponsor's Financing Plan, or project cost overruns should they occur;~~

~~(B) References from bankers, attorneys, accountants or otherpersons or firms having had prior business relationships with the Sponsor, plus references of Public Agencies as applicable;~~

~~(C) Certified financial statements for all general partners or corporate Sponsor(s), Borrower(s), and Owner(s). (At OHFA's option, certified financial statements may also be required for all Sponsor(s), Borrower(s), Owner(s) and their Affiliates.); and~~

~~(D) If applying for OHFA financing without credit enhancement, provide financial statements for each of the three years preceding the date of the Inducement Application, or from the inception of any entity, whichever time period is shorter, supplemented by a written representation of the Sponsor(s), Borrower(s), and Owner(s) that no material adverse changes in financial position have occurred since the date of the most recent financial statements submitted.~~

~~(3) A Project Plan containing a physical description of the proposed Project, including, as applicable:~~

~~(A) Street address, legal site description and site maps to locate the Project within its respective submarket and within the larger market area;~~

~~(B) Photographs of street scenes and adjacent property;~~

~~(C) Current or proposed site plans showing the location of all buildings, site entrances/exits, driveways and parking areas, easements, recreational facilities and other significant features;~~

~~(D) Configuration (number/type of buildings, number of units categorized by number of bedrooms/bathrooms and square footage) supplemented by recent photographs, artist renderings or representative photos/renderings of the interior of the residential units plus floor plan layouts of each unit configuration.~~

~~(E) Type of construction and design, with recent photographs, artist renderings or representative photos/renderings of each type of building configuration;~~

~~(F) Shared facilities and amenities, documented with recent photographs, artist renderings or representative photos/renderings of such facilities/amenities, including project entrance(s), driveways and parking areas, recreational facilities, congregate dining facilities, etc.; and~~

~~(G) For existing projects, a narrative description (supplemental by photos where appropriate) of the physical condition of the site and the project with particular discussion of uninhabitable units, structural deficiencies, major building system deficiencies, surface water control problems, etc.~~

~~(4) A Development Plan containing a narrative description of the plan to acquire and construct and/or rehabilitate the project, including:~~

~~(A) Current ownership of the property;~~

~~(B) Nature of the current site control, including evidence thereof (e.g., option to purchase, etc.);~~

~~(C) Current zoning of the property and proposed zoning if a change is needed to implement the Development Plan, together with a status report on the zoning change request, if applicable;~~

~~(D) Proposed construction and/or rehabilitation to be completed including staging and major building systems affected; and~~

~~(E) Proposed timetable for completion of major steps in the Development Plan.~~

~~(5) A Financial Feasibility Plan including the following information:~~

~~(A) For existing projects, a schedule indicating current occupancy rates by unit type and for the project overall, together with a schedule of current rents and other sources of project revenues;~~

~~(B) Schedule of proposed rents (both 'opening' or initial rents as well as stabilized rents) by unit type;~~

~~(C) Schedule of operating and maintenance expenses for most recent twelve (12) month period (for existing projects only) and as projected for stabilized operations;~~

~~(D) Copy of most recent appraisal, if available, for an existing Project, or, if an appraisal is unavailable, provide an explanation for lack of availability;~~

~~(E) Copy of market study or feasibility analysis, if available; and~~

~~(F) Pro forma revenue and expense analysis evidencing sufficient net operating income (NOI) to support the mortgage loan amount requested, after allowance for appropriate debt service coverage.~~

~~(6) A Financing Plan containing a narrative description of the Sponsor's plan to fund the costs of acquiring and constructing and/or rehabilitating the project, including:~~

~~(A) Schedule of total development cost including current estimates or allowances for each significant component of hard costs and soft costs;~~

~~(B) Detailed statement of proposed sources of funds to acquire and construct/rehabilitate the project, including (as appropriate) bridge loan financing, Owner equity, proceeds from syndication of equity including Low Income Housing Tax Credits, OHFA financing and grants;~~

~~(C) Detailed statement of proposed sources of funds to permanently finance the project following construction or rehabilitation, including (as appropriate) Owner equity, OHFA financing, mortgage debt from other sources, proceeds of equity syndication including Low Income Housing Tax Credits, and grants;~~

~~(D) Identification of proposed source(s) of credit enhancement (if any) supported by letters of interest, letters of intent or commitments from the related provider(s), if available; and~~

~~(E) Identification of proposed purchaser(s) of OHFA debt obligations (if not credit enhanced) supported by letters of interest, letters of intent or commitments from the proposed purchaser(s), if available.~~

~~(7) A Management and Marketing Plan including the following information:~~

~~(A) For existing projects, to the extent such information is available to the Sponsor at the time of Inducement Application, current resident profile by income and household size together with a discussion of resident displacement which could occur in order to effect rehabilitation or repairs, or to comply with imposed income limitations;~~

~~(B) Target market by income and household size;~~

~~(C) Primary and secondary market draw areas;~~

~~(D) Overview of proposed marketing strategy, particularly regarding the strategy to achieve and maintain low income occupancy requirements; and~~

~~(E) Overview of the proposed management plan for the property.~~

~~(b) All Inducement Application packages shall be accompanied by a corporate check in full payment of the Inducement Application Fee, unless such payment is waived by OHFA in accordance with 330:30-8-2.~~

330:30-6-3. Conditional commitment stage [REVOKED]

~~(a) To initiate the Conditional Commitment Stage of processing, the Sponsor(s), Borrower(s), and Owner(s) of a proposed Project requesting financing from OHFA shall submit a Notice of Intent to Proceed, substantially in the form to be provided by OHFA, to register its intent to implement its Project Financing Plan and Development Plan, as such Plans (as described in the related Inducement Application) may have been refined, amended or modified as further described in the Sponsor's related Conditional Commitment Application (which Application need not accompany the Notice of Intent to Proceed).~~

~~(b) The Notice of Intent to Proceed shall be accompanied by a corporate check in full payment of the applicable Conditional Commitment Fee and the Conditional Commitment Expense Escrow Payment, unless such Fee and/or Payment is waived by OHFA in accordance with 330:30-8-3.~~

~~(c) During the Conditional Commitment Stage of processing, the Sponsor(s), Borrower(s), and Owner(s) will assemble its Conditional Commitment Application for eventual submission to OHFA prior to the Trustee's consideration of the Financing Resolution relating to the Project.~~

~~(d) The Conditional Commitment Application package, when finalized, shall include the following items.~~

~~(1) A completed Conditional Commitment Application in the form prescribed by OHFA and containing the same information contained in the Inducement Application package as described under 330:30-6-2(a)(1), revised as appropriate to reflect any changes in the Sponsorship/Borrowership/Ownership and/or the composition of the development team relating to the Project.~~

~~(2) A Mortgage Credit Package Addendum containing the same information contained in the Inducement Application package as described under 330:30-6-2(a)(2), revised as appropriate to reflect any changes in the credit of the Sponsor(s), Borrower(s), and Owner(s) and supplemented by:~~

~~(A) interim financial statements covering the period commencing on the date of the most recent annual financial statements and ending not earlier than sixty (60) days prior to the date of the final Conditional Commitment Application submitted to OHFA; and~~

~~(B) any additional financial information requested by OHFA.~~

~~(3) A Project Plan Addendum containing the same information contained in the Inducement Application package as described under 330:30-6-2(a)(3), revised as appropriate to reflect any changes in the physical description of the proposed Project, and supplemented by an Environment Review Certificate satisfactory to OHFA counsel.~~

~~(4) A Development Plan Addendum containing the same information contained in the Inducement Application package as described under 330:30-6-2(a)(4), revised as appropriate to reflect any changes in the plan for acquisition, construction or rehabilitation of the project.~~

~~(5) A Financing Plan Addendum containing the same information contained in the Inducement Application package as described under 330:30-6-2(a)(6), revised as appropriate to reflect any changes in the plan of financing for the project and supported by written commitments or conditional commitments from financial institutions or other entities providing one or more key elements of the plan of financing including bridge loans, interim or permanent credit enhancement, equity contributions or grants.~~

~~(6) A Financial Feasibility Plan Addendum containing the same information contained in the Inducement Application package as described under 330:30-6-2(a)(5), revised as appropriate to reflect any changes in the assumptions underlying the Pro Forma Revenue and Expense Analysis and including copies of updated appraisals, market studies of feasibility studies.~~

~~(7) A Management and Marketing Plan Addendum containing the same information contained in the Inducement Application package as described under 330:30-6-2(a)(7), revised as appropriate to reflect any changes in the plan for the marketing and management of the project.~~

330:30-6-4. Financing approval stage [REVOKED]

~~(a) The final terms and conditions of OHFA debt obligations issued to provide financing for a multi-family residential rental project or cooperative shall be reflected in the financing documents relating to the transaction, which documents may include, among others:~~

~~(1) bond trust indenture;~~

~~(2) loan agreement;~~

~~(3) regulatory agreement;~~

~~(4) mortgage loan note and mortgage; and~~

~~(5) guarantees of completion and contractor bonds.~~

~~(b) The financing documents shall reflect in all material respects the Financing Plan, Development Plan and other aspects of the proposed project as described in the Conditional Commitment Application and as approved by the Trustees in the related Financing Resolution.~~

~~(c) The Sponsor(s), Borrower(s), and Owner(s) shall remit to OHFA, upon the Closing of its financing transaction, by corporate check, the applicable Financing Fee plus payment for certain expenses of OHFA in accordance with 330:30-8-4.~~

330:30-6-5. Certifications and forms [REVOKED]

~~(a) Each of the Sponsor(s), Borrower(s), and Owner(s) applying for OHFA financing under the rules established by this Chapter, and their Affiliates, shall provide the following representations and certifications in conjunction with any such Application:~~

~~(1) A verified conflict of interest statement in a form to be provided by OHFA, demonstrating that the Sponsor has used due diligence to ascertain whether any Trustee, employee, attorney, or consultant for the OHFA or any of their Affiliates, as defined by Title 60, Oklahoma Statutes, 175.3 and 178.8, has any direct or indirect interest with the Sponsor, the Project, (including, but not limited to, providing labor, services, consultation, goods, supplies or materials for the Project or to or for Sponsor(s), Borrower(s), or Owner(s)) or other parties Affiliated with the Project or with the placement of the bonds or other debt instrument proposed to be issued by OHFA to provide financing for the Project; and~~

~~(2) A statement from each of the Sponsor(s), Borrower(s), or Owner(s) submitting applications to OHFA pursuant to this Chapter that they each acknowledge and understand the penalty of perjury under State law (including subjecting the OHFA Project loan to immediate acceleration) for submitting false information in an Application or in other materials submitted to OHFA relating to such Application; and~~

~~(3) A certificate or representation letter, under oath, in the form to be provided by OHFA [see 330:30-2-3(d)].~~

~~(b) During the Inducement Application Stage, a Public Hearing shall be conducted by OHFA after Reasonable Public Notice, for the purpose of receiving and evaluating comments in support of or in opposition to the proposed Project.~~

SUBCHAPTER 8. FEES AND EXPENSES

330:30-8-1. Initial application stage

(a) Unless waived or deferred by OHFA, ~~Upon~~ upon submission of ~~its Initial~~ the initial Application, the ~~Sponsor(s)~~ Applicant shall ~~be required to~~ remit to OHFA an Initial Application Fee in an amount equal to the greater of:

(1) Three basis points (.030%) of the dollar amount of OHFA debt financing requested; or

(2) $1,500.00.

(b) The Initial Application Fee is non-refundable.

(c) All or a portion of the Initial Application Fee may be waived or deferred by OHFA ~~if the Sponsor is a Non-Profit Organization, Public Agency or other governmental unit~~.

(d) OHFA may require a Sponsor or Applicant to make payments to third parties, if any, which provide services relating to OHFA's review and evaluation of Sponsor's Initial Application.

330:30-8-2. Inducement application stage

(a) Unless waived or deferred by OHFA, ~~Upon submission of its Inducement Application, the Sponsor(s), Borrower(s) and~~

~~Owner(s)~~ at the commencement of the Inducement stage, Applicant shall ~~be required to~~ remit to OHFA an Inducement Application Fee in an amount equal to the greater of

(1) Seven basis points (.070%) of the dollar amount of OHFA debt financing requested; or

(2) $3,500.00.

(b) The Inducement Application Fee is non-refundable.

(c) All or a portion of the Inducement Application Fee may be waived or deferred by OHFA ~~if the Sponsor is a Non-Profit Organization, Public Agency or other governmental unit~~.

(d) OHFA may require a Sponsor or Applicant to make payments to third parties, if any, which provide services relating to OHFA's review and evaluation of Sponsor's Inducement Application.

330:30-8-3. Conditional commitment stage

(a) Unless waived or deferred by OHFA ~~Upon submission to OHFA of its Notice of Intent to Proceed with the implementation of the Financing Plan for its project, the Sponsor(s), Borrower(s) and Owner(s) shall be required to~~ at the commencement of the Conditional commitment stage, Applicant shall remit to OHFA a Conditional Commitment Fee in an amount equal to the greater of:

(1) Fifteen basis points (0.15%) of the dollar amount of OHFA debt financing requested; or

(2) $7,500.00.

(b) The Conditional Commitment Fee is non-refundable.

(c) Concurrent with the payment of its Conditional Commitment Fee, ~~the Sponsor(s), Borrower(s) and Owner(s) shall be required to~~ the Sponsor or Applicant shall remit (in cash or in the form of an irrevocable letter of credit) to OHFA the Conditional Commitment Expense Escrow Payment, which shall be a percentage of the fees and expenses of OHFA's financial advisor, legal counsel, bond counsel, underwriters, underwriter's consultants and/or consultants relating to the transaction as estimated by OHFA.

(d) All or a portion of the Conditional Commitment Fee and/or the Conditional Commitment Expense Escrow Payment may be waived or deferred by the OHFA ~~if the Sponsor is a Non-Profit Organization, Public Agency or other governmental unit~~.

(e) The Conditional Commitment Expense Escrow Payment shall be retained by OHFA for application toward payment of financial advisor, bond counsel fees or similar fees and expenses at Closing or upon earlier termination of the proposed Project financing prior to Closing.

(f) OHFA may require a Sponsor or Applicant to make payments to third parties, if any, which provide services relating to OHFA's review and evaluation of Sponsor's or Sponsor's ~~Conditional Commitment~~ Application.

330:30-8-4. Financing approval stage

(a) As a part of the Closing of the issuance of the OHFA debt relating to its project, ~~the Sponsor(s), Borrower(s) and Owner(s)~~ the Borrower shall ~~be required to~~ remit to OHFA the Financing Approval Fee in an amount equal to the greater of:

(1) Twenty-five basis points (0.25%) of the dollar amount of OHFA debt financing provided; or

(2) $12,500.00.

(b) Concurrent with the payment of its Financing Approval Fee, the Sponsor(s), Borrower(s) and Owner(s) shall be required to remit to OHFA the balance (after application of the related Conditional Commitment Expense Escrow Payment) of the actual fees and expenses of OHFA's financial advisor, legal counsel and/or other consultants relating to the transaction.

(c) Any deferred fees will be due and payable by the Borrower at Closing.

330:30-8-5. Administrative fee

(a) The Borrower of each multifamily residential rental Project financed by OHFA shall be required to remit to OHFA an Administrative Fee equal to twelve and one-half basis points (0.125%) per annum of the principal amount of OHFA debt outstanding with respect to the Project financed as of the date of calculation.

(b) The Administrative Fee shall be paid in advance and may be paid annually, semi-annually, quarterly or monthly as the Sponsor(s), Borrower(s), ~~and~~ Owner(s), and OHFA may mutually agree.

330:30-8-6. Compliance fee

(a) The ~~Sponsor(s), Borrower(s) and Owner(s)~~ Owner of each Project financed by OHFA shall be required to remit to OHFA annually a Compliance Fee equal to twelve and one-half basis points (0.125%) per annum of the principal amount of OHFA debt outstanding with respect to the Project financed as of the date of calculation.

(b) The Compliance Fee shall be paid in advance and may be paid annually, semi-annually, quarterly or monthly as the Sponsor and OHFA may mutually agree.

(c) The Compliance Fee may be waived or deferred by OHFA if the Sponsor of the Project is a Non-Profit Organization, a Public Agency, or other governmental unit.

330:30-8-7. Assumption and transfer fee

(a) OHFA requires, for each Project, that the Financing Documents contain a 'due on sale or change of ownership or control' clause in the Project Loan Documents.

(b) In connection with the transfer of ownership or change of ownership or control of a Project financed by OHFA, the ~~assignor Sponsor(s), Borrower(s), Owner(s) or assignee Sponsor(s), Borrower(s) or Owner(s)~~ Owner/Borrower or the purchaser shall remit to OHFA an Assumption/Transfer Fee in an amount equal to one percent (1.00%) of the principal amount of OHFA debt outstanding as of the date of transfer of ownership.

(c) The Assumption/Transfer Fee shall be paid in installments as follows:

(1) fifty percent (50%) upon submission of the related application for Approval of Assumption/Transfer in compliance with 330:30-14-1; and

(2) fifty percent (50%) upon Closing of assumption/transfer of ownership.

(d) If for any reason the assumption/transfer transaction does not close, a portion of the first installment of the Assumption/ Transfer Fee will be returned by OHFA to the person or entity having paid such installment, after deducting OHFA's expenses incurred in connection with the proposed assumption/transfer, including a reasonable amount for time and effort spent by OHFA staff.

SUBCHAPTER 10. EVALUATION CRITERIA AND APPROVAL REQUIREMENTS [REVOKED]

330:30-10-1. Evaluation criteria [REVOKED]

~~(a) In evaluating whether to authorize the issuance of OHFA debt obligations for the purpose of financing a Project, the Trustees shall take into consideration all of the criteria for disapproval set out in 330:30-4-2 and the following:~~

~~(1) the extent to which there exists a documented need for rental or cooperative housing units affordable by moderate, low or very low income residents or by individuals having special needs within the primary market area to be served by the proposed project. [See 330:30-6-1(9)];~~

~~(2) the extent to which the proposed project is expected to meet or satisfy the need for such housing;~~

~~(3) whether there is any material negative impact upon the community in the general area of the Project. [See 330:30-5-1(j)];~~

~~(4) the availability of suitable credit enhancement to increase the security or creditworthiness of the proposed OHFA debt obligations;~~

~~(5) the proposed method of sale or placement of the OHFA debt obligations and the institutional or retail (private individual) nature of the expected purchaser(s);~~

~~(6) the amount of OHFA debt financing relative to total project development cost;~~

~~(7) the underwriting criteria applied by the credit enhancer or the proposed purchaser of the debt obligations; and~~

~~(8) such other criteria as the Trustees, in their discretion, deem appropriate to further effectuate the public purpose objectives of OHFA and/or to better ensure the credit quality of OHFA debt obligations.~~

~~(b) The OHFA Trustees shall have complete and absolute discretion, unlimited by any criteria, to disapprove or fail to approve, the issuance of any debt obligation for the financing of any proposed multifamily Project, and no Sponsor, Owner, Project financing team member or any third party shall have any recourse against OHFA or any of its Trustee, employees, representatives, attorneys, financial advisors or other consultants for any such disapproval or failure to approve, without regard to whether such disapproval action or failure to approve inaction was with or without real or apparent cause, and without disclosing the reasons or lack thereof for such action or inaction.~~

330:30-10-2. Approval requirements [REVOKED]

~~(a) With respect to a Project to be financed with the proceeds of OHFA debt obligations secured by a credit enhancement acceptable to OHFA, the related Sponsor must meet the underwriting criteria and other requirements established by the related credit enhancer.~~

~~(b) With respect to a Project to be financed with the proceeds of OHFA debt obligations which are not credit enhanced, the following minimum requirements shall apply:~~

~~(1) All Project designs shall meet the applicable design standards established by local, state, and/or Federal governmental authorities, including zoning, building, housing, and other codes and ordinances. The Sponsor(s), Borrower(s) and Owner(s) shall certify compliance with all zoning, building, housing, and other codes in effect in the municipality in which the Project is located.~~

~~(2) The general construction and/or rehabilitation contract for the Project shall make provision for reserves for patent and latent defect corrections after completion of construction and~~

~~Sponsor's acceptance thereof. Such reserves shall be not less than one hundred fifty percent (150%) of the cost of correcting patent defects and two and one half percent (0.025%) of the contract amount for latent defects. Such reserves shall be held by OHFA or its designee for a period of one (1) year after the date on which a Certificate of Occupancy has been issued for all residential units in the Project.~~

~~(3) The performance of and payment for all construction contracts on the project must be secured by an irrevocable unconditional letter of credit by a commercial bank or be fully funded one hundred percent (100%) with performance and payment bond by a surety company licensed to do business in the State of Oklahoma and acceptable to OHFA.~~

~~(4) OHFA may require the establishment and funding by the Sponsor(s), Borrower(s) and Owner(s) of a special reserve funded with moneys available to the Sponsor (other than proceeds of OHFA debt obligations). In the event such a reserve requirement is established by OHFA, OHFA shall also specify the related required level of funding and the manner in which moneys credited to such reserve shall be applied.~~

~~(5) The financing documents shall provide that upon commencement of construction of the Project OHFA or its designee shall periodically inspect the Project to assure that the Project is being properly constructed, and after completion of construction to assure that the Project is being properly operated and maintained.~~

~~(c) With respect to any Project to be financed with the proceeds of OHFA debt obligations:~~

~~(1) All debt issued by OHFA to provide financing must be without recourse against OHFA or its Trustees, officers, employees, counsel, agents, or other representatives, but shall be recoverable solely from the project property and the liability of the Borrower(s) upon the mortgage and note to OHFA. OHFA may require such personal guarantee by Principals of the Borrower(s) as it deems necessary~~

~~to adequately insure the performance and payment by the Borrower(s) of the Mortgage Note and Mortgage;~~

~~(2) The Mortgage, Mortgage Note, Bonds, Bond Indenture, Building Loan Agreement, Regulatory Agreement, OHFA's Trustee, and Trustee Bank resolutions, Official Statement, Inducement Letter, Note and Bond Purchase Agreement, and all other documents as may be required by counsel for OHFA shall be provided, and shall be in such form and of such content as may be required or approved by counsel for OHFA;~~

~~(3) OHFA may not issue tax exempt debt obligations to finance a residential rental project or cooperative unless and until the tax-exempt status of such obligations is confirmed by an unqualified opinion of bond counsel designated by OHFA;~~

~~(4) The Loan Agreement, Note and Mortgage shall provide that the sale of the Project or change of substantial Control of either the Borrower(s) or the Owner(s) shall accelerate the due date of the Mortgage Note, which shall thereupon be paid in full unless the sale or change of substantial Control is approved prior to the time of the actual sale or change of Control in accordance with the financing documents and this Chapter; and~~

~~(5) The Loan Agreement and/or other appropriate financing document shall:~~

~~(A) establish the Borrower's obligation to prepare and distribute to OHFA and other designated parties to the transaction periodic reports regarding the financial condition of the Project, operating results, compliance with applicable OHFA or federal requirements relating to occupancy by lower income persons or families, and such other information as may be required from time to time by OHFA;~~

~~(B) provide that OHFA will be provided, at the expense of the Borrower(s) with copies of all records pertaining to the Project and/or satisfaction of the terms of the documents entered into by OHFA in connection with the Project; and~~

~~(C) require that the Project be insured at all times in accordance with the requirements specified in 330:30-2-4(i) of this Chapter.~~

330:30-10-3. Financing approval [REVOKED]

~~(a) At any regular meeting or special meeting, the Trustees shall:~~

~~(1) review the pending Conditional Commitment Application of a Sponsor applying for OHFA financing assistance;~~

~~(2) determine whether the Project described and contemplated in such Application further effectuates the public purpose objectives of OHFA; and~~

~~(3) in their discretion, determine whether to adopt the related Financing Resolution and thereby approve the Sponsor's Conditional Commitment Application.~~

~~(b) The OHFA Trustees shall have complete and absolute discretion, unlimited by any criteria, to disapprove or to fail to approve, the issuance of any debt obligation for the financing of any proposed multifamily Project, and no Sponsor(s), Owner(s), Project financing team member or any third party shall have any recourse against OHFA or any of its Trustee, employees, representatives, attorneys, financial advisors or other consultants for any such disapproval or failure to approve, without regard to whether such disapproval action or failure to approve inaction was with or without real or apparent cause, and without disclosing the reasons or lack thereof for such action or inaction.~~

SUBCHAPTER 12. COMPLIANCE AND REPORTING REQUIREMENTS

330:30-12-1. Compliance with state laws [REVOKED]

~~Any issuance of OHFA debt by the Agency is subject to compliance with all state and federal laws and all rules and regulations promulgated thereunder and all local ordinances, rules and regulations applicable to the Project, its financing, or any portion or aspect thereof. State laws which may have application include, but are not limited to:~~

~~(1) Central Purchasing Act (74 O.S., Section 85.1 et seq.)~~

~~(2) Open Meeting Act (25 O.S., Section 301 et seq.)~~

~~(3) Administrative Procedures Act(s) (75 O.S., Section 250 et seq.)~~

~~(4) Conflict of Interest Laws~~

~~(5) Open Records Law(s) (51 O.S., Section 24A.1 et seq.)~~

~~(6) Competitive Bidding Act (60 O.S., Section 176, and 74 O.S., Section 85.1 et seq.)~~

~~(7) Minimum Wages on Public Works Act (40 O.S., Section 196.1)~~

~~(8) Oklahoma Public Trust Act (60 O.S., Sections 176, et seq.~~

~~(9) Oklahoma Bond Oversight and Reform Act (62 O.S., Section 695.1 et seq.) (This statute requires that OHFA select Underwriters, Bond counsel, Trustee Bank and other service providers needed for the issuance of debt obligations of OHFA for a multifamily project, be obtained by a competitive bidding process. Such service providers cannot be selected by a Sponsor or Owner of a proposed Project.)~~

330:30-12-2. Records and accounts

(a) The ~~Sponsor(s), Borrower(s), and Owner(s)~~ Borrower must agree and certify, by executing certain financing documents, to keep at the Project site or other place within the State of Oklahoma, proper books, records and accounts in which complete and correct entries of all financial transactions relating to the ~~project~~ Project are entered and to keep copies of all certificates required to be provided, together with all invoices, receipts, tenant certifications, complete rent roll information or other records regarding occupancy by very low, low and moderate income residents, and other supporting documentation reasonably sufficient to demonstrate the accuracy of such certification.

(b) The ~~Sponsor(s), Borrower(s), and Owner(s)~~ Borrwor shall be obligated to furnish to OHFA, at no expense to OHFA, true and correct copies of such books, records and accounts and other documents pertaining to the Project and its financing by OHFA as OHFA, in its complete discretion and from time to time, deems necessary to determine that the federal and state laws, rules and regulations, including this Chapter and the Project Loan Documents and financing documents, have been complied with and to satisfy OHFA's statutory records keeping requirements.

330:30-12-3. Audits and examinations

OHFA shall have the right, at any time and from time to time, to examine and audit any and all of the records or accounts of the ~~Sponsor(s), Borrower(s) and Owner(s)~~ Applicant, Sponsor and/or Borrower and ~~their~~ Affiliates of each pertaining to the Project, the Project loan, and the direct and indirect ownership of any beneficial interest in the ~~Sponsor(s), Borrower(s), and Owner(s) [See 330:30-2-3(d)], including but not limited to those referred to in 330:30-12-2~~ Applicant and/or Borrow and the Affiliates of each.

SUBCHAPTER 14. SALE, TRANSFER/ASSUMPTION

330:30-14-1. Sponsors, borrowers and owners requirements

(a) ~~The Sponsor(s), Borrower(s), Owner(s)~~ The Borrower and its Affiliates and controlling parties must covenant and agree not to sell, transfer, or otherwise dispose of the Project, or any material portion of the Project site or any material portion of the Project facilities, or any portion of their ownership or controlling interest in the Project without first obtaining the prior written consent of OHFA.

(b) The ~~Sponsors, Borrowers, Owners~~ Borrower, its ~~and~~ controlling parties and prospective buyers must submit the following to OHFA for its review prior to any sale or transfer:

(1) Assumption/transfer fee according to 330:30-8-7;

(2) Consent to transfer agreement;

(3) Assumption agreement;

(4) A copy of the certified transcript of the organization of the prospective buyer;

(5) A copy of the Real Estate Purchase Contract;

(6) An opinion of counsel for the ~~transferee~~ prospective buyer that ~~the transferee has duly assumed (or at Closing will assume)~~ upon closing of the transfer, the remaining obligation of the ~~Sponsor~~ Borrower under the financing plan, the marketing plan, the Loan Documents, the Regulatory Agreement, and any and all documents relative thereto which were submitted and/or executed by the Sponsor, Applicant and/or Borrower ~~shall~~ will be ~~remaining~~ assumed by, and become obligations of the ~~transferee~~ prospective buyer and duly binding on the ~~transferee~~ prospective buyer;

(7) A written representation regarding the nature, extent and availability of the prospective buyer's own capital, bank credit lines, governmental grants or other sources of funds to meet or cover working capital requirements, equity contributions contemplated by the Project's financing plan or Project cost overruns, if any;

(8) References from lenders, attorneys, accountants or other persons or firms having had prior business relationships with the prospective buyer, plus a listing of all public agencies with which the prospective buyer and each of its Affiliates have done or are currently doing business, together with any releases authorizing OHFA to make inquiry of any of the foregoing;

(9) Three years certified financial statements for all general partners and/or corporate entity(ies) making up the prospective buyer or owning any interest in the prospective buyer;

~~(7) Financial statements of the prospective buyer for the last three (3) years;~~

(~~8~~10) A detailed statement of the transferee regarding its history of ownership and management of multifamily projects;

(~~9~~11) Affidavits ~~of each of the Sponsor(s), Borrower(s), Owner(s), Principal(s) and Controlling Party~~ of the principals and Controlling parties of the prospective buyer in the form to be provided by OHFA; and

(~~10~~12) Such additional material as may be required by OHFA, its counsel, or the Trustees, in their complete discretion, including verification that neither the prospective buyer nor any of its Affiliates, Controlling parties or principals is disqualified under 330:30-2-4.1.

(c) OHFA's criteria for disapproval or non-approval of a proposed sale or transfer shall be ~~as follows:~~

~~(1)~~ ~~At~~ at the discretion of the ~~OHFA~~ Trustees, based upon the facts and circumstances presented by the Borrower and prospective buyer.

~~(2) Failure to submit a complete Initial Application package as required by this Chapter.~~

~~(3) Failure to adequately demonstrate, to OHFA's satisfaction, in its discretion, the need for additional housing in the related market.~~

~~(4) Failure to adequately demonstrate, to OHFA's satisfaction, in its discretion, that the proposal is consistent with OHFA's public purposes.~~

~~(5) Failure to adequately demonstrate, to OHFA's satisfaction, in its discretion, that the proposed Financing Plan is reasonable and appropriate for the Project and market conditions.~~

~~(6) Failure to adequately demonstrate, to OHFA's satisfaction, in its discretion, that all the Sponsor, the Owners and the development team members have the good character, reputation, integrity, honesty, experience, resources and capacity to successfully execute the Financing and Development Plans and to properly manage the Project.~~

~~(7) The Sponsor has failed to comply with any request by OHFA for additional information in regard to the Initial Application package, or has failed to meet with OHFA staff upon their request.~~

~~(8) The information contained in the Inducement Application package varies materially from the information contained in the Initial Application package.~~

~~(9) The information contained in the Conditional Commitment package varies materially from the information contained in the Initial Application package and the Inducement Application package.~~

~~(10) Any condition for Closing has not been satisfied.~~

[OAR Docket #03-1077; filed 5-30-03]

TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY
CHAPTER 36. AFFORDABLE HOUSING TAX CREDIT PROGRAM

[OAR Docket #03-1076]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
330:36-1-4 [AMENDED]
330:36-1-9 [AMENDED]
330:36-1-11[AMENDED]
Subchapter 2. Allocation Procedures
330:36-2-1 [AMENDED]
330:36-2-2 [AMENDED]
330:36-2-12 through 2-15 [AMENDED]
Subchapter 4. Development Applications and Selection
330:36-4-2 [AMENDED]
330:36-4-2.1[AMENDED]
330:36-4-3 [AMENDED]
Subchapter 6. Program Administration
330:36-6-1 [AMENDED]
330:36-6-5 [AMENDED]
330:36-6-7 [AMENDED]
AUTHORITY:
These Chapter 36 Rules are authorized by the Board of Trustees of OHFA, the Amended Trust Indenture, and the Bylaws of OHFA
DATES:
Comment Period:
January 2, 2003 through February 14, 2003
Public Hearing:
February 14, 2003
Adoption:
March 12, 2003
Submitted to Governor:
March 21, 2003
Submitted to House:
March 21, 2003
Submitted to Senate:
March 21, 2003
Gubernatorial approval:
May 1, 2003
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 15, 2003.
Final Adoption:
May 15, 2003
Effective:
January 1, 2004
Availability:
These Rules are available for inspection at the offices of OHFA, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116, weekdays from 8:30 am to 4:30 pm.
SUPERSEDED EMERGENCY ACTIONS:
na
INCORPORATIONS BY REFERENCE:
na
ANALYSIS:
Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"), provides that a federal tax credit (the "Credit") may be claimed for a period of ten years by qualified owners (as defined by the Code) of residential rental property rented to qualified low-income tenants at restricted rental rates, if said owner has been approved for an allocation of Credits by the state housing credit agency. OHFA is Oklahoma's housing credit agency. The Code further provides that each state's Credit annual authority is to be allocated by that state's housing credit agency pursuant to a qualified allocation plan. These Chapter 36 Affordable Housing Tax Credit Program Rules (the "Rules") embody Oklahoma's qualified allocation plan. The purpose of said Rules is to comply with the Code, the Oklahoma Administrative Procedures Act ("APA"), and to provide guidelines for administering the allocations of Oklahoma's annual Credit authority and OHFA's Affordable Housing Tax Credit Program (the "Credit Program"). The Trustees are also required to administer the Credit Program in a manner consistent with Oklahoma's Housing Antidiscrimination Act, 15 O.S., Sections 1451-1453 and all federal laws prohibiting discrimination, including 42 U.S.C., Section 1983 and the Fair Housing Act, as amended 42 U.S.C., Sections 3601 et seq.
CONTACT PERSON:
Phillip Elzo, Agency Liaison, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116,(405)419-8275.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JANUARY 1, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

330:36-1-4. Definitions

The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional capitalized terms used in these Chapter 36 Rules are defined in the Code. When a conflict exists between the following definitions and the Code the Code shall control.

"Affiliate" means any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with any other Person and specifically shall include parents and/or subsidiaries of the Person who is an Affiliate of the first Person.

"Applicant" means any Person, and each Affiliate of such Person, that submits an Application to OHFA requesting a TCA pursuant to these Rules and the Application, and includes the Development owner(s) and the original or successor Applicant and each of their successors in interest in the Development, regardless as to whether any such successors in interest in the Development have obtained the approval of transfer of such interest in the Development as required by the Rules or the Application.

"Application" means an application in the form prescribed by OHFA, from time to time, in the AP, including all exhibits and other materials filed by an Applicant with OHFA in support of or in connection with the formal request by the Applicant requesting a TCA.

"Application Packet" (referred to in these Rules as the "AP") means the Application in the form prescribed by OHFA

from time to time, together with instructions and such other materials provided by OHFA to any Person requesting the same for the purpose of seeking to obtain from OHFA a TCA. The AP may include definitive statements of what shall constitute Threshold Criteria, Selection Criteria, priorities, preferences, and compliance and monitoring requirements as may be authorized by or provided for in the Code and these Rules, and may include the necessary forms, instructions and requirements for Applications, environmental assessments, market studies, commitments, extensions, Carryover Allocations, Agreements, Elections, Set-asides, OHFA staff evaluation criteria for Threshold Criteria and Selection Criteria, final ranking, credit amounts, tax exempt bond financed projects, compliance monitoring, and other matters deemed by OHFA Trustees, in their complete discretion, to be relevant to the process of evaluation of Applications and the Applicants in connection with the award or denial of TCAs.

"Code" means the Internal Revenue Code of 1986, as amended, together with applicable rules and regulations, revenue rulings, notices or procedures promulgated thereunder or referred to therein or in the applicable rules and regulations.

"**Consultant**" means any person (which is not an owner or Affiliate of an owner of the Development) that provides professional or expert services relating to an Application, a Development, or any activities pertaining to the filing of an Application, the award of a TCA, the Carryover Allocation, or cost certification documents filings with OHFA.

"Control" (including the terms "controls", "controlling", "controlled by", and/or "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction or the management and policies or any other Person, whether through an ownership interest in the other Person, by contract, agreement, understanding, designation, office or position held in or with the other Person or in or with any other Person, or by coercion, or otherwise.

"Development" means a site or sites, together with any building or buildings that are proposed, or are, to be assisted with tax credits as a single undertaking.

"Development Team" means the Applicant, Owner, Developer, property management company and the principals of each.

"Drug" for purposes of these OAHTC Program Rules, means "a controlled substance" as that term is defined in Section 102 of the Controlled Substances Act, 21 U.S.C., Section 802.

"Elderly" means any person sixty-two years of age or older. The sixty-two year old age limit does not apply to spouses or immediate family members for purposes of qualifying as an Elderly Development. It is intended that Elderly Developments will be operated for occupancy by at least one person 62 years of age or older per unit to satisfy this criteria. State or Federal definitions are not superseded by those established for other housing.

"**Hard Construction Costs"** means the following types of activities, but not limited to, earthwork/sitework, on-site utilities, roads and walks, concrete, masonry, metals, carpentry (rough and finish), moisture protection, doors/windows/glass, insulation, roofing, sheet metal, drywall, tile work, acoustical, flooring, electrical, plumbing, elevators, blinds and shades, appliances, lawns & planting, fence, cabinets, carpets, and heat & ventilation.

"Homeless" means" (1) lacking a fixed, regular and adequate nighttime residence; and has a primary nighttime residence that is a supervised public or private shelter providing temporary accommodations or a public or private place not ordinarily used as sleeping accommodations for human beings, OR (2) displaced as a result of fleeing violence in the home; and has a temporary residence that is a supervised public or private shelter OR (3) certified by an agency involved in regularly determining homeless status.

"Large Development" means a Development with more than sixty (60) units.

"Nonprofit" means a private nonprofit organization that is organized under State or local laws; has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization; has a tax exemption from the Internal Revenue Service under section 501(c) (3) or (4) of the Internal Revenue Code of 1986; does not include a public body; has among its purposes the provision of decent housing that is affordable to low income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws; and, has at least a one year history of providing affordable housing at the local level, and is duly qualified to do business within the State.

"Nonprofit Sponsored Development" means and refers to a proposed Development that has or will have a Nonprofit that has a Controlling interest by reason of an ownership interest in a Person that is or will be the owner of the subject Development, and has materially participated, or will materially participate (within the meaning of the Code) in the Development and operation of the Development throughout the Compliance Period.

"OAHTC" means the affordable housing tax credit provided by Section 42 of the Code.

"OHFA" means Oklahoma Housing Finance Agency. OHFA has been designated by the Governor to administer the State's OAHTC Program.

"Person" means, without limitation, any natural person, corporation, partnership. limited partnership, joint venture, limited liability company, limited liability partnership, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality, CHDO, interlocal cooperative, or other organization of any nature whatsoever, and shall include any two or more Persons acting in concert toward a common goal.

"**Phased development**" means two or more properties that share certain characteristics, including but not limited to close or contiguous physical proximity to each other, similar architecture or size, common developer or development team, or common ownership or financing.

"Qualifying Households" means households whose annual incomes do not exceed the chosen setaside (which is either 50 % or 60%) ~~60%~~ of the median family income for the area.

"Regulatory Agreement" means the written and recorded agreement between a recipient of a TCA and the allocating agency, OHFA, placing restrictive covenants upon the Development and the underlying land for a term of not less than thirty years (30) years, or such other term as may be required from time to time by provisions of the AP, these OAHTC Rules and Section 42 of the Code and the federal rules and regulations promulgated thereunder and containing other restrictions, covenants, warranties and agreements required by state, federal or local law and these OAHTC Rules.

"**Review Report"** means the Threshold Criteria Review and Selection Criteria Review containing the results of OHFA's review of the Application and scoring of the Application.

"Rural Area" means any city, town, village, area or place generally considered rural by the Secretary of Agriculture (RHS) for rural housing programs.

"Rural Development" means a Development that is, or will be located within a Rural Area. RHS ~~RD~~ 538 projects are not eligible for the Rural 515 set-aside, but may qualify under other set-asides.

"Selection Criteria" means the evaluation criteria, over and above the Threshold Criteria, set out in an applicable AP, which shall be established and may be changed by OHFA from time to time in an applicable AP (using the priorities for the State as they are established from time to time under and pursuant to these Rules and the applicable AP), to determine the Development's qualifications, and which are the bases for ranking Applications and establishing a relative level of acceptability for consideration under the Rules and the applicable AP for the possibility of the award of a TCA by OHFA. Although the Selection Criteria may be given substantial weight by OHFA Trustees in deciding whether or not a particular Application and Applicant shall be awarded a TCA, the OHFA Trustees reserve the right to take into consideration such other factors as they, in their complete discretion, deem appropriate.

"Site Control" ~~means the exercise of dominion or control over the property through execution of a purchase and sale agreement, receipt of a deed or conveyance of the Land where the development will be located, or an option to purchase the property (where the option is not revocable on the part of the seller).~~ means the exercise of dominion or control over the property through the execution of a purchase, sale, or long-term lease agreement (with a lease term that exceeds the extended use period), receipt of a deed or conveyance of the Land where the development will be located, or an option to purchase the property (where the option is not revocable on the part of the seller). OHFA alone will decide if an Applicant or Owner has obtained Site Control.

"Special Housing Development(s)" means any Development specifically designed and developed for persons with Special Needs.

"Special Needs" means such targeted populations as may be designated from time to time in an Application Packet by official action of OHFA, which designations may include, but are not necessarily limited to the homeless, the elderly, persons with mental and physical disabilities and/or disabled or handicapped persons.

"TCA" means a tax credit allocation by OHFA to a Development owner pursuant to the Code, these Rules, the applicable AP, the Application, and formal action by OHFA.

"Threshold Criteria" means the criteria set out herein and in an applicable AP, which shall be established and may be changed by OHFA from time to time in an applicable AP, to determine the qualifications of the Applicant and the owner and the Proposed Development, presented in each Application that are the minimum level of acceptability for consideration under the Rules and the applicable AP for the possibility of the award of a TCA by OHFA. Failure to timely satisfy all Threshold Criteria set out in the applicable AP shall result in the disqualification of the Application for further consideration, and shall require OHFA to not apply the Selection Criteria to the Application, and to notify the Applicant of the disqualification.

"**Transitional Housing**" for purposes of these OAHTC Program Rules means transitional housing for the homeless which meets the requirements of Code Section 42(i)(3)(B)(iii).

"Trustees" means the Board of Trustees of OHFA.

330:36-1-9. Regulatory Agreement/Compliance Manual/Compliance with Applicable Laws

(a) **Regulatory Agreement.** TCA recipients (owners) must enter into a written Regulatory Agreement with OHFA. Requirements, procedures, and processes provided in the applicable Regulatory Agreement and amendments to it shall apply to Developments and the owner(s) thereof selected to receive a TCA.

(b) **Compliance Manual.** OHFA shall provide each owner upon request with a Compliance Manual at a cost of $30.00 ~~$25.00~~. The compliance manual will also be available on OHFA's website at www.ohfa.org.

(c) **Compliance with Applicable Laws.** The Applicant, the Development, the owner(s) of the Development, the Development Team and the Affiliates of each must comply with all applicable federal, state and local laws, rules, regulations and ordinances, including but not limited to, Code Section 42, and regulations promulgated thereunder, the Oklahoma Landlord Tenant Act, the Titles VI and VII of the Civil Rights Act of 1964, as amended and Title VIII of the Civil Rights Act of 1968, as amended. Neither the Applicant, the owner(s) of a Development, the Development Team nor the Affiliates of each shall discriminate on the basis of race, creed, religion, national origin, ethnic background, age, sex, familial status or disability or handicap in the lease, use or occupancy of the Development or in connection with the employment or application for employment of persons for the operation and/or management of any Development. The owner(s) of a Development will be required to covenant and agree in the Regulatory Agreement to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended.

330:36-1-11. Technical assistance

OHFA will, from time to time, designate staff members who shall be available to provide OAHTC Program technical assistance regarding the Code, these Rules, the AP and

their implementation and proposed Development concepts. The names of staff members designated from time to time to provide technical assistance may be obtained by contacting OHFA's Housing Development Team. Interested parties must make appointments for technical assistance sessions.

SUBCHAPTER 2. ALLOCATION PROCEDURES

330:36-2-1. TCAs distribution

(a) OAHTCs allocated annually to the State by the IRS shall be awarded to Applicants selected through a formal application process governed by a Qualified Allocation Plan (QAP), which is contained in these Rules, and an Annual Program Description which shall contain the Application form and instructions for completion and filing of the same with OHFA (collectively referred to as the "AP"). Each AP will be developed using a process of informal public input sessions and one formal public hearing. OHFA will make a draft AP publicly available for comment to all interested parties ~~on or before October 1 of each calendar year~~. Comments received will be considered by OHFA in the design of the AP that may become applicable for the OAHTC Program for the next succeeding calendar year. The deadline for all informal input sessions and the formal public hearing will be published by OHFA's Staff. ~~no later than December 1 of each calendar year. OHFA Trustees, in their discretion, may formally adopt a final AP for the next succeeding calendar year and make the same available to the public by not later than January 31 of the applicable calendar year.~~

(b) TCAs will be awarded according to the Act, Code, these Chapter 36 Rules, the applicable AP, and the discretion of the OHFA Trustees, by their formal action.

(c) The AP shall be made available to parties considering the filing of an Application and interested parties upon request. Requests for the AP should be directed to OHFA's Housing Development Team. or accessed at OHFA's website www.ohfa.org.

330:36-2-2. Additional Credits

(a) Applications for additional Credits on new construction developments are not allowed. Although discouraged, applications for additional credits on rehabilitation developments may be allowed, but only under extenuating circumstances not easily identifiable or ascertainable at the time of initial credit award. The OHFA Board of Trustees may award additional credits at their sole discretion. Maximum award amount cannot exceed 10% of the original tax credit allocation amount. Applicants ~~which~~ who have received approval of a Carryover Allocation in a prior year for a specific Development may request additional Credits for that Development. The Applicant may supplement the Applicant's prior Application; however, the Application as supplemented must:

(1) Be made by the applicable reservation cycle deadline;

(2) Be accompanied by the Application fee;

(3) Meet all Threshold requirements of the Credit Program Rules in effect as of the deadline of the reservation cycle in which the request for additional Credits is made; and

(4) Each page ~~be~~ clearly tabbed in conformity with the current form of Application.

(b) The supplemented Application will be scored and ranked in accordance with the Credit Program Rules in effect as of the deadline of the reservation cycle in which the request is made.

(c) An additional feasibility analysis will be undertaken. The Applicant must prepare an in-depth analysis of why additional Credits are required. OHFA may request information from the Applicant's lender(s), accountants, legal advisors or financial Consultants to confirm representations contained in the Application.

(d) Neither the Applicant nor OHFA shall be required to give additional notice pursuant to 330:36-5-3.1 of these Chapter 36 Rules if the notice requirements of the Credit Program Rules if effect as of the date of the Applicant's original filing of an Application were met.

330:36-2-12. [RESERVED]

330:36-2-13. Review Report

(a) Upon completion of its review of all applications, OHFA will forward OHFA's Review Report to the contact person identified by the Applicant in the Application. OHFA will mail the Review Report by certified mail with return receipt requested. The Applicant must provide OHFA with any clarifying information requested therein within ten (10) days of the date of the Report. In the event the Applicant disputes any matter contained in the Review Report, including without limitation any finding, determination, recommendation or scoring, the Applicant must respond to the Review Report in writing. Information requested by OHFA and/or the Applicant's response must be forwarded to OHFA, postmarked no later than ten (10) days following the date of the Review Report. Applicants are encouraged to use certified mail, Federal Express or another carrier providing a return receipt. Electronic transmissions will not be accepted.

(b) The Applicant's response to the Review Report must identify with specificity the disputed matter, finding, determination, recommendation, scoring, etc, and the Applicant's reason for disputing same, including any evidence which controverts the Review Report's determination. Any applicable statutes, rules, regulations or ordinances should be cited. Documentary evidence should be attached.

(c) OHFA will consider the Applicant's response to the Review Report prior to making its recommendations to the Trustees. The Applicant will be informed of OHFA's recommendations prior to the meeting of the Trustees where the Application is being considered.

(d) Failure to respond to staff's Review Report in a timely manner may result in the adoption of the Review Report by the Trustees, including any recommendation contained therein to deny the Application.

(e) The Trustees will not entertain Applications for Rehearing or Reconsideration based upon any matter contained in the Review Report which could have been asserted under 330:36-2-13.

330:36-2-14. [RESERVED]

330:36-2-15. Communications with OHFA during Application Review

(a) Following submission of an Application, neither the Applicant nor any representative or affiliate of the Applicant shall contact any OHFA employee, with the exception of the Housing Development Team Leader concerning the Application or any other Applications filed in the same cycle. This prohibition includes telephone and electronic transmissions. All communications concerning the Application must be directed to the Housing Development Team Leader, be in writing and executed by the contact person identified in the Application. Only written transmissions will be accepted.

(b) Upon issuance of the Review Report by OHFA, communications with OHFA shall be made in the manner and time set forth in 330:36-2-13. Failure to comply with 330:36-2-15 may result in termination of the review process and denial of the Application.

(c) OHFA reserves the right to grant or deny requests for meetings with the staff of OHFA at any time during the Application process.

SUBCHAPTER 4. DEVELOPMENT APPLICATIONS AND SELECTION

330:36-4-2. Selection of Applications for award of TCAs

(a) **General.** For the purpose of selecting Applications for awards of TCAs, OHFA may annually develop Threshold and Selection Criteria that conform to the Code, the OAHTC Program purposes and these Chapter 36 Rules for inclusion in the next year's AP. The number, severity, or value of any one or more of the Threshold Criteria items may be increased by adoption of an AP for a given year that contains such increased Threshold Criteria items. However, each AP must contain, as a minimum standard for approval of any Applications for the award of any TCAs, for any applicable AP, the Threshold Criteria set out herein below in this section.

(b) **Minimum Threshold Criteria.** Failure to meet all Threshold Requirements set forth in the AP upon initial submission of the Application will result in the Application being rejected without further review. The Threshold Criteria shall include, but are not necessarily limited to the following:

(1) **Prohibition of Phased Developments.** Phased Developments are permitted in MSAs only if they are described and contemplated in the original Application, and if all phases contain 50% or more market rate units, or the development is part of a HUD approved revitalization plan and the financing includes HUD HOPE VI Program funding.

(2) **Notice Requirements** ~~**to local Chief Executive Officer and other interested parties.**~~ The provisions of this subsection apply to all Applicants for a TCA, including the owners of Developments to be located on tribal property(ies). All notice requirements must be satisfied not less than 30 days prior to submission of an Application. Every application cycle requires notice.

(A) **Developments located within a MSA.** ~~Not less than 30 days prior to submission of an Application for a Development within a MSA, t~~The Applicant must notify, in writing and by certified mail, the local Chief Executive Officer of the local Governing Body, Chairman of the appropriate county commissioners, state legislators within whose district the proposed Development is to be located ~~and any other state legislator(s) whose district(s) boundary is within a two mile radius of the proposed Development's site,~~ regarding their intent to submit a Development proposal. This written notice shall serve to provide a reasonable opportunity to comment on the proposed Development. All notice requirements must be satisfied not less than 30 days prior to submission of an Application. Every application cycle requires notice.

(B) **Developments located outside of a MSA.** ~~Not less than 30 days prior to submission of an Application for a Development located in a non MSA, t~~The Applicant must notify, in writing and by certified mail, the local Chief Executive Officer~~s~~ of the Local Governing Body, the Chairman of the appropriate county commissioners, and state legislators within whose district the proposed Development is to be located regarding their intent to submit a Development proposal. This written notice shall serve to provide a reasonable opportunity to comment on the proposed Development. All notice requirements must be satisfied not less than 30 days prior to submission of an Application. Every application cycle requires notice.

(C) **Publication notice.** Notice of an Applicant's intent to file an Application shall also be published in a newspaper of general circulation in the area wherein the Development will be located. All notice requirements must be satisfied not less than 30 days prior to submission of an Application. Every application cycle requires notice. ~~All such notices shall be in a format prescribed by OHFA. However, a~~At a minimum all such notices must contain the following information:

(i) the name and the legal description or street address of the proposed Development;

(ii) the names, business addresses and telephone numbers of the Applicant and the Applicant's designated contact person in regard to the proposed Development;

(iii) whether the Development is new construction, acquisition and rehabilitation and/or substantial rehabilitation;

(iv) the maximum number of Units proposed and their characteristics;

(v) the amount of credits requested;

(vi) the Cycle and year ~~in~~ for which the Application will be submitted ~~may be considered by the OHFA Trustees for an award of a TCA~~;

(vii) the month in which the Applicant reasonably expects the Application to be considered by the OHFA Trustees for an award of a TCA ~~to be heard by the OHFA Trustees~~;

(viii) the name, business address, telephone number and extension number of the contact person at OHFA to whom all inquiries about the hearing on the Application and the proposed Development should be directed.

(D) **Additional notice requirements.** If the site for the proposed Development is not located within the specific corporate limits of an incorporated town or city, but is proposed to be located within two (2) miles of an incorporated town or city(ies) limits, Applicant must provide the same notice to each such town(s) and city(ies) as if the site was located within the corporate limits of each such town(s) and city(ies). All notice requirements must be satisfied not less than 30 days prior to submission of an Application. Every application cycle requires notice.

(3) **Market analysis.** All Applicants must submit third party, independent housing market analyses conforming to the Threshold Criteria set forth in the applicable AP, demonstrating and documenting the status of the market demand for the type and number of housing units proposed to be developed. The market analysis must be prepared no more than 12 months prior to the date Application is filed with OHFA. An update, including at a minimum, new federal subsidized housing must be included.

(4) **Nonprofit owners.** Applicants proposing Developments under the nonprofit set-aside must demonstrate and document that the Nonprofit owner and/or Nonprofit ownership participant meet the definition of a nonprofit as defined in Section 42h(5)(C) of the Code and these Chapter 36 rules at 330:36-1-4. Applicants for nonprofit set-aside TCAs must demonstrate that the Nonprofit participant:

(A) has an ownership interest (either directly or through a Partnership) in the Development;

(B) is at least a co-general partner, co-managing member, or a controlling stockholder, or can otherwise demonstrate ownership of, or the contractual obligation to acquire a controlling interest in the proposed Development by not later than the date the Development is substantially completed and commences business;

(C) will materially participate, on a regular basis, in the planning and construction of the Development, and in the operation and management of the Development throughout the entire compliance period pursuant to 469(h) of the Code;

(D) has a Board of Directors and Officers that are independent from any for-profit Development partner;

(E) is duly authorized to do business within the State; and

(F) has at least one year of housing experience in the State.

(5) **Resolution of local support.** Applicants must provide documentation of official local support for the Development by the jurisdiction within which the proposed Development is to be located, i.e. the Local Governing Body. The required documentation must be in the form of a resolution duly adopted by the Local Governing Body, and must be in a form that shall be subject to approval by OHFA's General Counsel. If there are any conditions in the resolution, OHFA may exercise its discretion to contact the governing body to ascertain the potential impact of the conditions. In the case of Developments to be located on tribal property, the resolution of support may be issued by the official elected tribal governing body.

(6) **Capacity and prior performance.** Each Applicant must demonstrate and document the degree of expertise of Applicant and owner in the use of TCAs and the Development, rehabilitation and/or conversion, management and operation of properties related to the type of the proposed Development. Applicants, Owners, and their Affiliates, including all Development team members, shall be examined in regard to their existing Developments, and the record of compliance performance within Oklahoma and other states in which the Development team members have developed or are developing affordable housing. Applicants with existing Developments shall be ineligible for a TCA where OHFA has or receives notice of uncorrected or repeated instance of nonperformance by Applicant, owner, or any of their Affiliates, including any of their Development team, including without limitation:

(A) failure to meet and maintain minimum property standards;

(B) failure to meet and maintain any material aspect of a Development as represented in a Development Application;

(C) have been involved in uncured financing defaults, foreclosures, or placement on USHUD's list of debarred contractors;

(D) events of material uncorrected non-compliance with any Federally or State assisted housing programs within the prior seven (7) years; or

(E) the appointment of a Receiver; conviction on a felony criminal charge; or bankruptcy within the prior seven (7) years.

(F) the removal as a General Partner may be considered lack of capacity and performance.

(7) **Acquisition credits/ten-year holding requirement.** Applicants requesting acquisition credits must provide an opinion of counsel, in a form satisfactory to OHFA, that the ten-year holding requirement of Code Section 42(d)(2)(B)(ii) has been met or a waiver obtained from the IRS. If an existing waiver or waiver to be granted is claimed, copy of the waiver letter or a copy of the letter indicating a waiver will be granted and is forthcoming must be included in the applicant's Development proposal.

(8) **Appraisal.** Applicants must provide an appraisal of the Development prepared ~~within~~ no more than twelve (12) months prior to ~~of~~ the date an Application is filed with OHFA. The appraisal must be on an "as built" basis and must be prepared by a State Certified General Appraiser.

(9) **Phase 1 environmental study.** Applicants must submit a Phase 1 Environmental Assessment of the Development prepared no more than ~~property to be developed within~~ twelve (12) months ~~of the filing of~~ prior to the date an Application is filed with OHFA. In lieu of assessment for existing ~~RDC~~ RHS-financed properties to be acquired and rehabilitated, the Applicant and R~~DC~~HS must certify that there are no adverse environmental concerns.

(10) **Financial feasibility and viability.** Applicants must provide a plan that demonstrates and makes commitments to the Development's financial feasibility and viability as a qualified low-income housing Development throughout the extended use period. Projects financed through the RHS programs must submit a Multiple Family Housing Obligation-Fund Analysis, Form FmHA 1944-51, or other evidence of firm commitment.

(11) **Readiness to proceed.** Applicants must demonstrate readiness to proceed in a timely manner should they be awarded a TCA. Factors that may be considered regarding Development readiness shall include but not be limited to:

(A) obtaining firm financing commitments. Applicant must demonstrate to OHFA's satisfaction that the Applicant has financing commitments for one hundred percent (100%) of the project's total estimated construction and permanent financing. Financing rates and the terms of the commitment must have been approved by the lending institution(s) and the commitment conditioned only on the award of TCAs;

(B) site control;

(C) land preparation. Applicant must provide preliminary plans or specifications for those activities commonly necessary to make a site ready for building, i.e. clearing, grading, infrastructure (streets, utilities, and the like), etc.

(D) completion of all environmental impact and assessment activities with remediation requirements detailed and costs identified in the budget; and

(E) proper zoning for the proposed Development.

(c) **Code preference selection criteria.**

(1) **Income targeting.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated therein a commitment to target lower-income populations. Points will be awarded based on the percentage of total AHTC units targeted to persons at or below 50% AMFI to the total number of AHTC units in the project. A maximum of 10 points is available under this criteria on a sliding scale established in the annual AP.

(2) **Term of affordability.** Each Application will be analyzed on its ability and evaluated as to any commitments made therein in regard to serving qualified tenants for a period of time longer than the minimum required by the Code. A maximum of 5 points will be awarded for an extension of the term of affordability beyond the minimum required by the Code.

(3) **Development location and housing characteristics.** Each Application will be analyzed and evaluated as to the geographic location and prevailing market conditions for the proposed Development. Examples of location and condition variables may include but are not necessarily limited to locating Developments within Difficult Development Areas, areas with rent burdens and/or Qualified Census Tracts the development of which contributes to a concerted community revitalization plan, including but not limited to USHUD or RDC designated Empowerment Zones, Enterprise Communities and/or Championship Communities. A maximum of 10 points is available for projects satisfying targeted locations as established in the annual AP.

(d) **Selection criteria.** The Selection Criteria shall be set forth in the appropriate AP, and shall include, but not necessarily be limited to the following:

(1) **Development Leverage~~/Level of Community Support~~.** Each Application will be analyzed and evaluated as to the extent to which it incorporates Development beneficial participants that result in tangible, cost beneficial investments or contributions to the proposed Development. Such investments and contributions may include, but are not necessarily limited to: funding under the HOME Investment Partnership Program, the Native American Housing Assistance and Self-Determination Act (NAHASD) Program, the Affordable Housing Program of the Federal Home Loan Banks, the Rural ~~Development~~ Housing Services 515 Program and other comparable funding sources, for which an application process exists, and the application has been approved or filed, ~~cash, supportive services, equity grants, discounted loans, land, and structures, and any other type of tangible or intangible properties, including services,~~ which may be incorporated in the assets and liabilities, income or deductions from expenses of the Development in accordance with generally accepted accounting principles. ~~Donated structures, public improvements and tax abatements are not acceptable examples of leverage.~~ Leverage shall be considered as the proportion or percentage of leverage resources to total eligible basis. A maximum of 10 points is available under this criterion as established in the annual AP.

(2) **Community Support.** Examples of community support include, but are not necessarily limited to: fee waivers, tax abatements, public improvements directly related to a Development, donations of property and/or materials, and other contributions of direct value to the proposed Development that are under the control of the unit of local government providing such assistance or support. A maximum of ~~20~~ 10 points is available under this criteria~~a~~on ~~as established in the annual AP~~. Support must be directly related to the proposed project and be a tangible contribution that can be incorporated into the assets and liabilities, income or deductions from expenses of the development in accordance with generally accepted

accounting principles. Eligible evidence of support will be established in the annual AP.

(~~2~~3) **Development Characteristics.** Each Application will be analyzed and evaluated as to commitments made therein for the provision of resident appropriate supportive amenities and services, including but not limited to: supportive services, day care, formalized resident involvement in the Development's on-going operations and management, and special on-site facilities. Services and amenities must be on-site if a Large Development; Small Developments may provide off-site or contractual services. A maximum of 20 points is available under this criteri~~a~~on for the resident appropriate supportive amenities and/or services established in the annual AP. Only services and amenities which exceed the minimum required by applicable laws, such as the ADA, will be eligible for points.

(~~3~~4) **Applicant/Owner Management Experience.** Each Application will be analyzed and evaluated as to the experience of the owner in owning and successfully operating and managing or providing management for Developments in the OAHTC Program and/or for other types of affordable housing Developments. A maximum of 20 points is available under this criteri~~a~~on for Owner/Applicants that have placed into service three (3) or more developments which are being successfully operated in compliance with the Code and federal regulations, the Regulatory Agreement and the rules of OHFA;10 points may be awarded for Owner/Applicants that have placed into service one (1) or two (2) developments that are being successfully operated in compliance with the Code and federal regulations, the Regulatory Agreement and the rules of OHFA. This evaluation will be based on the experience of the Owner/Applicant and professional development team members.

(~~4~~5) **Tenant/Special Needs Populations.** Each Application will be analyzed and evaluated as to the extent to which commitments are made therein to serve Special Needs populations. A maximum of 10 points is available under this criteri~~a~~on. To be eligible for the maximum number of points, the project must be 100% dedicated to tenants with special needs. ~~One floating unit per development~~ A development with 15% of total residential units with rents set at 50% of the allowable tax credit rent will be eligible for 5 points.

(~~5~~6) **Public Housing Wait Lists.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated that the local public housing authority documents the presence of a client waiting list for affordable housing units. A maximum of 5 points is available under this criteria.

(~~6~~7) **Tenant populations of individuals with children.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated that the development will provide amenities and a unit mix conducive to families/individuals with children. A maximum of 5 points is available under this criteria.To be eligible, the market study must indicate a need for family units.

(~~7~~8) **Tenant ownership.** A maximum of 5 points is available to applicants proposing for single family home ownership after the Compliance Period. Applicants must submit a detailed plan which includes projections on maintenance, tenant reserve funds, etc. which plans will be evaluated for feasibility.

(~~8~~9) **Cost per unit.** Each Application will be analyzed and evaluated as to the ability demonstrated therein to cost efficiently produce the highest number of quality housing units for the TCAs requested in the Application together with all other benefits provided by OHFA or applied for with OHFA by the Applicant or any Affiliate of the Applicant for the same Development. Projects with the lowest Tax Credit eligible basis per unit will be given priority in the case of a tie in the final total rating scores.

(e) **OHFA discretion.** Not withstanding the point ranking under the Selection Criteria set forth above under 330:36-~~3~~4-2(c), OHFA reserves the right and shall have the power to allocate Credits to a project irrespective of its point ranking, if such intended allocation is:

(1) in compliance with Code Section 42;

(2) in furtherance of the housing goals set forth herein, in the AP or any formally adopted resolution of the Trustees; and

(3) is determined by the Trustees to be in the interests of the citizens of the State.

330:36-4-2.1. General program requirements and limitations

(a) **General.** [Reserved]

(b) **Developer Fee limitations.** The amount of allowable Developer Fees shall be limited to:

(1) **Small developments.** Developer Fees may not exceed eighteen percent (18%) of the ~~Qualified Project Costs~~ Eligible Basis, excluding the Developer Fees~~, making up the eligible basis of the qualified low-income building(s)~~.

(2) **Large Developments.** Developer Fees may not exceed fifteen percent (15%) of the ~~Qualified Project Costs~~ Eligible Basis, excluding the Developer Fees~~, making up the eligible basis of the qualified low-income building(s)~~.

(3) OHFA may, in its sole discretion, increase the Developer Fees allowable in order to create special financing incentives to meet a pressing local affordable housing need. All determinations of allowable Developer Fees shall be made in a manner consistent with the Code, IRS regulations and/or any directives of the Internal Revenue Services at the time of Allocation.

(c) **Contractor Fee limitation.** Allowable Contractor Fees shall be limited to:

(1) **Small Developments.** Total allowable Contractor fees may not exceed sixteen percent (16%) of the hard construction costs, ~~Qualified Project Costs~~, excluding the ~~Developer Fees and~~ Contractors Fees~~, making up eligible basis of the qualified low-income building(s)~~. Allowable Contractor Fees are further limited as follows:

(A) General requirements may not exceed six percent (6%) of the ~~Qualified Project Costs~~ hard construction costs, excluding the ~~Developer Fees and~~

Contractors Fees~~, making up the eligible basis of the qualified low-income building(s)~~;

(B) General Overhead may not exceed two percent (2%) of the ~~Qualified Project Costs~~ hard construction costs, excluding the ~~Developer Fees and~~ Contractors Fees~~, making up the eligible basis of the qualified low-income building(s)~~; and

(C) Builders Profit may not exceed eight percent (8%) of the ~~Qualified Project Costs~~ hard construction costs, excluding the ~~Developer Fees and~~ Contractors Fees~~, making up the eligible basis of the qualified low-income building(s)~~.

(2) **Large Developments.** Total allowable Contractor fees may not exceed fourteen percent (14%) of the ~~Qualified Project Costs~~ hard construction costs, excluding the ~~Developer Fees and~~ Contractors Fees~~, making up eligible basis of the qualified low-income building(s)~~. Allowable Contractor Fees are further limited as follows:

(A) General requirements may not exceed six percent (6%) of the ~~Qualified Project Costs~~ hard construction costs, excluding the ~~Developer Fees and~~ Contractors Fees~~, making up the eligible basis of the qualified low-income building(s)~~;

(B) General Overhead may not exceed two percent (2%) of the ~~Qualified Project Costs~~ hard construction costs, excluding the ~~Developer Fees and~~ Contractors Fees~~, making up the eligible basis of the qualified low-income building(s)~~; and

(C) Builders Profit may not exceed six percent (6%) of the ~~Qualified Project Costs~~ hard construction costs, excluding the ~~Developer Fees and~~ Contractors Fees~~, making up the eligible basis of the qualified low-income building(s)~~.

(d) **Underwriting standards.**

(1) **Operating and replacement reserves.**

(A) Minimum operating reserves ~~should~~must equal ~~four to~~ six months of projected operating expenses plus:

(i) debt service payments and

(ii) annual replacement reserve payments.

(B) Minimum replacement reserves should equal $200 per unit annually for new construction and $300 for rehabilitation developments.

~~(C) Exceptions may be approved, at the discretion of OHFA, for certain special needs developments, such as elderly developments.~~

(C~~D~~) Developer guarantees or letters of credit may be accepted in lieu of operating reserves, at the discretion of OHFA. The developer must demonstrate~~d~~ financial capacity and liquidity. OHFA will also consider~~ed~~ the developer's ~~tract~~ track record and the number of other guarantees outstanding.

(D~~E~~) Notwithstanding the foregoing, these underwriting standards shall not apply if the project is being constructed in accordance with another federal program, such as Rural ~~Development~~ Housing 515, and such program provides for budgeting for operating and replacement reserves.

(2) **Debt service coverage.**

(A) Debt service coverage means the ratio of a property's net operating income ~~(rental income less operating expenses and reserve payments)~~ to ~~foreclose-able, currently amortizing~~ debt service obligations.

(B) The minimum acceptable debt service coverage ratio of 1.15 (1.05 in RHS properties) is required.

(3) **Projections.** All projections and pro-formas must contain realistic operating expense and vacancy rate projections consistent with prevailing market conditions.

(4) **Cost limits.** Costs per unit must be realistic and consistent with prevailing market rates. OHFA encourages cost efficient production, but will not give a preference solely for lowest construction costs.

(5) **Capital needs assessment.** No allocations for rehabilitation will be made unless preceded by a~~n~~ qualified independent third-party (architect, engineer, contractor, Rural Housing Services ~~Development~~) which considers the proposed rehabilitation activities to ensure that the proposed improvements have a useful life that meets the full term of affordability based on extended use agreements.

(6) **Minimum of $7,500 hard construction costs per unit for rehabilitations.** No allocations for rehabilitation will be made unless a minimum of $7,500 in hard construction costs per unit will be expended.

(e) **Progress reports.** Progress reports must be filed by the Applicant/Owner beginning with the calendar quarter following the approval of a reservation of Credits until the Form 8609 is issued for a building. The report must contain, at a minimum, the status of site preparation and/or construction, including the percentage of completion of each building. The report must address any other requirements set forth in a Resolution of the Trustees and/or the Carryover Agreement. Within thirty (30) days after the Certificate of Occupancy is issued for the last building in the project, the Owner must notify OHFA and submit a copy of the Permanent Certificate of Occupancy for each building in the Project. Remedies for violation of these provisions include those denoted at 330:36-6-3, including but not limited to return of unused tax credits.

(f) **Construction time period.** Construction, not including site prep work, must begin within 180 days of credit reservation, unless extended for cause by OHFA. Remedies for violation of these provisions include those denoted at 330:36-6-3, including but not limited to return of unused tax credits.

(~~f~~g) **Additional requirements.** OHFA may, as it deems necessary in its sole discretion, impose additional requirements or Program limitations on any Applicant, Owner or Project. Said requirements or limitations may be set forth in a Resolution of the Trustees or in any contract between the Applicant or Owner and OHFA.

(~~g~~h) **Bond financed developments.** Taxable or tax-exempt bond ~~D~~developments financed at least fifty percent (50%) with the proceeds of tax-exempt bonds subject to the private activity bond volume cap are required to comply with all requirements

of these Rules except the competitive selection process. Evidence of the bond financing must be submitted at least 7 business days before the board meeting wherein the 4% tax credits are to be awarded.

(~~h~~i) **Timeliness and completeness of filings.** Deadlines for filing Applications will be established in the AP. Should OHFA request additional information the deadline for filing same with OHFA will be set forth in the letter requesting same. Applicants/Owners must strictly comply with all deadlines and all filings must be complete when filed.

330:36-4-3. Fees

(a) **General.** Application and TCA Fees will be used to support overall OAHTC Program delivery and operation activities. Application fees shall be calculated as follows:

(1) **Application fees.**

(A) for single site or contiguous site Developments consisting of one to four Units, the application fee shall be $~~250~~350.00;

(B) for single site or contiguous site Developments consisting of five to fifty Units, the application fee shall be $~~500~~700.00;

(C) for single site or contiguous site Developments consisting of fifty one to one hundred units, the application fee shall be $~~1,000~~1,400.00;

(D) for single site or contiguous site Developments consisting of over one hundred units, the application fee shall be $~~2,000~~2,800.00;

(E) for ~~0 to 10~~ scattered sites, the application fee shall be $~~250.00~~350.00 per site~~, up to $1,000 maximum; for 11 to 20 scattered sites, $1,000 plus $250 per site,~~ up to a maximum of $~~2000.00~~2,800.00.

(F) For non-profit sponsored Developments the application fee shall be $~~250.00~~350.00.

(2) **Amendment fee.** Any amendments to an Application, exhibits thereto or other information on file with OHFA must be accompanied by a $~~50~~75.00 processing fee along with $~~10~~15.00 per each supplemental page and/or each page amended. No amendments to an Application will be accepted prior to approval of a reservation unless the amendment is requested, in writing, by OHFA.

(3) **Reservation fees.** A non-refundable Reservation fee of ~~1~~2% of the reservation amount is due within fourteen (14) days of notification from OHFA of the approval of a Reservation.

(4) **Allocation fee.** An Allocation fee shall be paid in an amount equal to ~~seven (7)~~ eight (8) percent of the total Allocation, but in any event not less than $1,000.00. The Allocation fee must accompany the Allocation or Carryover Allocation request. The Allocation request will not be submitted to the Trustees for approval, nor will a Carryover Allocation Agreement be executed, nor will Form 8609 be issued unless this fee has been received by OHFA.

(5) **Processing fee.** A processing fee of ~~one-half~~ three quarters of one percent (~~1/2%~~) (.75%) of the TCA must accompany the request for a final Allocation. A service fee of $100.00 must accompany the Request for Final Allocation of Credit.

(6) **Regulatory Agreement filing fee.** Upon approval of a final Allocation, an executed Regulatory Agreement must be submitted to OHFA and be accompanied by a check payable to the County Clerk of the county or counties in which the Development is located. The check or checks shall be in an amount sufficient to cover the filing fees of that county(ies). OHFA will provide a schedule of said fees.

(7) **Compliance monitoring fees.** In addition to the documentation required by OHFA, an annual compliance monitoring fee shall be paid to OHFA. The ~~applicable year the~~ compliance fee is ~~being invoiced on an annual basis and shall be~~ payable on or before January 28th for each year during the compliance period and extended use period subject to annual adjustment. If the Development includes scattered sites, a compliance monitoring fee for each site shall be paid to OHFA. If the Compliance fee is not paid within thirty (30) days of the due date, then a Late Fee will be assessed. The Late Fee is equal to 10% of the Compliance fee. Failure to remit timely payment of compliance monitoring fees may ~~shall~~ result in the filing by OHFA of a lien against the Development. The compliance monitoring fee shall be computed as follows:

(A) For Developments financed by ~~RD~~ RHS under the Section 515 or by taxable or tax-exempt bonds (and otherwise qualify under the Code) where an agreement has been entered into between OHFA and ~~RD~~ RHS or the ~~tax-exempt~~ bond issuer wherein the ~~RD~~ RHS or ~~tax-exempt~~ bond issuer agrees to provide OHFA with the required information respecting the income and rent of the tenants in the Development, the fee shall be $~~150~~210.00 per Development per year, plus $~~2.50~~3.50 per OAHTC unit per year within any building within the Development;

(B) For developments where no agreement has been entered into between OHFA and ~~RD~~ RHS or the ~~tax-exempt~~ bond issuer wherein ~~RD~~ RHS or the ~~tax-exempt~~ bond issuer agrees to provide OHFA with the required information respecting the income and rent of tenants-the fee shall be $~~250~~350.00 per Development per year, plus $~~10.00~~15.00 per OAHTC unit per year within any building within the Development.

(C) For single site or contiguous site Developments of four units or less-the fee shall be $~~200~~275.00 per Development per year.

(D) For all other Developments the fee shall be $~~250~~350.00 per Development, plus $~~10~~15.00 per OAHTC unit per year within any building within the Development.

(8) **Additional monitoring fees.** In the event of noncompliance with the Code or Regulatory Agreement or these Chapter 36 Rules requiring OHFA to conduct an examination of the owner, any building within the Development or any documentation to verify correction of said noncompliance, OHFA shall be reimbursed its costs by the

Development or owner for such an examination, including an hourly rate for the OHFA examiner, not to exceed $~~20~~30.00 per hour, plus any and all actual travel, lodging and per diem expenses of such examiner. Such reimbursement of expenses and costs shall be paid to OHFA within ten (10) days of receipt of OHFA's statement of same.

(9) **Ownership transfer fee.** In the event that the owner submits a request for approval of a transfer of ownership of the Development or any of the Buildings therein, a fee of ~~2~~3% of the amount of annual tax credit ~~being transferred~~ allocation, but not less than $2,500.00 shall be imposed to cover OHFA's costs of handling the request. This fee shall accompany the request and shall be non-refundable.

(10) **Notice costs.** All costs of copies and postage costs incurred by OHFA in connection with the notification provisions contained in these Chapter 36 Rules at 330:36-3-2, Review Report at 330:36-2-13, and any occasion when OHFA incurs extra postage costs to accommodate the Applicant, (such as Resolutions and Regulatory Agreements) must be reimbursed by the Owner within ten (10) days of OHFA's statement of same. Failure to do so may result in the rejection or deferral of consideration of the Application.

(11) **Copies of Rules.** Copies of these Chapter 36 Rules will be provided at a cost of $~~5~~10.00 per copy~~.~~, but can be accessed via OHFA's website.

(12) **Copies of Credit listing.** Copies will be provided at a cost of $~~5~~10.00 per copy~~.~~, but can be accessed via OHFA's website.

(13) **Compliance Workshops.** A $30 fee shall be charged for attendance at OHFA Compliance Workshops.

SUBCHAPTER 6. PROGRAM ADMINISTRATION

330:36-6-1. Program violations and recapture.

(a) The following are violations of OAHTC Program policies and procedures and these OAHTC Program Rules:

(1) The filing of false information in an Application and/or a Development report;

(2) Failure of an Applicant or owner, as the case may be, to satisfy any of the requirements of the Code, applicable state or federal statutes, rules or regulations, these OAHTC Program Rules, or any requirements contained in the applicable AP, or any commitments made in the Application upon which the award of a TCA was based;

(3) Breach of any of the terms, conditions, obligations, covenants, warranties, or representations of the owner or Applicant contained in the Regulatory Agreement and/or the Carryover Allocation Agreement or the breach of any terms conditions, obligations or requirements set forth in any Resolution of the Trustees pertaining to the Applicant/Owner or the Development;

(4) Notice by OHFA to the owner that significant corrective actions are necessary to protect the integrity of the Development and that such corrective actions have not been, or can not be, effected within a reasonable time, in the judgment of OHFA staff;

(5) An administrative or judicial determination that the Applicant or owner has committed fraud, waste, or mismanagement in any current or prior State or federally funded project;

(6) The housing of a convicted felon or person(s) engaged in any illegal or criminal activity ~~involving moral turpitude,~~ including, but not limited to, prostitution, rape, incest, child abuse, or felonious assault, or engaged in any drug-related criminal activities (illegal manufacture, sale, distribution or use of a Drug, or the possession of a Drug with intent to manufacture, sell, distribute or use the Drug), if the Applicant, owner, or managers of the Development, or any of their Affiliates, have knowledge of or about, or by reasonable inquiry should have know of same. The prohibition on the housing of a convicted felon shall not apply to qualified tenants of Transitional Housing, except that the housing of a person in any Transitional Housing shall be prohibited if said person:

(A) is subject to a lifetime registration requirement under a State sex offender registration program, or

(B) has been convicted of a crime involving moral turpitude committed against women or children;

(7) From and after the date of the filing of the Application, failure to notify OHFA of any material changes effecting the proposed development, including, but not limited to, modifications to any representations contained in the Application, any amendments or modifications of the financing plan, syndicators or equity partners or any other Threshold requirement and/or changes in Development Team Members, contractors, property managers, and the like. Notification must be filed with OHFA not less than sixty (60) ~~ten (10)~~ business days prior to the proposed change. Approval by the OHFA Board of Trustees is required for any changes or amendments involving the ownership or control of the Development or the Owner after the Application is filed. This would; include, but not be limited to, changes or transfers of the Development, changes or modifications of the ownership or composition of the general partner entity (i.e. addition or removal of members, partners, stockholders, etc.), any addition, substitution, withdrawal or removal of any general partner. Other amendments may be handled administratively by staff, although staff reserves the right to refer any amendments to the OHFA Board of Trustees for their consideration; or

(8) Failure to submit reports including but not limited to the timely filing of progress reports, updates, compliance reports, etc., and fees when due and failure to provide OHFA with any additional information requested by OHFA within the period set forth in any request for information.

(9) Little or no progress has been achieved with previous taxcredit reservations approved for the Applicant or Developer or any of the Principals of either. This would include, but not be limited to: failure to meet the minimum carryover allocation requirements resulting in the

return of credits; failure to place a development in service within twenty-four (24) months receiving the carryover allocation; involvement of a foreclosure or deed-in-lieu of foreclosure within the past seven (7) years.

(b) Failure to follow all required procedures throughout the allocation process could jeopardize the final allocation or result in housing credit being recaptured.

330:36-6-5. Applicant and/or owner responsibilities

An Applicant and/or owner under the OAHTC Program shall be responsible for:

(1) Taking all action necessary to enforce the terms of the Regulatory Agreement against any private or public owner that fails to comply with applicable provisions of the Regulatory Agreement or any subcontract or documents resulting from it, and to recover on behalf of OHFA, all costs and expenses incurred by or on behalf of OHFA, that may arise as a result of a violation or breach of the commitments made in the Application and/or the Regulatory Agreement by any Applicant or owner or any Affiliate of either. Nothing in this subsection shall restrict OHFA's right to independently enforce the terms of the commitments made to OHFA in the Application and/or the Regulatory Agreement or in any subcontracts or documents resulting from either of them, or to recover any sums that may become due to OHFA as the result of a breach of any of the commitments made to OHFA in the Application and/or the Regulatory Agreement, or in any such subcontracts or documents.

(2) Complying with all applicable provisions of the Code, state and federal regulations, guidelines, circulars, rulings and notices, these Rules, the applicable AP, the Application, the Regulatory Agreement between the Applicant and/or Owner, and/or any subcontracts or documents resulting from either of them, and OHFA or other Program requirements that may be released by the Internal Revenue Service or OHFA from time to time.

(3) Maintaining records and accounts, including, but not limited to, property, personnel, financial and tenant records that properly document and account for all Development funds and compliance with the tenant income certification requirements of the Code, these Rules, the applicable AP, and the Application and the Regulatory Agreement. All records required by the Code or 26 CRF 1.42-5, as presently effective or as may be amended in the future, must be kept and retained by the Owner. Additional requirements of OHFA respecting said records may be included in the Regulatory Agreement. OHFA may require specific types and forms of records. All such records and accounts shall be made available upon request by OHFA for the purpose of inspection and use in carrying out its responsibilities for administration of the tax credits.

(4) OHFA may require the Applicant and/or Owner to provide special narrative and financial reports related to the elements of a written agreement in the forms and at such times as may be necessary or required by OHFA.

(5) Retaining all books, documents, papers, records, and other materials involving all activities and transactions related to the Owner's commitments to OHFA found in the Application and in the Regulatory Agreement, as required by the Code, federal regulations, the AP, the Application and the Regulatory Agreement.

(6) OHFA shall have the right to perform as many audits of any Development, from time to time, in the complete discretion of OHFA, as OHFA deems necessary or appropriate to discharge its compliance duties to the IRS in regard to each Development for which TCAs have been awarded, at least through the end of the compliance period and extended use period of the buildings and units in the Development. Audits may include physical inspection of any building in the Development, as well as a review of the records described in this subchapter. The cost of any such audit shall be borne by the Applicant and/or Owner if any material violations are documented as a result of the audit. The audit and inspection provisions of this subsection are in addition to any inspection of OAHTC certifications, supporting documentation, or inspection of records performed pursuant to annual compliance review.

~~(7) Complying with all applicable provisions of the Code and all applicable state and federal requirements, these Rules, the applicable AP, and the commitments made in the Application, and in the Regulatory Agreement, and/or in any subcontracts or documents resulting from either of them.~~

330:36-6-7. OHFA monitoring procedures.

(a) **General.** Section 42(m)(1)(B)(iii) of the Code mandates that state housing credit agencies monitor all placed in service tax credit projects for compliance with the provisions of Section 42. The Code also mandates that the Internal Revenue Service be notified, by the state housing agencies, of any instances of noncompliance, this includes failure to comply with the Code and federal regulations and these Chapter 36 Rules, as well as failure to pay all compliance fees in a timely manner. OHFA will also monitor for compliance with the Land Use Restriction Agreement (Regulatory Agreement) provisions which contain additional owner commitments made to secure points in the project selection process, e.g. additional low-income units or an extended low-income use period. OHFA has assembled and will make available to the project owners, a Compliance Manual explaining the OAHTC monitoring process in detail. ~~All~~An owner representative~~s~~ and ~~their~~ a management agent representative~~s~~ will be required to successfully complete a compliance training session conducted by OHFA or approved by OHFA and submit proof thereof with the first Quarterly report ~~prior to the release of IRS Form 8609~~. OHFA will monitor the documents and certifications set forth in 330:36-6-7(b) and (c) for compliance with the Code.

(b) **Record keeping and record retention provisions.**

(1) The owner of a low-income housing project is required to keep records for each qualified low-income building in the project showing:

(A) The total number of residential units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);

(B) The percentage of residential rental units in the building that are low-income units;

(C) The rents charged on each residential rental unit in the building (including any utility allowances;

(D) The number of occupants in each low-income unit~~, but only if the rent is determined by the number of occupants in each unit under Code Section 42 (g)(2)~~;

(E) The low-income unit vacancies in the building and information that shows when, and to whom the next available units were rented;

(F) The annual income certification of each low-income tenant per unit;

(G) Documentation to support each low-income tenant's income certification;

(H) The eligible basis and qualified basis of the building at the end of the first year of the credit period;

(I) The character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) of the Code (e.g tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project); and

(J) Copies of all correspondence with the IRS.

(2) The owner is required to retain the records described in this section for each building in the project for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

(c) **Certification and review provisions**

(1) Between the ~~time a building is~~ placed in service date of a building and the submission of an application ~~applies~~ for a final allocation of credits, and prior to the issuance of an 8609, OHFA ~~will~~ may physically inspect the property. An on-site review will again be conducted within the following year as described in 330:36-6-7(c)(6) of these Rules.

(2) **Owner Certification**

(A) In accordance with Section 42(l)(1), following the close of the first taxable year in the credit period, the owner must certify to the Secretary of the Treasury:

(i) the taxable year in which such building was placed in service,

(ii) the adjusted basis and eligible basis as of the close of the first year of the credit period,

(iii) the maximum applicable percentage and qualified basis, and

(iv) the election made for the low-income targeting threshold.

(B) This certification is accomplished by completing Part II of the 8609(s). A copy of the completed 8609(s) must also be submitted to OHFA by the end of the first period for which the Housing Credit is claimed for each building.

(3) At the end of the first full calendar quarter following the ~~receipt of a final allocation (IRS Form 8609)~~ placed-in-service date, and for the subsequent three quarters, owners must prepare and submit a Quarterly Status Report accompanied by copies of the Tenant Income Certification for each tenant and new move-ins for the appropriate quarter. If a project is determined not to be in compliance with Program requirements or there is indication of possible noncompliance, OHFA, at its discretion, may require reports each quarter until compliance is demonstrated.

(4) The owner of a low-income housing project is required to certify annually, in a form prescribed by OHFA, that for the preceding 12-month period:

(A) The project met the requirements of the 20-50 or 40-60 test under Section 42(g)(I) of the Code, whichever minimum set-aside is applicable to the project, and, if the applicable to the project, the 15-40 test under Section 42(g)(4) for "deep rent skewed" projects;

(B) There was no change in the applicable fraction (as defined in Section 42(c)(1)(B))of any building in the project, or that there was a change and a description of the change;

(C) The owner has received an annual income certification from each low-income tenant and documentation to support that certification;

(D) Each low-income unit in the project was rent-restricted under Section 42(g)(2);

(E) All units in the project were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless);

(F) Each building in the project was suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low-income unit in the project;

(G) There was no change in the eligible basis (as defined in Section 42(d) of any building in the project, or that there was a change, and the nature of that change;

(H) All tenant facilities included in eligible basis under Section 42(d) of any building in the project, such as swimming pool, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;

(I) If a low-income unit in the project became vacant during the year, reasonable attempts were, or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were, or will be rented to tenants not having a qualifying income;

(J) If the income of the tenant of a low-income unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was, or will be, rented to tenants having a qualifying income;

(K) An extended low-income housing commitment, as described in Section 42 (h)(6), was in effect;

(L) The project meets the additional requirements contained in the Land Use Restriction Agreements;

(M) There was no change in the Owner entity (for example, transfer of general partnership interest);

(N) If the owner received its credit allocation from a portion of the State's ceiling set-aside for projects involving "qualified non-profit organizations" under Section 42(h)(5) of the Code, the non-profit organization has materially participated in the operation if the development (within the meaning of Section 469(h) of the Code);

(O) No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for this project. A finding of discrimination includes an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 361a(a)(1), or an adverse judgement from federal court; and

(P) An extended low-income housing commitment as described in Section 42(h)(6) was in effect, that an owner cannot refuse to lease a unit in a project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s.

(5) OHFA will review the owner certifications submitted pursuant to 330:36-6-7(c)(4),for compliance with the requirements of Section 42 of the Code.

(6) OHFA must and will conduct on-site inspections of all buildings in the project by the end of the second calendar year following the year the last building in the project is placed in service, and for at least 20 percent of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.

(7) At least once every three (3) years through the extended use period, OHFA must conduct on-site inspections of all buildings in the project and, for at least 20 percent of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.

(8) The certifications and reviews of paragraphs 330:36-6-7(c)(2) and (c)(4) of these Chapter 36 Rules are required to be made at least annually ~~through the end of the 15 year compliance~~ until the end of the extended use period. ~~under Section 42(i)(1) of the Code~~ and the certifications are to be made under penalty of perjury.

(9) The owner is required to provide annually to OHFA a copy of the completed 8609 Schedule A and IRS Form 8586 that is submitted to the Internal Revenue Service.

(10) The owner is required to provide to OHFA, as it occurs, copies of all correspondence with the Internal Revenue Service.

(d) **Auditing provisions.** OHFA has the right to perform an audit of any low-income housing project during the term of the Land Use Restriction Agreement. An audit includes physical inspection of any building in the project, as well as a review of the records described in 330:36-6- 7(c)(1) of these Chapter 36 Rules. The auditing provision of this paragraph is in addition to any inspection of low-income certifications and documentation under 330:36-6-7(c)(7)of this Chapter 36 Rules.

(e) **Notification of non-compliance provisions.**

(1) OHFA will provide prompt written notice to the owner of a low-income housing project if OHFA does not receive the certification described in 330:36-6-7(c)(4) of these Chapter 36, or does not receive, or is not permitted to inspect, the tenant income certification supporting documentation and rent records, or discovers on audit, inspection review, or in some other manner, that the project is not in compliance with the Code or these Chapter 36 rules. The owner shall have a period of time, not to exceed thirty (30) days, from the date of such notice (the "Correction Period") to supply any missing certifications and bring the project into compliance. OHFA may extend, in its own discretion, the Correction Period for up to an additional thirty (30) days for good cause.

(2) OHFA must file IRS Form 8823 Report of Noncompliance with the Internal Revenue Service no later than 45 days after the end of the Correction Period whether or not the noncompliance or failure to certify is corrected. OHFA will explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis that results in a decrease in the qualified basis of the project under Section 42(c)(1)(A) is an event of noncompliance that must be reported under this paragraph.

[OAR Docket #03-1076; filed 5-30-03]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 10. PEACE OFFICER CERTIFICATION

[OAR Docket #03-2015]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
390:10-1-5 [AMENDED]
390:10-1-6 [AMENDED]

AUTHORITY:
Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.

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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amended sections would add a testing requirement for inactive peace officers who are returning to the profession after five years and clarify the procedure for granting certification by reciprocity for full-time peace officer status.
CONTACT PERSON:
Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

390:10-1-5. Requirements for certification

(a) No person may be certified as a peace officer under the laws and the rules of this chapter until the following requirements have been met.

(1) The agency employing an officer seeking certification, or in the case of an elected official, the elected official himself must certify to CLEET that the employment standards set forth in 70 O.S. Section 3311 (D)(E)(F)(J) have been met. This certification shall be in a format accepted by CLEET.

(2) Having met the employment standards set forth herein, an officer must certify to CLEET that he or she is physically able to fully participate in and complete all phases of the CLEET Basic Peace Officer Certification Academy. This certification shall be in writing on forms to be provided by CLEET. CLEET shall reserve the right to refuse training to persons found to be physically unable to complete all phases of basic certification training.

(3) The head of the agency employing an officer enrolling in a CLEET Basic Certification Academy, shall first certify to CLEET that the officers's employing agency will fully assume all medical expenses incurred by said officers as a result of any injury or illness incurred during basic certification training.

(4) Any officer seeking peace officer certification must successfully complete all phases of a CLEET Basic Certification Academy, or a CLEET - approved basic certification academy.

(5) Every full-time peace officer, certified by the Council, who has been inactive for five (5) or more years, upon re-entry to full-time status, must complete forty (40) hours of refresher training and successfully pass a written examination as prescribed by the Council, within one (1) year of employment.

(b) The Council on Law Enforcement Education and Training, pursuant to relevant provisions of the Americans With Disabilities Act, will not discriminate against persons capable of performing essential functions required in peace officer training programs with or without reasonable accommodation.

390:10-1-6. Certification by reciprocity

Any officer seeking Oklahoma Peace Officer Certification, who has been certified by a state peace officer standards and training agency as a peace officer in another state, or any officer who has been certified as a federal peace officer by a Council recognized federal law enforcement agency, may obtain certification by reciprocity, under the following conditions:

(1) The officer must meet the minimum peace officer employment standards set forth by law.

(2) The officer must have been employed as a full time peace officer within the two (2) year period immediately preceding the request for Oklahoma certification.

(3) The officer must attend the Legal Block of the CLEET Basic Academy and successfully pass the Legal Block examination.

(~~3~~4) The officer must successfully pass a certification examination which is designed to be scored by functional area blocks, with the exception of skills training functional areas which shall not be tested. Officers must pass every functional area block tested at a standard prescribed by the Council. Officers may have one retest for each functional area block which they fail.

(~~4~~5) If an officer fails both a block test and a retest for any given functional area, then that officer must successfully complete the corresponding functional area in a CLEET Basic Academy, to include successfully passing the block examination(s). Any retest would follow the guidelines listed in OAC 390:15-1-13.

[OAR Docket #03-2015; filed 6-4-03]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 15. BASIC PEACE OFFICER CERTIFICATION TRAINING

[OAR Docket #03-2016]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Basic Academy Programs
390:15-1-3 [AMENDED]
390:15-1-13 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.
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ANALYSIS:
The proposed changes would allow CLEET to amend rules to reflect re-examination scores on an individual's profile report and establish provisions for departments to provide remedial firearms training conducted by a CLEET certified firearms instructor to students who do not successfully complete training in the basic academy.
CONTACT PERSON:
Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. BASIC ACADEMY PROGRAMS

390:15-1-3. Examinations and testing; remedial training; missed time

(a) For objectives that demand performance of observable behavior by a trainee, the test method, where appropriate, shall be performance oriented and shall duplicate, to the extent possible, realistic job situations.
(b) For objectives that demand mastery of cognitive material, the test method shall involve a written examination and, wherever possible, the written examination should test a trainee's ability to apply methods, concepts, and techniques taught in the classroom.
(c) Examinations shall be given at designated intervals during the Basic Academy to determine trainee achievement of objectives.
(d) Successful achievement on each cognitive examination or performance test shall be 70% or higher with the exceptions of the First Aid Test and CPR which requires a score of 80% or higher.
(e) ~~CLEET shall establish rules governing examination frequency, examination and test retakes, remedial training, and making up missed time.~~Re-examination scores will be recorded on individual profile forms of peace officers.

390:15-1-13. Academic requirements

(a) In order to successfully complete the basic academy program, trainees must achieve a score of seventy percent (70%), or higher, in all examinations and proficiency tests, except that First Aid and CPR require a score of Eighty percent (80%) or higher which is consistent with the standards of the American Red Cross, or American Heart Association.
(b) Any trainee who fails a specific block examination will be permitted to retake that block examination within five (5) days of the first examination.
(c) If the trainee fails the retake examination the trainee will be required to repeat the entire block of instruction and pass the block examination (third test).
(d) If the trainee fails the block examination a third time, the trainee's agency head may petition the Director to request that the trainee repeat the block of instruction for a third time and take the examination for a fourth time.
(e) If a trainee successfully completes all academic blocks but still needs to complete a proficiency block, the trainee may take the certification examination. However, the examination will be maintained in CLEET files until the required proficiency blocks are successfully completed.
(f) If a trainee fails to complete an academic block of instruction the trainee will not be allowed to take the certification examination until the academic block is successfully completed.
(g) Trainees who fail the certification examination will be permitted to retake the examination within ten (10) working days. If a trainee fails the certification examination a second time, the trainee's agency head must petition the Director in writing, to request a third attempt. A third failure will necessitate reenrollment into a basic academy.
(h) When a trainee fails a proficiency test in the Custody Control block, or the Law Enforcement Driver Training block, the trainee will not be certified, and will be scheduled for up to

two remedial training courses at a later time. ~~If the trainee fails a proficiency test in the Firearms block, the trainee will not be certified, and will be scheduled for up to two days of remedial training.~~ If the trainee does not successfully complete remedial training, the trainee's agency head must petition the Director in writing, to request any further training.

(i) Petitions for further testing or training, except for the Firearms Block, shall be made within fifteen (15) working days of the date of the trainee's academic or proficiency failure. Such petitions should articulate the reasons for allowing the trainee to continue. Should the Director deny such a petition, the trainee's agency head may similarly petition the Council to request further testing or training for the trainee.

(j) If the trainee fails a proficiency test in the Firearms Block, the trainee will not be certified, and shall be required to obtain additional firearms training through his/her employing agency; such training to be conducted by a CLEET certified firearms instructor within ninety (90) days of the student's original academy completion date. Upon completion of such training, the student's employing agency administrator must, in writing, notify the Director of CLEET that the student is ready to be scheduled for firearms proficiency testing by CLEET firearms staff. Such testing shall be completed by allowing the student up to three (3) attempts to attain the CLEET required proficiency in firearms. Should the trainee not attain the required proficiency, the employing agency administrator must, within fifteen (15) working days of such failure, petition the Director of CLEET for further testing or training. Such petitions must articulate the reasons for allowing the trainee to continue. Should the Director deny such a petition, the trainee's agency head may similarly petition the Council to request further testing or training for the trainee.

(~~j~~k) Trainees are expected to attend all blocks of instruction. If a trainee misses any time during the academy, the trainee must state in writing the reasons for the absence.

(~~k~~l) Absences due to unforeseen emergencies, illnesses, subpoenas, or other unusual circumstances may be approved by the Training Division Manager or Assistant Director for make-up during the current academy. Each case will be reviewed to evaluate the length of time missed, the impact upon the instructional staff and class to remediate the trainee, and options for the student to make up the missed time. The trainee may be required to provide documentation for excused absences such as a copy of the subpoena, doctor's statement, etc.

(~~l~~m) Unexcused absences or repeated tardiness may require makeup work during a current or future academy, and may result in administrative discipline.

(~~m~~n) Decisions that the Training Manager or Assistant Director make, regarding attendance and makeup requirements, may be appealed to the Director.

(~~n~~o) It is mandated by the Council that all examinations, and all proficiency tests must be successfully completed to meet the requirements for peace officer certification.

(~~o~~p) Each applicant is required to attend all class sessions, subject to previously stated exceptions. Lost time due to unexcused tardiness or absenteeism must be made up in a subsequent academy to complete the requirements for certification.

(~~p~~q) If a health condition or an injury exists, prohibiting a trainee from fully participating in any block of instruction, a signed and notarized release from the trainee's physician must be submitted before the trainee will be allowed to further participate in that block.

(~~q~~r) If the trainee cannot be so released by a physician to fully participate in that block then participation is prohibited. In that event, peace officer certification will not be granted until such time that the trainee is physically or medically able to satisfy all certification requirements.

(~~r~~s) Extensions of time to complete the requirements for certification may be granted at the Director or designee's discretion.

[OAR Docket #03-2016; filed 6-4-03]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 20. RESERVE PEACE OFFICER CERTIFICATION AND TRAINING

[OAR Docket #03-2017]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
390:20-1-3 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.
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n/a
ANALYSIS:
The proposed amendments would clarify the attendance requirements for reserve certification and establish requirements for reserve certification by reciprocity. This change would provide a route to certification for officers who have been certified in other states.
CONTACT PERSON:
Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

390:20-1-3. Reserve peace officer certification training

(a) The Council shall formulate a program of instruction for reserve peace officer certification, which shall be based on the Basic Peace Officer Academy, and which shall be known herein as the Reserve Academy.

(b) The curriculum of each Reserve Academy shall be based entirely upon the functional areas of the CLEET Reserve Academy curriculum. ~~The instructional topics within each functional area shall consist of not less than 120 hours of instruction.~~The total number of hours for all functional areas combined shall meet or exceed the number of hours required by 70 O.S., Section 3311 (D)(2) for Reserve certification.

(c) Trainee attendance is critical. One-hundred percent (100%) attendance is required in ~~the **Legal, Firearms, Custody and Control and Patrol**~~all blocks of instruction.

(d) Remedial training may be accomplished under the following conditions:

(1) The trainee attends remedial training taught by the same instructor who taught the original academy class.

(2) The training is conducted in an academy setting and monitored by the academy coordinator.

(3) Remedial training must be completed by the end of the original academy.

(4) Trainees failing to successfully complete remedial training in the original academy shall be required to successfully complete remedial training in another academy.

(e) Trainees must successfully complete required classroom and/or skills proficiency testing prior to being administered the required progress or certification examinations.

(f) Trainees who fail to successfully complete any skills proficiency portion(s) of the academy may be administered progress and certification examinations, however, certification will be withheld until all requirements have been fulfilled.

(g) Any officer seeking Oklahoma Reserve Peace Officer Certification, who has been certified by a state peace officer standards and training agency as a **full-time** peace officer in another state, or any officer who has been certified as a federal peace officer by a Council recognized federal law enforcement agency, may obtain reserve certification by reciprocity, under the following conditions:

(1) The officer must meet the minimum peace officer employment standards set forth by law.

(2) The officer must have been employed as a full time peace officer within the two (2) year period immediately preceding the request for Oklahoma Reserve Peace Officer Certification.

(3) The officer must attend the Legal Matters block of instruction and successfully pass all Progress and Certification examinations at a standard prescribed by the Council. Skills training functional areas shall not be tested. Officers may have one retest for each functional examination which they fail.

(4) If an officer fails both a test and a retest for any given functional area, then that officer must successfully complete the corresponding functional area in a CLEET Basic Reserve Academy, to include successfully passing the functional area examination(s).

[OAR Docket #03-2017; filed 6-4-03]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 35. REGULATION OF PRIVATE SECURITY INDUSTRY

[OAR Docket #03-2018]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. License Requirements
390:35-5-3 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.
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ANALYSIS:
This amendment would require current photographs of license applicants for new and renewed licenses. This change is needed to eliminated the problem of applicants submitting photographs that are several years old to be affixed on licenses.
CONTACT PERSON:
Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 5. LICENSE REQUIREMENTS

390:35-5-3. Conditional licenses

(a) Conditional licenses may be issued only to employees of security or investigative agencies.

(b) Conditional licenses may be issued to such employees when the following requirements have been met:

(1) Receipt of an applicant's completed license application form. An application form shall be considered complete when all applicable spaces have been filled in properly, and it has been signed and notarized;

(2) Receipt of two (2) properly completed, CLEET-issued "applicant" fingerprint cards;

(3) Receipt of correct license fees;

(4) Receipt of ~~two (2)~~three (3) current personal photographs, in color and of the prescribed size;

(5) Receipt of proof of bond or liability insurance coverage, in the prescribed amount.

[OAR Docket #03-2018; filed 6-4-03]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 40. OKLAHOMA SELF-DEFENSE ACT

[OAR Docket #03-2019]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Instructor Approval
390:40-5-4 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 70 O. S., Section 3311; 20 O. S., Section 1313.2; 59 O. S., Sections 1750.1-1750.11; 59 O. S., Sections 1451-1476; 75 O.S., Section 250 et seq.; 21 O.S., Section 1289.8 and 1290.1 et seq.; 51 O.S. Sections 24-A.1 et seq.
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amendments to this section would change the effective period of an instructor's approval to reflect current statutory language.
CONTACT PERSON:
Janet Ingram, Council on Law Enforcement Education and Training, 3530 N. Martin Luther King Blvd., Oklahoma City, OK 73136, 405-425-2758.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 5. INSTRUCTOR APPROVAL

390:40-5-4. Instructor approval certificates

(a) Upon acceptance of the firearm instructor's credentials, and completion of all CLEET requirements, applicants will be issued an SDA Firearm Instructor Approval Certificate for:

(1) Revolver Firearms Instructor;

(2) Semi-Auto Pistol Firearms Instructor; or

(3) Revolver and Semi-Auto Pistol Firearms Instructor.

(b) Applicants must submit a copy of this certificate with their application and fee for instructor registration to the OSBI within thirty (30) days after receiving CLEET's approval.

(c) Upon final clearance by the OSBI, a registration certificate will be issued to the applicant by the OSBI.

(d) Unless the approval or registration has been revoked or suspended, a firearms instructor's CLEET approval shall be for a term ~~of one year~~established in 21 O.S. Section 1290.14.

(e) Instructors must possess the SDA Firearm Instructor Approval Certificate and OSBI Registration Certificate before teaching courses.

(f) Instructors must display their Registration Certificate during each training and qualification course~~s~~.

[OAR Docket #03-2019; filed 6-4-03]

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

[OAR Docket #03-1067]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 11. Prescriptive Guidelines and Drug Formulary

435:15-11-2. Drug Formulary [AMENDED]

AUTHORITY:
Title 59 O.S., Section 519.3, Board of Medical Licensure and Supervision

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435:15-11-2. Drug Formulary
Gubernatorial approval:
October 1, 2002
Register publication:
20 Ok Reg 16
Docket number:
02-1377

INCORPORATED BY REFERENCE:
n/a

ANALYSIS:
Permanent amendments are being made to the Drug Formulary which reflect changes made to the PA law in SB32, effective November 1, 2001. This law allows physician assistants to write an order for a Schedule II drug on site pursuant to a written protocol and the Drug Formulary.

CONTACT PERSON:
Jan Ewing, Deputy Director, 405-848-6841, #104

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 11. PRESCRIPTIVE GUIDELINES AND DRUG FORMULARY

435:15-11-2. Drug formulary

This Drug Formulary is for prescriptions issued by physician assistants. The Committee will, at least on an annual basis and in a timely manner, review the structure and content of the Physician Assistant Drug Formulary and make such revisions as it deems necessary. Any proposed changes must be reviewed and approved by the State Board of Medical Licensure and Supervision after consultation with the State Board of Pharmacy before becoming effective. Copies of the formulary shall be made available to any licensed pharmacy in the State of Oklahoma upon request. The Board assumes that all supervising physicians and physician assistants are completely familiar with the law and rules governing prescriptive authority of physician assistants.

(1) **Antihistamines.** All agents are included under the antihistamines category.

(2) **Anti-infective agents.**

(A) Agents included under the anti-infective agents category are:

(i) Amebicides
(ii) Antihelmintics
(iii) Antibiotics including:
(I) Aminoglycosides
(II) Antifungal antibiotics
(III) Cephalosporins
(IV) Miscellaneous beta lactam antibiotics
(V) Macrolides
(VI) Penicillins
(VII) Tetracyclines
(VIII) Miscellaneous antibiotics (Ref: American Hospital Formulary Service 8:12.28)
(iv) Antituberculosis agents
(v) Antivirals
(vi) Antimalarial agents
(vii) Quinolones
(viii) Sulfonamides
(ix) Antitreponemal agents
(x) Antitrichomonal agents
(xi) Urinary anti-infectives
(xii) Miscellaneous anti-infectives (Ref: American Hospital Formulary Service 8:40)

(B) Agents excluded under the anti-infective agents category are:

(i) Chloramphenicol
(ii) Pediatric quinolones
(iii) Pediatric tetracyclines

(3) **Antineoplastic agents.** All agents are excluded under the antineoplastic agents category.

(4) **Autonomic agents.**

~~(A)~~ Agents included under the autonomic agents category are:
(~~i~~A) Parasympathomimetic(cholinergic) agents
(~~ii~~B) Anticholinergic agents
(~~iii~~C) Sympathomimetic (adrenergic) agents.28
(~~iv~~D) Sympatholytic (adrenergic blocking) agents
~~(v) Skeletal muscle relaxants~~
(~~vi~~E) Miscellaneous autonomic drugs (Ref: American Hospital Formulary Service 12:92)
~~(B) Agents excluded under the autonomic agents category are any preparations containing a Scheduled II controlled substance.~~

(5) **Blood formation and coagulation agents.** Agents included under the blood formation and coagulation agents category are:

(A) Antianemia drugs
(B) Coagulants and anticoagulants
(C) Hemorrheologic agents
(D) Thrombolytic agents

(6) **Cardiovascular agents.** Agents included under the cardiovascular agents category are:

(A) Cardiac drugs
(B) Antilipemic agents
(C) Hypotensive agents
(D) Vasodilating agents
(E) Sclerosing agents

(7) **Central nervous system agents.**

(A) Agents included under the central nervous system agents category are:

(i) Analgesics and antipyretics ~~not containing a Schedule II controlled substance~~:

~~(I) Nonsteroidal anti-inflammatory agents~~

(~~II~~ii) Miscellaneous analgesics and antipyretics (Ref: American Hospital Formulary Service 28:08.92)

(~~ii~~iii) Anticonvulsants ~~not containing a Schedule II controlled substance~~

(~~iii~~iv) Psychotherapeutic agents ~~not containing a Schedule II controlled substance~~

(~~iv~~v) Respiratory and cerebral stimulants ~~not containing a Schedule II controlled substance~~

(~~v~~vi) Anxiolytics, sedatives and hypnotics ~~not containing a controlled substance~~

(~~vi~~vii) Antimanic agents

(viii) Opiate and benzodiazepine antagonists

(B) Agents excluded under the central nervous system agents category are:

(i) Schedule I ~~or II~~ opiate agonists

(ii) Schedule I ~~or II~~ opiate partial agonists

~~(iii) Opiate antagonists~~

(8) **Diagnostic agents.** All agents are included under the diagnostic agents category.

(9) **Electrolyte, caloric and water balance.** Agents included under the electrolyte, caloric and water balance category are:

(A) Acidifying agents
(B) Alkalinizing agents
(C) Ammonia detoxicants
(D) Replacement preparations
(E) Calcium-removing resins
(F) Potassium-removing resins
(G) Caloric agents
(H) Diuretics
(I) Irrigating solutions
(J) Uricosuric agents

(10) **Enzymes.** All agents are included under the enzymes category.

(11) **Expectorants, antitussives, and mucolytic agents.**

~~(A)~~ Agents included under the expectorants, antitussives, and mucolytic agents category are:

(~~i~~A) Antitussives

(~~ii~~B) Expectorants

(~~iii~~C) Mucolytic agents

~~(B) Agents excluded under the expectorants, antitussives, and mucolytic agents category are any preparation containing a Schedule II controlled substance.~~

(12) **Eye, ear, nose and throat preparations.**

(A) Agents included under the eye, ear, nose and throat preparations category are:

(i) Anti-infectives

(I) Antibiotics

(II) Antivirals

(III) Sulfonamides

(ii) Mouthwashes and gargles

(iii) Vasoconstrictors

(B) Agents excluded under the eye, ear, nose and throat preparations category are:

~~(i) Any preparation containing a Schedule II controlled substance~~

(~~ii~~i) ~~Steriod-containing~~Steroid-containing ophthalmic preparations

(~~iii~~ii) Carbonic anhydrase inhibitors

(~~iv~~iii) Ophthalmic anesthetics

(~~v~~iv) Miotics

(~~vi~~v) Mydriatics

(~~vii~~vi) Miscellaneous EENT drugs (Ref: American Hospital Formulary Service 52:36)

(C) Those physician assistants whose supervising ~~physician~~physician's scope of practice includes~~practices in the specialty of~~ eye care may prescribe:

(i) ~~Steriod-containing~~Steroid-containing ophthalmic preparations

(ii) Carbonic anhydrase inhibitors

(iii) Miotics

(iv) Mydriatics

(13) **Gastrointestinal agents.**

~~(A)~~ Agents included under the gastrointestinal agents category are:

(~~i~~A) Antacids and adsorbents

(~~ii~~B) Antidiarrhea agents

(~~iii~~C) Antiflatulents

(~~iv~~D) Cathartics and laxatives

(~~v~~E) Cholelitholytic agents

(~~vi~~F) Digestants

(~~vii~~G) Emetics

(~~viii~~H) Antiemetics

(~~ix~~I) Miscellaneous GI drugs (Ref: American Hospital Formulary Service 56:40)

~~(B) Agents excluded under the gastrointestinal agents category are any preparation containing a Schedule II controlled substance.~~

(14) **Hormone and synthetic substitutes.**

(A) Agents included under the hormone and synthetic substitutes category are:

(i) Adrenals

(ii) Contraceptives

(iii) Estrogens

(iv) Gonadotropins

(v) Antidiabetic agents

(I) Insulins

(II) Sulfonylureas

(III) Miscellaneous antidiabetic agents (Ref: American Hospital Formulary Service 68:20.92)

(vi) Progestins
(vii) Thyroid agents
(B) Agents excluded under the hormone and synthetic substitutes category are:
(i) Androgens
(ii) Antithyroid agents
(iii) Parathyroid hormones and synthetics
(iv) Pituitary hormones and synthetics
(15) **Oxytocics.** All agents are excluded under the oxytocics category.
(16) **Skin and mucous membrane agents.**
(A) Agents included under the skin and mucous membrane agents category are:
(i) Anti-infectives
(I) Antibiotics
(II) Antivirals
(III) Antifungals
(IV) Scabicides and pediculicides
(V) Miscellaneous local anti-infectives (Ref: American Hospital Formulary Service 4:04.16)
(ii) Anti-inflammatory agents
(iii) Antipruritics and local anesthetics
(iv) Detergents
(v) ~~Emolients~~Emollients, demulcents, and protectants
(vi) Minoxidil
(vii) Sunscreen agents
(B) Agents excluded under the skin and mucous membrane agents category are:
(i) Cell stimulants and proliferants
(ii) Keratolytic agents
(iii) ~~Kerotoplastic~~Keratoplastic agents
(iv) Miscellaneous skin and mucous ~~membrance~~membrane agents (Ref: American Hospital Formulary Service 84:36)
(v) Depigmenting and pigmenting agents
(C) Those physician assistants whose supervising physician's scope of practice includes ~~practices in the specialty of~~ skin care may prescribe:
(i) Cell stimulants and proliferants
(ii) Keratolytic agents
(iii) ~~Keroataplastic~~Keratoplastic agents
(iv) Miscellaneous skin and mucous ~~membrance~~membrane agents (Ref: American Hospital Formulary Service 84:36)
(v) Depigmenting and pigmenting agents
~~(17) **Smooth muscle relaxants.** Agents included under the smooth muscle relaxants category are:~~
~~(A) Genitourinary smooth muscle relaxants~~
~~(B) Respiratory smooth muscle relaxants~~
(17) **Musculoskeletal agents.** Agents included under the musculoskeletal agents category are:
(A) Anti-inflammatory agents
(B) Anti-osteoporosis agents
(C) Skeletal muscle relaxants
(D) Those physician assistants whose supervising physician's scope of practice includes disorders of connective tissues may prescribe anti-inflammatory agents not listed above.
(18) **Vitamins.** All agents are included under the vitamins category.

[OAR Docket #03-1067; filed 5-29-03]

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 20. PHYSICAL THERAPISTS AND ASSISTANTS

[OAR Docket #03-1068]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 5. Regulation of Practice
435:20-5-8. Unprofessional Conduct [NEW]
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ANALYSIS:
This is a new rule to define "acts of unprofessional conduct" as it relates to physical therapists and assistants licensed in Oklahoma.
CONTACT PERSON:
Jan Ewing, Deputy Director, 405-848-6841, #104

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 5. REGULATION OF PRACTICE

435:20-5-8. Unprofessional conduct - Grounds for disciplinary action

(a) The Physical Therapy Advisory Committee may recommend to the Board to revoke or take other disciplinary action

against a licensee or deny a license to an applicant for unprofessional conduct.

(b) Acts that constitute unprofessional conduct include, but are not limited to:

(1) Procuring aiding or abetting a criminal operation.

(2) Habitual intemperance or the habitual use of habit-forming drugs.

(3) Conviction of a felony or of any offense involving moral turpitude.

(4) Conviction or confession of a crime involving violation of the laws of this state.

(5) Dishonorable or immoral conduct that is likely to deceive, defraud, or harm the public.

(6) Aiding or abetting, directly or indirectly, the practice of physical therapy by any person not duly authorized under the laws of this state.

(7) Engaging in physical conduct with a patient that is sexual in nature, or in any verbal behavior that is seductive or sexually demeaning to a patient.

(8) Participation in fraud, abuse and/or violation of state or federal laws.

(9) Any conduct which potentially or actually jeopardizes a patient's life, health or safety.

(10) Verbally or physically abusing patients.

(11) Discriminating in the rendering of patient care.

(12) Negligence while in practice of physical therapy or violating the "Standards of Ethics and Professional Conduct" adopted by the Board.

(13) Habitual intemperance or addicted use of any drug, chemical or substance that could result in behavior that interferes with the practice of physical therapy and the responsibilities of the licensee.

(14) Unauthorized possession or use of illegal or controlled substances or pharmacological agents without lawful authority or prescription by an authorized and licensed independent practitioner of the State of Oklahoma.

(15) Fraudulent billing practices and/or violation of Medicare and Medicaid laws or abusive billing practices.

(16) Improper management of medical records, inaccurate recording, falsifying or altering of patient records.

(17) Falsely manipulating patient's records or forging a prescription for medication/drugs, or presenting a forged prescription.

(18) Aiding, abetting or assisting any other person to violate or circumvent any law, rule or regulation intended to guide the conduct of a physical therapist or physical therapist assistant.

(19) Being judged mentally incompetent by a court of competent jurisdiction.

(20) Failing to timely make application for license renewal.

(21) Falsifying documents submitted to the Physical Therapy Committee or the Oklahoma State Board of Medical Licensure and Supervision.

(22) Obtaining or attempting to obtain a license, certificate or documents of any form as a physical therapist or physical therapist assistant by fraud or deception.

(23) Cheating on or attempting to subvert the national physical therapy examination or skills assessment tests.

(24) Leaving a patient care assignment without properly advising the appropriate personnel.

(25) Violating the confidentiality of information or knowledge concerning a patient.

(26) Conviction of, or confession of or plea of no contest to a felony or misdemeanor.

(27) While engaged in the care of a patient, engaging in conduct with a patient, patient family member, or significant other that is seductive or sexually demeaning/exploitive in nature.

(28) Failure to report through proper channels the unsafe, unethical or illegal practice of any person who is providing care.

(29) Failure to furnish to the Board, its investigators or representatives, information lawfully requested by the Board.

(30) Failure to cooperate with a lawful investigation conducted by the Board.

(31) Violation of any provision(s) of the Physical Therapy Practice Act or the rules and regulations of the board or of an action, stipulation, agreement or order of the Board.

(32) Failure to report to the Board any adverse action taken against him or her by another licensing jurisdiction (United States or foreign), by any governmental agency, by any law enforcement agency, or by an court for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section.

(c) A physical therapist or physical therapist assistant who knowingly allows or participates with individual(s) who are in violation of the above will be prohibited from supervising other physical therapy practitioners for so long as the Board deems appropriate, and may themselves be subject to disciplinary action pursuant to their conduct.

[OAR Docket #03-1068; filed 5-29-03]

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION
CHAPTER 50. LICENSED PEDORTHISTS

[OAR Docket #03-1069]

RULEMAKING ACTION:
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RULES:
Subchapter 1. General Provisions
435:50-1-4. Definitions [AMENDED]
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ANALYSIS:
The National Pedorthics Association added the definition of "Subtalar-Control Foot Orthosis" (SCFO) to the scope of practice; therefore, the definition is being added to keep in line with the national standard.
CONTACT PERSON:
Jan Ewing, Deputy Director, 405-848-6841, #104

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

435:50-1-4. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Accommodative device" *means a device designed with a primary goal of conforming to the individual's anatomy. [59 O.S. ss. 2302]*

"BCP" means the Board for Certification in Pedorthics.

"Board" *means the State Board of Medical Licensure and Supervision. [59 O.S. ss. 2302]*

"Certified Pedorthist (C.Ped.)" *means a professional whose competence in the practice of pedorthics is attested to by issuance of a credential by the Board for Certification in Pedorthics. [59 O.S. ss. 2302]*

"Committee" means the Advisory Committee on Pedorthics.

"Department" *means the State Department of Health. [59 O.S. ss. 2302]*

"Direct supervision" means personal supervision and specific delineation of tasks and responsibilities by an Oklahoma licensed pedorthist and shall include the responsibility for personally reviewing the work by the supervisee. It is the responsibility of the Oklahoma licensed pedorthist to be on site during treatment to ensure that the supervisee does not perform duties for which he is not trained.

"Full-time" means greater than 2,000 hours a year.

"General supervision" means responsible supervision and control, with the Oklahoma licensed pedorthist providing both initial direction and periodic inspection of the supervisee's work. Such plan of treatment shall not be altered by the supervised individual without prior consultation with and approval of the supervising pedorthist. The supervising pedorthist need not always be physically present or on the premises when the supervisee is performing services; however, except in cases of emergency, supervision shall require the availability of the supervising pedorthist for consultation with and direction of the supervised individual.

"Licensed Pedorthist" or "L.Ped." means a person who is licensed as required by the Oklahoma Licensed Pedorthists Act, who regularly practices pedorthics, and who is therefore entitled to represent himself or herself to the public by a title or description of services that

includes the term "pedorthist".

"Pedorthic device" *means therapeutic shoes, shoe modifications made for therapeutic purposes, partial foot prostheses and custom made orthoses, inserts, inlays or variants thereof for use from the ankle and below, but does not include nontherapeutic accommodative inlays or nontherapeutic accommodative footwear, regardless of method of manufacture, unmodified over-the-counter shoes, or prefabricated foot care products. [59 O.S. ss. 2302]*

"Pedorthist" means a person who measures, designs, fabricates, fits or services pedorthic devices and assists in the formulation of the order of pedorthic devices as prescribed by a licensed physician, licensed podiatrist, or chiropractor for the support or correction of disabilities caused by diseases, injuries or deformities.

"Practice of pedorthics" means the practice, pursuant to a written prescription from a physician when addressing a medical condition, of evaluating, planning treatment, measuring, designing, fabricating, assembling, fitting, adjusting, managing of the patient, or servicing of painful and/or disabling conditions of the foot and ankle.

"Subtalar - Control Foot Orthosis (SCFO)"means a lower extremity orthosis designed to manage the function of the anatomy distal to the ankle joint by controlling the range of motion of the subtalar joint. The proximal length of a SCFO does not extend beyond the musculotendonis junction of the gastrocnemius and calcaneal (Achilles) tendon. A SCFO is an improved method of treatment of conditions related to the foot demanding additional surface area to control forces. A SCFO does not include a supramalleoli orthosis.

(A) Ankle joint as used in this definition includes the following:

(i) Ankle joint articulations

(I) Talus - Talar trochlea

(II) Tibia - Inferior articular surface; Articular surface of the medial malleolus

(III) Fibula

(IV) Articular surface of the inferior lateral malleolus

(ii) Ankle joint function. The ankle joint is a single plane joint consisting of the sagital motions of plantar flexion and dorsiflexion.

(B) Subtalar joint as used in this definition includes the following:

(i) Subtalar joint articulations

(I) Calcaneous - Middle articular surface; Posterior articular surface

(II) Talus - Talo-calcaneal; Talo-navicular

(ii) Subtalar Joint Function. The subtalar joint is a multi-plane or tri-plane motion joint consisting of the frontal plane motion of inversion/eversion, the transverse plane motion of abduction/adduction, and the sagital plane motion of lexion/extension.

"Therapeutic device" *means a device that addresses a medical condition. [59 O.S. ss. 2302]*

[OAR Docket #03-1069; filed 5-29-03]

TITLE 530. OFFICE OF PERSONNEL MANAGEMENT
CHAPTER 10. MERIT SYSTEM OF PERSONNEL ADMINISTRATION RULES

[OAR Docket #03-2029]

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PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
Part 1. General Provisions
530:10-1-2. [AMENDED]
530:10-1-6. [AMENDED]
Subchapter 3. Affirmative Action and Equal Employment Opportunity
Part 2. Discrimination Complaints Investigations
530:10-3-22. [AMENDED]
Part 5. Noncompliance, Investigations, Hearings, and Remedies
530:10-3-52. [AMENDED]
Subchapter 7. Salary and Payroll
Part 1. Salary and Rates of Pay
530:10-7-14. [AMENDED]
530:10-7-16. [NEW]
5 0:10-7-22. [AMENDED]
Subchapter 13. Reduction-in-Force
Part 1. General Provisions for Reduction-in-Force
530:10-13-2. [AMENDED]
Part 7. Priority Consideration for Reemployment
530:10-13-70. [AMENDED]
Subchapter 17. Employee Performance Management System and Career Enhancement Programs
Part 3. Employee Performance Management System
530:10-17-31. [AMENDED]
Part 17. State Work Incentive Program
530:10-17-173. [AMENDED]
Subchapter 23. Employee Recognition [NEW]
Part 1. General Provisions [NEW]
530:10-23-1. [NEW]
530:10-23-2. [RESERVED]
530:10-23-3. [NEW]
Appendix B. Schedule of Annual and Sick Leave Accrual Rates and Accumulation Limits [NEW]
AUTHORITY:
The Administrator of the Office of Personnel Management; Sections 840-1.6A, 840-2.1, 840-2.17, 840-5.16 and 4121 of Title 74 of the Oklahoma Statutes.
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Part 1. General Provisions
530:10-1-6. [AMENDED]
Subchapter 7. Salary and Payroll
Part 1. Salary and Rates of Pay
530:10-7-14. [AMENDED]
530:10-7-16. [NEW]
530:10-7-22. [AMENDED]
Subchapter 13. Reduction-in-Force
Part 1. General Provisions for Reduction-in-Force
530:10-13-2. [AMENDED]
Part 7. Priority Consideration for Reemployment
530:10-13-70. [AMENDED]
Subchapter 17. Employee Performance Management System and Career Enhancement Programs
Part 3. Employee Performance Management System
530:10-17-31. [AMENDED]
Subchapter 23. Employee Recognition [NEW]
Part 1. General Provisions [NEW]
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530:10-23-2. [RESERVED]
530:10-23-3. [NEW]
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n/a
ANALYSIS:

Subchapter 1-An amendment to the definition of "lateral transfer" in 530:10-1-2 is intended to make the rule consistent with a statutory change. An amendment to 530:10-1-6 is intended to make permanent a current emergency amendment which makes the rule consistent with a statutory change.

Subchapter 3-An amendment to 530:10-3-22 creates a deadline by which discrimination complaints investigators must submit proof of completion of annual training requirements to the Administrator. The intent of this change is to make it easier for OPM to determine compliance. An amendment to 530:10-3-52 is intended to make discretionary a current mandatory requirement that the Administrator notify Appointing Authorities when their agency's affirmative action plan is late. This notification is often unnecessary as most agencies that are going to be late notify OPM of that fact and the expected date on which they will submit their plan.

Subchapter 7-Amendments to 530:10-7-14 are intended to make permanent current emergency amendments which clarify the rule and make it consistent with statutory changes. Merit Rule 530:10-7-16 is intended to make permanent a current emergency rule.

Subchapter 13-Amendments to 530:10-13-2 and 530:10-13-70 are intended to make permanent current emergency amendments that make the rules consistent with statutory changes.

Subchapter 17-Amendments to 530:10-17-31 make permanent current emergency amendments that make the rule consistent with statutory changes. Other changes to 530:10-17-31 are intended to incorporate some procedural requirements into the rule. An amendment to 530:10-17-173 is intended to clarify procedural requirements regarding the State Work Incentive Program

Subchapter 23-Amendments are intended to make permanent current emergency rules that implement statutory changes.

Appendix B-This new appendix is necessary to put the schedule of leave accrual rates and accumulation limits into the rules. (While this schedule is in the statute, many state employees do not have easy access to the Oklahoma Personnel Act but are provided access to the Merit Rules, therefore the schedule is being added to the rules as a convenience to state employees and state agencies.)

CONTACT PERSON:

Kimberlee Williams, Chief Policy Attorney, (405) 522-1736.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 15, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. GENERAL PROVISIONS

530:10-1-2. Definitions

In addition to terms defined in OAC 455:10-1-2, the following words and terms, when used in the Merit Rules, shall have the following meaning, unless the context clearly indicates otherwise.

"Absence without leave" and **"unauthorized absence"** means any absence of an employee from duty without specific approval.

"Absolute preference veteran" means a veteran eligible for placement at the top of registers for appointment to the classified service because of a service-connected disability of **30%** or more.

"Act" means the Oklahoma Personnel Act.

"Administrator" *means the appointing authority of the Oklahoma Office of Personnel Management* [74:840-1.3]. As the term is used in the Merit Rules, the term includes employees of the Office of Personnel Management to whom the Administrator has lawfully delegated authority to act on his or her behalf. The term, as used in the Merit Rules, may also include Appointing Authorities to whom the Administrator has delegated authority under a duly executed delegation agreement.

"Adverse impact" or **"disparate impact"** means a substantially different rate of selection in hiring, promotion, or other employment decision which works to the disadvantage of members of a race, sex, or ethnic group. A common yardstick for determining adverse impact is the **"4/5ths rule"** which indicates adverse impact if the selection rate for any protected group is less than 4/5ths (80%) of the selection rate of the group with the highest selection rate.

"Agency" *means any office, department, board, commission or institution of the executive branch of state government* [74:840-1.3].

"Allocation" or **"Position allocation"** means the process by which the Office of Personnel Management designates a position to an established job family. A position is allocated on the basis of duties, authority, responsibilities, classification guides, and other appropriate factors.

"Appointing authority" *means the chief administrative officer of an agency* [74:840-1.3]. As the term is used in the Merit Rules, the term includes employees of an agency to whom the Appointing Authority has lawfully delegated authority to act on his or her behalf.

"Assignment" or "Position assignment" in the context of position allocation means the process by which an Appointing Authority designates a position to an established job family level.

"Balanced and representative work force" means a work force whose composition at all levels approximates the composition of the relevant civilian labor force in terms of race, sex, and ethnicity.

"Base pay", **"base rate"**, or **"base salary"** means the hourly rate or salary established for a job performed. It does not include shift differentials, benefits, overtime, incentives, longevity, or any other pay elements.

"Break in service" means a period of time in excess of thirty (30) days during which an employee is not present at work and is not in paid leave status or on approved leave without pay.

"Career progression" means a type of intra-agency promotion in which an employee is advanced from one level of a job family to a higher non-supervisory level in the same job family.

"Certification", in the context of initial classified appointments, means the submission of available names of eligibles from the appropriate register to an Appointing Authority. Such a list is called a **"certificate".** Individuals whose names appear on the certificate are said to be **"certified".** In the context of all other types of appointments, certification means the determination by the Office, or by an Appointing Authority to whom the Administrator has delegated authority, that a candidate possesses permanent classified status or is eligible for reinstatement to permanent classified status, and meets requirements for appointment to a specified job in the classified service.

"Classification" *means:*

(A) *the process of placing an employee into an appropriate job family and level within the job family, consistent with the allocation of the position to which the employee is assigned, or*

(B) *an employee's job family and the level at which work is assigned* [74:840-1.3].

"Classification plan" *means the orderly arrangement of positions within an agency into separate and distinct job families so that each job family will contain those positions which involve similar or comparable skills, duties and responsibilities* [74:840-1.3].

"Classified employee" means an employee in the classified service, or an employee currently on leave from the classified service in accordance with established Merit Rules governing leave.

"Classified service" *means state employees and positions under the jurisdiction of the Oklahoma Merit System of Personnel Administration* [74: 840-1.3].

"Commission" *means the Oklahoma Merit Protection Commission* [74:840-1.3].

"Compensation plan" means a schedule of salaries or hourly wages established for the jobs recognized in the agency classification plan so that all positions of a given job within an agency may be paid the same salary range established for the job.

"Consider" means a reasonable judgment based on job related criteria and on an individual's fitness for duties for initial or internal appointment.

"Demotion" means the reclassification of a classified employee to a different job with a lower pay band assignment or to a lower level within the same job family. Demotion may be voluntary or involuntary.

"Direct reclassification" means a change made in a classified employee's classification by an Appointing Authority as a result of the adoption of a new or revised job family descriptor.

"Discharge" is defined in 455:10-11-3.

*"**Displacement**" or "**displace**" means the process of an employee accepting an offer of employment to an occupied or funded vacant position* [74:840-2.27B].

"EEO Job Categories", as used in the context of affirmative action/equal employment opportunity, means the following occupational categories:

(A) **Officials and Administrators:** Occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, or direct individual departments or special phases of the agency's operations, or provide specialized consultation on a regional, district, or area basis.

(B) **Professionals:** Occupations which require specialized and theoretical knowledge which is usually acquired through college training or through work experience and other training which provides comparable knowledge.

(C) **Technicians:** Occupations which require a combination of basic scientific or technical knowledge and manual skill which can be obtained through specialized post-secondary school education or through equivalent on-the-job training.

(D) **Protective Service Workers:** Occupations in which workers are entrusted with public safety, security and protection from destructive forces.

(E) **Paraprofessionals:** Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually require less formal training and/or experience normally required for professional or technical status.

(F) **Administrative Support (Including Clerical and Sales):** Occupations in which workers are responsible for internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office.

(G) **Skilled Craft Workers:** Occupations in which workers perform jobs which require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs.

(H) **Service-Maintenance:** Occupations in which workers perform duties which result in or contribute to the comfort, convenience, hygiene or safety of the general public or which contribute to the upkeep and care of buildings, facilities or grounds of public property.

"Eligible" means a person who has met all requirements for appointment to a given job.

*"**Employee**" or "**state employee**" means an elected or appointed officer or employee of an agency unless otherwise indicated* [74:840-1.3].

*"**Entrance examination**" means any employment test used by the Office of Personnel Management to rank the names of applicants who possess the minimum requirements of education, experience, or licensure for a job or group of similar jobs on a register of eligibles established by the Office of Personnel Management* [74:840-1.3].

*"**Executive Director**" means the appointing authority of the Oklahoma Merit Protection Commission* [74:840-1.3].

"FEPA" means the Oklahoma Fair Employment Practices Act, Section 840-4.12 of the Oklahoma Personnel Act.

"FLSA" means the federal Fair Labor Standards Act.

"FLSA exempt" means employees performing work which is considered to be exempt from the overtime payment provisions of the FLSA.

"FLSA non-exempt" means employees performing work which is considered to be under the overtime payment provisions of the FLSA.

"Hiring range" means a range within a pay band within which an Appointing Authority may establish the initial rate of pay for a given job.

"Hiring rate" means the initial rate of pay for a given job within the pay band assigned to the job family level.

"Hiring rule" refers to the names of the top **10** available eligibles certified to an Appointing Authority by the Administrator.

"Initial appointment" or **"original appointment"** means the act of an Appointing Authority hiring a person, usually from a certificate, for a probationary period. Contrast the meaning of these terms with "internal action" and "internal appointment" which are also defined in this Section.

*"**Interagency transfer**" means an action in which an employee leaves employment with one agency and enters employment with another agency while continuously employed with the state* [74:840-1.3].

"Internal action" or **"Internal appointment"** means the reclassification of a current employee or the reinstatement, recall or reemployment from a Priority Reemployment Consideration Roster of a former employee.

*"**Intra-agency transfer**" means moving an employee from one position to another position with the same agency either with or without reclassification* [74:840-1.3].

*"**Job**" means a position or job family level in a job family* [74:840-1.3].

*"**Job family**" means:*

(A) *jobs which require similar core skills and involve similar work, and*

(B) *a logical progression of roles in a specific type of occupation in which the differences between roles are related to the depth and breadth of experience at various levels within the job family and which are sufficiently similar in duties and requirements of the work to warrant similar treatment as to title, typical functions, knowledge, skills and abilities required, and education and experience requirements* [74:840-1.3].

"Job family descriptor" *means a written document that:*

(A) *describes a job family, including, but not limited to, the basic purpose, typical functions performed, various levels within the job family, and the knowledge, skills, abilities, education, and experience required for each level, and*

(B) *identifies the pay band assigned for each level* [74:840-1.3].

"Job family level" **or "level"** *means a role in a job family having distinguishable characteristics such as knowledge, skills, abilities, education, and experience* [74:840-1.3].

"Job-related organization" *means a membership association which collects annual dues, conducts annual meetings and provides job-related education for its members and which includes state employees, including any association for which payroll deductions for membership dues are authorized pursuant to paragraph 5 of subsection B of Section 7.10 of Title 62 of the Oklahoma Statutes* [74:840-1.3].

"Lateral transfer" *means the ~~reclassification~~ reassignment of an employee to another state job with the same pay band assignment as the job family level in which the employee ~~had been~~ was classified prior to the lateral transfer* [74:840-1.3].

"Leave of absence without pay" means leave or time off from duty granted by the Appointing Authority, for which period the employee receives no pay.

"Manifest imbalance" means representation of females, Blacks, Hispanics, Asian/Pacific Islanders and American Indians/Alaskan natives in specific job groups or EEO job categories within the agency's work force that is substantially below its representation in the appropriate civilian labor force.

"Merit Rules" *or* ***"Merit Rules for Employment"*** *or* ***"Merit System of Personnel Administration Rules"*** *means rules adopted by the Administrator of the Office of Personnel Management or the Oklahoma Merit Protection Commission pursuant to the Oklahoma Personnel Act* [74:840-1.3]. Merit Rules adopted by the Administrator are in OAC 530:10, and Merit Rules adopted by the Commission are in OAC 455:10.

"Merit System" *means the Oklahoma Merit System of Personnel Administration* [74:840-1.3].

"Minimum qualifications" means the requirements of education, training, experience and other basic qualifications for a job.

"Minority" means a person who appears to belong, identify with, or is regarded in the community as belonging to one of the following racial or ethnic groups:

(A) **"Black"**, meaning all persons having origins in any of the Black racial groups of Africa;

(B) **"Hispanic"**, meaning all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

(C) **"Asian or Pacific Islander"**, meaning all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

(D) **"American Indian or Alaskan Native"**, meaning all persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition. For affirmative action purposes, persons who are reported as American Indian shall verify tribal affiliation by providing a certificate of Degree of Indian Blood from the U.S. Department of Interior, Bureau of Indian Affairs, or by providing the name and address of tribal officials who can verify tribal affiliation [74:840-2.1].

"New position" means a position not previously existing.

"Noncompetitive appointment" *means the appointment of a person to a noncompetitive job level within a job family* [74:840-1.3].

"Noncompetitive job" *means an unskilled or semiskilled job designated by the Office of Personnel Management as noncompetitive. Noncompetitive jobs do not require written examinations for placement on registers of eligibles* [74:840-1.3].

"Office" *means the Office of Personnel Management* [74:840-1.3].

"Oklahoma Personnel Act" means Sections 840-1.1 et seq. of Title 74 of the **Oklahoma Statutes**, creating the Merit System of Personnel Administration and any amendments or supplements.

"Part-time employee" means an employee who works less than full time.

"Pay band" means the pay range assigned to a job family level.

"Payline" means the relationship between the rate of pay of a particular job family level and the assigned job evaluation points for the same job family level.

"Permanent employee" *means a classified employee who has acquired permanent status in* the classified service according to the Act and the Merit Rules.

"Position" means a group of specific duties, tasks and responsibilities assigned by the Appointing Authority to be performed by one person; a position may be part time or full time, temporary or permanent, occupied or vacant.

"Priority reemployment consideration" means the requirement that Appointing Authorities consider eligible former state employees who were separated as a result of a reduction-in-force whose names appear on Priority Reemployment Consideration Rosters before any vacant position is filled by any eligible initially appointed from an employment register.

"Probationary employee" means a classified employee who has not acquired permanent status in the classified service in accordance with the Act and the Merit Rules.

"Probationary period" means a working test period during which a classified employee is required to demonstrate fitness for the job to which appointed by the satisfactory performance of the duties and responsibilities of the job.

"Promotion" means the reclassification of a classified employee to a different job with a higher pay band assignment or to a higher level within the same job family.

*"**Promotional examination**" means any employment test designated by the Office of Personnel Management to determine further the qualifications of a permanent classified employee of a state agency for employment in a different job for which the employee possesses the minimum qualifications of education, experience, or licensure within that agency* [74:840-1.3].

"Reallocation" or **"Position reallocation"** means the process of reassigning an established position, occupied or vacant, from one job family to another.

"Recall right" means the entitlement of an eligible person to be offered reappointment to the job family level from which removed by a reduction-in-force before any other person may be appointed, except by recall.

*"**Reclassification**" means the process of changing a classified employee from one job family to another job family or from one job family level to another job family level in the same job family, resulting in a change in the employee's assigned job code* [74:840-1.3].

"Register" means a list of eligibles for original probationary appointment to a job.

"Register life" means the length of time during which a person's name may be continuously or intermittently on a register as a result of an entrance examination.

"Regular and consistent" means, in connection with an employee's work assignments, the employee's usual and normal work assignments, excluding incidental, casual, occasional tasks, and activities the employee assumes without direction to do so. Temporary work assignments of less than **60** days in any **12** month period are not considered regular and consistent.

*"**Regular unclassified service employee**" means an unclassified service employee who is not on a temporary or other time-limited appointment* [74:840-1.3].

"Reinstatement" means the reappointment of a former permanent classified employee as provided in the Merit Rules or the replacing of an eligible's name on a register.

"Resignation" means an employee's voluntary termination of his or her employment with the state. In the case of a classified employee, it includes the forfeiture of status in the classified service.

"Salary administration plan" means the plan adopted by an Appointing Authority and submitted to the Administrator for approval which establishes hiring ranges for positions. Components of a salary administration plan may include but are not limited to conditions for hiring above the midpoint of a pay range, skill-based pay programs, and other pay movement mechanisms authorized by Section 840-2.17 of the Oklahoma Personnel Act.

"Senior EEO Investigator" means a person who has been designated by the Administrator to provide advice and support to persons completing the training requirements for discrimination complaints investigators as described in 530:10-3-22.

"Successor job family level" means a job family level that takes the place of another job family level.

*"**Supervisor**" means a classified or unclassified employee* [within the executive branch, excluding employees within The Oklahoma State System of Higher Education 74:840-3.1] *who has been assigned authority and responsibility for evaluating the performance of* [other state employees] [74:840-3.1].

"Trial period" means a working test period after promotion or voluntary demotion during which a classified employee is required to demonstrate satisfactory performance in the job to which promoted or voluntarily demoted before acquiring permanent status in the job.

*"**Unclassified service**"* or *"**exempt service**" means employees and positions excluded from coverage of the Oklahoma Merit System of Personnel Administration* [74:840-1.3]. Such employees and positions are subject to various provisions of the Oklahoma Personnel Act and the Merit Rules.

"Veteran" means a person who has been honorably discharged from the Armed Forces of the United States and who has been a resident of Oklahoma for at least **1** year before the date of examination [74:840-1.3].

530:10-1-6. Violations; penalties

(a) The Administrator shall issue orders directing agencies to comply with provisions of the Oklahoma Personnel Act, the Merit Rules, or written communications issued to agencies explaining the Oklahoma Personnel Act, the Merit Rules, and any other matter relating to the Merit System of Personnel Administration. [74:840-1.6A]

(b) *The Oklahoma Merit Protection Commission or the Administrator of the Office of Personnel Management may levy an administrative fine not to exceed Five Thousand Dollars ($5,000.00) against any person, whether subject to the provisions of the merit system or in unclassified service, who after proper notice fails or refuses, within a reasonable period of time, to implement a written order of the Oklahoma Merit Protection Commission or the Administrator of the Office of Personnel Management. Such fine shall be assessed against the person who violates the order and shall not be paid by any monies of the employing entity in which the person is employed or serves.* [74:840-6.9(A)]

(~~b~~c) *Any person against whom an administrative fine is levied who continues the violation for an unreasonable period of time, as determined by the Oklahoma Merit Protection Commission or Administrator of the Office of Personnel Management, shall forfeit his or her position and shall be ineligible for appointment to or employment in state government for a period of five (5) years* [74:840-6.9(B)].

(~~c~~d) *Any fines collected pursuant to this section shall be deposited to the revolving fund of the respective entity which levies the fine* [74:840-6.9(C)].

SUBCHAPTER 3. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY

PART 2. DISCRIMINATION COMPLAINTS INVESTIGATIONS

530:10-3-22. Training requirements for discrimination complaints investigators

(a) Unless otherwise provided by state or federal law, all persons who are designated to investigate complaints of employment discrimination in executive branch agencies shall complete:

(1) four days of initial discrimination complaints investigator training either conducted by the Office of Personnel Management or approved by the Administrator; and

(2) a minimum of one investigation under the guidance of a senior EEO investigator, designated by the Administrator. The senior EEO investigator shall advise and support the investigator in developing competency in investigating complaints of discrimination; and

(3) a minimum of six hours of classroom instruction or 0.6 Continuing Education Units (CEUs) in training related to the subjects listed in subsection (b) each calendar year and other annual training that may be announced by the Administrator. Persons who complete annual training shall submit proof of completion that is acceptable to the Administrator no later than December **31**st of each year.

(b) Discrimination complaints investigator training shall provide participants with a current knowledge of:

(1) Oklahoma and federal equal employment opportunity laws and rules;

(2) theories of discrimination and burdens of proof;

(3) planning and conducting complete and impartial investigations;

(4) techniques for interviewing witnesses;

(5) collecting relevant evidence;

(6) documenting the record of investigation; and

(7) preparing the written report of investigation.

(c) A person who has completed the initial training requirements established in (a)(1) of this Section and who is conducting an investigation under the guidance of a senior EEO investigator required in (a)(2) of this Section shall be considered as conditionally meeting the training requirements of the Administrator and shall be considered to be in compliance of this Part for that investigation.

(d) The Administrator will certify that a person has completed the training requirements for investigating complaints of discrimination after the Administrator:

(1) determines the person has completed the initial training requirements established in (a)(1) of this Section, and

(2) receives recommendation from the senior EEO investigator under whose guidance one or more investigations have been conducted as required in (a)(2) of this Section that the person seeking certification has demonstrated competency in conducting investigations; or the Administrator waives the recommendation requirement.

(e) The Administrator shall send notice of certification to the person certified and to the certified person's Appointing Authority if the person is a state employee.

PART 5. NONCOMPLIANCE, INVESTIGATIONS, HEARINGS, AND REMEDIES

530:10-3-52. Failure to submit an affirmative action plan on time

(a) If the Appointing Authority fails to submit or resubmit an affirmative action plan as required in 530:10-3-33, the Administrator shall take the following actions unless the Administrator finds compelling reasons why they should not be taken.

(1) ~~Within **7** calendar days following September **1** or any deadline for resubmission, the Administrator shall submit a written notice to the Appointing Authority that the affirmative action plan is late; and~~

~~(2)~~ If an affirmative action plan is not received within **30** days ~~after~~ following September **1** or any established deadline for ~~its submission or~~ resubmission, the Administrator shall submit written notice to the Appointing Authority, any governing body of the agency, ~~to~~ the appropriate Cabinet Secretary, and ~~to~~ the Affirmative Action Review Council that the affirmative action plan is late.

(~~3~~2) If an affirmative action plan is not received within **60** days ~~after~~ following September **1** or any established deadline for ~~its submission or~~ resubmission, the Administrator shall submit written notice to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives that the affirmative action plan is late.

(b) Failure to submit or resubmit an affirmative action plan by ~~any~~ the established deadline may result in the Appointing Authority being recorded in the report described in 530:10-3-39 as being in noncompliance with the Oklahoma Personnel Act and standards for affirmative action plans.

SUBCHAPTER 7. SALARY AND PAYROLL

PART 1. SALARY AND RATES OF PAY

530:10-7-14. Rate of pay upon reclassification, promotion, career progression, demotion, and transfer

(a) **Rate of pay when incumbent is reclassified directly.** When an employee is reclassified directly under 530:10-5-90, the rate of pay shall be fixed in accordance with 530:10-7-13.

(b) **Rate of pay upon promotion or career progression.**

(1) An Appointing Authority shall adopt objective written criteria for the amount of salary advancements on promotion or career progression. These criteria shall be a part of the agency salary administration plan established under 530:10-7-1.1 and shall be consistent with state and federal statutes prohibiting discrimination.

(2) The Appointing Authority shall set an employee's salary on promotion or career progression at no less than 5% and no more than 20% of the employee's salary before career progression, except as follows: ~~within the new~~

~~pay band, except as provided in paragraph (3) of this subsection.~~

(A) ~~The Appointing Authority shall set an employee's salary on promotion or career progression at least 5% above the employee's salary before the promotion or career progression advancement, unless~~ If the increase would make the employee's salary after promotion or career progression greater than the maximum rate of pay for the new pay band, ~~(in which case~~ the employee's salary shall be set at the maximum rate of pay for the new pay band~~)~~. ~~However, if the employee's salary before promotion is more than 5% below the minimum of the new salary band, the Appointing Authority shall set the employee's salary on promotion or career progression to at least the minimum of the new pay band.~~

(B) ~~The Appointing Authority may set an employee's salary on promotion or career progression up to 20% above the employee's salary before promotion or career progression, or any rate within the hiring range established for the position in an approved salary administration plan.~~ If the increase is insufficient to raise the employee's salary to the minimum of the new pay band, the employee's salary shall be raised to the minimum of the new pay band.

(C) The Appointing Authority may set the employee's salary at any rate within the hiring range established for the position in an approved salary administration plan.

(D) The Appointing Authority shall not lower the salary of an employee on promotion or career progression. If the employee's salary before promotion or career progression exceeds the maximum of the new pay band, the employee's salary shall remain the same.

~~(3) The Appointing Authority shall not lower the salary of an employee on promotion or career progression. If the employee's salary before promotion or career progression exceeds the maximum for the new pay band, the employee's salary shall remain the same.~~

(c) **Rate of pay when demoted.** The rate of pay of an employee who is demoted shall be set by the Appointing Authority at any rate of pay within the pay band for the job to which demoted, which does not exceed that employee's last rate of pay. An Appointing Authority may delay setting the rate of pay upon demotion for up to **1** year when the demotion is due to an agency reorganization. For the purposes of this subsection, "agency reorganization" means the reclassification of employees in lieu of reduction-in-force.

(d) ~~**Rate of pay when transferred interagency.** An Appointing Authority shall set the salary of an employee who receives an interagency transfer to the same job or another with the same pay band assignment, at the same rate of pay received before transfer.~~

~~(e)~~ **Rate of pay upon intra-agency lateral transfer.** An Appointing Authority may provide up to a 5% increase in salary, not to exceed the maximum rate of pay for the pay band, for an employee ~~on~~ upon intra-agency lateral transfer to a position in the same job family and level or another job family and level with the same pay band assignment, based on the needs of the agency. [74:840-2.17]

530:10-7-16. On-call pay

A classified employee shall receive a minimum of two (2) hours work if the employee is required to report to work while on-call. [74:840-2.29]

530:10-7-22. Salary adjustments upon completion of initial probation or trial period

An Appointing Authority may provide salary adjustments not to exceed **5%** to probationary classified employees achieving permanent status following the initial probationary period. An Appointing Authority may also provide this salary adjustment to employees reinstated to the classified service after a break in service upon completion of a probationary period, and to permanent classified employees successfully completing trial periods after intra-agency lateral transfer or promotion to a different job family level or career progression to a different job family level. [74:840-2.17]

SUBCHAPTER 13. REDUCTION-IN-FORCE

PART 1. GENERAL PROVISIONS FOR REDUCTION-IN-FORCE

530:10-13-2. Definitions

In addition to terms defined in 530:10-1-2 and 455:10-1-2, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

"Affected job family levels" means those containing affected positions.

"Affected employees" means classified and unclassified employees in affected positions.

"Affected positions" means positions being abolished or positions which are subject to displacement action.

"Agency" *means any office, department, board, commission, or institution of all branches of state government, except institutions within The Oklahoma State System of Higher Education.*

"Displacement limit" *means any area within an agency in which displacement may not occur. These areas may include, but are not limited to, job families, units, and geographic areas within an agency.*

"Displacement opportunity" *means the circumstances under which an occupied or funded vacant position is subject to displacement by an affected employee.*

"Displacement privilege" *means the privilege an affected employee has to utilize a displacement opportunity.*

"Educational institution" *means an institution within The Oklahoma State System of Higher Education, a facility under the management or control of the Oklahoma State Department of Vocational and Technical Education, or a licensed private educational institution in the State of Oklahoma.*

"Eligible classified employee" means a permanent classified employee or a classified employee on probationary status after reinstatement from permanent classified status without a break in service in an affected position who is eligible for displacement opportunities or severance benefits.

"Eligible regular unclassified employee" means a regular unclassified service employee with ~~over six months~~ one **(1)** year or more continuous service in an affected position who is eligible for severance benefits.

"Limited-term unclassified employee" *means an unclassified affected employee whose employment status is temporary or time-limited and whose employment status does not make the employee eligible for participation in a state retirement system.*

"Personnel transaction" *means the record of the separation as a result of a reduction-in-force of a classified affected employee from an agency, or the record of the transfer or demotion of a classified affected employee.* [74:840-2.27B]

"Reduction-in-force" *means abolition of positions in an agency or part of an agency and the corresponding nondisciplinary removal of affected employees from such positions through separation from employment or through displacement to other positions.*

"Severance benefits" *means employee benefits provided by the State Government Reduction-in-Force and Severance Benefits Act to affected employees separated through a reduction-in-force.*

"Years of service" *means current and prior service which is creditable for the Longevity Pay Plan. An affected employee shall not be required to have been continuously employed for two (2) years to be given credit for either current or prior service pursuant to the State Government Reduction-in-Force and Severance Benefits Act.*

PART 7. PRIORITY CONSIDERATION FOR REEMPLOYMENT

530:10-13-70. Eligibility for priority reemployment consideration

(a) ~~Probationary and permanent~~ Permanent employees, ~~and~~ regular unclassified full-time employees with ~~over 6 months~~ one **(1)** year or more continuous service, and employees on probationary status after reinstatement from permanent classified status without a break in service, who have been separated as a result of an officially conducted reduction-in-force or the abolition of all or part of a state agency, are eligible for priority reemployment consideration [74:840-2.27C] for jobs in the classified service. In addition, affected employees shall be eligible for Priority Reemployment Consideration beginning with the date the implementation schedule is posted, for a period not to exceed **12** months before the scheduled date of separation, if the agency:

(1) has posted a reduction-in-force plan and implementation schedule and the employees are in positions covered by the plan and within the displacement limits established by the Appointing Authority; or

(2) is scheduled to be closed or abolished by law or court order. [74:840-2.27C]

(b) To be placed on the Priority Reemployment Consideration Roster for a job family level, a person shall apply to the Office of Personnel Management and meet all requirements for the job~~, including passing any required examination~~ [74:840-2.27C]. The job family level need not be announced for recruitment. The names of the persons on Rosters shall be ranked in order of their individual final earned ratings~~ on the examination~~ [74:840-2.27C].

(c) Employees who accept severance benefits:

(1) are eligible for Priority Reemployment Consideration in accordance with the provisions of Section 840-2.27C of Title 74 of the **Oklahoma Statutes,**

(2) who are employed by any agency less than **1** year after receiving severance benefits are required to repay such benefits in accordance with Section 840-2.27E of Title 74 of the **Oklahoma Statutes.**

(d) Employees who accept voluntary out benefits in accordance with Section 840-2.28 of Title 74 of the Oklahoma Statutes shall not be eligible for Priority Reemployment Consideration.

SUBCHAPTER 17. EMPLOYEE PERFORMANCE MANAGEMENT SYSTEM AND CAREER ENHANCEMENT PROGRAMS

PART 3. EMPLOYEE PERFORMANCE MANAGEMENT SYSTEM

530:10-17-31. Employee performance management system

(a) *The Office of Personnel Management shall make available one standard performance management system to be used by all agencies for completing employee service ratings. Agencies shall implement this new system on or before January 1, 2000. Until January 1, 2000, agencies may continue to use employee service rating systems which were approved or provided by the Administrator prior to November 1, 1999. The purpose of this employee performance management system is to evaluate the performance of each classified, unclassified and exempt employee in the executive branch of state government except those in the exempt unclassified service as specified in paragraphs 1 and 2 of subsection A of Section 840-5.5 and those employees employed by the institutions under the administrative authority of The Oklahoma State System of Higher Education* [74:840-4.17].

(b) *The employee performance management system shall provide for the following:*

(1) *An objective evaluation of the employee, by the immediate supervisor, of the performance of the employee within the assigned duties of the job;*

(2) *The identification of the strengths and deficiencies of the employee;*

(3) *Corrective actions, if necessary, to correct deficiencies;*

(4) *An interview with the employee by the immediate supervisor who shall provide the employee with a copy of the service ratings; and*

(5) *The opportunity for the employee to submit written comments regarding the service rating* [74:840-4.17].

(c) *Each employee shall be rated thirty (30) days prior to the end of the probationary period. Thereafter, each employee shall be rated no less than once each year* [74:840-4.17].

(d) The immediate supervisor shall hold a meeting in person with the employee at least three times during a **12**-month evaluation period.

(1) One meeting shall take place at the beginning of the evaluation period in order to communicate the accountabilities and behaviors upon which the employee will be evaluated. A copy shall be provided to the employee.

(2) One meeting shall take place during the rating period for the purpose of discussing the progress of the employee in meeting the accountabilities upon which the employee will be evaluated.

(3) One meeting shall take place at the end of the review period to provide the final evaluation. A copy of the evaluation shall be provided to the employee, and the employee shall have the opportunity to provide written comments.

(~~d~~e) *The agency shall use the available service ratings of current or former state employees in decisions regarding promotions, appointments, demotions, performance pay increases, and discharges. Reductions-in-force shall not be considered discharges* [74:840-4.17].

(~~e~~f) *The agency shall retain a copy of the service rating for each employee of the agency. A copy of the service rating ~~shall be furnished to the Administrator of the Office of Personnel Management for review to determine compliance with the provisions of this section and~~ shall be retained in the ~~file on the employee~~ employee's personnel file* [74:840-4.17].

(~~f~~g) The basic document to be used in conducting performance evaluations is the Performance Management Process form (OPM-111), a form prescribed by the Administrator. The form contains spaces for the supervisor to describe a list of accountabilities on which the employee will be evaluated. The form also lists behaviors on which state employees will be evaluated. The form provides spaces for the supervisor to enter an overall accountability rating, an overall performance rating, and a summary/development plan. The form requires signature by the employee, the supervisor, and the reviewer.

PART 17. STATE WORK INCENTIVE PROGRAM

530:10-17-173. Eligibility and length of appointment

To be eligible for hire under the State Work Incentive Program, a person must be certified as a participant in the Temporary Assistance to Needy Families Program by a State Work Incentive Referral Form issued by the State of Oklahoma Department of Human Services, or be certified as an eligible individual by a State Work Incentive Program Certificate issued by the Department of Rehabilitation Services. A copy of the required certification will be provided to the Office of Personnel Management at the time of appointment. Agencies may employ eligible persons in the State Work Incentive Program for up to **2** years in full-time or part-time unclassified status.

SUBCHAPTER 23. EMPLOYEE RECOGNITION

PART 1. GENERAL PROVISIONS

530:10-23-1. Purpose

The purpose of the rules in this Subchapter is to establish an on-the-job employee performance recognition program that encourages outstanding job performance and productivity, promotes excellence in job performance, and provides recognition for work units with exceptional performance.

530:10-23-2. RESERVED

530:10-23-3. Employee performance recognition programs

(a) At the discretion of the Appointing Authority, agencies may establish employee performance recognition programs to recognize individual employees or work units with exceptional job performance records or for other significant contributions to the agency. Agencies may not request additional funding from the Legislature in order to fund employee performance recognition programs.

(b) Recognition awards may consist of distinctive wearing apparel, service pins, plaques, writing pens, or other awards. The value of recognition awards may not exceed $150.00 per recognized employee each fiscal year.

(c) In addition to the recognition awards as provided in Subsection (b), agencies may provide cash awards to recognize outstanding performance in the workplace by the employees of the agency. Cash awards may not exceed $250.00 per recognized employee each fiscal year.

(d) The awards authorized in this Section may be presented at a formal or informal ceremony, banquet, or reception, the cost of which may be funded from monies available in the agency's operating funds. [74:4121]

APPENDIX B. SCHEDULE OF ANNUAL AND SICK LEAVE ACCRUAL RATES AND ACCUMULATION LIMITS

ANNUAL AND SICK LEAVE ACCRUAL RATES AND ACCUMULATION LIMITS SCHEDULES
[74:840-2.20(2)]
Note: "Days" refers to working days.

	Annual Leave		Sick Leave	
Years of Cumulative Service	**Accrual Rate**	**Accumulation Limit**	**Accrual Rate**	**Accumulation Limit**
Less than 5 years	15 days/year (10 hours/month)	30 days*	15 days/year (10 hours/month)	No limit.
5 but less than 10 years	18 days/year (12 hours/month)	60 days*	15 days/year (10 hours/month)	No limit.
10 to 20 years	20 days/year (13-1/3 hours/month)	60 days*	15 days/year (10 hours/month)	No limit.
Over 20 years	25 days/year (16-2/3 hours/month)	60 days*	15 days/year (10 hours/month)	No limit.

*Except as provided in 530:10-15-11(b)(5)

[OAR Docket #03-2029; filed 6-5-03]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 10. PHARMACISTS; INTERNS, PRECEPTORS AND TRAINING AREAS

[OAR Docket #03-1049]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Pharmacists
535:10-3-1.2. [AMENDED]
535:10-3-4. [AMENDED]
Subchapter 5. Interns, Preceptors and Training Areas
535:10-5-2. [AMENDED}
535:10-5-2.1. [NEW]
Subchapter 11. Pharmacist Administration of Immunization [NEW]
535:10-11-1 through 535:10-11-6 [NEW]
AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.9, 353.11, 353.16A, 353.18, 353.20, 353.22, and 353.24 - 353.26 and 364-366.
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Subchapter 11. Pharmacist Administration of Immunization [NEW]
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The revision in 535:10-3-1.2 (20) describes cheating or subverting a Board exam and 535:10-3-1.2(21) describes allowing a non-pharmacist to perform duties of the pharmacist as a violation of professional conduct as recommended by our Board attorney. In 535:15-3-4 it removes the approval statement in j, it renumbers (k) to (j), (l) to (k) and adds ACPE programs as approved continuing education in the new (l), and cleans up language where committee is listed twice in (m).

Rule 535:10-5-2 cleans up grammar and rule 535:10-5-2.1 adds intern multiple employment locations duplicates. The new rules in 535:10-11-1 through 535:10-11-6 add the pharmacist administration of immunization rules required by Title 59 O.S. 353.30. They describe the requirements and process for pharmacist to administer immunizations when properly prescribed by a licensed practitioner. A Pharmacist has NO prescriptive authority and so cannot administer in the absence of a valid PATIENT SPECIFIC prescription or order issued by a licensed practitioner licensed by law to prescribe, please note 535:10-11-3(b).

Pharmacy employers requested an alternative to the interns having to carry their certificate for posting. This posting is required for the public to know individuals are registered and entitled to be working in the pharmacy

Additions to the pharmacist code of professional practice close loopholes in the code; the cleanup and additions in the continuing education and the grammar corrections clarify these rules. Immunization registration ensures minimum competency for pharmacist who administer physician prescribed immunizations. By allowing interns multiple locations duplicates, it protects the public right to know but allows convenience for registrants and the pharmacy.

As a participant in the national pharmacist examination we must have rules prohibiting subverting or cheating on this or any Board exam. The continuing education rules needed to be clear. The emergency rules for immunization administration need to be made permanent. Interns and technicians were forgetting to take their license or permit with them for posting.

These rule amendments allow the registrant to purchase multiple copies of their certificate for posting at each work site rather than having to keep it with them for posting. Additions to the pharmacist code of professional practice close loopholes in the code; the cleanup and additions in the continuing education and the grammar corrections clarify these rules. Immunization registration ensures minimum competency for pharmacist who administer physician prescribed immunizations.
CONTACT PERSON:
Mr. Bryan H. Potter, Executive Director, Oklahoma State Board of Pharmacy, 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488, Telephone number (405) 521-3815

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 3. PHARMACISTS

535:10-3-1.2. Violations of professional conduct

Violations of the rules of professional conduct, which may also be called unprofessional conduct, include, but are not limited to, the following:

(1) The act of violating directly, indirectly, through actions of another, assisting in or abetting the violation of, or conspiring to violate, any provision or term of the Oklahoma State Board of Pharmacy, Title 59, 353 et seq., the Prescription Drug Marketing Act (21 U.S.C., Sec. 331 et seq.), the Robinson-Patman Act (15 U.S.C., Sec. 13 et seq.), or federal, state and local laws and rules governing pharmacists or pharmacies.

(2) Failure to establish and maintain effective controls against the diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by federal, state or local laws or rules.

(3) Making or filing a report or record which a pharmacist or pharmacy knows to be false, intentionally or negligently failing to file a report or record required by federal, state or local laws or rules, willfully impeding or obstructing such filing, or inducing another person to do so. Such reports or records include only those which the pharmacist or pharmacy is required to make or file in his capacity as a licensed pharmacist or pharmacy.

(4) Practicing pharmacy without reasonable skill and safety by reason of illness, use and/or abuse of drugs,

narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

(5) Knowingly dispensing a prescription drug after the death of a patient.

(6) Knowingly billing or charging for quantities greater than delivered, or for a brand when a generic is dispensed.

(7) Submitting fraudulent billing or reports to a third party payor of prescription drugs.

(8) Refusing to answer reasonable questions or provide information about prescriptions dispensed by the pharmacy when requested by, or for, the patient and which would aid the patient's health in the professional judgement of the pharmacist.

(9) Not attempting to resolve a possible prescription error or situation of potential harm to the patient when apparent or should have been apparent to the pharmacist.

(10) Not attempting to address the possible addiction or dependency of a patient to a drug dispensed by the pharmacist, if there is reason to believe that the patient may be dependent or addicted.

(11) The assertion or inference in a public manner of material claims of professional superiority in the practice of pharmacy that cannot be substantiated.

(12) The publication or circulation of false, misleading, or otherwise deceptive statements concerning the practice of pharmacy.

(13) Discriminating in any manner between patients or groups of patients for reasons of a particular disease, religion, race, creed, color, sex, age or national origin.

(14) Violating patient confidentiality. This does not prevent pharmacies from providing drug therapy information to physicians for their patients, nor does it prevent the provision of information as required by law.

(15) Theft of merchandise (including, but not limited to, legend drugs) while practicing pharmacy.

(16) Knowingly dispensing prescription drug refills after the death of a physician. (A limited quantity may be allowed for the patient's health and safety.)

(17) Failure to establish and maintain effective controls to prevent prescription errors or mis-fills.

(18) The misfilling of a prescription that departs from the standards of care ordinarily exercised by a pharmacist with proof of actual injury not having to be established.

(19) Providing fictitious information, fraud or misrepresentation in applying for or procuring a pharmacist license, preceptor certificate or other permit, or in connection with applying for or procuring periodic re-registration or renewal of the same.

(20) Attempting to cheat or subverting the pharmacist licensure examination, Oklahoma law examination, Oklahoma preceptor examination or any other examination required by the Board.

(21) Allowing a non-pharmacist to perform any of the duties reserved to a pharmacist.

535:10-3-4. Uniform pharmacy continuing education

(a) **Certification.** At the time of annual renewal of registration each pharmacist must certify they have obtained at least 15 clock hours of continuing education credits obtained through satisfactory completion of an accredited program during the previous calendar year.

(b) **Records.** Proof of continuing education is to be maintained by the individual pharmacist for a period of two years from renewal date (submit to the Board only on request).

(c) **Verification forms.** Verification forms of attendance and/or completion of continuing education programs shall be obtained and maintained by the pharmacist.

(d) **Graduate school.** Pharmacists in pharmacy graduate school will be allowed credit for the required fifteen (15) hours continuing education.

(e) **Military personnel.** Military personnel will not be exempt from the continuing education requirement because of the availability of correspondence courses, etc.

(f) **Job credit.** No credit for continuing education will be granted for anything directly connected with a pharmacist's job.

(g) **Journals.** No credit will be allowed for reading, subscribing to or writing articles for various professional and trade journals.

(h) **Meetings.** Credit for individual meetings will have to be submitted to the Committee on Continuing Education for credit by the individual pharmacist.

(i) **Prior approval.** Prior approval of programs on continuing education shall be obtained by the program sponsor. Each program must be submitted in its entirety, including all materials, in order to be evaluated by the Continuing Education Committee. Continuing education programs sponsored by various drug companies will be acceptable, if the programs are continuing education oriented and not promotional or product oriented.

~~(j) **Approval statement.** The following statement of approval shall be used by programs approved for continuing education (CE) credit: "THIS PROGRAM HAS BEEN UNTIL (date) FOR (number of hours) BY THE CONTINUING EDUCATION COMMITTEE OF THE OKLAHOMA STATE BOARD OF PHARMACY." The wording of this statement shall remain the same on all statements of approval by program sponsors.~~

(~~k~~j) **Approved programs notice.** Programs approved for credit by the Continuing Education Committee and the Board of Pharmacy will be published in the Oklahoma Pharmacist as these programs are approved.

(k~~l~~) **Schools of pharmacy.** The two State schools of pharmacy may review the various continuing education programs and make recommendations to the Continuing Education Committee.

(l) **American Council on Pharmaceutical Education (ACPE).** The Oklahoma Board accepts ACPE approved continuing education (CE) programs for CE credit.

(m) **Continuing Education Committee.** The Continuing Education Committee ~~(committee)~~ will consist of up to six (6) pharmacist members appointed by the Board for a three (3) year minimum term. The committee will meet quarterly or as needed.

(n) **Live continuing education recommended.** Pharmacists are encouraged to attain three (3) hours or more

of live continuing education (CE) each year as part of the fifteen (15) hours required. Live CE is attained in the presence of other pharmacists with a presenter and the possibility of interaction with a peer group.

SUBCHAPTER 5. INTERNS, PRECEPTORS AND TRAINING AREAS

535:10-5-2. Intern registration

Interns shall register with the Board of Pharmacy on an application form supplied by the Board. The intern certificate ~~A~~ fee shall be set by the Board ~~for the intern license~~.

(1) Interns shall conspicuously display in their training area the intern certificate provided by the Board. ~~It shall be assumed by the Board, or its agents, that the holder of said certificate is presently practicing as such in the training area.~~ The intern shall be assumed to be presently practicing as such in the training area, by the Board or it's agents, where such certificate is posted.

(2) An intern, to be practicing as such, must abide by the regulations governing same, whether logging hours for credit or not.

535:10-5-2.1. Multiple locations of employment, duplicate

An intern working in multiple locations regularly or on an emergency relief basis may be issued a duplicate certificate on request.

(1) A written request indicating the need for such duplicate shall be sent to the Board by the intern.

(2) The duplicate certificate for multiple locations will have "Duplicate - M. L." listed on the certificate.

SUBCHAPTER 11. PHARMACIST ADMINISTRATION OF IMMUNIZATIONS

535:10-11-1. Purpose

(a) The purpose of this Subchapter is to identify standards for the provisions of those acts or services that are necessary for pharmacists to administer immunizations ordered by a prescribing practitioner.

(b) The rules in this Subchapter implement a portion of the requirements authorized in Title 59 O.S. 353.30.

535:10-11-2. Definitions

The following words or terms, when used in this Subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Controlled dangerous drug" or "**CDS drugs**" means those drugs, substances or immediate precursors that require a prescription and are scheduled under federal or state law.

"Healthcare provider" means an individual, licensed as a Doctor of Pharmacy by the Board, who provides healthcare.

"Pharmacist" or "**D.Ph.**" or "**Doctor of Pharmacy**" means a person registered by the Board of Pharmacy to engage in the practice of pharmacy.

"**Prescribing Practitioner**" means a licensed practitioner of allopathic or osteopathic medicine in active practice duly authorized or recognized by law to prescribe RX Only dangerous drugs and/or controlled dangerous substances.

"RX Only drug" **"Dangerous drug"**, "**Legend drug**", or "**Prescription drug**" means drugs which require a prescription under federal or state law to be administered or dispensed.

535:10-11-3. D.Ph. administering of immunization requirements

(a) A D.Ph. must have completed an approved training course and received registration for immunizations with the Board prior to administering immunizations.

(b) A D.Ph. shall administer immunizations only on the patient specific prescription order of a prescribing practitioner.

(c) The Board will maintain a register of those pharmacists who have been approved for immunizations.

535:10-11-4. Immunization registration of D.Ph.

(a) In order to obtain and maintain eligibility to administer immunizations an applicant must be registered as a D.Ph. in Oklahoma and have successfully completed an approved training described in 535:10-11-5.

(b) Each D.Ph. immunization registrant is subject to the rules regarding applicants in Subchapter 535:25-3.

(c) Prior to administering immunizations, each D.Ph. shall be registered with the Board as an immunization registrant.

(1) Each D.Ph. shall apply to be placed on the immunization register by completing a form furnished by the Board and paying the $25 fee.

(2) A permit will be sent to the D.Ph. indicating their immunization registration.

535:10-11-5. D.Ph. training requirements for administration of immunizations

(a) The following is a list of approved pharmacist training programs for administration of immunizations:

(1) Programs that include training in immunizations offered by the two state colleges of pharmacy:

(A) Southwestern Oklahoma State University (SWOSU) School of Pharmacy

(B) University of Oklahoma (OU) College of Pharmacy

(2) Immunization programs approved by the American Council on Pharmaceutical Education (ACPE).

(3) Immunization programs offered by the American Pharmaceutical Association (APHA).

(4) Immunization programs offered by the National Community Pharmacy Association (NCPA).

(5) Immunization programs offered by the American Society of Health System Pharmacists (ASHP).

(b) Each D.Ph must have successfully completed one of these training courses in immunization prior to registering

with the Board or administering immunizations prescribed by an Oklahoma licensed prescribing practitioner.

535:10-11-6. Records

(a) Separate records of immunizations will be kept on file by the pharmacy. The files will include, but not be limited to, the following:

(1) Patient name (Parent name, if patient is a minor)
(2) Address of patient
(3) Prescribing practitioner
(4) Immunization order
(5) Name, Manufacturer, Lot no., Expiration Date
(6) Date for continued dose regimen if required

(b) Such records must be readily available for inspection in the pharmacy.

(c) Records or reports will be sent to the State Health Department, if required.

(d) Report of immunization to prescribing physician, if requested.

[OAR Docket #03-1049; filed 5-28-03]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 10. PHARMACISTS; INTERNS, PRECEPTORS AND TRAINING AREAS

[OAR Docket #03-1050]

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RULES:
Subchapter 9. Pharmaceutical Care
535:10-9-5 [NEW]
AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.9, 353.11, 353.16A, 353.18, 353.20, 353.22, and 353.24 - 353.26 and 364-366.
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ANALYSIS:
The new amended in 535:10-9-5 describes agreements that pharmacists may enter into with physicians licensed with the Oklahoma Board of Medical Licensure or the Board of Osteopathic Examiners as allowed under Title 59 O.S. 353.30.

Title 59 O.S. Section 353.30 allows agreements between pharmacists and physicians and the rule in 535:10-9-5 describes the minimum requirements for these agreements.

This rule will describe the minimum requirements for pharmacist and physician agreements. This rule will enable immunizations to be administered statewide upon a licensed practitioner's prescription. They will be more readily available especially in rural areas.
CONTACT PERSON:
Mr. Bryan H. Potter, Executive Director, Oklahoma State Board of Pharmacy, 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488, Telephone number (405) 521-3815

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 9. PHARMACEUTICAL CARE

535:10-9-5. Agreements

(a) Agreements will be allowed between Oklahoma licensed pharmacists and physicians licensed by the Oklahoma Board of Medical Licensure or the Oklahoma Board of Osteopathic Examiners.

(b) A copy of the agreement shall be filed in the pharmacy and be available for review by the Board.

(c) The agreement shall not violate any state or federal law.

[OAR Docket #03-1050; filed 5-28-03]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 15. PHARMACIES

[OAR Docket #03-1051]

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Subchapter 3. Pharmacies
535:15-3-2. [AMENDED]
535:15-3-6. [AMENDED]
535:15-3-12. [AMENDED]
535:15-3-12.1. [AMENDED]
535:15-3-21. [AMENDED]
AUTHORITY:
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ANALYSIS:
The revision in 535:15-3-2 requires the pharmacist manager to work sufficient hours to exercise control and meet responsibilities, in 535:15-3-6 the pharmacy library is updated, in 535:15-3-12 the rule is updated to include DEA requirement so that pharmacies don't neglect the DEA requirement for transfer in error.

Rule 535:15-3-12.1 cleans up grammar and corrects cites. Rule 535:15-3-21 brings the rule closer to DEA requirements and allows the same flexibility to allow technological improvements.

The grammar corrections and cite cleanup make the rules clear.
CONTACT PERSON:
Mr. Bryan H. Potter, Executive Director, Oklahoma State Board of Pharmacy, 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488, (405) 521-3815

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 3. PHARMACIES

535:15-3-2. Pharmacy responsibilities

(a) **Pharmacy staffing responsibility.** Each pharmacy shall employ an adequate number of pharmacists to perform the practice of pharmacy as defined by the Oklahoma Pharmacy Act with reasonable safety.

(b) **Pharmacist manager.** Each pharmacy, in order to obtain and maintain a pharmacy license, must have a registered pharmacist as the pharmacy manager.

(1) A pharmacy manager (i.e. pharmacist in charge) is designated by his signature on the original pharmacy application or by the appropriate notification to the Board as required in 535:15-3-10(a), and is responsible for all aspects of the operation related to the practice of pharmacy. These responsibilities include, but are not limited to the:

(A) supervision of all employees as they relate to the practice of pharmacy;

(B) establishment of policies and procedures for safekeeping of pharmaceuticals that satisfy Board requirements, including security provisions when the pharmacy is closed;

(C) proper record keeping system for the purchase, sale, delivery, possession, storage, and safekeeping of drugs;

(D) proper display of all licenses;

(E) annual controlled drug inventory; and,

(F) maintenance of prescription files;

(2) No pharmacist may serve as a pharmacy manager in more than one pharmacy at a time.

(3) A pharmacy manager shall work sufficient hours in the pharmacy to exercise control and meet the responsibilities of the pharmacy manager.

(c) **Pharmacist manager's and pharmacy's responsibilities.** The following describe responsibilities of the pharmacy and pharmacist manager.

(1) Where the actual identity of the filler of a prescription is not determinable, the manager of the pharmacy and the pharmacy where the prescription was filled will be the subject of any charges filed by the Board of Pharmacy.

(2) The pharmacy and the pharmacy manager are responsible to establish and maintain effective controls against prescription errors or misfills.

(d) **Responsibility for automated pharmacy systems.** This subsection describes the responsibilities of the pharmacy and the pharmacist manager for automated pharmacy systems.

(1) Prior written notice must be provided to the Board of the installation or removal of automated pharmacy systems. Such notice must include, but is not limited to the:

(A) name and address of the pharmacy,

(B) name of pharmacy manager,

(C) name of the manufacturer & model of system.

(2) The system being implemented should conform to Board automated pharmacy system guidelines.

(3) The pharmacy shall monitor the automated pharmacy system with a quality assurance program.

(e) **Responsibilities for personnel identification.** The pharmacist manager and the pharmacy are responsible to assure that the public be able to distinguish pharmacy technicians, support personnel, and/or interns from any pharmacist in the pharmacy.

(1) All pharmacy technicians, support personnel, and/or interns must wear a designation tag and be distinctly identifiable from a practicing pharmacist.

(2) Designation tags must be clear, readable and lettered with "Rx Tech", "Tech", "Clerk", or "Intern".

(3) All pharmacy interns, technicians or clerks must identify themselves as such on any phone calls initiated or received while performing pharmacy functions.

535:15-3-6. Required library reference books or computer sources

A pharmacy library shall contain the following current reference books or computer sources:

(1) **Oklahoma law books.** The latest copy of Oklahoma State Laws, Rules and Regulations Pertaining to the Practice of Pharmacy and a recent copy of Oklahoma State Bureau of Narcotics & Dangerous Drugs Control, Rules and Regulations.

(2) **Library menu.** A recent copy of any two of the following:

(A) USP/NF (latest edition)

(B) Merck Manual (latest edition)~~(2 years)~~

(C) Remington (3 years)
(D) A toxicology reference (3 years)
(E) Physicians Drug Reference [PDR] (2 years)
(F) ~~Physicians' Generix~~ Mosby's Drug Consult (2 years)
(G) A medical dictionary (5 years)
(H) Facts and Comparisons (2 years)
(I) ASHP, American Hospital Formulary Service (AHFS) Drug Information (2 years)
(J) A current computer professional pharmacy reference program, eg. one of the following:
(i) Micro Medix
(ii) Clinical Pharmacology
(iii) Facts and Comparisons
(iv) Natural Medicines Comprehensive Database

535:15-3-12. Transfer of prescription refill information

For the purpose of refill dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements:

(1) the transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies:
(A) for up to the number of originally authorized refills remaining on Rx Only drugs that are not controlled; or
(B) on a **one-time** basis only, the transfer of original prescription and refill information for a controlled dangerous substance **(CDS)** listed in Schedules III, IV or V for the purpose of refill dispensing. However, pharmacies electronically sharing a real-time, online database may transfer up to the maximum refills permitted by law and the prescriber's authorization.

(2) the transfer must be communicated orally directly between two licensed pharmacists and/or licensed interns;

(3) both the original and the transferred prescription drug order must be maintained for a period of five years from the date of last refill;

(4) the pharmacist transferring the prescription drug order information shall:
(A) write the word "void" on the face of the invalidated prescription drug order; and
(B) record on the reverse of the invalidated prescription drug order the following information:
(i) the name and address of the pharmacy to which such prescription drug order is transferred;
(ii) the last name and registration number of the pharmacist receiving the prescription drug order information;
(iii) the last name and registration number of the pharmacist transferring the prescription drug order information; ~~and~~
(iv) the date of the transfer; and,
(v) as required in federal DEA rules, pharmacies must exchange and document the sending and receiving pharmacy DEA number on a controlled dangerous substance prescription transfer.

(5) the pharmacist receiving the transferred prescription drug order information shall:
(A) write the word "transfer" on the face of the transferred prescription drug order, see 535:15-3-12 (8); and
(B) record on the transferred prescription drug order the following information:
(i) the date of the original prescription (refills are allowed only as prescribed for a one-year maximum from original prescription date on non-scheduled, as stated in 535:15-3-11 (b) et seq. and up to five refills for no more than six months on Schedule III-V, as stated in 475:30-1-1 (a));
(ii) the original prescription number and the number of refills authorized on the original prescription drug order;
(iii) the number of valid refills remaining and the date of last refill;
(iv) the name and address of the pharmacy from which such prescription information is transferred; ~~and~~
(v) the last name and registration number of the pharmacist transferring the prescription drug order information; and,
(vi) as required in federal DEA rules, pharmacies must exchange and document the sending and receiving pharmacy DEA number on a controlled dangerous substance prescription transfer.

(6) pharmacies with computer systems shall invalidate the prescription drug order in their system for purposes of filling or refilling, but shall maintain the information for refill history purposes;

(7) if the computer system has the capacity to store all of the information required in (4) and (5) of this paragraph, the pharmacist is not required to record this information on the original or transferred prescription drug order.

(8) the computer system used by the pharmacy receiving the transfer must be able to show that a CDS or scheduled prescription is a transferred prescription. (This is to prevent the possible second transfer of a Scheduled prescription in violation of federal law and 535:15-3-12 (1).)

535:15-3-12.1. Electronic transfer of prescription refill information

(a) Two or more pharmacies that have established and use a common electronic file to maintain required prescription information may transfer the refill information electronically as described in Subsection (b), except as restricted in 535:15-3-12(1) ~~and (2)~~.

(b) Electronic ~~The following process for electronic~~ transfer of prescription refill information shall be completed by a licensed pharmacist as follows:

(1) Prior to the transfer or dispensing the pharmacist accessing the file of the original pharmacy shall review the profile of the patient.

(2) There shall be the ability in the electronic transfer file system for the pharmacist to void the original prescription and identify the pharmacy and pharmacist taking the prescription refill information.

(3) The original pharmacy shall be notified electronically of the transfer.

(4) The rules in 535:15-3-12 (1), ~~(2) (4)~~ (3) and (5) ~~(6)~~ (B), (i), (ii), (iii) apply to electronic transfers.

535:15-3-21. Prescription refill records and reports

(a) **Dangerous drugs.**

(1) Refills may be entered on the back of each original prescription.

(2) Refills may be kept by using an automated data processing system to maintain the refill information.

(b) **Controlled Dangerous Substances (CDS) - Schedule II.** No refills are allowed on Schedule II CDS.

(c) **Controlled Dangerous Substances (CDS) - Schedule III, IV and V**

~~(1)~~ **Hard copy method.** The refills are entered on the back of the original (hard copy) prescription according to Oklahoma Bureau of Narcotics and Dangerous Drugs' rules in OAC 475:30-1-11 et seq.

(d~~2~~) **CDS automated data processing method**. A pharmacy may elect to use an automated data processing system to maintain the prescription files including the original information and the refill information. **Caution.** The pharmacy must maintain complete and retrievable prescription records for five years whether you use logbooks, nightly reports, or a manual system. If the pharmacy elects the automated system certain compliance reports will be required

(1~~A~~) **Nightly reports.** Nightly reports will be required for Schedule II's and for Schedule III, IV and ~~&~~ V's. These reports will include but are not limited to:

(A~~i~~) Schedule II reports will include the information in ASAP/NABP Committee on Standardization's Computerized Compliance Reports (e.g. run date, run by, Rx #, drug name, dose form, quantity, date written, date dispensed; pharmacist, patient and prescriber names, DEA number, ~~and~~ patient and prescriber addresses.)

(B~~ii~~) Schedule III, IV and V's reports will include the same information as in (A) ~~(i)~~ above, except patient and prescriber address are not required. These reports may be mixed or be Schedule III, IV or V specific.

(C~~iii~~) These nightly reports shall be verified, signed and dated by the pharmacist as required. (See CFR 1306.22(3), et seq.)

(D~~vi~~) These reports must be kept for five years.

(2) **Logbook or file alternate procedure.** In lieu of the nightly reports procedure for Schedule III, IV & V's provided in 535:15-3-21, the pharmacy may choose to use the following method:

(A) The pharmacy shall maintain a bound log book, or separate file, in which each individual pharmacist involved in such refill dispensing shall sign a statement (in the manner described in CFR 1306.22 (b)) each day, attesting to the fact that the refill information entered into the computer that day has been reviewed by them and is correct as shown.

(B) Such a book or file must be maintained at the pharmacy employing such a system for a period of five years after the date of dispensing the appropriately authorized refill.

(3) **Refill reports.** Any pharmacy using an automated data processing system to track refills shall be able to print such reports as required in CFR 1306.22 (b) et seq.

(4~~B~~) **Audit reports.** If an automated data processing system is used to maintain refill information, the ability to print upon request the following Controlled Dangerous Substance (CDS) audit reports is required. The following required audit reports must include the information in ASAP/NABP Committee on Standardization's Computerized Compliance Reports:

(A~~i~~) CDS Audit Report by Drug

(B~~ii~~) CDS Audit Report by Prescriber

(C~~iii~~) CDS Audit Report by Pharmacist

(D~~iv~~) Patient Profile Report

[OAR Docket #03-1051; filed 5-28-03]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 15. PHARMACIES

[OAR Docket #03-1052]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Hospital Pharmacies
535:15-5-1. Purpose [AMENDED]
535:15-5-2. Definitions [AMENDED]
535:15-5-10. Director of Pharmacy responsibilities [AMENDED]
535:15-5-18. Drug rooms [AMENDED]
Subchapter 6. Hospital Drug Room
535:15-6-1. Purpose [NEW]
535:15-6-2. Definitions [NEW]
535:15-6-3. Registration [NEW]
535:15-6-4. Staffing requirements [NEW]
535:15-6-5. Drug room and PIC responsibilities and duties [NEW]
535:15-6-6. Physical and library requirements [NEW]
535:15-6-7. Drug distribution and control [NEW]
535:15-6-8. Emergency dispensing and pre-packaged medications [NEW]
535:15-6-9. Emergency Room Pre-Packaged Medications Formulary [NEW]
535:15-6-10. Access to drug room in absence of PIC or drug room supervisor [NEW]
535:15-6-11. Administration of drugs to patients [NEW]
535:15-6-12. Medications from other sources [NEW]
535:15-6-13. Investigational drugs [NEW]
535:15-6-14. Drug storage stock inspections [NEW]
535:15-6-15. Non-distributive roles of pharmacists [NEW]
535:15-6-16. Performance improvement [NEW]
535:15-6-17. Board of Pharmacy inspections [NEW]
535:15-6-18. Drug room training area [NEW]
535:15-6-19. Violations [NEW]

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29 and 354.

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The revision in 535:15-5-1 and 535:15-5-2 remove the requirements for hospital drug rooms from Subchapter 5. The revisions in 535:15-5-10 clean up grammar, cites and includes storage as a director of pharmacy responsibility. The new hospital drug room rules in 535:15-6-1 through 535:15-6-19 include purpose, definitions, registration, staffing requirements, drug room and PIC responsibilities and duties, physical and library requirements, drug distribution and control, emergency dispensing and prepackaged medications formulary, access to drug room in absence of PIC or drug room supervisor, administration of drugs to patients, medications from other sources, investigational drugs, drug storage stock inspections, non-distributive roles of pharmacists, performance improvement, Board of Pharmacy inspections, drug room training area, and violations

The Board deferred regulations of hospital that were licensed by the health department for rural municipal and non-profit hospitals because of their charitable nature, while inspecting to assure adequate drug controls and safekeeping were maintained. These hospital pharmacies are now being operated by large for profit and commercial entities. While designed to allow more flexibility for these smaller hospitals these rules will better control prescription drugs in these hospital drug rooms.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JANUARY 1, 2004:

SUBCHAPTER 5. HOSPITAL PHARMACIES

535:15-5-1. Purpose

The rules of this Subchapter are to accomplish the purposes of the Oklahoma Pharmacy Act, as specified in 59 O.S., Section 353.18(A) thereof, by implementing the rules and regulations of a licensed hospital pharmacy and a ~~hospital~~ drug room.

535:15-5-2. Definitions

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

"Automated dispensing systems" means a mechanical system controlled by a computer that perform operations or activities, relative to the storage, packaging, compounding, labeling, dispensing, administration, or distribution of medications, and which collects, controls, and maintains all transaction information.

"Certified medication order" means a filled prescription that has been reviewed and certified by a pharmacist.

"Certified pharmacy technician" means a pharmacy technician who has a current Board approved pharmacy technician certification in addition to a current Oklahoma pharmacy technician permit.

"Director of Pharmacy" means a pharmacist licensed to engage in the practice of pharmacy in Oklahoma who is thoroughly familiar with the specialized functions of a hospital pharmacy and directs the activities of a hospital pharmacy.

"Drug room" ~~**or "Hospital drug room"**~~ means a secured room where drug inventories are maintained for use in a facility ~~hospital~~ licensed and regulated by the Oklahoma Health Department, and ~~is~~ which may be inspected by the Board.

"Hospital employee" means any individual employed by a hospital whose compensation for services or labor actually performed for a hospital is reflected on the payroll records of a hospital.

"Hospital facility" or "Hospital" means any institution licensed as a hospital by this state for the care and treatment of patients.

"Hospital pharmacy" means the place or places in which drugs, chemicals, medicines, prescriptions, or poisons are stored, controlled and prepared for distribution and administration for the use and/or benefit of patients in a hospital facility. Hospital pharmacy shall also mean the place or places in which drugs, chemicals, medicines, prescriptions or poisons are compounded and prepared for dispensing to the members of the medical staff, hospital employees, and the members of their immediate families, patients being discharged, and for other persons in emergency situations.

"Medical staff" means a medical practitioner who has privileges to practice in the hospital facility.

"Medication order" means a prescription as defined in Title 59 O.S. Section 353.1(7).

"Pharmacist" means any person licensed to practice pharmacy by the Oklahoma State Board of Pharmacy.

"Pharmacy technician" or "Tech" or "RxTech" means a person who has been issued a permit by the Board to assist the pharmacist and performs non-judgmental, technical, manipulative, non-discretionary functions in the prescription department under the pharmacist's immediate supervision.

"Supportive personnel" or "support person" means all persons, other than pharmacists, interns and techs, who are regularly paid employees of the hospital pharmacy and who work or perform tasks in the hospital pharmacy that do not

require a permit or license (e.g. clerk, typist, delivery or data entry person, etc.).

535:15-5-10. Director of Pharmacy responsibilities

(a) **Written procedures.** The Director of Pharmacy shall establish written procedures for the safe and efficient acquisition, distribution, storage, and utilization of pharmaceutical products with any of the federal legends such as "Rx Only" and medications administered or used in the hospital system. Such procedures shall be annually reviewed and a current copy shall be on hand for Board inspection.

(b) **General responsibilities.** The Director of Pharmacy shall be responsible for the safe and efficient purchasing, acquisition, monitoring, distribution, control, security, and accountability of all drugs including, but not limited to, federal legend drug products used in diagnostic procedures, I.V. fluids, or contained in supply kits. The other professional staff of the hospital facility shall cooperate with the Director in meeting this responsibility. The Director shall be responsible for, at a minimum, the following:

(1) Preparing and sterilizing parenteral medications prepared within the hospital facility.

(2) Admixing parenteral products, including education and training of nursing personnel concerning incompatibility and provision of proper incompatibility information when the admixture of parenteral products is not accomplished within the hospital pharmacy.

(3) Preparing drug products including unit dose.

(4) Establishing specifications for procurement of all materials, including drugs, chemicals and biologicals used within pharmacy practice, subject to approval of the appropriate committee of the hospital facility.

(5) Participating in the development and maintenance of a formulary for use within the hospital facility.

(6) Filling and dispensing all drugs which are to be administered within the hospital facility.

(7) Maintaining and making available a sufficient inventory of pharmaceuticals, including antidotes and other emergency drugs, for use within the hospital facility. In addition, current references, antidote information, and telephone numbers of regional reference centers such as Poison Centers and Drug Information Centers shall be maintained and readily available throughout the hospital.

(8) Maintaining records of all transactions of the hospital pharmacy required by applicable local, state, and federal law, and necessary to maintain accurate control and accountability for all pharmaceutical materials.

(9) Participating in those aspects of the hospital facility's patient care evaluation programs that relate to pharmaceutical material utilization and effectiveness.

(10) Cooperating fully with teaching and/or research programs in the hospital facility, if any.

(11) Implementing the policies and decisions of the appropriate committees of the hospital, which deal with drug distribution and drug utilization.

(12) Meeting all inspection and other requirements of the Oklahoma Pharmacy Act, and the rules and regulations governing the practice of pharmacy within a hospital facility.

(13) Establishing guidelines for the safe and effective distribution of drugs intended for floor stock, and their subsequent administration.

(14) Initial and continuing training of pharmacy technicians.

(c) **Confidentiality.** The Director of Pharmacy shall have direct responsibility for the security and integrity of any patient pharmacy information, confidential and non-confidential, and must comply with all federal and state laws and regulations applicable to the hospital pharmacy.

(1) Rules regarding confidentiality of patient records are described in ~~535:15-3-4~~ 535:15-3-14 (e); and,

(2) Responsibilities for confidentiality shall be as set forth in 535:10-3-1.1 and 535:10-3-1.2 and the rules of this Title.

(d) **Adverse Drug Events program.** The Director of Pharmacy shall develop and maintain a program to monitor the actual and potential adverse drug events including pharmacist interventions, medication errors, and adverse drug reactions for all medications utilized in the hospital to include system wide programs if an integrated system is involved.

(1) Policies indicating the tracking, review, and outcome of the adverse drug events shall be kept current and available for Board inspection.

(2) Type 1 Deficiencies assessed by the JCAHO for failure to meet standards in Patient Care Medication Use Standards shall be maintained and be available for Board inspection.

(e) **Investigational drug programs.** The Director of Pharmacy shall maintain a file for review by the Board of all investigational drug protocols open and closed that have been approved by the hospital Investigational Review Board.

(f) **Discontinued drug orders.** The Director of Pharmacy shall develop and implement policies and procedures to insure that discontinued drugs, outdated drugs, and containers with worn, illegible or missing labels are returned to the pharmacy for proper disposition.

(g) **Controlled drug accountability.** The hospital facility shall maintain adequate records regarding the use and accountability of controlled substances and such other drugs as the hospital may designate; and as directed by the Oklahoma State Bureau of Narcotics and the Federal Drug Enforcement Administration. The Director of Pharmacy shall establish effective written procedures to implement this requirement.

(h) **Drug recall procedures.** The Director of Pharmacy shall develop and implement a written recall procedure that can be readily activated which assures that drugs involved, inside or outside of the facility, are returned to the pharmacy for proper disposition. All actions taken in this area are to be properly documented and maintained for 36 months for Board review.

(i) **Records and reports.** The Director of Pharmacy shall maintain and submit, as appropriate, such records and reports

as are required to insure patient health, safety and welfare. These should include the following:

(1) Adverse drug reaction reports.

(2) Floor stock inventories of night cabinets and emergency boxes.

(3) Inventory listing of the pharmacy.

(4) Controlled substance inventory.

(5) Ethyl alcohol inventory.

(6) Pharmacy and therapeutic committee minutes.

(7) Reports and records as required by law and/or rules.

(8) Outpatient prescriptions shall contain ~~containing~~ all information required by pharmacy law and rule.

(j) **Pharmacist staffing.** The Director of Pharmacy shall maintain adequate staffing levels of pharmacist to insure pharmaceutical patient-focused care support. This staffing shall be a sufficient number of additional registered pharmacists as may be required to operate such a pharmacy competently, safely and adequately to meet the needs of the patients of the hospital facility

(k) **Automated dispensing systems.** The Director of Pharmacy shall maintain control to insure that direct pharmacist intervention and responsibility (and certification of medication order) is present and consistent in any cycle of automated dispensing from acquisition of product through the terminal dispensing act prior to administration to the patient of any medication as described in these rules.

(1) The Board must be provided with prior written notice of the installation or removal, or major upgrade that physically changes the operation of automated dispensing systems.

(2) Such notice must include, but is not limited to the:

(A) name and address of the pharmacy,

(B) location of the automated equipment,

(C) identification of the pharmacist-in-charge; and

(D) name of manufacturer and model of system.

(3) Along with such notice, submit a copy of the automated dispensing system quality assurance plan to the Board for review.

(4) The terminal act of automated dispensing must be to a licensed caregiver (nurse or practitioner not intended to include medication technician's or CMA's) in the hospital facility in no more than a 24-hour supply of medication that has been reviewed by a pharmacist.

535:15-5-18. Drug rooms

(a) A drug room, as defined in 535:15-5-2, shall comply with all federal, state and local rules for ~~hospital~~ drug rooms.

(b) At a minimum there shall be a consultant pharmacist on duty as required by the rules of the Oklahoma State Department of Health.

(c) The drugs dispensed from a drug room shall be for administration only to patients in the facility hospital.

SUBCHAPTER 6. HOSPITAL DRUG ROOM RULES

535:15-6-1. Purpose

The rules of this Subchapter, as authorized under Title 59 O.S. Section 353.7 and 353.18(a) establish the rules for all hospital drug rooms.

535:15-6-2. Definitions

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

"**Adverse Drug Event**" or "**ADE** " means an injury from a medicine or lack of an intended medicine.

"**Authorized licensed independent practitioner**" or "**ALI Practitioner**" or "**Licensed independent practitioner**" means an individual permitted by Oklahoma law and by the hospital to provide care and services, without direct supervision, within the scope of the individual's license and consistent with individually granted clinical privileges. Licensed independent practitioners may include physicians, advanced practice nurses with prescriptive authority, physician assistants, dentists, podiatrists, and optometrists.

"**Contract employee**" means any person who performs services or labor for a hospital, and whose compensation may or may not be reflected on the payroll records of a hospital. Examples of pharmacy contract employees are consultant D.Ph., relief D.Ph. and/or volunteer D.Ph.

"**Drug room**" or "**Hospital drug room**" means a secured room where drug inventories are maintained for use in a hospital, with less than 100 licensed beds including bassinets, licensed and regulated by the Oklahoma Health Department and by the Oklahoma State Board of Pharmacy.

"**Drug room supervisor**" means an Oklahoma registered nurse, licensed practical nurse, or registered pharmacist (D.Ph.) as described in OAC 310:667-21-2 (c).

"Pharmacist-in-Charge" or "PIC" means an Oklahoma licensed pharmacist director or consultant of the hospital drug room, either employed or a contract employee.

535:15-6-3. Registration

(a) All Oklahoma hospital drug rooms shall be licensed annually with the Board of Pharmacy at a fee set by the Board.

(b) A hospital drug room license shall be issued only to those drug rooms that satisfy and maintain compliance with the provisions of Title 59 O.S. Section 353.18 (a), OAC Title 535, 535:25 for rules regarding registrants, and the rules of this Subchapter.

(c) Each drug room, in order to obtain and maintain a hospital drug room license shall have an Oklahoma D.Ph. as the PIC.

535:15-6-4. Staffing requirements

(a) The PIC shall be assisted by a sufficient number of additional pharmacists (D.Ph.s) to operate such a drug room competently, safely and adequately to meet the needs of the patients of the hospital facility.

(b) Each hospital drug room shall have oversight by a PIC who shall be responsible for certifying that the drug room meets the requirements of the Oklahoma Pharmacy Act and

the rules of this Title. The PIC shall notify the Board, in writing, within 10 days of any change of employment.

(c) A drug room supervisor must be assigned as designated in the rules of the Oklahoma Department of Health under OAC 310:557-21-2(c) et seq.

535:15-6-5. Drug room and PIC responsibilities and duties

(a) **Responsibilities.** Responsibilities of the hospital drug room and PIC include drug purchasing, acquisition, preparation, distribution, monitoring, security, storage and control.

(1) **Written procedures.** The hospital drug room and PIC shall establish written procedures for the safe and efficient acquisition, distribution, and utilization of all medicine products with any of the Federal legends such as "RX only" and medications administered or distributed in the hospital system. A current copy of such procedures shall be available for review by the Board.

(2) **General Responsibility.** The hospital drug room and PIC shall be responsible for the safe and efficient monitoring, distribution, control, purchasing, acquisition and accountability of all drugs including but not limited to Federal legend drug products used in diagnostic procedures, I.V. fluids, or contained in supply kits excluding blood bank products and reagents controlled by the laboratory. The other professional staff of the hospital facility shall cooperate with the pharmacist in meeting this responsibility.

(3) **Confidentiality.** The hospital drug room and PIC shall have responsibility for establishing policies for the security and integrity of any patient information, confidential and non-confidential, and must abide by all relevant State and Federal regulations applicable to the hospital system.

(4) **Adverse Drug Events Program.** The hospital drug room and PIC shall develop and maintain a program to monitor the actual and potential adverse drug events including pharmacist interventions, medication errors, and adverse drug reactions for all medications utilized in the hospital to include system wide programs if an integrated system is involved. Records indicating the tracking, review, and outcome of the Adverse Drug Events shall be kept current and available for Board inspection.

(5) **Investigational drug programs.** The PIC shall establish a policy for investigational drug use.

(6) **Review of medication orders.** The PIC shall cause medication orders to be reviewed by a pharmacist in a timely manner.

(7) **Pharmacists Visits.** The hospital drug room and PIC shall cause and document a minimum of 52 routine in-house visits per year to be made to a hospital with a drug room as required by health department rule OAC 310:667-21-2(a) et seq.

(A) No more than 2 visits in any 7-day period shall be counted towards this minimum.

(B) Visits in any calendar month shall be no less than 2.

(C) The PIC shall submit a report outlining issues encountered and decisions made during visits. A copy of this report shall be available in the hospital drug room for inspection by the Board.

(8) **Pharmacy and Therapeutics (P&T) Committee.** The PIC shall be a participating member in the Pharmacy and Therapeutics Committee.

(b) **Duties.** The duties of a PIC in a licensed hospital drug room, at a minimum, shall be the following:

(1) The training duties of the PIC are:

(A) Competency training regarding preparation and sterilization of parenteral medications prepared by appropriate hospital staff;

(B) Competency training of personnel concerning medicine incompatibilities and providing incompatibility information; and

(C) Training personnel in confidentiality of protected health and proprietary information and regarding the compliance with all federal and state laws and regulations applicable to the hospital drug room.

(i) Such rules regarding confidentiality of patient records are described in 535:15-3-14(e), the federal HIPAA regulations; and,

(ii) Such responsibilities for confidentiality shall be as set forth in 535:10-3-1.1 (a) (6) and 535:10-3-1.2 (a) (14) and the rules of this Title.

(D) Conducting initial and continuing competency training of all drug room personnel.

(2) Repackaging drug products including unit dose.

(3) Establishing procedures for procurement of all medicines used within the hospital system subject to approval of the medical and professional staff.

(4) Participating in the development and maintenance of a formulary for use within the hospital system.

(5) Maintaining and making available a sufficient inventory of medicines including antidotes and other emergency drugs approved by the medical and professional staff, for use within the hospital facility. In addition, current references, antidote information, and telephone numbers of regional reference centers such as Poison Centers and Drug Information Centers shall be maintained and readily available throughout the hospital.

(6) Maintaining oversight of the records of all transactions of the drug room required by applicable local, state, and federal law, and necessary to maintain accurate control and accountability for all medications.

(7) Participating in those aspects of the hospital facility's patient care evaluation programs that relate to medicine utilization and effectiveness.

(8) Cooperating fully with teaching and/or research programs in the hospital facility, if any.

(9) Implementing the policies and decisions of the appropriate committees of the medical and professional staff that deal with drug distribution.

(10) Meeting all inspection and other requirements of the Oklahoma Pharmacy Act, and those rules and regulations governing the practice of pharmacy within a hospital facility.

(11) Establishing guidelines for the safe and effective distribution of medicines intended for floor stock, and their subsequent administration.

535:15-6-6. Physical and library requirements

A hospital drug room shall have sufficient facilities to insure that drugs are prepared in sanitary, well-lighted and enclosed places, and which meet the other requirements of this Chapter.

(1) **Equipment and materials.** Each hospital drug room shall have sufficient equipment and physical facilities for proper compounding, dispensing and storage of drugs.

(A) For parenteral preparations:

(i) If a laminar hood is used, a hospital drug room shall comply with 535:15-9-6 and 535:15-9-10, 1 through 5.

(ii) If a laminar hood is not used, a closed system for parenteral admixtures should be utilized. If parenteral compounding must be done, an area must be designated for that activity. This area must be at least a counter used for only this purpose and be away from patient care areas. Acceptable aseptic techniques shall be used.

(B) A library shall be maintained which includes four of the following current references (not more than 2 years old or most recent). Current electronic sources may be substituted for two hard copy information sources:

(i) Drug interactions;
(ii) Drug compatibility;
(iii) Poison and antidote information;
(iv) Toxicology;
(v) Pharmacology;
(vi) Microbiology;
(vii) Patient counseling;
(viii) Rational therapy;
(ix) Dispensing information; and,
(x) U.S.P.

(2) **Storage.** All drugs bearing a federal legend such as "RX Only" and medications administered in the hospital shall be stored in designated areas within the hospital which are sufficient to insure proper sanitation, temperature, light, ventilation, moisture control, segregation and security. The storage shall be as directed by the PIC and shall remain under the supervision of such pharmacist.

(3) **Alcohol and flammables.** Alcohol and flammables shall be stored in areas that shall, at a minimum, meet basic local building code requirements for the storage of volatiles and such other laws, ordinances or regulations as may apply.

(4) **Unattended areas.** In the absence of authorized personnel in a hospital medication area, such area shall be locked.

(5) **Security.** All areas occupied by a hospital drug room shall be capable of being locked by key or combination to prevent access by unauthorized personnel.

535:15-6-7. Drug distribution and control

(a) **General.** The PIC shall establish written procedures for the safe and efficient distribution of medicine products. A copy of such procedures shall be on hand for inspection by the Board.

(b) **Responsibility.** The PIC shall be responsible for the safe and efficient distribution, control, and accountability of drugs. The other professional staff of the hospital facility shall cooperate with the PIC in meeting this responsibility. The PIC shall be responsible for, at a minimum, the following:

(1) Competency education and training of nursing personnel concerning admixture of parenteral products, and incompatibility and provision of proper incompatibility information.

(2) Prepackaging and/or preparing of drug products including certification of unit dose.

(3) Establishing of specifications for procurement of all materials, including drugs, chemicals, and biologicals used within the hospital system, subject to approval of the appropriate committee of the hospital system.

(4) Participating in the development and maintenance of a formulary for use within the hospital facility.

(5) Maintaining and making available a sufficient inventory of medicines, including antidotes and other emergency drugs, for use within the hospital facility. In addition, current references, antidote information, and telephone numbers of regional reference centers such as Poison Centers and Drug Information Centers shall be maintained and readily available throughout the hospital.

(6) Reviewing records of all transactions of the hospital drug room required by applicable local, state, and federal law, necessary to maintain accurate control and accountability for all medicine materials.

(7) Participating in those aspects of the hospital facility's patient care evaluation programs that relate to drug utilization and effectiveness.

(8) Developing a mechanism to implement the policies and decisions of the appropriate committees of the hospital that deal with drug distribution and drug utilization.

(9) Meeting all inspection and other requirements of the Oklahoma Pharmacy Act, and those rules and regulations applying to hospital drug rooms.

(10) Establishing floor stock guidelines for the safe and effective distribution of drugs intended for floor stock, and their subsequent administration.

(11) Fully cooperating with teaching and/or research programs in the hospital facility, if any.

(12) Prepackaging medications included in the hospital drug room formulary in 535:15-6-9.

(c) **Labeling.** Hospital drug room labeling requirements shall be as follows:

(1) **Labeling for use inside the hospital facility.** All drugs outside of the drug room intended for use within the facility shall be adequately labeled by the pharmacist or in their original container.

(2) **Labeling for use outside the hospital facility.** All drugs labeled by the pharmacist or licensed practitioner for

after hours dispensing to discharged or emergency room patients shall be labeled with the following:

(A) Name and address of the hospital facility,

(B) Date and identifying number,

(C) Name of the patient,

(D) Directions for use to the patient,

(E) Name of the prescribing practitioner,

(F) Initials of the dispenser,

(G) Required precautionary information regarding controlled substances,

(H) Such other accessory or cautionary information as may be required or desirable for proper use and safety to the patient, and

(I) The name of the drug, its strength, and the number of units dispensed.

(3) **Drugs added to parenteral admixtures.** Whenever any drugs are added to parenteral solutions, whether within or outside the direct and personal supervision of a pharmacist (D.Ph.), such admixtures shall be labeled with a distinctive supplementary label indicating the name and amount of the drug added, date and time of such addition, expiration date and time of admixture, and the initials of the persons (preparer and the verifier) responsible for the admixture.

(d) **Discontinued and outdated drugs.** The PIC shall develop and implement policies and procedures to insure that discontinued and outdated drugs, and containers with worn, illegible or missing labels are returned to the drug room for proper disposition.

(e) **Practitioner's orders.** Hospital drug room requirement regarding practitioner's orders shall be as follows:

(1) Drugs may be dispensed to specific patients only upon the written or verbal order of an authorized practitioner. A pharmacist or other authorized individual in a patient care area of the hospital facility must commit verbal ALI practitioner's orders to writing.

(A) **Authorization.** The appropriate hospital committee shall designate those ALI practitioners authorized to issue and accept orders for hospital patients.

(B) **Requirements.** Orders for drugs for use by inpatients of the facility shall, at a minimum, contain the patient name and room number, drug name, strength, directions for use, any relevant stop date or time, order date and time, and ALI practitioner's signature. A direct copy or facsimile of the order is to be provided to the drug room from which the order is to be processed.

(2) Orders for drugs for outpatients shall be considered prescriptions and must fulfill all of the requirements of a prescription identified within the Pharmacy Practice Act; and state and federal law and rules.

(f) **Controlled drug accountability.** The hospital facility shall establish effective written procedures and maintain adequate records as required by law and rule regarding the use and accountability of controlled substances and such other drugs as the hospital may designate.

(g) **Drug recall procedures.** The PIC shall develop and implement a written recall procedure that can be readily activated which assures that drugs involved, inside or outside the facility, are returned to the hospital drug room for proper disposition. All actions taken in this area are to be properly documented.

(h) **Records and reports.** The PIC shall develop a mechanism for maintaining and submitting as appropriate, such records and reports as are required to insure patient health, safety, and welfare. These should include the following:

(1) Adverse drug reaction reports,

(2) Floor stock inventories of night cabinets and emergency boxes,

(3) Drug list or formulary of the hospital drug room as required by state health department rules,

(4) Controlled substance inventory,

(5) Ethyl alcohol inventory,

(6) Pharmacy and therapeutics committee minutes; and

(7) Reports and records as may be required by law, and the rules of this chapter.

535:15-6-8. Emergency dispensing and pre-packaged medications

(a) **Emergency dispensing.** A pharmacist or ALI practitioner on duty may label and dispense an appropriate supply of a medication from the hospital drug room when ordered by an ALI practitioner for a patient of the hospital to take with them when dismissed. An appropriate supply would include only sufficient doses required from the time of dismissal until resumption of normal business hours of local pharmacies.

(b) **Pre-packaged medications.** A pharmacist may pre-package medications in sufficient amounts to meet the immediate needs of patients of the hospital. The pre-dispensed medications must be labeled and packaged properly as required under sub-section 535:15-6-7 (c) Labeling, excepting items B, C, D, and E, and adding the medication expiration date and lot number. Such pre-packaged medications shall be securely stored, and an accurate accounting of their use shall be kept.

(1) When such medications are ordered by an ALI practitioner, to be used after dismissal from the hospital, the prescribing ALI practitioner [with dispensing privileges] shall complete the medication label with the appropriate information including the patient's name, the ALI practitioner's name, appropriate directions for use, the date the medication is distributed to the patient, and an identifying number.

(2) The ALI practitioner who orders the medication shall be responsible for appropriate patient counseling and drug information dissemination.

535:15-6-9. Emergency room pre-packaged medications formulary

(a) Each hospital drug room may choose the medicines to be included in their emergency room (ER) pre-packaged medications formulary within the requirements and limits listed below. This formulary shall be included within the policies and procedures of the hospital drug room. These pre-packaged medications shall be administered only as allowed in 535:15-6-8 for a maximum of a 72-hour supply.

(b) Type of Medication defined or parameters for choice [Limits]

(1) Controlled Dangerous Substances (CDS):

(A) Hydrocodone / acetaminophen combination [one]

(B) Codeine/acetaminophen combination [one]

(C) Propoxyphene/acetaminophen combination [one]

(D) Hydrocodone containing antitussive preparation [one]

(2) ACE inhibitor: per ER formulary [two]

(3) Anti-nausea: per ER formulary [two]

(4) Anti-viral: per ER formulary [two]

(5) Anti-coagulant: per ER formulary [two]

(6) Antihistamine: per ER formulary [two]

(7) Anti-hypertensive: per ER formulary [three]

(8) Antimicrobial: per ER formulary [unlimited]

(9) Asthma: per ER formulary [one]

(10) Beta blocker: per ER formulary [two]

(11) Diuretic: per ER formulary [two]

(12) Ear: antibiotic/steroid or antibiotic/ steroid/pain combination

(13) Eye: antibiotic or antibiotic/steroid combination

(14) Miscellaneous:

(A) terbutaline

(B) oral contrast media

(15) Muscle relaxant: per ER formulary [two non-CDS]

(16) Pain: per ER formulary [two non-CDS]

(17) Proton pump inhibitor per ER formulary [one]

(19) Steroid: per ER formulary [three]

535:15-6-10. Access to drugs in absence of PIC or drug room supervisor

(a) **Absence of the PIC or the drug room supervisor.** During such times as the drug room may be unattended, advance arrangements shall be made for provision of drugs to the medical staff and other authorized personnel of the hospital facility by use of night cabinets and in emergency circumstances, by access to the drug room by authorized personnel.

(b) **Night cabinets.** IF NIGHT CABINETS ARE USED THE FOLLOWING SHOULD PREVAIL:

(1) In the absence of a pharmacist (D.Ph.), a supply of controlled dangerous substances may be kept in locked cabinet(s) or other enclosure(s) constructed and located outside of the hospital drug room area, to which only specifically authorized personnel may obtain access by key or combination, and which is sufficiently secure to deny access to an unauthorized person by force or otherwise.

(2) The PIC shall, in conjunction with the appropriate committee of the hospital facility, develop inventory listings of those drugs to be included in such cabinet(s) and shall insure that:

(A) Such drugs, available therein, are properly labeled;

(B) Only prepackaged drugs are available therein, in amounts sufficient for immediate therapeutic requirements;

(C) Whenever access to such cabinet(s) shall have been gained, written ALI practitioner's orders and proofs of use, if applicable, are provided;

(D) A method of documenting responsibility for the key(s) at all times, and their transfer from one authorized person to another, is established;

(E) All drugs therein are monitored weekly, and discrepancies are reported in the PIC's report.

(F) A complete review of all activity concerning such cabinet(s) is conducted no less than once per month; and,

(G) Written policies and procedures are established to implement the requirements of this paragraph.

(c) **Access to drug room.** Whenever any drug is not available from floor supplies or night cabinets, and such drug is required to treat the immediate needs of a patient whose health would otherwise be jeopardized, such drug may be obtained from the drug room in accordance with the requirements of this paragraph.

(1) One supervisory registered professional nurse and only one in any given shift is responsible for removing drugs from the hospital drug room. The responsible nurse may, in time of emergency, delegate this duty to another nurse.

(2) The responsible nurse shall, prior to being permitted to obtain access to the drug room, be designated by position in writing by the appropriate committee of the hospital facility; and shall receive thorough education and training in the proper methods of access, removal of drugs, and records and procedures required from the PIC.

(3) Such education and training shall be given by the PIC.

(4) The PIC shall require, at a minimum, the following records and procedures:

(A) The removal of any drug from the hospital drug room by an authorized licensed nurse must be recorded on a suitable record showing patient name, room number, name of drug, strength, amount, date, time and signature of nurse; and

(B) The drug room supervisor or the pharmacist shall properly and promptly check such record.

535:15-6-11. Administration of drugs to patients

(a) **General provisions.** Drugs shall be administered at a hospital facility in accordance with the policies and procedures of that facility.

(b) **Self-Administration.** Self-administration of drugs by patients shall be permitted per hospital policy only when specifically authorized by the prescribing ALI practitioner per hospital policy, provided the drugs to be self-administered have been identified by a licensed pharmacist or ALI practitioner.

535:15-6-12. Medication from other sources

(a) **Drugs from outside sources.** Whenever drugs or pharmaceutical services are obtained from outside of the hospital facility on a regular basis, arrangements shall be made to insure that such outside pharmacists provide their services in a manner that assures the safety of the patients and properly serves the need of the hospital drug room. Such arrangements shall be made in writing and shall at a minimum specify that:

(1) A pharmacist shall act in the capacity of a PIC, and therefore, shall be subject to these rules and regulations.

(2) A pharmacist shall provide on-call services at all times.

(3) The hospital drug room shall provide adequate storage facilities for such drugs.

(4) All drugs supplied shall be labeled so as to insure that recalls can be affected and that proper control and supervision of such drugs may be exercised. (Unit dose packaging is recommended.)

(b) **Emergency sources of medications.** Procedures shall be made, in writing, for the hospital facility to obtain emergency medications from a neighboring facility, retail pharmacy, or other source of drugs. (Unit dose packaging is recommended.)

(c) **Medications from home.** Whenever patients bring drugs into a hospital facility, such drugs shall not be administered unless they can be precisely identified and the licensed prescribing practitioner has specifically indicated on the patient chart that the patient is to receive their own medications.

535:15-6-13. Investigational drugs

(a) **Use within hospital.** Policies and procedures of the drug room shall reflect the use of investigational drugs within the hospital facility.

(b) **Approval for use.** The appropriate committee of the hospital shall approve all investigational drugs for use within a hospital.

(c) **Labeling and administration information.** All investigational drugs shall be labeled in accordance with this Subchapter with the drug's investigational status identified on the label. In addition, the individual responsible for the administration of the drug must be provided with complete information regarding its use.

(d) **Storage.** Investigational drugs shall be stored in an area separated from approved pharmaceuticals and shall be secured.

535:15-6-14. Drug storage stock inspections

(a) The PIC or his appropriate designee, shall conduct an inspection of all drug storage areas within the hospital on at least a monthly basis.

(b) This monthly drug storage area stock inspection shall verify at least the following (see 535:15-6-5 (a) for additional requirements):

(1) Drugs for internal use are stored separately from drugs and disinfectants for external use.

(2) Drugs requiring special storage conditions to insure their stability are properly stored.

(3) No outdated drugs are stocked in the facility and are removed from the facility not more than 6 months after the expiration date.

(4) Distribution and administration of controlled substances are properly and adequately documented and reported.

(5) Emergency drugs are adequate and in proper supply.

(6) All necessary and required security and storage standards are met.

(7) Metric-apothecaries' weight and measure conversion tables and charts are reasonably available to all medical personnel.

(8) Policies and procedures of the hospital drug room are followed.

535:15-6-15. Non-distributive roles of pharmacists

The policies and procedures of the hospital drug room shall reflect the scope of non-distributive roles carried out by the pharmacist of the hospital system.

535:15-6-16. Performance improvement

(a) **Purpose.** As a part of the hospital or health system's performance improvement program, the quality and appropriateness of patient care services provided by the drug room shall be monitored and evaluated through a planned and systematic approach to improving performance.

(b) **Responsibility.** The PIC is responsible for assuring that the process described in this section is implemented to assure safe use of drugs for good patient outcomes.

(1) The Board recommends the PIC serve as a voting member of the hospital wide Performance Improvement Committee.

(2) The Board recommends the PIC assume a leadership role within the hospital or health system for the medication-use process performance improvement (including dispensing, administration, monitoring, prescribing, and education) across the continuum of care.

(3) The PIC shall work in collaboration with patients, prescribing practitioners, nurses, and other health care providers in improving the medication use process.

(c) **Measurement.** The drug room shall have a systematic process in place to collect data and measure performance related to the medication-use process.

(d) **Assessment.** The drug room shall assess data to identify ways to improve the medication-use process.

(e) **Performance improvement.** The drug room shall achieve and sustain improved performance in the medication-use process.

(f) **Documentation.** The process described in (a) through (e) of this Section is recorded and documented in a manner consistent with the facility's overall performance improvement plan.

535:15-6-17. Board of Pharmacy inspections

(a) The Oklahoma State Board of Pharmacy's qualified designee shall inspect all aspects of the management and operation of all hospital drug rooms in the state of Oklahoma, to verify compliance with the law, the rules of this Title, and such other standards as may be appropriate to insure that the health, safety and welfare of patients of the facility serviced by the hospital drug room are protected.

(b) Any discrepancies or deficiencies noted at inspection shall be corrected.

535:15-6-18. Drug room training area

(a) A licensed hospital drug room may apply for a training area certificate after meeting the requirement in 535:10-5 and 535:25.

(b) If approved by the Board, such training area certificate enables the drug room to serve as a licensed training area so long as a qualified pharmacist preceptor is present and supervising each intern working in the drug room, as required in 535:10-5.

(c) Each drug room training area, pharmacist preceptor and intern shall meet requirements in 535:10-5.

535:15-6-19. Violations

(a) Unlawful acts are described in the Oklahoma Pharmacy Act.

(b) Hospital drug room rules of conduct, violations of rules of conduct, and rules for all applicants are found in 535:25.

(c) Rules of conduct and violations of rules of conduct for PIC are found in 535:10-3.

(d) Penalties for violations of this Title, the Oklahoma Pharmacy Act and federal and state laws and rules are listed in Title 59 O.S. Section 353.26.

[OAR Docket #03-1052; filed 5-28-03]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 20. MANUFACTURERS, PACKAGERS, AND WHOLESALERS

[OAR Docket #03-1053]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Manufacturers
535:20-3-1 [AMENDED]
AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, Sec 353.12 through 353.18; Sec. 353.20, and Sec. 353.24 - 353.26.
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Failure of the Legislature to disapprove the rules resulted in approval on May 21, 2003
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SUPERSEDED EMERGENCY ACTION:
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
The revision in 535:20-3-1 clarifies the manufacturer licensure requirement. This revision puts in plain easy to understand language the manufacturer licensure requirement that exists in the Oklahoma Pharmacy Act in Title 59 O.S. Section 353.18 (B).

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 3. MANUFACTURERS

535:20-3-1. Manufacturer permit

(a) A manufacturer permit entitles the permit holder to manufacture and wholesale Rx Only drugs (prescription drugs) from the licensed location.

(b) A manufacturer permit is only valid for the name, ownership and location listed on the permit.

(c) A new permit is required within 10 days if name, ownership or location changes.

(d) Each manufacturing location must be licensed.

(e) Each manufacturer whose product is sold in Oklahoma is required to obtain and maintain an Oklahoma manufacturer permit.

[OAR Docket #03-1053; filed 5-28-03]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 25. RULES AFFECTING VARIOUS REGISTRANTS

[OAR Docket #03-1054]

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PERMANENT final adoption
RULES:
Subchapter 7. Rules of Registrant Conduct
535:25-7-6 [AMENDED]

AUTHORITY:
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ANALYSIS:
It adds failure to report violations penalty to the conduct requirements in 535:25-7-6. These amended rules add to registrants such as interns, technicians, and facilities, etc. conduct requirements.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 7. RULES OF REGISTRANT CONDUCT

535:25-7-6. Governing body

(a) A registrant will recognize the State Board of Pharmacy as the governing body in the State of Oklahoma and report to them any violation of pharmacy laws or regulations that may come to ~~his~~ their attention.
(b) A registrant who fails to report such violations will be subject to Board action against their license, permit or certificate.

[OAR Docket #03-1054; filed 5-28-03]

TITLE 565. OKLAHOMA BOARD OF PRIVATE VOCATIONAL SCHOOLS CHAPTER 10. LICENSURE AND REGULATION OF PRIVATE VOCATIONAL SCHOOLS AND REPRESENTATIVES

[OAR Docket #03-2026]

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PERMANENT final adoption
RULES:
Subchapter 5. Fees
565:10-5-1 [AMENDED]
565:10-5-4 [AMENDED]
565:10-5-4.1 and 565:10-5-4.2 [NEW]
565:10-5-5 [AMENDED]
Subchapter 7. Facilities and Equipment
565:10-7-1 [AMENDED]
Subchapter 9. Surety Bonds
565:10-9-1 [AMENDED]
565:10-9-5 [AMENDED]
Subchapter 11. School Operation
565:10-11-1 [AMENDED]
565:10-11-4 [AMENDED]
565:10-11-6 [AMENDED]
Subchapter 19. Penalty
565:10-19-2 [NEW]
Subchapter 23. Seminars, Workshops and Short Courses
565:10-23-10 [NEW]
Subchapter 27. Financial Statements and Financial Stability
565:10-27-2 [AMENDED]
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565:10-5-4 [AMENDED]
565:10-5-4.1 and 565:10-5-4.2 [NEW]
Subchapter 9. Surety Bonds
565:10-9-1 [AMENDED]
Subchapter 11. School Operation
565:10-11-1 [AMENDED]
Subchapter 23. Seminars, Workshops and Short Courses
565:10-23-10 [NEW]
Subchapter 27. Financial Statements and Financial Stability
565:10-27-2 [AMENDED]
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Register publication:
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ANALYSIS:
The rules clarify the items required to be submitted for a change of school location, amend requirements for enrollment agreements to provide the date the contract was signed and the title of the course enrolled, and require a school to maintain a permanent transcript and make available to the student a copy of their transcript, diploma or completion certificate. The rules provide an additional option that the schools can use in their advertising to advise the public that the school is licensed and provide an exemption by the Board from this requirement if adequate justification is furnished. The rules provide additional financial stability requirements for licensed schools and would allow the Board to increase the amount of bond required for schools that do not meet these requirements. The rules expand the requirements for schools posting a Certificate of Deposit in lieu of bond to require the bank to be located in Oklahoma and require the Certificate of Deposit to be held in safe keeping at the bank and not be released without the written authorization of the Board. The rules reflect statutory fee changes, provide rules for the annual School Workshop required by 70 O.S. 21-106, and provide for rules required by 75 O.S. 506 (C) for waiver of administrative fees imposed by the Board.
CONTACT PERSON:
Dennis Rea, Board Director, 2200 N. Classen Blvd., Suite 1010, Oklahoma City, OK 73106. (405) 521-2225, Facsimile: (405) 528-3366

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A). WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 5. FEES

565:10-5-1. School fees

(a) **Main school fee.** Private schools shall pay the following base fee per license issued by the Board: A fee of ~~Seven Hundred Fifty Dollars ($750.00)~~ One Thousand Dollars ($1,000.00) shall be paid to the Board for the issuance of a license under 70 O.S. § 21-103, and a fee of ~~Three Hundred Seventy-five Dollars ($375.00)~~ Five Hundred Twenty Five Dollars ($525.00) shall be paid to the Board for each renewal of a license. [70:21-106 (C)(1)]

(b) **Branch school fee.** In addition to the fees required for the main school location, each private school shall pay an additional fee of ~~Two Hundred Fifty Dollars ($250.00)~~ Three Hundred Dollars ($300.00) for each in state branch and a fee of ~~Two Hundred Fifty Dollars ($250.00)~~ Three Hundred Dollars ($300.00) for each out of state branch as defined by 70 O.S. § 21-101. Each branch which is not located in the same state as its main school or which does not offer substantially the same curriculum as is offered at the main school shall be considered to be a separate private school. Upon application for a license or renewal of license, each private school shall designate a main school location. [70:21-106 (C)(2)]

565:10-5-4. Additional fees

In addition to the licensing fees, the following fees will be charged for changes after a license is issued:

(1) Changes in the catalog or approval of new catalog, ~~$15.00~~ Fifty Dollars ($50.00).

(2) Change of school location, Twenty Five Dollars ($25.00)." [70:21-106(C)(3)]

565:10-5-4.1. Workshop fees

A fee of One Hundred Dollars ($100.00) shall be paid to the Board for attendance at a school workshop by any of the school's personnel. [70:21-106 (C)(4)]

565:10-5-4.2. Licensing inquiry packet fee

The fee for each licensing inquiry packet shall be Twenty-five dollars ($25.00). [70:21-106 (D)]

565:10-5-5. Non-refundable fees

~~Licensing fees~~ Fees are not refundable.

SUBCHAPTER 7. FACILITIES AND EQUIPMENT

565:10-7-1. Facilities

(a) **Physical requirements.** The building, classrooms, equipment, furniture, grounds, instructional devices, instructional facilities, and other physical requirements of the educational program shall be appropriate and shall contribute directly to the achievement of the educational objectives of the institution.

(b) **Health standards.** The physical plant shall meet all safety requirements and health standards and shall have adequate lighting, heating, and ventilation.

(c) **Fire, safety and sanitation.** The plant and facilities shall be in compliance with any local or state laws given, particularly with respect to fire, safety and sanitation.

(d) **Changes to school facility.** Extensive remodeling, repairs, or additions to existing buildings shall be delineated by plans and specifications submitted to the Board.

(e) **Insurance.** Adequate insurance shall be maintained in force at all times covering buildings and equipment of the school.

(f) **Change of location.** The Board must be notified of a change of location prior to moving and a copy of a new floor plan and fire department inspection must be submitted for the new location. In addition the school must submit a revised catalog and enrollment agreement, with checklists, and the appropriate fees in Subchapter 5 of this Chapter.

SUBCHAPTER 9. SURETY BONDS

565:10-9-1. Bond requirement and amount

(a) **Bond amount.** Before the Oklahoma Board of Private Vocational Schools issues a license to a school or a representative thereof, the school shall have filed with the Board a corporate surety bond and such bond shall cover all branches operated by the private school, and shall reflect dates of coverage that are congruent with the yearly licensing period of July 1 through June 30 of the following year. Conditioned

that the private school will faithfully perform its agreements and contracts with its students, the amount of required corporate surety bond will be based on ten percent (10%) of the amount of student payments collected by the school, rounded upwards to the nearest thousand dollars, with a maximum bond of $50,000.00. Determination of the required bond amount for each school will be based on the total amount of student payments contained in the school's financial statement of the last fiscal year, submitted for licensing. If the school does not meet the standards for financial stability in OAC 565:10-27, the Board may increase the amount of surety bond required by the school to a maximum of Two Hundred Fifty Thousand Dollars($250,000.00).

(b) **Signature of surety.** The surety shall be signed by a solvent surety company authorized to do business in Oklahoma and shall be made payable to the State of Oklahoma.

565:10-9-5. Certificate of deposit

In lieu of the corporate surety bond, a school may provide a certificate of deposit made out in favor of the Board drawn on a state or federal bank or savings and loan association ~~as may be acceptable to the Board~~ located in Oklahoma and which is authorized to conduct business in the State of Oklahoma. Such certificate of deposit shall be subject to all of the requirements, uses and purposes applicable to the surety bond under these regulations and applicable provisions of law. Any interest received on such certificate of deposit shall ~~inure to the benefit~~ be the property of the school providing the certificate, and the Board shall execute the appropriate instruments to assign or transfer such interest to the school. The certificate of deposit shall be held in safe keeping by the bank or savings and loan and shall not be released without the written permission of the Board.

SUBCHAPTER 11. SCHOOL OPERATION

565:10-11-1. Personnel

(a) **Submission of training or work experience.** The school's administrators, directors, owners, and instructors shall be qualified by reason of preparation and experience. Evidence of such training, preparation, and experience shall be submitted on forms provided by the Board on each administrator, director, and instructor. The accuracy of such information shall be attested to by the person responsible for the operation of the school.

(b) **Reputation and character.** The school's administrators, directors, owners, agents and instructors shall be of good reputation and moral character. The Board may consider a conviction or a plea of guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside, to constitute a violation of this rule. A copy of the record of conviction, certified by the clerk of the court entering the conviction, shall be conclusive evidence of conviction.

(c) **Director qualification.** The director or manager of the school must be familiar with educational administration and methods as well as sound business practices, including:

(1) The development of a curriculum capable of preparing students for specific job entry levels.

(2) The selection of an instructional staff competent in subject matter and teaching techniques to implement the curriculum.

(d) **Instructor qualifications.** Instructors must be found to be qualified by education and experience background, and must meet the following qualifications as minimum requirements.

(1) Be a person of good character.

(2) Be a graduate of a recognized college or university and hold a baccalaureate degree with a minimum of 12 credit hours in a field directly related to the subject(s) he/she is teaching or,

(3) Have two years minimum full time work experience within the last seven years in the field in which he/she is teaching or,

(4) Have a license issued by a state or the federal government in the field in which he/she is teaching, or have a nationally recognized professional certification in the field he/she is teaching, as approved by the Board.

(5) The Board may waive these requirements if the school presents evidence that the instructor has met other requirements sufficient to provide adequate instruction in the subjects being taught, as approved by the Board.

(e) **Instructor changes and terminations.** The Board will be notified of any terminations or changes of instructors within thirty (30) days.

(f) **Authorized administrative official.** One person must be designated as the authorized administrative official of the school. Such duly designated official shall have sole authority to represent the school and act in all matters involving the school's responsibilities under the law.

(g) **Responsible for school operation.** The school director or administrator should be recognized as the authorized administrative official who is directly responsible for the school program, including methods of instruction, selection and employment of teachers, representatives, and/or other school employees organization of classes, maintenance of facilities, advertising, maintenance of administrative and overall classroom records, business professional ethics, development of policies, and the one who is directly responsible for meeting school obligations under terms of its license.

(h) **Qualifications of authorized administrative official.** The authorized administrative official of the school must be a person of good moral character. He/she should be a graduate of an approved college or university with a major in the general field related to the direct objectives of the school's efforts, or have suitable experience as a school administrator or as a teacher in one or more of the major subjects offered by the school, or in lieu thereof, he/she must possess other qualifications which are considered by the Board as being substantially equivalent.

(i) **Employment status of authorized administrative official.** The authorized administrative official or the administrative official's designated representative must devote his/her full time to the operations of the school while it is in session.

(j) **Mandatory school workshop.** The Board shall develop and administer workshops which emphasize rules relating to relicensing and daily operation of a school. [70:21-106 (C)(4)]

(1) At least one person from each school who is responsible for the operation of the school shall be required to participate in an annual workshop conducted by the Board. [70:21-106 (C)(4)]

(2) The Board shall notify each school of the date, time, and location the workshop is scheduled at least thirty (30) days prior to the workshop.

(3) Workshop registration forms and fees must be submitted to the Board not less than 15 days prior to the workshop.

(4) Schools that do not submit the workshop registration form with fee in accordance with the Board's rules or do not participate in the workshop, may be fined in accordance with 565:10-19-1(b) and O.S. 70 §21-103(B).

565:10-11-4. Student records

(a) **Required student records.** The school shall maintain individual records for each student enrolled, which are current, complete and accurate, and will reveal the following information:

(1) An enrollment agreement containing, but not limited to, the following information:

(A) Name and address.

(B) Starting date.

(C) Student and school official signatures and date signed.

(D) Title of the course enrolled ~~or courses within a curriculum~~.

(E) Total instructional hours.

(F) Payment schedule and total cost.

(G) Refund policy.

(H) A statement to the effect that the individual signing the contract or application has read and understands all aspects of the agreement.

(I) The holder in due course rule.

(J) Three day cancellation notice in accordance with OAC 565:10-11-3(b)(2).

(2) Date student~~s~~ enrolled and date completed.

(3) Grades received on completed assignments.

(4) All monies owed and/or paid by the student to the school.

(5) Student attendance, which shall be kept daily indicating present or absent.

(6) Counseling records.

(7) A transcript will be maintained permanently.

(8) Other records which may have a direct bearing on factors involving continued approval of the school.

(b) **Inspection of records.** Records of students shall be open for inspection by properly authorized officials of the Oklahoma Board of Private Vocational Schools.

(c) **Availability of student records.** Student records shall be easily available and readily accessible for use and review by authorized officials of the school and authorized representatives of the Board.

(d) **Credit for previous training.** A school which gives credit toward a course based on prior experience or previous training shall record such credit on the school's records and the student's official transcript as satisfactory and list the portion of the course for which the student is given credit. A copy of the transcript reflecting courses for which a student is given credit shall be attached to the school's official transcript and shall be retained as part of the student's permanent records.

(e) **Completion certificate.** The school shall award a completion certificate or diploma ~~and make available a transcript~~ to each student who satisfactorily completes a course. If the student has not met all financial obligations to the school, the certificate of completion or diploma may be held until the debt is paid.

(f) **Official transcript.** The school shall maintain a permanent transcript for each student showing the name of the course, all subjects within the course attempted or completed and the grade received for each, and the date the student graduated or dropped. The school shall make available to each student a copy of their official transcript. If a fee is charged by the school, such fee shall be clearly stated in the school catalog. If the student has not met all financial obligations to the school, the transcript may be held until the debt is paid

565:10-11-6. Advertising

(a) A licensed school shall not advertise through any medium that it offers courses that the school has not been licensed to offer.

(b) Printed catalogs, bulletins, or prospectus information distributed in any manner must be specific if references are made to entrance requirements, curricula, description of courses, tuition, fees, refund policies, or graduation requirements. Such references when made shall not be so stated as to reflect information which may be interpreted as different than that which is covered under the ~~approval~~ license issued by the Oklahoma Board of Private Vocational Schools.

(c) Schools holding a franchise to offer specialized courses or subjects not open to other schools shall not advertise such courses in any manner as to impugn the value and scope of courses offered by other schools that do not hold such franchise. Such advertising of special subjects or courses offered under a franchise shall be limited to the subject or courses offered.

(d) Schools shall not use any name, title, or other designation by way of advertising or otherwise, that is misleading or deceptive as to character of the institution, its course of instruction, or its influence in obtaining employment for students.

(e) Schools shall not use a photograph, cut, engraving, or illustration in catalogs, sales literature, or otherwise in such a manner as to convey a false impression as to the size, importance, or location of the school or its equipment.

(f) Schools shall not use endorsements, commendations, or recommendations by students in favor of the school unless with the written consent of the writer and without any offer of

financial compensation. Such material shall be kept on file by the school.

(g) Schools shall publish their schedules of tuition rates, methods of payment, and refund policy in their catalog or on a separate rate sheet which ~~may~~ must be ~~attached~~ an addendum to the catalog and shall not deviate from such published rates and policies.

(h) Schools shall not make or cause or permit to be made or publish any false, untrue, or deceptive statement of representation by way of advertising or otherwise, concerning other private schools or their activities in attempting to enroll students, or concerning the character, nature, quality, value or scope of any course of instruction or educational service offered, or in any other material respect.

(i) A school shall not solicit students to enroll by means of "blind" advertisement or advertisements in the "help wanted" or other employment columns of newspapers and publication.

(j) Schools shall not make false, untrue or deceptive statements of representation regarding the opportunities for employment in any vocation or field of activity which may be available to a student or prospective student upon completion of any given course of instruction or educational service.

(k) The title of the course as advertised must be specifically identifiable in the current approved catalog and neither the skill objective nor the salary prospective shall be exaggerated.

(l) Advertising by licensed schools shall clearly indicate that the school is licensed with the inclusion of the statement, "Licensed by the Oklahoma Board of Private Vocational Schools" ~~or~~ ,"Licensed by the O.B.P.V.S.", or Lic OBPVS. This requirement may be waived if the school presents evidence that the wording does not meet the media specifications and the actual verbiage used is not construed as misleading.

(m) The authorized administrative official or any of their representatives shall not at any time, nor in any willful manner, advertise or otherwise furnish to prospective students such information regarding another licensed school which is considered by the Board to be adversely critical and/or untruthful of the quality, content, length, cost or objective of a course offered by such school, or of the professional, financial, or moral qualifications or standings of the school, its administrators, director, instructors or representatives at the community, state, or national level.

SUBCHAPTER 19. PENALTY

565:10-19-2. Waiver of administrative penalties and fines

In accordance with 75 O.S. §506, the Board may waive or reduce any administrative penalty or fine for violation of the Board's rules or applicable statutes by a small business, as defined in 75 O.S. §502. [75:506]

SUBCHAPTER 23. SEMINARS, WORKSHOPS AND SHORT COURSES

565:10-23-10. Mandatory school workshop

At least one person from each school who is responsible for the operation of the school shall be required to participate in an annual workshop conducted by the Board in accordance with the rules established in 565:10-11-1(j). [70:21-106 (C)(4)]

SUBCHAPTER 27. FINANCIAL STATEMENTS AND FINANCIAL STABILITY

565:10-27-2. Financial stability

A school shall have a ratio of current assets to current liabilities of not less than 1:1.and ~~The~~ the school ~~or its owner(s)~~ shall have adequate financial resources to meet its responsibilities and to ensure the continuity of services. ~~The debt factor must not be a burden to the performance of the institution.~~ Upon the failure of either of these requirements, the Board may require the school bond to be increased as provided in OAC 565:10-9-1(a). ~~If the owner(s) chooses to file a personal financial statement, it must include~~ To further assure adequate financial resources, the owners(s) may be permitted to file a personal financial statement along with a notarized statement stating that the owner(s) will take financial responsibility for the school and will furnish adequate financial resources for its operation.

[OAR Docket #03-2026; filed 6-5-03]

TITLE 570. STATE BOARD FOR PROPERTY AND CASUALTY RATES
CHAPTER 10. FILING PROCEDURES, INTERPRETATIONS AND ADDITIONAL BOARD RULES

[OAR Docket #03-1063]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
570:10-1-36. Use of lack of prior insurance in underwriting or rating [NEW]
570:10-1-37. Use of auto accidents in underwriting or rating [NEW]
AUTHORITY:
State Board For Property & Casualty Rates, 36 O.S. §§ 901.1, 902.2 and 907.
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INCORPORATION BY REFERENCE:
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ANALYSIS:
The purpose of rule 570:10-1-36 is to prohibit insurers from penalizing the insurance consumer for not having continuous prior liability coverage that is not required by Oklahoma's Financial Responsibility Law, Chapter 7 of Title 47. The purpose of rule 570:10-1-37 is to prohibit insurers from penalizing the insurance consumer for automobile accidents when the insurance consumer was less than fifty percent (50%) at fault pursuant to the contributory negligence laws of this state.
CONTACT PERSON:
Karl F. Kramer, Assistant General Counsel, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2003:

570:10-1-36. Use of lack of prior insurance in underwriting or rating

Insurers shall not refuse to insure, surcharge or place an applicant for insurance in a higher priced program or plan if the applicant is not required to have insurance pursuant to Chapter 7 of Title 47 of the Oklahoma statutes. An insurer shall not be prohibited from applying a rating plan approved by the Board.

570:10-1-37. Use of auto accidents in underwriting or rating

Insurers shall not use auto accidents of an insured for either underwriting or rating purposes when the insured is less than fifty percent (50%) at fault. If a payment has previously been made, the burden of conclusively establishing the percentage of fault shall rest with the insured. An insurer's normal underwriting guidelines shall apply when the insured is unable to provide the required proof.

[OAR Docket #03-1063; filed 5-29-03]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 10. FACILITIES MANAGEMENT

[OAR Docket #03-2036]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Use of Public Areas of Capitol Building and Plazas [REVOKED]
580:10-1-1 through 10-12-4 [REVOKED]
Subchapter 2. General Provisions [NEW]
580:10-2-1 through 10-2-5 [NEW]
Subchapter 5. Use of Public Areas of Capitol and Plazas [NEW]
580:10-5-1 through 10-5-9 [NEW]
Subchapter 7. Use of State Capitol Park [NEW]
580:10-7-1 through 10-7-3 [NEW]
Subchapter 9. Operation of Buildings Owned, Used or Occupied by or on Behalf of the State [NEW]
Part 1. Smoking [NEW]
580:10-9-1 through 10-9-4 [NEW]
Part 3. Use of Capitol Conference Center and the Concourse Theater [NEW]
580:10-9-8 through 10-9-10 [NEW]
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Subchapter 5. Use of Public Areas of Capitol and Plazas [NEW]
580:10-5-1 [RESERVED]
580:10-5-2 [NEW]
Subchapter 9. Operation of Buildings Owned, Used or Occupied by or on Behalf of the State [NEW]
Part 1. Smoking [NEW]
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Subchapter 1. Use of Public Areas of Capitol Building and Plazas [REVOKED]
580:10-1-1 through 580:10-1-4 [REVOKED]
Subchapter 2. General Provisions [NEW]
580:10-2-1 through 10-2-5 [NEW]
Subchapter 5. Use of Public Areas of Capitol and Plazas [NEW]
580:10-5-1 [NEW]
580:10-5-3 through 580:10-5-8 [NEW]
Subchapter 7. Use of State Capitol Park [NEW]
580:10-7-1 through 10-7-3 [NEW]
Subchapter 9. Operation of Buildings Owned, Used or Occupied by or on Behalf of the State [NEW]
Part 3. Use of Capitol Conference Center and the concourse Theater [NEW]
580:10-9-8 through 10-9-10 [NEW]
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n/a

ANALYSIS:

The revocation of Subchapter 1 is necessary to facilitate the reorganization of Chapter 10 effected by the adoption of new rules. Subchapter 2 is new and sets out general provisions and definitions which apply to the administration of Chapter 10 rules.

Rules in Subchapter 5 establish information for use of the State Capitol and Capitol Plazas which include operating hours, entrances and access to the State Capitol, defining areas available for public use, reservation request and approval, procedures for use of the public areas, authorized and prohibited activities and waiver request provisions.

Rules in Subchapter 7 establish requirements and procedures for use of the State Capitol Park necessary because of the transfer of statutory responsibility for the park from the Department of Tourism to the Department of Central Services. The rules include reservation request and approval procedures for use of the public areas, authorized and prohibited activities and waiver request provisions.

Rules in Subchapter 9 establish requirements and procedures for use of public meeting rooms as defined in this chapter which include reservation request and approval procedures for use of public meeting rooms and conditions for their use. New rules in Subchapter 9 also establish information and procedures for inspection of designated smoking rooms in public owned or operated buildings and inspection results reporting to the Department of Central Services so that compliance with Senate Bill 1553, specifically 21 O.S., Section 1247.A.(5.c.), may be efficiently and expeditiously verified.

Subchapters 5, 7 and 9 establish procedures and guidelines for use of the Capitol, Capitol Park and public meeting rooms to ensure safety for visitors and state employees as well as protect the Capitol, public meeting rooms, their contents, the Plazas, and the State Capitol Park.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. USE OF PUBLIC AREAS OF CAPITOL BUILDING AND PLAZAS [REVOKED]

580:10-1-1. Purposes; Department of Central Services' responsibilities and authority [REVOKED]

~~(a) Any citizen of the State of Oklahoma may request the use of the public areas of the Oklahoma State Capitol Building and the South Plaza, the North Plaza, or the West Plaza of the State Capitol Building.~~

~~(b) The Department of Central Services is statutorily responsible for adopting rules for:~~

~~(1) Preserving the State Capitol and the Plazas from defacement;~~

~~(2) Protecting the property, occupants and historic treasures in the State Capitol;~~

~~(3) Assuring that the use of the State Capitol and the Plazas will not pose an increased risk to the state due to overcrowding in the event of fire or other emergency; and~~

~~(4) Assuring that the corridors and other areas of the State Capitol and the Plazas do not become congested to the extent that individuals employed in these areas are unable to effectively carry out their functions.~~

~~(c) The rules contained in OAC 580:10-1-1 are designed to assure that the existing state law and that public funds not be expended for private purposes. Approval will be revoked and the event or exhibit discontinued when the Department of Central Services' rules or state law have been violated or when the conditions set out in the reservation have been breached.~~

~~(d) The Director of the Department of Central Services reserves the right to deny or restrict access to the State Capitol and the Plazas for any reason. The Director of the Department of Central Services also reserves the right to waive any of the rules contained in OAC 580:10-1 if such waiver is in the best interest of the state.~~

580:10-1-2. Definitions [REVOKED]

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

~~**"Art exhibit"** means an exhibit composed solely of paintings, sculptures, or other artistic media, not involving a gathering of people. All art exhibits must be approved by the State Capitol Preservation Commission and will be placed on the walls of the east and/or north galleries only. In the case of art that cannot be hung on the walls, tables and pedestals will be used in the east and/or north galleries only.~~

~~**"Capitol"** means the Oklahoma State Capitol Building.~~

~~**"CPC"** means the Oklahoma State Capitol Preservation Commission.~~

~~**"Event"** means an assembly or gathering of people for a single purpose. Such gatherings shall not exceed 24 hours in duration.~~

~~**"Exhibit"** means any display that does not involve a gathering of people, is not considered art work, and is free standing, leaving a clear aisle way of at least six (6) feet on either side and no more than two aisles.~~

~~**"Plazas"** mean the North Plaza, the South Plaza, and the West Plaza of the State Capitol Building only. These areas do not include the grounds or sidewalks adjacent to the North Plaza, the South Plaza, or the West Plaza~~

~~**"Private purpose event or exhibit"** means an assembly or gathering of people for a private purpose that is closed to the general public or requires admission fees or special admission requirements.~~

~~**"Public area"** means those areas in the Capitol open to the general public for general visitation.~~

~~**"Public purpose event or exhibit"** means an event that shall relate to a public purpose (i.e., events and exhibits sponsored by a state agency or a political subdivision shall be considered a public purpose).~~

580:10-1-3. Use of public areas of Capitol and Plazas [REVOKED]

~~The provisions contained in 580:10-1-3 outline the process for requesting the use of the public areas of the Capitol or the Plazas for exhibits, art exhibits and events. They also contain the rules pertaining to the use of the Capitol and the Plazas.~~

~~(1) **General Provisions.** The provisions in 580:10-1-3(1)(A) through (D) apply to all events, and to exhibits of ten (10) working days or less. Such events and exhibits require the prior written approval of the Department of Central Services.~~

~~(A) An application must be completed and received including a check for applicable fees by the Department of Central Services at least ten (10) working days prior to the date of the proposed event or exhibit.~~

~~(B) Requests must be received between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding official state holidays.~~

~~(C) Reservations may contain additional conditions and time limitations consistent with the rules in OAC 580:10-1 and state law.~~

~~(D) If a request for a reservation is denied, a letter will be sent to the requesting party indicating the reason(s) for the denial.~~

~~(2) **Provisions for events.** In addition to the provisions in 580:10-1-3(1), the provisions in 580:10-1-3(2) shall apply to events.~~

~~(A) The Department of Central Services reserves the right to limit the number of events in an area in one day and to restrict events so they will not occur concurrently. All events will be reserved on a first-come, first-served basis (see 580:10-1-4(d)(2) for exceptions).~~

~~(B) Reservations issued by the Department of Central Services authorize events to be held in the requested areas only.~~

~~(3) **Provisions for art and non-art exhibits.** The provisions in 580:10-1-3(3) shall apply to art and non-art exhibits.~~

~~(A) Approval for exhibits of more than ten (10) working days will be given by the CPC.~~

~~(B) Approval for all art exhibits will be given by the CPC.~~

~~(C) For information regarding the process for approval by the CPC for exhibits of more than ten (10) working days, and/or art exhibits, please contact the Department of Central Services.~~

~~(D) Aisle ways will be maintained as in the definition of "exhibit" in 580:10-1-2.~~

~~(4) **Rules for all events, exhibits and art exhibits.** The rules in 580:10-1-3(4) apply to all events, exhibits and art exhibits. They are intended for the safety of those visiting the Capitol as well as the safety of the employees in the building and its contents.~~

~~(A) No structures will be erected nor will any other miscellaneous paraphernalia be allowed anywhere inside the Capitol or on the Plazas during events unless prior approval has been obtained by the Department of Central Services~~

~~(B) No intoxicating beverage or substance will be consumed on state property (37 O.S. Section 8).~~

~~(C) Public areas of the Capitol and the Plazas will not be used for events or exhibits requiring the use of cooking or heating elements of any kind, with the exception of the Capitol Cafeteria and the snack bar.~~

~~(D) No materials of any kind will be placed on vehicles in any state parking lot in conjunction with any event or exhibit.~~

~~(E) All materials used in conjunction with any event or exhibit must be removed from the area immediately following the event or exhibit. Exceptions may be made by the Director of the Department of Central Services.~~

~~(F) All signs must be on hand sticks and will be used on the Plazas only. Signs or banners of any kind will not be allowed in the Capitol.~~

~~(G) No banners, signs, or any materials will be taped, tacked, nailed, hung, or otherwise placed in any manner on or in the Capitol or in any manner on the Plazas. This also includes, but is not limited to the walls, in elevators, and/or in rest rooms. Such material will be removed without notice.~~

~~(H) No entrance or exit to the Capitol will be blocked in any way.~~

~~(I) No individual shall congregate with another individual or individuals nor block or partition off either partially or completely any corridor, hallway, passageway, rotunda, or other public space in the Capitol or on the Plazas in a manner so as to unreasonably interfere with the passing or movement of any other individual through such public space or create any unreasonable risk to such works of art or other public property or occupants contained in the Capitol. For this reason, no events or exhibits are permitted in the corridors of the 3rd, 5th, or 6th floors of the Capitol.~~

~~(J) No merchandise will be sold, fees collected, or monetary donations accepted in the Capitol or on the Plazas nor will fund raising events in which money is collected in the Capitol or on the Plazas be permitted. Exceptions may be granted for certain state agencies and non-profit organizations that are selling goods to promote the function of that agency or non-profit organization. Exceptions will be left to the discretion of the Director of the Department of Central Services.~~

~~(K) No event or exhibit will be scheduled for the purpose of promoting a profit making organization or individual for any reason. This includes displaying business cards and other means considered by the Department of Central Services to be promotional.~~

~~(L) Audio devices used at a decibel level that is disturbing or disruptive to the ongoing work of employees in the Capitol or on the Plazas will be adjusted accordingly if requested by the Department of Central Services.~~

~~(M) If any event or exhibit begins to pose a hazard, as determined by the Department of Central Services, to the participants, general public, building or contents of the building, it will be discontinued.~~

~~(N) Any electrical cords used for events or exhibits must be placed so they do not create a potential hazard to the public or employees that may be in the area. Electrical cords must be placed out of the flow of traffic or taped securely to the floor.~~

~~(O) Compressed gas cylinders will not be brought into the Capitol or on the Plazas without the prior approval of the Department of Central Services unless such cylinders are used by a state agency in connection with the official duties of that agency.~~

~~(P) Waste of any kind will not be allowed to accumulate in any area or in any manner so as to create a potential hazard to life or property. No confetti, balloons, rice, birdseed or other similar substances will be used in conjunction with any events or exhibits. Lit candles will not be used inside the Capitol for any reason.~~

~~(Q) Stairs will not be blocked for any reason except for janitorial purposes.~~

~~(R) All reservations for the Blue Room and the Governor's Art Gallery will be made through the Office of the Governor.~~

~~(S) The number of participants in the Blue Room and Governor's Art Gallery shall conform with the occupancy limits set forth by the State Fire Marshal.~~

~~(T) A refundable security deposit of Two Hundred Fifty Dollars ($250.00) will be required before a reservation for the Blue Room or Governor's Art Gallery is confirmed. The security deposit will be returned after the event and after the Blue Room and the Governor's Art Gallery have been inspected for damages. If damages are found, the security deposit will be forfeited. Any damages in excess of the amount of the security deposit will be billed to the responsible party.~~

~~(U) No vehicles will be allowed to park on the North or South Plazas unless authorized by the Director of the Department of Central Services in the furtherance of a specific state purpose.~~

580:10-1-4. Public versus private purpose; conditions for private use [REVOKED]

~~(a) Events and exhibits held in the State Capitol or on the Plazas shall relate to a public purpose. However, the use of the Capitol or the Plazas for a private purpose event or exhibit may be allowed but will be subject to the conditions in this section.~~

~~(1) The event/exhibit is subject to being preempted by a public purpose event, even if the private event was scheduled earlier;~~

~~(2) The event/exhibit shall be subject to the fee schedule below.~~

~~(A) Chair - $1.00~~

~~(B) Table - $6.00~~

~~(C) Table top Lectern/Microphone - $10.00~~

~~(D) Large Sound System - $30.00~~

~~(E) Floor Model Lectern - $10.00~~

~~(F) Stage - $30.00~~

~~(G) Easel - $2.00~~

~~(b) The Department of Central Services will be the final authority in determining whether an event or exhibit may be scheduled and if it relates to a public or private purpose. The Office of the Governor shall be the final authority in determining whether an event or exhibit may be scheduled in the Blue Room or the Governor's Art Gallery and if it relates to a public or private purpose.~~

SUBCHAPTER 2. GENERAL PROVISIONS

580:10-2-1. Purpose

This Chapter provides information and establishes procedures for the Director of Central Services to administer the operations of all buildings owned, used or occupied by or on behalf of the state, the Capitol, Capitol plazas, and the State Capitol Park.

580:10-2-2. Definitions

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

"Art" means fine art of museum quality representing the highest quality of art objects available to include paintings, graphic arts, art photography and sculpture, aesthetically aligned with recognized values, created by the conscious use of skill and creative imagination.

"Art exhibit" means an exhibit composed primarily of art.

"Capitol" means the State Capitol Building.

"Capitol Conference Center" means Room 104 of the Capitol.

"Commercial activity" means selling or offering merchandise, food or services for the benefit of an individual or business entity organized for profit.

"Concourse Theater" means Room C50 located in the concourse between the Will Rogers Building and the Sequoyah Building.

"CPC" means the State Capitol Preservation Commission.

"Demonstration" means a gathering of persons which may include demonstrating, picketing, speech making, marching, holding of vigils and other like forms of conduct which involve the communication or expression of views engaged in by one or more persons, the conduct of which has the effect, intent or propensity, to draw a crowd or onlookers.

"Department" means the Department of Central Services.

"Director" means the Director of Central Services.

"Event" means an assembly or gathering of people for a single purpose.

"Exhibit" means a display whether free standing or affixed to structures.

"Plaza" means the outdoor area adjacent to the Capitol under the authority of the Department of Central Services.

"Private purpose" means an event or exhibit subject to special admission requirements.

"Public area" means those portions of the Capitol for general visitation or use under the control of the Department of Central Services.

"Public purpose" means an event or exhibit for general visitation or use.

"Reservation" means an accommodation the Department approves and a sponsor secures in advance for an event, art exhibit, demonstration, exhibit or meeting.

"Sponsor" means an individual that requests use of a public area on behalf of an individual, group or state agency.

"**State agency"** means any state board, bureau, commission, department, authority, public trust, interstate commission, the Judiciary, the Legislature, or the Office of the Governor.

"State Capitol Park" or "park" *means all portions of the State Capitol grounds and within such boundaries as are located in the State Capitol Complex, including the Governor's Mansion and all properties within the public right-of-way along Lincoln Boulevard north from the north boundary line of Northeast 13th Street to the south boundary line of Northeast 28th Street and along Business Route 66, known as Northeast 23rd Street, from the east edge of Santa Fe Street east to the west edge of Kelley Avenue in Oklahoma City, Oklahoma, as designated on the amended plat filed in the office of the Secretary of state as File Number 155 in the State Property Records.* [74 O.S., §1811.4]

580:10-2-3. Statutory citations

Statutory citations refer to the most recent codification of statutes.

580:10-2-4. Forms

Forms or instructions will be developed for use by the public to facilitate requirements of this chapter. The Department shall provide forms upon request.

580:10-2-5. Waivers

The Director may waive any requirement of this chapter unless statutes mandate the requirement.

(1) All requests for waivers shall be in writing and must include justification for the waiver request.

(2) The Department shall respond in writing as to the approval, conditional approval, or denial of a waiver request.

SUBCHAPTER 5. USE OF PUBLIC AREAS OF CAPITOL AND PLAZAS

580:10-5-1. Purpose

The provisions of this Subchapter prescribe conditions and procedures for Capitol access and use of designated public areas of the Capitol or Plazas for exhibits, art exhibits and events to ensure the safety of persons visiting the Capitol, employees, the building and the building contents.

580:10-5-2. Capitol access, operating hours and access requirements

(a) Capitol operating hours are from 6:00 a.m. to 7:00 p.m., Monday through Friday, excluding state holidays and 9:00 a.m. to 4:00 p.m., Saturdays, Sundays and state holidays.

(b) Capitol entrances are open from 6:00 a.m. to 7:00 p.m. or until one hour following adjournment of legislative session, Monday through Friday.

(c) After 7:00 p.m. or one hour following adjournment of the legislative session, Monday through Friday, and on Saturdays, Sundays and state holidays, persons may enter the Capitol through the west entrance only.

(1) Persons entering the west entrance of the Capitol after 7:00 p.m., Monday through Friday, and on Saturdays, Sundays and state holidays shall check in with a Capitol Patrol Officer, produce a valid form of picture identification and state their intended destination inside the Capitol.

(2) Persons shall check out with a Capitol Patrol Officer at the west entrance when exiting the Capitol.

(d) All state agencies located in the Capitol shall compile and file a list of employees who are authorized by the chief administrative officer of the agency to access the building during time periods outside of the standard hours of operation established in this subchapter with the Capitol Patrol security personnel.

(1) The list shall state the name, established location of employment in the Capitol and office telephone number for each employee on the list; and, the name and telephone number of an administrative employee of the agency for emergency contact purposes outside of the Capitol.

(2) The list shall be filed and maintained by Capitol Patrol security personnel.

(3) Information provided on the list shall be reviewed regularly and revisions filed with Capitol Patrol security personnel immediately.

(e) Public entrances, operating hours and access requirements for the Capitol are subject to change to ensure the health and safety of visitors and employees in the event of an emergency, disaster or other circumstances as determined by the Director.

580:10-5-3. Use of public areas

(a) **Reservation requests.** All events, exhibits and art exhibits to be in the public areas of the Capitol or plazas, whether for a public or private purpose, require prior written approval of the Department.

(1) A sponsor shall submit an application for a reservation together with a check for any applicable fees (Reference 580:10-5-5) to the Department at least ten (10) working days but no more than six (6) months prior to the beginning date of the proposed event or exhibit. The application must be submitted during the Department's business hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding state holidays.

(2) The application shall specify the desired date, time period, public use area, a description of the event or exhibit. The Department may request additional information as determined necessary to facilitate the reservation.

(3) The Department may impose conditions and time limitations pursuant to the rules of this subchapter and state law.

(4) If the Department denies a request for a reservation, the Department will issue written notice to the requesting sponsor indicating the reasons for denial. Reservation requests which indicate that the sponsor may allow or encourage conduct that is violent, threatening, abusive, obscene, or that jeopardizes the safety of self or others shall not be approved by the Department.

(b) **Prioritization of reservations.** Except as otherwise provided, the Department shall issue approved reservations on a first-come, first-served basis and may limit the number of reservations in the public areas or plazas.

(c) **Reservation limitations.** Reservations authorize events only in the public areas or plazas specified in the approved application. Event participants shall not block or inhibit passage through the Capitol public areas or plaza common areas, sidewalks, hallways, aisles or passageways.

580:10-5-4. Provisions for exhibits and art exhibits

(a) In addition to the approval requirements of 580:10-5-3, all art exhibits shall be approved by CPC prior to the date of the art exhibit.

(b) In addition to the approval requirements of 580:10-5-3, any exhibit which exceeds ten (10) working days shall be approved by CPC prior to the date of the exhibit.

(c) The Department provides information to a sponsor to seek CPC approval for exhibits and art exhibits upon request.

(d) Exhibits and art exhibits shall not block or inhibit passage through hallways, aisles or passageways.

580:10-5-5. Private purpose; conditions for use

The Department shall determine whether an event, exhibit or art exhibit in the Capitol or a plaza for a private purpose pertains primarily to a private purpose. Private purpose events are subject to the conditions in this subsection.

(1) The event, exhibit or art exhibit is subject to being preempted by a public purpose event, even if the private event was scheduled earlier; and

(2) Equipment may be available for use during an event, exhibit or art exhibit and shall be subject to the fee schedule below:

(A) Chair - $2.00
(B) Table - $8.00
(C) Tabletop Lectern/Microphone - $12.00
(D) Large Sound System - $50.00
(E) Floor Model Lectern - $15.00
(F) Stage - $40.00
(G) Easel - $3.00
(H) Risers - $40.00

580:10-5-6. Provisions for events, exhibits and art exhibits

(a) The following provisions apply to all events, exhibits or art exhibits:

(1) Sponsors shall confine events, exhibits and art exhibits to the public areas specified in the reservation and shall not relocate to, install, or erect additional paraphernalia in other areas of the Capitol or plazas unless the Department grants prior approval.

(2) No intoxicating beverage or substance will be dispensed or consumed on state property.

(3) Use of cooking or heating elements of any kind is prohibited.

(4) Placement of materials of any kind on structures, fixtures or vehicles in a state parking lot in conjunction with an event, exhibit or art exhibit is prohibited.

(5) Unless authorized in the reservation application, affixing banners, signs, or materials in any manner on or in the Capitol or plazas, or to an appurtenance of the Capitol or plaza is prohibited. The Department may remove and dispose of, or cause to be removed and disposed of, the signs or banners without notice.

(A) Plaza. Use of handheld signs and signs on hand sticks are allowed.

(B) Capitol. Unless authorized in a reservation, signs or banners of any kind are prohibited in the Capitol.

(6) No individual or group may restrict access to, from or within the Capitol or a plaza.

(7) No individual or group shall cause unreasonable risk to works of art, public property or persons within the Capitol or plaza.

(8) The Department prohibits commercial activity, collection of fees, solicitation of money, or fund raising events which solicit or collect money, in the Capitol or on a plaza. State agencies and non-profit organizations that sell goods to benefit or promote the function of the agency or non-profit organization may request an exemption from the Director.

(9) Events, exhibits or art exhibits for the purpose of promoting a profit making organization or individual are prohibited. Display of business cards or other means the Department considers promotional are prohibited.

(10) Use of audio devices may be restricted or altered to a decibel level which does not disturb or disrupt other persons in the Capitol or on a plaza.

(11) The Department may order or seek to cause cessation of an event, exhibit or art exhibit which may pose a hazard, as determined by the Department, to an individual, group, building, contents of the building, or building fixtures and appurtenances.

(12) A sponsor shall place electrical cords and cables used for events, exhibits or art exhibits so that the cords and cables limit potential hazard to persons in the area. Electrical cords and cables must be placed out of walkways unless secured to the floor.

(13) Compressed gas cylinders are prohibited for use in conjunction with an event, exhibit or art exhibit, unless specifically identified and approved in the reservation.

(14) Waste accumulation of any kind in any area or manner so as to create a potential hazard to health, safety or property is prohibited.

(15) Open flames (including candles), confetti, balloons, rice, birdseed or other similar substances in conjunction with events, exhibits or art exhibits are prohibited.

(16) All reptiles, animals and fowl, with the exception of assistance dogs and law enforcement canines, are prohibited in the Capitol or on a plaza.

(b) **Requirements at end of event, exhibit or art exhibit.** A sponsor shall remove all materials used in conjunction with or created by an event, exhibit or art exhibit immediately following the conclusion of the event, exhibit or art exhibit.

(c) **Unauthorized events or activities.** Security personnel will be notified upon detection of unauthorized events or activities.

580:10-5-7. Governor's Art Gallery and Blue Room

(a) A sponsor that desires to use the Blue Room and the Governor's Art Gallery shall contact the Office of the Governor. The Governor's Office may approve or disapprove an event, exhibit or art exhibit.

(b) A sponsor shall state the number of persons the sponsor anticipates to attend the event on the reservation application. The Governor's Office shall limit the number of participants in the Blue Room and Governor's Art Gallery to conform with the occupancy limits set by the State Fire Marshal.

(c) Upon approval of an event, exhibit or art exhibit by the Governor's Office, the sponsor shall pay a security deposit of Two Hundred Fifty Dollars ($250.00) to the Governor's Office prior to the event, exhibit or art exhibit. If, upon inspection following the event, inspectors find no damages the Governor's Office will return the security deposit to the sponsor. If inspectors find damages, the sponsor shall forfeit the security deposit or a portion of the security deposit. The sponsor is responsible and shall be billed for any damages that exceed the security deposit amount.

580:10-5-8. Vehicles on plaza

Parking or driving vehicles on a plaza is strictly prohibited unless for a specific state purpose. Prior written authorization must be issued by the Director for the purpose.

580:10-5-9. Access to the Capitol Dome

The Capitol Dome shall not be considered a designated public area of the Capitol. All access shall be strictly controlled by the Director.

SUBCHAPTER 7. USE OF STATE CAPITOL PARK

580:10-7-1. Purpose

The provisions of this Section prescribe conditions and procedures for the use of the public areas of the State Capitol Park for noncommercial demonstrations and events to ensure the safety of persons visiting the Park, employees, and preservation of the Park. For the purposes of this subchapter, the areas within the perimeter fence of the Governor's Mansion are not considered public areas.

580:10-7-2. Use of State Capitol Park

(a) **Reservation requests.** All demonstrations and events to be on the State Capitol Park, whether for a public or private purpose, require prior written approval of the Department.

(1) A sponsor shall submit an application for a reservation together with a check for any applicable fees to the Department at least ten (10) working days prior to the beginning date of the proposed demonstration or event. The application must be submitted during the Department's business hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding state holidays.

(2) The application shall specify the desired date, time period, public use area, a description of the demonstration or event. The Department may request additional information as determined necessary to facilitate the reservation.

(3) The Department may impose conditions and time limitations pursuant to the rules of this subchapter and state law.

(4) Reservations for use of the Park are also subject to the provisions of 580:10-5-5.

(5) If the Department denies a request for a reservation, the Department will issue written notice to the requesting sponsor indicating the reasons for denial. Reservation requests which indicate that the sponsor may allow or encourage conduct that is violent, threatening, abusive, obscene, or that jeopardizes the safety of self or others shall not be approved by the Department.

(b) **Prioritization of reservations.** Except as otherwise provided, the Department shall issue approved reservations on a first-come, first-served basis and may limit the number of reservations in the public use areas of the park.

(c) **Reservation limitations.** Reservations authorize demonstrations and events only in the public area and during the time period specified in the approved application.

580:10-7-3. Park use information

(a) **Conditions.** The provisions of this section shall apply to the use of the State Capitol Park, which includes all demonstrations or events approved by the Director pursuant to this Subchapter.

(1) Individuals may carry handheld signs, placards and banners. Affixing or securing signs, placards or banners to a building, fixture, tree or any other fixed structure is prohibited.

(2) Use of audio devices and musical instruments may be restricted or altered to a decibel level which does not disturb other persons.

(3) Digging, which includes driving stakes into the ground, is prohibited.

(4) Injuring, removing, molesting, burning or vandalizing botanical, paleontological, archaeological or historical features and structures is prohibited.

(5) Contained fires may be authorized based upon intended use and climatological conditions.

(6) Discharging or setting off fireworks is prohibited. The Department may authorize the use of fireworks during holidays and events based upon intended use and climatological conditions.

(7) Assembling, congregating or acting individually in such a way as to obstruct sidewalks, walkways, or entrances and exits to buildings is prohibited.

(8) Possession of firearms, explosives, clubs, missiles, chemicals, incendiary devices, or other like devices is prohibited.

(9) The placement, setting up or erection of tents, sleeping bags, bed rolls, or bedding of any kind for the purpose of camping or remaining overnight is prohibited.

(10) Throwing stones, bottles or other objects with the intent to injure another person or damage property is prohibited.

(11) Use of a motorized vehicle on sidewalks or grounds shall be restricted to emergency, maintenance, construction, development, or authorized building access purposes as determined by the Department.

(12) Burial of human or animal remains is prohibited.

(13) No intoxicating beverage or substance will be dispensed or consumed on state property.

(14) Waste accumulation of any kind in any area or manner so as to create a potential hazard to health, safety or property is prohibited.

(b) **Requirements at end of demonstration or event.** A sponsor shall remove all facilities, equipment, temporary structures and materials used in conjunction with or created by a demonstration or event immediately following the conclusion of the demonstration or event.

(c) **Unauthorized demonstrations and events.** Security personnel will be notified upon detection of unauthorized demonstrations or activities.

SUBCHAPTER 9. OPERATION OF BUILDINGS OWNED, USED OR OCCUPIED BY OR ON BEHALF OF THE STATE

PART 1. SMOKING

580:10-9-1. Purpose; Authority

All buildings, or portions thereof, owned or operated by the state may have one designated smoking room which must meet certain requirements. [21 O.S., Section 1247(A.5.)]. The purpose of this Part is to establish inspection procedures to verify designated smoking rooms meet the requirements. This Part also provides information and reporting methods to ensure compliance is met and maintained. In addition to the statutory requirements, state agencies are encouraged to maintain designated smoking rooms in such a manner as to provide reasonable safety from fire, smoke, panic and related hazards for persons using a smoking room.

580:10-9-2. Definitions

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

"**Air intake**" means the part of the building's ventilation system where makeup air or fresh air enters the building to be mixed with conditioned air and is part of the HVAC system.

"**Air pressure measurement devices**" means any device that is capable of measuring differential pressures between two or more areas within the facility.

"**Appointing authority**" means the chief administrative officer of an agency.

"**ASHRAE**" means the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc.

"**Building**" means a structure operated by a state agency.

"**Building entrance**" means a place of entry into or exit from a building.

"**Building manager**" means the person responsible for the daily operation and maintenance activities for a state operated building.

"**Common supply**" means the common building supply distribution system used to deliver conditioned air to all spaces within the building.

"**Department**" means the Department of Central Services.

"**Director**" means the Director of the Department of Central Services.

"**Fully Enclosed**" means that a room's HVAC is isolated from the common building return and that the room is sealed to the floor above, so that smoke does not escape into adjoining areas.

"**HVAC**" means Heating Ventilation and Air Conditioning System.

"**Industrial hygienist**" means a professional qualified by education, training and experience to recognize, evaluate and develop controls for occupational hazards.

"**Negative air pressure**" means an atmosphere of pressure lower than adjacent areas measured by the ASHRAE Standard Method of Pressure Measurement or equivalent industry measurement methods.

580:10-9-3. Smoking Room Inspection Report

(a) **Use.** Any state agency that operates a state owned building and has designated a smoking room in such building must file an inspection report with the Department.

(b) **Forms.** The State Operated Building Smoking Room Inspection form related to this Part has been issued by the Department for use by agencies and is available upon request.

(c) **Content.** The inspection report must include the following information:

(1) The name of the state agency and division;

(2) Physical address of the building;

(3) The name of the building manager;

(4) Room number of the designated smoking room

(5) Room size, which must include the length, width, height, area and volume of the room;

(6) Distance from the designated smoking room exhaust to the nearest fresh air intake;

(7) Negative pressure measurements tested by an air pressure measurement device;

(8) A diagram of the designated smoking room which displays all entrances, HVAC supply vents and exhaust; and

(9) The name, title and address of person or company testing air pressure measurements, if other than the agency.

(10) Any other additional information the Department may determine necessary.

(d) **Signature and Attestation.** The inspection report must be signed and verified by the agency building manager and certified by the appointing authority prior to delivery to the Department.

(1) **Building Manager Verification.** The verification language of the building manager must read: As the Building Manager responsible for the operation of the building listed in this report, I hereby verify that the designated Smoking Room was inspected for compliance with the requirements of Oklahoma Statutes, Title 21, Section 1247, specifically: (list of statutory required items) and that the facts contained in this report are true.

(2) **Appointing Authority Certification.** The certification language of the appointing authority must read: I hereby certify that I have reviewed the contents of this report and that the above named Building Manager, an employee of this agency, is authorized to verify the information contained herein.

(e) **Original Signature.** At least one copy of the inspection report delivered to the Department must contain an original signature of the agency building manager and appointing authority.

(f) **Due Date .** The inspection report is due by October 1, 2002. Thereafter, an inspection report shall be filed whenever a new smoking room is designated or an existing designated smoking room is structurally changed in any way.

580:10-9-4. Verification for compliance

The inspection report described in 580:10-9-10 will be reviewed and evaluated by an industrial hygienist employed by the Department.

(1) **Report Acceptance.** If the facts contained in the report confirm compliance with the requirements of this Part, the Department industrial hygienist will endorse both copies of the report with the words "Compliance Verified by the Department of Central Services Based Upon Certified Report Information", the date of the inspection report review and his or her signature. The original report will be filed and maintained by the Department. The copy will be returned to the agency.

(2) **Report Rejection.** If the facts contained in the report are inconclusive or insufficient so that compliance cannot be verified, the report will be returned to the agency with an explanation of the insufficiencies and corrections necessary for compliance.

PART 3. USE OF CAPITOL CONFERENCE CENTER AND THE CONCOURSE THEATER

580:10-9-8. Purpose

The provisions of this Part prescribe procedures and conditions for the use of the Capitol Conference Center and the Concourse Theater, designated by the Director as meeting rooms for public purposes.

580:10-9-9. Reservation of meeting rooms

(a) **Reservation.** Use of a meeting room by a state agency requires prior written approval of the Department.

(1) A state agency shall submit an application for a reservation to the Department.

(2) The application shall specify the desired date, time period and meeting room requested. The Department may request additional information determined necessary to facilitate the reservation.

(A) Use of audio visual devices, teleconferencing, voice or data outlets must be specified in a reservation request.

(B) Training to use audio visual devices or teleconferencing arrangements must be scheduled at least five (5) days prior to the approved reservation date.

(3) The Department may impose conditions and time limitations pursuant to the rules of this Part and state law.

(4) If the Department denies a request for a reservation, the Department will issue written notice to the requesting state agency indicating the reasons for denial.

(b) **Prioritization of meeting room reservations.** Except as otherwise provided, the Department shall issue approved reservations on a first-come, first-served basis and may limit the number of reservations for a meeting room.

(c) **Reservation limitations.** Reservations authorize meetings only in the specified meeting room during the specified time period.

(d) **Unauthorized meetings.** The Department may notify security personnel upon detection of unauthorized meetings.

580:10-9-10. Use of meeting rooms

(a) **Conditions.** The following conditions shall apply to the use of all meeting rooms reserved pursuant to this Part:

(1) The number of attendees shall not exceed the maximum room occupancy.

(2) Possession and consumption of food in meeting rooms is prohibited.

(3) Possession and consumption of beverages in meeting rooms may be limited or prohibited.

(4) Smoking in meeting rooms is prohibited.

(5) Affixing, by any means, materials to walls or appurtenances in a meeting room is prohibited except as provided by specific meeting room information.

(b) **Meeting supplies.** The reserving agency is responsible for providing all materials or supplies for use with equipment or devices in meeting rooms.

(c) **Requirements at end of meeting.** Immediately following the conclusion of the meeting, the reserving state agency shall:

(1) Remove all materials used in conjunction with or created by the meeting;

(2) Deposit all waste in an appropriate container; and,

(3) Return tables and chairs to the standard configuration.

(d) **Damages.** The Department shall bill the state agency reserving the meeting room for damage occurring to the room, furniture, fixtures or equipment during the reserved period of time.

[OAR Docket #03-2036; filed 6-5-03]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 15. CENTRAL PURCHASING

[OAR Docket #03-2030]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 2. General Provisions
580:15-2-2 [AMENDED]
580:15-2-6 [AMENDED]
580:15-2-7 [AMENDED]
580:15-2-11 [AMENDED]
Subchapter 4. Supplier Provisions
580:15-4-2 [AMENDED]
580:15-4-5 [AMENDED]
580:15-4-7 [AMENDED]
580:15-4-8 [AMENDED]
580:15-4-10 [AMENDED]
580:15-4-11 [AMENDED]
580:15-4-12 [AMENDED]
580:15-4-13 [AMENDED]
580:15-4-14 [AMENDED]
580:15-4-17 [AMENDED]
580:15-4-18 [AMENDED]
580:15-4-19 [AMENDED]
580:15-4-20 [AMENDED]
Subchapter 6. State Agency Provisions
580:15-6-1 [AMENDED]
580:15-6-2 [AMENDED]
580:15-6-3 [AMENDED]
580:15-6-4 [AMENDED]
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580:15-6-8 [AMENDED]
580:15-6-9 [AMENDED]
580:15-6-10 [AMENDED]
580:15-6-11 [AMENDED]
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580:15-6-17 [AMENDED]
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The amended rules clarify information and procedural requirements pertaining to suppliers bidding and/or contracting with the state and procurement processes administered by the DCS and the State Purchasing Director. Amended rules clarify the requirement of original signatures on bid documents and bid evaluation criteria. Amended rules revise procedures related to the protest of an award of contract by a supplier. New rules require a supplier that contracts with the state to provide proof of workers compensation insurance or alternative as authorized by law. New rules pertaining to continuing education of certified procurement officers (CPO) place burden of proof of education requirements on CPO and clarify compliance period for education credit.
CONTACT PERSON:
Gerry Smedley, Administrative Programs Officer, (405) 522-6597, Department of Central Services, Administration, 2401 N. Lincoln Boulevard, Suite 206, Oklahoma City, OK 73105.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 2. GENERAL PROVISIONS

580:15-2-2. Definitions

As used in this chapter, unless the context otherwise requires:

"Acquisition authority" means the dollar amount within which a state agency is approved to make acquisitions without submitting a requisition to the State Purchasing Director.

"Affiliates" means associated business entities or individuals that directly or indirectly control or can control other business entities, or individuals that associate with a business entity but derive financial benefit from another business entity.

"All or none bid" means a bid in which the bidder states only an award for all items or services included in the solicitation will be accepted.

"All or none solicitation" means a solicitation in which the state indicates it will award a contract to a single supplier for all items or service included in the solicitation.

"Alternate bid" means that with the submission of a bid that meets the requirements of the solicitation, a bidder, at the same time, includes another bid which contains an intentional substantive variation to a basic provision, specification, term or condition of the solicitation.

"Authorized signature" means the signature of a person the supplier authorizes to sign documents the supplier submits to the State Purchasing Director.

"Bid bond", **"performance bond"** or **"surety bond"** means a form of surety or guaranty that the State Purchasing Director may require bidders to submit with a bid.

"Certified procurement officer or CPO" means a state agency procurement official certified by the State Purchasing Director under the provisions of the Oklahoma Central Purchasing Act.

"Clarification" means a bidder' explanation of all or part of a bid that does not change, alter or supplement the bid.

"Closing date" means the date and time a solicitation specifies after which a bid is considered late and the Purchasing Division or state agency will not accept a bid.

"Commodity classification" means numeric designations the State Purchasing Director assigns to classify goods and services into similar categories.

"Commodity list" means a list of all items and services in a commodity classification.

"Competitive bidding" means a process of acquisition wherein bidders submit bids to the Purchasing Division or a state agency pursuant to terms, conditions and other requirements of a solicitation.

"Days" means calendar days unless otherwise specified.

"Debar" or **"debarment"** means action taken by the State Purchasing Director to exclude any business entity from inclusion on the suppliers list, bidding, offering to bid or receiving an award of contract with the State of Oklahoma for acquisitions by state agencies or a contract the Department of Central Services awards or administers.

"Department" means the Department of Central Services.

"Director" means the Director of the Department of Central Services.

"Emergency acquisition" means an acquisition made by the State Purchasing Director or a state agency without seeking competitive bids to relieve an unforeseen condition believed to endanger human life or safety or pose imminent danger to significant property, or a condition certified by the Governor as a serious environmental situation.

"Firm bid" means an offer by a bidder which contains no conditions which may prevent acceptance and which, by its terms, remains open and binding until the State Purchasing Director accepts or rejects the bid.

"Fiscal year" means the period of time from July 1 of a calendar year through June 30 of the succeeding calendar year.

"Fixed rate" means a rate the Department establishes for contracts for services a supplier provides to persons directly benefiting from the services.

"Forms" means documents the Director prescribes and requires suppliers and state agencies to use to provide information to the Department or Purchasing Division.

"Invitation to bid" means a type of solicitation a state agency or the State Purchasing Director sends to suppliers for submission of bids for acquisitions.

"Life Cycle Costing" means a procurement technique that takes into account demonstrable and documented operating, maintenance, the cost of money, other costs of ownership, and usage and resale or residual value in addition to acquisition price in making an award on lowest and best or best value.

"Material deficiency" means failure to provide information necessary to evaluate a solicitation.

"Minor deficiency" or **"minor informality"** means an immaterial defect in a bid or variation in a bid from the exact requirements of a solicitation that may be corrected or waived without prejudice to other bidders. A minor deficiency or informality does not affect the price, quantity, quality, delivery or conformance to specifications is negligible in comparison to the total cost or scope of the acquisition.

"Noncollusion affidavit" means a document a supplier submits pursuant to the Oklahoma Central Purchasing Act with bids or for acquisitions by contract.

"Nonbinding contract" means a contract that the State Purchasing Director or a state agency establishes based on historical usage of a service or product rather than a specified quantity of said service or product and which does not obligate the State to purchase any certain amount. (Example: A contract to treat special head injuries based on the number of cases for the special treatment provided by the State for previous years.)

"Nonencumbered contract" means a contract that the State Purchasing Director or a state agency establishes that provides for an unspecified quantity of items or services, or an unspecified delivery date for goods and services, when a state agency encumbers funds for each order pursuant to the contract.

"Nonresponsive" means a bid that does not conform to essential requirements in a solicitation.

"Oklahoma Central Purchasing Act" means 74 O.S., Sections 85.1 et seq.

"Oklahoma Correctional Industries" means a program of the State Board of Corrections for utilization of inmate labor for the manufacture or production of items or products for use by state agencies.

~~**"Purchasing Director"** means the director of the Purchasing Division of the Department of Central Services or the Purchasing Director's designee.~~

"Purchasing Division" or **"Division"** means the Purchasing Division of the Department of Central Services.

"Ratification" means the act of approving an unauthorized commitment made by a state agency.

"Reciprocity" means a preference which the State Purchasing Director shall apply against the price an out of state bidder submits for an acquisition whose home state applies a similar preference against Oklahoma bidders.

"Registered supplier" means a supplier that registers with the Purchasing Division pursuant to 580:15-4-2.

"Remedy" means to cure, alter, correct or change.

"Request for proposal" means a type of solicitation a state agency or the State Purchasing Director sends to suppliers requesting submission of proposals for acquisitions.

"Request for quotation" means a simplified written or oral solicitation a state agency or the State Purchasing Director sends to suppliers requesting submission of a quote.

"Requisition number" means an identifier the state agency or Purchasing Division assigns to a requisition.

"Requisitioning unit" means the unit in a state agency responsible for making acquisitions.

"Responsive offer" means an offer a supplier submits which conforms in all material respects to requirements a solicitation states.

"Responsible supplier" means a supplier who demonstrates capabilities in all respects to fully perform the requirements of a contract which may include, but not be limited to, finances, credit history, experience, integrity, perseverance, reliability, capacity, facilities and equipment which will ensure good faith performance.

"Scheduled acquisition" means a recurring acquisition that consolidates multiple state agency requirements for a given commodity or group of commodities.

"Settlement agreement" means a document that reflects agreement between the state and individual or business entity that ratifies an unauthorized commitment.

"Solicitation" means a request or invitation by the State Purchasing Director or state agency for a supplier to submit a priced offer to sell acquisitions to the state. A solicitation may be an invitation to bid, request for proposal or request for quotation.

"State official" means a person that works for a department, state agency, trusteeship, authority, school district, fair board, advisory group, task force or study group supported in whole or in part by public funds or administering or operating public property.

"State Purchasing Director" means the director of the Purchasing Division of the Department of Central Services appointed by the Director of the Department or the Purchasing Director's designee.

"State Use Committee" means a committee that certifies severely disabled individuals and sheltered workshops as eligible participants, and establishes the State Use Committee procurement schedule for state agency use pursuant to 74 O.S., Sections 3001 et seq.

"Supplier complaint" or **"performance evaluation"** means information a state agency or the Purchasing Division provides to the State Purchasing Director, in a manner the Director prescribes, that documents supplier performance.

"Supplier registration" means a process a supplier uses to register with the Purchasing Division to receive solicitations for commodities on a commodity list for a specified period of time.

"Suppliers list" means a list of individuals or business entities that desire notification of solicitations for specified commodity lists.

"Suspension" means action by the State Purchasing Director to exclude an individual or business entity from the ~~supplier's~~ suppliers list.

580:15-2-6. Bid submission document open for public inspection

Documents a supplier submits in a bid are public records and shall be available for review, upon request, after a supplier is selected and the bid is awarded. ~~by an individual or business entity~~. The State Purchasing Director may designate bidder's financial information or proprietary information confidential and reject all requests to disclose the information so designated. ~~[74:85.10]~~ [74 O.S., Section 85.10].

580:15-2-7. State Purchasing Director authority

(a) **General.** The State Purchasing Director is an employee of the Department of Central Services. The Director and the Oklahoma Central Purchasing Act prescribe the duties, responsibilities and authority of the State Purchasing Director.

(b) **Conditional.**

(1) **Waivers.** The State Purchasing Director may waive requirements of the Oklahoma Central Purchasing Act pursuant to 580:15-2-11.

(2) **New contracting procedures.** ~~The Oklahoma Central Purchasing Act authorizes the Purchasing Director to develop and test new contracting procedures. If the Purchasing Director uses such procedures for acquisitions, the Purchasing Director shall make the procedures known to the state agency requesting the acquisition, and in the solicitation for the acquisition.~~ Whenever the State Purchasing Director develops and tests new contracting procedures and said procedures are used for acquisitions, the State Purchasing Director shall:

(A) Inform any state agency requesting the acquisition of said procedures; and

(B) Include a statement of said procedures in the solicitation for the acquisition.

(c) **Limited contact.** For those solicitations requiring submission of requisitions to the State Purchasing Director, the State Purchasing Director may limit contact regarding the solicitation between suppliers and agency personnel during the solicitation process. The limitation of contact shall be described in the solicitation. All communication between suppliers and agency personnel shall be documented for inclusion in the bid file. The State Purchasing Director may require agency personnel to file a statement disclosing all communications with suppliers during the evaluation process.

(d) **Limited disclosure.** For solicitations requiring submission of requisitions to the State Purchasing Director, agency staff shall not announce or reveal their decision regarding ~~vendor~~ supplier evaluation or recommendation for award to Central Purchasing in any public manner or forum, including board meetings, until after Central Purchasing has issued the award of contract.

(e) **Negotiation.** The State Purchasing Director or ~~the Purchasing Director's~~ designee may negotiate consolidation contracts, enterprise agreements, and high technology system contracts in lieu of or in conjunction with bidding procedures by noting in the solicitation that negotiations will be conducted and by following these rules for negotiation. Negotiations may

be conducted with suppliers whose technical proposals are acceptable and whose price proposals are within the competitive range.

(1) **Negotiation team.** The State Purchasing Director shall designate a negotiation team consisting of a minimum of two individuals. The team members shall be familiar with the technical and cost aspects of the contract and have training in the dynamics and techniques of negotiation. The State Purchasing Director or ~~the Purchasing Director's~~ designee shall serve as the chief negotiator for the team.

(2) **Negotiation process.**

(A) The chief negotiator shall notify vendors of the date and time for negotiations.

(B) The chief negotiator shall request the supplier provide a list and resumes of the individuals who will attend the negotiation and have full authority to bind the supplier in the negotiation process.

(C) All negotiations shall be conducted at the Department of Central Services.

(D) Negotiations shall be recorded and transcribed.

(E) The negotiation team shall develop an agenda with the chief negotiator and submit the agenda to all suppliers participating in the negotiation process. The agenda shall set forth the key areas in the solicitation which require negotiation. The agenda shall also identify all nonnegotiable areas of the solicitation.

(F) Negotiations may be concluded by allowing suppliers to submit a best and final offer by a date and time certain.

(G) The chief negotiator shall prepare a memorandum of agreement to be approved and signed by all participants in the negotiation. The memorandum of agreement shall document the following:

(i) an overview setting ~~for~~ forth the solicitation number, names and titles of participants, description of the contract, date and location of the negotiation, and purpose of the negotiation;

(ii) a summary of the areas negotiated and the original position of the parties; and

(iii) a summary of the results of the negotiation, specifically stating what is the basis of the final agreement.

(H) A memorandum of agreement created under these rules shall become a part of the contract documents.

580:15-2-11. Waivers

State agencies may request a waiver from competitive bidding requirements or rules of this chapter from the State Purchasing Director.

(1) **State agency inability to perform necessary function.** If a state agency reasonably believes that the state agency would be unable to perform a necessary function due to the inability to make an acquisition pursuant to rules of this chapter, the state agency may request a waiver from the State Purchasing Director.

(2) **Court orders.** If a court order directs a state agency to make an acquisition from a specified vendor or provider, the state agency shall request a waiver from the State Purchasing Director.

(3) **State Purchasing Director determination.**

(A) **Waiver approval.** If the State Purchasing Director approves or conditionally approves a waiver, the State Purchasing Director shall notify the state agency.

(B) **Waiver denial.** If the State Purchasing Director denies a waiver, the State Purchasing Director shall notify the state agency of waiver denial.

SUBCHAPTER 4. SUPPLIER PROVISIONS

580:15-4-2. Supplier registration

(a) **General.** The Purchasing Division shall place a registered supplier on the suppliers list for each commodity class for which a supplier registers. The Division shall provide the supplier information for each commodity class for which the supplier desires to register. Except in an emergency or pursuant to a waiver, the Division shall notify registered suppliers of invitations to bid or requests for proposal for each commodity class for which a supplier registers.

(b) **Registration.** Suppliers shall submit supplier registration forms to the Purchasing Division. The State Purchasing Director shall not place a supplier on the supplier list if the supplier provides incomplete information or if the State Purchasing Director determines the supplier is not responsible.

(c) **Registration fee.** Suppliers shall pay an annual fee as set by 74 O.S., §85.33 to the Purchasing Division for each commodity class for which the supplier registers.

(d) **Registration expiration.** Supplier registration shall expire on December 31 of each calendar year.

(e) **Voluntary removal from suppliers list.** Suppliers may request the Purchasing Division remove them from the suppliers list for a commodity.

(f) **Registration fee refunds.** The Purchasing Division shall not refund supplier registration fees.

580:15-4-5. Bid solicitation by the State Purchasing Director

(a) **General.** The Purchasing Division shall comply with provisions of the Oklahoma Central Purchasing Act and rules the Department promulgates pursuant to the Oklahoma Central Purchasing Act to ensure fair competition for suppliers.

(b) **Competitive solicitations.** The State Purchasing Director shall issue solicitations for acquisitions by invitation to bid, request for proposal or request for quotation.

(c) **Supplier notification.**

(1) **Registered suppliers.** The State Purchasing Director shall notify suppliers of solicitations for commodity classes for which the supplier registers.

(2) **Suppliers a state agency recommends.** The State Purchasing Director may notify suppliers a state agency recommends for a solicitation.

(3) **Emergency notification.** For an emergency acquisition pursuant to 74 O.S. §85.7(4), the State Purchasing Director or a state agency shall select a supplier or a group of suppliers to notify utilizing telephone, facsimile or electronic commerce.

(4) **Notification pursuant to a waiver.** When the State Purchasing Director issues a waiver pursuant to 580:15-2-11, the State Purchasing Director or a state agency may select a supplier or group of suppliers to notify using telephone, facsimile or electronic commerce. Supplier selection shall be determined on the ~~bases~~ basis of price, timeliness of delivery.

(5) **Amendments to a solicitation.** If the State Purchasing Director amends a solicitation, the State Purchasing Director shall notify suppliers sent the original solicitation of the amendment. Suppliers submitting bids or quotations shall acknowledge receipt of an amendment in the supplier's bid or quotation. If the supplier has already submitted a bid, the supplier shall submit an acknowledgment of the amendment prior to the closing date.

(d) **Bid award criteria.** The State Purchasing Director shall indicate in the solicitation whether the bid award criteria is lowest and best, or best value.

(e) **Specifications.** Solicitations shall include specifications or a statement of work. The State Purchasing Director may reference manufacturer names, product names, or other product references as specifications to describe the type or quality of the acquisition.

(f) **Terms and Conditions.** The State Purchasing Director shall include all the terms and conditions for the acquisition in the solicitation.

(1) **Copyrights, patents or intellectual property.** If an acquisition includes copyrights, patents or intellectual property rights pursuant to federal law, the solicitation shall request conditions of use for the acquisition.

(2) **Other terms and conditions.** The State Purchasing Director may not accept supplier terms and conditions in a supplier's bid. No alterations or variations of the terms of the contractor shall be valid or binding upon the state, unless made in writing and accepted by the State Purchasing Director.

(3) **Other rights and remedies.** Actions of the State Purchasing Director shall not limit the rights or remedies of a state agency.

(4) **Rejection of all bids.** If the State Purchasing Director finds it to be in the best interest of the State of Oklahoma, any and all bids or proposals may be rejected and a solicitation may be reissued or canceled.

(g) **Affidavit.** The Purchasing Director shall include a noncollusion affidavit form in a solicitation. ~~Suppliers shall execute the noncollusion affidavit and return it with the supplier's bid or proposal.~~ An original, notarized copy of the noncollusion affidavit, executed by the supplier, shall be attached to any bid or proposal submitted to the Division.

(h) **High technology systems.** The State Purchasing Director shall state in a solicitation if the acquisition is a high technology system.

(i) **Pre-bid conference.** The State Purchasing Director shall state in a solicitation if the State Purchasing Director shall hold a supplier pre-bid conference and shall state whether supplier attendance is mandatory or optional.

(j) **Shipping.** Bidders shall deliver the acquisition F.O.B. destination to the receiving state agency unless otherwise specified in the solicitation.

(k) **Closing date.** The State Purchasing Director shall provide notice to suppliers in the solicitation of the closing date, time and location of a bid opening.

(l) **Sample submission.** For acquisitions of items or products, the solicitation may specify submission of samples of the required items or products to the State Purchasing Director.

(1) **Sample receipt.** If a bidder submits a sample, the bidder shall submit the sample to the Purchasing Division prior to the closing date.

(2) **Sample identification.** The bidder shall identify the sample the bidder submits with the bidder's name, bidder's address, state bid identification number and closing date. The supplier shall place the information on the sample container and on the sample shipping container.

(3) **Sample costs.** The bidder shall pay costs for the sample and submission to the State Purchasing Director.

(4) **Sample requirements.** A sample a bidder submits to the Purchasing Division shall represent the quality of the whole.

(5) **Sample tests.** The State Purchasing Director shall use standard testing procedures to determine the quality of a sample a bidder submits.

(6) **Sample tests costs.** If the sample a bidder submits to the Purchasing Division fails to meet the specification or standards the solicitation requires, the bidder shall pay testing costs the Purchasing Division incurs.

(7) **Unsuccessful bidder samples.**

(A) **Bidder requests sample return.** Bidders may request that the State Purchasing Director return samples examination does not destroy.

(B) **State Purchasing Director retains sample.** The State Purchasing Director may retain samples that bidders submit that examination does not destroy.

(C) **State Purchasing Director returns sample.** The State Purchasing Director may return samples that bidders submit that examination does not destroy. Bidders shall pay costs the Division incurs for sample return.

(8) **Successful bidder samples.** The State Purchasing Director may retain samples the successful bidder submits to ensure that acquisitions the successful bidder delivers meet specifications in the solicitation.

(m) **Subcontractor notice.** If a solicitation specifies submission of information for subcontractors a bidder intends to use for an acquisition, the supplier shall provide the information in the supplier's bid.

580:15-4-7. Bid submission

(a) **Submission location.** Bidders shall submit bids to the location the solicitation specifies.

(b) **Bid submission contents.** ~~Bidders shall submit forms, documents and contents the solicitation specifies in a sealed envelope or container. The outside of the envelope or container the bidder submits shall indicate bidder name, bidder address, requisition number and closing date.~~ Bidders shall submit all forms, documents and contents required by a solicitation in a sealed envelope or container. The legal name and complete address of the bidder, bid number and closing date shall be legibly printed on the outside of the envelope or container.

(c) **Purchasing Division bid receipt.** Upon receipt, the Purchasing Division shall clearly mark the outside of all envelopes or containers with the receipt date and time. ~~When the Purchasing Division receives a bid, the Division shall mark the outside of the envelope or container with the receipt date and time~~.

(d) **Signatures on solicitation documents.** All signatures required on any bid document shall be original unless otherwise authorized by state law and approved by the State Purchasing Director.

580:15-4-8. Bid withdrawal

(a) **Bid withdrawal before closing date.** A bidder who desires to withdraw a bid ~~before~~ prior to the closing date shall ~~notify the Purchasing Division. The Division shall require a bidder that desires to withdraw a bid to~~ submit written notice to the Division which includes ~~provide~~ personal identification, the supplier name, ~~requisition~~ bid number and closing date ~~in writing~~.

(b) **Bid withdrawal after closing date.** Withdrawal of a bid after the closing date shall not be authorized by the State Purchasing Director unless the bidder can prove that significant error by the bidder exists in the bid. ~~The Purchasing Director shall not allow a bidder to withdraw a bid after the closing date unless the bidder proves significant error by the bidder in the bid to the Purchasing Director.~~

580:15-4-10. Public ~~Bid~~ bid opening

(a) **Public ~~Bid~~ bid opening.** Bidders may request that a bid opening be public.

(b) **Late bids.** The State Purchasing Director shall reject all bids or proposals received after the closing date and time.

580:15-4-11. Bid evaluation

(a) **Evaluation document.** The State Purchasing Director shall establish an evaluation document that contains evaluation criteria the Purchasing Division shall use to evaluate bids. The evaluation document shall be open for public inspection following contract award.

(b) **Bid clarification.** The State Purchasing Director may solicit clarification from a bidder regarding the bidder's bid. The clarification shall not alter or supplement the bid.

(c) **Reasons for bid rejection.** The State Purchasing Director shall indicate in the solicitation file if a bid is nonresponsive. The State Purchasing Director may reject a bid that is nonresponsive or a bid from a nonresponsible bidder~~.~~ for reasons that include, but are not limited to the following:

(1) **Terms and conditions.** ~~If a~~ A bid that does not meet the terms and conditions of the solicitation~~, the Purchasing Director~~ shall ~~consider~~ be considered ~~the bid~~ nonresponsive.

(2) **Forms use.** ~~If a~~ A bid that does not contain forms or other information the solicitation specifies~~, the Purchasing Director~~ may ~~consider the bid~~ be considered nonresponsive.

(3) **Incomplete forms.** ~~If forms the solicitation requires do not have complete information, the Purchasing Director may consider the bid nonresponsive.~~ If forms required by the solicitation do not contain complete information, the bid may be considered nonresponsive.

(4) **Form entries improper.** If information provided in the ~~on forms the~~ solicitation documents ~~specifies are~~ is not in ink, legible, typewritten or printed, ~~the Purchasing Director may consider~~ the bid may be considered nonresponsive.

(5) **Improper alterations.** If alterations do not bear the initials of the person making the alteration, ~~the Purchasing Director may consider~~ the bid may be considered nonresponsive.

(6) **Use of unauthorized ~~Signature not authorized~~ signature.** If a signature on a form is not an authorized signature pursuant to state laws and the rules of this chapter, ~~the Purchasing Director shall consider~~ the bid shall be considered nonresponsive.

(7) **~~No~~ Absence of notary seal.** If forms do not contain a notary seal where forms indicate or otherwise comply with the manner of notarization prescribed for the bidding suppliers' state of residence, ~~the Purchasing Director shall consider~~ the bid shall be considered nonresponsive.

(8) **Bid does not contain bid bond.** ~~If a solicitation specifies that the bidder shall supply a bid bond and the bidder does not supply a bid bond, the Purchasing Director shall consider the bid nonresponsive.~~ If a bidder fails to include a bid bond specified as a requirement by a solicitation, the bid shall be considered nonresponsive.

(9) **Bid does not contain samples.** If a solicitation specifies that the bid shall contain samples and the bid does not contain samples, ~~the Purchasing Director shall consider~~ the bid shall be considered nonresponsive.

(10) **Bid nonresponsive.** If a bid does not offer items suitable for the intended use of the items, ~~the Purchasing Director shall consider~~ the bid shall be considered nonresponsive.

(11) **Pricing.** If bid pricing does not meet requirements of a solicitation, ~~the Purchasing Director shall consider~~ the bid shall be considered nonresponsive.

(12) **Bid fails to acknowledge solicitation amendment.** If a bid fails to acknowledge an amendment the Purchasing Director issues to a solicitation, ~~the Purchasing Director shall consider~~ the bid may be considered nonresponsive.

(13) **Bidder not responsible.** If the solicitation specifies that suppliers submit information relating to responsibility and a bidder does not submit ~~the~~ said information, or the State Purchasing Director determines the bidder is not

responsible, ~~the Purchasing Director may reject~~ the bid may be rejected.

(14) **One bid from multiple suppliers.** ~~The Purchasing Director shall consider one~~ One bid from multiple suppliers that does not designate a prime contractor shall be considered ~~as~~ nonresponsive.

(15) **Additional supplier terms and conditions.** If a supplier adds terms and conditions to an acquisition that are contrary to the laws of Oklahoma ~~the Purchasing Director may consider~~ the bid shall be considered nonresponsive.

(16) **Past performance.** If the Purchasing Director has ~~supplier~~ received complaints on a supplier, ~~the Purchasing Director may find the supplier's bid~~ the supplier may be found not responsible.

(17) **Signatures on solicitation documents.** If a facsimile signature appears in any solicitation document that requires an original signature [Reference 580:15-4-7.(d)], the bid may be considered nonresponsive.

(18) **Proof of insurance.** Whenever applicable to a solicitation, if a supplier is unable to provide proof of workers' compensation insurance or an alternative or exemption as authorized by state law, the supplier may be found not responsible.

(e) **Samples.** When a solicitation specifies a bidder submit samples, the State Purchasing Director shall examine the sample to determine the expected performance and service capabilities. The State Purchasing Director shall indicate the method of testing and rate the sample's performance in the evaluation document.

(f) **Supplier past performance.** The State Purchasing Director shall consider bidder performance on previous contract awards and indicate past performance in the evaluation document.

(g) **Lowest and best bid.** If the State Purchasing Director specifies in the solicitation that the bid evaluation criteria is lowest and best, the State Purchasing Director shall consider criteria the Oklahoma Central Purchasing Act specifies to determine the lowest and best bid.

(h) **Best value bid.** If the State Purchasing Director specifies in the solicitation that the bid evaluation criteria is best value, the State Purchasing Director shall consider criteria specified to determine the best value bid.

(i) **Life cycle costing.** If the State Purchasing Director specifies in the solicitation the evaluation criteria is life cycle costing, the State Purchasing Director shall consider the specified criteria to determine the factors and methodology to be used in the life cycle costing adjustments.

(j) **Other factors in determination of award.** The State Purchasing Director may waive minor deficiencies or informalities in a bid if the State Purchasing Director reasonably determines the deficiencies or informalities do not prejudice the rights of other bidders, or are not a cause for bid rejection.

(k) **Proof of insurance.** A vendor who contracts to do business with the state shall provide proof of workers' compensation insurance or proof of an alternative or exemption authorized by state law.

580:15-4-12. Contract award

(a) **Time of award.** The State Purchasing Director shall not make a contract award at a bid opening. The ~~Purchasing Director, shall make the~~ award shall be made upon completion of bid evaluation, completion of the evaluation document, determination of the lowest and best or best value bidder, completion of administrative tasks and, if necessary, coordination of award with the requisitioning state agency.

(b) **Award by item.** If a solicitation does not specify an all or none bid, the Purchasing Director may award to more than one bidder by awarding contract by item or groups of items.

(c) **No contract award.** ~~The Purchasing Director may make no contract award~~ A contract may not be awarded when:

(1) The Purchasing Director determines no bid meets the requirements of the solicitation.

(2) The Purchasing Director determines that all bids exceed fair market value for the acquisition.

(3) The state agency determines that bid price exceeds available state agency funds.

(4) The state agency determines that it no longer requires the acquisition in the form or manner the solicitation specifies.

(d) **Evaluation tie.** ~~In the event that the Purchasing director determines that two or more bids are equal, the Purchasing Director shall determine the successful bidders by a coin toss or a series or coin tosses.~~ Whenever it is determined that two or more bids are equal, the State Purchasing Director shall determine the successful bidder by a coin toss.

(e) **Notification of successful bidder.** The Purchasing Director shall notify the successful bidder within five (5) days of the contract award.

580:15-4-13. Supplier's protests

A supplier may protest a contract award by a state agency or the Purchasing Division to the State Purchasing Director.

(1) **Supplier notification.** A supplier shall submit written notice to the State Purchasing Director of a protest of an award of contract by a state agency or the Purchasing Division ~~to the Purchasing Director~~ within ten (10) days of contract award. The protest notice shall state supplier facts and reasons for protest.

(2) **State Purchasing Director review and determination.** The State Purchasing Director shall review the supplier's protest and contract award documents~~, and sustain or deny the supplier's protest~~. Written notice of the decision by the State Purchasing Director to sustain or deny the protest will be sent to the supplier within ten (10) days of receipt of the protest.

(3) **Supplier appeal of State Purchasing Director denial.** The supplier may appeal a denial of protest by the State Purchasing Director to the Director of Central Services. The supplier shall file a written appeal within ten (10) days of the date of the State Purchasing Director's ~~letter~~ notice of denial pursuant to 75 O.S., Section 309 et seq.

(4) **Director actions and determination.** The Director ~~shall~~ may hear the protest, assign the protest to an attorney employed by the Department, or assign

the supplier's appeal to an administrative law judge the Department retains. ~~The~~ If the protest is assigned to an attorney employed by the Department or to an administrative law judge, the delegated party shall review the protest for legal authority and jurisdiction. If legal authority and jurisdictional requirements are met, the delegated party shall conduct an administrative hearing and provide findings of fact and conclusions of law to the Director. The Director shall send written notice of the decision to sustain or deny the supplier's appeal to the supplier.

(5) **Supplier appeal of Director denial.** If the Director denies a supplier's appeal, the supplier may appeal pursuant to provisions of 75 O.S., Section 309 et seq.

580:15-4-14. Supplier Contract performance

(a) **Delivery.** A supplier shall deliver acquisitions to a state agency within time periods the contract specifies.

(b) **Item inspection.** The state agency shall inspect acquisitions from the supplier within a reasonable time after supplier delivery.

(c) **Item rejection.** The state agency shall reject acquisitions from the supplier that do not meet specifications or other terms and conditions of the contract. The supplier shall pay costs to retrieve and replace acquisitions that do not meet specifications with a conforming item or service.

(d) **Acquisition title.** Title to acquisitions shall not pass from the supplier to the state agency until the state agency receives, inspects and accepts the items.

(e) **Supplier nondiscrimination.** The State of Oklahoma seeks equality of opportunity for all persons. If the Oklahoma Human Rights Commission certifies that a supplier engages in practices that deny or seek to deny equality of opportunity for all persons, the State Purchasing Director may terminate contracts the supplier has with state agencies and may suspend the supplier.

(f) **Subcontractor performance.** A supplier shall be responsible for the performance of subcontractors. The supplier shall provide a single point of contact for the state agency when the supplier uses subcontractors. The supplier shall notify the state agency and the Purchasing Division if the supplier uses a subcontractor the supplier did not disclose in the supplier's bid.

(g) **Change orders.** If a supplier determines a requested change order exceeds the original scope of the solicitation, the supplier shall notify the State Purchasing Director or the state agency before initiating changes.

(h) **Contract assignment.** A supplier shall not assign or subcontract a contract to another supplier, individual, business entity or organization without written approval of the State Purchasing Director.

580-15-4-17. Contract termination

(a) **The State Purchasing Director may terminate a contract between a supplier and a state agency.**

(1) If a supplier fails to post, or allows to expire, a bid~~,~~ performance or surety bond the solicitation specifies, the State Purchasing Director may terminate a contract.

(2) If a supplier fails to deliver an acquisition pursuant to the contract, the State Purchasing Director may terminate a contract.

(3) If a supplier fails timely to replace at the supplier's expense acquisitions that fail to meet the requirements of the contract, the State Purchasing Director may terminate a contract.

(4) If a supplier misrepresents the supplier's ability to provide an acquisition, the State Purchasing Director may terminate a contract.

(5) If a supplier's financial or other condition, including but not limited to, bankruptcy or other evidence of insolvency which may affect the supplier's ability to perform, the State Purchasing Director may terminate a contract.

(6) If a supplier commits an unlawful act or an act that impairs the supplier's ability to perform, the State Purchasing Director may terminate a contract.

(7) If a supplier commits an act that could result in the supplier's suspension or debarment from the suppliers list, the State Purchasing Director may terminate a contract.

(8) If the State Purchasing Director determines that an administrative error occurred prior to contract performance, the State Purchasing Director may terminate a contract.

(9) The State Purchasing Director may terminate the contract in its entirety or any portion thereof.

(b) **Supplier responsible for damages.** If the State Purchasing Director terminates a contract between a supplier and a state agency, the Attorney General of the State of Oklahoma, the State Purchasing Director, or the requisitioning agency, may seek damages from the supplier. Damages may include additional cost to obtain the acquisition from another supplier, the cost of re-bidding the acquisition and the cost of acquisition receipt delay.

580:15-4-18. Supplier suspension from suppliers list

(a) **Cause for suspension.** The State Purchasing Director may suspend a supplier from the suppliers list for a period of time not to exceed one (1) year.

(1) If a supplier fails to post or allows to expire a bid bond, performance bond, or surety bond, required by a solicitation, the State Purchasing Director may suspend the supplier.

(2) If a supplier fails to perform pursuant to the contract, the State Purchasing Director may suspend the supplier.

(3) If a supplier provides acquisitions that fail to meet the requirements of the contract, the State Purchasing Director may suspend the supplier.

(4) If a supplier fails to deliver an acquisition pursuant to the contract, the State Purchasing Director may suspend the supplier.

(5) If a supplier fails timely to replace at the supplier's expense acquisitions that fail to meet the requirements of the contract or that have latent defects, the State Purchasing Director may suspend the supplier.

(6) If a supplier provides the State Purchasing Director with false, misleading, inaccurate, materially deficient or

incomplete information on a bidder registration form, the State Purchasing Director may suspend the supplier.

(7) If a supplier fails to keep bids firm for sixty (60) days from the solicitation closing date, the State Purchasing Director may suspend the supplier.

(8) If a supplier fails to resolve a dispute with a state agency, the State Purchasing Director may suspend the supplier.

(9) If the Oklahoma Human Rights Commission certifies that a supplier engaged in discriminatory practices, the State Purchasing Director may suspend the supplier.

(10) If a supplier misrepresents, fails to provide, or allows to expire a professional certification required by the solicitation, the State Purchasing Director may suspend the supplier.

(11) If a supplier colludes with other suppliers to restrain competitive bidding, the State Purchasing Director may suspend the supplier.

(12) If a supplier provides a state employee with a kickback, the State Purchasing Director may suspend the supplier.

(13) If the State Purchasing Director determines that a supplier is no longer responsible or qualified to do business with the State of Oklahoma, the State Purchasing Director may suspend the supplier.

(14) If a supplier violates any provision of the Oklahoma Central Purchasing Act, the State Purchasing Director may suspend the supplier.

(15) The State Purchasing Director may suspend a supplier for any other reason the State Purchasing Director determines appropriate.

(b) **Suspension notice.** The State Purchasing Director shall notify a supplier of the supplier's suspension from the Purchasing Division suppliers lists within five (5) days of the State Purchasing Director's determination.

(c) **Suspension appeal.** A supplier may appeal a suspension of the supplier by the State Purchasing Director to the State Purchasing Director. The supplier shall appeal the supplier's suspension by the State Purchasing Director within five (5) days of receipt of the suspension notice.

(d) **Supplier suspension appeal.** If a supplier appeals suspension by the State Purchasing Director, the State Purchasing Director shall affirm or deny the appeal.

(1) If the State Purchasing Director affirms the supplier's appeal, the State Purchasing Director shall reinstate the supplier to the suppliers list.

(2) If the State Purchasing Director denies the supplier's appeal, the supplier may appeal the denial to the Director of Central Services pursuant to 75 O.S., Section 309 et seq.

(e) **Supplier request for reinstatement.** A supplier the State Purchasing Director suspends may request the State Purchasing Director to allow the supplier to register for the suppliers list before the end of the supplier's suspension period. The State Purchasing Director shall require the supplier to submit documents that indicate a change of conditions that would alleviate the reason for the supplier's suspension.

(f) **Supplier reinstatement.** If the State Purchasing Director reasonably believes that the supplier demonstrates the ability to satisfy requirements for performance of state contracts, the State Purchasing Director shall authorize the supplier to register for the suppliers list pursuant to 580:15-4-2.

580:15-4-19. Supplier debarment.

The State Purchasing Director may debar a supplier from the suppliers list or from submitting bids to the Purchasing Division.

(1) **Cause for debarment.**

(A) **Fraud, bribery or corruption.** The State Purchasing Director may debar a supplier upon conviction of an individual or business entity guilty of a felony involving fraud, bribery or corruption.

(B) **Gift, donation or gratuity.** The State Purchasing Director may debar a supplier upon conviction of an individual or business entity of a misdemeanor involving a gift, donation or gratuity an individual or business entity gives to an official of the Department of Central Services or an immediate family member of an official of the Department of Central Services.

(C) **Anti-Kickback Act of 1974.** The State Purchasing Director may debar a supplier upon conviction of an individual or business entity of a felony involving the Anti-Kickback Act of 1974.

(2) **Debarment notice.** If the State Purchasing Director considers debarment of an individual or business entity, the State Purchasing Director shall notify the individual or business entity of rights to a hearing pursuant to the Oklahoma Administrative Procedures Act [75 O.S., Section 309 et seq.].

(3) **Debarment considerations.** The State Purchasing Director shall consider factors of this subsection when considering debarment of an individual or business entity.

(A) **Disassociation.** The State Purchasing Director may consider the efforts, if any, of the individual or business entity, to disassociate itself from individuals and business entities responsible for convictions.

(B) **Imputed business entity.** Conviction of an individual, affiliate or associate a business entity employs may impute the business entity.

(C) **Imputed individual.** Conviction of a business entity may impute an individual, affiliate or associate of the business entity.

(D) **Time period.** The State Purchasing Director may consider the period of time during which the acts leading to conviction of the individual or business entity occur.

(E) **Failure to respond to debarment notice.** The State Purchasing Director shall consider failure to respond to the debarment notice by the individual or business entity.

(F) **Other factors.** The State Purchasing Director may consider other factors regarding the individual or business entity.

(4) **State Purchasing Director options.** Upon completion of review of debarment records, the State Purchasing Director shall take an action affecting the individual or business entity.

(A) **Decline to debar.** The State Purchasing Director may decline to debar an individual or business entity.

(B) **Suspension.** The State Purchasing Director may suspend an individual or business entity for a period of time up to one year, as the State Purchasing Director determines appropriate.

(C) **Debarment.** The State Purchasing Director may debar an individual, a business entity or both.

(5) **Reinstatement after debarment.** A debarred individual or business entity may submit a request for reinstatement to the State Purchasing Director.

(A) **State Purchasing Director consideration.** The State Purchasing Director shall consider information the individual or business entity provides and determine if the information the individual or business entity provides, merits consideration for reinstatement of the individual or business entity to the suppliers list. The State Purchasing Director may reinstate the individual or business entity to the supplier's list.

(B) **Supplier appeal of State Purchasing Director actions.** A supplier may appeal a denial of reinstatement by the State Purchasing Director to the Director within ten (10) days of the date of the State Purchasing Director's letter of denial. The Director shall review the denial and all pertinent information. Following the review of the request for reinstatement of an individual or business entity, the Director shall take an action.

(i) **Director reinstates individual or business entity.** If the Director determines that the State Purchasing Director should reinstate the individual or business entity, the Director shall notify the State Purchasing Director and the individual or business entity of the decision. The individual or business entity may apply for inclusion on the suppliers list pursuant to 580:15-4-2.

(ii) **Debarment continues.** If the Director determines that the individual or business entity does not qualify for reinstatement, the Director shall notify the individual or business entity.

580:15-4-20. Other provisions

(a) **Document reproduction.** The Purchasing Division shall provide reproductions of documents to an individual or business entity.

(b) **Document reproduction fees.** The Purchasing Division shall collect a fee for each reproduction. The fee shall not exceed the amount per reproduction pursuant to 51 O.S., Section 24A.5.

(c) **Search fees.** The Purchasing Division may collect a fee for records search. The State Purchasing Director shall base the fee per hour on the hourly rate of pay of the lowest level employee capable to conduct the search.

SUBCHAPTER 6. STATE AGENCY PROVISIONS

580:15-6-1. Purpose

The purpose of this subchapter is to provide state agencies and certified procurement officers information to make acquisitions for state agencies. State agencies and certified procurement officers shall comply with provisions of the Oklahoma Central Purchasing Act, State Use Committee, other statutory provisions and rules of the Purchasing Division for state agency acquisitions. State agencies may submit questions regarding rules of the Purchasing Division to the State Purchasing Director.

580:15-6-2. Certified procurement officers

(a) **Training.** The State Purchasing Director shall provide training for state agency purchasing officials and other purchasing staff pursuant to 74 O.S., Section 85.5(D).

(b) **Certification.** The State Purchasing Director shall certify state agency purchasing officials and other purchasing staff who demonstrate proficiency in principles of state procurement practices, basic contracting, provisions of the Oklahoma Central Purchasing Act, provisions of State Use Committee and other matters which relate to procurement practices.

(c) **Authority.** A CPO ~~Certified procurement officers~~ shall be authorized to make acquisitions for state agencies.

(d) **Duties.** A ~~certified procurement officer~~ CPO shall provide assistance and oversight to a state agency so state agency acquisition processes meet the requirements of the Oklahoma Central Purchasing Act, rules of the Purchasing Division, other statutory provisions and the state agency's internal purchasing procedures.

(e) **Decertification.** The State Purchasing Director may revoke certification of a ~~certified procurement officer~~ CPO if the State Purchasing Director reasonably believes the ~~certified procurement officer~~ CPO did not make state agency acquisitions pursuant to the Oklahoma Central Purchasing Act, rules of the Purchasing Division, other statutory provisions, or the state agency's internal purchasing procedures.

(f) **Continuing education.** ~~Certified procurement officers~~ A CPO shall attend eighteen (18) hours of qualifying continuing education per calendar year following certification. Continuing education courses must be related to procurement practices. Prior to December 31 of each calendar year, ~~certified procurement officers~~ a CPO shall submit to the State Purchasing Director documentation verifying course attendance. Failure to obtain the required continuing education hours may result in suspension of certification by the State Purchasing Director.

(1) **Burden of proof.** The burden of proof rests solely upon the CPO to demonstrate to the satisfaction of the State Purchasing Director, in accordance with the rules of this chapter, that all continuing education courses reported

meet all of the requirements as to content and subject matter related to the procurement practices.

(2) **Reporting and documentation by CPOs.** Continuing education credit may be claimed by a CPO only for the compliance period in which the course was completed and credit granted.

(g) **Change in status.** ~~Certified procurement officers~~ A CPO shall notify the State Purchasing Director when they are no longer performing as a ~~certified procurement officer~~ CPO ,when they transfer to another state agency, or when they terminate their employment with the state.

580:15-6-3. State agency purchasing procedures

(a) **Development.** State agencies shall develop internal purchasing procedures for acquisitions by the state agency.

(b) **Submission to State Purchasing Director.** The state agency shall submit a copy of the procedures to the State Purchasing Director.

(c) **State Purchasing Director review.** The State Purchasing Director shall review the state agency's procedures to ensure compliance with provisions of the Oklahoma Central Purchasing Act, provisions of the State Use Committee, and the rules of the Purchasing Division.

(d) **State Purchasing Director notice of approval or denial to state agency.** Within fifteen (15) days of submission, the Director, or the Director's designee, shall notify the state agency of the procedures' compliance or indicate revisions necessary to bring the procedures into compliance.

(e) **State agency resubmission following disapproval.** The state agency shall resubmit procedures until the Director notifies the state agency of the procedures' compliance.

(f) **Purchasing procedure amendments.** If a state agency desires to amend the state agency's internal purchasing procedures, the state agency shall submit the new procedures in their entirety to the State Purchasing Director for review pursuant to the provisions of these rules.

580:15-6-4. State agency acquisition records retention

(a) **Retention time period.** A state agency shall retain all records relative to acquisitions and contracts for the duration of the contract term and for a period of three (3) years following completion and/or termination of the acquisition. If an audit, litigation, or other action involving such records is started before the end of the three (3) year period, the records shall be maintained for two (2) years from the date all issues arising from the action are resolved or until the end of the three (3) year retention period, whichever is later.

(b) **Records retention location.** A state agency shall retain records and documents in a central location unless a written waiver is provided by the State Purchasing Director.

(c) **Records availability.** A state agency shall make records for state agency acquisitions available to the State Purchasing Director when the State Purchasing Director performs an audit of state agency acquisitions.

(d) **Records to be retained.** A state agency shall retain acquisition records to include but not limited to justification for the acquisition, supporting documents, related information, acquisition contract, evaluations, other evidence of contractor performance and written reports.

580:15-6-5. Methods State Agencies Use to Make Acquisitions

State agencies shall make acquisitions using a method of acquisition in this section.

(1) **Statewide Contracts.** The State Purchasing Director shall designate statewide contracts as mandatory or nonmandatory.

(A) **Mandatory statewide contract.** The State Purchasing Director may designate a statewide contract for mandatory use. State agencies shall make acquisitions from mandatory statewide contracts regardless of the acquisition purchase price. A state agency may submit a written request to the State Purchasing Director to waive requirements for a state agency's use of a mandatory statewide contract for acquisitions. The State Purchasing Director shall grant exceptions prior to a state agency making the acquisition from another supplier.

(B) **Nonmandatory statewide contracts.** State agencies may use nonmandatory statewide contracts when an agency determines it is in the best interest of the state.

(2) **State Use Committee.** State agencies shall make acquisitions from suppliers on the State Use Committee procurement schedule regardless of the acquisition purchase price if the supplier's delivery date meets state agency requirements. State Use Committee statewide contracts are mandatory statewide contracts. State agencies shall reference the State Use Committee procurement schedule to ensure all acquisitions are pursuant to 74 O.S., Section 3007. An agency may make an open market acquisition of a specified commodity or class of commodities on the State Use Committee procurement schedule upon receipt of a written waiver from the State Use Committee procurement officer.

(3) **Oklahoma Correctional Industries.** State agencies shall make acquisitions from the Oklahoma Correctional Industries pursuant to 57 O.S., Section 549.1 regardless of the acquisition purchase price. State agencies shall submit requisitions for acquisitions from Oklahoma Correctional Industries to the Purchasing Division or to Oklahoma Correctional Industries. If an acquisition is available from the State Use Committee procurement schedule and from Oklahoma Correctional Industries, the state agency shall make the acquisition from the State Use Committee procurement schedule. If Oklahoma Correctional Industries is unable to meet state agency requirements for an acquisition, Oklahoma Correctional Industries shall notify the State Purchasing Director. If the State Purchasing Director determines that an acquisition Oklahoma Correctional Industries produces does not meet minimum state agency requirements, the State Purchasing Director shall notify Oklahoma Correctional Industries. If Oklahoma Correctional Industries disagrees with the State

Purchasing Director, the Director shall resolve the dispute. An agency may make an open market acquisition of a specified commodity or class of commodities produced by the Oklahoma Correctional Industries upon receipt of a written waiver from the Oklahoma Correctional Industries.

(4) **Scheduled acquisitions.** If the State Purchasing Director makes scheduled acquisitions from suppliers for a state agency, the state agency shall not make open market purchases for the same commodity or group of commodities.

(5) **Nonencumbered Contracts.**

(A) **For a state agency.** If a state agency is unable to establish a quantity of items or services, or delivery dates for an acquisition, the State Purchasing Director or the state agency may establish a nonencumbered contract for the acquisition by the state agency.

(B) **For state agencies.** If the State Purchasing Director is unable to establish a quantity of items or services, or delivery dates for an acquisition, the State Purchasing Director may establish a nonencumbered contract for acquisitions by state agencies.

(6) **Open market acquisitions.** State agencies may make open market acquisitions not exceeding Twenty Five Thousand Dollars ($25,000.00) pursuant to provisions of the Oklahoma Central Purchasing Act and rules of the Purchasing Division.

580:15-6-8. State agency open market acquisitions not exceeding ten thousand dollars ($10,000.00)

State agencies that do not have a ~~certified procurement officer~~ CPO and approved internal purchasing procedures pursuant to the requirements of 580:15-6-2 and 580:15-6-3 shall make open market acquisitions not exceeding Two Thousand Five Hundred Dollars ($2,500.00) pursuant to this section. State agencies that do have a ~~certified procurement officer~~ CPO and approved internal purchasing procedures shall make open market acquisitions not exceeding Ten Thousand Dollars ($10,000.00) pursuant to this section.

(1) **Supplier selection.** The State Purchasing Director shall make the Division registered supplier list available to state agencies. A state agency may select suppliers from the registered supplier list. State agencies shall not select a supplier that is suspended or debarred by the State Purchasing Director or the Oklahoma Tax Commission or a supplier that is suspended or debarred by the federal government if federal funds are being used in the acquisition.

(2) **State agency terms and conditions.** The state agency shall document the state agency's specifications. The state agency shall notify suppliers of the state agency's specifications for the acquisition. The state agency shall give suppliers written specifications upon the suppliers' request.

(3) **Price quotation.** The state agency shall solicit price quotations and delivery dates by mail, telephone, facsimile or by means of electronic commerce from a minimum of two suppliers. The state agency shall secure the suppliers' price quotation in writing or document the suppliers' price quotation and delivery dates.

(4) **Contracts.** If the state agency and the supplier execute a contract for the acquisition, the supplier shall attach a notarized, sworn statement of noncollusion pursuant to 74 O.S., Section 85.23.

(5) **Delivery document from supplier.** When the state agency takes possession of the acquisition, the state agency shall obtain a delivery document from the supplier stating, at a minimum, the date of the acquisition, the name and address of the supplier, and a description of the acquisition. The state agency shall note the delivery date and person receiving the acquisition on the delivery document.

(6) **Supplier payment.** The state agency shall pay the supplier following receipt, inspection and acceptance of the acquisition by the state agency.

580:15-6-9. State agency acquisitions exceeding ten thousand dollars ($10,000.00) and not exceeding twenty-five thousand dollars ($25,000.00)

State agencies with a ~~certified procurement officer~~ CPO and approved internal purchasing procedures pursuant to the requirements of Sections 580:15-6-2 and 580:15-6-3 shall make acquisitions exceeding Ten Thousand Dollars ($10,000.00) but not exceeding Twenty-Five Thousand Dollars ($25,000.00) pursuant to this section.

(1) **Supplier selection.** The State Purchasing Director shall make the Division registered supplier list available to state agencies. The state agency shall select a minimum of three (3) suppliers for the commodity classification for bid solicitation. The state agency may select suppliers from the registered supplier list. State agencies shall rotate use of suppliers. State agencies shall not select a supplier that is suspended or debarred by the State Purchasing Director or the Oklahoma Tax Commission or a supplier that is suspended or debarred by the federal government if federal funds are being used in the acquisition.

(2) **Solicitations.** The state agency shall prepare specifications for a solicitation. The state agency shall solicit bids from a minimum of three (3) suppliers using mail, telephone, facsimile or by means of electronic commerce. The state agency shall notify the suppliers of the state agency's specifications for the acquisition.

(3) **Noncollusion affidavit.** The state agency shall provide suppliers a noncollusion affidavit form pursuant to 74 O.S., Section 85.22. Suppliers shall submit the forms with the supplier's bid.

(4) **Supplier bid submission.** Suppliers shall submit bids to the state agency in person, by mail, by facsimile or by means of electronic commerce. If a supplier submits a bid, the supplier shall submit an original notarized, sworn statement of noncollusion pursuant to 74 O.S., Section 85.22. If a supplier submits a bid by facsimile or by means of electronic commerce, the supplier shall submit the notarized, sworn statement of noncollusion with the original signature prior to the closing date the state agency specifies.

(5) **Bid evaluation.** The state agency shall make a written bid evaluation. The state agency shall select the lowest and best bid or bid providing the best value to the state agency.

(6) **Award to a supplier.** When the state agency selects a bid, the state agency shall notify the supplier of the award.

(7) **Contract noncollusion affidavit.** If the state agency and the supplier execute a contract for the acquisition, the supplier shall submit a notarized, sworn statement of noncollusion pursuant to 74 O.S., Section 85.23.

(8) **Delivery document from supplier.** The state agency shall receive a delivery document from the supplier stating, at a minimum, the date of the acquisition, the name and address of the supplier, and a description of the acquisition. The state agency shall note the delivery date and person receiving the acquisition on the delivery document.

(9) **Supplier payment.** The state agency shall pay the supplier following receipt, inspection and acceptance by the state agency of the acquisition.

580:15-6-10. State agency acquisitions the Purchasing Division processes

State agencies that do not have ~~certified procurement officers~~ a CPO and internal purchasing procedures pursuant to the requirements of 580:15-6-2 and 580:15-6-3 shall submit requisitions for acquisitions exceeding Two Thousand Five Hundred Dollars ($2,500.00) the state agency's acquisition authority dollar amount to the State Purchasing Director. State agencies whose acquisition authority has been reduced by the Director shall submit all acquisitions exceeding the established authority dollar amount to the State Purchasing Director. All acquisitions exceeding twenty-five thousand dollars ($25,000.00) shall be submitted to the State Purchasing Director.

(1) **Forms.** State agencies shall use forms for requisitions provided or approved by the State Purchasing Director.

(2) **Item requisition requirements.** The state agency shall submit with each item requisition, a statement signed by the state agency's chief administrative officer or chief administrative officer of the requisitioning unit justifying the acquisition and, where applicable, the quantity or volume to be acquired.

(3) **Services requisition requirements.** If the state agency requisitions professional or nonprofessional services, the state agency shall submit a document signed by the state agency's chief administrative officer or the chief administrative officer of the requisitioning unit. The document shall meet the requirements of 74 O.S., Section 85.4(E)(2).

(4) **Additional requisition information.** The State Purchasing Director may require a state agency to submit additional information with a requisition.

(5) **Requisition acceptance or rejection.** The State Purchasing Director shall accept or reject a state agency's requisition. The State Purchasing Director shall notify the state agency if the State Purchasing Director rejects a requisition.

(6) **Competitive bid evaluation.** The State Purchasing Director and the state agency shall evaluate bids for acquisition of professional services.

(7) **Competitive bid award.** The State Purchasing Director shall award a contract, as the solicitation specifies, to the responsible bidder that provides the lowest and best, or best value bid.

(8) **State agency notification.** The State Purchasing Director shall notify the state agency of the successful bidder by purchase order following the award of contract.

580:15-6-11. Additional purchasing information

(a) **Split purchases.** A state agency shall not make split purchases for the purpose of evading the state agency's dollar amount threshold for competitive bids. Conviction for making an acquisition by split purchase is a felony pursuant to 74 O.S., Section 85.7.

(b) **Acquisitions by component.** If a state agency makes an acquisition that the state agency receives in components, the acquisition purchase price is the total acquisition purchase price for all components.

(c) **Change orders.** Contracts including component or phased deliveries may be increased by an amount which does not exceed ten percent (10%) of the total acquisition purchase price. In determining the ten percent (10%) dollar amount, the cumulative value of all change orders shall be compared to the original total acquisition price. All other contracts may be increased only if the change order does not exceed the scope of the original solicitation.

(1) **Acquisitions by a state agency.** If a change order would increase the the total contract dollar amount above the dollar amount requiring the state agency to submit a requisition to the State Purchasing Director, the state agency shall seek approval of the State Purchasing Director prior to issuing the change order.

(2) **Acquisitions by the Purchasing Division.** If a requested change order exceeds ten percent (10%) in a contract which includes component or phased deliveries or exceeds the scope of the original solicitation, the State Purchasing Director shall deny the requested change order and notify the state agency. The State Purchasing Director may deny a requested change order which exceeds the scope of the original solicitation.

(d) **Fixed rates.** The Department may approve service acquisitions as qualifying for a fixed rate pursuant to the provisions of 74 O.S., Section 85.7(11).

(e) **State agency acquisitions from another state agency.** A state agency may contract with another state agency pursuant to 74 O.S., Section 581. A state agency shall not make an acquisition with or through another state agency for the purpose of evading competitive bidding provisions of the Oklahoma Central Purchasing Act, rules of the Purchasing Division or State Use Committee.

(f) **State agency acquisitions from another governmental agency.** A state agency may contract with a political subdivision, agency of the United States or a political division

pursuant to 74 O.S., Sections 1001 through 1008. A state agency shall not make an acquisition with or through a political division, political subdivision, or agency of the United States for the purpose of evading competitive bidding requirements, provisions of the Oklahoma Central Purchasing Act, rules of the Purchasing Division or State Use Committee.

(g) **Recycled materials.** State agencies shall procure acquisitions with recycled or recyclable materials whenever feasible. The State Purchasing Director shall supply information regarding acquisitions that contain recycled materials to a state agency, upon request.

(h) **Trade-ins.** State agencies may use state agency items as trade-in items when the state agency makes an acquisition with written approval of the State Purchasing Director. The state agency shall determine fair market value for the trade-in item and receive that amount or more as credit on the purchase price of the acquisition. The state agency may seek advice from the State Purchasing Director to determine fair market value of the trade-in.

(i) **State agency acquisitions through OneNet.** State agencies may make acquisitions through OneNet pursuant to provisions of the Oklahoma Central Purchasing Act.

(j) **Signature authorization.** State agencies shall provide the State Purchasing Director with a current Authorized Signature Form. The form shall be dated and identify the name, title, and signature of those individuals designated by the appointing authority to sign and approve requisitions, sole source affidavits, change order requests, and surplus property transactions. The State Agency shall submit revisions of the form to the State Purchasing Director within 30 days of any change in the authorized signatures.

580:15-6-13. Sole source and sole brand acquisitions

State agencies with a ~~certified procurement officer~~ CPO and approved internal purchasing procedures that meet the requirements of Sections 580:15-6-2 and 580:15-6-3 may requisition a sole source or sole brand acquisition within the agency's purchasing authority limit pursuant to the provisions of the Oklahoma Central Purchasing Act.

580:15-6-15. State Purchasing Director audits of state agencies

The State Purchasing Director shall review state agency acquisitions to ensure state agency compliance with provisions of the Oklahoma Central Purchasing Act, rules the Purchasing Division promulgates, provisions of 74 O.S., Sections 3001 through 3010, State Use Committee, other laws of the State of Oklahoma, and the state agency's internal purchasing procedures. If the State Purchasing Director finds state agency procurement practice deficiencies, the State Purchasing Director shall report the findings to the Director. The Director shall determine corrective actions for the state agency.

(1) **State Purchasing Director notification.** The State Purchasing Director shall notify the state agency that the Division audit team shall audit state agency acquisitions. The notice shall advise the state agency of the audit team arrival date, the number of audit team members, the expected time period the audit team may be at the state agency and the time period for acquisitions the audit team shall review.

(2) **State agency responsibilities.**

(A) The state agency shall provide work space for the audit team.

(B) The state agency shall provide records for acquisitions during the time period the State Purchasing Director specifies.

(C) The state agency shall make the state agency's ~~certified procurement officer~~ CPO available to assist the audit team.

(3) **Purchasing Division audit following Director reduction of state agency purchasing authority.** If the Director reduces the purchasing authority of a state agency, the State Purchasing Director shall periodically audit the state agency's acquisitions to review the agency's efforts to correct audit findings of noncompliance.

580:15-6-17. Ratification of an unauthorized commitment

If a state agency makes an unauthorized commitment on behalf of the state to a supplier, the state may, if in the best interest of the state, ratify the commitment.

(1) **State agency actions.** The chief administrative officer of the state agency shall approve or disapprove a ratification request.

(A) **Chief administrative officer approves request.** If the chief administrative officer approves the request, the state agency shall perform steps as follows.

(i) The state agency shall negotiate a proposal for a settlement agreement with the supplier.

(ii) The chief administrative officer shall sign the proposed settlement agreement.

(iii) The chief administrative officer shall document facts and circumstances of the unauthorized commitment.

(iv) The chief administrative officer shall provide a copy of the settlement agreement and the supporting documents to the State Purchasing Director.

(B) **Chief administrative officer disapproves request.** If the chief administrative officer disapproves the request, the state agency shall retain documents from the supplier and the state agency.

(2) **State Purchasing Director actions.** The State Purchasing Director shall retain a copy of the settlement agreement.

580:15-6-18. State purchase card program

Use of state purchase cards authorized by the State Purchasing Director [Reference 74 O.S., Section 85.5L.] shall be

subject to the policies and procedures of a purchase card program established by the State Purchasing Director to ensure compliance with the statewide contract for this service.

[OAR Docket #03-2030; filed 6-5-03]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 20. CONSTRUCTION AND PROPERTIES

[OAR Docket #03-2031]

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PERMANENT final adoption
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580:20-1-1 through 165:20-1-6. [AMENDED]
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580:20-1-8. [REVOKED]
580:20-1-8.1 [NEW]
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580:20-1-16 [AMENDED]
580:20-1-18 [AMENDED]
Subchapter 3. Selection of Architects, Engineers, And Other Design Consultants
580:20-3-2 [AMENDED]
580:20-3-4 through 20-3-7 [AMENDED]
Subchapter 5. Minimum Codes for State Construction
580:20-5-2 [AMENDED]
Subchapter 7. Procedures for Agencies to Perform Responsibilities Exercised by the Construction and Properties Division
580:20-7-2 [AMENDED]
580:20-7-4 [AMENDED]
580:20-7-5 [AMENDED]
Subchapter 9. Full-Time Employment by Agencies for Minor Construction Projects
580:20-9-2 [AMENDED]
Subchapter 15. Energy Services Contracts
580:20-15-2 [AMENDED]
Subchapter 17. Construction Management Procedures and Requirements [NEW]
580:20-17-1 through 580:20-17-9 [NEW]
Subchapter 19. Design-Build Procedures and Requirements [NEW]
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Subchapter 21. Selection of Construction Management and Design-Build Firms [NEW]
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Subchapter 15. Energy Services Contracts
580:20-15-2 [AMENDED]
Subchapter 17. Construction Management Procedures and Requirements [NEW]
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Subchapter 19. Design-Build Procedures and Requirements [NEW]
580:20-19-1 through 580:20-19-13 [NEW]
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ANALYSIS:
The purpose of the rules is to administer the mandates of House Bill No. 2874 of the Second Regular Session of the 48th Oklahoma Legislature, which amends 61 O.S., Sections 201 through 211 titled "Public Building Construction and Planning Act." The rules prescribe procedures and requirements for utilization of the construction management or design-build delivery services by individuals and business entities that contract with the State.
CONTACT PERSON:
Gerry Smedley, Administrative Programs Officer, (405) 522-6597, Department of Central Services, Administration, 2401 N. Lincoln Boulevard, Suite 206, Oklahoma City, OK 73105.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. BIDDING PROCEDURES

580:20-1-1. Purpose

(a) The Construction and Properties Division, Department of Central Services is responsible for assisting and advising the using state agency, other departments and divisions of state government, in planning, programming, arranging and contracting for the services of professionals for the planning, design and construction of assigned projects and contracting for construction. The Division is also responsible for implementing the Public Competitive Bid Act, 61 O.S., Sections 101 through ~~137~~ 138. This document is provided to assist concerned parties in the bidding of projects for construction or renovation of state facilities.

(b) The State of Oklahoma does not discriminate in its hiring practices and expects its contractors to abide by all Federal rules and regulations on non-discrimination. All bidders shall acknowledge in the bidding documents they are Equal Employment Opportunity employers.

(c) The State of Oklahoma adheres to a policy which provides a drug free workplace to all of its employees. All contractors working on a state facility shall comply with the policies of the state agency controlling that facility.

580:20-1-2. Definitions

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

"Administrator" means the State Construction Administrator of the Construction and Properties Division of the Department of Central Services.

~~**"Agency"** means the state department or agency for whom the project is being constructed.~~

"Alternate bid" (or "Alternate") means an amount stated in the bid to be added to or deducted from the amount of the base bid if the corresponding change in the work, as described in the bidding documents, is accepted.

"Base bid" means the sum stated in the bid for which the bidder offers to perform the work described in the bidding documents as the base. Work may be added or deleted for sums stated in the alternate bids.

"Bid" means the cost proposal submitted by a construction firm in response to a request or solicitation for bids from the Division for a construction project described in plans and/or specifications provided by the State.

"Design consultant" means either the architectural/engineering firm under contract to the Division ~~agency~~ or a representative of the Construction and Properties Division used for the design and construction monitoring of the construction project.

"Division" means the Construction and Properties Division of the Department of Central Services.

"State agency" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 61.

580:20-1-3. Bid solicitations

The manner in which bids are solicited shall be determined by the estimated cost of the project. There are two categories, projects over the amount established by statute in 61 O.S., Section ~~102(4)~~ 102(6) and projects under the statutory amount.

(1) **Projects over statutory amount.** Projects over the statutory amount established in 61 O.S., Section ~~102(4)~~ 102(6) are advertised in a newspaper of general circulation and published in the county where the work, or a major part of it, is to be done. The notice is published in two consecutive weekly issues of the said newspaper with the first publication at least twenty (20) days prior to the day set for bid opening. Information is also provided to various bid assistance centers and to trade publications such as the Dodge Report and Southwest Construction News. The State does not control how the trade publications handle the publishing of the information. ~~Solicitations are mailed to firms who have made known to the Division their interest in bidding. The letter of interest must be received by the Division not more than one year and not less than twenty days prior to the time set for opening bids. Those wanting to register with the Division should complete the Contractor Registration Application and submit it to the Division. These must be resubmitted each year. It is to be noted that a firm is NOT required to be on the bidders list to be able to bid.~~

(2) **Projects under statutory amount.** Projects under the statutory amount established in 61 O.S., Section ~~102(4)~~ 102(6) are not usually advertised. The state agency shall develop a written, clearly defined scope of work and detailed requirements for the project. Direct mail, facsimile or telephone solicitations are made by the state agency to three or more contractors whose place of business is preferably located in the general vicinity of the proposed construction. The Construction and Properties Administrator shall assess the ability of a state agency to solicit, award and issue construction contracts for projects under the statutory amount. [61 O.S., Section 209(3)]

(3) **Emergency Projects.** When an emergency situation is declared to exist by ~~an~~ the chief administrative officer or governing body of a state agency ~~head~~, the Division may award a contract without competitive bids to correct the emergency condition.

580:20-1-4. Bid documents

(a) **Solicitation notice.** [61 O.S.,Section 105] The solicitation notice shall contain:

(1) Sufficient information concerning the proposed public construction contract to allow a contractor to determine if he may be interested in bidding the project.

(2) The location where a complete set of bidding documents may be obtained.

(3) The date and time for the MANDATORY site visit, if required. As most specifications shall indicate, contractors shall be responsible for visiting the site of a project prior to bidding. Failure to do so shall not excuse a contractor from any requirement of the specifications. Occasionally, a MANDATORY site visit shall be held which shall require the attendance of a contractor at a specific time and place prior to bidding.

(4) The location and time for the pre-bid conference if one is to be held. Some projects may have a MANDATORY pre-bid conference which means that bidders MUST attend to have their bid accepted.

(5) The date, time and place of the opening of bids.

(6) The name and address to whom the sealed bids must be submitted.

(7) If applicable, any pre qualification requirements.

(~~7~~8) Other information deemed of benefit to the public or prospective bidders.

(b) **Bidding documents.** At least twenty days prior to the bid opening, a complete set of bidding documents shall be available for purchase, by check or money order, to prospective bidders at the location shown in the bid notice. The Division will require a reasonable deposit for each such set which shall be nonrefundable and so stated in the notice for bids. ~~A deposit may be required for the documents as stated in the bid notice. The Division may retain all or part of the deposit. If the deposit is stated to be refundable, and a contractor decides not to bid, he must return the plans and specifications at least seven days prior to bid date for the deposit to be returned. Unsuccessful bidders have until seven days after the bid to return their plans and specifications and obtain a refund of their deposit. All plans, specifications, and addenda (if any) must be returned in a clean, non-mutilated condition without marks or annotations in order to have the deposit refunded. [61 O.S., Section 106]~~

(c) **Bid forms.** Bidders must use the information found in the specifications and drawings to prepare their bids. Verbal information from any source cannot be used. All supplemental information, when required, shall be in the form of a written addendum provided by the Division to all bidders of record.

580:20-1-5. Bid submittal

(a) **Advertised projects.** Bids must be prepared on forms provided by the Division and in accordance with the instructions provided in the bid package. Instructions on obtaining the bid packages are in the solicitation notices. Bids cannot be submitted by telephone or fax machine or telegram. Bids may be delivered in person, by the U.S. Mail, or by any of the express/delivery services available during regular business hours, 8:00 AM to 5:00 PM weekdays and shall be received during a period which does not exceed 96 hours (excluding weekends or holidays) before the scheduled bid opening at the time and day specified in the bid documents. [61 O.S., Section 109] The following information must be placed on the outside of each sealed bid envelope:

(1) Company name and address.

(2) Description of project.

(3) Department of Central Services number of project.

(4) Closing date and time.

(b) **Bid envelopes.** Each envelope shall contain only one bid. Bids received after the time specified in the bid documents cannot be accepted. The time is determined by the stamp-clock on the desk of the Division receptionist where all bids must be received and stamped. The State cannot be responsible for delay of receipt of bids due to factors beyond the control of state employees.

(c) **Direct mail, facsimile or telephone solicitations.** On projects under the statutory amount, written ~~Written~~ bids shall be received as indicated in the solicitation by telephone, facsimile or as indicated in the direct mailing according to Subsection 1-3. Before a construction contract shall be awarded by the Division, the state agency shall provide:

(1) A properly signed requisition form.

(2) Three or more original written bids, including any declined bids, signed by the bidders.

(3) Scope of work with detailed requirements.

(4) Acceptance letter to award the contract.

(d) **Equal opportunity employment requirements.** The State of Oklahoma is an Equal Opportunity Employer. ~~All bidders shall be required to acknowledge that they do not discriminate in their hiring practices. Failure to do so shall disqualify their bid.~~

580:20-1-6. Modifications/withdrawal of bids

Bids may be modified or withdrawn up to the time set for bid opening. Modification notices or withdrawal instructions may be sent by registered mail ~~facsimile~~ or delivered in person. Appropriate identification reflecting the authority of the bearer to modify or withdraw a bid must be presented to the Administrator or his authorized representative. A bid to be withdrawn shall not be opened and shall be returned at the conclusion of the bid opening. The modification must state the amount of change only. Any indication of the bid amount shall disqualify the bidder.

580:20-1-7. Bid openings

(a) The public is invited to all bid openings which are held as specified in the solicitation notice. The bids are opened by the Administrator or his designee in the following manner and recorded by an assistant. Bids may be examined by the public after the bid opening on request to the Administrator. [61 O.S., Section 110]

(1) The bidder's name and city are announced.

(2) The bid is checked for completeness and correctness. Any of these deficiencies shall be grounds for disqualifying the bid:

(A) Addenda must be acknowledged. This may be waived in those cases where the addenda has no direct effect on the proposal cost.

(B) The bid must be signed.

(C) The affidavits required by the bid documents must be present, signed and properly notarized. [61 O.S., Section 108]

(D) If the total bid including alternates exceeds the amount specified in 61 O.S., Section 107, a certified check, cashier's check, bid bond or bid letter of credit for 5% of the base bid price and the price of all alternate bids must be present. [61 O.S., Section 107]

(E) All equipment lists, selected materials, or other information when required by the specifications must be present.

(F) The price is read aloud.

(b) Projects for which only a single bid is received shall not be opened until the state agency has been notified and permission has been received from the state agency to open the single bid.

580:20-1-8. Claims for minority preference [REVOKED]

~~Oklahoma law requires that preference be given to minority bidders. Information and application for minority certification may be obtained from the Minority Business Assistance Section, Department of Central Services. Certificates issued are valid on the first of the month following the date of issuance. On any project, including projects under the statutory amount, for which a bidder has claimed a minority preference, after the certificate number has been verified, a percentage as indicated by current law shall be added to each non-minority bidder's bid amount. Selection review and evaluation shall be made on the revised amounts. The minority bidder must place his certification number on the bid form where it is requested. [74 O.S., Section 85.45]~~

580:20-1-8.1. Pre qualification of bidders

(a) **Scope.** The Division may require prospective bidders, general contractors, subcontractors and material suppliers to prequalify prior to submitting bids on a public construction contract to determine the responsibility of bidders.

(b) **Notice.** The solicitation notice for specific projects described in 580-20-1-4 (a), shall contain the requirements for prequalification and the availability of approved forms to be submitted to the Division.

(c) **Prequalification Form.** All prospective bidders, general contractors, subcontractors and material suppliers must submit a prequalification form prescribed by the Administrator to the Division which must include the following information:

(1) Company organization type;
(2) Type of work or classification of work;
(3) Organization information;
(4) Licensing and registration information;
(5) Experience on current projects;
(6) Experience on projects completed within last five years;
(7) Experience of key personnel;
(8) Specialized experience for specific building types, subsystems or materials;
(9) References from construction trades, bank and surety company;
(10) Current financial statement, which according to statute shall remain confidential;
(11) Any other business information that will enable the Division to evaluate the responsibility of prospective bidders.

(d) **Evaluation.** The Division shall evaluate the information contained in the prequalification form and designate the qualification status as:

(1) "Approved" for a firm that demonstrates verifiable experience and that has successfully completed contract work with the State; or,
(2) "Approved/Conditional" for a firm that demonstrates verifiable experience but does not have a record of contract work with the State; or
(3) "Unsatisfactory" for a firm that:
(A) Does not demonstrate verifiable experience;
(B) Does not demonstrate verifiable size and scope experience required for a specific project;
(C) Does not have a verifiable record of successfully completed contract work with the State;
(D) Has an unsatisfactory record of contract work for the State due to any of the following:
(i) Unsatisfactory performance evaluations on past projects;
(ii) Failure to complete a State construction contract;
(iii) Demonstrated history of noncompliance with plans and specifications;
(iv) Quality of past work does not meet minimum industry standards;
(v) Failure to complete work in the specified contract time;
(vi) Uncooperative and/or unprofessional work manner of the company owner(s) or key personnel;
(vii) History of assigning unsatisfactory personnel to projects;
(viii) Failure to coordinate and manage subcontracts; or
(ix) Failure to maintain and provide accurate documentation of project records.
(E) Financial information does not indicate financial ability to complete a State contract.
(4) "Incomplete Submittal" for submittals that:
(A) Are incomplete;
(B) Do not contain the information requested in the solicitation notice.

(e) **Required status prior to bid.** Bidders, general contractors, subcontractors and material suppliers shall have "Approved" or "Approved/Conditional" status prior to submitting a bid on a public construction contract when prequalification is required in the solicitation notice or if the Division requires prequalification on all public construction contracts.

(f) **Additional requirements.** The Division may request additional information from an existing prequalified company whenever a solicitation notice requires prequalification for specific experience for specific project types, subsystems or materials.

(g) **Information update; due date.** Prequalification forms shall be updated annually and submitted to the Division on or before January 31st of each year for review and approval.

580:20-1-9. Bid review and evaluation

(a) At the conclusion of the bid opening, the bid tabulation is forwarded to the state agency for review and evaluation, concurrently with the review and evaluation by the Division. The following items are reviewed:

(1) **Surety companies.** Surety companies used to issue bonds must be registered to do business in Oklahoma.

When a bid bond is required and the bond submitted is from a company not registered in Oklahoma, the bid shall be disqualified. [61 O.S., Section 134]

(2) **Verification of bid contents.**

(A) Extensions on unit price calculations shall be checked. In case of an error, the unit price shall govern.

(B) When there is a variance between the amount in words and the figures, the amount in words shall govern.

(C) Bid forms containing omissions, alteration of form, additions, or conditions not called for, or containing a clause in which the bidder reserves the right to accept or reject a contract, shall be disqualified.

~~(D) Unbalanced proposals where some prices are out of proportion to the prices for other items may be disqualified~~.

(D) The Division may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work; and, if there is reasonable doubt that the bid will result in the lowest overall cost to the Owner even though it may be the low evaluated bid; or, if it is so unbalanced as to be tantamount to allowing an advance payment.

(E) Failure to submit unit prices for any requested work item shall cause the bid to be disqualified.

~~(F) If the bidder fails to acknowledge that they are an Equal Opportunity Employer, the bid shall be disqualified.~~

(b) Before a contract may be awarded to a bidder, the bidder's ability to perform the required work is considered. [61 O.S., Section 118] Any of the following may be grounds for disqualifying the bidder.

(1) More than one bid for the same work from an individual, firm, partnership, joint venture or corporation under the same or different names.

(2) Evidence of collusion among bidders, subcontractors or material suppliers. [61 O.S., Section 115]

(3) Lack of responsibility as shown by past work for the State of Oklahoma judged from the standpoint of workmanship and progress.

(4) Uncompleted work under any contract with the State of Oklahoma or any party which might hinder or prevent the prompt completion of the contract, if awarded.

(5) For being in arrears on existing contracts with the State of Oklahoma or having defaulted on a previous contract or failure to comply with any other just and reasonable cause.

~~(6) Notification by the State Department of Labor of non-compliance with the Davis-Bacon Act.~~

(6~~7~~) Certificate by the Oklahoma Human Rights Commission that the bidder has engaged or is engaging in a discriminatory practice as defined in 25 O.S., Section 1505 or Section 1604.

(7~~8~~) Any violation of 580:20-1 or other information indicating that the bidder is no longer responsible nor qualified to do business with the State.

(c) The review/evaluation shall be completed within the amount of time specified by 61 O.S., Section 111 after the bid opening.

(d) Decisions leading to the contract award may be appealed in writing within five working days of notice of the decision to the Director, Department of Central Services.

580:20-1-12. Construction conferences

(a) A construction conference may be called periodically by the design consultant or state agency which shall include essential information as follows:

(1) Project progress as it relates to schedule.

(2) Payment requests and their status.

(3) Change order requests and their status.

(4) Special problems and remedial action required.

(5) Results of previous remedial action.

(6) Other subjects as required.

(b) The meeting shall be chaired by the design consultant or state agency. Minutes of the meeting shall be kept, typed and distributed to all attendees within five (5) working days.

580:20-1-13. Payment requests

(a) **Partial payments.** Partial payments for work completed and materials stored on site may be submitted once each month. A detailed procedure to be followed is shown below:

(1) The contractor shall be required to complete a detailed breakdown of costs, arranged according to sections of the specifications, using a format similar to the one found in the Application for Partial Payment form, and submitting it to the design consultant and the Division for approval. This breakdown shall be used throughout the job and cannot be changed without approval from the design consultant.

(2) The contractor should meet with the design consultant when the rough draft of the pay request is prepared. Then all can agree on percentages of work completed prior to typing the final form. The contractor should furnish the design consultant with five copies of the pay request and all supporting documents.

(3) An itemized listing of materials stored on site at the end of the period covered in the pay request shall be prepared on the contractor's letterhead. Copies of paid invoices are to be attached. The date on the listing must agree with the date on the pay request. The materials must be stored at the site and cannot be removed after the payment has been made. The detailed description of stored materials should show quantities and sizes of materials. The usual terms of reference such as tons of steel and types of windows shall be acceptable. If the contractor deems it necessary, and it is recommended by both the design consultant and Department of Central Services representative, the contractor may store material off-site if there is a written agreement between the owner and the contractor. This agreement must provide the following:

(A) Proof of applicable insurance.
(B) A written guarantee of delivery to the job site.
(C) A written title to all materials covered by the request for payment, which shall pass to the owner.
(D) An on-site inspection of facilities by the design consultant to verify the authenticity of quantities of stored materials with the contractor responsible for reimbursing the design consultant for all incurred expenses resulting from each inspection.

(4) All pay requests are submitted to the ~~agency, not the~~ Division.

(5) All partial payments are subject to retainage as specified in 61 O.S., Section 113.1.

(b) **Final pay request.** The Certificate of Contract Completion, Consent of Surety and the Contractor's Warranties must be submitted with the final request for pay to the state agency.

580:20-1-16. Substantial completion inspection

(a) This inspection is to be requested by the contractor after he has determined that the project is substantially complete. Substantial completion is defined as the construction is sufficiently completed in accordance with the plans and specifications, as modified by any authorized changes, so that the owner can occupy the building and/or use the facility for its intended use. ~~the use for which it was intended.~~ [61 O.S., Section 124]

(b) After receipt of a list of items to be completed or corrected from the contractor, the ~~The~~ inspection is to be scheduled by the design consultant who shall send out ~~formal~~ written notification inviting the using state agency ~~and~~ ,the Construction and Properties Division ~~Department of Central Services~~ and other interested persons to attend. After the inspection, the Certificate of Substantial Completion Form with punch list shall be prepared by the design consultant. Five copies of the form shall be provided to the Division ~~Department of Central Services~~ for signature.

580:20-1-18. Final inspection

This inspection shall occur upon completion of construction and when requested by the contractor after he determines the project is finally complete and all punch list items have been completed. The design consultant shall send out formal notification inviting the using state agency, the Construction and Properties Division ~~Department of Central Services~~ and other interested parties to attend. [61 O.S., Section 124]

SUBCHAPTER 3. SELECTION OF ARCHITECTS, ENGINEERS, AND OTHER DESIGN CONSULTANTS

580:20-3-2. Definitions

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

~~**"Agency"** means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in O.S., Section 61.~~

"Consultant" means any individual, firm, corporation, association, partnership, or other legal entity possessing the required qualifications to provide licensed professional architectural, engineering, or land surveying services for any construction project.

"Division" means the Construction and Properties Division of the Department of Central Services, State of Oklahoma.

"Fixed fee" means the type of fee to a consultant which is expressed as a firm, fixed amount, for the services specified in the scope of work. This fee is not determined by the amount of a construction contract.

"Interview committee" means a group of individuals ~~appointed~~ designated by the chief administrative officer ~~agency head~~ or governing body of a state agency ~~for the purpose of interviewing~~ to interview consultants for the purpose of selecting a consultant for a planned project. This group should include licensed architects or engineers, if available.

"Percentage fee" means a fee to be paid a consultant which is based upon a negotiated percentage of the resultant construction contract. For the consultant contract purposes, the construction contract amount is estimated.

"Program" means the detailed description of the work scope of the design services. This program is written by the state agency, or may be developed by the consultant as part of his contract.

"Screening committee" means a group of individuals designated by the ~~agency head~~ chief administrative officer or governing body of a state agency which reviews the files of interested consultants for the purpose of selecting a short list of consultants to be interviewed. The group should include licensed architects or engineers, if available.

"Selection criteria" means a listing of the considerations and requirements used to evaluate each prospective consultant.

"Short list" means a listing of consultants chosen during the screening process for detailed interview. This list shall contain no less than three nor more than five consultants for a single project. If the process is selecting for more than one consultant contract, there should be two consultants on the short list for every planned project.

"State agency" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 61.

580:20-3-4. Selection procedure

(a) **Define project.** The state agency shall develop a description of the project which shall include: [61 O.S., Section 62(C)]

(1) A narrative description of the work being planned.
(2) The estimated cost and time schedule of the project.
(3) The source of the funding i.e., appropriated state money, federal funding or other source of funding.
(4) Any other pertinent data which would assist a consultant in determining his interest in the project.

(b) **Request list of consultants.** The state agency shall forward a request to the Division for a listing of consultants

currently listed with the Division in the form of a letter which includes the description of the project developed in (a) of this Section. The Division shall print the list and/or one set of mailing labels and return them to the state agency.

(c) **Announce project.** The state agency shall send a letter to each consultant on the list which includes the description developed in Step 1 and shall notify them of the last day their letters may be received to be considered. [61 O.S., Section 62(C)]

(d) **Request and review files.** The state agency shall send a list of consultants that indicated interest in being considered for the announced project(s) to the Division. The Division then assembles and transmits to the state agency a copy of the information on file for each consultant on the list. [61 O.S., Section 62(D)]

(e) **Screen the files to select the "short list".** The chief administrative officer or governing board ~~or the head~~ of the state agency shall designate a screening committee of three or more persons ~~for the purposes of selecting~~ to select the three to five best qualified consultants based upon the data in the files supplied by the Division and other information that may be supplied by the consultants. The screening committee should include licensed architects or engineers if they are available. If the selection is for more than one consultant contract, at least two consultants for each project should be included in the short list. The selection criteria is listed in 580:20-3-6. [61 O.S., Section 62(E)]

(f) **Scheduling and performing interviews.**

(1) The chief administrative officer or governing board of ~~the head of~~ the state agency shall designate an interview committee. All members of the interview committee shall participate in all interviews of each consultant.

(2) An evaluation criteria list shall be developed to insure that all interviews are conducted identically. The interview committee should consider the criteria listed in 580:20-3-7.

(3) Each consultant should be notified by letter informing him that he has been selected for interview. The letter should contain:

(A) Date, time and place of interview. Interviews should be scheduled individually for each consultant.

(B) Period of time permitted for the interview. Indicate how much time the consultant shall be permitted for his presentation and how much time shall be reserved for questions by the committee.

(C) A copy of the interview criteria.

(D) Names of the interview committee members.

(E) The letter should contain any other information which shall help the committee to obtain information needed for them to properly evaluate the consultant.

(F) Oklahoma Statutes prohibit the requesting of any information on fees. Any consultant who discloses its fee, or any indication thereof, prior to subsection (j) of this Section, Negotiation of Contract, shall be removed from the request list or short list and receive no further consideration for the project. Consultants must be selected on the basis of qualifications and not on a bid basis.

(4) The interviews are conducted privately with each consultant out of the hearing of other consultants.

(5) At the conclusion of all interviews, the committee shall then rate each consultant in a manner as to recommend to the ~~convening authority~~ state agency the relative ranking of each consultant. This document does not attempt to designate the exact procedure the committee shall use to make their selections. All criteria and procedures used by the committee shall be documented for the record.

(g) **Forwarding of recommendations.** The recommendations are forwarded to the ~~convening authority~~ state agency for the final selection.

(h) **Preparation of report to the Division.**

(1) The state agency shall prepare a chronological report detailing the steps in the procedure actually followed by the state agency in making its selection. This report shall include the criteria used in the screening process as well as the interviews and the ratings of all firms considered. A copy of the approved minutes of any board action affecting the selection process shall be included. ~~[61 O.S., Section 62(F)]~~

~~(2) If an out-of-state firm is selected, the report must include the justification for the selection. 61 O.S., Section 62(E), requires that Oklahoma firms be given preference.~~

(~~3~~2) The report is submitted to the Division for the independent review of the entire process.

(i) **Negotiation of Contract.**

(1) The negotiation of fees is the first time a discussion of costs is permitted. There are no defined procedures for negotiating. The Division ~~agency~~ shall usually open negotiations by designating a negotiator and by defining the detailed scope of work and forwarding that scope to the consultant in a letter formally requesting the cost proposal. The letter should require a detailed breakdown of costs to enable the Division ~~agency~~ to understand the cost items and have a basis for negotiation. The consultant should also be provided a copy of the proposed contract format. Copies of the approved contract formats may be obtained from the Division.

(2) The consultant shall develop his fee proposal and return it to the Division ~~agency~~.

(3) The Division ~~agency~~ shall then set up a negotiation meeting to negotiate and agree to the fee. The fee is expressed as either a firm fixed price fee or a fixed percentage fee as defined above. The choice is up to the Division ~~agency~~. Attached as Appendix A is a table which may be used as an aid in evaluating a fee proposal. After a fee has been determined, the consultant is asked to modify ~~his~~ the proposal to reflect the agreed upon scope of work and fee. This modified proposal shall become part of the contract. [61 O.S., Section 62(G)]

(4) The state agency then forwards an agency requisition to the Division ~~with the modified proposal~~.

(j) **Award of contract.**

(1) The contract is processed for award by the Division. After the contracts have been signed by all parties, ~~and processed through the Office of State Finance,~~ copies shall be provided to the state agency and the consultant.

(2) Changes to the base contract are permitted as long as the scope of the change is generally included within the scope of work developed in (1) of this subsection for which the consultant selection process was conducted. Changes are initiated and negotiated by the Division ~~agency and transmitted to the Division for processing~~. The change request letter must reference the correct contract, and include the scope of the change, the fee for the change and the source of the funding for the change.

580:20-3-5. Consultant contracts

(a) Contracts are written by the Division in standard formats as required by 61 O.S. ~~Industry standard contracts or consultant prepared contracts are not permitted.~~ The Division may be contacted for development of special requirements to be included in contracts. ~~The contract may or may not list the exact scope of work.~~

(b) Phases of services may involve all or any of the following depending on the size and type of project:

(1) **Program planning.** Program planning may include the following:

(A) Space plan.

(B) Written and/or graphic program document as specified.

(C) Circulation allowances.

(D) ~~Rough costs~~. Cost estimate.

(E) Specific additional features as required in the agencies request for proposal.

(2) **Schematic Design.** Schematic design may include the following:

(A) The line drawing and graphic representation of the floor plan, perspective drawings and site orientation of the project.

(B) Energy and feasibility presentation of utility access, recommended materials, parking, traffic flow, site access, and space and volume estimates of cost.

(C) Cost estimate.

(3) **Design Development.** A set of drawings may be required to be produced which specifies the project's specified parameters, resulting in:

(A) The site plan for parking, street and pedestrian access.

(B) Overall dimensions.

(C) Rooms and traffic circulation within the buildings.

(D) Types of materials.

(E) Building elevations.

(F) Building sections.

(G) Recommended structural systems.

(H) Recommended mechanical systems and equipment based upon life cycle studies.

(I) Cost estimate.

(4) **Construction Documents.** Construction documents may include those items necessary for a construction contractor to properly bid and construct the project. They include:

(A) Working drawings.

(B) Specifications.

(C) Project manuals.

(D) Any other item specifically required by the contract.

(E) Cost estimate.

(5) **Construction phase services.** The consultant may be required to perform specific construction phase services which include:

(A) Review and approval of shop drawings.

(B) Review and approval of pay requests.

(C) All standard contracts include a reference to construction monitoring which are periodic visits ~~is~~ at intervals appropriate to the stage of the contractor's operations, ~~an occasional visit~~ by the consultant and sub-consultants to the construction site to determine that the contractor is following the intent of the construction contract documents. When more frequent monitoring is needed, the Division ~~agency~~ shall include this in the criteria package and negotiate this increased cost service.

(D) The primary responsibility for the administration of the construction contract lies with the consultant.

580:20-3-6. Screening criteria

(a) The screening process is the examination of each consultant that has indicated interest in the project proposed by the state agency. Files on each consultant are provided by the Division for this purpose. Prior to beginning the review, a specific list of criteria must be developed and should include, but not be limited to the following:

(1) Specialized experience related to the proposed project.

~~(2) Capacity of the consultant to complete the project in the time available.~~

(2) Similar experience on comparable projects.

~~(3) Past performance in similar projects.~~

(3) Technical qualifications of the design team.

~~(4) Preference shall be given to Oklahoma domiciled firms.~~

(b) A screening evaluation sheet should be prepared listing each consultant considered with a rating for each criteria listed as in the Consultant Screening Evaluation Form. After all consultants are evaluated, the ratings are compared and the top three to five consultants are identified for interview. If multiple projects are being considered, two consultants for each project are selected for interview. [61 O.S., Section 62(E)]

(c) A copy of the evaluation sheets shall be included in the report to the Division. ~~[61 O.S., Section 62(F)]~~

580:20-3-7. Interview criteria

(a) The interview is the most important step in the selection process. Each consultant must be evaluated against a clearly established list of criteria which is provided to the consultant within seven days in advance of the interview. It is recommended that an interview evaluation sheet be made up for each consultant being interviewed such as the Consultant Interview

Evaluation Form. Information should be sought during the interview which shall answer these questions:

(1) How will the consultant staff the proposed project?

(2) What is the consultant's proposed management plan?

(3) What is their previous experience for this project?

(4) Where are they located? How will they reduce travel costs if they are not close to the proposed project? ~~61 O.S., Section 62(E), requires that Oklahoma firms be given preference in the selection process.~~

(5) What are their plans for project control?

(6) What is their proposed approach to the design of this project?

(7) What are examples of the similar projects they have completed?

(8) What are their experiences in value engineering, life cycle costs analyses, critical path method of scheduling, energy conservation, new energy resources, environmental assessments or other specialized experience, if required?

(9) What awards have they received for their designs?

(10) Has a judgement been paid by the consultant or on their behalf for liability caused by professional errors and/or omissions in the past five years?

(11) Any other additional factors?

(b) Questions concerning fees may not be asked. Engineers, architects, and land surveyors are prohibited from being required to bid by Oklahoma Statutes. They are to be selected based upon their professional expertise and qualifications with their fees being negotiated after selection, as described in 580:20-3-6.

(c) Copies of the completed evaluation sheets shall be included in the report to the Division.

SUBCHAPTER 5. MINIMUM CODES FOR STATE CONSTRUCTION

580:20-5-2. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

" ADA " means the Americans with Disabilities Act

"Administrator" means the State Construction Administrator ~~administrative head~~ of the Construction and Properties Division of the Department of Central Services.

"ANSI" means the American National Standards Institute.

"ASHRAE" means the American Society of Heating, Refrigeration and Air Conditioning Engineers, Inc.

"BOCA" means the Building Officials and Code Administrators International.

"CABO" means the Council of American Building Officials.

"Code" means the minimum building code or codes provided by this rule.

"Code Panel" means a standing panel appointed by the Administrator and shall consist of five Division employees or contract employees of which at least three shall be registered engineers or architects. Registered engineers or architects from state agencies may be invited to assist this panel.

"Division" means the Construction and Properties Division of the Department of Central Services, an agency of the State of Oklahoma.

"Facility" means any building or improvement to real property constructed for state use subject to the provisions of 61 O.S. This definition shall apply also to construction of real property that the state shall lease.

"IES" means the Illuminating Engineering Society.

"NFPA" means the National Fire Protection Association.

SUBCHAPTER 7. PROCEDURES FOR AGENCIES TO PERFORM RESPONSIBILITIES EXERCISED BY THE CONSTRUCTION AND PROPERTIES DIVISION

580:20-7-2. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Administrator" means the State Construction Administrator ~~administrative head~~ of the Construction and Properties Division of the Department of Central Services.

~~**"Agency"** means any agency, department, board, commission, office, institution, or other governmental body of the State which receives its operating monies through the Office of State Finance.~~

"Architect" means a person legally qualified to practice the profession of architecture as defined in the State Architectural Act, Section 46, Title 59, Oklahoma Statutes.

"Consultant" means registered engineers or architects hired from the private sector for the purpose of providing architect/ engineering services in the design and preparation of construction documents for the construction, renovation or repair of state owned facilities.

"Director" means the Director ~~administrative head~~ of the Department of Central Services.

"Division" means the Construction and Properties Division of the Department of Central Services.

"Engineer" means a person legally qualified to practice the profession of engineering as defined in Chapter 10, Engineering and Land Surveying, Title 59, O.S.

"Facility" means any building or improvement to real property constructed for state use subject to the provisions of Title 61, Oklahoma Statutes.

"FTE" means a full time equivalent personnel position authorized the state agency by current legislative authority.

"State agency" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 61.

580:20-7-4. Requesting services of consultants, architects, engineers, and land surveyors

All agencies requesting the services of consultant architects or engineers or land surveyors are hereby delegated the following responsibilities of Section 62 as modified by Sections 208(A) and (B), Title 61:

(1) Provide all of the information required by Section 62(C), Title 61, Oklahoma Statutes.

(2) Prepare the letter of ~~notification~~ solicitation as required by Section 62(C).

(3) Receive the replies of interested consultants and submit a list of the interested parties to the Administrator.

(4) Conduct the selection ~~and negotiation~~ as described in ~~Section 62(E), (F), and (G).~~ Section 62 (E) and (F).

(5) Submit a requisition to the Administrator from which the Division shall prepare and execute a contract.

580:20-7-5. Request for delegation of authority to agencies

(a) Agencies wanting to perform the responsibilities of Title 61 Oklahoma Statutes assigned to the Department of Central Services must make a request in writing to the Director, Department of Central Services. Such request must contain all of the following information:

(1) Specific reference to the section and paragraph of Title 61 to be delegated to the state agency.

(2) Complete justification for the request. Effect on FTE, appropriations and state Agency mission should be included.

(3) Complete listing of engineers and architects available to the state agency to perform the duties for which delegation of authority is requested.

(4) Any additional information which shall assist the Director to properly evaluate the request.

(b) A request in 580:20-7-5(a) may be for either a limited or indefinite period. The request should indicate what period is being requested.

SUBCHAPTER 9. FULL-TIME EMPLOYMENT BY AGENCIES FOR MINOR CONSTRUCTION PROJECTS

580:20-9-2. Definitions

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

"Administrator" means the State Construction Administrator ~~administrative head~~ of the Construction and Properties Division of the Department of Central Services.

~~**"Agency"** means any agency, department, board, commission, office, institution, or other governmental body of the State which receives its operating monies through the Office of State Finance.~~

"Architect" means a person legally qualified to practice the profession of Architecture as defined in the State Architectural Act, Section 46, Title 59, Oklahoma Statutes.

"Consultant" means registered engineers or architects hired from the private sector for the purpose of providing architect/ engineering services in the design and preparation of construction documents for the construction, renovation or repair of State owned facilities.

"Director" means the Director ~~Administrative head~~ of the Department of Central Services.

"Division" means the Construction and Properties Division of the Department of Central Services.

"Engineer" means a person legally qualified to practice the profession of Engineering as defined in Chapter 10, Engineering and Land Surveying, Title 59, Oklahoma Statutes.

"Facility" means any building or improvement to real property constructed for State use subject to the provisions of Title 61, Oklahoma Statutes.

"FTE" means a full time equivalent personnel position authorized the state agency by current legislative authority.

"Minor Construction" means any construction which does not require the person performing the construction to have an occupational license.

"State Agency" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in O.S., Section 61.

SUBCHAPTER 15. ENERGY SERVICES CONTRACTS

580:20-15-2. Definitions

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

~~**"Agency"** means any agency, board, commission, office, institution, or other governmental entity owning a facility for which an energy service contract is to be performed~~.

"Division" means the Construction and Properties Division of the Department of Central Services, State of Oklahoma.

"Energy audit" means to review facilities and systems, to identify existing operating and utility costs, to specify areas of potential savings, and to quantify those savings.

"Energy service company" means the company responsible for the installation of energy conservation measures and the guarantee of energy savings.

"Energy service contract" means a contract signed by ~~an~~ a state agency and an energy service company which conforms to the provisions of this chapter.

"ESC" means energy service company.

"Equipment portion" means the portion of the energy service contract which deals with the purchase of equipment and its installation.

"Guaranteed savings" means the amount of money per year guaranteed by the ESC that shall be saved by the state agency on present utility costs.

"Service portion" means the portion of the energy service contract which deals with guaranteed savings, period of guaranteed savings, training, and bonds.

"State agency" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 61.

SUBCHAPTER 17. CONSTRUCTION MANAGEMENT PROCEDURES AND REQUIREMENTS

580:20-17-1. Purpose

This subchapter provides information pertaining to procedures and requirements for individuals or business entities that provide construction management services on state construction projects that utilize the construction management delivery system for construction. These procedures implement the provisions of 61 O.S., Sections 201 through 211 titled "Public Building Construction and Planning Act."

580:20-17-2. Definitions

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

"Administrator" means the State Construction Administrator of the Construction and Properties Division of the Department of Central Services.

"Construction Management" (CM) means the project delivery method based on an agreement whereby the state acquires from a construction entity a series of services that can include, but are not necessarily limited to: design review, scheduling, cost control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration. Construction management includes:

(A) **"Construction Management/Agency" (CMa)** whereby the construction entity applies appropriate management techniques to project planning, design and construction for the purpose of controlling time, cost and quality for the state without taking on financial risks for the execution of the actual construction. CMa services could include a range of management and/or consulting services spanning all phases of the design and construction process from conception to completion of the construction project.

(B) **"Construction Management/At-Risk" (CMc)** whereby the construction entity, after providing construction management/agency services listed in (a) of this section during the pre-construction period, takes on the financial obligation to carry out construction under a specified cost agreement.

"Construction Manager" means a person, properly certified in accordance with 20-17-3, who acts as an agent of the state for a construction project; who coordinates and manages the construction process; who is a member of the construction team with the state, design professional and other consultants that may be required for the project; and who utilizes skill and knowledge of general contracting to assist in the development of schedules, preparation of project construction estimates, study of labor conditions and provides advice concerning construction, safety and other issues related to the project that may surface. Issues may include, but are not limited to, monitoring progress, payments, changes and other factors affecting cost or as may otherwise be specified in the solicitation issued by the state agency.

"Director" means the Director of the Department of Central Services.

"Design Consultant" means any individual, firm, corporation, association, partnership, copartnership, or any other legal entity possessing the required qualifications to provide licensed architectural, registered engineering, or registered land surveying services for any construction project.

"Guaranteed Maximum Price" (GMP) shall be the sum of the estimated cost of the work as defined in the contract and includes all of the contractor's fees and agreed upon contingencies.

"Notice to Proceed" shall be the formal written notice, by letter, informing the Construction Manager that the Guaranteed Maximum Price (GMP) is approved and the construction management services advance to the next phase.

"State agency" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 202.

580:20-17-3. Qualifications

(a) **General.** An individual or business entity that desires to provide or provides construction management services to the state must meet minimum qualifications established in this Section.

(b) **Construction management certification.** An individual or business entity that desires to provide construction management services to the state shall possess certification that demonstrates the individual's or business entity's capability to provide the services.

(c) **Certification sources.** An educational program that provides certification of an individual as capable to provide construction management services shall include industry recognized standards for knowledge of construction, construction management and project management. An individual certified by one of the following sources may qualify to provide construction management services to the state.

(1) **Certified Construction Manager.** An individual certified by the Construction Management Association of America as a certified construction manager.

(2) **Project Management Professional.** An individual certified by the Project Management Institute as a project management professional.

(3) **Certified Cost Engineer/Certified Cost Consultant.** An individual certified by the Association for the Advancement of Cost Engineering, International as a Certified Cost Engineer or Certified Cost Consultant.

(4) **Certified Professional Estimator.** An individual certified by the American Society for Professional Estimators as a Certified Professional Estimator.

(5) **Certified Professional Constructor.** An individual certified by the American Institute of Constructors as a Certified Professional Constructor.

(6) **Certified Construction Contract Administrator.** An individual certified by the Construction Specifications Institute as a Certified Construction Contract Administrator.

(d) **Other professional certification recognition.** If an individual presents professional certification from other than a professional entity this subsection specifies, the Administrator shall determine whether the individual may provide construction management services to the state.

580:20-17-4. Registration

(a) **General.** An individual that possesses the qualifications established in 20-17-3 shall register with the Division to provide construction management services.

(b) **Registration Application.** An individual or business entity must submit registration application forms prescribed by the Administrator to the Division to request consideration for registration as a construction management firm. Registration application forms are available upon request to the Division.

(c) **Administrator review and notification.** The Administrator shall review the registration application and:

(1) **Accept the registration.** If the review determines that the applicant is qualified and the application is complete and accurate, the Administrator shall send written notification of the acceptance to the individual or business entity; or,

(2) **Reject the registration.** If the review determines that the applicant is not qualified or the application is incomplete or inaccurate, the Administrator shall send written notification of the rejection to the individual or business entity. The Administrator shall specify reasons for rejection in the notice; or,

(3) **Incomplete registration.** If the review determines the application is incomplete, the Administrator may advise the individual or business entity to submit additional information to the Administrator.

(d) **Registration.** Upon approval of the registration application, an individual or business entity will be added to the official list of registered construction managers maintained by the Division. Registration shall be effective for one (1) calendar year and renewed annually on or before January 31st of each succeeding year.

580:20-17-5. Project designation consideration

(a) **General.** The Administrator and the Director shall consider factors in this section to determine whether a state construction project merits consideration for use of the construction management delivery system.

(b) **Consideration factors.** Each factor of this subsection must be considered prior to requesting or designating a project for construction management.

(1) **Time constraints.** The time period the state agency desires for project completion.

(2) **State agency capabilities.** The capabilities of the Division staff and whether the staff has the ability and experience to effectively manage a project that utilizes construction management.

(3) **State agency funding.** The state agency shall demonstrate whether the agency has adequate funding to pay for services of the construction management firm, design consultant and construction services.

(4) **Project components.** The project complexity is sufficient to benefit from advisory consulting services during design or if the construction execution could be enhanced by the services of a construction manager. Such services during design might include, but are not limited to: independent preparation of cost estimates, independent design review, evaluation of alternate construction bid strategies and constructability evaluations. Services during construction that a construction manager might perform include, but are not limited to: certain elements of construction administration desired by the state agency that are outside the normal scope of the design consultant and overall coordination of multiphase, complex projects where one or more contractors may be involved in executing the work.

(c) **State agency request.** A state agency shall submit a written request for consideration of formal designation of a state construction project for the construction management delivery method to the Director after careful review of the factors in (b) of this section. The request shall specify reasons the state agency believes the project merits consideration for construction management and the funding amount the state agency has available for the project.

(d) **Director consideration.** Upon receipt of a state agency request for construction management services for a project, the Director shall consider whether the project merits designation for construction management and whether the state agency has adequate funds for the project.

(e) **Administrator consideration.** The Director may request the Administrator to consider whether a project merits designation for construction management.

(f) **Administrator notification.** Upon completion of the consideration of the state agency request, pursuant to Subsection 6, the Administrator shall forward the Director's official response to the requesting state agency which states reasons for the determination and whether the project has been determined to reasonably merit official designation for construction management.

580:20-17-6. Project designation

(a) **General.** After consideration of factors in 20-17-5, the Director may designate the project delivery method as construction management.

(b) **Construction management type.** The Administrator shall determine the construction management type as:

(1) Construction Management/Agency (CMa) (See 20-17-2); or

(2) Construction Management/At-Risk (CMc) (See 20-17-2).

(c) **Director notification.** If the Administrator determines that the project reasonably meets the criteria for designation for construction management and that the state agency has adequate funds for the project, the Administrator shall complete, sign and submit the prescribed project designation form to the Director.

(d) **Director actions.** The Director shall determine whether the information on the project designation form is complete and agree or disagree with the Administrator's designation.

(1) **Director agrees.** If the Director agrees with the Administrator's designation, the Director shall sign the project designation form and return the form to the Administrator.

(2) **Director disagrees.** If the Director disagrees with the Administrator's designation, the Director shall return the unsigned form to the Administrator.

(e) **Project designation.** The Administrator shall apply the applicable project delivery method to the project in accordance with the action of the Director.

(1) **Director signs designation form.** If the Director signs the designation form, the Administrator shall acquire construction services pursuant to provisions of this subchapter.

(2) **Director does not sign designation form.** If the Director does not sign the designation form, the Administrator shall acquire design consultant and construction services pursuant to provisions of subchapters 1 and 3 of this chapter.

(f) **State Agency notification.** The Administrator shall provide the state agency written notice of the final designated project delivery method.

(g) **Designation form filing.** The final project designation form shall be filed and maintained in the division project file.

580:20-17-7. Project requisition

(a) **State agency requisition preparation.** Upon receipt from the Administrator of the notice of project designation as construction management, the state agency shall complete a requisition form which must state on the form that the project delivery method is construction management and indicate the construction management type.

(b) **State agency requisition submission.** The state agency shall submit the requisition form to the Administrator.

(c) **Administrator review.** The Administrator shall review the requisition form to ensure the form contains the required information.

580:20-17-8. Selection procedures for construction management services

Selection of construction management firms shall be in accordance with Subchapter 21 of this Chapter.

580:20-17-9. Fee negotiation and contracts

(a) In accordance with the qualifications-based ranking of firms to perform construction management services in 580:21, the Division shall request a fee proposal from the highest ranking firm.

(b) Upon receipt of the written fee proposal, the Division shall hold fee negotiations in a manner consistent with the selection criteria.

(1) The Division shall negotiate a contract with the highest qualified firm at compensation determined in writing to be fair and reasonable.

(2) In establishing the construction management fee, the Division shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature of the services

(3) In the event the Division is unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price determined to be fair and reasonable, negotiations with that firm shall be formally terminated. The Division shall then undertake negotiations with the second most qualified firm, beginning with a formal request for a fee proposal from that business. Failing accord with the second most qualified business, the Division shall formally terminate negotiations with that firm. This process shall continue, with proposals received from and negotiations held with the next most highly qualified firm, until such time as a contract is signed with a qualified firm or the procurement process is terminated and a new request for qualifications is initiated.

(4) In general, pre-construction services are required on all types of construction management contracts. The fee for these services should be negotiated as a lump sum amount and should be based on the duration of services.

(5) For Construction Management/At-Risk (CMc), there are essentially two phases of the contract.

(A) Phase One commences following completion of fee negotiations for pre-construction services. Pre-construction services include all activities by the construction manager up to the point at which the design is far enough along for the construction manager to establish a Guaranteed Maximum Price (GMP). The point in time when the GMP can be established will vary from one type of project to another. Included in the GMP quoted by the construction manager are the construction manager's fees for administering the construction contract (project fee) and the fee to cover the General Conditions for construction. The project schedule may also dictate the amount of contingency included in the GMP.

(B) Approval of the GMP advances the project from Phase One of construction management services to Phase Two. This is accomplished through issuance by the Division of a Notice to Proceed. Once the GMP is established, it will remain in effect through the development of the construction documents by the design consultant and the construction manager will work in conjunction with the design consultant to perform value engineering and construction coordination reviews and to develop individual bid packages for issuance to subcontractor trades.

(i) Upon receiving the Notice to Proceed, the Construction Manager/At-Risk will be required to furnish 100% performance, payment and defect

bonds, in an amount equal to the GMP or lump sum. Worker's Compensation, All Risk, Property and General Liability insurance shall be required.

(ii) Non approval of the GMP allows the Division to terminate the services of the construction manager or to renegotiate, as required.

(iii) When the design is complete and bid documents have been prepared for issuance of work packages to subcontractor trades, the construction manager becomes essentially a general contractor for the project, responsible for issuing and awarding individual work packages to subcontractor trades in accordance with subchapter 1, titled "Bidding Procedures", of this Chapter.

(6) When individual work packages are bid as a lump sum, the CM's contract for that portion of the work converts from a GMP to a lump sum. Once all work packages have been bid, the construction manager's contract becomes all lump sum.

(7) In the event that the GMP is exceeded after all bids are received from subcontractor trades, the construction manager and the Division must determine whether individual work packages need to be revised and then rebid in order to reduce cost. As an alternative, the Division may allow an adjustment to the GMP in order to allow the construction manager to award all work packages.

(8) In administering the construction contract, the construction manager will adhere to Oklahoma public bidding laws in advertising and award of various work packages for a project. The estimated value of a work package will be published with the advertisement to bid.

(9) Because the construction manager is "at risk" for the total contract amount, they are permitted to self-perform portions of the work, provided that they competitively bid the work as a lump sum (each work package) under the same terms and conditions as the other bidders. If the construction manager decides to bid a work package, they must declare this intent during the pre-bid meeting held by the Division.

(10) In the award of subcontracts, the construction manager will award to the lowest responsible bidder. To be considered a "responsible bidder" the offeror must meet the minimum pre-qualification requirements, if any, that may be defined in the contract bid documents. An offeror shall meet the minimum pre-qualification requirements and complete the qualifications form that will be included as part of the bid package.

(c) **Award of contract.** The construction management contract is written and processed for award by the Division. After the contracts have been signed by all parties, and processed, copies shall be provided to the state agency and the consultant.

(d) **Changes to base contract.** Changes to the base contract are permitted as long as the scope of the change is generally included within the scope of work developed for which the selection process was conducted. All changes shall be in writing and signed by all parties to the contract.

(e) **Construction Management contracts.** Contracts are written by the Division in standard formats as required by 61 O.S. The Division may be contacted for development of special requirements to be included in the contracts.

SUBCHAPTER 19. DESIGN-BUILD PROCEDURES AND REQUIREMENTS

580:20-19-1. Purpose

This subchapter provides information pertaining to procedures and requirements for individuals or business entities that provide design-build services on state construction projects that utilize the design-build delivery system for construction. These procedures implement the provisions of 61 O.S., Sections 201 through 211 titled "Public Building Construction and Planning Act."

580:20-19-2. Definitions

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

"Administrator" means the State Construction Administrator of the Construction and Properties Division of the Department of Central Services.

"Delivery System" is the approach used to develop and construct a project where Design-Build or Design-Bid-Build are typical approaches.

"Design-Bid-Build"(DBB) is the delivery method used on public projects whereby a licensed design professional retained based on qualifications, shall develop the project design in its entirety. The Division shall then solicit bids and award the contract to the general contractor who demonstrates that they can complete construction, as specified in the design, and that they are the lowest responsible bidder.

"Design-Build" (DB) is the project delivery method in which the Division procures both design and construction services in the same contract from a single, legal entity referred to as the design-builder. The method uses Request for Qualifications (RFQ)/Request for Proposal (RFP) procedures rather than the DBB Invitation for Bids (IFB) procedures. The design-build entity is liable for all design and construction costs and must provide a firm fixed price in its proposal.

"Design-Build Contract" shall be a contract between the Division and a design-builder to furnish the labor, materials and other services for both the design and construction for the same public project.

"Design-Builder" shall be the entity that proposes to design and construct any public project governed by the procedures of Title 61 and this Chapter.

"Design Consultant" means any individual, firm, corporation, association, partnership, copartnership, or any other legal entity possessing the required qualifications to provide licensed architectural, registered engineering, or registered land surveying services for any construction project.

"Director" means the Director of the Department of Central Services

"Division" means the Construction and Properties Division of the Department of Central Services.

"**Evaluation Criteria**" shall be the requirements for the first phase of the selection process and shall include, as appropriate, specialized experience, technical competence, capacity to perform, past performance and other appropriate factors. Prices shall be considered only in the second phase of the selection process.

"Proposal" shall be an offer to enter into a design-build contract, as further defined in this subchapter.

"Request for Proposals" (RFP) shall be the document the state agency sends to each of the design-build firms on the "short list". The RFP shall contain the "Request for Proposals" (RFP) elements as described in OAC 580:20-19-11.

"Request for Qualifications" (RFQ) shall be the document or publication whereby a state agency solicits for qualified design-build firms.

"State agency" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 202.

580:20-19-3. Design-build qualifications

(a) **Qualifications.** An individual or business entity that desires to provide design-build services to the state shall possess the construction experience that demonstrates the individual's or business entity's capability to provide the service.

(b) **Contractor Prequalification.** The contractor of the design-build team shall be authorized to do business in the state and shall be prequalified with the Division.

(c) **Architect of Record.** The Architect-of Record of the design build team, for a specific project, shall be licensed and authorized to do business in the state.

580:20-19-4. Registration

(a) **General.** An individual that desires to provide design-build services to the state shall prequalify with the Division pursuant to Section 1-8.1.

(b) **Registration Application.** An individual or business entity must submit registration application forms prescribed by the Administrator to the Division to request consideration for registration as a design-build firm. Registration application forms are available upon request to the Division.

(c) **Administrator review and notification.** The Administrator shall review the registration application and:

(1) **Accept the registration.** If the review determines that the applicant is qualified and the application is complete and accurate, the Administrator shall send written notification of the acceptance to the individual or business entity.

(2) **Reject the registration.** If the review determines that the applicant is not qualified or the application is incomplete or inaccurate, the Administrator shall send written notification of the rejection to the individual or business entity. The Administrator may specify reasons for rejection in the notice.

(3) **Incomplete registration.** If the review determines the application is incomplete, the Administrator may advise the individual or business entity to submit additional information to the Administrator.

(d) **Registration.** Upon approval of the registration application, an individual or business entity will be added to the official list of registered design-build firms maintained by the Division. Registration shall be effective for one (1) calendar year and renewed annually on or before January 31st of each succeeding year.

580:20-19-5. Project designation consideration

(a) **General.** The Administrator and the Director shall consider factors in this section to determine whether a state construction project merits consideration for use of the design-build delivery system.

(b) **Consideration factors.** Each factor of this subsection must be considered prior to requesting or designating a project for use of the design-build delivery system.

(1) **Time constraints.** The time period the state agency desires for project completion.

(2) **Division capabilities.** The capabilities of the Division staff and whether the staff has the ability and experience to effectively manage a project that utilizes design-build.

(3) **State agency funding.** The state agency can demonstrate it has adequate funding to pay for services of the design-build firm, a design consultant and construction services.

(4) **Project components.** The features of the project merit nomination of the project for execution using the design-build delivery approach.

(A) Project features that are compatible with using the design-build delivery method include:

(i) Projects for which the definitive space program and functional building requirements can be clearly defined by the state agency prior to the selection of the design-build team, with low likelihood of these requirements changing during the design phase. Examples include, but not limited to: general purpose storage warehouses, multifamily housing or dormitory type projects.

(ii) Repetitive type projects. For example, site adaptation of a standard or prototypical design that has been previously constructed at another location.

(iii) Projects with certain unique factors that require special knowledge or experience to produce the least cost design.

(iv) Pre-engineered structures.

(v) Performance based projects.

(vi) Projects where the time to completion is a critical factor.

(B) Projects features that are incompatible with using the design-build delivery method include:

(i) Projects where the cost to prepare the Request For Proposal (RFP) and the cost to respond to the RFP by the design-build firms are not justified relative to the anticipated benefits.

(ii) Projects where the scope of work is hard to define. Examples include: complex renovation projects and highly technical projects where the

evaluation of alternative design approaches is critical.

(iii) Projects which are design driven, such as museums, research laboratories, medical facilities, technology centers, courthouses and executive office buildings.

(iv) Projects where the state agency or the division desires to be closely involved during the design process to exercise discretionary control over the completed project.

(c) **State agency request.** A state agency shall issue a written request for consideration of formal designation of a state construction project for the design-build delivery method to the Director after careful review of the factors in (b) of this Section. The request shall specify reasons the state agency believes the project merits consideration for design-build delivery system and the funding amount the state agency has available for the project.

(d) **Director consideration.** Upon receipt of a state agency request for design-build services for a project, the Director shall consider whether the project merits designation for a delivery-build system and whether the state agency has adequate funds for the project.

(e) **Administrator consideration.** The Director may request the Administrator to consider whether a project merits designation for a design-build delivery system.

(f) **Administrator notification.** Upon completion of the consideration of the state agency request, the Administrator shall advise the requesting person whether the project has been determined to reasonably merit official designation for a design-build delivery system. The Administrator shall provide a written response stating reasons for the determination.

580:20-19-6. Project designation

(a) **General.** After consideration of factors in 20-19-5, the Director may designate the project delivery method as design-build.

(b) **Director notification.** If the Administrator determines that the project reasonably meets the criteria for designation for design-build delivery and that the state agency has adequate funds for the project, the Administrator shall complete, sign and submit the prescribed designation form to the Director.

(c) **Director actions.** The Director shall determine whether the information on the designation form is complete and agree or disagree with the Administrator's designation.

(1) **Director agrees.** If the Director agrees with the Administrator's designation, the Director shall sign the project designation form and return the form to the Administrator.

(2) **Director disagrees.** If the Director disagrees with the Administrator's designation, the Director shall return the unsigned designation form to the Administrator.

(d) **Project designation.** The Administrator shall apply the applicable project delivery method to the project in accordance with the action of the Director.

(1) **Director signs designation form.** If the Director signs the designation form, the Administrator shall acquire construction services pursuant to provisions of this subchapter.

(2) **Director does not sign designation form.** If the Director does not sign the designation form, the Administrator shall acquire design consultant and construction services pursuant to provisions of subchapters 1 and 3 of this chapter.

(e) **State Agency notification.** The Administrator shall provide the state agency written notice of the final designated project delivery method.

(f) **Designation form filing.** The final designation form shall be filed and maintained in the division project file.

580:20-19-7. Project requisition

(a) **State agency requisition preparation.** Upon receipt from the Administrator of the notice of project designation as design-build, the state agency shall complete a requisition form which must state that the project delivery method is design-build on the form.

(b) **State agency requisition submission.** The state agency shall submit the requisition form to the Administrator.

(c) **Administrator review.** The Administrator shall review the requisition form to ensure the form contains the required information.

580:20-19-8. Selection Procedure for design consultant for design-build

(a) The state agency shall select a design consultant pursuant to provisions of Subchapter 3 of this Chapter.

(b) The state agency shall develop, with the assistance of the design consultant, a comprehensive scope of work statement and design criteria package that defines the project. This package will be issued to competing design-build teams, enabling the design-builders to submit proposals that meet the state agency's needs. The scope of work/design criteria package should contain, but not be limited to, the following information:

(1) A conceptual design including, as a minimum, a space plan and programmatic summary of state agency's requirements.

(2) Topographic survey and existing utility systems survey information for the project site.

(3) Geotechnical report of soils conditions for the project site.

(4) Clear definition of type of building desired, quality of materials, finishes, etc.

(5) Disclosure of the construction price limit of the project so firms don't run the risk of preparing proposals that are not price competitive.

580:20-19-9. Selection Procedures for design-build

Selection of design-build firms shall be in accordance with Subchapter 21 of this Chapter.

580:20-19-10. Proposals and contracts

(a) Following the qualifications-based ranking of firms to perform design-build in accordance with 580:20-21, the state agency shall solicit competitive Request for Proposals (RFP) from the four (4) most highly qualified firms.

(b) The Request for Proposals (RFP) shall contain, at a minimum, the following elements:

(1) The procedures to be followed for submitting proposals and the procedures for making the selection decision, including a reference to the requirements of this Chapter and the regulations of the state agency.

(2) A copy of the proposed design-build contract.

(3) The evaluation factors and their relative weights.

(4) The statement of work/design criteria package.

(5) Provision for the design-builder to offer comments, enhancements or other appropriate value engineering recommendations pertaining to the concept drawings and technical specifications provided by the state agency in the RFP.

(6) A stipend is required to be paid to each design-build firm in the event that the state agency elects to have the proposing design-builders develop design drawings as part of the submission . The RFP must describe the drawings, specifications, or other submittals to be provided with the proposal, with guidance as to the form and level of completeness of the drawings, specifications or submittals that will be acceptable.

(A) The stipend should be sufficient to cover the cost to develop drawings, specifications or other technical narratives in response to the RFP.

(B) The RFP should state that in return for the stipend, the State will retain ownership of the plans submitted by the competing design-build teams.

(C) Stipends may not be required if the RFP documentation is complete enough that the proposing design-builders do not have to perform additional design work in order to respond to the requirements of the RFP.

(7) A schedule for commencement and completion of the design-build contract.

(8) Budget limits for the design-build contract.

(9) Requirements for design-builders to have bonds and insurance.

(10) Any other information that the state agency in its discretion chooses to supply, including without limitation, surveys, drawings or models of existing structures, environmental studies, photographs, or references to public records.

580:20-19-11. Evaluation factors

(a) The state agency, in consultation with the design consultant, shall determine the scope and level of detail required for the evaluation factors and shall submit the factors to the Division for approval. The evaluation factors should be detailed enough to permit qualified design-builders to submit proposals in accordance with the solicitation, without having to perform additional design services to meet the requirements of the RFP.

(b) The design consultant who consults in the development of the evaluation factors shall be disqualified from submitting a proposal to enter into the design-build contract, and the design-builder shall not be permitted to delegate services under the design-build contract to the design professional who developed the evaluation factors.

(c) The design consultant who develops the evaluation factors shall be either a full time employee of the state agency or shall be engaged in compliance with Title 61 of Oklahoma Statutes, and to the extent allowed by law may delegate the development of specific aspects of the design criteria to other consultants.

(d) Evaluation factors shall include:

(1) Past performance (cost, quality, schedule)

(2) Similar experience on comparable projects

(3) Technical qualifications of design-build team

(4) Proposed schedule

(5) Proposed costs

(6) Proposed technical approach including design submittals.

(7) Any other factors relevant to project.

580:20-19-12. Proposals

(a) Proposals shall be sealed and shall not be opened until expiration of the time established for making proposals as set forth in the RFP.

(b) Upon expiration of the time established for making proposals as set forth in the RFP, all proposals received shall be submitted to and evaluated by the Selection Committee.

(c) Clarifications may be required to ensure conformance of proposals with the evaluation factors. Clarifications may require revised price and/or technical proposals. No proposal shall be considered until the Selection Committee issues certification that the proposal is consistent with evaluation factors.

(d) No proposal for a design-build contract may be accepted unless the Selection Committee determines that there was adequate competition for such contract.

(e) Proposals shall establish a cost of the design-build contract, which will not be exceeded if the proposal is accepted without change.

(f) Proposals may allow the design-builder to identify subcontractors to whom the design-builder proposes to delegate obligations under the design-build contract. Entities so identified will not be replaced without the approval of the state agency, or the award may be revoked.

(g) Each design-build team must include licensed architects and engineers independent from the state agency's design professional. The design-build team's licensed architects and engineers must be named in the proposal submitted to the state agency.

(h) The state agency shall have the right to reject any and all proposals, except for the purpose of evading the provisions and policies of this Chapter. The state agency may thereafter solicit new proposals using the same or different evaluation factors, budget constraints, or qualifications.

(i) The state agency shall maintain the secrecy and confidentiality of all proposals and all information contained in the

proposals, and shall not disclose the proposals or the information contained therein to the design-builder's competitors or the public. Once a proposal is accepted, the disclosure of the proposal and the information in the proposal, and the ownership of the drawings, specifications, and information therein, shall be determined in accordance with existing law and the terms of the design-build contract.

(j) When a design-builder receives notification from a state agency that its proposal has not been accepted, the design-builder may, within seven (7) days, submit a written request for a written explanation of the selection process to the state agency.

(k) Proposals may be withdrawn for any reason at any time prior to acceptance.

(l) Written notice of the acceptance of a proposal shall be delivered to the design-builder that submitted the accepted proposal. The state agency shall deliver written notice to the unsuccessful design-builders that their proposals were not accepted at the same time the notice of acceptance is delivered.

580:20-19-13. Design-build contracts

(a) A design-build contract is written and processed for award by the Division. Upon receipt of the Notice to Proceed, the design-builder will be required to furnish 100% performance, payment and defect bonds, in an amount equal to the GMP or lump sum, and proof of worker's compensation, all risk, property and general liability insurance. After the contracts have been signed by all parties, and processed, copies shall be provided to the state agency and the consultant.

(b) Changes to the base contract are permitted as long as the scope of the change is generally included within the scope of work evaluated during the selection process. All changes shall be in writing and signed by all parties to the contract.

(c) Contracts are written by the Division in standard formats as required by 61 O.S. The Division may be contacted for development of special requirements to be included in the contracts.

SUBCHAPTER 21. SELECTION OF CONSTRUCTION MANAGEMENT AND DESIGN-BUILD FIRMS

580:20-21-1. Purpose

The purpose of this subchapter is to provide procedures and information to construction management or design-build firms desiring to do business with the State of Oklahoma; and, to assist state agencies and political subdivisions of the state with the selection of construction management or design-build firms for the purpose of construction or renovation of state facilities. These procedures implement the provisions of 61 O.S., Sections 201 through 211 titled "Public Building Construction and Planning Act."

580:20-21-2. Definitions

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

"Design Consultant" means any individual, firm, corporation, association, partnership, copartnership, or any other legal entity possessing the required qualifications to provide licensed architectural, registered engineering, or registered land surveying services for any construction project.

"Division" means the Construction and Properties Division of the Department of Central Services.

"Fixed Fee" means a fee to be paid to a firm which is expressed as a firm, fixed amount for the services specified in the scope of work.

"Interview committee" means a group of individuals designated by the chief administrative officer or governing body of a state agency to interview construction management or design-build firms for the purpose of selecting such a firm for a planned project. The interview committee shall include a representative from the Construction and Properties Division. This group should include licensed architects or engineers, if available.

"Percentage fee" means a fee to be paid a firm which is based upon a negotiated percentage of the resultant construction contract.

"Program" means the detailed description of the work and the scope of the design services. This program is written by the state agency or a Design Consultant.

"Request for Qualifications (RFQ)" shall be the document or publication whereby a state agency solicits for qualified construction management or design-build firms. [Reference 20-21-4 (d)]

"Screening committee" means a group of individuals designated by the chief administrative officer or governing body of a state agency which reviews the qualifications of interested firms for the purpose of selecting a short list of firms to be interviewed. The screening committee shall include a representative of the Construction and Properties Division. The group should include licensed architects or engineers, if available.

"Selection criteria" means a list of the considerations and requirements used to evaluate each prospective construction management or design-build firm.

"Short list" means a list of construction management or design-build firms chosen during the screening process for a detailed interview. This list shall contain no less than three nor more than five firms for a single project. If the screening process is selecting for more than one construction management or design-build contract, there should be two firms on the short list for every planned project.

"State agency" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 202.

580:20-21-3. Registration of construction management and design-build firms

(a) All construction management or design-build firms desiring to perform services for the State of Oklahoma must register with the Division by delivering a completed registration application form to the Division.

(b) A registration is valid for one (1) calendar year and must be renewed annually on or before January 31st of each succeeding year.

(c) Construction management or design-build firms shall not be solicited for projects with the state until the date the company's registration application is received and approved by the Division.

(d) A construction management or design-build firm may register with the Division any time prior to the deadline for project consideration.

580:20-21-4. Selection procedure

(a) **Define project.** A state agency shall develop a description of the project which shall include:

(1) A narrative description of the work being planned.

(2) The estimated cost and time schedule of the project.

(3) The source of the funding i.e., appropriated state money, federal funding or other source of funding.

(b) **Request list of construction management or design build firms.** A state agency shall submit a written request to the Division for a list of construction management or design-build firms currently registered with the Division. The request must include the description of the project developed pursuant to (a) of this Section. The Division shall deliver to the state agency a printed list and/or one set of mailing labels in response to the request.

(c) **Announce project.** The state agency shall send a Request for Qualifications (RFQ) to each consultant management or design-build firm on the list which must include the description developed in (a) of this Section and the deadline when letters must be received for consideration. In special circumstances, the Director or Administrator may choose to precede the RFQ with a request for Letters of Interest (LOI) from the registered construction management or design-build firms, whichever is applicable.

(d) **RFQ Contents.** An RFQ must contain, at a minimum, the following elements:

(1) Identity of the state agency that will select the construction management or design-build firm.

(2) Procedures for submitting statements of qualification and procedures for making awards, including a reference to the requirements of this Chapter and the regulations of the Division.

(3) Evaluation factors to be considered by the selection committee.

(4) A statement of work including a summary description of the project.

(5) A schedule for planned commencement and completion of the contract.

(6) Budget limits for construction of the project for which services are being sought.

(7) Requirements for Construction Management/at-risk or Design-Build firms to have bonds and insurance.

(e) **Request and review files.** The state agency shall send a list of construction management or design-build firms that submitted Letters of Interest (LOI) for the announced project(s) to the Division. Upon receipt of the list, the Division will assemble and deliver a copy of any information on file for each firm on the list to the state agency.

(f) **Selection of the "short list".** The screening committee shall select no less than three and no more than five of the best qualified construction management or design-build firms based upon the data supplied by the Division and other information which may be submitted by the construction management or design-build firms.

580:20-21-5. Screen criteria

(a) The screening process is the examination of each construction management or design-build firm that has submitted a Letter of Interest (LOI) for the project proposed by the state agency. Files on each firm are provided by the Division for this purpose. A specific list of screening criteria shall include, but need not be limited to the following:

(1) Specialized experience related to the proposed project.

(2) Capacity of the firm to complete the project in the time available.

(3) Past performance in similar projects.

(b) Each firm considered shall be rated by the Screening Committee for each criteria established by (a) of this Section and additional criteria established by the state agency or division, if any. Written ratings for each firm shall be documented on a screening evaluation form which lists all criteria developed for the selection process. After all firms are evaluated, the ratings are compared and the top three to five firms are identified for interview.

(c) A copy of all screening evaluation forms shall be included in the report to the Division as required by Subsection 8.

580:20-21-6. Scheduling and performing interviews

(a) All members of the interview committee shall participate in all interviews of each firm.

(b) An evaluation criteria list shall be developed to ensure that all interviews are conducted identically. The interview committee shall use the criteria listed in 580:20-21-7.

(c) Each firm shall be notified by letter of the selection for interview. The letter shall contain:

(1) Date, time and place of interview. Interviews should be scheduled individually for each firm.

(2) Period of time permitted for the interview. Indicate how much time the firm shall be permitted for the presentation and how much time shall be reserved for questions by the committee.

(3) A copy of the interview criteria.

(4) The letter should contain any other information which would help the committee to obtain information needed for them to properly evaluate the firm.

(5) Oklahoma Statutes prohibit the requesting of any information on fees. Any firm who discloses its fee, or any indication thereof, shall be removed from the request list or short list and receive no further consideration for the project. Construction management or design-build firms must be selected on the basis of qualifications and not on a bid basis.

(d) Interviews must be conducted privately with each firm.

(e) At the conclusion of all interviews, the committee shall rate each firm in a manner so as to recommend to the state agency the relative ranking of each firm. All criteria and procedures used by the committee shall be documented for the record. The recommendations are forwarded to the state agency for the final selection.

580:20-21-7. Interview criteria

(a) The interview is the most important step in the selection process. Each firm must be evaluated against a clearly established list of criteria which is provided to the firm at least seven days prior to the interview.

(b) The state agency shall use the interview evaluation form, prescribed by the Director, which includes, but is not limited to the following criteria:

(1) Specialized experience and technical competence of the firm regarding the type of services required.

(2) Capacity and capability of the firm, including any consultants, to perform the work, including any specialized services, within the stated time limitations of the project.

(3) Past record of performance on contracts with government agencies or private industry with respect to control of costs, quality of work and ability to meet schedules.

(4) Proximity to or familiarity with the area in which the project is located.

(5) The volume of work previously awarded by the state to the firm.

(6) Any other factors that are relevant to the project as determined by the Division.

(c) Questions concerning fees shall not be asked.

580:20-21-8. Report to Division

(a) **Contents.** The state agency shall prepare a chronological report detailing the specific steps used by the state agency during its selection process. This report shall include:

(1) the criteria used in the screening process;

(2) the interviews and the ratings of all firms considered;

(3) a copy of the approved minutes of any board action affecting the selection process, if applicable; and

(4) If an out-of-state firm is selected, the report must include the justification for the selection.

(b) **Delivery to Division.** The report must be submitted to the Division for an independent review of the complete selection process.

[OAR Docket #03-2031; filed 6-5-03]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 30. MOTOR POOL DIVISION [REVOKED]

[OAR Docket #03-2032]

RULEMAKING ACTION:
PERMANENT final adoption
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ANALYSIS:
Revocation of Chapter 30 is necessary to facilitate the statutory amendments mandated by Enrolled House Bill 1326, effective November 1, 2001 which eliminate the Motor Pool Division and transfer its responsibilities to the Fleet Management Division and Division Fleet Manager.
CONTACT PERSON:
Gerry Smedley, Administrative Programs Officer, (405) 522-6597, Department of Central Services, Administration, 2401 N. Lincoln Boulevard, Suite 206, Oklahoma City, OK 73105.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

580:30-1-1. Purpose [REVOKED]

~~The Motor Pool Division of the Office of Public Affairs is responsible for establishing a pool of vehicles to be used in the conduct of the state's business by the various agencies and departments of the state. Because the operation of the State Motor Pool impacts other state agencies and in order to conduct the business in a cost effective and safe manner, the rules in Chapter 30 of Title 580 are proposed. The effect of the rules in 580:30 will be to assist all agencies and traveling employees by providing information and instructions for the use of Motor Pool vehicles.~~

580:30-1-2. Use of state owned vehicles [REVOKED]

~~(a) Every driver of a state owned vehicle is vulnerable to public criticism. To avoid complaints and criticism, each driver shall adhere to the following:~~

~~(1) Do not use a state owned vehicle for personal transportation to stores, shopping centers, lakes, parks, golf courses, athletic events, etc.~~

~~(2) Do not use a state owned vehicle for hauling a trailer other than on that is state owned or that is rented or leased for official business.~~

~~(3) Observe all state traffic rules and regulations.~~

~~(4) Observe all city ordinances on traffic, parking, etc.~~

~~(5) Drive carefully and safely.~~

~~(6) Be courteous and set a good example for other drivers.~~

~~(7) Control your speed to driving conditions.~~

~~(b) Persons other than state employees shall not be permitted to drive or ride in state owned vehicles, unless authorized by the using agency and then only on official state business.~~

~~(c) State Motor Pool vehicles are not to be driven in excess of the speed limit posted by the state and municipalities. Violation fines shall be entirely the responsibility of the driver involved.~~

580:30-1-3. Rental rates [REVOKED]

~~(a) The State Motor Pool shall bear all operation, repair, insurance, and maintenance expenses for vehicles issued on a rental basis and in turn will charge each using agency the same standard rate to cover the above costs. The standard rate will be set by the Office of Public Affairs Motor Pool Division, taking into account all necessary expenses in maintaining the vehicles. A copy of these rates will be furnished to all agencies upon request.~~

~~(b) If it is determined by the State Motor Pool that a change in the rental rate is necessary to cover the expenses referred to in (a) of this Section, the State Motor Pool will notify the director of each agency or department of the new rate at least thirty (30) days before said rate is to take effect.~~

580:30-1-4. Reservations for daily or trip assignments [REVOKED]

~~(a) **Advance reservations.** Any requesting agency shall make advance oral or written reservations as many days in advance as possible by contacting the State Motor Pool dispatcher. All reservations for more than a two week period must be made in writing. There are more requests than available vehicles and an early reservation will more likely insure your getting a vehicle. If the request is granted, and when a vehicle is available, a Motor Pool requisition must be completed by the using agency. This form must be signed by the agency head or his authorized agent on the approval signature line. The requisition should be presented to the State Motor Pool dispatcher at the time the vehicle is picked up. NO VEHICLE WILL BE RELEASED WITHOUT A SIGNED REQUISITION.~~

~~(b) **Cancellations.** Cancellations must be made as early as possible prior to the scheduled vehicle pick up time. In the event you fail to cancel your reservation prior to pick up time, your agency will be billed the minimum daily rate for that vehicle class.~~

~~(c) **Monthly assignments.**~~

~~(1) Requests for a vehicle to be assigned on a monthly basis shall be sent to the State Motor Pool on "YOUR AGENCY" letterhead and should include the following information:~~

~~(A) Employee's name.~~

~~(B) Home address.~~

~~(C) Telephone number.~~

~~(D) Official duty station.~~

~~(E) Type of work.~~

~~(F) Territory to be covered, and~~

~~(G) The approximate miles to be driven per month.~~

~~(2) The requesting agency will be advised of the action on each request.~~

~~(3) If the request is granted, and when a vehicle is available, a Motor Pool requisition must be completed by the using agency. This form must be signed by the agency head or his authorized agent on the approval signature line. This requisition shall be presented to the State Motor Pool dispatcher at the time the vehicle is picked up. No vehicle will be released without a signed requisition. The agency is to send a new requisition, signed by the authorized approval signature AND the driver for each vehicle assigned on a monthly basis. THE NEW REQUISITION IS TO BE SENT BETWEEN THE 25TH AND THE LAST WORKING DAY OF EACH MONTH.~~

580:30-1-5. Gasoline and oil purchases from the Department of Transportation [REVOKED]

~~Gasoline and oil for State Motor Pool vehicles may be obtained from retail outlets or service stations. HOWEVER, users are STRONGLY ENCOURAGED to purchase their fuel and oil from Oklahoma Department of Transportation facilities because of reduced prices and significant savings that will accrue to the state and ultimately, to you the taxpayer.~~

580:30-1-6. State issued gasoline credit cards [REVOKED]

~~(a) Not all service stations will honor state credit cards. The driver MUST clear this card with the attendant BEFORE pumping gas.~~

~~(b) Two credit cards are issued with each State Motor Pool vehicle. The first is our GASOLINE CARD, which is exclusively for purchasing gas at the State Motor Pool pumps. This card is necessary to activate the pumps and each card is programmed to be used with a specific car. They are not interchangeable. The State Motor Pool gas card, regular credit card, and the keys are all on one holder - DO NOT SEPARATE THEM.~~

~~(c) The second credit card issued is the STATE CREDIT CARD for vehicle gas and emergency repairs on the road. This credit card is not transferable AND MUST be used ONLY with the vehicle bearing the number imprinted on the card. This credit card will guarantee the service station, oil company, and the driver that each sales slip will have all the necessary information for immediate processing and prompt payment.~~

~~(d) No employee shall accept or sign a gasoline charge slip unless it is on a standard credit card charge slip used by the oil company represented by the vendor. ALL information must be filled in:~~

~~(1) Gallons;~~
~~(2) Price per gallon;~~
~~(3) Number of quarts of oil;~~
~~(4) Price per quart;~~
~~(5) All information on any miscellaneous items; and,~~
~~(6) The total for all items.~~

~~(e) All copies of charges are to be turned in to the State Motor Pool dispatcher when turning in daily vehicles or rechecking monthly vehicles.~~

~~(f) Emergency repairs may be charged on the credit card only when necessary and NOT WITHOUT PRIOR APPROVAL. Approval may be obtained by calling the State Motor Pool and receiving a purchase order number from the shop foreman (for the work to be done). All charges must have prior approval. Calls may be collect.~~

580:30-1-7. Procedures for on-the-road break-down and repairs [REVOKED]

~~In the event of an on-the-road break-down, the following procedure must be followed:~~

~~(1) If the vehicle is not drivable, call a local car dealership or garage and have the vehicle towed in. Most care dealership either have a wrecker or contract with a local wrecker services and will bill us for this service.~~

~~(2) Have the dealership or garage evaluate the vehicle's condition and make a repair estimate.~~

~~(3) Call the State Motor Pool with this estimate and obtain a purchase order number for this repair. Calls may be collect.~~

580:30-1-8. Other credit and cash purchases [REVOKED]

~~(a) **Invoices .** All invoices or sales slips MUST BE MADE OUT TO THE STATE MOTOR POOL. DO NOT USE YOUR AGENCY NAME OR THEY WILL BE BILLED. The following information must be on the invoice:~~

~~(1) Vendor's name, address and telephone number;~~
~~(2) Date of purchase, vehicle number, quantity and cost of each item used, labor time and charge, and the purchase order number;~~
~~(3) Driver's signature; and,~~
~~(4) No state sales tax is to be charged.~~

~~(b) **Cash purchases.**~~

~~(1) In an emergency situation where a charge to the state is not possible, the State Motor Pool will reimburse the driver for all reasonable charges incurred providing the information in 580:30-1-8(a) is included on the invoice.~~

~~(2) All copies of sales receipts and invoices are to be turned in to the State Motor Pool.~~

580:30-1-9. Care and maintenance [REVOKED]

~~(a) Each agency, and in turn, each driver of a permanently assigned State Motor Pool vehicle, shall assume the responsibility for proper maintenance of the vehicle according to the following maintenance schedule:~~

~~VEHICLE SERVICE VEHICLE SERVICE~~
~~MILES DUE MILES DUE~~
~~5,000 "A" MAINTENANCE 55,000 "A"MAINTENANCE~~
~~10,000 "A" MAINTENANCE 60,000 "B" MAINTENANCE~~
~~15,000 "A" MAINTENANCE 65,000 "A" MAINTENANCE~~
~~20,000 "B" MAINTENANCE 70,000 "A" MAINTENANCE~~
~~25,000 "A" MAINTENANCE 75,000 "A" MAINTENANCE~~
~~30,000 "A" MAINTENANCE 80,000 "B" MAINTENANCE~~
~~35,000 "A" MAINTENANCE 85,000 "A" MAINTENANCE~~
~~40,000 "B" MAINTENANCE 90,000 "A" MAINTENANCE~~
~~45,000 "A" MAINTENANCE 95,000 "A" MAINTENANCE~~
~~50,000 "C" MAINTENANCE 100,000 "C" MAINTENANCE~~

~~(1) If the vehicle is stationed in or near the Oklahoma City metro area, call the State Motor Pool for an appointment.~~

~~(2) If the vehicle is stationed outside the Oklahoma City metro area, all "A" and "B" maintenance may be handled by a local vendor if the following procedure is adhered to:~~

~~(A) Always obtain a garage estimate for the service to be performed prior to having the work started.~~

~~(B) Call the State Motor Pool for approval and to obtain a purchase order number. Make sure the number is written on the invoice. Calls may be collect.~~

~~(C) Make sure the invoice is mailed to the State Motor Pool.~~

~~(b) "A" maintenance includes the following:~~

~~(1) Change oil and filter;~~
~~(2) Chassis lube;~~
~~(3) Check all fluid levels;~~
~~(A) Power steering;~~
~~(B) Master cylinder;~~
~~(C) Transmission fluid;~~
~~(D) Windshield washer;~~
~~(E) Battery; and~~
~~(F) Radiator coolant.~~
~~(4) Check tire condition and pressure;~~
~~(A) Rotate and balance (if necessary); and,~~
~~(B) Check spare.~~
~~(5) Check for proper operation of the following:~~

~~(A) Windshield wiper and washer;~~
~~(B) All lights and reflectors;~~
~~(C) Horn;~~
~~(D) Heater and air conditioner;~~
~~(E) Emergency brake; and,~~
~~(F) Radio.~~
~~(6) Check safety inspection sticker; and,~~
~~(7) Check for fluid leaks.~~
~~(c) "B" maintenance include the items listed in "A" maintenance plus the following:~~
~~(1) Minor tune and filters;~~
~~(A) Replace p.c.v. valve; and,~~
~~(B) Clean and protect battery terminal ends.~~
~~(2) Service transmission;~~
~~(3) Clean engine;~~
~~(4) Check brakes;~~
~~(5) Check shocks;~~
~~(6) On rear drive vehicles check front wheel bearing; and,~~
~~(7) On front drive vehicles check drive axle boots.~~
~~(d) "C" maintenance includes all of the items listed in "A" maintenance plus the following:~~
~~(1) Complete detail clean;~~
~~(2) Replace all belts and hoses;~~
~~(3) Flush cooling system and add new anti-freeze; and,~~
~~(4) Replace universal joints on vehicles so equipped.~~

580:30-1-10. Wrecker service [REVOKED]

~~A wrecker is maintained at the State Motor Pool. If you need towing or a service call between the hours of 7:30 a.m. and 4:30 p.m., call and arrangements will be made. If this service is needed after 4 :30 p.m., weekends or holidays, you will need to call a private wrecker service and charge the expense to the State Motor Pool. If you are unable to locate a wrecker company that will charge the expense, you will be reimbursed for the cost. Towing and/or service calls required because of gross driver negligence will not be reimbursed.~~

[OAR Docket #03-2032; filed 6-5-03]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 35. FLEET MANAGEMENT DIVISION

[OAR Docket #03-2033]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
580:35-1-1. through 580:35-1-3 [AMENDED]
580:35-1-4. through 580:35-1-10 [NEW]
Appendix A. Fleet management inventory report [REVOKED]
Appendix B. Fleet management monthly report [REVOKED]
AUTHORITY:
Department of Central Services; 74 O.S., Section 78(B)(4)
DATES:
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amendments to 580:35-1-1 through 580:35-1-3 clarify, revise and update obsolete references related to general provisions of the Fleet Management Division of the Department of Central Services, procedures for maintaining the inventory of state-owned vehicles and fleet management practices.

The new rules in 580:35-1-4 through 580:35-1-10 are revised and updated rules compiled from obsolete rules related to the Motor Pool Division. Statutes governing the Motor Pool Division were repealed or amended and recodified by Laws 2001, House Bill 1241, c. 168, emerg. eff. May 2, 2001. The new rules provide information and procedures for the use of state-owned vehicles, vehicle reservations, fuel and oil purchases, other credit card and cash purchases, vehicle break-downs and emergency repairs, and vehicle inspection and maintenance.

Revocation of Appendix A and Appendix B is proposed to facilitate inclusion of report requirements within its respective rule
CONTACT PERSON:
Gerry Smedley, Administrative Programs Officer, (405) 522-6597, Department of Central Services, Administration, 2401 N. Lincoln Boulevard, Suite 206, Oklahoma City, OK 73105.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

580:35-1-1. ~~Purpose~~General Provisions

~~(a) It is the intention of the Fleet Management Division of the Office of Public Affairs to assist the agencies in the management of their fleets. In addition to reporting to the Governor and to the State Legislature information as to the state's fleet status, the Fleet Management Division will also be a centralized focal point for all agencies on any fleet related matters.~~
~~(b) The Fleet Management Division will establish reporting and record keeping standards and investigate all potential cost saving programs to assist agencies in keeping down fleet operating costs. The Division will also provide agencies with useful reports to assist in fleet management efforts. A statewide bid for a national fleet maintenance account contract will be investigated for use by agencies that do not have in-house repair facilities.~~
~~(c) The division will also provide an informational newsletter to all agencies. The newsletter will contain fleet related~~

~~information and possibly a listing of surplus vehicles available for purchase.~~

~~(d) Through meetings with agencies sharing similar fleet operation problems, we hope to incorporate your good ideas into the operation of the State of Oklahoma's total fleet picture.~~

(a) Purpose. This Chapter provides information and establishes procedures and standards to administer the operations to provide fleet management services to state agencies and oversight to agencies that own, operate and utilize motor vehicles. The Director of Central Services promulgated these rules pursuant to 74 O.S., Section 78 and the Administrative Procedures Act to ensure an adequate fleet of safe, reliable motor vehicles is available to meet the needs of the state.

(b) **Definitions.** The following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise:

(1) **"Chief administrative officer"** means an individual responsible for directing the administration of a state agency. The term does not mean one or all of the individuals that make policy for a state agency.

(2) **"Class"** means compact car, medium size car, full size car, medium size station wagon, full size station wagon, police car, pickup, truck, SUV, van, bus, aircraft or motorcycle.

(3) **"Department"** means the Department of Central Services.

(4) **"Director"** means the Director of the Department of Central Services.

(5) **"Division"** means the Fleet Management Division within the Department of Central Services.

(6) **"Fleet Manager"** means the administrative head of the Fleet Management Division appointed by the Director.

(7) **"State agency"** means any state board, bureau, commission, department, authority, public trust, interstate commission, the Judiciary, the Legislature, and the Office of the Governor.

(8) **"VIN"** means vehicle identification number.

(c) **Forms** .The Director shall approve forms and instructions for use by state agencies to facilitate requirements of this chapter. The Department shall provide forms upon request.

(d) **Agency authorized signatures.** A chief administrative officer shall designate in writing to the Division, the name of any person authorized to sign on behalf of the agency for the purposes of this chapter.

(e) **Waivers.** The Director may waive any requirement of this chapter unless statutes mandate the requirement.

(1) All requests for waivers shall be in writing and must include justification for the waiver request.

(2) The Department shall respond in writing as to the approval, conditional approval, or denial of a waiver request within fifteen (15) working days of receipt of the request.

580:35-1-2. Vehicle inventory control

~~(a) **Fleet inventory.** The Fleet Management Division will establish and maintain a perpetual inventory of all state vehicles as follows:~~

~~(1) Each state agency, board, commission or institution shall establish and maintain a current perpetual inventory of its motor vehicles including the following information for each vehicle:~~

~~(A) Current agency vehicle number. (Agencies that do not now have a numbering system are required to develop one.) Once developed this number cannot be changed without prior authorization from the Fleet Management Division.~~

~~(B) Make, model, class* and year of all vehicles *examples of class: full size car, medium size car, pickup, truck, etc.~~

~~(C) Purchase date.~~

~~(D) Original cost.~~

~~(E) Vehicle identification number ("VIN" number).~~

~~(F) License tag number – the Fleet Management Director may at his discretion, and upon good cause shown by the agency, omit this information.~~

~~(G) Vehicle location (if operator takes the vehicle home according to Title 47, 151, 156.1, 159.6) the operator's name, home address and telephone number is required upon request.~~

~~(H) Designation of owned, loaned or leased and the name of the vendor.~~

~~(2) Each state agency, board, commission or institution shall submit the information in 580:35-1-2(a)(1) to the Office of Public Affairs Fleet Management Division within 15 days of the request.~~

~~(3) All further acquisitions and disposals of vehicles representing changes to the state fleet inventory must be reported promptly for effective inventory maintenance. The approved methods for acquisition and disposal are described in (b) through (e) of this section.~~

~~(b) **Vehicle acquisition (purchase).**~~

~~(1) All agencies shall notify the Fleet Management Division not less than thirty (30) days prior to the proposed purchase of any vehicle, whether or not exempt from the Oklahoma Central Purchasing Act.~~

~~(2) A copy of the purchase order or request shall be submitted including the following information:~~

~~(A) Intended use (justification) for this vehicle; whether replacement, additional etc.~~

~~(B) Whether the mission of this vehicle has changed since last replacement.~~

~~(C) Options selected over the standard equipped vehicle with justification for these options.~~

~~(3) Upon review of this information, the Fleet Management Division will issue either:~~

~~(A) A certificate of approval indicating the proposed purchase is appropriate; or~~

~~(B) A notice of an alternative recommendation.~~

~~(4) If the initially proposed purchase is completed after an agency is notified of an alternative recommendation, a report shall be submitted to the Governor and the Joint Committee on Fiscal Operations regarding the agency's failure to utilize the alternative recommendation. The Fleet Management Division shall receive notification of~~

~~the purchase within ten (10) days of delivery on Form FMD-1 (Appendix A of this Chapter).~~

~~(c) **Vehicle disposal.** The following new minimum disposal requirements are set by 74 O.S. Section 78. No passenger car, truck, pickup, or other vehicle purchased by any state board, commission, department or institution shall be sold or disposed of unless:~~

~~(1) Vehicle has been in use for sixty thousand (60,000) miles; or~~

~~(2) At least twenty-four (24) months have elapsed since the day the claim was approved for the payment thereof; or~~

~~(3) Vehicle has damage of Two Thousand Five Hundred Dollars ($2,500.00) or more; or~~

~~(4) Written permission to dispose of the vehicle is given by the Fleet Management Division.~~

~~(d) **Vehicle disposal procedure.** All agencies shall notify the Fleet Management Division not less than thirty (30) days prior to the proposed disposal of any state-owned vehicle. This notification must include the following information:~~

~~(1) Agency vehicle number.~~

~~(2) Reason for selling: (age, mileage, or other).~~

~~(3) Estimated value of vehicle.~~

~~(4) Type of sale (public auction, sealed bid, etc.).~~

~~(5) Proposed date of sale.~~

~~(e) **Notification of final disposition.** All agencies shall notify the Fleet Management Division of the final outcome of sale within fourteen (14) days after disposition; notice shall include:~~

~~(1) Agency vehicle number.~~

~~(2) Selling price of vehicle.~~

~~(3) Any changes in the method of disposal.~~

~~(4) A list of any vehicle(s) not disposed of.~~

~~(5) Form FMD-1 (Appendix A of this Chapter) shall be completed and sent to the Fleet Management Division within fourteen (14) days.~~

(a) **Fleet inventory.** The Division shall maintain a current and complete inventory of all state vehicles compiled from the following:

(1) Each state agency shall maintain a current and complete inventory of the motor vehicles it owns which includes the following information for each vehicle:

(A) Current agency vehicle number.

(i) Agencies that do not have a vehicle numbering system shall develop one for the purposes of this Chapter.

(ii) A state agency shall not change an established vehicle number without prior written authorization of the Fleet Manager.

(B) Make, model, class and year of all vehicles;

(C) Purchase date;

(D) Original cost;

(E) VIN number;

(F) License tag number;

(G) Vehicle location; If the operator is authorized to take the vehicle home [Reference 47 O.S., Section 156.1], the operator's legal name, residence street address and telephone number shall be available upon request.

(H) Designation of "owned", "loaned" or "leased" and the legal name and address of the vendor; and,

(I) Type of fuel used in the vehicle

(2) Each state agency shall submit written notice of the acquisition or disposal of a motor vehicle to the Division no later than fifteen (15) days after said transaction takes place. Notice of the acquisition of a vehicle shall include the information required in (1) of this subsection.

(b) **Vehicle acquisition by a state agency.** All state agencies with authority to own motor vehicles shall submit to the Division a vehicle acquisition request for approval by the Director not less than thirty (30) days prior to the proposed purchase of any vehicle, whether or not exempt from the Oklahoma Central Purchasing Act.

(1) The request for approval shall include a copy of the purchase order or requisition and state the following:

(A) The intended use and justification for the vehicle;

(B) Whether the vehicle is a replacement, addition, etc.

(C) Whether the purpose of the vehicle has changed since the last replacement;

(D) Any options selected over the standard equipped vehicle with justification for the options.

(E) The supplier of the vehicle;

(F) The agency has sufficient funds to acquire and maintain the vehicle; and

(G) The statutory authority of the agency to acquire a vehicle.

(2) **Director consideration.** Within fifteen (15) days of receipt of a state agency request, the Director will review the information and send notice to the agency of the approval or denial of the acquisition.

(3) **Fleet Manager consideration.** The Director may request the Fleet Manager to review and verify information provided in a state agency acquisition request.

(4) **Director notification.** The Director shall provide the state agency written notice of the approval or denial of the acquisition request in the following manner:

(A) Issue a notice of approval indicating the proposed purchase is appropriate; or,

(B) Issue a notice of denial of the proposed purchase; or

(C) Issue a notice of an alternative acquisition recommendation.

(c) **Vehicle disposal.** A vehicle owned by a state agency may be sold or disposed of in the manner authorized by OAC 580:65 and the Surplus Property Act, if:

(1) the vehicle has been in use for sixty thousand (60,000) miles; or

(2) at least twenty-four (24) months have elapsed since the day the purchase claim was approved for payment thereof; or

(3) the vehicle has damage of Two Thousand Five Hundred Dollars ($2,500.00) or more; or

(4) the Fleet Manager has provided written authorization to dispose of the vehicle.

(d) **Vehicle disposal procedure.** All agencies shall notify the Fleet Management Division not less than thirty (30) days prior to the proposed disposal of any state-owned vehicle. The notice shall be in writing and include the following:

(1) Agency vehicle number;
(2) Reason for selling, (age, mileage, or other);
(3) Estimated value of vehicle;
(4) Type of sale (public auction, sealed bid, etc.); and
(5) Proposed date of sale.

(e) **Notification of final disposition.** All agencies shall provide written notice to the Division of the final outcome of sale within fourteen (14) days after disposition, which shall include:

(1) Agency vehicle number
(2) Selling price of vehicle
(3) Any changes in the method of disposal
(4) A list of any vehicle(s) not disposed of.
(5) A completed copy of the inventory report information required by (a)(1) of this section;
(6) Any other information the Division may request to maintain accurate inventory of state vehicles.

580:35-1-3. Vehicle management control

~~(a) The Fleet Management Division will provide oversight of the fleet management practice of all state agencies.~~

~~(b) All state agencies must have on file with the Fleet Management Division, a detailed written description of their present fleet management policies and procedures.~~

~~(c) All state agencies shall submit monthly reports for all vehicles on Form FMD-2 (Appendix B of this Chapter) on the 10th of the month for the preceding month. The Form FMD-2 (Appendix B of this Chapter) will contain sufficient information to allow the Fleet Management Division to maintain statistical data on each vehicle necessary to perform its duties and functions.~~

(a) **Agency fleet management policies and procedures.** A state agency shall file a detailed written description of its current fleet management policies and procedures with the Division.

(b) **Agency monthly inventory report.** A state agency shall submit a report of all vehicles it owns monthly to the Division. The report shall be due on the 10th of each month and shall contain information for each vehicle owned representing the month preceding the report, which includes:

(1) Agency name and number;
(2) Vehicle number;
(3) Hours or mileage;
(4) Fuel cost and number of gallons used;
(5) Type of maintenance performed on vehicle specified in the following manner:
  (A) "P" - preventive maintenance - internal repair;
  (B) "E" - preventive maintenance - outside repair;
  (C) "B" - body work - internal repair;
  (D) "W" - body work - outside repair;
  (E) "M" - mechanical repair - internal repair; or
  (F) "R" - mechanical repair - outside repair.
(6) Cost of any repairs listed pursuant to (5) of this subsection.

580:35-1-4. Use of state owned vehicles

(a) **State vehicle driving conditions.** Every driver of a state owned vehicle shall comply with the following conditions:

(1) A state owned vehicle shall not be used for personal transportation to stores, shopping centers, lakes, parks, golf courses, athletic events, etc.
(2) A state owned vehicle shall not be used for hauling a trailer other than a trailer that is state owned or that is rented or leased for official business.
(3) All state traffic rules and regulations shall be observed.
(4) All city ordinances related to traffic, parking, etc. shall be observed.
(5) Safe and courteous driving habits shall be used at all times.

(b) **Prohibited drivers and passengers.** Persons other than state employees shall not be permitted to drive or ride in state owned vehicles, unless authorized by the using agency and then only on official state business.

(c) **Traffic violations.** State-owned vehicles shall not be driven in excess of the speed limit posted by states and municipalities. All traffic violation fines shall be the sole responsibility of the driver involved.

580:35-1-5. Service and rental rates

(a) **Fleet operation funding.** The Division shall fund all operation, repair, insurance, and maintenance expenses for vehicles issued on a rental basis.

(b) **Service rates.** A standard rate shall be set by the Division and charged to each agency renting Division vehicles to recover the costs listed in (a) of this section. A copy of these rates shall be furnished to all agencies upon request.

(c) **Notice of rate change.** If the Director determines it is in the best interest of the State to change the rental rate to ensure the recovery of expenses listed in (a) of this section, the Director will send written notice to the chief administrative officer of each agency or department of the new rate at least thirty (30) days prior to its effective date.

(d) **Payment due date .** Payment for Division services as authorized by 74 O.S., Section 78c. shall be paid no less than monthly to the Department of Central Services.

(e) **Delinquent accounts.** State agencies that are delinquent sixty (60) days or more with payment to the Department shall be considered in arrears. Written notice of the delinquency and outstanding balance will be sent to the agency chief administrative officer.

(1) Accounts delinquent for more than 90 days shall be subject to suspension by the Director. Suspension of an account bars the agency from use of Division services until payment is received and the account is no longer in arrears.
(2) The Director may waive suspension if it is determined that the suspension will disrupt vital services to the

public, cause undue hardship, or is otherwise in the best interest of the agency and/or the state.

(f) **Other agency expenses.** An agency that rents Division vehicles is responsible for and shall pay the Division for any expenses related to the replacement or repair of a rented vehicle when the agency is found to be at fault.

(1) For accidents, "at fault" shall be determined by the results of an investigation by a qualified external organization, e.g. law enforcement, insurance company etc.

(2) An agency shall be considered "at fault" if it is determined that certain conditions contributed to the replacement or repair which include, but are not limited to, the following:

(A) failure to comply with Division preventative maintenance standards established in 580:35-1-10;

(B) operation of a vehicle in unsafe conditions, e.g. continuing to operate a vehicle after a vehicle caution light has engaged;

(C) use of a vehicle inconsistent with the performance of work related activities.

580:35-1-6. Daily reservations and monthly assignments

(a) **Advance reservations.** All reservations require prior approval of the Division.

(1) An agency shall submit a verbal or written request for reservation to the Division at least ten (10) working days prior to the beginning date of the reservation. The reservation must be submitted during the Department's business hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding state holidays.

(2) The reservation shall specify the desired class of vehicle and desired date and time period for use of the vehicle. The Division may request additional information as determined necessary to facilitate the reservation.

(3) A request for use of a vehicle for two or more weeks shall be made in writing.

(4) The Division may impose conditions and time limitations pursuant to the rules of this subchapter and state law.

(b) **Prioritization of reservations.** Except as otherwise provided, the Division shall issue approved reservations on a first-come, first-served basis.

(c) **Fleet Management requisition.** A Fleet Management requisition form, signed by the chief administrative officer or designee shall be presented to the Division each time a vehicle is picked up for use by a state agency.

(d) **Cancellations of reservation.** Written notice of cancellation shall be submitted to the Division no less than one (1) working day prior to the reservation date. An agency shall be charged the minimum daily rate for the applicable vehicle class for failure to cancel a reservation prior to the scheduled pick up time.

(e) **Monthly assignments.** A written request for a vehicle to be assigned to an agency on a monthly basis shall be signed by the appointing authority of the agency or designee and include the following information:

(1) Legal name of employee assigned to the vehicle

(2) Address of employee

(3) Employee's work telephone number

(4) Official duty station of employee

(5) Type of work performed by employee

(6) Territory to be covered, and

(7) Approximate miles to be driven per month.

(A) The requesting agency will be advised of the approval or denial for each request.

(B) A new, signed request shall be submitted monthly to the Division between the 25th and the last working day of each month. The request shall include the name of the driver and current mileage of the vehicle.

580:35-1-7. Gasoline and oil purchases

(a) **Fuel card purchases.** Gasoline and oil for Division vehicles shall be purchased from authorized fueling locations with the state issued fuel card furnished with each vehicle.

(1) The current vendor of the state fuel card is determined by award of SW Contract 101 "Automated Fuel Management System".

(2) A list of fuel card provider locations by city is provided inside each vehicle.

(b) **Purchases from the Department of Transportation.** Gasoline and oil may also be purchased from Department of Transportation facilities.

(c) **Required fuel for Division vehicles.** Use only regular unleaded fuel in Division vehicles.

580:35-1-8. Wrecker service, on-the-road breakdown and repairs

(a) **Division wrecker service.** An agency shall contact the Division whenever towing or a service call is required in or near the Oklahoma City metro area and between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday, excluding holidays.

(b) **Private wrecker service.** An agency shall contact a wrecker service listed in the Fuel/Maintenance locator guide whenever towing or a service call is required outside the Oklahoma City metro area and/or after 4 :30 p.m., on weekends or holidays.

(1) If the locator guide does not list a wrecker service in the area, a local wrecker service may be contacted and expenses charged to the Division in accordance with 580:35-1-9.

(2) An agency shall notify the Division of the use of a private wrecker service on the following workday.

(3) The driver shall be reimbursed for towing expenses if a private wrecker service refuses to invoice the Division.

(c) **Driver negligence.** The Division shall not be responsible for towing and/or service calls required because of driver negligence and related expenses shall not be reimbursed. (See also 580:35-1-5(f).]

(d) **Vehicle breakdown.** In the event of an on-the-road breakdown, contact the Division immediately. If it is impossible to contact the Division, proceed as follows:

(1) If the vehicle is operable, drive it to the nearest maintenance location listed in the locator guide provided with the vehicle

(2) If the vehicle is inoperable, contact a wrecker service following the procedure in subsection (b) of this section and have the vehicle towed to a garage or dealership listed in the locator guide. If there are no locations available, call a local dealership or garage to have the vehicle towed in.

(e) **Authorization of repairs.** Contact the Division as soon as possible to report the status and location of the vehicle. All repairs to a vehicle require prior authorization from the Division. An agency shall be responsible for payment of any unauthorized repairs.

580:35-1-9. Other credit and cash purchases

(a) **Invoices .** All invoices or sales slips for expenses approved by the Division shall be billed to the Division. An invoice must contain the following:

(1) Vendor's legal name, street and mailing address and telephone number;

(2) Date of purchase;

(3) Vehicle number;

(4) Quantity and cost of each item used, labor time and charge;

(5) Division purchase order number;

(6) Driver's signature; and

(7) No state sales tax shall be charged.

(b) **Cash purchases.** In an emergency situation where a charge to the state is not possible, the Division will reimburse the driver for all reasonable charges incurred provided:

(1) The information in subsection (a) of this section is included on the invoice; and

(2) All copies of sales receipts and invoices are submitted to the Division immediately upon receipt.

(c) **Invoices to other agencies.** The Division is not responsible for payment of invoices charged to any other agency.

580:35-1-10. Care and maintenance of vehicles

(a) **Vehicle maintenance schedule.** A state agency and each driver employed by said agency shall assume the responsibility for proper maintenance of any state-owned vehicle in its possession, according to the following maintenance schedule:

(1) 5,000 vehicle miles: "A" maintenance service due;

(2) 10,000 vehicle miles: "A" maintenance service due;

(3) 15,000 vehicle miles: "A" maintenance service due;

(4) 20,000 vehicle miles: "B" maintenance service due;

(5) 25,000 vehicle miles: "A" maintenance service due;

(6) 30,000 vehicle miles: "A" maintenance service due;

(7) 35,000 vehicle miles: "A" maintenance service due;

(8) 40,000 vehicle miles: "B" maintenance service due;

(9) 45,000 vehicle miles: "A" maintenance service due;

(10) 50,000 vehicle miles: "C" maintenance service due;

(11) 55,000 vehicle miles: "A" maintenance service due;

(12) 60,000 vehicle miles: "B" maintenance service due;

(13) 65,000 vehicle miles: "A" maintenance service due;

(14) 70,000 vehicle miles: "A" maintenance service due;

(15) 75,000 vehicle miles: "A" maintenance service due;

(16) 80,000 vehicle miles: "B" maintenance service due;

(17) 85,000 vehicle miles: "A" maintenance service due;

(18) 90,000 vehicle miles: "A" maintenance service due;

(19) 95,000 vehicle miles: "A" maintenance service due;

(20) 100,000 vehicle miles: "C" maintenance service due.

(b) If the vehicle is stationed in or near the Oklahoma City metro area, service shall be performed by the Division.

(c) If the vehicle is stationed outside the Oklahoma City metro area, all "A" and "B" maintenance shall be obtained from a local vendor as follows:

(1) Check the Fuel/Maintenance locator guide for a location willing to accept the current state fuel card provided with the vehicle. If such a facility is unavailable, contact a local dealership or garage.

(2) Obtain a garage estimate for the service to be performed prior to commencement of work.

(3) Authorization by the Division shall be obtained prior to commencement of the work.

(4) All invoices shall be mailed to the Division.

(d) **"A" maintenance requirements.** "A" maintenance includes the following:

(1) Change oil and filter;

(2) Chassis lubrication;

(3) Check all fluid levels, which include:

(A) Power steering;

(B) Master cylinder;

(C) Transmission fluid;

(D) Windshield washer;

(E) Battery; and

(F) Radiator coolant.

(4) Check tire condition and pressure;

(A) Rotate and balance (if necessary); and,

(B) Check spare.

(5) Check for proper operation of the following:

(A) Windshield wiper and washer;

(B) All lights and reflectors;

(C) Horn;

(D) Heater and air conditioner;
(E) Emergency brake;
(F) Radio; and
(6) Check for fluid leaks.

(e) **"B" maintenance requirements.** "B" maintenance includes the items listed in "A" maintenance plus the following:
(1) Air and fuel filters, check and replace, if necessary;
(A) Replace p.c.v. valve; and,
(B) Clean and protect battery terminal ends.
(2) Service transmission;
(3) Clean engine;
(4) Check brakes;
(5) Check shocks;
(6) Check front wheel bearing on rear drive vehicles; and,
(7) Check drive axle boots on front drive vehicles.

(f) **"C" maintenance requirements.** "C" maintenance includes all of the items listed in "A" maintenance plus the following:
(1) Complete detail clean; and
(2) Replace all belts and hoses;

APPENDIX A. FLEET MANAGEMENT INVENTORY REPORT [REVOKED]

FLEET MANAGEMENT DIVISION

FLEET MANAGEMENT INVENTORY REPORT

AGENCY NUMBER_____ VEHICLE NUMBER_____

AGENCY NAME_____

CLASS___MAKE_____MODEL_____YEAR_____STATUS___LOCATION_____

TAG NUMBER_____VEH ID NUMBER (VIN)_____

(CHECK ONE) PURCHASED___LOANED___LEASED___

VENDOR NAME_____

BEGINNING ODOMETER/HOUR READING_____

COST_____PO#_____DEL DATE_____

(FOR USE AT TIME OF SALE ONLY)
SALE DATE_____SALE TYPE_____SALE AMOUNT_____

ENDING ODOMETER/HOUR READING_____

CODE DESCRIPTIONS:

CLASS
C - Compact car
M - Medium size car
F - Full size car
J - Medium size station wagon
W - Full size station wagon
P - Police Car
L - Pick-up
H - Truck
V - Van
B - Bus
A - Aircraft
Y - Motorcycle

LOCATION
H - Home
O - State Office or Facility

STATUS
A - Active
W - Wrecked
S - Salvage
L - Deadlined for sale
R - Major repair

SALE TYPE
S - Sealed bid
O - Open auction
C - Consignment
R - Retail sale
T - Transfer to another agency

VEHICLE NUMBER: To be created by the agency with a maximum of six (6) digits. These may be a combination of alphabetic and numeric. (Example: AF-101, 05-102)

FMD-1

APPENDIX B. FLEET MANAGEMENT MONTHLY REPORT [REVOKED]

FLEET MANAGEMENT DIVISION

FLEET MANAGEMENT MONTHLY REPORT

AGENCY NUMBER _____VEHICLE NUMBER_____REPORT DATE(MMYY)_____

HOURS OR MILEAGE
___HOUR/ODOMETER READING_____

FUEL COST_____ FUEL GAL_____

MAINTENANCE TYPE__ MAINTENANCE COST_____
__ _____
__ _____
__ _____
__ _____
__ _____

MAINTENANCE TYPE:
P - Preventive maintenance - Internal Repair
E - Preventive maintenance - Outside Repair
B - Body Work - Internal Repair
W - Body Work - Outside Repair
M - Mechanical Repair - Internal Repair
R - Mechanical Repair - Outside Repair

FMD-2

[OAR Docket #03-2033; filed 6-5-03]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 65. STATE SURPLUS PROPERTY

[OAR Docket #03-2035]

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Subchapter 1. General Provisions
580:65-1-1 through 580:65-1-2. [AMENDED]
580:65-1-3 through 580:65-1-6. [REVOKED]
580:65-1-7 through 580:65-1-10 [NEW]
Subchapter 3. Declaration and Approval of Surplus Property [NEW]
580:65-3-1 through 580:65-3-4 [NEW]
Subchapter 5. Sale or Disposal of Surplus Property [NEW]
580:65-5-1 through 580:65-5-5 [NEW]
Subchapter 7. Acquisition of Surplus Property [NEW]
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Subchapter 9. Surplus Property Records [NEW]
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Subchapter 3. Declaration and Approval of Surplus Property [NEW]
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Subchapter 5. Sale or Disposal of Surplus Property [NEW]
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580:65-7-1 through 580:65-7-7 [NEW]

Subchapter 9. Surplus Property Records [NEW]
580:65-9-1 through 580:65-9-2 [NEW]

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

These rules revoke existing rules related to surplus vehicles and equipment and create new rules which apply to the management of all state surplus property.

Rules in Subchapter 1 provide the purpose and definitions for the chapter in addition to provisions for an agency to request an exemption and prohibitions for the donation of state property.

Rules in Subchapter 3 provide information and procedures pertaining to the declaration and request for approval of state property as surplus by agencies; storage and preservation of surplus property; approval of surplus property requests by the Department of Central Services; documents required for disposal of surplus vehicles and equipment, including repairs, if necessary prior to disposal; cancellation or amendment of an approved surplus property request; and the transport and delivery of surplus property to State Surplus.

Rules in Subchapter 5 provide information and procedures for the sale and disposal of surplus property by state agencies and State Surplus and handling of certain special classes of surplus property.

Rules in Subchapter 7 provide information and procedures for the acquisition of surplus property which include sales to related parties whereby a conflict of interest with the state may exist; priority purchase by authorized entities; transfer of surplus property to State Surplus cutoff date prior to monthly public auction; public auction payment and pick up deadlines; payment provisions, delinquent accounts and insufficient checks; and state agency reimbursement.

Rules in Subchapter 9 provide information and requirements for state surplus property records to be maintained by state agencies and State Surplus.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

580:65-1-1. Purpose

This ~~subchapter~~ chapter provides general information and provisions pertaining to the transfer, ~~and~~ disposal and acquisition of state surplus property ~~that~~ for use by state agencies, authorized entities, individuals and business entities pursuant to the ~~shall follow. The rules shall conform to provisions of the~~ Oklahoma Surplus Property Act. [74 O.S., Sections 62.1 et seq.] The Director of Central Services promulgated these rules pursuant to 74 O.S., Section 62.3. to ensure that state-owned surplus property is disposed of at fair market value, in an independent and ethical manner, and that the property or the value of the property has not been misrepresented.

580:65-1-2. Definitions

In addition to terms the Oklahoma Surplus Property Act provides, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly requires otherwise:

"Administrator" means the person in the Department of Central Services designated by the Director of the Department to oversee the State Surplus Property Program.

"Authorized entity" *means a political subdivision, school, group or organization eligible to acquire surplus property from a surplus property program.* [74 O.S., §62.2]

"Authorized signature" means the signature of a state employee duly authorized by the chief administrative officer of a state agency to sign forms on behalf of such agency for submission to the Department or a surplus property agent.

"Business entity" means an individual, partnership, business trust, cooperative, association, corporation or any other firm, group or concern which functions as a separate entity for business purposes.

"Cannibalize" means to take salvageable parts from (as a disabled machine) for use in building or repairing another machine; or to make use of (a part taken from one thing) in building or repairing something else.

"Department" means the Department of Central Services.

"Fiscal year" means the period of time from July 1 of a calendar year through June 30 of the succeeding calendar year.

"Form" means a document prescribed by the Director to be used by state agencies to provide information to the Department or a surplus property agent.

"Inventory" means an itemized list of tangible assets owned by state boards, commissions, institutes and agencies pursuant to provisions of 74 O.S., §110.1.

"Proceeds" means funds the surplus property agent derives from sale of surplus property.

"Program" means the Surplus Property Program established and administered by the Director of the Department of Central Services in accordance with 74 O.S., Section 62.1 et seq.

"Public auction" means either a tangible event at a public location or an electronic event which is advertised and made available to the public via the Internet.

~~**"State agency"** means any office, officer, bureau, board, counsel, court, commission, department, institution, unit, body or house of the executive or judicial branches of the state government, whether elected or appointed, excluding only political subdivisions of the state.~~

"Salvage or scrap" means property which, because of its worn, damaged, deteriorated, incomplete condition or specialized nature has no reasonable prospect of sale or use as designed, but has some value in excess of its basic material content.

"Surplus property agent " or **"agent"** means a person ~~the Director designates to receive, process, redistribute, trade, sell and dispose of surplus property.~~ designated by the Director to perform duties necessary to administer a surplus property program.

"Trade-in" means equipment which is exchanged on replacement equipment.

"Vehicle" or **"equipment"** means automobiles, station wagons, vans, pickups, trucks, buses, other modes of transportation and motorized work devices.

"VIN" mean the unique vehicle identification number of a vehicle or equipment.

580:65-1-3. Vehicle and equipment record keeping by a surplus property agent [REVOKED]

~~(a) **General.** A surplus property agent shall keep and maintain information the Director requires.~~

~~(b) **Vehicle and equipment information.** A surplus property agent shall maintain a file for vehicles and equipment the agent receives from a state agency. The file shall contain a description, transport method and required documents for each vehicle or piece of equipment.~~

~~(c) **Expenses a surplus property agent incurs.** A surplus property agent shall include records for expenses the agent incurs to transport a vehicle or equipment, remove markings from a vehicle or equipment, remove special equipment from a vehicle or equipment, additional parts for a vehicle or equipment and labor expenses to install parts on a vehicle or piece of equipment.~~

580:65-1-4. Vehicle and equipment disposal by a state agency [REVOKED]

~~(a) **General.** A state agency that desires to dispose of vehicles the state agency owns shall notify the surplus property agent. The state agency shall provide information and documents the agent requires.~~

~~(b) **Location.** The state agency shall advise the surplus property agent of the location of the vehicle or equipment.~~

~~(c) **Description.** The state agency shall provide the surplus property agent information for the vehicle or equipment.~~

~~(1) **Basic information.** Basic information shall, at a minimum, include the make, model, model year, mileage or operation hours, color, VIN and general condition of the vehicle or equipment.~~

~~(2) **Identifying markings.** The state agency shall advise the type and location of identifying markings on the vehicle or equipment.~~

~~(3) **Special equipment.** The state agency shall specify whether the vehicle or equipment has special equipment the state agency desires the surplus property agent to remove prior to vehicle or equipment disposal.~~

~~(d) **Transport method.** The state agency shall advise the surplus property agent the transport method the state agency intends to utilize to transport the vehicle to the location the agent specifies.~~

~~(e) **Documents.**~~

~~(1) **Disposal documents.** If laws governing a state agency require written authorization for the state agency to dispose of a vehicle, the state agency shall provide the surplus property agent a copy of required documents.~~

~~(2) **Title.** At the time of vehicle transfer to the surplus property agent, the state agency shall provide title to the vehicle to the agent with authorized signatures for legal transfer of the vehicle.~~

~~(f) **Additional information.** A state agency may provide additional information to the surplus property agent that the state agency desires regarding the vehicle or equipment.~~

~~(g) **Vehicle repairs.**~~

~~(1) **State agency contact.** If a surplus property agent reasonably believes that the cost of minor repairs to a vehicle or equipment will enhance the potential sale value of the vehicle or equipment in an amount that exceeds the cost of the minor repair, the agent shall contact the state agency.~~

~~(2) **State agency approval.** If the state agency approves the minor repairs the surplus property agent shall acquire parts for and repair the vehicle or equipment.~~

~~(3) **Repair documents.** The surplus property agent shall retain receipts for parts and indicate the labor time to install the parts. The agent shall retain the documents in the state agency vehicle and equipment disposal file the agent maintains.~~

580:65-1-5. Vehicle and equipment disposal by a surplus property agent [REVOKED]

~~(a) **General.** A surplus property agent may dispose of a vehicle or piece of equipment through sale to a state agency, sale to an authorized entity, sale by auction to individuals or business entities, or salvage.~~

~~(b) **Transfer or sale to a state agency or authorized entity.** A state agency that desires to acquire a vehicle or equipment from a surplus property agent shall negotiate the price the state agency or authorized entity shall pay for the vehicle or equipment with the agent. The agent shall accept funds from the state agency or authorized entity. The agent shall provide the state agency or authorized entity a receipt for the funds signed by the agent and retain a copy of the receipt in the state agency vehicle and equipment file the agent maintains.~~

~~(c) **Sale by auction.** A surplus property agent shall conduct periodic public auctions to dispose of vehicles or equipment to individuals and business entities. The agent shall keep a record for each vehicle or piece of equipment sold by auction. The agent shall provide each buyer a receipt for funds the agent receives from the buyer. The agent shall retain a copy of the receipt in the state agency vehicle and equipment file the agent maintains.~~

~~(d) **Disposal for salvage.** If a surplus property agent reasonably believes a vehicle or equipment has salvage value only, the agent shall adhere to the provisions of this subsection for vehicle or equipment disposal.~~

~~(1) **Documentation.** The surplus property agent shall document reasons the agent believes a vehicle or equipment has only salvage value.~~

~~(2) **State agency notification.** The surplus property agent shall notify the state agency that the agent intends to offer the vehicle or equipment for salvage.~~

~~(3) **Auction.** The surplus property agent may dispose of salvage vehicles through public auction.~~

~~(4) **Solicitation.** For salvage vehicles that the surplus property agent does not dispose of by public auction, the agent may solicit bids in writing, by telephone or by facsimile from individuals or business entities that acquire salvaged vehicles.~~

~~(5) **Bid award.** If the surplus property agent solicits bids, the agent shall award to the individual or business entity that offer the greatest amount for the vehicle or equipment.~~

~~(6) **File documents.** The surplus property agent shall retain copies of documents relating to salvage vehicles and equipment in the state agency vehicle and equipment disposal file the agent maintains.~~

580:65-1-6. Surplus property agent reasonable fee determination and funds remittance [REVOKED]

~~(a) **General.** A surplus property agent shall charge a reasonable administrative fee to determine the amount agent shall retain from proceeds from transfer, sale or salvage of vehicles and equipment.~~

~~(b) **Administrative fee.** A surplus property agent shall retain an administrative fee of ten percent (10%) of the sale price of the vehicle or equipment.~~

~~(c) **Remittance to a state agency.** A surplus property agent shall remit the fund balance of the proceeds for the vehicle or equipment less the reasonable fee to the state agency.~~

~~(d) **Reasonable fee deposit.** A surplus property agent shall deposit the reasonable fee to a special cash fund the Oklahoma Surplus Property Act specifies.~~

580:65-1-7. Statutory citations

Statutory citations refer to the most recent codification of statute.

580:65-1-8. Program forms

The Director shall approve forms and instructions for use by state agencies and authorized entities to facilitate requirements of this subchapter. The Department shall provide forms upon request.

580:65-1-9. Exemption

(a) **State agency inability to perform Program requirements.** If a state agency reasonably believes that it is unable to perform a requirement of the Program, the state agency may submit a written request for an exemption to the Administrator. The request must be signed by the chief administrative officer of the agency and state the reason for the exemption request.

(b) **Approval of exemption and notification.** The Administrator will review the request and determine whether to approve, conditionally approve or deny an exemption. Written notification of such determination which shall set forth conditions for approval or reasons for denial of the request will be sent to the state agency.

(c) **Exemption expiration.** Approval of an exemption shall expire upon the completion of the transaction designated in the exemption request.

580:65-1-10. Prohibitions

(a) **Donations of state property.** Donations of state property to private individuals, for-profit organizations or state employees is prohibited.

(b) **Sales to state employees.** The sale of state property to state employees is prohibited unless items are sold at announced public sales or auctions.

SUBCHAPTER 3. DECLARATION AND APPROVAL OF SURPLUS PROPERTY

580:65-3-1. Declaring state property surplus

(a) **Declaration and approval.** A state agency shall determine when its personal property is surplus property in accordance with 74 O.S., Section 62.2.

(b) **Storage and preservation of surplus property by agency.** A state agency is responsible for the preservation of its surplus property prior to the official approval of its disposal required by the rules of this chapter.

(1) A state agency must make reasonable efforts to protect its surplus property from the elements, theft or any other means of destruction or deterioration.

(2) A state agency must make reasonable efforts to store surplus property no longer than six (6) months to minimize its depreciation.

(3) If a surplus property agent has reasonable cause to believe that the resale value of surplus property has been decreased because of negligent storage or handling by a state agency, costs incurred by the Department for the disposal of such property may be charged to the state agency.

(c) **Request for approval to sell or transfer surplus property.** State owned property shall not be destroyed, sold, transferred, traded in, traded, discarded, donated or otherwise disposed of without prior written approval of the Administrator. This rule applies to and includes any residue that may be remaining from agency cannibalization of property.

(d) **Surplus Property Transfer Form.** To request official approval to dispose of surplus property, a state agency must submit a form, prescribed by the Department, to the Administrator for approval. A surplus property transfer form must be signed by the chief administrative officer of the agency or an authorized agent and shall state:

(1) The legal name of the state agency;

(2) The principal address of the state agency;

(3) The name of the division or department within the agency, if applicable, where property is located.

(4) The name, telephone number, fax number and e-mail address of a contact person authorized to show and/or provide additional information concerning the surplus property to an agent;

(5) The name, telephone number, fax number and e-mail address of the person preparing the form;

(6) The complete address or location of the surplus property;

(7) A desired method of disposal of the surplus property as authorized in 580:65-5-1;

(8) The reason the property has been declared as surplus property, which may be stated as:

(A) No longer needed to perform the duties of the agency; or,

(B) Broken, cost to repair not economical; or,

(C) Obsolete. Not compatible with newer equipment; or

(D) Other, which shall be followed with a specific explanation.

(9) The inventory control number, if any, assigned to the surplus property item;

(10) A description of the surplus property item, including serial, model or other identification numbers, whenever available;

(11) A general statement as to the condition of the surplus property item (i.e. excellent, good, fair, poor, damaged, scrap, missing parts, etc.);

(12) Any known defects or enhancements;

(13) An estimate, current value, suggested selling price or minimum acceptable price;

(14) Any other information or recommendations to assist the approval and efficient disposal of the property.

(A) The name, address and telephone number of a suggested vendor, if any.

(B) Specify whether a recommended buyer is considered to be a related party as described in 580:65-7-1.

(15) A statement that the contents of the form have been reviewed by the chief administrative officer or authorized agent of the agency and that the facts contained therein are true and correct.

(e) **Approval by the Department.** The Administrator shall review the request and determine whether to approve, conditionally approve or deny the disposal of surplus property. Written notification of such determination, which shall set forth conditions for approval or reasons for denial of the request, will be sent to the state agency.

(f) **Exception.** A surplus property transfer form is not required when equipment is transferred between departments within the same agency, even though a purchase price may be charged.

580:65-3-2. Declaration of surplus vehicles and equipment

(a) **Additional information.** Whenever a state agency desires to dispose of vehicles or equipment, the following information shall be included on the surplus property transfer form required by 580:65-3-1(d):

(1) Make, model and model year;

(2) Body style, load rating, seats or passenger capacity, number of cylinders, number of drive wheels (i.e. 2 x 4 or 4 x 4)

(3) Vehicle options (i.e. power steering, power brakes, air conditioning, AM/FM radio etc.)

(4) Mileage or operation hours;

(5) Color;

(6) VIN;

(7) General condition (i.e. runs, driveable, etc.);

(8) Type and location of any identifying markings on the vehicle or equipment;

(9) Any special equipment the state agency desires the surplus property agent to remove prior to vehicle or equipment disposal. Failure to request the approval and removal of special equipment at least 24 hours in advance of the disposal of the vehicle or equipment by an agent may result in the loss of the special equipment.

(b) **Required Documents.**

(1) **Disposal documents.** If laws governing a state agency require written authorization for the state agency to dispose of a vehicle, the state agency shall provide the surplus property agent a copy of required documents.

(2) **Title.** At the time of vehicle transfer to the surplus property agent, the state agency shall provide title to the vehicle to the agent with authorized signatures for legal transfer of the vehicle.

(c) **Vehicle or equipment repairs.**

(1) **Notice to state agency.** If a surplus property agent reasonably believes that the cost of minor repairs to a vehicle or equipment will enhance its potential sale value in an amount that exceeds the cost of the minor repairs, the agent shall send written notice to the state agency and request approval to authorize the repairs.

(2) **State agency approval.** Within five (5) business days after receipt of the repair notice in (1) of this subsection, the state agency shall send written notice of approval or disapproval of the repairs to the agent.

(d) **Repair documents.** Upon receipt of the written approval by a state agency, the surplus property agent shall acquire parts for and repair the vehicle or equipment. The agent shall retain receipts for the parts and document the labor time to install the parts. All repair documents shall be filed and maintained in the state agency vehicle and equipment disposal records of the Department.

580:65-3-3. Cancellation or amendment of a surplus property transfer request

(a) A state agency may notify the Department of its decision to:

(1) Withdraw a request for approval of the disposal of surplus property;

(2) Cancel a request for disposal of surplus property after its approval by the Administrator;

(3) Add or delete one or more items from a list of property submitted to or approved by the Administrator.

(b) A cancellation or amendment request must be in writing and shall include an explanation of the request.

(c) The Administrator shall send written notice to the state agency of the approval or disapproval of a cancellation or amendment request.

(d) The Department may assess charges for any transportation, handling and processing expenses incurred in the return of surplus property.

580:65-3-4. Transport and delivery of surplus property

(a) **Transport method.** Upon receipt of approval of the disposal of surplus property from the Department, a state agency shall advise the surplus property agent the transport method the state agency desires to utilize to transport the property, vehicle or equipment to the location the agent specifies.

(1) A state agency shall be responsible for delivering surplus property to State Surplus, whenever possible. A state agency shall notify a surplus property agent at least 24 hours prior to the date it proposes to deliver surplus property to the State Surplus location.

(2) Whenever a state agency is unable to transport surplus property, the agency shall contact a surplus property agent to schedule pick up and transport by State Surplus.

(A) A state agency shall provide State Surplus a notice of no less than thirty (30) business days prior to the date the agency desires surplus property to be picked up.

(B) The notice period required in (A) of this paragraph may be decreased if it is determined that an emergency or other conditions exist which warrant earlier removal of surplus property upon approval by a surplus property agent.

(b) **Handling and loading surplus property for transport.** A state agency shall assist, whenever possible, with loading and handling of surplus property for transport by a surplus property agent.

(1) The contact person identified on the surplus property transfer form [See 580:65-3-1(d)], or a designee, shall be present during the handling and loading of surplus property by an agent.

(2) A surplus property agent will verify surplus property for loading and transporting against the surplus property list approved in accordance with 580:65-3-1(d).

(A) Any property not specified on the approved list shall not be loaded or transported by a surplus property agent.

(B) Any property specified on the approved list which is missing at the time an agent is loading for transport to State Surplus shall be noted as missing on the copy of the approved list. Such note shall be initialed at that time by both the agent and the state agency contact.

SUBCHAPTER 5. SALE OR DISPOSAL OF SURPLUS PROPERTY

580:65-5-1. Methods of disposal of surplus property

(a) The method of disposal of surplus property must be approved by the Administrator in accordance with 580:65-3-1(d) prior to disposal of state property by a state agency.

(b) Methods of disposal of surplus property are:

(1) **Transfer to a state agency or authorized entity.** Property is transferred to another state agency or authorized entity with or without charge as mutually agreed by both parties.

(2) **Sealed bid.** Property is sold by sealed bid in accordance with 74 O.S., §85.1 et seq. and Subchapter 15 of this chapter by the state agency.

(3) **Public auction.**

(A) **State Agency.** Property is sold at a public auction coordinated by the state agency, if authorized by statute.

(B) **Surplus Property Program.** Property is sold at a public auction coordinated by a surplus property agent in accordance with the rules of this Chapter.

(4) **Scrap metal.** Property is sold as scrap metal at the request of state agency.

(5) **Trade-in.** Property is exchanged as trade-in for replacement equipment by a state agency.

(6) **Transfer to Department for disposal by a surplus property agent.** Agent disposes of surplus property, with the exception of vehicles and equipment, by any method listed in this subsection with no remuneration to the state agency.

(7) **Disposal by other means.** Property is disposed of by other specified means which are deemed to be in the best interest of the state at the request of the state agency.

(c) An agency which is approved to dispose of state property shall be responsible for the removal of such property from the agency's official inventory records and submitting notification to the Risk Management Division of the Department, whenever applicable.

580:65-5-2. Disposal by other than a surplus property agent

(a) **Transfer to another state agency or authorized entity.** A state agency may determine that the direct transfer of state property to another state agency or authorized entity, with or without remuneration, is in the best interest of the state and request approval of such transfer from the Administrator.

(1) Official approval must be received prior to the transfer of state property. A request to transfer state property shall be made according to 580:65-3-1(d).

(2) The transferring agency is responsible for maintaining a record of all property transferred pursuant to this section. Records shall include, but are not limited to:

(A) Itemized list of property transferred;

(B) Reason for transfer;

(C) To whom property is transferred;

(D) Inventory number of property transferred;

(E) Acquisition cost, if known; and

(F) Estimated value at time of transfer.

(3) Whenever a state property transfer between two state agencies requires remuneration for the state property, all receipts and remittances required to effect such transactions shall be processed through the special cash fund created by 74 O.S., Section 62.5.A.

(b) **Sealed bid or public auction.** A state agency may elect to sell surplus property by sealed bid or public auction without using the services of a surplus property agent and request approval of such sale from the Administrator.

(1) Official approval must be received prior to the sale of surplus property by a state agency. A request to sell

state property shall be made according to 580:65-3-1(d).) Sealed bids shall be conducted in accordance with the Oklahoma Central Purchasing Act.

(2) A public auction may be conducted utilizing the services of such state agency employees or by contracting with a professional auction service in accordance with 74 O.S., §85.1 et seq. and Subchapter 15 of this chapter.

(3) A state agency is responsible for maintaining a record of all property it sells or disposes of pursuant to this subsection which shall include, but not be limited to:

(A) Name of the selling agency;

(B) Date of the sale;

(C) Method of sale;

(D) Selling price of property; and,

(E) Name and address of buyer.

(c) **Trade in.** A state agency may determine it is in the best interest of the state to trade in property it owns to receive credit towards the purchase of new property and request approval of such trade in from the Administrator.

(1) Official approval must be received prior to trading in state property. A request to trade in state property for credit against the purchase of new state property shall be made according to 580:65-3-1(d).

(2) In addition to the information required by 580:65-3-1(d), the following information must be submitted to the Administrator for approval:

(A) Description of the item to be purchased;

(B) Cost of the new item;

(C) Value to be allowed for the state property; and,

(D) Name and address of vendor offering the replacement property.

(3) The Administrator will review the request and determine whether to approve, conditionally approve or deny the trade in of the state property. Written notification of such determination which shall set forth conditions for approval or reasons for denial of the request will be sent to the state agency.

(d) **Scrap.** A state agency may determine that property it owns is worn out, damaged, disassembled or in poor condition in such a manner that renders it of no value and request approval to abandon, destroy or sell the property as scrap from the Administrator.

(1) Official approval must be received prior to the abandonment, destruction or selling of state property for scrap. A request to abandon, destroy or sell state property for scrap shall be made according to 580:65-3-1(d).

(2) In addition to the information required in the surplus property form [See 580:65-3-1(d)], a detailed statement of the condition and quantity of such state property which would be useful to the approval process must be submitted to the Administrator for consideration.

(3) The Department will send written notification to the agency that:

(A) A determination was made that some reasonable value can be obtained from the sale of the property as scrap which must be coordinated by a state surplus property agent; or

(B) A determination that there is no value either for salvage or for spare parts; whereas, authorization may be given to abandon or destroy the property in a manner designated or coordinated by a state surplus property agent.

(e) **Prohibitions.** A state agency shall not arrange sales to individuals or non-state agencies.

580:65-5-3. Disposal of state property by a surplus property agent

(a) **Method of disposal.** A surplus property agent shall determine the method of disposal for all surplus property transferred to State Surplus for disposal.

(b) **Public Auction.** A surplus property agent shall conduct periodic public auctions to dispose of surplus property that has been held on-site for longer than thirty (30) days.

(1) A public auction shall be open to individuals and business entities.

(2) The time, date and location of a public auction shall be advertised in a local newspaper and published on the Department website.

(c) **Disposal for salvage.** An agent may reasonably believe that surplus property has salvage value only and shall document the reasons for such a determination.

(1) The agent shall notify a state agency, in writing, that the agent intends to offer the surplus property for salvage and state the reasons.

(2) Surplus property declared to have salvage value only may be disposed of by public auction or solicitation of bids pursuant to the Oklahoma Central Purchasing Act.

(d) **Direct sales.** An agent may sell surplus property directly to state agencies, counties, cities and non-profit organizations at market prices.

580:65-5-4. Processing special class surplus property

(a) **Special classes of surplus property.** An agent may determine any surplus data processing copier, printer, telecommunications, other such technology equipment or portable buildings to be a special class of property based upon its value, operation, or structure.

(b) **Approval of special classes.** Special classes are declared surplus property and approved by the Administrator according to 580:65-5-1.

(c) **On-site demonstrations to potential buyers.** Whenever a state agency declares items named in (a) of this section as surplus property and requests its transfer to the Department, an agent may determine that the property be retained on-site and in operation, if applicable, to permit demonstration to potential buyers. The determination will be based on the following:

(1) Disconnection and transportation of the property may drastically decrease its value;

(2) On-site demonstration of the property is for the overall best interest of the state;

(d) **Coordination of sale.** An agent shall coordinate the sale of property named in this section with the agency and employ the most efficient, timely and cost effective method to process

the property. Sales to the public shall be delayed for thirty (30) days to provide priority purchase to state agencies. [see 580:65-7-2.]

580:65-5-5. Disposal of hazardous waste

(a) **Acceptance of hazardous material.** The Department shall not receive, store, handle or process any equipment, fluids, chemicals, residue or other property which have been identified as hazardous to the health or safety of the general public.

(b) **Notification of Department of Environmental Quality.** An agency discovering or suspecting the presence of hazardous material shall immediately contact the Department of Environmental Quality for direction and information related to its disposal.

SUBCHAPTER 7. ACQUISITION OF SURPLUS PROPERTY

580:65-7-1. Sales to related parties

(a) A conflict of interest may exist or appear to exist when a related party attempts to purchase surplus property.

(b) A related party is defined as someone who may fit into any of the following categories pertaining to the surplus property in question:

(1) Has purchasing authority.

(2) Has maintenance authority.

(3) Has disposition or signature authority.

(4) Has authority regarding the disposal price.

(5) Has access to restricted information.

(6) Is perceived to be a related party using other criteria which may prohibit independence.

(c) Owning state agencies must list any recommended purchasers on the transfer of surplus property form [See 580:65-3-1(d)] and specify whether they are considered to be a related party.

(d) When a prospective purchaser is identified or determined to be a related party, the Administrator will employ one of the following procedures:

(1) The Administrator may require written justification and authorization from the Department or Division director. Justification may include reference to maintenance history, purchase price and the absence of conflicts of interest. If the related party is an authorized agent, a higher approval may be sought.

(2) The Administrator may choose to hold the property for sale by public auction or sealed bid. The prospective buyer may then compete against other bidders.

(3) The Administrator may hold the property for a 30 day period before allowing the related party the opportunity to purchase the property, thus allowing for purchase of the property in accordance with the rules of this chapter.

580:65-7-2. Transfer or sale to a state agency or authorized entity

(a) **Priority purchase of surplus property.** An agent shall make all approved surplus property available to state agencies and authorized entities for review and priority purchase for a minimum of thirty (30) days prior to their transfer or sale.

(b) **Acquisition cutoff date.** The agent will schedule a reasonable cutoff date for final acquisition of surplus property by state agencies no less than five (5) days prior to the next regularly scheduled public auction date.

(c) **Transfer cutoff date.** All transfers to State Surplus after the cutoff date is scheduled will be approved by an Agent on a case by case basis based upon storage capacity prior to the auction.

(d) **Purchase price.** A state agency or authorized entity that desires to acquire surplus property, a vehicle or equipment from the Department may negotiate the purchase price for the property with a surplus property agent.

580:65-7-3. Public auction

(a) **Public sales.** Sales to the public shall be made only by means of a public auction or sealed bids.

(b) **Payment deadline.** Final payment for surplus property by the public shall be made no later than 2:00 p.m. on the date of the auction.

(c) **Pick up deadline.** Surplus property shall be picked up after payment no later than 3:00 p.m. on the Tuesday immediately following the date of the auction.

(d) **Cancellation of transaction.** If payment is not made or property is not picked up by the cutoff time scheduled by the agent, the sale transaction shall be canceled.

580:65-7-4. Return of property after purchase

All surplus property, vehicles and equipment are sold "as is" and are nonreturnable.

580:65-7-5. Payment provisions

(a) **General requirements for purchases.** Payment made by the public shall be at the time of purchase and prior to removal of the property purchased. Payment for purchases by state subdivisions shall be within 45 days following the purchase and removal of the property. The following provisions apply to all sale transactions prior to the release of property by an agent:

(1) **State agency, political subdivision, school district.** A state agency, political subdivision or school district shall:

(A) Provide a purchase order for the mutually agreed purchase price at the time of purchase; and,

(B) Submit a billing invoice which contains the name and address of the purchasing agency or authorized entity and the name of the representative making the purchase on behalf of the agency or authorized entity with the payment.

(2) **Private business.** A private business shall provide a business tax identification number and a tax exempt certificate, if applicable, at the time of payment. Otherwise, local sales tax shall be charged.

(3) **General public.** Sales tax shall be collected for all purchases made by the general public unless a tax exempt certificate is presented at the time of payment.

(4) **Non-governmental entities.** Non-governmental entities that are not-for-profit organizations shall provide a copy of the letter issued by the Internal Revenue Service granting its tax exempt status at the time of its first purchase.

(b) **Form of payment from non-governmental entities.** Payment may be in the form of certified funds, business check, money order, or cashier's check.

(1) The presenter of a check must present a valid driver license or other picture form of identification at the time of payment.

(2) A check must be guaranteed by a letter of credit issued by the financial institution and may not be accepted for amounts exceeding $2,500.00.

(3) Unguaranteed checks and 2-party checks shall not be accepted.

(c) **Payment refunds.** All payments received for the purchase of surplus property are nonrefundable.

(d) **Cash.** Cash for exact purchase amounts may be accepted at a public auction.

580:65-7-6. Conditions of service

(a) **Delinquent accounts.** State agencies that are delinquent sixty (60) days or more with payment to the Department shall be considered in arrears. Written notice of the delinquency and outstanding balance will be sent to the agency.

(1) Accounts delinquent for more than 120 days shall be subject to suspension by the Director. Suspension of an account bars the agency from the purchase of additional surplus property until payment is received and the account is no longer in arrears.

(2) The Director may waive suspension if it is determined that the suspension will disrupt vital services to the public, cause undue hardship, or is otherwise in the best interest of the agency and/or the state.

(b) **Insufficient checks.** If a check from the general public is returned by a financial institution for "insufficient funds", "account closed" or other reason, the Department shall send written notice to the debtor stating that the debtor has fifteen (15) days to pay the amount owed with cash, a money order or cashier's check, including any and all additional fees associated with the collection process, such as returned check fees.

(1) Any customer who presents the Department with an insufficient check will be notified in writing of the requirement to make payment by cash, money order or cashier's check for any future surplus property purchases made for twelve (12) months following the date of such notice.

(2) The Administrator may waive the payment requirement in paragraph (1) of this subsection.

580:65-7-7. State agency reimbursement

(a) **Payment schedule.** Whenever the Department sells vehicles or equipment for a state agency, reimbursement of sales receipts shall be issued to the state agency in the month following the month of sale of the property.

(1) Sales receipts shall be accompanied by a report which includes:

(A) a description of the item(s) sold;

(B) the sale price and the portion of the sale price paid back to the agency.

(2) If the sale price of item(s) is lower than cost incurred by State Surplus to sell the item(s), no sales report shall be provided to the state agency.

(b) **Surplus Property Program fee determination and funds remittance.** A reasonable administrative fee shall be charged and retained by the Department from sales receipts for the transfer, sale or salvage of vehicles and equipment.

(1) The Department shall retain an administrative fee of ten percent (10%) of the sale price of a vehicle or equipment.

(2) The administrative fee shall be deducted from the sale receipts of a vehicle or equipment prior to remittance of sales receipts to a state agency.

(3) All administrative fees collected pursuant to this subsection shall be deposited into a revolving fund as specified by statute.

SUBCHAPTER 9. SURPLUS PROPERTY RECORDS

580:65-9-1. Surplus property record keeping by a state agency

The chief administrative officer of each state agency shall maintain a current list of all surplus property. (74 O.S., Section 62.6.) The list shall include the following:

(1) Detailed description of surplus property;

(2) Street address and city or town where surplus property is maintained;

(3) Original purchase price, if known. If purchase price is unknown, estimate of current market value;

(4) If surplus property is disposed of, the method of disposal approved by the Administrator, which shall include:

(A) If sold, date of sale, selling price, name and address of buyer; or,

(B) If transferred, name and address of state agency or authorized entity to which transferred; or,

(C) If otherwise disposed of, a description of the manner of disposal.

(5) Any other information that will document or account for status and location of surplus property.

580:65-9-2. Surplus property record keeping by a surplus property agent

The surplus property agent shall keep and maintain the following surplus property records:

(1) **Vehicle and equipment information.** A record for each vehicle or piece of equipment received from a state agency for disposal, which contains:

(A) a description of the vehicle or equipment;

(B) the transport method;

(C) all documents required by this subchapter related to the vehicle or equipment;

(D) records for expenses incurred by the agent for:

(i) transport of the vehicle or equipment;
(ii) removal of markings from a vehicle or equipment;
(iii) removal of special equipment from a vehicle or equipment;
(iv) additional parts for a vehicle or equipment; and
(v) labor expenses to install parts on a vehicle or equipment.

(2) **Surplus property information.** A record for each surplus property item sold by the agent, which contains the following:
(A) a general description of the surplus property item;
(B) a copy of the signed receipt issued to the buyer.

[OAR Docket #03-2035; filed 6-5-03]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 70. STATE INVENTORY

[OAR Docket #03-2034]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [NEW]
580:70-1-1 through 70-1-4 [NEW]
Subchapter 3. Tangible Assets Reporting [NEW]
580:70-3-1 through 70-3-6 [NEW]
Subchapter 5. Tangible Assets Management [NEW]
580:70-5-1 through 70-5-2 [NEW]
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Subchapter 3. Tangible Assets Reporting [NEW]
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Subchapter 5. Tangible Assets Management [NEW]
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ANALYSIS:
New rules in Chapter 70. State Inventory ensure compliance with 74 O.S., Section 110.1, effective June 5, 2002.

Rules in Subchapter 1 provide the purpose and definitions for the new chapter; establish the general tangible asset reporting threshold, procedures by which the Director may specify individual thresholds and the designation of an agency inventory control officer.

Rules in Subchapter 3 establish requirements and procedures for the annual report of tangible assets by agencies to the Department; review of the reports by the Department of Central Services and procedures for noncompliance or insufficient reporting.

Rules in Subchapter 5 establish procedures and information for properly coding tangible assets and availability of inventory records for Risk Management reporting purposes.
CONTACT PERSON:
Gerry Smedley, Administrative Programs Officer, (405) 522-6597, Department of Central Services, Administration, 2401 N. Lincoln Boulevard, Suite 206, Oklahoma City, OK 73105.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

580:70-1-1. Purpose

This Chapter establishes procedures and standards and provides information for the administration of inventories of tangible assets owned by state boards, commissions, institutions, agencies and the institutions comprising The Oklahoma State System of Higher Education and the University Hospitals Authority as authorized pursuant to the provisions of 74 O.S., Section 110.1 and the Administrative Procedures Act.

580:70-1-2. Definitions

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

"Agency" means a state board, commission, institution, agency, or an institution comprising the Oklahoma State System of Higher Education and the University Hospitals Authority.

"Agency inventory control officer" means a person an agency appointing authority designates to provide tangible asset information to the Department.

"Computer application" or **"application"** means a system that allows electronic data entry, storage and transfer from one computer or system to another.

"Department" means the Department of Central Services.

"Director" means the Director of Central Services.

"Form" means a document the Director prescribes and requires agencies to use to provide inventory information to the Department.

"Historical significance" means a tangible asset that has enhanced value due to its relation to past events or circumstances.

"Inventory" means a detailed list of tangible assets.

"Inventory tag" or "**tag**" means a form of unique identification an agency applies to a tangible asset.

"State inventory control officer" means a person the Director designates to receive agency tangible asset information.

"Surplus property" means a tangible asset an agency intends to dispose of pursuant to applicable provisions of law.

"Tangible assets" mean *machinery, implements, tools, furniture, livestock, vehicles and other apparatus that an agency may use repeatedly without material impairment of its physical condition and have a calculable period of service and a value exceeding the reporting threshold the Director of Central Services establishes for the entity.* [74 O.S., Section 110.1(D)]

"Threshold" means the dollar amount specified by the Director as the value of tangible assets required to be reported by an agency.

580:70-1-3. Threshold determination

(a) **General threshold.** Unless the Director specifies otherwise (Reference (b) of this Section), the threshold for tangible asset inventory reports is $500.00.

(b) **Specified threshold.** The Director may specify an individual threshold for an agency which shall be greater than $100.00 but not to exceed the amount authorized by 74 O.S., Section 110.1.

(c) **Threshold considerations.** Whenever the Director specifies an individual threshold for an agency, the capabilities of the agency to provide an inventory of tangible assets to the Department shall be considered:

(1) If an agency demonstrates reliable tangible asset reporting capabilities, the Director may specify a threshold greater than $500.00 but not to exceed the amount authorized by 74 O.S., Section 110.1.

(2) If an agency demonstrates unreliable tangible asset reporting capabilities or does not meet reporting requirements, the Director may specify a threshold not to exceed $500.00.

(d) **Unreliable reporting.** Whenever it is determined that an agency with an established threshold exceeding $500.00 has provided unreliable information or has not met the reporting requirements of this Chapter, the Director may reduce the threshold of the agency.

(e) **Review of specified threshold.** No less than six (6) months after the reduction of its threshold, an agency may submit a written request for review of the agency's inventory reporting capabilities to the Director.

(1) If the review determines the agency has demonstrated the capability to provide reliable inventory reports, the Director may increase the agency threshold to an amount not to exceed the amount authorized by 74 O. S., Section 110.1.

(2) If the review determines the agency has provided unreliable information or has not met the reporting requirements of this Chapter, the Director may reduce the agency threshold to an amount exceeding $100.00.

(f) **Notice of reporting threshold.** The Director shall provide an agency with written notice of the tangible asset reporting threshold specified pursuant to this section which states the amount and determination for the change.

580:70-1-4. Agency inventory control officer

(a) **Inventory control officer.** Each agency subject to this chapter shall appoint at least one (1) agency inventory control officer.

(1) The name, address and telephone number of the individual designated pursuant to this subsection shall be submitted in writing to the Department by January 15.

(2) Written notification of any changes to information relating to the agency inventory control officer must be submitted to the Department within thirty (30) days of the change.

(b) **Internal inventory procedures.** To ensure accuracy of state inventory records, an agency shall develop internal procedures for reporting and maintaining information related to the acquisition, reallocation, relocation and disposition of tangible assets to an agency inventory control officer.

SUBCHAPTER 3. TANGIBLE ASSETS REPORTING

580:70-3-1. Inventory report

(a) **Report due date.** All agencies must submit an annual report of current inventory of tangible assets owned by the agency as of June 30 of the preceding fiscal year to the Department by August 15. The report shall include all tangible assets based upon the threshold stated in 580:70-1-3(a).

(b) **Report formats.** The Director shall specify tangible asset identification data elements an agency inventory report shall contain and the forms and computer applications the Director shall accept for the agency to report the inventory information. The Director may specify data elements applicable to a tangible asset type.

(c) **Inventory report contents.** The inventory report shall by signed by the agency inventory control officer and shall include for each tangible asset:

(1) the agency number;
(2) the asset tag number;
(3) the model and serial number, if any;
(4) the manufacturer;
(5) the description;
(6) product name;
(7) physical location;
(8) acquisition date and cost;
(9) any other information which may be requested by the Department to ensure the integrity of state inventory records.

(d) **Supporting documents.** An agency shall maintain supporting documents to identify tangible assets. Document types include acquisition, digital photographs or images and other documents that may provide pertinent tangible assets identification information.

(e) **Report forms.** An agency shall submit inventory reports on forms prescribed by the Director. The Department will provide forms upon request.

(f) **Electronic report submission.** The Director may accept electronic inventory submission. The state inventory control officer shall advise an agency of computer applications the Department may accept.

580:70-3-2. Additional asset reporting identification elements

Whenever a tangible asset named in this section is reported by an agency, the asset shall be specifically identified by type in the inventory report required by 580:70-3-1(a):

(1) tangible assets with historical significance;

(2) livestock assets by breed, gender and approximate value;

(3) assets on loan to another agency; a copy of the written instrument documenting the loan shall be submitted with the annual inventory report;

(4) assets that have been traded in by the agency;

(5) assets the agency is unable to affix an inventory tag to;

(6) assets that have been disposed of in accordance with the state surplus property program;

(7) assets that reach the end of its useful life.

580:70-3-3. Missing, stolen and destroyed tangible assets

(a) **Asset loss reports.** An agency shall report a loss to the state inventory control officer within thirty (30) days of discovery that a tangible asset is missing, stolen or destroyed by vandalism.

(b) **Asset loss documentation.** A report of missing, stolen or destroyed tangible assets shall be accompanied by:

(1) A copy of the notice reporting the loss submitted to the insuring entity; and,

(2) A copy of a report from a law enforcement agency made by the agency to report the loss, theft or vandalism.

(c) **Director notification of loss.** The state inventory control officer shall compile a list and report all missing tangible assets to the Director.

580:70-3-4. Agency inventory submission to the Department

(a) **Electronic report submission.** An agency inventory control officer shall request prior approval of submission of inventory data via a computer application from the state inventory control officer and specify the computer application.

(b) **Acceptance of electronic inventory reports.** Upon receipt of a request pursuant to (a) of this section, the state inventory control officer shall provide written authorization to an agency to indicate the Department will accept an inventory report via the computer application identified in such request or advise the agency of alternate computer applications the Department is able to accommodate.

(c) **Rejection of electronic inventory reports.** Electronic versions of inventory reports submitted without the written authorization provided by this section will be rejected by the state inventory control officer.

580:70-3-5. Department review of agency inventory report submissions

(a) **Inventory report review.** Upon receipt of an agency inventory report the state inventory control officer shall review an inventory submission and identify tangible assets that contain incorrect or irreconcilable data elements.

(b) **Report errors and additional information.** The state inventory control officer shall send written request for information to the agency appointing authority of all tangible assets with errors or irreconcilable data elements.

(c) **Agency response.** An agency shall review the state inventory control officer findings and, within thirty (30) days:

(1) shall provide written evidence of error reconciliation to the state inventory control officer; or,

(2) if unable to reconcile an error, shall provide written notice of such facts to the state inventory control officer.

(d) **Director notification of insufficient report or response.** The state inventory control officer shall submit written notice to the Director if an agency is unable to provide evidence in response to a reconciliation request or fails to respond to a reconciliation request. The notice shall include previous tangible asset data elements, a description of irreconcilable elements, the agency written notice and the agency response, if available.

580:70-3-6. Director action in the event of agency noncompliance

Upon receipt of written notice that an agency is missing tangible assets, irreconcilable data elements or has failed to respond to a request by the state inventory control officer, the Director shall determine a course of action.

(1) The Director declares the asset reporting of the agency unreliable and sends written notice of a reduction in the reporting threshold to the agency appointing authority with an explanation of the declaration; or,

(2) The Director shall provide a written report of the known facts regarding missing tangible assets, irreconcilable data elements or the agency's failure to respond to a law enforcement agency with jurisdiction for the agency.

SUBCHAPTER 5. TANGIBLE ASSETS MANAGEMENT

580:70-5-1. Tangible asset identification

(a) **Inventory tags.** An agency shall affix a unique identifier as an inventory tag to all tangible assets.

(b) **Inventory tag location.** The inventory tag shall be affixed in a location to ensure accessibility by an inventory control officer.

(1) An agency shall affix inventory tags in a similar fashion and location on tangible assets similar in nature and use.

(2) An agency shall place inventory tags for tangible assets that do not have an affixed tag in a central location readily accessible to inventory control officers.

(3) If an agency affixes an inventory tag in an inconspicuous location on a tangible asset, the agency shall indicate the location on an inventory list.

(c) **Inventory tag material.** Inventory tags shall be a durable material designed to withstand physical elements the tag may endure.

580:70-5-2. Insurance

The Director shall ensure that the agency inventory reports are accessible by the Risk Management Division of the Department. An agency that acquires insurance from the Risk Management Division of the Department for tangible assets and consumable supplies may use inventory data to identify assets and supplies as reportable losses.

[OAR Docket #03-2034; filed 6-5-03]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 15. UNIFORM RETIREMENT SYSTEM FOR JUSTICES AND JUDGES

[OAR Docket #03-2025]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
590:15-1-16. Longevity and other annual lump-sum payments [NEW]
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Oklahoma Public Employees Retirement System Board of Trustees; 20 O.S., § 1101.11 and 1103.2
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ANALYSIS:
590:15-1-16. Longevity and other annual lump-sum payments; [74 O.S. Section 902(18)]. This new rule provides for recognition of longevity payments and that three (3) lump-sum annual payments that are included within the definition of compensation for retirement purposes and are received during the last three years of salary will be averaged out over the past twelve (12) months in computing the final average compensation of a member.
CONTACT PERSON:
Lydia Lee, Attorney and General Counsel, Oklahoma Public Employees Retirement System, 6601 N. Broadway Extension, Suite 129, Oklahoma City, Oklahoma 73116, 405-858-6737

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

590:15-1-16. Longevity and other annual lump-sum payments

(a) Only the three (3) highest annual longevity payments received during the last three years of salary (thirty-six months) will be added into the sum used in computing the final average compensation. If a retiring member is scheduled to receive a prorated longevity payment at or near the effective date of retirement, the prorated longevity payments will be used only in the amount actually paid and if it is one of the three highest longevity payments.

(b) Other lump-sum annual payments that are included as compensation for retirement purposes, shall be averaged over the previous twelve (12) months of salary immediately preceding the month of payment for use in computing the final average compensation. These lump-sum payments include those which are paid on an annual basis at the discretion of the employer.

[OAR Docket #03-2025; filed 6-5-03]

TITLE 600. REAL ESTATE APPRAISER BOARD CHAPTER 15. DISCIPLINARY PROCEDURES

[OAR Docket #03-2007]

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PERMANENT final adoption
RULES:
600:15-1-2. Definitions [AMENDED]
600:15-1-3. Screening officers and hearing officers [REVOKED]
600:15-1-4. Complaint process procedure [AMENDED]
600:15-1-5. ~~Screening officers to respond~~Issuance of formal complaint; setting date for formal hearing [AMENDED]
600:15-1-6. Notice of disciplinary proceedings [AMENDED]
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600:15-1-3. Screening officers and hearing officers [REVOKED]
600:15-1-4. Complaint process procedure [AMENDED]
600:15-1-5. ~~Screening officers to respond~~Issuance of formal complaint: setting date for formal hearing [AMENDED]
600:15-1-6. Notice of disciplinary proceedings [AMENDED]
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20 Ok Reg 557
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n/a
ANALYSIS:
These permanent rules provide for the establishment of a Probable Cause Committee to review the complaints filed with the Board against individuals regulated by the Board and to provide a more effective procedure to be used by the Board in such disciplinary proceedings.
CONTACT PERSON:
Michelle Dobbs, Rulemaking Liaison, (405) 521-6636

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2002:

600:15-1-2. Definitions

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

"Act" means the Oklahoma Certified Real Estate Appraisers Act, cited as 59 Oklahoma Statutes, Sections 858-700 et seq.

"Administrator" means the Commissioner of the State Insurance Department.

"Board" means the Oklahoma Real Estate Appraiser Board.

"Certified Real Estate Appraiser" means those persons meeting the requirements for certification as set forth in the Oklahoma Certified Real Estate Appraisers Act.

"Clear and convincing evidence" means that considering all the evidence in the case, the proposition in question is highly probable and free from serious doubt.

"Department" means the State Insurance Department.

"Director" means the person designated by the Administrator as Director of the Real Estate Appraiser Division of the Oklahoma Insurance Department.

"Hearing Panel" means the three member panel selected by the Board to conduct a disciplinary hearing. Hearing Panel is selected from the Standards and Disciplinary Procedures Committee.

"Licensed Real Estate Appraiser" means those persons meeting the requirements for licensure as set forth in the Oklahoma Certified Real Estate Appraisers Act.

~~**"Panel"** means the three member panel of appointed Hearing Officers selected by the Board to conduct a disciplinary hearing.~~

"Person" means an individual, company, association, organization, society, partnership, trust, corporation or estate.

"Probable Cause Committee" will be Board selected and will be comprised of three (3) members: a past member of the Board, a current member of the Board, and a Certified Appraiser from the Disciplinary Committee. Provided, at all times, at least two (2) members of the Committee shall be certified appraisers, of the two (2) certified appraisers, at least one (1) shall be a certified general appraiser.

"Respondent" means a Trainee, State Licensed, Certified Residential, or Certified General Real Estate Appraiser against whom a complaint has been received and not been finally resolved.

~~**"Screening Officers"** means the person(s) designated by the Insurance Department to assist the Beard in the disciplinary process.~~

"Trainee Appraiser" means those persons meeting the requirements for licensure as a Trainee Appraiser as set forth in the Oklahoma Certified Real Estate Appraisers Act.

"Uniform standards" means the Uniform Standards of Professional Appraisal Practice, as authorized by the Appraisal Subcommittee pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and which are the standards rules that meet the minimum requirements adopted by the Appraisal Foundation.

600:15-1-3. Screening officers and hearing officers [REVOKED]

~~(a) The two screening officers shall include no less than one person who is qualified as a State Certified General Appraiser.~~
~~(b) Disciplinary proceedings shall be conducted by a three member hearing panel comprised of two appraiser hearing officers and one attorney hearing officer, or three appraiser hearing officers.~~
~~(c) Appraiser hearing officers shall be appointed by Board order. All such persons must be State Certified Residential or State Certified General Appraisers and competent to sit as hearing officers in the particular matter to which they are assigned by the Board. All hearing officers shall be selected by the Board for case assignments on a selection system adopted by the Board.~~
~~(d) Any hearing officer who is an attorney shall be appointed by Board order. All such persons must be duly licensed to practice law by the Supreme Court of Oklahoma at all times during their service.~~

~~(e) Any hearing officer who hears a case shall complete the case and issue any rulings, findings, conclusions or recommendations, prior to any resignation, retirement or withdrawal from the case unless specifically excused from so doing by the Board.~~

~~(f) Any person subject to the jurisdiction of the Board, who shall attempt to pressure, coerce, intimidate, or otherwise influence or affect the opinion of a Board member, hearing officer, screening officer, witness, Real Estate Appraiser Division staff or complainant regarding a disciplinary matter, shall be subject to disciplinary action by the Board.~~

~~(g) In the event any hearing officer or screening officer has any personal, social, or economic relationship with the complainant, respondent named in any complaint, or any attorney involved in the proceedings, the hearing officer or screening officer shall make full disclosure of that relationship to the Director who shall take appropriate administrative action to assure objectivity in the proceedings including, if necessary, replacement of any panel member or screening officer.~~

600:15-1-4. Complaint process procedure

(a) ~~A complaint may be filed with the Board against a Trainee, State Licensed, State Certified Residential or State Certified General Appraiser on a form prepared by the Board. In addition, where reasonable cause exists, a complaint may be brought against a Trainee, State Licensed, State Certified Residential or State Certified General Appraiser directly by the Board.~~ A complaint may be filed with the Board against a Trainee, State Licensed, State Certified Residential or State Certified General Appraiser on a form prepared by the Board. In addition, where reasonable cause exists, a complaint may be brought against a Trainee, State Licensed, State Certified Residential or State Certified General Appraiser directly by the Board.

(b) ~~The Department shall dispose of any complaint that is not under the Board's jurisdiction and the Respondent shall be notified.~~ All complaints will be deemed informal until the Board votes it a formal complaint.

(c) ~~Upon receipt of a complaint which is under the jurisdiction of the Board, the Department shall promptly provide Notice of Pending Complaint to the Respondent named in the complaint. Such Notice shall be forwarded by Certified Mail, Return Receipt Requested, to the last address reported to the Board by the Respondent. Such Notice shall be in writing, shall include a copy of the actual complaint form filed with the Board and all its attachments, and a letter of determination, if jurisdiction is founded. Such Notice shall give the Respondent twenty days from receipt thereof to file a written response to the complaint with the Board.~~ The Probable Cause Committee will review all informal complaints.

(d) ~~If the Respondent fails to respond, the Department shall appoint screening officers and shall forward the complaint to the screening officers who shall proceed in the absence of the Respondent's response.~~ The Probable Cause Committee will be selected by the Board, to serve, at the pleasure of the Board for a minimum of one quarter. The Board selected Prosecuting Attorney may be advisor to the Probable Cause Committee.

(e) ~~In the event new information or evidence is developed in the course of any investigation, the complainant, Respondent, and/or Real Estate Appraiser Board may supplement or amend the complaint or response of record. Any supplement or amendment shall be filed with the Board no less than ten (10) days prior to a scheduled hearing with copies provided to the Respondent, screening officers and any other interested party.~~ The Probable Cause Committee is an advisory body to the Board whose function is to summarize the informal complaint and to make an informed recommendation regarding disposition of the informal complaint.

(f) The Probable Cause Committee will meet as needed depending on the volume of informal complaints to be reviewed. Any Board member acting as a member of the Probable Cause Committee shall be recused from all Board decisions relating to the complaint.

(g) The Board may direct the Department to turn over any or all complaints to the Probable Cause Committee for disposition in accordance with procedures found in 600:15-1-4 and 600:15-1-5.

600:15-1-5. ~~Screening officers to respond~~ Issuance of formal complaint: setting date for formal hearing

(a) ~~Following expiration of the twenty (20) day response time, the screening officers shall make a review of the complaint and response, if any, and may initiate any additional investigative efforts deemed necessary in order for the screening officers to make one of the following responses:~~ If the complaint and/or summary and recommendations of the Probable Cause Committee appear to the Board to warrant and support such action, the Board shall file a formal complaint and shall set the date, time and place for a formal hearing.

~~(1) No factual basis exists to support disciplinary proceedings, and the matter has been dismissed with prejudice.~~

~~(2) The existing information is insufficient to support the allegations set forth in the complaint, and the matter has been dismissed without prejudice.~~

~~(3) The complaint and the allegations therein, if taken as true and correct, do not constitute a violation of any rule, statute or professional standard of practice which the Board is authorized to enforce, and the matter has been dismissed with prejudice.~~

~~(4) The screening officers believe a reasonable basis exists to support one or more of the allegations in the complaint and further disciplinary proceedings will follow.~~

(b) ~~The screening officers shall have forty five (45) days following receipt of the Respondent's response to make one of the above enumerated responses, unless for good cause shown, the Board extends the response time by proper order.~~ The Prosecuting Attorney may select from the Standards and Disciplinary Procedures Committee a certified appraiser to assist in the presentation before the Hearing Panel.

600:15-1-6. Notice of disciplinary proceedings

(a) Where the Board deems the Probable Cause Committee's ~~screening officers'~~ response to the complaint ~~provides for actual~~ warrants disciplinary proceedings, the ~~Department~~ Respondent shall ~~serve~~ be served ~~the Respondent~~ with Notice of Disciplinary Proceedings which shall specify the rule, statute, or standard(s) of professional conduct allegedly violated by the Respondent. Service of such notice shall be by Certified Mail, Return Receipt Requested to the last address reported to the Board by the Respondent.

~~(b) The Notice of Disciplinary Proceedings shall specify a time, date and location for a hearing, which date shall be no earlier than twenty (20) thirty (30) days nor later than thirty (30) sixty (60) calendar days from the date of mailing of the Notice of Disciplinary Proceedings.~~

(~~c~~b) No less than ten (10) days prior to the scheduled hearing, ~~the Department shall provide~~ written notice shall be provided to the parties stating which individual Hearing Officers will comprise the Panel conducting the disciplinary proceedings. Upon a showing of good cause, any Hearing Panel member selected may be removed by either party. If the parties cannot agree upon a Hearing Panel, either party may make written application to the Board which shall then make an appointment.

(~~d~~c) Following selection and acceptance of the three (3) member Hearing ~~Officer~~ Panel, the three members shall elect one member to serve as Chairman of the Hearing Panel, to preside over the hearing for which they have been selected.

(~~e~~d) By mutual agreement of the parties and approval of the Hearing ~~p~~Panel the hearing may be rescheduled at both a different time, date or location with proper written notice of such change given to all parties.

(~~f~~e) Disciplinary proceedings shall be conducted by a Hearing Panel.

(f) Hearing Officers shall be appointed by Board order. All such persons must be State Certified Residential or State Certified General Appraisers. All hearing officers shall be selected by the Board.

(g) The Hearing Panel shall complete the case and issue any rulings, findings. conclusions or recommendations.

(h) Any person subject to the jurisdiction of the Board, who shall attempt to pressure, coerce, intimidate, or otherwise influence or affect the opinion of a board member, hearing officer, witness or complainant regarding a disciplinary matter, shall be subject to disciplinary action by the Board.

(i) In the event any hearing officer has any personal, social, or economic relationship with the complainant. appraiser named in any complaint, or any attorney involved in the proceedings, the hearing officer shall make full disclosure of that relationship to the Board who shall take appropriate administrative action to assure objectivity in the proceedings including, if necessary, replacement of any Hearing Panel member.

[OAR Docket #03-2007; filed 6-3-03]

TITLE 605. OKLAHOMA REAL ESTATE COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #03-1033]

RULEMAKING ACTION:
Permanent final adoption
RULES:
Subchapter 1. General Provisions
605:1-1-4 [AMENDED]
AUTHORITY:
Title 59 O.S., Section 858-208. Oklahoma Real Estate Commission
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendment in Subchapter 1 complies with the addition of Subsection 14 to 858-208, which became effective on August 1, 2001. The amendment creates an Oklahoma Real Estate Contract Form Committee that is required to draft and revise residential real estate purchase contracts and any related addenda capable of standardization for use by real estate licensees. It also identifies the mission of the committee, commission membership, sets term of members and provides avenue for removing a member.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75, O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

605:1-1-4. Operational procedures

(a) **Organization.** The organization of the Commission is declared to be that as enumerated in Sections 858-201 through 858-204 of the heretofore described Code.

(b) **Operational procedures.** The general course and method of operation shall be as hereinafter specified in overall provisions of the rules of this Title.

(c) **Open Records Act.** In conformance with Title 51, Section 24 A.1., et seq, Oklahoma Statutes, 1985, titled 'Oklahoma Open Records Act' all open records of the Real Estate Commission may be inspected and copied in accordance with procedures, policies, and fee as required by the Commission. The Commission shall charge the following:

(1) A fee of $.25 for each xerographic copy or micrographic image.

(2) A fee of $1.00 for each copy to be certified.

(3) A fee of $10.00 per hour for a record or file search.

(d) **Directory of Licensees.** One copy of the Directory of Licensees shall be provided each licensee if Commission funds permit. Additional copies shall be available to licensees and the public from the Commission upon payment of a charge based on actual cost of production and printing. Copies of the Directory may be furnished to governmental agencies without charge as inventory permits.

(e) **Petition for promulgation, amendment or repeal of any rule.** Any person may petition the Commission in writing requesting a promulgation, amendment or repeal of any rule.

(1) The petition must be in writing in business letter form or in the form of petitions used in civil cases in this State, and shall contain an explanation and the implications of the request and shall be:

(A) Signed by the person filing the petition and be filed with the Secretary-Treasurer of the Commission.

(B) Submitted to the Commission at least thirty (30) days prior to a regular meeting.

(C) Considered by the Commission at its first meeting following such thirty (30) days.

(D) Scheduled for a public hearing before the Commission within sixty (60) days after being considered by the Commission in a regular meeting.

(2) Within sixty (60) days after the public hearing, the Commission shall either grant or deny the petition. If the petition is granted, the Commission shall immediately begin the procedure for the promulgation, amendment or repeal of any rule pursuant to Title 75 O.S. 303.

(3) If the petition is denied the parties retain their rights under 75 O.S. Sec. 318, to proper Judicial Review.

(f) **Petition for declaratory ruling of any rule or order.**

(1) Any person may petition the Commission for a declaratory ruling as authorized by Section 307 of Title 75 of the Oklahoma Statutes as to the applicability of any rule or order of the Commission. Such petition shall:

(A) be in writing;

(B) be signed by the person seeking the ruling;

(C) state the rule or order involved;

(D) contain a brief statement of facts to which the ruling shall apply; and

(E) if known and available to petitioner, include citations of legal authority in support of such views.

(2) The Commission shall have at least thirty (30) days to review the petition. Following the review period, the Commission shall consider the petition at its next meeting.

(3) The Commission may compel the production of testimony and evidence necessary to make its declaratory ruling.

(4) Declaratory rulings shall be available for review by the public at the Commission office.

(g) **Contract Forms Committee.**

(1) The Contract Forms Committee is required to draft and revise residential real estate purchase contracts and any related addenda for standardization and use by real estate licensees (Title 59 O.S. 858-208 {14}).

(2) The committee shall consist of eleven (11) members. Three (3) members shall be appointed by the Oklahoma Real Estate Commission; three (3) members shall be appointed by the Oklahoma Bar Association; and five (5) members shall be appointed by the Oklahoma Association of Realtors, Incorporated.

(3) The initial members' terms shall begin upon development of the forms and each member shall serve through the effective date of implementation of form(s) plus one (1) year. Thereafter, the Oklahoma Real Estate Commission shall appoint one (1) member for one (1) year, one (1) member for two (2) years, and one (1) member for three (3) years; the Oklahoma Bar Association shall appoint one (1) member for one (1) year, one (1) member for two (2) years, and one (1) member for three (3) years and; the Oklahoma Association of Realtors, Incorporated shall appoint two (2) members for one (1) year, two (2) members for two (2) years, and one (1) member for three (3) years. Thereafter, terms shall be for three (3) years and each member shall serve until their term expires and their successor has been appointed. Any vacancy which may occur in the membership of the committee shall be filled by the appropriate appointing entity.

(4) A member can be removed for just cause by the committee.

(5) Each member of the committee shall be entitled to receive travel expenses essential to the performance of the duties of his appointment, as provided in the State Travel Reimbursement Act.

[OAR Docket #03-1033; filed 5-23-03]

TITLE 605. OKLAHOMA REAL ESTATE COMMISSION
CHAPTER 10. ADMINISTRATIVE OPERATIONS

[OAR Docket #03-1034]

RULEMAKING ACTION:
Permanent final adoption

RULES:
Subchapter 1. General Provisions
605:10-1-2 [AMENDED]
605:10-1-4 [AMENDED]
Subchapter 7. Licensing Procedures and Options
605:10-7-1 [AMENDED]
605:10-7-8.2 [AMENDED]
Subchapter 9. Broker's Operational Procedures
605:10-9-1 [AMENDED]
605:10-9-4 [AMENDED]
Subchapter 11. Associate's Licensing Procedures
605:10-11-2 [AMENDED]
Subchapter 15. Disclosures

605:10-15-4 [AMENDED]
Subchapter 17. Causes for Investigation; Hearing Process; Prohibited Acts; Discipline
605:10-17-1 [AMENDED]
605:10-17-4 [AMENDED]
Appendix B Residential Property Condition Disclaimer Statement Form [REVOKED]
Appendix B Residential Property Condition Disclaimer Statement Form [NEW]

AUTHORITY:
Title 59 O.S., Section 858-208. Oklahoma Real Estate Commission

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n/a

ANALYSIS:
The amendment to the definition of "broker" in Subchapter 1 provides clarification to license applicants, licensees, board members, staff, and the general public that a managing broker manager of an association is included in the definition of a broker.

The amendment to the definition of "inactive status" in Subchapter 1 provides clarification to license applicants, licensees, board members, staff, and the general public that a licensee is prohibited from performing activities which require an active license during the period in which a license is on "inactive status".

The amendment that deletes the reference to subsection 8 in Subchapter 1 was due to it not being needed.

The amendment that adds an administrative fee of Thirty-five Dollars ($35.00) in Subchapter 1 for each returned check gives the Commission authority to charge the fee for each returned check so the agency can recoup administrative costs for the handling and processing of returned checks.

The last amendment in Subchapter l gives the Commission authority to delay or deny other agency services if a check is dishonored upon presentation to the bank on which the check is drawn.

The first amendment in Subchapter 7 provides further clarification to the license applicants, licensees, board members, staff, and the general public that no real estate licensee shall begin operations in the real estate business without first having been issued his or her numbered license certificate, which includes all original licenses, activations, reinstatements and all license types being changed from an associate to a broker or branch office broker, as defined in the rules.

The last amendment in Subchapter 7 provides clarification to the license applicants, licensees, board members, staff, and the general public that not only a member, but also a manager of an association who holds a separate license as a real estate broker can also qualify to be a managing broker of an association.

The first amendment in Subchapter 9 provides clarification to the license applicants, licensees, board members, staff and the general public that a broker shall supervise a brokerage practice, which is available to the public during reasonable business hours. It also provides guidance to the licensees.

The other amendment in that same section provides the licensees and the general public with further guidance and clarification that each broker shall be available to manage and supervise such brokerage practice.

The amendment in Subchapter 9 regarding associates advertising provides the licensees and the general public with further guidance and clarification that in associates advertising, if allowed by a broker, an associate may include in the advertisement a team name as long as all of the names of all of the associate team members are included near the team name reference, and which cannot be construed as that of a company name. The other amendment in Subchapter 9 deletes the requirement of inclusion of associate team members' names on personal business cards, which was not feasible.

The amendment in Subchapter 11 that deletes the word "principal" eliminates an obsolete term.

The amendment in Subchapter 11 that changes the word "his" to "their" eliminates gender.

The amendment in Subchapter 15 changes the date to July 1, 2002, which corresponds to the latest date the Residential Property Condition Disclosure Statement form was amended.

The amendment in Subchapter 17 that deals with commissions and disputes deletes confusing language that the Commission shall not be used as a Board of Arbitration to determine disputes between licensees or clients, or between any two of them as the term "Board of Arbitration" is contrary to the way the Commission operates. It also provides clarification to license applicants, licensees, board members, staff, and the general public that the Commission may dismiss or postpone any investigation or hearing which essentially involves a dispute not affecting the public interest until or unless such dispute is resolved.

The amendment in Subchapter 17 that concerns prohibited dealings deletes the language "such as discount points", which doesn't apply and adds language to clarify that failure of the licensee to inform the buyer and seller at the time the offer is presented that he or she will be expected to pay certain closing costs, brokerage service costs, and approximate amount of said costs is a prohibited act.

The amendment in Subchapter 17 that changes the word "failing" to "failure" corrects language.

The amendment in Subchapter 17 that eliminates the term "bona fide" clarifies that failure to reduce an offer to writing, when a proposed purchaser requests such offer to be submitted is a prohibited act.

The amendment in Subchapter 17 that deletes the word "written" is due to the term "bona fide offer" already being defined in the rules as an offer in writing.

The amendment in Subchapter 17 that adds the words "as defined in the rules" provides clarification that the definition of broker or branch office broker is the same as defined in the rules.

The last amendments in Subchapter 17 add two (2) new prohibited acts, which further define Title 59, O.S. 858-312 (8) conduct that constitutes untrustworthy, improper, fraudulent or dishonest dealings. It also provides the licensee with guidelines from which to operate, educates both the licensee and consumer, provides sanction consistency for current and future board members, further limits being arbitrary and capricious and further benefits the public's interest and protection. The two (2) new prohibited acts are as follows:

1. Discouraging a party from obtaining an inspection on a property.
2. Allowing access to, or control of, real property without the owner's authorization.

The last amendment in Chapter 10 amends language in Appendix B; which is the Residential Property Condition Disclaimer Statement Form, to reflect the Commission's current address location and adds the Commission's web site address for recognition of the site by the licensees and general public.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75, O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

605:10-1-2. Definitions

When used in this Chapter, masculine words shall include the feminine and neuter, and the singular includes the plural.

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

"Advertising" means all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication to consumers for any purpose related to licensed real estate activity.

"Bona fide offer" means an offer in writing.

"Branch office broker" means a person who qualified for a broker license and who is designated by a broker to direct and supervise a branch office on behalf of the broker in conformance with Section 858-310 of the Code. A branch office broker is considered an associate of the broker and a managing broker of the branch office.

"Broker" means a sole proprietor, corporation, managing corporate broker of a corporation, association, managing broker member or manager of an association, partnership, or managing partners of a partnership and shall be one and the same as defined as a broker in Section 858-102 of the Code and whom the Commission shall hold responsible for all actions of associates who are assigned to said broker.

"Code" when used in the rules of this Chapter, means Title 59, Section 858-101 et seq, Oklahoma Statutes as adopted 1974 and amended.

"Filed" means the date of the United States postal service postmark or the date personal delivery is made to the Commission office.

"Firm" means a sole proprietor, corporation, association or partnership.

"Inactive status" means a period in which a licensee is ~~restricted~~ prohibited from performing activities which require an active license.

"Nonresident" means a person who is licensed to practice in this state, however, does not maintain a place of business in this state but maintains a place of business in another state and who periodically comes to this state to operate and perform real estate activities.

"Previously licensed applicant" means a person who has been licensed in another state and is desiring to obtain a resident license in this state.

"Provisional sales associate" shall be synonymous in meaning with sales associate except where it is specifically addressed in Subchapters 3, 5 and 7 of this Chapter.

"Resident" means a person who is licensed in this state and operates from a place of business in this state.

"Sole proprietor" means a broker who is the sole owner of a real estate business.

"Trade name" means the name a firm is to be known as and which is used in advertising by the firm to promote and generate publicity for the firm. A firm may or may not do business in the name under which their license is issued but must register with the Commission all trade names used by the firm.

605:10-1-4. Returned checks-disposition

(a) All fees are received subject to collection. Payment of a fee to the Commission with a dishonored check shall be prima facie evidence of a violation of Title 59, Section 858-312~~,~~. ~~subsection 8.~~

(b) If the Commission receives a check that is dishonored upon presentation to the bank on which the check is drawn, a returned check fee of Thirty-five Dollars ($35.00) will be charged. ~~and~~ If such payment is for fees, or other amounts due the Commission, and the check is not replaced within ~~ten (10) days~~ the specified time frame as determined by the Commission, such request shall be deemed incomplete and the transaction null and void.

(c) Other services may be delayed or denied if a check is dishonored upon presentation to the bank on which the check is drawn.

SUBCHAPTER 7. LICENSING PROCEDURES AND OPTIONS

605:10-7-1. ~~Receipt of license~~ License issuance

No real estate ~~broker or sales associate~~ licensee shall begin operations in the real estate business without first having ~~actually~~ been issued his or her numbered license certificate. This includes all original licenses, activations, reinstatements and all license types being changed from an associate to a broker or branch office broker, as defined in the rules.

605:10-7-8.2. Association licensing procedures and requirements of good standing

(a) **Broker license requirement.** Each association who performs activities which require a real estate license pursuant to Title 59, O.S., Section 858-102 of the License "Code" shall apply as a real estate broker. Upon approval by the Commission, the association shall be granted a real estate broker license. In order to obtain a license, the association shall furnish to the satisfaction of the Commission, but not limited to, the following items:

(1) Completed application form(s) and required fee(s).

(2) Verification that the association is authorized to transact business as a association in the State of Oklahoma and that the association is in good standing in the State of Oklahoma.

(3) Association must be in compliance with Title 59, O.S., Section 858-312.1 of the License "Code".

(4) Association must have a managing member or manager who holds a separate license as a real estate broker.

(5) The designation of a managing broker member or manager shall be established by sworn statement signed by an authorized member or manager of the association stating the date and place such action was effected.

(6) In the event of the death, disability, retirement or cessation of employment for any reason of the managing broker member or manager, the association shall be required to appoint a new managing broker member or manager within three (3) working days of the occurrence of such event, and such notice of change must be filed in the Commission office no later than five (5) working days of the occurrence of the event. The notice of change in a managing broker member or manager must be accompanied by the appropriate documents as required by the

Commission and a Twenty-five Dollar ($25.00) change of status fee.

(b) **Association and managing broker member or manager responsible for acts.** The managing broker member or manager in conjunction with the association is responsible for all acts of the association, including the acts of all associates associated with the association.

(c) **Association closing requirements or partial ceasing of real estate activities.** When an association discontinues a portion of the real estate activities or ceases all real estate activities, the association is required to comply with the following:

(1) Immediately notify the Commission.

(2) Comply with Section 605:10-13-1 (m.)

(d) **Limited liability company.** A limited liability company shall be considered as an association.

(e) **Group change information.** Under certain circumstances as determined by the Commission, the Commission may place a cap of Seven Hundred Fifty Dollars ($750.00) on group transactions requesting licenses to be issued. To qualify, such request must be received complete and require no further correspondence and/or documents except for the issuance of the licenses.

SUBCHAPTER 9. BROKER'S OPERATIONAL PROCEDURES

605:10-9-1. Place of business

(a) **Requirements.** Each broker shall maintain a specific place of business, ~~which shall be available~~ and supervise a brokerage practice which is available to the public during reasonable business hours. Each broker shall be available to manage and supervise such brokerage practice and comply with the following:

(1) The broker's license, as well as those of all licensees associated with the broker, must be prominently displayed in such place of business.

(2) The office shall consist of at least one enclosed room or building of stationary construction wherein negotiations and closing of real estate transactions of others may be conducted and carried on with privacy and wherein the broker's books, records and files pertaining to real estate transactions of others are maintained.

(b) **Branch offices.** If a broker maintains one or more branch offices, each associate's license shall be issued to and displayed in the office to which the associate is assigned whether that be the main office or branch office.

(c) **Office located at residence.** The office may be in the residence of the broker, if not contrary to local zoning ordinances.

(d) **Associates not permitted to have an office.** Associates are not permitted to have an office, but must be registered with an office maintained and registered in the name of the broker.

(e) **Licenses issued to place of business.** All licenses will be issued to the street address of the place of business, unless the United States postal service refuses to deliver mail when addressed in such manner.

(f) **Broker may be broker for more than one firm.** A broker may be the broker for more than one firm so long as the firms are at the same location.

(g) **Broker is responsible for acts of unlicensed assistants.** A broker is responsible for all real estate related activities of any unlicensed assistant working within the firm.

605:10-9-4. Advertising

(a) **Requirements and prohibitions.**

(1) A broker, when advertising real estate, must use his or her business trade name or the name under which the broker is licensed. The advertisement must indicate that the party is a real estate broker and not a private party, to include, but not limited to, "agency", "company", "realty", or "real estate", as the case may be. Legal abbreviations following the trade name or name under which the broker is licensed shall be acceptable as long as they are easily identifiable by the public as such.

(2) No real estate advertisement shall show only a post office box number, telephone number or street address.

(3) Each broker when operating under a franchise trade name shall clearly reveal in all office identification and in all advertising other than institutional type advertising designed to promote a common name, that he or she is the person who owns the firm using such franchise trade name. All institutional type franchise advertising shall indicate that each office is independently owned and operated.

(4) A licensee shall not advertise, either personally or through any media, to sell, buy, exchange, rent, or lease property when such advertisement is directed at or referred to persons of a particular race, color, creed, religion, national origin, familial status or handicap. The contents of any advertisement must be confined to information relative to the property itself, and any advertisement which is directed at or referred to persons of any particular race, color, creed, religion, national origin, familial status, or handicap is prohibited.

(5) Any advertising in any media which is misleading or inaccurate in any material fact or in any way misrepresents any property, terms, values, services, or policies is prohibited.

(6) A licensee shall not advertise any property for sale, rent, lease, or exchange in any media unless the broker has first secured the permission of the owner or the owner's authorized representative and said permission has a definite date of expiration.

(b) **Associates advertising.**

(1) An associate is prohibited from advertising under only his or her name.

(2) All advertising by an associate must be under the direct supervision of his or her broker.

(3) In all advertising, the associate must include the name of his or her broker or the name under which the broker operates, in such a way that the broker's reference is prominent, conspicuous and easily identifiable by the public. If allowed by a broker, an associate may include in the advertisement:

(A) The associate's personal insignia of which such approval is to be maintained by the broker and which cannot be construed as that of a company name.

(B) The associate's personal nickname or alias which must be registered at the Commission prior to its use and which cannot be construed as that of a company name.

(C) An associate's contact information.

(D) A team name so long as all of the ~~name(s)~~ names of all of the ~~associate(s)~~ associate team members ~~is~~ are included near the team name reference, and which cannot be construed as that of a company name; ~~and~~ however, in the case of personal business cards, inclusion of all associate team members' names shall not be required; and

(E) A slogan which cannot be construed as that of a company name.

(4) A sign rider with the associate's contact information may be attached to a yard sign if the sign contains the name or trade name and office telephone number of the broker.

(5) Open house or directional signs used in conjunction with broker's signs do not have to contain the name or trade name of the associate's broker and broker's telephone number.

(c) **Licensee acting as owner, purchaser or direct employee of owner.**

(1) When a licensee, either active or inactive, is purchasing real estate or is the owner of property that is being sold, exchanged, rented or leased and such is being handled either by the licensee or marketed through a real estate company, the licensee is required to disclose in writing on all documents that pertain to the transaction and in all advertisements that he or she is licensed.

(2) A licensee who is not acting in the capacity of a licensee but is engaged in buying, selling, leasing or renting real estate as a direct employee for the owner or as an officer for a corporate owner is not required to indicate in the advertising that he or she is licensed.

SUBCHAPTER 11. ASSOCIATE'S LICENSING PROCEDURES

605:10-11-2. Associate licenses

(a) **License issuance and change request.** Each associate license shall be issued to the associate's broker, who shall retain custody of such license. Upon an associate leaving the association of the broker, the associate's license shall be returned to the Commission, together with a release executed by the broker. Any change of association from one firm to another or relocation from one office to another within a firm by an associate must be filed in the Commission office within ten (10) days. Filed shall mean the date of the United States postal service postmark or the date personal delivery is made to the Commission office. The associate's new broker shall be required to file a consent agreement to sponsor said associate on a form as shall be provided by the Commission. An associate requesting an association or office change shall be required to pay a fee of Twenty-five Dollars ($25.00).

(b) **Broker refusal to release associate.** In the event a broker refuses or for any other reason will not release an associate, the associate shall notify the broker by certified mail of the disassociation and furnish the Commission a sworn statement that the notification has been served on the broker. If a ~~principal~~ broker, when requested to release an associate or when notified by certified mail of the disassociation by an associate, is of the opinion that the association has not been terminated and ~~he~~ prevails in court over such associate, the ~~principal~~ broker may file a request with the Commission for a hearing to determine whether or not the associate should be disciplined. In such a filing, the complaining ~~principal~~ broker must show cause in the form of a copy of the court order directing a verdict in ~~his~~ their favor.

(c) **Group change requests.** Under certain circumstances as determined by the Commission, the Commission may place a cap of Seven Hundred Fifty Dollars ($750.00) on group transactions requesting licenses to be reissued. To qualify, such request must be received complete and require no further correspondence and/or documents except for the issuance of the licenses.

(d) **Associates transfer.** When an affiliated associate leaves a broker for whom such associate is acting, the broker shall immediately cause the license of that associate to be forwarded to the Commission along with a release of association form. The broker shall make every attempt to notify the associate of the disassociation.

(e) **Active associate may continually act.** An active associate transferring from one broker to a new broker may continually act if the change is done in a timely manner and in compliance with the ten (10) day notification requirement and other applicable rules of this Chapter.

(f) **Compensation due a disassociated associate.** A previous broker may pay compensation due a disassociated associate directly to the associate and not be required to make such payment through the associate's new broker. However, any agreements between the associate and prior broker requiring further activities to be performed in connection with the compensation to be received, can only be performed with consent and acknowledgement of the new broker.

(g) **Change of home address.** An associate is required to notify the Commission office of his or her current home address. Such change shall be filed in the Commission office within ten (10) days of such change. No fee is required to change the licensee's records; however a fee of Twenty-five Dollars ($25.00) will be charged if the change requires a new license to be issued.

SUBCHAPTER 15. DISCLOSURES

605:10-15-4. Residential Property Condition Disclosure Act forms

(a) **Development and amendment of forms.** In accordance with Oklahoma Statutes, Title 60, Section 833 the Commission shall develop and amend by rule the forms for the Residential

Property Condition Disclosure Statement and Residential Property Condition Disclaimer Statement. Effective ~~January 1, 1999~~ July 1, 2002, the disclosure statement is amended and all disclosure forms executed prior to ~~January 1, 1999~~ July 1, 2002 will remain in force and valid until expiration of the 180 days from the date noted thereon.

(b) **Availability of forms.** The forms shall be available to the public upon request on and after July 1, 1995.

(c) **Copy of form format.** The Residential Property Condition Disclosure Statement as referenced in this section is set out in Appendix A at the end of this Chapter. The Residential Property Condition Disclaimer Statement as referenced in this section is set out in Appendix B at the end of this Chapter.

SUBCHAPTER 17. CAUSES FOR INVESTIGATION; HEARING PROCESS; PROHIBITED ACTS; DISCIPLINE

605:10-17-1. Commissions and disputes

(a) The Commission shall not establish the rate of commissions to be charged for real estate services and shall have no interest therein.

(b) ~~The Commission shall not be used as a Board of Arbitration to determine disputes between licensees or clients, or between any two of them.~~ At its discretion, the Commission may dismiss or postpone any investigation or hearing which essentially involves a ~~private~~ dispute not affecting the public interest until or unless such dispute is resolved.

(c) The Commission shall entertain a complaint against a broker charging a violation of subsection 18 of Section 858-312 of this "Code" only if the complaining licensee submits with his or her complaint evidence that a court of competent jurisdiction has ruled in his or her favor relative to the subject and awarded judgment against the broker.

605:10-17-4. Prohibited dealings

Within the meaning of subsection 8 of Section 858-312 of the "Code," untrustworthy, improper, fraudulent or dishonest dealing shall include, but not be limited to, the following:

(1) The making of a brokerage service contract without a date of termination.

(2) Purchasing of property by a licensee for himself or herself or another entity in which he or she has interest as defined in 605:10-15-1 (c), if such property is listed with the broker or his or her firm, without first making full disclosure thereof and obtaining the approval of the owner, or the failure by the licensee to exert his or her best efforts in order to later purchase or acquire the property for himself or herself or another entity in which he or she has interest as defined in 605:10-15-1 (c).

(3) Repeated misrepresentations, even though not fraudulent, which occur as a result of the failure by the licensee to inform himself or herself of pertinent facts concerning property, as to which he or she is performing services.

(4) Procuring the signature to a purchase offer or contract or to any lease or lease proposal which has no definite purchase price or lease rental, or no method of payment, termination date, possession date or property description.

(5) The payment of any fees or amounts due the Commission with a check that is dishonored upon presentation to the bank on which the check is drawn.

(6) Lending a broker's license to an associate; permitting a an associate to operate as a broker; or failure of a broker to properly supervise the activities of an associate. A broker permitting the use of his or her license to enable an associate licensed through him or her to, in fact, establish and conduct a brokerage business wherein the broker's only interest is the receipt of a fee for the use of his or her sponsorship.

(7) Failure to make known in writing to any purchaser any interest the licensee has in the property he or she is selling.

(8) Failure of the licensee to inform the buyer and seller at the time the offer is presented that he or she will be expected to pay certain closing costs, ~~such as discount points~~, brokerage service costs, and approximate amount of said costs.

(9) ~~Failing~~ Failure, upon demand in writing, to respond to a complaint in writing, or to disclose any information within licensee's knowledge, or to produce any document, book or record in licensee's possession or under licensee's control that is real estate related and under the jurisdiction of the Real Estate Commission, for inspection to a member of the Commission staff or any other lawful representative of the Commission.

(10) Failure to reduce ~~a~~ an ~~bona fide~~ offer to writing, ~~where~~ when a proposed purchaser requests such offer to be submitted.

(11) Failure to submit all ~~written~~ bona fide offers to an owner when such offers are received prior to the seller accepting an offer in writing.

(12) Any conduct in a real estate transaction which demonstrates bad faith or incompetency.

(13) ~~Failing~~ Failure to act, in marketing his or her own property, with the same good faith as when acting in the capacity of a real estate licensee.

(14) An associate who does not possess the license of a broker or branch office broker as defined in the rules, but is intentionally acting in the capacity of a broker or branch office broker.

(15) Discouraging a party from obtaining an inspection on a property.

(16) Allowing access to, or control of, real property without the owner's authorization.

APPENDIX B. RESIDENTIAL PROPERTY CONDITION DISCLAIMER STATEMENT FORM [REVOKED]

APPENDIX B. RESIDENTIAL PROPERTY CONDITION DISCLAIMER STATEMENT FORM [NEW]

Seller instructions: Oklahoma Law (the "Residential Property Condition Disclosure Act," 60, O.S. Section 831 et. seq., effective July 1, 1995) **requires a seller** of 1 and 2 residential dwelling units **to deliver, or cause to be delivered, a disclaimer statement to a purchaser as soon as practicable, but in any event before acceptance of an offer to purchase if you, the seller: 1) have never occupied the property and make no disclosures** concerning the condition of the property; and **2) have no actual knowledge of any defect** concerning the property.

If, however, you occupied the property or **know of a defect in regard to the property**, you must complete and deliver, or cause to be delivered, a "Residential Property Condition Disclosure Statement" to the purchaser.

Also, if you become aware of a defect after delivery of this disclaimer statement to a purchaser, but before you accept an offer to purchase, you must complete and deliver, or cause to be delivered, a "Residential Property Condition Disclosure Statement" to a purchaser.

Completion of this form by you **may not be more than 180 days prior to the date this form is received by a purchaser.**

Note: If this disclaimer statement **is delivered to a purchaser after an offer to purchase has been made by the purchaser**, the offer to purchase **shall be accepted by you only after** a purchaser has acknowledged receipt of this statement and confirmed the offer to purchase.

Defect means a condition, malfunction, or problem that would have a materially adverse effect on the monetary value of the property, or that would impair the health or safety of future occupants of the property.

(For more information on the requirements of the law, please refer to the Residential Property Condition Disclosure Information Pamphlet.)

Seller's Disclaimer Statement

The undersigned seller states that seller has never occupied the property located at _____ _____, Oklahoma; makes no disclosures concerning the condition of the property; AND has no actual knowledge of any defect.

Seller's Signature	**Date**	**Seller's Signature**	**Date**

Purchaser's Acknowledgment

The purchaser shall sign and date this acknowledgment. The purchaser is urged to carefully inspect the subject property and, if desired, to have the property inspected by an expert. The purchaser acknowledges that purchaser has read and received a signed copy of this statement. This completed acknowledgement should accompany an offer to purchase you make on the property identified above.

Purchaser's Signature	**Date**	**Purchaser's Signature**	**Date**

Note to seller and purchaser: **A real estate licensee has no duty to the seller or purchaser to conduct an independent inspection of the property and has no duty to independently verify the accuracy or completeness of any statement made by the seller in this disclaimer statement.**

The disclosure and disclaimer statement forms and the Residential Property Condition Disclosure Information Pamphlet are made available by the Oklahoma Real Estate Commission, 2401 NW 23rd St, Suite 18, Oklahoma City, Oklahoma 73107-2431, or visit OREC's Web site www.orec.state.ok.us

(OREC-7/03)

[OAR Docket #03-1034; filed 5-23-03]

TITLE 610. OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

[OAR Docket #03-1072]

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PERMANENT final adoption
RULES:
Subchapter 1. Academic Scholars Program
610:25-1-3. General principals for operation of program [AMENDED]
610:25-1-4. Eligibility Requirements and Term of Scholarship Award [AMENDED]
610:25-1-7. Fiscal aspects of program [AMENDED]
AUTHORITY:
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610:25-1-7. Fiscal aspects of program [AMENDED]
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N/A
ANALYSIS:
The proposed rule changes increase the minimum academic requirements to qualify as an Institutional Nominee for the Academic Scholars scholarship. The rule changes also incorporate statutory amendments approved in HB 1440 which passed during the 2002 session. The statutory amendments allow the State Regents to set the scholarship awards at an amount "not to exceed" the average cost of tuition, fees, room and board, and books. Previously the statute mandated the award be "equivalent" to these costs. The amendments also modify the process by which the State Regents make scholarship awards to Institutional Nominees. Amendatory language authorizes the Chancellor rather than the State Regents to approve additional semesters awarded above the eight semester limit and clarifies that award payments will be sent to the institution in which the student is enrolled.
CONTACT PERSON:
Regina Switzer, Associate General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9335, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. ACADEMIC SCHOLARS PROGRAM

610:25-1-3. General principles for operation of program

(a) Recipients of award must attend a regionally or State Regents' accredited public, independent or proprietary higher education institution in Oklahoma.
(b) The program is designed to adhere to the State Regents' Policy on Social Justice by encouraging all potential applicants to the Oklahoma State Regents' Academic Scholars Program to enter national scholarship competition.
(c) Concurrently enrolled high school students are not eligible for this program.
(d) Only SAT and ACT test scores from tests administered on national test dates prior to college entry, excluding concurrently enrolled students and students enrolled for the summer term following high school graduation, will be considered for admission to the program. Qualifying test scores obtained on a national test date after college enrollment are invalid for applying to the program. Partial scores from more than one examination will not be considered.
(e) A student must enter the program the fall semester immediately after his/her class graduates from high school, except for students admitted under the State Regents' Opportunity Admission Category. The Chancellor may approve exceptions to this requirement for extraordinary circumstances.
(f) Disability Provision. Provisions contained in this section are consistent with 70 O.S. 1991, Section 2403, as amended, and federal legislation affecting disabled persons. If a person identifies himself or herself as a student with a disability and requests consideration for a scholarship under the Academic Scholars Program by means other than standard testing procedures, the State Regents shall permit the student to be examined under the special testing arrangements provided by either ACT ~~the American College Testing Program~~ or The College Board provided that he or she meets the qualifications specified by ACT and SAT respectively to be examined. Performance percentile requirements for participation in the Academic Scholars Program remain the same as for other students. Students taking such tests and receiving Academic Scholarship awards will be expected to meet the same retention standards as other students. Special provisions may be considered in determining full-time enrollment for students falling in this category.

610:25-1-4. Eligibility Requirements and Term of Scholarship Award.

(a) There are five avenues by which to qualify for the Academic Scholars Program. Each is defined below:

(1) An Individual Applicant Qualified Student, which shall mean a student who is a resident of the State of Oklahoma whose ~~American College Testing Program~~ ACT test score or whose Scholastic Aptitude Test score falls within the 99.5 to 100.0 percentile levels as administered in the State of Oklahoma and whose grade-point average and/or class rank is exceptional, as determined by the State Regents,

(2) A Presidential Scholar, which shall mean a student selected by the Commission on Presidential Scholars pursuant to the Presidential Scholars Program administered by the United States Department of Education,

(3) A National Merit Scholar, which shall mean a student designated as a National Merit Scholar by the National Merit Scholarship Corporation,

(4) A National Merit Finalist, which shall mean a student designated as a National Merit Finalist by the National Merit Scholarship Corporation.

(5) An Institutional Nominee, which shall mean a student nominated by an institution in The Oklahoma State System of Higher Education whose ~~American college Testing Program~~ ACT test score or whose Scholastic Aptitude Test score falls within the 95.0 to 99.49 percentile levels, or who shows exceptional academic achievement as evidenced by factors including but not limited to grade point average, class rank, national awards, scholastic achievements, honors, and who shows exceptional promise based on documentation that may include but not be limited to teacher recommendations, extracurricular activities, and evidence of overcoming economic and social obstacles as determined by the State Regents. The State Regents shall ~~approve each nomination to~~ ensure that standards of high academic ability are documented. Scholarship awards to institutional nominees become effective when ~~approved~~ appropriate documentation is verified by the State Regents.

(A) Effective with the fall 2002 semester, Institutional Nominees are required to meet at least two of the three minimum criteria outlined below to be considered eligible for application as an Institutional Nominee. The Chancellor may approve exceptions to the minimum criteria for applicants who lack class ranking and/or GPA criteria:

(i) Comprehensive universities:
- (I) ACT: 30 or SAT equivalent
- (II) GPA: 3.9
- (III) Class rank: Top 5%

(ii) Regional universities:
- (I) ACT: 28 or SAT equivalent
- (II) GPA: 3.8
- (III) Class rank: Top 10%

(iii) Two-year colleges:
- (I) ACT: 27 or SAT equivalent
- (II) GPA: 3.7
- (III) Class Rank: Top 10%

(B) ~~Unless further changes in minimum criteria are approved,~~ Effective with the Fall 2003 semester, Institutional Nominees ~~after Fall 2002~~ are required to meet at least one of the two minimum criteria outlined below to be considered eligible for application as an Institutional Nominee:

(i) Comprehensive universities:
- (I) ACT: ~~30~~ 32 or SAT equivalent
- (II) GPA 3.9 and Top ~~5~~ 2% Class Rank

(ii) Regional universities:
- (I) ACT: ~~28~~ 30 or SAT equivalent
- (II) GPA 3.8 and Top ~~10~~ 4% Class Rank

(iii) Two-year colleges:
- (I) ACT: ~~27~~ 29 or SAT equivalent
- (II) GPA 3.7 and Top ~~10~~ 5% Class Rank

(C) Students are eligible for consideration as an Institutional Nominee no later than the fall semester immediately following the graduation of their high school class. The Chancellor may approve exceptions to this requirement for extraordinary circumstances.

(D) Institutional Nominees may be Oklahoma residents or nonresidents.

~~(E) Institutional Nominees are eligible for eight semesters of scholarship at Oklahoma colleges and universities. Additional semesters of award, up to ten semesters, are available upon approval by the President or appropriate academic officer of the institution and the State Regents.~~

(~~F~~E) Students receiving the scholarship as an Institutional Nominee of a two-year college are eligible for transfer to a four-year public or private Oklahoma institution after completion of an associate's degree or at least 48 credit hours within their first two academic years at any combination of two-year colleges in the State System. In addition, the Institutional Nominee of a two-year college must attend the nominating institution for the first year.

(~~G~~F) Students receiving the scholarship as an Institutional Nominee of a four-year university are eligible for transfer to another Oklahoma institution after one year of attendance at the nominating institution.

(~~H~~G) Students who fail to enroll the first semester upon nomination forfeit their scholarship eligibility unless they are nominated subsequently a second time.

(~~I~~H) Institutions may not replace students who forfeit their scholarship or are removed from the program due to failure to meet continuing eligibility requirements with another nominee.

(b) Students receiving the scholarship ~~as a qualifier in accordance with the provisions of paragraphs one through four of 610:25-1-4 paragraph (a)~~ are eligible for eight semesters of scholarship at Oklahoma colleges and universities. Additional semesters of award, up to ten semesters, are available upon approval by the President or appropriate academic officer of the institution and the Chancellor ~~State Regents~~. Additional semesters are intended only for extraordinary circumstances or for undergraduate academic programs that cannot be completed within eight semesters.

610:25-1-7. Fiscal aspects of program

(a) **Award limits.** Academic Scholarship awards to qualified nonresident students attending Oklahoma institutions shall not exceed 25 percent of the greater of the number of awards of the preceding year or the amount of the previous year's funding for certified awards for the program.

(b) **Additional aid.** Students receiving this scholarship may also receive additional state-supported financial aid, but not in excess of ~~legitimate educational costs~~ the student's cost of attendance as determined by the institution consistent with regulations for federal financial aid. Likewise, a student may enhance the Academic Scholars award by accepting grants and scholarships from private sources.

(c) **Funding priorities.** The Oklahoma State Regents will, as soon as fiscally feasible, set aside in the Oklahoma State Regents' Academic Trust funds for the full scholarship commitment. Funding priority will be given first to prior years' recipients, and secondly, to any students applying for the scholarship for the first-time. For first-time students, priority will be given to Individual Applicant Qualified Students, Presidential Scholars, National Merit Scholars, and National Merit Finalists, and secondly, to Institutional Nominees.

(d) **Amount of Scholarship.** The program shall provide participants a scholarship in ~~the~~ an amount ~~equivalent to~~ not to exceed the average costs of tuition and other fees, room and board, and required textbooks or materials for undergraduate and graduate study for students attending regionally accredited public institutions of higher education in Oklahoma.

(1) The institution shall provide the student a tuition waiver that, when combined with the scholarship award, will meet the ~~average~~ costs described in paragraph (d) above.

(2) Students who do not meet the continuing eligibility requirements for the scholarship may be eligible for the tuition waiver if they meet the standard tuition waiver criteria determined by the institution.

(3) Transfer students are eligible for the same level of tuition waiver as all other Academic Scholars.

(4) Institutions may elect to award nonresident students a resident and/or nonresident tuition waiver.

(e) **Payment of funds.** Funds made available to students as part of the Oklahoma State Regents Academic Scholars Program shall be paid directly to the institution in which the student is enrolled ~~of student's choice~~, in trust for the student, and on the student's behalf and shall contain appropriate restrictions and conditions that such monies are expended only for the purposes authorized by the State Statute authorizing this program.

(f) **Private institutions.** For students attending private Oklahoma institutions, the award amount will be the same as the student attending a similar type of public institution as defined by the State Regents.

[OAR Docket #03-1072; filed 5-30-03]

TITLE 610. OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

[OAR Docket #03-1071]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 23. Oklahoma Higher Learning Access Program
610:25-23-2. Eligibility of participants [AMENDED]
610:25-23-3. Applications [AMENDED]
610:25-23-4. Program requirements [AMENDED]
610:25-23-5. Securing OHLAP benefits [AMENDED]
610:25-23-8. Administrative responsibilities [AMENDED]

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Subchapter 23. Oklahoma Higher Learning Access Program
610:25-23-2. Eligibility of participants [AMENDED]
610:25-23-3. Applications [AMENDED]
610:25-23-4. Program requirements [AMENDED]
610:25-23-5. Securing OHLAP benefits [AMENDED]
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ANALYSIS:
The rule changes are primarily to accommodate statutory amendments in HB 2738 of the 2002 legislative session that expand eligibility for the Oklahoma Higher Learning Access Program (OHLAP) to students attending non-accredited schools. Additional changes unrelated to HB 2738 include administrative clarifications on: (1) the tax years that can be used for application purposes; (2) the June 30 deadline for submission of applications; and (3) the submission of certification forms by school contact persons. An amendment is also being made that incarcerated persons shall not be eligible to receive OHLAP benefits.

CONTACT PERSON:
Regina Switzer, Associate General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104, (405) 225-9335.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 23. OKLAHOMA HIGHER LEARNING ACCESS PROGRAM (OHLAP)

610:25-23-2. Eligibility of participants

Eligibility to participate in the program must be established by both the student and his/her parent(s), custodial parent(s), or guardian(s). Beginning with the 2000-2001 school year, students who are enrolled in the eighth, ninth or tenth grade and whose parents' income meets the financial need criteria are eligible to apply to become an OHLAP participant {Note: students who begin participating in the program as tenth-graders are eligible for benefits only under more restrictive conditions. See 610:25-23-7(h)}. Eligibility requirements to participate in the program include the following:

(1) The student must be a resident of the state of Oklahoma; and

(2) ~~The student must be enrolled in an Oklahoma school that is accredited by the State Board of Education~~; ~~and~~

~~(3)~~ The student's parent(s), custodial parent(s), or guardian(s) must establish financial need.

(A) To meet the OHLAP financial need criteria, the income of the student's parent(s) from taxable and nontaxable sources shall not exceed $50,000 per year. [70 O.S. § 2603]

(B) Parents of students making application to the OHLAP must use their most recent calendar (tax) year income to establish financial need eligibility. Parents of tenth-grade applicants may use the calendar (tax) year income that coincides with the spring semester of the tenth-grade if the parents' income is expected to be significantly less than the previous year.

(C) A *student who satisfies the financial need criteria during the eighth, ninth- or tenth-grade when he or she begins participating in the Oklahoma Higher Learning Access Program shall not later be denied participation in the Oklahoma Higher Learning Access Program on grounds that the student does not meet the financial need criteria.* [70 O.S. § 2603]

610:25-23-3. Applications

(a) Students and their parent(s), custodial parent(s), or guardian(s) must complete fully an application form provided by the Oklahoma State Regents for Higher Education (OSRHE).

(b) The application shall include either:

(1) an agreement form upon which the school site contact person (see rule 610:25-23-8 for polices related to the contact person) shall certify that the student meets the financial need criteria and which verifies that the student and his/her parent(s), custodial parent(s), or guardian(s) agree to the program's requirements. The agreement form shall be retained in the student's permanent record and a copy forwarded to the Oklahoma State Regents for Higher Education. A copy of the agreement form must be received by the Oklahoma State Regents for Higher Education for the student to be considered enrolled in the program; or

(2) an agreement form submitted directly to the OSRHE which shall be processed and verified by the OSRHE.

(c) Students participating in the Oklahoma Higher Learning Access Program shall provide their social security number, or their student identification number used by their local school, to the Oklahoma State Regents for Higher Education. The Regents shall keep the numbers confidential and use them only for administrative purposes.

(d) Any falsified or incomplete information on the application forms may result in the student's disqualification from the OHLAP.

(e) Applications will be accepted throughout the school year.

(f) Contact persons should forward copies of agreement forms to the OSRHE monthly, but not later than June 30 of each school year.

(g) Persons applying directly to the OSRHE should submit agreement forms to the OSRHE no later than June 30. If June 30 is not a business day, agreement forms shall be submitted no later than the first business day thereafter.

610:25-23-4. Program requirements

(a) Students shall agree to abide by the following provisions:

(1) *Attend school regularly and to do homework regularly*;

(2) *Refrain from substance abuse*;

(3) *Refrain from commission of crimes or delinquent acts*;

(4) *Have school work and school records reviewed by mentors designated pursuant to the program*;

(5) *Provide information requested by the Oklahoma State Regents for Higher Education or the State Board of Education; and*

(6) *Participate in program activities.* [70 O.S. § 2605]

(b) The student's parent(s), custodial parent(s), or guardian(s) shall witness the student's agreement and further agree to:

(1) *Assist the student in achieving compliance with the agreements*;

(2) *Confer, when requested to do so, with the school contact person, other school personnel, and program mentors*;

(3) *Provide information requested by the Oklahoma State Regents for Higher Education or the State Board of Education*; *and*

(4) *Assist the student in completing forms and reports required for program participation, making application to institutions and schools of higher learning, and filing applications for student grants and scholarships.* [70 O.S. § 2605]

(c) OHLAP students graduating high school in the 2000-2001 academic year and thereafter must complete the following 17-unit core curriculum with a minimum 2.5 GPA on a 4.0 grading scale, by the time they graduate from high school (replaces OSRHE policy II-6-9.1):

(1) Four units, or years, of English (grammar, composition, literature);

(2) Two units, or years, of lab science (biology, chemistry, physics, or any lab science certified by the school district; general science with or without a lab may not be used to meet this requirement);

(3) Three units, or years, of mathematics (Algebra I, Algebra II, geometry, trigonometry, math analysis, calculus);

(4) Two units, or years, of history (including one unit of American history);

(5) One unit, or year, of citizenship skills from the subjects of economics, geography, government, non-western culture;

(6) Two units, or years, of a foreign or non-English language (both units, or years, of the same language), or Two units, or years, of computer technology (courses in programming, hardware, and business computer applications such as word processing, databases, spreadsheets and graphics will qualify; keyboarding and typing classes do not qualify);

(7) Two additional units, or years, of subjects listed above;

(8) One unit, or year, of fine arts (music, art, or drama) or speech.

(d) Advanced students who complete core courses in earlier grades will not be required to take additional courses for purposes of the requirements of this program.

(e) As a pilot study, beginning fall 1992, selected applied courses may be substituted for the high school courses specified in this section. Strict parameters regulate the substitution of applied courses (see OSRHE Policy II-2-46.7).

(f) Exceptions to the required OHLAP core curriculum will be considered according to the following:

(1) Students attending schools which do not offer all the OHLAP core curriculum courses will be allowed to satisfy the requirements subject to the following provisions:

(A) OHLAP core curriculum requirements which are also required for regular college admission (OSRHE Policy II-2-35 et seq.) will be subject to the State Regents' Policy on Remediation of High School Curricular Deficiencies (OSRHE Policy II-2-121 et seq.).

(B) Any other OHLAP core curriculum requirements must be satisfied during the first twenty-four (24) hours of college coursework. Any exceptions to the twenty-four (24) hour limitation must be requested in writing and shall be subject to approval by the Chancellor.

(2) Students who have documented proficiency in a non-English language equivalent to at least two (2) units of high school study may be exempted from the requirement of two (2) units of a foreign or non-English language.

(3) Any other requests for exceptions to the OHLAP core curriculum requirement must be submitted in writing to the Chancellor. Upon approval of the exception, the student may be eligible for OHLAP benefits; provided, such approval may require the satisfaction of any OHLAP core curriculum requirements omitted in high school.

(g) Students must attain a minimum 2.5 cumulative GPA on a 4.0 grading scale for all work attempted in grades nine through twelve.

(h) Students graduating from a high school not accredited by the State Board of Education must achieve a composite score of 22 or higher on the ACT test.

610:25-23-5. Securing OHLAP benefits

(a) To qualify for the OHLAP benefits for the first semester or other academic unit of postsecondary enrollment, the participant must:

(1) Be a resident of this state.

(2) Have graduated within the previous three years from a high school ~~accredited by the State Board of Education,~~ or the Oklahoma School of Science and Mathematics. For the purposes of qualifying for OHLAP benefits, home-educated students shall not be considered to have graduated from a high school.

(3) Have a record of satisfactory compliance with the agreements and program requirements described in 610:25-23-4. Students failing to comply with the agreement and program requirements shall not be eligible for awards. Compliance shall be verified by the local contact person upon a form provided by the OSRHE. Final verification of compliance shall be determined by the OSRHE. A copy of the student's final high school transcript shall be submitted by the local contact person with the student's verification form.

(4) Have satisfied admission standards as established by the Oklahoma State Regents for Higher Education for first-time-entering students for the appropriate type of institution (OSRHE Policy II-2-35) or, if attending a private institution, satisfy the admission standards determined by the private institution; provided, that no student participating in OHLAP shall be admitted into an institution of higher education by special admission standards.

(5) Have secured admission to, and enrolled in, an institution which is a member of The Oklahoma State System of Higher Education, a postsecondary program offered pursuant to a duly approved cooperative agreement between a public technology center and an institution of The Oklahoma State System of Higher Education, or a private institution of higher learning located within this state and accredited pursuant to Section 4103 of Title 70 of the Oklahoma Statutes.

(b) Any person incarcerated in a state, federal, or private correctional facility shall not be eligible to receive OHLAP benefits.

610:25-23-8. Administrative responsibilities

The Oklahoma Higher Learning Access Act established administrative roles and responsibilities for the Oklahoma State Regents for Higher Education and the State Board of Education.

(1) *On a form provided by the Oklahoma State Regents for Higher Education, every public school district shall designate at least one OHLAP contact person, who shall be a counselor or teacher, at each Oklahoma public school site in which eighth, ninth- or tenth-grade classes are taught. When requested by the State Regents, the State Board of Education shall assist the State Regents to ensure the designation of contact persons.* [70 O.S. § 2605]

(A) The contact person at the local school district shall be responsible for processing student applications for the OHLAP according to the rules and regulations established by the OSRHE.

(B) The contact person shall maintain the agreements, which shall be executed on forms provided by the OSRHE.

(C) The local contact person shall:

(i) monitor the student's compliance with the terms of the agreement;

(ii) document transfer out of state, death, and other conditions; and

(iii) report on circumstances of noncompliance to the OSRHE.

(D) Compliance with the program requirements for attending school regularly, refraining from substance abuse, and refraining from criminal or delinquent acts shall be determined according to the local school district's policy.

(E) The local district contact person shall report OHLAP participants who transfer into or out of the district to the OSRHE and identify the local education agency (LEA) and site from which or to which the student transferred.

(F) Beginning in April of the student's year of graduation, the local contact shall gather from the OHLAP participants and his/her records, information which substantiates that the program requirements have been met and the higher education institution in which the student has enrolled or plans to enroll.

(G) The agreement certification form should be completed, signed, dated, and forwarded to the OSRHE as soon after the student's graduation as possible~~, by no later than June 15 of each year~~.

(2) *The local school district where an Oklahoma Higher Learning Access Program student is attending when the student begins participation in the program and any subsequent school district where the student attends shall forward information regarding the student's participation in the program to a school to which the student transfers upon the school's request for the student's records.* [70 O.S. § 2605]

(3) The Oklahoma State Regents for Higher Education shall:

(A) *designate personnel to coordinate tracking of program records for the years when students participating in the program are still in the public schools, provide staff development for contact persons in the public schools, and provide liaison with the State Board of Education and local organizations and individuals participating in the program* [70 O.S. § 2605];

(B) coordinate and develop policies and procedures to implement the Oklahoma Higher Learning Access Act;

(C) coordinate the publication and distribution of OHLAP awareness information and materials;

(i) *Each school year, every fifth- through ninth-grade student in the public schools of Oklahoma shall be apprised, together with his/her parents, custodial parent, or guardian, of the student's opportunity for access to higher learning under the Oklahoma Higher Learning Access Program* [70 O.S. § 2605];

(ii) *The Oklahoma State Regents for Higher Education and the State Board of Education shall develop, promote, and coordinate a public awareness program to be utilized in making students and parents aware of the OHLAP* [70 O.S. § 2605];

(D) coordinate the provision of technical assistance to local school districts and individual participants;

(E) administer the Oklahoma Higher Learning Access Trust Fund;

(F) process applications submitted directly to the OSRHE;

(G) determine final eligibility for the OHLAP award.

[OAR Docket #03-1071; filed 5-30-03]

TITLE 655. SECRETARY OF STATE
CHAPTER 10. ADMINISTRATIVE RULES ON RULEMAKING

[OAR Docket #03-2057]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Preparation of Documents
Part 5. Notice Documents
655:10-7-26 [AMENDED]
Subchapter 13. Correction of Errors
655:10-13-3 [AMENDED]
AUTHORITY:
Secretary of State; 75 O.S., §§ 250 et seq.
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Comment Period:
February 19, 2003 through March 21, 2003
Public Hearing:
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Adoption:
March 21, 2003
Submitted to Governor:
March 28, 2003
Submitted to House:
March 28, 2003

Submitted to Senate:
March 28, 2003
Gubernatorial approval:
May 13, 2003
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 21, 2003
Final Adoption:
May 21, 2003
Effective:
July 11, 2003
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 7. Preparation of Documents
Part 5. Notice Documents
655:10-7-26 [AMENDED]
Subchapter 13. Correction of Errors
655:10-13-3 [AMENDED]
Gubernatorial approval:
July 2, 2002
Register publication:
19 Ok Reg 2863
Docket number:
02-1262
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Provisions related to Notices of Rulemaking Intent have been revised to reflect statutory amendments in SB 948 that extended the required comment period, as well as the earliest possible date for scheduling a public hearing, from 20 to 30 days after publication of the NRI in the Register.
CONTACT PERSON:
Beverly Roundtree, 2401 N. Lincoln Boulevard, Room 220, Oklahoma City, OK 73105, (405) 521-4911.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 7. PREPARATION OF DOCUMENTS

PART 5. NOTICE DOCUMENTS

655:10-7-26. Notices of rulemaking intent

(a) **Use.**

(1) **Permanent rules.** Prior to adoption of a permanent rule, the agency must publish in the Register a notice describing the intended rulemaking action. The notice of rulemaking intent must be prepared pursuant to this Section. The agency must allow a minimum ~~20-day~~30-day comment period following publication of the notice before adopting the rules. [75:303(A)-(C)]

(2) **Emergency and preemptive rules.** Although an agency is not required to publish a notice of rulemaking intent prior to adoption of an emergency or preemptive rule, the agency may publish a notice of rulemaking intent that announces a full or abbreviated comment period and/or a hearing. If the agency elects to publish a notice of rulemaking intent, the notice must be prepared pursuant to this Section. [75:253(J) and 75:250.6(D)]

(b) **Format; document heading.** The notice of rulemaking intent begins with the document heading required in 655:10-7-3. Beginning two single spaces below the document heading, include the headings and information described in (c) of this Section, formatted pursuant to the following:

(1) Begin each heading at the left margin.

(2) Begin the contents required for each heading on the first line below the heading.

(3) Indent the first line of the contents, but do not indent subsequent lines of the contents; except, when listing rules under the heading **PROPOSED RULES** [see (c)(2) of this Section], begin each rule number on a separate indented line under the heading.

(c) **Content.** A notice of rulemaking intent must be prepared pursuant to the style required in (b) of this Section and must contain the following headings and information:

(1) **Rulemaking action.** Under the bolded heading "**RULEMAKING ACTION:**", type one of the following:

(A) If permanent rulemaking is proposed, type "Notice of proposed PERMANENT rulemaking."

(B) If emergency rulemaking is proposed, type "Notice of proposed EMERGENCY rulemaking."

(C) If preemptive rulemaking is proposed, type "Notice of proposed PREEMPTIVE rulemaking."

(D) If permanent and emergency rulemaking are simultaneously proposed (i.e., the agency is announcing a comment period/hearing to consider adopting the proposed rules as both permanent and emergency rules), type "Notice of proposed PERMANENT and EMERGENCY rulemaking."

(2) **Proposed rules.** Under the bolded heading "**PROPOSED RULES:**", identify the proposed rulemaking action. It is the agency's responsibility to determine how specific its identification of the proposed rules should be. However, the agency must comply with the following:

(A) If the agency elects not to identify each affected Section and Appendix, the agency must at a minimum identify whether the Chapter itself is being added, amended, or revoked by typing the Chapter number and name followed by [NEW], [AMENDED], or [REVOKED].

(B) If the agency elects to identify each affected Section, Appendix, Part, and Subchapter, the agency must identify whether the Sections, Appendices, Parts, and/or Subchapters are [NEW], [AMENDED], [REVOKED], [RESERVED], [RENUMBERED], or [AMENDED AND RENUMBERED]. If headings or taglines are included, identify any proposed amendments to a heading or tagline through the use of strikeouts and underscoring. [See also 655:10-7-11(b)(2) (relating to identifying rules in preambles)]

(3) **Summary.** Under the bolded heading "**SUMMARY:**", explain the proposed action by including, at a minimum, the following statutory requirements:

(A) *in simple language, a brief summary of the rule[s].* [75:303(B)(1)]

(B) *the proposed action[s] being taken.* [75:303(B)(2)]

(C) *the circumstances which created the need for the rule[s].* [75:303(B)(3)]

(D) *the intended effect of the rule[s].* [75:303(B)(5)].

(4) **Authority.** Under the bolded heading "**AUTHORITY:**":

(A) identify the rulemaking entity, as defined in 655:10-1-2, and

(B) cite the *specific legal authority authorizing the proposed rule* [75:303(B)(4)]. The "specific legal authority" is the statute or other legal instrument which authorizes the promulgation of rules for this area of control, or the statute or other legal instrument which authorizes the rules. Do not cite APA statutes which authorize rulemaking procedures except when promulgating "required rules" pursuant to 655:10-5-7.

(5) **Comment period.** Under the bolded heading "**COMMENT PERIOD:**", cite the time when, the place where, and the manner in which interested persons may *submit data, views or arguments, orally or in writing* [75:303(A)(2)]. The agency must allow a minimum 30-day comment period from the date the notice will be published in the Register.

(6) **Public hearing.** Under the bolded heading "**PUBLIC HEARING:**", cite one of the following:

(A) If the agency schedules a hearing, cite the date, time and place of such hearing, and *the manner in which interested persons may present their views* [75:303(B)(7)]. The hearing *may not be held earlier than thirty (30) days after notice of the hearing is published* [75:303(C)(2)] in the Register.

(B) If the agency does not schedule a hearing, cite *the time when, the place where, and the manner in which persons may demand a hearing* [75:303(B)(9)]. The agency must allow a minimum of 30 days from the date the NRI is published for persons to demand a hearing.

(7) **Requests for comments from business entities.** Under the bolded heading "**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES**," identify whether any of the proposed rules affect business entities, as follows:

(A) *If the agency determines that the rule[s] affects business entities*, include *a request that such entities provide the agency, within the comment period, in dollar amounts if possible, the increase in the level of direct costs . . . and indirect costs . . . , or other costs expected to be incurred by a particular entity due to compliance with the proposed rule[s]* [75:303(B)(6)]; or

(B) If the agency determines that the rule(s) does not affect business entities, as described in (A) of this paragraph and in 75 O.S., Section 303(B)(6), type "n/a."

(8) **Copies of proposed rules.** Under the bolded heading "**COPIES OF PROPOSED RULES:**", cite *where copies of the proposed rules may be obtained for review by the public* [75:303(B)(10)]. Other information about the proposed rules, such as copying charges, may also be included.

(9) **Rule impact statement.** Under the bolded heading "**RULE IMPACT STATEMENT:**", state if *the agency intends to issue a rule impact statement ... and where copies of such impact statement may be obtained for review by the public* [75:303(B)(8)]. Do not include the rule impact statement itself. The rule impact statement must be issued *prior to or within fifteen (15) days after the date of publication of the notice of proposed rule adoption* (i.e., the Notice of Rulemaking Intent) [75:303(D)(1)].

(10) **Contact person.** Under the bolded heading "**CONTACT PERSON:**", include the name and phone number of a contact person for information regarding the proposed rulemaking.

(11) **Additional information.** Under the bolded heading "**ADDITIONAL INFORMATION:**", cite any additional information determined by the agency to be pertinent to the notice. The use of this category is optional.

SUBCHAPTER 13. CORRECTION OF ERRORS

655:10-13-3. Errors after Register publication

(a) **Rule documents.**

(1) **Permanent rule documents.**

(A) **Regulatory text.** In the event an agency discovers an error in regulatory text in a permanent rule document after publication in the Register, the agency may correct the error through emergency, preemptive, or permanent rulemaking procedures only.

(B) **Other than regulatory text.**

(i) **Published pages.** When an agency discovers an error in the preamble (except effective date) or enacting clause (except effective date) in a permanent rule document after publication in the Register, the agency may submit a Notice of Error in Published Document pursuant to 655:10-7-35.

(ii) **Non-published pages.** When an agency discovers an error in the attestation or supplemental information pages of a permanent rule document after publication in the Register, the agency may submit the corrected page or pages to the OAR. Upon review and acceptance of the corrected pages, the OAR will add the corrected pages to the official files.

(2) **Emergency and preemptive rule documents.** Emergency and preemptive rule documents may not be corrected by an agency after publication in the Register.

(b) **Notice documents.**

(1) **Corrections allowed.** When an agency discovers an error in one of the following types of notice documents after publication in the Register, the agency may correct such error by submitting a Notice of Error in Published Document [see 655:10-7-35]:

(~~i~~A) Statement of Submission for Gubernatorial and Legislative Review.

(~~ii~~B) Notice of Gubernatorial Approval of Permanent Rules.

(~~iii~~C) Notice of Gubernatorial Disapproval of Permanent Rules.

(~~iv~~D) Notice of Legislative Disapproval of Rules.

(~~v~~E) Notice of Withdrawn Rules.

(2) **Corrections not allowed.** When an agency discovers an error in a notice document which announces an action affecting the public's direct participation in the rulemaking process (as identified in (A) through (C) of this paragraph), the agency may not correct the notice document after publication in the Register. The agency may submit a new notice document and, if applicable, publish a Notice of Cancelled Hearing or Comment Period; however, the new document acquires a new "publication date" for purposes of compliance with APA time restrictions (e.g., minimum ~~20-day~~30-day comment period). Notice documents which may not be corrected with a Notice of Error in Published Document include the following:

(A) Notice of Rulemaking Intent.

(B) Notice of Cancelled Hearing or Comment Period.

(C) Notice of Continued Hearing or Comment Period.

(c) **Local Project Funding Contract Announcements.** In the event an agency discovers an error in a local project funding contract announcement after publication in the Register, the agency may not correct the announcement. The agency may submit a new local project funding contract announcement; however, the new document acquires a new "publication date" for purposes of the agency's compliance with the requirement to *announce the availability of contracts for local project funds by publication in the Oklahoma Register at least one month prior to the deadline for applications for such contracts* [Paragraph 5 of Executive Order 95-26].

[OAR Docket #03-2057; filed 6-5-03]

TITLE 655. SECRETARY OF STATE
CHAPTER 25. NOTARY PUBLIC

[OAR Docket #03-2058]

RULEMAKING ACTION:
PERMANENTfinal adoption
RULES:
Subchapter 1. General Provisions [AMENDED]
Subchapter 3. Revocation, Resignation and Death [AMENDED]
Subchapter 5. ~~Journal and~~ Seal [AMENDED]
Subchapter 7. Change of Name and Address [REVOKED]
Subchapter 9. Availability of Information [REVOKED]
AUTHORITY:
Secretary of State; 49 O.S., §§ 1 et seq.
DATES:
Comment Period:
February 19, 2003 through March 21, 2003
Public Hearing:
March 21, 2003
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March 21, 2003
Submitted to Governor:
March 28, 2003
Submitted to House:
March 28, 2003
Submitted to Senate:
March 28, 2003
Gubernatorial approval:
May 13, 2003
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 21, 2003
Final Adoption:
May 21, 2003
Effective:
July 11, 2003
SUPERSEDED EMERGENCY ACTIONS:
NA
INCORPORATIONS BY REFERENCE:
NA
ANALYSIS:
The revisions to Chapter 25 include deleting language that is in conflict with law and that unnecessarily repeats statutory language. In addition, the revisions bring the rules into compliance with current agency procedures.
CONTACT PERSON:
Beverly Roundtree, (405) 521-4911.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

655:25-1-2. Application

(a) Every application for a notarial commission must include:

(1) the printed name of the applicant exactly as he/she will sign documents as a notary;

(2) former name-complete only if the notary's name has changed since the last commission;

(3) if a resident of this state, the county of residence and street address;

(4) if a resident of another state, the county and street address of employment in Oklahoma and residence address;

(5) a statement that the applicant is at least 18 years of age and a citizen of the United States;

(6) a designation of new, renewal or expired commission including an expiration date if applicable;

~~(7) the official signature of the applicant exactly as he/she will sign documents as a notary public. The signature must match the printed name;~~

(~~8~~7) the mailing address where the applicant's commission is to be mailed;

(~~9~~8) a daytime telephone number; and

(~~10~~9) an application fee.

(b) Renewal applications will only be accepted during the six (6) weeks prior to the expiration date.

(c) The applicant will apply for a new commission if:

(1) The applicant has never been an Oklahoma notary public;

(2) The applicant has been an Oklahoma notary public but has let the commission expire; or

(3) The applicant is a current Oklahoma notary public and wishes to make changes on the current commission.

(d) A post office box number cannot be accepted in lieu of a residence or employment address on the application. A street address, route number or directions to the residence or place of employment of the applicant must be provided.

~~(e) Under normal circumstances, notary public applications received for processing will be ready for pick up after 4:00 P.M. the following business day.~~

655:25-1-5. Bond

(a) Prior to performing the duties as a notary public, ~~No notarial commission becomes effective until~~ the following ~~has been~~ must be filed with the court clerk in the county in which the notary resides or if a non-resident, the county employed:

(1) the commission;

(2) an oath of office and loyalty oath;

(3) the official signature;

(4) an impression of the official seal;

(5) a bond in the sum of One Thousand Dollars ($1,000.00) approved by the court clerk; and

(6) a filing fee.

(b) The bond reflecting the commission number and oath of office shall be transmitted by the court clerk to the Secretary of State for filing and recording.

SUBCHAPTER 3. REVOCATION, RESIGNATION AND DEATH

655:25-3-1. Revocation

(a) A notary commission will be revoked by the Secretary of State upon receipt of the following:

(1) a court order issued for such purpose;

(2) an official notice by a county court clerk;

(3) an official notice by a public official in a position to order such suspension; or

(4) failure to tender the statutory notary fees to the Secretary of State.

(b) Upon revocation of a notary commission, notice of such action will be mailed to the party ordering such revocation, the county court clerk of the county in which the notary's bond is filed and said notary. ~~When a notarial commission is revoked, the notary shall:~~

~~(1) destroy the official seal; and~~

~~(2) within 30 days after the effective date of the revocation, deliver to the court clerk in the county where the bond was filed, the journal and records.~~

655:25-3-2. Resignation

(a) A notary who resigns their notarial commission shall deliver to the Secretary of State a notice of resignation and the effective date of such resignation.

(b) Notaries who cease to reside or work in this state shall resign their commission.

(c) When a notarial commission is resigned, the notary shall~~:~~

~~(1)~~ destroy the official seal.~~; and~~

~~(2) within 30 days after the effective date of the revocation, deliver to the court clerk in the county where the bond was filed, the journal and records.~~

655:25-3-3. Death

If a notary dies during the term of commission, the notary's heirs or personal representative, as soon as reasonably practicable after death, shall:

(1) destroy the official seal; and

(2) deliver a signed notice of the date of death to the Secretary of State.~~; and~~

~~(3) deliver the journal and records to the court clerk in the county where the bond was filed.~~

SUBCHAPTER 5. ~~JOURNAL AND~~ SEAL

655:25-5-1. Journal [REVOKED]

~~(a) A notary shall keep and maintain a records of all official notarial acts. For every notarial act, the notary shall record in a bound journal at the time of notarization at least the following:~~

~~(1) the date of the act;~~

~~(2) the type of notarial act;~~

~~(3) a description of the document;~~

~~(4) the signature and printed name and address of each person for whom a notarial act is performed;~~

~~(5) a description of the form of identification provided or a statement that the person is "personally known" to the notary;~~

~~(6) the fee, if any, charged; and~~

~~(7) the address where the notarization was performed.~~

~~(b) A journal of notarial acts is an official public record that may be inspected in the notary's presence by an individual whose identity is personally known to the notary or proven on the basis of satisfactory evidence, and who specifies the notarial act sought.~~

~~(c) Upon request in compliance with subsection (b), the notary shall provide a photocopy or a certified copy of an entry in the journal upon payment of fees.~~

655:25-5-2. Official seal

(a) A notary shall keep an official notarial seal that is the exclusive property of the notary and that may not be used by any other person. At the end of a notary's employment, an employer may not require the notary to surrender the seal.

(b) The seal may be either a metal seal which leaves an embossed impression or a rubber stamp.

~~(1) The seal shall contain:~~

~~(A) the notary's name exactly as reflected on the commission;~~

~~(B) the county of residence or county of employment, if the notary is a non-resident;~~

~~(C) the words "State of Oklahoma" and "Notary Public"; and~~

~~(D) a rectangular or circular border surrounding the required words.~~

~~(2) If using a rubber stamp, the date of expiration may be part of the stamp.~~

(c) A notary shall authenticate all official acts with this seal. The seal impression shall appear near the notary's official signature on a notarial certificate.

SUBCHAPTER 7. CHANGE OF NAME AND ADDRESS [REVOKED]

655:25-7-1. Change of address [REVOKED]

~~Within 30 days after the change of a notary's residence address or employment address if a non-resident, the notary shall deliver to the Secretary of State a written notice providing the new address.~~

655:25-7-2. Change of Name [REVOKED]

~~If a name change occurs in the middle of the commission term, the notary has two options:~~

~~(1) continue to use the former name as reflected on the commission until it expires; or~~

~~(2) apply for a new commission, obtain a new bond and seal and resign the current commission.~~

SUBCHAPTER 9. AVAILABILITY OF INFORMATION [REVOKED]

655:25-9-1. Availability of information [REVOKED]

~~(a) Record search. Personnel in the Notary Department will provide information on a maximum of three (3) notaries public to persons making such request in person or by telephone. Customers requesting more than three searches, must submit a list in writing. Customers will be contacted when the information is available.~~

~~(b) Daily notary list. Persons interested in receiving a daily list of commissioned notaries may do so by written request. The list will be available for pick-up, mailing or faxing the following business day after 9:00 a.m. Customers will be invoiced monthly based on the fees required by 28 O.S, Section 111. Payment is due upon receipt. Customers with an outstanding invoice over 60 days old must pay all outstanding invoices prior to receiving additional notary lists.~~

~~(c) Master File. The Notary Master File consists of active notary records. Requests for the data must be done in writing and must be accompanied by a payment. The Master File is provided in various formats and may be picked up from the Secretary of State's Office or mailed. The customer is responsible to pay all shipping and handling costs and provide packaging for shipping the data.~~

~~(d) Documents. Copies of documents filed by the Notary Department may be obtained by placing an order and by payment of fees required by 28 O.S., Section 111.~~

[OAR Docket #03-2058; filed 6-5-03]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #03-1057]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Practice and Procedure
Part 3. Description of Administrative Review and Hearings
710:1-5-10. Tax protests and claims for refund [AMENDED]
710:1-5-13. Settlement of claims or protests [AMENDED]
Part 5. Administrative Proceedings Related to Tax Protests
710:1-5-22. Commencement and numbering of a protest [AMENDED]
Part 7. Abatement of Erroneous Tax Assessment
710:1-5-70. Purpose [AMENDED]
710:1-5-71. When an assessment becomes final [AMENDED]
710:1-5-72. Request for adjustment or abatement [AMENDED]
Part 8. Settlement of Tax Liability [NEW]
710:1-5-80. Purpose [NEW]
710:1-5-81. Definitions [NEW]
710:1-5-82. Grounds for settlement [NEW]
710:1-5-83. Eligibility requirements for settlement [NEW]
710:1-5-84. Application for a Settlement Agreement [NEW]
710:1-5-85. Effect of Offer in Compromise by the Internal Revenue Service [NEW]
710:1-5-86. Review by Commission [NEW]
710:1-5-87. Disclosure [NEW]
710:1-5-88. Effect of a Settlement Agreement [NEW]
710:1-5-89. Payment [NEW]
710:1-5-90. If the proposed Settlement Agreement is declined [NEW]
710:1-5-91. Return of Settlement Agreement Application [NEW]
710:1-5-92. Exclusivity of request for settlement of tax liability [NEW]
710:1-5-93. Officials ineligible for Settlement Agreement [NEW]
AUTHORITY:
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Subchapter 5. Practice and Procedure
Part 8. Settlement of tax liability

710:1-5-80 through 710:1-5-93 [NEW]

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03-452

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Existing Section 710:1-5-13, which described the settlement procedures previously available to taxpayers, is expanded and amended to describe the scope of the new Part 8 procedures.

Section 710:1-5-31, describing the appointment and duties of Administrative Law Judges employed by the Commission, has been amended to provide for notice to the parties involved when an Administrative Law Judge must be substituted for one initially assigned in a proceeding.

Sections 710:1-5-10, 710:1-5-22, 710:1-5-71, and 710:1-5-72 have been amended to conform to changes in the Uniform Tax Code enacted by SB 1448 §§ 1-2, which expanded the period in which assessments can be protested from 30 days to 60 days, and made other significant changes to the appeals process.

A new Part 8, dealing with Settlement of Tax Liability, is being promulgated to implement the provisions of Senate Bill 1253, § 1. The bill provided specific statutory authority for the Commission to consider settlement offers under certain statutory conditions, provided that the underlying constitutional authority was approved by the people, which occurred November 5, 2002. These Sections generally set out the manner in which the new law will be implemented. Topics include eligibility requirements, how to make application, what a taxpayer may expect with respect to the procedural aspects of review and determination, and the relationship and effect upon existing remedies and liabilities.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 5. PRACTICE AND PROCEDURE

PART 3. DESCRIPTION OF ADMINISTRATIVE REVIEW AND HEARINGS

710:1-5-10. Tax protests and claims for refund

(a) A **protest** may be described as a formal, written challenge to a proposed tax assessment or to the denial of a claim for refund of taxes paid. The statutory requirements for perfecting a protest or claim for refund are governed, generally, by the provisions of the Uniform Tax Procedure Code (68 O.S. §§ 201 et seq.), except in the areas of Income Tax (Article 23 of Title 68 of the Oklahoma Statutes) and Estate Tax (Article 8 of Title 68 of the Oklahoma Statutes) which have additional, and in some instances, superseding, statutory requirements.

(b) There are several routes available, both formal and informal, to a taxpayer in objecting to an assessment. Prior to the filing of a protest, the issues may be resolved by further discussion with the assessing tax division. Challenged assessments or audits may be amended or adjusted by the tax Division involved, upon reasoned grounds and adequate documentation. Should issues remain unresolved after consulting with the assessing division, the taxpayer may file written protest with the taxing division. A protest must be "timely filed." That is, it must be filed on, or before, the statutory time provided for filing protests, to insure that the protestant-taxpayer preserves his legal rights to a full hearing of the matter and a route for appeal if the disposition of the protest is not resolved in his favor. In the absence of a formal written extension of time within which to file a protest, **proposed assessments which are not protested within the time prescribed by statute are considered final.** Any finally assessed tax in such a case which is paid to or collected by the Tax Commission is not subject to a claim for refund or hearing thereon, to the extent provided in 68 O.S. § 227(f). Thus, a taxpayer who receives a notice of proposed assessment of tax from the Tax Commission should not assume that it can be challenged later by way of a claim for refund, if a protest of the proposed assessment is not timely filed and the proposed assessment then becomes final. However, a taxpayer who fails to file a timely protest may, within one (1) year of the date the assessment becomes final, request the Tax Commission to adjust or abate the assessment pursuant to 68 O.S. § 221(e) and the provisions of Part 7 of this Subchapter.

(c) The following is a brief description of a typical protest that would take place within the framework of the Oklahoma Tax Commission administrative proceedings process.

(1) Initially, an audit is conducted by one of the various taxing Divisions of the Oklahoma Tax Commission pursuant to 68 O.S. § 221(a). Thereafter, a proposed assessment is issued to the taxpayer. If, in fact, the taxpayer disagrees with the proposed assessment, a protest may be filed, generally within ~~thirty (30)~~ sixty (60) days of the date of the assessment ~~was issued by the respective taxing Division~~, pursuant to the provisions of 68 O.S. § 221(c).

(2) Except for the initial filing of a protest, which may be made with the taxing division, with the Office of the General Counsel, or with the office of the Administrative Law Judges, the office of the Administrative Law Judges serves as the "Court Clerk" for the administrative hearing process. The Administrative Law Judges are appointed by the Commissioners of the Oklahoma Tax Commission and act independently of the taxing Divisions and the Office of the General Counsel.

(3) Once a protest is received by the taxing Division, the Division will generally review the proposed assessment to determine whether further adjustments are appropriate. Additional discussion between the taxpayer and the Division may be requested in this regard. If issues still remain unresolved at the conclusion of this process, the protest is forwarded to the Administrative Law Judges' Office, where the protest is docketed and a Pre-Hearing Conference is scheduled between the taxpayer, the General Counsel's Office attorney who represents the taxing Division and an Administrative Law Judge.

(4) At this time, a case may be resolved through discussion and negotiation with the staff attorney and the protest or claim is formally withdrawn from the docket, at the

request of the parties. This informal resolution may be described as either a withdrawn assessment or a withdrawn protest, depending upon the manner in which the issues were resolved.

(5) Generally, the manner in which a case is to be submitted is decided by the parties at the Pre-Hearing Conference. Other matters decided at this conference are the legal issues of the case and the manner of evidence or witnesses (or both) to be presented at any hearing. When a protest or claim is not actively pursued, the case may be dismissed by the Commission. Dismissal forecloses the taxpayer from further challenging the assessment in question. Upon dismissal, the tax is considered due and owing from the date of assessment, including statutory penalties, if any, and interest accrued from the date of delinquency. Thus, taxpayers are urged to respond to letters; appear or make alternate arrangements at scheduled pre-hearing conferences and hearings; file required briefs or position letters in a timely fashion; and in all respects pursue their legal rights diligently.

(6) Following the Pre-Hearing Conference, and assuming the case is not resolved, it is set for hearing. The Administrative Law Judge will preside at the hearing, wherein testimony and exhibits are received and a record is made. After consideration of the merits, the Administrative Law Judge will issue Findings, Conclusions and Recommendations.

(7) Following the issuance of the Findings by the Administrative Law Judge, the Commissioners may~~, within fifteen (15) days following its issuance,~~ either adopt the Finding, or modify it, in part, or in whole. If the taxpayer has requested an en banc hearing, the Commission may grant it at this time. Once the Order of the Commission is issued, the Taxpayer has thirty (30) days within which to file an appeal with the Oklahoma Supreme Court.

(8) Detailed procedural rules governing a tax **protest** may be found in 710:1-5-21 through 710:1-5-48, which set out rules of Practice and Procedure before the Commission.

710:1-5-13. Settlement of claims or protests

Settlement of **disputed, unliquidated** tax claims or assessments is within the discretionary authority of the Oklahoma Tax Commission pursuant to the provisions of 68 O.S. § 219. Request for settlement or offer of settlement proposal should be made to the taxing division which initiated the disputed assessment. Settlements of final liabilities pursuant to 68 O.S.Supp.2002, § 219.1 are governed by the provisions of Part 8 of this Subchapter.

PART 5. ADMINISTRATIVE PROCEEDINGS RELATED TO TAX PROTESTS

710:1-5-22. Commencement and numbering of a protest

(a) Protests must be commenced by filing a timely written protest with the office of any Commissioner, the director of the division out of which the controversy arose, the office of the Administrative Law Judges, or the office of the General Counsel. In order for a protest to be considered timely, it must be filed, pursuant to Oklahoma Statutes, within ~~thirty (30)~~ sixty (60) days after the date of the mailing of the assessment, unless an extension is granted within the ~~thirty (30)~~ sixty (60) day period.

(b) The Administrative Law Judges' Office assigns a case number of a protest of proposed assessment or protest to denial of claim for refund (both called "protest" herein), creates a court file, assigns a Judge and sets a day for a pre-hearing conference between the parties and the Administrative Law Judge.

PART 7. ABATEMENT OF ERRONEOUS TAX ASSESSMENT

710:1-5-70. Purpose

The provisions of this Part are provided to taxpayers who wish to request adjustment or abatement of an assessment of the Oklahoma Tax Commission which has already become final. [**See:** ~~68 O.S. 221(e)~~ 68 O.S. § 221(e)]

710:1-5-71. When an assessment becomes final

(a) In the event the person to whom a proposed assessment is issued acquiesces in the changes reflected on the proposed assessment, or fails to file a written protest within the ~~thirty~~ sixty (60) days after the mailing of the proposed assessment (or any extensions allowable by Statute that have been granted by the Division), the proposed assessment becomes final.

(b) In cases in which an extension has been granted for filing a protest, the proposed assessment becomes final at the expiration of the period as extended by the Division if no protest is filed.

710:1-5-72. Request for adjustment or abatement

(a) **Untimely "protest" construed as request for abatement.** Every written statement "protesting" a proposed assessment which is received after the expiration of ~~thirty~~ sixty (60) days from the mailing of the proposed assessment, or after the expiration of any extension granted by the Division, shall be treated as a request for an adjustment or abatement of the assessment.

(b) **Manner in which timeliness determined.** Timeliness of the filing of a request for adjustment or abatement of the assessment shall be determined by the date of the first filing with the Director of the Division out of which the controversy arose, the office of the Administrative Law Judges, the office of the General Counsel, or the Commission.

(c) **Abatement request does not extend period in which proposed assessment may be timely protested.** A request for adjustment or abatement of an assessment does not extend the time in which a written protest can be timely filed. No request for adjustment or abatement of an assessment filed after a proposed assessment becomes final will be construed as amending the time in which a protest can be filed and a request for hearing submitted.

PART 8. SETTLEMENT OF TAX LIABILITY

710:1-5-80. Purpose

The provisions of this Part are provided to taxpayers who wish to request settlement of all or any portion of an Oklahoma tax liability and interest and penalties which have already become final for less than the outstanding amount. [**See:** 68 O.S. §219.1]

710:1-5-81. Definitions

The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

"Commission" means the Oklahoma Tax Commission.

"Final liability" means:

(A) The tax, penalty and interest due after the expiration of the statutory prescribed time within which to file a protest to a proposed assessment;

(B) The amount due after the exhaustion of administrative remedies without appeal to the Supreme Court;

(C) A tax amount admitted to be due by a taxpayer's report;

(D) The amount found due after a final court decision concerning the existence or amount of the liability; or,

(E) Other cases of liabilities where further administrative or judicial review is not available and the only consideration is collectibility.

"Insolvency" means:

(A) The inability to pay debts as they fall due in the usual course of business; or,

(B) Having liabilities in excess of the reasonable market value of assets held.

"Person" means any individual, partnership, corporation, limited liability company, association, or public or private organization of any character.

"Settlement Agreement" means a written agreement between a taxpayer and the Commission whereby the Commission agrees to abate all or a portion of an outstanding tax liability, including the interest or penalties accruing thereto, and the taxpayer agrees to pay the remainder of such liability, if any, as provided herein.

"Tax Liability" means and includes the total amount of Oklahoma tax, penalty, or interest due.

"Taxpayer" means:

(A) Any person subject to or liable for any Oklahoma tax; or,

(B) Any person required to file a return, or to pay or withhold and remit any tax required by the provisions of any Oklahoma tax law that is administered by the Commission.

"Trust fund tax" means Oklahoma Sales Tax levied pursuant to 68 O.S. §§ 1350 et seq., Oklahoma Use Tax levied pursuant to 68 O.S. §§ 1406-1407, Oklahoma Income Tax withholding levied pursuant to 68 O.S. §§ 2385.2-2385.28, or Oklahoma Motor Fuel taxes levied pursuant to 68 O.S. §§ 500.1 et seq.

710:1-5-82. Grounds for settlement

(a) **General provisions.** Except for a trust fund tax, the Commission may settle an Oklahoma tax liability for any of the following reasons:

(1) Collection of the tax with interest and penalties would reasonably result in the taxpayer declaring bankruptcy;

(2) The tax liability is uncollectible due to the insolvency of the taxpayer resulting from factors beyond the control of the taxpayer or other similar factors; or,

(3) The tax liability is the result of actions of a person other than the taxpayer and to hold taxpayer liable for the tax liability would be inequitable.

(b) **Uncollected trust fund taxes.** If the tax liability for which settlement is sought is a "trust fund tax", the applicant must show:

(1) That the tax was not collected; and,

(2) That applicant had a good faith belief that collection of the tax was not required.

(c) **Unremitted trust fund taxes.** Trust fund taxes collected, but not remitted to the Commission, may not be abated.

710:1-5-83. Eligibility requirements for settlement

(a) **General requirements.** Before a taxpayer becomes eligible for settlement pursuant to this program, the following general requirements must be met:

(1) Tax liability must be final.

(2) All administrative remedies and appeals must have been exhausted.

(3) Taxpayer must be current with all returns filed or required to be filed with the Commission.

(4) Taxpayer must not be currently the subject of an open bankruptcy proceeding.

(5) Taxpayer must not be currently the subject of a State tax-related criminal investigation or criminal prosecution.

(b) **Bankruptcy or insolvency.** If settlement is sought on the grounds of bankruptcy or insolvency:

(1) Taxpayer must demonstrate that the ability to make payment in full any time in the foreseeable future is unlikely.

(2) Taxpayer must be without sufficient resources or unable to apply present or future resources to paying the outstanding tax liability.

(3) Taxpayer must be reasonably unable to dispose of assets or borrow against assets to pay the tax liability.

(4) Taxpayer must demonstrate that monthly income is insufficient to fully pay the tax liability through reasonable installment payments.

710:1-5-84. Application for a Settlement Agreement

(a) **Application.** The forms necessary to make application for a Settlement Agreement may be obtained from the Account Maintenance Division, 2501 Lincoln Boulevard, Oklahoma City, OK, 73194. Completed Settlement Agreement Applications and any documents in support thereof must be submitted to the same address.

(b) **When a Power of Attorney is Required.** Applications being tendered on behalf of a taxpayer by an attorney, CPA, or other person, must be accompanied by a properly acknowledged Power of Attorney Form, signed by the taxpayer, authorizing the person to act on behalf of the taxpayer.

(c) **Additional information.** The Account Maintenance Division may request additional financial or other information deemed necessary to supplement the Settlement Agreement Application.

(d) **Presentation of the application.** The Account Maintenance Division shall present a completed application to the Commission during a regularly scheduled meeting of the Commission.

(e) **Notice of the determination of the application.** The Account Maintenance Division shall notify the applicant in writing of the decision of the Commission and make any required adjustments to the applicant's account.

(f) **Withdrawal of application.** An application for a Settlement Agreement may be withdrawn by the taxpayer at any time prior to its acceptance.

710:1-5-85. Effect of Offer in Compromise by the Internal Revenue Service

(a) Acceptance of an Offer in Compromise by the Internal Revenue Service does not automatically guarantee acceptance by the State. An application for a Settlement Agreement tendered to the Commission will be reviewed and evaluated on its own merits.

(b) The federal "Offer in Compromise" form cannot be substituted for the Oklahoma Settlement Agreement Application. However, other documents such as the current financial statements included in a compromise offer submitted to the Internal Revenue Service may also be submitted to the State in support of an application for a Settlement Agreement.

710:1-5-86. Review by Commission

(a) **Unanimous vote required.** A unanimous vote of the members of the Commission is required for approval of a Settlement Agreement.

(b) **Discretionary act.** The determination of settlement is within the sole discretion of the Commission.

(c) **Facts and other considerations.** In making its decision, the Commission will consider, but not be limited to, the following matters:

(1) The likelihood of collection of the debt;

(2) The amount of the debt;

(3) Efforts made by the applicant to pay a part of the debt prior to filing an application for settlement;

(4) The taxpaying record of the applicant;

(5) Applicant's current and possible future earning capacity;

(6) The portion of the tax itself which would be paid under the terms of the proposed Settlement Agreement;

(7) The composition of the balance of tax, penalty, and interest due;

(8) The percentage of the tax debt proposed to be settled;

(9) The Applicant's age and health;

(10) The Applicant's net worth;

(11) The acceptance by the Internal Revenue Service of an Offer in Compromise and the amount;

(12) The age of the debt;

(13) The existence of liens;

(14) Current operating status of any business;

(15) Bankruptcy status;

(16) The amount determined to be collectible. This amount is generally based upon the Commission's evaluation of the reasonable collection potential of the taxpayer's assets and revenue. The collectible amount is one factor used to determine if an offer is reasonable.

(17) Other liable parties;

(18) Whether tax debt due is a trust tax collected by Applicant but not remitted to the Commission;

(19) What other persons are liable,

(20) Whether the Applicant is located within Oklahoma or not;

(21) The accuracy and veracity of the Applicant's representations to the Commission;

(22) The recommendations of the Account Maintenance Division; and

(23) The expense and time expended in future collection efforts by the Commission on the Applicant's debt.

(d) **Other circumstances which may be considered.** In addition to the factors set out in (c) of this Section, the Commission may consider any other aggravating or mitigating circumstances contributing to the request for settlement, including, but not limited to:

(1) Good faith efforts made by taxpayer to comply with the tax laws of this state.

(2) Benefit received by taxpayer from nonpayment of the tax.

(3) Involvement of taxpayer in economic activity which gave rise to tax liability.

(e) **No appeal of denial.** The decision by the Commission to decline a proposed Settlement Agreement is final and is not appealable.

(f) **Court approval required.** If the amount of the tax liability to be abated exceeds Five Thousand Dollars ($5,000.00), the Settlement Agreement requires the approval of a judge of the district court of Oklahoma County.

(g) **Resubmission of application.** If a taxpayer has previously submitted an application for a Settlement Agreement and that application was not accepted, the taxpayer may apply at a later date if financial conditions have changed, or to submit additional information not previously provided for review by the Commission.

710:1-5-87. Disclosure

No return or document filed with the Commission pursuant to the Settlement of Tax Liability program will be subject to disclosure except as provided by 68 O.S. § 205.

710:1-5-88. Effect of a Settlement Agreement

(a) **Effect of pending Settlement Agreement.**

(1) Filing an application for settlement does not constitute the filing of a protest of a proposed assessment, or extend the time to protest a proposed assessment. Filing an application for settlement does not constitute the taking of an appeal to the Oklahoma Supreme Court, nor extend the time to take an appeal to the Supreme Court.

(2) If taxpayer is on an existing repayment plan, the taxpayer must continue to make payments until the application for a Settlement Agreement is either accepted or denied. Payments made pursuant to an existing repayment plan will not be considered a part of the amount offered in the agreement.

(3) Collection activities may continue during the review process, however, the Commission may suspend its collection efforts if the interests of the State will not be compromised. If there is any indication that the taxpayer filed the settlement offer simply to delay collection of the tax or that the delay would interfere with collecting the tax, the Commission will immediately resume collection efforts.

(4) Interest and penalty will continue to accrue on any unpaid tax debt while the settlement is being considered.

(b) **Effect of accepted Settlement Agreement.**

(1) A Settlement Agreement relates to the entire liability of the taxpayer with respect to the period and type of tax for which the application is submitted, and all questions of such liability are conclusively settled thereby.

(2) Neither the Commission nor the taxpayer shall, upon acceptance of the proposed Settlement Agreement, be permitted to revise the agreement except by reason of the following:

(A) Falsification or concealment of facts or assets by the taxpayer; or

(B) Mutual mistake of a material fact concerning the basis for a Settlement Agreement; or

(C) Assets were fraudulently transferred prior to the agreement or were liquidated during the review process; or

(D) Taxpayer failed to comply with the terms of the agreement.

(3) Settlement of a civil liability does not constitute a settlement of a criminal liability concerning the tax period in question.

(4) Tax liens will be released only after an application for a Settlement Agreement is accepted and the amount offered is paid in full.

710:1-5-89. Payment

(a) No payment is required to be paid when the Settlement Agreement Application is submitted to the Commission.

(b) Full payment of the amount offered in settlement of the tax liability must be made within thirty (30) days from date of notification that the proposed Settlement Agreement has been accepted. Payment of the accepted settlement amount by cash, cashier's check, money order, or charged to an approved credit card must be made by the payment due date indicated on the acceptance notice. [**See: www://oktax.state.ok.us/oktax/gn-payopt.html or Call: 1-800-2PAY-TAX**]

(c) Any payment made with the application will, if directed by the Applicant, be returned if the Settlement Agreement is declined or withdrawn. Interest will not be paid on any returned payment.

(d) In appropriate circumstances, the Commission may consider proposed Settlement Agreements that provide for payments to be made over a period of time based on future income.

(e) The Settlement Agreement becomes void if taxpayer defaults on payment under the agreement.

(f) The Settlement Agreement becomes void if the agreement was obtained by fraud or misrepresentation of a material fact.

710:1-5-90. If the proposed Settlement Agreement is declined

(a) If the application for a Settlement Agreement is declined, the taxpayer will be notified by the Account Maintenance Division in writing.

(b) Taxpayer should immediately contact the Commission to arrange payment of the entire liability. If immediate payment of the entire liability is not possible, the taxpayer may request payment through the regular collection procedures.

710:1-5-91. Return of Settlement Agreement Application

The Commission may reject the Settlement Agreement Application as not processible for any of the following reasons:

(1) The applicant is not adequately identified (name, address, ID#, etc.) or required signatures are not provided.

(2) The settlement offer includes an amount already collected or subject to refund.

(3) The tax liability is not adequately identified.

(4) The Settlement Agreement Application does not show a reason or a statement supporting the reason for the settlement offer has not been provided.

(5) Financial statements or other documentation have not been included or are incomplete.

(6) The Commission's records indicate noncompliance with filing of required returns.

(7) The applicant is currently under bankruptcy court jurisdiction.

(8) Power of Attorney Form (if indicated) has not been included.

710:1-5-92. Exclusivity of request for settlement of tax liability

Procedures governing settlement of final tax liabilities, pursuant to this Part, are exclusive and must be clearly distinguished from procedures required for the filing of a timely

protest of a proposed tax assessment or a protest of a denial of a claim for refund of taxes as set out in 710:1-5-21 through 710:1-5-48. The procedures for the filing, consideration, and disposition of **petitions for abatement or adjustment of a tax assessment** pursuant to the provisions of 68 O.S. § 221(e) are set out in 710:1-5-70 through 710:1-5-78. Procedures for settlement of disputed, unliquidated tax claims or assessments are set out in 710:1-5-13.

710:1-5-93. Officials ineligible for Settlement Agreement

No appointed or elected officials may apply for settlement pursuant to this Section.

[OAR Docket #03-1057; filed 5-29-03]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 20. ALCOHOL, MIXED BEVERAGES, AND LOW-POINT BEER

[OAR Docket #03-1058]

RULEMAKING ACTION:
Permanent final adoption
RULES:
Subchapter 3. Alcoholic Beverages
710:20-3-2. Payment or remittance of the excise tax on alcoholic beverages [AMENDED]
710:20-3-3. Monthly tax reports required [AMENDED]
Subchapter 5. Mixed Beverages
710:20-5-1. Procedures for payment of gross receipts tax on mixed beverage, caterer, hotel beverage, beer and wine, mixed beverage/caterer combination, and special event license holders; definitions [AMENDED]
710:20-5-9. Commission may require security from vendor [NEW]
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ANALYSIS:
Section 710:20-3-2 has been amended to clearly set out the liability for collection and payment of the tax by the class of nonresident sellers, first sellers, and importers in possession of any untaxed alcoholic beverages shipped of delivered in to this State.
Section 710:20-3-3 has been amended to correct a scriveners error.
Section 710:20-5-1 has been amended to add definitions for "alcoholic beverages" and for "mixed beverages".
Section 710:20-5-9 has been added to implement and bring the rules into conformity with 37 O.S. § 578(C), which authorized a minimum bond of $1,500.00 for new mixed beverage permits.
CONTACT PERSON:
Carolyn Swifthurst, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, OK 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 3. ALCOHOLIC BEVERAGES

710:20-3-2. Payment or remittance of the excise tax on alcoholic beverages

(a) **Liability of wholesaler.** The excise tax levied upon the sale, distribution, use or possession of alcoholic beverages, except low-point beer, in this State shall be paid by the licensed wholesaler to the licensed distributor at the time of consummation of the taxable sale to the licensed wholesaler.

(b) **Remittance by distributor.** The excise tax in (a) of this Section shall be remitted to the Oklahoma Tax Commission on a monthly basis by the licensed distributor upon all taxable sales of such products to licensed wholesalers made during the preceding month, whether the consideration for each such sale was money or otherwise and whether such sales were consummated within or without the State of Oklahoma.

(c) **Liability for tax on stored beverages.** Any licensed distributor who causes any alcoholic beverages, except beer, to be shipped into this State and stored as alcoholic beverages in transit shall be liable for any tax assessed pursuant to audit of any storage facility wherein all such stored merchandise is not accounted for in the total of the shipments to licensed wholesalers in this State and the shipments out of this State.

(d) **Liability of nonresident seller, first seller, importer.** Any holder of a nonresident seller license in possession of any alcoholic beverages shipped or delivered into this State shall be liable for the excise tax levied upon the sale, distribution, use, or possession of alcoholic beverages, in accordance with *OAC* 710:20-3-3 and 710:20-3-4.

710:20-3-3. Monthly tax reports required

(a) **General requirements.** Every licensed distributor and wholesaler and every bonded warehouseman who is licensed by the Oklahoma Alcoholic Beverage Laws Enforcement (ABLE) Commission to ship or cause to be shipped into this State or to sell, distribute, use, possess or in any manner deal with alcoholic beverages, except beer, in this State, shall report

monthly to the Oklahoma Tax Commission, all sales, distributions, receipts and shipments of all such alcoholic beverages in this State during the preceding month, on verified monthly alcoholic beverage tax report forms as prescribed by the Oklahoma Tax Commission. Each such monthly report shall include the minimum information required by the Oklahoma Alcoholic Beverage Control Act and any additional information and attachments that may be required by the prescribed tax report form.

(b) **Incomplete or insufficient reports.** Any monthly alcoholic beverage tax report form that does not include all information requested on the prescribed form or that is not duly executed and verified shall not constitute the mandatory report.

(c) **Failure to file.** In the event a complete monthly report is not filed on or before the due dates in accordance with 710:20-3-4, of the Oklahoma Tax Commission Rules, the report shall be delinquent. [**See:** 37 O.S. §§ 502 et seq.]

SUBCHAPTER 5. MIXED BEVERAGES

710:20-5-1. Procedures for payment of gross receipts tax on mixed beverage, caterer, hotel beverage, beer and wine, mixed beverage/caterer combination, and special event license holders; definitions

(a) **General provisions.** Pursuant to the authority and power granted to the Oklahoma Tax Commission, the excise tax imposed upon the total gross receipts of a holder of a mixed beverage, caterer, hotel beverage, beer and wine, mixed beverage/caterer combination, or special event license issued by the ABLE Commission, shall be paid through monthly tax reporting procedures as established by rules of this Commission, and shall be implemented, administered and enforced in accordance with said rules. [**See:** 37 O.S. §576]

(b) **Definitions.** The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

(1) ***"Alcoholic beverage"*** *means alcohol, spirits, beer, and wine*, as those terms are defined in Section 506(3) of Title 37 of the Oklahoma Statutes *and also includes every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by human beings, but does not include low-point beer,* as that term is defined in 37 O.S. § 163.2.

(2) ***"Mixed beverages"*** *means one or more servings of a beverage composed in whole or part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage, beer and wine, caterer, or special event license.* [**See:** 37 O.S. § 506(22)]

710:20-5-9. Commission may require security from vendor

(a) **General provisions.** To assure payment of any mixed beverage tax due, the Commission shall require that sufficient security be deposited with the Commission. Security may be in the form of:

(1) A corporate surety bond, furnished by a surety licensed to do business in Oklahoma;

(2) A certificate of deposit issued by a bank or financial institution, issued to the "taxpayer **OR** the Oklahoma Tax Commission";

(3) Cash; or,

(4) Any other form agreed upon by the Commission and person liable for remitting the tax.

(b) **Amount of required bond.** The amount of the bond shall not be less than an amount equal to the average estimated quarterly gross receipts tax liability and not greater than an amount equal to three times the average estimated quarterly gross receipts tax liability.

(c) **Minimum bond.** The minimum bond required for a new permit holder shall not be less than One Thousand Five Hundred Dollars ($1,500.00).

(d) **Forfeiture or cancellation of bond** The forfeiture or cancellation of such bond or security shall result in the automatic revocation of the mixed beverage tax permit issued pursuant to provisions of the Oklahoma Alcoholic Beverage Control Act.

[OAR Docket #03-1058; filed 5-29-03]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 60. MOTOR VEHICLES

[OAR Docket #03-1060]

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Permanent final adoption
RULES:
Subchapter 4. Registration Pursuant to the International Registration Plan
710:60-4-3. Registration [AMENDED]
710:60-4-6. ~~Owner-operator vehicles~~ Registration as an owner-operator [AMENDED]
710:60-4-10. Renewal applications [AMENDED]
710:60-4-11. Enforcement [AMENDED]
710:60-4-13. Amended mileage/adding states [AMENDED]
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n/a
ANALYSIS:
The amendments to Sections 710:60-4-3, 710:60-4-6, and 710:60-4-10 bring the rules into compliance with the requirements of Section 906 of the International Registration Plan (IRP). The amendments require certain specific information to be provided upon making application to proportionally register a vehicle in Oklahoma. The amendments and the IRP require that persons registering vehicles under the IRP provide a street address, telephone number, and such other information as will ensure that every owner-operator who claims Oklahoma as a base jurisdiction can be located for audit purposes. [47:1120] The amendments to Sections 710:60-4-11 and 710:60-4-13 delete references to specific dates for expiration and enforcement purposes and use more general terminology applicable to the staggered registration provisions of the Act. [47:1115]
CONTACT PERSON:
Carolyn Swifthurst, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, OK 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 4. REGISTRATION PURSUANT TO THE INTERNATIONAL REGISTRATION PLAN

710:60-4-3. Registration

(a) **General requirements for registration.** Before a vehicle can be proportionally registered in the state of Oklahoma the registrant must:

(1) Have an established place of business located in Oklahoma or satisfy the requirements for registration as a owner-operator;

(2) Complete the application ~~and~~ , all required schedules, and provide backup documentation required by the Commission to verify the information submitted by the applicant;

(A) The application must include the mailing address and telephone number of the applicant, for verification purposes.

(B) If the application is signed by someone other than the registrant, pursuant to a power of attorney, the name or names of the individuals to whom such authority is granted must be included in the power of attorney executed by the applicant.

(3) Provide proof of payment (or suspension from the levy) of Federal Heavy Vehicle Use Tax;

(4) Provide proof of financial responsibility pursuant to 47 O.S. §7-602 (liability insurance);

(5) Except in the case of private carriers, provide proof of operating authority;

(6) Provide proof of ownership;

(7) Provide proof of payment of prior registration fees, if the vehicle was registered pursuant to the IRP in another jurisdiction; and

(8) Pay all applicable fees to complete registration.

(b) **Registration periods.** Application for registration may be made at any time during a registration year.

(c) **Where to make application.** Application for registration may be submitted through the mail to the Prorate Section, Motor Vehicle Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma, 73194, or by applying in person at the Oklahoma City, Oklahoma office of the Tax Commission, Motor Vehicle Division, Prorate Section, located at 409 N.E. 28th Street. A list of other locations where application may be submitted is available from the Prorate Section.

(d) **Incomplete applications.** No application for proportional registration shall be processed unless the applicant has submitted the documentation required in (a) of this Section. Failure to submit the required documentation shall result in denial of the application.

710:60-4-6. ~~Owner-operator vehicles~~ Registration as an owner-operator

~~Proportional registration for owner-operators may be accomplished by one of the following procedures:~~

~~(1) **When applicant is the owner-operator.** The owner-operator (lessor) may be the registrant and the vehicle may be registered in the name of the owner-operator. The application must be completed in accordance with the operational records of the owner-operator. A current telephone listing, Oklahoma street address, and an Affidavit for Mandatory IRP Records must also be submitted. If using a carrier to satisfy the requirement of operating authority or proof of insurance, the owner-operator must also submit an executed copy of the lease between the owner-operator and the carrier; or~~

~~(2) **When applicant is a lessee.** The lessee may be the registrant at the option of the lessor and the vehicle may be registered by the carrier. The application must be completed according to the operational records of the carrier. The plates and cab cards shall be the property of the lessee. The carrier must meet the requirements of an established place of business in Oklahoma as set out in 710:60-4-5.~~

(a) **General requirements.** Owner-operators who cannot fully comply with Section 218 of the International Registration Plan and 710:60-4-5, may register in Oklahoma, provided that the owner-operator furnishes a street address, a telephone number, and satisfactorily demonstrates that the owner-operator can be located in Oklahoma for purposes of audit.

(b) **Street address.** The street address in Oklahoma must be the street address where the owner-operator's records are maintained or where the records will be delivered for purposes of audit. An owner-operator may not utilize the address of a registration agent to satisfy the requirement of an address in Oklahoma unless the owner-operator's records are maintained at the registration agent's address, or there is a continuing relationship between the owner-operator and registration agent under which the records are to be provided for audit at the registration agent's address.

(c) **Telephone number.** The telephone number shall be the telephone number of the owner-operator or of a person who has knowledge of the owner-operator's whereabouts and is able to contact the owner-operator within a reasonable time upon request.

(d) **Owner-operator can be located.** The owner-operator must submit documentation that indicates the owner-operator can be located in Oklahoma for purposes of audit. Documentation acceptable for meeting the requirements of this subsection include, but are not limited to:

(1) Proof of Oklahoma residency;

(2) Employment of owner-operator or owner-operator's spouse in Oklahoma;

(3) Enrollment of one or more of owner-operator's children in an Oklahoma school or schools;

(4) Ownership of real property in Oklahoma; or,

(5) Lease to an Oklahoma-based motor carrier.

(e) **Requirement of lease.** An owner-operator using a carrier to satisfy the requirement of operating authority or proof of insurance must submit an executed copy of the lease between the owner-operator and a motor carrier.

710:60-4-10. Renewal applications

When an application for renewal of proportional registration is not received on or before ~~December 1,~~ the first day of the month of expiration, the applicant cannot be assured that a registration cab card and plate will be issued for display of credentials prior to the enforcement date ~~of March 3~~. Registrants whose renewal application is not received on or before ~~December 31~~ the expiration date shall be subject to enforcement for display of credentials on ~~January 1~~ the day following the expiration date.

710:60-4-11. Enforcement

(a) Credentials for the current registration year may be displayed upon receipt, but **should** be displayed on the vehicle by 12:01 a.m., ~~March 3,~~ on the enforcement date, since enforcement for display of current registration year credentials will begin ~~March 3,~~ on the enforcement date, unless extended by the Commission.

(b) Registrants whose renewal application is not received on or before ~~December 31~~ the expiration date cannot avail themselves of the grace period and shall be subject to enforcement ~~on January 1~~.

(c) Vehicles apprehended for improper registration credentials may be subject to arrest and fine in the jurisdiction in which the violation occurs.

(d) IRP apportioned registration does not include special fuel requirements, operating authority or overdimensional and overweight permits.

710:60-4-13. Amended mileage/adding states

(a) If the operations of a registrant change to include additional states during the registration year, the additional states can be added to the fleet. The states must be added to all vehicles in the fleet. The original mileage percentages **cannot** be changed. The addition of a state or states will result in a total fee assessment in excess of One Hundred percent (100%).

(b) To apply to add states, the registrant must complete OTC Form Schedule B and submit OTC Form Schedule A or a list of currently registered vehicles. The appropriate space on the form should be marked to show the type of transaction and mileage must be shown for each state added. If there is actual mileage for a state being added, actual miles must be included. If not, estimated must be used.

(c) Estimated mileage must be based on reasonable proposed operations of the fleet during the entire calendar year for which a state is being added. The applicant shall be required to substantiate the estimation by submitting a full statement of the proposed method of operation on a form provided by the Commission. The statement shall include reasonable information relating to origin, destination, and number of trips. If requested, subsequent to initial review and prior to disapproval, the applicant shall submit supporting documentation, which may include verifiable contracts or brokerage agreements, or both. Alternatively, owner operators may provide a copy of the miles reported by the carrier with which the vehicle and driver have a valid lease agreement. Additionally, the Division may independently substantiate mileage through other sources available to the Oklahoma Tax Commission.

(d) In the absence of a full statement of the proposed method of operation, the Commission shall require the applicant to utilize the 2nd year estimated mileage chart established by the Commission. The chart mileage shall be multiplied by the number of registered vehicles.

(~~c~~ e) Once the fees are paid, new IRP cab cards will be issued reflecting the additional state(s).

[OAR Docket #03-1060; filed 5-29-03]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 60. MOTOR VEHICLES

[OAR Docket #03-1061]

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Subchapter 4. Registration Pursuant to the International Registration Plan
710:60-4-5. Established place of business ~~requirements~~ [AMENDED]
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ANALYSIS:
Section 710:60-4-5 has been amended to provide for improved compliance and to clarify documentation needed for establishing a registrant's place of business in Oklahoma as required by recent amendments to Section 218 of the IRP. The new provisions will not become effective until October 1, 2003.
CONTACT PERSON:
Carolyn Swifthurst, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, OK 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH A LATER EFFECTIVE DATE OF OCTOBER 1, 2003:

SUBCHAPTER 4. REGISTRATION PURSUANT TO THE INTERNATIONAL REGISTRATION PLAN

710:60-4-5. Established place of business ~~requirements~~

(a) **General provisions.** To verify a registrant's established place of business in Oklahoma, the registrant must provide proof of a physical structure, designated by a street number or road location and open during normal business hours, which contains within it:

(1) A telephone or telephones publicly listed in the name of the fleet registrant;

(2) A person or persons conducting the fleet registrant's business; and,

(3) The operational records of the fleet, unless such records can be made available in accordance with the provisions of Section 1602 of the International Registration Plan.

(b) **Specific compliance provision (IRP Decis. 99-4).** An "established place of business" as utilized in these rules and in Sections 210 and 218 of the International Registration Plan cannot be provided for the registrant by or in the form of a registration agent or other third party.

(c) **Physical structure.** A physical structure, owned, leased, or rented by the registrant, wherein operational records of the fleet can be made available for audit purposes, must be evidenced by:

(1) A current real estate tax bill;

(2) Photocopies of rent receipts or mortgage payments which indicate the business address;

(3) A current real estate rental contract and an original power of attorney conforming with Section 20 of Title 16 of the Oklahoma Statutes, if the contract is signed by someone other than the registrant; or,

(4) Proof of insurance coverage.

(d) **Publicly listed telephone.** A telephone or telephones, located in the structure, which is publicly listed in the name of the fleet registrant, must be evidenced by one of the following:

(1) A telephone bill in the registrant's name, indicating the business address; or,

(2) A copy of a current listing in the current telephone book, or verification of a current, active directory listing for the registrant's business address from a telephone company.

(e) **Specific compliance provision (IRP Decis. 99-4).** A registrant may not utilize a telephone listing indicating the same telephone number as that of any other person in this state as a qualifying telephone listing under subsection (d).

(f) **Person or persons conducting registrant's business.** ~~The presence of any person or persons in this state conducting the registrant's business must be evidenced by :~~

~~(1) Submission of the registrant's federal employer's identification or other identification number and verification by the Commission that the registrant is an employer for purposes of Oklahoma Withholding; or,~~

~~(2) A written statement by the registrant providing the name of the person conducting the registrant's business, a description of the person's duties, and such other information as the Commission may require.~~ The person conducting the trucking-related business of the registrant must be in the permanent employment of the registrant, as evidenced by submission of the registrant's federal employer's identification or other identification number and verification by the Commission that the registrant is an employer for purposes of Oklahoma Withholding.

(g) **Specific compliance provision (IRP Decis. 99-4).** A registrant may not utilize a registration agent or its employees to satisfy the requirement of the presence of a person or persons in this state conducting the registrant's business.
(h) **Affidavit.** The registrant must execute the uniform Affidavit for Mandatory IRP Records provided by the Commission.
(i) **Use of registration agent.** Nothing in this Section shall be construed as prohibiting a registration agent from preparing or filing proportional registration applications or other documents for a registrant who meets the requirements set forth in this Section.

[OAR Docket #03-1061; filed 5-29-03]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 60. MOTOR VEHICLES

[OAR Docket #03-1059]

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RULES:
Subchapter 4. Registration Pursuant to the International Registration Plan
710:60-4-15. Mileage [AMENDED]
Appendix A. Estimated Mileage Chart for New IRP Registrants [REVOKED]
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Appendix A. Estimated mileage chart for new IRP registrants [REVOKED]
Appendix A. Estimated mileage chart for new IRP registrants [NEW]
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ANALYSIS:
These amendments to existing Section 710:60-4-15 establish a methodology for determining an annual estimated mileage chart for use in registering fleet vehicles under the IRP. Use of the chart is limited to vehicles that have not been operated in the state during the preceding year, where a full statement of proposed operations is not provided or is unavailable. The methodology defined by the rule will remain unchanged so long as the underlying Section 800 requirements remain static. However, the chart provided to registrants for reference each year will be recomputed to reflect the most current figures. Under these circumstances, the Commission determined that the practice of including the chart as an "appendix" to these rules should be discontinued. Thus, the existing chart is being revoked, rather than another being adopted in its place.
CONTACT PERSON:
Carolyn Swifthurst, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, OK 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 4. REGISTRATION PURSUANT TO THE INTERNATIONAL REGISTRATION PLAN

710:60-4-15. Mileage

(a) If an applicant for proportional registration operated for ninety (90) or more days during the mileage reporting period of the preceding year, actual operated miles must be filed. For those jurisdictions where there is no mileage to report, but for which proration is desired, estimated miles must be filed.
(b) If an applicant for proportional registration is new, or the applicant did not operate for ninety (90) days or more during the reporting period, estimated miles must be filed for all jurisdictions for which proration is sought.
(c) Estimated mileage will not be accepted after the first year of prorate registration in Oklahoma. Provided, in cases where actual operation was less than ninety (90) days during the mileage reporting year, estimated mileage will also be accepted for the second year.
(d) Estimated mileage must be based on reasonable proposed operations of the fleet during the entire calendar year for which proportional registration is being sought. The applicant shall be required to substantiate the estimation by submitting a full statement of the proposed method of operation on a form provided by the Commission. The statement shall include reasonable information relating to origin, destination, and number of trips. If requested, subsequent to initial review and prior to disapproval, the applicant shall submit supporting documentation, which may include verifiable contracts and/or brokerage agreements. Alternatively, owner operators may provide a copy of the miles reported by the carrier with which the vehicle and driver have a valid lease agreement. Additionally, the Division may independently substantiate mileage through other sources available to the Oklahoma Tax Commission.
(e) In the absence of a full statement of the proposed method of operation, the Commission shall require the applicant to utilize the estimated mileage chart ~~set out in Appendix A of this Subchapter~~ provided by the Commission. The chart shall be developed and updated annually by dividing the total actual

miles for each member jurisdiction reported by Oklahoma registrants by the total number of vehicles registered with actual miles for the jurisdiction.

(f) Failure to provide a full statement of the proposed method of operation, or in the alternative, to submit the application based upon the estimated mileage chart developed by the Commission shall result in denial of the application for proportional registration.

APPENDIX A. ESTIMATED MILEAGE CHART FOR NEW IRP REGISTRANTS [REVOKED]

APPENDIX A. ESTIMATED MILEAGE CHART FOR NEW IRP REGISTRANT

JURISDICTION	MILEAGE	JURISDICTION	MILEAGE	JURISDICTION	MILEAGE
ALABAMA	1,994	MICHIGAN	1,287	TENNESSEE	1,846
ARIZONA	1,152	MINNESOTA	1,396	TEXAS	25,428
ARKANSAS	4,128	MISSISSIPPI	1,551	UTAH	438
CALIFORNIA	1,766	MISSOURI	5,197	VERMONT	151
COLORADO	3,603	MONTANA	737	VIRGINIA	744
CONNECTICUT	220	NEBRASKA	1,963	WASHINGTON	849
DELAWARE	61	NEVADA	379	WEST VIRGINIA	384
DISTRICT OF COLUMBIA	15	NEW HAMPSHIRE	160	WISCONSIN	1,184
FLORIDA	1,226	NEW JERSEY	380	WYOMING	566
GEORGIA	1,205	NEW MEXICO	2,535	ALBERTA	384
IDAHO	484	NEW YORK	1,192	BRITISH COLUMBIA	60
ILLINOIS	2,925	NORTH CAROLINA	1,050	MANITOBA	134
INDIANA	1,980	NORTH DAKOTA	916	NEW BRUNSWICK	138
IOWA	2,388	OHIO	1,231	NEWFOUNDLAND	368
KANSAS	5,668	OKLAHOMA	30,941	NOVA SCOTIA	258
KENTUCKY	1,568	OREGON	707	ONTARIO	476
LOUISIANA	2,574	PENNSYLVANIA	1,263	PRINCE EDWARD ISLAND	78
MAINE	240	RHODE ISLAND	64	QUEBEC	94
MARYLAND	321	SOUTH CAROLINA	686	SASKATCHEWAN	300
MASSACHUSETTS	373	SOUTH DAKOTA	882		

[OAR Docket #03-1059; filed 5-29-03]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 85. VARIOUS TAX INCENTIVES

[OAR Docket #03-1062]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Oklahoma Quality Jobs Program
710:85-1-2. Definitions [AMENDED]
710:85-1-3. Procedure upon qualification; reporting [AMENDED]
710:85-1-8. Procedure for filing claim, verification, payment, protest [AMENDED]
Subchapter 7. Oklahoma Film Enhancement Rebate Program [NEW]
710:85-7-1. Purpose [NEW]
710:85-7-2. Definitions [NEW]
710:85-7-3. Procedure upon qualification; payment [NEW]
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ANALYSIS:
Definitions set out in Section 710:85-1-2 have been amended to add the statutory definition of "start date" for the convenience of the reader and to ensure that the definition of "baseline employment" conforms with that promulgated by the Department of Commerce.

Section 710:85-1-3 has been amended to clarify that the notification of an approved establishment's "start date" is sent to the Commission by the Department of Commerce.

Section 710:85-1-8 has been amended to articulate precise parameters for recordkeeping, record formats, and record retention to an ensure that there is adequate information to verify claims.

Sections 710:85-7-1 through 710:85-7-3 have been promulgated to implement and administer the "Compete with Canada Film Act".
CONTACT PERSON:
Carolyn Swifthurst, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, OK 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. OKLAHOMA QUALITY JOBS PROGRAM

710:85-1-2. Definitions

In addition to terms defined in 68 O.S. § 3603, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Baseline employment" means an establishment's total number of jobs which existed in this state prior to approval of the establishment's application by the Oklahoma Department of Commerce. A job shall be deemed to exist in this state prior to approval of an establishment's application if the activities and functions for which the particular job exists have been ongoing at any time within six months prior to approval of the establishment. Upon approval of an application or upon the start date of a project, if it is more than sixty days later than the approval date, the Department shall determine an establishment's baseline employment to be its current employment or its average employment over the last four ~~quarter,~~ quarters, whichever is greater.

"Commission" means the Oklahoma Tax Commission

"Department" means the Oklahoma Department of Commerce.

"New direct jobs" means **"new direct jobs"** of a qualified establishment as recognized by the Oklahoma Department of Commerce.

"Qualified establishment" means an establishment for which the Commission has been notified of an approved application for incentive payments by the Oklahoma Department of Commerce.

"Start date" means *the date on which an establishment may begin accruing benefits for the creation of new direct jobs, which date shall be determined by the Department.* [**See:** 68 O.S.2001, § 3603]

710:85-1-3. Procedure upon qualification; reporting

(a) **Procedures upon initial qualification.** Upon receipt of each approved incentive offer and notification of the start date from the Oklahoma Department of Commerce ~~and notification of start date from the qualified establishment~~, the Commission will establish a withholding tax account. Such account shall be utilized by the qualified establishment to report the actual number and gross payroll of new direct jobs for the qualified establishment.

(b) **Reports required.** The reports, on forms prescribed by the Commission, shall be filed in the same manner as returns for withholding, reporting and remitting Oklahoma Income Taxes. A return shall be filed for each period following notification by the Commission, even if the qualified establishment has no new direct jobs and gross payroll for the period. [**See:** 68 O.S. §2385.1 et seq., OAC 710:90-1-1 through 710:90-7-3]

710:85-1-8. Procedure for filing claim, verification, payment, protest

(a) **Contents of claim.** As soon as practicable after the end of a calendar quarter, the qualified establishment shall file a

claim for gross payroll paid the previous quarter. The claim, on forms prescribed by the Commission, shall include:

(1) Name of qualified establishment;

(2) Identification number of qualified establishment;

(3) Period for which claim is filed;

(4) Actual number of new direct jobs during period of claim;

(5) Gross payroll of new direct jobs during period of claim;

(6) Net benefit rate; and

(7) Amount claimed for period.

(b) **Amount of claim not to include penalty, interest paid.** The amount claimed shall not include any portion of penalty and/or interest paid by the qualified establishment because of delinquent filing and/or payment of withholding tax. [**See:** 68 O.S. §2385.6]

(c) **Verification of claim.** The Commission shall verify the actual gross payroll utilizing information available to the Commission. All participating companies are required to retain documentation to verify the quality jobs employees and rebate amounts claimed. Documents retained shall include all employee names, both base and new employees, social security numbers, original hire dates, individual wages drawn for each month, and copies of claim forms for the duration of the contract. These records shall be retained in both hard copy form and in an electronic format approved by the Commission for a minimum of three (3) years after the final rebate payment is received by the company. In the event the Commission is unable to verify the gross payroll, the Commission may request additional information from the qualified establishment or may request the qualified establishment revise its claim to the amount verified by the Commission.

(d) **Payment of claim.** Except as provided in 710:85-1-11, the qualified establishment whose claim has been approved shall receive a warrant in an amount not to exceed the net benefit rate multiplied by the actual gross payroll for new direct jobs for the calendar quarter for which the claim is filed.

(e) **Procedure when claim cannot be verified or is revised.** The following shall apply when a claim cannot be verified or is revised by the Commission.

(1) The qualified establishment may, within thirty (30) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or ~~his~~ a duly authorized agent setting out:

(A) a statement of the action ~~as determined~~ by the Commission that is protested;

(B) a statement of the qualified establishment's disagreement with such action; and

(C) supporting documentation relied on by the qualified establishment in support of its claim.

(2) If the qualified establishment fails to file a written protest within the thirty (30) days, then the action of the Commission shall become final and no appeal will be entertained.

(3) A protest to the action of the Commission filed by a qualified establishment shall be governed by 710:1-5-21 through 710:1-5-48.

SUBCHAPTER 7. OKLAHOMA FILM ENHANCEMENT REBATE PROGRAM

710:85-7-1. Purpose

The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. § 250.1 et seq. and to facilitate the administration and payment of certain tax incentives pursuant to the *Compete with Canada Film Act*. [**See:** 68 O.S.2001, § 3621 et seq.]

710:85-7-2. Definitions

In addition to terms defined in 68 O.S. § 3623, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Commission" means the Oklahoma Tax Commission.

"Fund" means the Oklahoma Film Enhancement Rebate Program Revolving Fund.

"Office" means the Oklahoma Film Office.

710:85-7-3. Procedure upon qualification; payment

(a) **Procedures upon approval by Office.** Upon notification to the Commission of each approved claim by the Office, the Commission will verify:

(1) That the claim of the production company contains an affidavit stating that the company has not received an exemption from sales taxes pursuant to the provisions of 68 O.S. § 1357(21); and,

(2) That an Oklahoma income tax return has been filed by the claimant for the tax year in which the production expenses were made.

(b) If the facts set out in (a) of this Section cannot be verified, then the Commission shall require repayment of previously exempted sales taxes, and documentation that the taxes have been repaid shall be included in the claim.

(c) **Payment of claims.** Upon approval of the claim by the Office and processing by the Commission, the Commission shall issue payment for all approved claims from funds in the "Fund". The amount of payments in any single fiscal year shall not exceed Two Million Dollars ($2,000,000.00). If the amount of approved claims exceeds the amount of funds available for rebate payments in the Fund, or if payment will cause total payments from the Fund to exceed Two Million Dollars ($2,000,000.00) in the fiscal year, then the payment may be made in part, if funds exist to do so, and any remaining approved claims will be carried over to the next fiscal year, subject to the same limitations for that year as set out in this Section.

[OAR Docket #03-1062; filed 5-29-03]

TITLE 715. TEACHERS' RETIREMENT SYSTEM
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #03-2022]

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None
ANALYSIS:
715-1-1-4 is being amended to update the agency's address.
CONTACT PERSON:
Jacqueline Scott Shannon, 521-4743

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

715:1-1-4. Administrative office

The Teachers' Retirement System has office space located in the ~~Oklahoma School Boards Association Building, 2801~~ Oliver Hodge Education Building, 2500 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105. The mailing address for correspondence is TRS, P. O. Box 53524, Oklahoma City, OK 73152. The main telephone number is (405) 521-2387. The toll-free telephone number for calls originating outside the Oklahoma City local calling area is 1-877-738-6365. The Teachers' Retirement System's website is ~~www.state.ok.us/~okteachers/~~ www.trs.state.ok.us. Members are encouraged to visit the Retirement Office, or make written inquiries regarding any matter pertaining to their retirement accounts.

[OAR Docket #03-2022; filed 6-4-03]

TITLE 715. TEACHERS' RETIREMENT SYSTEM
CHAPTER 10. GENERAL OPERATIONS

[OAR Docket #03-2023]

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Subchapter 1. Membership Provisions
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715:10-1-7. [AMENDED]
Subchapter 5. Establishing Other Service Credits
715:10-5-15. [AMENDED]
715:10-5-32. [AMENDED]
Subchapter 11. Withdrawal from Membership and Refund of Deposits
715:10-11-2. [AMENDED]
Subchapter 13. Contributions for Membership Service
715:10-13-3.1. [AMENDED]
715:10-13-9. [AMENDED]
Subchapter 15. Service Retirement
715:10-15-18. [AMENDED]
715:10-15-22. [AMENDED]
Subchapter 17. Post-retirement Employment
715:10-17-1. [AMENDED]
715:10-17-5. [AMENDED]
715:10-17-6. [AMENDED]
715:10-17-7. [AMENDED]
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715:10-13-3.1 [AMENDED]
715:10-13-9. [AMENDED]
Subchapter 17. Post-Retirement Employment
715:10-17-1. [AMENDED]
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715:10-5-32. [AMENDED]
Subchapter 19. Tax Sheltered Annuity Program
715:10-19-8. [AMENDED]
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715:10-17-6. [AMENDED]
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20 Ok Reg 384
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02-1655
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715:10-1-4. [AMENDED]
715:10-11-2. [AMENDED]
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03-1026
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None
ANALYSIS:

715:10-1-4. will allow support personnel who voluntarily terminated TRS membership to rejoin the Retirement System. This rule is being changed to comply with an Internal Revenue Service Private Letter Ruling based on House Bill 1754 (2001).

715:10-1-7. was promulgated as an emergency rule following the 2002 legislative session and is now being promulgated as a permanent rule. It is being changed to comply with House Bill 2670 (enacted by the 2002 Legislature), which allows a participating employee of an education association to be retired upon qualifying for retirement, even if the employee continues to be employed by the education association.

715:10-5-15. is being changed to clarify documentation of active duty military service.

715:10-5-32. was promulgated as an emergency rule following the 2002 legislative session and is now being promulgated as a permanent rule. It is being amended to correct a reference to the Internal Revenue Code.

715:10-11-2. will allow support personnel who voluntarily terminated TRS membership to rejoin the Retirement System. This rule is being changed to comply with an Internal Revenue Service Private Letter Ruling based on House Bill 1754 (2001).

715:10-13-3.1 was promulgated as an emergency rule following the 2002 legislative session and is now being promulgated as a permanent rule. It is being amended to comply with House Bill 2344 (enacted by the 2002 Legislature), which requires local employers to remit statutory employer contributions for retired members who are employed after retirement.

715:10-13-9 was promulgated as an emergency rule following the 2002 legislative session and is now being promulgated as a permanent rule. It is being amended to comply with House Bill 2344 (enacted by the 2002 Legislature), which requires local employers to remit statutory employer contributions for retired members who are employed after retirement.

7 15-10-15-18. is being changed to clarify the Retirement System's ability to require re-examination of disabled retirees before age 60.

715:10-15-22. is being changed to allow disabled retirees to earn the same level of post-retirement pay as other retirees age 62 and older.

715:10-17-1 was promulgated as an emergency rule following the 2002 legislative session and is now being promulgated as a permanent rule. It is being amended to comply with House Bill 2344 (enacted by the 2002 Legislature), which requires inclusion of post-retirement earnings from employment in public education in the state of Oklahoma, whether the retiree is employed as an individual, corporation or other business structure. "Annuitant" and its definition are being stricken. "Retired Member" and its definition are being added.

715:10-17-5 was promulgated as an emergency rule following the 2002 legislative session and is now being promulgated as a permanent rule. It is being amended to comply with House Bill 2344 (enacted by the 2002 Legislature), which requires inclusion of post-retirement earnings from employment in public education in the state of Oklahoma, whether the retiree is employed as an individual, corporation or other business structure.

715:10-17-6 was promulgated as an emergency rule following the 2002 legislative session and is now being promulgated as a permanent rule. It is being amended to comply with House Bill 2344 (enacted by the 2002 Legislature), which changes the earnings limit for a retired member employed in Oklahoma public schools without affecting his or her monthly retirement benefit. The proposed amendments reflect the increased dollar amount of compensation for permissible post-retirement employment in public education in Oklahoma.

715:10-17-7. is being changed to allow disabled retirees to earn the same level of post-retirement pay as other retirees age 62 and older.

715:10-19-8. was promulgated as a Permanent Rule during the 2002 legislative session and was submitted correctly to the Office of Administrative Rules for publication in *The Oklahoma Register*. However, the Office of Administrative Rules published it incorrectly in *The Oklahoma Register*, Volume 19, Number 17, pp. 2736 and 2745. It is being amended to remove an extraneous word that had been stricken in the rule submitted for publication, but which was published incorrectly in *The Oklahoma Register*. The Oklahoma Administrative Procedures Act (75 O.S., §250 et seq.) requires that a rule as published in *The Oklahoma Register* is the official rule of a state agency, even if it is published incorrectly in the *Register* through no fault of the agency, as this rule was.

CONTACT PERSON:
Jacqueline Scott Shannon, 521-4743

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. MEMBERSHIP PROVISIONS

715:10-1-4. Optional TRS membership

The following employees are eligible to be members of the Teachers' Retirement System at their option:

(1) "Classified" employees regularly employed in the public, state-supported educational institutions of Oklahoma at any time during the five-year (5-year) period from July 1, 1938, to June 30, 1943.

(2) "Non-classified" employees employed by the public, state-supported educational institutions in Oklahoma for twenty (20) hours or more per week at a rate of compensation comparable to other persons employed in similar positions.

(3) "Classified" employees regularly employed in the public, state-supported educational institutions who have reached age fifty-five (55) at the time of employment.

(4) An employee on official sabbatical leave receiving at least one-half pay from the employing school or institution. Contributions for such employment shall be at a rate commensurate with the salary earned as a regular full-time employee in the last preceding school year. "Official sabbatical" means paid leave granted by the governing

board of the employing school or institution. The member must elect to participate and make contributions to TRS at the time of the sabbatical. Sabbatical leave cannot be purchased by the member at a later date.

(5) Any member absent from the teaching service who is eligible to continue membership under special provisions of 70 O.S. 17-116.2, provided that such employee continues to be employed by a governmental agency.

(6) A visiting professor from another state or nation.

(7) Classified and Non-Classified members employed after retirement. (See OAC 715:10-17-13).

(8) Full-time, non-classified optional personnel who previously have opted out of TRS under OAC 715:10-11-2 may revoke their election and return to TRS participation. Providing, however, that such member is not eligible to redeposit the account withdrawn under OAC 715:10-11-2 or purchase credit for service performed after termination of membership and re-instatement of membership.

715:10-1-7. Membership in education associations

Any member absent from employment in the public schools of Oklahoma because of election or appointment as a local, state or national education association officer shall be allowed to retain membership in TRS by making the contribution required of such member by Title 70 Okla. Stat. Section 17-116.2 and any other applicable statute. For purposes of this section the following shall apply:

(1) An education association is defined as an organization of educators established for the sole purpose of promoting the advancement of educational goals in Oklahoma or at the national level. A local or state association must be duly organized under the laws of the State of Oklahoma with a charter or articles of incorporation filed with the appropriate state agency and must comply with all applicable laws of the State of Oklahoma. A national association must be duly registered or chartered for the purpose of furthering educational goals at the national level.

(2) An "officer in an association" is a current member of TRS who is elected or appointed to an employment position within the association commensurate with a position in the public schools of Oklahoma defined as "classified" personnel by 70 O.S. 17-101. The officer must receive compensation for services rendered commensurate with compensation received for similar services in the public schools of Oklahoma.

(3) A member must notify TRS in writing on the form provided by TRS, his intent to elect to continue membership in TRS within thirty (30) days of becoming employed by an eligible association. In making this election the member shall agree to make payment in accordance with 70 O.S. 17-116.2 for the period of employment that qualifies for continued membership and to comply with all statutes and rules of TRS in maintaining membership.

(4) The maximum years of creditable service a member may receive for one such absence shall not exceed eight (8) continuous years. A member may again qualify for creditable service in an educational association provided that the member returns to employment in the public schools of Oklahoma for a minimum of the same number of years received as credit in the former education association.

(5) ~~Effective July 1, 1991, a member electing to continue membership in TRS and receive credit for employment by an educational association shall not be allowed to receive retirement benefits so long as the member is employed by an educational association.~~

~~(6) A member who after July 1, 1991, elects to receive credit for employment in an educational association shall be subject to the same post-retirement employment provisions for employment by any education association that apply to retired members employed by the public schools of Oklahoma (See Subchapter17 of this chapter.)~~

~~(7)~~ On the recommendation of the executive secretary, the Board of Trustees may deny eligibility to any local state or national association, when it is judged not to conform with the intent of 70 O.S. 17-116.2 or when it is determined that the association was not established for the sole purpose of promoting the advancement of education.

(~~8~~6) Effective July 1, 1994, a member may elect to continue membership as provided in Section (3) above only if the member has ten (10) years of contributory Oklahoma service prior to July 1, 1994.

SUBCHAPTER 5. ESTABLISHING OTHER SERVICE CREDITS

715:10-5-15. Application for military service

Members desiring to obtain credit for military service credit should request in writing to be billed for the cost of the credit. Included with the request should be a certified copy or copies of the member's service record showing the dates and nature of the member's active military duty [Form DD-214, Form DD-217 or VA Certification of Active Duty is the type of certification accepted as documentation of active duty military service]. TRS may require the member to make available to it such other evidence as may be required to establish the member's eligibility for military service. When the system determines the duty eligible for credit, it shall bill the member for the years of eligible credit. If the member becomes eligible for additional credit after the billing by TRS it shall be the responsibility of the member to request a second billing. Payment must be made by the date shown on the billing statement to avoid additional charges that may be required after the expiration of the billing date.

715:10-5-32. Roll-overs from other qualified plans or conduit IRAs

Credit for past service, including redeposits of withdrawn Oklahoma service, defined in this subchapter may be purchased with roll-overs from another retirement plan if allowed by ~~qualified under section 401(a) of~~ the Internal Revenue Code. This includes "conduit IRAs" which have been established with funds received from a 401(a) plan distribution for the purpose of holding the funds separate until a rollover can be

consummated, traditional IRAs, 403(b) tax-deferred annuity plans, 401(k) and 457 deferred compensation plans. For a roll-over payment to be accepted by Teachers' Retirement the following conditions must be met:

(1) The member should contact Teachers' Retirement to obtain a billing statement for the service to be purchased and convey the intent to make total or partial payment by a roll-over.

(2) The member must obtain written documentation from the originating institution verifying the amount of the distribution and that the monies came from a qualified plan under the Internal Revenue Code.

(3) The roll-over check from the qualified plan must be made payable to the Oklahoma Teachers' Retirement System, For Benefit Of and the member's name. The member must deliver the check to Teachers' Retirement with the required documentation and the billing statement for the service to be purchased. Teachers' Retirement will only accept payment for the amount of the billing statement. If the distribution from the originating institution is greater than the billing, the originating institution must be willing to generate a check payable to Teachers' Retirement for the exact amount of the billing statement. If the distribution from the originating institution is less than the billing, a personal check or cashier's check must accompany the roll-over proceeds, or the member may pay the balance through an installment payment plan. Payments in excess of the billing will not be accepted.

(4) A receipt for the payment will be issued after Teachers' Retirement has determined all documentation and the appropriate amount of funds have been received.

(5) Roll-overs must comply fully with the Internal Revenue Code and applicable Internal Revenue Service regulations.

SUBCHAPTER 11. WITHDRAWAL FROM MEMBERSHIP AND REFUND OF DEPOSITS

715:10-11-2. Withdrawal of optional membership while still employed

A non-classified optional member may voluntarily terminate TRS membership while continuing employment in the public schools of Oklahoma, if:

(1) Proper application is made to TRS. Withdrawal may be made no earlier than two (2) months after date of application and no earlier than the receipt by TRS of the final deposit to the member's account.

(2) The financial officer of the employing school certifies the effective date of the member's last contributions and the date payment will be remitted to TRS.

(3) Any member who withdraws under the conditions listed here ~~cannot~~ may rejoin the Teachers' Retirement System~~ while employed in a non-classified optional employee position~~, under the provision of OAC 715:10-1-4(8).~~ nor can a~~ A member who terminates membership under this section cannot redeposit contributions withdrawn under this ~~rule~~ section at a later date, even if the individual ~~becomes employed as a classified mandatory membership position which requires~~ returns to membership in TRS. The member will also forfeit any right to purchase ~~any Oklahoma, military, out-of-state or other~~ service performed from the date of termination of membership under this section and prior to the ~~mandatory~~ re-entry date, and will forfeit any unused sick leave accumulated from the date of termination of membership under this section and prior to the ~~mandatory~~ re-entry date.

(4) A member's contributions cannot be terminated, by either the member or the employer, without termination of TRS membership. Any member who ceases contributions while still employed in an optional position shall be deemed to have become an ineligible member of TRS, and will have forfeited all rights to retirement benefits provided by TRS.

(5) An employer may prevent its employees from withdrawing, under this rule, if the employer has a negotiated labor agreement, or formalized IRS plan, prohibiting such terminations and withdrawals.

(6) After-tax contributions can be refunded to an optional member prior to separation from service. Pre-tax contributions cannot be refunded until the member terminates employment. Following termination of employment, TRS should be contacted for the proper form to be completed for return of pre-tax contributions. Upon completion of the verification form by the school and the mandatory four-month waiting period, payment of the balance of the account will be made at the same time as regular withdrawals.

SUBCHAPTER 13. CONTRIBUTIONS FOR MEMBERSHIP SERVICE

715:10-13-3.1. Employer contribution rates

(a) Beginning July 1, 1998, through June 30, 2000, the local employer shall pay four and eight-tenths percent (4.8%) of the regular annual compensation of the member, up to the member's applicable maximum compensation level.

(b) Beginning July 1, 2000, through June 30, 2001, the employer shall pay five and eight-tenths percent (5.8%) of the regular annual compensation of the member up to the member's applicable maximum compensation level.

(c) Beginning July 1, 2001, through June 30, 2002, the employer shall pay six and eight-tenths percent (6.8%) of the regular annual compensation of the member up to the member's applicable maximum compensation level.

(d) Beginning July 1, 2002, the employer shall pay seven and five-hundredths percent (7.05%) of the regular annual compensation of the member up to the member's applicable maximum compensation level. In addition to the contribution rate of 7.05% on each active member's applicable regular annual compensation, the employer shall pay seven and five-hundredths percent (7.05%) of the regular annual compensation of any retired member as defined in OAC 715:10-17-1 and 715:10-17-5.

715:10-13-9. Monthly remittance report of contributions

A remittance report shall be prepared and filed with the Executive Secretary of the Teachers' Retirement System by the superintendent of schools or the financial secretary of a school, on the form supplied by the Teachers' Retirement System each month for each payroll period occurring during that month.

(1) School officials preparing the claims shall prepare an alphabetical list of all members comprising the report, the amount of contributions both taxed and non-taxed (paid by the employer on a before tax basis) for each employee and the total monthly compensation amount. The report must include a listing of the retired members who are employed by the school and the amount of employer contributions remitted for each retired member. Monthly compensation shall be the total compensation (including benefits) for the pay period and shall not in any case be less than 1/12th of the maximum compensation option elected by the member. (This list shall be known as TRS Form 50.)

(2) TRS Form 32 Summary of Payroll Remittance along with warrants covering the total amount to be remitted shall accompany TRS Form 50. All employee contributions, employer contributions, retired member contributions and ~~federal~~ matching funds for the pay period shall be remitted at the same time.

(3) TRS Form 1-A Personal Data shall be required for each new member of the Teachers' Retirement System. This form must be mailed to TRS prior to or with the first remittance report containing the name of a new employee/member.

(4) Payments for prior school years may not be included on current year reports. These payments must be handled as a back payment including any interest which may be due. Contact Teachers' Retirement System for proper billing of these amounts.

(5) Special permission may be obtained to make a computerized report on magnetic media when it is to the advantage of both the remitting agency and the Teachers' Retirement System. Details of computerized reporting requirements are available from Teachers' Retirement. Prior approval by TRS is required before a school may utilize this option. (Note: Approval by the State Department of Education for an alternate accounting system does not guarantee acceptance for use in TRS reporting.)

(6) The employer of each member shall deposit within ten (10) days of the last day of each calendar month all employer and employee contributions of each member due the Retirement System for payroll periods ending during the calendar month. Employer and employee contribution amounts not paid to the Retirement System after thirty (30) days from the end of the payroll month shall be subject to a monthly late charge of one and one-half percent (1 1/2%) of the unpaid balance to be paid by the employer to the Retirement System.

(7) Reports for the summer months of June, July and August must be made on three individual TRS Form 32 reports; however, they can all be sent to TRS at the same time. Reports for July and August of the preceding school year must be prepared and filed as separate reports from reports filed for the new year beginning July 1. Contributions due for one fiscal or school year shall not be commingled on the same remittance report with contributions for the next fiscal or school year.

(8) The executive secretary of TRS may, at any time, require additional items to be included on the monthly remittance report or require additional reports when in the executive secretary's judgment such information is necessary for the efficient operation of the System or to comply with state statutes.

(9) Receipts shall be issued by the Teachers' Retirement System to the remitting agency making the remittance.

SUBCHAPTER 15. SERVICE RETIREMENT

715:10-15-18. Discontinuance of disability retirement

The Medical Board may require any member who has been retired under a disability, and who has not reached age sixty (60), to undergo a medical examination ~~at the end of the first year of such retirement~~. Refusal to submit to the examination results in discontinuance of disability retirement benefits until such examination is completed. If the medical report from such examination leads to a recommendation by the Medical Board that a member's disability benefits should be terminated, that information will be provided to the member and the member will be advised of the right to appeal the recommendation. Disability benefits will continue to the member while the appeal process is before the Board of Trustees. Any member under age 62 receiving disability retirement benefits who returns to employment in any school or to a position similar to the position held when disability benefits were approved shall immediately be subject to discontinuance of benefits.

715:10-15-22. Reduction of disability benefits for excess earnings

All persons under ~~65~~ 62 years of age who are retired on a TRS disability must file by April 15 of each year a report of earnings received from gainful employment for the previous calendar year on a form provided by TRS. Failure to submit a timely report may result in a requirement for a medical re-examination or suspension of benefits until the report is filed. If it is determined that the person is receiving excessive earnings or is employed in a position requiring duties similar to those required in the position held before having been granted disability benefits, a medical re-examination may be required to determine if the person is still qualified for disability retirement.

SUBCHAPTER 17. POST-RETIREMENT EMPLOYMENT

715:10-17-1. Definitions

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

~~"**Annuitant**", as defined in TRS statutes at 70 O.S., §17-101 (12), shall be inclusive of any "member", "person", or "incorporated entity" that may be created by a retired member for purposes of contracting with the public schools of Oklahoma following retirement.~~

"**Public school**" means all schools, colleges, universities, state agencies, boards, commissions or other state educational entities conducted within the state supported wholly or partly by public funds and operating for any function of public education. All employment by any state agency, which would cause or allow the member to be enrolled in TRS as an active employee will constitute employment by a public school for the purposes of this section. Members receiving service retirement benefits may be employed in private schools, public schools in other states, and in private business without affecting their benefits.

"**Retired Member**" shall be inclusive of any person, who is receiving monthly benefits from the Teachers' Retirement System of Oklahoma, whether that person is an individual, incorporated entity, corporation, proprietorship, partnership, limited liability company or partnership, or any other business structure that contracts with a public school to perform duties ordinarily performed by classified or non-classified personnel.

"**Retirement**" means withdrawal from active service, with a retirement benefit in lieu thereof.

715:10-17-5. Permissible employment

Post-retirement employment in the public schools, institutions, and agencies covered by TRS is allowed after the break in employment outlined in OAC 715:10-17-2 has been met. Employment subject to this section shall include any services performed by a retired member, as defined in this subchapter, except for payments received as an independent contractor or consultant, pursuant to a lawful contract that complies with the requirements of 70 O.S. § 6101.2(B). The Teachers' Retirement System will follow guidelines in subsection B of Section 6-101.2 of Title 70 and federal guidelines from the Department of Labor and the Internal Revenue Service in determining when a retired person qualifies as an independent contractor or consultant.

715:10-17-6. Earnings limits

(a) ~~Effective July 1, 1999, a retired member, whether such member represents himself or herself to TRS or to the public schools of Oklahoma to be an individual or an incorporated entity who has been retired for thirty-six (36) or more months and who is employed to teach as an active classroom teacher, counselor or librarian in a public school in Oklahoma shall be able to earn up to Twenty-five Thousand Dollars ($25,000.00) annually from that post-retirement employment. Eligible retirees who are employd part-time in a position other than a teaching position shall have thier earnings under this rule prorated based upon the percentage of time the retiree is in a teaching position.~~ Effective July 1, 2002, the annual earnings limit from employment in the public schools of Oklahoma for a retired member under age 62 may not exceed one-half (1/2) of the member's final average salary used in computing retirement benefits or $15,000, whichever is less.

(b) ~~For a retiree under age 65, who has been retired fewer than thirty-six (36) months or who is not working as an active classroom teacher, a counselor or a certified librarian in the public schools of Oklahoma, annual post-retirement earnings from the public schools may not exceed one-half (1/2) of the member's average salary used in computing retirement benefits, or $15,000, whichever is less.~~ Effective July 1, 2002, the annual earnings limit from employment in the public schools of Oklahoma for a retired member age 62 or older may not exceed one-half (1/2) of the member's average salary used in computing retirement benefits or $30,000, whichever is less.

(c) ~~For a retiree under age 65, who has been retired fewer than thirty-six (36) months or who is not working as an active classroom teacher, a counselor or a certified librarian in the public schools of Oklahoma, annual post-retirement earnings from the public schools may not exceed one-half (1/2) of the member's average salary used in computing retirement benefits.~~ Notwithstanding the provisions of subsections (a) and (b) of this section, effective July 1, 2002, any retired member who retired as a classified member and who has been retired for thirty-six (36) months or more may earn up to $30,000 annually from employment in the public schools of Oklahoma.

(d) For purposes of this rule the following shall apply:

(1) Earnings shall mean "regular annual compensation" as defined in OAC 715:10-13-1 and 70 O.S. § 17-116.2(D). Earnings shall include any payment by a public school for services rendered by a retired member who is employed for any purpose whatsoever. Supplemental retirement payments paid by a former public school employer in accordance with 70 O.S. 17-105(9) or other applicable state statutes or payments to an independent contractor or consultant, pursuant to a lawful contract which complies with the requirements of 70 O.S. § 6-101.2(B), will not be counted as earnings.

(2) Earnings in excess of the maximum limit will result in a loss of future retirement benefits of one dollar ($1) for each one dollar ($1) earned over the maximum.

(3) The earnings limits will, in all cases, be applied on a calendar year basis from January 1 through December 31.

(4) The earnings limit for the calendar year in which a member retires shall be one-twelfth (1/12th) of the annual limit multiplied by the number of months the member is eligible to work and receive payments from the public schools of Oklahoma.

(5) The earnings limit for the calendar year in which a member reaches age ~~65~~ 62 shall be prorated in equal monthly increments with the month in which the member's birth date occurs counted at the higher earnings level.

(6) The earnings limit for the calendar year in which a member reaches his or her thirty-sixth (36th) month of retirement shall be prorated in equal monthly increments.

(7) For purposes of this ~~rule~~ section, for a retired member whose average salary exceeds $40,000, "average

salary" means the weighted or aggregated average used to compute monthly benefits for all the member's years of credited service.

715:10-17-7. Employment by a disabled retiree

A member retired under the disability retirement provisions of TRS is not eligible to be employed, in any capacity, by any school, public or private, in Oklahoma or in other state, from the date of retirement to age ~~65~~ 62. After age ~~65~~ 62, a member receiving disability retirement shall be eligible for post-retirement employment under the same conditions outlined above for other retired members.

(1) A disabled retiree who returns to Oklahoma public education employment at an annual salary equal to or greater than the annual salary received at the time of disability shall again become a contributing member of TRS. Disability retirement payments shall be suspended until the member has qualified to be restored to active service. Upon completion of six (6) months of membership service, the member shall be considered as having met the requirements to be restored to active service. At such time, disability retirement shall be terminated and the unused portion of the accumulated contributions shall be re-established in the member's active retirement account. If the member again retires under a regular retirement allowance, eligibility to receive a monthly retirement allowance shall be based on total years of creditable service (see OAC 715:10-15-21).

(2) Each retired member, who has not attained age 65, receiving disability retirement from TRS shall complete a TRS Report of Earned Income by Disabled Member Form and file such form with TRS by April 15 each year. The report will list all "earned" income from all sources. Failure to complete a TRS Report of Earned Income by Disabled Member Form may result in suspension of monthly benefits if the executive secretary of TRS deems such action necessary and appropriate (see OAC 715:10-15-22).

SUBCHAPTER 19. TAX-SHELTERED ANNUITY PROGRAM

715:10-19-8. Distributions

(a) Distributions from members' accounts must be made in accordance with the Internal Revenue Code. TRS will distinguish pre-'87 and post-'86 account balances. Both account balances will be distributed in accordance with ~~as~~ the applicable Internal Revenue Code provisions as they pertain to individual retirement accounts or annuities. The post-'86 account balance will include earnings after 1986 on the pre-'87 account balance. TRS will adjust each balance as required under IRS rules and regulations.

(b) Distribution of deposits made, or income earned, after December 31, 1988, will not be made to members except under one of the following circumstances:

(1) Attainment of age fifty-nine and one-half (59 $\frac{1}{2}$).

(2) Death.

(3) Disability. For the purpose of this section, a member is considered disabled if the member is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration.

(4) Separation from service (termination of employment).

(5) Retirement.

(6) Financial hardship (this distribution does not include accumulated earnings).

(7) Transfer to another tax-sheltered annuity program.

(c) Distributions from this tax-sheltered annuity program are subject to federal and state income taxes. Certain distributions may also be subject to penalties and/or excise taxes under the Internal Revenue Code. Members should seek tax advice prior to requesting distributions.

(d) Upon filing a properly executed distribution request application, a portion or all of a member's tax-sheltered annuity balance that qualifies under Internal Revenue Code regulations, may be distributed. Distributions, other than required minimum distributions and hardship withdrawals, are subject to a mandatory federal withholding of twenty percent (20%). (Distribution of these deposits shall not affect membership status.)

(e) Members who have attained age 59 $\frac{1}{2}$ are eligible to withdraw all or any portion of their deposits, subject to the provisions of subsection (i) of this section.

(f) Members who have not attained age 59 $\frac{1}{2}$ and who have not separated from service (retired or terminated employment) may withdraw only contributions made prior to January 1, 1989, unless a financial hardship exist. (See OAC 715:10-19-9.)

(g) Members eligible to take a distribution may take up to 80% of their account balance at any time. For those desiring to close their accounts, they may do so after earnings from the previous month have been posted. No earnings will be paid during the month in which an account is closed.

(h) Members who roll-over their tax-sheltered annuity accounts to another tax-sheltered annuity program may return these funds to the Teachers' Retirement System's program at a later time.

(i) At termination or retirement, a member may elect one of the following annuity distribution options subject to Internal Revenue Service requirements, including Code Section 403(b)(10), Code Section 401(a)(9), and the incidental death benefit requirements of Code Section 401(a);

(1) Minimum distribution option under Code Section 401(a)(9), with the post-1986 deferrals and all post-1986 earnings subject to the current Internal Revenue Service distribution rules and the pre-1987 account balance subject to the prior applicable Internal Revenue Service distribution rules.

(2) Lump sum surrender option, payable only to the member.

(3) Partial lump sum, where the member selects a specified lump sum payable to the member~~;~~.

(j) Earnings on Teachers' Retirement System tax-sheltered annuity accounts are calculated each month-end, based on accumulated deposits as of the first day of the month.

(k) The beneficiary(ies) designated on a member's regular retirement account also shall serve as beneficiary(ies) for the tax-sheltered annuity account, unless otherwise designated by the member.

(l) In the event the member dies, and if the member's sole beneficiary is his or her spouse, the surviving spouse has the same privileges to the account as the member. In order to satisfy minimum distribution rules, if the sole designated beneficiary is the member's surviving spouse, distributions must commence on or before the later of:

(1) the end of the calendar year immediately following the calendar year in which the member died; or

(2) the end of the calendar year in which the member would have attained age 70 $\frac{1}{2}$.

(m) Non-spousal beneficiaries (individuals or trusts) must begin taking a required minimum distribution no later than December 31 of the year following the year of the member's death. In the event there is no designated beneficiary, or if the member's estate or a charitable organization is the designated beneficiary, the entire account balance must be distributed by the fifth year following the member's death.

(n) In all cases, distribution of a termination or retirement benefit must begin no later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70 $\frac{1}{2}$ or retires.

[OAR Docket #03-2023; filed 6-4-03]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 5. FEES

[OAR Docket #03-1095]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
785:5-1-16. Fees required in other matters [AMENDED]
AUTHORITY:
Oklahoma Water Resources Board; 82 O.S. 2001, § 1085.2; and 62 O.S. 2001, §§ 41.5q and 41.5s.
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The Oklahoma Water Resources Board ("OWRB") has adopted amendments to OAC Section 785:5-1-16 in order to provide for charging convenience fees for electronic/online transactions. This amendment is needed in order to provide persons who do business with the OWRB the opportunity to utilize the Internet to file applications and reports and perform other functions currently done through the mail or in person. State law at 62 O.S. §§ 41.5q and 41.5s enacted in 2001 recognized the need for a state portal system to foster electronic commerce between constituents and state agencies, and allows agencies to charge convenience fees for online transactions under certain circumstances. The intended effect of the adopted amendment is to allow the OWRB and its constituents to utilize the state portal system to file applications and reports and perform other functions online, and to allow the OWRB to charge convenience fees therefor as authorized by state law.

The rules amendments adopted by the OWRB in this rulemaking implement portions of 82 O.S. 2001, § 1085.2 and 62 O.S. §§ 41.5q and 41.5s. Rules related to these rules amendments are codified in OAC Title 785, Chapter 5.
CONTACT PERSON:
James W. Schuelein, Administrative Services Division Chief, (405) 530-8800

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

785:5-1-16. Fees required in other matters

(a) The fee for making and certifying a measurement of the flow in any stream shall be $50.00 per measurement.

(b) The fee for computer services shall be as follows:

(1) Custom programming (when required) - $40.00 per hour.

(2) Printing charges - $.05 per page.

(3) Copying documents to diskette - $1.00 per document or file plus actual cost of Board provided diskette.

(4) Direct labor cost to convert raw data in data bases to machine-readable format, including but not limited to preparation of table and field descriptions.

(5) Actual cost of medium supplied by Board used in copying data from data base.

(c) The fee for a document search ~~(as allowed in 51 O.S. Supp. 1995, § 24A.5)~~ shall be $10.00 per hour.

(d) The filing fee for Information Sheets regarding domestic use of stream water from federal reservoirs shall be $50.00.

(e) The fee for entering an annual standing request for notice of special meetings shall be $18.00.

(f) For transcripts prepared by certified court reporter, stenographer or Board staff under the provisions of 785:4-3-6, the fee shall be the actual cost of the transcription. Prior to such transcription being made, the person requesting the

transcription (or appealing the Board's order) shall pre-pay to the Board the estimated cost of the transcribing the cassette tapes, with such estimate to be prepared by the Board. Upon completion of the transcription, the person requesting the same shall deposit the balance, if any, necessary for full payment of the transcription. The Board shall refund or credit any excess amount previously deposited.

(g) For copies of National Wetlands Inventory maps prepared by the U.S. Department of Interior Fish and Wildlife Service, the fee shall be as follows:

(1) Processing charge for each order including first map shall be $6.50.

(2) Each additional map in same order shall be $2.50.

(3) Postage if mailed shall be the actual cost.

(h) If unavailable from local floodplain administrators, flood zone and flood map information on file with the Board for each tract or description of land requested will be provided for a fee of $25.00.

(i) The fee for preparation and compilation of the administrative record for transmittal to a court pursuant to the Administrative Procedures Act shall be $1.00 per page for written documents, plus the cost of copying cassette tapes and the tapes as provided in this Chapter, plus actual cost of duplication of other exhibits, all payable prior to the transmittal of the record in the court. If the party appealing an order of the Board requests a written transcription of the hearing, or if the district court orders a written transcription as authorized by 75 O.S. ~~Supp. 1995,~~ § 309, the provisions in subsection (f) above, including prepayment of the cost of transcribing cassette tapes of the hearing, shall apply to the party appealing the Board's order. The full cost of transcribing the tapes must be paid before the Board shall transmit the transcription to the court. The Board shall review any such transcription for accuracy before transmitting the same to court.

(j) In addition to any other applicable fee, and subject to review by the State Governmental Internet Applications Review Board and approval by the Office of State Finance ("OSF"), unless otherwise waived by the Board a person who undertakes an electronic/on-line transaction with the Board shall pay a convenience fee approved by OSF which includes, but is not necessarily limited to, the transaction fee levied by OSF, the credit card or other financial institution charge, and a prorated share of the reasonable costs of development and implementation of, sustaining and upgrading, and future expansion of, the electronic/on-line application. Such transactions may include, but shall not be limited to, filing applications for permits or loans, filing reports of well drilling activities, and renewing licenses or certifications.

[OAR Docket #03-1095; filed 6-2-03]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 20. APPROPRIATION AND USE OF STREAM WATER

[OAR Docket #03-1096]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Application Requirements and Processing
785:20-3-2. General application requirements [AMENDED]
785:20-3-8. Revisions and corrections to applications [AMENDED]
Subchapter 5. Notice, Hearings and Board Actions
785:20-5-5. Factors relating to statutory elements for application approval [AMENDED]
Subchapter 7. Permits
785:20-7-3.1. Contents of permits to divert water from Barren Fork Creek [NEW]

AUTHORITY:
Oklahoma Water Resources Board; 82 O.S., §§ 105.1 et seq., 1085.2, 1452, 1453 and 1454; 62 O.S. §§ 41.5q and 41.5s.

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SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATION BY REFERENCE:
n/a

ANALYSIS:
The Oklahoma Water Resources Board ("OWRB") has adopted amendments to OAC 785:20 for the following purposes:

Several rules have been amended to provide for online filing via the Internet of applications for provisional temporary permits and other permits for appropriation of stream water. These rules are needed for convenience of those who do business with the OWRB, and because applicants for these permits often need to begin using the water in a short time. State law at 62 O.S. §§ 41.5q and 41.5s enacted in 2001 has recognized the need for a state portal system to foster electronic commerce between constituents and state agencies, and allows agencies to charge convenience fees for online transactions under certain circumstances. The intended effect of these rules is to provide convenience for applicants who desire permits for stream water use, and to expedite the time it takes for these applicants to get their applications approved.

OAC Section 785:20-5-5 has been amended, and a new Section 785:20-7-3.1 has been adopted, to provide for protection of the flow in the "scenic river area" of Barren Fork Creek in eastern Oklahoma. The adopted rules add a minimum instream flow protection provision of 50 cubic feet per second for the Barren Fork Creek in Adair and Cherokee Counties. These rules are needed because a portion of the Barren Fork is designated as a "scenic river area" in the Scenic Rivers Act, 82 O.S. § 1451 and following, and the demand for appropriations of water from the stream or its tributaries could diminish the Barren Fork flow contrary to the preservation purposes of the Scenic Rivers Act. The intended effect of the rule is to provide guidance to the OWRB and to prospective users in determining how much water can be safely appropriated

from the stream while protecting the flow and preserving the stream in its natural scenic state in accordance with the Scenic Rivers Act.

Finally, OAC 785:20-3-8 has been amended to correct and update a statutory citation. The intended effect of this amendment is to make the rule reflect the appropriate citation.

CONTACT PERSON:

Michael E. Mathis, Chief, Planning and Management Division, (405) 530-8800

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 3. APPLICATION REQUIREMENTS AND PROCESSING

785:20-3-2. General application requirements

(a) **Application form to be used.** The applicant shall complete all applications for a regular, term, ~~or~~ seasonal or provisional temporary stream water permit on the approved form set out in Appendix A to this chapter, or on an electronic or other form approved by the Board, copies of which are provided by the Board, and in the manner described by the form. The application form may be presented to the Board in person, by mail, ~~or~~ by readable facsimile transmittal, or through the Board's online application service. With copies of the application form, the Board will provide copies of a sample plat on which information as required by the application form must be indicated.

(b) **Right of access to diversion point and to cross lands of another.** If at the time the application is filed, the applicant has evidence regarding right of access to the diversion point and authority to cross lands of another with pipelines or other appurtenances related to the use of the water, such evidence shall be submitted with the application.

785:20-3-8. Revisions and corrections to applications

(a) Applications for stream water will be altered, corrected or revised by the Board only upon written request signed by the applicant or his duly authorized agent or by telephone instructions to the Board from the applicant or his duly authorized agent to be followed by written confirmation.

(b) Changes may also be made directly on the application, or filed through the Board's online application service, by the applicant or his duly authorized agent.

(c) All changes must meet the requirements of 82 O.S. ~~1981,~~ §§ 105.1 et seq. and the rules in this Chapter.

(d) Revisions to the application requested after notice has been published may be granted if the resultant change in the application is not substantial.

SUBCHAPTER 5. NOTICE, HEARINGS AND BOARD ACTIONS

785:20-5-5. Factors relating to statutory elements for application approval

(a) **Determination of water available for appropriation from a stream.**

(1) For direct diversions from a stream, the determination of water available for appropriation shall take into consideration the mean annual precipitation run-off in the watershed above the point(s) of diversion, the mean annual flow, stream gauge measurements, domestic uses and all existing appropriations and other designated purposes in the stream system. The Board may consider other evidence or laws relating to stream flow or elevation, including but not limited to apportionment provisions of interstate stream compacts to which the State of Oklahoma is a party and the Oklahoma Scenic Rivers Act.

(2) Absent the presentation of more accurate evidence to the contrary, the Board shall estimate the amount of water required to satisfy domestic use to be six (6) acre-feet per household per year or three (3) acre-feet per non-household domestic use.

(b) **Determination of water available for appropriation from a reservoir, lake or pond.**

(1) The amount of water available for appropriation from a lake or reservoir shall be based on a ninety-eight percent (98%) dependable yield of the reservoir for municipal and industrial use and an eighty percent (80%) dependable yield of the reservoir for irrigation use. The Board may consider other dependable yields of reservoirs, considering the type of use proposed, interconnections with other reservoirs and other factors deemed relevant by the Board.

(2) The amount of water available from a Natural Resources Conservation Service flood detention structure shall be based on the designated sediment pool amount as specified in 785:20-11-1. For impoundments other than Natural Resources Conservation Service flood detention structures, the Board shall determine the amount of water available for appropriation by estimating the yield based on the storage capacity, evaporation amounts and other factors deemed appropriate by the Board.

(3) If an application is made to appropriate water from water supply storage at Sardis Reservoir, an amount of 20,000 acre-feet of water shall not be considered available for appropriation unless the applicant's use is within one or more of the 10 county area of southeastern Oklahoma. The 10 counties include LeFlore, McCurtain, Pushmataha, Latimer, Haskell, Choctaw, Pittsburg, Coal, Atoka, and Bryan. The following conditions apply to this paragraph:

(i) Appropriations shall be granted first from the remainder of the yield of Sardis Reservoir; and

(ii) Water appropriated from the 20,000 acre-feet amount cannot be used as a substitute for water which is used out of southeastern Oklahoma; and

(iii) If the applicant's proposed use from the 20,000 acre-feet amount is for municipal or rural water district use, the service area must be within southeastern Oklahoma, and if the use from the

20,00 acre-feet is for industrial, commercial, irrigation or power use, the primary processes for such use must occur within southeastern Oklahoma; and

(iv) No water shall be released or withdrawn from water supply storage in Sardis Reservoir unless a lake level management plan for the applicant's use has been reviewed by the Oklahoma Department of Wildlife Conservation and is approved by the Board, provided that an approved lake level management plan shall have an emergency clause for domestic use.

(c) **Present or future need.**

(1) In considering the amount of water requested, the Board may review the efficiency of the works proposed to place the water to beneficial use and may order modifications to such works or that different works be utilized.

(2) For a proposed public water supply or municipal use, the Board may review population projections for the area served or proposed to be served by the applicant.

(3) For a proposed irrigation use, the amount of water needed shall be based on the types of crops to be grown and the number of irrigable acres, as indicated by the "Technical Report on Irrigation Water Requirements State of Oklahoma," U.S. Department of the Interior, Bureau of Reclamation, Southwest Region, Amarillo, Texas, September 1986. Other appropriate publications may be utilized to calculate water demand for crops, and the applicant may submit additional information for consideration as to the amount of water needed. If more than one crop is to be irrigated, present and future need may be based on the crop which has the greatest irrigation water requirements during a dry year.

(d) **Determination of interference with domestic and existing appropriative uses.**

(1) For purposes of determination of interference with domestic uses of stream water, interference with domestic use of groundwater will not be considered.

(2) The Board may determine that conditions or restrictions are necessary to protect existing beneficial uses and rights and may establish and impose such conditions on certain stream flow whereby direct diversion may be allowed only during certain times of the year or when a certain level of stream flow or elevation in the stream is reached. In some cases, the Board may determine that water storage is necessary.

(3) If the Board determines water to be available for appropriation pursuant to 785:20-5-5(a) and (b) and the applicant agrees to the placement of a condition(s) on the permit that the proposed use will not interfere with domestic or existing appropriative uses and/or conditions or restrictions pursuant to 785:20-5-5(d)(2), it shall be a presumption that interference will not occur.

(e) **Additional factors to be determined for scenic rivers and outstanding resource waters.** If the application is to divert water from a definite stream which has been designated as a "scenic river area" under the Scenic Rivers Act, 82 O.S. 1991, §1451 et seq., or a stream designated as Outstanding Resource Waters under Chapter 45 of this Title, the Board shall consider, in addition to the guidelines set forth in (a), (b), (c) and (d) of this Section, the following factors insofar as sufficient information is readily available to assure that appropriate instream flows are protected:

(1) Quantity of water requested in comparison to the amount of water available for appropriation based on mean annual precipitation run-off produced within the drainage area of the watershed above the proposed point of diversion;

(2) Quantity of flow needed in cubic feet per second (cfs) for recreational purposes, including sustaining existing fish species in the stream, spawning periods for such species, etc., provided that for sustaining existing fish species in the Barren Fork Creek, and unless information to the contrary is shown, a flow restriction of 50 cfs will be considered as needed;

(3) Existing water quality in the stream and the potential of the diversion to alter the water quality or physical characteristics of the stream; and

(4) Other information as deemed relevant by the Board.

SUBCHAPTER 7. PERMITS

785:20-7-3.1. Contents of permits to divert water from Barren Fork Creek

(a) This section shall apply to permits (except provisional temporary permits) issued after July 1, 2003, to divert water from the Barren Fork Creek and its tributaries in Adair and Cherokee Counties, provided that this section shall not be construed to alter or remove any condition on diversions based on flow in permits issued prior to July 1, 2003.

(b) Unless contrary information is shown and the Board determines that a different flow restriction is needed for aquatic community purposes on the Barren Fork Creek, the Board will include a condition in the permit that diversions must be temporarily suspended beginning the sixth day after the stream flow measured at the United States Geological Survey gage number 07197000 near Eldon, Oklahoma, falls below 50 cfs for a period of five (5) consecutive days.

(c) The condition shall indicate that the temporary suspension shall continue until the flow at the Eldon gage increases to 50 cfs.

(d) In establishing the condition, the Board may utilize an alternative gage that reliably measures stream flow on the Barren Fork Creek or its tributaries and may make corresponding adjustments to the flow restriction.

(e) Details relating to notice of the flow at the Eldon gage (or its equivalent) shall be set forth in the permit condition.

(f) The permittee may be required to utilize storage or an alterative source of water for supply when diversions are temporarily suspended.

[OAR Docket #03-1096; filed 6-2-03]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 30. TAKING AND USE OF GROUNDWATER

[OAR Docket #03-1097]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
785:30-1-4. Requirement for water right [AMENDED]
Subchapter 3. Permit Application Requirements
785:30-3-1. General application requirements [AMENDED]
AUTHORITY:
Oklahoma Water Resources Board, 82 O.S. 2001, §§ 1085.2 and 1020.10; and 62 O.S. 2001, §§ 41.5q and 41.5s.
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ANALYSIS:
The Oklahoma Water Resources Board ("OWRB") has adopted amendments to OAC Section 785:30-1-4 and 785: 30-3-1 to provide for online filing via the Internet of applications for provisional temporary permits and other permits for use of groundwater. These rules are needed for convenience of those who do business with the OWRB, and because applicants for these permits often need to begin using the water in a short time. State law at 62 O.S. §§ 41.5q and 41.5s enacted in 2001 has recognized the need for a state portal system to foster electronic commerce between constituents and state agencies, and allows agencies to charge convenience fees for online transactions under certain circumstances. The intended effect of these rules is to provide convenience for applicants who desire permits for groundwater use, and to expedite the time it takes for these applicants to get their applications approved. These two Sections also have been amended to correct typographical and formatting errors and to update citations and language. The intended effect of these amendments is to make the rules reflect the appropriate format, citations, and otherwise to state their text accurately.
CONTACT PERSON:
Michael E. Mathis, Chief, Planning and Management Division, (405) 530-8800

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

785:30-1-4. Requirement for water right

(a) **Who should file.** *Any person intending to* [82:1020.7] initiate a use of groundwater for beneficial use as defined herein, other than domestic use as defined herein, shall make application and obtain an appropriate permit before completing any fresh water well for such purposes. An application for a permit to use groundwater is not required to be filed for testing. For purposes of this section, testing shall be considered the conducting of a pump, well acceptance, drawdown or aquifer test that will require the continuous pumping of the well for twenty-four (24) hours or less, or the cumulative pumping for seventy-two (72) hours or less within a five (5) day period. If pumping for longer periods occurs or is intended, an application must be filed.

(b) **Forms to be furnished by the ~~board~~ Board.** The Board will furnish, without charge, blank application forms and instructions for filing for a groundwater permit. Each blank on the application shall be filled in by the applicant as accurately and completely as the circumstances permit with all the relevant data. Supplements may be attached if space on the ~~printed~~ form is insufficient. If a supplement is used, the data entered thereon should be segregated into paragraphs with numbers corresponding to the paragraph numbers of the ~~printed~~ forms and properly cross-referenced thereto.

(c) **Applications to be amended by applicant.** Groundwater applications will be altered, corrected, amended or revised by the Board only upon written request signed by the applicant or his duly authorized agent. Changes may also be made directly on the application, or filed through the Board's online application service, by the applicant or his duly authorized agent or by telephone instructions to the Board from the applicant or his duly authorized agent to be followed by written confirmation. All changes must meet the requirements of 82 O.S.~~1981~~, §§1020.1 et seq. and these rules and regulations.

(d) **Corrections, changes, or amendments to defective applications.** If the application is defective as to form, the Board shall advise the applicant of the corrections, amendments, or changes required and sixty (60) days shall be allowed for the refiling thereof. If the application is not corrected, amended, or changed within the time required, the Board may inactivate the application.

(e) **Corrected applications not filed in time allowed.** Any corrected application filed after the time allowed shall be treated in all respects as an original application received on the date of its refiling.

SUBCHAPTER 3. PERMIT APPLICATION REQUIREMENTS

785:30-3-1. General application requirements

(a) **Application form to be used.** The applicant shall complete an application for a groundwater permit on the approved form set out in Appendix A to this chapter, or on an electronic

or other form approved by the Board, copies of which are provided by the Board, and in the manner described by the form. The application form may be presented to the Board in person, by mail, ~~or~~ by readable facsimile transmittal, or through the Board's online application service. With copies of the application form, the Board will provide copies of a sample plat on which information as required by the application form must be indicated. The Board may require that relevant portions of the approved form be completed for applications or petitions to amend an existing groundwater right.

(b) **Written permission of owner required if applicant does not own land.** Except as provided in 82 ~~0.S. 1981~~ O.S., §1020.21, *no permit shall be issued to an applicant who is not the surface owner of the land on which the well is to be located, or hold a valid* [82:1020.11(D)] right *from such surface owner permitting withdrawal of water* [82:1020.11(D)], provided that an owner (or lessee) of a mineral estate severed prior to May 28, 1985, shall not be required to get separate authorization from the surface estate owner, pursuant to the Oklahoma Supreme Court case of Unit Petroleum Co. v. Okla. Water Res. Board. A copy of the ownership documentation or written permission may be required as part of the application.

(c) **Existing and proposed well locations; potential well areas; maximum number of wells to be completed.**

(1) **Locations of existing wells.** The applicant may in the application form Appendix A describe or show the actual location of existing wells by distances in feet from readily identifiable objects or monuments such as section lines or provide latitude/longitude coordinates of existing wells requested to be authorized.

(2) **Locations of proposed wells.** If specific information is known, for instances by test drilling, the actual locations of proposed wells may be shown in the application plat by distances in feet from readily identifiable objects or monuments such as section lines or by latitude/longitude coordinates.

(3) **Potential well areas.** If the applicant does not have specific information as to location of existing or proposed wells, the potential area or areas where such wells are located or may be drilled and completed on the dedicated lands must be indicated on the application plat. Unless specified well location information is provided, the potential well area information for proposed well locations as indicated on the plat will be used to determine the certified mail notice that the applicant must provide. To be authorized by the permit, specific location information about existing and proposed wells must be provided or the wells must be located in the potential well area or areas.

(4) **Maximum number of wells to be completed.** If the requested permit is issued, it will authorize a maximum number of existing wells and proposed wells to be drilled and completed. Absent information to the contrary, a maximum of three wells will be authorized for each 100 acre-feet of groundwater to be withdrawn per year. Pursuant to subchapter 7 of this Chapter 30, a permittee may request authority to complete additional wells after the permit is issued.

(d) **Additional information.** In addition to the information specified in (a) and (b) of this Section and in the application form, the applicant may be required to submit additional information necessary for proper consideration of the application~~, including but not limited to a completed copy of the Water Protection Plan checklist as set forth in Appendix B to this chapter~~.

[OAR Docket #03-1097; filed 6-2-03]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 35. WELL DRILLER AND PUMP INSTALLER LICENSING

[OAR Docket #03-1098]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
785:35-1-2. Definitions [AMENDED]
785:35-1-4. Violations and penalties [AMENDED]
785:35-1-6. Well Drillers and Pump Installers Advisory Council [AMENDED]
Subchapter 3. Licensing and Certifications
785:35-3-2. Expiration and renewal of licenses and certifications [AMENDED]
Subchapter 5. General Requirements to Maintain Licenses and Operator Certifications
785:35-5-1. General requirements for licenses [AMENDED]
785:35-5-2. General requirements for certified operators [AMENDED]
Subchapter 7. Minimum Standards for Constructions of Wells
785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observations wells, ~~heat exchange wells,~~ and water well test holes [AMENDED]
785:35-7-1.1. Minimum standards for construction of heat exchange wells [NEW]
Subchapter 11. Plugging and Capping Requirements for Wells and Test Holes
785:35-11-2. Plugging requirements for site assessment observation wells, monitoring wells and geotechnical borings [AMENDED]
AUTHORITY:
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INCORPORATION BY REFERENCE:

n/a

ANALYSIS:

The Oklahoma Water Resources Board ("OWRB") has adopted amendments to OAC 785:35 for the following purposes:

OAC Section 785:35-1-2 has been amended to add certain definitions for direct push geotechnical boring, open-loop heat pump water supply well (a kind of geothermal/heat exchange well), vertical closed-loop heat pump well, and water return well. The new definitions are needed to reflect the technological advances in the respective industries;

OAC Section 785:35-1-4 has been amended to clarify conditions and any penalty associated with the failure of a licensee to submit a multipurpose completion report within 60 days after completion of a certified activity as required by current Board rules. This amendment is intended as an incentive for licensees to submit the required data and to increase compliance of the existing rule;

OAC Section 785:35-1-6 has been amended to clarify that the Board will seek nominations for membership on the Well Drillers and Pump Installers Advisory Council from the five Congressional Districts instead of requiring that members shall serve from the Congressional districts. An amendment also adds pump installer as an alternative qualification for Council membership instead of only well drillers;

OAC Sections 785:35-3-2, 785:35-5-1 and 785:35-5-2 have been amended to add a new continuing education requirement for all licensees and operators as a condition to renew a well driller or pump installer license. The amendment requires that all licensees and operators obtain four (4) units of approved continuing education per year or eight (8) units per a two-year renewal period as the case may be (a renewal period of one year would require only four continuing education units). The proposed amendment is intended to increase the professionalism and expertise of the licensees and operators in the well drilling and pump installation industry in Oklahoma and to achieve a greater level of compliance with current Board construction standards;

OAC Section 785:35-5-1 has been amended to eliminate the requirement to affix a rig sticker provided by the Board on well drilling rigs associated with licensed well driller and pump installer activities;

OAC Section 785:35-7-1 has been amended and a new OAC Section 785:35-7-1.1 has been adopted to provide separate and more specific provisions relating to construction of geothermal/heat exchange wells. Geothermal/heat exchange wells are a separate license activity category by current rule and construction requirements and standards should be separate from water well rules. The Well Drillers and Pump Installers Advisory Council recommended amendments to rules to meet current industry recommended standards while considering site-specific conditions related to the geology and hydrology found within the State of Oklahoma;

OAC Section 785:35-7-3 has been amended to provide that the Board may require a licensed professional engineer to certify variances for well construction unless specifically requested by the Board, to clarify that the landowner will be required to assume all liability resulting from the variances if issued by the Board, and to specify an additional seal requirement;

OAC Section 785:35-11-2 has been amended to provide specific language relating to the plugging of direct push geotechnical borings to allow a more practical and economical method for plugging small diameter borings while maintaining protection of the groundwater; and

Several provisions throughout OAC 785:35 have been amended to correct typographical, grammatical, formatting, and other errors; and to update citations. The circumstances which created the need for these amendments are that several rules contain typographical, grammatical, formatting, and other errors. Several rules contain statutory, rule or other citations, which have recently been or are being changed. The intended effect of these amendments is to make the rules reflect the appropriate definitions, spelling, grammar, format, citations, and otherwise to state their text accurately.

The rules amendments adopted by the OWRB in this rulemaking implement portions of 82 O.S. 2001, §§ 1020.16 and 1085.2 . Rules related to these rules amendments are codified in OAC Title 785, Chapter 30.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 1. GENERAL PROVISIONS

785:35-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Abandoned well" means a well that has been permanently taken out of use, or is in such a state of disrepair that using it is impracticable or threatens to contaminate the groundwaters of the State.

"APA" means and refers to the Oklahoma Administrative Procedures Act set forth in 75 O.S. 1981, §§250 et seq., as amended.

"Application" means a formal request to the Board and the first step required by law to acquire the right to perform or engage in activities regulated by the Board.

"Board" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, for duties authorized by law to be delegated to the Executive Director, the Executive Director or any employee or agent or staff member thereof as assigned by the Executive Director.

"Commercial drilling" means *drilling and installation as a business, trade, or occupation for compensation.* [82:1010.1]

"Commercial installation" means *installation as a business, trade or occupation for compensation.* [82:1020.1]

"Commercial plugging" means plugging wells or borings *as a business, trade or occupation for compensation.* [82:1020.1]

"Direct push geological boring" means a geological boring in which tools and sensors are pushed into the ground using static weight combined with percussion as the energy to remove soil or make a path for the tool to obtain geotechnical, soil, water, and/or vapor information.

"Drilling water" means water that is used in the drilling of a well which is of a quality suitable for drinking or is uncontaminated water with a residual chlorine content equal to or greater than one hundred (100) milligrams per liter.

"Fresh water observation well" means any well used to measure the depth to the water table or parameters of fresh water aquifer performance.

"Geotechnical boring" means any excavation deeper than four feet (4'), that is drilled, augured, bored, cored, washed, driven, jetted or otherwise constructed and which is used or capable of being used to obtain soil or geological formation samples or information, or for the determination of groundwater quality or remediation.

"Geothermal well" means heat pump well.

"Groundwater well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed which is used or is capable of being used for the production of groundwater.

"Heat pump well" means a boring or cased hole that uses or is capable of using the thermal characteristics of the geologic formations or groundwater if encountered, and includes but is not limited to an open or closed loop groundwater heat pump system.

"Heat sink well" means a well utilized for heat exchange purposes, including but not limited to, a heat pump well and a geothermal well.

"License" means a certification issued by the Board to qualified persons making application therefor authorizing such persons to engage in weather modification and control operations or the business of drilling or plugging wells or borings and installing water well pumps.

"Monitoring well" means a well used to obtain a representative groundwater sample for determining groundwater chemistry or quality; for detecting, recovering, or remediation of actual or potential contamination; or for monitoring the unsaturated zone above a water table or confined aquifer, and includes site assessment observation wells and unsaturated zone monitoring wells.

"Open-loop heat pump water supply well" means a well drilled to supply water for the purpose of heat transfer.

"Operator" means the individual person engaging in the actual operation and use of the well drilling equipment and facilities and who performs and supervises the actual on-site construction, completion and handling of wells or well test holes, and conducts tests, and obtains and records well or well test hole data.

"Piezometer" means cased holes that monitor or are capable of monitoring water pressures or soil moisture tensions, primarily located at dam sites or other man-made water retention structures.

"Pump" means mechanical equipment or device used to remove water from wells and shall include, but is not limited to pumps, seals, tanks, fittings, and controls.

"Pump installer" means a person who is qualified to engage in the installation, removal, alteration, or repair of water well pumps and pumping equipment used in connection with a water well and breaking of the water well seal.

"Site assessment observation well" means a well used to measure the depth to the water when used for evaluation, classification or determination of the groundwater flow direction at a site that is or might be contaminated.

"Unsaturated zone monitoring well" means any well used for the characterization, evaluation or monitoring of the unsaturated area above the water table or zone.

"Vertical closed-loop heat pump well" means the borehole perpendicular to the natural grade of the earth surface drilled deeper than ten (10) feet into which a closed-loop pipe is placed for the purpose of heat transfer.

"Water return well" means a well constructed for the purpose of returning water that has passed through the heat pump system to the same aquifer from which the water was produced by the open-loop water supply well.

"Water well test hole" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed which is used or is capable of being used to determine the location of fresh groundwater and/or the capacity of the geologic formation to yield groundwater.

"Well" means any type of excavation for the purpose of obtaining groundwater, to monitor, to remediate, or observe conditions under the surface of the earth, but does not include oil and gas wells.

"Well driller" means and refers to the individual owner-proprietor or partnership, firm or corporation engaged in the business of the commercial drilling, plugging or reconstruction and the testing for or of wells in the State of Oklahoma.

785:35-1-4. Violations and penalties

(a) **Misdemeanor violations.** Any person who, after notice from the Board violates or refuses or neglects to comply with any provision of 82 0.S. 1991, §§1020.1 through 1020.22, as amended and the rules of this Chapter, or who commits waste shall be guilty of a misdemeanor, and upon conviction shall be fined not less than Twenty-Five Dollars ($25.00) nor more than Two Hundred Fifty Dollars ($250.00) for each offense. Any person who, after notice that he is in violation thereof continues to violate any provision of this act, and fails to comply therewith within a reasonable length of time, is guilty of a separate offense for each day the violation continues.

(b) **Administrative penalties.** *The Board may, after notice and hearing, impose administrative penalties of up to Five Hundred Dollars ($500) and may revoke, suspend or deny renewal of the license or operator certification for each violation of the Board's rules and regulations regarding license or certification requirements or minimum construction or installation standards. Each day a violation continues shall constitute a separate violation. Such administrative penalties shall be deposited in the Well Drillers and Pump Installers Remedial Action Indemnity Fund except as otherwise provided in* 785:35-1-5(c). [82:1020.16(E)]

(1) **Notice of violation and proposed assessment.** In addition to revoking, suspending or not renewing a license or operator certification, ~~The~~ the Board may impose administrative penalties against drillers or operators who fail, refuse or neglect to comply with rules or orders of the Board. Such administrative penalties shall be imposed only after notice and opportunity for hearing on the proposed imposition of such penalties. The notice of the proposed assessment of administrative penalties shall inform the respondent of the provisions of the Board rules or order at issue and the proposed amount of the penalty. A letter, petition, notice of violation, consent order or final order may constitute a notice of proposed assessment for purposes of initiating administrative penalty proceedings if it meets the requirements of this section.

(2) **Determining amount of penalty.** In setting the administrative penalty amount, the Board may consider the following:

(A) The nature, duration and number of previous instances of failure by respondent to comply with requirements of law, Board rules and orders;

(B) The efforts of the driller or operator to correct deficiencies or other instances of failure to comply with the requirements of law, Board rules and orders subject of the proposed penalty;

(C) The cost of carrying out actions required to meet the requirements of law and Board rules and orders;

(D) Any established penalty set forth in these rules;

(E) Other factors deemed appropriate by the Board.

(3) **Procedures for penalty assessment.**

(A) The notice of proposed assessment of administrative penalties shall specify a time, date and place for a hearing.

(B) Failure of respondent to appear at the hearing shall be deemed to constitute an agreement with the imposition of the penalty in the amount proposed as set forth in the notice, and proposed findings, conclusions and order shall not be prepared in that instance. The Board and respondent may also agree to an informal disposition of the matter. In either situation, the matter shall be presented to the Board for consideration of entering a final order assessing the administrative penalty.

(C) The administrative penalty is due and payable immediately upon issuance of the final order, unless otherwise provided therein.

(D) If the Board believes that violations are continuing after issuance of the administrative penalty order, it may seek the issuance of additional orders to assess penalties occurring in the period after issuance of the previous assessment orders.

(4) **Established penalty for failure to submit reports.** Unless otherwise specifically determined by the Board, the penalties to be assessed for the failure to submit multipurpose completion reports within sixty (60) days after completion of the activity as required by Board rules shall be as follows, provided that to avoid such an assessment the Board may from time to time provide an amnesty period of a duration and under such conditions to be set forth in a written notice to be provided to all licensees:

(A) For the first time penalties are assessed against a licensee or operator for failure to submit such reports, $50 for each report, provided that the licensee or operator shall submit an acceptable report with the associated penalty within thirty (30) days after receipt of the notice; and

(B) For the second or additional times that penalties are assessed against a licensee or operator for failure to submit such reports, $250 for each report, provided that the licensee or operator shall submit an acceptable report with the associated penalty within thirty (30) days after receipt of the notice.

785:35-1-6. Well Drillers and Pump installers Advisory Council

(a) **Creation of Council.** The Well Drillers and Pump Installers Advisory Council is hereby created. The Council shall consist of eight (8) members appointed by and serving at the pleasure of the Oklahoma Water Resources Board. ~~One member shall be appointed and shall serve~~ The Board shall seek nominations from each of the Congressional districts and the remaining members shall be appointed at large. The Executive Director of the Board shall be a member ex officio. At least one member shall represent each licensed activity. Three members shall be appointed for a term of one (1) year; three members shall be appointed for a term of two (2) years; and two members shall be appointed for a term of three (3) years. Upon the expiration of said terms, their successors shall be appointed for terms of three (3) years. Council members may be removed by the Board without cause.

(b) **Qualifications for Council membership.** Each Council member shall have been licensed as a well driller or pump installer by the Board for at least five (5) years prior to appointment to the Council, and must be in good standing with the Board at the time of appointment and during the term of Council membership.

(c) **Organization of Council.** The Council shall meet at least once each twelve months and otherwise at the call of the Board or Executive Director of the Board. The Executive Director or his or her designee shall chair the first Council meeting, at which the Council members may elect a chair for a term of one year from among their membership. In the event of a vacancy on the Council, the remaining Council members may make nominations or recommendations, subject to approval and appointment by the Board. The Executive Director or his or her designee will consult with an elected chair concerning meeting agendas.

(d) **Duties of the Council.** The Council shall have the following duties:

(1) Recommend new rules and rules amendments to the Board, provided such recommendations must be in writing and must be concurred in by a majority of the membership of the Council;

(2) Review and recommend approval or denial of use of monies in the Well Drillers and Pump Installers Remedial Action Indemnity Fund for:

(A) Remedial actions to protect groundwater from pollution or potential pollution from wells or boreholes under the jurisdiction of the Board which do not meet minimum standards for construction or that have been abandoned, and

(B) Inspections, licensing, enforcement and education by the Board; and

(3) Recommend seeking reimbursement for any remedial action taken or required by the Board.

(e) **Effect of rule.** Nothing in this section shall be construed to limit or restrict the Board's authority regarding water well and pump installer licensing or use of the Well Drillers and Pump Installers Remedial Action Indemnity Fund.

SUBCHAPTER 3. LICENSING AND CERTIFICATIONS

785:35-3-2. Expiration and renewal of licenses and certifications

(a) **Expiration.** All licenses and operator certifications issued by the Board shall expire on June 30 of the first or second year following issuance of the license or operators certification. New licenses or operator certifications shall be issued for a one or two year period, so that all odd license numbers and associated operators certifications shall expire in odd numbered years and all even numbered licenses and associated operator certifications shall expire in even numbered years.

(b) **Renewal.** All licenses and certifications may be renewed for a period of two years, subject to the rules in this Chapter. On or before May 31 of the year the license or certification is to be renewed, except as specified in this subsection, each licensee and certified operator shall submit the following:

(1) A completed application for renewal on forms furnished by the Board with the affidavit executed by the listed contact person for the licensee, and

(2) The license or operator certification renewal fee as provided for in these rules, provided that renewal fees shall not be due for licenses and certifications issued after January 1 of the year in which the first renewal is due, and

(3) The indemnity fund fee for those activities for which the license or operator certification is valid, and

(4) he late fee if the renewal application is submitted after June 30.

(c) **Grace period.** Any licensee or operator who allows his or her license or certification to lapse will be given until July 31 of the year in which they are scheduled to renew their license or operator certification in which to renew his or her license or certification without an examination; provided however, a late fee shall be due after June 30 as set forth in 785:5-1-11. After the grace period, the application will be treated as a new application.

(d) **Board action.** The Board may grant the renewal application or deny the application as provided in this subchapter of these rules.

(e) **Continuing education requirement.**

(1) Beginning July 1, 2004, completing annual continuing education shall be required before any license or operator certification will be renewed, unless otherwise specifically determined by the Board or as set forth in paragraph (8) of this subsection. Information concerning the continuing education attended must be submitted with the application for renewal form.

(2) All licensees and all certified operators shall be required to attend at least four (4) units of approved continuing education during each year period (from July 1 through June 30) or a total of eight (8) units for each two-year period of renewal.

(3) Continuing education shall be required during the first full year that the license or operator certification is active and during each year the license or operator certification is renewed.

(4) One unit of continuing education shall equal fifty (50) minutes of approved instruction.

(5) Approved trade shows and exhibitions attended shall be counted as one unit.

(6) Continuing education instruction relating to well drilling and plugging and pump installation which are provided by or approved by another state's well drilling program are pre-approved for the Oklahoma continuing education requirement.

(7) Other continuing education instruction and trade shows and exhibitions will be considered for approval by the Board after information concerning the continuing education or trade show and exhibition is submitted to the Board for review. Pre-approval of continuing education, trade shows and exhibitions may be requested for any licensee or certified operator.

(8) If a licensee or certified operator fails to attend four (4) or eight (8) units as the case may be during the renewal period, the application for renewal may be approved after payment of $250.00 in penalty and double the continuing education requirements (eight (8) or sixteen (16) units as the case may be).

SUBCHAPTER 5. GENERAL REQUIREMENTS TO MAINTAIN LICENSES AND OPERATOR CERTIFICATIONS

785:35-5-1. General requirements for licenses

All licensees shall comply with the following to maintain their license:

(1) Designate in a writing filed with the Board an authorized representative of the licensee who shall be deemed and treated as responsible for the exercise, use, maintenance, modification, renewal and all other respects of, and all reports and correspondence relating to, the license. The licensee representative need not be an operator.

(2) An operator certified for the activity being conducted shall be present at the drilling, plugging or pump installation site at all times when any of the regulated activities are being conducted. The operator must have his certification in his possession anytime he is in charge of the drilling operations or pump installation activities.

(3) Each rig used in drilling or pump installation operations shall be properly identified with letters that are a minimum of two inches (2") inches in height, with the firm name~~,~~ and license number ~~and rig sticker provided by the Board~~ in a location visible to the public.

(4) Complete each well or install each pump as the case may be to meet or exceed the minimum standards adopted by the Board set forth in this Chapter, unless a variance has been requested and approved pursuant to 785:35-7-3 before construction begins.

(5) Submit a multi-purpose completion report acceptable to the Board for each new well constructed, each well plugged and each well reconditioned on the appropriate form provided by the Board within sixty (60) days following the completion of new construction, plugging, or reconditioning of the well. The report shall include all applicable information required in the form. For test holes and geotechnical borings, a multi-purpose completion report for each test hole and boring, or one multiple test

hole/boring report on a form provided by the Board listing the required information for each such test hole or boring on a contiguous tract of land, must be submitted to the Board within sixty (60) days after completion and plugging of the test holes or borings. Licensees are responsible for the accuracy of information in all reports submitted by certified operators.

(6) Properly renew said license as required herein, including continuing education attendance.

(7) Post the license issued by the Board in a conspicuous place at the business address of the licensed individual, partnership, firm or corporation.

(8) Construct and complete water wells which are to be used for purposes other than domestic use only when an application has been made to the Board for a permit authorizing the location of the well(s).

785:35-5-2. General requirements for certified operators

All certified operators shall be required to do the following to maintain their certification:

(1) Complete each well or install each pump to meet or exceed the minimum standards adopted by the Board in this Chapter.

(2) Provide accurate information for any reports or other documents filed with the Board.

(3) Properly renew said certification as required herein, including continuing education attendance.

(4) Have in his possession the operator certification any time he is in charge of drilling or pump installation operations.

SUBCHAPTER 7. MINIMUM STANDARDS FOR CONSTRUCTION OF WELLS

785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observation wells, ~~heat exchange wells,~~ and water well test holes

(a) **General requirements.**

(1) **Minimum standards.** The minimum standards set forth in this subchapter apply to all groundwater wells, fresh water observation wells, heat exchange wells, and water well test holes whether constructed by a person having a valid license or by any other person.

(2) **Construction of wells.** Flowing and non-flowing groundwater wells, observation wells, heat exchange wells and water well test holes are to be constructed in a manner as to prevent waste and to prevent contamination of groundwater by pollution material either entering the ground around the casings or tubing, or entering the fresh groundwater from pollution sources below the ground, or by entering the fresh well water by leaking wells, casing pipe fittings, pumps, or well seals.

(3) **Proper maintenance, plugging and capping.** The well driller and/or the well owner are charged with the responsibility of taking whatever steps are reasonable in a particular situation to guard against waste and contamination of the groundwater resources, and to see that unused wells are properly capped or plugged.

(b) **Minimum location standards.**

(1) Except as provided otherwise in this subsection, every new groundwater well, fresh water observation well, heat exchange well and water well test hole shall be located a minimum distance from possible pollution sources as prescribed in this subsection. Possible pollution sources include but are not limited to existing or proposed septic tanks, sewer lines, absorption fields or beds, seepage pits, building foundations, waste pits, lagoons, oil or gas wells, and landfills. The minimum distance between the possible pollution source and the well or test hole shall be as follows:

(A) 50 feet if the well is upgradient from possible pollution sources,

(B) 75 feet if the well is on the same ground level from possible pollution sources, and

(C) 00 feet if the well is downgradient from possible pollution sources.

(D) Provided however, if the possible pollution source is an existing or proposed waste lagoon for a feedlot or confined animal feeding operation, the minimum distance from the outside perimeter of the possible pollution source shall be 300 feet.

(E) Owners of wells or other federal or state agencies may require wells to be located at distances greater than the minimum distances set forth in this paragraph.

(2) If not prohibited by the owner of the well or other federal or state agency requirements, groundwater wells which will not be used for drinking water, fresh water observation wells, and heat exchange wells may be located closer to a possible pollution source than the minimum distances specified in paragraph (1) of this subsection if all of the following conditions are met:

(A) the possible pollution source is not a wastewater lagoon,

(B) before the well is drilled, the well driller advises the person wanting the well drilled that the well is subject to contamination,

(C) the owner of the proposed well notifies the Board that the owner will authorize the driller to drill the well closer to the possible pollution source than the minimum location standard,

(D) the outside water-tight casing is properly cement grouted at least twenty (20) feet down from the land surface or pitless adaptor connection, and

(E) except for a heat exchange well near a building foundation, the well must be located at the maximum distance possible from the possible pollution source, and

(F) if a heat exchange well is drilled, the well annulus must be completely sealed with high solids bentonite grout, bentonite pellets or chips from the bottom of the hole to within twenty feet (20') of land

surface and a minimum of twenty feet (20') of cement shall be placed above the bentonite to land surface to form the cement surface seal.

(3) If a well driller or other person proposing to drill a well encounters a structure, object or other situation and is unsure whether it may be a possible source of pollution, he shall contact Board staff and obtain approval for location of the well.

(c) **Casing of groundwater and fresh water observation wells.** Requirements for casing of groundwater wells and fresh water observation wells shall be as follows:

(1) The casing shall be installed to seal off any groundwater zones containing water which does not meet the groundwater quality standards as set forth in Oklahoma's Water Quality Standards. In no case shall a well be completed in a salt water zone.

(2) New groundwater and fresh water observation wells shall have:

(A) Outside water-tight production casing cement grouted from land surface to a minimum depth of ten (10) feet below the land surface, and to such further depth as may be necessary, depending upon the character of the underground formations, to extend into an impervious stratum, where such stratum is found above the source aquifer.

(B) Casing seated at top of the first impervious stratum suitable for casing point. Where an impervious formation or tight confined bed does not occur at the well site, the casing shall be extended as far as practicable below the water table and wherever possible, at least ten (10) feet below the minimum seasonal stage of the water table.

(C) Casing joints threaded, welded, or glued with water well construction glue so as to be water-tight.

(D) Casing that extends at least eight (8) inches above the natural ground level. In areas where known flooding occurs, the casing shall extend twenty-four (24) inches above the maximum level of such flooding. Provided, this (D) shall not apply to heat exchange wells.

(E) Casing meeting or exceeding the following:

(i) new or clean and sanitary used carbon or stainless steel, or

(ii) new PVC fresh water well casing which has a S.D.R. rating of twenty-six or stronger and which may be plain end with threaded connector, and with all joints made water-tight by cleaning and cementing, using manufacturer's recommended thinner and cement for use in fresh water wells, or

(iii) fiberglass or other material which meets or exceeds N.S.F. approval for casing which is specially designed for use in a water well.

(d) **Cement grouting and concreting.** Cement grouting and concreting requirements for groundwater wells and fresh water observation wells ~~and heat exchange wells~~ shall be as follows. These requirements must be met before the drilling rig is taken from the site.

(1) All new groundwater wells~~,~~ and fresh water observation wells ~~and heat exchange wells~~ shall be made water-tight around the outside of the production casing or heat exchange tubing by cement grouting to such depths as may be necessary to exclude pollution, but in no case shall the seals be less than ten (10) feet in depth. If surface pipe and production casing are used, the cement grouting shall be installed inside the surface pipe casing and where possible outside the surface pipe casing.

(2) This seal shall originate at a minimum ten (10) foot depth and terminate at the natural land surface, unless a written waiver is first obtained from the Board.

(3) The cement grout shall consist of a mix ratio of one (1) 94 pound sack of cement to a maximum of six (6) U.S. gallons of water. A maximum of fifty percent (50%) aggregate by dry weight may be added to the portland cement to form the cement grout, provided the aggregate is a size that will not create a potential to cause bridging in the annular space.

(4) A maximum of six (6) percent bentonite may be added to the slurry, which bentonite shall be prehydrated to the manufacturer's recommended consistency.

(5) The well borehole shall be a minimum diameter of at least three (3) inches greater than the ~~nominal~~ outside diameter of the well casing or tubing.

(6) This annular space shall be filled with cement grout to the minimum ten (10) foot depth, or such further depth as may be necessary to exclude pollution.

(7) Where a pitless well adapter or unit ~~or heat exchange well header unit~~ is being installed, the grouting shall start below the junction of the pitless well adapter or unit where it attaches to the well casing and shall continue to at least ten (10) feet below this junction.

(e) **Well development requirements for groundwater wells or fresh water observation wells.** Upon completion of the groundwater well or fresh water observation wells and before conducting the yield of drawdown tests, the well driller shall clean and develop the well to remove drill cuttings and drilling mud.

(f) **Disinfection of groundwater or fresh water observation wells.** Requirements for disinfection of groundwater or fresh water observation wells shall be as follows:

(1) All water used in the drilling of the well shall be potable water or uncontaminated chlorinated water having not less than 100 parts per million chlorine.

(2) A new, repaired, or modified well shall first be thoroughly cleaned and prepared for receiving pumping equipment.

(3) Thereafter, the well and pumping equipment shall be disinfected with chlorine so applied that a concentration of at
least one hundred (100) parts per million of chlorine shall be obtained in all parts of the water in the well.

(4) A minimum contact period of two (2) hours shall be provided before pumping the well to flush chlorine solution from the fresh water distribution system.

(g) **Access port or water level measuring device.** Upon completion of a new groundwater or fresh water observation

well and before the well is put into service, the well driller will equip the well with either an access port that will allow for the measurement of the depth to static water surface or a static water level measuring device.

785:35-7-1.1. Minimum standards for construction of heat exchange wells

(a) **General requirements.**

(1) **Applicability of minimum standards.** The minimum standards set forth herein apply to all heat exchange wells as defined in 785:35-1-2, whether constructed by a person having a valid license or by any other person.

(2) **Prohibition against other uses.** Heat exchange wells cannot be used for any purpose other than heat exchange. After completion, heat exchange wells shall not be converted to any other type of well except by written approval by the Board. The licensee shall ensure that the heat exchange well is constructed according to the rules.

(3) **Maximum protection of groundwater required.** Construction of geothermal and heat exchange wells shall provide maximum protection to the groundwater from contamination and movement and migration of water from one zone or aquifer to another.

(b) **Location of heat exchange wells.**

(1) A vertical heat pump well shall be located on a site so that surface water will not pool or pond around or within ten (10) feet of the heat exchange well location.

(2) Placement of a heat exchange well must meet or exceed standards as set forth by section 785:35-7-1(b) relating to location requirements for groundwater wells except as set forth in paragraph 3 of this subsection.

(3) If not prohibited by the owner of the well or other federal or state agency requirements, heat exchange wells may be located closer to a possible source of pollution than the minimum distances specified in Section 785:35-7-1(b) if all of the following conditions are met:

(A) The possible pollution source is not a wastewater lagoon.

(B) The well annulus is completely sealed as described in paragraph 7 of subsection (c) of this section.

(c) **Heat exchange well construction material.** Site specific conditions shall be assessed to determine the best method and materials as described in this subsection to be used for sealing and filling the well annulus to protect the groundwater.

(1) **Casing material.** If permanent casing is needed in a heat exchange well, it must meet standards set out in Section 785:35-7-1 for steel and for plastic.

(2) **Heat exchange loop material.** In a closed-loop heat exchange well, the material used to make up the heat exchange loop that is placed into the ground must be equal to or exceed PE3408, DR 11, 160 PSI high density polyethylene (HDPE) or ASTM D-3350.

(3) **Connecting closed-loop pipe.** All pipe joints and fittings installed and buried shall be socket, butt or thermally fused according to the pipe manufacturer's specifications. Glued or clamped joints shall not be used below ground unless the joint or connection serves as a service outlet and the joint or connection is not covered with earth material. Joints must not leak after assembly.

(4) **Heat transfer fluid.** The fluid used inside the closed-loop assembly must be non-toxic, food grade quality and approved for use by the U.S. Environmental Protection Agency and a release of the fluid to the groundwater must not violate Oklahoma Water Quality Standards set forth in Chapter 45, OAC 785.

(5) **Borehole size.** The hole size for heat exchange wells must be of sufficient size to allow placement of the material to surround all pipe, but in no case shall the borehole diameter be less than four (4) inches.

(6) **Grouting of vertical heat exchange wells.** Grouting and filling the annulus of a heat exchange well (with the exception of the Portland cement surface seal) must be completed immediately after the well is drilled to avoid cave-in of the uncased hole.

(7) **Vertical heat exchange well sealing and filling materials and methods.** The well annulus must be completely sealed or filled the total length of the borehole with approved materials and methods as listed below.

(A) A Portland cement grout seal shall be installed from a point twenty (20) feet below the bottom of the excavation trench up to the trench that connects the closed loop to the heat exchange system, provided that if a slurry mix is used to seal the annulus, the Portland cement grout seal shall be installed after a settling period of twenty-four (24) hours.

(B) Approved annulus sealing and filling materials shall include Portland cement, high solids bentonite grout (20-30% solids by weight),bentonite pellets or chips, water well filter pack sand or gravel, or approved high efficiency or thermally enhanced grouts designed for geothermal borehole.

(C) The annulus sealing or fill material shall be installed from the bottom of the borehole to a termination point of no less than 20 feet from the bottom of the excavation trench for the horizontal piping.

(D) Bentonite chip or pellet fill material installed shall be hydrated immediately after installation if installed in the unsaturated zone.

(E) Fill material placed in the annulus shall be uncontaminated, provided that cuttings shall not be used as fill material.

(F) When non-slurry sealing and filling materials are used, only clean water well filter pack sand or gravel or chipped or pelletized sodium bentonite varieties that are designed to fall through standing water are acceptable when sealing the annulus of a well that is below the water level in the saturated zone. The borehole shall be flushed clean of all drilling mud and debris left over from the drilling operation so that the bentonite products designed for this type of installation will gravity feed without obstruction. Material shall be introduced in a manner to prevent bridging

of the materials in the borehole annulus. A measuring device such as a tagline shall be used to measure and document placement of the materials installed.

(G) Slurry mixes of bentonite grout or Portland cement shall be installed by pumping through a tremie pipe in a continuous operation using a positive displacement method. Polymer additives designed to retard swelling are acceptable for use with the bentonite grout or Portland cement. The tremie pipe will extend the full depth of the borehole before pumping begins. The borehole diameter shall be of adequate size to allow proper placement of materials using this method. Slurry volume used must equal the annulus volume of the borehole.

(H) For air drilled boreholes in which the borehole is completely dry and the normal static water level is deeper than the total depth of the heat exchange well, the bentonite slurry may be pumped from the surface without a tremie pipe.

(8) **Multiple formations, lost circulation zones, or zones of differing water quality.** When multiple formations, lost circulation zones, or zones of differing water quality are encountered within the same borehole, the listed sealing and filling materials set forth in paragraph (7) may be used, provided, that if sand or gravel material is used as the fill material, a solid plug of Portland grout, bentonite pellets, or bentonite chips must be installed to separate the formations or zones to prevent cross contamination. The total length of the plug must be a minimum of five (5) feet and installed in a consolidated area of the borehole. If no consolidated area or formation is present to install the plug (such as loose sand or gravel), sand and /or gravel shall not be acceptable annulus fill material.

(9) **Wells drilled in lost circulation conditions.** If caves or large fractures are encountered in drilling the borehole, grouting may not be possible and the Board must pre-approve completion of the heat pump well in such conditions based on plans to bridge and seal such areas. If completion is not approved, the well must be properly plugged. Chipped bentonite or clean fill (gravel, sand and other appropriate material) may be used to seal small fractures.

(d) **Construction standards for open-loop heat exchange wells.**

(1) Open-loop heat exchange wells must meet the minimum construction standards set forth in Section 785:35-7-1 relating to groundwater.

(2) Water return wells for domestic heat exchange systems must meet the minimum construction requirements set forth in Section 785:35-7-1, and the groundwater used in the system must be returned to the same aquifer from which the groundwater was withdrawn by the open-loop heat exchange well, provided that authorization from the Oklahoma Department of Environmental Quality may also be required.

SUBCHAPTER 11. PLUGGING AND CAPPING REQUIREMENTS FOR WELLS AND TEST HOLES

785:35-11-2. Plugging requirements for site assessment observation wells, monitoring wells and geotechnical borings

(a) **Monitoring wells and site assessment observation wells.** Monitoring wells and site assessment observation wells shall be plugged to prevent pollution of groundwater within three (3) days after completion of use or immediately if drilled by an unlicensed or uncertified person or if the Board determines that the well does not meet the minimum construction standards set forth in this Chapter. The following are minimum requirements for plugging monitoring wells and site assessment observation wells, and the owner of such wells or other federal or state agency may specify more stringent requirements:

(1) If no contaminated soil or contaminated groundwater is present in the well, cement grout shall be placed in the well through a tremie pipe and filled or pumped from the bottom of the well to an elevation four (4) feet below the land surface. In the alternative, bentonite pellets, granules or high solids grout shall be placed from the bottom of the well to an elevation fourteen (14) feet below land surface and a minimum of ten (10) feet shall be filled with cement grout to an elevation four (4) feet below land surface, unless contaminated soil or contaminated groundwater is present in the well. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil. If the depth of the well is fourteen (14) feet or less, cement grout shall be placed from the bottom of well to land surface.

(2) If contaminated soil or contaminated groundwater is present in the well and the top of the screen is less than 20 feet below land surface, the casing shall be removed or drilled out. Cement grout shall be placed from the bottom of the well to an elevation four (4) feet below land surface. If the top of the well screen is 20 feet or more below land surface and the well meets current minimum construction standards, then the casing need not be removed and cement grout shall be placed in the well through a tremie pipe and filled or pumped from the bottom upward to within four (4) feet of land surface or to land surface. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil.

(b) **Geotechnical borings except direct push geotechnical borings.** Geotechnical borings shall be plugged to prevent pollution of groundwater within thirty (30) days after completion of drilling or immediately if drilled by an unlicensed or uncertified person or if the Board determines that the well does not meet the minimum construction standards set forth in this Chapter. The following are minimum requirements for plugging geotechnical borings, and the owner of the boring or other federal or state agency may specify more stringent requirements:

(1) If no contaminated soil and groundwater is encountered in the boring, uncontaminated drill cuttings,

uncontaminated surface clay, cement, and/or bentonite grout, pellets, or granules shall be placed from the bottom of the boring to an elevation fourteen (14) feet below land surface and a minimum of ten (10) feet shall be filled with cement grout to an elevation four (4) feet below land surface. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil.

(2) If contaminated soil or contaminated groundwater is encountered in the boring, or if the boring is located at an underground storage tank site or within 300 feet of the outside perimeter of an existing wastewater lagoon or is located on a tract of land where a wastewater lagoon is proposed, cement grout shall be placed from the bottom of the borehole to an elevation four (4) feet below land surface. Cement grout shall be placed in the borehole through a tremie pipe and filled or pumped from the bottom upward. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil.

(3) If the boring is twenty (20) feet or less in total depth and groundwater has not been encountered, the boring shall, at a minimum, be filled with compacted uncontaminated cuttings from the bottom of the boring to land surface.

(c) **Direct push geotechnical borings.** Direct push geotechnical borings shall be plugged to prevent pollution of groundwater within thirty (30) days after completion of drilling or immediately if drilled by an unlicensed or uncertified person or if the Board determines that the well does not meet the minimum construction standards set forth in this Chapter as follows:

(1) Bentonite chips shall be placed and effectively compressed within the annulus space from the bottom of the borehole to within ten (10) feet of the land surface.

(2) Cement grout shall be installed through a tremie pipe in the remaining annulus space from ten (10) feet to land surface.

(~~c~~d) **Cement grout requirements.** If cement grout is used, the grout shall have a mix ratio of one 94 pound sack of cement to a maximum of six U.S. gallons of water.

(~~d~~e) **Abandonment after equipment removed.** If a site assessment observation well, monitoring well or geotechnical boring is abandoned after the drilling equipment has been removed from the site, responsibility for proper plugging within the applicable time period specified in this section shall lie with the owner of the land where the well or boring is located.

[OAR Docket #03-1098; filed 6-2-03]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 50. FINANCIAL ASSISTANCE

[OAR Docket #03-1099]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 8. Rural Economic Action Plan (REAP) Grant Program Requirements and Procedures

785:50-8-5. REAP grant priority point system [AMENDED]

AUTHORITY:
Oklahoma Water Resources Board, 82 O.S. 2001, §1085.2; and 62 O.S. Supp. 2002, § 2003.

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n/a

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n/a

ANALYSIS:
The Oklahoma Water Resources Board ("OWRB") has adopted amendments to OAC Section 785:50-8-5 to implement the statutory changes to the Rural Economic Action Plan Grant Program (the "REAP Program") at Title 62, Oklahoma Statutes 2001, Section 2003 pursuant to Enrolled Senate Bill 1247 (2002 Legislative Session). Senate Bill 1247 amends the priority scoring criteria for population from less than 1500 persons to less than 1750 persons. The OWRB has previously promulgated rules that set comparable priority scoring criteria for other eligible entities such as rural water and sewer districts and public school districts. Rural water and sewer districts currently receive priority scoring if they have less than 450 non-pasture customers, and school districts currently receive priority scoring if they have an average daily membership of less than 450 students. The 450 figure is based on approximately 30% of the statutory criterion of 1500 population. The proposed rulemaking would modify the criterion to less than 525 non-pasture customers or less than 525 average daily membership. The proposed 525 figure represents approximately 30% of the statutory criterion of 1750 population.

Utilizing a criterion for rural water and sewer districts and school districts that is 30% of the statutory population criterion can be justified as follows:

1. The rural district and school district population criterion "levels the playing field" to allow consideration of applications by non-municipal entities without unfair advantage or disadvantage. Census 2000 data available through the Oklahoma Department of Commerce website (http://www.odoc.state.ok.us/index.html) indicate that the average household in the State of Oklahoma contains 2.49 persons. This figure tends to be slightly higher in rural areas. Thus for a rural district, each "non-pasture customer" represents approximately 2.5 persons.

2. A population of 1750 divided by 2.5 persons per household would result in 700 customers (approximately 40%). However, many municipalities may not (especially in rural areas) actually provide services to their entire population. Certain individuals may instead be served by private wells, water corporations, or rural districts. Subtracting an additional factor of 10% results in approximately 525 customers (approximately 30% of 1750). It is known that all rural district customers are being served by the rural district.

3. The 30% calculation can also be applied to school districts. All students are being served during the school day, in addition to teachers and other support personnel. Setting a limit of 525 students (based on average daily membership) again restricts priority scoring to those smaller districts (as other "qualified entities") that were intended for funding under the REAP Program statutes.

This rulemaking will allow the OWRB to apply this change in criteria to future application funding cycles that consider applications submitted by September 1 of each year.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 8. RURAL ECONOMIC ACTION PLAN (REAP) GRANT PROGRAM REQUIREMENTS AND PROCEDURES

785:50-8-5. REAP grant priority point system

(a) **Basis of priority system and formula.**

(1) **General description.** The priority system consists of a mathematical equation rating the qualified entities and the proposed project in accordance with the requirements of state law by means of a formula awarding points for each criterion used in the evaluation. The maximum point total under the system is one hundred fifteen (115). The Board may consider each month, and in order from the highest rating, those applications awarded point ratings of 40 or more priority points. If the Board determines that the qualified entity with the highest point rating cannot promptly proceed with the project due to delays, including but not limited to those caused by legal problems, engineering problems, feasibility problems or availability of other funding sources, the Board may pass over consideration of such application then proceed to consider in order the next highest rated application. Applications which are bypassed shall retain their ratings and thus remain eligible for further consideration. Applications preliminarily determined by Board staff to have point ratings of 39 or fewer shall be deemed denied; provided, such applications may be reevaluated if the applicant submits additional information showing changed circumstances within 120 days after the date of staff's determination, and such information improves the applicant's preliminary point rating.

(2) **Statutory criteria.** The basis of the priority formula has been developed from the enacting legislation. The primary statutory criteria are:

(A) There shall be a higher priority for any city or town with a population less than ~~1,500~~ one thousand seven hundred fifty (1,750) according to the latest federal decennial census than for any jurisdiction with a greater population according to the census; and

(B) *Among such cities or towns, those municipalities having relatively weaker fiscal capacity shall have a priority for project funding in preference to other municipalities* [62:2003]. In order to give a priority evaluation to each applicant, the Board shall evaluate all applications according to the fiscal capacity criteria set forth in this Section.

(3) **Total priority points.** Total priority points will be calculated and awarded for individual projects. Therefore, qualified entities will be required to complete separate applications for each project for which grant funds are requested. Priority lists compiled and published by other Oklahoma State agencies and/or seniority dates of applications submitted shall be utilized to decide ties in point totals among qualified entities.

(b) **Priority formula for eligible entities other than school districts and counties.**

(1) **Formula.** The following formula has been devised to rank grant applications: T = P + WR + I + MHI + FP + N + AR + BP + PG, Where:

(A) T = Total of priority points
(B) P = Population
(C) WR = Water and sewer rate structure
(D) I = Indebtedness per customer
(E) MHI = Median household income
(F) FP = Applicant's ability to finance project
(G) N = Need
(H) AR = Amount of grant requested
(I) BP = Project benefit to other systems
(J) PG = Previous grant assistance

(2) **Explanation.** Each of these criteria are explained below:

(A) **Population (P).** Municipalities which have a population of less than ~~1,500~~ 1,750 according to the latest federal decennial census shall be given 55 priority points. Rural water or sewer districts which have less than ~~450~~ 525 non-pasture customers shall be given 55 points.

(B) **Water and Sewer rate structure (WR).**

(i) For systems providing water service only, points are figured as follows:

(I) If the rate is $26 or greater, the applicant shall be given 10 points.
(II) If the rate is $24 to $25.99, the applicant shall be given 9 points.
(III) If the rate is $22 to $23.99, the applicant shall be given 8 points.
(IV) If the rate is $20 to $21.99, the applicant shall be given 7 points.
(V) If the rate is $18 to $19.99, the applicant shall be given 6 points.
(VI) If the rate is $16 to $17.99, the applicant shall be given 5 points.
(VII) If the rate is $14 to $15.99, the applicant shall be given 4 points.
(VIII) If the rate is $12 to $13.99, the applicant shall be given 3 points.
(IX) If the rate is $10 to $11.99, the applicant shall be given 2 points.
(X) If the rate is $8 to $9.99, the applicant shall be given 1 point.
(XI) If the rate is less than $8, the applicant shall be given 0 points.

(ii) For systems providing both water and sewer services, points are figured as follows:

(I) If the rate is $30 or greater, the applicant shall be given 10 points.

(II) If the rate is $29 to $29.99, the applicant shall be given 9 points.
(III) If the rate is $27 to $28.99, the applicant shall be given 8 points.
(IV) If the rate is $24 to $26.99, the applicant shall be given 7 points.
(V) If the rate is $22 to $23.99, the applicant shall be given 6 points.
(VI) If the rate is $21 to $21.99, the applicant shall be given 5 points.
(VII) If the rate is $20 to $20.99, the applicant shall be given 4 points.
(VIII) If the rate is $18 to $19.99, the applicant shall be given 3 points.
(IX) If the rate is $16 to $17.99, the applicant shall be given 2 points.
(X) If the rate is $13 to $15.99, the applicant shall be given 1 point.
(XI) If the rate is less than $13, the applicant shall be given 0 points.

(iii) For systems providing sewer service only, points are figured as follows:
(I) If the rate is $23 or greater, the applicant shall be given 10 points.
(II) If the rate is $21 to $22.99, the applicant shall be given 9 points.
(III) If the rate is $19 to $20.99, the applicant shall be given 8 points.
(IV) If the rate is $17 to $18.99, the applicant shall be given 7 points.
(V) If the rate is $15 to $16.99, the applicant shall be given 6 points.
(VI) If the rate is $13 to $14.99, the applicant shall be given 5 points.
(VII) If the rate is $11 to $12.99, the applicant shall be given 4 points.
(VIII) If the rate is $10 to $10.99, the applicant shall be given 3 points.
(IX) If the rate is $8 to $9.99, the applicant shall be given 2 points.
(X) If the rate is $7 to $7.99, the applicant shall be given 1 point.
(XI) If the rate is less than $7, the applicant shall be given 0 points.

(iv) The Board will deduct 3 points from the total of the Water and Sewer Rate Structure ranking for any system which charges a flat water rate (unmetered) without regard to the amount of water used, and 2 points for a decreasing block rate which lowers the cost per 1000 gallons for customers using larger amounts of water. No points will be added or subtracted for systems using a fixed rate per 1,000 gallons above the minimum. Two points will be added for systems using an increasing block rate. Entities who dedicate sales tax for water and/or sewer improvements will be awarded 1 additional point. Under this category the maximum number of points is 13 and the minimum is -3 points.

(C) **Indebtedness per customer (I).** The indebtedness per customer ranking is calculated by taking the applicant's monthly requirements for debt service on debt incurred for water and/or sewer system purposes and dividing it by the number of customers served.
(i) If the indebtedness per customer is $15.00 or greater, the applicant will be given 10 points.
(ii) If the indebtedness per customer is $13.00 to $14.99, the applicant will be given 9 points.
(iii) If the indebtedness per customer is $11.00 to $12.99, the applicant will be given 8 points.
(iv) If the indebtedness per customer is $10.00 to $10.99, the applicant will be given 7 points.
(v) If the indebtedness per customer is $9.00 to $9.99, the applicant will be given 6 points.
(vi) If the indebtedness per customer is $8.00 to $8.99, the applicant will be given 5 points.
(vii) If the indebtedness per customer is $7.00 to $7.99, the applicant will be given 4 points.
(viii) If the indebtedness per customer is $6.00 to $6.99, the applicant will be given 3 points.
(ix) If the indebtedness per customer is $5.00 to $5.99, the applicant will be given 2 points.
(x) If the indebtedness per customer is $4.00 to $4.99, the applicant will be given 1 point.
(xi) If the indebtedness per customer is less than $4.00, the applicant will be given 0 points.

(D) **Median household income (MHI).** The median household income is calculated according to the latest federal decennial census.
(i) The county median figure for median household income will be used in cases where data for the applicant's service area is not available.
(ii) Points for this MHI criterion are awarded as follows:
(I) If the MHI is less than $10,000, the applicant shall be given 10 points.
(II) If the MHI is $10,000 to $11,999, the applicant shall be given 9 points.
(III) If the MHI is $12,000 to $13,999, the applicant shall be given 8 points.
(IV) If the MHI is $14,000 to $15,999, the applicant shall be given 7 points.
(V) If the MHI is $16,000 to $17,999, the applicant shall be given 6 points.
(VI) If the MHI is $18,000 to $21,999, the applicant shall be given 5 points.
(VII) If the MHI is $22,000 to $23,999, the applicant shall be given 4 points.
(VIII) If the MHI is $24,000 to $25,999, the applicant shall be given 3 points.
(IX) If the MHI is $26,000 to $27,999, the applicant shall be given 2 points.
(X) If the MHI is $28,000 to $29,999, the applicant shall be given 1 point.

(XI) If the MHI is $30,000 or greater, the applicant shall be given 0 points.

(E) **Ability to finance project (FP).**

(i) The maximum points possible under this criterion for the ability of the applicant to finance the project without assistance from the state is 12.

(ii) The FP ranking gives a standardized account of the amount the existing water/sewer rates would have to be raised in order for the applicant to finance the project through a loan. A standard interest rate and term of 10% for 25 years is assumed. The cost per customer per month is calculated using the following formula: FP = AR (0.1102)/(12)(C), Where:

(I) FP = Estimate of the amount monthly water/sewer rates would have to be raised to finance the amount of grant requested for the project.

(II) AR = Amount of grant requested.

(III 0.1102) = Annual rate factor for a 25 year loan at 10%.

(IV 12) = Number of months per year.

(V C) = Number of customers.

(iii) In cases where the applicant's current revenues exceed expenses by a large margin, the Board will appropriately adjust the (AR) figure to accurately represent the applicant's ability to finance the project.

(iv) Points in the FP ranking, based upon the cost per customer per month calculated as set forth in (ii) of this subparagraph, are awarded as follows:

(I) If the FP is $10.00 or greater, the applicant shall be given 12 points.

(II) If the FP is $8.00 to $9.99, the applicant shall be given 11 points.

(III) If the FP is $6.00 to $7.99, the applicant shall be given 10 points.

(IV) If the FP is $5.00 to $5.99, the applicant shall be given 9 points.

(V) If the FP is $4.00 to $4.99, the applicant shall be given 8 points.

(VI) If the FP is $3.00 to $3.99, the applicant shall be given 7 points.

(VII) If the FP is $2.00 to $2.99, the applicant shall be given 6 points.

(VIII) If the FP is $1.75 to $1.99, the applicant shall be given 5 points.

(IX) If the FP is $1.50 to $1.74, the applicant shall be given 4 points.

(X) If the FP is $1.25 to $1.49, the applicant shall be given 3 points.

(XI) If the FP is $1.00 to $1.24, the applicant shall be given 2 points.

(XII) If the FP is $0.75 to $0.99, the applicant shall be given 1 point.

(XIII) If the FP is less than $0.75, the applicant shall be given 0 points.

(F) **Need (N).** An applicant who is subject to an enforcement order issued by a governmental agency with environmental jurisdiction shall be given 5 priority points for a proposed project which will remedy the violation out of which the order arose if the order specifies a project construction start date which is on or before June 30 of the Board's current fiscal year for funding REAP grants.

(G) **Amount of grant requested (AR).** Points under this category for amount of grant requested are determined as follows:

(i) If the AR is $140,001 to $150,000, the applicant shall be given -5 points.

(ii) If the AR is $130,001 to $140,000, the applicant shall be given -4 points.

(iii) If the AR is $120,001 to $130,000, the applicant shall be given -3 points.

(iv) If the AR is $110,001 to $120,000, the applicant shall be given -2 points.

(v) If the AR is $100,001 to $110,000, the applicant shall be given -1 point.

(vi) If the AR is $100,000, the applicant shall be given 0 points.

(vii) If the AR is $80,000 to $99,999, the applicant shall be given 1 point.

(viii) If the AR is $60,000 to $79,999, the applicant shall be given 2 points.

(ix) If the AR is $40,000 to $59,999, the applicant shall be given 3 points.

(x) If the AR is $20,000 to $39,999, the applicant shall be given 4 points.

(xi) If the AR is less than $20,000, the applicant shall be given 5 points.

(xii) Any portion of an AR that is more than $150,000 shall be denied.

(H) **Project benefit to other systems (BP).** If the applicant's project will benefit other adjacent systems as well as applicant's, or result in or lead to consolidation of systems, an additional five (5) priority points will be included in the total of priority points assigned to the application.

(I) **Previous grant assistance (PG).** No qualified entity shall receive more than $150,000 in REAP grant assistance in any twelve (12) month period. For purposes of this subparagraph a political subdivision and all its public trusts and similar subordinate entities together shall be treated as one and the same qualified entity; provided, rural water or sewer districts shall not be construed to be subordinate entities of counties unless the effect would be to make multiple grants to substantially the same entity and/or service area. If a qualified entity has been approved for or received one (1) or more REAP grants from the Board in the past, points shall be deducted from the application according to all of the following provisions that apply:

(i) If the qualified entity has been approved for or received one (1) REAP grant in the preceding

twelve (12) month period, the application will be given -8 points.

(ii) If the qualified entity has been approved for or received more than one (1) REAP grant in the preceding twelve (12) month period, the application will be given -10 points for each REAP grant so received.

(iii) If the qualified entity has been approved for or received one (1) REAP grant more than twelve (12) months in the past, the application will be given -5 points.

(iv) If the qualified entity has been approved for or received two (2) REAP grants more than twelve (12) months in the past, the application will be given -8 points.

(v) If the qualified entity has been approved for or received three (3) REAP grants more than twelve (12) months in the past, the application will be given -10 points.

(vi) If the qualified entity has been approved for or received four (4) REAP grants more than twelve (12) months in the past, the application will be given -12 points.

(vii) If the qualified entity has been approved for or received five (5) or more REAP grants more than twelve (12) months in the past, the application will be given -14 points.

(c) **Priority formula for school districts and counties.**

(1) School districts created under Article V of the School Code, 70 O.S. 1991, §5-101 et seq., and counties are political subdivisions of the State, and therefore are eligible for financial assistance under the Board's REAP grant program.

(2) In evaluating and prioritizing grant applications from school districts and counties, similar criteria to those applied to municipalities and rural water districts will be utilized.

(3) In developing a priority formula for school district and county applicants, the primary criteria are average daily membership (for schools only), fiscal capacity, need, amount requested, and previous grant assistance.

(4) The following formula has been devised to rank REAP grant applications by counties and school districts: T = ADM + LT + BI + MHI + FP + N + AR + PG, Where:

(A) T = Total of priority points

(B) ADM = Average daily membership

(C) LT = Local tax levies

(D) BI = Bonded indebtedness

(E) MHI = Median household income of population within the school district or area of county to be served

(F) FP = Applicant's ability to finance project

(G) N = Need

(H) AR = Amount of grant requested

(I) PG = Previous grant assistance

(5) The criteria MHI, FP, N, AR and PG are the same as that set forth in (b) of this Section. The criteria ADM, LT and BI are explained as follows:

(A) **Average daily membership (ADM).** School districts with an average daily membership of less than ~~450~~ 525 students shall be given 55 priority points.

(B) **Local tax levies (LT).** Points awarded under this category for local tax levies are based on the total amount of mills levied, as follows:

(i) If the mills are 95 to 100, the applicant shall be given 13 points.

(ii) If the mills are 90 to 94.99, the applicant shall be given 11 points.

(iii) If the mills are 85 to 89.99, the applicant shall be given 10 points.

(iv) If the mills are 80 to 84.99, the applicant shall be given 8 points.

(v) If the mills are 70 to 79.99, the applicant shall be given 6 points.

(vi) If the mills are 60 to 69.99, the applicant shall be given 4 points.

(vii) If the mills are 55 to 59.99, the applicant shall be given 2 points.

(viii) If the mills are 50 to 54.99, the applicant shall be given 1 point.

(ix) If the mills are 45 to 49.99, the applicant shall be given 0 points.

(x) If the mills are 40 to 44.99, the applicant shall be given -1 point.

(xi) If the mills are less than 40, the applicant shall be given -2 points.

(C) **Bonded indebtedness (BI).**

(i) Priority points for Bonded Indebtedness are as follows:

(I) If the percentage is 95% to 100%, the applicant shall be given 10 points.

(II) If the percentage is 90% to 94.99%, the applicant shall be given 8 points.

(III) If the percentage is 80% to 89.99%, the applicant shall be given 7 points.

(IV) If the percentage is 75% to 79.99%, the applicant shall be given 6 points.

(V) If the percentage is 70% to 74.99%, the applicant shall be given 5 points.

(VI) If the percentage is 65% to 69.99%, the applicant shall be given 4 points.

(VII) If the percentage is 60% to 64.99%, the applicant shall be given 3 points.

(VIII) If the percentage is 55% to 59.99%, the applicant shall be given 2 points.

(IX) If the percentage is 50% to 54.99%, the applicant shall be given 1 point.

(X) If the percentage is 45% to 49.99%, the applicant shall be given 0 points.

(XI) If the percentage is 40% to 44.99%, the applicant shall be given -1 point.

(XII) If the percentage is 30% to 39.99%, the applicant shall be given -2 points.

(XIII) If the percentage is less than 30%, the applicant shall be given -3 points.

(ii) A deduction of one (1) point from the indebtedness ranking total will be made for applicants with 75% of existing debts financed at rates of 5% or less, and one (1) point will be added if 75% of existing debts are financed at rates greater than 10%.

[OAR Docket #03-1099; filed 6-2-03]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 50. FINANCIAL ASSISTANCE

[OAR Docket #03-2000]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Clean Water State Revolving Fund Regulations
Part 1. General Provisions
785:50-9-5. Purpose [AMENDED]
785:50-9-7. Applicability to projects [AMENDED]
785:50-9-9. Definitions [AMENDED]
Part 3. General Program Requirements
785:50-9-21. Eligible project [AMENDED]
785:50-9-23. Clean Water SRF Project Priority System [AMENDED]
785:50-9-35. Loan closing [AMENDED]
Part 7. SRF Environmental Review Process
785:50-9-60. Requirement of environmental review [AMENDED]
AUTHORITY:
Oklahoma Water Resources Board, 82 O.S. 2001, §1085.2; 82 O.S. Supp. 2002, §§1085.51 through 1085.62, 1085.64 and 1085.65.
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ANALYSIS:
The Oklahoma Water Resources Board has adopted amendments to OAC 785:50-9-23 in order to implement the statutory changes to the Clean Water State Revolving Fund Loan Program (the CWSRF") made by Enrolled House Bill 1995 enacted during the 2002 legislative session. House Bill 1995 amended 82 O.S. §1085.51 et seq. to authorize the CWSRF to fund non-point source pollution projects and to score all potential water quality projects on the basis of an integrated priority list. The OWRB has previously promulgated rules that set priority scoring criteria for projects funded through the CWSRF, however these criteria are appropriate only for point source projects, and do not serve to fairly and adequately evaluate all eligible water quality projects. Under the current rules, point source projects are evaluated on the basis of a point source discharge component and an urban storm water component. The adopted amendments modify the criterion to evaluate all eligible water quality projects on the basis of a project type criteria, a water quality restoration criteria, a water quality protection criteria, and a readiness to proceed criteria. This rulemaking will allow the OWRB to apply this change to criteria to projects identified in its Intended Use Plan beginning in fiscal year 2004.

Several provisions throughout OAC 785:50 have been adopted to correct definitions and formatting and to update citations. Several rules contain formatting and other errors. Several rules contain statutory, rule or other citations which have recently been or are being changed. The intended effect of these amendments is to make the rules reflect the appropriate definitions, format and citations, and otherwise to state their text accurately.
CONTACT PERSON:
Joe Freeman, Financial Assistance Division Chief, (405) 530-8800

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2003:

SUBCHAPTER 9. CLEAN WATER STATE REVOLVING FUND REGULATIONS

PART 1. GENERAL PROVISIONS

785:50-9-5. Purpose

The purpose of this subchapter is to facilitate the administrative and technical management of the Oklahoma ~~Wastewater Facility Construction~~ Clean Water State Revolving Fund Loan Account as required by 82 O.S., Section 1085.51 et seq.

785:50-9-7. Applicability to projects

This subchapter shall apply to all public projects for which application is made for financial assistance from the ~~Wastewater Facility Construction~~ Clean Water State Revolving Fund Loan Account for the purposes authorized by law.

785:50-9-8. Authority

In order to implement the Clean Water State Revolving Fund program in Oklahoma, the Legislature created the ~~Wastewater Facility Construction~~ Clean Water State Revolving Fund Loan Account to be administered by the Board. The rules in this Subchapter are authorized by 82 O.S., Sections 1085.51 et seq. These regulations are necessary for determining the eligibility and priority of entities to receive financial assistance pursuant to the Federal Clean Water Act as amended and from the ~~Wastewater Facility Construction~~ Clean Water State Revolving Fund Loan Account.

785:50-9-9. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"303(d) List" means the list of impaired waters of the State, or most recent approved revision thereof, developed

pursuant to Section 303(d) of the Clean Water Act as amended and maintained on file at the Board.

"Act" means The Federal Clean Water Act, as amended.

"Applicant" means any municipality, as defined, that submits a preapplication/application for financial assistance in accordance with this subchapter.

"Architectural or **engineering services"** means consultation, investigations, reports, or services for design-type projects within the scope of the practice of architecture or professional engineering.

"As a result of" means funds in the Clean Water SRF including the capitalization grant, repayments of first round loans, bond proceeds, and the State match.

"Binding commitment" means binding commitments are legal obligations by the State to the local recipient that define the terms and the timing for assistance under Clean Water SRF.

"Board" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, for duties authorized by law to be delegated to the Executive Director, the Executive Director or any employee or agent or staff member thereof as assigned by the Executive Director.

"Brownfield" *means an abandoned, idled or underused industrial or commercial facility or other real property at which expansion or redevelopment of the real property is complicated by environmental contamination caused by regulated substances* [27A:2-15-103(2)].

"Brownfield assessment" means any phase I, phase II, phase III or other study required by the Department which is used to assess a brownfield.

"Building" means the erection, acquisition, alteration, remodeling, improvement or extension of treatment works.

"Capitalization grant" means an agreement between EPA and State whereby federal dollars are made available to partially fund a Clean Water SRF.

"Collector sewer" means the common lateral sewers, within a publicly owned treatment system which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service "Y" connections designed for connection with those facilities including:

(A) Crossover sewers connecting more than one property on one side of a major street, road, or highway to a lateral sewer on the other side when more cost effective than parallel sewers; and

(B) Pumping units and small diameter lines serving individual structures or groups of structures.

"Combined sewer" means a sewer that is designed as a sanitary sewer and a storm sewer.

"Conservation Commission" means the Oklahoma Conservation Commission.

"Construction" means any one or more of the following: brownfield assessment; preliminary planning to determine feasibility, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other actions or undertakings necessary to a project; erection, building, acquisition, alteration, remodeling, improvement, or extension of a project; or the inspection or supervision of any of the foregoing items.

"Contingency section" means that portion of the planning portion of the priority list consisting of projects which may receive loans due to bypass provision or due to additional funds becoming available.

"Cross-cutting laws and orders" means Federal laws and authorities that apply to all activities supported with funds "directly made available by" capitalization grants.

"Department" means the Oklahoma Department of Environmental Quality.

"Enforceable requirements of the Act" means those conditions or limitations of NPDES or other discharge permits which, if violated, could result in the issuance of a compliance order or initiation of a civil or criminal action. If a permit has not been issued, the term shall include any requirement which would be included in the permit when issued. Where no permit applies, the term shall include any requirement which is necessary to meet applicable criteria for best practicable wastewater treatment technology (BPWTT).

"Equivalency projects" means projects cited by the Board as meeting the requirement of the capitalization grant.

"Excessive infiltration/inflow" means the quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.

"Fundable portion" means that portion of the Project Priority List which includes projects scheduled for financial assistance during the funding year.

"Funding year" means the first year of the planning period represented by a project priority list.

"Infiltration" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from inflow.

"Inflow" means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from infiltration.

"In perpetuity" means maintaining the principal amounts of the federal capitalization grants and state matching funds within the CWSRF.

"Intended Use Plan" means a document prepared each year by the State, which identifies the intended uses of the funds in the CWSRF and describes how those uses support the goals of the CWSRF.

"Interceptor sewer" means a sewer which is designed for one or more of the following purposes:

(A) To intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor.

(B) To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant.

(C) To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment.

(D) To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.

"Loan" means an agreement between the State and the local recipient through which the Clean Water SRF provides funds for eligible assistance and the recipient promises to repay the principal sum to the Clean Water SRF over a period not to exceed 20 years at an interest rate established at or below market rates (may be interest free).

"MBE" means Minority Business Enterprise.

"MBE/WBE participation" means the federal requirement for negotiation of a "fair share" objective for minority and women owned businesses (MBE/WBE) applies to assistance in an amount equal to the capitalization grant.

"MGD" means millions of gallons per day.

"Municipality" means a city, town, county, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, or an Indian tribe or an authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other waste, or a designated and approved management agency consistent with the State Water Quality Management Plan.

"Nonexcessive infiltration" means the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effectiveness analysis.

"Nonexcessive inflow" means the rainfall induced peak inflow rate which does not result in chronic operational problems related to hydraulic overloading of the treatment works during storm events. These problems may include surcharging, backups, bypasses, and overflows.

"Nonpoint source" means a source of pollution which is diffuse and does not have a single point of origin or is introduced into a receiving stream from a specific outlet.

"Nonpoint source activities" means capital works, capital improvements, capital equipment, environmental cleanups, land acquisition, or implementation of management practices for the purpose of protecting or improving surface or underground water quality through watershed management or reduction of nonpoint source pollution as authorized by the Act.

"Operable treatment works" means a treatment works that, upon completion, will meet the enforceable requirements of the Act.

"Operation and maintenance" means activities required to assure the dependable and economical function of treatment works.

(A) **"Maintenance"** means preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment.

(B) **"Operation"** means control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

"OWQS" means the Oklahoma Water Quality Standards promulgated by the Board at Oklahoma Administrative Code Title 785, Chapter 45, as amended.

"Planning" means the process of evaluating alternative solutions to water pollution problems, and through a systematic screening procedure, selecting the most cost effective environmentally sound alternative.

"Planning portion" means that part of the Project Priority List containing all projects outside the fundable portion of the list that may, under anticipated allotment levels, receive funding during the five-year planning period represented by the list.

"Project" means the ~~scope of work~~ water quality project for which Clean Water SRF assistance is provided. ~~The scope of work is for~~ Water quality projects include:

(A) construction and design, or construction of an operable treatment works or segment thereof the principal purpose of which is for the treatment of domestic users' discharges within the jurisdiction, community, sewer service area, region or district concerned; ~~or~~

(B) urban storm water activities;

(C) nonpoint source activities; or

(D) other water quality projects as defined by 82 O.S. §1085.52, as amended.

"Project completion" means the date operations of the project are initiated or are capable of being initiated, whichever is earlier.

"Project Priority List" means a contiguous list of projects in order of priority for which Clean Water SRF assistance is expected during a five-year planning period.

"Project priority points" means the total number of points assigned to a project by using the priority ranking formula.

"Reallotment" means allotment of previously allotted unused funds.

"Recipient" means a municipality or other entity which receives assistance under the Clean Water SRF program.

"Repayment" means principal and interest payments on loans which must be credited directly to the Clean Water SRF.

"Replacement" means those expenditures for obtaining and installing equipment, accessories, or appurtenances during the useful life of the treatment works necessary to maintain the capacity and performance for which such works are designed and constructed.

"Responsible bidder" means a prospective contractor that currently meets the minimum standards of financial and technical ability to perform the tasks identified in the project specifications.

"Revenue programs" means a formally documented determination of sewer use charges which is designed to provide revenues for operation and maintenance (including replacement) cost, and/or any combination of revenue generating programs necessary to meet local debt service requirements.

"Sewer System Evaluation Survey (SSES)" means a study which shall identify the location, estimated flow rate, method of rehabilitation, and cost of rehabilitation versus the cost of transportation and treatment for each defined source of infiltration/inflow.

"State match" means funds equaling at least 20% of the amount of the capitalization grant which the State must deposit into the Clean Water SRF.

"State Revolving Fund" or **"SRF"** means funds for loans or providing other assistance for pollution control projects established through capitalization grants from EPA and State matching funds.

"Storm sewer" means a sewer designed to carry only storm waters, surface runoff, street wash waters, and drainage.

"Treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances. In addition **"treatment works"** means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, including on-site systems and waste in combined storm water and sanitary sewer systems.

"Urban storm water activities" means those activities which are conducted under the Oklahoma Brownfields Voluntary Redevelopment Act for eligible entities that have obtained a draft or final permit pursuant to the National Pollution Discharge Elimination Act or Oklahoma Pollutant Discharge Elimination System Act, which are designed to improve water quality, and which are exempt from funds administered under the Nonpoint Source Management Program of the federal Clean Water Act.

"User charge" means a charge levied on users of a treatment works for the user's share of the cost of operation and maintenance (including replacement) of such works.

"WBE" means Women's Business Enterprise.

PART 3. GENERAL PROGRAM REQUIREMENTS

785:50-9-21. Eligible project

(a) The categories of wastewater treatment projects eligible for assistance are as follows:

(1) ~~Secondary Treatment~~ Category I - Secondary Treatment. The treatment facility necessary to discharge an effluent meeting the secondary treatment definition. This category may include outfall lines and lines which take existing treatment plants out of operation by transporting the effluent to a different plant;

(2) ~~Advanced Treatment~~ Category II - Advanced Treatment. The additional treatment necessary to meet more stringent than secondary effluent requirements as established in water quality management plans;

(3) ~~Infiltration/Inflow Correction~~ Category IIIA -- Infiltration/Inflow Correction. The correction of infiltration/inflow conditions including all costs necessary for removing excessive I/I from the sewer system, such as replacement or relining sewer sections, flow routing systems, etc;

(4) ~~Major Sewer System Rehabilitation~~ Category IIIB -- Sewer System Rehabilitation. Replacement or major rehabilitation of sewers, where it has been determined that such replacement or rehabilitation is necessary to the total integrity and performance of the wastewater treatment works;

(5) ~~New Collection Systems~~ Category IVA -- New Collector Sewer Systems. Sewage collection system is the common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual structures or from private property, and which include service connection "Y" fittings designed for connection with those facilities. Pumping units, and pressurized lines, for individual structures or groups of structures when such units are cost effective and are owned and maintained by the applicant are included in this category;

(6) ~~New Interceptors~~ Category IVB - New Interceptor Sewer Systems and Appurtenances. A sewer whose primary purpose is to transport wastewaters from collector sewers to a treatment facility;

(7) ~~Combined Sewer Overflow Correction~~ Category V -- Combined Sewer Overflow Correction. Correction of combined sewer overflows including cost of new collectors, interceptors, storm sewers, retention basin, etc., necessary to alleviate the overflow problem; ~~, and~~

(8) Category VI - Storm Sewers. Urban storm water activities~~.~~ ;

(9) Nonpoint source activities; and

(10) Other water quality projects as defined under 82 O.S. §1085.51, as amended.

(b) The Board will determine annually the amount of funding necessary and the project categories that will be placed on the fundable portion of the Priority List.

(c) Costs associated with the planning or assessing, design and building of the eligible categories of projects are considered allowable by the Board. Eligible construction costs will be based on the lowest responsible bidder.

(d) Eligibility for equivalency projects is subject to the applicable Federal requirements including those identified in 785:50-9-38(e) and 785:50-9-45(2) through (4).

(e) Additionally, the Board shall consider the following issues in determining project eligibility:

(1) **Capacity funding limitations.** The eligible capacity shall be determined using average dry weather flow and peak flows in accordance with population and per capita flow estimates provided by the applicant. Project capacity must be consistent with environmental constraints.

(A) Eligible capacity for treatment plants will be up to a period of 20 years from the estimated date of initiation of construction.

(B) Eligible capacity for interceptors and outfalls will be up to 40 years from the estimated date of initiation of construction.

(C) Eligible capacity shall be calculated by multiplying the Board approved local population projection by an appropriate local per capita flow figure. The flow thus calculated will be deemed to include all the eligible project flows (residential, commercial, federal facilities, industrial, and infiltration/inflow). Eligible capacity will be determined during the development of the planning documents.

(D) The applicant will be responsible for documenting, in the planning document, the peaking factors used for the project.

(E) Eligible capacity will be determined when planning documents are approved by the Board.

(2) **Collection systems.** The common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service "Y" connections.

(3) **Population and flow projections.** Section 208 Areawide Water Quality Management Plan population and flow projections will be used to determine the eligible project capacity. A discussion of the local projections should be included in the planning document.

(4) **Land costs.** Allowable costs for land and rights-of-way include the cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement that will be an integral part of the treatment process or that will be used for the ultimate disposal of residues resulting from such treatment, including:

(A) The cost of a reasonable amount of land, considering irregularities in application patterns and the need for buffer areas, berms, and dikes;

(B) The cost of land acquired for a soil absorption system for a group of two or more homes;

(C) The cost of land acquired for composting or temporary storage of compost residues which result from wastewater treatment; and

(D) The cost of land acquired for storage of treated wastewater in land treatment systems before land application. The total land area for construction of a pond for both treatment and storage of wastewater is allowable if the volume necessary for storage is greater than the volume necessary for treatment. Otherwise, the allowable cost will be determined by the ratio of storage volume to the total volume of the pond.

(5) **On-site systems.** Treatment and collection systems constructed at or near the wastewater source where the system serving individual structures or groups of structures are cost-effective and are owned and operated by the loan recipient.

(6) **Brownfield remediation.** The types of urban storm water activities that may be qualified for Clean Water SRF funding include, but are not limited to: excavation and disposal of underground storage tanks; constructing wetlands or other filtering mechanisms; capping wells; excavation, removal and disposal of contaminated soil or sediments; tunnel demolition; well abandonment; and all phases or brownfield assessments or planning required by the Department.

785:50-9-23. Clean Water SRF Project Priority System

(a) **Preparation.** The Board shall prepare and maintain a current Clean Water SRF Project Priority Listing of potential eligible projects in the order of priority.

(b) **Projects included.**

(1) **Fundable portion.** The fundable portion includes projects scheduled for financial assistance during the current fiscal year, and which are within the limits of currently available funds.

(2) **Planning portion.** The planning portion includes that portion of the priority list containing all of those projects outside the fundable portion of the list, and which are anticipated to receive financial assistance in future fiscal years. The planning portion may also include contingency projects which are scheduled for assistance during the current fiscal year, but for which adequate funds are not available to provide financial assistance. Contingency projects may receive assistance due to bypass provisions or due to additional funds becoming available.

(c) **Public participation.** Before the beginning of each fiscal year, the Board shall insure that adequate public participation has taken place. A public meeting will be held to discuss the Clean Water SRF Project Priority List and any revisions that were made to the Clean Water SRF Project Priority System. The notice of public meeting shall precede the public meeting by 30 days and shall be published in a statewide publication. At this time, the Board shall circulate information about the Project Priority List including a description of each proposed project. Attenders of the public meeting will be allowed to express their views concerning the list and system.

(d) **Clean Water SRF Project Priority List.** A Clean Water SRF Project Priority List shall become effective and supersede all previous lists upon the beginning of the fiscal year for which it is designated. A Clean Water SRF Project Priority List, as updated during the funding year, shall remain effective until such time as it is superseded by a new list.

(e) **CWSRF Integrated Priority Rating System.** The Board will utilize an integrated priority ranking system to evaluate and rank ~~point source projects and brownfield projects~~ proposed projects, including treatment works, nonpoint source activities, and urban storm water activities, based on the relative impact of the project in achieving the water quality objectives of the Act. ~~Such~~ This system consists of ~~two components: the point source discharge component (PS) and~~

~~the urban storm water component (USW). Priority points (P) equal PS plus USW.~~

~~(f) Point source discharge component (PS). This component is based on the relative impact of the project in achieving the pollution control objectives of the Act.~~

~~(1) Formula. The point source priority points (PS) are derived from the formula PS equals T plus S plus Q plus H, where T equals Project Type Factor, S equals Segment Ranking Factor, Q equals Effluent Quality Factor, and H equals Public Health Factor.~~

~~(2) Project type factor (T). The system establishes a priority factor for each of the following categories of need. These categories comprise mutually exclusive classes of facilities and include:~~

~~(A) Category I - The treatment facility necessary to discharge an effluent meeting the secondary treatment definition. This category may include outfall lines and lines which take existing treatment plants out of operation by transporting the effluent to a different plant.~~

~~(B) Category II - The additional treatment necessary to meet more stringent than secondary effluent requirements as established in water quality management plans.~~

~~(C) Category IIIA - Infiltration/Inflow Correction. The correction of infiltration/inflow conditions including all costs necessary for removing excessive I/I from the sewer system, such as replacement or relining sewer sections, flow routing systems, etc.~~

~~(D) Category IIIB - Replacement or major rehabilitation of sewers, where it has been determined that such replacement or rehabilitation is necessary to the total integrity and performance of the wastewater treatment works.~~

~~(E) Category IVA - Sewage collection system is the common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual structures or from private property, and which include service connection "Y" fittings designed for connection with those facilities. Pumping units, and pressurized lines, for individual structures or groups of structures when such units are cost effective and are owned and maintained by the applicant are included in this category.~~

~~(F) Category IVB - Interceptor Sewer and Appurtenances. A sewer whose primary purpose is to transport wastewaters from collector sewers to a treatment facility.~~

~~(G) Category V - Correction of Combined Sewer Overflows. Correction of combined sewer overflows including cost of new collectors, interceptors, storm sewers, retention basin, etc., necessary to alleviate the overflow problem.~~

~~(H) Category factors - The factors for the categories in (A) through (G) of this paragraph are:~~

~~(i) Category I = a ranking factor of 10~~

~~(ii) Category II = a ranking factor of 10~~

~~(iii) Category IIIA = a ranking factor of 4~~

~~(iv) Category IIIB = a ranking factor of 2~~

~~(v) Category IVA = a ranking factor of 2~~

~~(vi) Category IVB = a ranking factor of 2~~

~~(vii) Category V = a ranking factor of 2~~

~~(3) Segment ranking factor (S).~~

~~(A) The segment ranking factor is derived from the 303(d) List. The 303(d) List includes a priority ranking of impaired waters, taking into account the severity of the pollution and the uses to be made of such waters, as well as other factors. The 303(d) List assigns four priority levels to listed waters. Not all waters of the state are included on the list. The segment ranking factor will be determined as follows:~~

~~(i) Waters or segments identified as Priority 1 will be assigned 100 points.~~

~~(ii) Waters or segments identified as Priority 2 will be assigned 80 points.~~

~~(iii) Waters or segments identified as Priority 3 will be assigned 60 points.~~

~~(iv) Water or segments identified as Priority 4 will be assigned 40 points.~~

~~(v) Waters or segments not listed in the 303(d) List will be assigned 20 points. The segment ranking factor will be subject to change whenever the 303(d) List is revised.~~

~~(4) Effluent quality factor (Q).~~

~~(A) The effluent quality factor (Q) is calculated by use of the following formula: Q = the sum of BOD5 plus TSS plus NH3 plus PO4, multiplied by F1, where~~

~~(i) BOD5 equals (Monitored BOD5 in mg/l) divided by (Required BOD5 in mg/l),~~

~~(ii) TSS equals (Monitored TSS in mg/l) divided by (Required TSS in mg/l),~~

~~(iii) NH3 equals (Monitored NH3 in mg/l) divided by (Required NH3 in mg/l),~~

~~(iv) PO4 equals (Monitored PO4 in mg/l) divided by (Required PO4 in mg/l), and~~

~~(v) F1 equals (Flow in MGD multiplied by 8.34).~~

~~(B) For proposed projects to replace, upgrade, expand or modify a single existing facility, Q will be calculated from the existing facility data.~~

~~(C) For proposed projects to eliminate more than one existing facility, Q will be the summation of the effluent quality factors for each existing facility.~~

~~(D) The monitored element shall be the average concentration of the effluent for the preceding calendar year indicated by the Discharge Monitoring Reports. The required element shall be the limit of concentration in the most currently approved water quality management plan. Any ratio not greater than 1 will be considered to be 0. The flow will be the design flow for proposed facility in MGD. When any element of the formula is not established, that portion of the effluent quality factor (Q) shall be zero (O). This factor may be applied only to category I and category II projects.~~

~~(E) Where seasonal limits have been established, the most stringent limits will be used in calculating Q.~~

~~(5) Public health factor (H). The Executive Director of the Oklahoma Water Resources Board may determine that a project is necessary to preclude or alleviate a threat to public health. Projects so identified will receive a factor of 10. Such a condition will be considered to exist if there is an administrative fine order or a signed consent order between the applicant and the Department, or EPA has issued an Administrative Order or discharge permit with compliance schedules which require construction/modification of the facility. The project will receive an additional 5 points if the Department has issued a moratorium of the existing system. The H factor will apply only to those categories for which the enforcement orders and moratorium are issued.~~

~~(6) Readiness to proceed. Projects ready to proceed during the current fiscal year will receive an additional 5000 points. Projects ready to proceed during the second year of the priority list will receive an additional 4000 points. Projects ready to proceed during the third year of the priority list will receive an additional 3000 points. Projects ready to proceed during the fourth year of the priority list will receive an additional 2000 points. Projects ready to proceed during the fifth year of the priority list will receive an additional 1000 points. This determination will be based on projected funds available and best estimates of the date of the project would qualify to receive financial assistance from the Clean Water SRF.~~

~~(g) Urban storm water component (USW).~~

~~(1) General. This component is based upon the relative impact of the project in achieving the pollution control objectives of the Act. The urban storm water priority points (USW) are derived from the formula USW equals R plus H plus S, where R equals the redevelopment factor described in (2) of this subsection, H equals the public health factor described in (f)(5) of this Section, and S equals the segment ranking factor described in (f)(3) of this Section.~~

~~(2) Redevelopment factor (R). The redevelopment factor evaluates the six criteria listed in (A) through (F) of this paragraph and is calculated as provided in (G) of this paragraph:~~

~~(A) Site contamination is present at concentrations that pose a potential unacceptable risk to human health or the environment.~~

~~(B) A redevelopment or revitalization plan supported by the affected municipality has been developed for the site.~~

~~(C) The redevelopment or revitalization plan has attracted investors.~~

~~(D) The site is located in a federally-recognized Enterprise Community, a state-recognized Historic District, a state-recognized Enterprise Zone, or a neighborhood with environmental justice concerns.~~

~~(E) The site is within one mile from a major transportation artery or an industrial or commercial complex.~~

~~(F) The site has been vacant for three or more years.~~

~~(G) The point value for the redevelopment factor shall be:~~

~~(i) Ten if all six criteria in (A) through (F) of this paragraph exist;~~

~~(ii) Nine if the four criteria in (A) through (D) of this paragraph exist and either of the criteria in (E) or (F) of this paragraph exists;~~

~~(iii) Eight if the three criteria in (A) through (C) of this paragraph exist and any of the criteria in (D) through (F) of this paragraph exists;~~

~~(iv) Seven if the two criteria in (A) and (B) of this paragraph exist and any of the criteria in (C) through (F) of this paragraph exists;~~

~~(v) Six if the two criteria in (A) and (B) of this paragraph exist and the site is within three miles of both a major transportation artery and an industrial or commercial complex;~~

~~(vi) Five if the two criteria in (A) and (B) of this paragraph exist and the site has been vacant for 18 months or more;~~

~~(vii) Four if the two criteria in (A) and (B) of this paragraph exist and the site is within five miles of both a major transportation artery and an industrial or commercial complex;~~

~~(viii) Three if the two criteria in (A) and (B) of this paragraph exist and the site has been vacant for one year or more;~~

~~(ix) Two if the two criteria in (A) and (B) of this paragraph exist; and~~

~~(x) One if either of the criteria in (A) or (B) of this paragraph exists.~~

~~(h)~~ criteria integrating public health protection and Oklahoma's Water Quality Standards beneficial use maintenance and protection goals and Anti-degradation policy, including project type, water quality restoration, water quality protection, and readiness to proceed.

(1) **Project Type Factor.** The Project Type Factor provides a maximum of seventy (70) points for proposed water quality projects based on the following:

(A) Treatment works or water quality projects designed to effectively eliminate or reduce a documented source of human health threat and/or discharge permit limit violation within a watershed of a waterbody being utilized as a public water supply shall receive seventy (70) points.

(B) Treatment works or water quality projects designed to effectively eliminate or reduce a documented source of human health threat and/or discharge permit limit violation shall receive sixty (60) points.

(C) Treatment works or water quality projects designed to sustain compliance with or provide a degree of treatment beyond permit limits; increase capacity, reliability, or efficiency; reclaim/reuse wastewater; reduce a documented water quality threat, or

otherwise maintain beneficial uses shall receive thirty (30) points.

(D) All other eligible treatment works or pollution control projects shall receive twenty (20) points.

(2) **Water Quality Restoration Factor.** The Water Quality Restoration Factor provides a maximum of twenty (20) points for proposed projects located on waterbodies which are not meeting the beneficial uses assigned to them in Oklahoma's Water Quality Standards and which are listed on Oklahoma's 303(d) list as threatened or impaired. The water quality restoration factor will be subject to change whenever the 303(d) List is revised. Water quality projects meeting the following criteria shall receive additional priority points:

(A) A project located in a watershed listed as a "Top Ten NPS Priority Watershed" in Oklahoma's Nonpoint Source Management Program shall receive an additional ten (10) points.

(B) A project listed on Oklahoma's 303(d) list of threatened or impaired stream segments shall receive an additional five (5) points.

(C) A project that implements the recommendations of a conservation plan, site-specific water quality remediation plan, TMDL or modified 208 water quality management plan, which has been approved by an agency of competent jurisdiction, in a sub-watershed where discharge or runoff from nonpoint sources are identified as causing, or significantly contributing to water quality degradation shall receive an additional five (5) points.

(3) **Water Quality Protection Factor.** The Water Quality Protection Factor provides a maximum of ten (10) priority points to proposed water quality projects that provide maintenance of beneficial uses and protection for water bodies afforded special protection under OWQS. Projects shall receive ten (10) points for satisfying the following criteria:

(A) A water quality project located within the watershed of a stream segment or in a groundwater basin underlying a watershed of a stream segment (known as "Special Source" groundwater):

(i) listed in OWQS Appendix A. as an Outstanding Resources Water, High Quality Water, Sensitive Water Supply, Scenic River or Culturally Significant Water;

(ii) listed in OWQS Appendix B.--"Areas with Waters of Recreational and/or Ecological Significance"; or

(iii) located in a delineated "source water protection area"; or

(B) A water quality project located in an area overlying a groundwater classified in OWQS with a vulnerability level of Very High, High, Moderate, or Nutrient Vulnerable.

(4) **Readiness to Proceed Factor.** The Readiness to Proceed Factor provides a maximum of four hundred (400) points depending on the relative "readiness to proceed" with a loan commitment among proposed projects.

(A) A project requesting to be considered for funding within the five-year planning period shall receive one hundred (100) points.

(B) In addition to a request for funding, a project for which preliminary planning documents have been submitted shall receive two hundred (200) points. Preliminary planning documents include a preliminary engineering report and a preliminary environmental information document, and must be submitted to the Board and to the Department or the Conservation Commission as appropriate.

(C) In addition to a request for funding and preliminary planning documents, a project for which a completed loan application has been submitted shall receive three hundred (300) points.

(D) In addition to a request for funding, preliminary planning documents, and a completed loan application, a project for which the appropriate technical plans and specifications necessary to implement the project have been approved by the Department or the Conservation Commission, as appropriate, shall receive four hundred (400) points.

(f) **Management of the Project Priority List.**

(1) **Tie breaking procedure.** A tie breaking procedure shall be utilized when two or more projects have equal points under the Project Priority System and are in competition for funds. Projects will be ranked according to existing population. According to the most recent 208 Water Quality Management Plan, i.e., the project with the greatest existing population will receive the higher ranking.

(2) **Project bypass.** A project on the fundable portion of the list may be bypassed if it is determined that the project will not be ready to proceed during the funding year. This determination will be made on projects that are unable to meet the schedule established on the priority list. The applicant whose project is affected shall be given written notices that the project is to be bypassed. Projects that have been bypassed may be reinstated on the funded portion of the list if sufficient funds are available, and the project completes the necessary tasks to proceed. Funds which become available due to the utilization of these bypass procedures will be treated in the same manner as additional allotments.

(3) **Project Priority List update.** The priority list is continually reviewed and changes (i.e., loan award dates, estimated construction assistance amounts, project bypass, addition of new projects, etc.) may occur as necessary.

(4) **Additional allotments.** After defining the fundable portion of the Clean Water SRF Project Priority List, the Board may determine that it is necessary or desirable to obligate additional funds that are available and the list may be extended to include the next highest ranked project or projects on the planning portion of the list. Any sum made available to a state by reallotment or deobligation shall be treated in the same manner as the most recent allotment.

(5) **Project removal.** The Board may remove a project from the Clean Water SRF Project Priority List when the project has been funded, the project is found to be ineligible, it is indicated that the applicant does not intend to continue in the Clean Water State Revolving Loan Program, or the Board has determined that the applicant does not have financial, legal, or managerial capability to construct the project.

(6) **Amount of financial assistance.** The amount of financial assistance shall be the sum of the total eligible costs related to construction. The amount is contingent upon the availability of funds for this purpose. During each funding year, loans totaling twenty-five (25) percent of the funds available from the capitalization grant and state match for that year shall be provided to those eligible small municipalities with a population of 10,000 or less. However, if the state has not met the federal requirement of making binding commitments in an amount equal to one hundred and twenty (120) percent of each quarterly grant payment within one year of receipt of each quarterly payment, other eligible applicants may apply for a loan or an increase to an existing loan to utilize the small community set aside, if such actions will permit the state to comply with the federal binding commitment requirement.

(7) **Addition of new projects to the Clean Water SRF Project Priority List.**

(A) **General.** Prior to the placement of any new projects on the Clean Water SRF Project Priority List, the applicant must submit a request for such placement to the Board. The request must specify that the applicant intends to apply for financial assistance from the Clean Water SRF. The Board will evaluate the request, and if it is indicated that a viable project could result which would be in conformance with Clean Water SRF requirements, the potential project will be added to the Clean Water SRF Priority List.

(B) **Urban storm water.** Requests received for urban stormwater activity projects must satisfy the following requirements before they will be placed on the Clean Water SRF fundable portion of the project priority list:

(i) Submit a certification from the Department that the project is an urban storm water project;

(ii) Submit a certification from the Department that urban runoff from the project site potentially impacts water quality; and

(iii) Submit project documents which determine the water quality benefits of the proposed project.

(C) **Nonpoint source activities.** Requests received for nonpoint source activity projects must satisfy the requirements of 82 O.S. §1085.58(G), as amended, before they will be placed on the Clean Water SRF fundable portion of the project priority list.

(8) **Categories of need.** All projects receiving financial assistance must fit into at least one of the categories of need listed in 785:50-9-21(a).

(A) A project may include all eligible categories of need.

(B) If a point source project consists of more than one category including a non-point project, its project ranking calculation will be based on that category which will result in the greatest priority points.

(9) **Change of scope.** A change of scope, such as the addition of new construction items, will not be eligible after loan closing unless:

(A) The change of scope is necessary to result in an operable treatment works due to an oversight and not to replace faulty construction or equipment already funded, or

(B) The change of scope is necessary due to changes in Federal or State requirements.

785:50-9-35. Loan closing

(a) **Documentation to be submitted prior to loan closing.** Prior to loan closing the applicant will submit to the Board, the following bid and contract documents:

(1) Bidding documents, including all addenda, approved in accordance with 785:50-9-32.

(2) A tabulation of all bids received and an explanation for any rejected bids or otherwise disqualified bidders.

(3) Contingently executed construction contract to be entered into by the applicant for building of the projects containing the appropriately executed bonds, insurance certificates, act of assurance, and other documents required by this chapter.

(4) Other or additional engineering data and information, if deemed necessary by the Board staff.

(5) A certification that all required acquisitions, leases, easements, rights-of-way, relocations, (both voluntary and involuntary) have been obtained for the project to be built.

(6) Evidence that the applicant has obtained all required permits and financing to build the project.

(7) Information requested by the Board regarding loan closing documents.

(8) Prior to concurrence by the Board in the award of a construction contract, any and all bid protests must be resolved by the applicant.

(9) A detailed project budget which limits the contingency to five percent (5%) of the contracted amount.

(10) Copies of all legal, financial, engineering and inspection contracts that will be paid in whole or in part from the loan proceeds.

(b) **General conditions for all loans.**

(1) Under the federal Water Quality Act of 1987 and 82 O.S., §1085.54, the Board is authorized to make available financial assistance from the ~~Wastewater Facility Construction~~ Clean Water State Revolving Fund Loan Account under the following conditions:

(A) The financial assistance application, project and planning documents have been approved by the Board pursuant to Section 1085.58 of Title 82 or the Oklahoma Conservation Commission pursuant to Section 1085.65 of Title 82 of the Oklahoma Statutes.

(B) The loan is made at or below market interest rates, including interest-free loans, at terms consistent with the federal Water Quality Act of 1987.

(C) Principal and interest payments will begin not later than one year after completion of any project, which completion date shall be determined by the Board, and all loans will be fully amortized consistent with the federal Water Quality Act of 1987.

(D) The applicant demonstrates to the satisfaction of the Board the financial capability to assure sufficient revenues to pay debt service.

(E) The recipient of the loan establishes a dedicated source of revenue for payment of debt service for the loan.

(F) The recipient agrees to maintain financial records in accordance with governmental accounting standards, to conduct an annual audit of the financial records relating to the wastewater project and to submit the audit report to the Board on a scheduled annual basis, and

(G) The project is identified in the Board's current Intended Use Plan.

(2) Financial assistance shall not be made from the Wastewater Revolving Loan Account until the conditions in (1) of this subsection are met.

(c) **Evidence of indebtedness.** The financial assistance loans contemplated within this subchapter shall be provided by the Board for approved projects pursuant to such notes, bonds, revenue bonds or other appropriate form of evidence of indebtedness from the applicant as the Board may require.

(d) **Criteria for determining interest rates.**

(1) The interest rates on loans to be made from the ~~Wastewater Facility Construction~~ Clean Water State Revolving Fund Loan Account shall be at or below market rates for similar indebtedness by eligible entities.

(A) Interest rates for interim construction loans may be reviewed and determined by the Board every six (6) months.

(B) The percentage of the market interest rate to be utilized for long-term loans is set by the Board based on recommendations made by Board staff.

(2) Factors which may be used to calculate the interest rate for a particular entity or class of entities include without limitation the following:

(A) Guidelines utilized by the United States Environmental Protection Agency and federal Farmers Home Administration or successor agency for similar type financial assistance for facilities that could qualify as Clean Water SRF projects.

(B) Maintenance of the ~~Wastewater Facility Construction~~ Clean Water State Revolving Fund Loan Account in perpetuity.

(C) Statewide needs for Clean Water SRF project financial assistance.

(D) Five-year demand projections of the Board of Clean Water SRF project financial assistance.

(E) Prevailing market interest rates which shall be the interest rates on long-term bonds maintaining a rating of AA.

(F) Debt service requirements of investment certificates issued by the Board to provide funds for the ~~Wastewater Facility~~ Clean Water State Revolving Fund Loan Account.

(G) Financial resources of the entity.

(H) The ability of the entity to repay the loan.

(I) Whether the entity discharges municipal wastewater into scenic river areas as defined in Section 1452 of Title 82 of the Oklahoma Statutes.

(e) **Security for loan.**

(1) As security for the assistance loan provided by the Board to an approved applicant, applicant must provide if required by the Board a mortgage on any or all facilities of the project for which application is made.

(2) The Board shall require a pledge and lien on revenues to be derived from the operation of the project.

(3) For purposes of this subsection, the pledge of lien on project revenues shall be a pledge of and lien on such project revenue, as is necessary to secure repayment of the loan obligation of applicant.

(4) Also, for purposes of this subsection, if the specific project for which application is made and approved is not of itself a revenue producing unit, then such pledge of an lien on revenues shall be on the revenues of the revenue producing system of which the specific project is a part and on such other additional revenue sources or systems which may be pledged by the applicant to satisfy the loan security requirements necessary to obtain assistance from the Board.

(5) The Board may require additional security which the Board deems necessary, which such additional security may include such pledges, liens, revenues and/or mortgages on additional facilities or systems of and as may be tendered by the applicant.

(f) **Conditions for disbursement of funds.** At or following the loan closing, the following conditions and requirements must be met prior to the release and disbursement of any financial assistance funds:

(1) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents for loan closing, including but not limited to all mortgages, notes, financing statements and pledges of project security and revenues where appropriate.

(2) Recipient sends disbursement requests based on costs incurred to the Board, who shall review the requests and approve them as appropriate.

PART 7. SRF ENVIRONMENTAL REVIEW PROCESS

785:50-9-60. Requirement of environmental review

As required by the provisions of Section 602(b) (6) of the Clean Water Act, the Board shall conduct an interdisciplinary environmental review consistent with the National Environmental Policy Act of the project proposed for funding through the ~~Wastewater Facility Construction~~ Clean Water State Revolving Fund Loan Account. This review will insure that the project will comply with the applicable local, state and federal laws and Board regulations relating to the protection and enhancement of the environment. Based upon the staff's review, the Board will make formal determinations regarding the potential social and environmental impacts of the proposed project. As necessary, the determination will include mitigative provisions as a condition of financial assistance for building and no financial assistance will be provided until a final environmental determination has been made. Nothing in this Part shall prohibit any public, private or governmental party from seeking administrative or legal relief from the determinations of the Board. Potential applicants to the ~~Wastewater Facility Construction~~ Clean Water State Revolving Fund Loan Account should obtain guidance from the staff regarding the scope of the environmental review to be conducted by the Board and the environmental information which the applicant will be required to submit in support of the proposed project.

(1) **Basic environmental determination.** There are three (3) basic environmental determinations that will apply to projects proposed to be implemented with assistance from the ~~Wastewater Facility Construction~~ Clean Water State Revolving Fund Loan Account. These are: a determination to categorically exclude a project from a formal environmental review; a finding of no significant impact (FNSI) based upon a formal environmental review supported by an environmental information document (EID); and a determination to provide or not to provide financial assistance based upon a Record of Decision following the preparation of an environmental impact statement (EIS). The appropriate determination will be based on the following criteria.

(A) The categorical exclusion determination applies to categories of projects that have shown over time not to entail significant impacts on the quality of the human environment.

(i) Projects which meet any of the following criteria may be categorically excluded from formal environmental review requirements.

(I) The project is directed solely toward rehabilitation of existing facilities, functional replacement of equipment, or toward the construction of related facilities adjoining the existing facilities that do not affect the degree of treatment or the capacity of the works (i.e. infiltration and inflow correction, rehabilitation of existing equipment and structures, and the construction of small structures on existing sites).

(II) The project is in a community of less than 10,000 population and is for minor expansions or upgrading of existing treatment works or on-site disposal systems are proposed.

(ii) Categorical exclusions will not be granted for projects that entail:

(I) the construction of new collection lines;

(II) a new discharge or relocation of an existing discharge;

(III) a substantial increase in the volume or loading of pollutants;

(IV) providing capacity for a population thirty (30) percent greater than the existing population;

(V) known or expected impacts to cultural resources, threatened or endangered species, or other environmentally sensitive areas; and

(VI) the construction of facilities that are known or expected to be not cost-effective or are likely to cause significant public controversy.

(iii) The Board may exclude, by amendment to these regulations, other categories of projects for which there is sufficient documentation demonstrating that they are not likely to have significant effects on the quality of the human environment.

(B) The FNSI will be based upon an environmental review by the staff supported by an EID prepared by the applicant in conformance with 785:50-9-61(2)(A). Based upon its review, the staff will prepare an environmental assessment (EA) resulting in the issuance of either a FNSI or a public notice that the preparation of an EIS will be required. All applicants whose projects do not meet the criteria for either a categorical exclusion or EIS will be required to prepare an EID. The Board's issuance of a FNSI will be based upon an EA documenting that the potential environmental impacts will not be significant or that they may be mitigated without extraordinary measures.

(C) The Record of Decision may only be based upon an EIS in conformance with the format and guidelines described in 785:50-9-61(3). An EIS will be required when the Board determines any of the following:

(i) the project will significantly affect the pattern and type of land use or growth and distribution of the population;

(ii) the effects of the project's construction or operation will conflict with local or state laws or policies;

(iii) the project may have significant adverse impacts upon:

(I) wetlands,

(II) floodplains,

(III) threatened and endangered species or their habitats,

(IV) cultural resources including parklands, reserves, other public lands or areas of recognized scenic, recreational, agricultural, archeological or historic value;

(iv) the project will displace population or significantly alter the characteristics of existing residential areas;

(v) the project may directly or indirectly (i.e., through induced development) have significant adverse effect upon local ambient air quality, local noise levels, surface and ground water quality or quantity, fish, shellfish, wildlife or their natural habitats;

(vi) the project may generate significant public controversy;

(vii) the treated effluent will be discharged into a body of water where the present classification is too lenient or is being challenged as too low to protect present or recent uses, and the effluent will not be of sufficient quality to meet the requirements of those uses.

(2) **Other determinations that are required of the Board.**

(A) Recognizing that a project may be altered at some time after an environmental determination on the project has been issued, the Board will provide that, prior to approval, the plans and specifications, assistance application, and related documents will be examined for consistency with the environmental determination. If inconsistencies are found, the Board may revoke a categorical exclusion and require the preparation of an EID or an EIS, consistent with the criteria of this subsection, or require the preparation of amendments to an EID or supplements to an EIS, as appropriate. Based upon the staff's review of the amended project, the Board will:

(i) reaffirm the original determination through the issuance of a public notice or statement of finding;

(ii) issue a FNSI for a project for which a categorical exclusion has been revoked, or issue a public notice that the preparation of an EIS will be required;

(iii) issue an amendment to a FNSI, or revoke a FNSI and issue a public notice that the preparation of an EIS will be required, or

(iv) issue a supplement to a record of decision, or revoke a record of decision and issue a public notice that financial assistance will not be provided.

(B) When five (5) or more years have elapsed between the last environmental determination and the submittal of an application to the Fund, the Board will re-evaluate the project, environmental conditions and public views, and prior to the approval of application, proceed in accordance with 785:50-9-60(2)(A).

(3) **Other determinations that are available to the Board.**

(A) An applicant may request advance authority to construct part of the proposed wastewater treatment project prior to completion of the necessary environmental review when the part of the project will:

(i) immediately remedy a severe public health, water quality or environmental problem;

(ii) not preclude any reasonable alternatives identified for the complete system;

(iii) not cause significant or indirect environmental impacts including those which cannot be acceptably mitigated without completing the entire project; and

(iv) not be highly controversial.

(B) Based upon the review of the information required by Section 785:50-9-61, the Board will issue a FNSI so conditioned as to prohibit construction of the remainder of the project until a complete environmental review has been performed and a subsequent environmental determination has been issued.

(C) The Board may choose to accept determinations made by a federal agency in a previously issued environmental decision in lieu of conducting a formal environmental review when the proposed project will not cause adverse impacts to the environment and is not highly controversial.

[OAR Docket #03-2000; filed 6-2-03]