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Peggy Coe, Managing Editor

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Submissions for Review

Within 10 calendar days after adoption by an agency of a proposed PERMANENT rulemaking action, the agency must submit the proposed rules to the Governor and the Legislature for review. In addition, the agency must publish in the *Register* a "statement" that the rules have been submitted for gubernatorial/legislative review.

For additional information on submissions for gubernatorial/legislative review, see 75 O.S., Section 303.1, 303.2, and 308.

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 40. REGISTERED ELECTROLOGISTS

[OAR Docket #04-1072]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review.

RULES:

435:40-1-9. License renewal and replacement [AMENDED]

SUBMITTED TO GOVERNOR:

May 25, 2004

SUBMITTED TO HOUSE:

May 25, 2004

SUBMITTED TO SENATE:

May 25, 2004

[OAR Docket #04-1072; filed 5-28-04]

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 460. DEPARTMENT OF MINES CHAPTER 3. NON-COAL RULES OF PRACTICE AND PROCEDURES

[OAR Docket #04-1103]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Chapter 3. Non-Coal Rules Of Practice And Procedures [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2004

[OAR Docket #04-1103; filed 6-4-04]

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

[OAR Docket #04-1104]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Chapter 10. Non-Coal Rules And Regulations [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2004

[OAR Docket #04-1104; filed 6-4-04]

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

[OAR Docket #04-1105]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Chapter 20. The Permanent Regulations Governing The Coal Reclamation Act Of 1979 [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2004

[OAR Docket #04-1105; filed 6-4-04]

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

[OAR Docket #04-1106]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Chapter 25. Oklahoma Explosives And Blasting Regulations [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2004

[OAR Docket #04-1106; filed 6-4-04]

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

[OAR Docket #04-1107]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Chapter 30. Coal Combustion By-Product Standards [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2004

[OAR Docket #04-1107; filed 6-4-04]

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

[OAR Docket #04-1128]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions [AMENDED]
Subchapter 3. Affirmative Action and Equal Employment Opportunity [AMENDED]
Subchapter 7. Salary and Payroll [AMENDED]
Subchapter 9. Recruitment and Selection [AMENDED]
Subchapter 11. Employee Actions [AMENDED]
Subchapter 13. Reduction-in-Force [AMENDED]
Subchapter 15. Time and Leave [AMENDED]

Subchapter 17. Employee Performance Management System and Career Enhancement Programs [AMENDED]
Subchapter 21. Employee Assistance Programs [AMENDED]
Appendix B. Schedule of Annual and Sick Leave Accrual Rates and Accumulation Limits [REVOKED]
Appendix B. Schedule of Annual and Sick Leave Accumulation Limits and Yearly Accruals [NEW]

GUBERNATORIAL APPROVAL:
May 13, 2004

[OAR Docket #04-1128; filed 6-9-04]

TITLE 530. OFFICE OF PERSONNEL MANAGEMENT
CHAPTER 15. VOLUNTARY PAYROLL DEDUCTION RULES

[OAR Docket #04-1129]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions
530:15-1-1. [AMENDED]
530:15-1-2. [AMENDED]
Subchapter 3. Administrative Provisions
530:15-3-7.2. [NEW]
530:15-3-11. [NEW]
530:15-3-14. [NEW]
530:15-3-15. [RESERVED]
530:15-3-16. [NEW]

GUBERNATORIAL APPROVAL:
May 13, 2004

[OAR Docket #04-1129; filed 6-9-04]

TITLE 660. DEPARTMENT OF SECURITIES
CHAPTER 1. ORGANIZATION AND PROCEDURES OF SECURITIES COMMISSION

[OAR Docket #04-1078]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. General Provisions
660:1-1-3. Definitions [AMENDED]
Subchapter 3. Organization
660:1-3-1. Purpose and organization [AMENDED]

GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-1078; filed 5-28-04]

TITLE 660. DEPARTMENT OF SECURITIES
CHAPTER 2. ORGANIZATION AND PROCEDURES OF DEPARTMENT OF SECURITIES

[OAR Docket #04-1079]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. General provisions
660:2-1-3. Definitions [AMENDED]
Subchapter 3. Organization
660:2-3-1. Organization [AMENDED]
Subchapter 5. Authority and actions of administrator
660:2-5-4. Summary orders [AMENDED]
Subchapter 7. Investigations
660:2-7-1. Initiation [AMENDED]
660:2-7-2. Authority [REVOKED]
660:2-7-3. Investigative ~~hearings~~ processes [AMENDED]
660:2-7-4. Subpoenas [REVOKED]
660:2-7-5. Testimony [REVOKED]
660:2-7-6. Reports [REVOKED]
660:2-7-7. Enforcement of process [REVOKED]
660:2-7-8. Right to counsel [REVOKED]
660:2-7-9. Termination of investigation [AMENDED]
Subchapter 9. ~~Hearing~~ Individual proceeding practices and procedures
660:2-9-1. Hearings in general [AMENDED]
660:2-9-2. ~~Setting or denial of hearing~~ Initiation of individual proceedings [AMENDED]
660:2-9-3. Prehearing proceedings and processes [AMENDED]
660:2-9-4. Authority to subpoena witnesses [AMENDED]
660:2-9-5. ~~Right to counsel~~ Representation [AMENDED]
660:2-9-6. ~~Rules of evidence at~~ Conduct of hearings [AMENDED]
660:2-9-7. Record of hearing [AMENDED]
660:2-9-9. Rehearings [AMENDED]
Subchapter 11. Procedures for inspecting and/or copying public records
660:2-11-7. Fees [AMENDED]
Subchapter 13. Declaratory rulings and interpretive opinions
660:2-13-1. Opinions [AMENDED]

GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-1079; filed 5-28-04]

TITLE 660. DEPARTMENT OF SECURITIES CHAPTER 6. FORMS

[OAR Docket #04-1080]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 5. Forms Used Under the Securities Act
660:6-5-1. Forms for registration or exemption of securities [AMENDED]
660:6-5-2. Licensing forms [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-1080; filed 5-28-04]

TITLE 660. DEPARTMENT OF SECURITIES CHAPTER 10. OKLAHOMA SECURITIES ACT

[OAR Docket #04-1081]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Chapter 10. Oklahoma Securities Act [REVOKED]
GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-1081; filed 5-28-04]

TITLE 660. DEPARTMENT OF SECURITIES CHAPTER 11. OKLAHOMA UNIFORM SECURITIES ACT OF 2004

[OAR Docket #04-1082]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Chapter 11. Oklahoma Uniform Securities Act of 2004 [NEW]
GUBERNATORIAL APPROVAL:
May 5, 2004

[OAR Docket #04-1082; filed 5-28-04]

TITLE 730. DEPARTMENT OF TRANSPORTATION CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #04-1111]

RULEMAKING ACTION:
Gubernatorial approval
RULE:
Subchapter 5. Department of Transportation
730:1-5-5. [NEW]
GUBERNATORIAL APPROVAL:
May 11, 2004

[OAR Docket #04-1111; filed 6-4-04]

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 420. OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD CHAPTER 10. LIQUEFIED PETROLEUM GAS ADMINISTRATION

[OAR Docket #04-1075]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
420:10-1-5. [AMENDED]
AUTHORITY:
Oklahoma Liquefied Petroleum Gas Board; Pursuant to statute 420.3. Oklahoma Liquefied Petroleum Gas Administration - Rules, regulations and specifications. Subsection (g)(h)(i).
DATES:
Adoption:
June 23, 2003
Approved by Governor:
June 26, 2003
Effective:
Immediately upon Governor's approval.
Expiration:
Effective through July 14, 2004, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
n/a.
INCORPORATIONS BY REFERENCE:
n/a
FINDING OF EMERGENCY:
Due to the current budget crisis affecting the State of Oklahoma and the Oklahoma Liquefied Petroleum Gas Administration, the Legislature provided a specific mandate giving the Board the authority to promulgate emergency rules to adjust fees. In HB 1214, the Oklahoma Liquefied Petroleum Gas Board has been given the following authority; "For the fiscal year ending June 30, 2004, the Liquefied Petroleum Gas Board is hereby authorized to promulgate emergency rules for the purpose of establishing fees pursuant to this act."
ANALYSIS:
The amended rules increase the annual fee assessed to each permit holder licensed by the Oklahoma LP Gas Administration. The amended rules also increase the annual truck inspection fee from $120.00 to $150.00 and increases the tank tag fee from $7.50 to $10.00. The LP Gas Administration projects that the fee increases will generate approximately $156,000 in additional revenue, which will assist the agency in payment of $193,380.00 to the State General Revenue Fund of the State Treasury, as required by HB 1214.
CONTACT PERSON:
Mr. Bill Glass, (405) 521-2458.

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):

420:10-1-5. Permits

(a) **Permits required.** No person, firm, corporation, association or other entity shall engage in the manufacturing, assembling, fabrication, installing or selling of any system, container, or apparatus to be used in this State in or for the transportation, storing, dispensing, or utilization of LPG, nor shall any transporter, distributor, or retailer of LPG store, dispense and/or transport over the highways of this State any LPG for use in this State in any system, container, apparatus or appliance without having first obtained a permit to do so as provided in this section.

(b) **Permit classifications.** The permits required for engaging in business shall be divided into the following classifications:

(1) **Class I - Dealer permit.** The Class I Dealer Permit permits the holder to engage in any phase of the LP Gas business. A Class X Manager's permit must be secured for the person actually in charge of an LP Gas operation at each separate branch or base of operation of a Class I permit holder. The initial permit fee for a Class I is Five Hundred Dollars ($500.00). The annual fee for the Class I permit is ~~One Hundred Fifty Dollars ($150.00)~~ Two Hundred Dollars ($200.00).

(A) Class I holder can go on inactive status, but will have to meet all the requirements of the permit, including paying the renewal fee, and having proper insurance requirements filed with the administrator, before going back on active status. If requirements are not met the permit will then be revoked. All Class I holders, active and inactive, are required to pay the annual renewal fee.

(B) Applicant must furnish to the Board, evidence of the following insurance:

(i) A minimum of $500,000.00 general liability insurance, as per 420:10-1-18;

(ii) Worker's Compensation shall be required as per state requirements;

(iii) Motor vehicle insurance must meet State and Federal requirements.

(C) Brokers/wholesalers selling LP Gas to anyone other than Class I permit holders or refinery/gas processing type facilities shall obtain a Class I permit and meet the requirements thereof, except for minimum storage and metering, when said sales are by transport bulkhead to bulkhead.

(2) **Class II - Truck Transporter permit.** The Class II transporter Permit permits the holder to transport LP Gas as a common carrier or private carrier to another of the following: a person, firm, or corporation engaged in the production or manufacture of LP Gas and/or selling or reselling LP Gas to transporters, industrial consumers, processors, distributors, retailers, and/or to holders of Class I, III, or VI permits. A Class II permit shall not authorize the resale of LP Gas to an end-user. A Class II permit shall not be a substitute where a Class I is needed. A transport must meet all CFR 49 requirements. The initial permit fee for a Class II is Three Hundred Dollars ($300.00). The annual fee for a Class II permit is ~~One Hundred Fifty Dollars ($150.00)~~ Two Hundred Dollars ($200.00).

(3) **Class III - DOT Cylinder Transporter Permit.** The Class III DOT Cylinder Transporter Permit permits the holder to operate DOT cylinder filling station and cylinder delivery service. The annual fee for a Class III permit is ~~One Hundred Dollars ($100.00)~~ One Hundred Fifty Dollars ($150.00).

(4) **Class IV - Installer permit.**

(A) The Class IV Installer Permit permits the holder to install and service LP Gas systems, appliances, and other LP Gas equipment. The applicant is required to have immediate supervision for two (2) weeks with a Class IV, IV-D, Class X, or an Oklahoma licensed plumber, and then shall be required to pass a written examination. Exception from two (2) week training period would be anyone already licensed by Oklahoma as a licensed plumber. If the supervising Class X determines that the new applicant is properly trained, proper documentation of the training is on file, and a Class IV application has been forwarded to the LP Gas Administration, the applicant at that time may begin performing the duties of a Class IV permit holder until such time as the test is administered and the permit issued. This time shall not exceed thirty (30) days or the applicant shall cease to perform these duties. Current Class IV's, as of September 1, 1994, are not required to take a written exam. The annual fee for a Class IV permit is ~~Thirty-five Dollars ($35.00)~~ Fifty Dollars ($50.00).

(B) Class IV permit does not permit the holder to install or service LP-Gas carburetion systems.

(C) Any installer not under the personal and direct supervision of a Class X holder at the immediate time and location of installation shall be required to have a Class IV or IV-D permit.

(5) **Class IV-D - Driver/Installer Permit.**

(A) The Class IV-D Driver/Installer Permit permits the holder to deliver LP Gas by bobtail and install and service LP Gas systems, appliance, and other LP Gas equipment. Class IV-D permit can only be issued under a Class I permit. New applicants must be under immediate supervision from a current Class IV-D, or Class X while in a minimum of a two (2) week training period before testing. Permit holder shall be required to pass a written examination. The tests shall be given according to current policies of the administration. If the supervising Class X determines that the new applicant is properly trained, proper documentation of the training is on file, and a Class IV-D application has been forwarded to the LP Gas Administration, the applicant at that time may begin performing the duties of a Class IV-D permit holder until such time as the test is administered and the permit issued. This time shall not exceed thirty (30) days or the applicant shall cease to perform these duties. Current Class IV permit holders, as of September 1, 1994, properly trained in delivery of LP Gas will not be required to take the test and will be issued a IV-D permit. The annual fee for a Class IV-D is ~~Thirty-five Dollars ($35.00)~~ Fifty Dollars ($50.00).

(B) Class IV-D permit does not permit the holder to install or service LP Gas carburetion systems.

(C) Any installer not under the personal and direct supervision of a Class X holder at the immediate time and location of installation shall be required to have a Class IV or IV-D permit.

(6) **Class VI - DOT Cylinder &/or LP Gas Motor Fuel Station Operator Permit.** The Class VI DOT Cylinder and/or LP Gas Motor Fuel Station Operator Permit permits the holder to operate DOT cylinder charging station and/or a motor fuel dispenser for resale. Applicant shall be required to pass an approved written examination. Examination shall be administered by an LP Gas Inspector, or by a Class X Manager. In either case, the test fee for the Class VI permit is Ten Dollars ($10.00). Permit holder is responsible for the safety of the dispensing operation and training and safety of the employees dispensing LP Gas. Class VI locations may not become operational until a permit has been issued. A permit will not be issued until the proper fee has been paid and certificate of insurance is received by the LP Gas Administration. The annual fee for a Class VI permit is ~~Seventy Dollars ($70.00)~~ One Hundred Dollars ($100.00).

(7) **Class VI-A - LP Gas Dispensing Permit.** All employees involved in dispensing LP Gas must acquire a Class VI-A permit, except a Class IV, Class IV-D, Class VI, and Class X. Class VI-A applicants must be properly trained by a Class VI or Class X on proper filling of ASME tanks and DOT cylinders, and inspection thereof per NFPA 58. Applicants shall be required to pass an approved written examination. Test shall be administered by an LP Gas inspector, or by Class X manager. In either case, the test fee for the Class VI-A permit is Ten Dollars ($10.00). Holder must carry permit and attend the annual safety school once every year. This does not prohibit any person, firm or corporation from filling his own equipment

from his own supply line, or dispensing motor fuel from an approved limited access self-service dispenser. The annual fee for a Class VI-A permit is ~~Five Dollars ($5.00)~~ Twenty-Five Dollars ($25.00).

(8) **Class VII - Cylinder Exchange Program Permit.** The Class VII Cylinder Exchange Program Permit permits the holder to participate in the cylinder exchange program. Applicant shall be required to pass an approved written examination. One person can be tested for multiple locations. Examination shall be administered by an LP Gas Inspector, or by a Class X Manager. In either case, the test fee for the Class VII permit is Ten Dollars ($10.00). A permit is required for each bottle exchange location. Class VII locations may not become operational until a permit has been issued. Permits will not be issued until the proper fee has been paid and certificate of insurance is received by the LP Gas Administration. The annual fee for a Class VII permit is ~~Thirty-five Dollars ($35.00)~~ Fifty Dollars ($50.00).

(9) **Class VIII - Appliance Dealer Permit.** The Class VIII Appliance Dealer Permit permits the holder to sell LP Gas appliances. The annual fee for a Class VIII permit is ~~Thirty-five Dollars ($35.00)~~ Seventy Dollars ($70.00).

(10) **Class IX - LP Gas Container Sales Permit.** The Class IX Gas Container Sales Permit permits the holder to manufacture and/or sell LP Gas containers. This permit is required by both wholesalers and retailer. The annual fee for a Class IX permit is ~~Thirty-five Dollars ($35.00)~~ Seventy Dollars ($70.00).

(11) **Class IX-A - Mobile Homes and Recreation Sales Permit.**

(A) The Class IX-A Mobile Homes and Recreation Sales Permit permits the holder to manufacture, fabricate and sell all LP Gas facilities or systems used in mobile homes, campers, recreational vehicles and portable buildings whether such LP Gas system is manufacture, fabricated or sold separately or as an integral part of such trailer, camper, recreational vehicle or portable building. The annual fee for a Class IX-A is ~~Thirty-five Dollars ($35.00)~~ Seventy Dollars ($70.00).

(B) This shall not be construed to require a permit for a sale by the owner of a mobile home or recreational vehicle who is not engaged in such business on a commercial basis and does not make over two such sales in one year.

(12) **Class X - Manager's Permit.** A Class X Manager's permit is required for a person actively in charge of LP Gas operation for holder of Class I permit and at each separate branch or base of operation of a Class I permit. All Class X holders must be a full-time employee of said Class I holder. The annual fee for a Class X permit is ~~One-hundred Dollars ($100.00)~~ One Hundred Fifty Dollars ($150.00).

(13) **Additional permits required for employees of Class I dealers.** Class IV, IV-D, VI-A, and X permits are the only additional permits that may be required for the employees of a Class I dealer, or as may be required by future Board action.

(14) **Truck inspections.** For the purpose of defraying the cost and expenses of administering and enforcing this act, persons, firms and corporations shall also pay at the time of inspection an annual inspection fee of ~~One Hundred Twenty Dollars ($120.00)~~ One Hundred Fifty Dollars ($150.00) for each LP Gas bulk delivery truck or trailer belonging to a person who holds a permit authorizing the use of such truck or trailer and ~~One Hundred Twenty Dollars ($120.00)~~ One Hundred Fifty Dollars ($150.00) for each such truck or trailer belonging to a person who does not hold a permit. The inspection fee shall increase to Two Hundred Forty Dollars ($240.00) per vehicle if said inspection is not completed within sixty (60) days of the expiration date, or at the discretion of the Administrator.

(15) **Containers or cylinders.** There is hereby levied the following fee, to be paid to the Administrator, upon the sale, purchase, rental or use in this state of liquefied petroleum gas containers or cylinders; on all Department of Transportation (DOT) cylinders, vehicle fuel containers, a fee of Three Dollars ($3.00) each, and on all other containers, a fee of ~~Seven Dollars and fifty cents ($7.50)~~ Ten Dollars ($10.00) each.

[OAR Docket #04-1075; filed 5-28-04]

TITLE 420. OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD
CHAPTER 10. LIQUEFIED PETROLEUM GAS ADMINISTRATION

[OAR Docket #04-1076]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
420:10-1-6. [AMENDED]
AUTHORITY:
Oklahoma Liquefied Petroleum Gas Board; Pursuant to statute 420.3. Oklahoma Liquefied Petroleum Gas Administration - Rules, regulations and specifications. Subsection (g)(h)(i).
DATES:
Adoption:
July 14, 2003
Approved by Governor:
August 4, 2003
Effective:
Immediately upon Governor's approval.
Expiration:
Effective through July 14, 2004, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
n/a.
INCORPORATIONS BY REFERENCE:
n/a.
FINDING OF EMERGENCY:
HB 1214 was recently passed by the Legislature and approved by the Governor authorizing the Oklahoma Liquefied Petroleum Gas Board to establish a fee for the transfer of a Class I Permit. HB 1214 also gave the Board the following authority; "For the fiscal year ending June 30, 2004, the Liquefied Petroleum Gas Board is hereby authorized to promulgate emergency rules for the purpose of establishing fees pursuant to this act." The

proposed emergency rules are necessary in order to provide the Board with the specific requirements for transferring a Class I Permit and to bring the rules in compliance with the new statute requirements.

ANALYSIS:

The proposed rules outline the conditions that must be met before a Class I Permit may be purchased. Specifically, only an active Class I Dealers Permit is transferable. The applicant must pay a Class I Transfer Fee of $5,000.00. The applicant must have a Class X Manager's permit in place, before the transfer, for the person actually in charge of the LP Gas operation at each separate branch or base of operation of the Class I Permit Holder. This will ensure that the safety of the LP Gas operation is not compromised. Finally, the applicant must have on file with the LP Gas Administration the required Class I insurance requirements.

CONTACT PERSON:

Mr. Bill Glass, (405) 521-2458.

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):

420:10-1-6. Application for certificate or permit

(a) **Filing Fee.** Application for any new permit under the rules of this chapter shall be filed with the Administrator on written forms to be prescribed by the Board or Administrator and shall be accompanied with the filing fee in cash, cashiers check or money order in the amount of Ten Dollars ($10.00) for each permit.

(b) **Examination.** Before any permit shall be issued, except those which may be specifically exempt from requirement for examination by the statutes, or by this chapter the applicant shall be required to pass a necessary written examination to satisfy the Board or Administrator that the applicant possesses the necessary technical knowledge and qualifications so as to safely deal with the product, commodity or render the services authorized by the permit. All examination fees are Ten Dollars ($10.00), except Class I ($55.00), and Class X ($55.00).

(c) **Exception to acquiring Class I through examination.** An applicant for a Class I Dealers Permit may purchase a Class I permit from its present owner, as per O.S. Title 52, but must meet the following conditions:

(1) Only Active Class I Dealer Permits are transferable. An Inactive Class I Dealer Permit is not transferable;

(2) Pay a Class I Transfer Fee of Five Thousand Dollars ($5,000.00);

(3) A Class X Manager's permit must be in place, before the transfer, for the person actually in charge of the LP gas operation at each separate branch or base of operation of the Class I permit holder;

(4) Have on file with the LP Gas Administration the required Class I insurance requirements as per 420:10-1-18.

(d) **Other requirements.**

(1) The mere filing of an application for a permit does not of itself authorize the engaging of any of the operations sought in said application. Such operations are prohibited except pursuant to an order of the Board or Administrator issuing such permit and only after the applicant has satisfied the Board or Administrator as to its qualifications and fitness by a written examination, when required, and filing of all the necessary insurance and meeting other requirements of the statutes and of this chapter.

(2) Any person, firm or corporation to whom a permit is issued shall commence operation within 90 days from the date of issuance of such permit, unless this time be extended by the authority issuing the permit for good cause.

[OAR Docket #04-1076; filed 5-28-04]

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 20. SPECIMENS

[OAR Docket #04-1083]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
40:20-1-3. Collection, transfers, and retention of specimens of blood [AMENDED]
AUTHORITY:
Board of Tests for Alcohol and Drug Influence; Title 47 O.S. Chapter 67, Section 759
DATES:
Comment period:
March 31, 2004
Public hearing:
March 31, 2004
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April 1, 2004
Submitted to Governor:
April 1, 2004
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April 1, 2004
Submitted to Senate
April 1, 2004
Gubernatorial approval:
May 11, 2004
Legislative approval:
Failure of the legislator to disapprove the rules resulted in approval on May 26, 2004
Final adoption:
May 26, 2004
Effective:
July 11, 2004
SUPERSEDED EMERGENCY RULES:
Superseded rules:
40:20-1-3 Collection, transfers, and retention of specimens of blood [AMENDED]
Gubernatorial approval:
June 5, 2003
Register publication:
20 OK Register 2837
Docket number:
03-3024
INCORPORATIONS BY REFERENCE:
NA
ANALYSIS:
This deals with the storage of Blood after being in the officers presents for a twelve hours, which has been verified through forensic science
CONTACT PERSON:
McBeth Sample, Jr.; State Director of Tests for Alcohol and Drug Influence, 405-425-2460 or msample@dps.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, 2004:

40:20-1-3. Collection, transfers, and retention of specimens of blood

(a) **Withdrawal and collection of blood.** Withdrawal and collection of specimens of blood obtained from living human subjects under the provisions of Title 47 and Title 3 and Title 63, Oklahoma Statutes shall be performed as set forth in this Section. The entire process shall be carried out with full regard for the health and safety of the tested persons, and so as to maintain properly the identity, integrity, and composition of such blood specimens.

(1) **Collection of blood specimens - general conditions.**

(A) Blood shall be withdrawn in accordance with accepted medical practices, in an appropriate hospital or medical or clinical environment, and by persons authorized by Title 47, Section 752 of the Oklahoma Statutes, to withdraw blood.

(B) No blood shall be knowingly withdrawn from any person with hemophilia or from any person who is taking anticoagulant medication(s) under the direction of a licensed healing arts practitioner.

(2) **Procedures and techniques, precautions.**

(A) Blood shall be withdrawn by venipuncture, after appropriate preparation of the puncture site(s), and with necessary precautions to maintain asepsis and avoid contamination of the specimens. Puncture site preparation and skin cleansing shall be performed without the use of alcohol or other volatile organic disinfectant.

(B) All blood specimens shall be collected directly in or immediately deposited into suitable clean, sterile, dry containers with inert closures, which contain adequate and appropriate anticoagulant(s) and preservative(s) in accordance with recognized procedural standards.

(C) All disposable materials, supplies, and paraphernalia shall not be reused for the withdrawal and collection or storage of blood specimens. All such materials, supplies, and paraphernalia other than required records or those required to be stored or retained or forwarded for evidentiary or other reasonable purposes shall be safely disposed of as soon as practicable after use. All materials, supplies, and paraphernalia with which the tested subject will or

may come into physical contact shall be stored, handled, and used in a properly safe and sanitary manner.

(D) Each tube or other vessel containing a blood specimen shall be placed into a sealed envelope or other suitable sealed container or enclosure, 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 blood specimen was obtained

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

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

(iv) Legible signature and title of the qualified person who withdrew the blood specimen.

(b) **Handling and disposition of state's blood specimen.** A blood specimen collected at the request of a law enforcement officer, hereafter termed "State's blood specimen," shall be handled and processed as set forth hereinafter.

(1)Each State's blood specimen, in its sealed container and employing other shipping or transport enclosures as required, shall be promptly dispatched or forwarded by the law enforcement agency to a central or branch forensic laboratory of the Oklahoma State Bureau of Investigation, or to another official Forensic Alcohol Laboratory or Forensic Drug Laboratory approved by the Board, as appropriate, accompanied by a request for determination of the concentration of alcohol and/or other intoxicating substance in such blood specimen, as appropriate. The choice of approved Laboratory shall be made by the law enforcement agency employing the arresting officer.

(2) The law enforcement agency may accomplish the dispatch or forwarding of the State's blood specimen to the approved Laboratory of its choice by use of the U. S. Postal Service, personal delivery, or by any other appropriate means. ~~If dispatch or forwarding of the State's blood specimen is delayed beyond twelve (12) hours, the specimen shall be stored at normal refrigerator temperature (approximately 4°C), but not frozen.~~

(3) The storage and dispatch or forwarding of the State's blood specimen shall be accomplished in accordance with policies, practices and procedures established by the law enforcement agency responsible for obtaining and processing such specimens and not inconsistent with the Rules of the Board of Tests for Alcohol and Drug Influence. Such storage and processing shall be carried out in such manner and by such means as to maintain the chain of custody, to exclude tampering with and unauthorized access to or exchange or loss of specimens, and to provide the requisite security for evidentiary purposes.

(c) **Collection, transfers, and retention of retained blood specimens.** Whenever a State's blood specimen is collected under the provisions of Title 47, Oklahoma Statutes, at the direction of a law enforcement officer and for the purpose of determining the concentration of alcohol or other intoxicating substance thereof, an additional and separate blood specimen shall be collected at the same time and by the same qualified person withdrawing the State's blood specimen. The resulting additional specimen is hereafter termed "Retained Blood Specimen." Such Retained Blood Specimens shall be collected, retained, transferred, and analyzed as set forth hereinafter.

(1) **Collection of retained blood specimens.**

(A) Whenever possible, the additional blood specimen shall be withdrawn from the tested person without performing additional venipunctures, and shall be collected incident to and as a part of the entire blood collection process.

(B) The Retained Blood Specimen shall be withdrawn and collected in a manner identical to the State's blood specimen and as set forth heretofore in this Section.

(C) The tube or other vessel containing the Retained Blood Specimen shall be placed into a sealed envelope or other suitable sealed container or enclosure, 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 blood specimen was obtained

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

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

(iv) Legible signature and title of the qualified person who withdrew the blood specimen.

(2) **Transfer of retained blood specimens to an approved retention laboratory.**

(A) Each Retained Blood Specimen, in a sealed container and employing other shipping or transport enclosures as required, shall be promptly transferred by the law enforcement agency to a Retention Laboratory approved by the Board of Tests for Alcohol and Drug Influence and designated for that purpose by the Board.

(B) Each Retained Blood Specimen so transferred shall be accompanied by substantially the following information, clearly associated with a given specimen:

(i) Name, location, address, and telephone number of the law enforcement agency (and unit thereof if needed for further identification) transferring the blood specimen

(ii) Date of transfer of the blood specimen from the law enforcement agency to the Approved Retention Laboratory

(iii) Full name of the subject from whom the blood specimen was obtained

(iv) Date, time and location of blood specimen collection

(v) Case or identification number assigned to the case or subject by the law enforcement agency

(vi) Legible signature, name, and title of the authorized person initiating the transfer of the specimen from the law enforcement agency to the Approved Retention Laboratory.

(C) The law enforcement agency may accomplish the transfer or forwarding of the Retained Blood Specimen to the Approved Retention Laboratory designated by the Board by use of the U. S. Postal Service, personal delivery, or by any other appropriate means. ~~If initiation of transfer or forwarding of the Retained Blood Specimen is delayed beyond twelve (12) hours, the specimen shall in the meantime be stored at normal refrigerator temperature (approximately 4°C), but not frozen.~~

(D) The transfer or forwarding of the Retained Blood Specimen shall be accomplished in accordance with policies, practices and procedures established by the law enforcement agency responsible for obtaining and processing such specimens and not inconsistent with the Rules of the Board of Tests for Alcohol and Drug Influence. The transfer or forwarding 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.

(E) Neither the tested person, nor any agent or attorney of such person, shall have access to the Retained Blood Specimen while it is in the custody of the law enforcement agency, or during the transfer process, or thereafter.

(3) **Retention and storage of retained blood specimens.**

(A) Each Retained Blood Specimen, in a sealed envelope or other sealed container or enclosure, shall be kept and stored by the Approved Retention Laboratory designated by the Board for sixty (60) days from the date of collection, unless transferred prior thereto to a Board-approved Forensic Alcohol Laboratory or Forensic Drug Laboratory as hereinafter provided. After the expiration of sixty (60) days from the date of such collection, all such Retained Blood Specimens, other than those transferred to an approved Laboratory as hereinafter provided, shall be promptly and safely destroyed by the Approved Retention Laboratory.

(B) Retained Blood Specimens shall be stored and kept in accordance with policies, practices, or procedures established by the Approved Retention Laboratory responsible for obtaining and storing these specimens and not inconsistent with the Rules of the Board of Tests for Alcohol and Drug Influence. Storage ~~shall be at normal refrigerator temperature (approximately 4°C), but not frozen; and~~ shall be carried out in such a 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 Blood Specimen while it is in the custody of the Approved Retention Laboratory.

(4) **Transfer of retained blood specimens to a forensic alcohol laboratory or forensic drug laboratory.**

(A) Upon proper direction by the tested person or such person's agent to the Approved Retention Laboratory which has custody of the Retained Blood Specimen obtained from such person, received in accordance with such Approved Retention Laboratory's policies, practices and procedures and within sixty (60) days from the date of collection of the Retained Blood Specimen, the Approved Retention Laboratory shall promptly transfer the Retained Blood Specimen obtained from such person to any Forensic Alcohol Laboratory or Forensic Drug Laboratory, as appropriate, 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 Approved Retention Laboratory may accomplish the transfer of the Retained Blood Specimen to the Forensic Alcohol Laboratory or Forensic Drug 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 or attorney of such person shall have access to the Retained Blood Specimen during the transfer process, or thereafter.

[OAR Docket #04-1083; filed 6-2-04]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 25. APPARATUS, DEVICES, EQUIPMENT, AND MATERIALS

[OAR Docket #04-1084]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
40:25-1-1. Purpose [AMENDED]
40:25-1-2. Approval evidential breath-alcohol analyzers [AMENDED]
40:25-1-3. Alcoholic breath simulators [AMENDED]
AUTHORITY:
Board of Tests for Alcohol and Drug Influence; Title 47 O.S. , Chapter 67, Section 759
DATES:
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SUPERSEDED EMERGENCY RULES:
Superseded rules:
40:25-1-1. Purpose [AMENDED]
40:25-1-2. Approval evidential breath-alcohol analyzers [AMENDED]
40:25-1-3. Alcoholic breath simulators [AMENDED]
Gubernatorial approval:
June 5, 2003
Register publication:
20 OK Register 2839
Docket number:
03-3025
INCORPORATIONS BY REFERENCE:
na
ANALYSIS:
25-1-1., Purpose was modified in terminology, 25-1-2., Removed the Breathalyzer from approve equipment, 25-1-3., Added breath-alcoholic simulators and removed obsolete ones. Mainly we had judicial problems with a new simulator, so in the process of changing this we removed obsolete simulators.
CONTACT PERSON:
McBeth Sample, Jr.; State Director of Tests for Alcohol and Drug Influence, 405-425-2460 or **msample@dps.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, 2004:

40:25-1-1. Purpose

The rules in this Chapter concern the approved apparatus, devices, and equipment, materials, supplies and other items used for or involved in tests for alcohol and other intoxicating substances under the provisions of 47 O.S., Sections 751-761 and 3 O.S., Section 303 and 63 O.S., Section 4210A. ~~They include designation by the Board of approved apparatus, devices, and materials for breath alcohol analysis.~~

40:25-1-2. Approved evidential breath-alcohol analyzers

~~(a) The Model 900 and Model 900A Breathalyzer (manufactured by National Draeger, Inc., Pittsburgh, PA 15230 or its predecessors or successors) are hereby approved for analysis of alcohol in breath specimens.~~The Model 5000-D Intoxilyzer (manufactured by CMI, Inc., Owensboro, KY 42301, or its successors) is hereby approved for analysis of alcohol in breath specimens and is designated as an automated analyzer.

40:25-1-3. Alcoholic breath simulators

The following alcoholic breath simulator devices are hereby approved, for use in association with any breath-alcohol analysis apparatus, device, or instrument for the determination of the alcohol concentration of breath specimens approved for that purpose by the Board of Tests for Alcohol and Drug Influence or its predecessor agency:

~~(1) Alcoholic Breath Simulator, Part No. 6000, Stephenson Co., Red Bank, NJ, or its predecessors or successors~~

~~(2) Alcoholic Breath Simulator, Model MKII, National Draeger, Inc., Pittsburgh, PA or its predecessors or successors~~

(~~3~~1) Alcoholic Breath Simulator, Model Mark IIA, National Draeger, Inc., Pittsburgh, PA, or its predecessors or successors

~~(4) Alcoholic Breath Simulator, Model LS-40, Luckey Laboratories, Inc., San Bernardino, CA, or its predecessors or successors~~

(~~5~~2) Alcoholic Breath Simulator, Model 34C, Guth Laboratories, Inc., Harrisburg, PA, or its predecessors or successors

(~~6~~3) Alcoholic Breath Simulator, Model 10-4, Guth Laboratories, Inc., Harrisburg, PA, or its predecessors or successors

~~(7) Alcoholic Breath Simulator, Model TOXITEST or ABS 120, CMI, Inc., Owensboro, KY, or its predecessors or successors~~

~~(8) Alcoholic Breath Simulator, Model TOXITEST II, CMI, Inc., Owensboro, KY, or its predecessors or successors~~

(4) Alcoholic Breath Simulator, Model 210021, Guth Laboratories, Inc., Harrisburg, PA, or its predecessors.

(5) Alcoholic Breath Simulator, Model 210021, Guth Laboratories, Inc., Harrisburg, PA, or its predecessors.

[OAR Docket #04-1084; filed 6-2-04]

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

[OAR Docket #04-1085]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
40:35-1-2. Approved methods for blood-alcohol analysis [NEW]
AUTHORITY:
Board of Tests for Alcohol and Drug Influence; Title 47 O.S., Chapter 67, Section 759
DATES:
Comment period:
March 31, 2004
Public hearing:
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April 1, 2004
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Gubernatorial approval:
May 11, 2004
Legislative approval:
Failure of the Legislator to disapprove the rules resulted in approval on May 26, 2004
Final adoption:
May 26, 2004
Effective:
July 11, 2004
SUPERSEDED EMERGENCY RULES:
Superseded rules:
40:35-1-2. Approved methods for blood-alcohol analysis [NEW]
Gubernatorial approval:
October 8, 2003
Register publication:
21 Ok Reg 37
Docket number:
03-3144
INCORPORATIONS BY REFERENCE:
na
ANALYSIS:
The Board made an error in removing this section from the rules. When discovered they as quickly as possible modified this section with current information and submitted for approval as an emergency rule. Then proposed it as a permanent rule.
CONTACT PERSON:
McBeth Sample, Jr.; State Director of Tests for Alcohol and Drug Influence, 405-425-2460 or **msample@dps.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, 2004:

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

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 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).

(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 802208), U.S. Department of Transportation, National Highway Traffic Safety Administration, Washington, D.C. 20590, January 1977. (Available from NTIS, Springfield, Virginia 22161.

(3) **The Dubowski gas chromatographic method (manual).** Dubowski, K. M.; Ethanol, in Methodology for Analytical Toxicology, I. Sunshine Ed., CRS Press, Cleveland 1979, pp. 149-154.

[OAR Docket #04-1085; filed 6-2-04]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 50. IGNITION INTERLOCK DEVICE

[OAR Docket #04-1086]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
40:50-1-1. Explanation of terms and actions [NEW]
40:50-1-2. Procedure for device approval [NEW]
40:50-1-3. Technical requirements [NEW]
40:50-1-4. Miscellaneous requirements [NEW]
40:50-1-5. Maintenance and calibration requirements [NEW]
40:50-1-6. Approval, denial, and withdrawal of approval [NEW]
40:50-1-7. Certification and inspection of service centers [NEW]
40:50-1-8. Service representative [NEW]
40:50-1-9. Ignition interlock inspector [NEW]
AUTHORITY:
Board of Tests for Alcohol and Drug Influence; Title 47 O.S., Chapter 67, Section 759
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May 11, 2004
Legislative approval:
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May 26, 2004
Effective:
July 11, 2004
SUPERSEDED EMERGENCY RULES:
NA
INCORPORATIONS BY REFERENCE:
NA
ANALYSIS:
The Department of Public Safety had maintained these rules and the Alcohol/Drugs Countermeasures Unit of the Department maintained the files and approved the devices. The Department had ask the Board to take control of the rules, yet we had not. Then several situations arose indicating these rules where not sufficient. The Board then agreed to take them over and contacted Texas for support. Using their rules as a bases the Board took over and rewrote the rules to match the State of Texas.
CONTACT PERSON:
McBeth Sample, Jr.; State Director of Tests for Alcohol and Drug Influence, 405-425-2460 or msample@dps.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, 2004:

40:50-1-1. Explanation of terms and actions

(a) **Alcohol.** Ethyl Alcohol, also called ethanol.

(b) **Alcohol concentrations.** The weight amount of alcohol contained in a unit of breath or air, measured in grams of Ethanol/210 liters of breath or air which gives a quantitative measurement of alcohol concentration from which breath alcohol concentrations can be determined. "Alveolar" refers to the alveoli, which are the smallest air passages in the lungs, surrounded by capillary blood vessels and through which an interchange of gases occurs during respiration.

(c) **Alveolar air.** Also called "deep lung air" or "alveolar breath". An air sample which is the last portion of a prolonged, uninterrupted exhalation and which gives a quantitative measurement of alcohol concentration from which breath alcohol concentrations can be determined. "Alveolar" refers to alveoli, which are the smallest air passages in the lungs, surrounded by capillary blood vessels and through which an interchange of gases occurs during respiration.

(d) **Anti-Circumvention feature(s).** Any feature or circuitry incorporated into the Ignition Interlock Device (IID) that is designated to prevent human tampering which would cause the device not to operate as intended.

(e) **Approval.** Meeting and maintaining the requirements of these rules and placement on the Board of Tests for Alcohol and Drug Influence (Board) list of approved devices. Approval may be denied, cancelled, withdrawn, and/or suspended at any time, for cause by the Board.

(f) **Appropriate judicial authority.** A phrase used throughout these rules that is meant to include personnel or court orders of the Oklahoma judicial system including but not limited to: the actual court order requiring or authorizing installation of an IID, the court (or judge) that ordered or authorized that installation, pretrial services authorities (having to do bail bond requirements in these matters), adult supervision (or adult probation) authorities and/or occupational licensing authorities.

(g) **Board.** The unmodified word Board in these rules refers to the Oklahoma Board of Tests for Alcohol an Drug Influence.

(h) **Bogus air sample.** Any gas sample other than the unaltered, undiluted, or unfiltered alveolar air sample coming from the individual required to have an ignition interlock device installed in his/her vehicle.

(i) **Breath-Alcohol analysis.**Analysis of a sample of a person's expired alveolar breath to determine the concentration of alcohol in the person's breath.

(j) **Certification.**

(1) Certification refers to meeting and maintaining the requirements set forth in these rules. Under the provisions of these rules, certification is granted to:

(A) inspectors,

(B) service representatives, and

(C) service centers

(2) Certification is granted by the Board only when minimum requirements of certification have been met. All aspects of IID business in Oklahoma must be preformed under certification in order to be eligible for court purposes.

(3) Certificates are issued to inspectors, service representatives, and service centers. Certificates are not issued for individual IID's or reference sample devices.

(k) **Certified IID Inspectors.**Refers to an individual who meets the requirements stated in 40:50-1-9. of this title (relating to Ignition Interlock Device Inspector).

(l) **Certified service center.**Refers to any IID service center, whether fixed site or mobile, meeting and maintaining the provisions state in 40:50-1-7. of this title (relating to Certification and Inspection of Service Centers).

(m) **Certified service center representative.**Refers to an individual who has successfully completed the requirements stated in these rules and has received certification from the Board to install, inspect, download, calibrate, repair, monitor, maintain, service and/or remove a specific Ignition Interlock Device (s). Service representative certification is contingent upon compliance with all provisions stated in 40:50-1-8. of this title (relating to Service Representative).

(n) **Costs.**The non-refundable original administrative fees plus any and all costs incurred by the Board for testimony and/or approval, or revaluation, of any device. Any and all incurred costs within thirty (30) days. Additionally the cost established by the Board in the form of inspection fees payable by either the manufacturer or vendor, whichever is appropriate. Fees for Reinstatement of an inactivated certificate, revoked certificate, suspended certificate or any other fees which the Board deems necessary to maintain the IID program in a safe and dependable way. Failure to pay or reimburse the Board for these reasonable costs shall result in the denial or loss of certification of affected service center(s).

(o) **Data storage system.**A computerized recording of all events monitored by the installed IID, which may be reproduced in the form of required reports.

(p) **Device.** An ignition interlock device (abbreviated in this title as IID).

(q) **Director.** Refers to the position of the State Director of Tests for Alcohol and Drug Influence as defined in OAC 40:1-1-3., and will be under the overall guidance of the Chairman of the Board, and with the assistance of the Administrative Assistant to the Board, to conduct and administer the affairs and functions of the Board between meetings thereof. Only the Board, or it designee or an appeal to District Court, shall have the authority to review and act upon appeals made by an ignition interlock manufacturer, vendor or employee

(r) **Emergency bypass.** A one time event, authorized by a service representative that permits the IID equipped vehicle to be started without the requirement of passing the breath test. This event must be recorded in the Data storage system. Also see Illegal Start.

(s) **Filtered air sample.**Any mechanism by which there is an attempt to remove alcohol from the human breath sample. Filters would include, but are not limited to silica gel, drierite, cat litter, cigaret filters, water filters, cotton, or by any other means not mentioned.

(t) **Fixed-Site service center.** A certified service center that is at a permanent location, i.e. not mobile.

(u) **Free restart.** The condition in which a test is successfully completed and the motor vehicle is started, and then at some point the engine stops for any reason (including stalling). A free restart is the ability to start the engine again, within a

reasonable time as approved by the Board, without completion of another breath-alcohol analysis. This free restart does not apply, however, if the IID was awaiting a rolling retest that was not delivered.

(v) **IID.** The common abbreviation for **I**gnition **I**nterlock **D**evice used throughout these Rules.

(w) **Ignition interlock device.** (Abbreviated in this Rule as IID) A device that is a breath-alcohol analyzer that is connected to a motor vehicle ignition. In order to start the motor vehicle engine, a driver must deliver an alveolar breath sample an approved IID which measures the alcohol concentration using fuel cell analysis. If the alcohol concentration meets or exceeds the startup set point on the interlock device, the motor vehicle will not start.

(x) **Illegal start.** An event wherein the IID equipped vehicle is started without the requisite breath test having been taken and passed and/or is started when the IID is in a lockout condition or is started by enabling an authorized emergency bypass. Any and all of these events shall be recorded in the Data storage system as violations.

(y) **Inactivation.**

(1) Inactivation refers to the voluntary or temporary discontinuance of certification. Unless specifically stated otherwise, this loss of certification will be an administrative program control as opposed to suspension or revocation for violation of these rules or the unreliability or incompetence. Inactivation may be initiated by anyone having authority to suspend or revoke or by the certified entity in case of voluntary surrender of certification. In questionable cases, the decision to accept inactivated suspension or revocation will be determined by the Board or its designee. Re-certification of an inactivated certificate will require a written request from the applicant to the Board and successful completion of requirements outlined in 40:50-1-7., 40:50-1- 8. and 40:50-19. of this title (relating to Certification and Inspection of Service Centers, Service Representative, and Ignition Interlock Device Inspector) as appropriate for re-certification and/or other requirements determined by the Board or its designee. Inactivation will be used in, but not limited to, the following situations:

(A) an inspector or service representative terminates employment under which certification was acquired and a new employment does not require certification, or the new location of the inspector or service representative cannot be ascertained; or

(B) a service representative fails to renew current certification and reverts to an in active status; or

(C) a service center that no longer meets all the requirements for certification.

(2) Inactivation will not be considered by the Board as a disciplinary action. It is for administrative program control to safeguard the scientific integrity of the IID program.

(z) **Interlock.** The mechanism which prevents a motor vehicle from starting when the alcohol concentration of a person meets or exceeds a preset value.

(aa) **Lockout condition.** A state wherein the IID will not allow the vehicle to be started until a certified service representative completes a violation reset, downloads the data storage system and restores the IID to a state that will allow the vehicle to be started. Violation conditions that trigger the lockout condition will enable a unique auditory and/or visual cue that will warn the driver that the vehicle ignition will enter a lockout condition within a period not to exceed five (5) days. This event will be uniquely recorded in the data storage system and will simultaneously start a clock that culminates in the actual lockout condition.

(bb) **Manufacturer.** The actual producer of the device.

(cc) **Manufacturer's representative.**An individual and/or entity designated by the manufacturer to act on behalf of or represent the manufacturer of the device. May be synonymous with vendor.

(dd) **Mobile service center.** Any IID facility that has the personnel and equipment capability to be in use separately and simultaneously with it's parent fixed service center, whether set up in a vehicle or temporarily set up at a site with a permanent foundation.

(ee) **Negative result.** A test result indicating that the alcohol concentration is less than startup set point value.

(ff) **Positive result.** A test result indicating that the alcohol concentration meets or exceeds the startup set point value.

(gg) **Proficiency test.** A test administered by, and in the presence of, an IID inspector to establish and/or ascertain the competency of a service representative with regard to IID equipment.

(hh) **Purge.**Any mechanism which cleanses or removes a previous breath or reference sample from the device and specifically removes alcohol.

(ii) **Re-certification.** Re-certification refers to the regaining of lost certification; for example, certification loss by inactivation, suspension, or revocation. Unless provided for by specific provision in these rules, application for re-certification requires a written request from the applicant to the Board. Upon receipt of the request, the applicant will be advised of necessary procedure to regain certification. Re-certification requires the successful completion of requirements stated in 40:50-1-7., 40:50-1- 8. and 40:50-1-9. of this title (relating to Certification and Inspection of Service Centers, Service Representative , and Ignition Interlock Device Inspector) as appropriate, and/or additional requirements as stated by the department.

(jj) **Reference sample device.** A device which generates a head space gas above a water/alcohol solution that is maintained at a thermostatically controlled temperature. This head space gas can be used to simulate the breath-alcohol concentration of an individual who has been drinking alcoholic beverages and whose alcohol concentration is reflected in an analysis of breath sample. The results of this analysis are expressed as grams of alcohol per two hundred and ten liters of breath (g/210L).

(kk) **Retest set point.** A pre-set or pre-determined alcohol concentration setting, which is the same (0.02g/210L) as the startup set point, at which, or above, during a rolling retest, the device will record in the data storage system, the high alcohol result as a violation.

(ll) **Revocation.**

(1) Revocation refers to the immediate cancellation of certification. Revocation is an action taken only by the

Board or its designee. To regain certification after revocation requires a written request from the applicant to the Board and successful completion of the requirements for certification and/or re-certification and/or a cost for this reinstatement, plus any other requirements determined by the Board. Revocation invalidates any current IID program certification issued to the revoked entity for the period of revocation and until recertification. Unless provided for by specific provision in these rules, revocation will apply when the holder of the certification no longer meets the criteria for certification. Examples of cases for which revocation will apply include, but not limited to, the following:

(A) a certified IID service center that no longer meets the requirements of these rules because of unreliability, incompetence, or violation of these rules.

(B) A certified inspector or service representative who is no longer in compliance with the requirements for certification under these rules including a certified inspector or certified service representative who, subsequent to certification, is convicted of driving while intoxicated, theft, a crime involving moral turpitude, or any offense classified as a felony.

(C) any case where, in the opinion of the Board or its designee, continuance of certification would not uphold the scientific integrity of the IID program.

(2) If after the allowed appeals process, the revocation of a service center is sustained; the revoked entity shall be required to replace the IID service and/or the IID as in 40:50-1-5. of this title (relating to Maintenance and Calibration Requirements).

(3) In the event that no appeal from the revoked service center is forthcoming, the revoked entity shall have 30 days to achieve the requirements of 40:50-1-5. of this title (relating to Maintenance and Calibration Requirements)

40:50-1-2. Procedure for device approval

(a) All ignition interlock devices to be used in the state of Oklahoma must be approved by the State Director of Tests for Alcohol and Drug Influence, of the Board of Tests for Alcohol and Drug Influence. The rules and requirements only apply to the IID usage in the Oklahoma legal system in applications such as (but not limited to) court orders, probation requirements or by the Department of Public Safety's Legal Division and/or occupational licensing requirements intended to apply to or limit IID use in a voluntary or non-adjudicated scenario such as a parent having an IID placed on a child's motor vehicle.

(b) The Board will establish and maintain a list of approved devices by model and/or class for use in the state. **Only fuel cell devices will be accepted in Oklahoma.**

(c) If application is made for approval of a device by model and/or class not on the approved list, the following procedures and standards shall apply.

(1) A manufacturer or manufacturer's representative requesting approval of a device must submit a product model of the device, along with a written request for approval. It shall be the responsibility of the manufacturer or manufacture's representative to incur costs of mailing, shipping or physically bring the device to and from the Board. It shall also be the responsibility of the manufacturer or the manufacture's representative to submit a certified check or money order in the amount of $150.00 payable to the Board of Tests for Alcohol and Drug Influence (this is an administrative processing fee and is non-refundable). In the event of non-approval, additional requests for approval may be limited by the Board. The Board shall not get involved in research and development procedures of these devices.

(2) Accompanying each device shall be shall be a notarized affidavit from a testing laboratory certifying that the submitted device by model and/or class meets or exceeds all requirements set forth in 40:50-1-3. of this title (relating to Technical requirements) and 40:50-1- 4. of this title (relating to Miscellaneous Requirements) and/or any other requirements as determined by the Board. This affidavit shall also include:

(A) the name and location of the laboratory;

(B) the address and phone number of the testing laboratory;

(C) a description of the test preformed;

(D) copies of the data and results of the testing procedures; and

(E) the names and qualifications of the individuals performing the test.

(d) Prior to approval of the device, the manufacturer or the manufacturer's representative shall complete and submit an approved application Affidavit available through the Board. The notarized Affidavit shall be signed by the manufacturer or the manufacturer's representative. This affidavit shall state that the device by model and/or class will be calibrated and maintained pursuant to these rules and as designated by the Board. The affidavit shall include the following information:

(1) Name of individuals designated as the state service representative responsible for installation, periodically maintaining, calibrating and repairing the IID in accordance with the rules of the Board.

(2) Address of these individuals.

(3) Phone number of these individuals.

(4) Qualifications of these individuals.

(A) If a device is submitted for approval by a party other than the manufacturer, the submitting party shall submit a notarized affidavit from the manufacturer of the device certifying that the submitting party is an authorized manufacturer's representative and that it is agreed and understood that any action taken by the Board or any cost incurred in accordance with the provisions of these rules shall ultimately be the responsibility of the manufacturer.

(B) After the device is approved, in order to do business in the Oklahoma IID program, a manufacturer must vend through a Certified IID Service Center as described in 40:50-1-7. of this title (relating to Certification and Inspection of Service Centers).

(e) An annual reevaluation of the approved IID, pursuant to Board of Tests for Alcohol and Drug Influence Title 40, Chapter 50, shall be required in order for continued approval. This reevaluation shall consider those requirements, and 40:50-1-3., 40:50-1- 4. and 40:50-1-5. of this title (relating to Technical Requirements, Miscellaneous Requirements, and Maintenance and Calibration Requirements). The cost of this reevaluation shall be the same as for the initial approval process noted in subsection c (1) of this section.

(f) Annually provide to the Board a written report of each service and feature of all approved IIDs made available by the manufacturer. The Board shall make available the form for this report.

(g) The vendor shall notify the Board in writing if the Certification or approval of a device that is approved for use in Oklahoma is or ever has been suspended, revoked or denied in another state, whether such action occurred before or after approval in Oklahoma. This notification shall be made in a timely manner, not to exceed 30 days, after the vendor has received notice of the suspension, revocation, or denial of certification or approval of the device, whether or not the action is or has been appealed.

40:50-1-3. Technical requirements

(a) **Accuracy.** The startup set point value for the interlock device shall be an alcohol concentration of 0.020g/210L of breath. The accuracy of the device shall be 0.020g/210L ± 0.010g/210L. The accuracy will be determined by analysis of an external standard generated by a reference sample device, or other methodologies that may be approved by the Board.

(b) **Alveolar breath sample.** The device shall have a demonstrable feature designed to assure that the breath sample that is measured is essentially alveolar.

(c) **Precision.** The device shall correlate with a known alcohol concentration of 0.020g/210L with accuracy set forth in subsection set forth in subsection (a) of this section. A correlation of 95% will be considered reliable precision; 95 of 100 times the device must respond to, detect, and prevent the motor vehicle engine from operating when the operator has alcohol concentration of 0.020g/210L or greater, or any other limits as set by the Board.

(1) The proportion of false positive results shall not exceed 5.0%

(2) The proportion of false negative results shall not exceed 5.0%.

(d) **Specificity.** A test of alcohol-free samples shall not yield a positive result. Endogenously produced substances capable of being present in the breath shall not yield or significantly contribute to positive results.

(e) **Temperature.** The device shall meet the requirements of subsections (a) and (b) of this section when used at ambient temperature of - 20 °C to 50 °C or other limits as set by the Board.

(f) **Rolling restart or retest.** To thwart curbside assistance, after passing the test allowing the engine to start, the IID shall require a second test within a randomly variable interval ranging from 5 to 15 minutes. Third and subsequent retests shall be required at intervals not to exceed 45 minutes from previously requested test for the duration of the travel. During the rolling retest, the retest set point shall be the same as the startup set point. In order to alert the driver that a retest is to be required, a warning light and/or tone shall come on. The driver will then be afforded sufficient time to retest. If the engine is intentionally or accidently shutdown after or during the warning but before retesting, the free restart shall not be operative. The failure to take a retest shall be recorded in the data storage system as a violation.

(g) **Vibrational stability.** The device shall meet the requirements of subsections (a) and 9 (c) of this section when subjected to simple harmonic motion having an amplitude of 0.38 mm (0.015 inches) applied initially at a frequency of 10 Hz and increased at a uniform rate to 30 Hz in $2\frac{1}{2}$ minutes, then decrease at a uniform rate to 10 Hz in $2\frac{1}{2}$ minutes. The device shall also meet the requirements to simple harmonic motion having an amplitude of 0.19mm (0.0075 inches) applied initially at a frequency of 30 Hz in $2\frac{1}{2}$ minutes.

40:50-1-4. Miscellaneous requirements

(a) **Anticircumvention.** The device shall be designed so that anticircumvention features will be difficult to bypass.

(1) Anticircumvention provisions shall include, but not be limited to, prevention or preservation of evidence of cheating by attempting to use bogus or filtered breath samples or bypass the breath sampling requirements of the device electronically.

(2) The device may use special seals or other methods that record attempts to bypass anticircumvention provisions.

(3) The device shall be checked for evidence of tampering at least every sixty (60) days or more frequently if the need arises.

(4) When evidence of tampering is discovered, the appropriate judicial authority and the Department of Public Safety shall be notified in writing and these records shall be made available to the Board.

(b) **Operational features.**

(1) The device shall be designed to permit a free restart of the motor vehicle's ignition within a reasonable time as approved by the Board after the ignition has shut off, without requiring a further alcohol analysis.

(2) The device shall also automatically purge alcohol before allowing subsequent analyses. In addition to the operational features of these rules, the Board may impose additional requirements , as needed, depending upon design and functional changes in device technology.

(3) The device shall have a data storage system of sufficient capacity to facilitate the recording and maintaining of all daily driving activities for the period of time elapsed from one maintenance and calibration check, as referred to in 40:50-1-5. of this title (relating to Maintenance and Calibration Requirements) to the next.

(c) **Product liability.** The manufacturer of the device shall carry liability insurance covering product liability, including coverage in Oklahoma with a minimum policy limit if one million dollars ($1,000,000.00).

(d) **Service report.** The manufacturer shall ensure responsibility for service within a maximum of 48 hours after notification of a reported malfunction. This support shall be in effect during the period the device is required to be installed in a motor vehicle.

(e) **Modifications.** Once a device by model and/or class has been approved, no modification in design or operational concept may be made without prior written consent of the Board or its designee. This does not include replacement or substitution of repair parts to maintain the device nor software changes that do not modify the operational concept of the device.

(f) **Warning label.** A label warning against tampering, circumventing, or misuse shall be affixed to each device.

(g) **Safety.** The device shall be designed to comply with generally recognized safety requirements.

(h) **Specification and operating instructions.** Manufacturers shall provide to the Board with each device submitted for approval, a precise set of specifications, which describe the features of the device concerned in the evaluation of its performance. A set of detailed operating instructions shall be supplied with each device.

(i) **Product indemnity.** The manufacturer shall provide a signed statement that the manufacturer shall indemnify and hold harmless the state of Oklahoma, the Board and its members, employees and agents from claim, demands, and actions, as a result of damage or injury to persons or property which may arise, directly or indirectly, out of any act or omission by the manufacturer or their representative relating to the installation, service, repair, use and/or removal of an IID.

(j) **General.** Any other requirements as may be determined necessary by the Board or its designee to ensure that the device functions properly and reliably.

40:50-1-5. Maintenance and calibration requirements

(a) The device shall be inspected, maintained, and calibrated for accuracy and operational performance at least once every sixty (60) days and more frequently, if necessary, as specified by the Board or the appropriate judicial authority. This maintenance and calibration check will be performed by a certified IID service center as described in 40:50-1-7. of this title (relating to Certification and Inspection of Service Centers).

(b) The maintenance and calibration check will consist of, but not be limited to, a check of the device to determine that the device is properly functioning in accordance with the following sections:

(1) **Accuracy** - 40:50-1-3.(a) of this title (relating to Technical Requirements);

(A) The device shall be calibrated before placing into service. The calibration described herein shall verify the IID accuracy to be within plus or minus (±) 0.010g/210L of the reference sample predicted value.

(B) Upon return to the service center as in subsection (a) of this section, the device shall be subjected to a calibration confirmation test. The test results described herein shall verify the accuracy of the IID to be within plus or minus (±) 0.010g/210L of the reference sample predicted value.

(i) Should the device fail the calibration confirmation test referred to in subsection (b) (1) (B) of this section that information shall be made available to the appropriate judicial authority and the Board.

(ii) Should the calibration confirmation test referred to in subsection (b)(1) (B) of this section not agree within plus or minus (±) 0.010 g/210L of the reference sample predicted value, the device shall be recalibrated so as to restore accuracy described in subsection (b) (1) (A) of this section before the device may be returned to service.

(2) **Anticircumvention** - 40:50-1-4. of this title (relating to Miscellaneous Requirements); and

(3) **Operational features** - 40:50-1-4. of this title (relating to Miscellaneous Requirements).

(c) Maintenance and calibration records shall be maintained by the manufacturer, the manufacturer's representative, and/or the vendor and shall be provided upon request to the Board and/or any appropriate judicial authority or the Department of Public safety.

(d) If at any time the device fails to meet the provisions of this section, the device shall be removed from service or recalibrated and/or repaired, and these shall be made available to the appropriate judicial authority or the Department of Public safety and upon request to the Board.

(e) A manufacturer shall be responsible for providing continuing service by a certified service center during the installation period, without interruption, should a certified service center go out of business or be revoked.

(1) If the out of business or revoked service center is being replaced, the manufacture shall make all reasonable efforts to obtain participant records and data from certified service center being replaced and provide them to the new service center. The Board shall be notified of this event within sixty (60) days.

(2) If the out of business or revoked service center is not replaced, the manufacturer shall retain the records and data as required in subsection (e)(1) of this section. The Board shall be notified of this event as soon as possible.

(A) The manufacturer shall be responsible for, and shall bear the cost of, removal of the original IID, regardless of the manufacture of the device being substituted, if another manufacture's device is available. The manufacturer shall also determine that each participant with an existing installed IID is able to obtain the required service within a reasonable distance, or the closest service center available, of participant's residence or place of business.

(B) The manufacturer shall make every reasonable effort to notify all participants of the change of the certified service center or replacement of the device thirty (30) days before the change or replacement will occur, or as soon as is possible.

(3) If neither subsection (e) (1) nor subsection (e) (2) of this section can be accomplished, the manufacturer shall be responsible for notifying the clients and appropriate judicial authority that service will be terminated within

sixty (60) days, and then removing the device at no cost to the clients in question.

40:50-1-6. Approval, denial, and withdrawal of approval

(a) Upon proof of compliance with these rules, an ignition interlock device will be approved by Brand and/or Model and will be placed on a list of approved devices. Notification of approval shall be made in writing to the manufacturer. It will be the responsibility of the manufacturer to provide proof that each individual device installed in any motor vehicle meets or exceeds the minimum standards of these rules and is the same model and/or class approved by the Board. It will further be the responsibility of the manufacturer to provide expert or other testimony in any civil or criminal proceedings as to the method of manufacturer of the device, how said device functions, and the testing protocol by which the device was approved. In the event it should become necessary for the Board to provide testimony in any civil or criminal procedures involving the approval or use of the device, the manufacturer shall reimburse the Board for any costs incurred in providing such testimony. Failure to provide this reimbursement shall result in withdrawal of approval for the device.

(b) The approval of a device may be denied or withdrawn by the Board if:

(1) the device, entity, or person fails to meet the requirements for approval under the Oklahoma ignition interlock device rules; or

(2) changes in IID technology are such that continued approval of the device would, as determined by the Board, not be in the best interest of the State of Oklahoma.

(3) for misconduct as determined by the Board

(c) The denial or withdrawal of an approval may be appealed to the Board of Tests for Alcohol and Drug Influence. The Board will be the final level of appellate review

40:50-1-7. Certification and inspection of service centers

(a) All IID service centers conducting business in this state, whether fixed or mobile, must have the approval of and be certified by the Board.

(b) To initiate certification for an IID service center, a vender or IID manufacturer's representative shall submit an application to the Board for approval. The application, available from the Board, shall show physical location of service center, the brand and/or model of the ignition interlock device(s) to be merchandised and reference sample device(s) to be used. The application shall also contain a statement acknowledging permission from the IID manufacturer to vend the IID described by application. Only IID's listed on the approved list referenced in 40:50-1-2 of this title (relating to Procedure for Device Approval) may be merchandised. A vendor applying for certification of an IID service center must agree to:

(1) Allow access for inspection under subsection (d) of this section,

(2) comply with subsection (g) of this section,

(3) comply with subsection (c) of 40:50-1-4. of this title (relating to Miscellaneous Requirements) concerning product liability insurance requirements, and

(4) comply with subsection (d) 40:50-1-4. of this title (relating to Miscellaneous Requirements) concerning service support requirements.

(c) All IID testing techniques, in order to be approved, shall meet, but not be limited to, the following:

(1) A certified IID service center shall be located in a facility which properly and successfully accommodates installing, inspection, downloading, calibrating, repairing, monitoring, maintaining, servicing an /or removing a specific IID device(s). The service center must incorporate the use of analysis of a reference sample such as head space gas from a mixture of water and known weight of alcohol at a known temperature, the results of which must agree with the reference sample predicted value as in 40:50-1-5. of this title (relating to Maintenance and Calibration Requirements), or other methodology that may be approved by the Board. Preparatory documentation (such as certificate of analysis) on then reference sample solution(s) shall be available to the Board. Only reference sample devices approved by the Board may be used in certified IID operations.

(2) Services rendered by IID service center must be performed by a properly trained and certified service representative. IID service centers shall maintain sufficient staff to ensure an acceptable level of service. Monitor checks shall be scheduled in a manner such as not to deprive the client of an acceptable level of service. The IID service center must at all times be staffed with at least one certified service representative. Potential service representative candidates may train in the certified IID service center only under the direct supervision of a currently certified service representative. The potential service representative candidate will be given a reasonable time as determined by the Board to train before being required to take and pass the IID service representative examination.

(3) All analytical results shall be expressed in grams of alcohol per two hundred andten liters (g/210L).

(4) The applicant must agree to maintain any specified records designated by theBoard, including but not limit to:

(A) submitting violation(s) if any, of any court order to appropriate judicial authority or the Department of Public Safety, not later than 48 hours after the vendor discovers the violation.

(B) maintaining complete records of each device installed for five (5) years from the date of the removal.

(C) making IID records available, either by inspection or via copy to any appropriate judicial authority or the Department of Public Safety and upon request to the Board.

(5) All anticircumvention features must be activated an any installed IID.

(6) The device must be installed and inspected in accordance with applicable court order. Furthermore, the service center, through the certified IID representative(s),

shall perform a visual inspection of the vehicle, the devices, and the device's wiring to ensure no tampering or circumvention has occurred during the monitoring period. In the case wherein the client returns to the service center as in 40:50-1-5. of this title (relating to Maintenance and Calibration Requirements) absent their vehicle, such fact shall be made available to the appropriate judicial authority or the Department of Public Safety.

(d) An IID inspector or a designated representative of the Board may at any time make an inspection of the certified IID service center to ensure compliance with these rules.

(e) A designated custodian of records, when required, shall be provided by the vendor to testify in court and provide testimony concerning the interpretation of any data storage system records, as required by these courts and to answer questions concerning certification of the IID program.

(f) Upon proof of compliance with subsection (a)-(c) of this section, certification will be issued by the Board. Issuance of a certificate to the service center shall be evidence that the service center meets all necessary criteria for approval and certification. Prior to issuance of the certification, an on-site evaluation may be required by the Board to ensure compliance with the provisions of this section.

(g) Certification of the IID service center is contingent upon the applicant's agreement to conform and abide by any directives, orders or policies issued or to be issued by the Board regarding any aspect of the IID service center; this shall include, but not limited to, the following:

(1) program administration;

(2) reports;

(3) records and forms;

(4) inspections;

(5) methods of operation and testing techniques;

(6) personnel training and qualifications;

(7) criminal history considerations for service representative; and

(8) records custodian.

(h) Certification of an IID service center may be denied, withdrawn, inactivated, suspended, or revoked by the Board if a vendor, service center, service representative, or IID equipment fails to meet all criteria stated in this section, or if the vendor violates any law of this state that applies to the vendor. An IID service center whose pending application for certification has been denied, or an IID service center whose certification has been withdrawn, inactivated, suspended or revoked may appeal such action in writing to the Board, who will decide whether the action of the director will be affirmed or set aside. The Board may allow the pending application for certification of the IID service center, or the Board may reinstate certification of the IID service center appealing the withdrawal, activation, suspension or revocation of certification under such conditions deemed necessary. Appeal to the Board is the final level of appellate review.

(i) Recertification of a service center whose certification has been withdrawn, inactivated, suspended or revoked will require a written request from the applicant to the Board and successful completion of the original requirements for certification as outlined in subsection (b) of this section and/or other requirements as determined by the Board.

(j) Recertification of a service center whose certification has been withdrawn, inactivated, suspended or revoked will require four hundred dollar ($400.00) reinstatement fee paid to the Board before recertification will take place.

40:50-1-8. Service representative

(a) **Initial certification.**

(1) In order to apply for certification as a service representative of an ignition interlock device service center, an applicant must successfully attain the following:

(A) proof of employment by an ignition interlock device service center that meets the requirements set forth in 40:50-1-7. of this title (relating to Certification and Inspection of Service Centers); and

(B) documentation from the aforementioned employee that the applicant is currently trained in all necessary aspects of the specific IIDs involved in the vendors service center.

(C) If a service representative is certified to work with a specific brand and/or model of equipment and is required to be certified on an additional brand and/or model of equipment, the Board may waive portions of subsection (a)(1)(B) of this section and require only that instruction needed to acquaint the applicant with proper operation of the new brand and/or model of equipment.

(2) Prior to initial certification as a service representative of an ignition interlock device service center, an applicant must satisfactorily complete a written examination which shall cover the regulatory aspects of the Oklahoma IID program.

(A) Failure of the initial written examination will cause the applicant to be ineligible for reexamination for a period of thirty (30) days.

(B) A subsequent failure will be handled the same as an initial failure.

(3) An applicant who has been convicted of an alcohol related offense, theft, crime involving moral turpitude, or any offense classified as a felony, within five (5) years prior to the date of filing of the applicant's application for certification as an IID service representative is not eligible for certification. For purpose of this section, a conviction means the applicant was adjudicated guilty, no lo contendere or received a deferred sentence by a court of competent jurisdiction.

(4) The Board or its designee, with advance notice to IID vendors, may impose additional requirements for service representative certification should the need be warranted.(5) Upon successful completion of the requirements for initial certification, the Boardor its designee will issue the individual a service representatives certificate valid for a period of time designated by the Board unless certification is withdrawn, inactivated, suspended, or revoked.

(b) Renewal of current certification. The service representative is required to renew certification prior to its expiration

date. The minimum requirement for renewal of service representative certification will be:

(1) a biennial written acknowledgment from the service representative's employing IID vendor that this service representative is both;

(A) employed by the vendor in the capacity of service representative, and

(B) currently trained in all necessary aspects of the IIDs involved in the vendor's service center.

(2) a biennial written acknowledgment from the service representative that he or she still meets the requirements of subsection (a)(3) of this section.

(3) Renewal of certification will be denied and current certification will be inactivated when the service representative:

(A) fails to finish proper documentation required in subsection (b)(1)(A) and of this section or

(B) fails to meet requirements of subsection (a)(3) of this section.

(4) Upon successful completion of the requirements for renewal of certification, the Board will issue the individual a service representative's certificate valid for a period of time designated by the Board or until next renewal unless certification is withdrawn, inactivated, suspended, or revoked.

(c) Certification of the service representative may denied, withdrawn, inactivated, suspended or revoked by the director if the service representative fails to meet the requirements of these rules. A person whose pending application for certification has been denied, or service representative whose certification has been withdrawn , inactivated, suspended or revoked may appeal such action to the Board, who will decide whether the action of the director will be affirmed or set aside. The Board may allow the pending application for certification as an IID service representative, or the Board may reinstate certification of the IID service representative appealing the withdrawal, inactivation, suspension or revocation of certification under such conditions deemed necessary. The Board is the final level of appellate review.

(d) Recertification of a service representative whose certification has been withdrawn, inactivated, suspended or revoked will require written request from the applicant to the Board and successful completion of the original requirements for certification as outlined in subsection (a) of this section and/or other requirements as determined by the Board.

(e) Recertification of a service representative whose certification has been withdrawn, inactivated, suspended or revoked will require a reinstatement fee of one hundred and fifty dollars ($150.00).

40:50-1-9. Ignition interlock inspector

(a) The **minimum qualifications** for certification as an IID inspector are:

(1) graduation from a standard senior high school or the equivalent plus two (2) years or more responsible work experience. College may substitute for experience on a year-per-basis.

(2) the satisfactory completion of IID inspector training that is approved by the Board, the content of which shall include, but not limit to familiarity with:

(A) record keeping appropriate to approved IIDs in use in the State of Oklahoma;

(B) operational principles and theories applicable to the program; and

(C) legal aspects of the IID program.

(3) Knowledge and understanding of the scientific theory and principles as to the operation of the IID and reference same device.

(4) Persons who are currently engaged in business with or employed by an IID manufacturer or an IID vendor shall not be eligible to become a certified IID inspector.

(5) An applicant who has been convicted of an alcohol related offense, theft, a crime involving moral turpitude, or any offense classified as a felony, within five (5) years prior to the date of filing of the applicant's application for certification as an IID inspector is not eligible for certification. For purpose of this section, a conviction means the applicant was adjudicated guilty, no lo contendere or received a deferred sentence by a court of competent jurisdiction.

(6) The Board, with advance notice, may impose additional and/or different requirements for IID inspector certification should the need be warranted.

(7) Upon satisfactory proof to the Board by the applicant that the minimum qualifications of this subsection have been met, the Board will approve and direct the State Director to issue a certificate that will be valid unless certification is withdrawn, inactivated, suspended or revoked for cause.

(b) **Duties.** A certified IID inspector will make a minimum of one onsite inspection of each service center as needed or directed by the State Director. Such an inspection will include but not limited to:

(1) Any and all IID technician requirements as per 40:50-1-3. of this section (relating to Technical Requirements).

(2) Any and all IID miscellaneous requirements as per 40:50-1-4. of this title (relating to Miscellaneous Requirements).

(3) Any and all IID maintenance and calibration requirements as per 40:50-1-5. of this title (relating to Maintenance and Calibration Requirements).

(4) Any and all service center representative requirements as per 40:50-1-7. of this title (relating to Certification and Inspection of Service).

(5) Any and all service representative requirements as per 40:50-1-8. of this title (relating to Service Representative).

(c) **Costs.** Vendors shall reimburse the Board for conducting each inspection of the vendor's facility under this section. This cost shall be uniform for all facilities inspected.

(1) The Board may conduct more inspections for cause, such as complaints from judicial, adult supervision, or client at additional cost to the service center being inspected.

(2) The calculated cost per inspection will be standardized throughout the IID program unless there are individual vendor circumstances that require additional costs to the Board and will consequently be passed through to the affected vendor(s).

(d) Certified IID inspector will be **appointed by** the State Director of Tests and this appointment will be reviewed and approved by the Board.

(e) Certification of a IID inspector may be **denied, withdrawn, inactivated, suspended or revoked** by the Director, if the inspector fails to meet the requirements of these rules.

(f) A person whose pending application for certification has been denied, or an IID inspector whose certification has been withdrawn, inactivated, suspended or revoked **may appeal** such action to the Board, who will decide whether the action will be affirmed or set aside. The Board may allow the pending application for certification as an IID inspector, or the Board may reinstate certification of the IID inspector appealing the withdrawal, inactivation, suspension or revocation of certification under such conditions deemed necessary. The Board is the final level of appellate review.

(g) **Recertification** of an IID inspector whose certification has been withdrawn, inactivated, suspended, or revoked will require a written request from the applicant to the State Director, will be reviewed and approved by the Board, and successful completion of the original requirements for certification as outlined in subsection (a) of this section and/or other requirements as determined by the State Director.

[OAR Docket #04-1086; filed 6-2-04]

TITLE 115. STATE CAPITOL PRESERVATION COMMISSION CHAPTER 1. COMMISSION ADMINISTRATION

[OAR Docket #04-1143]

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Revisions to 115:1-1-1.(c) update the address of the Department of Central Services, which provides staffing for the Commission. Revisions to 115:1-1-2. clarify the process for an open records request to the Commission. Statutory citations are added to 115:1-1-3 and 115:1-1-5. Section 115:1-1-6. is a new rule which provides for exemptions from the Commission rules and the process required to apply to the Commission to request such exemption.
CONTACT PERSON:
Gerry Smedley, Human Resources Director, (405) 521-2758, Department of Central Services, 2401 N. Lincoln Boulevard, Suite 212, 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, 2004:

115:1-1-1. Purpose

(a) The State Capitol Preservation Commission (referred to hereinafter as the Commission) was created by Section 4102 of Title 74 of the Oklahoma Statutes to plan and supervise the preservation and restoration of the interior and exterior of the State Capitol Building and the Governor's Mansion. The Commission also controls the display of art objects in the public areas of the Capitol and on the first floor of the Governor's Mansion (see 115:10-1-2(b) and 115:10-1-3(g) for additional considerations regarding the Governor's Mansion).

(b) The primary powers and responsibilities of the Commission are set forth in Section 4104 of Title 74 of the Oklahoma Statutes.

(c) The Commission office is located within the Department of Central Services, Administration, Will Rogers Office Building, 2401 N. Lincoln Blvd., Suite 206, Oklahoma City, Oklahoma. ~~in the State Capitol Building~~. Office hours are from 8:00 a.m. until 5:00 p.m., Monday through Friday, excluding legal holidays established by statute or proclamation of the Governor.

(d) The purpose of this Chapter is to outline the organization and administration of the Capitol Preservation Commission.

115:1-1-2. Availability of records

(a) Commission records are kept within the Department of Central Services. All records, except those documents specifically excluded by law, shall be available to the public as ~~provided~~ authorized by the Open Records Act. Documents

will be available to the public for inspection during regular office hours.

(b) Persons wishing to view Commission records shall register their name, address and telephone number before the documents are viewed. The person wishing to view the documents shall state whether the documents being viewed are for a personal, business or commercial reason and shall list the documents desired for viewing.

(c) No original records shall be removed from the Commission files.

(d) Persons wishing to obtain a copy of ~~photocopy~~ Commission documents in the custody of the Department of Central Services shall submit a written request at least twenty-four (24) hours in advance. ~~may do so in accordance with the Open Records Act~~. Documents shall be copied and ~~A~~ a fee ~~charge~~ charged for the copies ~~may be made~~ in accordance with the Open Records Act [51 O.S., Section 24A.1 et seq] and the administrative rules of the Department of Central Services.

115:1-1-3. Commission organization and administration

(a) **Meeting requirements.** All meetings of the Commission are subject to the requirements of the ~~state's~~ Open Meeting Act [25 O.S., Section 1 et seq]. Committee meetings of the Commission are not required to comply with the requirements of the Open Meeting Act unless they are charged with decision making authority by the full Commission.

(b) **General commission information.** The information in this subsection pertains to general commission operations.

(1) **Meetings.** The Commission shall meet bi-monthly on the third Thursday of even numbered months at the State Capitol. An agenda shall be mailed to each member not less than seven (7) days in advance of each meeting.

(2) **Emergency meetings.** The chair may call such emergency meetings as may be required to deal with matters requiring urgent or emergency consideration. In the absence of the chair, the vice-chair may call such meetings.

(3) **Quorum.** A quorum shall consist of one half the actual members plus one, including vacancies.

(4) **Election of chair and vice chair.** A chair and vice-chair shall be elected or reelected for two year terms at the regularly scheduled meeting held in June each odd-numbered year, to take office July 1 of that year.

115:1-1-4. Committees

(a) **Referral of proposals to committees.** All matters other than routine administration or procedural matters shall be referred to the appropriate committee for preliminary study and recommendations prior to final action by the Commission. This policy shall not apply to subject matter introduced on an emergency basis or under conditions which in the best judgment of the Commission chair or the Executive Committee should be considered by the Commission as a whole without such prior reference.

(b) **Committee quorum.** A quorum of each committee is not less than 50 percent of its members and must include the chair or vice chair of the committee.

(c) **Committee designations.** The following committees are established for the purposes outlined in this subsection. Committee chairs and vice-chairs shall be appointed by the Commission chair.

(1) **Executive Committee.**

(A) The Executive Committee shall consist of the following members:

(i) the elected officers of the Commission:

(ii) the State Capitol Architect and Curator:

(iii) Director of Central Services;

(iv) a representative of each appointing authority not represented by an elected officer, to be appointed by the Commission chair.

(B) The Committee will act as the Budget and Finance Committee for the Commission with responsibility for developing in conjunction with the Department of Central Services, operating and capital construction budgets for the Capitol and Governor's Mansion. Such budget proposals shall be submitted to the Commission for approval.

(C) Other responsibilities of the Executive Committee include:

(i) intra-commission coordination;

(ii) coordination with the responsibilities and activities of the Capitol Architect and Curator;

(iii) establishing internal administrative and operating procedures;

(iv) reviewing committee reports for Commission action;

(v) developing legislation and executive branch coordination procedures and proposed legislation as needed; and,

(vi) other activities considered to be outside the purview of other committees.

(D) The Executive Committee is responsible for the following:

(i) formulating policies, review, and control of all promotional material and media releases relating to responsibilities of the Commission;

(ii) preparation of statements of goals and public relations targets;

(iii) self-imposed restraints on public utterances;

(iv) review and coordination of all presentations to media agencies;

(v) production of Commission annual reports;

(vi) developing plans and procedures for maintaining liaison and rapport with all state government agencies and departments, and for review of all such activities; and

(vii) such other matters pertinent to a well developed and coordinated public relations effort.

(2) **Art Standards Committee.** The Art Standards Committee is responsible for works of art, murals, portraits, sculptures and furnishings displayed in and around

the public areas of the Capitol Building and first floor of the Governor's Mansion (see 115:10-1-2(b) for additional considerations regarding the Governor's Mansion), both permanent and temporary. The Art Standards Committee ~~will set~~ shall establish standards, which include ~~for~~ the following:

(A) acquisitions and commissioned works;

(B) disposition or acceptance of donated works of art; and

(C) restoration, preservation, inventory (description and value), storage, placement and location, security, and loaning of state-owned art pieces.

(3) **Architecture and Grounds Committee.** The Architecture and Grounds Committee is responsible for the following:

(A) The supervision of research, planning, and oversight of all proposed restoration, reconstruction and renovation any part of the Capitol and the Governor's Mansion (see 115:10-1-3(g) for additional considerations regarding the Governor's Mansion);

(B) Review of all building guide and information systems (signage);

(C) Oversight of landscaping and maintenance of the building exteriors (in conjunction with the State Department of Parks and Recreation and the Capitol Improvement Committee);

(D) Approval and placement of all monuments and sculptures surrounding the buildings;

(E) Development and administering standards for all exterior, permanent or temporary displays.

(4) **Long Range Planning Committee.** The Long Range Planning Committee is responsible for the following:

(A) all planning and physical, financial, and public relations needs for the Commission programs and responsibilities that are projected for three (3) or more years in advance; and,

(B) the formulation of long range goals and objectives and recommendations for policies, procedures, programs, and budget estimates to meet approved goals and objectives.

115:1-1-5. Appeals

Any decision of the Commission may be appealed in accordance with the Oklahoma Administrative Procedures Act [75 O.S., Section 250 et seq] . Appeals must be submitted in writing to the Commission Liaison, Office of the Attorney General, within ten days of notification of the decision.

115:1-1-6. Exemptions

The Commission may exempt any requirement of this chapter unless statutes mandate the requirement.

(1) All requests for exemptions shall be in writing and include justification for the exception request.

(2) The Commission shall respond in writing as to the approval, conditional approval, or denial of an exemption request.

(3) Exemptions shall require the approval of a majority of the Commission.

[OAR Docket #04-1143; filed 6-9-04]

TITLE 115. STATE CAPITOL PRESERVATION COMMISSION CHAPTER 10. PRESERVATION, RESTORATION, ARCHITECTURAL AND DECOR STANDARDS

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Revisions to 115:10-1-1 and 115:10-1-2 clarify the purpose and display of art work, art standards and submission of a written request to the commission for approval of placement of art works in the Capitol and Governor's Mansion. Revisions to 115:10-1-1(d) establishes guidelines for the criteria the Commission reviews for memorializing individuals with personalized works of art in the State Capitol. Revisions to 115:10-1-1(e) establish requirements for the maintenance of complete files, which include the location and documentation for all state-owned art at all times; provides for storage requirements; and a check out procedure whenever the art leaves a state building. Revisions to 115:10-1-1(f) requires approval of two-thirds of the Commission to amend the art standards. Section 115:10-1-2.1 are new rules adopted to provide procedures for foundations, groups or individuals to request approval of the Commission for the display of art.

CONTACT PERSON:

Gerry Smedley, Human Resources Director, (405) 521-2758, Department of Central Services, 2401 N. Lincoln Boulevard, Suite 212, 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, 2004:

115:10-1-1. Purpose

The purpose of this Chapter is to ~~outline~~ provide information and procedures related to the ~~Commission's policies regarding the~~ preservation, restoration, structure and decor of the State Capitol and Governor's Mansion.

115:10-1-2. Art standards

(a) **~~Quality~~ Display of art work.** Only art and art objects of highest museum quality, consistent with ~~the~~ legislative directives and approved by the Commission shall be permitted for permanent display in public areas of the Capitol. ~~All such works of art shall be directly related to the history and culture of the State of Oklahoma. The Capitol Preservation Commission must approve the artist of all such works.~~

(1) All such works of art shall be directly related to the history and culture of the State of Oklahoma.

(2) A painting, which includes portraits, landscapes or other paintings, excluding murals, shall be painted on linen with oils or acrylics.

(3) Any proposed mural work or sculptures to be placed in and around the Capitol and adjacent grounds shall comply with guidelines established by the Art Standards Committee, in conjunction with the Capitol Architect and Curator, specifically for each such display.

(4) The stained glass originally planned for the Capitol shall be the only stained glass in the Capitol.

(5) Placement of all art works in public areas of the Capitol is the sole responsibility of the Commission.

(A) A written request to move art work shall be submitted to the Art Standards Committee for review.

(B) Upon completion of the review, the Art Standards Committee will submit a written recommendation for the approval or denial of the request to the Commission.

(b) **Art work in Mansion.** Furnishings and art work on the first floor of the Governor's Mansion may be changed ~~with~~ upon written approval of the ~~Capitol Preservation~~ Commission. Art and art objects under control of the Commission may be made available to the Mansion subject to availability and appropriate priorities. All such state-owned material as may be determined surplus to Mansion needs will be returned to the Commission for appropriate disposition.

(c) **Temporary exhibits.** Temporary exhibits and displays of art and art objects ~~not inconsistent~~ shall comply with the rules of this chapter, the standards of the Commission and ~~as directed by legislation, may be permitted for periods not longer than 15 working days except by special authority of the Commission. Temporary exhibits displayed in the Governor's Art Gallery are exempt from rules for permanent displays; however, such exhibits are anticipated to be closely controlled by the Oklahoma Arts Council~~ state laws.

(1) Temporary exhibits may be permitted for periods not longer than 15 working days except by special authority of the Commission.

(2) Temporary exhibits displayed in the Governor's Art Gallery are exempt from rules for permanent displays and shall have strict oversight by the Oklahoma Arts Council.

(d) **Criteria for memorializing individuals with personalized works of art in the State Capitol.** Persons to be memorialized through placement of personalized works of art in the State Capitol shall be only those whose achievements and contributions to the history of Oklahoma and the Nation are of such transcending importance as to place the individual in a status clearly and generally acknowledged to be of paramount significance to the enduring history of the state. Such persons shall have been dead for a minimum of ten (10) years.

(1) All personalized works shall comply with the rules of this chapter, standards established by the Commission and state laws.

(2) Potential donors shall submit a written request for approval to the Commission no less than six (6) months prior to the proposed project completion date, which includes:

(A) a summary describing how the subject meets the qualifications described in OAC 115:10-1-2;

(B) project timelines, if available;

(C) any information that may assist the Commission with the review of the proposed project; and

(D) any additional information requested by the Commission.

(3) Proposals for personalized works of art shall be submitted to the Commission for review and approval prior to any commitment by the sponsor(s). Any action on the part of the sponsor(s) taken prior to review and approval by the Commission shall be at the risk of the promoter(s).

(4) All proposals will be referred to the Arts Standards Committee for review and recommendations to the Commission.

(5) The Commission shall be responsible for the selection of the artist, location, size, subject and framing.

(e) **Property and security of art work.** All works of art under the purview of the Capitol Preservation Commission shall be inventoried by the Capitol Preservation Commission with description, value, and location of art piece. ~~Complete files shall be kept showing the location of state-owned art at all times, with proper documentation showing temporary locations such as loans, repair, or temporary display out of state buildings. Art work shall be stored in a controlled locked area with proper environment suitable for storage of art pieces. All art pieces leaving state buildings should be checked by Building Security for proper ownership and recorded by name and piece on security log.~~

(1) Complete files shall be maintained showing the location of state-owned art at all times, with proper documentation showing temporary locations such as loans, repair, or temporary display out of state buildings.

(2) All art work shall be stored in a controlled locked area with proper environment suitable for storage of art pieces.

(3) All art pieces leaving state buildings shall be checked by Building Security for proper ownership and recorded by name and piece on a security log developed by the Commission.

(f) **Development of art standards.** Art standards ~~will~~ may be developed by the Art Standards Committee and the Capitol Architect and Curator. Such standards ~~will~~ shall be approved by the Commission. ~~All new art work shall comply with approved standards. Exceptions shall require approval of a majority of the Commission~~. Revisions to the art standards shall require the approval of two thirds (2/3) of the Commission.

~~(g) **Revisions to art standards.** Revisions to the art standards shall require a simple majority for 90 days following the promulgation of this Chapter. Thereafter, revisions shall require the approval of two thirds (2/3) of the full Commission~~.

115:10-1-2.1. Approval of art display

(a) **Request for approval.** Any foundation, group or individual interested in financing and donating an appropriate work of art to the State for use in the Capitol or the Governor's Mansion shall submit a written request for approval of a permanent display to the Commission.

(1) A request for approval shall be reviewed by the Art Standards Committee for presentation to the Capitol Architect and Curator and the Commission for discussion.

(2) Upon approval by the Commission, a formal set of guidelines will be established with participation of the potential donor and artists, if chosen.

(b) **Commissioned art contract requirements.** Works commissioned by the State for exhibit in the Capitol shall meet requirements contained within a written contract developed by the Art Standards Committee, in conjunction with the Capitol Architect and Curator.

(1) All such contracts and works shall be approved by the Commission.

(2) Any variation from such contract shall be reviewed and approved or disapproved by the Commission.

(c) **Approval of artist.** The Commission shall approve the artist of all commissioned works and provide written notice of said approval to the applicant.

(d) **Solicitation of art works.** Whenever possible, an open competition program will be established and utilized by the Commission to acquire special art works. Artists shall contact the Commission or the Oklahoma Arts Council when such art works are being solicited.

(e) **Noncommissioned art works.** Individuals interested in donating noncommissioned art works to the State shall submit a written request for review and approval to the Commission.

(1) Noncommissioned art works presented to the Commission or the State may be accepted by the Committee on behalf of the Commission for display in the State Capitol or the Governor's Mansion only if such works meet quality standards approved by the Commission.

(2) Such works may be displayed, stored, loaned to other agencies of the State or sold after three (3) years if so recommended by the Art Standards Committee.

[OAR Docket #04-1142; filed 6-9-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 1. ORGANIZATION

[OAR Docket #04-1113]

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03-3044
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n/a
ANALYSIS:
The amended rule adds the administration and enforcement of the Deferred Deposit Lending Act to the duties of the Administrator of Consumer Credit.
CONTACT PERSON:
Cindy Barrett, Deputy Administrator, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105, 405-522-4660.

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 12, 2004:

160:1-1-1.2. Duties of Administrator

(a) The Administrator, as the head of the Department, is charged with the duty of administering and enforcing all provisions of:

(1) the Uniform Consumer Credit Code beginning at §1-101 of Title 14A of the Oklahoma Statutes;

(2) the Oklahoma Rental-Purchase Act beginning at §1950 of Title 59 of the Oklahoma Statutes;

(3) the Oklahoma Pawnshop Act beginning at §1501 of Title 59 of the Oklahoma Statutes;

(4) the Precious Metal and Gem Dealer Licensing Act beginning at §1521 of Title 59 of the Oklahoma Statutes;

(5) the Credit Services Organization Act beginning at §131 of Title 24 of the Oklahoma Statutes;

(6) the Oklahoma Health Spa Act beginning at §2000 of Title 59 of the Oklahoma Statutes; ~~and,~~

(7) the Mortgage Broker Licensure Act beginning at §2081 of Title 59 of the Oklahoma Statutes~~.~~; and,

(8) the Deferred Deposit Lending Act beginning at §3101 of Title 59 of the Oklahoma Statutes.

(b) When the Administrator is absent or unable to act for any reason, then the Deputy Administrator shall perform the duties of Administrator [14A:6-507].

[OAR Docket #04-1113; filed 6-7-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 3. PROCEDURE

[OAR Docket #04-1114]

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INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The amended rule deletes information about the Department's Tulsa office that has been closed.
CONTACT PERSON:
Cindy Barrett, Deputy Administrator, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105, 405-522-4660.

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 12, 2004:

160:3-1-1.1. Requests for information

(a) Requests for information may be made electronically, by telephone, by facsimile, by mail, or by personal appearance.

(1) The Department's web page address is www.ok-docc.state.ok.us.

(2) The Department's telephone numbers are (405) 521-3653~~, (918) 581-2771,~~ and (800) 448-4904.

(3) The Department's facsimile ~~numbers are~~number is (405) 521-6740~~ and (918) 581-2599~~.

(4) The Department's ~~addresses are~~address is 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105~~, and 440 S. Houston, Suite 4, Tulsa, OK 74127~~.

(5) The Department's regular business hours are 8:00 a.m. to 4:30 p.m.

(b) The Oklahoma Open Records Act beginning at §24A.1 of Title 51 of the Oklahoma Statutes sets forth the records that shall be open to any person for inspection, copying or mechanical reproduction.

(c) Where the request is for materials of which copies are not available and photocopying or reproduction by other means is required, such service shall be provided upon payment of the appropriate fee.

[OAR Docket #04-1114; filed 6-7-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 5. FEES

[OAR Docket #04-1115]

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ANALYSIS:
The amended rule adds new fees for mortgage brokers and mortgage loan originators pursuant to House Bill 2009 from the 2002 Second Regular Session of the 48th Legislature, and adds fees for deferred deposit lenders pursuant to Senate Bill 583 from the 2003 First Regular Session of the 49th Legislature.
CONTACT PERSON:
Cindy Barrett, Deputy Administrator, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105, 405-522-4660.

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 12, 2004:

160:5-1-2. Fees

Fees charged by the Department are as follows:

(1) Supervised Lenders

(A) $150.00 application fee for license, except that for any license granted after June 30, the fee shall be $75.00 [14A:3-503(1)]

(B) $225.00 investigation fee for license [14A:3-503(1)]

(C) $150.00 annual renewal fee [14A:3-504(5)] and a $50.00 late fee for a late application for renewal of a license received after December 1 [14A:3-504(5)]

(D) For any examination under one-half hour, no fee. For any examination over one-half hour up to eight (8) hours, $300.00. For any examination in excess of eight (8) hours, $300.00 plus $50.00 per examiner per hour for each full hour, or pro rata for each partial hour, over eight (8) hours. A $50.00 late fee shall be imposed when the examination fee is not received within thirty (30) days of the invoice date. No licensee shall be assessed a total fee in excess of Six Hundred Fifty Dollars ($650.00) for each licensed office in any calendar year. [14A:3-506(1)]

(E) ~~No fees shall be refunded when a license is suspended or revoked.~~

~~(F)~~ $25.00 fee for a duplicate or amended license [14A:3-504(5)]

(~~G~~F) $25.00 fee for a returned check [14A:3-506(10)]

(G) All fees are non-refundable unless the Code or these rules require otherwise.

(2) Notifications

(A) $20.00 annual filing fee [14A:6-203(1)]

(B) sellers, lessors, lenders and assignees shall pay the $20.00 annual filing fee plus $10.00 per $100,000.00 of business conducted in Oklahoma [14A:6-203(2) and (3)]

(C) All fees are non-refundable unless the Code or these rules require otherwise.

(3) Pawnbrokers

(A) $100.00 application fee for license, except that for any application filed after June 30, the fee shall be $50.00 [59:1505(A)]

(B) $125.00 investigation fee for license [59:1505(A)]

(C) $100.00 annual renewal fee [59:1506(C)]

(D) $200.00 annual examination fee [59:1508(A)]

(E) ~~No~~All fees ~~shall be refunded when a license is suspended or revoked~~are non-refundable unless the Act or these rules require otherwise.

(4) Rent-to-Own Businesses

(A) $100.00 application fee for license, except that for any application filed after June 30, the fee shall be $50.00 [59:1953]

(B) $100.00 annual renewal fee [59:1953]

(C) $200.00 annual examination fee [59:1955(B)]

(D) ~~No~~All fees ~~shall be refunded when a license is suspended or revoked~~are non-refundable unless the Act or these rules require otherwise.

(5) Health Spas

(A) $200.00 initial registration fee [59:2002(A)(4)];this fee shall be applied without regard to the date of filing.

(B) $200.00 annual renewal fee [59:2002(A)(4)]

(C) ~~The initial registration fee shall be applied without regard to the date of filing, and no~~All fees ~~shall be refunded when a license is suspended or revoked~~are non-refundable unless the Act or these rules require otherwise.

(6) Credit Services Organizations

(A) $100.00 application fee for license [24:143(A)];this fee shall be applied without regard to the date of filing.

(B) $100.00 investigation fee for license [24:143(A)]

(C) $100.00 annual renewal fee [24:143(A)]

(D) $200.00 annual examination fee [24:146(A)]

(E) ~~The application fee for license shall be applied without regard to the date of filing, and no~~All fees

~~shall be refunded when a license is suspended or revoked~~are non-refundable unless the Act or these rules require otherwise.

(7) Precious Metals and Gem Dealers

(A) $50.00 application fee for license for dealers, $25.00 application fee for license for each employee [59:1525(A) and (B)];these fees shall be applied without regard to the date of filing.

(B) $50.00 investigation fee for license [59:1525(A)]

(C) $50.00 annual renewal fee for dealers, $25.00 annual renewal fee for each employee [59:1526(A) and (B)]

(D) ~~The application fee for license shall be applied without regard to the date of filing, and no~~All fees ~~shall be refunded when a license is suspended or revoked~~are non-refundable unless the Act or these rules require otherwise.

(8) Mortgage Brokers

(A) ~~$500.00~~$750.00 application fee for a mortgage broker license; this fee ~~is non-refundable and is required of each applicant~~shall be applied without regard to the ~~number of licenses sought or the~~ date of filing [59:2085(A)(2)]

(B) $300.00 initial license fee for a mortgage broker license [~~59:2085(C)~~59:2085(I)(1)]; this fee shall be applied without regard to the date of filing.

(C) $300.00 triennial renewal fee for a mortgage broker license [~~59:2085(C)~~59:2085(I)(1)]

(D) ~~The initial license fee shall be applied without regard to the date of filing, and no fees shall be refunded when a licensee is on probation or had its license suspended or revoked.~~ $25.00 late fee per day for a late application for renewal of a mortgage broker license received after December 31 and on or before January 31 [59:2085(D)]

(E) $150.00 triennial license fee for a branch office license [59:2085(I)(2)]; this fee shall be applied without regard to the number of licenses sought or the date of filing.

(F) $50.00 inactive status fee for a mortgage broker license [59:2085(I)(3)]

(G) Reactivation fees for a mortgage broker license [59:2085(F)]

(i) If a mortgage broker license has been inactive for one licensing year, then the reactivation fee is $200.

(ii) If a mortgage broker license has been inactive for two consecutive licensing years, then the reactivation fee is $100.

(iii) If a mortgage broker license is reactivated during an inactive license year, then the reactivation fee is the prorated portion of the $300 license fee to cover the remainder of the three-year license period.

(H) $10.00 change of address fee [59:2085(H) and (I)(4)]

(I) $100.00 initial license fee for a mortgage loan originator license [59:2085(I)(5)]; this fee shall be applied without regard to the date of filing.

(J) $100.00 triennial renewal fee for a mortgage loan originator license [59:2085(I)(5)]

(K) $150.00 license test fee; this fee is required for each test taken without regard to test results or the number of times that a person takes the test [59:2092(C)]

(L) Test handbook fee equal to the actual cost of producing and distributing the handbook [59:2092(E)]

(M) All fees are non-refundable unless the Act or these rules require otherwise.

(9) Deferred Deposit Lenders

(A) $250.00 application fee for license; this fee is required of each applicant without regard to the number of licenses sought or the date of filing [59:3113(D)]

(B) $500.00 investigation fee for license; this fee is required of each applicant without regard to the number of licenses sought or the date of filing [59:3113(D)]

(C) $250.00 annual renewal fee; this fee is required of each applicant without regard to the number of licenses sought [59:3113(E)]

(D) For any examination under one-half hour, no fee. For any examination over one-half hour up to eight (8) hours, $300.00. For any examination in excess of eight (8) hours, $300.00 plus $50.00 per examiner per hour for each full hour, or pro rata for each partial hour, over eight (8) hours. A $50.00 late fee shall be imposed when the examination fee is not received within thirty (30) days of the invoice date. [59:3114(A)]

(E) $25.00 late fee for any annual report received after May 1 [59:3114(F)]

(F) All fees are non-refundable and non-abatable unless the Act or these rules require otherwise. [59:3113(D)]

(~~9~~10) Other

(A) $0.25 fee per page for copies [51:24A.5(3)]

(B) $1.00 fee per copied page for a certified copy [51:24A.5(3)]

(C) Reasonable search fee of the hourly rate of lowest paid employee capable of performing search when records are requested solely for commercial purpose or the request would clearly cause excessive disruption of the Department's essential functions [51:24A.5(3)]

[OAR Docket #04-1115; filed 6-7-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 10. CONSUMER LEASING

[OAR Docket #04-1116]

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RULES:
Subchapter 5. Disclosures
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160:10-5-1.4. [NEW]
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ANALYSIS:
The rules incorporate federal changes to maintain Oklahoma's exemption from federal regulation.
CONTACT PERSON:
Cindy Barrett, Deputy Administrator, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105, 405-522-4660.

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 12, 2004:

SUBCHAPTER 5. DISCLOSURES

160:10-5-1.1. General disclosure requirements

(a) **General requirements.** A lessor shall make the disclosures required by 160:10-5-1.2, as applicable. The disclosures shall be made clearly and conspicuously in writing in a form the consumer may keep, in accordance with this section.

(1) **Form of disclosures.** The disclosures required by 160:10-5-1.2 shall be given to the lessee together in a dated statement that identifies the lessor and the lessee; the disclosures may be made either in a separate statement that identifies the consumer lease transaction or in the contract or other document evidencing the lease. Alternatively, the disclosures required to be segregated from other information under paragraph (a)(2) of this section may be provided in a separate dated statement that identifies the lease, and the other required disclosures may be provided in the lease contract or other document evidencing the lease. In a lease of multiple items, the property description required by 160:10-5-1.2(1) may be given in a separate statement that is incorporated by reference in the disclosure statement required by this paragraph.

(2) **Segregation of certain disclosures.** The following disclosures shall be segregated from other information and shall contain only directly related information: 160:10-5-1.2(2) through 160:10-5-1.2(6), 160:10-5-1.2(7)(B), 160:10-5-1.2(8)(C), 160:10-5-1.2(9)(A), 160:10-5-1.2(10), and 160:10-5-1.2(13)(A). The headings, content, and format for the disclosures referred to in this paragraph shall be provided in a manner substantially similar to the applicable model form in the appendixes of this chapter.

(3) **Timing of disclosures.** A lessor shall provide the disclosures to the lessee prior to the consummation of a consumer lease.

(4) **Language of disclosures.** The disclosures required by 160:10-5-1.2 may be made in a language other than English provided that they are made available in English upon the lessee's request.

(5) **Electronic communication.** For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see 160:10-5-1.4.

(b) **Additional information; nonsegregated disclosures.** Additional information may be provided with any disclosure not listed in paragraph (a)(2) of this section, but it shall not be stated, used, or placed so as to mislead or confuse the lessee or contradict, obscure, or detract attention from any disclosure required by this chapter.

(c) **Multiple lessors or lessees.** When a transaction involves more than one lessor, the disclosures required by this chapter may be made by one lessor on behalf of all the lessors. When a lease involves more than one lessee, the lessor may provide the disclosures to any lessee who is primarily liable on the lease.

(d) **Use of estimates.** If an amount or other item needed to comply with a required disclosure is unknown or unavailable after reasonable efforts have been made to ascertain the information, the lessor may use a reasonable estimate that is based on the best information available to the lessor, is clearly identified as an estimate, and is not used to circumvent or evade any disclosures required by this chapter.

(e) **Effect of subsequent occurrence.** If a required disclosure becomes inaccurate because of an event occurring after consummation, the inaccuracy is not a violation of this chapter.

(f) **Minor variations.** A lessor may disregard the effects of the following in making disclosures:

(1) that payments must be collected in whole cents;

(2) that dates of scheduled payments may be different because a scheduled date is not a business day;

(3) that months have different numbers of days; and
(4) that February 29 occurs in a leap year.

160:10-5-1.4. Electronic communication

(a) **Definition.** "Electronic communication" means a message transmitted electronically between a lessor and a lessee in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(b) **General rule.** In accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 et seq.) and the rules of this chapter, a lessor may provide by electronic communication any disclosure required by this chapter to be in writing.

(c) **When consent is required.** Under the E-Sign Act, a lessor is required to obtain a lessee's affirmative consent when providing disclosures related to a transaction. For purposes of this requirement, the disclosures required under 160:10-7-1.1 are deemed not to be related to a transaction.

(d) **Address or location to receive electronic communication.** A lessor that uses electronic communication to provide disclosures required by this chapter shall:

(1) send the disclosure to the consumer's electronic address; or

(2) make the disclosure available at another location such as a web site; and

(A) alert the lessee of the disclosure's availability by sending a notice to the consumer's electronic address (or to a postal address, at the lessor's option). The notice shall identify the transaction involved and the address of the Internet web site or other location where the disclosure is available; and

(B) make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the lessee of the disclosure, whichever comes later.

(3) **Exceptions.** A lessor need not comply with paragraph (d)(2)(i) and (ii) of this section for the disclosures required under 160:10-7-1.1.

(e) **Redelivery.** When a disclosure provided by electronic communication is returned to a lessor undelivered, the lessor shall take reasonable steps to attempt redelivery using information in its files.

[OAR Docket #04-1116; filed 6-7-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 15. PAWN TRANSACTIONS

[OAR Docket #04-1117]

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Subchapter 5. Licensing
160:15-5-6. [AMENDED]

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ANALYSIS:
The amended rules rewrite the subsections on keeping information on file with the Department current and on changing a location and add a subsection on closing a location.
CONTACT PERSON:
Cindy Barrett, Deputy Administrator, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105, 405-522-4660.

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 12, 2004:

SUBCHAPTER 3. RECORDS

160:15-3-1. Records and changes

(a) Each licensee shall preserve and make available such books and records related to pawn transactions for four (4) years from the date of the initial transaction between the pawnshop and each consumer, or for two (2) years from the date of the final entry into such records is made thereon, whichever is later [59:1508(F)]. The records shall be maintained for such time periods whether the pawnshop is currently licensed or previously licensed. Upon licensing, the licensee shall designate a location or locations in Oklahoma where records shall be maintained, and the records shall not be moved therefrom unless the Administrator has given written approval for another location.

(b) Each licensee's records shall be maintained in compliance with the Act and these rules. Each licensee shall ~~provide the Administrator with~~keep current the information ~~in regard to the licensee~~required for licensing by reporting any changes or additions to the information previously submitted to the

Department~~. Any change of information in regard to the licensee shall be reported~~ within thirty (30) days of such change or addition unless the Act or these rules require otherwise.

SUBCHAPTER 5. LICENSING

160:15-5-6. Moving or closing a location

(a) ~~An owner shall give~~At least thirty (30) days before the address of a pawnshop is changed, the owner shall notify ~~written notice to~~ the Administrator ~~before a pawnshop is moved~~ [59:1505(B)]~~, and the~~in writing. The owner shall post an announcement on the front door listing the address of the new location. The announcement shall remain on the front door until the location changes. ~~The~~In the change notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement and any license that needs to be amended.

(b) At least thirty (30) days before a pawnshop is to be closed, the owner shall notify the Administrator in writing. The owner shall post an announcement on the front door listing the business telephone number and mailing and business address of another location, if any. The announcement shall remain posted until the existing pawnshop closes. In the closing notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement along with the license for the closing pawnshop.

[OAR Docket #04-1117; filed 6-7-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 30. CREDIT SERVICES ORGANIZATION

[OAR Docket #04-1118]

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The amended rules rewrite the subsections on keeping information on file with the Department current and on changing a location and add a subsection on closing a location.
CONTACT PERSON:
Cindy Barrett, Deputy Administrator, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105, 405-522-4660.

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 12, 2004:

SUBCHAPTER 3. LICENSING

160:30-3-3.4. Moving or closing a location

(a) ~~An owner shall give~~At least thirty (30) days ~~written notice to~~before the address of a credit service organization is changed, the owner shall notify the Administrator ~~before a credit service organization is moved~~ [24:144(B)]~~, and the~~in writing. The owner shall post an announcement on the front door listing the address of the new location. The announcement shall remain on the front door until the location changes. ~~The~~In the change notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement and any license that needs to be amended.

(b) At least thirty (30) days before a credit service organization is closed, the owner shall notify the Administrator in writing. The owner shall post an announcement on the front door listing the business telephone number and mailing and business address of another location, if any. The announcement shall remain posted until the existing credit service organization closes. In the closing notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement along with the license for the closing credit service organization.

SUBCHAPTER 9. RECORDS

160:30-9-1. Records and changes

(a) Each licensee shall preserve and make available such books and records related to each of its credit service transactions for four (4) years from the date of the initial transaction between the licensee and each consumer, or for two (2) years from the date of the final entry into such records is made

thereon, whichever is later [24:146(D)]. The records shall be maintained for such time periods whether the credit services organization is currently licensed or previously licensed. Upon licensing, the licensee shall designate a location or locations in Oklahoma where records shall be maintained, and the records shall not be moved therefrom unless the Administrator has given written approval for another location.

(b) Each licensee's records shall be maintained in compliance with the Act and these rules. Each licensee shall ~~provide the Administrator with~~keep current the information ~~in regard to the licensee~~required for licensing by reporting any changes or additions to the information previously submitted to the Department~~. Any change of information in regard to the licensee shall be reported~~ within thirty (30) days of such change or addition unless the Act or these rules require otherwise.

[OAR Docket #04-1118; filed 6-7-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 35. OKLAHOMA RENTAL-PURCHASE ACT

[OAR Docket #04-1119]

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The amended rules rewrite the subsections on keeping information on file with the Department current and on changing a location and add a subsection on closing a location.

CONTACT PERSON:
Cindy Barrett, Deputy Administrator, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105, 405-522-4660.

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 12, 2004:

SUBCHAPTER 3. LICENSING

160:35-3-1.4. Moving or closing a location

(a) ~~An owner shall give~~At least thirty (30) days ~~written notice to~~before the address of the location to which the license applies is changed, the owner shall notify the Administrator ~~before an owner moves a location to which the license applies, and the~~in writing. The owner shall post an announcement on the front door listing the address of the new location. The announcement shall remain on the front door until the location changes. ~~The~~In the change notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement and any license that needs to be amended.

(b) At least thirty (30) days before a location to which the license applies is closed, the owner shall notify the Administrator in writing. The owner shall post an announcement on the front door listing the business telephone number and mailing and business address of another location, if any. The announcement shall remain posted until the existing location closes. In the closing notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement along with the license for the closing location.

SUBCHAPTER 5. RECORDS

160:35-5-1. Records and changes

(a) Each licensee shall preserve and make available such books and records related to the rental-purchase business for four (4) years from the date of the initial transaction between the lessor and each lessee, or for two (2) years from the date of the final entry into such records is made thereon, whichever is later. The records shall be maintained for such time periods whether the lessor is currently licensed or previously licensed. Upon licensing, the licensee shall either designate a location or locations in Oklahoma where records shall be maintained or agree in writing to provide copies of records kept at an out-of-state location to the Department upon demand, and the records shall not be moved from the designated location unless the Administrator has given written approval for another location.

(b) Each licensee's records shall be maintained in compliance with the Act and these rules. Each licensee shall ~~provide~~

~~the Administrator with~~keep current the information ~~in regard to the licensee~~required for licensing by reporting any changes or additions to the information previously submitted to the Department~~. Any change of information in regard to the licensee shall be reported~~ within thirty (30) days of such change or addition unless the Act or these rules require otherwise [59:1952(C)].

[OAR Docket #04-1119; filed 6-7-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 45. TRUTH IN LENDING RULES

[OAR Docket #04-1120]

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Subchapter 1. General Provisions
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Subchapter 3. Open-End Credit
160:45-3-1. [AMENDED]
160:45-3-2. [AMENDED]
160:45-3-3. [AMENDED]
160:45-3-13. [AMENDED]
160:45-3-14. [AMENDED]
Subchapter 5. Closed-End Credit
160:45-5-1. [AMENDED]
160:45-5-7. [AMENDED]
160:45-5-8. [AMENDED]
Subchapter 7. Miscellaneous
160:45-7-3. [AMENDED]
Subchapter 9. Special Rules for Certain Home Mortgage Transactions
160:45-9-1. [AMENDED]
160:45-9-2. [AMENDED]
160:45-9-4. [NEW]
Subchapter 11. Electronic Communication [NEW]
160:45-11-1. [NEW]
Appendix F. Annual Percentage Rate Computations for Certain Open-End Credit Plans [REVOKED]
Appendix F. Annual Percentage Rate Computations for Certain Open-End Credit Plans [NEW]
Appendix H. Closed-End Model Forms and Clauses [REVOKED]
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The rules incorporate federal changes to maintain Oklahoma's exemption from federal regulation.
CONTACT PERSON:
Cindy Barrett, Deputy Administrator, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105, 405-522-4660.

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 12, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

160:45-1-1. Authority, purpose, coverage, organization, enforcement and liability

(a) **Authority.** This chapter, known as Regulation Z, conforms to the regulations issued by the Board to implement the federal Truth In Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 USC 1601 et seq.). This chapter does not contain fair credit billing provisions, because Oklahoma does not have an exemption from Chapter 4, Credit Billing, of the federal Truth In Lending Act, and Oklahoma does not have a Fair Credit Billing Act; thus, creditors in Oklahoma should recognize that regulation of fair credit billing requirements lies with federal authorities; as a convenience, the pertinent sections of the Code of Federal Regulations, 12 CFR 226, have been referenced.

(b) **Purpose.** The purpose of this chapter is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The chapter also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling and regulates certain credit card practices. The chapter does not govern charges for consumer credit. The chapter requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home-equity plans that are subject to the requirements of 160:45-3-3 and mortgages that are subject to the requirements of 160:45-9-2. The chapter prohibits certain acts or practices in connection with credit secured by a consumer's principal dwelling.

(c) **Coverage.**

(1) In general, this chapter applies to each individual or business that offers or extends credit when four conditions are met:

(A) the credit is offered or extended to consumers;

(B) the offering or extension of credit is done regularly; **1/**

(C) the credit is subject to a finance charge or is payable by a written agreement in more than four installments; and

(D) the credit is primarily for personal, family or household purposes.

(2) If a credit card is involved, however, certain provisions apply even if the credit is not subject to a finance charge, or is not payable by a written agreement in more than four installments, or if the credit card is to be used for business purposes.

(3) In addition, certain requirements of 160:45-3-3 apply to persons who are not creditors but who provide applications for home-equity plans to consumers.

(d) **Organization.** The chapter is divided into subchapters and appendices as follows:

(1) Subchapter 1 contains general information. It sets forth:

(A) the authority, purpose, coverage, and organization of the chapter;

(B) the definitions of basic terms;

(C) the transactions that are exempt from coverage; and

(D) the method of determining the finance charge.

(2) Subchapter 3 contains the rules for open-end credit. It requires that initial disclosures and periodic statements be provided, as well as additional disclosures for credit and charge card applications and solicitations and for home-equity plans subject to the requirements of 160:45-3-2 and 160:45-3-3, respectively. ~~It also describes special rules that apply to credit card transactions, annual percentage rate calculations, rescission requirements, and advertising rules.~~

(3) Subchapter 5 relates to closed-end credit. It contains rules on disclosures, treatment of credit balances, annual percentage rate calculations, rescission requirements, and advertising.

(4) Subchapter 7 contains rules on oral disclosures, ~~Spanish language disclosure in Puerto Rico~~language of disclosures, record retention, and rate limitations.

(5) Subchapter 9 ~~relates to~~contains special rules for mortgage transactions~~ covered by 160:45-9-2 and reverse mortgage transactions~~. ~~It contains rules on disclosures, fees, and total-annual-loan-cost rates.~~160:45-9-2 requires certain disclosures and provides limitations for loans that have rates and fees above specified amounts. 160:45-9-3 requires disclosures, including the total annual loan cost rate, for reverse mortgage transactions. 160:45-9-4 prohibits specific acts and practices in connection with mortgage transactions.

(6) Subchapter 11 relates to electronic communication.

(~~6~~7) Several appendices contain information such as special rules for certain kinds of credit plans, and the rules for computing annual percentage rates in closed-end credit transactions and total-annual-loan-cost rates for reverse mortgage transactions.

(e) **Enforcement and Liability.** Article 6 of the Code contains the administrative enforcement provisions. Sections 5-202, 5-203, 5-301 and 5-302 of the Code contain provisions relating to liability for failure to comply with the requirements of the Code and this chapter.

1/ The meaning of "regularly" is explained in the definition of "creditor" in 160:45-1-2(a).

SUBCHAPTER 3. OPEN-END CREDIT

160:45-3-1. General disclosure requirements

(a) **Form of disclosures.**

(1) The creditor shall make the disclosures required by this subchapter clearly and conspicuously in writing, **7/** in a form that the consumer may keep. **8/**

(2) The terms "finance charge" and "annual percentage rate," when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure. **9/**

(3) Certain disclosures required under 160:45-3-2 for credit and charge card applications and solicitations must be provided in a tabular format or in a prominent location in accordance with the requirements of 160:45-3-2.

(4) For rules governing the form of disclosures for home-equity plans, see 160:45-3-3(1).

(5) **Electronic communication.** For rules governing the electronic delivery of disclosures, including the definition of electronic communication, see 160:45-11-1.

(b) **Time of disclosures.**

(1) **Initial disclosures.** The creditor shall furnish the initial disclosure statement required by 160:45-3-4 before the first transaction is made under the plan.

(2) **Periodic statements.**

(A) The creditor shall mail or deliver a periodic statement as required by 160:45-3-5 for each billing cycle at the end of which an account has a debit or credit balance of more than $1 or on which a finance charge has been imposed. A periodic statement need not be sent for an account if the creditor deems it uncollectible, or if delinquency collection proceedings have been instituted, or if furnishing the statement would violate federal law.

(B) The creditor shall mail or deliver the periodic statement at least 14 days prior to any date or the end of any time period required to be disclosed under 160:45-3-5(10) in order for the consumer to avoid an additional finance or other charge. **10/** A creditor that fails to meet this requirement shall not collect any finance or other charge imposed as a result of such failure.

(3) **Credit and charge card application and solicitation disclosures.** The card issuer shall furnish the disclosures for credit and charge card applications and solicitations in accordance with the timing requirements of 160:45-3-2.

(4) **Home-equity plans.** Disclosures for home equity plans shall be made in accordance with the timing requirements of 160:45-3-3(2).

(c) **Basis of disclosures and use of estimates.** Disclosures shall reflect the terms of the legal obligation between the parties. If any information necessary for accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available and shall state clearly that the disclosure is an estimate.

(d) **Multiple creditors; multiple consumers.** If the credit plan involves more than one creditor, only one set of disclosures shall be given, and the creditors shall agree among themselves which creditor must comply with the requirements that this chapter imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the account. If the right of rescission under 160:45-3-13 is applicable, however, the disclosures required by 160:45-3-4 and 160:45-3-13(b) shall be made to each consumer having the right to rescind.

(e) **Effect of subsequent events.** If a disclosure becomes inaccurate because of an event that occurs after the creditor mails or delivers the disclosures, the resulting inaccuracy is not a violation of this chapter, although new disclosures may be required under 160:45-3-7(c).

7/ The disclosure required by 160:45-3-7(d) when a finance charge is imposed at the time of a transaction need not be written.

8/ The disclosures required under 160:45-3-2 for credit and charge card applications and solicitations, the home-equity disclosures required under 160:45-3-3(4), the alternative summary billing-rights statement provided in accordance with federal regulations, 12 CFR §226.9(a)(2), ~~and~~ the credit and charge card renewal disclosures required under 160:45-3-7(e), and the disclosures made in accordance with federal regulations, 12 CFR §226.10(b), about payment requirements need not be in a form that the consumer can keep.

9/ The terms need not be more conspicuous when used under 160:45-3-2 generally for credit and charge card applications and solicitations, under 160:45-3-5(4) on periodic statements, under 160:45-3-7(e) in credit and charge card renewal disclosures, and under 160:45-3-14 in advertisements. (But see special rule for annual percentage rate for purchases, 160:45-3-2(b)(1).)

10/ This timing requirement does not apply if the creditor is unable to meet the requirement because of an act of God, war, civil disorder, natural disaster, or strike.

160:45-3-2. Credit and charge card applications and solicitations

(a) **General rules.** The card issuer shall provide the disclosures required under this section on or with a solicitation or an application to open a credit or charge card account.

(1) **Definition of solicitation.** For purposes of this section, the term "solicitation" means an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application.

(2) **Form of disclosures.**

(A) The disclosures in paragraphs (b)(1) through (7) of this section shall be provided in a prominent location on or with an application or a solicitation, or other applicable document, and in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in ~~appendix~~Appendix G.

(B) The disclosures in paragraphs (b)(8) through (11) of this section shall be provided either in the table containing the disclosures in paragraphs (b)(1) through (7), or clearly and conspicuously elsewhere on or with the application or solicitation.

(C) The disclosure required under paragraph (b)(5) of this section shall contain the term "grace period."

(D) The terminology in the disclosures under paragraph (b) of this section shall be consistent with that to be used in the disclosures under 160:45-3-4 and 160:45-3-5.

(3) **Exceptions.** This section does not apply to home-equity plans accessible by a credit or charge card that are of the type subject to the requirements of 160:45-3-3; overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; or lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines.

(4) **Fees based on a percentage.** If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.

(5) **Certain fees that vary by state.** If the amount of any fee referred to in paragraphs (b)(8) through ~~(10)~~(11) of this section varies from state to state, the card issuer may disclose the range of the fees instead of the amount for each state, if the disclosure includes a statement that the amount of the fee varies from state to state.

(b) **Required disclosures.** The card issuer shall disclose the items in this paragraph on or with an application or a solicitation in accordance with the requirements of paragraphs (c), (d), or (e) of this section. A credit card issuer shall disclose all applicable items in this paragraph except for paragraph (b)(7) of this section. A ~~credit and~~ charge card issuer shall disclose the applicable items in paragraphs (b)(2), (4), and (7) through (11) of this section.

(1) **Annual percentage rate.** Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by 160:45-3-12(b)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least 18-point type, except for the following: a temporary initial rate that is lower than the rate that will apply after the temporary rate expires, and a penalty rate that will apply upon the occurrence of one or more specific events.

(A) If the account has a variable rate, the card issuer shall also disclose the fact that the rate may vary and how the rate is determined.

(B) When variable-rate disclosures are provided under paragraph (c) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 60 days before mailing the disclosures. When variable-rate disclosures are provided under paragraph (e) of this section, an annual percentage rate

disclosure is accurate if the rate was in effect within 30 days before printing the disclosures. Disclosures provided by electronic communication are subject to paragraph (b)(1)(C) of this section.

(C) When variable rate disclosures are provided by electronic communication, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before mailing the disclosures to a consumer's electronic mail address. If disclosures are made available at another location such as the care issuer's Internet web site, the annual percentage rate must be one in effect within the last 30 days.

(2) **Fees for issuance or availability.** Any annual or other periodic fee, expressed as an annualized amount, or any other fee that may be imposed for the issuance or availability of a credit or charge card, including any fee based on account activity or inactivity.

(3) **Minimum finance charge.** Any minimum or fixed finance charge that could be imposed during a billing cycle.

(4) **Transaction charges.** Any transaction charge imposed for the use of the card for purchases.

(5) **Grace period.** The date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average.

(6) **Balance-computation method.** The name of the balance-computation method listed in paragraph (g) of this section that is used to determine the balance for purchases on which the finance charge is computed, or an explanation of the method used if it is not listed. The explanation may appear outside the table if the table contains a reference to the explanation. In determining which balance-computation method to disclose, the card issuer shall assume that credit extended for purchases will not be repaid within the grace period, if any.

(7) **Statement on charge card payments.** A statement that charges incurred by use of the charge card are due when the periodic statement is received.

(8) **Cash-advance fee.** Any fee imposed for an extension of credit in the form of cash.

(9) **Late-payment fee.** Any fee imposed for a late payment.

(10) **Over-the-limit fee.** Any fee imposed for exceeding a credit limit.

(11) **Balance-transfer fee.** Any fee imposed to transfer an outstanding balance.

(c) **Direct-mail applications and solicitations.** The card issuer shall disclose the applicable items in paragraph (b) of this section on or with an application or solicitation that is mailed to consumers or provided by electronic communication.

(d) **Telephone applications and solicitations.**

(1) **Oral disclosure.** The card issuer shall orally disclose the information in paragraphs (b)(1) through (7) of this section, to the extent applicable, in a telephone application or solicitation initiated by the card issuer.

(2) **Alternative disclosure.** The oral disclosure under paragraph (d)(1) of this section need not be given if the card issuer either does not impose a fee described in paragraph (b)(2) of this section or does not impose such a fee unless the consumer uses the card, and the card issuer discloses in writing within 30 days after the consumer requests the card (but in no event later than the delivery of the card) the following:

(A) The applicable information in paragraph (b) of this section; and

(B) The fact that the consumer need not accept the card or pay any fee disclosed unless the consumer uses the card.

(e) **Applications and solicitations made available to general public.** The card issuer shall provide disclosures, to the extent applicable, on or with an application or solicitation that is made available to the general public, including one contained in a catalog, magazine, or other generally available publication. The disclosures shall be provided in accordance with paragraphs (e)(1), (2) or (3) of this section.

(1) **Disclosure of required credit information.** The card issuer may disclose in a prominent location on the application or solicitation the following:

(A) The applicable information in paragraph (b) of this section~~.~~;

(B) The date the required information was printed, including a statement that the required information was accurate as of that date and is subject to change after that date; and

(C) A statement that the consumer should contact the card issuer for any change in the required information since it was printed, and a toll-free telephone number or a mailing address for that purpose.

(2) **Inclusion of certain initial disclosures.** The card issuer may disclose on or with the application or solicitation the following:

(A) The disclosures required under 160:45-3-4(1) through (3); and

(B) A statement that the consumer should contact the card issuer for any change in the required information, and a toll-free telephone number or a mailing address for that purpose.

(3) **No disclosure of credit information.** If none of the items in paragraph (b) of this section is provided on or with the application or solicitation, the card issuer may state in a prominent location on the application or solicitation the following:

(A) There are costs associated with the use of the card; and

(B) The consumer may contact the card issuer to request specific information about the costs, along with a toll-free telephone number and a mailing address for that purpose.

(4) **Prompt response to requests for information.** Upon receiving a request for any of the information referred to in this paragraph, the card issuer shall promptly and fully disclose the information requested.

(f) **Special charge card rule - - card issuer and person extending credit not the same person.** If a cardholder may by use of a charge card access an open-end credit plan that is not maintained by the charge card issuer, the card issuer need not provide the disclosures in paragraphs (c), (d) or (e) of this section for the open-end credit plan if the card issuer states on or with an application or a solicitation the following:

(1) The card issuer will make an independent decision whether to issue the card;

(2) The charge card may arrive before the decision is made about extending credit under the open-end credit plan; and

(3) Approval for the charge card does not constitute approval for the open-end credit plan.

(g) **Balance computation methods defined.** The following methods may be described by name. Methods that differ due to variations such as the allocation of payments, whether the finance charge begins to accrue on the transaction date or the date of posting the transaction, the existence or length of a grace period, and whether the balance is adjusted by charges such as late fees, annual fees and unpaid finance charges do not constitute separate balance-computation methods.

(1) **Average daily balance method.**

(A) **Average daily balance (including new purchases).** This balance is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(B) **Average daily balance (excluding new purchases).** This balance is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(2) **Two-cycle average daily balance method.**

(A) **Two-cycle average daily balance (including new purchases).** This balance is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

(B) **Two-cycle average daily balance (excluding new purchases).** This balance is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

(3) **Adjusted balance.** This balance is figured by deducting payments and credits made during the billing cycle from the outstanding balance at the beginning of the billing cycle.

(4) **Previous balance.** This balance is the outstanding balance at the beginning of the billing cycle.

160:45-3-3. Requirements for home-equity plans

The requirements of this section apply to open-end credit plans secured by the consumer's dwelling. For purposes of this section, an annual percentage rate is the annual percentage rate corresponding to the periodic rate as determined under 160:45-3-12(b).

(1) **Form of disclosures.**

(A) **General.** The disclosures required by paragraph (4) of this section shall be made clearly and conspicuously and shall be grouped together and segregated from all unrelated information. The disclosures may be provided on the application form or on a separate form. The disclosure described in paragraph (4)(D)(iii), the itemization of third-party fees described in paragraph (4)(H), and the variable-rate information described in paragraph (4)(L) of this section may be provided separately from the other required disclosures.

(B) **Precedence of certain disclosures.** The disclosures described in paragraphs (4)(A) through (D)(ii) of this section shall precede the other required disclosures.

(2) **Time of disclosures.** The disclosures and brochure required by paragraphs (4) and (5) of this section shall be provided at the time an application is provided to the consumer. **10a/**

(3) **Duties of third parties.**

(A) **General.** Persons other than the creditor who provide applications to consumers for home-equity plans must provide the brochure required under paragraph (5) of this section at the time an application is provided. If such persons have the disclosures required under paragraph (4) of this section for a creditor's home-equity plan, they also shall provide the disclosures at such time. **10a/**

(B) **Electronic communication.** Persons other than the creditor that are required to comply with paragraphs (4) and (5) of this section may use electronic communication in accordance with the requirements 160:45-11-1, as applicable.

(4) **Content of disclosures.** The creditor shall provide the following disclosures, as applicable:

(A) **Retention of information.** A statement that the consumer should make or otherwise retain a copy of the disclosures.

(B) **Conditions for disclosed terms.**

(i) A statement of the time by which the consumer must submit an application to obtain specific terms disclosed and an identification of any disclosed term that is subject to change prior to opening the plan.

(ii) A statement that, if a disclosed term changes (other than a change due to fluctuations in the index in a variable-rate plan) prior to opening the plan and the consumer therefore elects not to open the plan, the consumer may receive a refund of all fees paid in connection with the application.

(C) **Security interest and risk to home.** A statement that the creditor will acquire a security interest in the consumer's dwelling and that loss of the dwelling may occur in the event of default.

(D) **Possible actions by creditor.**

(i) A statement that, under certain conditions, the creditor may terminate the plan and require payment of the outstanding balance in full in a single payment and impose fees upon termination; prohibit additional extensions of credit or reduce the credit limit; and, as specified in the initial agreement, implement certain changes in the plan.

(ii) A statement that the consumer may receive, upon request, information about the conditions under which such actions may occur.

(iii) In lieu of the disclosure required under paragraph (4)(D)(ii) of this section, a statement of such conditions.

(E) **Payment terms.** The payment terms of the plan, including~~-~~:

(i) The length of the draw period and any repayment period.

(ii) An explanation of how the minimum periodic payment will be determined and the timing of payments. If paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance, a statement of this fact, as well as a statement that a balloon payment may result. **10b/**

(iii) An example, based on a $10,000 outstanding balance and a recent annual percentage rate, **10c/** showing the minimum periodic payment, any balloon payment, and the time it would take to repay the $10,000 outstanding balance if the consumer made only those payments and obtained no additional extensions of credit. If different payment terms may apply to the draw and any repayment period, or if different payment terms may apply within either period, the disclosures shall reflect the different payment terms.

(F) **Annual percentage rate.** For fixed-rate plans, a recent annual percentage rate **10c/** imposed under the plan and a statement that the rate does not include costs other than interest.

(G) **Fees imposed by creditor.** An itemization of any fees imposed by the creditor to open, use, or maintain the plan, stated as a dollar amount or percentage, and when such fees are payable.

(H) **Fees imposed by third parties to open a plan.** A good faith estimate, stated as a single dollar amount or range, of any fees that may be imposed by persons other than the creditor to open the plan, as well as a statement that the consumer may receive, upon request, a good faith itemization of such fees. In lieu of the statement, the itemization of such fees may be provided.

(I) **Negative amortization.** A statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling.

(J) **Transaction requirements.** Any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements, stated as dollar amounts or percentages.

(K) **Tax implications.** A statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan.

(L) **Disclosures for variable-rate plans.** For a plan in which the annual percentage rate is variable, the following disclosures, as applicable:

(i) The fact that the annual percentage rate, payment, or term may change due to the variable-rate feature.

(ii) A statement that the annual percentage rate does not include costs other than interest.

(iii) The index used in making rate adjustments and a source of information about the index.

(iv) An explanation of how the annual percentage rate will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin.

(v) A statement that the consumer should ask about the current index value, margin, discount or premium, and annual percentage rate.

(vi) A statement that the initial annual percentage rate is not based on the index and margin used to make later rate adjustments, and the period of time such initial rate will be in effect.

(vii) The frequency of changes in the annual percentage rate.

(viii) Any rules related to changes in the index value and the annual percentage rate and resulting changes in the payment amount, including, for example, an explanation of payment limitations and rate carryover.

(ix) A statement of any annual or more frequent periodic limitations on changes in the annual percentage rate (or a statement that no annual limitation exists), as well as a statement of the maximum annual percentage rate that may be imposed under each payment option.

(x) The minimum periodic payment required when the maximum annual percentage rate for each payment option is in effect for a $10,000 outstanding balance, and a statement of the earliest date or time the maximum rate may be imposed.

(xi) An historical example, based on a $10,000 extension of credit, illustrating how annual percentage rates and payments would have been affected by index-value changes implemented according to the terms of the plan. The historical example shall be based on the most recent 15 years of index values (selected for the same time period each year) and shall reflect all significant plan terms, such as negative amortization, rate carryover, rate discounts, and rate and payment limitations, that would have been affected by the index movement during the period.

(xii) A statement that rate information will be provided on or with each periodic statement.

(5) **Brochure.** The home-equity brochure published by the Board or a suitable substitute shall be provided.

(6) **Limitations on home-equity plans.** No creditor may, by contract or otherwise~~-~~:

(A) ~~change~~Change the annual percentage rate unless~~-~~:

(i) ~~such~~Such change is based on an index that is not under the creditor's control; and

(ii) ~~such~~Such index is available to the general public~~;~~.

(B) ~~terminate~~Terminate a plan and demand repayment of the entire outstanding balance in advance of the original term (except for reverse-mortgage transactions that are subject to paragraph (6)(D) of this section) unless~~-~~:

(i) ~~there~~There is fraud or material misrepresentation by the consumer in connection with the plan;

(ii) ~~the~~The consumer fails to meet the repayment terms of the agreement for any outstanding balance;

(iii) ~~any~~Any action or inaction by the consumer adversely affects the creditor's security for the plan, or any right of the creditor in such security; or

(iv) ~~federal~~Federal law dealing with credit extended by a depository institution to its executive officers specifically requires that as a condition of the plan the credit shall become due and payable on demand, provided that the creditor includes such a provision in the initial agreement.

(C) ~~change~~Change any term, except that a creditor may~~-~~:

(i) ~~provide~~Provide in the initial agreement that it may prohibit additional extensions of credit or reduce the credit limit during any period in which the maximum annual percentage rate is reached. A creditor also may provide in the initial agreement that specified changes will occur if a specific event takes place (for example, that the annual percentage rate will increase a specified amount if the consumer leaves the creditor's employment).

(ii) ~~change~~Change the index and margin used under the plan if the original index is no longer available, the new index has an historical movement substantially similar to that of the original index, and the new index and margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the original index became unavailable.

(iii) ~~make~~Make a specified change if the consumer specifically agrees to it in writing at that time.

(iv) ~~make~~Make a change that will unequivocally benefit the consumer throughout the remainder of the plan.

(v) ~~make~~Make an insignificant change to terms.

(vi) ~~prohibit~~Prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which~~-~~:

(I) ~~the~~The value of the dwelling that secures the plan declines significantly below the dwelling's appraised value for purposes of the plan;

(II) ~~the~~The creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations under the plan because of a material change in the consumer's financial circumstances;

(III) ~~the~~The consumer is in default of any material obligation under the agreement;

(IV) ~~the~~The creditor is precluded by government action from imposing the annual percentage rate provided for in the agreement;

(V) ~~the~~The priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line; or

(VI) ~~the~~The creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice.

(D) ~~for~~For reverse-mortgage transactions that are subject to 160:45-9-3, terminate a plan and demand repayment of the entire outstanding balance in advance of the original term except~~—~~:

(i) ~~in~~In the case of default;

(ii) ~~if~~If the consumer transfers title to the property securing the note;

(iii) ~~if~~If the consumer ceases using the property securing the note as the primary dwelling; or

(iv) ~~upon~~Upon the consumer's death.

(7) **Refund of fees.** A creditor shall refund all fees paid by the consumer to anyone in connection with an application if any term required to be disclosed under paragraph (4) of this section changes (other than a change due to fluctuations in the index in a variable-rate plan) before the plan is opened and, as a result, the consumer elects not to open the plan.

(8) **Imposition of nonrefundable fees.** Neither a creditor nor any other person may impose a nonrefundable fee

in connection with an application until three business days after the consumer receives the disclosures and brochure required under this section. **10d/**

10a/ The disclosures and the brochure may be delivered or placed in the mail not later than three business days following receipt of a consumer's application in the case of ~~an application~~applications contained in magazines or other publications, or when the application is received by telephone or through an intermediary agent or broker.

10b/ A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at such time.

10c/ For fixed-rate plans, a recent annual percentage rate is a rate that has been in effect under the plan within the ~~12~~twelve months preceding the date the disclosures are provided to the consumer. For variable-rate plans, a recent annual percentage rate is the most recent rate provided in the historical example described in paragraph (4)(L)(xi) of this section or a rate that has been in effect under the plan since the date of the most recent rate in the table.

10d/ If the disclosures and brochure are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

160:45-3-13. Right of rescission

(a) **Consumer's right to rescind.**

(1) **General provisions.**

(A) Except as provided in paragraph (a)(1)(B) of this section, in a credit plan in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind: each credit extension made under the plan; the plan when the plan is opened; a security interest when added or increased to secure an existing plan; and the increase when a credit limit on the plan is increased.

(B) As provided in §5-204(5) of the Code, the consumer does not have the right to rescind each credit extension made under the plan if such extension is made in accordance with a previously established credit limit for the plan.

(2) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram, or other means of written communication. Notice is considered given when mailed, or when filed for telegraphic transmission, or, if sent by other means, when delivered to the creditor's designated place of business.

(3) The consumer may exercise the right to rescind until midnight of the third business day following the occurrence described in paragraph (a)(1) of this section that gave rise to the right of rescission, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures, **36/** whichever occurs last. If the required notice and material disclosures are not delivered, the right to rescind shall expire three years after the occurrence giving rise to the right of rescission, or upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with §5-204(1) of the Code.

(4) When more than one consumer has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

(b) **Notice of right to rescind.** In any transaction or occurrence subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered by electronic communication as provided in 160:45-11-1(b)). The notice shall identify the transaction or occurrence and clearly and conspicuously disclose the following:

(1) The retention or acquisition of a security interest in the consumer's principal dwelling.

(2) The consumer's right to rescind, as described in paragraph (a)(1) of this section.

(3) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

(4) The effects of rescission, as described in paragraph (d) of this section.

(5) The date the rescission period expires.

(c) **Delay of creditor's performance.** Unless a consumer waives the right to rescind under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services shall be performed, and no materials delivered until after the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded. A creditor does not violate this section if a third party with no knowledge of the event activating the rescission right does not delay in providing materials or services, as long as the debt incurred for those materials or services is nor secured by the property subject to rescission.

(d) **Effects of rescission.**

(1) When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void, and the consumer shall not be liable for any amount, including any finance charge.

(2) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.

(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the

money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

(4) The procedures outlined in paragraphs (d)(2) and (3) of this section may be modified by court order.

(e) **Consumer's waiver of right to rescind.** The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signatures of the consumers entitled to rescind. Printed forms for this purpose are prohibited.

(f) **Exempt transactions.** The right to rescind does not apply to the following:

(1) A residential mortgage transaction.

(2) A credit plan in which a state agency is a creditor.

36/ The term "material disclosures" means the information that must be provided to satisfy the requirements in 160:45-3-4 with regard to the method of determining the finance charge and the balance upon which a finance charge will be imposed, the annual percentage rate, the amount or method of determining the amount of any membership or participation fee that may be imposed as part of the plan, and the payment information described in 160:45-3-3(4)(E)(i) and (ii) that is required under 160:45-3-4(5)(B).

160:45-3-14. Advertising

(a) **Actually available terms.** If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

(b) **Advertisement of terms that require additional disclosures.** If any of the terms required to be disclosed under 160:45-3-4 is set forth in an advertisement, the advertisement shall also clearly and conspicuously set forth the following **36d/**

(1) Any minimum, fixed, transaction, activity or similar charge that could be imposed.

(2) Any periodic rate that may be applied expressed as an annual percentage rate as determined under 160:45-3-12(b). If the plan provides for a variable periodic rate, that fact shall be disclosed.

(3) Any membership or participation fee that could be imposed.

(c) **Catalogs ~~and~~or other multiple-page advertisements~~.~~ ; electronic advertisements**

(1) If a catalog or other multiple-page advertisement, or an advertisement using electronic communication, gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (b) of this section, it shall be considered a single advertisement if~~—~~:

(A) The table or schedule is clearly and conspicuously set forth; and

(B) Any statement of terms set forth in 160:45-3-4 appearing anywhere else in the catalog or advertisement clearly refers to ~~that~~the page ~~on which~~or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an advertisement using electronic communication complies with this paragraph if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

(d) **Additional requirements for home-equity plans.**

(1) **Advertisement of terms that require additional disclosures.** If any of the terms required to be disclosed under 160:45-3-4(1) or (2) or the payment terms of the plan are set forth, affirmatively or negatively, in an advertisement for a home-equity plan subject to the requirements of 160:45-3-3, the advertisement also shall clearly and conspicuously set forth the following:

(A) Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range.

(B) Any periodic rate used to compute the finance charge, expressed as an annual percentage rate as determined under 160:45-3-12(b).

(C) The maximum annual percentage rate that may be imposed in a variable-rate plan.

(2) **Discounted and premium rates.** If an advertisement states an initial annual percentage rate that is not based on the index and margin used to make later rate adjustments in a variable-rate plan, the advertisement also shall state the period of time such rate will be in effect, and, with equal prominence to the initial rate, a ~~reasonable~~reasonably current annual percentage rate that would have been in effect using the index and margin.

(3) **Balloon payment.** If an advertisement contains a statement about any minimum periodic payment, the advertisement also shall state, if applicable, that a balloon payment may result. **36e/**

(4) **Tax implications.** An advertisement that states that any interest expense incurred under the home-equity plan is or may be tax deductible may not be misleading in this regard.

(5) **Misleading terms.** An advertisement may not refer to a home-equity plan as "free money" or contain a similarly misleading term.

36d/ The disclosures given in accordance with 160:45-3-2 do not constitute advertising terms for ~~the~~ purposes of the requirements of this section.

36e/ ~~See footnote 10b.~~ A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at such time.

SUBCHAPTER 5. CLOSED-END CREDIT

160:45-5-1. General disclosure requirements

(a) **Form of disclosures.**

(1) The creditor shall make the disclosures required by this subchapter clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related **37/** to the disclosures required under 160:45-5-2. **38/** The itemization of the amount financed under 160:45-5-2(3)(A) must be separate from the other disclosures under 160:45-5-2.

(2) The terms "finance charge" and "annual percentage rate," when required to be disclosed under 160:45-5-2(4) and (5) together with a corresponding amount or percentage rate, shall be more conspicuous than any other disclosure, except the creditor's identity under 160:45-5-2(1).

(3) **Electronic communication.** For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see 160:45-11-1.

(b) **Time of disclosures.** The creditor shall make disclosures before consummation of the transaction. In certain residential mortgage transactions, special timing requirements are set forth in 160:45-5-3(a). In certain variable-rate transactions, special timing requirements for variable-rate disclosures are set forth in 160:45-5-3(b) and 160:45-5-4(c). In certain transactions involving mail or telephone orders or a series of sales, the timing of the disclosures may be delayed in accordance with paragraphs (g) and (h) of this section.

(c) **Basis of disclosures and use of estimates.**

(1) The disclosures shall reflect the terms of the legal obligation between the parties.

(2) **Estimates and per-diem interest.**

(A) If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer, and shall state clearly that the disclosure is an estimate.

(B) For a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest shall be considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction.

(3) The creditor may disregard the effects of the following in making calculations and disclosures~~:~~.

(A) That payments must be collected in whole cents.

(B) That dates of scheduled payments and advances may be changed because the scheduled date is not a business day.

(C) That months have different numbers of days.

(D) The occurrence of leap year.

(4) In making calculations and disclosures, the creditor may disregard any irregularity in the first period that falls within the limits described below and any payment schedule irregularity that results from the irregular first period:

(A) For transactions in which the term is less than 1 year, a first period not more than 6 days shorter or 13 days longer than a regular period;

(B) For transactions in which the term is at least 1 year and less than 10 years, a first period not more than 11 days shorter or 21 days longer than a regular period; and

(C) For transactions in which the term is at least 10 years, a first period shorter than or not more than 32 days longer than a regular period.

(5) If an obligation is payable on demand, the creditor shall make the disclosures based on an assumed maturity of ~~one~~1 year. If an alternate maturity date is stated in the legal obligation between the parties, the disclosures shall be based on that date.

(6) **Multiple advances.**

(A) A series of advances under an agreement to extend credit up to a certain amount may be considered as one transaction.

(B) When a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction.

(d) **Multiple creditors; multiple consumers.** If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor must comply with the requirements that this chapter imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation. If the transaction is rescindable under 160:45-5-7, however, the disclosures shall be made to each consumer who has the right to rescind.

(e) **Effect of subsequent events.** If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of this chapter although new disclosures may be required under paragraph (f) of this section, 160:45-5-3, or 160:45-5-4.

(f) **Early disclosures.** If disclosures required by this subchapter are given before the date of consummation of a transaction and a subsequent event makes them inaccurate, the creditor shall disclose before consummation: **39/**

(1) any changed term unless the term was based on an estimate in accordance with paragraph (c)(2) of this section and was labeled an estimate;

(2) all changed terms, if the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed earlier by more than 1/8 of 1 percentage point in a regular transaction, or more than 1/4 of 1 percentage point in an irregular transaction, as defined in 160:45-5-6(a).

(g) **Mail or telephone orders - delay in disclosures.** If a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or ~~any other written or electronic communication~~facsimile machine without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is

made available in written form to the consumer or to the public before the actual purchase order or request:

(1) The cash price or the principal loan amount.

(2) The total sale price.

(3) The finance charge.

(4) The annual percentage rate, and if the rate may increase after consummation, the following disclosures:

(A) The circumstances under which the rate may increase.

(B) Any limitations on the increase.

(C) The effect of an increase.

(5) The terms of repayment.

(h) **Series of sales - delay in disclosures.** If a credit sale is one of a series made under an agreement providing that subsequent sales may be added to an outstanding balance, the creditor may delay the required disclosures until the due date of the first payment for the current sale, if the following two conditions are met:

(1) The consumer has approved in writing the annual percentage rate or rates, the range of balances to which they apply, and the method of treating any unearned finance charge on an existing balance.

(2) The creditor retains no security interest in any property after the creditor has received payments equal to the cash price and any finance charge attributable to the sale of that property. For purposes of this provision, in the case of items purchased on different dates, the first purchased is deemed the first item paid for; in the case of items purchased on the same date, the lowest priced is deemed the first item paid for.

(i) **Interim student credit extensions.** For each transaction involving an interim credit extension under a student credit program, the creditor need not make the following disclosures: the finance charge under 160:45-5-2(4), the payment schedule under 160:45-5-2(7), the total of payments under 160:45-5-2(8), or the total sale price under 160:45-5-2(10).

37/ The disclosures may include an acknowledgment of receipt, the date of the transaction, and the consumer's name, address, and account number.

38/ The following disclosures may be made together with or separately from other required disclosures: the creditor's identity under 160:45-5-2(1), the variable-rate example under 160:45-5-2(6)(A)(iv), insurance or debt cancellation under 160:45-5-2(14), and certain security interest-charges under 160:45-5-2(15).

39/ For certain residential mortgage transactions, 160:45-5-3(a)(2) permits redisclosure no later than consummation or settlement, whichever is later.

160:45-5-7. Right of rescission

(a) **Consumer's right to rescind.**

(1) In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction, except for transactions described in paragraph (f) of this section. **47/**

(2) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram or other means of written communication. Notice is considered given when mailed, when filed for telegraphic transmission or, if sent by other means, when delivered to the creditor's designated place of business.

(3) The consumer may exercise the right to rescind until midnight of the third business day following consummation, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures, **48/** whichever occurs last. If the required notice or material disclosures are not delivered, the right to rescind shall expire ~~three~~3 years after consummation, upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with §5-204(1) of the Code.

(4) When more than one consumer in a transaction has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

(b) **Notice of right to rescind.**

(1) In a transaction subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered by electronic communication as provided in 160:45-11-1(b)). The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:

(A) The retention or acquisition of a security interest in the consumer's principal dwelling.

(B) The consumer's right to rescind the transaction.

(C) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

(D) The effects of rescission, as described in paragraph (d) of this section.

(E) The date the rescission period expires.

(2) **Proper form of notice.** To satisfy the disclosure requirements of paragraph (b)(1) of this section, the creditor shall provide the appropriate model form in ~~appendix~~Appendix H of this chapter or a substantially similar notice.

(c) **Delay of creditor's performance.** Unless a consumer waives the right of rescission under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services shall be performed and no materials delivered until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded.

(d) **Effects of rescission.**

(1) When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void and the consumer shall not be liable for any amount, including any finance charge.

(2) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.

(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

(4) The procedures outlined in paragraphs (d)(2) and (3) of this section may be modified by court order.

(e) **Consumer's waiver of right to rescind.** The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all of the consumers entitled to rescind. Printed forms for this purpose are prohibited.

(f) **Exempt transactions.** The right to rescind does not apply to the following:

(1) A residential mortgage transaction.

(2) A refinancing or consolidation by the same creditor of an extension of credit already secured by the consumer's principal dwelling. The right of rescission shall apply, however, to the extent the new amount financed exceeds the unpaid principal balance, any earned unpaid finance charge on the existing debt, and ~~the~~ amounts attributed solely to the costs of the refinancing or consolidation.

(3) A transaction in which a state agency is a creditor.

(4) An advance, other than an initial advance, in a series of advances or in a series of single-payment obligations that is treated as a single transaction under 160:45-5-1(c)(6), if the notice required by paragraph (b) of this section and all material disclosures have been given to the consumer.

(5) A renewal of optional insurance premiums that is not considered a refinancing under 160:45-5-4(a)(5).

(g) **Tolerances for accuracy.**

(1) **One-half of 1 percent tolerance.** Except as provided in paragraphs (g)(2) and (h)(2) of this section, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge~~—~~:

(A) is understated by no more than 1/2 of 1 percent of the face amount of the note or $100, whichever is greater; or

(B) is greater than the amount required to be disclosed.

(2) **One percent tolerance.** In a refinancing of a residential mortgage transaction with a new creditor (other than a transaction covered by 160:45-9-2), if there is no new advance and no consolidation of existing loans, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge~~—~~:

(A) is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or

(B) is greater than the amount required to be disclosed.

(h) **Special rules for foreclosures.**

(1) **Right to rescind.** After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the consumer shall have the right to rescind the transaction if~~—~~:

(A) ~~a~~A mortgage broker fee that should have been included in the finance charge was not included; or

(B) ~~the~~The creditor did not provide the properly completed appropriate model form in ~~appendix~~Appendix H of this chapter, or a substantially similar notice of rescission.

(2) **Tolerance for disclosures.** After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge~~—~~:

(A) is understated by no more than $35; or

(B) is greater than the amount required to be disclosed.

47/ For purposes of this section, the addition to an existing obligation of a security interest in a consumer's principal dwelling is a transaction. The right of rescission applies only to the addition of the security interest and not the existing obligation. The creditor shall deliver the notice required by paragraph (b) of this section but need not deliver new material disclosures. Delivery of the required notice shall begin the rescission period.

48/ The term "material disclosures" means the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total ~~of~~ payments, the payment schedule, and the disclosures and limitations referred to in 160:45-9-2(c) and (d).

160:45-5-8. Advertising

(a) **Actually available terms.** If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

(b) **Advertisement of rate of finance charge.** If an advertisement states a rate of finance charge, it shall state the rate as an "annual percentage rate," using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in

conjunction with, but not more conspicuously than, the annual percentage rate.

(c) **Advertisement of terms that require additional disclosures.**

(1) If any of the following terms is set forth in an advertisement, the advertisement shall meet the requirements of paragraph (c)(2) of this section:

(A) The amount or percentage of any downpayment.

(B) The number of payments or period of repayment.

(C) The amount of any payment.

(D) The amount of any finance charge.

(2) An advertisement stating any of the terms in paragraph (c)(1) of this section shall state the following terms, **49/** as applicable:

(A) The amount or percentage of the downpayment.

(B) The terms of repayment.

(C) The "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.

(d) **Catalogs ~~and~~or other multiple-page advertisements~~.~~ ; electronic advertisements.**

(1) If a catalog or other multiple-page advertisement, or an advertisement using electronic communication, gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (c)(2) of this section, it shall be considered a single advertisement if~~—~~:

(A) The table or schedule is clearly and conspicuously set forth; and

(B) Any statement of terms of the credit terms in paragraph (c)(1) of this section appearing anywhere else in the catalog or advertisement clearly refers to the page ~~on which~~or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an advertisement using electronic communication complies with paragraph (c)(2) of this section if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

49/ An example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used.

SUBCHAPTER 7. MISCELLANEOUS

160:45-7-3. ~~Spanish language~~Language of disclosures

~~All disclosures~~Disclosures required by this chapter ~~shall~~may be made in ~~the~~a language other than English~~ language, except in the Commonwealth of Puerto Rico, where creditors may, at their option, make disclosures in the Spanish language~~, provided that the disclosures are made available in English upon the consumer's request. ~~If Spanish disclosures are made, English disclosures shall be provided on the consumer's request, either in substitution for or in addition to the Spanish disclosures.~~ This requirement for providing English disclosures on request ~~shall~~does not apply to advertisements subject to 160:45-3-14 and 160:45-5-8~~ of this chapter~~.

SUBCHAPTER 9. SPECIAL RULES FOR CERTAIN HOME MORTGAGE TRANSACTIONS

160:45-9-1. General rules

(a) **Relation to other subchapters in this chapter.** The requirements and limitations of this subchapter are in addition to and not in lieu of those contained in other subchapters of this chapter.

(b) **Form of ~~disclosure~~disclosures.**

(1) **General.** The creditor shall make the disclosures required by this subchapter clearly and conspicuously in writing, in a form that the consumer may keep.

(2) **Electronic communication.** For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see 160:45-11-1.

(c) **Timing of disclosure.**

(1) **Disclosures for certain closed-end home mortgages.** The creditor shall furnish the disclosures required by 160:45-9-2 at least three business days prior to consummation of a mortgage transaction covered by 160:45-9-2.

(A) **Change in terms.** After complying with paragraph (c)(1) of this section and prior to consummation, if the creditor changes any term that makes the disclosures inaccurate, new disclosures shall be provided in accordance with the requirements of this subchapter.

(B) **Telephone disclosures.** A creditor may provide new disclosures by telephone if the consumer initiates the change and if, at consummation~~—~~:

(i) ~~the~~The creditor provides new written disclosures; and

(ii) ~~the~~The consumer and creditor sign a statement that the new disclosures were provided by telephone at least three days prior to consummation.

(C) **Consumer's waiver of waiting period before consummation.** The consumer may, after receiving the disclosures required by paragraph (c)(1) of this section, modify or waive the three-day waiting period between delivery of those disclosures and consummation if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers entitled to the waiting period. Printed forms for this purpose are prohibited.

(2) **Disclosures for reverse mortgages.** The creditor shall furnish the disclosures required by 160:45-9-3 at least three business days prior to~~—~~:

(A) ~~consummation~~Consummation of a closed-end credit transaction; or

(B) ~~the~~The first transaction under an open-end credit plan.

(d) **Basis of disclosures and use of estimates.**

(1) **Legal obligation.** Disclosures shall reflect the terms of the legal obligation between the parties.

(2) **Estimates.** If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided, and shall state clearly that the disclosure is an estimate.

(3) **Per-diem interest.** For a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest shall be considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared.

(e) **Multiple creditors; multiple consumers.** If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor must comply with the requirements that this chapter imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation. If the transaction is rescindable under 160:45-3-13 or 160:45-5-7, however, the disclosures shall be made to each consumer who has the right to rescind.

(f) **Effect of subsequent events.** If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of this chapter, although new disclosures may be required for mortgages covered by 160:45-9-2 under paragraph (c) of this section, 160:45-3-7(c), 160:45-5-3, or 160:45-5-4.

(g) **Accuracy of annual percentage rate.** For purposes of 160:45-9-2, the annual percentage rate shall be considered accurate and may be used in determining whether a transaction is covered by 160:45-9-2, if it is accurate according to the requirements and within the tolerances under 160:45-5-6. The finance-charge tolerances for rescission under 160:45-5-7(g) or (h) shall not apply for this purpose.

160:45-9-2. Requirements for certain closed-end home mortgages

(a) **Coverage.**

(1) Except as provided in paragraph (a)(2) of this section, the requirements of this section apply to a consumer credit transaction that is secured by the consumer's principal dwelling, and in which either~~—~~:

(A) ~~the~~The annual percentage rate at consummation will exceed by more than 8 percentage points for first-lien loans, or by more than 10 percentage points for subordinate-lien loans, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the ~~15th~~fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

(B) ~~the~~The total points and fees payable by the consumer at or before loan closing will exceed the greater of 8 percent of the total loan amount, or $400; the $400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1.

(i) The dollar amount for 1996 is $412.

(ii) The dollar amount for 1997 is $424.

(iii) The dollar amount for 1998 is $435.

(iv) The dollar amount for 1999 is $441.

(v) The dollar amount for 2000 is $451.

(vi) The dollar amount for 2001 is $465.

(vii) The dollar amount for 2002 is $480.

(viii) The dollar amount for 2003 is $488.

(viv) The dollar amount for 2004 is $499.

(2) This section does not apply to the following:

(A) ~~a~~A residential mortgage transaction.

(B) ~~a~~A reverse-mortgage transaction subject to 160:45-9-3.

(C) ~~an~~An open-end credit plan subject to subchapter 3 of this chapter.

(b) **Definitions.** For purposes of this subchapter, the following definitions apply:

(1) For purposes of paragraph (a)(1)(B) of this section, **points and fees** means~~—~~:

(A) ~~all~~All items required to be disclosed under 160:45-1-4(a) and (b), except interest or the time-price differential;

(B) ~~all~~All compensation paid to mortgage brokers; ~~and~~

(C) ~~all~~All items listed in 160:45-1-4(c)(7) (other than amounts held for future payment of taxes) unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor~~.~~; and

(D) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction.

(2) **Affiliate** means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 ~~USC~~U.S.C. 1841 et seq.).

(c) **Disclosures.** In addition to other disclosures required by this chapter, in a mortgage subject to this section, the creditor shall disclose the following in conspicuous type size:

(1) **Notices.** The following statement: "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a

mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan."

(2) **Annual percentage rate.** The annual percentage rate.

(3) **Regular payment~~.~~ ; balloon payment.** The amount of the regular monthly (or other periodic) payment and the amount of any balloon payment. The regular payment disclosed under this paragraph shall be treated as accurate if it is based on an amount borrowed that is deemed accurate and is disclosed under paragraph (c)(5) of this section.

(4) **Variable-rate.** For variable-rate transactions, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate required to be disclosed under 160:45-7-4.

(5) **Amount borrowed.** For a mortgage refinancing, the total amount the consumer will borrow, as reflected by the face amount of the note; and where the amount borrowed includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact shall be stated, grouped together with the disclosure of the amount borrowed. The disclosure of the amount borrowed shall be treated as accurate if it is not more than $100 above or below the amount required to be disclosed.

(d) **Limitations.** A mortgage transaction subject to this ~~subject may~~section shall not ~~provide for~~include the following terms:

(1) **Balloon payment.**

(A) For a loan with a term of less than five years, a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance.

(B) **Exception.** The limitations in paragraph (d)(1)(A) of this section do not apply to loans with maturities of less than one year, if the purpose of the loan is a "bridge" loan connected with the acquisition or construction of a dwelling intended to become the consumer's principal dwelling.

(2) **Negative amortization.** A payment schedule with regular periodic payments that cause the principal balance to increase.

(3) **Advance payments.** A payment schedule that consolidates more than two periodic payments and pays them in advance from the proceeds.

(4) **Increased interest rate.** An increase in the interest rate after default.

(5) **Rebates.** A refund calculated by a method less favorable than the actuarial method (as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 ~~USC~~U.S.C. 1615(d)), for rebates of interest arising from a loan acceleration due to default.

(6) **Prepayment penalties.** Except as allowed under paragraph (d)(7) of this section, a penalty for paying all or part of the principal before the date on which the principal is due. A prepayment penalty includes computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992.

(7) **Prepayment-penalty exception.** A mortgage transaction subject to this section may provide for a prepayment penalty otherwise permitted by law (including a refund calculated according to the rule of 78s) if~~—~~:

(A) ~~the~~The penalty can be exercised only for the first five years following consummation;

(B) ~~the~~The source of the prepayment funds is not a refinancing by the creditor or an affiliate of the creditor; and

(C) ~~at~~At consummation, the consumer's total monthly debts (including amounts owed under the mortgage) do not exceed 50 percent of the consumer's monthly gross income, as verified by the consumer's signed financial statement, a credit report, and payment records for employment income.

(8) **Due-on-demand clause.** A demand feature that permits the creditor to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in the following circumstances:

(A) There is fraud or material misrepresentation by the consumer in connection with the loan;

(B) The consumer fails to meet the repayment terms of the agreement for any outstanding balance; or

(C) There is any action or inaction by the consumer that adversely affects the creditor's security for the loan, or any right of the creditor in such security.

~~(e) **Prohibited acts and practices.** A creditor extending mortgage credit subject to this section may not—~~

~~(1) **Repayment ability.** Engage in a pattern or practice of extending such credit to a consumer based on the consumer's collateral if, considering the consumer's current and expected income, current obligations, and employment status, the consumer will be unable to made the scheduled payments to repay the obligation.~~

~~(2) **Home improvement contracts.** Pay a contractor under a home improvement contract from the proceeds of a mortgage covered by this section, other than—~~

~~(A) by an instrument payable to the consumer or jointly to the consumer and the contractor; or~~

~~(B) at the election of the consumer, through a third-party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor prior to the disbursement.~~

~~(3) **Notice to assignee.** Sell or otherwise assign a mortgage subject to this section without furnishing the following statement to the purchaser or assignee: "Notice: This is a mortgage subject to special rules under the Code. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor."~~

160:45-9-4. Prohibited acts or practices in connection with credit secured by a consumer's dwelling

(a) **Prohibited acts or practices for loans subject to 160:45-9-2.** A creditor extending mortgage credit subject to 160:45-9-2 shall not:

(1) **Home improvement contracts.** Pay a contractor under a home improvement contract from the proceeds of a mortgage covered by 160:45-9-2, other than:

(A) By an instrument payable to the consumer or jointly to the consumer and the contractor; or

(B) At the election of the consumer, through a third-party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor prior to the disbursement.

(2) **Notice to assignee.** Sell or otherwise assign a mortgage subject to 160:45-9-2 without furnishing the following statement to the purchaser or assignee: "Notice: This is a mortgage subject to special rules under the federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor."

(3) **Refinancings within one-year period.** Within one year of having extended credit subject to 160:45-9-2, refinance any loan subject to 160:45-9-2 to the same borrower into another loan subject to 160:45-9-2, unless the refinancing is in the borrower's interest. An assignee holding or servicing an extension of mortgage credit subject to 160:45-9-2, shall not, for the remainder of the one-year period following the date of origination of the credit, refinance any loan subject to 160:45-9-2 to the same borrower into another loan subject to 160:45-9-2, unless the refinancing is in the borrower's interest. A creditor (or assignee) is prohibited from engaging in acts or practices to evade this provision, including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors, or modifying a loan agreement (whether or not the existing loan is satisfied and replaced by the new loan) and charging a fee.

(4) **Repayment ability.** Engage in a pattern or practice of extending credit subject to 160:45-9-2 to a consumer based on the consumer's collateral without regard to the consumer's repayment ability, including the consumer's current and expected income, current obligations, and employment. There is a presumption that a creditor has violated this paragraph (a)(4) if the creditor engages in a pattern or practice of making loans subject to 160:45-9-2 without verifying and documenting consumers' repayment ability.

(b) **Prohibited acts or practices for dwelling-secured loans; open-end credit.** In connection with credit secured by the consumer's dwelling that does not meet the definition in 160:45-1-2(a)(20), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of 160:45-9-2.

SUBCHAPTER 11. ELECTRONIC COMMUNICATION

160:45-11-1. Requirements for electronic communication

(a) **Definition.** "**Electronic communication**" means a message transmitted electronically between a creditor and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(b) **General rule.** In accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 et seq.) and the rules of this chapter, a creditor may provide by electronic communication any disclosure required by this chapter to be in writing.

(c) **When consent is required.** Under the E-Sign Act, a creditor is required to obtain a consumer's affirmative consent when providing disclosures related to a transaction. For purposes of this requirement, the disclosures required under 160:45-3-2, 160:45-3-3(4) and (5), 160:45-3-14, 160:45-5-1(g)(1) through (5), 160:45-5-3(b) and 160:45-5-8 are deemed not to be related to a transaction.

(d) **Address or location to receive electronic communication.** A creditor that uses electronic communication to provide disclosures required by this chapter shall:

(1) Send the disclosure to the consumer's electronic address; or

(2) Make the disclosure available at another location such as an Internet web site; and

(A) Alert the consumer of the disclosure's availability by sending a notice to the consumer's electronic address (or to a postal address, at the creditor's option). The notice shall identify the account involved and the address of the Internet web site or other location where the disclosure is available; and

(B) Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the consumer of the disclosure, whichever comes later.

(3) **Exceptions.** A creditor need not comply with paragraphs (d)(2)(A) and (B) of this section for the disclosures required under 160:45-3-2, 160:45-3-3(4) and (5), 160:45-3-14, 160:45-5-1(g)(1) through (5), 160:45-5-3(b) and 160:45-5-8.

(e) **Redelivery.** When a disclosure provided by electronic communication is returned to a creditor undelivered, the creditor shall take reasonable steps to attempt redelivery using information in its files.

(f) **Electronic signatures.** An electronic signature as defined under the E-Sign Act satisfies any requirement under this chapter for a consumer's signature or initials.

APPENDIX F. ANNUAL PERCENTAGE RATE COMPUTATIONS FOR CERTAIN OPEN-END CREDIT PLANS [REVOKED]

APPENDIX F. ANNUAL PERCENTAGE RATE COMPUTATIONS FOR CERTAIN OPEN-END CREDIT PLANS [NEW]

In determining the denominator of the fraction under 160:45-3-12(c)(3), no amount will be used more than once when adding the sum of the balances 1/ subject to periodic rates to the sum of the amounts subject to specific transaction charges. In every case, the full amount of transactions subject to specific transaction charges shall be included in the denominator. Other balances or parts of balances shall be included according to the manner of determining the balance subject to a periodic rate, as illustrated in the following examples of accounts on monthly billing cycles:

1. Previous balance - none. A specific transaction of $100 occurs on the first day of the billing cycle. The average daily balance is $100. A specific transaction charge of 3% is applicable to the specific transaction. The periodic rate is 1½% applicable to the average daily balance. The numerator is the amount of the finance charge, which is $4.50. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance subject to the periodic rate exceeds the amount of the specific transactions (such excess in this case is 0), totaling $100.

The annual percentage rate is the quotient (which is 4½) multiplied by 12 (the number of months in a year), i.e., 54%.

2. Previous balance - $100. A specific transaction of $100 occurs at the midpoint of the billing cycle. The average daily balance is $150. A specific transaction charge of 3% is applicable to the specific transaction. The periodic rate is 1½% applicable to the average daily balance. The numerator is the amount of the finance charge which is $5.25. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance subject to the periodic rate exceeds the amount of the specific transaction (such excess in this case is $50), totaling $150. As explained in example 1, the annual percentage rate is 3½% x 12 = 42%.

3. If, in example 2, the periodic rate applies only to the previous balance, the numerator is $4.50 and the denominator is $200 (the amount of the transaction, $100, plus the balance subject only to the periodic rate, the $100 previous balance). As explained in example 1, the annual percentage rate is 2¼% x 12 = 27%.

4. If, in example 2, the periodic rate applies only to an adjusted balance (previous balance less payments and credits) and the consumer made a payment of $50 at the midpoint of the billing cycle, the numerator is $3.75 and the denominator is $150 (the amount of the transaction, $100, plus the balance subject to the periodic rate, the $50 adjusted balance). As explained in example 1, the annual percentage rate is 2½% x 12 = 30%.

5. Previous balance - $100. A specific transaction (check) of $100 occurs at the midpoint of the billing cycle. The average daily balance is $150. The specific transaction charge is $.25 per check. The periodic rate is 1½% applied to the average daily balance. The numerator is the amount of the finance charge, which is $2.50 and includes the $.25 check charge and the $2.25 resulting from the application of the periodic rate. The denominator is the full amount of the specific transaction (which is $100) plus the amount by which the average daily balance exceeds the amount of the specific transaction (which in this case is $50), totaling $150. As explained in example 1, the annual percentage rate would be 1 2/3% x 12 = 20%.

6. Previous balance - none. A specific transaction of $100 occurs at the midpoint of the billing cycle. The average daily balance is $50. The specific transaction charge is 3% of the transaction amount or $3.00. The periodic rate is 1½% per month applied to the average daily balance. The numerator is the amount of the finance charge, which is $3.75, including the $3.00 transaction charge and $.75 resulting from application of the periodic rate. The denominator is

the full amount of the specific transaction ($100) plus the amount by which the balance subject to the periodic rate exceeds the amount of the amount of the transaction ($0). Where the specific transaction amount exceeds the balance subject to the periodic rate, the resulting number is considered to be zero rather than a negative number ($50 - $100 = -$50). The denominator, in this case, is $100. As explained in example 1, the annual percentage rate is 3 3/4% x 12 = 45%.

1/Where a portion of the finance charge is determined by application of one or more daily periodic rates, the phrase sum of the balances shall also mean the average of daily balances.

APPENDIX H. CLOSED-END MODEL FORMS AND CLAUSES [REVOKED]

APPENDIX H. CLOSED-END MODEL FORMS AND CLAUSES [NEW]

H-1	Credit Sale Model Form (160:45-5-2)
H-2	Loan Model Form (160:45-5-2)
H-3	Amount Financed Itemization Model Form (160:45-5-2(3))
H-4(A)	Variable-Rate Model Clauses (1160:45-5-2(6)(A))
H-4(B)	Variable-Rate Model Clauses (160:45-5-2(6)(B))
H-4(C)	Variable-Rate Model Clauses (160:45-5-3(b))
H-4(D)	Variable-Rate Model Clauses (160:45-5-4(c))
H-5	Demand Feature Model Clauses (160:45-5-2(9))
H-6	Assumption Policy Model Clause (160:45-5-2(17))
H-7	Required Deposit Model Clause (160:45-5-2(18))
H-8	Rescission Model Form (General) (160:45-5-7)
H-9	Rescission Model Form (Refinancing (with Original Creditor)) (160:45-5-7)
H-10	Credit Sale Sample
H-11	Installment Loan Sample
H-12	Refinancing Sample
H-13	Mortgage with Demand Feature Sample
H-14	Variable-Rate Mortgage Sample (160:45-5-3(b))
H-15	Graduated-Payment Mortgage Sample
H-16	Mortgage Sample (160:45-9-2)

H-16 Mortgage Sample

You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application.

If you obtain this loan, the lender will have a mortgage on your home.

YOU COULD LOSE YOUR HOME, AND ANY MONEY YOU HAVE PUT INTO IT, IF YOU DO NOT MEET YOUR OBLIGATIONS UNDER THE LOAN.

You are borrowing $_____ (optional credit insurance is [] is not [] included in this amount).

The annual percentage rate on your loan will be: %.

Your regular [frequency] payment will be: $
[At the end of your loan, you will still owe us: $[balloon payment].]

[Your interest rate may increase. Increases in the interest rate could increase your payment. The highest amount your payment could increase is to $.]

[OAR Docket #04-1120; filed 6-7-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 50. HEALTH SPAS

[OAR Docket #04-1121]

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160:50-3-11. [AMENDED]
Subchapter 11. Records
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The amended rules rewrite the subsections on keeping information on file with the Department current and on changing a location and add a subsection on closing a location.
CONTACT PERSON:
Cindy Barrett, Deputy Administrator, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105, 405-522-4660.

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 12, 2004:

SUBCHAPTER 3. REGISTRATION

160:50-3-11. Moving or closing a location

(a) ~~An owner shall give~~At least thirty (30) days ~~written notice to~~before the address of a health spa is changed, the owner shall notify the Administrator~~ before a health spa is moved, and the~~in writing. The owner shall post an announcement on the front door listing the address of the new location. The announcement shall remain on the front door until the location changes. ~~The~~In the change notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement and any license that needs to be amended.

(b) At least thirty (30) days before a health spa is closed, the owner shall notify the Administrator in writing. The owner shall post an announcement on the front door listing the business telephone number and mailing and business address of another location, if any. The announcement shall remain posted until the existing health spa closes. In the closing notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement along with the license for the closing health spa.

SUBCHAPTER 11. RECORDS

160:50-11-1. Records and changes

(a) Each registrant shall preserve and make available such books and records related to the health spa for four (4) years from the date of the initial transaction between the health spa and each member or buyer, or for two (2) years from the date of the final entry into such records is made thereon, whichever is later. The records shall be maintained for such time periods whether the health spa is currently registered or previously registered. Upon registration, the registrant shall designate a location or locations in Oklahoma where records shall be maintained, and the records shall not be moved therefrom unless the Administrator has given written approval for another location.

(b) Each registrant's records shall be maintained in compliance with the Act, the Code and these rules. Each registrant shall ~~provide the Administrator with~~keep current the information ~~in regard to the registrant~~required for registration by reporting any changes or additions to the information previously submitted to the Deparment~~. Any change of information in regard to the registrant shall be reported~~ within thirty (30) days of such change or addition unless the Act, the Code or these rules require otherwise.

[OAR Docket #04-1121; filed 6-7-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 55. MORTGAGE BROKERS

[OAR Docket #04-1122]

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160:55-1-2. [AMENDED]
Subchapter 3. Licensing
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160:55-3-1.2. [AMENDED]
160:55-3-1.3. [NEW]
160:55-3-1.4. [NEW]
160:55-3-3. [AMENDED]
160:55-3-3.1. [AMENDED]

160:55-3-4. [AMENDED]
160:55-3-8. [AMENDED]
160:55-3-9. [AMENDED]
160:55-3-9.1. [AMENDED]
160:55-3-10.1. [NEW]
Subchapter 5. Advisory Committee
160:55-5-2. [AMENDED]
Subchapter 7. Records
160:55-7-1. [AMENDED]
Subchapter 9. Enforcement
160:55-9-2. [AMENDED]
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160:55-3-10.1. [NEW]
Subchapter 5. Advisory Committee
160:55-5-2. [AMENDED]
Subchapter 7. Records
160:55-7-1. [AMENDED]
Subchapter 9. Enforcement
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ANALYSIS:
The rules provide regulations for the new mortgage loan originator license and branch office license and new licensing requirements for mortgage brokers and add a continuing education rule for mortgage brokers.

CONTACT PERSON:
Cindy Barrett, Deputy Administrator, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105, 405-522-4660.

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 12, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

160:55-1-1. Purpose

The rules in this chapter provide regulations relating to the licensure of mortgage brokers and mortgage loan originators.

160:55-1-2. Definitions

Except as otherwise specifically defined in this section, the definitions set forth in the Act are incorporated herein and made a part hereof. 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 Mortgage Broker Licensure Act beginning at §2081 of Title 59 of the Oklahoma Statutes.

"APA" means the Administrative Procedures Act beginning at §250 of Title 75 of the Oklahoma Statutes.

"Committee" means the Mortgage Broker Advisory Committee.

"Days" mean calendar days. In computing any period of time for communications between a ~~licensee~~person and the Department or a court, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a day that the ~~mortgage brokerage~~licensed location, the Department or the office of the court clerk is closed.

"Department" means the Oklahoma State Department of Consumer Credit.

"Deputy Administrator" means the Deputy Administrator of the Department.

~~**"Licensee"** means a mortgage broker that has been given authority by the Administrator to engage in the business of a mortgage broker within Oklahoma.~~

"Mortgage ~~brokerage~~business" means the ~~business or establishment of a~~trade that involves the making, negotiating or offering to make or negotiate any loan secured by a mortgage ~~broker~~, deed of trust or any lien interest on residential real estate created with the consent of the owner of the real estate.

SUBCHAPTER 3. LICENSING

160:55-3-1.1. Licensure forms

(a) ~~**Application**~~**License application.**

(1) The license application shall be completed by the ~~entity~~person seeking a mortgage broker license or a mortgage loan originator license and shall include all fees, forms and exhibits requested.

(2) The Administrator may require any applicant to provide additional information. An application is not considered final until all requested information has been submitted and the applicant has passed a license test, if required. [59:2085(A)(1)(c), (A)(9) and (L)(4), and 2092(B)]

(3) The Administrator shall grant or deny a license application within ~~sixty (60)~~thirty (30) days from ~~the filing of a~~ final application unless the period is extended by written agreement between the applicant and the Administrator. [59:2085(C)]

(4) ~~If the applicant fails to comply with the application process, the initial license fee shall be returned to the applicant, but the Administrator shall retain the application fee.~~ An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application and not a denial. If any applicant pays for a license test, but does not take the license test, the license test fee shall be returned to the applicant. If an applicant for a mortgage broker license fails to comply with the application process, the initial license fee shall be returned to the applicant, but the Administrator shall retain the application fee.

(b) **License test.** The examination approved by the Administrator that is required to be taken and passed by applicants for mortgage broker licenses, unless waived by the Administrator. [59:2085(A)(1)(c) and (A)(9), and 2092(A) and (B)] The examination approved by the Administrator that is required to be taken and passed by applicants for mortgage loan originator licenses that do not have the required experience, unless waived by the Administrator. [59:2085(A)(9) and (L)(4), and 2092(A) and (B)]

(c) ~~**License**~~**Licenses.** No license is transferable or assignable. [59:2085(A)(7)] Expired licenses shall not be renewed; however, a new license may be issued if the applicant satisfies all of the licensing requirements of an initial license. [59:2085(D)]

(1) **Mortgage broker license.** The license, executed under the hand of the Administrator and delivered, is evidence of a ~~mortgage broker's~~person's authority to engage in the mortgage business within Oklahoma. The license shall be prominently displayed in an area of the ~~mortgage brokerage~~principal place of business that is used or visited by a majority of the borrowers [59:2085(G)]. ~~The license is not transferable or assignable.~~

(2) **Mortgage loan originator license.** The license, executed under the hand of the Administrator and delivered, is evidence of an individual's authority to make, negotiate or offer to make or negotiate a mortgage loan for or on behalf of a mortgage broker.

(3) **Branch office license.** The license, executed under the hand of the Administrator and delivered, is evidence of a location in addition to the principal place of business noted on the mortgage broker license where mortgage business may be transacted. Any branch office license shall be prominently displayed in an area of the branch office that is used or visited by a majority of the borrowers [59:2085(H)].

(~~c~~d) **Renewal application.**

(1) The license renewal application shall be completed by ~~entities~~persons previously issued a license and shall be submitted with all fees and postmarked on or before the first day of December of the final year of validity of each license. As a courtesy, the Department may ~~mail~~send a notice of renewal to each ~~licensee~~person, but the failure to do so shall not relieve any ~~licensee~~person of the duty to renew timely or impair the authority of the Administrator against any ~~licensee~~person.

(2) If the license is not renewed by December 15 of the final year of validity of each license, a delinquency notice shall be sent to the person. If the license is not renewed by December 31, the license shall be suspended. A suspended license may be renewed with a completed license renewal application submitted with all fees and postmarked on or before January 31. If the license is not renewed by January 31, the license shall expire. [59:2085(D)]

~~(d) **Delinquency notice.** If the license is not renewed, a delinquency notice shall be mailed to the licensee. The license shall expire on December 31 of the year in which the fee has been paid or fifteen (15) days after the notice, whichever is later.~~

(e) **Inactive and reactivation applications.** In lieu of renewal, a mortgage broker may place its license on inactive status for the following license year by completing an inactive application and submitting the application with its license and fee postmarked on or before the first day of December of the final year of validity of the license. [59:2085(E)] If a mortgage broker applies for inactive status when the license is not eligible for inactive status, the Administrator shall notify the mortgage broker that the license is subject to the renewal requirements.

(1) At the end of the first inactive license year, the mortgage broker shall complete an inactive application or a reactivation application and submit it with the proper fee postmarked on or before the first day of December. [59:2085(E) and (F)] If a mortgage broker applies for inactive status when the license is not eligible for inactive status, the Administrator shall notify the mortgage broker that the license is subject to the reactivation requirements.

(2) If the mortgage broker license is on inactive status for two (2) consecutive years, then at the end of the second inactive license year, the mortgage broker shall complete a reactivation application and submit it with the fee postmarked on or before the first day of December. [59:2085(E) and (F)]

(3) If a mortgage broker license is not inactivated or reactivated by December 31, then the license shall expire. [59:2085(E)]

(4) During an inactive license year, the mortgage broker license may be reactivated for the remainder of the three-year license period by completing a reactivation application and submitting the application with the fee. [59:2085(F)]

160:55-3-1.2. Experience or educational requirement

(a) To apply for a mortgage broker license, an applicant shall provide satisfactory evidence of ~~at least two years' continuous employment or business activity in the residential mortgage loan industry or real estate sales or lending industry, or both~~the required experience or graduation from an institution of higher education or a vocational school with a degree in a discipline that directly relates to the occupation of a mortgage broker. [59:2085(A)(1)(a) and (b)]

(b) To apply for a mortgage loan originator license, an applicant may provide satisfactory evidence of the required experience [59:2085(L)(4)].

(c) ~~A letter from the previous employer may satisfy this requirement.~~Satisfactory evidence for experience includes, but is not limited to, W-2 forms and 1099 forms.

(d) For purposes of this section, "applicant" means an individual; an owner of a sole proprietorship; the stockholders or three largest stockholders and the officers, directors and trustees of a corporation; the partners, principals, officers and directors of a partnership or limited liability company. ~~[59:2085(A)(1)]~~

160:55-3-1.3. Active management requirement

An individual is in active management of the activities of a licensed person when the individual supervises the mortgage business operations on a full-time basis.

160:55-3-1.4. Mortgage brokers continuing education

(a) **Purpose.** The purpose of this section is to set forth the requirements for continuing education which a mortgage broker must meet, and to set forth the requirements for approval by the Administrator of a proposed continuing education course.

(b) **Definitions.** The following words or terms, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"CEC"** means continuing education credit.

(2) **"Certificate of course completion"** means a form acceptable to the Administrator and completed by the provider that signifies satisfactory completion of the approved course and reflects hours of credit earned.

(3) **"Credit hour"** means at least a fifty (50) minute classroom instructional session unless a correspondence or self-study course.

(4) **"Education verification form"** means a form acceptable to the Administrator and completed by the mortgage broker that states under oath to compliance with the continuing education requirements.

(5) **"Provider"** means the Commission; a technology center school; a college or university; a private school; the Oklahoma Association of Mortgage Brokers, the National Association of Mortgage Brokers or any affiliate thereof; the Oklahoma Bar Association, American Bar Association or any affiliate thereof; or an education provider that provides approved continuing education courses to mortgage brokers. [59:2093(B)]

(c) **Continuing education requirements.**

(1) **Credit hours.**

(A) All mortgage brokers shall complete forty-eight (48) credit hours of continuing education during each thirty-six (36) month period. [59:2093(A)] The thirty-six (36) month period ends December 31 of the final year of validity of the license. Courses taken in excess of the required hours shall not carry forward.

(B) A minimum of sixteen (16) of the forty-eight (48) credit hours shall consist of:

(i) four (4) credit hours covering the Real Estate Settlement Procedures Act;

(ii) four (4) credit hours covering the Truth In Lending Act;

(iii) four (4) credit hours covering federal laws related to fair lending - the Equal Credit Opportunity Act, the Fair Housing Act and the Home Mortgage Disclosure Act; and

(iv) four (4) credit hours covering ethics. [59:2093(A)]

(C) Courses must be of a meaningful nature and shall not include items such as prospecting, motivation, sales techniques, psychology, recruiting, time management, phone etiquette, and subjects not relating to the mortgage broker's license. Courses conducted in conjunction with other meetings must have a separate continuing education course component; the method to monitor attendance must be stated and approved by the Administrator.

(2) **Correspondence and video courses.**

(A) **Correspondence courses.** A mortgage broker who completes an approved course by correspondence and provides satisfactory proof of completion will receive credit for the number of hours assigned for the course.

(B) **Video courses.** In order for a mortgage broker to receive credit for viewing an approved course presented by video, the mortgage broker must view the video under the supervision of a contact person with the provider and swear by affidavit that the video was viewed in its entirety. The affidavit must also be signed by the supervising contact person.

(3) **Credit for instructors.** An instructor who is a mortgage broker shall receive the same continuing education credit for presenting approved course materials as a mortgage broker who attends an approved classroom instructional session.

(4) **Certificates of course completion required for license renewal or reactivation.** Each mortgage broker shall attach an education verification form and certificates of course completion for the required number of credit hours to the renewal or reactivation application. [59:2093(A)]

(5) **Repeating courses.** A mortgage broker may repeat a course within the thirty-six (36) month period if the maximum credits designated for the course were not attained in the first attempt. By repeating the course, the mortgage broker may not earn more than the maximum credits designated for the course. A mortgage broker may repeat a course after two (2) license renewal dates have elapsed and receive the maximum credits designated for the course.

(6) **Exceptions.** The requirements for continuing education in this section shall not apply to:

(A) a mortgage broker whose license is on inactive status; or,

(B) a non-resident mortgage broker who is licensed in a state having continuing education requirements and the mortgage broker meets all the requirements of that state. The non-resident mortgage broker shall be responsible for providing satisfactory proof of compliance with the other state's requirements. [59:2093(E)]

(7) **Extensions.** For good cause shown, the Administrator may grant an extension of time during which the continuing education requirements may be completed. The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding thirty-six (36) month period. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the mortgage broker and shall include details and any documentation to support the request. Each request must be received by the Administrator no less than thirty (30) days before the expiration of the thirty-six (36) month period.

(d) **Approval of continuing education courses.**

(1) **Information required.** Each provider shall apply for approval of each course. All providers, including publicly funded educational institutions, shall provide:

(A) Name and address of the provider.

(B) Contact person and his or her address and telephone number(s).

(C) The location of the course, unless it is an individual study or correspondence course.

(D) The number of CEC hours requested for each course. Courses must consist of a minimum of one (1) credit hour.

(E) Subject outlines which list the summarized subjects covered in each course and a copy of any course materials.

(i) If a classroom course, a timed outline including any breaks.

(ii) If a correspondence course, a copy of text or table of contents with page numbers.

(F) The names and qualification of instructors. An instructor shall have one (1) of the following qualifications:

(i) Three (3) years of recent experience in the subject area being taught; or

(ii) A degree related to the subject area being taught; or

(iii) Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college and/or vocational technical school credit hours in the subject area being taught.

(2) **Application deadline for course approval.** At least thirty (30) days prior to the course date, the provider shall apply to the Administrator for course approval. The Administrator shall grant or deny approval in writing based upon information submitted regarding each course. The Administrator will assign the number of CEC hours awarded for an approved course. Each course approval shall be valid for a period of twelve (12) months. Course materials must be resubmitted at the time of expiration.

(3) **Withheld or withdrawn approval.** The Administrator may withhold or withdraw approval for any course for non-compliance with any provision of this section. This withdrawal will not affect any CEC hours attained under the course previous to the withdrawal.

(4) **List of approved courses.** A list of approved courses shall be available from the Administrator. [59:2093(C)]

(5) **Certificate of Course Completion.** At the completion of each course, the provider shall provide each mortgage broker with a "Certificate of Course Completion" form.

(6) **List of mortgage brokers completing course to Administrator.** At the completion of each course, the provider shall provide the Administrator a list of all mortgage brokers who completed the course. This list shall reflect the mortgage broker's name and license number.

(7) **Course records.** Providers shall maintain course records for at least seven (7) years.

160:55-3-3. Investigations for licensure

A thorough investigation shall be conducted of each applicant for a mortgage broker license, and applicants shall provide such additional information as may be requested from the applicant for that purpose. In addition, the Administrator may consult outside sources, including law enforcement agencies, and may require the applicant's consent to release such other relevant information as the Administrator may deem necessary to determine the moral character, experience, background, honesty, truthfulness, integrity and competency of the applicant, any responsible individual designated by the applicant and any officer, director, shareholder or other interested party of the applicant [59:2085(A)(1) and ~~(D) and 2088(B)~~(2)]. It shall be within the discretion of the Administrator to determine the fitness of an applicant, provided that such discretion is not arbitrary or capricious and is, or will be, applied uniformly to all similarly situated applicants.

160:55-3-3.1. License denials

(a) **Denial notice.** The Administrator shall notify the applicant of the denial of a license application in writing stating the reasons for the denial~~, and the initial license fee shall be returned to the applicant, but the Administrator shall retain the application fee~~. The notice shall be sent by certified mail with

return receipt requested or be delivered in person. If an applicant for a mortgage broker license is denied a license, the initial license fee shall be returned to the applicant, but the Administrator shall retain the application fee.

(b) **Hearing request.** The applicant may make a written request for a hearing on the application within thirty (30) days of receipt of the denial notice.

(c) **Hearing notice.**

(1) If the applicant makes a timely request for a hearing, a hearing shall be held within sixty (60) days of receipt of the request. However, the applicant shall be given twenty (20) days notice of the hearing in writing.

(2) The notice shall:

(A) state the time, place and nature of the hearing;

(B) state the legal authority and jurisdiction for the hearing;

(C) refer to the statutory sections and rules involved; and

(D) state the matters asserted briefly and plainly [75:309(B)(1) - (4)].

(d) **Hearing.** All parties shall be afforded the opportunity to respond and present evidence and argument on all points at issue [75:309(C)], and shall have the right to counsel [75:310(5)].

(e) **Order.**

(1) The Administrator shall issue an order granting or denying the license application within sixty (60) days from the last day of the hearing unless the period is extended by written agreement between the applicant and the Administrator.

(2) The order shall:

(A) be in writing;

(B) state findings of fact that shall be limited to the evidence from the hearing unless the parties agree otherwise on the record;

(C) state conclusions of law; and

(D) be delivered in person or by certified mail with return receipt requested [75:309(H) and 312].

160:55-3-4. Licensure periods

~~(a) Licenses issued before December 31, 1997, shall expire December 31, 2000.~~

~~(b) The first three-year licensure period after December 31, 1997, shall run from January 1, 1998, through December 31, 2000.~~ Any license issued during a year shall run only to ~~the end~~December 31 of the third calendar year.

160:55-3-8. Change of ~~ownership~~control

(a) ~~Thirty~~At least thirty (30) days before any proposed change of ~~ownership~~control of any licensed mortgage ~~brokerage~~broker, the ~~licensed owner~~mortgage broker shall notify the Administrator of the intent to change ~~ownership~~control, and the ~~proposed new owner~~acquiring person shall apply for a mortgage broker license and branch office licenses, if any. The Administrator shall notify the ~~licensed owner~~mortgage broker and the ~~proposed new owner~~acquiring person when the ~~new owner's~~acquiring person's mortgage broker license application has been granted. After the ~~licensed owner~~mortgage broker surrenders its mortgage broker license and branch office licenses, if any, and transfers ~~the ownership~~controlling interest, a mortgage broker license and branch office licenses, if any, shall be issued to the ~~new owner~~acquiring person. [59:2085(A)(7)]

(b) If the change of ~~ownership~~control results in the closing of ~~the existing location~~any locations, then the ~~licensed owner~~mortgage broker shall post an announcement on the front door listing the name, business telephone number and mailing and business addresses of the ~~new owner~~acquiring person. The announcement shall be posted before ~~the ownership~~controlling interest is transferred and shall remain posted until the existing location closes. The ~~licensed owner~~mortgage broker shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement.

(c) For purposes of this section, "change of ~~ownership~~control" means a change of an individual owner~~;~~, or a change of more than twenty percent (20%) in the power to vote outstanding shares of a licensed corporation, partnership, association or trust~~of partners; a change of the service agent or a change of the principal parties in interest in a corporation~~. [59:2085(A)(7)]

160:55-3-9. Ownership of more than one ~~office~~location

(a) ~~Each person who owns two (2) or more offices at which it has direct contact with the public, must separately license each such office.~~Any location, in addition to the principal place of business noted on the mortgage broker license, where the mortgage broker will transact mortgage business shall be licensed as a branch office [59:2085(H)].

(b) For purposes of this section, "~~offices which have direct contact with the public~~locations where mortgage business will be transacted" shall include any ~~place of business~~location at which:

(1) a mortgage loan application is provided, taken or completed in person, or

(2) ~~a potential customer obtains information about the terms and conditions of the licensee's services~~making, negotiating or offering to make or negotiate a mortgage loan occurs.

(c) For purposes of this section, the term "~~offices which have direct contact with public~~locations where mortgage business will be transacted" shall not include either:

(1) administrative offices at which only bookkeeping, billing or accounting duties are performed for separate ~~public~~ mortgage ~~brokerage offices~~business locations, or

(2) offices at which only independent contractors or their employees, or both, are located.

160:55-3-9.1. Moving or closing a location

(a) ~~An owner shall give~~At least thirty (30) days before the address of the principal place of business or a branch office is changed, the mortgage broker shall notify ~~written notice to~~ the Administrator ~~before a mortgage brokerage is moved,~~

~~and the owner~~in writing. The mortgage broker shall post an announcement on the front door listing the address of the new location. The announcement shall remain on the front door until the location changes. ~~The owner~~In the change notice, the mortgage broker shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement and any license that needs to be amended along with a change of address fee. [59:2085(H)]

(b) At least thirty (30) days before a location is to be closed, the mortgage broker shall notify the Administrator in writing. The mortgage broker shall post an announcement on the front door listing the business telephone number and mailing and business address of another location, if any. The announcement shall remain posted until the existing location closes. In the closing notice, the mortgage broker shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement along with the license for the closing location.

160:55-3-10.1. Loss or change of licensed mortgage broker sponsor

(a) When a mortgage broker cancels the sponsorship of a mortgage loan originator, the mortgage broker shall submit the mortgage loan originator's license to the Department within three (3) business days.

(b) The Department shall return the license to the mortgage loan originator with the name of the new sponsoring mortgage broker after all requested forms, exhibits and information have been submitted.

(c) The Department's holding of the mortgage loan originator license does not change the licensure period.

(d) The person remains subject to all licensing and renewal requirements for the mortgage loan originator license whether the person or the Department holds the license.

SUBCHAPTER 5. ADVISORY COMMITTEE

160:55-5-2. Responsibilities

(a) The Committee shall monitor the mortgage ~~brokerage~~ business in Oklahoma and shall recommend such policies or policy changes to the Commission deemed appropriate regarding the following subjects:

(1) the soundness and vitality of the industry;

(2) abuses or improper conduct in the industry;

(3) the sufficient availability of consumer credit to the people of Oklahoma for ~~residential mortgages~~mortgage loans; and

(4) a proper balance of interests between consumers and mortgage brokers and mortgage loan originators [59:2090(A)].

(b) The Commission may assign to the Committee such topics for advice and recommendation regarding the mortgage ~~brokerage industry~~business as the Commission may deem necessary from time to time, and shall set deadlines for the Committee to report back to the Commission with reports on its progress and advice [59:2090(A)].

(c) A recommendation under subsection (a) of this section or a report under subsection (b) of this section from the Committee shall be in writing and shall be placed on the next regular meeting agenda of the Commission.

(d) The Committee shall prepare licensing test forms for the Administrator's approval and the passing standard for the tests. It shall be within the discretion of the Administrator to approve the licensing test forms, provided that such approval shall not be unreasonably withheld when the content of the test forms covers the statutory topics. [59:2092(A)]

(e) The Administrator may also consult with, and seek the advice of, the Committee as the need may arise.

SUBCHAPTER 7. RECORDS

160:55-7-1. Records and changes

(a) ~~Each licensee~~Mortgage brokers and mortgage loan originators shall preserve and make available such books and records related to ~~the mortgage brokerage~~their mortgage business for four (4) years from the date of the initial transaction between the ~~mortgage broker~~person and each borrower, or for two (2) years from the date of the final entry into such records is made thereon, whichever is later. Trust account records shall be preserved and made available for at least three (3) years after the date of final entries therein [59:2087(D)]. Employee background investigation records shall be preserved and made available for at least two (2) years after employment is terminated [59:2085(A)(6)(b)]. The records shall be maintained for such time periods whether the ~~mortgage broker~~person is currently licensed or previously licensed. Upon licensing, ~~the licensee~~mortgage brokers and mortgage loan originators shall either designate a location or locations in Oklahoma where records shall be maintained or agree in writing to provide copies of records kept at an out-of-state location to the Department upon demand, and the records shall not be moved from the designated location unless the Administrator has given written approval for another location.

(b) Each ~~mortgage broker's~~person's records shall be maintained in compliance with the Act and these rules. Each ~~mortgage broker~~person shall ~~provide the Administrator with~~keep current the information ~~in regard to the licensee~~required for licensing by reporting any changes or additions to the information previously submitted to the Department~~. Any change of information in regard to the licensee shall be reported~~ within thirty (30) days of such change or addition unless the Act or these rules require otherwise.

SUBCHAPTER 9. ENFORCEMENT

160:55-9-2. Individual proceedings

(a) **Allegations notice.** The Administrator shall notify the ~~licensee~~person of facts or conduct that warrant the intended action, and give the ~~licensee~~person an opportunity to show compliance with all lawful requirements for the retention of the license [75:314(C)(1)].

(b) **Violations.** Where the facts indicate that the ~~licensee~~person has not complied with all lawful requirements for the retention of the license, the Administrator may initiate any authorized action.

(c) **Informal disposition.** In order to avoid the expense and time involved in formal legal proceedings, it is the policy of the Administrator to afford ~~licensees~~persons who have engaged in unlawful acts and practices an opportunity to enter into stipulations, agreed settlements, consent orders or defaults when it appears to the Administrator that such procedure fully safeguards the public interest. The Administrator reserves the right in all matters to withhold the privilege of an informal disposition. All stipulations, agreed settlements, consent orders or defaults shall be public records.

(d) **Hearing notice.**

(1) If the matter is to be set for hearing, the ~~licensee~~person shall be given twenty (20) days notice in writing.

(2) The notice shall:

(A) state the time, place and nature of the hearing;

(B) state the legal authority and jurisdiction for the hearing;

(C) refer to the statutory sections and rules involved; and

(D) state the matters asserted briefly and plainly [75:309(B)(1) - (4)].

(e) **Hearing.** All parties shall be afforded the opportunity to respond and present evidence and argument on all points at issue [75:309(C)], and shall have the right to counsel [75:310(5)].

(f) **Standard of proof.** The standard of proof is clear-and-convincing evidence. Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegation sought to be established.

(g) **Order.**

(1) The Administrator shall issue an order within sixty (60) days from the last day of the hearing unless the period is extended by written agreement between the ~~licensee~~person and the Administrator.

(2) The order shall:

(A) be in writing;

(B) state findings of fact that shall be limited to the evidence from the hearing unless the parties agree otherwise on the record;

(C) state conclusions of law;

(D) state the effective date; and

(E) be delivered in person or by certified mail with return receipt requested [75:309(H) and 312].

(h) **Impair.** A probation, suspension or revocation shall not impair or affect the obligation of any preexisting lawful contract between the ~~licensee~~person and any borrower.

160:55-9-3. License surrender

Any ~~licensee~~person may surrender any license by delivering it to the Administrator with written notice of its surrender. Such surrender shall not affect the liability of the ~~licensee~~person for acts committed before the surrender of the license. A surrender shall not impair or affect the obligation of any preexisting lawful contract between the ~~licensee~~person and any borrower.

160:55-9-4. License reinstatement

The Administrator may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked if the Administrator finds that the ~~mortgage broker~~person meets the licensing requirements then in effect and if the Administrator finds the circumstances for which the license was suspended or revoked no longer exists.

160:55-9-6. Circumvention prohibited

Whenever a ~~licensee~~person has an administrative action taken against a license, the Administrator may deny the ~~licensee's~~person's request to inactivate such license, to sell or transfer the accounts under such license or to take any other action to circumvent or negate the administrative action during the time of the action or during the pendency of the action if on appeal.

[OAR Docket #04-1122; filed 6-7-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 60. PRECIOUS METAL AND GEM DEALERS

[OAR Docket #04-1123]

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The amended rules rewrite the subsections on keeping information on file with the Department current and on changing a location and add a subsection on closing a location.
CONTACT PERSON:
Cindy Barrett, Deputy Administrator, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105, 405-522-4660.

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 12, 2004:

SUBCHAPTER 3. LICENSING

160:60-3-6. Moving or closing a location

(a) ~~An owner shall give~~At least thirty (30) days ~~written notice to~~before the address of a business is changed, the owner shall notify the Administrator ~~before a business is moved~~ [59:1525(H)]~~, and the~~in writing. The owner shall post an announcement on the front door listing the address of the new location. The announcement shall remain on the front door until the location changes. ~~The~~In the change notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement and any license that needs to be amended.

(b) At least thirty (30) days before a business is closed, the owner shall notify the Administrator in writing. The owner shall post an announcement on the front door listing the business telephone number and mailing and business address of another location, if any. The announcement shall remain posted until the existing business closes. In the closing notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement along with the license for the closing business.

SUBCHAPTER 7. RECORDS

160:60-7-1. Records and changes

(a) Each licensee shall preserve and make available such books and records related to the business for four (4) years from the date of the initial transaction between the dealer and each customer, or for two (2) years from the date of the final entry into such records is made thereon, whichever is later. The records shall be maintained for such time periods whether the dealer is currently licensed or previously licensed. Upon licensing, the licensee shall designate a location or locations in Oklahoma where records shall be maintained, and the records shall not be moved therefrom unless the Administrator has given written approval for another location.

(b) Each licensee's records shall be maintained in compliance with the Act and these rules. Each licensee shall ~~provide the Administrator with~~keep current the information ~~in regard to the licensee~~required for licensing by reporting any changes or additions to the information previously submitted to the Department~~. Any change of information in regard to the licensee shall be reported~~ within thirty (30) days of such change or addition unless the Act or these rules require otherwise.

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TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 65. SUPERVISED LENDERS

[OAR Docket #04-1124]

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The amended rules rewrite the subsections on keeping information on file with the Department current and on changing a location and add a subsection on closing a location.
CONTACT PERSON:
Cindy Barrett, Deputy Administrator, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105, 405-522-4660.

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 12, 2004:

SUBCHAPTER 3. LICENSING

160:65-3-6. Moving or closing a location

(a) ~~An owner shall give~~At least thirty (30) days ~~written notice to~~before the address of a location is changed, the owner shall notify the Administrator ~~before a location is moved~~ [14A:3-504(8)]~~, and the~~in writing. The owner shall post an announcement on the front door listing the address of the new location. The announcement shall remain on the front door until the location changes. ~~The~~In the change notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement and any license that needs to be amended.

(b) At least thirty (30) days before a location is closed, the owner shall notify the Administrator in writing. The owner shall post an announcement on the front door listing the business telephone number and mailing and business address of another location, if any. The announcement shall remain posted until the existing location closes. In the closing notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement along with the license for the closing location.

SUBCHAPTER 7. RECORDS

160:65-7-1. Records and changes

(a) Each licensee shall preserve and make available such books and records related to the business for four (4) years from the date of the initial transaction between the supervised lender and each borrower, or for two (2) years from the date of the final entry into such records is made thereon, whichever is later [14A:3-506(4)]. The records shall be maintained for such time periods whether the supervised lender is currently licensed or previously licensed. Upon licensing, the licensee shall either designate a location or locations in Oklahoma where records shall be maintained or agree in writing to provide copies of records kept at an out-of-state location to the Department upon demand or agree in writing to pay for the Department to examine the records at the place where they are maintained, and the records shall not be moved from the designated location unless the Administrator has given written approval for another location.

(b) Each licensee's records shall be maintained in compliance with the ~~Act~~Code and these rules. Each licensee shall ~~provide the Administrator with~~keep current the information ~~in regard to the licensee~~required for licensing by reporting any changes or additions to the information previously submitted to the Department~~. Any change of information in regard to the licensee shall be reported~~ within thirty (30) days of such change or addition unless the ~~Act~~Code or these rules require otherwise.

[OAR Docket #04-1124; filed 6-7-04]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 70. DEFERRED DEPOSIT LENDERS

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Subchapter 5. Disclosures [NEW]
160:70-5-1. through 160:70-5-2. [NEW]
Subchapter 7. Records [NEW]
160:70-7-1. through 160:70-7-2. [NEW]
Subchapter 9. Enforcement [NEW]
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CONTACT PERSON:
Cindy Barrett, Deputy Administrator, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105, 405-522-4660.

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 12, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

160:70-1-1. Purpose

The rules in this chapter provide regulations relating to the licensure of deferred deposit lenders.

160:70-1-2. Severability

If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

160:70-1-3. Definitions

Except as otherwise specifically defined in this section, the definitions set forth in the Act are incorporated herein and made a part hereof. The following words or terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Deferred Deposit Lending Act beginning at §3101 of Title 59 of the Oklahoma Statutes.

"APA" means the Administrative Procedures Act beginning at §250 of Title 75 of the Oklahoma Statutes.

"Business Day" means a day on which a deferred deposit lender's office is open to the public for carrying on substantially all of its business functions.

"Days" mean calendar days. In computing any period of time for communications between a licensee and the Department or a court, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a day that the deferred deposit lender, the Department or the office of the court clerk is closed.

"Department" means the Oklahoma State Department of Consumer Credit.

SUBCHAPTER 3. LICENSING

160:70-3-1. Licensure forms

(a) **Application.**

(1) The deferred deposit lender license application shall be completed by the person seeking a deferred deposit lender license and shall include all fees, forms and exhibits requested.

(2) The Administrator may require any applicant to provide additional information. An application is not considered final until all requested information has been submitted.

(3) The Administrator shall grant or deny a license application within ninety (90) days from the day of filing unless the period is extended by written agreement between the applicant and the Administrator.

(4) An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application and not a denial.

(b) **License.** The license, executed under the hand of the Administrator and delivered, is evidence of a deferred deposit lender's authority to engage in deferred deposit loans within Oklahoma. No other license issued by the Administrator authorizes a person to engage in deferred deposit loans within Oklahoma [59:3103].

(c) **Annual report.** Annual reports shall be filed by all deferred deposit lenders and postmarked on or before the first day of May of each year, reporting the business and operations as of December 31st of the preceding year. The annual reports shall be confidential, but the Administrator may compile a statistical report using the information therein. [59:3114(F)] As a courtesy, the Department may mail a notice of annual report to each licensee, but the failure to do so shall not relieve any licensee of the duty to file timely or impair the authority of the Administrator against any licensee.

(d) **Renewal application.** The deferred deposit lender license renewal application shall be completed by persons previously issued a license and shall be submitted with all fees and postmarked on or before the first day of December of each year. As a courtesy, the Department may mail a notice of renewal to each licensee, but the failure to do so shall not relieve any licensee of the duty to renew timely or impair the authority of the Administrator against any licensee.

(e) **Delinquency notice.** If the license is not renewed, a delinquency notice may be mailed to the licensee. The license shall expire on December 31 of the year in which the annual fee has been paid.

160:70-3-2. Investigations for licensure

A thorough investigation shall be conducted of each applicant, and applicants shall provide such additional information as may be requested from the applicant for that purpose. In addition, the Administrator may consult outside sources, including law enforcement agencies, and may require the applicant's consent to release such other relevant information as the Administrator may deem necessary to determine financial responsibility, character, experience and general fitness of the applicant [59:3113(A)(2)]. It shall be within the discretion of the Administrator to determine the fitness of an applicant, provided that such discretion is not arbitrary or capricious and is, or will be, applied uniformly to all similarly situated applicants.

160:70-3-3. License denials

(a) **Denial notice.** The Administrator shall notify the applicant of the denial of a license application in writing stating the reasons for the denial [59:3113(C)]. The notice shall be sent by certified mail with return receipt requested or be delivered in person.

(b) **Hearing request.** The applicant may make a written request for a hearing on the application within thirty (30) days of receipt of the denial notice.

(c) **Hearing notice.**

(1) If the applicant makes a timely request for a hearing, a hearing shall be held within sixty (60) days of receipt of the request. However, the applicant shall be given twenty (20) days notice of the hearing in writing.

(2) The notice shall:

(A) state the time, place and nature of the hearing;

(B) state the legal authority and jurisdiction for the hearing;

(C) refer to the statutory sections and rules involved; and

(D) state the matters asserted briefly and plainly [75:309(B)(1) - (4)].

(d) **Hearing.** All parties shall be afforded the opportunity to respond and present evidence and argument on all points at issue [75:309(C)], and shall have the right to counsel [75:310(5)].

(e) **Order.**

(1) The Administrator shall issue an order granting or denying the license application within sixty (60) days from the last day of the hearing unless the period is extended by written agreement between the applicant and the Administrator.

(2) The order shall:

(A) be in writing;

(B) state findings of fact that shall be limited to the evidence from the hearing unless the parties agree otherwise on the record;

(C) state conclusions of law; and

(D) be delivered in person or by certified mail with return receipt requested [75:309(H) and 312].

160:70-3-4. Moving or closing a location

(a) At least thirty (30) days before the address of a licensed location is changed, the licensee shall notify the Administrator in writing [59:3112(D)]. The licensee shall post an announcement on the front door listing the address of the new location. The announcement shall remain on the front door until the location changes. In the change notice, the licensee shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement and any license that needs to be amended.

(b) At least thirty (30) days before a licensed location is to be closed, the licensee shall notify the Administrator in writing. The licensee shall post an announcement on the front door listing the business telephone number and mailing and business address of another location, if any. The announcement shall remain posted until the existing location closes. In the closing notice, the licensee shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement along with the license for the closing location.

160:70-3-5. Change of ownership

(a) At least thirty (30) days before any proposed change of ownership of any licensed deferred deposit lender, the licensed owner shall notify the Administrator of the intent to change ownership, and the proposed new owner shall apply for a license. The Administrator shall notify the licensed owner and the proposed new owner when the new owner's license application has been granted. After the licensed owner surrenders its license and transfers the ownership interest, a license shall be issued to the new owner.

(b) If the change of ownership changes the payee on loan obligations, then the licensed owner shall notify the debtors of the change of ownership within thirty (30) days following the change of ownership. The notice shall include the business telephone number and mailing and business addresses of the new owner. The licensed owner shall certify to the Administrator the date the notice was mailed and shall attach a copy of the notice with a list of the names and addresses of the debtors notified.

(c) For purposes of this section, "change of ownership" means a change of an individual owner; a change of partners; a change of the service agent or a change of the principal parties in interest in a corporation.

160:70-3-6. Ownership of more than one location

(a) Each location where deferred deposit loans are made shall be licensed [59:3112(A)].

(b) For purposes of this section, "locations where deferred deposit loans are made" shall include any location at which:

(1) a deferred deposit loan application is provided, taken or completed in person, or

(2) making, negotiating or offering to make or negotiate a deferred deposit loan occurs.

(c) For purposes of this section, the term "locations where deferred deposit loans are made" shall not include administrative offices at which only bookkeeping, billing or accounting duties are performed for separate deferred deposit loan locations. [59:3112(C)]

SUBCHAPTER 5. DISCLOSURES

160:70-5-1. Rescission

(a) A debtor has the right to rescind a deferred deposit loan until 5 p.m. on the next business day following the day the debtor signs the deferred deposit loan agreement [59:3105].

(b) No right to rescind period shall begin to run until all disclosures have been properly provided to the debtor.

160:70-5-2. Notice of charges, terms and effective annual percentage rate

(a) The notice shall be posted on the front exterior at each licensed location and on each counter, desk, table or other station where potential debtors are processed. [59:3104(F)]

(b) Each notice shall be at least legal-size (8.5 inches by 14 inches) with black characters on a white background. The characters shall be legible and at least twenty-point type with the effective annual percentage rates and finance charges in bold type.

(c) The front exterior notice shall be posted so that it is readable from outside of the licensed location.

(d) Each notice shall be in plain view so that the whole notice is readable by potential debtors at all times and not obstructed by any other object or signage.

SUBCHAPTER 7. RECORDS

160:70-7-1. Records and changes

(a) Each licensee shall preserve and make available such books and records related to each of its loans for four (4) years from the date of the loan, or for two (2) years from the date of the final entry into such records is made thereon, whichever is later [59:3114(E)]. The records shall be maintained for such time periods whether the deferred deposit lender is currently licensed or previously licensed. Upon licensing, the licensee shall either designate a location or locations in Oklahoma where records shall be maintained or agree in writing to provide copies of records kept at an out-of-state location to the Department upon demand or agree in writing to pay for the Department to examine the records at the place where they are maintained, and the records shall not be moved from the designated location unless the Administrator has given written approval for another location. [59:3115(B)]

(b) Each licensee's records shall be maintained in compliance with the Act and these rules. Each licensee shall keep current the information required for licensing by reporting any changes or additions to the information previously submitted to the Department within thirty (30) days of such change or addition unless the Act or these rules require otherwise.

160:70-7-2. Examinations

(a) **Initiation.** The Administrator, or duly appointed representatives, shall conduct an examination of each licensee at least annually, and at such other times as deemed necessary [59:3114(A)].

(b) **Procedure.** Each licensee shall ensure that all records are promptly and reasonably available to be examined and copied [59:3114(A)].

(c) **Confidentiality.** The information obtained in the course of any examination shall be confidential, except in civil or administrative proceedings conducted by the Administrator, or criminal proceedings instituted by the state [59:3114(A)].

(d) **Noncompliance.** In case of failure to comply with the Administrator's examination processes, the Administrator may initiate any authorized action, including acts for enforcement by the Administrator [59:3114(A)].

(e) **Violations.** If the examination finds any violations of the Act or these rules, the Administrator may initiate any authorized action.

(f) **Informal disposition.** In order to avoid the expense and time involved in formal legal proceedings, it is the policy of the Administrator to afford parties who have engaged in unlawful acts and practices an opportunity to enter into stipulations, agreed settlements, consent orders or defaults when it appears to the Administrator that such procedure fully safeguards the public interest. The Administrator reserves the right in all matters to withhold the privilege of an informal disposition. All stipulations, agreed settlements, consent orders or defaults shall be public records.

SUBCHAPTER 9. ENFORCEMENT

160:70-9-1. Investigative proceedings

(a) **Initiation.** Investigations and inquiries are originated upon request or complaint of the public or by the Administrator upon the Administrator's motion. The request or complaint shall be in writing, signed by the initiator and shall contain a statement setting forth the alleged violations of law and the name and address of the party or parties at issue in the complaint. No forms or formal procedures are required in making requests or complaints. The initiator is not regarded as a party since the Administrator acts only in the public interest. The Administrator shall not take action when the alleged violation of law is merely a matter of private controversy and does not tend to adversely affect the public.

(b) **Procedure.** The Administrator encourages voluntary cooperation in investigations. The Administrator may invoke any or all of the compulsory processes authorized by law, including subpoenas and depositions. The Administrator may issue a notice to grant access to, for examination and copying, records of any party being investigated, and may require a party to file a report or to submit answers in writing to specific questions relating to any matter under investigation. Inquiries and investigations are conducted by representatives designated and duly authorized to exercise and perform the duties of their office in accordance with the laws of Oklahoma and the regulations of the Administrator, including the administration of oaths and affirmations, in any matter under investigation by the Administrator. Any party under investigation, compelled to furnish information or documentary evidence, shall be advised of the purpose and scope of the investigation. [59:3114(B) and 3115(A)]

(c) **Confidentiality.** The information obtained in the course of any investigation shall be confidential, except in civil or administrative proceedings conducted by the Administrator, or criminal proceedings instituted by the state. [59:3115(D)]

(d) **Noncompliance.** In case of failure to comply with the Administrator's investigative processes, the Administrator may initiate any authorized action, including acts for enforcement by the Administrator.

(e) **Violations.** If the investigation finds any violations of the Act or these rules, the Administrator may initiate any authorized action.

(f) **Informal disposition.** In order to avoid the expense and time involved in formal legal proceedings, it is the policy of the Administrator to afford parties who have engaged in unlawful acts and practices an opportunity to enter into stipulations, agreed settlements, consent orders or defaults when it appears to the Administrator that such procedure fully safeguards the public interest. The Administrator reserves the right in all matters to withhold the privilege of an informal disposition. All stipulations, agreed settlements, consent orders or defaults shall be public records.

160:70-9-2. Individual proceedings

(a) **Allegations notice.** The Administrator shall notify the licensee of facts or conduct that warrant the intended action, and give the licensee an opportunity to show compliance with all lawful requirements for the retention of the license [75:314(C)(1)].

(b) **Violations.** Where the facts indicate that the licensee has not complied with all lawful requirements for the retention of the license, the Administrator may initiate any authorized action.

(c) **Informal disposition.** In order to avoid the expense and time involved in formal legal proceedings, it is the policy of the Administrator to afford licensees who have engaged in unlawful acts and practices an opportunity to enter into stipulations, agreed settlements, consent orders or defaults when it appears to the Administrator that such procedure fully safeguards the public interest. The Administrator reserves the right in all matters to withhold the privilege of an informal disposition. All stipulations, agreed settlements, consent orders or defaults shall be public records.

(d) **Hearing notice.**

(1) If the matter is to be set for hearing, the licensee shall be given twenty (20) days notice in writing [59:3115(F)].

(2) The notice shall:

(A) state the time, place and nature of the hearing;

(B) state the legal authority and jurisdiction for the hearing;

(C) refer to the statutory sections and rules involved; and

(D) state the matters asserted briefly and plainly [75:309(B)(1) - (4) and 59:3115(F)].

(e) **Hearing.** All parties shall be afforded the opportunity to respond and present evidence and argument on all points at issue [75:309(C)], and shall have the right to counsel [75:310(5)].

(f) **Standard of proof.** The standard of proof is clear-and-convincing evidence. Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegation sought to be established.

(g) **Order.**

(1) The Administrator shall issue an order within sixty (60) days from the last day of the hearing unless the period is extended by written agreement between the licensee and the Administrator.

(2) The order shall:

(A) be in writing;

(B) state findings of fact that shall be limited to the evidence from the hearing unless the parties agree otherwise on the record;

(C) state conclusions of law;

(D) state the effective date; and

(E) be delivered in person or by certified mail with return receipt requested [75:309(H), 312 and 59:3115(F)].

(h) **Impair.** A suspension or revocation shall not impair or affect the obligation of any preexisting lawful contract between the licensee and any debtor [59:3115(H)].

160:70-9-3. Hearing procedure - emergency actions

(a) **Hearing notice.**

(1) If the public health, safety, or welfare imperatively requires emergency action, such action, including the suspension of a license instanter or a cease and desist instanter, may be ordered pending the final outcome of proceedings instituted by the Administrator [75:314(C)(2) and 314.1]. In such cases, the Administrator shall notify the party of such action by certified mail with return receipt requested or personal delivery, and shall include in such notice an order of hearing. The hearing shall be held within ten (10) days of the notice unless postponed by written agreement between the party and the Administrator.

(2) The notice shall:

(A) state the time, place and nature of the hearing;

(B) state the legal authority and jurisdiction for the hearing;

(C) refer to the statutory sections and rules involved; and

(D) state the matters asserted briefly and plainly [75:309(B)(1) - (4)].

(b) **Hearing.** All parties shall be afforded the opportunity to respond and present evidence and argument on all points at issue [75:309(C)], and shall have the right to counsel [75:310(5)].

(c) **Standard of proof.** The standard of proof is clear-and-convincing evidence. Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegation sought to be established.

(d) **Order.**

(1) The Administrator shall issue an order within thirty (30) days from the last day of the hearing unless the period is extended by written agreement between the party and the Administrator.

(2) The order shall:

(A) be in writing;

(B) state findings of fact that shall be limited to the evidence from the hearing unless the parties agree otherwise on the record;

(C) state conclusions of law;

(D) state the effective date; and

(E) be delivered in person or by certified mail with return receipt requested [75:309(H) and 312].

160:70-9-4. Circumvention prohibited

Whenever a licensee has an administrative action taken against a license, the Administrator may deny the licensee's request to inactivate such license, to sell or transfer the accounts under such license or to take any other action to circumvent or negate the administrative action during the time of the action or during the pendency of the action if on appeal.

160:70-9-5. Review of an order

(a) **Rehearing, reopening or reconsideration.**

(1) **Application.**

(A) Any party aggrieved by a final order may apply for a rehearing, reopening or reconsideration within ten (10) days from the date of the order [75:317(A)].

(B) The application shall be in writing and assert a statutory ground for a rehearing, reopening or reconsideration.

(C) The statutory grounds are:

(i) newly discovered or newly available evidence, relevant to the issues;

(ii) need for additional evidence adequately to develop the facts essential to proper decision;

(iii) probable error committed by the Department in the proceeding or in the decision such as would be ground for reversal on judicial review of the order;

(iv) need for further consideration of the issues and the evidence in the public interest; or

(v) a showing that issues not previously considered ought to be examined in order properly to dispose of the matter [75:317(A)(1) - (5)].

(2) **Application order.**

(A) The Administrator shall issue an order granting or denying the rehearing, reopening or reconsideration within thirty (30) days from receipt of the application unless the period is extended by written agreement between the party and the Administrator.

(B) If the application is granted, the order shall set forth the grounds that justify it [75:317(B)].

(3) **Hearing.**

(A) If the rehearing, reopening or reconsideration is granted, the hearing shall be limited to the ground or grounds upon which it was ordered [75:317(D)].

(B) All parties shall be afforded the opportunity to respond and present evidence and argument on all points at issue [75:309(C)], and shall have the right to counsel [75:310(5)].

(4) **Rehearing order.**

(A) The Administrator shall issue an order from the rehearing, reopening or reconsideration within sixty (60) days from the last day of the hearing unless the period is extended by written agreement between the party and the Administrator.

(B) The order shall:

(i) be in writing;

(ii) state findings of fact that shall be limited to the evidence from the hearing unless the parties agree otherwise on the record;

(iii) state conclusions of law;

(iv) state the effective date; and

(v) be delivered in person or by certified mail with return receipt requested [75:309(H) and 312].

(5) **Tolling.** The period for judicial review shall run from the day the party is notified of the final disposition of the application if the application was filed timely [75:317(E)].

(6) **Prerequisite.** An application shall not be a prerequisite to secure judicial review [75:318(A)(3)].

(b) **District Court.**

(1) **Petition.**

(A) Any party aggrieved by a final order may file a petition in the district court of the party's resident county or the situs county of the property interest within thirty (30) days from the day the party is notified of the order [75:318(B)(2)].

(B) The petition shall be served upon the Department and all other parties of record, and proof of service shall be filed in the court within ten (10) days after the petition is filed [75:318(C)].

(2) **Stay.** The filing of a proceeding for review shall not automatically stay the final order, but the Department may stay the order or the court may or shall impose a stay in accordance with the APA [75:319(1)].

(3) **Record.** The Department shall transmit the record of its proceeding to the court within thirty (30) days after the service of the petition unless the court has granted an extension [75:320].

(4) **Review scope.** The review shall be confined to the record and done by the court without a jury [75:321].

(5) **Court order.** The court may affirm, set aside, modify, reverse or remand the agency order in accordance with the APA [75:322], or may grant any temporary relief or restraining order deemed just [59:3115(L)(2)(a)].

(c) **Supreme Court.** Any party aggrieved by a final judgment of a district court may appeal to the Supreme Court in the manner and time provided in civil actions [75:323].

160:70-9-6. Civil and criminal actions

This chapter shall not be interpreted as limiting the right of the Administrator to seek civil remedies or make criminal referrals for any violation of the provisions of the Act or these rules.

[OAR Docket #04-1125; filed 6-7-04]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 30. SCHOOL FACILITIES AND TRANSPORTATION

[OAR Docket #04-1138]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Transportation
210:30-5-1. [AMENDED]
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ANALYSIS:
This rule allows greater flexibility for local school districts in determining the physical qualifications for their school bus drivers. The FMCSA physical is more stringent than that currently required by regulations. However, the FMCSA is valid for two years unless a medical condition requires monitoring. Districts that desire to meet these higher standards will not incur additional costs because the existing regulation requires an annual physical examination. The net effect will allow local school officials to raise the physical examination standards for drivers while reducing administrative costs and paperwork.
CONTACT PERSON:
Valerie Payne, 405-521-3308

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2004:

SUBCHAPTER 5. TRANSPORTATION

210:30-5-1. District operation and management

(a) **Definitions.** The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

(1) **"Transportation equipment"** means any vehicle or conveyance used for transportation of pupils when the cost of rent, lease, purchase, maintenance, or operation of the equipment is paid for in whole or part from public school funds.

(2) **"Type A school bus"** means a conversion or body constructed upon a van-type compact truck or a front-section vehicle, and has a gross weight rating of 10,000 pounds or less, designed for carrying more than ten (10) persons.

(3) **"Type B school bus"** means a conversion or body constructed and installed upon a van or front-section vehicle chassis, and has a vehicle weight rating of more than 10,000 pounds, designed for carrying more than ten (10) persons. Most of the engine is beneath and/or behind the windshield and beside the driver's seat. The entrance door is behind the front wheels.

(4) **"Type C school bus"** means a body installed upon a flat back cowl chassis and has a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than ten (10) persons. All of the engine is in front of the windshield and the entrance door is behind the front wheels.

(5) **"Type D school bus"** means a body installed upon a chassis, with the engine mounted in the front, midship, or rear, and has a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than ten (10) persons. The engine may be behind the windshield and beside the driver's seat; it may be at the rear of the bus, behind the rear wheels; or midship between front and rear axles.

(b) **Administration.** The local superintendent and board of education shall be held responsible for applying these regulations to all pupil transportation under their administration and supervision. In keeping with this responsibility, each local board of education shall examine and periodically review the school district's bus fleet liability insurance coverage and its tort liability insurance coverage to assure such coverages are coordinated to protect the interest of the students, general public, and school district. Any school district maintaining a school may provide transportation with the approval of the State Board of Education.

(c) **Students.**

(1) **Legally transported.**

(A) A student must live in a school district authorized by law to furnish transportation.

(B) A student must live one and one-half (1 1/2) miles or more by commonly traveled road from the school attended. Students living less than one and one-half (1 1/2) miles from school may be transported, but shall not be counted in determining state aid.

(C) A normal school day consists of not less than six (6) hours, exclusive of lunch period, with the exception of the first and kindergarten grades. Transportation may be provided for kindergarten age students to and from school during the normally scheduled morning and evening bus operation. Districts desiring to provide additional transportation for

kindergarten students at midday may do so at local district expense but it is not required.

(D) The local school district is responsible for providing transportation for an eligible special education student when transportation has been identified as "related service" necessary to enable the student to receive the educational services outlined in his/her Individualized Education Program (IEP).

(2) **Transfers.** Out-of-District transfers are governed by the following:

(A) Students living in a school district not offering the grade which they are entitled to pursue are entitled to transportation to a school authorized by law to provide transportation to and from school provided they have been legally transferred and reside in the transportation area.

(B) Students may be transferred from one district to another when their grade is taught in the home school if such transfer has the approval of the boards of education of the sending and receiving districts, provided, however, if the grade is not offered the transfer must be approved.

(C) A legally transferred or tuition student residing outside a transporting district's approved area may be transported to and attend the transporting school, provided she/he meets and boards the bus of the transporting school within the area approved for that school by the State Board of Education. When a bus stop is located in an area that may be considered hazardous, the boards of education of the school districts involved may concur and request the State Board of Education to approve an area outside the transporting district's area for the current school year.

(D) Tuition students may not be counted for the transportation reimbursement.

(E) School District "A" may provide transportation for its resident or transferred children outside its transportation area into School District "B" transportation area for tuition children attending School District "B's" Area Vocational Technical School or Center if requested by School District "A's" Board of Education and approved by the State Board of Education. School District "A" will not receive state aid funds for transporting tuition pupils.

(F) Provided further, School District "A" may provide transportation for a neighboring school district's tuition pupils who attend School District "B's" Area Vocational Technical School or Center on a cooperative basis.

(d) **Activities.**

(1) **Purpose.** The use of school buses for purposes other than the transportation of children to and from school should be strictly limited. Nevertheless, there are some purposes which necessitate transporting pupils some distance from schools that justify the use of a school bus. A school bus used for auxiliary purposes should be driven by its regular operator, who should be cautioned against over-crowding and speeding. The bus should be accompanied by an appropriately designated school official. School buses whether privately or publicly owned shall not be used to haul livestock, commodities, or anything that will render them unsuitable for student use.

(2) **Uses.** A district-owned bus (or a school bus with district-owned body) may be used:

(A) For group movements within the State, for participants to and from contests, athletic games, or other school functions under the direct auspices of the board of education.

(B) The following uses of school buses are approved by State Board of Education:

(i) Activity trips for children participating in regularly scheduled school activities within the State.

(ii) Activity trips for children participating in educational contests and activities with neighboring out-of-state schools for normally scheduled inter-school functions.

(iii) FFA and FHA trips in the State for children participating in regularly scheduled activities.

(iv) 4-H trips in the State, for children in regularly scheduled activities, if under the supervision of a member of the local school faculty.

(v) Transportation for school children participating in educational contests and activities outside the State of Oklahoma or outside the districts in which they reside upon request therefore by the State Director of Cooperative Extension Work in Agriculture and Home Economics (Service), or the State Director of Vocational Education, or the State Supervisor of Vocational Agriculture.

(vi) Trips, in State, for purposes connected with summer youth activities, upon approval of the school board governing said school district.

(vii) Transportation for adults enrolled in adult and community education class.

(viii) Other uses for adult community education activities as approved by the local board of education as defined in 70 O.S. § 1883. The local school district may charge a reasonable fee for the use of such transportation equipment.

(C) The following uses of school buses are prohibited:

(i) Out-of-state excursions.

(ii) Transportation for pupils to and from night programs, contests, athletic games, or other school functions at the local schools.

(iii) Transportation for adults to and from programs, contests, athletic games, or other non-supervised school functions.

(iv) Transportation for nonparticipating pupils to and from contests, athletic games, or other school functions.

(v) Any Oklahoma school district which transports pupils in a district-owned bus or a district-owned body on out-of-state excursions, or

permits it to be done, shall be violating the transportation regulations of the State Board of Education and shall forfeit its State Aid for the time of noncompliance.

(e) **Routes and boundaries.**

(1) **Routes.**

(A) The beginning of the route shall be the place where the first student is picked up on the morning trip.

(B) The length of the route shall constitute the entire distance from where the first student is picked up to the school facility.

(C) Route numbers shall be assigned on the basis of the number of vehicles operated. If any vehicle operates two routes, the first trip in the morning shall be distinguished by the addition of the letter "A" and the second trip by the addition of the letter "B". Thus, vehicle number one (1) might operate route "1-A" and "1-B".

(D) Geographical barriers whose location in a school district would inhibit the school district from consolidation or annexation shall be defined as rivers, mountains, lakes, forests, wildlife refuges, turnpikes and federal reservations or plants.

(E) School districts having geographical barriers whose location in the school district would inhibit the district from consolidation or annexation may make application for additional square miles for the purpose of calculations used for the weighted district sparsity-isolation formula. A school district may make a written application to the State Aid Section of the State Department of Education. Such application shall state that consolidation or annexation has been considered and the geographical barriers inhibit action. Recommendation will be presented to the State Board of Education to determine if school district qualifies for additional square miles to be used for the purpose of calculating the weighted district sparsity-isolation factor.

(2) **Boundaries.**

(A) A change in transportation area made after July 1, will not become effective until the next July 1, unless all boards of education affected agree to the proposed change.

(B) An elementary area that has been assigned to a high school transportation area may be changed to another high school transportation area by mutual agreement, in writing, by the three (3) boards of education affected and the approval of the State Board of Education.

(C) A part or all of an elementary school district that is isolated from the remainder of the school district's transportation area because of topography or previous annexations to another high school district, may be changed from one high school district's transportation area to another high school district's transportation area if the State Board of Education determines the change should be made on the basis of good administration.

(D) When a dependent school district is surrounded by an independent school district, that district must be designated as the transportation area for the high school students.

(E) No independent school district's route may extend into another independent school district's territory.

(F) An independent school district's transportation route may extend into a dependent school district's territory to pick up students whose grade is not offered in the dependent district, if the area is within its transportation area.

(G) Upon mutual agreement of two (2) school districts, a school district may cross a portion of another district provided the doors of the school bus are kept closed.

(3) **Routes inside transportation area.**

(A) Insofar as possible, buses will be approved to go within one-half (1/2) mile of a pupil's home. School buses may operate nearer than one-half (1/2) mile of the home of any child whose residence is not within one and one-half (1 1/2) miles of the school attended by such child if the board of education of the school district in whose transportation area the child resides determines that the additional transportation operation should be provided.

(B) In districts where buses are owned by school district, the buses should be kept at the closest possible place to the beginning of the route.

(C) An elementary school district that has been authorized to provide transportation may transport transferred children in their district from one high school district's transportation area to another high school district's transportation area, if the transportation is approved by the State Board of Education.

(4) **Changes After Bus Routes Have Been Approved.**

(A) Further changes in school bus routes may be made only by:

(i) Submitting statement of request by the local board of education.

(ii) Submitting statement signed by the County Commissioner showing willingness to include the proposed change in the county road program.

(iii) Approval by the State Board of Education.

(B) Changing routes that do not require a request:

(i) Driver moves to a new home in the district's transportation area.

(ii) Change will shorten route.

(iii) Backtracking within the area to serve children living in the district's transportation area or to safeguard the health of a child.

(iv) School districts near federal-impact areas that are required to operate school buses over roads that carry an unusually heavy motoring traffic, shortly before the opening of school of a morning and shortly after school in the afternoon, may

reverse a school bus route if, by so doing, it will greatly reduce the traffic hazards for a greater number of the children.

(5) **Petition for changing boundary lines.**

(A) Seventy percent (70%) of the legal voters residing in a district who have children eligible to attend a public school (grades K through 12) or who have children under the age of five (5) may petition the State Board of Education for an election to change any part or all of a district from one transportation area to another.

(B) The State Board of Education will approve a convenient date for an election, supply ballots, and send a representative to assist with the election.

(C) If fifty-one percent (51%) of all such legal voters in the district vote for the change, the election makes a good recommendation to the State Board of Education.

(6) **Changing areas, high school districts discontinued.** High school districts and/or elementary school districts that must be placed in one or more high school transportation area or areas because a high school has been discontinued may be placed in a transportation area or areas on the following basis:

(A) All or part of District "A" may be placed in the transportation area of high school District "B", whose transportation area is not adjacent to District "A", provided high school District "C", which has transportation area that separates District "A" from District "B" transportation area, appears to be in jeopardy of being discontinued itself, and provided the number of people in District "A", who want to be placed in the transportation area of District "B", justifies such an arrangement. People in District "A" requesting these arrangements to enable them to annex to District "B" will be given much more consideration than those desiring to transfer only.

(B) No portion of a school district that is adjacent to a high school district's transportation area, but is separated from the high school area by a natural barrier, will be placed in the high school district's transportation area unless or until there is a road connecting the two (2) areas that is maintained in a manner that will justify the operation of a school bus over the road across the barrier.

(f) **School bus.**

(1) **Equipment.**

(A) Transportation equipment used to transport ten (10) or more public school children at one time shall meet all the minimum standards required for Types A, B, C, and D buses.

(B) Vehicles having a seating capacity of fewer than (10) passengers, excluding the operator, are not required to meet the State minimum standards for school buses.

(2) **School bus inspections.**

(A) A driver shall perform a daily pre-trip safety inspection of the vehicle. The inspection shall include brakes, lights, tires, exhaust system, gauges, windshield wipers, steering and fuel. The driver shall make a daily written report describing the condition of the bus and listing any deficiencies. This report is to remain on file with the local Chief Administrative Officer or designee for a period of ninety (90) days.

(B) A school district shall have each school bus mechanically inspected annually by an inspector approved by the Oklahoma State Department of Education.

(C) At least twice during each school year, each pupil who is transported in a school vehicle shall be instructed in safe riding practices, and participate in emergency evacuation drills. This instruction should be conducted during the first two weeks of each semester.

(3) **School bus inspector qualifications.**

(A) Any person licensed to inspect school buses by the Department of Public Safety under the Motor Vehicle Laws of Oklahoma prior to July 1, 2001, may be qualified to perform annual school bus inspections.

(B) Any person not meeting the qualifications as prescribed in (A) may be qualified to perform the annual school bus inspection by submitting proof to the Oklahoma State Department of Education that they meet the following qualifications:

(i) Two years experience as an automotive technician and certification by the Association for Automotive Service Excellence (ASE), or

(ii) Any person qualified to perform inspections under the Federal Motor Carrier Safety Act, appendix G.

(4) **Standards and school bus specifications.**

(A) The NATIONAL MINIMUM STANDARDS FOR SCHOOL BUSES applies to school bus construction and equipment. The Oklahoma State Board of Education has accepted the various methods bus manufacturers use to meet the requirements of these standards and all requirements under the Federal Motor Vehicle Safety Standards. (P.L. 89-563) The responsibility for compliance with Federal and State bus specifications rests with dealers and manufacturers.

(B) State Standards in addition to Federal Requirements also apply as follows:

(i) The seller of any used or previously owned school bus shall certify to the local board of education that any such transportation equipment meets all Oklahoma and National Standards required for the date of its manufacture.

(ii) School buses converted for purposes other than transporting pupils to or from school shall be painted a color other than national school bus yellow with loading lights disconnected.

(iii) A church bus transports persons including school-age children to and from religious services.

The words "church bus" in letters not less than eight (8) inches in height shall be contained on the front and rear of the bus. Visual signals shall be used when the vehicle is stopped on the highway receiving or discharging passengers. Church buses used for the purpose of transporting children to and from school shall be painted national school bus yellow.

(iv) A copy of the invoice on all purchases of new chassis and/or bodies shall be submitted to the Transportation Officer of the State Department of Education.

(C) School districts that convert or have converted school buses to Liquefied Petroleum Gas (LPG) shall comply with safety standards prescribed by the National Fire Protection Association, Standard No. 58 (NFPA-58) and the Oklahoma Liquefied Petroleum Gas Administration. In order to insure safe installation and proper maintenance of equipment, all personnel must also meet the following existing requirements of the Oklahoma Liquefied Petroleum Gas Administration: "No person, firm, corporation, association, or other entity shall engage in the manufacturing, assembling, fabrication, installing, or selling of any system, container, or apparatus to be used in this State in or for the transportation, storing, dispensing, or utilization of LPG, nor shall any transporter, distributor, or retailer of LPG store, dispense and/or transport over the highways of this State any LPG for use in this State in any system, container, apparatus, or appliance without having first obtained a permit to do so as provided..."

(g) **Special education.**

(1) **Loading responsibility.** The local school district is responsible for the special education child from the time the student is loaded at the "home curb" until returned and unloaded at the "home curb". The parent or their designee is responsible for "door-to-curb", "curb-to-door", and "street crossing" of the child to the designated loading and unloading point.

(2) **Extended boundaries.** Based upon mutual agreement between two participating school districts, a school district offering special education classes may extend its transportation program to include the transportation of students qualifying for special education in an adjacent school district which does not offer special education classes.

(h) **School bus driver certification.**

(1) **General criteria.**

(A) No board of education shall have authority to enter into any written contract with a school bus driver who does not hold a valid certificate issued by the State Board of Education authorizing said bus driver to operate a school bus.

(B) The State Board of Education requires all public school bus drivers to complete a school bus drivers training course approved by the State Department of Education to obtain a standard certificate.

(C) All school bus drivers must have not less than 20-50 vision (Snellen) in each eye and not less than 20-30 vision (Snellen) with both eyes and a minimum field of vision of 70 degrees horizontal median vision in each eye.

(D) Any person with diabetes requiring insulin by injection shall not be eligible for a school bus certificate.

(E) The use of tobacco by a school bus driver is not permitted during the operation of the bus while hauling pupils. The use of any intoxicating or non-intoxicating alcoholic beverage by the driver eight (8) hours prior to or during the operation of a school bus is strictly prohibited. The use of any controlled dangerous substance seventy-two (72) hours prior to or during the operation of a school bus is strictly prohibited. The possession of any controlled dangerous substance on a school bus is strictly prohibited.

(F) All school bus drivers shall have an annual health certificate signed by a physician licensed by this state filed in the office of the local Chief Administrative Officer or designee attesting that such physician has examined the applicant and that the applicant has no sign or symptoms of ill health, and is otherwise, from the observation of such physician, physically and mentally capable of safely operating a school bus. As an alternative to the annual physical examination requirements for school bus drivers, school districts may adopt a policy that utilizes a biannual physical examination, provided the examination is in compliance with the physical qualifications and examination requirements of the Federal Motor Carrier Safety Act, Subpart E 391.41 to 391.50.

(G) Substitute and activity school bus drivers shall meet all the requirements prescribed for regular bus drivers.

(2) **Certificate requirements.**

(A) The Chief Administrative Officer or designee shall certify to the State Department of Education that each applicant submitted for Standard Five-Year Certification:

(i) Is at least 18 years of age.

(ii) Has successfully completed a twenty-five hour special school bus drivers' course approved by the State Department of Education.

(iii) Holds a valid Commercial Drivers license (CDL) appropriate for the type of vehicle driven with the proper endorsements required by the Department of Public Safety.

(iv) Has not been convicted, plead guilty, or nolo contendere to a felony during the last ten years.

(v) Has passed a driving record check, and no certificate shall be issued to any person who, within the preceding three years:

(I) Has had a license suspended or revoked, canceled or withdrawn pursuant to the Implied Consent Laws at 47 O.S. §751 et seq.

(II) Has a conviction for a violation of 47 O.S. §11-902 which includes driving, operating or being in actual physical control of a vehicle while under the influence of alcohol or any intoxicating drug.

(III) Has been convicted or plead guilty to a violation of 47 O.S. §761, operating a motor vehicle while impaired by consumption of alcohol.

(IV) Has been convicted of any municipal violation of driving under the influence of alcohol or drugs or operating a motor vehicle while impaired or being in actual physical control of a motor vehicle while impaired.

(V) Has had four or more traffic violations. (excluding parking violations)

(B) The Chief Administrative Officer or designee shall certify to the State Department of Education that the applicant for an Emergency One-Year School Bus Driver Certificate (Not Renewable).

(i) Is at least 18 years of age.

(ii) Holds a valid Commercial Drivers License with the proper endorsements required by the Department of Public Safety.

(C) Requirements for Renewal of the Standard Five-Year Certificate include:

(i) Every five years, each driver shall have successfully completed Session II of a school bus driver workshop (5 hour refresher course), and or completed 4 hours per year of inservice training approved by the State Department of Education.

(ii) The local Chief Administrative Officer or designee shall certify to the State Department of Education that the applicant meets all requirements for standard certification, [47 O.S. § 15-109]

(iii) Each applicant has a health certificate on file signed by a licensed physician and meets all vision requirements and is not dependent upon insulin by injection,

(iv) Each applicant has not been convicted or plead guilty of a felony in the last ten years, and

(v) A driving record has been checked and meets State Board of Education requirements for certification.

[OAR Docket #04-1138; filed 6-9-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 205. ALARM INDUSTRY

[OAR Docket #04-1093]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
310:205-1-2. [AMENDED]
310:205-1-3.1. [NEW]
Subchapter 3. License Requirements
310:205-3-2. [AMENDED]
310:205-3-3. [AMENDED]
310:205-3-4. [AMENDED]
310:205-3-7. [AMENDED]
Subchapter 5. Special Provisions [NEW]
310:205-5-1. [NEW]
310:205-5-2. [NEW]
Subchapter 7. Enforcement [NEW]
310:205-7-1. [NEW]
310:205-7-2. [NEW]

AUTHORITY:
Oklahoma State Board of Health; Alarm Industry Act, 59 O.S., Sections 1800.1 et seq.

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n/a

ANALYSIS:
The proposed rule amends the nomenclature of the term "burglar alarm technician trainee" and "fire alarm technician trainee" to allow salesman to work under the licensed trainee status with direct supervision of a licensed manager, technician or salesman.

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 the burglar/fire alarm company manager may be the person holding majority ownership in the said burglar/fire alarm company or a full time employee thereof. A burglar/fire alarm company manager who is a full time employee shall be the burglar/fire alarm company manager of only one burglar/fire alarm company in which he does not hold a majority ownership interest.

The proposed rule recommended by the Oklahoma State Fire Marshals Association, Oklahoma Burglar and Fire Alarm Association and by the Oklahoma Automatic Fire Alarm Association adopts a uniform tagging system and requires that licensed fire alarm and sprinkler companies use the tagging system to publish the operational status of the fire protection equipment.

The proposed rule adopts a minimum experience requirement for licensing burglar/fire alarm technicians and defines the responsibility of the alarm technician and the alarm trainee regarding the limited fire alarm license.

The proposed rule alters the definition of the term certification of an alarm system.

The proposed rule amends separate fees for renewal of licenses, adopt licensing fees for the new classifications of "Inspector", adopt a fee for duplicate and revised licenses; increase all licensing fees.

The proposed rule would grant municipalities and other legal political subdivisions authorities more stringent alarm and other related standards, and a safe harbor provision when compliance with the National Fire Protection Association or other recognized fire safety standard is demonstrated.

The proposed rule makes changes to the rules to allow fire technicians to submit a level 2 certification in fire alarm systems from the National Institute For Certification in Engineering Technologies in lieu of examination by the Department.

The proposed rule makes changes to the rules to burglar and fire alarm trainees that each burglar and fire alarm technician's application shall include 1000 hours verification of experience in the burglar alarm and fire alarm industry by a licensed burglar alarm company manager, setting forth minimum requirements for cooperation by licensees and applicants for licensure, when investigations are being conducted by the Department involving alleged misconduct, and provides for summary suspension of licensure when the Department establishes probable cause that a licensee or applicant has 1) been convicted of a felony or a misdemeanor that is related to qualification for licensure, or 2) refused to cooperate with an investigation involving misconduct by a licensee or applicant.

CONTACT PERSON

Matt Schue, Investigator, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; telephone:(405) 271-9444, ext. 57905; facsimile: (405) 271-5286 electronic mail: Matts@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 12, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

310:205-1-2. Definitions

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

"BOCA" means Building Officials and Code Administrators International, Inc.

"Burglar alarm company" means an alarm industry business which offers to, or engages in the planning, installation, repair, alteration, maintenance, service, sale, inspection or advertisement of burglar alarms.

"Burglar alarm company manager" 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.

"Burglar alarm salesperson" means an individual who is employed by an Oklahoma licensed burglar alarm company to sell burglar alarm equipment.

"Burglar alarm technician" means an individual who is employed by an Oklahoma licensed burglar alarm company to install, service and sell burglar alarm equipment.

"Burglar alarm technician trainee" means an individual who is employed by an Oklahoma licensed burglar alarm company to learn to properly install service and sell burglar alarm equipment.

"CABO" means The Council of American Building Officials.

"Certification of an alarm system" shall mean ~~a systematic inspection program for initial and routine follow-up~~ testing per applicable code~~and inspections~~ of any burglar alarm, fire alarm, or sprinkler alarm system by a properly licensed alarm individual working for a properly licensed alarm company to verify that the system complies with all of the requirements of the applicable code or standard.

"Certification of Personnel" shall mean proof of successful completion of a standardized formal program of related instruction and testing as provided by a recognized organization and approved by the Alarm Industry Committee in compliance with section 310:205-3-2(f)of this chapter.

"Commercial building" means a building or structure used for any purpose or occupancy that is not defined in this section as a *Residential Building*.

"Committee" means the Alarm Industry Committee.

"Department" means the Oklahoma State Department of Health.

"Fire alarm company" means an alarm industry business which offers to, or engages in the planning, installation, repair, alteration, maintenance, service, sale, inspection or advertisement of fire alarms. The company will be licensed as a limited or unlimited fire alarm company as defined by this chapter.

"Fire alarm company manager" 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 salesperson" means an individual who is employed by an Oklahoma licensed fire alarm company to sell fire alarm equipment.

"Fire alarm sprinkler inspector" means an individual who is employed by an Oklahoma licensed alarm company to inspect and test a fire alarm sprinkler system to determine if it has been installed and is operating according to the appropriate code or standard.

"Fire alarm technician" means an individual who is employed by an Oklahoma licensed Fire Alarm Company to install, service and sell fire alarm equipment.

"Fire alarm technician trainee" means an individual who is employed by an Oklahoma licensed Fire Alarm Company to learn to properly install, service and sell fire alarm equipment.

"Fire sprinkler alarm company" means an Alarm Industry Business which employs a Fire Sprinkler Alarm Company Manager. An Oklahoma licensed Fire Sprinkler Alarm Technician or Manager shall be on any job site where fire sprinkler work is being performed. The company will be licensed as a limited or unlimited company as defined by this chapter.

"Fire sprinkler alarm company manager" 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 sprinkler alarm technician" means an individual who is employed by an Oklahoma licensed alarm company to install, service and sell fire sprinkler equipment.

"ICC" means the International Code Council, Inc.

"Inspection" shall mean the visual observation or alarm system test of any burglar alarm system, fire alarm system or fire sprinkler alarm system to determine if the alarm system

has been installed and is operating according to the applicable code or standard.

"Limited fire alarm license" means the category of license which authorizes a fire alarm company, manager, technician or salesperson to engage in the alarm industry activities in compliance with this Chapter for fire alarm systems used in Residential Building and manufactured housing.

"Limited fire sprinkler alarm license" means the category of license which authorizes a fire sprinkler alarm company, manager, or technician to engage in the alarm industry activities in compliance with this Chapter for fire sprinkler alarm systems used in Residential Building and manufactured housing.

"Manufactured Housing" means a structure, transportable in one or more sections, which in the traveling mode is 8 body feet (2438 body mm) or more in width or 40 body feet (12 192 body mm) or more in length, or, when erected on site, is 320 square feet (30 m^2)or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein. For the purpose of these rules, a mobile home shall be considered a manufactured home, and each shall be regarded as manufactured housing.

"Monitoring company" means an alarm industry business which offers to, or does monitor burglar and/or fire alarms located in Oklahoma.

"Monitoring company manager" means an individual who is employed by an Oklahoma licensed alarm company and has control of the monitoring of alarm systems located in Oklahoma.

"Multipurpose Fire Sprinkler System" means a single piping system within residential building and manufactured housing where the same piping system simultaneously serves both domestic and fire protection needs and are not independent systems in any manner as described by the 1999 edition Standard for the installation of Sprinkler Systems in One and Two Family Dwellings (NFPA 13D).

"NBFAA" means the National Burglar and Fire Alarm Association.

"NFPA" means the National Fire Protection Association.

"NICET" means the National Institute of Certification in Engineering Technologies, a certification program sponsored by the National Society of Professional Engineers.

"NTS" means The National Training School, created by the National Burglar & Fire Alarm Association (NBFAA) to provide standardized training and testing for the certification of burglar and fire alarm individuals.

"Ownership" means the dominion, title or proprietary right in a company subject to the Alarm Industry Act and this Chapter.

"Residential building" shall mean buildings arranged for the use of one (1)- or two (2)-family dwelling units, including not more than five (5) lodgers or boarders per family and multiple single-family dwellings where each unit has an independent means of egress and is separated by a two (2)-hour fire separation assembly and all detached one (1)- or two (2)-family dwellings not more than three (3) stories in height, and the accessory structures as indicated in the 1995 edition of the CABO One and Two Family Dwelling Code.

"Security verification" means information submitted to the appropriate authority on each applicant to verify any criminal records.

"Unlimited fire alarm license" means the category of license which authorizes a fire alarm company, manager, technician or salesman to engage in the alarm industry activities in compliance with this Chapter for any residential or commercial application.

"Unlimited fire sprinkler alarm license" means the category of license which authorizes a fire sprinkler alarm company, manager or technician to engage in the alarm industry activities in compliance with this chapter for any residential or commercial application.

"Vehicle alarm company" means an alarm industry business which offers to, or engages in the planning, installation, repair, alteration, maintenance, service, sale, or inspection of vehicle alarms.

"Vehicle alarm company manager" means an individual who has control of an Oklahoma licensed vehicle alarm company.

310:205-1-3.1. Compliance with intent of chapter

Where no specific standards or requirements are specified in this chapter or within other codes or regulations adopted by the State Department of Health, compliance with the applicable standards of the National Fire Protection Association or other nationally recognized fire safety standards approved by the State is prima facie evidence of compliance with the intent of this chapter.

SUBCHAPTER 3. LICENSE REQUIREMENTS

310:205-3-2. License fees, period and display, and examination alternatives or prerequisites

(a) **~~Initial license~~License fees.** The following fees apply to alarm industry licensure:

(1) **Initial licensing fee**

(~~1~~A) Alarm Company License - $~~200.00~~250.00; license issued after February 1, but before the end of the State fiscal year - $125.00

(~~2~~B) Alarm Company Manager - $~~50.00~~200.00

(~~3~~C) Alarm Technician/Alarm Technician Trainee - $~~25.00~~75.00

(~~4~~D) Alarm Salesperson - $~~25.00~~75.00

(~~5~~E) Re-Examination, Per Attempt - $~~25.00~~50.00

(F) Inspector - $75.00

(G) Duplicate or Revised license $25.00

(2) **Renewal fees.**

(A) Alarm Company License - $250.00

(B) Alarm Company Manager - $100.00

(C) Alarm Technician - $35.00

(D) Alarm Technician Trainee - $25.00

(E) Alarm Salesperson $35.00

(F) Inspector $35.00

(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, invoices, statements, contracts, 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. The state issued license number shall be located on all vehicles that display the alarm company name.

(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 sub-fields of alarm systems to plan, install, repair, alter, maintain, service, sell, inspect, advertise, and monitor alarm systems or technical sub-fields 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 re-certification 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 sub-field 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 sub-fields 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, re-certification 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. The experience shall include verified/or licensed experience as a Burglar Alarm technician.

(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.~~ The burglar alarm company manager may be the person holding majority ownership in the said burglar alarm company or a full time employee thereof. A burglar alarm company manager who is a full time employee shall be the burglar alarm company manager of only one burglar alarm company in which he does not hold a majority ownership interest.

(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/Salesman Trainee.**

(A) A technician/salesman trainee shall be employed by a licensed Oklahoma burglar alarm company.

(B) A technician/salesman trainee shall work under the direct supervision of a licensed burglar alarm company manager, ~~or a~~ burglar alarm technician or a burglar alarm salesman.

(C) There shall be no more than three (3) technician/salesman trainees per burglar alarm company manager, ~~or~~ burglar alarm technician or burglar alarm salesman per job site.

(D) Each technician/salesman 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. The experience shall include verified/or licensed experience as a fire alarm technician.

(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 sub-field 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 sub-field 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 sub-field 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 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.~~ The fire alarm company manager may be

the person holding majority ownership in the said fire alarm company or a full time employee thereof. A fire alarm company manager who is a full time employee shall be the fire alarm company manager of only one fire alarm company in which he does not hold a majority ownership interest.

(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. A technician with a limited technician license may be a trainee on commercial installations and service work including the install, repair, alter, maintenance, service and inspections as long as he or she is under the direct supervision of a licensed unlimited technician.

(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, sub-field 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/Salesman trainee.**

(A) A technician/salesman trainee shall be employed by a licensed Oklahoma fire alarm company.

(B) A technician/salesman trainee shall work under the direct supervision of a licensed fire alarm company manager, ~~or a~~ fire alarm technician or a fire alarm salesman.

(C) There shall be no more than three (3) technician/salesman trainees per fire alarm company manager or fire alarm technician per job site.

(D) Each technician/salesman trainee shall have a security background verification.

(E) Each technician/salesman 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, sub-field 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.

310:205-3-7. Fire sprinkler license requirements

Licensing requirements for the fire sprinkler industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed fire sprinkler company manager who shall attend the operations of that office. Each company which maintains multiple offices within Oklahoma, except for offices established for single event activity such as job site construction offices, shall have a licensed manager at each individual office. The company licensed manager shall attend only one (1) of the company offices in Oklahoma.

(B) A licensed fire sprinkler technician or manager must be on job site of any being performed.

(C) A company whose manager only holds a limited fire sprinkler alarm manager license shall be issued a limited fire sprinkler alarm license.

(D) A company whose manager holds an unlimited fire sprinkler manager license shall be issued an unlimited fire sprinkler alarm license.

(E) A company with a limited fire sprinkler company license shall only offer to, or engage in the planning, sales, installation, repair, alteration, service, and inspection of residential multipurpose fire sprinkler systems on residential building and manufactured housing.

(F) A company with an unlimited fire sprinkler company license may offer to, or engage in the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire sprinkler systems for any residential or commercial use.

(2) **Manager.**

(A) Each unlimited fire sprinkler manager shall submit proof of Level Three certification by NICET or certification by another organization which offers national certification to individuals in the fire sprinkler alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter in the technical sub-field of automatic sprinkler systems layout, or possess a registration as a professional engineer in the State of Oklahoma in the field of fire protection.

(B) Each licensed limited or unlimited company manager further accepts full responsibility for all activities of his company within the State of Oklahoma.

(C) A fire sprinkler company manager is a specialty contractor whose principal contracting business is the execution of contracts requiring the art, ability, experience, knowledge, science, and skill to design, fabricate, install, inspect (other than electrical), alter or repair, fire sprinkler systems, piping or tubing and appurtenances and equipment pertaining thereto, including both overhead and underground non-potable water mains, fire hydrant mains, standpipes, and hose connections to fire sprinkler systems, air line systems used in connection with fire sprinkler systems, and tanks and pumps connected thereto, in compliance with nationally recognized standards including state and local codes and standards for layout, installation and maintenance of fire sprinkler systems.

(D) Each limited fire sprinkler manager shall submit proof of NICET II, technical sub-field of automatic sprinkler systems layout, or certification by another organization which offers national certification to individuals in the fire sprinkler alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter in the technical sub-field of automatic sprinkler systems layout, or possess a registration as a professional engineer in the state of Oklahoma in the field of fire protection.

(E) A limited fire sprinkler alarm manager shall only offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of multipurpose fire sprinkler alarm systems for use in Residential Building and manufactured housing.

(F) An unlimited fire sprinkler alarm manager may offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire sprinkler alarm systems for any residential of commercial use.

(3) **Technician.**

(A) Each limited or unlimited fire sprinkler technician must work for a licensed fire sprinkler company and work under the supervision of a fire sprinkler company manager.

(B) Each technician's experience must be validated by a licensed fire sprinkler company manager.

(C) Each unlimited fire sprinkler technician must pass an examination administered by the Department which determines if the applicant is sufficiently knowledgeable to plan, install repair, alter, maintain, service sell, inspect (other than electrical), fire sprinkler systems that meet applicable code standards when installed in any residential or commercial building.

(D) Each limited technician shall submit proof of certification approved by the alarm industry committee which demonstrates successful completion of training and testing administered by the National Fire Sprinkler Association, the American Fire Sprinkler Association in the installation of residential multipurpose piping systems that serve both domestic water and fire protection needs for Residential Building and manufactured homes or certification by another organization which offers national certification to individuals in the fire sprinkler alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter. Certification programs shall consist of a minimum of 16 hours of residential training.

(E) An unlimited fire sprinkler technician working for a fire sprinkler company with a limited license shall only perform fire sprinkler work for which the company is licensed for.

(4) **Inspector.**

(A) An applicant for initial licensure as a Fire Alarm Sprinkler Inspector shall possess an alarm industry license with the unlimited fire sprinkler alarm manager or unlimited fire sprinkler alarm technician category and submit proof of experience validated by an unlimited fire sprinkler alarm company manager for inspecting fire alarm sprinkler systems or possess a registration as a professional engineer in the state of Oklahoma in the field of fire protection. Beginning July 1, 2004, ~~an applicant for initial licensure as, or renewal of a fire sprinkler alarm inspector shall also submit proof of NICET Level II certification in the sub-field of Inspection and Testing of Water Based Systems or certification by another organization which offers national certification to individuals in the fire sprinkler alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter in the technical sub-field of automatic sprinkler systems layout, or possess a registration as a professional engineer in the State of Oklahoma in the field of fire protection. Beginning July 1, 2005, an applicant for initial licensure as, or renewal of a fire sprinkler alarm inspector shall also submit proof of NICET Level III certification in the sub-field of Inspection and Testing of Water Based Systems or certification by another organization which offers national certification to individuals in the fire sprinkler alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter in the technical sub-field of automatic sprinkler systems layout, or possess a registration as a professional engineer in the State of Oklahoma in the field of fire protection.~~ an applicant for initial licensure as, or renewal of a fire sprinkler alarm inspector shall submit an alarm industry license with the unlimited fire sprinkler alarm manager or unlimited fire alarm sprinkler alarm technician category; or possess a registration as a professional engineer in the State of Oklahoma in the field of fire protection; or possess proof of NICET Level II certification or proof of passing the examinations required for NICET Level II in the sub-field of Inspection and Testing of Water-Based Systems; or certification by another organization which offers national certification to individuals in the fire sprinkler alarm industry in accordance with subsection 310:205-3-2(f).

(B) Each fire alarm sprinkler inspector shall work for a licensed fire alarm sprinkler company.

(C) Each fire alarm sprinkler inspector shall inspect and test each fire alarm sprinkler system to determine if the system has been installed and is operating according to the appropriate code and standard before certifying the system.

(D) Each fire alarm sprinkler inspector shall work for a fire sprinkler alarm company which possesses an unlimited fire sprinkler alarm company license.

SUBCHAPTER 5. SPECIAL PROVISIONS

310:205-5-1. Unlimited fire alarm tagging requirements

(a) **White Tag (Installation sticker).** The White Tag shall be the permanent visual record of the original installation and certification. The following additional requirements shall apply to the use of the White Tag:

(1) The tag must be permanently affixed to the main control panels as long as the system is in service.

(2) The tag shall be five inches (5") in height by four inches (4") in width and shall be water durable and have a self-adhesive backing.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";

(B) The certifying company's name, address, and telephone number (local office);

(C) The certifying company's unlimited fire alarm license number;

(D) The signature and license number of the Unlimited Fire Alarm Technician certifying the system;

(E) The Fire Alarm Permit number;

(F) The model of the control panel;

(G) The date of certification; and,

(H) The Code, Edition and year under which the system was installed.

(4) Only the Fire Code Official may remove an installation tag.

(b) **Green Tag (Annual inspection tag/sticker).** The Green Tag shall be the visual record of the last annual inspection where the system was found to be operable with no deficiencies. The following additional requirements shall apply to the use of the Green Tag:

(1) The annual inspection must be conducted in accordance with NFPA testing standards and manufacturer's specifications.

(2) The tag shall be five inches (5") in height by four inches (4") in width and shall be water durable with a self-adhesive backing or made of colored card stock placed in a plastic sleeve.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL;"

(B) The service company's name, address, and telephone number (local office);

(C) The service company's unlimited fire alarm license number;

(D) The signature and license number of the Unlimited Fire Alarm Technician certifying the system; and

(E) The date the inspection was performed.

(4) Only an Unlimited Fire Alarm Technician, employed by an Unlimited Fire Alarm Company or the Fire Code Official may remove the tag.

(c) **Yellow Tag (Annual inspection tag/sticker) Operational but with minor impairments.** The Yellow Tag shall be the visual record of the last annual inspection where the system was found to be operable but with minor deficiencies.

The following additional requirements shall apply to the use of the Yellow Tag:

(1) The annual inspection must be conducted in accordance with NFPA testing standards and manufacturer's specifications.

(2) The tag shall be five inches (5") in height by four inches (4") in width and shall be water durable with a self-adhesive backing or made of colored card stock placed in a plastic sleeve.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";

(B) The service company's name, address, and telephone number (local office);

(C) The service company's unlimited fire alarm license number;

(D) The signature and license number of the Unlimited Fire Alarm Technician certifying the system;

(E) The date the inspection was performed; and,

(F) A list of the impairments.

(4) Only an Unlimited Fire Alarm Technician, employed by an Unlimited Fire Alarm Company or the Fire Code Official may remove the tag.

(5) If a Yellow Tag is placed on a fire alarm system the Unlimited Fire Alarm Company shall notify the building owner or agent and the Fire Code Official in writing of all deficiencies immediately or as soon as practicable, but no later than seventy-two (72) hours.

(d) **Red Tag (Annual inspection tag/sticker) Inoperable.** The Red Tag shall be the visual record of the last annual inspection where the system was found to be inoperable.

(1) The annual inspection must be conducted in accordance with NFPA testing standards and manufacturer's specifications.

(2) The tag shall be five inches (5") in height by four inches (4") in width and shall be water durable with a self-adhesive backing or made of colored card stock placed in a plastic sleeve.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";

(B) The service company's name, address, and telephone number (local office);

(C) The service company's unlimited fire alarm license number;

(D) The signature and license number of an Unlimited Fire Alarm Technician certifying the system;

(E) The date the inspection was performed;

(F) A list of the deficiencies that render the system inoperable; and,

(G) A list of any deficiencies present that do not render the system inoperable.

(4) Only an Unlimited Fire Alarm Technician, employed by an Unlimited Fire Alarm Company or the Fire Code Official may remove an annual inspection tag.

(5) If a Red Tag is placed on a fire alarm system the Unlimited Fire Alarm Company shall notify the building owner or agent and the Fire Code Official in writing of all deficiencies immediately or as soon as practicable, but no later than twenty-four (24) hours.

310:205-5-2. Fire sprinkler tagging requirements

(a) **White Sticker.** The white sticker shall be made from water durable material and permanently affixed to the riser of the fire protection system. The Fire Code Official shall affix this sticker at the time of acceptance. This sticker shall be permanently affixed above the data plate and be completed with waterproof ink. The following additional requirements shall apply to the use of the White Sticker:

(1) The sticker shall be a permanently affixed sticker(glued back) that is completed by the contractor. This installation sticker shall be affixed to the riser directly next to the data plate. This sticker will stay on the riser indefinitely. The sticker will be five inches in height and four inches in width.

(2) The sticker shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";

(B) The contractor's name;

(C) The contractor's complete address;

(D) The contractor's phone number;

(E) The contractor's Oklahoma State license number;

(F) The applicable version of NFPA 13 which the system was installed under;

(G) The date of installation;

(H) The technician's name responsible for installation; and

(I) The name of the Authority Having Jurisdiction(AHJ).

(3) All information shall be printed and be legible.

(4) Any subsequent addition(s) to the sprinkler shall require a new white sticker with the same data referenced above. The new sticker shall be placed on top of the previous sticker.

(b) **Traffic Light Bright Green Inspection/Service Tag.** The Traffic Light Bright Green Inspection/Service Tag shall be placed in a clear plastic sleeve and attached to the system after the system has been thoroughly inspected by a Licensed Fire Alarm Sprinkler Inspector or a Licensed Fire Alarm Sprinkler Company Manager of a licensed sprinkler company and found to be operational and in compliance with all applicable codes. The following additional requirements shall apply to the use of the Traffic Light Bright Green Inspection/Service Tag:

(1) After annual inspection or initial installation of a sprinkler system the Traffic Light Bright Green Inspection/Service Tag shall be affixed to the riser when no deficiencies are found and the system appears to be operational.

(2) A Traffic Light Bright Green Inspection/Service Tag shall be attached to the riser each time the system is serviced or repaired and the appropriate block punched. Any necessary comments shall be printed in the provided space on the rear of the tag.

(3) The Traffic Light Bright Green Inspection/Service Tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL;"

(B) The Licensed Fire Alarm Sprinkler Contractor's name and address;

(C) The Licensed Fire Alarm Sprinkler Contractor's Oklahoma State license number;

(D) The day, month and year inspected in print, and punched;

(E) The Fire Alarm Licensed Sprinkler Inspector or Licensed Fire Alarm Sprinkler Company Manager's signature; and,

(F) The type of work performed punched in the appropriate block for each type of work, installation, service and inspection performed.

(4) The tag shall be "traffic light bright" green in color, five and one fourth inches (5 1/4") in height and two and five-eights inches (2 5/8") in width.

(5) The tag shall be printed with dates and may be established for any six-year period. After each printing a copy of the tag shall be sent to the State Fire Marshall and the State Health Department Licensing Division.

(6) The tag can be removed only by a Licensed Sprinkler Inspector or a Licensed Company Manager of a licensed sprinkler company, an employee of the local or State Fire Marshal's office or an authorized representative of a governmental agency with regulatory authority. Unnecessary tags shall be removed and discarded each time a new tag is installed. The new tag shall be placed in the clear plastic sleeve.

(c) **Traffic Light Bright Yellow Inspection Tag.** The Traffic Light Bright Yellow Inspection Tag shall be placed in a clear plastic sleeve and be attached to the fire protection system after the system has been thoroughly inspected by a Licensed Fire Alarm Sprinkler Inspector or a Licensed Fire Alarm Sprinkler Company Manager of a licensed sprinkler company and found to contain minor deficiencies as per all applicable codes, but continues to be operational. The application of this inspection tag requires notification to the Fire Code Official within twenty-four (24) hours. The following additional requirements shall apply to the use of the Traffic Light Bright Yellow Inspection Tag:

(1) The Traffic Light Bright Yellow Inspection Tag cannot be removed and/or replaced by a Traffic Light Bright Green Inspection/Service Tag until the condition that caused or created the minor deficiencies has been corrected. The following deficiencies are appropriate for the use of the Traffic Light Bright Yellow Inspection Tag, provided the said deficiencies do not render the system inoperable:

(A) Minor loading of heads;

(B) Spare wrench or heads missing;

(C) Escutcheon rings missing;

(D) Minor head clearance violations (stock or storage);

(E) FDC cap missing;

(F) Glass on a gauge broken;

(G) Stock piled within three fee of a riser;

(H) Ceiling tiles missing, where there are pendant head;

(I) Improper spacing of sprinkler heads (due to structural modifications by tenant); and,

(J) Incorrect head rating or type (due to hazard classification change).

(2) The tag shall be attached to the riser.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL;"

(B) The Licensed Fire Alarm Sprinkler Contractor's name and address;

(C) The Licensed Fire Alarm Sprinkler Contractor's Oklahoma State license number;

(D) The day, month and year inspected in print, and punched; and,

(E) The Licensed Fire Alarm Sprinkler Inspector or Licensed Sprinkler Company Manager's signature.

(4) The tag shall be "traffic light bright" yellow in color, five and one-fourth inches (5 1/4") in height and two and five-eights inches (2 5/8") in width.

(5) The tag shall be printed with dates and may be established for any six-year period. After each printing a copy of the tag shall be sent to the State Fire Marshal and the State Health Department Licensing Division.

(6) The tag can be removed only by a Licensed Fire Alarm Sprinkler Inspector or a Licensed Fire Alarm Sprinkler Company Manager of a licensed sprinkler company, an employee of the local or State Fire Marshal's office or an authorized representative of a governmental agency with regulatory authority, after a determination of the system's condition has been made consistent with subsection (1) above. Unnecessary tags shall be removed and discarded each time a new tag is installed. The new tag shall be placed in the clear plastic sleeve.

(7) After the Traffic Light Bright Yellow Inspection Tag is placed on the sprinkler system the person or authority affixing the tag shall, in addition to notifying the Fire Code Official within twenty-four (24) hours, notify the building owner or agent immediately or as soon as practicable. Notification to the Fire Code Official shall be accomplished by transmission of a copy of the inspection form, preferably by telephonic facsimile transmission, that was completed by the person or authority affixing the tag. When the deficiencies are corrected the system shall be re-inspected and the appropriate colored tag placed upon the system.

(d) **Traffic Light Bright Red Inspection Tag.** The Traffic Light Bright Red Inspection Tag shall be placed in a clear plastic sleeve and be attached to the fire protection system after the system has been thoroughly inspected by a Licensed Fire Alarm Sprinkler Inspector or a Licensed Fire Sprinkler Company Manager of a licensed sprinkler company and found to contain deficiencies that could, or do in fact, render it inoperable. The application of this inspection tag requires notification to the Fire Code Official within twenty-four (24) hours. The following additional requirements shall apply to the use of the Traffic Light Bright Red Inspection Tag:

(1) The Traffic Light Bright Red Inspection Tag cannot be removed and or replaced by a Traffic Light Bright Yellow Inspection Tag or a Traffic Light Bright Green Inspection/Service Tag until the condition that caused it to be inoperable has been corrected. The following deficiencies are appropriate for the use of the Traffic Light Bright Red Inspection Tag:

(A) Extreme loading of heads with paint, grease or saw dust;

(B) Water turned off to the system;

(C) Frozen pipes;

(D) Inability of a licensed contractor to test the system because of obstructed drains;

(E) Flow signaling devices missing;

(F) Severe head obstruction;

(G) No FD connection;

(H) Uncovered areas that the system was designed to cover; and,

(I) Valves not properly secured or supervised.

(2) The tag shall be attached to the riser.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL;"

(B) The Licensed Fire Alarm Sprinkler Contractor's name and address;

(C) The Licensed Fire Alarm Sprinkler Contractor's Oklahoma State license number;

(D) The day, month and year inspected in print, and punched;

(E) The Licensed Fire Alarm Sprinkler Inspector or Licensed Fire Alarm Sprinkler Company Manager's signature; and,

(F) The appropriate deficiency check boxes and comment lines.

(4) The tag shall be "traffic light bright" red in color, five and one-fourth (5 1/4") inches in height and two and five-eights (2 5/8") inches in width.

(5) The tag shall be printed with dates and may be established for any six-year period. After each printing, a copy of the tag shall be sent to the State Fire Marshal and the State Health Department Licensing Division.

(6) The tag can be removed only by a Licensed Fire Alarm Sprinkler Inspector or a Licensed Fire Alarm Sprinkler Company Manager of a licensed sprinkler company, an employee of the local or State Fire Marshal's office or an authorized representative of a governmental agency with regulatory authority, after a determination of the system's condition has been made consistent subsection (1) above. Unnecessary tags shall be removed and discarded each time a new tag is installed. The new tag shall be placed in the clear plastic sleeve.

(7) After the Traffic Light Bright Red Inspection Tag is placed on the sprinkler system the person or authority affixing the tag shall, in addition to notifying the Fire Code Official within twenty-four (24) hours, notify the building owner or agent immediately or as soon as practicable but not later than twenty-four (24) hours. Notification to the Fire Code Official shall be accomplished by transmission of a copy of the inspection form, preferably by telephonic facsimile transmission, that was completed by the person or authority affixing the tag. When the deficiencies are corrected the system shall be re-inspected and the appropriate colored tag placed upon the system.

SUBCHAPTER 7. ENFORCEMENT

310:205-7-1. License revocation and suspension

(a) The employment or use of unlicensed individuals may be grounds to suspend, revoke, or deny renewal of the license of the person so employing or using unlicensed individuals.

(b) The repeated violation of any rule or provision of the Act, or the violation of multiple sections of this Chapter or provisions of the Act, may be grounds to suspend or revoke a licensee's license.

(c) Any person convicted in a court of competent jurisdiction of forgery, fraud, conspiracy to defraud, or any similar offense, or pleading guilty or nolo contendre to any such offense may be subject to license suspension or revocation.

(d) Any person failing to comply with a fine assessment or other administrative order of the Department within ninety (90) days of issuance of such assessment or order shall be subject to license suspension.

(e) Any person whose license is revoked pursuant to these rules may not perform alarm work before attaining licensure pursuant to OAC 310:205.

310:205-7-2. Prohibited acts

(a) No person, entity, or firm may perform burglar alarm, fire alarm, auto alarm, sprinkler alarm or monitoring work without first obtaining a license pursuant to these Rules.

(b) No person shall offer to engage in burglar alarm, fire alarm, auto alarm, sprinkler alarm or monitoring work during the period his license is suspended or revoked.

(c) No employing alarm firm shall employ or use an unlicensed person to perform alarm work.

(d) No person, entity, or firm may transfer a license or registration.

(e) No person, licensed pursuant to these Rules, shall enter into an agreement for the use of his license with any firm or person who is, or has been adjudicated to be, in violation of any provision of the Act, or whose license is currently suspended or has within the last year been revoked, unless or until otherwise approved by the Department.

(f) No person shall make a materially false or fraudulent statement in an application for license, engage in cheating, or otherwise commit an act in violation of title 59 O.S.1991, Section 1800.

[OAR Docket #04-1093; filed 6-4-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 256. FOOD SERVICE ESTABLISHMENTS

[OAR Docket #04-1094]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [AMENDED]
310:256-1-2. [AMENDED]
310:256-1-3. [AMENDED]
310:256-1-4. [AMENDED]
Subchapter 5. Food
310:256-5-45. [AMENDED]
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INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The intent is to provide public protection from foodborne infection by establishing prescriptive rules for operators of food service establishments. The proposal contains a Farmers' Market definition with language clarifying the responsibilities of the vendors, the Oklahoma State Department of Agriculture, Food and Forestry, and the Oklahoma State Department of Health. There are modifications to the language concerning raw animal foods, being cooked to heat all parts of the food to a temperature and for a time, which effectively eliminates pathogens. Other changes involve clarification to existing regulations regarding timely corrections pertaining to enforcement action.
CONTACT PERSON:
Ted Evans, Director, Consumer Protection Division, Consumer Health Services, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-9444, ext. 57944; facsimile: (405) 271-3458 electronic mail: tede@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 12, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

310:256-1-2. Definitions

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

"Accredited Program" means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals.

"Adulterated" means the definition in 63 O.S. 1991, Section 1-1109.

"Approved" means acceptable to the Department based on a determination of conformity with these rules.

"Beverage" means a liquid for drinking, including water.

"Bottled drinking water" means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, and includes bottled mineral water.

"Bulk food" means unpackaged or unwrapped, processed or unprocessed food in aggregate containers from which quantities desired by the consumer are withdrawn. For the purpose of this interpretation, the term does not include fresh fruits, fresh vegetables, nuts in the shell, and buffet areas in food-service establishments.

"Certification number" means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the National Shellfish Sanitation Program.

"Certified applicator" means any individual who is certified under 7 USC 136(i) or by the Oklahoma State Department of Agriculture as authorized to use or supervise the use of any pesticide that is classified for restricted use. Any applicator who holds or applies registered pesticides or uses dilutions of registered pesticides consistent with the product labeling only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served is not deemed to be a seller or distributor of pesticides.

"CIP" means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine. It does not include the cleaning of equipment such as band saws, slicers or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

"Code of Federal Regulations" or **"CFR"** means the compilation of the general and permanent rules adopted by federal executive departments and agencies.

"Color additive" means any material, not exempted under section 201(t) of the Federal Food, Drug, and Cosmetic

Act, that is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source and that, when added or applied to a food, drug, or cosmetic or to the human body or any part thereof, is capable (alone or through reaction with another substance) of imparting a color thereto. Substances capable of imparting a color to a container for foods, drugs, or cosmetics are not color additives unless the customary or reasonably foreseeable handling or use of the container may reasonably be expected to result in the transmittal of the color to the contents of the package or any part thereof. Food ingredients such as cherries, green or red peppers, chocolate, and orange juice which contribute their own natural color when mixed with other foods are not regarded as color additives; but where a food substance such as beet juice is deliberately used as a color, as in pink lemonade, it is a color additive. Food ingredients as authorized by a definitions and standard of identity prescribed by regulations pursuant to section 401 of the Federal Food, Drug, and Cosmetic Act are color additives, where the ingredients are specifically designated in the definitions and standards of identity as permitted for use for coloring purposes. An ingredient of an animal feed whose intended function is to impart, through the biological processes of the animal, a color to the meat, milk, or eggs of the animals is a color additive and is not exempt from the requirements of the statute. This definition shall apply whether or not such ingredient has nutritive or other functions in addition to the property of imparting color. An ingested drug the intended function of which is to impart color to the human body is a color additive. For the purposes of this part, the term color include black, white, and intermediate grays, but substances including migrants from packaging materials which do not contribute any color apparent to the naked eye are not color additives.

"Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing and includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, formed roast beef, gyros, ground beef, and sausage; and a mixture of two (2) or more types of meat that have been reduced in size and combined.

"Commissary" means a facility used for the servicing of pushcarts and mobile retail units and storage of packaged food and single service articles for use in those units.

"Common dining area" means a central location in a group residence where people gather to eat at mealtime but does not apply to a kitchenette or dining area located within private living quarters.

"Confirmed disease outbreak" means a foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative organism and epidemiological analysis implicates the food as the source of the illness.

"Consumer" means a person who takes possession of food, is not functioning in the capacity of an operator of a food service establishment or food processing plant, and does not offer the food for resale.

"Corrosion-resistant material" means a substance that maintains acceptable surface clean ability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the environment.

"Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

"Critical item" means a provision of these rules that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard.

"Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter is controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

"Customer self-service" means customer selection and packaging of a bulk food product from a product module.

"Department" means the Oklahoma State Department of Health.

"Display area" means a location or locations, including physical facilities and equipment, where bulk food is offered or customer self-service.

"Drinking water" means water that is traditionally known as "potable water." The term "water" except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "non-drinking" water.

"Dry storage area" means a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.

"Easily cleanable" means a surface that allows effective removal of soil by normal cleaning methods; is dependent on the material, design, construction, and installation of the surface; or varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.

"Easily movable" means an object mounted on casters, gliders, or rollers, or provided with a mechanical means to safely tilt a unit of equipment for cleaning, and has no utility connection, a utility connection that disconnects quickly or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and the adjacent area.

"Employee" means a person working in a food service establishment.

"EPA" means the U.S. Environmental Protection Agency.

"Equipment" means an article such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine. It does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or over wrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids. Food equipment that shall be certified by the National Sanitation Foundation (NSF) or an equivalent organization includes but is not limited to, floor mounted refrigerators, grills, warewashing machines,

griddles, fryers, ice machines, and steam tables; and counter mounted equipment such as slicers, grinders, food processors, crock-pot/hot holding units, and other similar food processing equipment.

"Farmers Market"means a designated area in which farmers, growers or producers from a defined region gather on a regularly scheduled basis to sell at retail non-potentially hazardous farm food products and whole shell eggs to the public. A portion of the raw food ingredients used by the individual vendor to produce a product must have been grown or raised by the vendor. The individual vendors wishing to process food as defined by Chapter 260 of the regulations must obtain a state food processor's license. A Farmers' Market must have written operational guidelines and a minimum of six vendors along with a designated market manager or advisory board who will be responsible for distribution of a copy of the guidelines to the vendors. Farmers' Markets must be registered with the Oklahoma Department of Agriculture, Food and Forestry and comply with the *Food Service Establishment Regulations*, Chapter 256, and/or *Good Manufacturing Practice, Chapter 260*. This definition does not include individual farmers who grow and sell unprocessed fruit and/or vegetables from the farm, roadside or truck. Any vendors who prepare or sell any potentially hazardous foods at the Farmers' Markets must abide by all applicable sections of Chapter 256 of the requlations including acquiring a license from the department.

"FDA" means the Food and Drug Administration.

"Fish" means fresh or saltwater finfish, molluscan shellfish, crustaceans, and other forms of aquatic animal life other than birds or mammals and includes any edible human food product derived in whole or in part from fish, including fish that has been processed in any manner.

"Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

"Food additive" means all substances not exempted by section 201(s) of the Federal Food, Drug, and Cosmetic Act, the intended use of which results or may reasonably be expected to result, directly or indirectly, either in their becoming a component of food or otherwise affecting the characteristics of food. A material used in the production of containers and packages is subject to the definition if it may reasonably be expected to become a component, or to affect the characteristics, directly or indirectly, of food packed in the container. "Affecting the characteristics of food" does not include such physical effects, as protecting contents of packages, preserving shape, and preventing moisture loss. If there is no migration of a packaging component from the package to the food, it does not become a component of the food and thus is not a food additive. A substance that does not become a component of food, but that is used, for example, in preparing an ingredient of the food to give a different flavor, texture, or other characteristic in the food, may be a food additive.

"Foodborne disease outbreak" means an incident in which two (2) or more persons experience a similar illness after ingestion of a common food.

"Food-contact surface" means a surface of equipment or a utensil with which food normally comes into contact.

"Food employee" means a person working with unpackaged food, food equipment or utensils, or food-contact surfaces.

"Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer.

"Food service establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption or any establishment that relinquishes possession of food to a consumer directly, or indirectly through a delivery service. It includes an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite location unless the vending location is licensed by the Department; and an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises.

"Food service establishment - fee exempt" means:

(A) A food establishment operated by a hospital, public school or government institution, which only prepares and serves food to its patients, students, employees, members or inmates and occasional visitors or guests; or

(B) Except as otherwise provided in paragraph (i) and (ii) below, a food establishment or operation conducted by a nonprofit civic, charitable or religious organization primarily for benevolent purposes.

(i) Fee exempt licensees shall comply with the applicable sections of these rules depending upon the type of operation involved; e.g., food service, retail food, combination, temporary, or mobile.

(ii) Fee exempt licenses, except temporary licenses, shall not expire but shall remain in full force and effect until revoked, suspended, annulled or withdrawn by the Commissioner in accordance with applicable law. A license is not required for a non-profit civic, charitable or religious organization, using non-paid persons to prepare or serve food on its behalf, for occasional fund-raising events sponsored and conducted by the organization, nor shall a license be required if such an organization, using non-paid persons, prepares and serves non-hazardous food at events sponsored or conducted by other organizations. Guidelines shall be provided for safeguarding the health of customers.

"Game animal" means an animal, the products of which are food, that is not included in the definitions of 2 O.S. 1991, §§ 6-183 et seq. (cattle, bison sheep, swine and goats). Equines are not included due to the provisions of 63 O.S. 1991, § 1-1135 (prohibits the use of equine for food), 2 O.S. 1991, § 6-251 et seq. (poultry, including any domestic bird whether live or dead), 2 O.S. 1991, §§ 6-280.1 et seq. (domesticated rabbits whether live or dead), 2 O.S. 1991, § 6-290.3 et seq. (exotic livestock including commercially raised livestock including but not limited to animals of the families bovidae,

cervidae, antilocapridae, or birds of the order casuariiformes or in the definitions of fish in this subchapter).

"General use pesticide" means a pesticide that is not classified by the EPA for restricted use as specified in 40 CFR 152.175.

"Grade A milk and milk products" means the milk and milk products at any stage from production through pasteurization and packaging, that are of the minimum quality and are produced, hauled, processed and distributed under conditions which substantially meet the requirements of the Oklahoma Milk and Milk Products Act (OS 2, Supp 1998, Sec 7-401 et seq).

"Group residence" means a private or public housing corporation or institutional facility that provides living quarters and meals or includes a domicile for unrelated persons.

"HACCP plan" means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

"Hazard" means a biological, chemical, or physical property that shall cause an unacceptable consumer health risk.

"Hermetically sealed container" means a receptacle that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

"Highly susceptible population" means a group that is more likely than other populations to experience foodborne disease; i.e., immunocompromised persons, older adults, or preschool age children in a facility that provides custodial care.

"Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries and the nature, severity, and duration of the anticipated injury.

"Impermeable" means incapable of allowing liquids to pass through the covering.

"Injected" means manipulating a meat so that infectious or toxigenic microorganisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the meat with juices which may be referred to as "injecting," "pinning," or "stitch pumping".

"Juice" means the aqueous liquid expressed or extracted from one or more fruits and vegetables, purees of the edible portions of one or more fruits and vegetables, or any concentrate of such liquid or puree.

"Kitchenware" means food preparation and storage utensils.

"Law" means local, state, and federal statutes, rules, and ordinances.

"License" means the document issued by the Department that authorizes a person to operate a food service establishment.

"Linens" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including gloves.

"Meat" means the flesh of animals used as food including the dressed flesh of cattle, bison, swine, sheep, goats, and other edible animals, except fish and poultry, that is offered for human consumption.

"mg/L" means milligrams per liter, which is the metric equivalent of parts per million (ppm).

"Misbranding" means the definition contained in 63 O.S. 1991, § 1-1110.

"Mobile food service establishment" means a facility that is vehicle mounted (has wheels and axles), is readily moveable and remains at one physical address for no more than 17 days at one time.

"Mobile pushcart" means a non-self propelled mobile food unit that can be manually moved, is limited to serving non-potentially hazardous foods, pre-packaged food or preparation and serving of frankfurters, and returns daily to a commissary.

"Mobile retail food establishment" means a facility that is vehicle mounted, remains at one physical address for no more than 17 days at a time and serves only prepackaged foods and dispensed drinks prepared in a facility that is regulated by the Good Manufacturing Practices in Title 21 of the CFR or regulated as a license holder pursuant to Chapter 310:260, Good Manufacturing ~~Prctice~~Practice Regulations, or this chapter.

"Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

"Packaged" means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food service establishment or a food processing plant. It does not include a wrapper, carryout box, or other non-durable container used to facilitate food protection during service and receipt of the food by the consumer.

"Person" means an association, corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

"Person in charge" means the individual present at a food service establishment who is responsible for the operation at the time of inspection.

"Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance.

"pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution.

"Physical facilities" means the structure and interior surfaces of a food service establishment including accessories.

"Physician" means a doctor of medicine (M.D.) or osteopathic medicine (D.0.) currently licensed to practice medicine and surgery in Oklahoma.

"Plumbing fixture" means a receptacle or device that is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system or discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

"Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

"Poisonous" or **"toxic materials"** means substances that are not intended for ingestion and are included in the following:

(A) Cleaners and sanitizers including cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(B) Pesticides including substances such as insecticides and rodenticides;

(C) Substances necessary for the operation and maintenance of the establishment including non-food grade lubricants and personal care items that may be deleterious to health; and

(D) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, including petroleum products and paints.

"Potentially hazardous food" means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, the growth and toxin production of ***Clostridium botulinum,*** or in raw shell eggs, the growth of ***Salmonella enteritidis*** Potentially hazardous foods include, but are not limited to, animal foods (a food of animal origin) that is raw or heat-treated, a food of plant origin that is heat-treated or consists of raw seed sprouts, cut melons, and garlic and oil mixtures that are not modified in a way that results in mixtures that do not support growth. Potentially hazardous food does not include air-cooled hard-boiled eggs with the shell intact, a food with a water activity of 0.85 or less, a food with a pH level of 4.6 or below when measured at seventy-five (75) degrees F, a food in an unopened, hermetically sealed container, a food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of **S. enteritidis** or **C. botulinum** can not occur, a food that may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness, but that does not support the rapid and progressive growth of infectious or toxigenic microorganisms.

"Poultry" *includes chickens, turkeys, ducks, geese and other domesticated bird used for human food and/or animal feed [OS 2, Supp 1998, Section 10-9.1].*

"Premises" means the physical facility, its contents, and the contiguous land or property under the control of the license holder; or the physical facility, its contents, and the contiguous land or property and its facilities and contents that are under the control of the license holder that may affect food service establishment personnel, facilities, or operations.

"Primal cut" means a basic major cut into which carcasses and sides of meat are separated.

"Product module" means a food contact container (multi-use or single-service) designed for customer self-service of bulk food by either mechanical or manual means.

"Public water system" means the definition in Chapter 630, "Public Water Supply Operation," of the Oklahoma Department of Environmental Quality.

"Ready-to-eat food" means food that is in a form that is edible without washing, cooking, or additional preparation by the food service establishment or the consumer and that is reasonably expected to be consumed in that form. It also includes unpackaged potentially hazardous food that is cooked to the temperature and time required for the specific food under OAC 310:256-5-45 through OAC 310:256-5-47; raw, washed, cut fruits and vegetables; whole, raw, fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet, or other food presented for consumption where further washing or cooking is not required and the rinds, peels, husks or shells have been removed.

"Reduced oxygen packaging" means the reduction of the amount of oxygen in a package by removing oxygen, displacing oxygen and replacing it with another gas or combination of gases, or otherwise controlling the oxygen content to a level below that normally found in the surrounding 21% oxygen atmosphere, and a process as specified in this definition that involves a food for which **Clostridium botulinum** is identified as a microbiological hazard in the final packaged form. Reduced oxygen packaging includes vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package, such as sous vide, modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes a reduction in the proportion of oxygen, a total replacement of oxygen, or an increase in the proportion of other gasses such as carbon dioxide or nitrogen. Reduced oxygen packaging also includes controlled atmosphere packaging, in which the atmosphere of a package of food is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring food, and impermeable packaging material.

"Refuse" means solid waste not carried by water through the sewage system.

"Restricted use pesticide" means a pesticide product that contains the active ingredients specified in 40 CFR 152.175 and that is limited to use by or under the direct supervision of a certified applicator.

"Safe material" means an article manufactured that shall not reasonably be expected to result, directly or indirectly, in becoming a component or otherwise affecting the characteristics of any food; an additive that is used as specified in Section 409 or 706 of the Federal Food, Drug, and Cosmetic Act; or other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

"Sanitization" means the application of cumulative heat or chemicals on cleaned food contact surfaces that, when evaluated for effectiveness, yield a reduction of five (5) logs, which

is equal to a 99.999 percent reduction, of representative disease microorganisms of public health importance.

"Sealed" means free of cracks or other openings that allows the entry or passage of moisture.

"Seasonal food service establishment" means a facility that is open no more than 150 consecutive days per physical address per year. The seasonal food service establishment is limited to serving coffee, snow cones, raw fruits, raw vegetables, nuts in the shell, and commercially bottled syrup, sorghum, honey, sweet cider, and other non-potentially hazardous foods.

"Seasonal fruit stand" means an establishment that is open no more than 150 consecutive days per physical address per year and is limited to whole, raw fruits and vegetables and unprocessed nuts in the shell.

"Service animal" means an animal such as a guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.

"Servicing area" means an operating base location to which a mobile food service establishment or transportation vehicle returns regularly for such things as discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

"Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and includes liquids containing chemicals in solution.

"Shellfish control authority" means a local, state, federal or foreign government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce.

"Shellstock" means raw, in-shell molluscan shellfish.

"Shucked shellfish" means molluscan shellfish that have one (1) or both shells removed.

"Single-service articles" means tableware, carryout utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one (1) time, one (1) person use after which they are intended for discard.

"Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded. Single use articles include items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and items which do not meet the materials, durability, strength, and cleanability specifications for multiuse utensils.

"Slacking" means the process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of minus twenty-three (23) degrees Celsius (minus 10 degrees Fahrenheit) to minus four (4) degrees Celsius (25 degrees Fahrenheit) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen foods.

"Smooth" means a food contact surface having a surface free of pits and inclusions with a clean ability equal to or exceeding that of one hundred (100) grit number three (3) stainless steel; a non-food-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and a floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

"Table-mounted equipment" means equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.

"Tableware" means eating, drinking, and serving utensils for table use, hollowware and plates.

"Temperature measuring device" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

"Temporary food service establishment" means a food service establishment where food is offered for sale or sold at retail from a fixed, temporary facility in conjunction with a single event or celebration not to exceed the duration of the event or celebration.

"USDA" means the United States Department of Agriculture.

"Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multi-use, single-service, or single-use gloves used in contact with food and food temperature-measuring devices.

"Variance" means a written document issued by the Department that authorizes a modification or waiver of one or more requirements of these rules if, in the opinion of the Department, a health hazard or nuisance will not result from the modification or waiver.

"Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

"Vending machine location" means the room, enclosure, space, or area where one (1) or more vending machines are installed and operated and includes the storage and servicing areas on the premises that are used in conjunction with the vending machines.

"Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.

"Water activity" means a measure of the free moisture in a food that is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol a_w.

"Whole-muscle intact beef" means whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef-steaks may be cut.

310:256-1-3. Incorporated by reference

Title 9, subpart B, subpart P, 308.3(d), 319, Title 7, Part 56 and 59, Title 21, 101, 130, 170 through 186, 1030.10, Title 40, 141, 152.1, 152.175, and 185, Code of Federal Regulations (CFR), as of April 1, 1997 are incorporated by reference. The Federal Food, Drug and Cosmetic Act Sections 201(s), 201(t), 401, and 403(Q)(3-5) are incorporated by reference. Seven United States Code 136(i) is incorporated by reference. The International Mechanical Code, Sections 507 and 509 are incorporated by reference. The United States Food and Drug Administration Grade A Pasteurized Milk Ordinance

is incorporated by reference. The United States Department of Agriculture List of Proprietary Substances and Non-food Compounds, Miscellaneous publication No. 1419 is incorporated by reference. The ~~united~~United States Food and Drug Administration Over the Counter Health-Care Antiseptic Drug Products monographs are incorporated by reference. The Interstate Shellfish Sanitation Conference National Shellfish Sanitation Program Manual of Operations is incorporated by reference. Oklahoma Statutes (1991) Title 2, 6-183 et seq., 6-251 et seq., 6-280.1 et seq., 6-290.3(6), Oklahoma Statutes (Supplement 1994) Title 2, 7-406 and 7-407 are incorporated by reference. Oklahoma State Department of Health Chapter 225 - "Bottled Drinking Water Regulations" is incorporated by reference.

310:256-1-4. Exemptions

The food service establishment definition does not include a food processing plant; a facility that sells only pre-packaged, non-potentially hazardous foods, which are incidental to the business, and does not have food in storage; a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale; a kitchen in a private home, such as a bed-and-breakfast operation that prepares and offers food to guests if the number of available guest bedrooms does not exceed three (3) and breakfast is the only meal offered; a lodging facility that is serving food in compliance with 310:285-3-14; ~~or~~ a private home that receives catered or home-delivered food~~.~~; or individual farmers' market vendors that are in compliance with the definition of a farmers' market and/or hold a food processors license from the Oklahoma Department of Health and/or egg dealers licensed by the Oklahoma Department of Agriculture, Food and Forestry.

SUBCHAPTER 5. FOOD

310:256-5-45. Raw animal foods*

(a) Except as specified in (b), (c), and (d) of this section, raw animal foods such as eggs, fish, poultry, meat, and foods containing these raw animal foods, shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods:

(1) Sixty-three (63) degrees Celsius (145 degrees Fahrenheit) or above for at least fifteen (15) seconds for:

(A) Raw shell eggs that are broken and prepared in response to a consumer's order and for immediate service; and

(B) Except as specified under (a)(2) and (a)(3) of this section, fish, pork, and meat including game animals commercially raised for food as specified under OAC 310:256-5-8(1)(A) & (B) and game animals under a voluntary inspection program as specified under OAC 310:256-5-8(2);

(2) Sixty-eight (68) degrees Celsius (155 degrees Fahrenheit) for fifteen (15) seconds or sixty-three (63) degrees Celsius (145 degrees Fahrenheit) for three (3) minutes or sixty-six (66) degrees Celsius (150 degrees Fahrenheit) for one (1) minute or 70 degrees Celsius (158 degrees Fahrenheit) for less than one second for ~~pork,~~ ratites~~,~~ and injected meats; ~~or for~~ the following if they are comminuted: ~~meat,~~ fish, meat, ~~or~~ game animals commercially raised for food as specified under OAC 310:256-5-8(1)(A) & (B), and game animals under a voluntary inspection program as specified under OAC 310:256-5-8(2) and raw eggs that are not prepared as specified under OAC 310:256-5-~~8~~45(a)(1)(A) or;

(3) Seventy-four (74) degrees Celsius (165 degrees Fahrenheit) or above for fifteen (15) seconds for poultry, wild game animals as specified under OAC 310:256-5-8(3), stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, or stuffing containing fish, meat, poultry, or ratites.

(b) Whole beef roasts and corned beef roasts shall be cooked:

(1) In an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature, as follows:

(A) In a still dry oven, one hundred seventy-seven (177) degrees Celsius (350 degrees Fahrenheit) or more if the roast weight is less than or equal to 4.5 kilograms (10 pounds) or one hundred twenty-one (121) degrees Celsius (250 degrees Fahrenheit)or more if the roast weight is greater than 4.5 kilograms (10 pounds); or

(B) In a convection oven, one hundred sixty-three (163) degrees Celsius (325 degrees Fahrenheit) or more if the roast weight is less than or equal to 4.5 kilograms (10 pounds) or one hundred twenty-one (121) degrees Celsius (250 degrees Fahrenheit)or more if the roast weight is greater than 4.5 kilograms (10 pounds); or

(C) In a high humidity oven in which relative humidity is greater than ninety percent (90%) for at least one (1) hour as measured in the cooking chamber or exit of the oven, or in a moisture-impermeable bag that provides one-hundred percent (100%) humidity, less than one hundred twenty-one degrees (121) degrees Celsius (250 degrees Fahrenheit; and

(2) To heat all parts of the food for 121 minutes at fifty-four (54) degrees Celsius (130 degrees Fahrenheit) or 77 minutes at fifty-six degrees Celsius (132 degrees Fahrenheit) or 47 minutes at fifty-seven degrees Celsius (134 degrees Fahrenheit) or 32 minutes at fifty-eight degrees Celsius (136 degrees Fahrenheit) or 19 minutes at fifty-nine degrees Celsius (138 degrees Fahrenheit) or 12 minutes at sixty (60) degrees Celsius (140 degrees Fahrenheit) or 8 minutes at sixty-one (61) degrees Celsius (142 degrees Fahrenheit) or 5 minutes at sixty-two (62) degrees Celsius (144 degrees Fahrenheit) or 3 minutes at sixty-three (63) degrees Celsius (145 degrees Fahrenheit).

(c) A raw or undercooked whole-muscle, intact beef steak may be served or offered for sale in a ready-to-eat form if:

(1) The food service establishment serves a population that is not a highly susceptible population;

(2) The steak is labeled to indicate that it meets the definition to "whole-muscle intact beef" as specified under OAC 310:256-5-2(e); and

(3)The steak is cooked on both the top and bottom to a surface temperature of sixty-three (63) degrees Celsius (145 degrees Fahrenheit) or above and a cooked color change is achieved on all external surfaces.

(d) A raw animal food such as raw egg; raw fish; raw marinated fish; raw molluscan shellfish; steak tartare; or a partially cooked food such as lightly cooked fish, rare meat other than whole-muscle intact beef as specified in OAC 310:256-5-45(c), and soft cooked eggs may be served or offered for sale in a ready-to-eat form and the consumer is informed as specified under OAC 310:256-5-67 that to ensure its safety, the food should be cooked as specified under OAC 310:256-5-45(a) if:

(1) The food service establishment serves a population that is not a highly susceptible population; or

(2) The Department grants a variance from OAC 310:256-5-45(a) or OAC 310:256-5-45(b) of this section as specified in OAC 310:256-15-3 based on a HACCP plan that:

(A) Is submitted by the license holder and approved by the Department;

(B) Documents scientific data or other information showing that a lesser time and temperature regimen results in a safe food; and

(C) Verifies that equipment and procedures for food preparation and training of food employees at the food service establishment meet the conditions of the variance.

SUBCHAPTER 15. COMPLIANCE AND ENFORCEMENT

310:256-15-35. Timely correction

(a) Except as specified in (b) of this section, a license holder shall at the time of inspection correct a critical violation and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit.

(b) The Department may agree to or specify a longer time frame, not to exceed ten (10) calendar days after the inspection, for the license holder to correct critical violations or HACCP plan deviations.

(c) If corrections are not made accordingly to OAC 310:256-15-35(a) and (b), then the facility is subject to enforcement action.

310:256-15-37. Time frame for correction

(a) The license holder shall correct non critical violations by a date and time agreed to or specified by the Department but no later than ninety (90) calendar days after the inspection.

(b) The Department may approve a compliance schedule that extends beyond the time limit specified if a written schedule of compliance is submitted by the license holder and no health hazard exists or will result from allowing an extended schedule for compliance.

(c) If corrections are not made accordingly to OAC 310:256-15-37(a) and (b), then the facility is subject to enforcement action.

[OAR Docket #04-1094; filed 6-4-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 265. HEARING AID DEALERS AND FITTERS ~~REGULATIONS~~

[OAR Docket #04-1095]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
310:265-1-2. [AMENDED]
310:265-1-3. [AMENDED]
Subchapter 3. Examinations
310:265-3-1. [AMENDED]
Subchapter 5. License Requirements
310:265-5-3. [AMENDED]
310:265-5-4. [AMENDED]
310:265-5-6. [AMENDED]
Subchapter 7. Regulatory Enforcement
310:265-7-1. [AMENDED]
310:265-7-2. [AMENDED]
310:265-7-3. [NEW]

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Oklahoma State Board of Health; Hearing Aid Dealers and Fitters, 63 O.S., Sections 1-1750 to 1-1754, as amended.

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The proposal amends Subchapters 1, 3, 5, and 7. Language is added regarding ambient noise levels for hearing testing, hearing screening, qualified waiver, practice of fitting and dealing in hearing aids, 30-day refund policy, not restricting an audiologist or physician from practicing their licensed profession. Language is added restricting an individual from taking the state hearing aid examination more than three times, providing for the suspension and revocation of the temporary permit of any person who fails the examination three times, requiring addresses for each business that a person engages in or intends to engage in the fitting or sale of hearing aids, requiring written receipt advising of right to cancel hearing aid purchase within 30 days, requiring questions or measurements to be documented in customer's file. Language

is amended to increase continuing education from eight hours to ten clock hours effective January 30, 2005. Language is added to suspend or revoke a license for conviction of a felony, for misrepresentation of any material fact, for not clearly portraying a business as a hearing aid business, for including an educational degree after a hearing aid dealer's and fitter's name and not qualifying the degree to its field or including the title "Dr." when the degree is a non-medical doctorate, for including any type of certification designation after a hearing aid dealer's and fitter's name that does not indicate the meaning of the certification designation, for offering a sale price or special promotional offer without providing complete details of the offer, for failing to provide information requested by the Department within 30 days. Language is added about selling a hearing instrument to a person under 18 without a medical evaluation from an otolaryngologist, stating a licensed audiologist should perform the evaluation and rehabilitation, prohibiting a licensed hearing aid dealer and fitter from inferring directly or indirectly in advertisement or written material that the hearing aid dealer and fitter is licensed as a physician or audiologist or performs diagnostic procedures to determine the cause of a hearing impairment. Language has been added establishing a complaint procedure for filing and investigating a complaint and for disciplinary action by the department.

CONTACT PERSON:

Rocky McElvany, Protective Health Services, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; telephone:(405) 271-9444, ext. 57935; facsimile: (405) 271-5286 electronic mail: rockym@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 12, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

310:265-1-2. Definitions

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

"Act" means those statutes relating to Hearing Aid Dealers and Fitters codified at 63 O.S. ~~Supplement 1990~~, Sections 1-1750 to 1-1754~~.~~, as amended.

"Board" means the State Board of Health.

"Commissioner" means the State Commissioner of Health or his/her authorized representative.

"Department" means the Oklahoma State Department of Health.

"Direct supervision" means a licensed hearing aid dealer and fitter shall accompany a temporary permit holder anytime the permit holder is performing the practice of fitting and dealing in hearing aids.

"Established procedures and instrumentation in fitting of hearing aids" means a minimum requirement all hearing tests shall include both air-conduction and bone conduction threshold measurements except in the case of a re-test when there is less than a fifteen (15) dB loss between the current air-conduction threshold and the previous air-conduction threshold and the previous tests showed the loss to be sensorineural. Further, all instruments used to measure thresholds shall be annually certified to meet American National Standard Specifications for Audiometer, S3.6-1969 or a standard which supersedes it. In addition, some form of live voice or recorded voice testing must be made to obtain at least a subjective evaluation of the individual's ability to discriminate. In the case of live voice testing, the tests should be run without visual cue. A hearing aid of similar characteristics can be re-fit to an individual without a hearing test if this is done within six (6) months of the original fitting and original hearing test. Hearing testing for the purpose of fitting hearing aids shall not be conducted where ambient noise levels exceed 45 dB measured on a slow weighted dB (a) scale. If the testing environment exceeds 45 dB, the testing shall be considered a "Hearing Screening" and shall not be utilized to determine the auditory thresholds in the selection of a hearing aid unless a qualified waiver is executed by the person supplied with a hearing aid.

"Hearing aid" means any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments or accessories, but excluding earmolds, batteries, and cords; provided that this definition shall not include lenses or spectacle frame fronts for eyeglass-type hearing aids; except in the case of spectacle frame fronts which include electrical wiring as part of the hearing aid.

"Hearing Screening" means a binary pure tone screening at a preset intensity level for the purpose of determining if an individual screened needs further testing prior to the selection or sale of a hearing aid. A licensee may conduct a hearing screening at a health fair, state fair, public location or similar facility, but due to excessive background noise commonly found in these environments, measurement of auditory thresholds are not acceptable. A licensee should present to the person receiving the "Hearing Screening" a written statement at the time of the screening containing the following provisions: Results of a "Hearing Screening" are not a medical or audiological evaluation of your ear nor a diagnosis of a hearing disorder. You passed failed (circle one) the hearing screening. Failing a screening is an indication you need further testing prior to the selection of a hearing aid.

"License" means a license issued by the Commissioner to hearing aid dealers and fitters.

"Practice of fitting and dealing in hearing aids" means ~~the~~ those practices used for the purpose of selection, adaptation and sale of hearing aids including direct observation of the ear and the counseling and instruction pertaining thereto. The practice also includes the testing of human hearing for these purposes and the making of impressions for earmolds.

"Qualified waiver" means a written acknowledgment endorsed by the person supplied with a hearing aid, or his lawfully appointed guardian, that indicates that the person supplied with a hearing aid was advised that the ambient noise level of the testing environment used to fit a hearing aid exceeded 45 dB on a slow weighted dB (a) scale and that the hearing test conducted could result in an inappropriately fitted hearing aid. The waiver must be accompanied by written documentation from a competent medical authority that the person supplied with a hearing aid is not ambulatory and any transport of that person would create a serious risk of harm or cause an imminent threat to their health and well being.

"Sell" or "sale" means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or dealers.

"Seller" means any person who dispenses a hearing aid to any member of the consuming public.

"Temporary permit" means a permit issued while the applicant is training to become a licensed hearing aid dealer or fitter.

"30-day Refund Policy" means the Hearing Aid Dealer and Fitter may retain a cancellation fee of 10% or $150 per aid, whichever is less, of the purchase price of the hearing aid(s). The guarantee must entitle the purchaser, upon cancellation for any reason within the 30-day period after taking possession of the hearing aid(s), to receive the full refund less the cancellation fee. Said refund shall be provided to the purchaser within 30 days after the return of the hearing aid(s). If the hearing aid must be repaired, remade or adjusted during the 30-day refund period, the running of the 30-day period is tolled for any period during which the hearing aid provider takes possession or control of a hearing aid after its original delivery.

310:265-1-3. Exemptions

(a) This act is not intended to prevent any person from engaging in the practice of measuring human hearing or making and fitting earmolds for the purpose of selection of hearing aids provided such person or organization employing such person does not sell hearing aids.

(b) Nothing in this act may be construed as preventing or restricting a person licensed by this state as an audiologist or physician from practicing the profession for which licensed.

SUBCHAPTER 3. EXAMINATIONS

310:265-3-1. Qualifications

(a) Applicants may obtain a hearing aid dealer or fitter license by successfully passing qualifying examinations, provided the applicant:

(1) Is at least eighteen (18) years of age;

(2) Is of good moral character. A criminal record shall not in itself bar an applicant from licensing, but evidence of such record may be considered along with other information in determining whether or not the applicant is of good moral character.

(3) Has an education equivalent to a four-year course in an accredited high school; and

(4) Has filed with the Commissioner an application for examination and paid the examination fee of Ninety-five Dollars ($95.00).

(b) An applicant for license by examination shall appear at a time, place and before such persons as the Commissioner may designate to be examined to demonstrate that he/she is qualified to practice the fitting and sale of hearing aids. Nothing in this examination shall imply that the applicant shall possess the degree of medical competence normally expected of physicians.

(c) The Commissioner shall give examination as required to permit applicants to be examined within six (6) months following the submission of the official application form.

(d) Successfully passing the examination means passing each of the sections based on the following criteria. When a passing score is obtained for any section, that section will not have to be taken again.

(1) Passing score for the written examination is established by the examination provider, International Institute for Hearing Instrument Studies.

(2) Passing score for the Oklahoma Audiometric Practical examination is 70% or above.

(3) Passing score for the Oklahoma Hearing Aid Rules examination is 70% or above.

(4) Passing score for the Oklahoma Ear Impression practical examination is 70% or above.

(5) Passing score for the Hearing Aid Trouble Shooting Practical Examination is 70% or above.

(e) No person may take any portion of the state examination more than three (3) times. Any person failing the state licensing examination three times shall not be allowed to apply for an Oklahoma Hearing Aid Dealers and Fitters License for five (5) years from their application date. If a person fails any portion of the state licensing examination three (3) times, the Department shall summarily suspend and seek permanent revocation of the person's current temporary hearing aid dealers and fitters permit.

SUBCHAPTER 5. LICENSE REQUIREMENTS

310:265-5-3. Address of place of business

(a) A person who holds a license shall notify the Commissioner in writing of ~~the regular~~ each address of the ~~place or places~~ business(es) where he/she engages or intends to engage in the fitting or the sale of hearing aids. A post office box number by itself does not fulfill this requirement.

(b) The Commissioner shall keep a record of the place of business of licensees.

(c) Any notice required to be given by the Commissioner to a person who holds a license shall be mailed to him/her by certified mail at the address of the last place of business of which he/she has notified the Commissioner.

(d) Where more than one (1) office is operated by the licensee, duplicate licenses shall be issued by the Commissioner for posting in each location. The licensee must send a written request for a duplicate license indicating the address of the place of business where the license will be posted.

310:265-5-4. Receipts

(a) Any person who practices the fitting and sale of hearing aids shall deliver to each person supplied with a hearing aid a receipt which shall contain the licensee's signature and show his business address, (a post office box number by itself does not meet the requirement of a business address), and number of his State license, together with specifications as to the make and model of the hearing aid furnished, with full terms of

the sale clearly stated. If an aid which is not new is sold, the receipt shall be clearly marked as "used" or "reconditioned", whichever is applicable, with terms of guarantee, if any.

(b) Such receipt shall bear in no smaller type than the largest used in the body copy portion the following: "Any examination or representation made by a licensed hearing aid dealer and fitter in connection with the fitting and selling of this hearing aid is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefore must not be regarded as medical opinion or advice. Further, it is recommended that medical advice from a licensed physician should be obtained."

(c) No receipt for a hearing aid shall be valid without the original signature of a licensed hearing aid dealer and fitter. Said receipt shall constitute a contract of sale between the hearing aid dealer and fitter and the purchaser. The holder of a temporary license may not issue a receipt unless the original signature of the direct supervisor also appears on the receipt. Said receipt shall have the state license number of both the licensed hearing aid dealer and fitter and the temporary licensed person.

(d) *The hearing aid provider shall provide a written receipt or contract to the purchaser that includes, in immediate proximity to the space reserved for the signature of the purchaser, the following specific statement in all bold-faced type capital letters no smaller than the largest print used in the written receipt or contract:*

OKLAHOMA STATE LAW GIVES THE PURCHASER THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON BY RETURNING THE HEARING AID TO THE HEARING AID PROVIDER AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRTIETH CALENDAR DAY AFTER RECEIPT OF THE HEARING AID.

BY LAW, THE HEARING AID PROVIDER MAY BE ENTITLED TO A CANCELLATION FEE NOT TO EXCEED TEN PER CENT (10%) OF THE TOTAL PURCHASE PRICE FOR THE HEARING AID OR ONE HUNDRED FIFTY DOLLARS ($150.00) PER HEARING AID, WHICHEVER IS LESS, TO COVER THE COSTS INCURRED BY THE HEARING AID PROVIDER.

IF THE PURCHASER RETURNS THE HEARING AID WITHIN THE THIRTY-DAY PERIOD, THE PURCHASER WILL RECEIVE A REFUND OF $ .00. (HEARING AID PROVIDER MUST INSERT THE DOLLAR AMOUNT OF THE REFUND). IF THE HEARING AID PROVIDER FAILS TO COMPLY WITH THIS PROVISION, COMPLAINTS SHOULD BE FORWARDED TO:

OKLAHOMA STATE DEPARTMENT OF HEALTH
OCCUPATIONAL LICENSING DIVISION
1000 N.E. 10TH STREET
OKLAHOMA CITY, OKLAHOMA 73117
[15:764.1(A)(3)]

(e) In each customer/patient file or permanent record, the following questions or measurements will be documented for the client:

(1) Does the client have a visible, congenital or deformity of the ear?

(2) Does the client have active, or a history of, drainage from the ear within the last 90 days?

(3) Does the client have acute or chronic dizziness?

(4) Does the client have unilateral hearing loss of a sudden or recent onset within the previous 90 days?

(5) Does the client have a history of sudden or rapidly progressive hearing loss within the previous 90 days?

(6) Does the client have an Audiometric Air Bone Gap equal to or greater than 15 decibels at 500 Hertz, 1000 Hertz and 2000 Hertz?

(7) Does the client have visible evidence of significant cerumen accumulation or a foreign body in the ear canal?

(8) Does the client have pain or discomfort in the ear?

310:265-5-6. Continuing education requirements

(a) These requirements for continuing education will become effective on ~~January 1, 1982~~ January 30, 2005.

(b) Each applicant for renewal of a hearing aid dealer or fitter license must submit written evidence showing he/she has completed ~~eight (8)~~ ten (10) clock hours of continuing education, completed during the previous year and pertaining to the hearing sciences, as approved by the National Institute of Hearing Instruments Studies or an equivalent; or have had the curriculum approved by the Department.

(c) **Continuing education course approval by the Department.** An entity which desires to sponsor education to licensees in compliance with the continuing education requirements of subsection (b) of this Section shall file an application for approval on the form prescribed by the Department. An application shall include a list of the course instructors and their qualifications, an agenda detailing the material to be presented, the location of the training, the program objectives, and the number of clock hours of classroom and supervised instruction. After completion of the course, the entity shall submit sign-in sheets for all sessions which require a signature and social security number or state license number of each person in attendance. The program shall verify the total number of continuing education hours completed by each attendee. All programs shall be presented as submitted unless changes have been approved prior to presentation. Changes which occur during the presentation shall be submitted to the Department within ten (10) days of the training session for review by the Department. Failure to obtain approval of changes may result in loss of certification.

(d) **Approval requirements for continuing education**

(1) All material and information presented shall pertain to the hearing aid dealers and fitters profession.

(2) The training location must be outside the regular work place or after hours.

(3) All training shall be generic and non-proprietary in nature.

SUBCHAPTER 7. REGULATORY ENFORCEMENT

310:265-7-1. Suspension or revocation of licenses

(a) The Commissioner shall have the power and duty to suspend or revoke the license of any person registered under this act, after a hearing, and after an administrative determination that such licensee has violated or has failed to comply with any of the provisions of this act or any regulation adopted thereunder. The Commissioner shall have the power to reinstate any such suspended or revoked licenses, upon a satisfactory and acceptable showing and assurance that there was compliance by the said licensee with provisions of these regulations and that conformity and compliance therewith will be continuous. Any action taken relative to the denial, suspension or revocation of a license shall conform to the Oklahoma Administrative Procedures Act.

(b) Any person registered under these regulations may have his license revoked or suspended for a fixed period by the Commissioner for any of the following causes:

(1) The conviction of any crime involving moral turpitude or a felony. The record of conviction, or a certified copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence of such conviction. Provided that upon successful completion of the sentence of the court, the person may again be eligible for licensing by the Commissioner.

(2) Procuring of license by fraud or deceit practiced upon the Commissioner.

(3) Unethical conduct, including, but not limited to:

(A) The obtaining of any fee or the making of any sale by fraud or misrepresentation;

(B) Knowingly employing directly or indirectly any suspended or unregistered person to perform any work covered by these regulations;

(C) Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceptive or untruthful~~;~~, or which may include making any misrepresentation of material fact, in whole or in part, or any claim that the services performed or the materials used are superior to that which is ordinarily performed or used in the business unless such claims can be documented as truthful and not misleading;

(D) Advertising a particular model or type of hearing aid for sale and/or advertising a particular sales price, where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised;

(E) Representing that the service or advice of a person licensed to practice medicine or audiology will be used or made available in the selection, fitting, adjustment, maintenance or repair of hearing aids when that is not true, or holding oneself out to the public by any title or description of services incorporating the terms "doctor", "audiologist", "audiology", "clinic", "hearing clinic", "hearing center" or similar words, abbreviations or symbols which tend to connote the medical or audiology profession when such is not accurate~~;~~. All hearing aid dealers and fitters operating within the State of Oklahoma must use a trade name or business name which clearly and fairly portrays the business as a hearing aid business, unless the trade or business name was used or employed by an entity that was a going concern as a hearing aid business on or before August 1, 2004. All changes in trade or business names made after August 1, 2004, must comply with the clear and fair trade or business name requirement of this subsection;

(F) Habitual intemperance;

(G) Gross immorality;

(H) Permitting another's use of a license;

(I) Advertising a manufacturer's product or using a manufacturer's name or trademark which implies a relationship with the manufacturer that does not exist; ~~or~~

(J) Directly or indirectly giving or offering to give, or permitting or causing to be given, money or anything of value to any person who advises another in a professional capacity as an inducement to influence him or have him influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dealer or fitter, or influencing persons to refrain from dealing in the products of competitors~~.~~;

(K) Including an educational degree after the hearing aid dealer's or fitter's name but does not qualify the degree as to its field, or includes the title "Dr." where the degree is a non-medical doctorate and the advertisement does not disclose that fact;

(L) Including any type of certification designation after the hearing aid dealer's or fitter's name, but does not append to his name, so written or printed in the same font size as his name, appropriate and easily understood words which clearly show and indicate the meaning of the certification designation and the group that provides the certification. Example: John Doe, BC-HIS, Board Certified in Hearing Instrument Sciences, or the BC-HIS logo.

(M) Advertising an offered or sale price of a hearing aid without the make and model of the hearing aid, the price of the added features of the hearing aid, the price of any additional testing or fitting fees, the manufacturer's suggested retail price and discounted price, if any of the above are to be incurred. Advertisements shall be written in a manner to be clear, honest and easily understood by the public; or

(N) Advertising a special promotional offer such as buy one get one free or a purchase with any rebate without also providing the details of the offer in the advertisement.

(4) Engaging in the fitting and sale of hearing aids under false name or alias with fraudulent intent.

(5) Selling a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids.

(6) Gross incompetence or negligence in fitting and selling hearing aids, including issuing a receipt to the purchaser which does not conform to OAC 310:265.

(7) Violating any provisions of the Law, these Regulations, or Federal regulations pertaining to the sale and fitting of hearing aids.

(8) Failing to provide information in response to a written request made by the department within 30 days.

310:265-7-2. Prohibited acts

(a) No person shall:

(1) Sell, barter, or offer to sell or barter a license;

(2) Purchase or procure by barter a license with intent to use it as evidence of the holder's qualification to practice the fitting and sale of hearing aids;

(3) Alter a license with fraudulent intent;

(4) Use or attempt to use as a valid license which has been purchased, fraudulently obtained, counterfeited or materially altered;

(5) Willfully make a false statement in an application for a license or application for renewal of a license;

(6) Engage in the practice of fitting and dealing in hearing aids with a temporary permit unless under the direct supervision of an Oklahoma Licensed Hearing Aid Dealer and Fitter; or

(7) Allow a temporary permit holder to engage in the practice of fitting and dealing in hearing aids unless under the direct supervision of an Oklahoma Licensed Hearing Aid Dealer and Fitter.

(8) Sell a hearing instrument to a person under eighteen (18) years of age unless the prospective user, parent or guardian has presented to the licensee a medical evaluation signed by a board eligible or board certified otolaryngologist that states the client may be considered a candidate for a hearing instrument. This requirement may be waived if a otolaryngologist is not available within 100 miles of the person's residence and a licensed physician provides the medical evaluation. This evaluation must have taken place within the preceding six (6) months of the testing and fitting. A licensed audiologist should perform the evaluation and rehabilitation.

(9) An Oklahoma licensed hearing aid dealer and fitter shall not infer directly or indirectly in advertisement or written material that the hearing aid dealer and fitter is licensed as a physician or audiologist or performs diagnostic procedures to determine the cause of a hearing impairment.

(b) Violations of this Section may be brought pursuant to Title 63 O.S. Section 1-1701.1A (Administrative penalty), as amended.

310:265-7-3. Complaint procedure

(a) **Purpose.** The purpose of this section is to specify the administration and investigation of complaints and the filing of disciplinary actions against hearing aid dealers and fitters who hold a license or temporary permit in Oklahoma, or against persons who sell hearing aids in Oklahoma without a license or temporary permit and who are not otherwise exempt from the license requirements.

(b) **Complaints**

(1) Any person may file a complaint against a licensed hearing aid dealer and fitter or temporary licensed dealer and fitter or a person selling or fitting hearing aids. A person desiring to report a complaint or violation by a licensee or seller shall notify the Department in writing. 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 Hearing Aid Advisory Council for consultation.

(2) The Department may request a written response to the complaint from the licensee to determine if the complainant has exhausted their remedy under the sales agreement.

(3) Except as provided in Paragraph (2) of this subsection, the complaint and the identity of the complainant may be confidential and unavailable for public inspection or disclosure unless otherwise required by law. The Department shall confirm whether or not a complaint has been received.

(c) **Investigation.** If the Department determines that a possible violation of the Act or this Chapter has occurred, the Department may commence an investigation of the complaint.

(d) **Filing of an action.** The Department may begin a disciplinary action against a person who holds a license or temporary permit as a hearing aid dealer and fitter or a person selling hearing aids who is not exempt from licensure. The Department shall specifically state the violation(s) and shall request the appropriate remedy. Remedies include revocation of a license, suspension of a license, probation of a licensee, an administrative penalty, injunctive relief, or a combination of the foregoing remedies.

(e) Notwithstanding subsection (d) of this section, the Commissioner of Health may refer the results of an investigation, or complaint, received by the Department to the appropriate official(s) in consideration for criminal prosecution.

[OAR Docket #04-1095; filed 6-4-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 276. HOME INSPECTION INDUSTRY

[OAR Docket #04-1096]

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Subchapter 9. Examination Applications, Examinations, Course Approval Requirements, Instructor Requirements, Continuing Education,

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This proposal amends Subchapter 1 by adding language to define client. Subchapter 9 is amended to change the waiting period between each home inspection license examination to thirty (30) days.

CONTACT PERSON:
Rocky McElvany, Chief, Consumer Health Services, Protective Health Services, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299, telephone:(405) 271-5243; facsimile: (405) 271-5286; electronic mail: rockym@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 12, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

310:276-1-2. 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 Home Inspection Licensing Act, found at 59 O.S. § 858.621 et seq.

"Alarm systems" means warning devices, installed or free-standing, including but not limited to: carbon monoxide detectors, flue gas and other spillage detectors, security equipment, ejector pumps and smoke alarms.

"Applicant" means any person applying for an examination for a license or registration under the Act.

"Architectural service" means any practice involving the art and science of building design for construction of any structure or grouping of structures and the use of space within and surrounding the structures or the design for construction, including but not specifically limited to, schematic design, design development, preparation of construction contract documents, and administration of the construction contract.

"Board" means the State Board of Health.

"Certificates of course completion" means a document acceptable to the Committee which signifies satisfactory completion of course work and reflects the hours of credit earned.

"Cheating" means any unapproved deviation from any official instruction given before, during or after a home inspector license examination for the purpose of affecting or influencing the examination results or otherwise providing an undue advantage to any examinee.

"Classroom hour" is equal to fifty (50) minutes out of each sixty (60) minute segment.

"Client" means a person with a direct material interest in the outcome of a home inspection who hires and compensates a home inspector for the performance of a home inspection.

"Commissioner" means the State Commissioner of Health.

"Committee" means the Committee of Home Inspector Examiners established by the Home Inspector Licensing Act, 59 O.S. 858-624.

"Component" means a part of a system.

"Continuing education" means education that is approved by the Committee to satisfy education requirements in order to renew licensure as a home inspector.

"Continuing education verification form" means a form acceptable to the Committee and completed by the course provider, that documents compliance with the continuing education requirements.

"Decorative" means ornamental; not required for the operation of the essential systems and components of a home.

"Defect" means a condition, malfunction or problem, which is not decorative, that would have a materially adverse effect on the value of a system or component, or would impair the health or safety of the occupants or client.

"Department" means the Oklahoma State Department of Health.

"Describe" means to report a system or component by its type or other observed, significant characteristics to distinguish it from other systems or components.

"Dismantle" means to take apart or remove any component, device or piece of equipment that would not be taken apart or removed by a homeowner in the course of normal and routine homeowner maintenance.

"Engineering service" means any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such professional service or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with the specifications and design, in conjunction with structures, buildings, machines, equipment, works or processes.

"Further evaluation" means examination and analysis by a qualified professional, tradesman or service technician beyond that provided by the home inspection.

"Home" or **"residence"** means any dwelling, from one to four (1-4) units in design, intended principally for residential purposes by one (1) or more individuals.

"Home inspection" or "inspection" *means a visual examination of any or all of the readily accessible physical real property and improvements to real property consisting of four or fewer dwelling units, including structural, lot drainage, roof, electrical, plumbing, heating and air conditioning and such other areas of concern as are specified in writing to determine if performance is as intended*.

"Home inspection license unit" means the staff and administrative support unit to the Committee of Home Inspector Examiners.

"Home inspection report" means a written opinion of the functional and physical condition of property written by the licensed home inspector pursuant to home inspection.

"Home inspector" means an individual licensed pursuant to the Home Inspection Licensing Act who, for compensation, conducts home inspections.

"Inspect" means to examine readily accessible systems and components of a building in accordance with these Standards of Practice, using normal operating controls and opening readily openable access panels.

"Installed" means attached such that removal requires tools.

"Instructor" means a person who presents course materials approved for qualifying education and continuing education credit hours that has the experience, training, and/or education in the course subject matter and has been approved by the Committee.

"Normal working order" means the system or component functions without defect for the primary purpose and manner for which it was installed.

"Normal operating controls" means devices such as thermostats, switches or valves intended to be operated by the homeowner.

"Provider" means a person, corporation, professional association or its local affiliates, or any other entity, which is approved by the Committee and provides approved qualifying and continuing education to home inspectors.

"Readily accessible" means available for visual inspection without requiring moving of personal property, dismantling, destructive measures, or any action which will likely involve risk to persons or property.

"Readily openable access panel" means a panel provided for homeowner inspection and maintenance that is within normal reach, can be removed by one person, and is not sealed in place.

"Reciprocity agreement" means an agreement whereby a home inspector who is licensed in other states with substantially similar or greater licensure requirements may be licensed in this State after payment of a fee for licensing by reciprocity.

"Recreational facilities" means spas, saunas, steam baths, swimming pools, exercise, entertainment, athletic, playground or other similar equipment and associated accessories.

"Report" means to communicate in writing.

"Representative number" means one component per room for multiple similar interior components such as windows and electric outlets; one component on each side of the building for multiple similar exterior components.

"Roof drainage systems" means components used to carry water off a roof and away from a building.

"Shut down" means a state in which a system or component cannot be operated by normal operating controls.

"Solid fuel burning appliances" means a hearth and fire chamber or similar prepared place in which a fire may be built and which is built in conjunction with a chimney; or a listed assembly of a fire chamber, its chimney and related factory-made parts designed for unit assembly without requiring field construction.

"Structural component" means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).

"System" means a combination of interacting or interdependent components, assembled to carry out one or more functions.

"Technically exhaustive" means an investigation that involves dismantling, the extensive use of advanced techniques, measurements, instruments, testing, calculations, or other means.

"Under-floor crawl space" means the area within the confines of the foundation and between the ground and the underside of the floor.

"Unsafe" means a condition in a readily accessible, installed system or component which is judged to be a significant risk of personal injury during normal operation. The risk may be due to damage, deterioration, improper installation or a change in accepted residential construction standards.

"Wiring methods" means identification of electrical conductors or wires by their general type, such as "non-metallic sheathed cable" ("Romex"), "armored cable" ("bx") or "knob and tube", etc.

SUBCHAPTER 9. EXAMINATION APPLICATIONS, EXAMINATIONS, COURSE APPROVAL REQUIREMENTS, INSTRUCTOR REQUIREMENTS, CONTINUING EDUCATION, DENIED APPLICATION APPEAL, SUBMISSION OF RECORDS, AND CONTINUING EDUCATION RECIPROCITY

310:276-9-2. Examinations

(a) Home inspection license examinations may include, without limitation, written questions, consisting of open book, closed book and problems, based on current national standards, and other related questions.

(b) The maximum grade value of each part of the examination shall be 100 points. A passing score is 70% or more on each part.

(c) Each applicant shall pay all examination and license fees before undertaking any examination. Reexamination fees shall be the same as the initial examination fees.

(d) Unless authorized by the Committee, only examinees shall be permitted in the examination area.
(e) Applicants shall present positive identification before undertaking an examination.
(f) Any applicant who fails ~~a~~an ~~first~~ examination must wait thirty (30) days before retaking the home inspection examination. ~~All subsequent failures will result in a waiting period of at least ninety (90) days.~~
(g) An examinee cheating or fraudulently representing an applicant shall immediately be expelled from the examination. A written record of the proceedings shall be made and become a part of the applicant's file. The Committee shall determine when the applicant may retake the exam, which time shall be no fewer than three hundred sixty-five (365) days.

[OAR Docket #04-1096; filed 6-4-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 400. LICENSED MARITAL AND FAMILY THERAPISTS

[OAR Docket #04-1097]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Rules of Professional Conduct
310:400-5-3. [AMENDED]
Subchapter 7. Application for Licensure
310:400-7-2.1. [NEW]
Subchapter 17. Enforcement
310:400-17-4.1. [AMENDED]
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ANALYSIS:
The language added to Subchapter 5 and amending 310:400-5-3 provides minimum requirements for cooperation by licensees, candidates for licensure, and applicants for licensure with investigations conducted by the Department involving alleged misconduct. The new language added to Subchapter 7 provides for clarification regarding the re-application process for licensure after an application has been denied by the Department. The language added to Subchapter 17 and amending 310:400-17-4 provides for summary suspension of licensure when the Department establishes probable cause that a licensee or candidate has committed: 1) misconduct involving an improper dual relationship with a client, 2) been convicted of a felony or a misdemeanor that is related to qualification or function, or 3) refused to cooperate with an investigation involving misconduct by a licensee or candidate.
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 12, 2004:

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.
(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.

(o) An LMFT, LMFT candidate, or applicant for LMFT licensure, in connection with a license application or an investigation conducted by the Department pursuant to OAC 310:400-17-3, shall not:

(1) knowingly make a false statement of material fact;

(2) fail to disclose a fact necessary to correct a misapprehension known by the LMFT, LMFT candidate or applicant for licensure to have arisen in the application or the matter under investigation; or

(3) fail to respond to a demand for information made by the Department or any designated representative thereof, unless a request for a protective order has been first made pursuant to the provisions of Chapter 2 of this title, in which case the LMFT, LMFT candidate or applicant may await the decision concerning the issuance or denial of a protective order before making any response.

SUBCHAPTER 7. APPLICATION FOR LICENSURE

310:400-7-2.1. Re-application procedures

(a) **Re-application for permanently expired license.**

(1) Re-application after license expires for non-renewal shall include the following documents:

(A) Application form,
(B) Documents of Recommendation,
(C) Supervision Agreement, and
(D) New Application Fee.

(2) Applicant shall re-take two examinations:

(A) The Licensing Examination in Marital and Family Therapy (Professional Examination Service) or another equivalent examination as determined by the Department, and

(B) An oral and/or written examination covering psychopathology and the LMFT law and regulations as approved by the Department.

(3) The Internship/Practicum Documentation Form on file shall carry over to a new application.

(4) All previously submitted and approved Supervised Experience shall carry over to a new application.

(5) Applicant shall obtain approved supervision until the exams are taken and passed. Failure to do so may constitute a violation of OAC Rule 310:400-17-7.

(b) **Re-application for revoked license.**

(1) Re-application after license is revoked as a result of administrative action shall include the following documents:

(A) Application form,
(B) Official university or college transcript,
(C) Documents of recommendation.
(D) Internship/Practicum Documentation form,
(E) Supervision Agreement, and
(F) New Application Fee.

(2) Applicant shall re-take two examinations:

(A) The Licensing Examination in Marital and Family Therapy (Professional Examination Service) or another equivalent examination as determined by the Department, and

(B) An oral and/or written examination covering psychopathology and the LMFT law and regulations as approved by the Department.

(3) All previously submitted and approved Supervised Experience shall not carry over to a new application.

(c) **Re-application for voided application.**

(1) Re-application after application is voided for failure to take scheduled examinations or after the eligible applicant fails an examination and does not take subsequent scheduled examinations shall include the following documents:

(A) Application form,

(B) Documents of Recommendation,

(C) Supervision Agreement, and

(D) New Application Fee.

(2) Applicant shall take two examinations:

(A) The Licensing Examination in Marital and Family Therapy(Professional Examination Service) or another equivalent examination as determined by the Department, and

(B) An oral and/or written examination covering psychopathology and the LMFT law and regulations as approved by the Department.

(3) The Internship/Practicum Documentation Form on file shall carry over to a new application.

(4) All previously submitted and approved Supervised Experience shall carry over to a new application.

(5) Applicant shall obtain approved supervision until the exams are taken and passed. Failure to do so may constitute a violation of OAC Rule 310:400-17-7.

(d) **Re-application for denied application.**

(1) Re-application after application has been denied shall included the following documents:

(A) Application form,

(B) Official university or college transcripts,

(C) Documents of Recommendation,

(D) Internship/Practicum Documentation form,

(E) Supervision Agreement, and

(F) New Application Fee.

(2) Application materials shall be reviewed by the LMFT Advisory Board.

(3) Applicant shall be required to take necessary examinations.

(4) Applicant shall be required to accrue an additional 500 hours of supervised experience.

(5) Internship/Practicum Documentation Form on file shall carry over to a new application.

(6) All previously submitted and approved Supervised Experience shall carry over to a new application.

(7) Applicant shall obtain approved supervision until the exams are taken and passed. Failure to do so may constitute a violation of OAC Rule 310:400-17-7.

SUBCHAPTER 17. ENFORCEMENT

310:400-17-4. 1 Filing of an action

(a) The Department may begin a disciplinary action against an LMFT or a person practicing marital and family therapy who is not exempt from licensure by following the procedures in Chapter 2 of this Title. The Department shall specifically state the violation(s) and shall request the appropriate remedy. Remedies include revocation of a license, suspension of a license, probation of a license and administrative penalty.

(b) If in the course of an investigation the Department determines that a licensee or candidate for licensure has engaged in conduct of a nature that is detrimental to the health, safety, or welfare of the public, and which conduct necessitates immediate action to prevent further harm, the Commissioner may order a summary suspension of the counselor's license or authorization to conduct marital and family therapy and/or the practice of marital and family therapy. A presumption of imminent harm to the public shall exist if the Department determines that probable cause exists that a licensee or candidate has violated 310:400-5-1(c), 310:400-5-3(b)(1, 2, or 5), and 310:400-5-3(f) or 310:400-5-3(o).

[OAR Docket #04-1097; filed 6-4-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 403. LICENSED BEHAVIORAL PRACTITIONERS

[OAR Docket #04-1098]

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PERMANENT final adoption
RULES:
Subchapter 7. Rules of Professional Conduct
310:403-7-6. [AMENDED]
Subchapter 11. Application Procedures
310:403-11-7. [NEW]
310:403-11-8. [NEW]
310:403-11-9. [NEW]
310:403-11-10. [NEW]
310:403-11-11. [NEW]
Subchapter 13. Academic Requirements
310:403-13-2. [AMENDED]
Subchapter 31. Enforcement
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The language to Subchapter 7 and amending 310:403-7-6 provides minimum requirements for cooperation by licensees, candidates for licensure, and applicants for licensure with investigations conducted by the Department involving alleged misconduct. The new language to Subchapter 11 provides for clarification regarding the re-application process for licensure after an application has been voided or a license has permanently expired or has been revoked or has been denied by the Department. The language added to Subchapter 13 and amending 310:403-13-2 provides clarification regarding the academic requirements for the categories of "Biological Bases of Behavior" and "Professional Orientation/Ethics." The language added to Subchapter 31 and amending 310:400-31-4 provides for summary suspension of licensure when the Department establishes probable cause that a licensee or candidate has committed: 1) misconduct involving an improper dual relationship with a client, 2) been convicted of a felony or a misdemeanor that is related to qualification or function, or 3) refused to cooperate with an investigation involving misconduct by a licensee or candidate.
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 12, 2004:

SUBCHAPTER 7. RULES OF PROFESSIONAL CONDUCT

310:403-7-6. Professional standards

(a) **Violations of other laws.** It shall be unprofessional conduct for an LBP to violate a state or federal law if the law directly relates to the duties and responsibilities of the LBP or if the violation involves moral turpitude.
(b) **Drug and alcohol use.** LBPs shall not render professional services while under the influence of alcohol or other mind or mood altering drugs.
(c) **Updating.** LBPs shall notify the Department of any change in address, telephone number, and employment and shall make necessary adjustments on the Statement of Professional Disclosure, supplying an updated copy to the Department.
(d) An LBP, LBP candidate, or applicant for LBP licensure, in connection with a license application or an investigation conducted by the Department pursuant to OAC 310:403-31-3, shall not:
(1) knowingly make a false statement of material fact;
(2) fail to disclose a fact necessary to correct a misapprehension known by the LBP, LBP candidate or applicant for licensure to have arisen in the application or the matter under investigation; or
(3) fail to respond to a demand for information made by the Department or any designated representative thereof, unless a request for a protective order has been first made pursuant to the provisions of Chapter 2 of this title, in which case the LBP, LBP candidate or applicant may await the decision concerning the issuance or denial of a protective order before making any response.

SUBCHAPTER 11. APPLICATION PROCEDURES

310:403-11-7. Re-application for expired license

(a) Re-application after license expires for non-renewal shall include the following documents:
(1) Application form,
(2) Official transcripts, mailed from the university,
(3) Document of recommendation forms,
(4) Supervision Agreement,
(5) Statement of Professional Disclosure,
(6) New Application Fee.
(b) Applicant shall re-take two examinations:
(1) The Practitioner's Examination of Psychological Knowledge or another equivalent examination as determined by the Department; and
(2) The LBP State Standards Test.
(c) Internship Documentation Form on file may carry over to a new application.
(d) All previously submitted and approved Supervised Experience shall carry over to a new application.
(e) Applicant shall obtain approved supervision until the exams are taken and passed as described in Subchapter 310:403-15-2(e)(2).

310:403-11-8. Re-application for revoked license

(a) Re-application after license is revoked for administrative action shall include the following documents:
(1) Application form,
(2) Official transcripts, mailed from the university,
(3) Document of recommendation forms,
(4) Supervision Agreement,
(5) Statement of Professional Disclosure,
(6) New Application Fee.
(b) Applicant shall re-take two examinations:
(1) The Practitioner's Examination of Psychological Knowledge or another equivalent examination as determined by the Department; and
(2) The LBP State Standards Test.
(c) Internship Documentation Form on file may carry over to a new application.
(d) All previously submitted and approved Supervised Experience shall not carry over to a new application.

310:403-11-9. Re-application for voided application for failure to take scheduled examinations

(a) Re-application after application is voided for failure to take scheduled examinations or after the eligible applicant fails an examination and does not take subsequent scheduled examinations shall include the following documents:

(1) Application form,
(2) Official transcripts, mailed from the university,
(3) Document of recommendation forms,
(4) Supervision Agreement,
(5) Statement of Professional Disclosure Form,
(6) New Application Fee.

(b) Applicant shall take two examinations:

(1) The Practitioner's Examination of Psychological Knowledge or another equivalent examination as determined by the Department; and
(2) The LBP State Standards Test.

(c) Internship Documentation Form may carry over to a new application

(d) All previously submitted and approved Supervised Experience shall carry over to a new application.

(e) Applicant shall obtain approved supervision until the exams are taken and passed and/or until the supervision requirement is complete as described in Subchapter 310:403-15-2(e)(2).

310:403-11-10. Re-application for voided application for failure to complete supervised experience

(a) Re-application after application is voided for failure to complete the supervised experience requirement within sixty (60) months as described in Subchapter 310:403-15-2(e)(3) shall include the following documents:

(1) Application form,
(2) Official transcripts, mailed from the university,
(3) Document of recommendation forms,
(4) Supervision Agreement form,
(5) Statement of Professional Disclosure form,
(6) New Application Fee.

(b) Applicant shall re-take two examinations:

(1) The Practitioner's Examination of Psychological Knowledge or another equivalent examination as determined by the Department; and
(2) The LBP State Standards Test.

(c) Internship Documentation Form may carry over to a new application

(d) All previously submitted and approved Supervised Experience shall be voided with prior application and shall not carry over to a new application.

(e) Applicant shall obtain approved supervision until the exams are taken and passed and/or the supervision requirement is complete as described in Subchapter 310:403-15-2(e)(2).

310:403-11-11. Re-application for denied application

(a) Re-application after application has been denied shall include the following documents:

(1) Application form,
(2) Official transcripts, mailed from the university,
(3) Document of Recommendation forms,
(4) Supervision Agreement,
(5) Statement of Professional Disclosure,
(6) New Application Fee.

(b) Application materials shall be reviewed by the LBP Advisory Board for approval.

(c) Applicant shall be required to take necessary examinations.

(d) Applicant shall be required to accrue an additional 500 hours of supervised experience.

(e) Internship Documentation Form on file may carry over to a new application.

(f) All previously submitted and approved Supervised Experience shall carry over to a new application.

(g) Applicant shall obtain approved supervision until the exams are taken and passed as described in Subchapter 310:403-15-2(e)(2).

SUBCHAPTER 13. ACADEMIC REQUIREMENTS

310:403-13-2. Required knowledge areas

All applicants from January 1, 2002 to December 31, 2004, as part of the required 45 graduate semester hours, shall have the following core knowledge areas:

(1) Assessment and Diagnosis - at least six (6) semester hours. Psychological theory, research, and methods concerning the measurement and assessment of an individual's behavioral or psychological functioning, such as the assessment of psychopathology, personality characteristics, intellectual functioning, skills and interests, and neuropsychological functioning;

(2) Intervention - at least six (6) semester hours. Psychological theory, research, and methods regarding empirically validated treatment modalities for the remediation, treatment, or prevention of behavior disorders, adjustment problems, and psychopathology, or other disturbances in psychological functioning;

(3) Experimental Foundations - at least three (3) semester hours. Psychological theory, research, and methods concerning the design, conduct, analysis, and interpretation of psychological research, or concerning the general principles and processes for the core areas of experimental psychology;

(4) Psychopathology - at least three (3) semester hours. Psychological theory, research, and methods concerning the descriptive characteristics, diagnosis, and etiology of psychopathology, or mental and behavioral disorders of children and adults;

(5) Personality and Social Psychology - at least six (6) semester hours. Psychological theory, research, and methods concerning the psychological or behavioral development and functioning of the individual and group differences. Three (3) of these hours shall be in a course in multicultural issues or cultural bases of behavior;

(6) Professional orientation/ethics - at least (3) semester hours. ~~Courses which deal primarily with~~

~~the objectives~~Objectives of professional behavioral health services organizations, codes of ethics, legal aspects of practice, standard of preparation and the role of persons providing direct behavioral health services.

(7) Biological bases of behavior - at least three (3) ~~hours courses~~semester hours.~~ that deal with biological~~Biological, physiological, or genetic underpinnings of behavior.

(8) Practicum/internship. Organized practica/internships with at least three hundred (300) clock hours in behavioral health services with planned experiences providing classroom and field experience with clients under the supervision of college or university approved behavioral health services professionals; and

(9) Elective courses. The remaining courses needed to meet the forty-five (45) graduate hour requirement shall be in any of the knowledge areas listed above.

SUBCHAPTER 31. ENFORCEMENT

310:403-31-4. Filing an action

(a) The Department may begin a disciplinary action against an LBP or a person practicing behavioral health services who is not exempt from licensure by following the procedures in Chapter 2 of this Title. The Department shall request the appropriate remedy. In making its recommendation, the Department may seek the counsel of the Advisory Board. Remedies include revocation of a license, suspension of a license, probation of a licensee and administrative penalty.

(b) If in the course of an investigation the Department determines that a licensee or candidate for licensure has engaged in conduct of a nature that is detrimental to the health, safety, or welfare of the public, and which conduct necessitates immediate action to prevent further harm, the Commissioner may order a summary suspension of the counselor's license or authorization to conduct behavioral health services, behavioral treatment interventions, and/or consulting. A presumption of imminent harm to the public shall exist if the Department determines that probable cause exists that a licensee or candidate has violated 310:403-7-4 or 310:403-7-6(d).

[OAR Docket #04-1098; filed 6-4-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 405. LICENSED PROFESSIONAL COUNSELORS

[OAR Docket #04-1099]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Rules of Professional Conduct
310:405-3-4. [AMENDED]
Subchapter 7. Application Procedures
310:405-7-8. [NEW]
Subchapter 31. Enforcement
310:405-31-4. [AMENDED]
AUTHORITY:
Oklahoma State Board of Health; 59 O.S. 2001, Section 1905(A); 63 O.S. 2001, Section 1-106.1
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ANALYSIS:
The language added to Subchapter 3 and amending 310:405-3-4 provides minimum requirements for cooperation by licensees, candidates for licensure, and applicants for licensure, with investigations conducted by the Department involving alleged misconduct. The new language added to Subchapter 7 provides for clarification regarding the re-application process for licensure after an application has been denied by the Department. The language added to Subchapter 31 and amending 310:405-31-4 provides for summary suspension of licensure when the Department establishes probable cause that a licensee or candidate has committed: 1) misconduct involving an improper dual relationship with a client, 2) been convicted of a felony or a misdemeanor that is related to qualification or function, or 3) refused to cooperate with an investigation involving misconduct by a licensee or candidate.
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 12, 2004:

SUBCHAPTER 3. RULES OF PROFESSIONAL CONDUCT

310:405-3-4. Professional standards

(a) **Violations of other laws.** It shall be unprofessional conduct for an LPC to violate a state or federal statute if the violation directly relates to the duties and responsibilities of the counselor or if the violation involves moral turpitude.

(b) **Drug and alcohol use.** LPCs shall not render professional services while under the influence of alcohol or other mind or mood altering drugs.

(c) **Sexual contact.**

(1) **Current clients.** LPCs shall not have any type of sexual contact with clients and shall not counsel persons with whom they have had a sexual relationship.

(2) **Former clients.** LPCs shall not engage in sexual contact with former clients for at least two (2) years after terminating the counseling relationship.

(d) **Updating.** LPCs shall notify the Department of any change in address, telephone number, and employment and shall make necessary adjustments on the Statement of Professional Disclosure, supplying an updated copy to the Department.

(e) An LPC, LPC candidate, or applicant for LPC licensure, in connection with a license application or an investigation conducted by the Department pursuant to OAC 310:405-31-3, shall not:

(1) knowingly make a false statement of material fact;

(2) fail to disclose a fact necessary to correct a misapprehension known by the LPC, LPC candidate or applicant for licensure to have arisen in the application or the matter under investigation; or

(3) fail to respond to a demand for information made by the Department or any designated representative thereof, unless a request for a protective order has been first made pursuant to the provisions of Chapter 2 of this title, in which case the LPC, LPC candidate or applicant may await the decision concerning the issuance or denial of a protective order before making any response.

SUBCHAPTER 7. APPLICATION PROCEDURES

310:405-7-8. Re-application for denied application

(a) Re-application after application has been denied shall included the following documents:

(1) Application form,

(2) Official transcripts, mailed from the university or college,

(3) Document of Recommendation forms,

(4) Supervision Agreement,

(5) Statement of Professional Disclosure, and

(6) New Application Fee.

(b) Application materials shall be reviewed by the LPC Advisory Board.

(c) Applicant shall be required to take necessary examinations.

(d) Applicant shall be required to accrue an additional 500 hours of supervised experience.

(e) Internship/Practicum Documentation Form on file shall carry over to a new application.

(f) All previously submitted and approved Supervised Experience shall carry over to a new application.

(g) Applicant shall obtain approved supervision until the exams are taken and passed. Failure to do so may constitute a violation of OAC Rule 310:405-31-7.

SUBCHAPTER 31. ENFORCEMENT

310:405-31-4. Filing of an action

(a) The Department may begin a disciplinary action against an LPC or a person practicing counseling who is not exempt from licensure by following the procedures in Chapter 2 of this Title. The Department shall specifically state the violation(s) and shall request the appropriate remedy. Remedies include revocation of a license, suspension of a license, probation of a licensee and administrative penalty.

(b) If in the course of an investigation the Department determines that a licensee or candidate for licensure has engaged in conduct of a nature that is detrimental to the health, safety, or welfare of the public, and which conduct necessitates immediate action to prevent further harm, the Commissioner may order a summary suspension of the counselor's license or authorization to conduct counseling, counseling treatment interventions, and/or consulting. A presumption of imminent harm to the public shall exist if the Department determines that probable cause exists that a licensee or candidate has violated 310:405-3-3(c) or 310:405-3-4(a,b,c or e).

[OAR Docket #04-1099; filed 6-4-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 530. FAMILY PLANNING CENTERS

[OAR Docket #04-1100]

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PERMANENT final adoption
RULES:
310:530-1-1. [AMENDED]
310:530-1-2. [AMENDED]
310:530-1-4. [AMENDED]
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ANALYSIS:

These proposed rules will clarify requirements for the administration of Family Planning Centers. Centers will use accepted medical practices to assist families in achieving their desired level of fertility and spacing of children, and establish fees for providing these services.

CONTACT PERSON:

Suzanna Dooley, M.S., A.R.N.P., Chief Maternal and Child Health Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299. Telephone 405/271-4480.

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 12, 2004:

310:530-1-1. Purpose

The ~~rules in~~purpose of this chapter ~~establish the Family Planning Centers guidelines as required by 63 O.S. § 2074.~~is to describe the family planning services offered by the Department and to establish the procedures and methods used by the Department to determine the annual allocation of programmatic costs attributable to the operation of the Family Planning Client Fee System and to determine the recommended fee assessment to be collected from persons receiving family planning services provided by the Department.

310:530-1-2. Definitions

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

"Attributable analysis period" means the most recently completed period for which cost and client encounter data is available.

"Client" means a female or male of reproductive age who requests family planning services.

"Commissioner of Health" and **"Commissioner"** mean the Oklahoma State Commissioner of Health, the chief executive officer of the Department. References in the subchapter to the Commissioner may include a designee of the Commissioner of Health. Designations shall be subject to such powers and limitations as are specified in writing.

"Contraceptive methods" means any Federal Drug Administration (FDA) approved medication or method that prevents pregnancy.

"Delivered product" means a contraceptive device or pharmacological substance administered or given to the client for use or consumption.

"Department" means the Oklahoma State Department of Health.

"Examination service" means a qualified family planning service described in the Family Planning Policies and Procedures Manual and incorporating a medical history and/or physical assessment element(s) as the central component of the service delivered to the client.

"Examination service component" means the set of all examination services provided by the family planning program.

"Family planning" means those services which will allow an individual to freely determine the number and spacing of their children, encompassing the spectrum from infertility to desired sterilization. Abortion is not a method of family planning.

"Family planning centers" means county health departments providing family planning services.

"Federal poverty level (FPL) guidelines" means the levels set forth in the most recent Poverty Guidelines issued pursuant to 42 U.S.C. § 9902(2).

"Laboratory service" means a qualified family planning service described in the Family Planning Policies and Procedures Manual and incorporating the performance of tests in a laboratory setting as the central component of the service delivered to the client.

"Laboratory service component" means the set of all laboratory services provided by the family planning program.

"Medical cost center" or **laboratory cost center"** means those cost centers used by the Department to allocate costs determined to be necessary for the delivery of family planning services.

"Recommended fee assessment for utilization of services" or **"RFA"** means the maximum fee assessed to a client who receives a family planning service or product provided pursuant to this Chapter by the Department.

"Relative value" means the value assigned to a service described in the relative value study that most closely matches or approximates the description of the service provided by the family planning program.

"Relative value study" means an accredited study of a given set of medical services that establishes the relationship between the medical services studied indicating the proportionate value of each service to that of the others in the study.

"~~Fee~~ Schedule of fees" means a listing of services offered and the corresponding fee, if any, assigned to those services.

"Sliding fee scale" means a schedule of discounts for individuals based upon federal poverty level, family income, family size, and other program specified economic considerations.

310:530-1-4. ~~Fees~~Methods and Procedures

(a) **General.** Fees will be charged for services based ~~on~~upon ~~an individual~~client's ability to pay, and ~~on~~upon the potential for payments or contribution from the ~~individual~~client's third party health insurance ~~plan~~provider.

~~(b)~~ ~~Individuals~~Clients will not be denied family planning services, or be subjected to any variation in quality or delivery of family planning services, because of inability to pay. The Commissioner of Health must approve the schedule of fees for family planning services annually and prior to implementation.

(b) **Determining the base unit cost.**

(1) **Examination services component.** The base unit cost for the examination service component is derived by dividing the total dollar amount attributable to the medical cost center by the sum of the collective weighted values of each examination service. The collective weighted value of each examination service is derived by multiplying the

relative value for the examination service by the frequency of encounters for that service during the attributable analysis period.

(2) **Laboratory service component.** The base unit cost for the laboratory service component is derived by dividing the total dollar amount attributable to the laboratory cost center by the sum of the collective weighted values of each laboratory service. The collective weighted value of each laboratory service is derived by multiplying the relative value for the laboratory service by the frequency of encounters for that service during the attributable analysis period.

(c) ~~The fee schedule is as follows:~~

~~(1) Initial & Annual Exam $130.~~

~~(2) Routine Visit, Pregnancy Test or Transfer $25.~~

~~(3) Problem visit or Postpartum $50.~~ **Deriving the applicable ancillary unit cost.**

(1) **Allocated unit indirect costs.** Allocated unit indirect costs are those indirect unit costs attributable to the family planning program and are prorated and added as an ancillary cost to each examination service provided by family planning centers. The allocated unit indirect cost is derived by dividing the sum of all indirect costs approved by the Commissioner for allocation to family planning during the attributable analysis period by the relative proportion of the collective weighted value of a given examination service to the total collective weighted value of the examination service component.

(2) **Unit clinical supply costs.** Unit clinical supply costs are prorated and added as an ancillary cost to each examination service provided by family planning centers. The unit clinical supply cost is derived by dividing the sum of all non-laboratory supplies consumed by family planning during the attributable analysis period by the relative proportion of the collective weighted value of a given examination service to the total collective weighted value of the examination service component.

(3) **Unit laboratory supply costs.** Unit laboratory supply costs are prorated and added as an ancillary cost to each laboratory service provided by family planning centers. The unit laboratory supply cost is derived by dividing the sum of all laboratory supplies consumed by family planning during the attributable analysis period by the relative proportion of the collective weighted value of a given laboratory service to the total collective weighted value of the laboratory service component.

(d) ~~The Commissioner of Health must approve the sliding fee scale prior to implementation.~~ **Deriving the sliding fee scale adjustment.** The sliding fee scale adjustment is used to convert the maximum RFA into the adjusted RFA. The scale is divided into seven (7) increments that correspond to incremental levels of poverty ranging from 100% to 250% of poverty based upon the annual Federal Poverty Guidelines. The base increment of the sliding fee scale shall correspond to 100% of poverty and cause the maximum RFA to be reduced to zero. The next increment of the sliding fee scale shall correspond to approximately 118.75% of poverty and cause the assessment to be reduced to a sum that is 10% of the maximum RFA. The next increment of the sliding fee scale shall correspond to approximately 137.5% of poverty and cause the assessment to be reduced to a sum that is 20% of the maximum RFA. Successive increments of the sliding fee scale shall correspond to successive incremental increases of approximately 37.5 percentage points of poverty and cause incremental 20 percentage point increases of the percentage of the maximum RFA to be assessed to the client.

(e) **Deriving the maximum recommended fee assessment for utilization of services (RFA).**

(1) **Examination services.** The maximum RFA for a given examination service is derived by multiplying the base unit cost determined for the examination service by the weighted value attributed to the service. This product is then added to the sum of the ancillary unit costs derived for the service. The total is then applied to the sliding fee scale adjustment applicable to the client and adjusted as indicated.

(2) **Laboratory services.** The maximum RFA for a given laboratory service is derived by multiplying the base unit cost determined for the laboratory service by the weighted value attributed to the service. This product is then added to the sum of the ancillary unit costs derived for the service. The total is then applied to the sliding fee scale adjustment applicable to the client and adjusted as indicated.

(3) **Delivered products.** The maximum RFA for a delivered product is the average unit cost incurred by the Department for the product during the most recently completed purchasing cycle. This amount is then applied to the sliding fee scale adjustment applicable to the client and adjusted as indicated.

(f) **Waiver.** The family planning center may waive in whole or in part an adjusted RFA for any client who is unable, for good cause, to pay for the family planning service or product provided.

[OAR Docket #04-1100; filed 6-4-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 535. IMMUNIZATIONS

[OAR Docket #04-1101]

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RULES:
Subchapter 3. Adult Immunizations
310:535-3-1. [AMENDED]
310:535-3-2. [AMENDED]
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03-934
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ANALYSIS:
These rules changes add additional vaccines to the list of vaccines county health departments may offer to adults, specifically, Influenza, Pneumococcal, Tetanus/Diphtheria combined, Measles, Mumps, and Rubella combined, Polio, and other currently licensed vaccines recommended for adults and vaccines licensed in the future which are recommended for adults. These changes also withdraw the section of the original rule, which established a minimum fee to be charged the vaccine recipients, because this fee was set too high.
CONTACT PERSON:
Susan Mendus, Immunization Representative Supervisor, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-4073; facsimile: (405) 271-6133 electronic mail: susanm@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 12, 2004:

SUBCHAPTER 3. ADULT IMMUNIZATIONS

310:535-3-1. Types of vaccines

County health departments may collect fees for the following adult immunizations: Hepatitis A; Hepatitis B; Hepatitis A/Hepatitis B combined; Meningococcal; Typhoid; Varicella; ~~and~~Influenza; Pneumococcal; Tetanus/Diphtheria combined; Measles, Mumps, and Rubella combined; Polio; Yellow fever; and other currently licensed vaccines recommended for adults and vaccines licensed in the future which are recommended for adults.

310:535-3-2. Fees and charges

(a) The county health departments may collect for the cost of the vaccine, and an administration fee of up to $10.00 per vaccine administered. The cost for each immunization referenced in section 310:535-3-1 shall be posted in plain view in the county health departments that offer adult immunizations. Any adult who requests immunizations shall be informed of the specific fee prior to receiving the immunization.

(b) ~~The minimum fee that the county health department may collect shall be $25.00.~~

~~(c)~~ Documentation confirming the cost of an adult immunization shall be available upon request.

[OAR Docket #04-1101; filed 6-4-04]

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

[OAR Docket #04-1102]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 15. Physical facility
310:605-15-2. Buildings and grounds ~~(refer to ADA standards)~~ [AMENDED]
AUTHORITY:
Oklahoma State Board of Health: Title 63 O.S. Section 1-104 and Title 63 O.S. Section 1-873
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Incorporated Standards:
Chapter 11 of the International Building Code, 2003 edition, as published by the International Code Council
Incorporating rules:
310:605-15-2
Availability:
The incorporated standards are available for viewing at Health Facilities Plan Review and Construction Inspections, Room 1108, 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 http://www.iccsafe.org/, or by contacting:
Publications
International Code Council, Chicago District Office
4051 W. Flossmoor Road
Country Club Hills, IL 60478-5795

Phone: 800-214-4321 Fax: 800-214-7167

ANALYSIS:

The proposed amendments are intended to clarify certain design and construction requirements in order to ensure that adult day care centers are accessible to physically disabled persons. The amendments require centers to comply with accessibility requirements specified in Chapter 11 of the International Building Code, 2003 Edition, published by the International Code Council. This standard also is enforced by the State Fire Marshal under authority of Title 74 O.S., Chapter 11, Section 324.11. Adoption of these amendments will ensure that the Oklahoma State Department of Health is reviewing adult day care centers with the same standards used by the Office of the State Fire Marshal.

CONTACT PERSON:

Henry Hartsell Jr., Chief, Health Resources Development Service, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-9444, x57269; facsimile: 405-271-7360; electronic mail: hank@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 12, 2004:

SUBCHAPTER 15. PHYSICAL FACILITY

310:605-15-2. Buildings and grounds ~~(refer to ADA standards)~~

(a) The building must meet the approval of local building and fire inspectors or the state fire marshal's office.

(b) ~~The center shall have ramps or other means of accessibility for disabled persons, which comply with federal, state and local law applicable to persons with disabilities.~~On and after the effective date of this subsection, each center that undergoes design changes or construction and each newly licensed center shall be designed and constructed in conformity with requirements for accessibility to physically disabled persons as specified in Chapter 11 of the International Building Code, 2003 Edition, published by the International Code Council.

(c) The building shall be designed or adapted to meet heating, air conditioning, and water supply approved by the Department according to rules and design standards of the Board of Health.

(d) There shall be at least two (2) exits from the center which can be used as disaster escape routes.

(e) The heating system shall comply with local and state codes. Heating pipes, radiators or hot water pipes in rooms and areas used by participants shall be covered or protected.

(f) Portable space heaters shall not be used.

(g) Plumbing and plumbing fixtures shall conform to local and state codes. There shall be no cross-connection between the potable water supply and any pollution source through which the potable water might become contaminated.

(h) An adequate supply of water under sufficient pressure shall be provided to properly serve the participants.

(i) At least one toilet and hand washing facility shall be provided for each 12 participants.

(j) The lavatory shall have hot and cold running water. Hot water shall not exceed one hundred fifteen degrees Fahrenheit (115 F.).

(k) A trash receptacle, soap, toilet paper, and individual paper towels shall be provided at all times and shall be within reach of the participants.

(l) The toilet room shall be within easy access to the activity areas and shall provide privacy for the participant.

(m) Each toilet room shall be equipped for approved ventilation.

(n) There shall be a separate room or partitioned area for temporarily isolating participants in case of illness.

(o) Grounds shall be maintained in a clean, orderly, and safe manner.

(p) Outside lighting shall be provided at the center's entrances and grounds.

(q) There shall be parking available for delivery and pickup of participants.

[OAR Docket #04-1102; filed 6-4-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 641. EMERGENCY MEDICAL SERVICES

[OAR Docket #04-1087]

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RULES:
Chapter 641. Emergency Medical Services [AMENDED]

AUTHORITY:
Oklahoma State Board of Health; 63 O.S. Section 1-104; 63 O.S., Section 1-2501 et seq.

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Subchapter 3. Ambulance Services
Part 27. Transfer Protocols
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21 Ok Reg 571

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n/a

ANALYSIS:

These rules add definitions for "base station", "substations" and "enroute time" and modify the definition for "response times". Fees for new ambulance license application are doubled, references to the State Protocols are removed, reinstatement fees are doubled and new driver training requirements are added. Ambulance marking restrictions are removed, air ambulances are required to conform to certain standards for collaboration and quality improvements, and air ambulance standards are updated. Fees are added for air ambulance initial and biannual inspections, with an exemption for CAMTS certified providers. Sanitation standards are updated, ambulance permit removal standards are detailed, transfer protocol standards are updated, and transfer protocols are required to be submitted for approval. The Health Department is allowed to certify transfer centers in counties with populations of over 300,000 and their contiguous communities. First response agency re-certification requirements are expanded and the renewal fee doubled. Reporting and inspection requirements are expanded. Enforcement actions are expanded. Individual license application requirements are expanded. Application reimbursement options are removed and standards are revised to be consistent with the National Registry of EMT's. The Standard of Care is updated to allow generic albuterol substitutes and eliminate "Advanced Cardiac" licensure. Reciprocity fees are made non-refundable and reciprocity limited to persons who successfully pass the National Registry exam. Training program records requirements are expanded. In-service instructor requirements are expanded.

CONTACT PERSON:

R. Shawn Rogers, Director, Emergency Medical Services Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-4027; facsimile: (405) 271-4240 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 12, 2004:

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.

"Base Station" means the primary location from which ambulances and crews respond to emergency calls on twenty-four (24) hour basis. The Base Station may include the principal business office, living quarters for personnel, training institution, and/or communications center.

"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 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).

"En Route Time" means the elapsed time from the time the emergency call is received by the EMS agency until the ambulance and complete crew is en route to the scene of the emergency.

"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.

"PPC" means Prehospital Pediatric Care.

"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~~the EMS agency until the time the ambulance and complete crew 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].

"Substation" means a permanent structure where a(an) ambulance(s) is/are stationed and available for emergency calls on a twenty-four (24) hour basis.

"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

310:641-3-10. License required

No person, company, governmental entity, including those established by Oklahoma Constitutional authority, or trust authority shall operate, advertise, or hold themselves out as providing an air, water, or ground ambulance without first obtaining a license to operate an ambulance service from the Department.

(1) Any ambulance service licensed prior to the effective date of these rules, July 18, 1991, shall remain in effect for the period of issuance, except that all such ambulance services shall be subject to the Act and rules which otherwise pertain hereafter, including the requirement for renewal.

(2) Federal agencies are exempt from this licensing requirement.

(3) Persons, companies, and governmental entities which operate on their own premises, are exempt from this licensing requirement, unless an ambulance patient is transported on the public streets and highways of Oklahoma, or outside of their own premises.

(4) An application for a license to operate an ambulance service shall be submitted on forms prescribed and provided by the Department. Ground, air, water, and specialized mobile intensive care services shall each be considered a separate license.

(5) The application shall be signed under oath by the party or parties seeking to secure the license.

(6) The party or parties who sign the application shall be considered the owner or agent (licensee), and responsible for compliance to the Act and rules.

(7) The application shall contain, but not be limited to the following:

(A) A statement of ownership shall include the name, address, telephone number, occupation and/or other business activities of all owners or agents who shall be responsible for the service;

(B) If the owner is a partnership or corporation, a copy of incorporation documents and the name of all partner(s) or stockholder(s) with an ownership interest of five (5%) percent or more (principal), and the name and addresses of any other ambulance service in which any partner or stockholder holds an interest shall also be included;

(C) If the owner is an entity of government, governmental trust, trust authority, or non-profit corporation, the name of each board member, or the chief administrative officer and/or chief operation officer shall be included;

(D) A business plan which includes a financial disclosure statement showing evidence of the ability to sustain the operation for at least one (1) year, and if a subscription program is anticipated the requirement of part 29, of these rules, shall be documented;

(E) Proof of vehicle and professional liability insurance, at least in the amount of one million dollars ($1,000,000.00) or to the amount provided for in "The Governmental Tort Claims Act", O.S. 51-151, O.S. 51-152, O.S. 51-153 and O.S. 51-154, shall be forwarded. This insurance requirement shall remain in effect at all times while the service is licensed, and such proof shall be in the form of a Certificate of Insurance from the insurance company;

(F) Proof of participation in a workers' compensation insurance program for employees who are subject to pertinent labor laws shall be forwarded.

This insurance requirement shall remain in effect at all times while the service is licensed;

(G) Each licensee shall have medical control as prescribed by the Act and these rules;

(H) Copy of any contract(s) for vehicles, medical equipment, and/or personnel, if such exist;

(I) Copy of patient care protocols as required by medical control as prescribed by the Act and these rules;

(8) An application for an initial, or new license, shall be accompanied by a non-refundable fee of ~~three~~ six hundred ~~($300.00)~~ ($600.00) dollars plus ~~ten ($10.00)~~ twenty ($20.00) dollars for each vehicle, in excess of two (2) vehicles utilized for patient transport. An additional fee of one hundred fifty ($150.00) dollars shall be included for each ambulance substation in addition to the base station.

(9) If an area of Oklahoma is being served by a licensed ambulance service, or services, and the area has adopted "sole source" resolutions or ordinances or an Emergency Services District as established pursuant to Article 10, Section 9 (C) of the Oklahoma Constitution, the Department shall require the approval of the community(ies) and/or the emergency medical services authority of that service area, before an additional ambulance service shall be licensed for that same service area.

310:641-3-11. Issuance of a ground ambulance license

(a) A license may be issued for basic life support, intermediate life support, paramedic life support, specialized mobile intensive care units, or stretcher aid vans.

(1) Basic life support means that the ambulance service vehicles are equipped with the minimum basic equipment, and staffed with at least one EMT-Basic on each request for emergency medical services.

(2) Intermediate life support means that the ambulance service vehicles are equipped with the minimum intermediate equipment, and staffed with at least one EMT-I on each request for emergency medical services.

(3) Paramedic life support means that the ambulance service vehicles are equipped with the minimum paramedic equipment, and staffed with at least one EMT-P on each request for emergency medical services.

(4) Specialized mobile intensive care is a special category of ambulance service licensed only to transport between medical facilities. These licenses are issued on a case by case basis when the Department finds the interest of the public can best be served. Examples of specialized care include, but are not limited to, neonatal care, coronary care, burn care. Specialized mobile intensive care does not pertain to vehicles, but rather a special group of patients. Pre-hospital or scene transportation is not permitted of specialized mobile intensive care ambulance services.

(b) The license shall be issued only for the name, service area (area of coverage), level, and type of service given in the application.

(c) The license is not transferable or assignable.

(d) The initial license period shall expire the second June 30th, following the date of issue. Subsequent renewal periods shall be twenty four (24) months, or two (2) years.

(e) A temporary license, not to exceed one hundred twenty (120) days and for one (1) time only, may be issued by the Department. A temporary license may be issued to an applicant who substantially meets all requirements and may be granted only for an area of Oklahoma that may otherwise be without ambulance service. Sole determination for a temporary license shall be made by the Department and based upon the following:

(1) The safety, need, and well-being of the public and general populace to be served by the ambulance service;

(2) The availability of personnel in the area, and equipment of the ambulance service;

(3) The financial ability of the applicant to meet the minimum standards of emergency medical services law;

(4) The number of estimated runs to be made by the ambulance service;

(5) The desire of the community(ies) to be served.

(f) The original, or a copy of the original, license shall be posted in a conspicuous place in the principal business office. If an office, or other public place is not available, then the license shall be available to anyone requesting to see the license, during regular business hours.

(g) The Department shall have the authority to upgrade or downgrade an advanced life support ambulance provider's license upon evidence that the license no longer meets existing license requirements for that level of care. Under no circumstance shall a downgrade be for less than basic life support~~, and during the time of a downgrade the service shall operate on State protocols~~. In order to return to a level of advanced life support, the service shall provide the Department written evidence that they now meet the requirements for a higher level of care. A fee of ~~fifty ($50.00)~~ one hundred ($100.00) dollars shall be required for reinstatement.

310:641-3-13. Denial of an initial or renewal license

(a) An application may be denied for any of the following reasons:

(1) The failure to meet standards set forth by statute or rule;

(2) A felony conviction of any person, member of the firm, partnership, corporation or the person designated to supervise the service; to include, but not be limited to, fraud, grand larceny, child abuse or other sexual offense(s), drug offense(s), or a conviction which might otherwise have a bearing on the operation of the service;

(3) Insufficient number of personnel to properly staff one vehicle on a twenty four (24) hour basis at the highest level of the service license;

(4) In urban areas, an insufficient number of vehicles and/or staff to respond to life-threatening emergency calls ninety percent (90%) of the time within eight (8) minutes;

(5) Insufficient financial resources, and;

(6) Falsification of Department required information;

(~~6~~7) Any other reason(s) which in the opinion of the Department, may not be in the best interest of the public.

(b) An applicant shall be notified in writing within sixty (60) days, from the date the Department receives the application, of the granting or denial of a license or renewal. In the event of a denial, the specific reason(s) shall be noted, and an indication of the corrective action necessary to obtain a license or renewal shall be given, if applicable. A license application may be re-submitted, but each re-submission shall be considered an initial application.

310:641-3-14. Severance of action, amendment, and re-instatement

(a) The issuance or renewal of a license after notice of a violation(s) has been given, shall not constitute a waiver by the Department of its power to rely on the violation(s) for subsequent license revocation or other enforcement action which may arise out of the notice of violation(s).

(b) Any change in the name of the service, level, service area, or type of service shall necessitate an application to amend the license and shall be accompanied by a fee of fifty ($50.00) dollars.

(c) If an existing license is placed on probation or suspension, a fee of ~~fifty ($50.00)~~ one hundred ($100.00) dollars, in addition to any other provision of the action, shall be submitted prior to re-instatement of the license to full privilege.

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 be en route to 90% of all emergency calls within five (5) minutes of the time the call is received in dispatch at the highest level of care for which the service is licensed.

(1) 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.

(2) 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. All drivers of a ground ambulance service shall successfully complete an emergency vehicle operator course approved by the Department within 120 days of employment. Emergency vehicle operators shall successfully complete a refresher course approved by the Department every two (2) years.

~~(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;
(6) KKK-A-1822E, effective June 1, 2002; and
(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) Ambulance vehicles shall be exempt from the section of the KKK specifications which specifies color, emblems and markings.
(~~e~~f) 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~~g) 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~~h) 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~~i) 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~~j) 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~~k) 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.

310:641-3-22. General provisions for ground transport vehicles

(a) Authorized emergency vehicles of licensed ambulance services ~~All vehicles utilized as ground ambulance vehicles~~ shall comply, at all times, with the applicable requirements of Title 47, the Oklahoma Motor Vehicle Code.
(b) Authorized emergency vehicles of licensed ambulance services ~~All vehicles utilized as ground ambulance vehicles~~ shall be in good mechanical and serviceable condition at all times, so as not to be hazardous to the patient(s) or crewmembers. If, in the determination of the Department, a vehicle does not meet this requirement, it may be removed from service until repairs are made.
(c) Authorized emergency vehicles of licensed ambulance services ~~All vehicles utilized as ground ambulance vehicles~~ shall be tested for interior carbon monoxide, in a manner acceptable to the Department. Carbon monoxide levels of more than ten parts per million (10ppm) shall be considered in excess, and shall render the vehicle "out of compliance". Vehicles shall be removed from service if carbon monoxide levels exceed fifty parts per million (50ppm), and until repairs are made to reduce the amounts of carbon monoxide below ten (10ppm) parts per million.
(d) Authorized emergency vehicles of licensed ambulance services ~~All vehicles~~ utilized ~~by licensed ambulance services~~ for the provision of patient care shall be equipped with communication equipment (radio and encoder) which shall provide voice contact with the emergency department of the area and other hospitals outside of the area. Acceptable frequencies shall be approved and consistent with the Oklahoma Area Wide Communication Plan, as adopted under the rules of the Federal Communications Commission (FCC). No paging shall be allowed on these designated medical frequencies. Encoder numbers for Oklahoma hospitals, copies of the Area Wide Communication Plan, and approval of frequencies may be obtained by contacting the Division.
(e) Authorized emergency vehicles of licensed ambulance services ~~All utilized as ground ambulance vehicles~~ shall have a permit and/or inspection decal, affixed by the Department. These decals shall be placed in the lower left corner of a rear window, unless it shall be impossible or impractical to utilize this area. The following permit classes of vehicles shall be recognized as authorized emergency vehicles of ambulance services:

(1) Class "A" permit shall be affixed to an ambulance in compliance with section 310:641-3-20 utilized as a primary "first out" vehicle. Class "A" vehicles shall have on board medical equipment as required in Section 310:641-3-23. Emergency and non-emergency ambulance patients may be transported in class "A" ambulances.
(2) Class "B" permit shall be affixed to an ambulance in compliance with section 310:641-3-20 utilized as a secondary or "back up" vehicle. Class "B" vehicles shall have medical equipment as required in section 310:641-3-23 on board when placed in-service to respond to emergency calls or transport any ambulance patients.
(3) Class "S" permit shall be affixed to a vehicle in compliance with section 310:641-3-22 utilized as a stretcher aid van. Class "S" vehicles shall have medical equipment as required in section 310:641-3-48.3 on board when placed into service to respond to calls for non-emergency transport for stretcher aid van patients.

(4) Class "E" permit shall be affixed to other vehicles owned or operated by a licensed ambulance service and utilized in provision of emergency medical services. Ambulance patients shall not be transported on the public streets or highways in a class "E" vehicle.

310:641-3-23. Equipment for ground transport vehicles

(a) Each ambulance vehicle, except for stretcher aid vans, shall carry the following:

(1) 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) 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) A minimum of two (2) each adult, child, and infant size oxygen masks, and a minimum of two (2) adult nasal cannulas;

(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, 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.

(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 spine board including straps and head immobilization device;

(E) Two (2) rigid or adjustable extrication collars in large, medium, small adult sizes, and pediatric sizes for children ages 2 years or older and one (1) infant collar. Collars shall not be foam or fiber filled.

(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)

(9) Other mandatory equipment, as follows:

(A) Trash receptacle which shall include a sufficient number of replacement bags and a receptacle for containment of medical wastes that displays the "biological hazard" emblem.

(B) Two way radio communication equipment on 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 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 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-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 if approved by local medical control;

(3) Appropriate quantities of sterile fluid as approved by local medical control;

(4) Esophageal obturator airway, and at least two (2) each endotracheal tubes sizes 3.0 - 5.0 mm uncuffed and 5.5 - 8.0 mm cuffed, ten (10)cc syringe, and stylettes in both pediatric and adult sizes and forceps in adult~~,~~ and pediatric ~~and infant~~ sizes;

(5) Blood sampling equipment if approved by local medical control;

(6) 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 required basic and intermediate equipment, the ALS ambulance will carry the following:

(1) Cardiac monitor/defibrillator with printout, defibrillator pads, quick-look paddles, EKG leads, chest attachment pads. 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 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 powered warning lights;

(B) Two (2) OSHA approved hard hats, with goggles or face shield; and

(C) Gauntlet leather gloves, 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 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) Portable battery powered ventilator per local medical direction.

(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

310:641-3-30. Air ambulance license

(a) The air ambulance operator (applicant) shall meet the requirements of section 310:641-3-10 <u>and be licensed at a Paramedic level and/or Specialty Care license in compliance with section 310:641-3-40. The air ambulance license shall be in addition to and separate from a specialty care license.</u> In addition the following special requirements shall be forwarded for application, survey and renewal purposes, as requested on forms provided by the Department.

(1) A list of flight crew and qualifications.

(2) The air medial director and qualifications.

(3) Copy of the Federal Aviation Administration (FAA) Part 135 certificate.

(4) Copy of contracts for aircraft, medical equipment, personnel and explanations, if applicable.

(b) The issuance of an air ambulance license shall be consistent with section 310:641-3-11.

(c) The renewal of an air ambulance license shall be consistent with section 310:641-3-12.

(d) The denial of an air ambulance license, or the renewal thereof shall be consistent with section 310:641-3-13, except that an air ambulance licensee shall not be held to the response criteria in Section 310:641-3-13(a)(3).

(e) Air ambulance licensees shall be subject to section 310:641-3-14.

(f) Air ambulance licensees shall provide an on-going and active aviation safety program.

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 prehospital responses with the appropriate local emergency resources~~.~~ through at least the following means:

(1) immediate verbal contact with the ambulance and first response agencies closest to the patient;

(2) radio and telephone coordination with ground personnel to ensure the most timely response to the patient;

(3) regularly scheduled post event reviews of all prehospital cases with ground agencies to refine response processes. The air ambulance provider shall report reviews on Department approved forms at quarterly intervals.

(e) Air medical utilization protocols shall be developed by all licensed ambulance and certified first response agencies and submitted for approval by the Department.

310:641-3-32. Air ambulance vehicles

(a) An air ambulance vehicle (aircraft) may be fixed wing, single or multi-engine, or rotary wing. Single engine aircraft shall be turbine powered.

(b) Operations of the aircraft shall be under the provisions of Part 91 and Part 135 of the Federal Aviation Regulations (FAR).

(c) The operator of an air ambulance service declares the capability of providing quality air ambulance services. These services include qualified flight crews, aircraft maintenance, patient configuration, space allocated for medical attendants and equipment as designated in Section 310:641-3-33.

~~(d) All air ambulance aircraft shall have radio capability to communicate air to ground, air to air, and ground to air. This radio system should include two-way communications with physicians who are responsible for directing patient care in transit, and with ground personnel who coordinate the transfer of the patient by surface transportation. The aircraft shall also have the capability to communicate between the medical attendant and pilot, and be in compliance with the Oklahoma Area Wide Communications Plan, or provide documentation that the aircraft can communicate with hospitals by phone.~~

~~(e) The aircraft shall have sufficient space to accommodate at least one (1) medical attendant on board with sufficient space to access the entire patient.~~

~~(f) The aircraft shall have sufficient space to accommodate and be equipped with at least one (1) litter to be of sufficient length and width to comfortably support the full frame of the patient.~~

~~(g) All persons on the aircraft shall be restrained by at least one (1) two point safety belt. Litter patients shall have three (3) two point safety belts and a shoulder harness in place to prevent the patient from shifting.~~

~~(h) The upper surface of the litter shall be at least twenty four (24) inches from the ceiling of the aircraft or the under surface of another litter.~~

~~(i) Doors of the aircraft shall be large enough to allow a litter to be loaded without axial (roll) rotation of more than thirty (30) degrees or lateral (pitch) rotation of forty five (45) degrees.~~

~~(j) Temperature and ventilation shall be controllable within the patient area of the aircraft.~~

~~(k) The patient area shall have lighting of at least forty (40) foot candle power and the cockpit shall have protection from the patient area lighting during night operations.~~

~~(l) Any violation(s) from the FAA Regulations, as stated in FAR 91.3 and 135.19, shall be reported to the Department.~~

~~(m) The licensee shall submit a summary report, of at least the following, location of the patient(s) at the time of request, time request was received, time the aircraft departed base station, time of arrival at location of patient(s) time aircraft and patient(s) departed the site, time of arrival at the destination hospital, patient's age, diagnosis and condition, list of the aeromedical technicians and their respective license level, and condition of patient(s) on arrival at the destination. These summary reports shall be made on all transport performed during the previous month.~~

~~(n) The licensee shall notify the Department prior to placing a substitute aircraft into operation.~~

(d) The aircraft design and configuration shall not compromise patient stability in loading, unloading or in-flight operations.

(1) The aircraft shall have an entry that allows loading and unloading without excessive maneuvering (no more than 45 degrees about the lateral axis and 30 degrees about the longitudinal axis) of the patient, and does not compromise functioning of monitoring systems, intravenous lines, and manual or mechanical ventilation.

(2) A minimum of one stretcher shall be provided that can be carried to the patient.

(3) Aircraft stretchers and the means of securing it in-flight must be consistent with FAR's.

(4) The type and model of stretcher indicates the maximum gross weight allowed (inclusive of patient and equipment) as labeled on the stretcher.

(5) The stretcher shall be large enough to carry the 95th percentile adult patient, full length in the supine position. (The 95th percentile adult American male is 6 ft. and 212 lbs.)

(6) The stretcher shall be sturdy and rigid enough that it can support cardiopulmonary resuscitation. If a backboard or equivalent device is required to achieve this, such device will be readily available.

(7) The head of the stretcher is capable of being elevated at least 30 degrees for patient care and comfort.

(8) If the ambulance stretcher is floor supported by its own wheels, there is a mechanism to secure it in position under all conditions. These restraints permit quick attachment and detachment for patient transfer.

(e) Patients transported by air will be restrained with a minimum of three straps, including shoulder straps, that must comply with FAA regulations. The flowing additional requirements shall apply to achieve patient stability.

(1) Patients less than 60 pounds (27kg) shall be provided with an appropriately sized restraining device (for patient's height and weight) which is further secured by a locking device. All patients under 40 pounds must be secured in a five-point safety strap device that allows good access to the patient from all sides and permits the patient's head to be raised at least 30 degrees. Velcro straps are not encouraged for use on pediatric devices.

(2) If a car seat is used, it shall have an FAA approved sticker.

(3) There shall be some type of restraining device within the isolette to protect the infant in the event of air turbulence.

(f) A Supplemental lighting system shall be installed in the aircraft/ambulance in which standard lighting is insufficient for patient care.

(1) A self-contained lighting system powered by a battery pack or portable light with a battery source must be available.

(2) Aircraft shall have a means to protect the pilot's night adaptation visions shall be provided for night operations either through the medical configuration or a dividing curtain. (Use of red lighting or low intensity lighting in the patient care area is acceptable if not able to isolate the patient care area.)

(g) An electric power outlet shall be provided with an inverter or appropriate power source of sufficient output to meet the requirements of the complete specialized equipment packages without compromising the operation of any other system or equipment. A back-up power source to enable use of equipment may be provided by an extra battery of appropriate voltage and capacity.

(h) Aircraft operational controls and communications equipment shall be physically protected from any intended or accidental interference by the patient, medical transport personnel, or equipment and supplies.

(i) Appropriately sized helmets shall be worn (by all rotor wing personnel on the aircraft except for the patient) OR the interior modification of the aircraft shall be clear of objects/projections OR the interior of the aircraft shall be padded to protect the head-strike envelope of the medical personnel and patients as appropriate to the aircraft.

(j) There shall be access and necessary space to ensure any onboard patient's airway is maintained and to provide adequate ventilatory support from the secured, seat-belted position of medical transport personnel.

(k) Oxygen shall be installed according to FAA regulations in the aircraft and according to state and federal regulations for ambulances. Medical transport personnel shall be able to determine if oxygen is on by in-line pressure gauges mounted in the patient care area.

(1) Each gas outlet shall be clearly marked for identification.

(2) Oxygen flow shall be capable of being started and stopped at or near the oxygen source from inside the aircraft.

(3) The following indicators shall be accessible to medical transport personnel while enroute:

(A) Quantity of oxygen remaining.

(B) Measurement of liter flow.

(l) A variety of oxygen delivery devices consistent with the service's medical protocols shall be available.

(m) An appropriately secured portable oxygen tank with a delivery device shall be carried on the aircraft. Portable oxygen tank may not be secured between patient's legs while the aircraft is in motion.

(n) There shall be a back-up source of oxygen sufficient to allow completion of the transport in the event the main system fails. For air transports, this back-up source can be the required portable tank as long as the portable tank is accessible in the patient care area during flight.

(o) Storage of oxygen shall comply with applicable OSHA standards. (p) Oxygen flow meters and outlets shall be padded, flush mounted, or so located to prevent injury to medical transport personnel. (p) Any occurrence which requires reporting to the FAA of emergency conditions or operations shall require a report in writing to the Department within ten business days.

(q) The licensee shall notify the Department prior to placing a substitute aircraft into operation. Any vehicle initially placed in service after a purchase, lease, contract and/or refurbish shall be inspected, approved, and permitted by the Department prior to utilization.

310:641-3-33. Air ambulance equipment

(a) Medical control ~~should~~shall determine the patient's needs and level of care required when deciding what equipment shall be aboard each flight and the type of aircraft required for transport. Equipment kits, cases and/or packs which are carried on any given flight shall be available for the following categories: trauma, cardiac, burn, toxicologic, pediatric, neonatal, and obstetrics.

(b) ~~Medical equipment generic to all aircraft includes the following:~~ The following medical equipment shall be required to be on board every aircraft certified by the Department for air medical services:

~~(1) Oxygen and associated administration equipment, attached to the aircraft in an approved manner, capable of delivery in the prescribed manner suited to the patient's condition for flight duration, with ample reserves.~~

~~(2) Mechanical suction and associated administration equipment; electric/battery operated.~~

~~(3) Blood pressure and respiratory monitoring equipment suitable for aircraft environment.~~

~~(4) Airway management kit, to include at least intubation equipment, bag-valve-mask set, oral/nasal airways, and oxygen delivery supplies and equipment.~~

~~(5) Medication/Intravenous (IV.) kit, to include IV. pumps and locking hooks (or other positive locking device for IV. fluid containers)~~

~~(6) Linens and pillow appropriate to patient needs and external environment.~~

~~(7) Emesis basin or bags.~~

~~(8) Patient extremity restraints.~~

~~(c) Equipment and supplies specified by the United States Department of Transportation "Air Ambulance Guidelines" 1988 edition shall be available for any specific transport.~~

(1) IV supplies and fluids, readily available.

(2) Hangers/hooks to secure IV solutions in place and equipment to provide high flow fluids if needed. Glass IV containers shall not be used unless required by specific medications and properly secured.

(3) A minimum of three IV infusion pumps, on the aircraft or immediately available for critical care transports.

(4) Accessible medications, consistent with the service's medical protocols.

(c) Medications shall be easily accessible. Controlled substances shall be in a locked system and kept in a manner consistent with 310:641-3-70.

(d) Storage of medications shall allow for protection from extreme temperature changes if environment deems it necessary.

(e) Medical supplies and equipment shall be consistent with approved medical protocols and scope of care. The following equipment shall be on the aircraft/ambulance and immediately available for all Critical Care or ALS providers.

(1) A cardiac monitor, defibrillator and external pacemaker shall be secured and positioned so that displays are visible.

(2) Extra batteries or power source shall be available for cardiac monitor / defibrillator or external pacemaker.

(3) The defibrillator shall be secured and positioned for easy access. Pediatric paddles shall be available.

(4) An external pacemaker shall be on-board.

(5) The pulse generator pacemaker shall be on-board or immediately available as a carry-on item.

(f) The aircraft shall be configured for effective CPR.

(g) Each air ambulance service shall carry the following advanced airway and ventilatory support equipment.

(1) Laryngoscope and tracheal intubation supplies, including laryngoscope blades, bag-valve-mask and oxygen supplies, including PEEP valves; appropriate for ages and potential needs of patient transported.

(2) A mechanical ventilator appropriate for critical care transports.

(3) Two suction units, one of which is portable and both of which are capable of delivering adequate suction to clear the airway.

(4) Pulse oximetry, on-board and immediately available.

(5) End-tidal CO2 monitoring capabilities and equipment.

(6) Automatic blood pressure device, sphygmomanomter, Doppler or arterial line monitoring capability, on-board and immediately available.

(7) Devices for decompressing a pneumothorax and performing an emergency cricothyroidotomy.

(h) All aircraft equipment (including specialized equipment) and supplies shall be secured according to FAR's. Equipment shall be secured by an appropriate clamp, strap, or other mechanism to the vehicle, stretcher or isolette to prevent movement during a crash or abrupt stop.

310:641-3-34. Air ambulance medical staffing

(a) Each air ambulance flight originating in Oklahoma shall have, as a minimum, one of the following aeromedical crew member (ACM) attending the patient:

(1) (ACM-4) Physician licensed to practice in the State of Oklahoma. This crew member should be oriented educationally in Advanced Cardiac Life Support (ACLS),Pediatric Advanced Life Support (PALS), Advanced Trauma Life Support (ATLS), altitude physiology, and on-board treatment modalities.

(2) (ACM-3) Registered nurse licensed to practice in the State of Oklahoma. This crew member should be licensed as an EMT Paramedic and be oriented educationally in critical care modalities (obstetrics, neonatology, pediatrics, burns, cardiology, neurosurgery, toxicology and infectious disease specialties), altitude physiology, aircraft safety, crash and survival procedures, mapping/aircraft orientation, aviation communications.

(3) (ACM-2) EMT Paramedic licensed to practice in the State of Oklahoma. This crew member should be oriented educationally in altitude physiology, aircraft safety, crash and survival procedures, mapping/aircraft orientation, aviation communications, ACLS, PALS and Pre-hospital Trauma Life Support (PHTLS).

~~(4) (ACM-1) EMT Basic or EMT Intermediate licensed to practice in the State of Oklahoma. This crew member should be oriented educationally in altitude physiology, aircraft safety, crash and survival procedures, mapping/aircraft orientation, aviation communications, and Basic Trauma Life Support (BTLS) or Pre-hospital Trauma Life Support (PHTLS).~~

~~(5) Any other crew member authorized by the Department, but with a minimum of Basic Trauma Life Support (BTLS) and/or Advanced Cardiac Life Support (ACLS).~~

(b) Aeromedical crew members (ACMs) are required to participate in continuing education training for, but not limited to, the following: altitude physiology, emergency medical services and aviation communications, aircraft and flight safety, use of patient care equipment, protocol and procedure review and legal aspects of air transportation.

(1) Didactic continuing education shall include an annual review of:

(A) Aviation - safety issues.

(B) Hazardous materials recognition and response.

(C) Human factors - Crew Resource Management

(D) Infection control

(E) State EMS rules and regulations regarding ground and air transport.

(F) Stress recognition and management.

(G) Survival training.

(2) Appropriate continuing education shall be developed and documented on an annual basis and must include:

(A) Critical care (adult, pediatric, neonatal).

(B) Emergency / trauma care.
(C) Invasive procedure labs.
(D) Labor and delivery.
(E) Prehospital experience.

(c) Scene or pre-hospital transports of air ambulance service shall have as a minimum, one aeromedical crew member licensed as an emergency medical technician - Paramedic. ~~, and trauma equipment kit as required in Section 310:641-7-4.~~

310:641-3-36. Operational protocols

(a) There shall be written policies and procedures with documentation of training in the following areas:
(1) Equipment shall be annually tested and inspected by a certified clinical engineer.
(2) Documentation of equipment inspections shall be available for review by the Department.

(b) Medical personnel shall be in seatbelts (and shoulder harnesses if installed) that are properly worn and secured for all take-offs and landings according to FAA regulations. The written policy shall define when medical personnel may get out of restraints.

(c) A written policy shall be in place for patient loading and unloading procedures for medical transports as follows: A written policy shall be utilized for rapid patient loading and unloading if practiced.

(d) A written Protocol shall be in place for emergency refueling with the engine running, rotors turning, and/or passengers onboard. This refueling protocol shall address the following:
(1) Refueling with engine(s) running and/or shut down.
(2) Refueling with medical transport personnel or patient(s) on board which includes a requirement that at least one medical transport person shall remain with the patient at all times during refueling or stopover.
(3) Fire hazard policies pertinent to refueling procedures that are documented in the certificate holder's Operations Specifications Manual.

(e) A written policy shall be developed and in place with limitations on nighttime "scene" landings if the searchlight or the radar altimeter are not functioning.

(f) A written protocol shall be developed and in place to address the combative patient.
(1) Additional physical and/or chemical restraints shall be available and used for combative patients who potentially endanger himself, the personnel or the aircraft.
(2) The written protocol shall address refusal to transport patients, family members or others who may be considered a threat to the safety of the transport personnel.

(g) A list of contaminated materials, which could pose a threat to the medical transport team or render transport inappropriate, shall be readily available.

(h) The LZ or aircraft operational area shall be a safe distance to avoid any downwind danger when approaching or departing.

(i) The aircraft shall be equipped with a 180 degree controllable searchlight of at least 400,000 candle power (RW).

(j) The aircraft shall be equipped with a functioning radar altimeter.

(k) The aircraft shall be equipped with a functioning emergency locator transmitter (ELT) and in compliance with the applicable FAR's.

(l) The aircraft shall be equipped with survival gear appropriate to the coverage area and the number of occupants.
(1) Survival gear shall be maintained appropriately and shall be available to personnel on board.
(2) The survival kit and contents shall be included on the daily check sheet.

(m) A fire extinguisher shall be accessible to medical transport personnel and pilot(s) or driver while in motion.

(n) The interior of the aircraft or ambulance shall be climate controlled to avoid adverse affects on patients and personnel on board.

310:641-3-37. Communications

(a) All air ambulance aircraft shall have radio capability to communicate air to ground, air to air, and ground to air. This radio system should include two-way communications with physicians who are responsible for directing patient care in transit, and with ground personnel who coordinate the transfer of the patient by surface transportation. The aircraft shall also have the capability to communicate between the medical attendant and pilot, be in compliance with the Oklahoma Area Wide Communications Plan, and provide documentation that the aircraft can communicate with hospitals as specified in OAC 310:641-3-22(d).

(b) All communications equipment shall be maintained in full operating condition and in good repair. Ambulance communications equipment shall be capable of transmitting and receiving clear and understandable voice communications to and from the base station at a reasonable distance. Radios on aircraft shall be capable of transmitting and receiving the following traffic:
(1) Medical direction.
(2) Communication Center.
(3) Air traffic control (aircraft).
(4) EMS and law enforcement agencies.

(c) The pilot shall be able to control and override radio transmissions from the cockpit in the event of an emergency situation. If cellular phones are part of the on-board communications equipment, they shall be used in accordance with FCC regulations.

(d) Providers whose medical director(s) require biomedical telemetry in their medical protocols may utilize the cellular telephone system for such communications. Other communications equipment such as cellular phones shall be in addition to and not in place of the radio equipment and shall not be used in the presence of pacemakers or other equipment sensitive to interference.

(e) The medical team shall be able to communicate with each other during flight.

(f) A communication Specialist shall be assigned to receive and coordinate all requests for the medical transport service. Training of the designated person shall be commensurate with the scope of responsibility of the Communications Center personnel and include:

(1) EMT certification, or the equivalent in knowledge or experience which minimally includes:
(2) Medical terminology.
(3) Knowledge of EMS - roles and responsibilities of the various levels of training - BLS/ALS, EMT/EMT-Paramedic.
(4) State and local regulations regarding EMS.
(5) Familiarization with equipment used in the field setting.
(6) Knowledge of Oklahoma State EMS Rules and regulations.
(7) General safety rules and emergency procedures pertinent to medical transportation and flight following procedures.
(8) Navigation techniques/terminology and under-standing weather interpretation. This shall include an understanding of GPS navigation.
(9) Types of radio frequency bands used in EMS systems.
(10) A knowledge of the hazardous materials response and recognition procedure using appropriate reference materials.
(11) Stress recognition and management.

(g) Aircraft shall communicate, when possible, with ground units securing unprepared landing sites prior to landing. A readily accessible post incident/accident plan shall be part of the flight following protocol so that appropriate search and rescue efforts may be initiated in the event the aircraft is overdue, radio communications can not be established not location verified. There shall be a written plan to initiate assistance in the event the ambulance is disabled.

(h) Initial coordination shall be documented and continuous flight following (or initiating and following ground transport) shall be monitored and documented, and shall consist of the following:
(1) Time of call (Time request/inquiry received).
(2) Name and phone number of requesting agency.
(3) Age, diagnosis or mechanism of injury.
(4) Referring and receiving physician and facilities (for interfacility requests) as per policy of the medical transport service.
(5) Vertification of acceptance of patient and vertification of bed availability by referring physician and facility.
(6) Destination airport, refueling stops (if necessary) location of transportation exchange and hours of operation
(7) Ground transportation coordination at sending and receiving areas.
(8) Time of Dispatch (Time crew notified flight is a go, post pilot OK's flight).
(9) Time depart base (time of lift-off or other site).
(10) Number and names of persons on board.
(11) Amount of fuel on board.
(12) Estimated time of arrival (ETA)
(13) Pertinent LZ information.
(14) Time arrive location.
(15) Time helicopter arrives at landing zone or helipad).
(16) Time depart location.
(17) Time helicopter lifts off from landing zone or helipad.
(18) Time arrive destination.
(19) Time depart destination.
(20) Time arrive base.
(21) Time aborted.

(i) Flight following and communications during a mission shall direct and/or relay communications to communication center (while in motion) specifying locations and ETA's, and deviations, if available.

(j) A "sterile cockpit" shall be maintained below pre-determined altitudes so that the pilot shall be able to transmit and receive vital information and to minimize distractions during any critical phase of flight. No external communications are permitted, and no patient information is transmitted at this time unless radios for medical transport are appropriately isolated.
(1) There shall be a policy/procedure for diversions from original destinations.
(2) Direct or relayed communications to communication center specifying all take-off and arrival times.
(3) Time between each communication shall be documented.
(4) Time between each communication shall not exceed 15 minutes while in flight. If an IFR or VFR flight plan has been filed, communication with air traffic control shall fulfill this requirement.
(5) Time between communications shall not exceed 45 minutes while on the ground.
(6) Alternate agencies shall be used to relay communications when direct contact is not possible.

(k) Communications Center shall contain the following:
(1) At least one dedicated phone line for the medical transport service.
(2) A method to keep noise and other distractions (traffic) from the communications area while the communications specialist is involved with a medical transport mission.
(3) A system for recording all incoming and outgoing telephone and radio transmissions with time recording and playback capabilities. Recordings to be kept for three (3) years.
(4) Capability to immediately notify the medical transport team and on-line medical direction (through radio, pager, telephone, etc.)
(5) Back-up emergency power source for communications equipment, or a policy delineating methods for maintaining communications during power outages and in disaster situations.
(6) A status board with information about pre-scheduled flights/patient transports, the medical transport team on duty, weather, and maintenance status.
(7) Local aircraft service area maps and navigation charts shall be readily available. Road maps must be available for ground transport services.

310:641-3-38. Aircraft utilization

(a) Each air ambulance service shall have in place a protocol to insure no delay in aircraft response. In such cases where a

delay is anticipated, the air ambulance service called has a responsibility to notify the caller and assist in referral to another licensed ambulance service.

(b) The air ambulance service shall ensure appropriate utilization and medical benefit to the patient. A documented review process shall be developed and utilized. Utilization review of scene transports shall include the following triage criteria. This is to minimize over utilization of air services: On scene transports - The following types of criteria shall be used in the triage plan for on-scene transports to minimize over triage:

(1) Anatomic and physiological identifiers.
(2) Mechanism of injury identifiers.
(3) Situational identifiers.
(4) Air vs. ground times.
(5) Road conditions.
(6) Entrapment or multiple injured.
(7) Capability of local ground provider verses patient needs.
(8) Safety of the transport environment.

(c) The air ambulance service shall be integrated with and communicate with other public safety agencies, including ground emergency service providers. This shall include participation in regional quality improvement reviews, regional disaster planning and mass casualty incident drills to include an integrated response to terrorist events.

(d) Quarterly scheduled post event reviews of cases with ground agencies and receiving facilities to enhance performance improvement.

(e) Air transport services shall develop and demonstrate use of a written code of ethical conduct that demonstrates ethical practices in business, marketing, and professional conduct.

(f) Air ambulance services shall report aviation incidents and accidents to the appropriate aviation authority immediately and the Department within 24 hours.

310:641-3-39. Rotorwing standards - certificate of the aircraft operator

(a) Licensed air ambulances shall meet all Federal Aviation Regulations, and shall hold a FAR Part 135 Certificate and Ambulance Operations Specifications specific to EMS operations.

(b) VFR weather minimums shall be specified for day and night local, and day and night cross country.

(c) The "local flying area" shall be determined by the operator based upon the operating environment.

(d) There shall be a written policy for obtaining and documenting pertinent weather information.

(1) The pilot in command shall be responsible for obtaining weather information according to policy that shall address at a minimum:
(A) Routine weather checks.
(B) Weather checks during marginal conditions.
(C) Weather trending.

(2) Communication between pilots, medical personnel, and communication specialists at shift change regarding the most current and forecasted weather shall be part of a formal briefing.

(e) VFR "response" weather minimums to begin a transport shall be no less than:

(1) Conditions - Day/Local:
(A) Ceiling - 500 ft.
(B) Visibility - 1 mile

(2) Conditions - Day/Xcountry:
(A) Ceiling - 1000 ft.
(B) Visibility - 1 mile

(3) Conditions - Night/local:
(A) Ceiling - 800ft.
(B) Visibility - 2 miles

(4) Conditions - Night/Xcountry:
(A) Ceiling - 1000 ft.
(B) Visibility - 3 miles

(f) A pilot in Command shall have a commercial rotorcraft-helicopter and instrument helicopter rating.

(g) The PIC shall possess 2000 total flight hours with a minimum of 1500 helicopter flight hours prior to assignment with a medical service with the following stipulations.

(h) There shall be a mechanic primarily assigned to each specific aircraft who is FAR 135 qualified to maintain the aircraft operated by the medical service and who possesses 2 years of rotorcraft experience as a certified airframe and powerplant mechanic prior to assignment with the medical service.

PART 13. SANITATION

310:641-3-60. Sanitation requirements

The following shall apply regarding sanitation standards for all ambulance services and personnel:

(1) The interior of the vehicle and the equipment within the vehicle shall be sanitary and maintained in good working order, at all times;

(2) Equipment shall be of smooth and easily cleaned construction;

(3) Freshly laundered linen or disposable linen shall be used on the cots and pillows. Linen shall be changed after each patient is transported, and bagged and stored in a separate compartment;

(4) Clean linen storage shall be provided on each vehicle;

(5) Closed compartments shall be provided on each vehicle for medical supplies;

(6) Pillows and mattresses shall be kept clean and in good repair;

(7) Soiled linen shall be placed in a closed container (plastic bags with ties). Any linen which is suspected of being contaminated with blood borne pathogens or other infectious disease shall be placed in a properly marked closed container for disposal. All contaminated disposable supplies shall be placed in properly marked containers with the "biological hazard" emblem for incineration;

(8) Exterior and interior surfaces of vehicles shall be cleaned routinely;

(9) Blankets and hand towels used in any vehicle shall be clean;

(10) Implements inserted into the patient's nose or mouth shall be single-service wrapped and properly stored and handled. When multi-use items are utilized, the local health care facilities should be consulted for instructions in sanitation and handling of such items;

(11) When a vehicle has been utilized to transport a patient(s) known to the operator to have a communicable disease the vehicle shall be cleansed and all contact surfaces shall be washed with soap and water and ~~disinfected~~ appropriate disinfectant. ~~The mattresses, pillows and blankets should be placed in the sunlight for several hours.~~ The vehicle should be placed "out of service" until a thorough cleansing is conducted, and;

(12) All storage spaces used for storage of linens, equipment, medical supplies and other supplies at the base station shall be kept clean and free from unnecessary articles. The contents shall be arranged so as to permit thorough cleaning.

(13) Personnel shall be clean, especially hands and fingernails, and well groomed. Clothing worn by personnel shall be clean. It is recommended that the licensee shall provide in each vehicle, a means of hand washing for the attendants.

(14) The oxygen humidifier shall be cleaned and placed on the vehicle dry, when not in use.

(15) All medications and equipment with expiration dates shall be current. Expired medications and equipment shall be discarded appropriately.

310:641-3-91. Correction orders

(a) Violation of Oklahoma Statues, the Act or the rules constitute grounds to issue a correction order, citing the deficiency, indicating the time period in which a correction shall be made. This time period shall not exceed one hundred twenty (120) days, for any deficiency.

(b) Written notification, within the time period cited, shall be forwarded to the Department when an order has been corrected. If this notice is not forthcoming, then the Department shall notify the service, by certified mail, that they are out of compliance. If no correction is made within thirty (30) days, then action for remedy against the service may be undertaken by administrative procedure [Title 75 O.S., Sec. 301, 1981, et seq.]

(c) Violations which appear to be hazardous to the health and welfare of the public and/or employees shall require immediate correction. ~~Such violations include but are not limited to empty oxygen tank(s), inoperative oxygen administration gauge(s), inoperative suction, tires in poor condition, carbon monoxide level(s) in excess of fifty (50ppm) parts per million, emergency lights and/or siren inoperative, dirty unsanitary conditions, air conditioning and/or heater inoperative.~~

(1) If such a violation is not, or cannot be, corrected immediately, the vehicle shall be removed from service and the ambulance permit shall be removed until such time as the vehicle is in compliance and has been re-inspected and permitted by the Department.

(2) Violations that may justify immediate removal of an ambulance vehicle permit include:

(A) Inadequate sanitation, including the presence of contamination by blood and/or body fluids;

(B) Inoperable heater/air conditioner;

(C) Inoperable AED or defibrillator;

(D) Tires in poor condition;

(E) Inoperable emergency lighting and/or siren;

(F) Inoperable oxygen system or less than 200psi in onboard oxygen tank;

(G) Inoperable suction apparatus;

(H) Carbon monoxide levels of greater than (50 ppm) fifty parts per million, or broken exhaust pipe;

PART 27. TRANSFER PROTOCOLS

310:641-3-130. Transfer protocols

(a) Trauma triage, transport, and transfer guidelines shall adhere to the principle of delivering time-sensitive severely injured patients to hospitals with a level I or II trauma and emergency operative service classification without overloading those hospitals with stable at-risk patients, or patients with minor-to moderate injuries.

(~~a~~b) Specific triage, transport, and transfer guidelines and facility utilization protocols shall be developed by medical control for the region, area, and/or local service vicinity as specified by 310:641-3-130~~(b)~~(c) and ~~(c)~~(d), and submitted to the Department for approval. ~~Each service shall comply with protocols approved by their medical control. Compliance with approved protocols shall be monitored and enforced by the department.~~

(~~b~~c) ~~Medical control shall consider the following when establishing triage, transport, and transfer guidelines.~~ Protocols approved by the Department shall include the following requirements:

(1) Non-emergency transports shall be transported to the facility of the patient's choice, if within reasonable service range.

(2) Emergency, non-injury related, non life threatening transports shall be transported to the facility of the patient's choice, if within reasonable service range.

(3) Emergency, injury-related transports shall adhere to the Oklahoma Triage, Transport, and Transfer Guidelines approved by the Oklahoma State Trauma Advisory Council and the Oklahoma Emergency ~~Medical Services~~ Response Systems Development Advisory Council and ~~the following:~~

~~(A) Medical control shall consider time and distance for each region and regional guidelines~~ shall ensure that patients are delivered to the most appropriate classified ~~trauma center~~ hospital, either within their region or contiguous regions.

(~~B~~4) ~~Severe~~ Severely ~~injury~~ injured patients as described in the Oklahoma Triage, Transport, and Transfer Guidelines shall be transported to a hospital classified at Level I or II for trauma ~~center~~ and emergency operative services unless time and distance factors are detrimental to patient care. These patients shall be transported to the

next highest level trauma and emergency operative service classified hospital ~~center according to the~~, unless a Department approved regional plan has been developed, in which case the regional plan shall be followed. ~~The regional plan shall provide for immediate stabilization and transfer to a higher level trauma center, if a level I or II center is not the initial receiving facility.~~

(~~C~~5) ~~Patients~~ Stable patients at risk for severe injury or with minor-to-moderate injury as described in the Oklahoma Triage, Transport, and Transfer Guidelines shall be transported to ~~a level I, II, or II trauma center according to the regional plan. The regional plan shall provide for immediate stabilization and transfer to a higher level trauma center if clinically indicated.~~ The closest appropriate facility.

~~(D) Patients with minor-to-moderate injury~~ These patients may be transported to the ~~center~~ hospital of the patient's or patients legal representative's choice consistent with regional guidelines.

~~(E) Injury related transports shall be those patients with ICD codes 800 to 959.9.~~

(~~4~~6) Emergency, life threatening, non-injury transports shall be to the ~~highest level and~~ nearest facility that can provide evaluation and stabilization appropriate to the patient's condition ~~and according to the regional plan.~~

(d) In counties with populations of 300,000 or more and their contiguous communities injury related transports shall be directed and coordinated by the trauma transfer and referral center for the region.

(1) All ambulance services providing pre-hospital emergency services in these regions shall contact the trauma transfer and referral center before transporting an injured patient to a hospital. The trauma transfer and referral center shall direct the ambulance to the appropriate hospital based on the regional plan, the severity of the injury, and the capacity status of the hospitals in the region.

(2) All ambulance services transporting injured patients on a pre-hospital basis from areas outside the region to hospitals in the region shall contact the trauma transfer and referral center before entering the region. The trauma transfer and referral center shall direct the ambulance to the appropriate hospital based on the regional plan, the severity of the injury, and the capacity status of the hospitals in the region.

(3) All ambulance services transferring injured patients from hospitals outside the region to hospitals in the region shall contact the trauma transfer and referral center before entering the region to advise the center of the patient transfer. The center shall maintain a record of the transfer for regional continuous quality improvement activities.

(~~e~~e) The patient has a right to refuse transport.

PART 31. FIRST RESPONSE AGENCIES

310:641-3-150. First response agencies

(a) All organizations desiring to become certified by the Department as a first response agency shall first secure a written agreement with a sponsoring licensed ambulance service, and an endorsement from the governmental authority in which the agency is located. The ambulance service shall submit an application for the proposed first response agency, and provide such documentation and other requirements to the Department, as prescribed on forms provided by the Department.

(1) Transportation of ambulance patients shall not be performed by certified first response agencies.

(2) An organization shall not be qualified, nor designate itself, as a Certified First Response Agency ~~first response agency~~ unless certified by the Department.

(b) The first response agency application for certification shall contain at least the following:

(1) The name, address, and officers of the organization;

(2) The name of the physician medical director of the organization;

(3) The name or names of licensed ambulance services, which shall serve as transport units for the service area;

(4) The names of all certified and licensed personnel acting or working in the organization, for this purpose;

(5) The level of care to be rendered; and

(6) A list of equipment and supplies.

(c) Applications may be approved by the Department, based upon inspection and review of the purpose and capability of the applicant, and upon a written agreement with a licensed ambulance service which shall provide transportation.

(1) The application shall be accompanied by a non-refundable fee of ~~twenty five ($25.00)~~ fifty ($50.00) dollars.

(2) Upon submission of a complete application, the Department shall have sixty (60) days to determine the ability of the agency to meet the requirements of law and these rules.

(3) A certificate shall be valid for two (2) years, ~~whereupon a renewal application, provided by the Department, shall be submitted.~~ The Department shall mail all certified first response agencies a "Survey/Renewal Form" in October, each year. This form shall be considered and utilized as a renewal application, if due. This form along with supplemental forms shall be returned to the Department by December 1st each year. The renewal fee shall be ~~ten ($10.00)~~ twenty ($20.00) dollars.

(d) Personnel of a certified first response agency may utilize procedures authorized to the extent and limitations set forth by required medical control of the first response agency and within their license and certification level.

(e) The Department may place on probation, suspend, revoke, and/or fine certified first response agencies, under the same laws governing ambulance services.

(f) Unannounced inspections shall be made by the Department.

PART 33. SERVICE AND AGENCY FILES

310:641-3-160. Ambulance service and first response agency files

(a) Each licensed ambulance service and first response agency shall maintain files about the operation, maintenance, and such other required documents, at the business office. These files shall be available for review by the Department, during normal work hours. Files which shall be maintained include the following:

(1) Copies of all run reports shall be retained for three (3) years, including copies of scannable run sheets and its narrative and;

(A) A copy of the run report shall be left with the receiving hospital at the time a patient(s) is (are) accepted at the hospital;

(B) All run reports shall contain administrative, legal, medical, community health and evaluation information required by the Department;

(C) All run reports and their narrative(s) shall be considered confidential;

(2) Records on the maintenance, and daily inspections of each vehicle;

(3) Copy of licenses, certificates or other qualifications of staffing or personnel employed by or associated with the service or agency as required by this Act. These required documents shall be separate from other personnel records so as to ensure confidentiality of records which do not pertain to the requirements for the license or certificate;

(4) Copies of staffing patterns, schedules, or staffing reports which indicate the ambulance service is maintaining twenty four (24) hour coverage, at the highest level of license;

(5) Copies of in-service training and continuing education records;

(6) Copies of ambulance service operational and medical protocols;

(7) A log of each call received and/or initiated, to include the number of the run report, date, all required times, name of the patient, location of the scene, and nature of the call;

(8) Copies of all incident reports defined as unusual occurrences which shall be forwarded to the Department within ten (10) days;

(9) Copies of all Occupational, Safety, and Health Agency-requirements, as required and;

(10) Such other documents which may be determined necessary by the Department.

(b) The standardized data set ~~(scannable report)~~ and an electronic submission standard for EMS data as developed by the Department shall be mandatory for each licensed ambulance service. Reports of the EMS data standard shall be forwarded to the Department by the fifteenth (15th) day following the end of each month. Exceptions to the monthly reporting requirements shall be granted only by the Director of EMS, in writing.

(c) Review and the disclosure of information contained in the ambulance service files shall be confidential, except for information which pertains to the requirements for license, certificate, or investigation issued by the Department.

(d) Department representatives shall have prompt access to files, records and property as necessary to appropriately survey the provider. Refusal to allow access by representatives of Department to records, equipment or property may result in summary suspension of licensure by the Commissioner of Health.

(e) All information submitted and/or maintained in files for review shall be accurate and consistent with Department requirements.

PART 39. ENFORCEMENT ACTION

310:641-3-190. Suspension, revocation, probation, or non-renewal of a licensee

(a) The Department may suspend or revoke a license, and/or fine or place on probation a license or licensee for the following:

(1) Violations of any of the provision of the Oklahoma Statutes, the Act or the rules and regulations promulgated by the Board;

(2) Permitting, aiding or abetting in any illegal act in connection with the ambulance service;

(3) Failure to provide emergency service to any person, unless a vehicle and/or personnel is not available, and failure to summon mutual aid;

(4) Conduct of any practice that is detrimental to the welfare of the patient or potential users of the service;

(5) Failure to operate the service on a twenty four (24) hour basis, except for the Specialty Care and/or Air Ambulance service;

(6) Placing a vehicle into service before it is properly inspected, approved and permitted by the Department, and/or;

(7) Failure to comply with a written correction order within the time frame specified by the Department.

(8) Engaging in any act which is designed or intended to hinder, impede or obstruct the investigation of any matter governed by the Act, by any lawful authority.

(~~8~~9) An ambulance service who fails to renew their Oklahoma license within the time frame and other requirements as specified in these rules, shall be considered an expired or lapsed licensee, and therefore no longer licensed as an ambulance service in the State of Oklahoma.

(~~9~~10) A first response agency who fails to renew their Oklahoma certification within the time frame and other requirements as specified in these rules, shall be considered an expired or lapsed certification, and therefore no longer certified as a first response agency in the State of Oklahoma.

(b) No person, company, governmental entity, or trust authority may operate an ambulance service or first response agency except in accordance with Title 63, Section 1-2501, et seq., and the rules and regulations as promulgated by the State Board. The Commissioner, District Attorney of the county wherein a violation occurs, or the Attorney General of this State, shall have the authority to enforce provisions of the law.

SUBCHAPTER 5. PERSONNEL LICENSES AND CERTIFICATION

PART 3. EMERGENCY MEDICAL PERSONNEL LICENSES

310:641-5-11. License qualification

Persons applying for initial license shall meet the requirements for qualification, application, and procedure as follows:

(1) Applicant shall be at least eighteen (18) years of age.

(2) Applicant shall within the past two (2) year period previous to examination, have successfully completed a Department approved emergency medical technician course. The two (2) year period is based upon the date of successful course completion.

(3) Applicant shall submit~~,~~ the following: ~~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.~~

(A) State application that specifies true, correct and complete information as to eligibility and character.

(B) A National Registry application that has been completed on-line with the National Registry of EMTs. Grading fee shall be paid to the National Registry.

(4) An application fee of seventy-five ($75.00) dollars for EMT-B and one hundred fifty ($150.00) dollars for EMT-I and EMT-P shall be submitted with the application. EMT-I and EMT-P fees shall be one hundred fifty ($150.00) for both written and practical re- examination, one hundred ($100.00) for a full practical re-examination, fifty ($50.00) for a partial practical re-examination, and fifty ($50.00) for a written only re-examination. Fees shall be in an acceptable form, made payable to the Oklahoma State Department of Health - Emergency Medical Services Division (OSDH/EMS). Fees are non-refundable except if the application is rejected ~~or in the case of a documented hardship, a refund may be made at the discretion of the Department.~~ Candidates who fail to appear at the scheduled test will be charged the full fee when a new application is made.

(5) If national registration is obtained outside the State of Oklahoma the candidate must follow reciprocity requirements to obtain State licensure

(~~5~~6) A license application may be denied on the basis of a felony which includes any conviction of assault, battery, or assault and battery with a dangerous weapon; aggravated assault and battery; murder or attempted murder; manslaughter, except involuntary manslaughter; rape, incest, or sodomy; indecent exposure and indecent exhibition; pandering; child abuse; abuse, neglect or financial exploitation of any person entrusted to his care or possession; burglary in the first or second degree; robbery in the first or second degree; robbery or attempted robbery with a dangerous weapon, or imitation firearm; arson, substance abuse, and such other convictions–which in the opinion of the Department would render the applicant unfit to provide emergency medical care to the public. Each decision shall be determined on a case-by- case basis.

(~~6~~7) 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.

(~~7~~8) Candidates are required to successfully complete all sections of the National Registry of Emergency Medical Technicians practical and written examinations.

(A) Practical examinations shall adhere to the policies of the National Registry and the Department. Candidates shall demonstrate an acceptable level of competency in all respective skill areas. The Department reserves the right to review and require additional practical examination of any candidate.

(i) A candidate for EMT-B shall complete a practical examination before applying for a written examination. The practical examination may be conducted at an approved training program in accordance with National Registry policies and shall be separate from the completion of training. Verification of successful completion and the measured competency of each of the required skill areas shall be kept on file, for a period of three (3) years at the training program, and summaries submitted to the Department with the final course documentation.

(ii) A candidate for EMT-I shall apply for both the practical and written license examinations. The written and practical examinations shall be administered in accordance with policies currently established by the National Registry of Emergency Medical Technicians.

(iii) A candidate for EMT-P shall apply for both the practical and written license examinations. The written and practical examinations shall be administered in accordance with policies currently established by the National Registry of Emergency Medical Technicians.

(B) ~~All candidates are allowed a maximum of three full (3) attempts to complete the practical examination, based upon one (1) emergency medical technician training course, and a two (2) year limit of validity on each training course. Should a candidate opt to attempt a fourth practical examination, the candidate shall complete and show evidence of a Department approved refresher course, for their respective level of training. Any subsequent examination shall be made upon a case by case review by the Department. Under no circumstance shall more than five (5) complete examinations be allowed at any level.~~Candidates are allowed three full attempts to pass the practical examination (one "full attempt" is defined as completing all

six (6) stations and two retests if so entitled). Candidates who fail a full attempt or any portion of a second retest must submit official documentation of remedial training over all skills before starting the next full attempt of the practical examination and re-examining over all six (6) stations. This official documentation must be signed by the EMT-Paramedic Training Program Director or medical director of training/operations which verifies remedial training over all skills has occurred since the last unsuccessful attempt and the candidate has demonstrated competence in all skills. Should a candidate fail the third full and final attempt of the practical examination, the candidate must complete a new, entire, state-approved EMT-Paramedic Training Program.

(C) Successful completion of the practical examination is valid for one (1) year only.

(~~8~~9) The written examination is based on the respective national standard emergency medical technician curriculum, as developed and promulgated by the United States Department of Transportation including State approved changes. Each candidate shall realize an overall passing minimum score, and in the case of EMT-P a passing minimum score for each section. Candidates who fail the written examination may re-apply, if eligible, for subsequent examination by submitting another application and fee, and meet current entry requirements.

(A) Candidates are allowed three (3) opportunities to successfully complete the written examination, within the two (2) year limitation on training and within the one (1) year limitation of the practical examination.

(B) Candidates who opt to attempt a fourth written examination shall submit proof of successful completion of a Department approved emergency medical technician refresher course, at the respective level of training.

(C) No oral examination of the written test shall be permitted. Only special examination accommodations approved by the National Registry will be provided for examinations.

(~~9~~10) The Department shall administer all National Registry written examinations and EMT-I and EMT-P practical examinations. Training programs, shall administer national registry basic and first responder practical examinations. ~~licensed~~Licensed ambulance services and certified first response agencies approved by the Department shall administer National Registry first responder ~~and EMT-B~~ practical examinations. All practical examinations are administered after completion of a State approved training course at all levels.

(~~10~~11) Department approved evaluators shall be used for all EMT-I and EMT-P practical examinations.

310:641-5-12. Personnel license levels

~~(a)~~ There shall be three (3) levels of emergency medical technicians recognized for new personnel licenses.

(1) Emergency medical technician/ basic (EMT-B);

(2) Emergency medical technician/ intermediate (EMT-I), and;

(3) Emergency medical technician/ paramedic (EMT-P).

~~(b) The emergency medical technician/ advanced cardiac (EMT-A/C), licensed by previous legislation shall no longer be issued, however they remain in effect and subject to renewal, as given in PART 7 of this Subchapter.~~

310:641-5-13. Issuance of licenses

(a) Upon successful completion of the examinations, an Oklahoma license at the respective level of emergency medical technician, shall be issued. Concurrent registration with the National Registry is included during the initial license period.

(b) The initial expiration date of a license shall coincide with the National Registry expiration date. This initial license period may range from eighteen (18) months to thirty (30) months. Subsequent license periods, if a licensee meets renewal requirements, shall be for a two (2) year period beginning April 1 and continuing through March 31 of the expiration year.

(c) A licensed emergency medical technician shall either have their State license card, or a copy, on their person or in the vehicle while on duty. If the card has been lost, destroyed, or is in transit, a thirty (30) day period shall be allowed for compliance. A duplicate license may be obtained from the Department upon request and verification of status. A five ($5.00)dollar fee shall be charged for a duplicate license, or license issued due to a name or address change.

~~(d) Upon the effective date of this rule, EMT licenses with an expiration date of December 31st shall expire on March 31st of the next license year.~~

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 ~~twenty-four (24) hour~~ basic refresher course 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, PPC, and Pediatric Education for the Prehospital Provider (PEPP) or any other State approved courses will be allowed the number of hours specified on the course completion certificate up to 16 hours unless otherwise approved by the Department. 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 Paramedic course shall fulfill the refresher and all continuing education requirements for the EMT Basic;

(C) 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 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 thirty-six (36) hour~~ an intermediate refresher course adhering to Department standards. Ten (10) hours of the refresher may be completed through distributive 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, PPC, and Pediatric Education for the Prehospital Provider (PEPP) or any other State approved courses will be allowed the number of hours specified on the course completion certificate up to 16 hours unless otherwise approved by the Department. 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) 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 ~~forty-eight (48) hour~~ paramedic refresher course 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, PPC, and Pediatric Education for the Prehospital Provider (PEPP) or any other State approved courses will be allowed the number of hours specified on the course completion certificate up to 16 hours unless otherwise approved by the Department. Successful completion of the following National Standard courses-- PHTLS (16hrs), BTLS (16hrs), 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, 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.

310:641-5-15. Expired license

Any person who fails to renew his Oklahoma emergency medical technician license within the time frame and other requirements as specified in Section 310:641-5-14, shall be considered an expired or lapsed licensee, and therefore no longer licensed as an emergency medical technician in the State of Oklahoma. Applications for renewal shall be postmarked no later than midnight March 31st of the respective license year of expiration. Hardships and unforeseen circumstances to the process deadline may be submitted in writing to the Department for an exception, but in no case shall an Oklahoma emergency medical technician license be renewed which has been expired more than ninety (90) calendar days.

310:641-5-17. Lapsed licenses

To reinstate an emergency medical technician license which has expired, lapsed, or which has not been renewed, an individual shall accomplish one of the following:

(1) If the expiration date is within a two (2) year period, the person shall successfully complete a Department approved national standard emergency medical technician refresher course, submit an initial application, appropriate fee, and successfully complete the Department approved written and practical examinations, respective to the level of training and original license, or;

(2) If the expiration date is beyond a two (2) year period, the person shall successfully complete a Department approved national standard emergency medical technician

training course, submit an initial application, appropriate fee, and successfully complete the Department approved written and practical examinations, respective to the level of training and original license.

(3) Emergency medical technician - paramedic if previously certified by the national registry may apply for ~~reinstatement~~re-entry. ~~if the reinstatement is authorized by~~Re-entry will be conducted by, and consistent with the standards of, the National Registry of Emergency Medical Technicians.

PART 5. PROCEDURES AUTHORIZED

310:641-5-30. Standard of care

(a) A licensed emergency medical technician basic (EMT-B) may perform to the following level or standard of care;

(1) Patient assessment, including the determination of vital signs, diagnostic signs, and triage;

(2) Bandaging, splinting, and the control of hemorrhage;

(3) Treatment of shock, including the use of pneumatic anti-shock trousers (PASG);

(4) Cardiopulmonary resuscitation (CPR) and the use of only adjunctive airway devices and the use of a semi-automated external defibrillator (SAED);

(5) The maintenance of intravenous fluids, without medications and/or drugs added;

(6) Rescue and extrication procedures;

(7) Assistance of patient prescribed medications, including sublingual nitroglycerin, epinephrine auto injector and hand held aerosol inhalers;

(8) Administration of oral glucose, activated charcoal, aspirin, agency supplied epinephrine auto ~~inject~~injector, and albuterol or approved substitute as per local medical direction;

(9) All other emergency medical care skills and measures included in the standard United States Department of Transportation basic emergency medical technician training curriculum which are not specifically listed above, and;

(10) Upon the approval of the Department, and recommendation of the Council, additional skills may be authorized upon the written request of a local medical director. Authorized skills for the EMT-B may be reduced or limited by local medical direction.

(b) A licensed emergency medical technician intermediate (EMT-I) may perform to the following level or standard of care;

(1) All skills listed in Subsection 310:641-5-30(a) for the EMT-B;

(2) Establishment of vascular access for the administration of intravenous fluids, without medications and/or drugs added;

(3) Administration of medications per local medical direction and approved by the Department;

(4) Venipuncture to obtain blood samples;

(5) The use and placement of definitive airway adjuncts for adults, children and infants;

(6) Upon the approval of the Department, and recommendation of the Council, additional skills may be authorized upon the written request of a local medical director.

(c) A licensed emergency medical technician paramedic (EMT-P) may perform to the following level or standard of care;

(1) All skills listed in Subsection 310:641-5-30(a), for the EMT-B and Subsection 310:641-5-30(b), for the EMT-I;

(2) The recognition, interpretation, treatment of cardiac arrhythmias using a cardiac monitor/defibrillator/external pacemaker;

(3) The advanced management of pediatric emergencies, including resuscitation, advanced airway placement, and administration of pediatric medication;

(4) The advanced management of obstetric and gynecologic emergencies, including medication administration;

(5) Advanced intervention of psychiatric patients, including medication administration;

(6) All other emergency medical care skills and measures included in the standard United States Department of Transportation paramedic emergency medical technician training curriculum, which are not specifically listed above, and;

(7) Upon the approval of the Department, and recommendation of the Council, additional skills may be authorized upon the written request of a local medical director.

PART 7. ADVANCED CARDIAC [REVOKED]

310:641-5-40. Requirements for advanced/cardiac [REVOKED]

~~(a) Current emergency medical technician advanced cardiac (EMT-A/C) licenses expire as of the date of record and each two (2) years thereafter, No new emergency medical technician advanced cardiac licenses shall be issued by the Department. Individuals currently licensed at emergency medical technician advanced cardiac (EMT-A/C) may continue to be licensed at this level, if the following conditions are met:~~

~~(1) Applications, mailed to the address of record by the Department, shall be submitted for this purpose. Renewal requirements contained Section 310:641-5-14, in general, apply also to the emergency medical technician advanced cardiac renewal;~~

~~(2) A renewal fee of twenty ($20.00) dollars is required, in an acceptable form, made payable to the Oklahoma State Department of Health – Emergency Medical Services Division (OSDH/EMS);~~

~~(3) Any person who holds a valid emergency medical technician advanced cardiac license who fails to apply for renewal within the requirements contained within this Section, shall be considered an expired licensee, and~~

~~thereafter no longer licensed at this level in the State of Oklahoma;~~

~~(4) Basic life support (BLS) training, advanced cardiac life support certification (ACLS), continuing education, refresher training, and skill competency shall be maintained and submitted documentation as follows:~~

~~(A) Annual BLS training by the American Heart Association shall be met. Copy of cards or certificates for both years shall be forwarded;~~

~~(B) Biannual ACLS certification by the American Heart Association shall be met. Copy of card or certificate shall be forwarded;~~

~~(C) Thirty two (32) hours of emergency medical technician advanced cardiac refresher training, taught in a Department approved training program and adhering to the content of original training, shall be met. An end of course class record shall be filed;~~

~~(D) Thirty six (36) hours of continuing education (CE) shall be completed from pre-approved topics or OSDH/EMS Staff approved topics which adhere to the content of original training. Copies or certificates of CEs documenting the date, place, content, hours, and instructor shall be forwarded;~~

~~(E) Statement of satisfaction by a physician that the licensee continues to remain competent in all of the original skills.~~

~~(b) A licensed emergency medical technician advanced cardiac (EMT-A/C) may participate in the "Inactive" status, as described in Section 310:641-5-16.~~

~~(c) A licensed emergency medical technician advanced cardiac may perform to the following level or standard of care:~~

~~(1) Patient assessment, including the determination of vital signs, diagnostic signs, and triage;~~

~~(2) Bandaging, splinting, and control of hemorrhage;~~

~~(3) Treatment of shock, including the use of pneumatic anti-shock trousers (PASG), and the administration of intravenous fluids (EMT-A/C may administer medications and drugs additives);~~

~~(4) Basic life support (BLS) and the use and placement of non-invasive adjunctive and invasive definitive airway devices for adults; Pediatric utilization of definitive airway adjuncts may be approved, if:~~

~~(A) The ambulance service medical director submits in writing, to the Department, that the EMT-A/C has had competent instruction and practice in utilizing definitive airway adjuncts for pediatrics as an additional part of an approved EMT-I course or has had independent instruction with verification from his/her ambulance service's medical director that s/he is proficient and knowledgeable concerning the anatomy, physiology and techniques relating to the use of definitive airway adjuncts for pediatrics;~~

~~(B) That the ambulance service's medical director establishes written protocol for the utilization of definitive airway adjuncts for pediatrics, and;~~

~~(C) That the written protocol is filed with the Department for approval prior to implementation of the protocol by the ambulance service.~~

~~(5) Rescue and extrication services;~~

~~(6) Venipuncture to obtain blood samples;~~

~~(7) Recognition, interpretation, defibrillation, and cardioversion of cardiac arrhythmias using a cardiac monitor (does not include advanced techniques for pediatric patients);~~

~~(8) Administration of emergency drugs by parenteral, intramuscular, subcutaneous, intradermal, and such other acceptable routes of administration (does not include advanced techniques for pediatric patients);~~

~~(9) Assistance of patient prescribed medications, including sublingual nitroglycerin, epinephrine auto-injector and hand held aerosol inhalers;~~

~~(10) Such other skills contained within the Department of Transportation national standard paramedical curriculum, as utilized for the original training of the licensed emergency medical technician advanced cardiac, and;~~

~~(11) Upon the approval of the Department, and recommendation of the Council, additional skills may be authorized upon the written request of a local medical director.~~

310:641-5-61. First responder

(a) No person may present himself or perform as a first responder in Oklahoma without a valid certificate from the Department or National Registry of Emergency Medical Technicians. All Department first responder certificates shall expire on October 31st of the expiration year. The certificate period will be for a two (2) year period.

(b) Persons applying for initial certification shall meet the following requirements to be eligible for first responder;

(1) Each applicant shall submit, on an application form provided by the Department or National Registry of Emergency Medical Technicians, true, correct, and complete information for eligibility and character;

~~(2) Each applicant shall be, at least, eighteen (18) years of age;~~

(~~3~~2) Each applicant shall have successfully completed a Department approved First Responder course;

(~~4~~3) Each applicant shall have, after completion of training, successfully completed a written and practical examination administered at the approved training facility, and based upon the First Responder curriculum objectives. Documentation of this requirement shall be submitted in writing on the final course roster, to the Department and will be considered an application.

(~~5~~4) As of January 1, 2000 all new applicants shall successfully become and maintain National Registry First Responder Registration.

(A) First Responders certified by the Department before January 1,2000 shall be given the opportunity to become National Registered.

(B) First Responders certified by the Department, whose initial training is greater than two (2) years prior to January 1, 2000, shall be given the opportunity to become Nationally Registered. Candidates shall meet National Registry requirements for registration.

(C) First Responders certified by the Department prior to January 1, 2000, shall continue to be eligible for state certification renewal. First Responder renewal requirements include: successful completion of a Department approved first responder refresher course every two (2) years, and continued activity with an ambulance service, certified first response agency or other organization providing first responder care.

(D) Once an individual obtains National Registration as a First Responder, they shall maintain National Registration in order to remain certified in Oklahoma.

(c) Certified first responders may perform to the following level or standard of care:

(1) Patient assessment and triage;

(2) Basic wound management, including hemorrhage control;

(3) Bandaging and splinting of fractures;

(4) Basic life support (BLS) including use of the semi-automated external defibrillator (SAED);

(5) Such other skills contained within the Department of Transportation national standard first responder curriculum, and;

(6) Upon the approval of the Department, and recommendation of the Council, additional skills may be authorized upon the written request of a local medical director, if such skills do not exceed the scope of practice for certification.

(d) A certified first responder, while performing in the employment or association of an ambulance service or certified first response agency, or agency providing first responder care to the general public shall perform medical procedures under medical control.

(e) No other State organization, school, chapter, or association may certify First Responders.

310:641-5-62. Other certification [REVOKED]

~~Certificates may be issued by the Department for other EMS training, such as Defensive Driving, Extrication, Refresher Training, Dispatching, EMS Instructor and such other courses of instruction as may be deemed necessary to enhance emergency medical services performance. Certification, under this subsection, issued from other sources shall not be recognized as equivalent, except by Department determination.~~

PART 13. RECIPROCITY

310:641-5-70. Reciprocity

(a) All candidates for reciprocity privileges shall submit an application for this purpose. Applications may be obtained from the Department. Fees, commensurate with respective initial test fees in 310:641-5-11(4), shall be submitted for reciprocity review. Fees shall be in an acceptable form, made payable to the Oklahoma State Department of Health/Emergency Medical Services Division (OSDH/EMS). All fees are non-refundable.

(b) Emergency medical technician applicants for reciprocity licensing shall document National Registration in good standing~~,~~. ~~or qualify for National Registry examination. If the latter is necessary, applicants shall comply with all requirements of initial emergency medical technician licensing, as found in Section 310:641-5-11 with the exception of 310:641-5-11(2). Previous training shall meet National Registry requirements for National Registration at the level being applied for.~~

(1) The Department may issue a license, based upon satisfactory verification by the Department, to a Nationally Registered emergency medical technician basic or emergency medical technician paramedic.

(2) The Department may issue a license to a Nationally Registered emergency medical technician intermediate, based upon satisfactory verification by the Department of completion of training and successfully passing a National Registry Practical examination on endotracheal intubation. The Department may issue an emergency medical technician basic license if the applicant meets all requirements except endotracheal intubation. The applicant may re-apply to be up-graded to the Intermediate level after all requirements have been met. Fees commensurate for re-examination as found in 310:641-5-11(4) shall be submitted with the application to up-grade to the Intermediate level. This up-grade may only occur during the initial license period.

(c) Emergency medical technician applicants who have received National Standard EMT training in another state, but who do not hold a current National Registry Registration, may be issued a license upon completion of the National Registry practical and written examination.

(1) A temporary nine (9) month permit may be issued to out of state certified or licensed individuals, who are in good standing with their respective State certifying or licensing agency. Verification of qualifications shall be conducted by the Department, before issuance.

(2) Individuals granted a temporary permit shall comply with all other requirements of Oklahoma State Law, and shall obtain an Oklahoma emergency medical technician license within a nine (9) month period. Temporary status will be terminated upon the failure of a respective first examination.

(3) Applicant shall prove employment, or potential employment in Oklahoma, and submit a fee of one hundred and fifty ($150.00) dollars, at the time of application.

(4) Individuals acting under a temporary permit shall be directly supervised by a emergency medical technician, licensed at or above the temporary permittee. Under no circumstance shall a temporary permittee be authorized to substitute for the sole requirement of a licensed emergency medical technician as required in these rules.

(d) A decision to grant reciprocity to each applicant, as to qualification for Oklahoma license, temporary permits, First Responder certification, shall be determined by the Department.

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 EMT program, an Intermediate EMT Program or a Paramedic program or a combination of any of these levels. A separate certificate will be issued for each training level.

(e) Training programs shall use 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.~~during normal working hours.

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;

(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;

(5) The name of the Medical Director and a Curriculum Vitae which includes address, telephone number, fax number and an electronic-mail address, ~~copies~~ copy of Oklahoma State medical license and Oklahoma Bureau of Narcotics and Dangerous Drugs ~~permit;~~ expiration date;

(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;

(9) Copies of all current agreements for the use of equipment and facilities needed to conduct courses;

(10) 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 a Paramedic training program.

310:641-7-12. Training program renewal

(a) Training programs continuing to conduct emergency medical services training 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, including the course authorization number, 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.~~ for each course, and provide National Registry of EMT's practical examinations for both first responder and basic courses after course completion.
(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.~~skill sheets for both course and national registry practical examinations. National registry practical examination skill sheets are required for first responder and basic courses only.

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~~course roster may be submitted for students who successfully complete all clinical course requirements after the final roster was submitted. All course requirements shall be completed by students within ~~three (3) months~~ ninety (90) days 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 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.**

(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.

(2) ~~An instructor certificate shall be issued to each qualified applicant.~~Instructor approval shall be indicated on the Emergency Medical Technician license upon successful re-licensure.

(3) Qualifications for instructor certification include:

(A) Affiliation with an approved training program, licensed ambulance service or certified first response agency;

(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

(C) Current training as a Basic Life Support Instructor (CPR) 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 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), Pediatric Prehospital Care (PPC) or Pediatric Education for the Prehospital Provider (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.

PART 7. IN-SERVICE INSTRUCTION PROGRAM

310:641-7-30. Authorization

(a) Licensed ambulance services and certified first response agencies shall be authorized in-service instruction based upon the need for training and continuing education activities. In-service instruction is limited to refresher courses, first responder courses, continuing education and other training courses as designated by the Department.

(b) Ambulance services or first response agencies shall use certified instructors. A guest presenter may be used provided a certified instructor is present and responsible for the training session.

(c) Ambulance service and first response agency personnel shall be the primary recipient of in-service instruction, however, in-service instruction may be provided to other ambulance services, first response agencies, and the public if approved by the service or agency head.

(d) All courses shall be approved as required in 310:641-7-15. Ambulance services and certified first response agency instructors may provide first responder and first responder refresher training to communities or other ambulance services according to the following guidelines:

(1) Instructors and/or ambulance services and certified first response agencies shall not charge for this instruction except for reimbursement for books, supplies and other reasonable expenses.

(2) Training shall be limited to the immediate service area of the licensed ambulance service, unless requested to provide such training by another ambulance service or first response agency.

(3) Courses must be approved and requested by the service or agency medical director.

(e) The Department may attend any in-service training as part of the quality management program.

(f) The Department may invalidate all or any portion of training conducted if a violation of the Act or rules has been substantiated.

PART 11. SPECIAL PROVISIONS

310:641-7-53. Paramedic curriculum

~~(a)~~ Training programs may use the United States Department of Transportation, National Highway Traffic Safety Administration (USDOT, NHTSA) National Standard Paramedic Curriculum, 1984 until June 1, 2001. After June 1, 2001 the USDOT, NHTSA National Standard Paramedic Curriculum, 1999 including the 2000 Oklahoma Paramedic Curriculum Implementation Guidelines, March 2000 as approved by the Oklahoma Emergency ~~Medical Services Advisory~~Response Systems Development Advisory Council and adopted by the Department shall be the official paramedic curriculum.

~~(b) Each training program shall submit an application for certification under these regulations to the Department prior to using the USDOT National Standard Paramedic Curriculum, 1999.~~

~~(c) The USDOT, NHTSA National Standard Paramedic Curriculum, 1999 may be used after the effective date of this Subchapter.~~

PART 13. SEMI-AUTOMATED EXTERNAL DEFIBRILLATOR TRAINING

310:641-7-60. Approved program providers

Semi-automated external defibrillator training providers approved by the American Red Cross, American Heart Association or National Safety Council shall be deemed acceptable to the Department as approved training programs for persons administering emergency defibrillation in accordance with 76 O.S. Supp. 1999 § 5A. Training programs offered by approved providers shall be at least four (4) hours in length, cover the use of the semi-automated external defibrillator and cardiopulmonary resuscitation in accordance with American Heart Association Standards.

310:641-7-61. Approved instructors

Instructors approved by the American Red Cross, ~~or~~ American Heart Association, National Safety Council, or a Department approved training program to provide semi-automated external defibrillation and cardiopulmonary resuscitation training shall be deemed acceptable to the Department as approved instructors of training programs for persons administering emergency defibrillation in accordance with 76 O.S. Supp. 1999 § 5A.

[OAR Docket #04-1087; filed 6-4-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 659. HEALTH MAINTENANCE ORGANIZATIONS

[OAR Docket #04-1088]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [NEW]
310:659-1-1 [NEW]
310:659-1-2 [NEW]
310:659-1-3 [NEW]
310:659-1-4 [NEW]
310:659-1-5 [NEW]
310:659-1-6 [NEW]
310:659-1-7 [NEW]
Subchapter 3. Examinations [NEW]
310:659-3-1 [NEW]
310:659-3-2 [NEW]
310:659-3-3 [NEW]
310:659-3-4 [NEW]
AUTHORITY:
Oklahoma State Board of Health: Title 63 O.S. Section 1-104, 1-105e, and 1-106.1; and Title 36 O.S. Section 6901 et seq.
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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATION BY REFERENCE:
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ANALYSIS:
This proposed new rule is intended to ensure that health maintenance organizations comply with provisions that the State Commissioner of Health is charged to enforce under the Health Maintenance Organizations Act of 2003, Title 36 O.S. Section 6901 et seq.

The rule will provide health maintenance organizations with the standards necessary for the State Commissioner of Health to certify compliance with Section 6907 of the Act to the Oklahoma Insurance Commissioner. The rule outlines quality assurance requirements pursuant to the Act and provides health maintenance organizations with the information needed to demonstrate appropriate quality of health care, ongoing quality assurance programs, clinical records, provider credentialing, peer review, emergency services, and grievance procedures.

The rule fixes the amounts of fees required for certification of compliance. The rule specifies administrative penalty amounts for violations of provider credentialing requirements by malpractice carriers or HMOs. The rule establishes procedures to ensure that qualified persons with whom the State Commissioner of Health contracts to make recommendations are not subject to conflicts of interest that would impair the ability to make impartial recommendations.
CONTACT PERSON:
Randy Wray, Director, Managed Care Division, Health Resources Development Service, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-6868, x57265; facsimile: 405-271-7360.

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 12, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

310:659-1-1. Purpose

This Chapter is intended to ensure that health maintenance organizations comply with provisions that the State Commissioner of Health is charged to enforce under the Health Maintenance Organizations Act of 2003, Title 36 O.S. Section 6901 et seq.

310:659-1-2. Definitions

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

"Commissioner" means the Commissioner of Health.

"Department" means the Oklahoma State Department of Health.

"HMO Act" means the Health Maintenance Organizations Act of 2003, Title 36 O.S. Section 6901 et seq.

310:659-1-3. Application materials

The applicant for a certificate of authority shall include narratives and documentation sufficient to demonstrate compliance with the requirements of 36 O.S. Section 6907 in its application filed with the Oklahoma Insurance Commissioner pursuant to 36 O.S. Section 6903(C).

310:659-1-4. Filing fee

Each HMO shall pay the Department a fee of $1,500.00 (One Thousand Five Hundred Dollars) for review of an application for certificate of authority. The fee shall be in the form of a check payable to the Oklahoma State Department of Health, and is due when the application is submitted to the Oklahoma Insurance Commissioner.

310:659-1-5. Governing body oversight

The HMO's governing body or its designee shall be responsible for the quality assurance program. The governing body or designee shall approve and regularly evaluate this program. If the HMO contracts with other entities to operate the quality assurance program, then the governing body or designee may consider reports from those entities. The governing body or designee shall receive reports on the quality assurance program at least once every six (6) months.

310:659-1-6. Managed care referral and non-formulary drugs

Each HMO shall be considered a managed care entity for the purposes of 63 O.S. Sections 2550.1, 2550.2, and 2550.4. Each HMO's quality assurance program shall ensure compliance with the requirements applicable to managed care plans for referrals to specialists and approvals of non-formulary or prior-authorized drugs.

310:659-1-7. Administrative penalties

The Department shall assess an administrative penalty in the amount of One Hundred Dollars ($100.00) per occurrence for an HMO that has been found in violation of 36 O.S. Section 6907(H) or a malpractice carrier that has been found in violation of 36 O.S. Section 6907(H)(8). Each day that the violation continues shall be considered a separate occurrence.

SUBCHAPTER 3. EXAMINATIONS

310:659-3-1. Purpose

(a) The Department shall examine the quality of an HMO's health care services within the first 12 months of member enrollment. This review is for the purpose of confirming that all required processes, systems and protocols are in place and are being implemented pursuant to 36 O.S. Section 6907.

(b) The Department may conduct the examination or the Department may require the HMO to contract for the examination pursuant to 36 O.S. Sections 6907(E) and 6919(B). If the Department requires the HMO to contract for the examination, the HMO shall select an independent quality examiner that has been approved by the Department.

310:659-3-2. Independent quality examiner

(a) The Department shall maintain a list of approved independent quality examiners who have demonstrated conformity to the following requirements:

(1) The examiner has written criteria and standards for assessing the quality of clinical care and the availability, accessibility and continuity of care;

(2) The examiner limits clinical judgements to physicians with experience in the delivery of health care in an HMO setting, and all final conclusions, opinions and recommendations shall be made or endorsed by physicians;

(3) The examiner has a training program for review team members to ensure uniform application of standards;

(4) The examiner ensures the confidentiality of medical and health care information; and

(5) The examiner institutes reasonable measures to ensure that review team members and their families have no financial interest in the HMO being examined or in any HMO operating in the geographic service area covered by the HMO being examined.

(b) Any person may file a request to be included on the Department's list of approved independent quality examiners. The request shall be in writing and shall demonstrate conformity to the requirements in (a) of this Section. The Department shall respond in writing within thirty (30) days after receiving the request. The Department at any time may remove approval status from an examiner for failure to maintain compliance with (a) of this Section, or for providing to or accepting from an HMO any gift or favor other than a reasonable and usual charge for the performance of a quality examination.

(c) The examination process shall include:

(1) Preliminary reviews to familiarize the examiner with the requirements of this Chapter and the HMO;

(2) A site visit to review records and to interview HMO officers, the medical director, members of the governing body, members of the quality assurance committee, the patient care coordinator, a customer service representative, other providers, and HMO personnel;

(3) An on-site summation; and

(4) Written preliminary and final reports.

(d) The HMO and the quality examiner shall provide the Department access to observe record reviews, interviews, and the on-site summation.

310:659-3-3. Reports

(a) The quality examiner shall prepare a report based upon the assessment team's findings. One (1) copy of each report shall be submitted to the Department. The report shall contain, at a minimum, the following information:

(1) An overview of the HMO's quality assurance program, an evaluation of recent quality assurance studies undertaken by the HMO, and the degree of implementation of the written quality assurance plan;
(2) A description of the HMO's quality assurance program;
(3) A description of the types and numbers of medical records reviewed, selection criteria, and review methods;
(4) A summary of charts that met and did not meet the established review criteria;
(5) Recommendations for follow-up, when indicated; and
(6) A listing of the names and titles of individuals that conducted and analyzed the review.

(b) 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 quality examiner.

310:659-3-4. Conflict of interest

(a) An independent quality examiner contracted by an HMO or a qualified person contracted by the Department pursuant to 36 O.S. Section 6929 shall:
(1) Have knowledge and expertise in the area they are contracted to review; and
(2) Have no history of disciplinary action or sanctions related to quality of care, fraud, or other criminal activity.

(b) No contracted examiner or qualified person shall have any material, professional, familial or financial conflict of interest with:
(1) The HMO;
(2) Any officer, director, or management employee of the HMO;
(3) Any provider contracted with the HMO; or
(4) Any other HMO in the service area.

(c) A potential reviewer or qualified person shall disclose information regarding potential conflicts of interest to all parties to the review.

[OAR Docket #04-1088; filed 6-4-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 663. CONTINUUM OF CARE AND ASSISTED LIVING

[OAR Docket #04-1089]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Physical plant design
310:663-7-1. [AMENDED]
AUTHORITY:
Oklahoma State Board of Health: Title 63 O.S. Section 1-104 and Title 63 O.S. Section 1-890.3
DATES:
Comment Period:
February 17, 2004 through March 18, 2004
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May 13, 2004
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 20, 2004
Final adoption:
May 20, 2004
Effective:
July 12, 2004
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
Incorporated Standards:
Chapter 11 of the International Building Code, 2003 edition, as published by the International Code Council
Incorporating rules:
310:663-7-1
Availability:
The incorporated standards are available for viewing at Health Facilities Plan Review and Construction Inspections, Room 1108, 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 http://www.iccsafe.org/, or by contacting:
Publications
International Code Council, Chicago District Office
4051 W. Flossmoor Road
Country Club Hills, IL 60478-5795
Phone: 800-214-4321
Fax: 800-214-7167
ANALYSIS:
The proposed amendments are intended to clarify certain design and construction requirements in order to ensure that assisted living centers are accessible to physically disabled persons. The amendments require centers to comply with accessibility requirements specified in Chapter 11 of the International Building Code, 2003 Edition, published by the International Code Council. This standard also is enforced by the State Fire Marshal under authority of Title 74 O.S., Chapter 11, Section 324.11. Adoption of these amendments will ensure that the Oklahoma State Department of Health is reviewing assisted living centers with the same standards used by the Office of the State Fire Marshal.
CONTACT PERSON:
Henry Hartsell Jr., Chief, Health Resources Development Service, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-9444, x57269; facsimile: 405-271-7360; electronic mail: hank@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 12, 2004:

SUBCHAPTER 7. PHYSICAL PLANT DESIGN

310:663-7-1. General requirements

(a) Each assisted living center shall comply with applicable construction and safety standards pursuant to Title 74 O.S. ~~Supp. 1997~~ Sections 317 through 324.21.

(b) The design of the assisted living center shall be appropriate to the mental or physical disabilities of the residents to be served in the assisted living center.
(c) The design of the continuum of care facility or assisted living center shall include physical separation of residents receiving assisted living services from those receiving nursing facility services, including separate dining and common areas. The continuum of care facility or assisted living center shall provide separate wings or buildings with separate exterior entrances for residents receiving assisted living services and those receiving nursing facility services.
(d) Each assisted living center shall comply with the hot water standards set forth in Appendix A.
(e) On and after the effective date of this subsection, each assisted living center that undergoes design changes or construction and each newly licensed assisted living center shall be designed and constructed in conformity with requirements for accessibility to physically disabled persons as specified in Chapter 11 of the International Building Code, 2003 Edition, published by the International Code Council.

[OAR Docket #04-1089; filed 6-4-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 667. HOSPITAL STANDARDS

[OAR Docket #04-1090]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
310:667-1-3. [AMENDED]
Subchapter 19. Medical Records Department
310:667-19-10. [AMENDED]
Subchapter 23. Diagnostic and Treatment Services
310:667-23-2. [AMENDED]
Subchapter 39. Critical Access Hospital
310:667-39-11. [AMENDED]
Subchapter 40. Emergency Hospital
310:667-40-11. [AMENDED]
Subchapter 51. Rehabilitation Hospital and Rehabilitation Unit Construction Requirements
310:667-51-15. [AMENDED]
Subchapter 59. Classification of Hospital Emergency Services
310:667-59-3. [AMENDED]
310:667-59-9. [AMENDED]
Appendix D. Filter Efficiencies For Central Ventilation And Air Conditioning Systems In General Hospitals [REVOKED AND REENACTED]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S. Section 1-104 et seq.; and Title 63 O.S. Section 1-705
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SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 1. General Provisions
310:667-1-3. [AMENDED]
Subchapter 59. Classification of Hospital Emergency Services
310:667-59-3. [AMENDED]
310:667-59-9. [AMENDED]
Gubernatorial approval:
January 12, 2004
Register publication:
21 Ok Reg 573
Docket number:
04-168
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendments to Subchapter 1 require all licensed hospitals to participate in a regional system to provide twenty four hour emergency services as a means to help ensure that minor-to-moderate trauma patients are transported to a hospital where they can receive appropriate care and that the resources of facilities classified at Level I and II for Trauma and Emergency Operative Services are preserved for the most seriously injured patients. The proposed rule requires all such regional systems to be approved by the Commissioner in consultation with the Oklahoma Emergency Response Systems Development Advisory Council. The amendments permit a facility's participation in a regional system to be met by providing emergency services directly or through their medical staffs at another facility, or by paying into a fund to be distributed to the hospitals that do provide these services. The amendments further require the Commissioner to develop such a system of providing emergency care for any region that is unable to develop a functioning system on its own and requires all hospitals in the area to then participate. Additionally, functioning regional systems must monitor patient transfers and compliance with these rules through continuous quality improvement activities.

The proposed amendments add a requirement for hospitals to report data on quality indicators, correct an error in a reference to practitioner authentication of medical record entries, allow one practitioner to authenticate another practitioner's reports of history and physical examinations and discharge summaries if certain conditions are met, allows mammography films to be maintained in a digital or electronic format, make the requirements for a hand washing station or a dispenser containing a hand degerming agent consistent for patient rooms in both general hospitals and rehabilitation hospitals/units.

The changes to Subchapter 59 allows facilities classified at Level II for Trauma and Emergency Operative Services to receive their classification based on an American College of Surgeons Committee on Trauma (ASC COT) site visit or a site survey by representatives deemed qualified by the Commissioner of Health. The amendments also require reciprocal transfer agreements between facilities classified at Level III or IV for Trauma and Emergency Operative Services and a hospital capable of providing definitive care for the severely injured patients and prohibits these agreements from incorporating any financial provisions for such transfers. Finally, the changes revoke and reenact an Appendix in order to insert a footnote which was omitted in error in a previous revision.
CONTACT PERSON:
Gary Glover, Chief, Medical Facilities, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-6576; electronic mail: gary@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 12, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

310:667-1-3. Licensure

(a) **Application for licensure.**

(1) No person or entity shall operate a hospital without first obtaining a license from the Department. The license is not transferable or assignable.

(2) The applicant shall file a licensure application in a timely manner. The application shall be on forms provided by the Department, with a check of $10.00 for each census bed, crib and bassinet, payable to the Oklahoma State Department of Health.

(3) The entity responsible for operation of the hospital and appointment of the medical staff shall be considered the applicant for the license. This entity may be a lessee if the hospital is leased and the lessee is the operating entity. For the purposes of licensure, a company providing administrative management of a hospital, which functions by contract with the governing body of the hospital, shall not be considered the entity responsible for operation.

(4) An application is not considered to be filed unless it is accompanied by the application fee.

(b) **Application filing.** An initial license application or renewal application shall be filed as follows:

(1) The application for an initial license for a new hospital shall be filed prior to or at the time final drawings for construction are submitted to the Department for review which shall be at least thirty (30) days before a hospital begins operation.

(2) The application for an initial license for a change of ownership or operation, shall be filed at least thirty (30) days before the transfer. The sale of stock of a corporate licensee, where a majority of the governing body does not change, is not considered a change of ownership or operation. The sale or merger of a corporation that owns an operating corporation that is the licensed entity shall not be considered a change of ownership unless a majority of the governing body is replaced.

(3) The application for renewal of a license of an existing hospital shall be filed at least thirty (30) days before the expiration date of the current license.

(c) **Where to file.** The application and the license fee shall be delivered or sent to the Department. The effective date shall be the date the application and fee are received.

(d) **Forms.** The applicant for a license shall file application forms as follows:

(1) For an initial license of a new hospital, or for an existing hospital following a change in ownership or operation, the applicant shall file these forms: Application for License to Operate a Hospital or Related Institution; Board of Directors Information Sheet; and Designation of Licensed Beds Form.

(2) For renewal of a current license, the applicant shall file the Application for License to Operate a Hospital or Related Institution; Board of Directors Information Sheet; Designation of Licensed Beds Form; and a Fire Inspection Report For Hospitals.

(e) **Description of forms.** The forms used to apply for a hospital license are the following:

(1) The Application For License to Operate Hospital or Related Institution (Form 920) requests: identification of the type of license requested; the name and address of the hospital; the name and address of the operating entity; the number of beds and bassinets; the ownership of the building and grounds; the applicant's name; the chief executive officer/administrator's name; attachment for credentialed staff; and an affidavit attesting the signature of the applicant.

(2) The Board of Directors Information Form (Form AGH-2) requests: The names and addresses of the Board of Directors for the hospital.

(3) The Designation of Licensed Beds Form (Form 920-A) requests: A listing of the types of beds operated by the hospital and a total of the beds.

(4) The Fire Inspection Report for Hospitals (Form 928) requests: a check list of the annual inspection conducted by the local fire marshall.

(f) **Eligibility for license.**

(1) Hospitals making appropriate application that have been determined to be compliant with these standards are eligible for a license.

(2) A hospital may operate inpatient and outpatient facilities under one (1) license as a hospital campus as long as the following requirements are met:

(A) The facilities shall be separated by no more than fifty (50) miles. This requirement may be waived if the services of the facilities are totally integrated through telecommunication or by other means.

(B) The facilities are operated by the same governing body with one administrator.

(C) The medical staff for all facilities is totally integrated so that any practitioner's privileges extend to all facilities operated under the common license.

(3) An outpatient facility located at a different address from a hospital is eligible to be licensed as part of the hospital but is not required to be licensed.

(4) Each hospital shall participate in a functioning regional system of providing twenty-four (24) hour emergency hospital care approved by the Commissioner of Health in consultation with the Oklahoma Emergency Response Systems Development Advisory Council. Participation in a regional system may include active participation of the hospital in the provision of emergency services based upon the system plan, participation of the hospital's medical staff in the provision of emergency services at other hospitals in the system based on the system plan, or payment into a fund to reimburse hospitals providing emergency services in the system.

(5) If an area of the state fails to develop a functioning regional system of providing twenty-four (24) hour emergency hospital care necessary to meet the state's needs for trauma and emergency care as established by the state-

wide trauma and emergency services plan, the Commissioner of Health, in consultation with the Oklahoma Emergency Response Systems Development Advisory Council, shall develop a system for the area. Each hospital located in the area shall participate as specified by the system plan for that region.

(g) **Regional system of emergency hospital care.**

(1) In counties and their contiguous communities with populations of 300,000 or more, a functioning regional system of providing twenty-four (24) hour emergency hospital care shall include definitive emergency care for all clinical categories specified in OAC 310:667-59-7. In these regions, a functioning system shall only transfer emergent patients out of the system when treatment or diagnostic services are at capacity unless the patient has a special treatment need not normally provided by the system. Transfers out of the system may occur based upon the patient or the patient's legal representative's request or based upon a special circumstance for the transfer.

(2) In counties and communities with populations of less than 300,000, a functioning regional system of providing twenty-four (24) hour emergency hospital care shall include definitive care based upon the classification of hospital's emergency services in the region as specified in OAC 310:667-59-7. Transfers out of the regional system may be based upon lack of diagnostic or treatment capability or capacity. A functioning system shall not permit emergent patient transfers out of the system if the system has the capability and capacity to provide care unless the patient or patient's legal representative requests the transfer.

(3) A functioning regional system of providing twenty-four (24) hour emergency hospital care shall demonstrate compliance with OAC 310:667-1-3(g)(1) or (2) through system continuous quality improvement activities. Activities shall include monitoring of patient transfers and corrective actions when inappropriate transfers are identified. Special circumstance patient transfers shall be identified and reviewed through continuous quality improvement activities.

(h) **Quality indicators.** The Department, with the recommendation and approval of the Hospital Advisory Council, shall establish quality indicators to monitor and evaluate the quality of care provided by licensed hospitals in the state.

(1) The quality indicators shall focus on the following measurement areas:

(A) Acute myocardial infarction (including coronary artery disease);

(B) Heart failure;

(C) Community acquired pneumonia;

(D) Pregnancy and related conditions (including newborn and maternal care);

(E) Surgical procedures and complications; and

(F) Patient perception measures such as satisfaction surveys.

(2) The quality indicators in use shall be periodically evaluated and revised as health care quality issues are identified and others are resolved.

(i) **Data submission requirements.**

(1) The Department shall define the parameters and scope of each quality indicator, the beginning and ending dates of the period when each indicator will be in effect, how the indicator will be measured, any inclusionary or exclusionary criteria, and the frequency and format of how the data shall be reported.

(2) Each hospital shall report applicable data related to these indicators to the Department in the specified format and within required time frames.

SUBCHAPTER 19. MEDICAL RECORDS DEPARTMENT

310:667-19-10. Signature

(a) Records shall be authenticated and signed by a physician or licensed independent practitioner.

(b) Every physician or practitioner shall authenticate the entries which he or she makes except as allowed at OAC ~~310:667-19-2(b)(4)(D)~~ 310:667-19-2(c)(4) and OAC 310:667-19-10(e).

(c) A single signature on the face sheet of the record shall not suffice to authenticate the entire record.

(d) Rubber stamp signatures may be used in any place in the medical record that requires a signature, provided signature identification can be verified. Authentication of reports by physicians or practitioners shall not take place prior to review of the final report by the physician or practitioner. Facilities allowing physicians and practitioners to use signature stamps to authenticate entries in the medical record shall have on file a signed statement from each such physician or practitioner that they have jurisdiction over the stamp. The use of signature stamps shall be approved in writing by the hospital administrator and medical records committee (or equivalent).

(e) Reports of history and physical examinations and discharge summaries may be authenticated by an authorized physician or practitioner other than the physician or practitioner who performed the examination or produced the summary when this practice is defined and approved in the medical staff bylaws or rules and regulations. If allowed, medical staff bylaws or rules and regulations must identify the physicians or practitioners who may authenticate another physician's or practitioner's report of history and physical examination or discharge summary, e.g. physician partners or attending physicians or practitioners, and define the circumstances under which this practice is allowed. The bylaws or rules and regulations must also specify that when a covering or attending physician or practitioner authenticates another physician's or practitioner's report of history and physical examination or discharge summary, such an authentication indicates that the covering or attending physician or practitioner assumes responsibility for his or her colleague's report or summary and verifies the document is complete, accurate, and final.

(~~e~~f) Electronic or computerized signatures may be used any place in the medical record that requires a signature, provided

signature identification can be verified. Computerized authorization shall be limited to a unique identifier (confidential code) used only by the individual making the entry. Authentication of reports by physicians or practitioners shall not take place prior to review of the final report by the physician or practitioner. Electronic or computerized signature shall be the full, legal name of physician or practitioner and include the professional title. The use of computerized or electronic signatures shall be approved in writing by the hospital administrator and medical records committee (or equivalent). Each physician or practitioner using an electronic or computerized signature shall sign and file a statement in the hospital administrator's office which states that:

(1) The physician or practitioner shall use an electronic or computer generated signature to authenticate his entries in the medical record;

(2) The signature shall be generated by a confidential code which only the physician or practitioner possesses;

(3) No person other that the physician or practitioner shall be permitted to use the signature.

SUBCHAPTER 23. DIAGNOSTIC AND TREATMENT SERVICES

310:667-23-2. Radiological, computerized tomography, magnetic resonance imaging services

(a) **Radiology.** The hospital shall maintain or have available radiological services according to needs of the hospital.

(1) **Hazards for patients and personnel.**

(A) The radiological department shall be free of health and safety hazards for patients and personnel.

(B) Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards, and radiation hazards.

(C) Inspection of x-ray equipment shall be made once every two (2) years by a certified health physicist or members of the Diagnostic x-ray section of the Department, and hazards so identified shall be promptly corrected.

(D) The hospital shall identify those employees who are subject to significant occupational exposure to radiation while performing their job duties. All such workers shall be checked periodically for amounts of radiation exposure by the use of exposure meters or badge tests.

(E) With fluoroscopes, attention shall be paid to modern safety design and good operating procedures; records shall be maintained for the output of all fluoroscopes.

(F) Regulations based upon medical staff recommendations shall be established as to the administration of the application and removal of radium element, its disintegration products, and other radioactive isotopes.

(G) If mammography is performed at the facility, the facility shall have a current certificate from the Food and Drug Administration as required by the Mammography Quality Standards Act.

(2) **Personnel.**

(A) Personnel adequate to supervise and conduct the services shall be provided, and the interpretation of radiological examinations shall be made by physicians or licensed independent practitioners competent in the field according to individually granted clinical privileges.

(B) The hospital shall have a qualified radiologist, either full-time, part-time or on a consulting basis, both to supervise the department and to interpret films and studies that require specialized knowledge for accurate reading.

(C) If the activities of the radiology department extend to radiotherapy, the physician in charge shall be appropriately qualified.

(D) The amount of qualified radiologist and technologist time shall be sufficient to meet the hospital's requirements. A technologist shall be on duty or on call at all times.

(E) The use of all x-ray apparatus shall be limited to personnel designated as qualified by the radiologist or by an appropriately constituted committee of the medical staff. The same limitation shall apply to personnel applying and removing radium element, its disintegration products, and radioactive isotopes. Radiology technologists shall not independently perform fluoroscopic procedures. Fluoroscopic procedures may be performed by radiology technologists only upon the written authorization of a qualified radiologist, and in the presence of a physician or licensed independent practitioner or by real time visualization through electronic means.

(3) **Signed reports.**

(A) Signed reports shall be filed with the patient's medical record and exact duplicates of the signed reports shall be kept in the department.

(B) Requests by the attending physician or licensed independent practitioner for x-ray examination shall contain a concise statement of reason for the examination.

(C) Reports of interpretations shall be written or dictated and signed by the radiologist, physician, or licensed independent practitioner making the interpretation.

(D) X-ray reports shall be preserved or microfilmed in accordance with the statute of limitations and OAC 310:667-19.

(E) X-rays and other images shall be maintained at least five (5) years. These images ~~except mammography films~~ may be maintained in a digital or electronic format as long as a duplicate can be reproduced.

(b) **Ultrasound imaging.**

(1) Ultrasound imaging shall be performed only upon order of a physician or licensed independent practitioner.

(2) Ultrasound imaging shall be performed by a physician or licensed independent practitioner or by a technologist that has specific training in ultrasound imaging and designated as qualified by the radiologist.

(3) Reports of findings of ultrasound imaging shall be included in the patient's medical record.

(c) **Computerized tomography and magnetic resonance imaging.**

(1) Computerized tomography and magnetic resonance imaging may be provided.

(2) If used by the facility, all computerized tomography (CT) and magnetic resonance imaging (MRI) examinations shall be authorized by a written and signed order from a physician or licensed independent practitioner.

(3) CT and MRI examinations shall be performed under the direction of and interpreted by a qualified radiologist who is a member of the hospital active or consulting medical staff.

(4) CT and MRI examinations shall be performed by a radiology technologist with documented CT or MRI training and experience and designated as qualified by the radiologist.

(5) A qualified physician or licensed independent practitioner shall be available during the administration of intravenous contrast media.

(6) Oxygen and emergency medical supplies shall be maintained within the CT/MRI suite or be readily available. If the CT/MRI suite is a mobile unit, the mobile unit shall contain oxygen and emergency medical supplies.

(7) CT/MRI films and reports shall be maintained at the hospital in the same manner as x-ray films and reports.

(8) If the CT/MRI is a mobile unit, written infection control policy and procedures and safety plans shall be maintained as part of the overall hospital plans.

SUBCHAPTER 39. CRITICAL ACCESS HOSPITAL

310:667-39-11. Medical record services

(a) **General.** The CAH shall have medical record services that ensure a medical record is maintained for every patient evaluated or treated in the facility. Medical record services shall be appropriate to the scope and complexity of the services performed and shall ensure prompt completion, filing, and retrieval of records. In general, services such as transcription, computer indexing and coding, and electronic storage may be performed off-site as a contracted service as long as the medical record remains under the control of the CAH. The CAH shall ensure that medical records maintained by a contracted service remain confidential and can be immediately accessed by CAH staff.

(b) **Reports to agencies and the Department.** The CAH shall comply with all requirements specified in OAC 310:667-19-2(a) regarding the reports made to agencies and the Department.

(c) **Content.** The medical record shall contain information to justify patient admission and treatment, support the diagnosis, and describe the patient's progress and response to treatment and services received. All entries shall be legible and complete, and shall be authenticated and dated promptly by the person, identified by name and discipline, who is responsible for ordering, providing or evaluating the service furnished.

(1) The author of each entry shall be identified and shall authenticate their entry. Authentication may include written signatures or computerized or electronic entries. If computerized or electronic authentications are used, the CAH shall comply with all requirements specified at OAC 310:667-19-10(e). Telephone and verbal orders shall be authenticated by the physician or practitioner giving the order as soon as possible or meet the requirements at OAC 310:667-19-2(c)(4). Reports of history and physical examinations and discharge summaries shall be authenticated by the authorized physician or practitioner who performed the examination or produced the summary or meet the requirements at OAC 310:667-19-10(e) if authenticated by another physician or practitioner. Signature stamps may be used to authenticate entries in the medical record provided the requirements at OAC 310:667-19-10(d) are met.

(2) All inpatient records shall document the following as appropriate:

(A) Patient identifying information including individuals to be contacted in case of an emergency.

(B) Evidence of a physical examination, including a health history, performed not more than seven (7) days prior to admission or within forty-eight (48) hours after admission. The history and physical examination shall be completed, signed and placed in the record within 48 hours of admission.

(C) Admitting diagnosis.

(D) Results of all consultative evaluations of the patient and appropriate findings by clinical and other staff involved in the care of the patient.

(E) Documentation of complications, hospital acquired infections, and unfavorable reactions to any drug or biological.

(F) Properly executed informed consent forms for procedures and treatments performed. The medical and professional staff shall establish which procedures or treatments require informed consent consistent with Federal and State law.

(G) All physicians' or practitioners' orders, nursing notes, reports of treatment, medication records, diagnostic reports, vital signs and other information necessary to monitor the patient's condition.

(H) Discharge summary with outcome of hospitalization, disposition of case, medications at the time of discharge, and provisions for follow-up care.

(I) Reports. All reports and records shall be completed and filed within a period consistent with good medical practice and not longer than thirty (30) days following discharge.

(J) Final diagnosis.

(d) **Maintenance of records.** The CAH shall maintain a medical record for each inpatient and outpatient. Medical

records shall be accurately written, promptly completed, properly filed and retained, and accessible. The CAH shall use a system of author identification and record maintenance that ensures the integrity of the authentication and protects the security of all record entries.

(1) Medical records shall be retained at least five (5) years after the date the patient was last seen or at least of three (3) years after the date of the patient's death. Records of newborns or minors shall be retained three (3) years past the age of majority. Medical records may be maintained in their original form or may be preserved by other means as specified by OAC 310:667-19-14(b).

(2) The CAH shall have, or provide, a system of coding and indexing medical records. The system shall allow for timely retrieval by diagnosis and procedure, in order to support medical care evaluation studies.

(3) Medical records shall be confidentially maintained. Information from, or copies of, records shall be released only to authorized individuals in accordance with state law, and the CAH shall ensure that unauthorized individuals cannot gain access to, or alter medical records. Original medical records shall be released only in accordance with federal or state laws or by court order.

(4) Facsimile copies shall be acceptable as any portion of the medical record. If the facsimile is transmitted on thermal paper, that paper shall be photocopied to preserve its integrity in the record. Facsimile copies shall be considered the same as original copies.

(5) In the event of closure of the CAH, the CAH shall inform the Department of the disposition of the patient medical records. Disposition shall be in a manner to protect the integrity of the information contained in the medical record. These records shall be retained and disposed of as specified by OAC 310:667-19-14(b)(4).

SUBCHAPTER 40. EMERGENCY HOSPITAL

310:667-40-11. Medical record services

(a) **General.** The EH shall have medical record services that ensure a medical record is maintained for every patient evaluated or treated in the facility. Medical record services shall be appropriate to the scope and complexity of the services performed and shall ensure prompt completion, filing, and retrieval of records. In general, services such as transcription, computer indexing and coding, and electronic storage may be performed off-site as a contracted service as long as the medical record remains under the control of the EH. The EH shall ensure that medical records maintained by a contracted service remain confidential and can be immediately accessed by EH staff.

(b) **Reports to agencies and the Department.** The EH shall comply with all requirements specified in OAC 310:667-19-2(a) regarding the reports made to agencies and the Department.

(c) **Content.** The medical record shall contain information to justify patient admission and treatment, support the diagnosis, and describe the patient's progress and response to treatment and services received. All entries shall be legible and complete, and shall be authenticated and dated promptly by the person, identified by name and discipline, who is responsible for ordering, providing or evaluating the service furnished.

(1) The author of each entry shall be identified and shall authenticate their entry. Authentication may include written signatures or computerized or electronic entries. If computerized or electronic authentications are used, the EH shall comply with all requirements specified at OAC 310:667-19-10(e). Telephone and verbal orders shall be authenticated by the physician or practitioner giving the order as soon as possible or meet the requirements at OAC 310:667-19-2(c)(4). Reports of history and physical examinations and discharge summaries shall be authenticated by the authorized physician or practitioner who performed the examination or produced the summary or meet the requirements at OAC 310:667-19-10(e) if authenticated by another physician or practitioner. Signature stamps may be used to authenticate entries in the medical record provided the requirements at OAC 310:667-19-10(d) are met.

(2) All inpatient records shall document the following as appropriate:

(A) Patient identifying information including individuals to be contacted in case of an emergency.

(B) Evidence of a physical examination, including a health history, performed not more than seven (7) days prior to admission or within forty-eight (48) hours after admission. The history and physical examination shall be completed, signed and placed in the record within 48 hours of admission.

(C) Admitting diagnosis.

(D)Results of all consultative evaluations of the patient and appropriate findings by clinical and other staff involved in the care of the patient.

(E) Documentation of complications, hospital acquired infections, and unfavorable reactions to

(F) Properly executed informed consent forms for procedures and treatments performed. The medical and professional staff shall establish which procedures or treatments require informed consent consistent with Federal and State law.

(G) All physicians' and practitioners' orders, nursing notes, reports of treatment, medication records, diagnostic reports, vital signs and other information necessary to monitor the patient's condition.

(H) Discharge summary with outcome of hospitalization, disposition of case, medications at the time of discharge, and provisions for follow-up care.

(I) Reports. All reports and records shall be completed and filed within a period consistent with good medical practice and not longer than thirty (30) days following discharge.

(J) Final diagnosis.

(d) **Maintenance of records.** The EH shall maintain a medical record for each emergency, stabilization, or observational patient. Medical records shall be accurately written, promptly completed, properly filed and retained, and accessible. The

EH shall use a system of author identification and record maintenance that ensures the integrity of the authentication and protects the security of all record entries.

(1) Medical records shall be retained at least five (5) years after the date the patient was last seen or at least of three (3) years after the date of the patient's death. Records of minors shall be retained three (3) years past the age of majority. Medical records may be maintained in their original form or may be preserved by other means as specified by OAC 310:667-19-14(b).

(2) The EH shall have, or provide, a system of coding and indexing medical records. The system shall allow for timely retrieval by diagnosis and procedure, in order to support medical care evaluation studies.

(3) Medical records shall be confidentially maintained. Information from, or copies of, records shall be released only to authorized individuals in accordance with state law, and the EH shall ensure that unauthorized individuals cannot gain access to, or alter medical records. Original medical records shall be released only in accordance with federal or state laws or by court order.

(4) Facsimile copies shall be acceptable as any portion of the medical record. If the facsimile is transmitted on thermal paper, that paper shall be photocopied to preserve its integrity in the record. Facsimile copies shall be considered the same as original copies.

(5) In the event of closure of the EH, the EH shall inform the Department of the disposition of the patient medical records. Disposition shall be in a manner to protect the integrity of the information contained in the medical record. These records shall be retained and disposed of as specified by OAC 310:667-19-14(b)(4).

SUBCHAPTER 51. REHABILITATION HOSPITAL AND REHABILITATION UNIT CONSTRUCTION REQUIREMENTS

310:667-51-15. Nursing unit (for inpatients)

Where inpatients are part of the facility, each nursing unit shall provide the following:

(1) **Patient rooms.** Each patient room shall meet the following requirements:

(A) The maximum room occupancy shall be four (4) patients. Larger units may be provided if justified by the functional program. At least two (2) single-bed rooms with private toilet rooms shall be provided for each nursing unit.

(B) The room areas exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules shall be at least one hundred-forty (140) square feet (13.01 square meters) in single-bed rooms and at least one hundred twenty-five (125) square feet (11.61 square meters) per bed in multi-bed rooms. In multi-bed rooms, a clearance of three (3) feet eight (8) inches (1.12 meters) shall be maintained at the foot of each bed to permit the passage of equipment and beds.

(C) Each patient sleeping room shall have a window as required in OAC 310:667-49-28(b)(1)(J).

(D) A nurse call system as required at OAC 310:667-49-32(g) shall be provided.

(E) ~~Handwashing stations shall be provided in each patient room.~~ In new construction, handwashing facilities shall be provided in each patient room. A handwashing station shall be located in the toilet room. In new construction, a handwashing station or a dispenser containing a hand degerming agent that does not require water for use, such as an alcohol based foam, rinse, or gel, shall be provided in the patient room in addition to the handwashing station in the toilet room. This handwashing station or dispenser shall be located outside the patient's cubicle curtain so that it is accessible to staff. In renovation projects, the handwashing fixture may be omitted from the bedroom where a water closet and handwashing fixture are provided in a toilet room designed to serve a single-bed room or one two (2) bed room. This exception does not apply to postpartum rooms.

(F) Each patient shall have access to a toilet room without having to enter the general corridor area. One (1) toilet room shall serve no more than four (4) beds and no more than two (2) patient rooms. The toilet room shall contain a water closet and a handwashing station. The handwashing station may be omitted from a toilet room that serves single-bed and two (2) bed rooms if each such patient's room contains a handwashing station. Each toilet room shall be of sufficient size to ensure that wheelchair users may access the room.

(G) Each patient shall have a wardrobe, closet, or locker with clear dimensions of at least one (1) foot ten (10) inches (55.88 centimeters) by one (1) foot eight (8) inches (50.80 centimeters). A clothes rod and adjustable shelf shall be provided.

(H) Visual privacy shall be provided for each patient in multibed rooms.

(2) **Service areas.** The service areas noted below shall be in, or readily available to, each nursing unit. The size and disposition of each service area shall depend upon the number and types of disabilities for which care shall be provided. Although identifiable spaces shall be required for each indicated function, consideration shall be given to alternative designs that accommodate some functions without designating specific areas or rooms. Such proposals shall be submitted for prior approval. Each service area may be arranged and located to serve more than one (1) nursing unit, but at least one (1) such service area shall be provided on each nursing floor. The following service areas shall be provided:

(A) Administrative center or nurse station.

(B) Nursing office.

(C) Storage for administrative supplies.

(D) Handwashing stations located near the nurse station and the drug distribution station. One (1) station may serve both areas.

(E) Charting facilities for nurses and doctors.

(F) Lounge and toilet room(s) for staff.

(G) Individual closets or compartments for safe-keeping personal effects of nursing personnel, located convenient to the duty station or in a central location.

(H) Room for examination and treatment of patients. This room may be omitted if all patient rooms are single-bed rooms. It shall have a floor area of at least one hundred-twenty (120) square feet (11.15 square meters), excluding space for vestibules, toilet, closets, and work counters whether fixed or movable. The room dimension shall be at least ten (10) feet (3.05 meters). The room shall contain a handwashing station, work counter, storage facilities, and a desk, counter, or shelf space for writing. The examination room in the evaluation unit may be used if it is conveniently located.

(I) Clean workroom or clean holding room.

(J) Soiled workroom or soiled holding room.

(K) Medication station. Provisions shall be made for convenient and prompt twenty-four (24) hour distribution of medicine to patients. Distribution may be from a medicine preparation room, a self-contained medicine dispensing unit, or through another approved system. If used, a medicine preparation room shall be under the nursing staff's visual control and contain a work counter, refrigerator, and locked storage for biologicals and drugs. A medicine dispensing unit may be located at a nurse station, in the clean workroom, or in an alcove or other space under direct control of nursing or pharmacy staff.

(L) Clean linen storage. A separate closet or an area within the clean workroom shall be provided for this purpose. If a closed-cart system is used, storage may be in an alcove.

(M) Nourishment station. This shall be accessible to patients and contain a handwashing station, equipment for serving nourishment between scheduled meals, a refrigerator, storage cabinets, and icemaker-dispenser units to provide for patient service and treatment.

(N) Equipment storage room. This shall be for equipment such as IV stands, inhalators, air mattresses, and walkers.

(O) Parking for stretchers and wheelchairs. This shall be located out of the path of normal traffic flow.

(P) Multipurpose dayroom. Due to patients' length of stay, a dayroom shall be provided for patients to socialize on the unit.

(3) **Patient bathing facilities.** Bathtubs or showers shall be provided at a ratio of at least one (1) bathing facility for each eight (8) beds not otherwise served by bathing facilities within patient rooms. Each tub or shower shall be in an individual room or privacy enclosure that provides space for the private use of bathing fixtures, for drying and dressing, and for a wheelchair and an assistant. Showers in central bathing facilities shall be at least four (4) feet (1.22 meters) square, curb-free, and designed for use by a wheelchair patient.

(4) **Patient toilet facilities.**

(A) A toilet room that does not require travel through the general corridor shall be accessible to each central bathing area.

(B) Doors to toilet rooms shall have a width of at least two (2) feet ten (10) inches (86.36 centimeters) to admit a wheelchair. The doors shall permit access from the outside in case of an emergency.

(C) A handwashing facility shall be provided for each water closet in each multifixture toilet room.

(5) **Airborne infection isolation rooms.** The need for and number of required airborne infection isolation rooms in the rehabilitation facility shall be determined by an ICRA. When required, the airborne infection isolation room(s) shall comply with the general requirements listed in OAC 310:667-49-2(a)(3). These may be located within individual nursing units and used for normal patient care when not required for isolation cases, or they may be grouped as a separate isolation unit.

SUBCHAPTER 59. CLASSIFICATION OF HOSPITAL EMERGENCY SERVICES

310:667-59-3. Inspections and deemed status

(a) All hospitals required to have a license are subject to inspection by Department staff in accordance with OAC 310:667-1-4.

(b) The Commissioner shall designate ~~Department~~ representatives to verify a hospital's emergency services are accurately classified for trauma and emergency operative services Levels II, III and IV, and all other classified emergency services. Survey teams for facilities providing trauma and emergency operative services at ~~Level~~ Levels II and III shall include a physician. If it is determined a hospital does not meet the requirements for a service to be classified at the Level reported on the Emergency Medical Services Classification Report (ODH Form 911), the Department shall classify that service at the next lowest Level where all requirements are met.

(c) ~~Only hospitals~~Hospitals holding ~~a~~ current verification ~~certificate~~ as a Level I or Level II trauma center issued after an on-site review of their trauma services by a verification team from the American College of Surgeons Committee on Trauma (ACS COT) shall be deemed to meet the classification requirements for Trauma and Emergency Operative Services listed in OAC 310:667-59-9(c) or OAC 310:667-59-9(d). Such hospitals shall be classified by the Department as providing definitive trauma and emergency operative services at either classification Level I or Level II as reported by the ACS based on the provisions of this Subchapter.

(d) The services provided by hospitals classified at Level II for Trauma and Emergency Operative Services may be verified by either ACS COT surveyors or other representatives deemed qualified by the Commissioner.

(e) Only hospitals holding current verification as a Level I trauma center after an on-site review of their trauma services

by a verification team from the ACS COT according to the standards at OAC 310:667-59-9(d) shall be classified at Level I for trauma and emergency operative services.

310:667-59-9. Classification of trauma and emergency operative services

(a) **Level IV.** A Level IV facility shall provide emergency medical services with at least a licensed independent practitioner, registered nurse, licensed practical nurse, or intermediate or paramedic level emergency medical technician on site twenty-four (24) hours a day. A hospital shall be classified at Level IV for trauma and emergency operative services if it meets the following requirements:

(1) **Clinical services and resources.** No diagnostic, surgical, or medical specialty services are required.

(2) **Personnel.** A physician, licensed independent practitioner, registered nurse, licensed practical nurse, or intermediate or paramedic level emergency medical technician shall be on site twenty-four (24) hours a day. In the absence of a physician, licensed independent practitioner, registered nurse, or paramedic level emergency medical technician, at least one of the practitioners on duty shall have received training in advanced life support techniques and be deemed competent to initiate treatment of the emergency patient.

(A) If the facility is licensed as a General-Medical Surgical Hospital, it shall also meet the personnel and staffing requirements at OAC 310:667-29-1 and any other applicable parts of this Chapter.

(B) If the facility provides emergency medical services and is licensed as a Specialized Hospital: Psychiatric, it shall also meet the personnel and staffing requirements at OAC 310:667-33-2 and any other applicable parts of this Chapter.

(C) If the facility provides emergency medical services and is licensed as a Specialized Hospital: Rehabilitation, it shall also meet the personnel and staffing requirements at OAC 310:667-35-3 and any other applicable parts of this Chapter.

(D) If the facility provides emergency medical services and is licensed as a Critical Access Hospital, it shall also meet the personnel and staffing requirements at OAC 310:667-39-14 and any other applicable parts of this Chapter.

(3) **Supplies and equipment.** The hospital shall have equipment for use in the resuscitation of patients of all ages on site, functional, and immediately available, including at least the following:

(A) Airway control and ventilation equipment, including laryngoscopes and endotracheal tubes of all sizes, bag-mask resuscitator, pocket masks, and oxygen;

(B) Suction devices;

(C) Electrocardiograph-oscilloscope-defibrillator-pacer;

(D) Standard intravenous fluids and administration devices, including large-bore intravenous catheters;

(E) Sterile surgical sets for:

(i) Airway control/cricothyrotomy;

(ii) Vascular access; and

(iii) Chest decompression.

(F) Equipment for gastric decompression;

(G) Drugs necessary for emergency care;

(H) Two-way communication with vehicles of emergency transport system as required at OAC 310:667-29-1(c)(4); and

(I) Thermal control equipment for patients.

(4) **Agreements and policies on transfers.**

(A) The hospital shall have written policies defining the medical conditions and circumstances for those emergency patients which may be retained for treatment in-house, and for those who require stabilizing treatment and transfer to another facility.

(B) The facility shall have a transfer agreement with a hospital capable of providing trauma care for severely injured patients. This agreement shall include reciprocal provisions requiring the facility to accept return transfers of patients at such time as the facility has the capability and capacity to provide needed care. Reciprocal agreements shall not incorporate financial provisions for transfers.

(~~B~~C) The facility shall have transfer agreements with a hospital capable of providing burn care in a physician-directed, organized burn care center with a staff of nursing personnel trained in burn care and equipped properly for care of the extensively burned patient.

(~~C~~D) The facility shall have transfer agreements with a hospital capable of providing acute spinal cord and head injury management and rehabilitation.

(~~D~~E) The facility shall have transfer agreements with a hospital capable of providing rehabilitation services in a rehabilitation center with a staff of personnel trained in rehabilitation care and equipped properly for acute care of the critically injured patient.

(5) **Quality Improvement.**

(A) For a hospital licensed as a general medical surgical hospital, in addition to the requirements of OAC 310:667-11-1 through OAC 310:667-11-5, the quality improvement programs shall include:

(i) Audit for all trauma deaths to include prehospital care and care received at a transferring facility;

(iii) Morbidity and mortality review;

(iv) Medical nursing audit, utilization review, tissue review; and

(v) The availability and response times of on call staff specialists shall be defined in writing, documented, and continuously monitored.

(B) For a hospital licensed as a critical access hospital, in addition to the requirements of OAC 310:667-39-7, the quality improvement programs shall include:

(i) A trauma registry;

(ii) Audit for all trauma deaths to include prehospital care and care received at a transferring facility;

(iii) Morbidity and mortality review;

(iv) Medical nursing audit, utilization review, tissue review; and

(v) The availability and response times of on call staff specialists shall be continuously monitored and documented.

(C) For a facility licensed as a birthing center, in addition to the requirements of OAC 310:667-616-5-2, the quality improvement programs shall include:

(i) Trauma registry;

(ii) Audit for all trauma deaths to include prehospital care and care received at a transferring facility;

(iii) Morbidity and mortality review;

(iv) Medical nursing audit, utilization review, tissue review; and

(v) The availability and response times of on call staff specialists shall be continuously monitored and documented.

(b) **Level III.** A Level III facility shall provide emergency medical services with an organized trauma service and emergency department. A physician and nursing staff with special capability in trauma care shall be on site twenty-four (24) hours a day. General surgery and anesthesiology services shall be available either on duty or on call. A hospital shall be classified at Level III for trauma and emergency operative services if it meets the following requirements:

(1) **Clinical services and resources.**

(A) **Trauma service.** A trauma service shall be established by the medical staff and shall be responsible for coordinating the care of injured patients, the training of personnel, and trauma quality improvement. Privileges for physicians participating in the trauma service shall be determined by the medical staff credentialing process. All patients with multiple-system or major injury shall be evaluated by the trauma service. The surgeon responsible for the overall care of the admitted patient shall be identified.

(B) **Emergency services.** A physician deemed competent in the care of the critically injured and credentialed by the hospital to provide emergency medical services and nursing personnel with special capability in trauma care shall be on site twenty-four (24) hours a day. The emergency service may also serve as the trauma service.

(i) For a hospital licensed as a general medical surgical hospital or specialty hospital, emergency services shall also comply with the requirements of OAC 310:667-29-1 through OAC 310:667-29-2.

(ii) For a hospital licensed as a critical access hospital, emergency services shall also comply with OAC 310:667-39-14.

(C) **General surgery.** A board certified, board eligible, or residency trained general surgeon shall be on call twenty-four (24) hours a day and promptly available in the emergency department. For a hospital licensed as a general medical surgical hospital, surgical services shall also comply with the requirements of OAC 310:667-25-1 through OAC 310:667-25-2.

(D) **Anesthesia.** Anesthesia services shall be on call twenty-four (24) hours a day, promptly available, and administered as required in OAC 310:667-25-2.

(E) **Internal medicine.** A physician board certified, board eligible, or residency trained in internal medicine shall be on call twenty-four (24) hours a day and promptly available in the emergency department.

(F) **Orthopedic Surgery.** A physician board certified, board eligible, or residency trained in orthopedics and deemed competent in the care of orthopedic emergencies shall be on site or on call twenty-four (24) hours a day and promptly available in the emergency department. In the absence of the orthopedic surgeon, a physician designated by the trauma director and credentialed to provide stabilizing emergency orthopedic treatment may provide care prior to transfer.

(G) **Operating suite.** An operating suite with thermal control equipment for patients and infusion of blood and fluids shall be available twenty-four (24) hours a day.

(H) **Post-anesthesia recovery unit.** The hospital shall have a post-anesthesia recovery room or intensive care unit in compliance with OAC 310:667-15-7 with nursing personnel and anesthesia services remaining in the unit until the patient is discharged from post-anesthesia care.

(I) **Intensive care unit.** The hospital shall have an intensive care unit in compliance with OAC 310:667-15-7 with a registered nurse on duty in the intensive care unit whenever the unit has a patient(s). A registered nurse shall be on call and immediately available when no patients are in the unit. The hospital shall define and document in writing the minimum staffing requirements for the intensive care unit and shall monitor compliance with these requirements through the quality improvement program.

(J) **Diagnostic imaging.** The hospital shall have diagnostic x-ray services available twenty-four (24) hours a day. A radiology technologist shall be on duty or on call and immediately available twenty-four (24) hours a day.

(i) For hospitals licensed as general medical surgical hospitals or specialty hospitals, diagnostic imaging services shall also comply with the applicable requirements in Subchapter 23 of this Chapter.

(ii) For hospitals licensed as critical access hospitals, diagnostic imaging services shall also comply with the applicable requirements in Subchapter 39 of this Chapter.

(K) **Clinical laboratory service.** The hospital shall have clinical laboratory services available twenty-four (24) hours a day. All or part of these

services may be provided by arrangements with certified reference laboratories provided these services are available on an emergency basis twenty-four (24) hours a day. At least the following shall be available:

(i) Comprehensive immunohematology services including blood typing and compatibility testing. A supply of blood and blood products shall be on hand and adequate to meet expected patient needs. All blood and blood products shall be properly stored. The hospital shall have access to services provided by a community central blood bank;

(ii) Standard analysis of blood, urine, and other body fluids to include routine chemistry and hematology testing;

(iii) Coagulation studies;

(iv) Blood gas/pH analysis;

(v) Comprehensive microbiology services or appropriate supplies for the collection, preservation, and transport of clinical specimens for aerobic and anaerobic bacterial, mycobacterial, and fungus cultures; and

(vi) Drug and alcohol screening.

(vii) For hospitals licensed as general medical surgical hospitals or specialty hospitals, clinical laboratory services shall also comply with the applicable requirements in Subchapter 23 of this Chapter.

(viii) For hospitals licensed as critical access hospitals, clinical laboratory services shall also comply with the applicable requirements in Subchapter 39 of this Chapter.

(L) **Social services.** Social services shall be available and provided as required in Subchapter 31 of this Chapter.

(M) **Burn Care.** If the hospital does not meet the requirements at OAC 310:667-59-9(d)(1)(O)(i) it shall have a transfer agreement with a hospital capable of providing burn care in a physician-directed, organized burn care center with a staff of nursing personnel trained in burn care and equipped properly for care of the extensively burned patient.

(N) **Spinal cord and head injury management.** If the hospital does not meet the requirements at OAC 310:667-59-9(d)(1)(P)(i) it shall have a transfer agreement with a hospital capable of providing acute spinal cord and head injury management and rehabilitation.

(O) **Rehabilitation services.** If the hospital does not meet the requirements at OAC 310:667-59-9(d)(1)(Q)(i) it shall have a transfer agreement with a hospital which meets the requirements of Subchapter 35 of this Chapter and is capable of providing rehabilitation services in a rehabilitation center with a staff of personnel trained in rehabilitation care and equipped properly for acute care of the critically injured patient.

(2) **Personnel.**

(A) **Trauma service director.** The medical staff shall designate a surgeon as trauma service director. Through the quality improvement process, the director shall have responsibility for all trauma patients and administrative authority for the hospital's trauma program. The director shall be responsible for recommending appointment to and removal from the trauma service.

(B) **Emergency services director.** The medical staff shall designate a physician credentialed to provide emergency medial care as emergency services director. The emergency services director may serve as the trauma service director.

(C) **Surgical director.** The medical staff shall designate a surgeon credentialed by the hospital to be the director of care for surgical and critical care for trauma patients.

(3) **Supplies and equipment.**

(A) **Emergency department.** The emergency department shall have equipment for use in the resuscitation of patients of all ages on site, functional, and available in the emergency department, including at least the following:

(i) Airway control and ventilation equipment, including laryngoscopes and endotracheal tubes of all sizes, bag-mask resuscitator, pocket masks, and oxygen;

(ii) Pulse oximetry;

(iii) Suction devices;

(iv) Electrocardiograph-oscilloscope-defibrillator-pacer;

(v) Apparatus to establish central venous pressure monitoring;

(vi) Standard intravenous fluids and administration devices, including large-bore intravenous catheters;

(vii) Sterile surgical sets for:

(I) Airway control/cricothyrotomy;

(II) Thoracotomy;

(III) Vascular access; and

(IV) Chest decompression.

(viii) Equipment for gastric decompression;

(ix) Drugs necessary for emergency care;

(x) Two-way communication with vehicles of emergency transport system as required at OAC 310:667-29-1(c)(4);

(xi) Skeletal traction devices including cervical immobilization device; and

(xii) Thermal control equipment for patients and infusion of blood, blood products, and other fluids.

(B) **Post-anesthesia recovery unit.** The post-anesthesia recovery unit shall have the following supplies and equipment on site, functional, and available for use:

(i) Equipment for the continuous monitoring of temperature, hemodynamics, and gas exchange;

(ii) Pulse oximetry;

(iii) End-tidal CO_2 determination; and

(iv) Thermal control equipment for patients and infusion of blood, blood products, and other fluids.

(C) **Intensive care unit.** The intensive care unit shall have the following supplies and equipment on site, functional, and available for use:

(i) Equipment for the continuous monitoring of temperature, hemodynamics, and gas exchange;

(ii) Cardiopulmonary resuscitation cart;

(iii) Electrocardiograph-oscilloscope-defibrillator-pacer;

(iv) Sterile surgical sets for:

(I) Airway control/cricothyrotomy;

(II) Thoracotomy;

(III) Vascular access; and

(IV) Chest decompression.

(4) **Policies on transfers.**

(A) The hospital shall have written policies defining the medical conditions and circumstances for those emergency patients which may be retained for treatment in-house, and for those who require stabilizing treatment and transfer to another facility.

(B) The facility shall have a transfer agreement with a hospital capable of providing trauma care for severely injured patients. This agreement shall include reciprocal provisions requiring the facility to accept return transfers of patients at such time as the facility has the capability and capacity to provide needed care. Reciprocal agreements shall not incorporate financial provisions for transfers.

(5) **Quality Improvement.** In addition to any other requirements of this Chapter, the hospital quality improvement program shall include:

(A) Trauma registry;

(B) Audit for all trauma deaths to include prehospital care and care received at a transferring facility;

(C) Morbidity and mortality review;

(D) Medical nursing audit, utilization review, tissue review;

(E) Multidisciplinary peer review of trauma and emergency services;

(F) Published on call schedules for surgeons, neurosurgeons, and orthopedic surgeons;

(G) Review of the times and reasons for trauma-related bypass; and

(H) The availability and response times of on call staff specialists shall be defined in writing, documented, and continuously monitored.

(6) **Continuing education.** The hospital shall provide and document formal continuing education programs for physicians, nurses, and allied health personnel.

(7) **Organ Procurement.** The hospital, in association with an organ procurement organization certified by the CMS, shall develop policies and procedures to identify and refer potential organ donors.

(c) **Level II.** A Level II facility shall provide emergency medical services with an organized trauma service and emergency department. A physician and nursing staff with special capability in trauma care shall be on site twenty-four (24) hours a day. General surgery, anesthesiology, and neurosurgery services shall be available on site or on call twenty-four (24) hours a day. Services from an extensive group of clinical specialties including cardiology, internal medicine, orthopedics, and obstetrics/gynecology shall be promptly available on call. A hospital shall be classified at Level II for trauma and emergency operative services if it meets the following requirements:

(1) **Clinical services and resources.**

(A) **Trauma service.** A trauma service shall be established by the medical staff and shall be responsible for coordinating the care of injured patients, the training of personnel, and trauma quality improvement. Privileges for physicians participating in the trauma service will be determined by the medical staff credentialing process. All patients with multiple-system or major injury shall be evaluated by the trauma service. The surgeon responsible for the overall care of the admitted patient shall be identified.

(B) **Emergency services.** A physician deemed competent in the care of the critically injured and credentialed by the hospital to provide emergency medical services and nursing personnel with special capability in trauma care shall be on site twenty-four (24) hours a day. For a hospital licensed as a general medical surgical hospital or specialty hospital, emergency services shall also comply with the requirements of OAC 310:667-29-1 through OAC 310:667-29-2.

(C) **General surgery.** A general surgeon or senior surgical resident deemed competent and appropriately credentialed by the hospital shall be on site or on call twenty-four (24) hours a day and promptly available in the emergency department. A stated goal of the general surgery service shall be to have the attending trauma surgeon authorized and designated by the trauma service director present in the emergency room at the time of the severely injured patient's arrival. For a hospital licensed as a general medical surgical hospital, surgical services shall also comply with the requirements of OAC 310:667-25-1 through OAC 310:667-25-2.

(D) **Anesthesia.** A board certified, board eligible, or residency trained anesthesiologist shall be on site or on call twenty-four (24) hours a day and promptly available in the emergency department. If the anesthesiologist is not present in the facility, prior to the physician's arrival, anesthesia services may be provided by a certified registered nurse anesthetist (CRNA). The CRNA shall be deemed competent in the assessment of emergent situations in trauma patients and of initiating and providing any indicated treatment. All anesthesia shall be administered as required in OAC 310:667-25-2.

(E) **Neurologic surgery.** A board certified, board eligible, or residency trained neurosurgeon or other physician deemed competent in the care of patients with neurotrauma and appropriately credentialed shall be on site or on call twenty-four (24) hours a day

and promptly available in the emergency department. If care is initiated by a physician other than a neurosurgeon, the neurosurgeon on call shall respond as required by the hospital's policy.

(F) **Other specialties.** The hospital shall also have services from the following specialties on call and promptly available:

(i) Cardiac surgery;
(ii) Cardiology;
(iii) Internal medicine;
(iv) Obstetric/gynecologic surgery;
(v) Ophthalmic surgery;
(vi) Oral/maxillofacial surgery;
(vii) Orthopedic surgery;
(viii) Otolaryngology;
(ix) Pediatrics;
(x) Plastic surgery;
(xi) Clinical licensed psychologist or psychiatrist;
(xii) Pulmonary medicine;
(xiii) Radiology;
(xiv) Thoracic surgery; and
(xv) Urology and urologic surgery.

(G) **Operating suite.** An operating suite with adequate staff and equipment shall be immediately available twenty-four (24) hours a day. The hospital shall define and document in writing the minimum staffing requirements for the operating suite. An on call schedule for emergency replacement staff shall be maintained.

(H) **Post-anesthesia recovery unit.** The hospital shall have a post-anesthesia recovery room or intensive care unit in compliance with OAC 310:667-15-7 with nursing personnel and anesthesia services remaining in the unit until the patient is discharged from post-anesthesia care.

(I) **Intensive care unit.** The hospital shall have an intensive care unit in compliance with OAC 310:667-15-7 with a registered nurse on duty in the intensive care unit whenever the unit has a patient(s). The hospital shall define and document in writing the minimum staffing requirements for the intensive care unit and shall continuously monitor compliance with these requirements through the quality improvement program. A registered nurse shall be on call and immediately available when no patients are in the unit. A physician with privileges in critical care shall be on duty in the unit or immediately available in the hospital twenty-four (24) hours a day.

(J) **Diagnostic Imaging.** The hospital shall have diagnostic x-ray services available twenty-four (24) hours a day. A radiologic technologist and computerized tomography technologist shall be on duty or on call and immediately available twenty-four (24) hours a day. A single technologist designated as qualified in both diagnostic x-ray and computerized tomography procedures by the radiologist may be used to meet this requirement if an on call schedule of additional diagnostic imaging personnel is maintained. The diagnostic imaging service shall provide at least the following services:

(i) Angiography;
(ii) Ultrasonography;
(iii) Computed tomography;
(iv) Magnetic resonance imaging;
(v) Neuroradiology; and
(vi) Nuclear medicine imaging.
(vii) For a hospital licensed as a general medical surgical hospital or specialty hospital, diagnostic imaging services shall also comply with the applicable requirements in Subchapter 23 of this Chapter.

(K) **Clinical laboratory service.** The hospital shall have clinical laboratory services available twenty-four (24) hours a day. All or part of these services may be provided by arrangements with certified reference laboratories provided these services are available on an emergency basis twenty-four (24) hours a day. At least the following shall be available:

(i) Comprehensive immunohematology services including blood typing and compatibility testing. A supply of blood and blood products shall be on hand and adequate to meet expected patient needs. All blood and blood products shall be properly stored. The hospital shall have access to services provided by a community central blood bank;
(ii) Standard analysis of blood, urine, and other body fluids to include routine chemistry and hematology testing;
(iii) Coagulation studies;
(iv) Blood gas/pH analysis;
(v) Comprehensive microbiology services or appropriate supplies for the collection, preservation, and transport of clinical specimens for aerobic and anaerobic bacterial, mycobacterial, and fungus cultures; and
(vi) Drug and alcohol screening.
(vii) For a hospital licensed as general medical surgical hospital or specialty hospital, clinical laboratory services shall also comply with the applicable requirements in Subchapter 23 of this Chapter.

(L) **Respiratory therapy.** Routine respiratory therapy procedures and mechanical ventilators shall be available twenty-four (24) hours a day. Respiratory therapy services shall comply with OAC 310:667-23-6.

(M) **Social services.** Social services shall be available and provided as required in Subchapter 31 of this Chapter.

(N) **Burn Care.** If the hospital does not meet the requirements at OAC 310:667-59-9(d)(1)(O)(i) it shall have a transfer agreement with a hospital capable of providing burn care in a physician-directed, organized burn care center with a staff of nursing

personnel trained in burn care and equipped properly for care of the extensively burned patient.

(O) **Spinal cord and head injury management.** The hospital shall provide acute spinal cord and head injury management including at least the ability to initiate rehabilitative care prior to transfer and shall have a transfer agreement with a hospital that meets the requirements at OAC 310:667-59-9(d)(1)(P)(i) if comprehensive rehabilitation services are not available within the facility.

(P) **Rehabilitation services.** If the hospital does not meet the requirements at OAC 310:667-59-9(d)(1)(Q)(i) it shall have a transfer agreement with a hospital which meets the requirements of Subchapter 35 of this Chapter and is capable of providing rehabilitation services in a rehabilitation center with a staff of personnel trained in rehabilitation care and equipped properly for acute care of the critically injured patient.

(2) **Personnel.**

(A) **Trauma service director.** The medical staff shall designate a surgeon as trauma service director. Through the quality improvement process, the director shall have responsibility for all trauma patients and administrative authority for the hospital's trauma program. The trauma service director shall be responsible for recommending appointment to and removal from the trauma service.

(B) **Trauma coordinator.** The hospital shall have a designated trauma coordinator who may also serve as the prevention coordinator. Under the supervision of the trauma service director, the trauma coordinator is responsible for organizing the services and systems of the trauma service to ensure there is a multidisciplinary approach throughout the continuum of trauma care. The trauma coordinator shall have an active role in the following:

(i) Clinical activities such as design of clinical protocols, monitoring care, and assisting the staff in problem solving;

(ii) Educational activities such as professional staff development, case reviews, continuing education, and community trauma education and prevention programs;

(iii) Quality improvement activities such as development of quality monitors, audits, and case reviews in all phases of trauma care;

(iv) Administrative tasks for the trauma service such as those related to services' organization, personnel, budget preparation, and accountability;

(v) Trauma registry data collection, coding, scoring, and validation; and

(vi) Consultation and liaison to the medical staff, prehospital emergency medical service agencies, patient families, and the community at large.

(C) **Prevention coordinator.** The hospital shall have a designated prevention coordinator who may also serve as the trauma coordinator. Under the supervision of the trauma director, the prevention coordinator is responsible for the organization and management of the hospital's outreach, prevention, and public education activities.

(D) **Emergency services director.** The medical staff shall designate a physician credentialed to provide emergency medical care as emergency services director.

(E) **Surgical director.** The medical staff shall designate a surgeon credentialed by the hospital to be the director of care for surgical and critical care for trauma patients.

(3) **Supplies and equipment.**

(A) **Emergency department.** The emergency department shall have equipment for use in the resuscitation of patients of all ages on site, functional, and available in the emergency department, including at least the following:

(i) Airway control and ventilation equipment, including laryngoscopes and endotracheal tubes of all sizes, bag-mask resuscitator, pocket masks, and oxygen;

(ii) Pulse oximetry;

(iii) End-tidal CO_2 determination;

(iv) Suction devices;

(v) Electrocardiograph-oscilloscope-defibrillator-pacer;

(vi) Apparatus to establish central venous pressure monitoring;

(vii) Standard intravenous fluids and administration devices, including large-bore intravenous catheters;

(viii) Sterile surgical sets for:

(I) Airway control/cricothyrotomy;

(II) Thoracotomy;

(III) Vascular access; and

(IV) Chest decompression.

(ix) Equipment for gastric decompression;

(x) Drugs necessary for emergency care;

(xi) Two-way communication with vehicles of emergency transport system as required at OAC 310:667-29-1(c)(4);

(xii) Skeletal traction devices including cervical immobilization device;

(xiii) Arterial catheters; and

(xiv) Thermal control equipment for patients and infusion of blood, blood products, and other fluids.

(B) **Operating suite.** The operating suite shall have the following supplies and equipment on site, functional and available for use:

(i) Thermal control equipment for patients and infusion of blood, blood products, and other fluids;

(ii) X-ray capability including c-arm intensifier;

(iii) Endoscopes;

(iv) Craniotomy instruments; and

(v) Equipment appropriate for fixation of long-bone and pelvic fractures.

(C) **Post-anesthesia recovery unit.** The post-anesthesia recovery unit shall have the following supplies and equipment on site, functional, and available for use:

(i) Equipment for the continuous monitoring of temperature, hemodynamics, and gas exchange;

(ii) Equipment for the continuous monitoring of intracranial pressure;

(iii) Pulse oximetry;

(iv) End-tidal CO_2 determination; and

(v) Thermal control equipment for patients and infusion of blood, blood products, and other fluids.

(D) **Intensive care unit.** The intensive care unit shall have the following supplies and equipment on site, functional, and available for use:

(i) Equipment for the continuous monitoring of temperature, hemodynamics, and gas exchange;

(ii) Cardiopulmonary resuscitation cart;

(iii) Electrocardiograph-oscilloscope-defibrillator-pacer;

(iv) Sterile surgical sets for:

(I) Airway control/cricothyrotomy;

(II) Thoracotomy;

(III) Vascular access; and

(IV) Chest decompression.

(4) **Policies on transfers.** The hospital shall have written policies defining the medical conditions and circumstances for those emergency patients which may be retained for treatment in-house, and for those who require stabilizing treatment and transfer to another facility.

(5) **Quality Improvement.** The hospital shall establish a multidisciplinary trauma committee composed of the trauma service director, emergency services director, trauma coordinator, and other members of the medical and nursing staff that treat trauma and emergency operative patients. The trauma committee shall meet regularly to review and evaluate patient outcomes and the quality of care provided by the trauma service. In addition to any other requirements of this Chapter, the hospital quality improvement program shall include:

(A) Trauma registry;

(B) Audit for all trauma deaths to include prehospital care and care received at a transferring facility;

(C) Morbidity and mortality review;

(D) Medical nursing audit, utilization review, tissue review;

(E) Regularly scheduled multidisciplinary trauma and emergency operative services review conferences;

(F) Published on call schedules for surgeons, neurosurgeons, and orthopedic surgeons;

(G) Review of the times and reasons for trauma-related bypass;

(H) The availability and response times of on call staff specialists shall be defined in writing, documented, and continuously monitored; and

(I) Quality improvement staff with time dedicated to and specific for trauma and emergency operative services.

(6) **Continuing education.** The hospital shall provide and document formal continuing education programs for physicians, nurses, allied health personnel, and community physicians. Continuing education programs shall be available to all state physicians, nurses, allied health personnel, and emergency medical service providers.

(7) **Organ Procurement.** The hospital, in association with an organ procurement organization certified by CMS, shall develop policies and procedures to identify and refer potential organ donors.

(8) **Outreach programs.** The hospital shall have organized outreach programs under the direction of a designated prevention coordinator.

(A) **Consultation.** The hospital shall provide on-site and/or electronic consultations with community health care providers and those in outlying areas as requested and appropriate.

(B) **Prevention and public education programs.** The hospital shall serve as a public information resource and collaborate with other institutions and national, regional, and state programs in research and data collection projects in epidemiology, surveillance, and injury prevention, and other areas.

(d) **Level I.** A Level one facility shall provide emergency medical services with an organized trauma service and emergency department. A physician and nursing staff with special capability in trauma care shall be on site twenty-four (24) hours a day. General surgery, anesthesiology, and neurosurgery services shall be available on site or on call twenty-four (24) hours a day. Additional clinical services and specialties such as nuclear diagnostic imaging, cardiac surgery, hand surgery, and infectious disease specialists shall also be promptly available. A Level I facility shall also have an organized trauma research program with a designated director.

(1) **Clinical services and resources.**

(A) **Trauma service.** A trauma service shall be established by the medical staff and shall be responsible for coordinating the care of injured patients, the training of personnel, and trauma quality improvement. Privileges for physicians participating in the trauma service will be determined by the medical staff credentialing process. All patients with multiple-system or major injury shall be evaluated by the trauma service. The surgeon responsible for the overall care of the admitted patient shall be identified.

(B) **Emergency services.** A physician deemed competent in the care of the critically injured and credentialed by the hospital to provide emergency medical services and nursing personnel with special capability in trauma care shall be on site twenty-four (24) hours a day. For a hospital licensed as a general medical surgical hospital or a specialty hospital, emergency services shall also comply with the requirements of OAC 310:667-29-1 through OAC 310:667-29-2.

(C) **General surgery.** A general surgeon or senior surgical resident deemed competent and appropriately credentialed by the hospital shall be on site or on call twenty-four (24) hours a day and promptly available in the emergency department. A stated goal of the general surgery service shall be to have the attending trauma surgeon authorized and designated by the trauma service director present in the emergency room at the time of the severely injured patient's arrival. For a hospital licensed as a general medical surgical hospital, surgical services shall also comply with the requirements of OAC 310:667-25-1 through OAC 310:667-25-2.

(D) **Anesthesia.** A board certified, board eligible, or residency trained anesthesiologist shall be on site or on call twenty-four (24) hours a day and promptly available. All anesthesia shall be administered as required in OAC 310:667-25-2.

(E) **Neurologic surgery.** A board certified, board eligible, or residency trained neurosurgeon or other physician deemed competent in the care of patients with neurotrauma and appropriately credentialed shall be on site twenty-four (24) hours a day and promptly available in the emergency department. If care is initiated by a physician other than a neurosurgeon, the neurosurgeon on call shall respond as required by the hospital's policy.

(F) **Other specialties.** The hospital shall also have services from the following specialties on call and promptly available:

(i) Cardiac surgery;
(ii) Cardiology;
(iii) Hand surgery;
(iv) Infectious disease;
(v) Internal medicine;
(vi) Microvascular surgery;
(vii) Obstetric/gynecologic surgery;
(viii) Ophthalmic surgery;
(ix) Oral/maxillofacial surgery;
(x) Orthopedic surgery;
(xi) Otolaryngology;
(xii) Pediatric surgery;
(xiii) Pediatrics;
(xiv) Plastic surgery;
(xv) Clinical licensed psychologist or psychiatrist;
(xvi) Pulmonary medicine;
(xvii) Radiology;
(xviii) Thoracic surgery; and
(xvix) Urology and urologic surgery.

(G) **Operating suite.** An operating suite with adequate staff and equipment shall be immediately available twenty-four (24) hours a day. The hospital shall define and document in writing the minimum staffing requirements for the operating suite. An on call schedule for emergency replacement staff shall be maintained.

(H) **Post-anesthesia recovery unit.** The hospital shall have a post-anesthesia recovery room or intensive care unit in compliance with OAC 310:667-15-7 with nursing personnel and anesthesia services remaining in the unit until the patient is discharged from post-anesthesia care.

(I) **Intensive care unit.** The hospital shall have an intensive care unit in compliance with OAC 310:667-15-7 with a registered nurse on duty in the intensive care unit whenever the unit has a patient(s). The hospital shall define and document in writing the minimum staffing requirements for the intensive care unit and shall continuously monitor compliance with these requirements through the quality improvement program. A registered nurse shall be on call and immediately available when no patients are in the unit. A physician with privileges in critical care shall be on duty in the unit or immediately available in the hospital twenty-four (24) hours a day.

(J) **Diagnostic Imaging.** The hospital shall have diagnostic x-ray services available twenty-four (24) hours a day. A radiologic technologist and computerized tomography technologist shall be on duty or on call and immediately available twenty-four (24) hours a day. A single technologist designated as qualified in both diagnostic x-ray and computerized tomography procedures by the radiologist may be used to meet this requirement if an on call schedule of additional diagnostic imaging personnel is maintained. The diagnostic imaging service shall provide at least the following services:

(i) Angiography;
(ii) Ultrasonography;
(iii) Computed tomography;
(iv) Magnetic resonance imaging;
(v) Neuroradiology; and
(vi) Nuclear medicine imaging.
(vii) For a hospital licensed as a general medical surgical hospital or specialty hospital, diagnostic imaging services shall also comply with the applicable requirements in Subchapter 23 of this Chapter.

(K) **Clinical laboratory service.** The hospital shall have clinical laboratory services available twenty-four (24) hours a day. All or part of these services may be provided by arrangements with certified reference laboratories provided these services are available on an emergency basis twenty-four (24) hours a day. At least the following shall be available:

(i) Comprehensive immunohematology services including blood typing and compatibility testing. A supply of blood and blood products shall be on hand and adequate to meet expected patient needs. All blood and blood products shall be properly stored. The hospital shall have access to services provided by a community central blood bank;

(ii) Standard analysis of blood, urine, and other body fluids to include routine chemistry and hematology testing;

(iii) Coagulation studies;

(iv) Blood gas/pH analysis;

(v) Comprehensive microbiology services or appropriate supplies for the collection, preservation, and transport of clinical specimens for aerobic and anaerobic bacterial, mycobacterial, and fungus cultures; and

(vi) Drug and alcohol screening.

(vii) For a hospital licensed as a general medical surgical hospital or specialty hospital, clinical laboratory services shall also comply with the applicable requirements in Subchapter 23 of this Chapter.

(L) **Respiratory therapy.** Routine respiratory therapy procedures and mechanical ventilators shall be available twenty-four (24) hours a day. Respiratory therapy services shall comply with OAC 310:667-23-6.

(M) **Acute hemodialysis.** The hospital shall have the capability to provide acute hemodialysis services twenty-four (24) hours a day. All staff providing hemodialysis patient care shall have documented hemodialysis training and experience.

(N) **Social services.** Social services shall be available and provided as required in Subchapter 31 of this Chapter.

(O) **Burn Care.**

(i) The hospital shall provide burn care in a physician-directed, organized burn care center with a staff of nursing personnel trained in burn care and equipped properly for care of the extensively burned patient; or

(ii) If the hospital does not meet the requirements at OAC 310:667-59-9(d)(1)(O)(i), it shall have a transfer agreement with a hospital capable of providing burn care in a physician-directed, organized burn care center with a staff of nursing personnel trained in burn care and equipped properly for care of the extensively burned patient.

(P) **Spinal cord and head injury management.** The hospital shall provide acute spinal cord and head injury management including at least the ability to initiate rehabilitative care prior to transfer and shall have a transfer agreement with a hospital that meets the requirements at OAC 310:667-59-9(d)(1)(P)(i) if comprehensive rehabilitation services are not available within the facility.

(Q) **Rehabilitation services.**

(i) The hospital shall provide rehabilitation services in a rehabilitation center with a staff of personnel trained in rehabilitation care and equipped properly for acute care of the critically injured patient; or

(ii) If the hospital does not meet the requirements at OAC 310:667-59-9(d)(1)(Q)(i) it shall have a transfer agreement with a hospital which meets the requirements of Subchapter 35 of this Chapter and is capable of providing rehabilitation services in a rehabilitation center with a staff of personnel trained in rehabilitation care and equipped properly for acute care of the critically injured patient.

(2) **Personnel.**

(A) **Trauma service director.** The medical staff shall designate a surgeon as trauma service director. Through the quality improvement process, the director shall have responsibility for all trauma patients and administrative authority for the hospital's trauma program. The trauma service director shall be responsible for recommending appointment to and removal from the trauma service.

(B) **Trauma coordinator.** The hospital shall have a designated trauma coordinator who may also serve as the prevention coordinator. Under the supervision of the trauma service director, the trauma coordinator is responsible for organizing the services and systems of the trauma service to ensure there is a multidisciplinary approach throughout the continuum of trauma care. The trauma coordinator shall have an active role in the following:

(i) Clinical activities such as design of clinical protocols, monitoring care, and assisting the staff in problem solving;

(ii) Educational activities such as professional staff development, case reviews, continuing education, and community trauma education and prevention programs;

(iii) Quality improvement activities such as development of quality monitors, audits, and case reviews in all phases of trauma care;

(iv) Administrative tasks for the trauma service such as those related to services' organization, personnel, budget preparation, and accountability;

(v) Trauma registry data collection, coding, scoring, and validation; and

(vi) Consultation and liaison to the medical staff, prehospital emergency medical service agencies, patient families, and the community at large.

(C) **Prevention coordinator.** The hospital shall have a designated prevention coordinator who may also serve as the trauma coordinator. Under the supervision of the trauma director, the prevention coordinator is responsible for the organization and management of the hospital's outreach, prevention, and public education activities.

(D) **Emergency services director.** The medical staff shall designate a physician credentialed to provide emergency medial care as emergency services director.

(E) **Surgical director.** The medical staff shall designate a surgeon credentialed by the hospital to be the director of care for surgical and critical care for trauma patients.

(F) **Research director.** The medical staff shall designate a physician as research director who may also serve as the trauma service director. The research director is responsible for the organization and management of the hospital's trauma and emergency operative research activities.

(3) **Supplies and equipment.**

(A) **Emergency department.** The emergency department shall have equipment for use in the resuscitation of patients of all ages on site, functional, and available in the emergency department, including at least the following:

(i) Airway control and ventilation equipment, including laryngoscopes and endotracheal tubes of all sizes, bag-mask resuscitator, pocket masks, and oxygen;

(ii) Pulse oximetry;

(iii) End-tidal CO_2 determination;

(iv) Suction devices;

(v) Electrocardiograph-oscilloscope-defibrillator-pacer;

(vi) Apparatus to establish central venous pressure monitoring;

(vii) Standard intravenous fluids and administration devices, including large-bore intravenous catheters;

(viii) Sterile surgical sets for:

(I) Airway control/cricothyrotomy;

(II) Thoracotomy;

(III) Vascular access; and

(IV) Chest decompression.

(ix) Equipment for gastric decompression;

(x) Drugs necessary for emergency care;

(xi) Two-way communication with vehicles of emergency transport system as required at OAC 310:667-29-1(c)(4);

(xii) Skeletal traction devices including cervical immobilization device;

(xiii) Arterial catheters; and

(xiv) Thermal control equipment for patients and infusion of blood, blood products, and other fluids.

(B) **Operating suite.** The operating suite shall have the following supplies and equipment on site, functional and available for use:

(i) Cardiopulmonary bypass capability;

(ii) Operating microscope;

(iii) Thermal control equipment for patients and infusion of blood, blood products, and other fluids;

(iv) X-ray capability including c-arm intensifier;

(v) Endoscopes;

(vi) Craniotomy instruments; and

(vii) Equipment appropriate for fixation of long-bone and pelvic fractures.

(C) **Post-anesthesia recovery unit.** The post-anesthesia recovery unit shall have the following supplies and equipment on site, functional, and available for use:

(i) Equipment for the continuous monitoring of temperature, hemodynamics, and gas exchange;

(ii) Equipment for the continuous monitoring of intracranial pressure;

(iii) Pulse oximetry;

(iv) End-tidal CO_2 determination; and

(v) Thermal control equipment for patients and infusion of blood, blood products, and other fluids.

(D) **Intensive care unit.** The intensive care unit shall have the following supplies and equipment on site, functional, and available for use:

(i) Equipment for the continuous monitoring of temperature, hemodynamics, and gas exchange;

(ii) Cardiopulmonary resuscitation cart;

(iii) Electrocardiograph-oscilloscope-defibrillator-pacer;

(iv) Sterile surgical sets for:

(I) Airway control/cricothyrotomy;

(II) Thoracotomy;

(III) Vascular access; and

(IV) Chest decompression.

(4) **Policies on transfers.** The hospital shall have written policies defining the medical conditions and circumstances for those emergency patients which may be retained for treatment in-house, and for those who require stabilizing treatment and transfer to another facility.

(5) **Quality Improvement.** The hospital shall establish a multidisciplinary trauma committee composed of the trauma service director, emergency services director, trauma coordinator, and other members of the medical and nursing staff that treat trauma and emergency operative patients. The trauma committee shall meet regularly to review and evaluate patient outcomes and the quality of care provided by the trauma service. In addition to any other requirements of this Chapter, the hospital quality improvement program shall include:

(A) Trauma registry;

(B) Audit for all trauma deaths to include prehospital care and care received at a transferring facility;

(C) Morbidity and mortality review;

(D) Medical nursing audit, utilization review, tissue review;

(E) Regularly scheduled multidisciplinary trauma and emergency operative services review conference;

(F) Published on call schedules for surgeons, neurosurgeons, and orthopedic surgeons;

(G) Review of the times and reasons for trauma-related bypass; and

(H) The availability and response times of on call staff specialists shall be defined in writing, documented, and continuously monitored.

(I) Quality improvement staff with time dedicated to and specific for trauma and emergency operative services.

(6) **Continuing education.** The hospital shall provide and document formal continuing education programs for physicians, nurses, allied health personnel, and community physicians. Continuing education programs shall

be available to all state physicians, nurses, allied health personnel, and emergency medical service providers.

(7) **Organ Procurement.** The hospital, in association with an organ procurement organization certified by CMS, shall develop policies and procedures to identify and refer potential organ donors.

(8) **Outreach programs.** The hospital shall have organized outreach programs under the direction of a designated prevention coordinator.

(A) **Consultation.** The hospital shall provide on-site and/or electronic consultations with community health care providers and those in outlying areas as requested and appropriate.

(B) **Prevention and public education programs.** The hospital shall serve as a public information resource and collaborate with other institutions and national, regional, and state programs in research and data collection projects in epidemiology, surveillance, and injury prevention, and other areas.

(9) **Research programs.** The hospital shall have an organized trauma and emergency operative services research program under the direction of a designated research director. Research groups shall meet regularly and all research proposals shall be approved by an Institutional Review Board (IRB) prior to launch. The research director shall maintain evidence of the productivity of the research program through documentation of presentations and copies of published articles.

APPENDIX D. FILTER EFFICIENCIES FOR CENTRAL VENTALATION AND AIR CONDITIONING SYSTEMS IN GENERAL HOSPITALS [REVOKED]

APPENDIX D. FILTER EFFICIENCIES FOR CENTRAL VENTILATION AND AIR CONDITIONING SYSTEMS IN GENERAL HOSPITALS [NEW]

Area Designation	Number Filter beds	Filter Bed No. 1 (%)	Filter Bed No. 2[1] (%)
All areas for inpatient care, treatment, and diagnosis, and those areas providing direct service or clean supplies such as sterile and clean processing, etc.	2	30	90
Protective environment room	2	30	90
Laboratories	1	80	__
Administrative, bulk storage, soiled holding areas, food preparation areas, and laundries	1	30	__

APPENDIX D NOTES:

[1]These requirements do not apply to small primary (neighborhood) outpatient facilities or outpatient facilities that do not perform invasive applications or procedures.

Additional roughing or pre-filters should be considered to reduce maintenance required for filters with efficiency higher than 75%.

The filtration efficiency ratings are based on average dust spot efficiency per ASHRAE 52.1-1992.

[OAR Docket #04-1090; filed 6-4-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 675. NURSING AND SPECIALIZED FACILITIES

[OAR Docket #04-1091]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Licenses
310:675-3-1.1. [AMENDED]
310:675-3-4. [NEW]
310:675-3-4.1. [AMENDED]
310:675-3-5. [AMENDED]
310:675-3-5.1. [AMENDED]
310:675-3-8. [AMENDED]
AUTHORITY:
Oklahoma State Board of Health: Title 63 O.S. Section 1-104 and Title 63 O.S. Section 1-1901 et seq.
DATES:
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May 20, 2004
Effective:
July 12, 2004
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed amendments are intended to ensure that facilities comply with the tax-related financial reporting requirements in Title 63 O.S. Section 1-1930.1. The amendments will provide verifiable advance warning of possible financial insufficiency and will reduce the potential for harm or jeopardy to residents of nursing facilities.

The proposed amendments require an applicant for a license to operate a nursing or specialized nursing facility, or a licensee applying for a renewal license, to disclose identifying information for the person or entity that is legally responsible for filing employment tax returns and paying employment taxes. The applicant and any person or entity so disclosed must certify that they are current in filing returns and in paying state and federal income, employment and unemployment taxes. Such persons or entities must declare any tax warrants, liens or levies, and submit a waiver allowing the Internal Revenue Service to provide information to the State Health Department to verify compliance.

The amendments authorize denial, suspension or revocation of a license if an applicant or disclosed person or entity is not current with tax filing or payment requirements or has state warrants or federal tax liens filed against them. The amendments describe the forms to be used. If the State Health Department receives information that an applicant or disclosed person is not compliant with tax filing, payment or disclosure requirements, the amendments authorize the Department to require additional waivers or proof of compliance with state and federal taxes.
CONTACT PERSON:
Henry Hartsell Jr., Chief, Health Resources Development Service, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-9444, x57269; facsimile: 405-271-7360; electronic mail: hank@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 12, 2004:

SUBCHAPTER 3. LICENSES

310:675-3-1.1. Application for licensure

(a) No person or entity shall operate a facility without first obtaining a license.

(b) The applicant shall file a licensure application in a timely manner, on the forms provided by the Department, with a check for the filing fee payable to the Oklahoma State Department of Health. The filing fee is set by statute, and currently is calculated as Ten Dollars ($10.00) per licensed bed.

(c) The facility owner shall be the applicant for the license, unless a receiver has been appointed. If there is a receiver, the receiver shall be the applicant.

(d) If the facility is leased, then the person or entity to whom the facility is leased shall be the applicant. If the lessee does not assume all rights to the facility and the lessor reserves some participatory rights in the operation of the facility, then both entities shall make joint application for the license.

(e) The applicant or licensee shall disclose the name, address, and tax identification number of a person or entity who has the legal duties of filing employment tax returns and paying employment taxes with respect to staff required to meet the needs of facility residents, including but not limited to administrators, nurses, nurse aides, certified medication aides, dieticians, nutritionists, food service staff, qualified mental retardation professionals, and activities, social services, maintenance and housekeeping personnel. The Department shall require such a person or entity to sign a Federal Tax Waiver to verify that employment taxes are being paid for staff required to meet the needs of residents.

(~~e~~f) An application is not considered to be filed unless it is accompanied by the application fee. The application fee, however, shall not be required from a receiver or temporary manager appointed by, or at the request of, the Department.

(g) An initial or renewal application for a license shall include a certification by the applicant that, at the time of the filing of the application:

(1) The applicant and any person or entity disclosed pursuant to 310:675-3-1.1(e) are current in their payment of all state and federal income, employment and unemployment taxes;

(2) The applicant and any person or entity disclosed pursuant to 310:675-3-1.1(e) have filed all required returns for such taxes;

(3) Whether any state tax warrants or federal tax liens have been filed against the applicant, the facility or any person or entity disclosed pursuant to 310:675-3-1.1(e); and

(4) Whether any state attachments or federal levies have been made and are currently pending to collect delinquent state or federal income, employment or unemployment taxes owed by the applicant, the facility, or any person or entity disclosed pursuant to 310:675-3-1.1(e).

(h) An applicant or any person or entity disclosed pursuant to 310:675-3-1.1(e) is current with its federal and state taxes if at the time of the submission of its initial or renewal application it has filed all tax returns that are due for state and federal income taxes, Form 941 federal employment taxes, Form 940 federal unemployment taxes, and all state employment and unemployment taxes and has paid all such taxes, interest, and penalties in full.

310:675-3-4. Denial of license

The Department's consideration of financial insufficiency as a reason for denial of a license pursuant to 63 O.S. Section 1-1906(C)(4), may include, but is not limited to, the following bases:

(1) The applicant or any person or entity disclosed pursuant to 310:675-3-1.1(e) is not current with filing and payment requirements for state and/or federal taxes;

(2) The State of Oklahoma has filed a tax warrant or warrants against the applicant or any person or entity disclosed pursuant to 310:675-3-1.1(e); or

(3) The Internal Revenue Service has filed a notice of federal tax lien against the applicant or any person or entity disclosed pursuant to 310:675-3-1.1(e).

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; the Certification of Tax Liens and Timely Payment of Taxes; and the Federal Tax Waiver.

(2) For renewal or suspension of a current license, the applicant shall file the License Application form, the Certification of Tax Liens and Timely Payment of Taxes, and the Federal Tax Waiver. 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.

(d) The Department's consideration of financial insufficiency as a reason for suspension or revocation of a license pursuant to 63 O.S. Section 1-1906(E)(4), may include, but is not limited to, the following bases:

(1) The applicant or any person or entity disclosed pursuant to 310:675-3-1.1(e) is not current with filing and payment requirements for state and/or federal taxes;

(2) The State of Oklahoma has filed a tax warrant or warrants against the applicant or any person or entity disclosed pursuant to 310:675-3-1.1(e); or

(3) The Internal Revenue Service has filed a notice of federal tax lien against the applicant or any person or entity disclosed pursuant to 310:675-3-1.1(e).

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 or any person or entity disclosed pursuant to 310:675-3-1.1(e); 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; name, address and tax identification number for any person or entity disclosed pursuant to 310:675-3-1.1(e); 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.

(7) The Certification of Tax Liens and Timely Payment of Taxes (Form 953-G) requires: certification of compliance with OAC 310:3-1-1(g).

(8) The Federal Tax Waiver (Form 953-H) requires authorization from the applicant and any person or entity disclosed pursuant to 310:675-3-1.1(e) to allow the Internal Revenue Service to provide tax return information to the Department to verify current compliance with the filing and payment requirements for federal income taxes, Form 941 employment taxes, and Form 940 unemployment taxes and to verify that there are no notices of federal tax liens that have been filed against the applicant or any person or entity disclosed pursuant to 310:675-3-1.1(e).

(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; any change in disclosure of persons or entities pursuant 310:675-3-1.1(e); and any change in compliance status with the tax certification requirements specified in 310:675-3-1.1(g).

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;

(5) Disclosure of persons or entities pursuant 310:675-3-1.1(e); and

(6) Compliance status with the tax filing and payment requirements certified pursuant to 310:675-3-1.1(g).

(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.

(c) Following receipt of information that an applicant or any person or entity disclosed pursuant 310:675-3-1.1(e) is not in compliance with the tax filing, payment or disclosure requirements of 310:675-3-1.1. or 63 O.S. Section 1-1930.1, the Department may require an applicant or licensee to submit:

(1) Such additional Federal Tax Waivers as are necessary to ensure compliance with federal tax laws for the above; and

(2) Proof that the applicant or person or entity disclosed pursuant to 310:675-3-1.1(e) is in compliance with state or federal taxes. Such proof may include a letter from the taxing agency, a file-stamped copy of a return, a receipt for a tax payment, or a tax transcript or account.

[OAR Docket #04-1091; filed 6-4-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 677. NURSE AIDE TRAINING AND CERTIFICATION

[OAR Docket #04-1092]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
310:677-1-3. [AMENDED]
Subchapter 3. Nurse aide training and competency examination program
310:677-3-2. [AMENDED]
AUTHORITY:
Oklahoma State Board of Health: Title 63 O.S. Section 1-104 and Title 63 O.S. Section 1-1951
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ANALYSIS:
The proposed amendments establish fees to recover the costs of processing nurse aide certification applications for waivers, exceptions, re-testing, and interstate reciprocities. Annual application fees of $25 are required for medication aide continuing-education programs. Requirements are specified for approval of a nurse aide to retest without retaking a training and competency evaluation program.

CONTACT PERSON:
Lisa McAlister, Director, Nurse Aide Registry, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-51249; facsimile: 405-271-1130.electronic mail: lisaam@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 12, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

310:677-1-3. Applicability

(a) This Chapter shall apply to specified employers and persons who are employed by such employers, as unlicensed employees providing health related services.

(b An employer shall not use on a full-time, temporary, per diem, or other basis persons as nurse aides for more than 120 cumulative days unless the individual has completed a training and competency examination program approved by the Department and placed on the Nurse Aide Registry.

(c) An employer shall not use on a temporary, per diem, leased, or for any other basis other than a permanent employee, any individual who has not successfully completed the training and competency examination requirements and who is not listed in the nurse aide registry.

(d) An employer shall not use an individual as a nurse aide unless the employer has consulted the State Nurse Aide Registry to determine whether the individual is listed in good standing in the nurse aide registry, or has had no confirmed findings regarding allegations of abuse, neglect or misappropriation of patient/resident/client property.

(e) The Department shall grant an exception to the nurse aide training requirements in 310:677-9-4 for home health aides, 310:677-11-4 for long term care aides, 310:677-13-4 for certified medication aides, 310:677-15-3 for developmentally disabled direct care aides, 310:677-17-3 for residential care aides and 310:677-19-3 for adult day care aides, and allow an individual to sit for the competency examination if the individual submits all information specified on the Department's training exception request form, which requires the following:

(1) Individual's full name;

(2) Telephone number and address to include street, city, state, and zip code;

(3) Photocopy of Social Security card;

(4) Copy of official transcript documenting classroom and clinical training equal to or greater than the classroom and clinical training as prescribed in 310:677-9-4, 310:677-11-4, 310:677-13-4, 310:677-15-3, 310:677-17-3 and 310:677-19-3; and

(5) Type of nurse aide training to be excepted.

(f) The Department shall grant to a graduate of an approved practical or registered nurse program located in the United States a waiver to be placed on the nurse aide registry if the following criteria are met:

(1) The individual submits all information specified on the Department's training and competency testing waiver request form, which requires the following:

(A) Individual's full name;

(B) Telephone number and address to include street, city, state, and zip code;

(C) Photocopy of Social Security card;

(D) Photocopy of diploma from an approved practical or registered nurse program; and

(E) Type of nurse aide training and competency testing requesting to be waived; and

(2) The Department verifies the following:

(A) The individual is in good standing with the Oklahoma Board of Nursing or the individual does not have confirmation of abuse, neglect or misappropriation of patient/resident/client property;

(B) The individual has not had cause for denial, revocation or suspension of a license by any State's Board of Nursing;

(C) The individual is not "habitually intemperate or addicted";

(D) The individual is not currently on probation, pending disciplinary action or has had confirmed disciplinary action by the Board of Nursing due to use/abuse or unlawful involvement with controlled substances or for any other cause identified under Subchapter 11 of the Oklahoma Board of Nursing Rules, Title 485;

(E) The individual is not a subject of a current ongoing investigation by the Oklahoma Board of Nursing or the Oklahoma Attorney General or other known legal entity; and

(F) The individual's license has not been restricted or placed on temporary suspension by the Oklahoma Board of Nursing.

(g) The Department shall allow a graduate of an approved practical or registered nurse program located outside the United States a training exception and shall be authorized to sit for a nurse aide competency examination if the following criteria are met:

(1) The individual submits the Foreign Graduate Training Exception Request form, which requires the following:

(A) Individual's full name;

(B) Telephone number and address to include street, city, state, and zip code;

(C) The location outside of the United States where the individual received their nursing education and licensing examination if applicable;

(D) The type of nurse aide training requesting to be excepted.

(2) Documentation verifying legal entry and resident status in the United States including but not limited to a photocopy of a Social Security Card, Visa, Green Card or naturalization papers.

(3) The individual submits a photocopy of a certified, translated diploma and transcript that are in English.

(h) An individual who has not completed an approved Oklahoma Nurse Aide Training program and is submitting an application to be included on the Oklahoma Nurse Aide Registry as a certified nurse aide shall submit the following nonrefundable fee with the required completed application:

(1) Deeming Application, $10.00 fee;

(2) Reciprocity Application, $15.00 fee;

(3) Training Exception Application, $15.00 fee; or

(4) Waiver Application, $15.00 fee.

(i) An individual who has previously completed a Department approved Nurse Aide Training and Competency Evaluation Program and is unable to renew his or her certification may submit a Re-Testing Application with a $10.00 nonrefundable fee if any of the following applies:

(1) The individual did not provide eight (8) hours of nursing or health related services for compensation during the twenty-four (24) months prior to expiration of the certification;

(2) The individual did not provide eight (8) hours of nursing or health related services for compensation up to twenty-four (24) months after expiration; or

(3) The individual's nurse aide certification has been expired for over two (2) years but less than three (3) years.

SUBCHAPTER 3. NURSE AIDE TRAINING AND COMPETENCY EXAMINATION PROGRAM

310:677-3-2. Approved programs

(a) The Department shall approve a nurse aide training and/or competency examination program that meets the criteria for a State approved program.

(b) An entity seeking approval of a nurse aide training and/or competency examination program shall file the appropriate application form (ODH-743) and a non-refundable application fee of fifty dollars ($50.00).

(c) The Department shall review, approve or disapprove a complete nurse aide training and competency examination program application and notify the entity of its action within ninety (90) days of the date of the request or receipt of additional information from the requester.

(d) An entity seeking approval of a certified medication aide continuing education update program shall file the appropriate application form (ODH-736) and a nonrefundable application fee of twenty-five dollars ($25.00) every twelve (12) months with the Department.

[OAR Docket #04-1092; filed 6-4-04]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 680. RESIDENTIAL CARE HOMES

[OAR Docket #04-1093A]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Construction Requirements and Physical Plant
310:680-5-1. [AMENDED]

AUTHORITY:
Oklahoma State Board of Health: Title 63 O.S. Section 1-104 and Title 63 O.S. Section 1-821

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n/a

INCORPORATION BY REFERENCE:
Incorporated Standards:
Chapter 11 of the International Building Code, 2003 edition, as published by the International Code Council
Incorporating rules:
310:680-5-1
Availability:
The incorporated standards are available for viewing at Health Facilities Plan Review and Construction Inspections, Room 1108, 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 http://www.iccsafe.org/, or by contacting:
Publications
International Code Council, Chicago District Office
4051 W. Flossmoor Road
Country Club Hills, IL 60478-5795
Phone: 800-214-4321
Fax: 800-214-7167

ANALYSIS:
The proposed amendments are intended to clarify certain design and construction requirements in order to ensure that residential care homes are accessible to physically disabled persons. The amendments require residential care homes to comply with accessibility requirements specified in Chapter 11 of the International Building Code, 2003 Edition, published by the International Code Council. This standard also is enforced by the State Fire Marshal under authority of Title 74 O.S., Chapter 11, Section 324.11. Adoption of these amendments will ensure that the Oklahoma State Department of Health is reviewing residential care home accessibility with the same standards used by the Office of the State Fire Marshal.

CONTACT PERSON:
Henry Hartsell Jr., Chief, Health Resources Development Service, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-9444, x57269; facsimile: 405-271-7360; electronic mail: hank@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 12, 2004:

SUBCHAPTER 5. CONSTRUCTION REQUIREMENTS AND PHYSICAL PLANT

310:680-5-1. General criteria

Residential care homes must meet or exceed the following requirements:

(1) Plans for construction or remodeling must be submitted to the Department for review and approval prior to the start of construction.

(2) Mobile homes shall not be approved.

(3) The residential care home shall be constructed or remodeled to provide ~~and~~an adequate living arrangement for residents.

(4) ~~The residential care home shall accommodate the needs of any resident in a wheelchair or otherwise physically handicapped.~~ On and after the effective date of this subsection, each residential care home that undergoes design changes or construction and each newly licensed residential care home shall be designed and constructed in conformity with requirements for accessibility to physically disabled persons as specified in Chapter 11 of the International Building Code, 2003 Edition, published by the International Code Council.

(5) Any first-time residential care home shall have a minimum of fifty (50) square feet of outside yard space for each licensed bed up to 100 beds (5,000 sq. ft.) For each additional licensed bed, a minimum of twenty-five (25) square feet shall be provided.

(6) A multiple building residential care home shall be considered as a unit and be subject to the provisions of these regulations as if the home was a single building. Each building of a multiple building unit shall be no more than 175 feet from the building housing the kitchen and dining room.

(7) All first-time licensed homes shall have seating capacity at dining room tables for the number of licensed beds.

(8) Each residential care home shall maintain sufficient equipment and furnishings to provide for the needs of all residents.

(9) Each residential care home shall be maintained in good repair for operation and appearance.

(10) Each residential care home shall be free from safety hazards.

[OAR Docket #04-1093A; filed 6-4-04]

TITLE 380. DEPARTMENT OF LABOR
CHAPTER 30. PROTECTION OF LABOR

[OAR Docket #04-1139]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
380:30-1-2. [AMENDED]
Subchapter 3. Wage Claim Procedures
380:30-3-6. [AMENDED]
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Commissioner of Labor, 40 O.S. 1; 40 O.S. 165.1 et seq.(165.7); 40 O.S. 197.1 et seq. (197.12)
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Subchapter 3. Wage Claim Procedures
380:30-3-6. [AMENDED]
Gubernatorial approval:
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21 Ok Reg 37
Docket number:
03-3132
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendment to Subchapter 1 formalizes the department's current interpretation of "bona fide disagreement" as used in 40 O.S. § 165.4 and provides the correct standard and analysis to use in determining whether a bona fide disagreement exists for purposes of determining liability under 40 O.S. §§ 165.2 and 165.3. The revisions to 380:30-3-6, superceding the emergency rule approved by the Governor on 10/08/03,: (1) provide a complete explanation and clarification of the burden of proof to be met by the participants in and parties to Oklahoma Department of Labor (ODOL) wage claim hearings; (2) conclusively confirm the present practice and policy of the Oklahoma Department of Labor Legal Division's defense of Orders of Determination at ODOL wage-and-hour hearings; (3) better delineate ODOL's responsibilities through the defense of Orders of Determination, and (4) assure the parties at department wage claim hearings, a full, just, and timely substantive hearing on the merits.
CONTACT PERSON:
T.L. Williams, (405) 528-1500, x310

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §

308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

380:30-1-2. Definitions

"Commissioner", as used in these Rules, means the Commissioner of Labor or the Commissioner's designee.

"Bona fide disagreement" means, as used in 40 O.S. 165.4, a dispute in which the employer holds an honest and sincere belief that the wages claimed are not owed **so long as** that belief is supported objectively by the facts and circumstances **and** the employer took reasonable steps to ascertain the facts and circumstances.

"Department" and **"Agency "** mean the Department of Labor and/or the Wage & Hour Division of the Department of Labor.

"Earned and due" means that wages derived from labor or professional services are presently and immediately matured and enforceable and the time for payment has arrived. The term "earned and due" necessitates that all conditions precedent to payment have happened, have been met or have been performed. If the employment agreement is based either in whole or in part on payment of commissions, the terms of the agreement will control the time when commissions are earned and due. The Department of Labor has jurisdiction over only those claims for wages that are earned and due at the time the wage claim is filed. Any claims for "future wages" will be summarily rejected by the compliance officer or dismissed by the administrative hearing officer.

"Employee" means any person permitted to work by an employer. Employee shall not include: Business owners, independent contractors, volunteers, co-partners, or joint venturers. For purposes of these rules, those persons who are permissibly exempt from the Workers' Compensation statute, as defined in 85 O.S. § 3, shall be considered "business owners" and not employees. A person who, pursuant to the terms of an employment agreement, has as their only form of compensation a potential interest in the proceeds or profits of a business (commonly called "working for sweat equity"), shall be considered a business owner and not an employee.

"Employer" means every individual, partnership, firm association, corporation, the legal representative of a deceased individual, or the receiver, trustee or successor of an individual, firm, partnership, association or corporation, employing any person in this state. "Employer" shall also include county, city, and municipal corporations, and all other local government entities. "Employer" shall not include the State of Oklahoma or any entity or branch of the United States government operating in this State.

"Established policy" means a statement, written or oral, or a course of conduct from or by the employer, of general applicability to all similarly situated employees regarding the business affairs of the employer. An "established policy" includes a written employment contract, a written employee manual or employment policy, or a written promise by the employer. An "established policy" also includes a verbal or implied promise by the employer that is supported by evidence of a past course of conduct consistent with the promise.

"Independent contractor" means one who renders service in the course of independent employment or occupation according to his own methods and is subject to his employer's control only as to the end product or final result of his work and not as to the means whereby it is to be accomplished. The following factors are considered significant in determining the employment relationship and whether a person is an employee or an independent contractor:

(A) the nature of the contract between the parties, whether written or oral;

(B) the degree of control which, by the agreement, the employer may exercise on the details of the work or the independence enjoyed by the contractor or agent;

(C) whether or not the one employed is engaged in a distinct occupation or business for others;

(D) the kind of occupation with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

(E) the skill required in the particular occupation;

(F) whether the employer or the workman supplies the instrumentalities, tools and the place of work for the person doing the work;

(G) the length of time for which the person is employed;

(H) the method of payment, whether by the time or by the job;

(I) whether or not the work is a part of the regular business of the employer;

(J) whether or not the parties believe they are creating the relationship of master and servant; and

(K) the right of either to terminate the relationship without liability. No one factor is controlling, and the relationship must be based on the set of facts peculiar to the case.

"Offsets" means deductions (as defined in this Subchapter); the value of any of the employer's money or property retained by the employee after termination; the amount of any prior overpayment of wages to the employee; and the amount of any prior valid final judgment obtained in a court of record or through an administrative agency, by the employer against the employee.

SUBCHAPTER 3. WAGE CLAIM PROCEDURES

380:30-3-6. Burdens of proof

~~The Claimant shall have the primary burden of proof in all Wage Claims. The Respondent shall have the burden of proof for all affirmative defenses to the claim. Any legal offset by the Respondent, as defined herein, shall be treated as an affirmative defense to the claim.~~

(a) The Commissioner (or the Commissioner's designee sitting as an Administrative Law Judge) shall conduct wage claim hearings which shall be informal, with the object of dispensing

speedy justice between the parties to assure a full and complete hearing on the merits.

(b) The Department is entitled (by this rule which has the force and effect of law) to participate in all hearings.

(c) Department's counsel, in defense of the earlier issued Order of Determination, shall proceed first at the hearing; thereafter, the Claimant may adduce additional evidence.

(d) At the conclusion of the presentation of evidence by Department's counsel and Claimant, the Commissioner (or the Commissioner's designee sitting as an Administrative Law Judge) may entertain a motion for judgment or dismissal (i.e., the equitable equivalent of a demurrer to the evidence) on the grounds that Department's counsel or Claimant, or both, have failed to meet the primary burden of proof in the wage claim hearing.

(e) The Department's right to appear and defend the Order of Determination is absolute; however, Department's counsel may waive appearance at the hearing solely at the discretion of Department's counsel. An election by the Department to waive appearance at the hearing does not preclude the Department's involvement in future litigation or any 75 O.S. 317, 318, or 319-323 proceedings.

(f) The Respondent shall have the burden of proof for all affirmative defenses to the claim. Any legal offset by the Respondent, as defined herein, shall be treated as an affirmative defense to the claim.

(g) The Claimant and the Respondent shall have the right to offer evidence in their behalf in accordance with Oklahoma Administrative Code 380:30-3-8 and the Commissioner (or Commissioner's designee sitting as an Administrative Law Judge) may call and question such witnesses and order the production of and admit into evidence such documents as deemed appropriate in the discretion of the Commissioner (or Commissioner's designee sitting as an Administrative Law Judge).

[OAR Docket #04-1139; filed 6-9-04]

TITLE 420. OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD
CHAPTER 10. LIQUEFIED PETROLEUM GAS ADMINISTRATION

[OAR Docket #04-1077]

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420:10-1-5 [AMENDED]
420:10-1-6 [AMENDED]
420:10-1-14 [AMENDED]
420:10-1-15 [AMENDED]
420:10-1-20 [AMENDED]
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Oklahoma Liquefied Petroleum Gas Board; Pursuant to Statute 420.3. Oklahoma Liquefied Petroleum Gas Administration - Rules, regulations and specifications. Subsection (g)(h)(I).
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n/a.
ANALYSIS:
The permanent rule amendments to 420:10-1-5 will supersede emergency rules that expire on July 14, 2004. Due to the budget crisis which affected the State of Oklahoma and the Oklahoma Liquefied Petroleum Gas Administration, the Legislature provided a specific mandate in HB1214 to give the Oklahoma LP Gas Board the authority to promulgate emergency rules to adjust fees. The emergency rule is of a continuing nature, therefore, the Oklahoma LP Gas Board initiated proceedings for promulgation of a permanent rule.

The permanent rule amendments to 420:10-1-6 will also supersede emergency rules that expire on July 14, 2004. The amendments are necessary in order to provide the Board with the specific requirements for transferring a Class I Permit and to bring the rules in compliance with the statutes.

The amendments in 420:10-1-14, 420:10-1-15 and 420:10-1-20 were needed in order to update several rules currently in effect, delete irrelevant language and add new language that clarifies safety procedures within the LP Gas industry. Substantive amendments include deleting all references to LPG Form 4-A, which is the public building inspection form, adding language that will require a customer's name to be included on a delivery meter ticket, providing guidelines for converting any stationary storage container from anhydrous ammonia to propane and outlining conditions when a pressure test and/or leak test must be performed. The rules also increase the maximum fine imposed, up to $500.00, on three specific violations, where the current maximum fine is not sufficient to deter violators.

The Oklahoma Liquefied Petroleum Gas Board maintains that the promulgation of the rules will ultimately help preserve the health, safety and welfare of the general public. The intended effect of the rules is to increase public safety and aid the LP-Gas Board in enforcing the laws of the State of Oklahoma and the rules and regulations adopted pursuant to such laws.
CONTACT PERSON:
Bill Glass, 405/521-2458.

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, 2004:

420:10-1-5. Permits

(a) **Permits required.** No person, firm, corporation, association or other entity shall engage in the manufacturing, assembling, fabrication, installing or selling of any system, container, or apparatus to be used in this State in or for the transportation, storing, dispensing, or utilization of LPG, nor shall any transporter, distributor, or retailer of LPG store, dispense and/or transport over the highways of this State any LPG for use in this State in any system, container, apparatus or appliance without having first obtained a permit to do so as provided in this section.

(b) **Permit classifications.** The permits required for engaging in business shall be divided into the following classifications:

(1) **Class I - Dealer permit.** The Class I Dealer Permit permits the holder to engage in any phase of the LP Gas business. A Class X Manager's permit must be secured for the person actually in charge of an LP Gas operation at each separate branch or base of operation of a Class I permit holder. The initial permit fee for a Class I is Five Hundred Dollars ($500.00). The annual fee for the Class I permit is ~~One Hundred Fifty Dollars ($150.00)~~Two Hundred Dollars ($200.00).

(A) Class I holder can go on inactive status, but will have to meet all the requirements of the permit, including paying the renewal fee, and having proper insurance requirements filed with the administrator, before going back on active status. If requirements are not met the permit will then be revoked. All Class I holders, active and inactive, are required to pay the annual renewal fee.

(B) Applicant must furnish to the Board, evidence of the following insurance:

(i) A minimum of $500,000.00 general liability insurance, as per 420:10-1-18;

(ii) Worker's Compensation shall be required as per state requirements;

(iii) Motor vehicle insurance must meet State and Federal requirements.

(C) Brokers/wholesalers selling LP Gas to anyone other than Class I permit holders or refinery/gas processing type facilities shall obtain a Class I permit and meet the requirements thereof, except for minimum storage and metering, when said sales are by transport bulkhead to bulkhead.

(2) **Class II - Truck Transporter permit.** The Class II transporter Permit permits the holder to transport LP Gas as a common carrier or private carrier to another of the following: a person, firm, or corporation engaged in the production or manufacture of LP Gas and/or selling or reselling LP Gas to transporters, industrial consumers, processors, distributors, retailers, and/or to holders of Class I, III, or VI permits. A Class II permit shall not authorize the resale of LP Gas to an end-user. A Class II permit shall not be a substitute where a Class I is needed. A transport must meet all CFR 49 requirements. The initial permit fee for a Class II is Three Hundred Dollars ($300.00). The annual fee for a Class II permit is ~~One Hundred Fifty Dollars ($150.00)~~ Two Hundred Dollars ($200.00).

(3) **Class III - DOT Cylinder Transporter Permit.** The Class III DOT Cylinder Transporter Permit permits the holder to operate DOT cylinder filling station and cylinder delivery service. The annual fee for a Class III permit is ~~One Hundred Dollars ($100.00)~~ One Hundred Fifty Dollars ($150.00).

(4) **Class IV - Installer permit.**

(A) The Class IV Installer Permit permits the holder to install and service LP Gas systems, appliances, and other LP Gas equipment. The applicant is required to have immediate supervision for two (2) weeks with a Class IV, IV-D, Class X, or an Oklahoma licensed plumber, and then shall be required to pass a written examination. Exception from two (2) week training period would be anyone already licensed by Oklahoma as a licensed plumber. If the supervising Class X determines that the new applicant is properly trained, proper documentation of the training is on file, and a Class IV application has been forwarded to the LP Gas Administration, the applicant at that time may begin performing the duties of a Class IV permit holder until such time as the test is administered and the permit issued. This time shall not exceed thirty (30) days or the applicant shall cease to perform these duties. Current Class IV's, as of September 1, 1994, are not required to take a written exam. The annual fee for a Class IV permit is ~~Thirty-five Dollars ($35.00)~~ Fifty Dollars ($50.00).

(B) Class IV permit does not permit the holder to install or service LP-Gas carburetion systems.

(C) Any installer not under the personal and direct supervision of a Class X holder at the immediate time and location of installation shall be required to have a Class IV or IV-D permit.

(5) **Class IV-D - Driver/Installer Permit.**

(A) The Class IV-D Driver/Installer Permit permits the holder to deliver LP Gas by bobtail and install and service LP Gas systems, appliance, and other LP Gas equipment. Class IV-D permit can only be issued under a Class I permit. New applicants must be under immediate supervision from a current Class IV-D, or Class X while in a minimum of a two (2) week training period before testing. Permit holder shall be required to pass a written examination. The tests shall be given according to current policies of the administration. If the supervising Class X determines that the new applicant is properly trained, proper documentation of the training is on file, and a Class IV-D application has been forwarded to the LP Gas Administration, the applicant at that time may begin performing the duties of a Class IV-D permit holder until such time as the test is administered and the permit issued. This time shall not exceed thirty (30) days

or the applicant shall cease to perform these duties. Current Class IV permit holders, as of September 1, 1994, properly trained in delivery of LP Gas will not be required to take the test and will be issued a IV-D permit. The annual fee for a Class IV-D is ~~Thirty-five Dollars ($35.00)~~ Fifty Dollars ($50.00).

(B) Class IV-D permit does not permit the holder to install or service LP Gas carburetion systems.

(C) Any installer not under the personal and direct supervision of a Class X holder at the immediate time and location of installation shall be required to have a Class IV or IV-D permit.

(6) **Class VI - DOT Cylinder &/or LP Gas Motor Fuel Station Operator Permit.** The Class VI DOT Cylinder and/or LP Gas Motor Fuel Station Operator Permit permits the holder to operate DOT cylinder charging station and/or a motor fuel dispenser for resale. Applicant shall be required to pass an approved written examination. Examination shall be administered by an LP Gas Inspector, or by a Class X Manager. In either case, the test fee for the Class VI permit is Ten Dollars ($10.00). Permit holder is responsible for the safety of the dispensing operation and training and safety of the employees dispensing LP Gas. Class VI locations may not become operational until a permit has been issued. A permit will not be issued until the proper fee has been paid and certificate of insurance is received by the LP Gas Administration. The annual fee for a Class VI permit is ~~Seventy Dollars ($70.00)~~ One Hundred Dollars ($100.00).

(7) **Class VI-A - LP Gas Dispensing Permit.** All employees involved in dispensing LP Gas must acquire a Class VI-A permit, except a Class IV, Class IV-D, Class VI, and Class X. Class VI-A applicants must be properly trained by a Class VI or Class X on proper filling of ASME tanks and DOT cylinders, and inspection thereof per NFPA 58. Applicants shall be required to pass an approved written examination. Test shall be administered by an LP Gas inspector, or by Class X manager. In either case, the test fee for the Class VI-A permit is Ten Dollars ($10.00). Holder must carry permit and attend the annual safety school once every year. This does not prohibit any person, firm or corporation from filling his own equipment from his own supply line, or dispensing motor fuel from an approved limited access self-service dispenser. The annual fee for a Class VI-A permit is ~~Five Dollars ($5.00)~~ Twenty-Five Dollars ($25.00).

(8) **Class VII - Cylinder Exchange Program Permit.** The Class VII Cylinder Exchange Program Permit permits the holder to participate in the cylinder exchange program. Applicant shall be required to pass an approved written examination. One person can be tested for multiple locations. Examination shall be administered by an LP Gas Inspector, or by a Class X Manager. In either case, the test fee for the Class VII permit is Ten Dollars ($10.00). A permit is required for each bottle exchange location. Class VII locations may not become operational until a permit has been issued. Permits will not be issued until the proper fee has been paid and certificate of insurance is received by the LP Gas Administration. The annual fee for a Class VII permit is ~~Thirty-five Dollars ($35.00)~~ Fifty Dollars ($50.00).

(9) **Class VIII - Appliance Dealer Permit.** The Class VIII Appliance Dealer Permit permits the holder to sell LP Gas appliances. The annual fee for a Class VIII permit is ~~Thirty-five Dollars ($35.00)~~ Seventy Dollars ($70.00).

(10) **Class IX - LP Gas Container Sales Permit.** The Class IX Gas Container Sales Permit permits the holder to manufacture and/or sell LP Gas containers. This permit is required by both wholesalers and retailer. The annual fee for a Class IX permit is ~~Thirty-five Dollars ($35.00)~~ Seventy Dollars ($70.00).

(11) **Class IX-A - Mobile Homes and Recreation Sales Permit.**

(A) The Class IX-A Mobile Homes and Recreation Sales Permit permits the holder to manufacture, fabricate and sell all LP Gas facilities or systems used in mobile homes, campers, recreational vehicles and portable buildings whether such LP Gas system is manufacture, fabricated or sold separately or as an integral part of such trailer, camper, recreational vehicle or portable building. The annual fee for a Class IX-A is ~~Thirty-five Dollars ($35.00)~~ Seventy Dollars ($70.00).

(B) This shall not be construed to require a permit for a sale by the owner of a mobile home or recreational vehicle who is not engaged in such business on a commercial basis and does not make over two such sales in one year.

(12) **Class X - Manager's Permit.** A Class X Manager's permit is required for a person actively in charge of LP Gas operation for holder of Class I permit and at each separate branch or base of operation of a Class I permit. All Class X holders must be a full-time employee of said Class I holder. The annual fee for a Class X permit is ~~One hundred Dollars ($100.00)~~ One Hundred Fifty Dollars ($150.00).

(13) **Additional permits required for employees of Class I dealers.** Class IV, IV-D, VI-A, and X permits are the only additional permits that may be required for the employees of a Class I dealer, or as may be required by future Board action.

(14) **Truck inspections.** For the purpose of defraying the cost and expenses of administering and enforcing this act, persons, firms and corporations shall also pay at the time of inspection an annual inspection fee of ~~One Hundred Twenty Dollars ($120.00)~~ One Hundred Fifty Dollars ($150.00) for each LP Gas bulk delivery truck or trailer belonging to a person who holds a permit authorizing the use of such truck or trailer and ~~One Hundred Twenty Dollars ($120.00)~~ One Hundred Fifty Dollars ($150.00) for each such truck or trailer belonging to a person who does not hold a permit. The inspection fee shall increase to ~~Two Hundred Forty Dollars ($240.00)~~ Three Hundred Dollars ($300.00) per vehicle if said inspection is not completed within sixty (60) days of the expiration date, or at the discretion of the Administrator.

(15) **Containers or cylinders.** There is hereby levied the following fee, to be paid to the Administrator, upon the sale, purchase, rental or use in this state of liquefied petroleum gas containers or cylinders; on all Department of Transportation (DOT) cylinders, vehicle fuel containers, a fee of Three Dollars ($3.00) each, and on all other containers, a fee of ~~Seven Dollars and fifty cents ($7.50)~~ Ten Dollars ($10.00) each.

420:10-1-6. Application for certificate or permit

(a) **Filing Fee.** Application for any new permit under the rules of this chapter shall be filed with the Administrator on written forms to be prescribed by the Board or Administrator and shall be accompanied with the filing fee in cash, cashiers check or money order in the amount of Ten Dollars ($10.00) for each permit.

(b) **Examination.** Before any permit shall be issued, except those which may be specifically exempt from requirement for examination by the statutes, or by this chapter the applicant shall be required to pass a necessary written examination to satisfy the Board or Administrator that the applicant possesses the necessary technical knowledge and qualifications so as to safely deal with the product, commodity or render the services authorized by the permit. All examination fees are Ten Dollars ($10.00), except Class I ($55.00), and Class X ($55.00).

(c) **Exception to acquiring Class I through examination.** An applicant for a Class I Dealers Permit may purchase a Class I permit from its present owner, as per O.S. Title 52, but must meet the following conditions:

(1) Only Active Class I Dealer Permits are transferable. An Inactive Class I Dealer Permit is not transferable;

(2) Pay a Class I Transfer Fee of Five Thousand Dollars ($5,000.00);

(3) A Class X Manager's permit must be in place, before the transfer, for the person actually in charge of the LP gas operation at each separate branch or base of operation of the Class I permit holder;

(4) Have on file with the LP Gas Administration the required Class I insurance requirements as per 420:10-1-18.

(d) **Other requirements.**

(1) The mere filing of an application for a permit does not of itself authorize the engaging of any of the operations sought in said application. Such operations are prohibited except pursuant to an order of the Board or Administrator issuing such permit and only after the applicant has satisfied the Board or Administrator as to its qualifications and fitness by a written examination, when required, and filing of all the necessary insurance and meeting other requirements of the statutes and of this chapter.

(2) Any person, firm or corporation to whom a permit is issued shall commence operation within 90 days from the date of issuance of such permit, unless this time be extended by the authority issuing the permit for good cause.

420:10-1-14. Standards for the storage and handling of liquefied petroleum gas

(a) **NFPA standards.** The standards for the storage and handling of liquefied petroleum gases adopted by the National Fire Protection Association and published in its pamphlets No. 58, and the standards for the installation of gas appliances and gas piping adopted by said National Fire Protection Association published in its pamphlet No. 54 have been adopted by the Legislature in 52 O.S. 1991, Section 402.3 (e) and shall be accepted standards for the State of Oklahoma. All Class I permit holders must have a current copy of NFPA 58 and 54 on file at each separate branch.

(b) **Supplemental standards.** The following standards are supplemental to NFPA pamphlet No. 58 and shall be part of the rules and regulations of the Oklahoma Liquefied Petroleum Gas Board:

(1) **Definitions.**

(A) The word "approved" as used in this section means acceptable to the State Liquefied Petroleum Gas Administrator. A device or system having materials or forms different from those detailed in this section may be examined and tested according to the intent of the regulations and if found equivalent, may be approved.

(B) In this section those provisions which are considered essential for adequate protection of life and property from fire are indicated by the words "shall" and "must. The words "should" or "preferably" indicate advisory provisions concerning which the State Liquefied Petroleum Gas Administrator of Oklahoma should be consulted.

(C) In each place mentioned in NFPA No. 54 and NFPA No. 58 where it refers to "the authority having jurisdiction" this would mean the Liquefied Petroleum Gas Administrator.

(D) An "important building" shall be any building, open to the public, or inhabited by people, in which any LP Gas system or any type is installed.

(2) **Submittal of plans.**

(A) Prior to the installation of liquefied petroleum gas systems in school buildings, churches, courthouses, office building and other building to which the public is invited, such as cafes, dance halls, tourist courts and parks, plans and specifications for such installation in duplicate, shall be submitted to, and approved, by the State Liquefied Petroleum Gas Administrator, and before such systems are filled with liquefied petroleum gas, they shall be physically inspected and approved by a licensed installer and a report made by him to the State Liquefied Petroleum Gas Administrator on LPG Form 4~~-A~~, or its revision, furnished by the LP Gas Administrator's office.

(B) Plans must be submitted on any dispenser used to fill DOT cylinders and/or ASME containers, and used for public resale of LP Gas. These plans must be submitted to the Administration office along with the proper fee, and an on site inspection must be performed by an LP Gas inspector prior to final approval

and before the dispenser can be placed into service. A Ten Dollar ($10.00) plan review fee must accompany all dispenser plans submitted. If a dispenser is taken out of service, written notice must be given to the Administration office within seven (7) working days. If a dispenser is moved to a new location, new plans must be submitted to the Administrator and on site inspection performed by an LP Gas inspector prior to final approval and dispenser being placed into service. A complete list of dispensers by location shall be submitted to the LP Gas Administration as indicated on Class I permit renewal forms.(C) Plans must be submitted to, and approved, by the Administrator on any fixed installation with individual water capacity of 2,000 gallons or more, or aggregate water capacity exceeding 4,000 gallons.

(3) **Report of accident.** In case of accident or fire at any location where a liquefied petroleum gas system or equipment is involved, or any accident involving liquefied petroleum gas systems or equipment, the dealer owning, operating or servicing the equipment or installation shall notify the State Liquefied Petroleum Gas Administrator. This notification shall be forwarded as soon as feasibly possible after the dealer has knowledge of the accident in order that an inspection may be made by the State Liquefied Petroleum Gas Administrator before the site has been disturbed.

(4) **Piping - including pipe, tubing and fittings.**

~~(A) Piping systems serving appliances in buildings to which the public is invited such as churches, schools, business houses, tourist courts, etc., shall be tested for leaks as provided in NFPA 54 and such test shall be made by a licensed liquefied petroleum gas installer prior to initial introduction of LP Gas into the system by each Class I permit holder and at least ONCE EACH YEAR, and a report of such test forwarded to the State Liquefied Petroleum Gas Administrator on LPG Form 4-A. If Form 4-A is completed by a Class IV or IV-D permit holder under the supervision of a Class I or Class X manager, then the Class I or Class X manager must co-sign the Form 4-A.~~

~~(B) Each holder of a Class I permit shall submit a list of all owners, operators or persons in charge of public building which he services with LP Gas, along with their mailing address, to the LP Gas Administrator. This list shall either precede or accompany his annual application for permit renewal.~~

(~~C~~A) No person, firm, or corporation shall connect a liquefied petroleum gas tank to any piping without having first determined that such piping complies with the laws of the State of Oklahoma and the rules and regulations of the State Liquefied Petroleum Gas Administrator relative to liquefied petroleum gas piping.

(~~D~~B) All installations, installed after July 1, 2002, of storage containers, with more than 4,000 gallon water capacity, shall have internal valves installed as per NFPA 58-3.3.3.6 and 2.3.3.2.

(~~E~~C) On installations of stationary or portable storage, with an aggregate of more than 4,000 gallon water capacity, a bulkhead approved by the LP Gas Administrator shall be required on each liquid line of one and one-half (1-1/2) inch or larger and each vapor line of one and one-quarter (1-1/4) inch or larger.

(5) **Vaporizers and housings.**

(A) The minimum capacity of the storage container feeding the vaporizer shall not be less than ten (10) times the hourly capacity of the vaporizer in gallons.

(B) The minimum capacity of a storage container being heated by a direct fired tank heater shall not be less than ten (10) times the hourly vaporizing capacity of the tank heater in gallons.

(6) **Container charging.** Containers, including DOT cylinders, with water capacity less than 300 pounds shall be charged by weight, except containers covered by Ch. 4-4.3, 1998 Edition of NFPA 58 or later revisions as made by NFPA 58.

(7) **Liquid metering systems.** Each bulk retail delivery of liquid LP Gas shall be measured by a suitable LP Gas liquid meter system, except those deliveries of liquid LP Gas in cylinders which are filled by weight and deliveries of LP Gas vapor through vapor meters otherwise, are exempt from the requirements of this paragraph.

(A) LP Gas Liquid meters shall indicate deliveries in terms of gallons and to the nearest tenth of a gallon.

(B) The LP Gas liquid meter shall meet, in addition to the other requirements of this paragraph, the following requirements:

(i) The system shall include a device (such as a differential back-pressure regulator) so designed and installed that the product being measured will remain in a liquid state during passage through the meter.

(ii) No means shall be provided by which any measured liquid can be diverted from the measuring chamber, differential valve equipment or the discharge line therefrom.

(iii) Effective January 1, 1994, in accordance with the National Institute of Standards and Technology (NIST) Handbook 44, all LP Gas Liquid meters used for bulk delivery shall be designed with the necessary equipment for mechanically printing gallons on a delivery ticket and the customer served thereby shall be given a ticket mechanically imprinted by the printing device. The customer's name and Class I Dealer's name must be included on the metered ticket. Meters used for stationary dispensing of motor fuel will not be required to be equipped with such printing device.

(iv) All bulk metered sales of propane, via bobtail or transport, shall be made by temperature compensated measure. Except, any truck now operating without a temperature compensation meter shall be retrofitted by no later than July 1, 2003.

(C) All meters where product is sold to the public must be proved annually by an approved meter tester/inspector and have written certification on file at permit holders place of business. All meters and temperature compensators must be accurate within the manufacturers tolerance not to exceed + or -1% at any time. The LP Gas liquid meter system shall be designed and constructed to provide for applying lead-and-wire seals in such a manner that no modifications or adjustments which would affect the accuracy of deliveries, can be made without mutilating the seal or seals. If a seal is broken, notification must be made to the Administrator and resealed by the LP Gas Inspector or an approved meter tester. In addition, the Administrator at his discretion may require proving of metering system to determine the accuracy.(D) No dealer or firm controlled or affiliated with a dealer may calibrate or certify its own meters. All meters must be tested with a volumetric meter prover.

(8) **Qualified personnel.** Each holder of an LP Gas permit shall be responsible for having qualified personnel operating and installing LP Gas equipment.

(9) **Filling unsafe or unapproved dispensing or storage tanks prohibited.** No person, firm, or corporation shall introduce liquefied petroleum gas into a dispensing or storage tank in the State with knowledge that such dispensing or storage tank or piping is known to be in an unsafe operating condition.

(10) **Basement installations.** No appliance shall be installed in any basement or semi-basement unless it is fully automatically controlled and properly vented and must have the approval of the State Liquefied Petroleum Gas Administrator.

(11) **Standards for containers.**

(A) In accordance with 52 O.S. Sec. 420.5, all first sales, rentals, purchases or uses of DOT cylinders and ASME tanks in this State, must have Oklahoma Identification tags attached to such cylinders or tanks. However, all DOT cylinders and ASME tanks in Oklahoma, with a manufacturers date prior to September 1, 1993, are not required to have Oklahoma Identification tags. These Oklahoma Identification tags are not transferable from one cylinder or tank to another.

(B) Any new container sold or installed in Oklahoma for use in this State shall carry a five year warranty covering workmanship and material. This warranty shall provide that any container not in compliance with this regulation must be repaired or replaced by the fabricator at no expense to the dealer or customer. This provision is to take care of "pin-hole" leaks in the weld that were not detected at the time of fabrication and does not apply to fittings.

(C) Containers shall be filled or used only upon authorization of the fee simple owner. The name of the fee simple owner, if other than the consumer, shall be conspicuously shown on the container.

(D) Any stationary storage container converted from anhydrous ammonia to propane shall be converted as follows:

(i) The container shall be purged of anhydrous ammonia by water flooding, steam or other methods described by the National Propane Gas Association's (NPGA) Recommendation for Prevention of Ammonia Contamination; and

(ii) It shall then be properly purged with propane vapor and tested with the red litmus paper as described in NFPA 58 or by any other test approved by the Board; and

(iii) The test shall be completed by the permit holder that performs the conversion; and

(iv) The results shall be documented and shall contain the container manufacturer, water capacity, serial number, the results of the test, the capacity of the relief valve, the date of the test, and the signature of the permit holder conducting the test. A copy of the results shall be provided to the owner of the container; and

(v) Any dealer filling a converted anhydrous ammonia container for the first time shall either be provided a copy of the test or complete the test as described above; and

(vi) The container shall meet all requirements of NFPA 58.

(12) **Underground containers.**

(A) Underground containers before being reinstalled must be inspected by the State Liquefied Petroleum Gas Administrator, and a fee of $25.00 paid to the State Liquefied Petroleum Gas Administrator's office, and reinstalled by a licensed LP Gas installer.

(B) Underground containers shall be dug up at the expense of the owner at any time at the discretion of the State Liquefied Petroleum Gas Administrator.~~(C) All underground tank installations shall be on file with the Administration office, as indicated on Class I permit renewal.~~

(~~D~~C) ~~All new~~ Any person installing an underground ~~tank~~ container ~~installations~~ must ~~have written approval by~~ notify the Administrator prior to installation.

(13) **Minimum storage.** All new Class I permit holders must provide bulk propane storage capacity of not less than an aggregate of 18,000 water gallons. Current active Class I permit holders, as of September 1, 1994, are not required to meet this minimum storage requirement. After a change of ownership the new Class I permit holder must secure the minimum storage requirement within one year.

(14) **Painting.** All bulk storage containers of a capacity 120 gallons water capacity or greater shall be painted a heat reflection color.

(15) **Lettering bulk storage and dispensers.**

(A) All bulk storage 2,000 gallons and above shall be lettered with the name of the contents, such as LP

Gas, butane, propane, and a "No Smoking" sign in letters not less than six (6) inches high.

(B) In addition to subparagraph (A) of this paragraph, all bulk storage used for loading and unloading facilities, and all container filling storages (dispensers) shall include the name of the person, firm, or corporation operating the bulk storage or dispenser and their phone number in letters not less than two (2) inches high. This information shall be placed so as to be readily visible to the public.(C) For all size bulk storage containers the name of the fee simple owners, if other than the consumer, shall be conspicuously shown on the container.

(16) **Extinguishers required.** Extinguishers of the dry chemical type, with a B:C or A:B:C rating, are required. Extinguishers shall have a net content of not less than the current NFPA 58 requirements and shall be inspected at least once each year by an authorized inspector such as Fire Departments or Fire Appliance Company representatives. Current weatherproof inspection tags shall be attached to the extinguisher.

(17) **Marking cargo vehicles.** Every tank vehicle used for transportation of liquefied petroleum gas shall be marked and placarded according to current DOT requirements. Each tank vehicle must also have the name of the person, firm or corporation on each side of the cargo tank in letters a minimum of two (2) inches in height. This information shall be placed so as to be readily visible to the public. This name shall be the same as permit holder has designated on the Class I or Class II permit.

(18) **Parking and garaging LP gas tank vehicles.** Any tank vehicle used for transportation of Liquefied petroleum gas shall not be parked beneath or adjacent to any electric transmission line in such position that there is a possibility of a conductor contacting the tank in event of breakage.

(19) **Filling unapproved truck or trailer tanks prohibited.**

(A) An inspection form (LPG Form No. 9), when properly completed, and a ~~registration plate~~ LPG registration decal (the serial number of which is shown on the inspection form), shall be evidence that the design, construction, assembly and mounting of the liquefied petroleum gas truck or trailer tank described on the inspection form by its serial number has been approved by the Liquefied Petroleum Gas Administrator for use in the transportation of liquefied petroleum gas. Such ~~registration plate~~ LPG registration decal and inspection form also shall authorize the person, firm or corporation whose name appears on the inspection form or its bona fide employees to operate the truck or trailer tank described on the inspection form, and further shall authorize the filling of such truck or trailer tank with liquefied petroleum gas.

(B) The ~~registration plate~~ LPG registration decal shall be displayed at all times in an easily visible location on the ~~rear of the truck or trailer tank~~ left front head of the cargo tank, which is on the driver's side. A copy of the inspection form shall be retained, until the expiration date, in the office of the person, firm or corporation whose name appears thereon. It will not be necessary to keep or display a copy of the inspection form on the truck or trailer tank.

(C) No person, firm or corporation shall operate a truck or trailer tank in the transportation of liquefied petroleum gas in this State unless such person, firm or corporation has been issued a ~~registration plate~~ LPG registration decal and an inspection form certifying that such tank has been registered with and approved by the State Liquefied Petroleum Gas Administrator, or unless its operation has been specifically approved by a communication from the State Liquefied Petroleum Gas Administrator.

(D) The ~~registration plate~~ LPG registration decal and the inspection form required in this paragraph are not transferable by the person, firm or corporation to whom they are issued or from one truck to another, and they are not to be used after the expiration date of the fiscal year for which they were issued, or in the event the Class I permit becomes inactive.

(20) **Vaporizers.** Exhaust gases shall not be used as a direct means of heat supply for the vaporization of fuel.

(21) **Stationary engines in building.**

(A) All engine rooms shall be well ventilated at the floor level.

(B) When engines are installed below grade level, suitable floor level mechanical exhaust ventilation shall be provided and operated continuously or adequate means shall be provided to purge the room before the engine is started. In any case the mechanical ventilation shall be in operation when the engine is running. Before and during any repairs to the engine the room shall be ventilated.

(C) Automatic fire doors shall be provided at openings in the engine room that open into other sections of the building.

(D) Exhaust gases shall be discharged outside the building in a manner that will not create a fire or any other hazard.

(E) Regulators and pressure relief valves installed in buildings and engine rooms shall be vented to the outside and discharge at least five feet away from any building opening. Such venting will not be required for combination engine fuel vaporizing - fuel reducing - fuel metering devices providing an acceptable automatic shut-off valve is installed immediately ahead of such devices.

(22) **Storage outside of buildings.** Valves and safety relief devices shall be protected against accumulations of ice and snow. Protective caps shall be deemed adequate.

(23) **Appliances.** Any mobile home, travel trailer, camper or recreational vehicle shall be delivered to the buying public by the permit holder with the system properly installed and free of leaks.

(24) **Maximum vapor pressure and container working pressure.**

(A) The maximum vapor pressure of the product at 100 degree Fahrenheit which may be transferred to a container shall not exceed the design working pressure of the container. Exception: 200 psig ASME working pressure vessels in LP Gas service in Oklahoma prior to January 1, 1994, may be continued in service for commercial propane, provided that they are fitted with relief valves and meet the start-to-leak setting in relation to the design pressure of the container, shall be in accordance with NFPA 58. For the purpose of this exception, "commercial propane" is defined as having a vapor pressure not in excess of 210 psig at 100 degree Fahrenheit. This exception does not apply to LP Gas motor fuel and mobile fuel containers.

(B) Any stationary 200 psig ASME containers brought into Oklahoma from out of state and intended for stationary LP Gas installation in Oklahoma at any facility requiring submission of plans and specification must be tested by at least two (2) of the following nondestructive test methods recognized by ASME to determine if the container or assembly is safe for LP Gas use in Oklahoma. The following test results must be submitted to the Oklahoma LP Gas Administration for approval.

(i) Hydrostatic Test;

(ii) Ultrasonic thickness test;

(iii) Wet particle fluorescent or magnaflux.

(25) **Testing, leakage and visual inspection, and meter calibration.**

(A) Hydrostatic testers operating in Oklahoma that are hydrostatic testing cargo containers for LP Gas use in Oklahoma must be approved by the Oklahoma LP Gas Board and shall:

(i) Hold a Federal C.T. number;

(ii) Include in their testing the use of a calibrated pressure chart recorder;

(iii) Hold a Class IV installer permit.

(B) Leakage and visual inspectors operating in Oklahoma and performing this inspection on cargo containers and their systems for LP Gas use in Oklahoma must be approved by the Oklahoma LP Gas Board and meet the following requirements:

(i) Inspectors shall hold a Federal C.T. number;

(ii) If the inspection includes repairs that require the LP Gas system to be re-plumbed, a Class IV permit is required.

(C) Meter calibrators operating in Oklahoma that are calibrating meters for LP Gas use in Oklahoma must be approved by the Oklahoma LP Gas Board and meet the following requirements:

(i) Meters shall be tested in accordance to Oklahoma Rules and Regulations, Section 420:10-1-14(7);

(ii) Meter calibrators shall furnish the meter owner a copy of the calibration showing the correct gear numbers and temperature compensator settings;

(iii) Meter calibration results shall be on a form approved by the LP Gas Administrator and a copy of the completed form shall be furnished to the meter owner;

(iv) Meter calibrators shall hold a Class IV permit.

(v) Meter calibration testers shall test meters according to National Institute of Standards and Technology (NIST) standards.

(26) **Cylinder exchange program.**

(A) Cylinder exchange cabinets shall be constructed of steel and be lockable so that cylinders cannot be removed and valves cannot be tampered with when unattended. The cabinets shall be otherwise configured in compliance with NFPA 58.

(B) The cabinet shall have the following signs affixed to it:

(i) "Propane" or "Flammable Gas" and "No Smoking" in letters not less than two (2) inches high;

(ii) Class VII Permit number;

(iii) Name of Class I permit holder who supplies the cylinders;

(iv) 24-hour Emergency telephone number.

(C) The cabinet shall be located for distance and number of cylinders as per NFPA 58 with a minimum five (5) feet distance away from any source of ignition.

(D) Protection against vehicle impact shall be provided in accordance with good engineering practice where vehicle traffic normally is expected at the location as per NFPA 58.

(E) An approved serviceable portable fire extinguisher of not less than eighteen (18) lbs. dry chemical, B:C or A:B:C rating, and shall be readily available within a fifty (50) foot radius of the exchange cabinet. Extinguishers shall have a net content of not less than the current NFPA 58 requirements and shall be inspected at least once a year by an authorized inspector such as Fire Departments or Fire Appliance Company representatives. Current weatherproof inspection tags shall be attached to the extinguisher.

(F) A warning sign shall be posted at or near any entrance doorway stating the "LP GAS EXCHANGE CYLINDERS EMPTY OR FULL SHALL NOT BE TAKEN INDOORS FOR ANY REASON."

(G) All employees who exchange cylinders shall be properly trained and know how to check for leaks and what emergency procedures to take if a leak is discovered. Only properly trained employees can remove or install exchange cylinders from the cylinder exchange cabinets. This training shall be provided by the Class I permit holder who is supplying the

exchange cylinders. This documentation will be kept at the Class VII location.

(H) A Class I permit shall be required in order to supply exchange cylinders for the cylinder exchange permit holder.

(I) Cylinders for sale or exchange, in exchange locations, shall each contain a minimum 35% water weight capacity of propane.

(J) A busy sidewalk and thoroughfare, as referenced in the 2001 Edition of NFPA 58-5.4.1.3(3) and Table 5.4.1.3, shall be further defined as not being located on private property. A busy sidewalk is alongside a public road and a thoroughfare is a public road.

(27) **Recreational vehicles.** Installations or repairs on LP Gas systems on recreational vehicles shall be performed as per NFPA 1192, Standard on Recreational Vehicles.

420:10-1-15. Standards for installations of gas appliances, ~~and~~ gas piping~~,~~ and testing~~, and test records~~

(a) The standards for installation of gas appliances, gas piping~~,~~ and testing ~~and test records~~, thereof adopted by the National Fire Protection Association and published in its ~~pamphlets~~ Handbook No. 54, have been adopted by the Legislature in 52 O.S. 1991, Section 420.3 (e) and shall be the accepted standards for the State of Oklahoma.

(b) ~~For the purpose of meeting the requirements of test records an approved Form 4 or other Board approved~~ Pressure tests and/or leak tests that are required by NFPA 54, 58, 1192, and this chapter, shall be documented on an approved Form 4 or other Board approved form. The form shall be completed with one (1) copy in file at the office ~~with~~ or branch office serving ~~consumer~~ the account, ~~and~~ one (1) copy filed with the LP Gas Administration within fifteen (15) working days after ~~test is~~ tests are performed, and one copy to ~~any other required party.~~ the owner, renter or responsible person.

(c) Form 4's and other approved forms must be completed in their entirety, legible and with all required signatures. ~~If~~ When Form 4's are completed by a Class IV or IV-D permit holder ~~under the supervision~~ employed by of a Class I or Class X manager, then the Class I or Class X manager must co-sign the Form 4. If Form 4's are not completed properly they will not be accepted as a testing record. Form 4's or other Board approved forms ~~must be completed by each servicing Class I permit holder:~~ shall be utilized to document pressure tests or leak tests as follows:

(1) Prior to injecting gas in a system for the first time (new customer), or if a period of 24 months has passed since gas was injected into a system previously serviced.

(2) ~~After any modifications are performed to an existing gas system.~~ After any circumstance as described in NFPA 54 that would require a pressure test or leak test, such as, but not limited to the following:

(A) a section of new or modified gas piping is placed into service;

(B) gas leakage is suspected;

(C) an out of gas condition occurs;

(D) an interruption of service.

(3) In the event of a change of ownership of the propane company, properly completed and filed Form 4's or other Board approved form may be transferred to the new ~~owner~~ company. The new company must secure a Form 4 or other Board approved form on all customers transferred. If a Form 4 cannot be secured on all the customers transferred, then the Administrator will establish a time schedule for the new company to complete and file all required Form 4's, as needed to stay in compliance.

(d) For standards for installation of gas appliances, gas piping, testing and test records for public buildings refer to 420:10-1-14, (2)&(4).

420:10-1-20. Suspension or revocation of registration permits and fines; appeals

(a) The Administrator is authorized to suspend or revoke any registration permit issued by the Board, if it is found at a hearing on the matter, that the registrant has violated or is violating or has failed or is failing to comply with any provisions of Title 52, O.S., Section 420.1 and following, or these rules or specifications, or has delivered a lesser quantity of gas than the registrant bills the customer for with intent to defraud.

(b) Upon his or her own motion, or upon the receipt of written complaint from any member of the Board, or from any Deputy Administrator or Inspector, that a registrant has violated or is violating or has failed or is failing to comply with any of the provisions of Section 420.1 and following, or these safety rules, regulations and/or specifications, the Administrator is authorized and it shall be his or her duty to hold a public hearing to consider such complaint. The Administrator shall have the power to conduct investigations; to summon and compel the attendance at such hearing of Witnesses; to require the production of any records or documents pertinent to the subject matter of any investigation or hearing; and to provide for the taking of depositions of witnesses in accordance with the rules of the district courts of this state. Notice of the date, time and place of any such hearing shall be given by registered mail not less than ten (10) days, exclusive of the date of mailing, before the date thereof, addressed to the registrant complained against and to any other parties involved, each of whom shall have the right to file answer, to appear and be heard in person and by counsel, and to present evidence at such hearing. The registrant complained against and any other parties involved may appear in person or present their case, including any evidence supporting their case, in writing to the Administrator in lieu of their making a physical appearance, and the Administrator will consider any such written evidence at the hearing.

(c) If the Administrator finds at a hearing that the registrant has violated or is violating or has failed or is failing to comply with any provision of Section 420.1 and following, or these rules or specifications, the Administrator, if the findings justify such action, shall issue an order suspending the registrant's registration permit for a period not to exceed ninety (90) days, revoking the registration permit, or imposing a fine of not more than Five Hundred Dollars ($500.00) for each separate offense. Any fine imposed pursuant to this section shall be deposited ~~with the State Treasurer for credit to the General Revenue Fund~~

into the Liquefied Petroleum Gas Fund. The amount of the fine and the type of penalty imposed for an offense or violation shall be within the Administrator's discretion, provided that the following fines shall be imposed for the following offenses or violations, in addition to additional fines and penalties the Administrator may impose for repeated or aggravated offenses or violations:

(1) Container Law (filling container owned conspicuously by another person) - [Title 52, O.S.SS420.9(F)]: $500.00 maximum fine

(2) Unauthorized removal of red tag - [OAC 420:10-1-14(b)(9)]: $500.00 maximum fine

(3) Failing to carry or use chock blocks - [NFPA 58, Ch.6-3.8]: $ 50.00 maximum fine

(4) Failing to complete or late filing of LPG Form 4 - [OAC 420:10-1-15]: ~~$50.00~~ $500.00 maximum fine per occurrence.

~~(5) Failing to complete or late filing of Form 4A - [OAC 420:10-1-14(b)(2)(4)]: $150.00 maximum fine~~

(~~6~~5) Inaccurate meters or meter calibration - [OAC 420:10-1-14(b)(7)]: ~~$100.00~~ $500.00 maximum fine

(~~7~~6) Meter gears do not match calibration report; Failing to report unsealed meter; Failing to give printed ticket- [OAC 420:10-1-14(b)(7)]: $500.00 maximum fine

(~~8~~7) Selling gas without proper permit - [OAC 420:10-1-15]: $500.00 maximum fine

(~~9~~8) Failing to renew existing permit before expiration [OAC 420:10-1-16]: 25% of permit cost maximum fine

(~~10~~9) Failing to attend safety school - [OAC 420:10-1-16]: $100.00 maximum fine

(~~11~~10) Failing to comply with inspection requirements - [OAC 420:10-1-14]: $500.00 maximum fine

(~~12~~11) Leaving Internal Safety Valve (ISV) open or manual liquid outlet valve open during transportation [NFPA 58,Ch.6-3.1.2]: $500.00 maximum fine

(~~13~~12) ESV's not operating - [NFPA 58, Ch.6-3.1.2]: $100.00 maximum fine

(~~14~~13) Other violations of NFPA 58 & 54 -[OAC 420:10-1-14]: $500.00 maximum fine

(~~15~~14) Failing to list all storage sites - [various]: $100.00 maximum fine

(~~16~~15) Failing to pay invoice from Administrator within 35 days from issued date - [various]: 25% of invoice maximum fine

(~~17~~16) No insurance - [OAC 420:10-1-18]: $500.00 maximum fine

(~~18~~17) Failing to report accident - [OAC 420:10-1-14(b)(3)]: $500.00 maximum fine

(~~19~~18) Failing to attend management safety seminar [OAC 420:10-1-16]: ~~$150.00~~ $500.00 maximum fine

(d) The Administrator's findings, judgment and order shall be reduced to writing and be recorded in a permanent public record to be retained in the office of the Administrator. Copies shall be furnished to the registrant complained against and to the board. Any registrant who has been fined, or whose registration permit is suspended or revoked by the Administrator may, within thirty (30) days after such fine, suspension or revocation, file an appeal with the Board, which shall review the order of the Administrator de novo at the next scheduled meeting of the Board, and shall affirm the Administrator's order if supported by substantial evidence. In the event the Board affirms in whole or in part the action of the Administrator, the registrant may, within thirty (30) days after the Board's action, file an appeal with the district court of Oklahoma County or in the county wherein the registrant resides or has its principal place of business in this state, where the matter shall be heard de novo, but the Administrator's order shall be affirmed if supported by substantial evidence. Upon filing of an appeal, enforcement of the Administrator's order shall be stayed pending final disposition of such appeal. Upon affirmance, the order shall become final and conclusive and the stay of enforcement shall be vacated.

[OAR Docket #04-1077; filed 5-28-04]

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

[OAR Docket #04-1130]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
Part 1. General Provisions
530:10-1-2. [AMENDED]
Part 3. Delegation of Human Resource Functions
530:10-1-31. [AMENDED]
Part 5. Model Projects
530:10-1-61. [AMENDED]
Subchapter 3. Affirmative Action and Equal Employment Opportunity
Part 2. Discrimination Complaints Investigations
530:10-3-22. [AMENDED]
Part 3. Affirmative Action
530:10-3-33.7. [AMENDED]
530:10-3-39. [AMENDED]
Part 7. Affirmative Action and Civil Rights Personnel
530:10-3-72. [AMENDED]
530:10-3-75. [AMENDED]
530:10-3-78. [AMENDED]
Subchapter 7. Salary and Payroll
Part 1. Salary and Rates of Pay
530:10-7-7. [AMENDED]
530:10-7-14. [AMENDED]
530:10-7-16. [AMENDED]
530:10-7-17. [AMENDED]
530:10-7-20. [AMENDED]
530:10-7-24. [AMENDED]
530:10-7-26. [AMENDED]
Part 3. Payroll
530:10-7-31. [AMENDED]
Subchapter 9. Recruitment and Selection
Part 11. Direct Hire Authority
530:10-9-122. [RESERVED]
530:10-9-123. [NEW]
Subchapter 11. Employee Actions
Part 3. Probationary Employees
530:10-11-34. [REVOKED]
Part 5. Promotions
530:10-11-51. [AMENDED]
Part 7. Tranfers and Voluntary Demotions
530:10-11-71. [AMENDED]
Part 13. Resignations

530:10-11-134. [AMENDED]
Subchapter 13. Reduction-in-force
Part 1. General Provisions for Reduction-in-Force
530:10-13-1. [AMENDED]
530:10-13-2. [AMENDED]
530:10-13-3. [AMENDED]
530:10-13-5. [REVOKED]
530:10-13-8. [AMENDED]
530:10-13-10. [AMENDED]
530:10-13-11. [AMENDED]
530:10-13-12. [AMENDED]
530:10-13-13. [AMENDED]
Part 3. Reduction-in-Force Plan Requirements
530:10-13-31. [AMENDED]
530:10-13-32. [AMENDED]
530:10-13-33. [AMENDED]
530:10-13-34. [AMENDED]
530:10-13-35. [AMENDED]
530:10-13-36. [AMENDED]
530:10-13-37. [AMENDED]
Part 5. Recall Rights
530:10-13-50. [AMENDED]
530:10-13-51. [AMENDED]
Part 7. Priority Consideration for Reemployment
530:10-13-70. [AMENDED]
530:10-13-72. [AMENDED]
Subchapter 15. Time and Leave
Part 3. Annual and Sick Leave Policies
530:10-15-11. [AMENDED]
530:10-15-12. [AMENDED]
530:10-15-43. [AMENDED]
530:10-15-45. [AMENDED]
530:10-15-49. [AMENDED]
Subchapter 17. Employee Performance Management System and Career Enhancement Programs
Part 3. ~~Employee~~ Performance ~~Management~~ Evaluation System
530:10-17-31. [AMENDED]
Part 7. Carl Albert Public Internship Program
530:10-17-74. [AMENDED]
530:10-17-75. [AMENDED]
Part 15. State Mentor Program
530:10-17-156. [AMENDED]
Part 17. State Work Incentive Program
530:10-17-177. [AMENDED]
Subchapter 21. Employee Assistance Programs
Part 1. General Provisions
530:10-21-5. [AMENDED]
Appendix B. Schedule of Annual and Sick Leave Accrual Rates and Accumulation Limits [REVOKED]
Appendix B. Schedule of Annual and Sick Leave Accumulation Limits and Yearly Accruals [NEW]

AUTHORITY:
The Administrator of the Office of Personnel Management; Sections 840-1.6A, 840-2.21, 840-2.10, 840-2.17, 840-2.20, 840-2.22, 840-2.27C, 840-2.29, 840-3.5, 840-3.8, 840-4.6 and 840-4.17 of Title 74 of the Oklahoma Statutes.

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Subchapter 7. Salary and Payroll
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Part 11. Direct Hire Authority
530:10-9-122. [RESERVED]
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Subchapter 11. Employee Actions
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530:10-11-34. [REVOKED]
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530:10-11-71. [AMENDED]
Subchapter 15. Time and Leave
Part 5. Miscellaneous Types of Leave
530:10-15-43. [AMENDED]
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Subchapter 17. Employee Performance Management System and Career Enhancement Programs
Part 7. Carl Albert Public Internship Program
530:10-17-74. [AMENDED]
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Subchapter 13. Reduction-in-Force
Part 1. General Provisions for Reduction-in-Force
530:10-13-1. [AMENDED]
530:10-13-2. [AMENDED]
530:10-13-3. [AMENDED]
530:10-13-5. [REVOKED]
530:10-13-8. [AMENDED]
530:10-13-11. [AMENDED]
530:10-13-12. [AMENDED]
530:10-13-13. [AMENDED]
Part 3. Reduction-in-Force Plan Requirements
530:10-13-31. [AMENDED]
530:10-13-32. [AMENDED]
530:10-13-33. [AMENDED]
530:10-13-34. [AMENDED]
530:10-13-35. [AMENDED]
530:10-13-36. [AMENDED]
530:10-13-37. [AMENDED]
Part 5. Recall Rights
530:10-13-50. [AMENDED]
530:10-13-51. [AMENDED]
Part 7. Priority Consideration for Reemployment
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Subchapter 1. General Provisions
Part 3. Delegation of Human Resource Functions
530:10-1-31. [AMENDED]

Part 5. Model Projects
530:10-1-61. [AMENDED]
Subchapter 3. Affirmative Action and Equal Employment Opportunity
Part 3. Affirmative Action
530:10-3-39. [AMENDED]
Subchapter 7. Salary and Payroll
Part 1. Salary and Rates of Pay
530:10-7-7. [AMENDED]
530:10-7-16. [AMENDED]
530:10-7-24. [AMENDED]
Part 3. Payroll
530:10-7-31. [AMENDED]
Subchapter 11. Employee Actions
Part 5. Promotions
530:10-11-51. [AMENDED]
Subchapter 15. Time and Leave
Part 3. Annual and Sick Leave Policies
530:10-15-11. [AMENDED]
530:10-15-12. [AMENDED]
Subchapter 17. Employee Performance Management System and Career Enhancement Programs
Part 3. Employee Performance ~~Evaluation~~Management System
530:10-17-31. [AMENDED]
Part 15. State Mentor Program
530:10-17-156. [AMENDED]
Subchapter 21. Employee Assistance Programs
Part 1. General Provisions
530:10-21-5. [AMENDED]
Appendix B. Schedule of Annual and Sick Leave Accrual Rates and Accumulation Limits [REVOKED]
Appendix B. Schedule of Annual and Sick Leave Accumulation Limits and Yearly Accruals [NEW]

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INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Subchapter 1-Merit Rule 530:10-1-2 is amended to include intra-agency lateral transfers in the definition of "trial period" and to make the rule consistent with 530:10-11-71. Merit Rule 530:10-1-31 is amended to allow delegation of human resource functions normally conducted by the Office of Personnel Management. Merit Rule 530:10-1-61 is amended to remove the requirement that model project applications be reviewed and approved by the Human Resource Management Advisory Committee.

Subchapter 3-Amendments to 530:10-3-22 require that Discrimination Complaint Investigators who have not completed or reported annual training may not conduct investigations of discrimination complaints. The amendments to 530:10-3-72, 530:10-3-75 and 530:10-3-78 make terminology consistent and clarify specifically which individuals must satisfy the training requirements in 530:10-3-78. Amendment to Merit Rule 530:10-3-33.7 deletes the requirement of a second utilization analysis. Merit Rule 530:10-3-39 is amended to extend the deadline for submission of the annual state report on equal employment opportunity and affirmative action in state government from January 1 to March 1.

Subchapter 7-Merit Rule 530:10-7-7 was amended to delete data processing mission critical pay from pay differentials for special duty requirements. Also amends subsection (d) to add "lateral" to make consistent with statute and rule. Merit Rule 530:10-7-14 was amended to include "or promotion" at subsection (b)(2) which provides for a 5 - 20% salary increase upon promotion or career progression. Merit Rule 530:10-7-16 is amended to require that on-call classified employees be compensated for a minimum of two (2) hours if required to report to work while on call. Merit Rule 530:10-7-17 is amended to reference 530:10-5-110 instead of 530:10-5-11. Merit Rules 530:10-7-20, 530-10-7-24 and 530:10-7-26 were amended to allow market adjustments based on job duties rather than job family level, require "meets standards" evaluation for eligibility, clarify that lump sum payments may be made pursuant to a skill based pay adjustment upon initial certification and any subsequent recertification, provide that skill-based pay differentials become permanent after 24 months, require that equity-based adjustments above the midpoint of a pay band be approved by the Administrator and clarify that an employee may only receive one equity-based adjustment in the same job family and level in a twelve-month period. Merit Rule 530:10-7-31 was amended to allow appointing authorities to certify payroll.

Subchapter 9-Amendments to Merit Rules 530:10-9-121 and 530:10-9-122 establish new rules for expedited recruitment pursuant to a statutory change and limit an appointing authority's expedited recruitment authority to 12 months.

Subchapter 11-Amendment to 530:10-11-34 revokes entire rule. Amendments to 530:10-11-51 modify posting requirements for vacancy notices. Amendment to 530:10-11-71 requires that an employee who receives and intra-agency lateral transfer serve a six-month trial period unless waived by the appointing authority. Amendments to 530:10-11-134 clarify the rule as it applies to "acting incumbents" who are hired to perform the duties of an employee who is absent due to military duty.

Subchapter 13-Amendments to 530:10-13-1 clarify that the reduction-in-force rules apply to classified employees in executive branch only. Amendments to 530:10-13-2 delete definitions given for "eligible classified employee," "eligible regular unclassified employee," and "limited term unclassified employee. Amendments to 530:10-13-3 provide notice requirements for agencies conducting reductions-in-force as well as requirement of review of fiscal components. Amendments to 530:10-13-8 modify the term implementation schedule to implementation plan. Amendment to 530:10-13-10 corrects the statutory citation. Amendments to 530:10-13-11 delete the distinction between classified and unclassified employees. Amendments to 530:10-13-12 provide clarification of who is entitled to severance benefits and clarify that employees reemployed by an agency from which separated within 1 year of receiving severance benefits are required to repay them. Amendments to 530:10-13-13 delete distinction between classified and unclassified employees and includes voluntary out benefits as well as severance benefits. Amendment to 530:10-13-31 deletes requirement that appointing authorities not reduce a higher percentage of occupied classified positions than occupied unclassified positions. Amendment to 530:10-13-32 deletes requirement to rank affected classified and unclassified employees separately. Amendment to 530:10-13-33 provides that periods of leave without pay of less than 30 days will be counted as full-time service. Amendments to 530:10-13-34 delete references to unclassified employees and provides parameters for displacement opportunities. Amendments to 530:10-13-35 provide requirements for reduction-in-force implementation plans. Amendments to 530:10-13-36 describe employee notice requirements. Amendments to 530:10-13-37 change the phrase implementation schedule to implementation plan. Amendment to 530:10-13-50 clarifies which separated employees have recall rights. Amendments to 530:10-13-51 delete references to unclassified employees. Amendment to 530:10-13-70 deletes reference to unclassified employees. Amendments to 530:10-13-72 delete references to unclassified and exempt employees.

CONTACT PERSON:
Chanda R. Graham, Chief Policy Attorney, Office of Personnel Management, 2101 N. Lincoln, G-80, Oklahoma City, OK 73105, (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 11, 2004:

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 reassignment of an employee to another state job with the same pay band assignment as the job family level in which the employee 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, or intra-agency lateral transfer during which a classified employee is required to demonstrate satisfactory performance in the job to which promoted, ~~or~~ voluntarily demoted, or transferred 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].

PART 3. DELEGATION OF HUMAN RESOURCE FUNCTIONS

530:10-1-31. ~~Delegation functions~~ Functions which may be delegated

~~The delegated~~ Upon the request of a state agency, and at the discretion of the Administrator, the Administrator may delegate any human resources functions ~~shall not include discipline or compensation~~ normally conducted by the Office of Personnel Management. [74:840-1.15~~(E)~~(A)] Human resources functions that are under the jurisdiction of the Oklahoma Merit Protection Commission as described in 74:840-1.9 and Title **455** of the Oklahoma Administrative Code may not be delegated pursuant to the rules in this Part.

PART 5. MODEL PROJECTS

530:10-1-61. Authorization of model projects

The Administrator may approve applications for model projects ~~after review and approval of the project by the Human Resources Management Advisory Committee~~. Approval of an application for a model project by the Administrator shall constitute authority for the agency to implement the approved model project for a length of time to be specified by the Administrator. [74:840-1.15]

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 31st 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.

(f) Discrimination complaints investigators who do not complete the annual training described in (a)(3), or who fail to report such training by January 15th of the following year, will be placed on an "inactive" list and shall not conduct discrimination complaints investigations until the training requirement for the previous year has been met and reported.

PART 3. AFFIRMATIVE ACTION

530:10-3-33.7. Utilization analysis

(a) Affirmative action plans for agencies authorized **15** or more full-time-equivalent employees shall include an analysis of the utilization of minorities and females in the agency's workforce for June 30th of each year. ~~A second utilization analysis for December 31st of each year shall be submitted separately to the Office of Personnel Management by March 1st of each year.~~

(b) Appointing Authorities shall use a commonly-recognized statistical method to determine if underutilization exists, i.e., there are fewer minorities or women in a particular job group than would reasonably be expected by their availability.

(1) Agencies authorized less than **200** full-time-equivalent employees shall use the "80% method" to determine underutilization, unless another method is approved by the Administrator. The "80% method" declares underutilization to exist if the females or minorities in a job group are less than 80% of their availability or if the number of females or minorities in a job group is zero.

(2) Agencies authorized **200** or more full-time-equivalent employees shall use the "80% method" as described in paragraph (1) of this subsection, or may use one of the following methods:

(A) The "whole person" method. When this method is used, underutilization is declared if the number of females or minorities is as much or more than one person below the number that would cause the job group representation percentage to match exactly the availability percentage.

(B) The "two standard deviation" method. When this method is used, underutilization is declared if the number of females or minorities in a job group is more than two standard deviations below availability.

(C) Another method approved by the Administrator.

(c) Appointing Authorities shall complete a form prescribed or approved by the Administrator to show a comparison of the actual employment of minorities and women with their relative availability in the applicable job groups. The form shall provide spaces for summary information, including but not limited to: total staffing, numbers of minorities and females, final availability percentages, job group percentages, and determination of underutilization.

(d) A declaration of underutilization in an affirmative action plan shall not constitute an admission of wrongdoing or a determination that discriminatory practices are occurring in the agency.

530:10-3-39. Preparation of the annual status report on equal employment opportunity and affirmative action in state government

(a) On or before ~~January 1~~March 1 of each year, the Administrator shall submit a report to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor. The report shall state the efforts and progress made by state agencies, except institutions within The Oklahoma State System of Higher Education, in the area of affirmative action, including the status of recruitment, hiring, and promotion of women, men, and minorities within job categories [74:840-2.1(C)].

(b) The Council shall assist the Administrator in preparing the annual status report on equal employment opportunity and affirmative action in state government [74:840-2.1(H)(1)].

PART 7. AFFIRMATIVE ACTION AND CIVIL RIGHTS PERSONNEL

530:10-3-72. Appointment and duties of civil rights and affirmative action personnel

The Appointing Authority in each agency of each branch of state government is responsible for affirmative action efforts and progress. The Appointing Authorities of agencies authorized fewer than **200** full-time-equivalent employees may personally act as the ~~primary equal employment~~ affirmative action officer or may employ or assign one or more persons to ~~assist the agency in~~ serve as the agency's affirmative action officer ~~and equal employment opportunity~~ [74:840-2.3]. The Appointing Authorities of agencies authorized **200** or more full-time-equivalent employees shall designate an ~~A~~affirmative ~~A~~action ~~O~~officer or Civil Rights Administrator who personally reports to the Appointing Authority on affirmative action and equal employment opportunity matters [74:840-2.3(1)].

530:10-3-75. Qualifications of civil rights and affirmative action personnel

(a) Personnel selected by Appointing Authorities to fill full-time Civil Rights Administrator positions in the classified service shall meet the minimum requirements contained in the job family descriptor for these jobs.

~~(b) Personnel selected by Appointing Authorities to fill full-time civil rights or affirmative action administrator, coordinator or officer positions in the unclassified service shall meet the requirements as provided in a job description approved by the Administrator.~~

(~~c~~b) Other classified and unclassified personnel designated by Appointing Authorities to ~~perform civil rights/affirmative action duties~~ serve as the agency's affirmative action officer on a full-time or part-time basis shall have knowledge of: federal and state civil rights laws; affirmative action and equal employment laws; and Oklahoma state government personnel practices and procedures.

530:10-3-78. Training requirements for affirmative action ~~and civil rights~~ personnel

(a) Individuals who are designated by Appointing Authorities ~~as civil rights administrators, coordinators, or~~ to serve as full-time or part-time affirmative action officers in the executive branch agencies shall complete a minimum of **6** hours of classroom instruction or **0.6** Continuing Education Units (CEU's) in training per calendar year in one of the following areas:

(1) EEO/Affirmative action laws, including the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., and Section 504 of the Federal Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., and court cases;

(2) Investigating discrimination complaints;

(3) Personnel practices and procedures;

(4) Alternative dispute resolution; and

(5) Diversity and multi-culturalism.

(b) Individuals may request approval from the Administrator for training in other areas not listed above.

(c) Completion of training requirements must be reported to the Administrator by December 31st of each year.

(d) Appointing authorities will be notified of individuals failing to complete the training requirements.

(e) Employees of the Human Rights Commission and Merit Protection Commission are exempt from this section.

(f) Persons investigating complaints of discrimination must complete the training requirements for discrimination complaints investigators and be certified by the Administrator under 530:10-3-22.

SUBCHAPTER 7. SALARY AND PAYROLL

PART 1. SALARY AND RATES OF PAY

530:10-7-7. Pay differential

(a) The Administrator may authorize a pay differential for a position within a job family because of special duty requirements related to the position. This may include shift pay, on-call pay, ~~data processing mission critical pay,~~ skill-based pay adjustments, and other types of differentials based on special work requirements, as approved by the Administrator. These payments shall be over and above the employee's base pay and shall be paid only as long as the employee occupies the particular position under the circumstances which have necessitated the differential. The request for the differential shall be submitted in writing by the requesting agency and shall adequately identify the need.

(b) An Appointing Authority shall determine whether pay differentials will be paid while employees are in paid leave status or provided only for hours actually worked. Appointing Authorities shall apply such practices uniformly. Pay differentials shall not be provided for hours that an employee is not in pay status.

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 promotion or career progression, except as follows:

(A) 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, the employee's salary shall be set at the maximum rate of pay for the new pay band.

(B) 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.

(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 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 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~~ An Appointing Authority shall compensate a classified employee ~~shall receive~~ for a minimum of two (2) hours work if the employee is required to report to a work location while on-call. Employees are guaranteed compensation for each occasion in which a call-back is made after having left the regular work station. The compensation may be in the form of compensatory time in lieu of cash payment. [74:840-2.29]

530:10-7-17. Rate of pay upon detail to special duty

The pay of an employee who is detailed to special duty in accordance with ~~530:10-5-11~~ 530:10-5-110 shall not be reduced, but must be increased to at least the minimum rate but not more than the maximum rate the employee could receive upon promotion to that job family and level, provided:

(1) any such temporary increase shall not affect eligibility for increase in the regular job family and level which the Appointing Authority could grant if the employee had not been detailed.

(2) at the conclusion of the detail, pay shall revert to the authorized rate of pay in the employee's regular job family and level.

530:10-7-20. Market adjustments

~~(a) A cost-of-living raise or any other type of raise that would be given to state employees on an across-the-board basis is prohibited unless specifically authorized by the Legislature. The Office of Personnel Management conducts annual compensation surveys of relevant markets to determine rates of pay for various jobs within the designated market areas. The Administrator shall make any recommendations concerning salary adjustments for state employees on an across-the-board basis in the Annual Compensation Report for consideration by the Legislature.~~

~~(b) At the discretion of~~ Upon approval by the Administrator, an Appointing Authority may make market adjustments ~~may be made~~ for all employees in ~~individual~~ a job ~~families~~ family or job family levels or limit such adjustment to employees who perform the same or similar duties, or who perform the same role or accountabilities~~upon the request of an Appointing Authority~~. An Appointing Authority making such a request shall provide the Administrator with information supporting the request, such as relevant market data, information on recruitment or retention problems, or other appropriate data. The Appointing Authority shall also certify that an adjustment can be made within the agency's budget for the current and subsequent fiscal year without the need for additional funding. An Appointing Authority may limit market adjustments to employees rated at least "Meets Standards" on the most recent performance evaluation. Such limitation must be included in the agency's approved Salary Administration Plan. All eligible employees of an agency in jobs affected by a market adjustment shall be given uniform treatment.

530:10-7-24. Skill-based pay adjustments

(a) An Appointing Authority may develop skill-based pay programs upon the approval of the Administrator. Such programs shall be related to the acquisition or possession of additional skills and abilities which can be applied to the work to be performed and which will increase the value of the employee to the agency. The skills or abilities must be verifiable through certification, licensure, diploma, or some other method and must be beyond the qualifications required ~~in the job family descriptor for all employees in that job family level~~ to perform the primary or essential functions and responsibilities of the employee's position. Requests to establish skill-based pay programs shall include a complete description of the training or education required, how it will benefit the agency, the proposed salary adjustment, and any other information that will assist in evaluating the request.

(b) Skill-based pay adjustments may be provided as a differential over and above an employee's base pay or as ~~a one-time~~ lump-sum payment. Lump sum skill-based pay adjustments may be awarded upon initial certification and any subsequent recertification as may be required by the certifying organization and identified in the agency's skill-based pay plan. Lump sum payments shall be limited to **10%** of an employee's annual salary, and differentials shall be limited to **10**% of an employee's monthly salary for employees paid on a monthly basis, and **10**% of an employee's biweekly salary for employees paid on a biweekly basis. Employees whose base pay is at or exceeds the maximum of the pay band shall not be eligible for a differential, but may receive a lump-sum payment. ~~Skill-based~~ Except as provided in Subsection (c),

skill-based pay adjustments shall be paid only as long as the employee occupies a position to which the skill is applicable in accordance with the agency's salary administration plan. An employee may receive multiple skill-based pay differentials so long as the combined total of all skill-based pay differentials does not exceed **15%.**

(c) Skill-based pay differentials paid to an employee shall become permanent after **24** continuous months and shall be included as a part of the employee's base pay, except as provided in 530:10-7-10. [74:840-2.17]

530:10-7-26. Equity-based pay adjustments

An Appointing Authority may provide equity-based pay adjustments when individual employees are significantly underpaid relative to other employees performing the same or similar duties, or employees with the same role or accountabilities, in the same job family and level within the same agency. Adjustments above the midpoint of the pay band require approval of the Administrator. ~~An Appointing Authority may make adjustments~~ Adjustments ~~which do not cause an employee's salary to exceed~~ below the midpoint of the pay band and which are consistent with the requirements of this section may be made at ~~his or her~~ the Appointing Authority's discretion. ~~Adjustments which cause an employee's salary to exceed the midpoint of the pay band require approval of the Administrator.~~ An Appointing Authority may limit equity-based pay adjustments to employees rated at least "Meets Standards" on the most recent performance evaluation. Such limitation must be included in the agency's approved Salary Administration Plan. No employee may receive more than one equity-based adjustment in the same job family and level in a twelve-month period.

PART 3. PAYROLL

530:10-7-31. Certification of payrolls

(a) **Certification~~ by the Office of Personnel Management~~.** No state disbursing or auditing officer shall make, approve or take part in making or approving any payment for personal service to any person holding a position in the classified service, unless the payroll voucher or account of such pay bears the certification of the ~~Office of Personnel Management~~Appointing Authority that the persons named therein have been appointed and employed in accordance with the provisions of the Oklahoma Personnel Act ~~or~~and the Merit Rules [74:840-1.18(D)].

(b) **Withholding of certification~~ by the Office of Personnel Management~~.** The ~~Office of Personnel Management~~Appointing Authority may for proper cause withhold certification from an entire payroll or from any specific item or items [74:840-1.18(D)]. Whenever the Office of Personnel Management finds that any person is employed or is proposed to be paid as an employee in the classified service in any amount not provided for under the provisions of the Oklahoma Personnel Act and the Merit Rules, the Office of Personnel Management shall notify the concerned state disbursing or auditing officer. After such notice, the concerned state disbursing or auditing officer shall not approve any payment to such person except in accordance with the provisions of the Act or the Merit Rules.

(c) **Suit to restrain disbursement.** Any citizen may maintain a suit to restrain a disbursing officer from making any payment in contravention of any provision of the Oklahoma Personnel Act or the Merit Rules [74:840-1.18(D)].

(d) **Recovery of erroneous payments.** Any sum paid contrary to any provision of the Oklahoma Personnel Act or the Merit Rules may be recovered in an action maintained by any citizen, from any officer who made, approved or authorized such payment or who signed or countersigned a voucher, payroll, check or warrant for such payment, or from the sureties on the official bond of any such officer [74:840-1.18(D)]. *All monies recovered in any such action shall be paid into the State Treasury* [74:840-1.18(D)].

(e) **Right of action by employees employed in contravention to the Merit Rules.** Any person appointed or employed in contravention of any provision of the Oklahoma Personnel Act or the Merit Rules and who performs service for which unpaid, may maintain an action against the officer or officers who purported to appoint or employ the person in order to recover the agreed pay for such services, or the reasonable value thereof if no pay was agreed upon. [74:840-1.18(D)] *No officer shall be reimbursed by the state at any time for any sum paid to such person on account of such services* [74:840-1.18(D)].

(f) **Action to compel payroll certification.** If the ~~Office of Personnel Management~~Appointing Authority wrongfully withholds certification of the payroll voucher or account of any employee, such employee may maintain an action or proceeding in the courts to compel the ~~Office of Personnel Management~~Appointing Authority to certify such payroll voucher or account [74:840-1.18(D)].

SUBCHAPTER 9. RECRUITMENT AND SELECTION

PART 11. DIRECT HIRE AUTHORITY

530:10-9-122. [RESERVED]

530:10-9-123. Expedited recruitment

(a) The Administrator may select positions or job family levels for expedited recruitment when in the opinion of the Administrator the education, experience or certification requirements for such positions or job family levels substantially limit the pool of available applicants to less than an adequate applicant pool as defined by 530:10-9-111. Applicants for positions selected for expedited recruitment who have been approved by the Office of Personnel Management as meeting the minimum qualifications for the job may be referred to agencies having such vacancies without examination and ranking, provided that the register for the job has been publicly announced for at least

14 calendar days. Applicants for positions selected for expedited recruitment are eligible for appointment upon referral. [74:840-1.6A]

(b) An Appointing Authority may request that positions or job family levels be considered for expedited recruitment by submitting a written request to the Administrator. The request shall describe the unique education, experience or certification requirements that substantially limit the pool of available applicants, the recruitment efforts made by the agency, the suggested duration of the expedited recruitment designation, and shall be accompanied by a Position Description Questionnaire (OPM-39) for the position(s). The Administrator may request clarification or additional information from the agency. The Administrator shall provide the agency with written notification of his approval or denial of the request. The decision of the Administrator shall be final.

(c) An Appointing Authority who has expedited recruitment authority may retain that authority for **12** months from the date of approval by the Administrator unless that authority is terminated by the Administrator pursuant to 530:10-9-121. The Appointing Authority may reapply to continue expedited recruitment authority for additional **12** month periods in the same manner as in the initial request.

SUBCHAPTER 11. EMPLOYEE ACTIONS

PART 3. PROBATIONARY EMPLOYEES

530:10-11-34. Suspension of probationary employees [REVOKED]

~~(a) A probationary employee may be suspended from duty without pay for disciplinary or internal investigatory purposes for up to **60** calendar days without right of appeal or hearing.~~

~~(b) The date of the final working day of the probationary period shall be adjusted for the same number of calendar days as the suspension.~~

~~(c) If a probationary employee is suspended in conjunction with an internal investigation, the Merit Protection Commission shall be so notified. If the investigation subsequently clears the employee, the agency, with the prior authorization of the Commission, shall reinstate the employee to the former position. The employee shall be fully compensated for the time lost, and the time spent on suspension shall be fully considered as part of the probationary period.~~

PART 5. PROMOTIONS

530:10-11-51. Promotional posting

(a) *The appointing authority shall post announcements of a vacancy or vacancies in accordance with a promotional plan filed by the agency with the Office of Personnel Management.* [A copy of this plan shall be posted throughout the agency.] ~~*In order to give qualified employees an opportunity to apply for and be considered for possible promotions, the vacancy notices shall be posted conspicuously in transparent, secured enclosures situated in prominent locations throughout the agency, at least five (5) working days prior to the closing date for the receipt of applications by the appointing authority.*~~ *Promotional posting shall be required for initial entry into a job family at any level. Promotional posting shall also be required for entry into any supervisory position or level. Each agency's promotional posting plan shall describe* ~~*where promotional notices will be posted and require that all vacancy or promotional notices be posted conspicuously in transparent, secured enclosures. Notices must be posted throughout the agency. However, an agency's plan may limit the posting of notices for a vacancy in a work unit, local office or administrative area to within that location, if the vacancy is to be filled by an employee from the same location*~~ *the method by which all agency employees will be notified of vacancy announcements*. [74:840-4.15] The Appointing Authority shall post all promotional opportunities to vacant positions and to all supervisory levels. Promotional posting is not required for career progression or for reallocation of occupied, non-supervisory positions.

(b) *The posting shall include:*

(1) ~~*A copy of the job family descriptor;*~~

~~(2)~~ *Identification of the job family level of the vacancy or vacancies;*

(2) *A listing of job title, major work duties and minimum qualifications;*

(3) *The pay band and range;*

(4) *The anticipated number of vacancies;*

(5) *The specific location of work;*

(6) *The time limits and procedure for filing an application with the appointing authority; and*

(7) *Any additional factors which the appointing authority will consider in filling the vacancy.* [74:840-4.15]

PART 7. TRANSFERS AND VOLUNTARY DEMOTIONS

530:10-11-71. Intra-agency transfer

(a) The intra-agency transfer of a permanent employee from one position to another position in the same job family or another job in the same pay band, for which the employee has currently qualified, may be made at any time by the Appointing Authority. Such transfer may be made simultaneously with a promotion or demotion in accordance with the provisions of the Merit Rules.

(b) Upon intra-agency lateral transfer, an employee shall serve a six-month trial period in the job level to which the employee is transferred, unless the trial period is waived in writing by the Appointing Authority. [74:840-4.12]

(~~b~~c) A state agency shall have sole and final authority to designate the place or places where its employees shall perform their duties. The Oklahoma Merit Protection Commission shall not have jurisdiction to entertain an appeal of an employee from action of the employing agency transferring the employee from one county or locality to another, changing the assigned duties of the employee, or relieving the employee

from performance of duty at a particular place and reassigning to the employee duties to be performed at another place, unless:

(1) the action results in a change in job classification or reduction of base salary; or

(2) an investigation by the Commission indicates that a violation of the provisions of Section 840-2.5 or 840-2.9 of . . . [the Oklahoma Personnel Act] may have occurred; or

(3) it is established that the action was clearly taken for disciplinary reasons and to deny the employee the right of appeal. [74:840-4.19]

PART 13. RESIGNATIONS

530:10-11-134. Resignation or leave without pay to accept an unclassified position

(a) No classified employee may be assigned to an unclassified or exempt position unless the employee so desires and such acceptance shall be transmitted in writing to the Administrator.

(b) Any classified employee shall be deemed to have resigned the classified position on the date of accepting an appointment to a position in the exempt or unclassified service of the state; except that, a person appointed to a temporary or acting position in the exempt or unclassified service, including appointment as an acting incumbent as provided in Section 840-5.5(A)(50) of Title 74 of the Oklahoma Statutes, may alternatively request leave without pay status in the classified position while assigned to the unclassified or exempt position. Such leave without pay shall not exceed **2** years from the date of the appointment to the unclassified service.

SUBCHAPTER 13. REDUCTION-IN-FORCE

PART 1. GENERAL PROVISIONS FOR REDUCTION-IN-FORCE

530:10-13-1. Purpose

The purpose of the rules in this Subchapter is to implement the provisions of Sections 840-2.27A through 840-2.27C of the Oklahoma Personnel Act which pertain to reductions-in-force. The rules in this Subchapter establish general provisions for reductions-in-force and policies and procedures for recall and priority consideration for reemployment. The rules in ~~Parts 1, 5, and 7 of~~ this Subchapter governing reductions-in-force apply to ~~agencies in all branches of state government, except institutions within The Oklahoma State System of Higher Education. The rules in Part 3 of this Subchapter apply to~~ classified employees within the executive branch ~~agencies~~ only. This Subchapter is not a comprehensive listing of state and federal statutory provisions related to reductions-in-force and regulations promulgated thereunder, and is not intended to conflict with either state or federal law and regulations.

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 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.

530:10-13-3. ~~Reduction-in-force plans~~ Notice of reduction-in-force and time requirements

(a) **Cabinet Secretary approval.** Prior to the posting of any reduction-in-force notice, the notice shall be approved by the cabinet secretary for the agency conducting the reduction-in-force. [74:840-2.27C] If there is no incumbent cabinet secretary for the agency, the approval requirement shall not apply.

(b) **Notice.** ~~Whenever a reduction-in-force occurs, the Appointing Authority shall provide a plan for such reduction-in-force to the Administrator of the Office of Personnel Management and the Director of the Office of State Finance at~~ At least **60** days before the scheduled beginning of reduction-in-force separations or as otherwise provided by law, the Appointing Authority shall post a notice in each office affected by the proposed reduction-in-force that a reduction-in-force will be conducted in accordance with the Oklahoma Personnel Act and Merit Rules. Such notice shall be posted for **5** days. The Appointing Authority shall provide a copy of the notice to the Administrator. A reduction-in-force shall not be used as a disciplinary action. [74:840-2.27C(A)] ~~The reduction-in-force plan of an agency in the executive branch of state government, except for the fiscal components of the plan, is subject to the approval of the Administrator of the Office of Personnel Management. [74:840-2.27C(A)] The Administrator shall reject any plan that is not in substantial compliance with Section 840-2.27C of Title 74 of the **Oklahoma Statutes** and the rules in this Subchapter. [74:840-2.27C(A)]~~

~~(b) The Appointing Authority of executive branch agencies shall either:~~

~~(1) adopt the rules in Parts 3, 5, and 7 of this Subchapter as the reduction-in-force plan for the agency and shall post notice of that intent with a copy of the rules (Sections 530:10-13-30 through 530:10-13-73), or~~

~~(2) provide a plan that is in substantial compliance with the Act and the rules in this Subchapter.~~

(c) **Implementation plan.** ~~Section 840-2.27C(A) of Title 74 of the **Oklahoma Statutes** requires the Director of the Office of State Finance to review the fiscal components of reduction-in-force plans of executive branch agencies and reject any plan that does not contain specified information.~~ The reduction-in-force implementation plan and subsequent personnel transactions directly related to the reduction-in-force shall be in compliance with rules adopted by the Administrator. The reduction-in-force implementation plan, including the description of and reasons for displacement limits and protections from displacement actions, and severance benefits that will be offered shall be posted in each office affected by the plan within **5** business days after posting of the reduction-in-force notice. At the discretion of the Appointing Authority, the reduction-in-force implementation plan may be posted concurrently with the reduction-in-force notice. The reduction-in-force implementation plan shall:

(1) Specify the position or positions to be abolished within specified units, divisions, facilities, agency-wide or any parts thereof, as determined by the Appointing Authority;

(2) Provide for retention of affected employees based on type of appointment;

(3) Require separation of probationary classified affected employees in affected job family levels, except those affected employees in probationary status after reinstatement from permanent classified status without a break in service, prior to the separation of any permanent classified affected employee in an affected job family level;

(4) Provide for the retention of permanent classified affected employees in affected job family levels and those affected employees in probationary status after reinstatement, based on years of service;

(5) Provide for exercise of displacement opportunities by permanent classified affected employees and those affected employees in probationary status after reinstatement if any displacement opportunities exist; and

(6) Provide for outplacement assistance and employment counseling from the Oklahoma Employment Security Commission and any other outplacement assistance and employment counseling that may be available. [74:840-2.27C(B)]

(d) **Review of fiscal components.** ~~*If the reduction-in-force is conducted pursuant to a reorganization, the fiscal components of the reduction-in-force plan shall contain reasons for the reorganization, which may include, but not be limited to, increased efficiency, improved service delivery, or enhanced quality of service.* [74:840-2.27C(A)]~~ The Director of the Office of State Finance shall, within **5** business days of receipt, review the fiscal components of the reduction-in-force implementation plan and reject any plan that does not meet the requirements of Section 840-2.27C(C) of Title 74 of the Oklahoma Statutes.

~~(e) The Appointing Authority shall post a copy of the plan in each office of executive branch agencies affected by the proposed reduction-in-force plan **5** days prior to the submission of the proposed plan to the Administrator and the Director of State Finance. [74:840-2.27C(B)]~~

~~(f) Within **2** business days after approval of a reduction-in-force plan by the Administrator for executive branch agencies or appointing authorities in the legislative and judicial departments, Appointing Authorities shall post the following documents in each office affected by the reduction-in-force plan [74:840-2.27C(B)]:~~

~~(1) an approved reduction-in-force plan,~~

~~(2) a description of and reasons for any displacement limits established by the Appointing Authority in accordance with Section 840-2.27C(C) of Title 74 of the **Oklahoma Statutes**,~~

~~(3) a description of and reasons for any protections from displacement action established by the Appointing Authority in accordance with Section 840-2.27C(C) of Title 74 of the **Oklahoma Statutes**,~~

~~(4) a description of severance benefits that will be offered to affected employees pursuant to Section 840-2.27D of Title 74 of the **Oklahoma Statutes**, and~~

~~(5) the implementation schedule. [74:840-2.27C(B)]~~

530:10-13-5. Displacement limits [REVOKED]

~~(a) Section 840-2.27C of Title 74 of the **Oklahoma Statutes** establishes standards and procedures for the limitation of displacement and eligibility criteria for the exercise of displacement opportunities.~~

~~(b) An eligible classified employee who exercises a displacement privilege shall be required to sign an agreement, in a form prescribed by the Administrator, acknowledging that the employee had an opportunity to receive severance benefits and affirmatively elected to exercise a displacement privilege and to forego such benefits. The form provides information to the affected employee concerning his or her rights and responsibilities under Section 840-2.27C of Title 74 of the **Oklahoma Statutes.** [74:840-2.27C(C)]~~

530:10-13-8. Required freeze on personnel actions

(a) At least **14** calendar days before the reduction-in-force implementation ~~schedule~~ plan is posted in accordance with Section 840-2.27C of Title 74 of the **Oklahoma Statutes** and 530:10-13-35, all personnel actions within affected job families shall be frozen, except:

(1) separations unrelated to the reduction-in-force,

(2) leave,

(3) disciplinary actions,

(4) other transactions specifically required by law,

(5) transactions specifically due to the reduction-in-force, and

(6) transactions the Appointing Authority certifies will not limit displacement opportunities for affected employees.

(b) This freeze shall remain in effect until the reduction-in-force implementation ~~schedule~~ plan is posted.

530:10-13-10. Appeal of reduction-in-force

Employees may only appeal a reduction-in-force to the Merit Protection Commission on the basis of procedural errors in the application of the reduction-in-force plan of the employing agency [~~74:840-6.2(C)~~ 74:840-6.2(J)]. A reduction-in-force shall not be used as a disciplinary action.

530:10-13-11. ~~Options~~ Option in lieu of reduction-in-force

Agencies may provide voluntary out benefits to eligible ~~classified employees and eligible regular unclassified~~ employees in accordance with the provisions of Section 840-2.28 of Title 74 of the **Oklahoma Statutes.**

530:10-13-12. Severance benefits

(a) Agencies shall provide mandatory severance benefits and may provide optional severance benefits in accordance with the provisions of Section 840-2.27D of Title 74 of the **Oklahoma Statutes** to eligible classified employees, eligible classified employees on probationary status after reinstatement from permanent classified status without a break in service, and ~~eligible~~ regular unclassified employees~~, and eligible employees of the University Hospitals Authority who have been continuously employed in the state service since on or before January 1, 1995~~ who are separated as a result of the same reasons that a reduction-in-force is conducted for classified employees. Employees who are eligible for Priority Reemployment Consideration in accordance with Section 840-2.27C of Title 74 of the **Oklahoma Statutes** and Part 7 of this Subchapter who are employed by any agency

~~(1)~~ before the scheduled date of reduction-in-force separations, are not eligible for severance benefits~~;~~. Employees who are reemployed by the agency from which separated by a reduction-in-force

~~(2)~~ 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.**

(b) An agency which is separating only unclassified employees with **1** year or more continuous service for budgetary reasons may provide severance benefits pursuant to Sections 840-2.27D and 840-5.1A of Title 74 of the **Oklahoma Statutes.**

(c) An eligible employee who accepts severance benefits shall be required to sign an agreement, in a form prescribed by the Administrator, acknowledging that the employee accepts the severance benefits provided by the Appointing Authority pursuant to the provisions of Section 840-2.27D of Title 74 of the **Oklahoma Statutes.** The form provides information to the affected employee concerning his or her rights and responsibilities under Section 840-2.27E of Title 74 of the **Oklahoma Statutes.** [74:840-2.27E]

530:10-13-13. Reduction-in-Force Educational Voucher Fund

There is hereby created in the State Treasury a revolving fund for the Office of Personnel Management to be designated the "Reduction-in-Force Education Voucher Action Fund." The fund is to be used to provide education vouchers to eligible ~~classified and unclassified~~ employees exercising rights to severance benefits or voluntary out benefits in accordance with Sections 840-2.27D and 840-2.28 of Title 74 of the **Oklahoma Statutes.** The vouchers are to be used to make payment to eligible educational institutions. [74:840-2.27F]

PART 3. REDUCTION-IN-FORCE PLAN REQUIREMENTS

530:10-13-31. Abolishing positions and retaining positions

The Appointing Authority shall *determine the specific position or positions to be abolished within specified units, divisions, facilities, agency-wide or any parts thereof* [74:840-2.27C]. The Appointing Authority shall determine which vacant positions will be retained. ~~*If an agency has both classified and unclassified positions in affected job family*~~

~~*levels, the appointing authority shall not reduce a higher percentage of occupied classified positions than occupied unclassified positions*~~ [74:840-2.27C].

530:10-13-32. Order of employee removal

(a) Agency-wide, or within displacement limits, if established, retention of affected employees shall be based on job family level and type of appointment [74:840-2.27C]. Subject to eligible classified employees accepting displacement offers, unclassified employees in a job family level on limited term appointments shall be separated first, followed by employees on project indefinite appointments, followed by employees on probationary appointments with the agency, prior to the separation or voluntary demotion of any permanent classified employee from the same job family level [74:840-2.27C].

(b) Retention of permanent classified employees in affected job family levels and within displacement limits, if any are established, shall be based on years of service [74:840-2.27C].

(c) The Appointing Authority shall calculate retention points for all eligible classified employees, including those on an approved leave of absence~~, and shall rank affected classified and affected unclassified employees separately~~. Eligible classified employees with more retention points shall be ranked higher; with the order of removal from a job family level in inverse order of that ranking. If tie scores occur, the ranking of employees who have the same total retention points shall be determined by giving preference for retention according to years of service in the agency. If a tie continues to exist, retention status shall be determined by a method established by the Appointing Authority and described in the reduction-in-force implementation ~~schedule~~plan.

(d) For purposes of a reduction-in-force, any permanent classified employee on a detail to special duty shall be ranked on the basis of base job family level, not on the basis of the job to which detailed.

530:10-13-33. Calculation of retention points for years of service

(a) Affected employees shall be given credit for all current and prior service which is creditable for the Longevity Pay Plan, Section 840-2.18 of Title 74 of the **Oklahoma Statutes.** An employee shall not be required to have been continuously employed for **2** years to be given credit for either current or prior service.

(b) An employee shall be granted **1** point for each full month of full-time service. Points shall not be granted for any work in excess of full-time. Points will be prorated for each month during which the employee worked less than full-time or less than the full month. In no case shall more than **1** point per month be granted. Appointing Authorities shall make sure that pro rata computations are consistent in application and calculation within the agency.

(c) A break-in-service or leave-without-pay period of more than **30** calendar days shall not be included in the calculation of retention points unless the employee was on military leave or on leave-without-pay in accordance with Section 840-2.21 of Title 74 of the **Oklahoma Statutes.** Periods of leave without pay of **30** calendar days or less shall be counted as full-time service.

(d) The end date for the calculation of years of service shall be uniform within an agency and shall approximate the date the reduction-in-force implementation ~~schedule~~ plan is posted.

530:10-13-34. Displacement opportunities and limits

(a) **Limitations on displacement opportunities.** Except as provided in this Section, ~~Displacement~~displacement opportunities shall be offered to eligible classified employees~~ and may be offered to eligible regular unclassified employees~~. Displacement opportunities shall not be offered if the result would be to cause the displacement of a permanent classified employee with higher retention points. ~~A classified employee may not be displaced by an unclassified employee. Likewise, an unclassified employee may not be displaced by a classified employee.~~ Employees who have no displacement opportunities or who choose not to exercise a displacement opportunity, employees who do not respond to an offer in accordance with 530:10-13-37, and employees who refuse an offer shall be separated in accordance with 530:10-13-38. *The appointing authority may protect from displacement action up to twenty percent (20%) of projected post-reduction-in-force employees in affected positions within displacement limits; provided that any fractional number resulting from the final mathematical calculation of the number of those positions shall be rounded to the next higher whole number. The appointing authority must explain why affected employees are being protected.* Employees must have received an overall rating of "meets standards" on the most recent performance evaluation in order to exercise a displacement opportunity. For the purposes of this Section, employees who have not been rated within the past **12** months shall be deemed to have received an overall rating of "meets standards" on the most recent performance evaluation. [74:840-2.27C]

(b) **Offers of displacement opportunities.** Starting with the employee having the highest retention points, displacement opportunities shall be offered to eligible classified employees and to displaced employees. Such offers shall be confined within any displacement limits established by the Appointing Authority. Options available will ~~normally~~ be offered in the order listed below~~, but an Appointing Authority may provide an alternative order in a reduction-in-force plan that has been approved by the Administrator~~. If an opportunity at one level, e.g. (1)(A), does not exist, an opportunity at the next lower level, e.g. (1)(B), shall be offered, if available. *If the affected employee has not held within the last five (5) years a position in the job family level or predecessor class in which the affected employee is otherwise eligible for a displacement opportunity, the appointing authority may determine that the affected employee does not possess the recent relevant experience for the position and deny in writing the displacement opportunity.* [74:840-2.27C]

(1) Transfer within the same job family and level into a retained position which is currently:

(A) vacant and available for displacement in accordance with 530:10-13-31,

(B) held by a non-permanent employee (in order of appointment type), or

(C) held by the employee with the lowest retention points~~, subject to the restriction regarding regular unclassified employees in (a) of this Section~~.

(2) Lateral transfer to a retained position in another job family previously held in the reverse order in which they were held by the employee on a permanent basis which is currently:

(A) vacant and available for displacement in accordance with 530:10-13-31,

(B) held by a non-permanent employee (in order of appointment type), or

(C) held by the employee with the lowest retention points.

(~~2~~3) Voluntary demotion to a retained position in the next available lower level of the same job family which is currently:

(A) vacant and available for displacement in accordance with 530:10-13-31,

(B) held by a non-permanent employee (in order of appointment type), or

(C) held by the employee with the lowest retention points~~, subject to the restriction regarding regular unclassified employees in (a) of this Section~~.

(~~3~~4) Voluntary demotion to a retained lower level position in another job family previously held in the reverse order in which they were held by the employee on a permanent basis ~~while either in the employment of the agency or, if transferred to the agency by statute or executive order, the former agency,~~ which is currently:

(A) vacant and available for displacement in accordance with 530:10-13-31,

(B) held by a non-permanent employee (in order of appointment type), or

(C) held by the employee with the lowest retention points~~, subject to the restriction regarding regular unclassified employees in (a) of this Section~~.

(c) An eligible employee who exercises a displacement privilege shall be required to sign an agreement, in a form prescribed by the Administrator, acknowledging that the employee had an opportunity to receive severance benefits and affirmatively elected to exercise a displacement privilege and to forego such benefits. The form provides information to the affected employee concerning his or her rights and responsibilities under Section 840-2.27C of Title 74 of the **Oklahoma Statutes.** [74:840-2.27C(C)]

530:10-13-35. Reduction-in-force implementation ~~schedule~~ plan

As provided in Section 840-2.27C of Title 74 of the **Oklahoma Statutes** and OAC 530:10-13-3, Appointing Authorities of executive branch agencies shall post the reduction-in-force implementation ~~schedule~~plan in all offices of the agency within ~~2~~ **5** business days after ~~approval of the reduction-in-force plan by the Administrator~~ posting the reduction-in-force notice. ~~Appointing Authorities of executive branch agencies~~ A copy of the implementation plan shall ~~submit the reduction-in-force implementation schedule, including the lists described in (4) of this Section,~~ be provided to the Office of Personnel Management and the Oklahoma Merit Protection Commission ~~within 2 business days after approval of the reduction-in-force plan by the Administrator~~ no later than the time it is posted in the agency. The reduction-in-force implementation ~~schedule~~ plan is not subject to the approval of the Administrator or the Commission. ~~The~~ In addition to the information required by 530:10-13-3(b), the reduction-in-force implementation ~~schedule~~ plan shall include:

(1) a statement of the conditions necessitating the reduction-in-force;

(2) the estimated time schedule for the reduction-in-force;

(3) a description of the displacement process, and limits;

(4) ~~the location in the office where the following lists are available for review,~~ listings of affected positions and employees, to include the following information (or if such lists are not posted, the location of the office where they are available for review):

(A) all occupied and vacant positions ~~in affected job families within any displacement limits, indicating those~~ to be abolished~~ and those available for displacement~~, showing in each case: geographical and administrative location, job family, level, and pay band for the position; the name, job family, level, and pay band, ~~appointment type, and rate of pay~~ of the incumbent; and, for permanent employees, retention points and other lateral or lower level job families ~~and levels~~ in which the employee previously held permanent status~~ while in the continuous classified service of the agency (and if transferred to the agency by statute or executive order, the former agency)~~, listed in the reverse order in which they were held;

(B) all ~~other~~ positions and employees~~ in affected job families~~ which are subject to displacement, showing the same information;

(C) other occupied and vacant positions and employees in affected job families, showing the same information. The agency may include all other positions in the agency in affected job families or may limit posting to ten percent of positions occupied by employees with the least number of retention points based on longevity dates in affected job families, and

(~~C~~D) all retained funded vacant positions anywhere in the agency~~;~~

~~(D) all affected job families, and unclassified jobs grouped by series~~;

(5) the schedule and procedure to be followed if an eligible employee chooses to accept ~~any~~ a displacement offer for transfer or voluntary demotion in lieu of separation;

(6) the agency policy on issues related to partial payment of moving expenses for transferred employees in accordance with Section 500.51 of Title 74 of the **Oklahoma Statutes**;

(7) such other information as the Appointing Authority deems appropriate; and

(8) the method established by the Appointing Authority to break ties in retention points.

530:10-13-36. Written notice to employees

Appointing Authorities of executive branch agencies shall provide individual written notice to ~~an~~ affected ~~employee~~ employees in abolished positions within ~~**14**~~ **5** calendar days after ~~approval of the reduction-in-force plan by the Administrator~~ posting of the implementation plan. Other employees affected through the exercise of a displacement opportunity shall be notified within **5** calendar days after being identified as being displaced. The written notice to employees shall:

(1) provide a description of the employee's retention status, including retention points calculation~~,~~;

(2) offer an opportunity to notify a specified agency official in writing of any possible errors in the retention points calculation, and to request in writing a meeting with supervisors or agency officials;

(3) include the effective date of separation and~~, if applicable,~~ instructions for ~~electing transfer or voluntary demotion in lieu of separation in response to a specific offer,~~ exercising a displacement opportunity, if one is available; and

(4) provide notice of appeal rights for classified employees in accordance with 530:10-13-10.

530:10-13-37. Exercise of displacement privileges

To exercise a displacement privilege in lieu of separation, eligible employees shall follow the schedule and procedure included in the reduction-in-force implementation ~~schedule~~ plan. Such procedure shall provide employees no less than **24** hours to respond following their receipt of a specific offer. An Appointing Authority may require employees to submit specific requests for transfer or voluntary demotion in writing, either by mail or in individual or group meetings.

PART 5. RECALL RIGHTS

530:10-13-50. Eligibility for recall

(a) ~~Eligible~~Consistent with any displacement limits adopted pursuant to Section 840-2.27C of Title 74 of the Oklahoma Statutes, permanent classified employees and employees in probationary status after reinstatement from permanent classified status without a break in service who are removed from a job family level as a result of a reduction-in-force in an agency shall be eligible for recall by that agency to the job family level from which removed for **18** months after the effective date of separation or demotion [74:840-2.27C]. ~~Regular unclassified employees who are removed from a position as a result of a reduction-in-force in an agency shall normally be eligible for recall by that agency to the position from which removed for **18** months after the effective date of separation or demotion; however, an Appointing Authority may alternatively exclude unclassified employees from recall provisions in a reduction-in-force plan approved by the Administrator.~~

(b) If there are persons eligible for recall to a job family level, an Appointing Authority may not appoint or reclassify persons to the job family level from the employment register, by internal action, such as promotion or reinstatement, or from Priority Reemployment Consideration Rosters [840-2.27C]. However, an Appointing Authority may reclassify an employee by involuntary demotion for cause to a job family level for which there is a recall list. The salary of a recalled ~~permanent classified~~ employee shall be set in accordance with 530:10-7-8.

(c) Affected employees ~~who accept severance benefits:~~

~~(1) are eligible for recall in accordance with the provisions of Section 840-2.27C of Title 74 of the **Oklahoma Statutes,**~~

~~(2)~~ who are ~~employed~~ reemployed by ~~any~~ the agency from which separated as a result of a reduction-in-force 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 recall.

530:10-13-51. Order of recall

Individuals who are eligible for recall shall be ranked in order of their retention points at the time the reduction-in-force implementation ~~schedule~~ plan is posted, from high to low. [74:840-2.27C(E)] Offers of recall as described in 530:10-13-50 for classified positions shall be made first to the eligible individual~~, who was formerly a permanent classified employee,~~ having the highest retention points, regardless of whether the individual was separated or ~~voluntarily demoted~~ was removed from the job family level by voluntary demotion or lateral transfer to another job family level. ~~If an Appointing Authority grants recall rights to unclassified employees in accordance with Section 840-2.27C(E) of Title 74 of the **Oklahoma Statutes** and 530:10-13-50, an eligible individual, who was removed as an unclassified employee, shall have recall rights only to unclassified positions. Likewise, an eligible individual, who was removed as a classified employee, shall have recall rights only to classified positions.~~

PART 7. PRIORITY CONSIDERATION FOR REEMPLOYMENT

530:10-13-70. Eligibility for priority reemployment consideration

(a) Permanent classified employees, ~~regular unclassified full-time employees with 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~~plan 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~~notice and implementation ~~schedule~~plan 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 [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 [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~~ reemployed ~~by any agency~~ less than **1** year after receiving severance benefits by the agency from which they separated 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.

530:10-13-72. Conditions of employment and entrance salary

Persons who are appointed from a Priority Reemployment Consideration Roster shall be employed in accordance with 530:10-9-102, if they are eligible for reinstatement as provided in that Section. The entrance salary of such persons shall be fixed in accordance with 530:10-7-4. ~~Persons appointed from a Priority Reemployment Consideration Roster, who were in the unclassified or exempt service at the time of separation and ineligible for reinstatement as provided in 530:10-9-102, shall be employed in accordance with 530:10-11, Part 3. The entrance salary of such persons shall be at the hiring rate established by the agency for the job to which appointed.~~

SUBCHAPTER 15. TIME AND LEAVE

PART 3. ANNUAL AND SICK LEAVE POLICIES

530:10-15-11. Annual leave

(a) Annual leave is intended to be used for vacations, personal business, and other time off work not covered by other paid leave or holiday provisions. An employee may charge family and medical leave, taken in accordance with 530:10-15-45, against annual leave accumulations.

(b) Eligible employees shall accrue annual leave ~~on a calendar month basis~~ based upon hours worked (excluding overtime), paid leave, and holidays [74:840-2.20] in accordance with 530:10-15-10 and the provisions in this subsection, not to exceed the total possible work hours for the month. The hourly rate is equal to the annual accrual divided by the number of work hours in the current year. Annual leave earned during one month shall not be available for use until the beginning of the next month.

(1) Annual leave shall be applied for by the employee and shall be used only when approved by the Appointing Authority.

(2) Part-time employees shall accrue annual leave in an amount proportionate to that which would be accrued under full-time employment [74:840-2.20].

(3) Annual leave earned during a pay period shall be prorated ~~in accordance with the days~~ based upon the number of hours (excluding overtime hours) an employee is on the payroll [74:840-2.20].

(4) An Appointing Authority may require an employee to take annual leave whenever in the administrative judgment of the Appointing Authority such action would be in the best interests of the agency; except that the employee shall not be required to reduce accrued annual leave below **5** days. An Appointing Authority shall not apply this rule in lieu of 530:10-11-120. Leaves of absence for internal investigatory purposes shall be administered according to 530:10-11-120.

(5) Unused accrued annual leave shall be accumulated for no more than the maximum leave accumulation limits specified in 530:10-15-10, except as provided in this paragraph. At the discretion of the Appointing Authority, employees may accumulate more than the maximum annual leave accumulation limits shown in the schedule, provided that such excess is used during the same year in which it accrues. Employees shall not be paid for excess leave above the accumulation limit; such excess accumulations shall be used for leave purposes in the agency where it was accrued or, if an employee was transferred to an agency by statute or executive order, in the agency to which the employee was transferred regardless of where the leave was accrued, only while the employee is continuously employed.

(6) Annual leave shall not be taken in advance.

(7) An employee who transfers to another agency may have accrued annual leave transferred at the option of the Appointing Authority to which transferred, or such Appointing Authority may require that all or a portion of the annual leave be paid by the agency from which the employee is transferred before the transfer. The amount of annual leave paid by the agency from which the employee is transferred and the amount of annual leave transferred with the employee shall not exceed the accumulation limits established in Section 840-2.20 of Title 74 of the **Oklahoma Statutes.**

(8) Any employee who is separated from the state service shall be paid or shall have payment made to the employee's estate for any annual leave accumulated up to and including the accumulation limit except as otherwise provided in the Merit Rules. Employees who resign from

a classified position to accept an unclassified position within the same agency, and employees who resign an unclassified position to accept a classified position within the same agency, are ineligible for payment of accrued annual leave.

(9) Annual leave shall be charged against an employee's annual leave balance based on the amount of time an employee is absent from work during the employee's assigned work schedule. Holidays falling within a period of annual leave shall not be charged to annual leave.

(10) Any probationary or permanent employee who leaves the employ of an agency shall receive payment for the accrued number of hours of annual leave in accordance with the hourly rate. Payment may only be withheld pending settlement of a legal debt to the agency. If a person is reemployed by the State within a period of **30** calendar days from the date of separation, any portion of the accumulated annual leave which has not yet been paid may be reinstated.

530:10-15-12. Sick leave

Eligible employees shall accrue sick leave ~~on a calendar month basis~~ based upon hours worked (excluding overtime), paid leave, and holidays [74:840-2.20(1)] according to 530:10-15-10 and this Section, not to exceed the total possible work hours for the month. The hourly rate is equal to the annual accrual divided by the number or work hours in the current year. Sick leave earned during one month shall not be available for use until the beginning of the next month.

(1) Sick leave means a period when the employee cannot work because of sickness, injury, pregnancy, or medical, surgical, dental or optical examination, or treatment, or where the employee's presence at work would jeopardize the health of the employee or others. An employee may charge family and medical leave, taken in accordance with 530:10-15-45, against sick leave accumulations.

(2) An employee shall not use sick leave for annual leave.

(3) An employee shall not use sick leave before it is accrued.

(4) Immediately on return to work, an employee who has been absent on sick leave shall give the Appointing Authority a signed statement that the absence was due to reasons listed in (1) of this Section. If an absence exceeds **3** working days, the employee shall give the Appointing Authority a physician's statement unless the Appointing Authority waives it. For shorter absences, the Appointing Authority may require the employee to supply proof the absence was consistent with (1) of this Section. Sick leave shall not be granted until approved by the Appointing Authority. An Appointing Authority shall approve sick leave unless there are facts to show that an employee abused sick leave privileges or the employee failed to supply requested evidence of illness.

(5) Sick leave shall be charged against an employee's sick leave balance based on the amount of time an employee is absent from work during the employee's assigned work schedule. Holidays, or the scheduled days off for holidays, occurring within a period of sick leave shall not be charged to sick leave.

(6) Sick leave earned during a pay period shall be prorated according to the ~~days~~ number of hours (excluding overtime) an employee is on the payroll [74:840-2.20(1)].

(7) Part-time employees shall accrue sick leave in an amount proportionate to that which would have accrued under full-time employment [74:840-2.20(1)].

(8) When an employee transfers from one agency to another, the Appointing Authority of the receiving agency shall give the employee credit for all unused sick leave accumulations.

(9) Employees shall not be compensated for accumulated sick leave when they separate from state service.

(10) If an absence because of illness or injury extends beyond the sick leave an employee has accumulated, the Appointing Authority may charge additional absence to the employee's annual leave accumulations.

(11) Unless it is against the law, an Appointing Authority shall approve sick leave when an employee is absent due to illness or injury and receiving Oklahoma State Workers Compensation benefits.

(12) If an employee leaves the state service on or after October 1, 1992, and is reemployed within a period of **2** years from the date of separation, the Appointing Authority may reinstate all or a part of the unused sick leave accumulated during the previous period of continuous employment with the state [74:840-2.20(6)].

(13) There is no limit on sick leave accumulations.

PART 5. MISCELLANEOUS TYPES OF LEAVE

530:10-15-43. Holidays

(a) Holidays shall be granted in accordance with state law and the Governor's proclamations as they are observed by the individual agencies in accordance with their work load and policies.

(b) To be eligible to receive holiday pay, an employee shall be in pay status or on furlough for the entire regularly-scheduled workday either the workday before or the workday after the holiday. An employee shall not be eligible to be paid for holidays which occur either before the employee's entry on duty date or after the last day the employee works. The receiving Appointing Authority shall pay an employee who transfers from another agency for any holidays occurring after the last day worked in the sending agency. An employee who is recalled, reemployed, or reinstated shall not be paid for any holiday occurring after the last day worked while previously employed and before entry on duty.

(c) Appointing Authorities shall pay full-time employees for holidays based on an **8**-hour workday. Full-time employees who are eligible for holiday pay under (b) of this Section and who are scheduled to work either more or less than **8** hours on a holiday shall receive the equivalent of **8** hours of holiday pay or compensatory time off.

(d) Appointing Authorities shall prorate holiday pay for part-time employees based on one of the following methods:

(1) Holiday pay as a percentage of normally scheduled hours worked divided by full-time hours; or

(2) Holiday pay equal to regular pay for hours normally worked if a holiday occurs on a normally scheduled work day.

(e) If a full-time or part-time employee's scheduled hours worked plus holiday hours total less than the employee's normally scheduled hours during the workweek, the Appointing Authority shall account for the difference exercising one or more of the following options:

(1) Work additional hours during the same workweek;

(2) Charge to accumulated annual leave; or

(3) Record as leave without pay under 530:10-15-47.

(f) If an employee's scheduled hours worked plus holiday hours are more than **40** hours in a workweek, the Fair Labor Standards Act requires that only hours actually worked be counted as hours worked in accordance with the Fair Labor Standards Act and 530:10-7-12.

(g) For employees who are scheduled to work on a holiday and for employees whose regular day off falls on a holiday, the Appointing Authority shall either:

(1) reschedule the employee's holiday to be taken within **180** days; or

(2) pay the employee for the holiday based on an **8**-hour workday times the employee's base rate of pay at the time of payment.

(h) An Appointing Authority may request an extension of the **180** days for taking holiday time off up to an additional **180** days providing the Appointing Authority submits proper documentation to the Office of Personnel Management justifying the extension. All extensions are subject to the approval of the Office of Personnel Management.

530:10-15-45. Family and medical leave

(a) The federal Family and Medical Leave Act of 1993 entitles eligible employees to family and medical leave. This section is not a comprehensive listing of the provisions of the federal Family and Medical Leave Act of 1993 (29 U.S.C, ~~2654~~ 2601 et seq.) and regulations promulgated thereunder, and is not intended to conflict with either the Act or the regulations. To be eligible, an employee shall have been employed by the state at least **12** months and have worked at least **1,250** hours during the preceding **12**-month period.

(b) An eligible employee is entitled to family and medical leave for up to a total of **12** weeks during any **12**-month period, for the following reasons:

(1) the birth of the employee's son or daughter, and to care for the newborn child;

(2) the placement with the employee of a son or daughter for adoption or foster care;

(3) to care for the employee's spouse, son, daughter, or parent with a serious health condition. As used in this subsection, "son" or "daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability; and

(4) a serious health condition that makes the employee unable to perform the functions of the employee's job.

(c) An Appointing Authority may require that an employee's request for family and medical leave to care for the employee's seriously-ill spouse, son, daughter, or parent, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a certification issued by the health care provider of the employee or the employee's ill family member.

(d) The entitlement to family and medical leave resulting from (b)(1) and (b)(2) of this Section expires at the end of the **12**-month period beginning on the date of the birth or placement.

(e) When family and medical leave is taken to care for a sick family member as defined in (b)(3) of this Section or for an employee's own serious health condition, leave may be taken intermittently or on a reduced leave schedule when it is medically necessary. An Appointing Authority may adopt a policy allowing family and medical leave to be taken intermittently to care for a newborn child or newly placed adopted or foster child.

(f) Whenever it is possible, an employee shall schedule family and medical leave to accommodate the operations of the employee's agency. An employee shall give the Appointing Authority notice and a leave request at least **30** days before leave is to begin if the need for family and medical leave is expected. When the need for family and medical leave is unexpected, an employee shall give the Appointing Authority notice and a leave request as soon as possible. The notice and request shall:

(1) be in writing;

(2) refer to this Section;

(3) describe the reason for the family and medical leave;

(4) specify the type of leave the employee is requesting to account for the time off; and

(5) include any information or documentation required for the type of leave requested.

(g) The Appointing Authority has the responsibility to review requests for sick leave and leave without pay for designation as family and medical leave. The Appointing Authority has the right to designate leave taken for an FMLA-qualifying event as FMLA leave, regardless of whether the employee has requested FMLA leave. The Appointing Authority's designation decision shall be based only on information provided by the employee or the employee's spokesperson. In accordance with the federal Family and Medical Leave Act, the Appointing Authority shall not designate leave as family and medical leave retroactively, unless the Appointing Authority does not have sufficient information concerning the employee's reason for taking the leave until after the leave period has begun.

(h) Family and medical leave is not a separate type of leave, and it is not accrued or accumulated. An Appointing Authority shall give employees the following options to account for time

lost because of leave under the federal Family and Medical Leave Act of 1993.

(1) Charge to accumulated annual leave [74:840-2.22];

(2) Charge to accumulated sick leave [74:840-2.22];

(3) Charge to leave donated by other state employees under Section 840-2.23 of Title 74 of the **Oklahoma Statutes**, which is also known as "shared leave"; and

(4) Record as leave without pay in accordance with 530:10-15-47.

(i) The agency shall continue paying the employee's insurance coverage while the employee is on family and medical leave.

(j) Upon return from family and medical leave, an employee shall have the right to be restored to the same or equivalent position and benefits, except for extension of his or her anniversary date for longevity pay, leave accrual, and calculation of retention points, he or she would have had if the employee had been continuously employed in pay status during the leave period.

(k) An employee shall not be required to take more leave than necessary to resolve the circumstance that precipitated the need for leave.

530:10-15-49. Leave and first preference due to work related illness or injury

(a) **Purpose.** The purpose of this Section is to interpret Section 840-2.21 of Title 74 of the **Oklahoma Statutes** (Section 840-2.21). Section 840-2.21 establishes the rights and benefits of state employees who are absent from work because of an illness or injury arising out of and sustained in the course of employment with the State. These employees have a right to return to work if certain conditions are met. **In applying Section 840-2.21 and this Section, employing agencies shall return an employee to work as soon as possible, either to the original position or to an alternate position if an employee, with reasonable accommodation, is unable to return to the original position.**

(b) **Employee eligibility.** This Section applies to all eligible probationary and permanent classified and regular unclassified employees. It does not apply to unclassified employees on temporary and other limited term appointments. An employee shall file a claim for workers compensation benefits to be eligible [74:840-2.21].

(c) **Termination of rights.** All rights and benefits under Section 840-2.21 and this Section shall end **1** year after the start of leave without pay under this Section and shall end immediately if the claim for workers compensation is denied or canceled within the **1** year period [74:840-2.21].

(d) **Employing agency practice, policy, and procedure.** An agency's policy, procedure and practice affecting employees who file claims for workers compensation benefits shall agree with Section 840-2.21**.**

(e) **Required notice to employees.** Appointing Authorities shall give employees who report a job related illness or injury copies of this Section, Section 840-2.21, and the agency's policies and procedures for complying with this Section and the law. The procedures shall include instructions about requesting leave without pay under Section 840-2.21.

(f) **Placement of employee on leave without pay.** Appointing Authorities shall refer to this Section when they place an employee on leave without pay under Section 840-2.21. The Appointing Authority shall not require employees to exhaust paid sick and annual leave accumulations before placing them on leave without pay [74:840-2.21]. The Appointing Authority shall continue paying the employee's basic plan insurance coverage and dependent insurance benefit allowance while the employee is on leave without pay, and the leave shall not be a break in service [74:840-2.21].

(g) **Medical reports.** At least every **3** months, an employee on leave without pay under this Section shall give the Appointing Authority a medical statement as to his or her ability to perform the essential duties of the original position [74:840-2.21]. The medical statement shall be made by a physician as defined in Section 14 of Title 85 of the **Oklahoma Statutes.**

(h) **Inability to perform essential duties of original position.** If an employee on leave without pay under this Section cannot perform the essential duties of the original position, the employing agency shall give the employee first preference for other classified and unclassified positions according to Section 840-2.21.

(1) Appointing Authorities shall establish a procedure for giving employees on leave without pay under this Section first preference to fill classified and unclassified positions that do not represent a promotion to the employee, if the employee is medically able to do the essential duties and has the minimum qualifications for positions the Appointing Authority seeks to fill.

(2) The Appointing Authority's procedure shall include either notifying an employee of all vacant classified and unclassified positions the Appointing Authority seeks to fill or allowing the Appointing Authority and the employee to agree on notice for specific positions or jobs. The procedure may require employees to submit medical reports stating their ability to perform the essential duties of specific positions or groups of positions. The Appointing Authority shall give a copy of the procedure to each employee on leave without pay under this Section.

(3) Appointing Authorities do not have to notify employees on leave without pay under this Section when the Appointing Authority fills a vacant position temporarily (by temporary unclassified appointment or detail to special duty).

(4) Before an Appointing Authority may give a classified or unclassified employee first preference for a classified position, the employee shall be certified by the Office of Personnel Management as meeting the minimum qualifications. Neither classified nor unclassified employees shall be required to compete through the open competitive process for a classified position. The Appointing Authority shall submit the necessary paperwork to the Office of Personnel Management for review.

(5) Before an Appointing Authority assigns an employee to an alternate position (a position that is not the original position), the Appointing Authority shall give the employee written notice of the requirement to return to the original position under (i) of this Section. While in

an alternate position, an employee shall submit medical reports at least every **3** months and whenever the medical condition changes enough to affect his or her ability to return to the original position.

(i) **Return to original position.** An employee on leave without pay or working in an alternate position shall have the right to return to his or her original position according to this Section and Section 840-2.21. When a medical report indicates the employee is able to perform the essential duties of the original position, with or without reasonable accommodation, the Appointing Authority shall return the employee to the original position. The employee and the Appointing Authority may agree in writing to waive the requirement to return the employee to the original position from an alternate position.

(j) **Failure to return to work.**

(1) The Appointing Authority may discipline a permanent classified employee or a probationary classified employee or an unclassified employee if:

(A) a medical report states the employee is able to do the essential duties of the original position or an alternate position (for which the employee is qualified); and

(B) the employee does not return to work within **7** days after the Appointing Authority mails a notice to the employee's last known address or delivers a notice to the employee.

(2) If an employee does not return to the original position or an alternate position within **1** year after the start of leave without pay, the Appointing Authority may terminate the employee under Section 840-2.21. An Appointing Authority that uses Section 840-2.21 as authority to terminate an employee shall give the employee a copy of (k) of this Section. Termination of a permanent classified employee under this Section is subject to the pretermination hearing requirements of Section 840-6.4 of Title 74 of the **Oklahoma Statutes.**

~~(3) If Section 5 (A)(2) of Title 85 of the **Oklahoma Statutes** prevents the Appointing Authority from terminating the employee, the Appointing Authority shall place the employee on leave without pay according to that law. The rights and benefits of this Section and Section 840-2.21 shall no longer apply.~~

(k) **Reinstatement upon separation.** A classified employee shall be eligible for reinstatement to either classified or unclassified employment with any state agency for **12** months after the date of separation under (j)(2) of this Section. An unclassified employee shall be eligible for reinstatement to unclassified employment with any state agency for **12** months after the date of separation under (j)(2) of this Section. This does not reduce eligibility under other general reinstatement or reemployment laws or rules, such as 530:10-9-102. [74:840-2.21]

SUBCHAPTER 17. EMPLOYEE PERFORMANCE MANAGEMENT SYSTEM AND CAREER ENHANCEMENT PROGRAMS

PART 3. ~~EMPLOYEE~~ PERFORMANCE ~~MANAGEMENT~~ EVALUATION 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.

(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].

(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 retained in the employee's personnel file* [74:840-4.17].

(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.

(h) On or before each January 1st, Appointing Authorities shall confirm their agency's compliance with the requirements of 74:840-4.17 to the Administrator. The confirmation shall be conveyed on a form prescribed by the Administrator.

PART 7. CARL ALBERT PUBLIC INTERNSHIP PROGRAM

530:10-17-74. Undergraduate internship program

(a) **Eligibility.** The undergraduate internship program consists of temporary positions for students enrolled in institutions of higher education ~~within the state~~ and working toward an undergraduate degree [74:840-3.4(1)]. To be considered for eligibility determination, applicants shall have completed at least **24** semester hours of coursework with at least a **2.5** cumulative grade point average on a **4.0** scale. Applicants shall follow the procedures in 530:10-17-77 for eligibility determination.

(b) **Conditions of employment.** Participants in the Undergraduate Internship Program who receive internship appointments shall:

(1) be employed in accordance with paragraph 8 of Section 840-5.5 of Title 74 of the Oklahoma Statutes, for not more than 2 semesters or 999 hours,

(2) continue making progress toward an undergraduate degree,

(3) maintain the grade point average set out in (a) of this Section, and

(4) complete the training requirements described in (d)(3) of this Section.

(c) **Benefits.** Undergraduate interns shall not be eligible for paid leave, or health and retirement benefits.

(d) **Responsibilities of appointing authorities.**

(1) The Appointing Authority or designee shall ensure that the intern provides written verification to the Office of Personnel Management that the intern is:

(A) continuing to make progress toward an undergraduate degree during each semester employed, and

(B) maintaining the grade point average set out in (a) of this Section.

(2) If this information is not transmitted to the Office of Personnel Management within **30** days after the end of the previous semester, the Administrator shall notify the Office of State Finance and the Appointing Authority of the termination of the internship agreement in accordance with Section 530:10-17-82(a).

(3) Each Appointing Authority shall provide a minimum of 4 clock hours of job-related training for undergraduate interns during the internship, in addition to the training coordinated by the Administrator, and shall provide verification to the Office of Personnel Management of the completion of the training requirements.

530:10-17-75. Executive Fellows program

(a) **Eligibility.** An Executive Fellows Program consists of six-month to two-year placements in professional or managerial level positions for students [74:840-3.4(2)]. No person is eligible to participate in the Executive Fellows program for more than **2** years. To be considered for eligibility determination, applicants shall have completed a baccalaureate degree and at least **6** semester hours of graduate level coursework with at least a **3.0** grade point average on a **4.0** scale [74:840-3.4(2)(a)] or a **7.0** on a **12.0** scale in all graduate level coursework. Applicants shall follow the procedures in 530:10-17-77 for eligibility determination.

(b) The Administrator may waive the completion of **6** semester hours of graduate level coursework required by subsection (a) of this section for **1** semester, if:

(1) An individual currently employed by a state agency as a Carl Albert Public Internship Program undergraduate intern provides written verification to the Office of Personnel Management that he or she has:

(A) completed an undergraduate degree, and

(B) is enrolled in **6** semester hours of approved graduate level work; and

(2) The Appointing Authority or designee of the agency where the undergraduate intern is currently employed certifies in writing on a form provided by the Office of Personnel Management that the agency intends to employ the undergraduate intern as a Carl Albert Public Internship Program Executive Fellow immediately upon the undergraduate intern's completion of an undergraduate degree.

(c) The appointment of an Executive Fellow in accordance with subsection (b) is not effective until the Administrator approves:

(1) the waiver of the **6** semester hours of graduate level coursework; and

(2) an Executive Fellow agreement form prepared by the Appointing Authority in accordance with 530:10-17-77(f).

(d) At the end of the semester for which the waiver of the **6** semester hours of graduate level coursework was approved by the Administrator pursuant to subsection (b), the individual employed as a Carl Albert Public Internship Program Executive Fellow shall meet the eligibility requirements in subsection (a) of this section or be removed from the Carl Albert Public Internship Program. [74:840-3.5]

(~~b~~e) **Conditions of employment.** Participants in the Executive Fellows Program who receive internship appointments shall:

(1) be appointed in accordance with paragraph 10 of Section 840-5.5 of Title 74 of the **Oklahoma Statutes** [74:840-3.5(4)],

(2) be granted leave benefits commensurate with regular state employees [74:840-3.5(4)],

(3) be enrolled in the state health insurance and retirement benefits programs, if expected to work one thousand (1,000) or more hours per year,

(4) continue to make scholastic progress toward their graduate degrees during each fall and spring semester until completion of all graduate degree requirements,

(5) maintain the grade point average set out in (a) of this Section, and

(6) complete the training requirements described in (c)(3) of this Section.

(~~e~~f) **Responsibilities of appointing authorities.**

(1) The Appointing Authority or designee shall ensure that the intern provides written verification to the Office of Personnel Management that the intern is:

(A) continuing to make scholastic progress toward a graduate degree, until completion of all graduate degree requirements, and

(B) maintaining the grade point average set out in (a) of this Section.

(2) If this information is not transmitted to the Office of Personnel Management within **30** days after the end of the previous semester, the Administrator shall notify the Office of State Finance and the Appointing Authority of the termination of the internship agreement in accordance with Section 530:10-17-82(a).

(3) Each Appointing Authority shall provide a minimum of **8** clock hours of job related training for Executive Fellows during each **6**-month period, in addition to the training coordinated by the Administrator, and shall provide verification to the Office of Personnel Management of the completion of the training requirements.

(4) Each Appointing Authority *shall rate the performance of participants in the Executive Fellows Program in accordance with Section 840-4.17* of Title 74 of the Oklahoma Statutes. [74:840-3.4]

PART 15. STATE MENTOR PROGRAM

530:10-17-156. Agency rotations

(a) **State Personnel Interchange Program.** Rotation assignments shall be accomplished through the State Personnel Interchange Program, Section 840-3.9, et seq. of Title 74 of the Oklahoma Statutes.

(b) **Length of rotations.** Each Mentor Executive shall ~~complete a two-year~~ be assigned to a management rotation ~~assignment which consists of six months in any or all of the following entities:~~ in any state agency accepting the Mentor Executive, and the Mentor Executive's sending agency, provided that each agency rotation shall not exceed six months. Rotational assignments may be consecutive or intermittent and shall not exceed a total of **24** months for all rotations combined.

~~(1) the sending agency;~~

~~(2) one or both houses of the Legislature;~~

~~(3) the Office of State Finance;~~

~~(4) the Governor's Office;~~

~~(5) the Office of Personnel Management; and~~

~~(6) any other agency accepting the Mentor Executive.~~

(c) **Work assigned during rotations.** Each agency participating in the State Mentor Program shall assign the Mentor Executive to a policy-level manager during the period he or she is completing a management rotation in that agency.

(d) **Compensation during rotations.**

(1) The Administrator shall establish minimum compensation for Mentor Executives. The sending agency and each agency in which the Mentor Executive is completing his or her management rotation may share the compensation of the Mentor Executive or either agency may pay the total amount.

(2) If a state employee's salary is below the minimum salary for the Mentor Executive job family, the employee's salary shall be increased to that minimum. A state employee's salary shall not be reduced because of his or participation in the State Mentor Program.

(e) **FTE limitations.** Employees participating in the State Mentor Program shall be exempt from any full-time-equivalent limitations established by law.

(f) **Intercession by the Office of Personnel Management.** *The Administrator of the Office of Personnel Management may intercede in mentor executive rotational assignments if the Administrator determines that the assignments are not functioning in accordance with guidelines established for the state mentor program. The result of the intercession may include, but is not limited to, reassignment or removal from the program.* [74:840-3.8]

(g) **Completion of rotation assignment.** At the end of a two-year management rotation assignment or sooner, if a Mentor Executive is unable to complete the entire two-year management rotation assignment, a Mentor Executive shall be entitled to return to the previous job family or its successor job family, if one exists in the sending agency. Otherwise, the reduction-in-force provisions of Section 840-2.27C of Title 74 of the Oklahoma Statutes shall apply.

PART 17. STATE WORK INCENTIVE PROGRAM

530:10-17-177. Conversion

(a) **Eligibility.** Persons employed by merit system agencies under the State Work Incentive Program shall be eligible for conversion to permanent classified status at the discretion of the Appointing Authority if the employee has:

(1) completed **2** years of continuous participation in the State Work Incentive Program, not including periods of leave without pay in accordance with 530:10-17-175;

(2) performed satisfactorily as evidenced by performance evaluations conducted according to Section 840-4.17 of Title 74 of the Oklahoma Statutes;

(3) met the minimum requirements for the position; and

(4) passed any entrance examination required for the applicable job family level by the Office of Personnel Management.

(b) **Direct conversion.** Direct conversion means the conversion of an employee to permanent classified status immediately following the successful completion of **2** years service under the State Work Incentive Program. Conversion shall be to a job consistent with the duties assigned to the employee under the State Work Incentive Program.

~~(c)~~ The conversion of employees ~~hired under the State Work Incentive Program~~ who meet the requirements of subsection (a) to permanent classified status shall be exempt from:

(1) the application, certification, and appointment requirements of Subchapter 9 of these rules;

(2) the probationary period requirements of Part 3 of Subchapter 11 of these rules; and

(3) the promotional posting requirements of Part 5 of Subchapter 11 of these rules.

(c) **Conversion following a break in service or to a different job.** If an employee completes a **2** year appointment under the State Work Incentive Program and is separated from the unclassified appointment under this program without being directly converted, the employee will be eligible for future appointment for up to **2** years following the completion of the State Work Incentive Program and eligible persons may make application for employment directly with state agencies. Additionally, a person may be converted to a different job which is not consistent with the duties and responsibilities performed under the State Work Incentive Program appointment subject to the following conditions. Prior to appointment and conversion of a person under this authorization, the agency shall meet the internal positing requirement of Part 5 of 530:10-11 and may require a probationary period in accordance with 530:10-9-102. The following requirements must also be met:

(1) The Administrator must certify that the person meets the current minimum qualifications for the job;

(2) The Administrator may require the person to pass a qualifying examination before approving the appointment;

(3) The date the person enters on duty must be within **2** years after the completion of the State Work Incentive Program appointment; and

(4) The probationary period must be in accordance with 530:10-11-30.

(d) **Salary upon conversion.** If there is no break in service and conversion is to a job which is consistent with the duties and responsibilities performed during the State Work Incentive Program appointment, the salary shall be fixed at the rate of pay in effect for the employee at the time of conversion. If the conversion is to a different job, or the conversion follows a break in service, the salary shall be determined in accordance with 530:10-7-3.

SUBCHAPTER 21. EMPLOYEE ASSISTANCE PROGRAMS

PART 1. GENERAL PROVISIONS

530:10-21-5. EAP records

(a) Records and information that relate to participation by an employee or family member in the EAP *shall be confidential* except as provided in Subsection (b) of this Section ~~[74:840-2.10(D)]. Such records shall not be subject to subpoena [74:840-2.10(D)], and no subpoena or subpoena duces tecum (subpoena for the production of documents) purporting to compel disclosure of such information or record shall be valid.~~ [*N]either the records nor the testimony of an Employee Assistance Program professional shall be subject to subpoena unless a participant poses a threat to deliberately harm the participant or others.* [74:840-2.10(D)]

(b) EAP staff and EAP professionals may have access to EAP records within their agency as necessary to perform the duties and responsibilities of their job. EAP staff and EAP professionals may disclose confidential information relating to a participant under the following circumstances:

(1) The participant consents in writing to the release of information;

(2) The participant's employing agency requests verification of an employee's appointment with an EAP professional for the purpose of granting authorized absence according to 530:10-21-7. The disclosure shall be limited to the date and time of the employee's appointment with the EAP professional;

(3) The EAP professional determines that the participant poses a threat to deliberately harm the participant or others [74:840-2.10(D)];

(4) There is *reason to believe that a child under the age of eighteen (18) years has had physical injury or injuries inflicted upon the child by other than accidental means where the injury appears to have been caused as a result of physical abuse, sexual abuse, or neglect* [21:846(A)];

(5) There is *reason to believe that an elderly person or incapacitated adult is suffering from abuse, neglect, or financial exploitation* [43A:10-104(A)];

(6) A court of competent jurisdiction orders the inspection, release, or disclosure of confidential information.

(c) Records and information relating to participation by an employee in the EAP *shall be maintained separate and apart from regular personnel records and shall not become part of the employee's personnel file* [74:840-2.10(D)].

(d) Participants in the EAP shall have a right of access to their own EAP records [74:840-2.10(D)].

(e) The provisions of this Section shall remain effective regardless of whether the participant has ceased participation in the EAP or has terminated employment with the state.

APPENDIX B. SCHEDULE OF ANNUAL AND SICK LEAVE ACCRUAL RATES AND ACCUMULATION LIMITS [REVOKED]

APPENDIX B. SCHEDULE OF ANNUAL AND SICK LEAVE ACCUMULATION LIMITS AND YEARLY ACCRUALS [NEW]

ANNUAL AND SICK LEAVE ACCUMULATION LIMITS AND YEARLY ACCRUALS
[74:840-2.20(2)]
Note: "Days" refers to 8-hour working days.

	Annual Leave		Sick Leave	
Years of Cumulative Service	**Yearly Accrual**	**Accumulation Limit**	**Yearly Accrual**	**Accumulation Limit**
Less than 5 years	15 days/year	30 days*	15 days/year	No limit.
5 but less than 10 years	18 days/year	60 days*	15 days/year	No limit.
10 to 20 years	20 days/year	60 days*	15 days/year	No limit.
Over 20 years	25 days/year	60 days*	15 days/year	No limit.

*Except as provided in 530:10-15-11(b)(5)

Note: Accrual rate is an hourly rate equal to the annual accrual divided by the number of work hours in the current year.

[OAR Docket #04-1130; filed 6-9-04]

TITLE 530. OFFICE OF PERSONNEL MANAGEMENT
CHAPTER 15. VOLUNTARY PAYROLL DEDUCTION RULES

[OAR Docket #04-1131]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
530:15-1-1. [AMENDED]
530:15-1-2. [AMENDED]
Subchapter 3. Administrative Provisions
530:15-3-7.2. [NEW]
530:15-3-11. [NEW]
530:15-3-14. [NEW]
530:15-3-15. [RESERVED]
530:15-3-16. [NEW]
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ANALYSIS:
Subchapter 1-Amendment of Merit Rule 530:15-1-1 provides for voluntary payroll deduction to pay for subscriptions to Oklahoma Today magazine. The amendment to Merit Rule 530:15-1-2 provides definitions of Appointing Authority and Product Vendor. The definition of Appointing Authority includes those to whom authority has been delegated.

Subchapter 3-Amendment to Merit Rule 530:15-3-7.2 provides mechanism for voluntary payroll deduction to pay educational organization and dues for personnel of the Oklahoma School for the Blind and the Oklahoma School for the Deaf. Amendment to Merit Rule 530:15-3-11 provides for voluntary payroll deduction to pay yearly subscription to Oklahoma Today magazine. Amendment to Merit Rule 530:15-3-14 describes the procedure for requesting voluntary payroll deduction. Amendment to 530:15-3-16 determines the parameters for agencies to provide reasonable access to product vendors and defines "reasonable access."
CONTACT PERSON:
Chanda R. Graham, Chief Policy Attorney, Office of Personnel Management, 2101 N. Lincoln, G-80, Oklahoma City, OK 73105, (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 11, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

530:15-1-1. Purpose

The rules in this Chapter provide procedures for implementation of voluntary payroll deductions for employee association dues, employee association foundation contributions, payments to credit unions, payments to supplemental insurance and retirement plans, ~~and~~ payments to a college savings account, and subscriptions to Oklahoma Today magazine, as authorized for state employees by Section 7.10 of Title 62 of the **Oklahoma Statutes.** Other types of voluntary payroll deductions (such as those for salary adjustment agreements under subsection B(3) of Section 7.10, U.S. Savings Bonds or charitable gifts) are not addressed by the rules in this Chapter.

530:15-1-2. Definitions

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

"Administrator" means the chief administrative officer of the Office of Personnel Management, an officer of the State of Oklahoma appointed by the Governor pursuant to Section 840-1.6A of Title 74 of the **Oklahoma Statutes**, and authorized to establish procedures for administration of voluntary payroll deductions by Section 7.10. The term, as used in this Chapter, includes employees of the Office of Personnel Management to whom the Administrator has lawfully delegated authority to act on his or her behalf.

"Appointing Authority" means the chief administrative officer of an agency. As the term is used in the Voluntary Payroll Deduction Rules, the term includes employees of an agency to whom the Appointing Authority has lawfully delegated authority to act on his or her behalf.

"Complaint" means a grievance with respect to any matter relevant to the Administrator's duties under Section 7.10.

"Complainant" means a person or an organization that has submitted a complaint.

"Declaratory ruling" means an explanation of a rule or order and its applicability to a particular matter.

"Dues-paying" means, with respect to a member of an employee association, the member is either currently paying dues or has provided a valid ~~and signed~~ authorization to have

such dues withheld from pay and remitted to the association. [62:7.10(B)(4)]

"Employee association" means a formal and continuing affiliation of state employees with the principle objective of speaking for and benefiting their interests as employees, in which membership is restricted to state employees but unrestricted as to the geographic location of their duty stations, and which has at least 1,000 dues-paying members.

"Member" means:

(A) with respect to a credit union, a shareholder; and

(B) with respect to an employee association, a person who has sought and been granted recognition as one of those within the field of membership as defined by the association's governing instruments.

"Participation" means the total number of state employees reported to the Office of Personnel Management for which amounts withheld from pay for a given month were remitted pursuant to employee authorization to a single billing unit as identified by its Federal Employer (Tax) Identification Number.

"Party" means any person, employee association, credit union or insurance organization that is the subject of, or requests, action by the Administrator in connection with any matter relevant to the Administrator's duties under Section 7.10.

"Product vendor" means any of the following entities approved for state employees' voluntary payroll deduction:

(A) an entity offering a supplemental retirement plan with a minimum participation of **500** state employees;

(B) a private insurance organization with a minimum participation of **500** state employees for supplemental life, accident, or health insurance;

(C) a private insurance organization with a minimum participation of **500** state employees for legal services;

(D) the Oklahoma Tourism and Recreation Department as publisher of Oklahoma Today magazine.

"Provided for by the State" means:

(A) for insurance purposes, the basic health, life, dental, or disability plan or any other such insurance a state agency is authorized to provide for its employees as evidenced by financial participation in those policies or a group policy(s) the agency has negotiated as a basic employment benefit; and

(B) for retirement purposes, any state retirement system, deferred compensation program (commonly referred to as deferred annuities), or other retirement plan(s) a state agency is authorized to provide for its employees as evidenced by financial participation in those plans.

"Section 7.10" means Section 7.10 of Title 62 of the **Oklahoma Statutes.**

"State agency" means any office, department, board, commission, or institution of the State of Oklahoma."

"State employee" means any employee of a state agency.

"Supplemental" means:

(A) for insurance purposes, life, accident (including income continuation during disability), legal, and health insurance policies not provided for by the State; and

(B) for retirement purposes, plans that provide retirement income benefits and are not provided for by the State. In recognition of the powers conferred upon state institutions of higher education by Section 3905 of Title 70 of the **Oklahoma Statutes**, the Administrator will follow such institutions' decisions as to whether an insurance policy or retirement plan is a basic or a supplemental employee benefit.

SUBCHAPTER 3. ADMINISTRATIVE PROVISIONS

530:15-3-7.2. Dues for statewide educational employee organizations

A statewide educational employee organization or association may request authorized payroll deduction status to allow instructional personnel of the Oklahoma School for the Blind or the Oklahoma School for the Deaf to pay membership dues through voluntary payroll deduction. The request may be made by filing a completed Form VPD-1 with the Administrator.

530:15-3-11. Subscriptions to Oklahoma Today magazine

Subscriptions to "Oklahoma Today" magazine published by the Oklahoma Tourism and Recreation Department may be paid by voluntary payroll deduction at the request of any state employee. Subscriptions to "Oklahoma Today" magazine shall be paid by a one-time (rather than monthly) deduction.

530:15-3-14. Procedure for requesting Voluntary Payroll Deduction

(a) A request by a state employee for voluntary payroll deduction for the payment of premiums for supplemental life, accident, and health insurance, insurance premiums for legal services, premiums or payments for retirement plans, salary adjustment agreements included in the flexible benefits plan, contributions to the Oklahoma College Savings Plan, membership dues in any statewide educational organization or association, and subscriptions to the Oklahoma Today magazine, must be made in writing to the employing state agency. The request must include the employee's signature.

(b) A request by a state employee for voluntary payroll deduction for the payment of membership dues in an employee association may be made as described in Subsection (a) or may be made via online or electronically submitted forms. The employee association shall verify that the online or electronically submitted form accurately reflects the request of the state employee via email or another method approved by the Office of Personnel Management, and shall forward a copy of such verification and membership application to the employing agency for processing.

(c) All forms for employee requests for voluntary payroll deduction, whether paper or electronic format, shall include at a minimum the employee's name, Social Security number, the amount of the voluntary payroll deduction, the vendor's name, and if applicable, the approved policy form number.

530:15-3-15. [RESERVED]

530:15-3-16. Product vendor access to state employees

(a) State agencies shall allow product vendors reasonable access to their employees at least once each calendar year for the purpose of providing information about their products. For the purposes of this Section, "reasonable access" shall mean the granting of access within **1** year from the date of the request. Such access shall be allowed only during scheduled breaks or during periods immediately before or after normal work hours. For facilities that operate **24** hours a day, product vendors shall be allowed access to all shifts. Such access shall not disrupt or interfere with the business of the agency, and state funds shall not be utilized to accommodate such access. State agencies may allow such access upon request, or may designate specific dates and times for product vendor access and notify product vendors of the designated dates.

(b) Product vendors may provide information only on products approved for voluntary payroll deduction, and may not provide information on any other products or services.

(c) Product vendors shall identify **1** contact through which state agencies can arrange access. Product vendors shall provide the contact name, as well as a telephone number, facsimile (fax) number, mailing address, and email address for the contact to the Office of Personnel Management. State agencies may request this information from the Office of Personnel Management for the purposes of facilitating vendor access. Product vendors shall be solely responsible for keeping such contact information current.

(d) Product vendors shall comply with all applicable laws, rules and policies of the state agencies they visit. Product vendors who fail to comply with laws, rules, or policies of the state agency after oral or written notification, or who cause a disruption to the business of the agency, may be denied access by the Appointing Authority to the employees of that state agency for **1** calendar year. Appointing Authorities shall give a product vendor notice and an opportunity to respond before making a decision to deny access.

[OAR Docket #04-1131; filed 6-9-04]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #04-1140]

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ANALYSIS:
Revisions to Chapter 1 update the agency name from the Office of Public Affairs to the Department of Central Services; update the principal office address of the agency; and deletes the State Bond Advisor from the list of commissions administratively supported by DCS.

CONTACT PERSON:
Gerry Smedley, Human Resources Director, (405) 521-2758, Department of Central Services, 2401 N. Lincoln Boulevard, Suite 212, 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, 2004:

580:1-1-1. Purpose

(a) The ~~Office of Public Affairs~~ Department of Central Services (also referred to ~~in Chapter 1 of Title 580~~ as ~~OPA~~ DCS) is created by Section 61.2 of Title 74 of the Oklahoma Statutes and is the successor to the Office of Public Affairs and the State Board of Public Affairs.

(b) The primary statutory powers and duties of ~~OPA~~ DCS are set forth in Section 1 et seq of Title 61 and Section 61 et seq. of Title 74 of the Oklahoma Statutes.

(c) The principal office of the ~~Office of Public Affairs~~ Department of Central Services is located in the ~~State Capitol Building in~~ Will Rogers Office Building, 2401 N. Lincoln Blvd., Suite 206, Oklahoma City, Oklahoma.

(d) Office hours are from 8:00 a.m. to 5:00 p.m. each day, except Saturday and Sunday, and any legal holiday established by statute or proclamation of the Governor.

580:1-1-2. Chief administrative officer

(a) The Director of the ~~Office of Public Affairs~~ Department of Central Services, also known as the Director of ~~Public Affairs~~ Central Services, is the chief administrative officer of the ~~Office of Public Affairs~~ Department of Central Services and is responsible for providing the overall direction necessary for the ~~Office of Public Affairs~~ agency to attain its mission as established by statute or administrative rule.

(b) The Director of ~~Public Affairs~~ Central Services is appointed by the Governor by and with the consent of the Senate and serves at the pleasure of the Governor (74 O.S., Section 61.1).

580:1-1-3. Availability of records

(a) Records in the custody of ~~OPA~~ DCS, except those documents specifically excluded by law, shall be available to the public as provided by the Open Records Act. Documents will be available to the public for inspection during regular office hours.

(b) Persons wishing to view records of ~~OPA~~ DCS shall register their name, address and telephone number before documents are viewed. The registrant shall state whether the documents are being viewed for a personal, business or commercial reason and shall list the documents desired for viewing.

(c) No original records shall be removed from the ~~OPA~~ DCS.

(d) Persons wishing to photocopy documents in the custody of the ~~OPA~~ DCS may do so in accordance with the Open Records Act. A charge for copies may be made in accordance with the Open Records Act and administrative rules of the ~~OPA~~ DCS.

580:1-1-4. Organization of the ~~Office of Public Affairs~~ Department of Central Services

(a) The ~~Office of Public Affairs~~ Department of Central Services is organized to include the following functions: ~~Internal~~ Administration, Asbestos Abatement, Building Management (also referred to as Facilities Services), Central Printing, Central Purchasing, Construction and Properties, Fleet Management, Interagency Mail, ~~Motor Pool~~, Property Distribution, and Risk Management.

(b) The ~~Office of Public Affairs~~ Department of Central Services also administratively supports ~~the State Bond Advisor~~, the Capitol-Medical Center Improvement and Zoning Commission, the Public Employees Relations Board, ~~the Santa Claus Commission,~~ the Oklahoma Capitol Improvement Authority, and the State Capitol Preservation Commission.

580:1-1-5. Appeals

Any decision of the ~~Office of Public Affairs~~ Department of Central Services may be appealed in accordance with the Oklahoma Administrative Procedures Act. Appeals must be submitted in writing to the General Counsel, ~~Office of the Public Affairs,~~ at the principal office of the Department of Central Services within ten days of notification of decision.

[OAR Docket #04-1140; filed 6-9-04]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 10. FACILITIES MANAGEMENT

[OAR Docket #04-1144]

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RULES:
Subchapter 2. General Provisions
580:10-2-2. [AMENDED]
Subchapter 5. Use of Public Areas of Capitol and Plazas
580:10-5-2. [AMENDED]
Subchapter 9. Operation of Buildings Owned, Used or Occupied by or on Behalf of the State
Part 4. Use of the J. Howard Edmondson and Robert S. Kerr Office Buildings [NEW]
580:10-9-15. [NEW]
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580:10-5-2. [AMENDED]
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Part 4. Access to the J. Howard Edmondson and Robert S. Kerr Office Buildings [NEW]
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ANALYSIS:
New rules in Subchapter 2 further establish information and prescribe procedures for operating hours, entrances and access to the State Capitol. New

rules in Subchapter 9, Part 4 establish information and procedures for access to the J. Howard Edmondson and Robert S. Kerr Office Buildings. A revision to 580:10-5-6 adds a prohibition to hold wedding ceremonies and wedding receptions in the State Capitol and Capitol plazas.

CONTACT PERSON:

Gerry Smedley, Human Resources Director, (405) 521-2758, Department of Central Services, 2401 N. Lincoln Boulevard, Suite 212, 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, 2004:

SUBCHAPTER 2. GENERAL PROVISIONS

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 Complex" means the property and buildings of the State of Oklahoma bordered by 28th Street on the north, south bound Lincoln Boulevard on the west, 18th Street on the South, and north bound Lincoln Boulevard on the east, to the point of beginning on 28th Street.

"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]

SUBCHAPTER 5. USE OF PUBLIC AREAS OF CAPITOL AND PLAZAS

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) During operating hours, the Capitol may be accessed by the public through the west entrance, the east entrance, the southeast entrance on the ground level, and the tunnel entrance on the southeast side of the Capitol.

(~~b~~ c) 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.

(d) All persons entering the Capitol shall submit to security screening requirements, including but not limited to magnetometer screening devices. Packages, briefcases, purses, and other container in the immediate possession of all persons shall be subject to inspection.

(~~c~~ e) 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~~ f) 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.

(g) Persons in the Capitol and on the Capitol Complex shall at all times comply with official signs of prohibitory, regulatory, or directory nature and with the lawful direction of law enforcement and other authorized individuals.

(~~e~~ h) 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.

SUBCHAPTER 9. OPERATION OF BUILDINGS OWNED, USED OR OCCUPIED BY OR ON BEHALF OF THE STATE

PART 4. USE OF THE J. HOWARD EDMONDSON AND ROBERT S. KERR OFFICE BUILDINGS

580:10-9-15. Purpose

The provisions of this Part prescribe procedures and conditions for access to the J. Howard Edmondson and Robert S. Kerr Office Buildings.

580:10-9-16. Access to the J. Howard Edmondson and Robert S. Kerr Office Buildings, operating hours and access requirements

(a) The Kerr and Edmondson Buildings operating hours are from 6:00 a.m. to 6:00 p.m., Monday through Friday, excluding state holidays.

(b) During operating hours, the Kerr and Edmondson Buildings may be accessed by the public through the East entrance of the Kerr building and through the South entrance of the Edmondson building.

(c) Entrances are open from 6:00 a.m. to 6:00 p.m., Monday through Friday.

(d) All persons entering the buildings shall submit to security screening requirements, including but not limited to magnetometer screening devices. Packages, briefcases, purses, and other container in the immediate possession of all persons shall be subject to inspection.

(e) All state agencies located in the buildings 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 buildings 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 buildings.

(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.

(f) Persons in the buildings and on the grounds immediately surrounding the buildings shall at all times comply with official signs of prohibitory, regulatory, or directory nature and with the lawful direction of law enforcement and other authorized individuals.

(g) Public entrances, operating hours and access requirements for the buildings 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.

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TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 15. CENTRAL PURCHASING

[OAR Docket #04-1147]

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Subchapter 2. General Provisions
580:15-2-2. [AMENDED]
580:15-2-6. through 580:15-2-7. [AMENDED]
Subchapter 4. Supplier Provisions
580:15-4-5. [AMENDED]
580:15-4-7. [AMENDED]
580:15-4-10. through 580:15-4-13. [AMENDED]
Subchapter 6. State Agency Provisions
580:15-6-5. [AMENDED]
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ANALYSIS:
The proposed rule amendments clarify, revise and update information and references pertaining to general provisions of the Purchasing Division of the Department of Central Services. The proposed rule amendments revise and update information and references that suppliers, agencies and the Central Purchasing Division follow to accomodate the new Oklahoma Online Bidding Act, effective July 1, 2003 (House Bill 1329/74 O.S., Section 85.45p through 85.45s). New rules are added to implement the Oklahoma Privatization of State Functions Act, effective November 1, 2003 (Senate Bill 1115/74 O.S., Section 588 et seq). Other proposed rule amendments clarify, revise and update information and references pertaining to procurement methods required of state agencies to implement new laws, which include: (1) requirement to verify vendors' registration with Secretary of State, if applicable, and franchise tax status prior to contract award (HB1393/74 O.S., Section 85.5(N)); (2) requirement to verify vendors' current sales tax license prior to award of contracts (HB1593/74 O.S., Section 85.5(N)); (3) revisions to requirements of certain notarized attachments to requisitions (SB646/74 O.S., Sections 85.4.E.(1) and 85.4E.(2)); (4) requirement to purchase from OCI second only to State Use Committee, unless OCI is lowest and best bidder (HB1279/57 O.S., Section 549.1); (5) authorization of State Purchasing Director to charge contract management fees, levys and rebates in contracts provided state agencies are ensured the best value for products(SB646/74 O.S., Section 85.33A(B)); (6) other miscellaneous revisions are added for clarification.
CONTACT PERSON:
Gerry Smedley, Human Resources Director, (405) 521-2758, Department of Central Services, 2401 N. Lincoln Boulevard, Suite 212, 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, 2004:

SUBCHAPTER 2. GENERAL PROVISIONS

580:15-2-2. Definitions

As used in this chapter, unless the context otherwise requires:

"Acceptable Electronic Signature Technology" Technology, which is capable of creating a signature that is unique to the person using it; is capable of verification, is under the sole control of the person using it, and is linked to the data in such a manner that if the data is changed, the electronic signature is invalidated.

"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~~ means a manual, electronic or digital identifier uniquely linked to 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's 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. The competitive bidding process may be electronic when the terms of the solicitation expressly permit electronic submission and the requirement of the statutes and/or rules are met.

"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.

"Electronic Record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic Signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. Unless provided by law, an electronic signature may be used to sign a writing and shall have the same force and effect as a written signature.

"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.

"Information Technology" means data processing, telecommunications, and office systems technologies and services.

"Internet" means the international computer network of both federal and nonfederal interoperable packet-switched data networks, including the graphical subnetwork called the World Wide Web.

"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~~ Department of Corrections for utilization of inmate labor for the manufacture or production of items or products for use by state agencies

"Online Bidding" means an electronic procurement process in which state agencies receive bids from vendors for goods, services, construction, or information services over the Internet or other electronic medium in a real-time, competitive bidding event.

"Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any goods, services, construction, or information services. The term also means all functions that pertain to the obtaining of any goods, services, construction, or information services, including, but not limited to, the description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

"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~~ provides 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.

"Reverse Auctioning" means a procurement method wherein bidders are invited to bid on specified goods or services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

"Scheduled acquisition" means a recurring acquisition that consolidates multiple state agency requirements for a given commodity or group of commodities.

"Services" means the furnishing of labor, time, or effort by a contractor not required to deliver a specific end product, other than reports which are merely incidental to required performance.

"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. The process for bidder registration for the receipt of online solicitations may be a separate list. Online bidders may be required to prequalify and online solicitations may be restricted to prequalified online bidders.

"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 suppliers list.

"Written, Writing, and in Writing" shall include handwriting, printing, typewriting and all other methods and means of forming letters and characters upon paper, stone, wood, other materials, or any electronic medium, that can be read, retrieved, and reproduced. When used in these rules, may include an electronic writing.

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. All bids submitted electronically through the online bidding process are subject to the same public disclosure laws. 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 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.** 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 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 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 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 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.

(f) Pursuant to 74 O.S., Section 85.33(B), the State Purchasing Director may enter into or award contracts that provide a contract management fee, levy or rebate to the Department. The State Purchasing Director may negotiate a contract management fee whenever it is in the best interest of the state and the Department. All monies received from fees, levies or rebates shall be deposited in the Contract Management Revolving Fund established by 74 O.S., Section 85.33(A).

SUBCHAPTER 4. SUPPLIER PROVISIONS

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. When a purchasing agent determines that electronic or online bidding is more advantageous than other procurement methods provided by the laws of this state, the purchasing agent may use online bidding to obtain bids as authorized by the Oklahoma Central Purchasing for the purchase of goods, services, construction, or information services.

(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 basis of price~~,~~ and 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. An original, notarized copy of the noncollusion affidavit, executed by the supplier, shall be ~~attached to any bid or proposal~~ submitted to the Division with any bid or proposal.

(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. In the event it is determined that a significant error or event occurred that affected the electronic receipt of an online bid, the Director of Central Services may authorize the Division to accept an electronic bid after the specified official closing date and time. Failure of the bidder's computer or electronic equipment or service is not an acceptable event.

(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 all forms, documents and contents required by a solicitation ~~in a sealed envelope or container~~ as instructed in the solicitation. 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~~ prominently displayed as stated in the solicitation.

(c) **Submission of notarized sworn statement.** When electronic submission of the bid is allowed, an original notarized sworn statement of non-collusion, must be submitted to the Central Purchasing Division as prescribed in the solicitation.

(~~c~~d) **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. Electronic submission of bids, when allowed, must be submitted in such a manner that the time and date of submission is electronically linked to the bid and cannot be changed.

(~~d~~e) **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.

580:15-4-10. Public bid opening

(a) **Public 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. Electronic bids solicited by online bidding may be accepted after the closing date and time if the Director of Central Purchasing

has authorized acceptance of bids due to a significant error or event that occurred which affected the electronic receipt of an online bid.

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.** A bid that does not meet the terms and conditions of the solicitation shall be considered nonresponsive.

(2) **Forms use.** A bid that does not contain forms or other information the solicitation specifies may be considered nonresponsive.

(3) **Incomplete forms.** 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 solicitation documents is not in ink, legible, typewritten ~~or~~, printed, or submitted in the electronic format specified in the solicitation, the bid may be considered nonresponsive.

(5) **Improper alterations.** If alterations do not bear the initials of the person making the alteration, the bid may be considered nonresponsive.

(6) **Use of unauthorized signature.** If a signature on a form is not an authorized signature pursuant to state laws and the rules of this chapter, the bid shall be considered nonresponsive.

(7) **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 bid shall be considered nonresponsive.

(8) **Bid does not contain bid bond.** 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 bid shall be considered nonresponsive.

(10) **Bid nonresponsive.** If a bid does not offer items suitable for the intended use of the items, the bid shall be considered nonresponsive.

(11) **Pricing.** If bid pricing does not meet requirements of a solicitation, 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 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 said information, or the State Purchasing Director determines the bidder is not responsible, the bid may be rejected.

(14) **One bid from multiple suppliers.** 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 bid shall be considered nonresponsive.

(16) **Past performance.** If the Purchasing Director has received complaints on a supplier, 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)~~ (e)], 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 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.~~

(1) completion of bid evaluation;

(2) completion of the evaluation document;

(3) determination of the lowest and best or best value bidder;

(4) verification, pursuant to applicable provisions of law, that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to Title 68, Sections 1203 and 1204, whenever the contract amount is Twenty-five Thousand Dollars ($25,000.00) or greater;

(5) verification with the Oklahoma Tax Commission that the business entity to which the state contract is to be awarded, has obtained a sales tax permit pursuant to Title 68, Section 1364 if such entity is required to do so;

(6) coordination of award with the requisitioning state agency, if necessary; and

(7) completion of any administrative tasks.

(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.** 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.** 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. All remedies available to suppliers through the sealed bid process pursuant to the Oklahoma Central Purchasing Act or the Public Building Construction and Planning Act are also available to online bidders in an online bidding process.

(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 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. 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 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. 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.

SUBCHAPTER 6. STATE AGENCY PROVISIONS

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~~ if such article or service is the lowest and best bid. 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~~ certify to the State Purchasing Director that it is not able to provide products. 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 or whenever the Oklahoma Correctional Industries cannot provide the lowest and best bid for such acquisition.

(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 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 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) **Services requisition requirements.** If the state agency requisitions professional or nonprofessional services, the state agency shall submit a requisition or contract signed by the state agency's chief administrative officer or the chief administrative officer of the requisitioning unit certifying to each requirement of 74 O.S., Section 85.4(E)(1).

(~~4~~5) **Contracts.** If the state agency and the supplier execute a contract for the acquisition, the supplier shall ~~attach~~ provide a notarized, sworn statement of noncollusion pursuant to 74 O.S., Section 85.23.

(A) Prior to awarding a contract exceeding Two Thousand Five Hundred Dollars ($2,500.00), the awarding agency must verify that the vendor has obtained a sales tax permit in accordance with the laws of Oklahoma.

(B) **Verification.** Sales tax permit verification may be confirmed through the link provided on the Department of Central Services' website. If a vendor cannot be identified by searching this database, agencies should call the Oklahoma Tax Commission for assistance.

(C) **Documentation.** Verification of the sales tax permit must be documented in the acquisition file.

(D) **Exceptions.** This verification requirement does not apply to acquisitions for services only or to acquisitions made with the state purchase card.

(~~5~~6) **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~~7) **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~~ as stated in the solicitation.

(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) **Services requisition requirements.** If the state agency requisitions professional or nonprofessional services, the state agency shall submit a requisition or contract signed by the state agency's chief administrative officer or the chief administrative officer of the requisitioning unit certifying to each requirement of 74 O.S., Section 85.4(E)(1).

(~~6~~7) **Award to a supplier.** When the state agency selects a bid, the state agency shall notify the supplier of the award.

(A) Prior to awarding a contract exceeding Two Thousand Five Hundred Dollars ($2,500.00), the awarding agency must verify that the vendor has obtained a sales tax permit in accordance with the laws of Oklahoma.

(B) **Verification.** Sales tax permit verification may be confirmed through the link provided on the Department of Central Services' website. If a vendor cannot be identified by searching this database, agencies should call the Oklahoma Tax Commission for assistance.

(C) **Documentation.** Verification of the sales tax permit must be documented in the acquisition file.

(D) **Exceptions.** This verification requirement does not apply to acquisitions for services only or to acquisitions made with the state purchase card.

(~~7~~8) **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~~9) **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~~10) **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 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~~2) **Services requisition requirements.** If the state agency requisitions professional or nonprofessional services, the state agency shall submit a ~~document~~ requisition or contract signed by the state agency's chief administrative officer or the chief administrative officer of the requisitioning unit~~. The document shall meet the requirements~~ certifying to each requirement of 74 O.S., Section 85.4(E)~~(2)~~(1).

(~~4~~3) **Additional requisition information.** The State Purchasing Director may require a state agency to submit additional information with a requisition.

(~~5~~4) **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~~5) **Competitive bid evaluation.** The State Purchasing Director and the state agency shall evaluate bids for acquisition of professional services.

(~~7~~6) **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~~7) **State agency notification.** The State Purchasing Director shall notify the state agency of the successful bidder by purchase order following the award of contract.

580:15-6-19. Electronic commerce and online bidding

The use of electronic commerce for solicitation, notification, and other procurement processes as provided for in 74 O.S., Section 85.45r and the Oklahoma Central Purchasing Act and/or the Public Building Construction and Planning Act shall be subject to the policies and procedures of the Online Bidding Standards authorized by the Director of the Department of Central Services and established by the State Purchasing Director.

580:15-6-20. Procedures for state agency privatization contracts

(a) **Cost analysis report.** Before any agency contracts to privatize a function, program, service, unit, or division valued at One Hundred Thousand Dollars ($100,000.00) or more, the agency must perform a cost analysis and submit a copy of the written cost analysis report to the Department of Central Services.

(b) **Cost analysis report contents.** The cost analysis report shall include, but not be limited to:

(1) A cost-benefit analysis comparison that shall include the collection and analysis of the direct and indirect, costs of the current governmental operation and the private vendor contract. Costs shall be itemized in the report and shall include direct personnel costs, materials and supplies, facility and equipment maintenance and repairs, equipment, rent, utilities, insurance, travel, operations overhead, transition costs associated with shifting the service delivery from the government agency to a private vendor and general administrative overhead associated with privatization of a function.

(2) A feasibility study determining whether another state agency could assume the function, program, service, unit, or division proposed to be privatized.

(3) An analysis of the cost savings and quality enhancements expected to be gained by privatizing.

(4) The availability of multiple qualified and competitive private vendors.

(c) **Cost analysis report review.** The State Purchasing Director shall review the contents of the cost analysis report and determine whether it meets the requirements of the Oklahoma Privatization of State Functions Act [Reference 74 O.S., Section 588 et seq] and this section. The State Purchasing Director shall send written notice to the agency of the results of the review. If the contents of the report are found deficient, the notice shall contain instructions to correct the deficiencies and the cost analysis report shall be returned to the agency along with the notice.

(d) **Privatization request for proposal.** An agency shall include the following requirements with any request for proposal for a privatization contract:

(1) Financial stability of the vendor, past and present litigation and references related to past government contract performance information; and

(2) Detail of how the vendor will perform the contract, including staffing and equipment information.

(e) **Agency certification statement.** An agency shall submit to the State Purchasing Director for approval, a privatization contract together with a written statement, signed by the agency director, certifying that:

(1) *The provisions of the Oklahoma Privatization of State Functions Act and all other applicable laws regarding the privatization of the respective state functions have been complied with*;

(2) *The quality and cost of the services to be provided by the selected bidder are likely to exceed the quality and cost benefit standards for the state function as formerly delivered by agency employees; and*

(3) *The proposed privatization contract is in the best interest of the public.* [74 O.S., Section 589.1]

[OAR Docket #04-1147; filed 6-9-04]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 20. CONSTRUCTION AND PROPERTIES

[OAR Docket #04-1141]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Bidding procedures
580:20-1-3. [AMENDED]
580:20-1-8.2. [NEW]
580:20-1-9. [AMENDED]
580:20-1-10. [AMENDED]
580:20-1-14. [AMENDED]
580:20-1-15. [AMENDED]
580:20-1-16. [AMENDED]
580:20-1-21. [NEW]
Subchapter 3. Selection of Architects, Engineers, and Other Design Consultants
580:20-3-2. [AMENDED]
Subchapter 5. Minimum Codes for State Construction
580:20-5-2. through 580:20-5-6. [AMENDED]
Subchapter 9. Full-Time Employment by Agencies for Minor Construction Projects
580:20-9-2. [AMENDED]
Subchapter 11. Life Cycle Costing for State Facilities
580:20-11-1. [AMENDED]
580:20-11-4. [AMENDED]
Subchapter 17. Construction Management Procedures and Requirements
580:20-17-2. through 580:20-17-3. [AMENDED]
Subchapter 23. Fees for Services [NEW]
580:20-23-1. through 580:20-23-3. [NEW]
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SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE
Incorporated standards:
National Fire Codes, NFPA current editions, and all publications as they relate to public construction contracts
International Codes, International Code Council, current editions, and all publications as they relate to public construction contracts, with certain exceptions
ASME Standards A17.1 Safety Code for Elevators and Escalators and A17.3 Safety Code for Existing Elevators
Incorporating rules:
580:20-5-4
580:20-5-5
580:20-5-6
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday at the Department of Central Services, Administration, 2401 N. Lincoln Boulevard, Suite 206, Oklahoma City, OK 73105
ANALYSIS:
The purpose of these proposed rules is to administer the mandates of Senate Bill No. 246 of the First Regular Session of the 49th Oklahoma Legislature, which amends 61 O.S., Sections related to the "Public Building Construction and Planning Act." The rules prescribe procedures and requirements for prequalification of insurance carriers, bonding companies and surety companies that provide bonds for public work projects pursuant to Title 61. The rules also prescribes fees to be collected by the Construction and Properties Division as authorized by Section 3 of Senate Bill 246. Revisions to existing rules clarify definitions of construction terms.
CONTACT PERSON:
Gerry Smedley, Human Resources Director, (405) 521-2758, Department of Central Services, 2401 N. Lincoln Boulevard, Suite 212, 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, 2004:

SUBCHAPTER 1. BIDDING PROCEDURES

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(6) and projects under the statutory amount.

(1) **Projects over statutory amount.** Projects over the statutory amount established in 61 O.S., Section 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.

(2) **Projects under statutory amount.** Projects under the statutory amount established in 61 O.S., Section 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)]

(A) Direct mail or facsimile 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.

(B) The state agency shall use procedures, forms and contracts developed by the Division.

(3) **Emergency Projects.** When an emergency situation is declared to exist by the chief administrative officer or governing body of a state agency, the Division may award a contract without competitive bids to correct the emergency condition.

580:20-1-8.2. Prequalification of insurance carriers, bonding companies and surety companies

(a) Pursuant to 61 O.S., Section 204A.(11), the Division shall prequalify as good and sufficient insurance carriers, bonding companies and surety companies using the following criteria:

(1) The insurance carrier, bonding company or surety company must be licensed to do business in the State of Oklahoma pursuant to 61 O.S., Section 134.

(2) The insurance carrier, bonding company or surety company must have prior experience with insuring or bonding construction projects within the State of Oklahoma.

(3) The insurance carrier, bonding company or surety company cannot have been deemed in default by the State of Oklahoma in connection with prior construction insurance or bonds on State construction projects.

(4) The insurance carrier, bonding company or surety company shall not have a prior history of committing the following unfair claims settlement practices:

(A) Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims or demands submitted in which liability has become reasonably clear.

(B) Compelling claimants or obligees, without just cause, to institute suits to recover amounts due under the insurance policy, insurance contract or bond by offering substantially less than the amounts ultimately recovered in suits brought by them or refusing to make an offer, when such claimants or obligees have made claims for amounts reasonably similar to the amounts ultimately recovered.

(C) Failing to fully disclose to claimants or obligees benefits, coverages, or other provisions of any insurance policy, insurance contract or bond, when such benefits, coverages or other provisions are pertinent to a claim.

(D) Knowingly misrepresenting to claimants or obligees pertinent facts, policy or bond provisions relating to the coverages at issue.

(E) Failing to adopt and implement reasonable standards for prompt investigations of claims or demands on bonds arising under its insurance policy, insurance contract or bonds.

(F) Except where there is a time limit specified in the policy or bond, making statements, written or otherwise, which require a claimant or obligee to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices an insurer's or bonding company's rights.

(G) Requesting a claimant or obligee to sign a release that extends beyond the subject matter that gave rise to the claim or demand payment.

(H) Failing to promptly pay claims that have no reasonably apparent defect or impropriety.

(I) Failing to notify the insured or obligee in writing within 30 calendar days of receipt of claim or demand that the claim is defective and/or lacks substantiating documentation, providing the insured or obligee reasons or basis for the determination.

(J) Issuing checks or drafts in partial settlement of a claim or demand with language which releases an insurer, surety company, or bonding company from its total liability.

(b) The Division may periodically, in its discretion, reevaluate an insurance carrier, bonding company or surety company utilizing the criteria established in this section.

(c) The Division may adjust or revoke the prequalification status of an insurance carrier, bonding company or surety company if a reevaluation determines the company fails to meet criteria established in this section.

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 and prequalified as good and sufficient by the Division pursuant to 580:20-1-8.2. When a bid bond is required and the bond submitted is from a company not registered in Oklahoma or prequalified by the Division as good and sufficient, the bid shall be disqualified. [61 O.S., Section 134 and Section 204(A)(11)]

(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) 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.

(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) 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) 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.

580:20-1-10. Contract award

(a) Bids are normally awarded to the lowest responsible bidder as determined by the review of the bids. Approximately 15 to 20 days after the bid opening, the successful bidder shall be notified by the Division of his selection and shall be provided copies of the contract to execute. The contractor shall be given a specific period of time, not to exceed sixty days, in which to execute the contract and obtain the necessary bonds and insurance. [61 O.S., Section 113(A)]

(b) The notice to proceed, or WORK ORDER, shall not be issued until the contract has been executed by all parties. Work shall not commence until the WORK ORDER has been received by the contractor.

(c) Projects over the amount set in 61 O.S., Section 113(B) require three bonds. The bonds shall be prepared on the forms provided by the Division. All bonds required by Title 61 shall be provided by insurance carriers, bonding companies or surety companies that are prequalified by the Division as good and sufficient in accordance with criteria established in 580:20-1-8.2(a). [61 O.S., Section 204A(11)

(1) **Performance bond.** A bond with good and sufficient security valued at not less than the total value of the proposed contract which shall ensure the proper and prompt completion of the work in accordance with the contract and shall ensure that the contractor shall pay all indebtedness incurred by the contractor and his subcontractors and all suppliers for such labor, material and repair of and parts for equipment as are used and consumed in the performance of the contract.

(2) **Defect bond.** A good and sufficient bond in an amount equal to the total value of the contract to protect the State against defective workmanship and materials for a period of one year after acceptance of the project.

(3) **Payment bond.** A good and sufficient bond in an amount equal to the total value of the contract to protect the State against claims or liens from subcontractors or suppliers for services or materials used in the project.

(d) **Letters of credit.** Irrevocable letters of credit may now be substituted for the bonds listed above for projects with a value of less than $100,000. One letter of credit is required for each bond. Each letter of credit must be for the total value of the contract. Forms for these letters of credit are available from the Construction and Properties Division.

(e) **Insurance.** Public liability insurance of not less than $100/300,000, property damage insurance of not less than $50/100,000 and workers' compensation insurance during construction are required for all projects, regardless of project size.

(f) **Additional insurance.** Additional forms of insurance or increases in the insurance amounts may be required. Any additions or increases shall be contained in the bid documents.

580:20-1-14. Change orders

(a) When it has been determined that a change is needed in the work, the design consultant shall request information from the contractor. The ~~Request for Contract Modification Form~~ Change Order Request shall be completed by the contractor as specified on the form. The ~~Request for Contract Modification~~ Change Order Request shall fully describe the scope of work explaining completely what each item entails and the cost, credit, and time extension involved. The contractor shall provide a detailed breakdown of cost, showing quantities and sizes of materials, unit cost, labor, equipment, profit and overhead, and other expense items. The design consultant shall transmit the completed ~~Request for Contract Modification~~ Change Order Request through the using agency to the Construction and Properties Division of Department of Central Services. The change in work scope described in the ~~Request for Contract Modification~~ Change Order Request is not authorized until it has been issued by the Construction and Properties Division of the Department of Central Services. [61 O.S., Section 121]

(b) When the change is less than $10,000, and the work involved can be costed by using a negotiated unit price, the detailed breakdown on the ~~Request for Contract Modification Form~~ Change Order Request as discussed in subsection (a) of this Section is not required.

(c) The total contract sum including change orders for projects under the statutory amount and not advertised according to 580:20-1-3(1) cannot exceed the statutory amount without advertising for bids on that part of the contract.

(d) Projects under the statutory amount and not advertised according to 580:20-1-3(1), that are awarded on a unit price or basis cannot exceed the statutory amount with cumulative change orders without advertising for bids on that part of the contract.

580:20-1-15. Time extensions

The contract documents shall contain the basis upon which time extensions may be granted. Substantiating data must be submitted with the requests for extensions. Such time extensions, if justified, shall be granted by ~~Contract~~ Change Order only. It is important that written notices of delay be submitted to the design consultant within twenty days of the delay. Time extensions for changes in the work must be included on the ~~Contract~~ Change Order form authorizing such change.

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. [61 O.S., Section 124]

(b) After receipt of a list of items to be completed or corrected from the contractor, the inspection is to be scheduled by the design consultant who shall send out written notification inviting the using state agency,the Construction and Properties Division 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. A time limit to complete the punch list of deficiencies shall be determined by the Contractor and approved by the Consultant and the Owner. Five copies of the form shall be provided to the Division for signature.

580:20-1-21. Performance evaluations of Consultants and Contractors

After the final inspection has been completed, the Using Agency and the Division shall evaluate the performances of the Contractor and the Consultant, using evaluation forms developed by the Division. The evaluations shall be filed in the respective Contractor or Consultant file, which shall be maintained by the Division. Copies of negative evaluations shall be mailed by certified mail to the respective parties. Written responses received from the Consultant or Contractor shall be attached to the evaluation and maintained in the respective file.

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:

~~**"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.~~

"Consultant" means an individual or legal entity possessing the credentials and qualifications to provide technical services for a public work improvement 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 designated by the chief administrative officer or governing body of a state agency 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 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.

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 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.

580:20-5-3. Construction requirements; appeals and interpretations

(a) Each facility shall be constructed or improved in such a manner as to provide reasonable safety from fire, smoke, panic and related hazards and to ensure a high level of health, comfort and well-being for all occupants.

(b) The Division shall determine adequacy of construction plans and specifications in accordance with the provisions of the Code. The Division, through the code panel, may permit the use of alternate materials and methods, where permitted by the applicable code, when it is clearly evident that reasonable safety is thereby secured.

(c) The Department of Central Services may delegate its responsibilities relative to the determination of adequacy of construction plans and specifications in accordance with the provisions of the code to other agencies on projects it determines such other agency is qualified to perform.

(d) All appeals and requests for interpretations of code by the Division through the code panel shall be made in writing. All such findings and interpretations shall also be made in writing.

(e) The referenced codes shall be subject to the order of precedence as listed. The ~~Basic~~ Life Safety Code, NFPA 101, shall have precedence over other codes. When there are differing requirements among codes, then the ~~Basic~~ Life Safety Code, NFPA 101, shall govern, or in cases where the Life Safety Code does not apply, the most stringent requirement shall govern.

580:20-5-4. Adopted codes

The following codes are adopted as the basic codes for the State of Oklahoma.

~~(1). **Life Safety Code.** NFPA 101 (Life Safety Code), current edition, has been adopted as the Basic Life Safety Code.~~

(1) **National Fire Codes, NFPA** current editions, and all publications as they relate to public construction contracts;

~~(2) **Building Code.** The BOCA National Building Code, current edition.~~

(2) **International Codes, International Code Council,** current editions, and all publications as they relate to public construction contracts; exceptions to the ~~BOCA~~ code ~~including~~ include the following:

(A) All references to the department of building ~~inspection~~ safety in the ~~BOCA~~ code shall mean the Construction and Properties Division of the Department of Central Services.

(B) All references to ~~code~~ building official shall mean the Administrator of the Division.

(C) All references to "permits" and "fees" in the ~~BOCA~~ code may be disregarded for facilities constructed or existing on state property. Permits and fees are not required.

(D) The board of appeals referred to in Section ~~124.0~~ 112 of the ~~BOCA~~ Code means the code panel defined in 580:20-5-2

~~(3) **Handicap Access Code.** The BOCA National Building Code, current edition. ANSI A117.1 is included by reference in the BOCA Code.~~

~~(4) **Energy Conservation Code.** International Energy Conservation Code, current edition.~~

(~~5~~ 3) **Electrical Code.** National Electrical Code, current edition.

~~(6) **Mechanical Code.** The International Mechanical Code, current edition.~~

~~(7) **Plumbing Code.** The International Plumbing Code, current edition.~~

~~(8) **Fire Prevention Code.** As designated by the State Fire Marshal in accordance with 74 O.S., Chapter 11.~~

580:20-5-5. Adopted standards

The following standards are adopted by reference:

(1) **ASHRAE Standards.**

(A) Standard #55. Thermal and Environmental Conditions for Human Occupancy.

(B) Standard #62. Ventilation for Acceptable Indoor Air Quality.

(C) Standard #90.1 Energy Efficient Design of New Buildings.

~~(2) **ANSI Standards.**~~

~~(A) Standard A17.1. Elevators, Dumbwaiters, Escalators and Moving Sidewalks Safety Code.~~

~~(B) Standard A117.1. Making Buildings and Facilities Accessible to, and Usable by, Physically Handicapped People.~~

(2) **ASME Standards**

(A) Standard A17.1. Safety Code for Elevators and Escalators

(B) Standard A17.3 Safety Code for Existing Elevators

(3) **IES Standards.** Illuminating Engineering Society Lighting Handbook Reference and Application Volumes.

~~(4) **National Fire Protection Association Standards.**~~

~~(A) NFPA 10. Portable Fire Extinguisher.~~

~~(B) NFPA 13. Installation of Sprinkler Systems.~~

~~(C) NFPA 13A. Inspection, Testing and Maintenance of Sprinkler Systems.~~

~~(D) NFPA 30. Flammable and Combustible Liquids.~~

~~(E)NFPA 54. National Fuel Gas Code.~~

~~(F) NFPA 70. National Electric Code.~~

~~(G) NFPA 90A. Air Conditioning and Ventilation Systems.~~

~~(H) NFPA 96. Vapor Removal from Cooking Equipment.~~

~~(I) NFPA 101. Life Safety Code.~~

~~(5) **CABO Model Energy Code.** Standard for residential buildings of three stories or less.~~

580:20-5-6. Sources for codes and standards

(a) A copy of all codes adopted by reference in this subchapter are on file and available for public inspection at the following address: Construction and Properties Division, Department of Central Services, Will Rogers Office Building, 2401 N. Lincoln Blvd., Suite 106, Oklahoma City, OK 73105, (405)-521-2111.

(b) Listed below are sources for the codes and standards referred to in this Subchapter:

(1) ~~BOCA: Southwest Regional Office Building, Officials & Codes Administrators International, 2316 South Garnett Road, Suite 1, Tulsa, OK 74129-5110~~ International Code Council: 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041-3401; Telephone: 1.703.931.4533

(2) NFPA: National Fire Protection Association, Batterymarch Park, Quincy, MA 02169

(3) ASHRAE: ASHRAE Publications Sales, 1791 Tullie Circle, NE, Atlanta, GA 30329

~~(4) ANSI: American National Standards Institute, 1430 Broadway, New York City, NY 10018~~

(4) ASME: 22 Law Drive, Box 2300, Fairfield, NJ 07007-2300

(5) IES: Illuminating Engineering Society, 345 East 47th Street, New York City, NY 10017

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 of the Construction and Properties Division of the Department of Central Services.

"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.~~

"Consultant" means an individual or legal entity possessing the credentials and qualifications to provide technical services for a public work improvement project.

"Director" means the Director 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 11. LIFE CYCLE COSTING FOR STATE FACILITIES

580:20-11-1. Purpose

The Oklahoma State Agencies are required by Oklahoma Statutes to perform Life Cycle Cost Analysis for alternative architectural and engineering designs and alternative major items of energy-consuming equipment to be retrofitted in state facilities. The following guidelines are promulgated by the ~~Office of Public Affairs~~ Construction and Properties Division of the Department of Central Services in compliance with the provisions of Sections 209 and 211 of Title 61 of the Oklahoma Statutes. Guidelines in this Subchapter are to be used in performing the required analysis.

580:20-11-4. Results

(a) The ~~Office of Public Affairs~~ Construction and Properties Division of the Department of Central Services shall sponsor training workshops for Oklahoma State agencies purchasing

personnel in the use and/or verification of the Life Cycle Cost Analysis. Until such a time as sufficient expertise is developed in state agencies, the results of the analysis, along with the input data should be submitted by the contractors, vendors or consultants to the ~~Office of Public Affairs~~ Construction and Properties Division of the Department of Central Services for verification.

(b) The suggested ranges for applying the Life Cycle Cost Analysis to conduct the analysis without the escalation factors for projects having total costs of more than $7,500, but less than $40,000 (i.e., equations 3.2. and 3.4 in 580:20-11-3(4)). For projects costing more than $40,000, where more accurate estimates are needed, escalation factors are included in the analysis (i.e., equations 3.3 and 3.5 in 580:20-11-3)(4)).

SUBCHAPTER 17. CONSTRUCTION MANAGEMENT PROCEDURES AND REQUIREMENTS

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.

"Consultant" means an individual or legal entity possessing the credentials and qualifications to provide technical services for a public work improvement project.

"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~~2) **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~~3) **Certified Professional Estimator.** An individual certified by the American Society for Professional Estimators as a Certified Professional Estimator.

(~~5~~4) **Certified Professional Constructor.** An individual certified by the American Institute of Constructors as a Certified Professional Constructor.

(~~6~~5) **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.

SUBCHAPTER 23. FEES FOR SERVICES

580:20-23-1. Purpose

The Construction and Properties Division may collect reasonable fees for the purpose of providing or contracting for architectural, engineering, and land surveying services to state agencies; from persons requesting plans and notification of solicitations issued by the Division; and, for contract management for a construction project. [Title 61, Section 208.1] The purpose of this chapter is to establish a schedule of fees for services provided by the Division.

580:20-23-2. Fees for services

The following fees shall be collected for services provided by the Division:

(1) DCS Roofing Program - Five (5%) of roofing contract price.

(2) DCS On-Call Consultants Program - Ten (10%) of Consultant's Fee

(3) DCS Testing Program - Ten (10%) of Testing Consultant's Fee

(4) DCS Project Management Program - Ten (10%) of Consultant's Fee

(5) DCS Land Surveying Program -Ten (10%) of Land Surveyor's Consultant Fee

(6) Bid Document Services - Actual cost of printing of bid documents.

(7) Other pilot DCS Value-added Services - Actual cost of services plus twenty five per cent (25%).

580:20-23-3. Deposits of fees

All fees collected in accordance with the provisions of this section shall be deposited in the Construction & Properties Division's revolving fund created by Title 61, Section 208.2.

[OAR Docket #04-1141; filed 6-9-04]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 25. RISK MANAGEMENT PROGRAM

[OAR Docket #04-1145]

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To provide clarification of certain terms with respect to Risk Management and to provide controls to assure the financial integrity and stability of the State's liability and property self-insurance fund.
CONTACT PERSON:
Gerry Smedley, Human Resources Director, (405) 521-2758, Department of Central Services, 2401 N. Lincoln Boulevard, Suite 212, 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, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

580:25-1-2. Definitions

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

"Administrator" means the officer appointed by the Director of Central Services to serve as Risk Management Administrator.

"Agency Risk Management Coordinator" means the individual, officer or employee of any state agency or other covered entity appointed by the state agency or other covered entity as the designated point of contact for the Risk Management Administrator for all risk management purposes, and shall include any employee or agent of the Risk Management Coordinator and such assistants as may be necessary shall be employed or appointed by such state agency or other covered entity to supervise and manage the agency Risk Management Program.

"Agency Risk Management Program" means the system within any individual state agency or other covered entity for coordination of risk management within such state agency or other covered entity for coordination of risk management activities between the state agency or other covered entity and the Risk Management Division, and for elimination, reduction, and minimizing of all insured or self-insured risks through a continuous effective loss-prevention and loss-control program, under the direction of the Risk Management Division.

"Authorized legal Counsel" means:

(A) The Attorney General of the State of Oklahoma;

(B) An attorney authorized to represent a state agency or other covered entity.

"Casualty incident" or **"liability incident"** means:

(A) Any liability occurrence or event:

(i) Taking place upon or within any real property owned or used by the State of Oklahoma; or,

(ii) Involving participation by any officer, employee or volunteer of any agency of the State of Oklahoma who may be acting within the scope of his or her employment; or,

(iii) Involving the temporary detention of a child in a juvenile detention facility which qualified as an other covered entity under the provision of 74 O.S. Section 85.34D; or

(iv) Involving any vehicle or other personal property owned by an agency or other covered entity and operated by an employee or volunteer of that agency or other covered entity; and,

(B) Any liability occurrence or event:

(i) Which results in personal injury or property damage; and,

(ii) Where there is probable cause to believe that such occurrence or event may give rise to a claim for damages against the state, an agency, an other covered entity or any of their employees.

"Claim" means the formal notice served upon proper legal authority by any claimant or the representative of any claimant, as provided by the Tort Claims Act, 51 O.S. Section 151 et seq., or any civil lawsuit brought against the state or its employees, or any administrative or arbitration proceeding brought against the state or its employees.

"Claimant" means the person or his authorized representative who files notice of a claim in accordance with 51 O.S. Section 151 et seq.

"Liability Insurance" means any type of commercial insurance, including self-insurance, administered or procured by the Risk Management Division including Directors and Officers Liability and any other liability insurance coverage for professional liability or errors and omissions coverage, including but not limited to, Law Enforcement Liability, Accountants Errors and Omissions, and Legal Liability.

"Loss Prevention and Loss Control" means any and all programs and systems designed to transfer, prevent, eliminate, mitigate, manage, and minimize the risk of loss due to any physical or financial cause, human or otherwise, and that may result in or give rise to a claim against the State, an agency, and any other covered entity, or any officers, directors, or employees of any group participating in the Risk Management Program.

"Other covered entity" means any organization or entity other than a state agency for which the Risk Management Administrator is authorized or required by law to obtain or provide insurance coverage.

"Payment of claim" means partial or full payment of a claim in compromise thereof by the appropriate lawful authority, and subject to any procedural requirements imposed by statute, resolution or written policy.

"Premiums" means the fees or payments levied and collected for the purpose of providing insurance coverage through a self-insurance program, or purchased insurance or a combination thereof.

"Property incident" means:

(A) Any occurrence or event involving any real or personal property owned by the state or in the possession of the state for safekeeping; and

(B) The result of which the property is damaged lost or destroyed by accident, misfortune or mishap.

"Reportable vehicle incident" means any occurrence or event involving a vehicle resulting in a liability incident including acts arising out of law enforcement practices. The term also includes any incident involving any vehicle or property used to conduct business within the scope of authority or employment of any employee, volunteer or official of the state, any agency or any other covered entity.

"Risk Management Division" means the organizational unit of the Oklahoma Department of Central Services which administers the Risk Management Program under the direction of the Risk Managemnet Administrator.

"Risk Management Program" means the consolidated and centrally administered system for coordination of risk management activities between any state agency or other covered entity and the Risk Management Division for acquisition through the Risk Management Division of property and casualty insurance for the management of all property, casualty and liability incidents, and for eliminating, reducing and minimizing all risks through a continuous, effective loss-prevention and loss-control program, under the direction of the Risk Management Administrator.

"State" or **"Agency"** means any board, commission, committee, institution, department, instrumentality or entity designated to act on behalf of the State of Oklahoma.

"Vehicle" means:

(A) In case of other covered entities extended services by authority of 74 O.S. Section 85.34A, any vehicle, vessel or aircraft used for or in fire fighting by any such entity:

(B) In case of other covered entities extended services by authority of 74 O.S. Section 85.34C, any vehicle used for transportation of elderly or handicapped person by such entity:

(C) In the case of other covered entities extended services by authority of 74 O.S. Section 85.34D, any vehicle used to provide for the temporary detention of children in a juvenile detention facility by such entity;

(D) In the case of the state or any agency, any self-propelled vehicle or mobile equipment which is owned by the state, or operated by any state employee who may be acting within the scope of state employment, whether or not the equipment is licensed for road use.

SUBCHAPTER 5. CASUALTY OR LIABILITY CLAIMS MANAGEMENT, PAYMENT AND REPORTS

580:25-5-1. Claims management

(a) **Settlement and payment of claims.**

(1) **General.** While the Risk Management Division will explore alternatives, most claims ~~will be self-insured~~ may be paid from the state's respective risk pools and not from commercial insurance. This requires that procedures be established to administer and settle claims. Where the Risk Management Division has approved the acquisition of a policy or contract of liability insurance, the terms of which make it applicable to any liability incident, the Administrator shall, upon receiving notice of any liability incident or claim from an agency or other covered entity, ascertain the existence and applicability of such insurance, and, within a reasonable time thereafter, notify the insurer of the incident or claim, as may be required by the applicable policy or contract of insurance. ~~and demand that the insurer provide a defense and indemnity under the terms of the contract or policy to the state, its agency or to any other covered entity. Thereafter,~~ The terms and conditions of the contract or policy shall govern the rights and obligations of the state, agency or other covered entity and the insurer with respect to the investigation, settlement, payment and defense of claims or suits against the state, an agency, ~~an~~ and other covered entity or any of their employees.

(A) With respect to claims subject to a contract or policy of liability insurance the following shall apply:

(i) A State agency, or any other covered entity, and its authorized attorney shall cooperate with any and all requests for information made by the Risk Administrator, or his/her representative or the insurer, or risk denial of coverage.

(ii) In the case of any possible settlement, regardless of the deductible or self-insured retention level claim, a state agency or any other covered entity and its attorney, shall notify the Risk Administrator or his/her representative prior to a settlement offer being made.

(iii) If any State agency, or any other covered entity, or its attorney fails to reasonable cooperate with Risk Management or the insurer, or fails to notify the Risk Administrator or his representative, prior to a settlement offer being made on any claim subject to a contract or policy of liability insurance, the Risk Administrator may refuse to pay the claim.

(iv) Settlement of claims subject to a commercial contract of policy of liability insurance shall also be subject to the liquidity of any accounts created for the self-insured retention pool establlished for that particular liability insurance policy or contract.

(v) Any litigation concerning the Comprehensive Professional Risk Management Program of the Department of Central Services shall be handled by the Attorney General of the State of Oklahoma. [74 O.S., Section 61.4] Accordingly, settlements of matters in litigation shall not be settled without consultation with the Office of Attorney General and the Risk Administrator.

(vi) Private counsel hired by Risk Management or by any state agency are subject to and must also comply with the rules and regulations of Risk Management with respect to claims subject to a contract or policy of liability insurance.

(B) Otherwise, in the absence of any applicable contract or policy of insurance, the following regulations shall be controlling:

(2) **"Official State Business" and "Scope of Employment".** Claims against the state shall be investigated to determine whether the employee was on official state business within the scope of their employment. For the purposes of the Risk Management Program, the determination of whether an employee's negligent actions will be covered is at the sole discretion of the Risk Management Division of the Department of Central Services. Risk Management will first look to see if the employee is paid for their employment from state tax proceeds, in the case of a volunteer, Risk Management will look to the organization utilizing the volunteers services to determine if the volunteer was reported as such in the annual Risk Management state employee/volunteer count. Next, Risk Management will determine whether the activity engaged in by the employee/volunteer at the time of said claim is officially sponsored by the insured organization. This determination is made by review of the information as well as additional investigation if necessary supplied on

an official "Scope of Employment" form completed and turned into Risk Management by the organization.

(A) In the case of Institutions of Higher Education, for liability coverage purposes all extracurricular activity clubs, associations or organizations shall be treated in the following manner:

(i) Clubs, associations, and or organizations affiliated with a college or university shall be covered under the states self-insured liability insurance program for claims arising under the Oklahoma Governmental Tort Claims Act as long as the members are enrolled students of the college or university and the activity is part of a university/college course, athletic competition, or deemed by the college or university as an official university or college sponsored activity.

(ii) In order to obtain liability coverage for such clubs, associations, and or organizations, the college or university must have paid the annual tort and motor vehicle premiums assessed by State Risk Management. Premiums for such clubs, associations and organizations shall be established by State Risk Management. Any use of state property utilized in the activity sponsored by the university or college shall be in compliance with state law regarding the use of state property.

(iii) Claims arising out of the use of state vehicles or personal vehicles, while on official state business by students, will be deemed denied if the student is acting outside the scope of their volunteer/employment status.

(B) In the case of state agencies, use of state vehicles and liability coverage for such use shall be provided by State Risk Management in the following manner:

(i) Liability coverage will be afforded any state employee operating a motor vehicle while in the scope of their employment and on official state business. For the purposes of this section, motor vehicle includes state vehicles owned or leased by the agency, personal vehicles used by an employee for official state business, and privately leased vehicles.

(ii) State employees provided a state vehicle on a "24 hour" take home basis will be deemed to be covered during their established lunch period if the use of the vehicle is for driving to and from an eating establishment. Personal errands or activities undertaken during a lunch hour will not be covered by State Risk Management. The employee will assume all liability while engaging in such activities.

(3) **Claims settled for amounts not exceeding $10,000. 00.** A claim settlement in which a payment not exceeding $10,000.00 is agreed upon may be paid by the Administrator pursuant to a settlement agreement negotiated and approved by authorized legal counsel.

(4) **Claims settled for amounts exceeding $10,000. 00.** A claims settlement in which a payment exceeding $10,000.00 is agreed upon may be paid by the Administrator pursuant to a settlement agreement negotiated and approved by authorized legal counsel, except that the settlement shall not be effective until approved by the district court as provided by law.

(5) **Disposition of claims against the state.** In the case of any claim against the state or an agency, the Attorney General, or other authorized legal counsel representing the state or agency in place of the Attorney General, may defend, settle, deny, compromise or otherwise dispose of any liability incident or claim as may be deemed necessary and proper under existing Oklahoma law.

(6) **Disposition of claims against a political subdivision and other covered entities.** In the case of any claim against any other covered entity which is also a political subdivision as defined by the Oklahoma Governmental Tort Claims Act, 51 O.S. Section 151 et seq. (the Act), defense, settlement or compromise of any claim or liability incident may be made by authorized legal counsel for the political subdivision, and payment or settlement may also require approval of the governing body, if any, of such political subdivision, as required by the Act, in addition to the approvals specified in 580:25-5-1(a)(2) and (3).

(7) **Limitations.** In no event shall self-insurance coverage provided to the state, an agency or other covered entity exceed the limitations on the maximum dollar amount of liability specified by the Oklahoma Governmental Tort Claims Act, which limits are codified at the time of adoption of these rules at 51 O.S. Section 154. These limits shall be applicable in cases of liability incidents involving any other covered entity, without regard to whether the other covered entity is qualified for treatment as a political subdivision as that term is defined in the Oklahoma Governmental Tort Claims Act. Where the Risk Management Division has approved the acquisition of a policy or contract of liability insurance, the terms of which make it applicable to any liability incident, the applicable limits of liability shall govern the dollar amount of indemnity available to the state, any agency or an other covered entity, and no self-insurance coverage shall be provided or paid.

(b) **Collection of liability claims owed to the state.** In the case of any incident where the state has incurred a loss through the wrongful or negligent acts of a private person or other entity, the following procedures will apply:

(1) Money damages collected by the Risk Management Division in any case of loss of property belonging to the state by a private person or other entity is liable for a wrongful act, will be paid to the Risk Management Division and subsequently disbursed through the agency clearing account by the Accounting Division of the Department of Central Services to the injured agency having charge of such damaged or lost property pursuant to 74 O.S. ~~1981~~, Section 85.9A.

(2) In the event a private person or other entity, whether insured or uninsured, is liable for a wrongful act giving

rise to damage or loss of property of the state and such person, entity, or its insurer declines or refuses to pay or settle a written demand by the Risk Management Division for damages within a reasonable time, the Administrator shall refer the matter to the Attorney General who may take whatever action he deems necessary and proper to collect all money damages owed to the state for its loss. All money damages collected pursuant to this provision by the Attorney General, less any amounts properly credited to the Attorney General's Evidence Fund, will be paid to the Risk Management Division and subsequently disbursed through the agency clearing account by the ~~Accounting~~ Finance Division of the Department of Central Services to the injured agency pursuant to 74 O.S. ~~1981~~, Section 85.9A.

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TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 65. STATE SURPLUS PROPERTY

[OAR Docket #04-1146]

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The revisions to the rules update the definition of "authorized entity" to comply with Senate Bill 589, effective July 1, 2003. Other rule revisions clarify the definition of vehicle, the disposal of salvage and authority to accept the state approved purchase card and Department approved credit cards for payment of surplus property purchases.

CONTACT PERSON:
Gerry Smedley, Human Resources Director, (405) 521-2758, Department of Central Services, 2401 N. Lincoln Boulevard, Suite 212, 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, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

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, a multipurpose senior citizen center, as such term is defined in the federal Older Americans Act of 1965, 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.

"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 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~~ heavy equipment.

"VIN" mean the unique vehicle identification number of a vehicle or equipment.

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 obtaining a signed receipt for all property transferred pursuant to this section, in addition to 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. Surplus property declared to have salvage value only may be disposed of by public auction, direct sale, or solicitation of bids pursuant to the Oklahoma Central Purchasing Act.

~~(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, rural fire departments, rural water districts and multipurpose senior citizen centers located in Oklahoma at market prices.

SUBCHAPTER 7. ACQUISITION OF SURPLUS PROPERTY

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; or,

(C) Make payment with a state approved purchase card.

(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 and general public.** Payment may be in the form of certified funds, business check, money order, ~~or~~ cashier's check or credit card approved for use by the Department.

(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.

[OAR Docket #04-1146; filed 6-9-04]

TITLE 712. OKLAHOMA COMMISSION FOR TEACHER PREPARATION CHAPTER 10. TEACHER PREPARATION PROGRAM ACCREDITATION

[OAR Docket #04-1110]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Teacher Preparation Teacher Assessment
712:10-7-1. [AMENDED]
AUTHORITY:
Oklahoma Commission for Teacher Preparation; 70 O.S. Supp. 1998, §6-180 et seq. Oklahoma Teacher Preparation Act
DATES:
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Submitted to Senate:
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Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 5, 2004
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SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 7. Teacher Preparation Teacher Assessment
712:10-7-1. [Amended]
Gubernatorial approval:
August 4, 2003
Register Publication:
20 Ok Reg 2947
Docket Number:
03-3045
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Pursuant to O.S. Supp. 1998, §6-180 et seq, known as the Oklahoma Teacher Preparation Act, the Oklahoma Commission for Teacher Preparation shall develop and administer a competency-based system of teacher assessment. This emergency rule will allow for flexibility for school districts in Oklahoma in hiring teachers certified in other states and may assist in supply and demand problems in critical teacher shortage areas. The rule will lessen the financial burden for teachers certified in other states that have successfully completed comparable assessments who are seeking Oklahoma certification.
CONTACT PERSON:
Ted Gillispie, Executive Director, (405)525-2612

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FOR THE IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JULY 11, 2004:

SUBCHAPTER 7. TEACHER PREPARATION TEACHER ASSESSMENT

712:10-7-1. Teacher assessment regulations

(a) **Examines-initial licensure and certification.** Any individual who applies for a teaching license/certification must successfully complete the competency examination as defined by the Oklahoma Commission for Teacher Preparation. (70 O.S. 1998 Supp., 6-182(14). The competency examination is made up of three components: The Oklahoma General Education Test (OGET), the Oklahoma Subject Area Test (OSAT) and the Oklahoma Professional Teaching Exam (OPTE). See Appendix A for competency exam requirements by certification area test codes.

(b) **Examinees-additional certification.** Individuals wishing to add an additional certification to an existing teaching credential may do so by taking the Oklahoma Subject Area Test for the field of the desired certification. See Appendix A for competency exam requirements by certification area and test codes.

(c) **Examinees-alternative preparation program.** Individuals seeking a teaching license via the Alternative Preparation Program must successfully complete the Oklahoma General Education Test and the Oklahoma Subject Area Test in their recommended certification area. A licensed teacher via the Alternative Preparation Program seeking a standard certificate must successfully complete the Oklahoma Professional Teaching Exam. See Appendix A for competency exam requirements by certification area and test codes.

(d) **Examinees-out of state certification.** Individuals seeking an Oklahoma license/certification who are certified educators in another state(s) shall meet the same assessment requirements as all other individuals seeking initial licensure/certification. Individuals having successfully completed comparable examination(s), as determined by OCTP, shall be exempt from the corresponding part(s) of Oklahoma's assessment requirement.

[OAR Docket #04-1110; filed 6-4-04]

TITLE 730. DEPARTMENT OF TRANSPORTATION CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #04-1112]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Department of Transportation
730:1-5-5. [NEW]
AUTHORITY:
Oklahoma Transportation Commission; 200 N. E. 21st Street, Oklahoma City, Oklahoma 73105; 69 O.S. §§ 303 and 304
DATES:
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None requested
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
This permanent proposed amendment will permit the Department of Transportation to collect for damage to Department facilties based on an estimated cost not to exceed $2500.00.
These smaller claims will be settled more efficiently through the use of a written estimate for the cost of repair and replacement. A standardized form will be used and a signed statement from the appropriate Division Engineer will verify that the damaged facility will be repaired as soon as practicable.
CONTACT PERSON:
Michael E. Mayberry, Assistant Director-Administration, ODOT, 200 N.E. 21st Street, Room 3A-2, Oklahoma City, OK 73105, 405-522-6000

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 12, 2004:

SUBCHAPTER 5. DEPARTMENT OF TRANSPORTATION

730:1-5-5. Collection of damage claims

Claims for damage to Department facilities with an estimated cost of less than two thousand five hundred dollars ($2,500.00) may be collected by the Department based upon a repair estimate prepared by the appropriate field division and approved by the division engineer. The estimate shall, as a minimum, contain an estimate of the materials required and cost for each item, an estimated number of man hours and the hourly rate by classification and equipment hourly costs. The Department shall develop a form for use by the field division in making damage cost estimates. The form shall contain a statement signed by the division engineer that the damage will be repaired as soon as practical.

[OAR Docket #04-1112; filed 6-4-04]

TITLE 735. STATE TREASURER
CHAPTER 80. UNCLAIMED PROPERTY

[OAR Docket #04-1126]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 80. Unclaimed Property Administration [AMENDED]
AUTHORITY:
State Treasurer, 62 O.S. §§517.1 - 517.7.
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Comment period:
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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
These Permanent Rules amend the text of Chapter 80. Unclaimed Property Administration. A sentence will be added clarifying the aggregate reporting requirements to conform with statute. City treasurers will no longer be required to report, in conformity with statute. Removal of the annual report date on mineral interest proceeds and the amount of interest due to the owner under 52 O.S. 570.10, in conformity with statute. Adding language to general reporting requirements clarifying reporting form is found on website and deleting the automatic mailing of report forms to the holder during the month of August. Deleting language making certain holders ineligible for amnesty program. Changing the reporting procedure for certified checks, travelers checks, cashier checks, drafts, certificates of deposit and expense and vendor checks to comply with statute. Removing indemnity bond requirements. Changing the interest/penalties assessment procedure from mandatory to discretionary assessment.
CONTACT PERSON:
Susan Bateman, Office of the State Treasurer, 2300 North Lincoln Boulevard, Room 217, Oklahoma City, Oklahoma 73105-4895, telephone number (405) 521-3191.

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, 2004:

735:80-1-2. Definitions

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

"Administrator" means the Administrator of the Unclaimed Property Division of the Office of the State Treasurer.

"Aggregate reporting" means the reporting of monies in the aggregate when the monies are due unknown owners, or reporting of property less than fifty dollar ($50.00) amounts ~~if voluntarily reported by holders~~ which are not one of a recurring number of continuous payments, including, but not limited to, royalties, annuities, dividends, distributions, and other sums presumed abandoned pursuant to subsection D of Section 655 of this title.

"Apparent owner" means the name of the owner who appears, from the records of the holder, to be the owner of the unclaimed property held by the holder.

"Attorney general" means the Chief Legal Officer of the State of Oklahoma.

"Audit costs" means any cost incurred during the normal course of an audit. Costs shall include travel, lodging, meals, hourly cost, and miscellaneous costs such as toll, parking, etc. Travel, lodging, and meals will be computed at the statutorily mandated cost as set forth by Oklahoma statutes. [See: 74 O.S. §§500.1 et seq.]

"Claim" means the demand with the necessary supporting ownership documents made by any person, who has or appears to have an interest in the unclaimed property or the proceeds from the sale of unclaimed property.

"Claimant" means a person or entity making a claim, who has stated his interest in the unclaimed property or the proceeds from the sale of unclaimed property.

"Claims process" means the review process designed to match claimant documentation submitted in support of the claim, to the information reported by the holder for the purpose of returning unclaimed or abandoned property to the rightful owner. Claims inquiries, submitted by claimants on appropriate claim forms, are reviewed by the designated employees of the Office of State Treasurer authorized to make recommendations to the Treasurer for payment or delivery of unclaimed property, or proceeds thereof, to the claimant.

"Commission" or **"Tax Commission"** means the Oklahoma Tax Commission.

"Current balance" means all monies held for an owner which has accrued to the "as of" date for the current report year.

"Date of last transaction" means the last date of owner contact or owner generated activity, or the date when property became due and payable. For mineral interest proceeds, the "date of the last transaction" means the first payable date of monies due the owner, the pooling order date, or in the case of unsigned division orders, the date monies first became due and payable to other owners in the same property.

"Documentation" means information supplied to the Office of State Treasurer by the claimant and/or the holder, which is used as a basis to determine ownership of the property which has been deemed to be abandoned or unclaimed. Insufficient documentation will result in claims denial.

"Domicile" means the state of incorporation of a holder or the state of the principal place of business of an unincorporated holder.

"Hearing" means an administrative review of a decision made by the Unclaimed Property Division of the Office of State Treasurer, held before a hearing examiner designated by the State Treasurer, to resolve a formal protest filed by a holder or a claimant against the decision made by the Unclaimed Property Division. After the review of the documentation and, based upon the recommendations of the hearing examiner, the Treasurer issues an Order stating the final decision.

"Holder" means any person, partnership, corporation, or any other form of legal or commercial entity who has filed or is required to file an unclaimed property report(s) with the Treasurer under the Uniform Unclaimed Property Act.

"Income" or "Increment" means any increases in the amount of unclaimed property, including but not limited to, dividends, interest, or additional royalty payments due after the property was initially reported to the Treasurer.

"Inquiry" means a request for information concerning an apparent owner of unclaimed property.

"Intangible personal property" means:

(A) monies, checks, drafts, deposits, interests, dividends and income;

(B) credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances.

(C) stocks and other intangible ownership interests in business associations;

(D) monies deposited to redeem stocks, bonds, coupons and other securities, or to make distributions;

(E) amounts due and payable under the terms of insurance policies;

(F) amounts due and payable under the terms of mining or mineral leases; and

(G) amounts distributable from trusts or custodial funds established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

"Last known address" means the address of an apparent owner of unclaimed property as shown on the records of the holder for the purpose of delivery of mail.

"Listed owner" means the name of the apparent owner as reported by the holder.

"Memorandum" means a mark, symbol, or statement indicating knowledge of or interest in funds on deposit.

"Mineral proceeds" means net revenue interest, royalties, overriding royalties, production payments, payments under joint operating agreements including working interests, lease bonuses, delay rentals, shut-in royalties, minimum royalties, and all other proceeds resulting from production and sale of mineral interests and acquisition and retention of mineral leases.

"No last known address or address unknown" means that the holder's records do not show any last known address of the owner or show that the address of the owner is unknown.

"Office of State Treasurer" or "OST" means the agency governed by the State Treasurer.

"Owner" means a person, or his legal representative, who has a legal or equitable interest in the property that is subject to the Uniform Unclaimed Property Act. Examples of an owner include, but are not limited to, a depositor in the case of a deposit, a beneficiary in the case of a trust, a creditor, claimant, or payee in the case of other intangible property. If a property is owned by more than one person, the presumption of abandonment shall occur when the property has been abandoned by all owners for the applicable abandonment period.

"Person" means an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

"Service charges, cessation of interest or dividend payments due to dormancy or inactivity" means imposition of charges or discontinuance of interest or dividend payments due to dormancy or inactivity after giving reasonable notice to the owner of the property. The owner may be notified at the time the account is opened, by mailing a schedule of service charges or brochure containing interest or dividend payment policy, or by incorporating such service charge and interest or dividend payment policies in the form of a statement in the Rules, Regulations, or Bylaws of the holder.

"Treasurer" or "State Treasurer" means the duly elected or appointed State Treasurer of Oklahoma.

"Unclaimed Property Division"means the division of employees within the Office of State Treasurer designated to administer the Oklahoma Uniform Unclaimed Property Act, 60 O.S. §§651 et seq.

"Undelivered shares" means any certificate or other instrument of ownership which represents shares of stock of a business association, which is still in the possession of the issuer, holder or transfer agent or broker.

"Underlying shares" means the intangible ownership interest or shares of stock of a business association, which are no longer in the possession of the issuer, holder, transfer agent, or broker and the dividends or distributions as a result of the interest have been presumed abandoned.

"Voucher" means a payment instrument issued by OST to the claimant.

SUBCHAPTER 3. REPORTING REQUIREMENTS

PART 1. GENERAL APPLICATION

735:80-3-1. General reporting requirements

(a) Annually a holder must file a verified report of unclaimed property. If a holder has no property that is reportable, a negative report (a report or a letter stating no property is reportable) is required. Report forms may be obtained from OST.

(b) The report must be filed on ~~a~~the form(s) provided on the unclaimed property website ~~furnished by OST~~. Computer generated reports will be accepted only if provided in a format which has received prior approval from OST and if accompanied by an OST form provided for verification. Any report submitted in any format other than the prescribed format required by OST will be returned to the holder for correction.

~~(c) If a holder has filed an unclaimed property report in the preceding year, the Unclaimed Property Division will automatically mail the report forms to the holder during the month of August (March for life insurance corporations) for the current year. However, if report forms are not received by the holder within thirty (30) days prior to the report due date established by the Uniform Unclaimed Property Act, and the holder has in its custody property subject to the Act, it is the holder's responsibility to request the report forms from the OST.~~

(~~d~~c) Any holder who refuses to file an Unclaimed Property report as required under the provisions of the Uniform Unclaimed Property Act or refuses to furnish records or information requested by OST to determine the amount of unclaimed property in the holder's possession, and subsequent examination of holder's records establishes that the holder willfully or without reasonable cause has failed to deliver unclaimed property, the holder shall be subject to the penalties imposed by the Uniform Unclaimed Property Act. [See: 60 O.S. §§679, 680]

(~~e~~d) If holders report and remit property to Oklahoma that should be reported and remitted to another state, pursuant to the reciprocal agreements with the other states, OST shall transmit the monies to the respective states of owners last known addresses. [See: 60 O.S. §683.1]

735:80-3-4. Aggregate reporting; reporting requirements

~~Unclaimed property of less than fifty dollars ($50.00) in value owing to an individual is not required to be reported. However,~~ Items of less than fifty dollars ($50.00) in value must be reported and remitted in the aggregate, except property which is one of a recurring number of continuous payments, including, but not limited to, royalties, annuities, dividends, distributions, and other sums presumed abandoned pursuant to subsection D of Section 655 of this title, all of which shall be reported in the same manner as property with a value of fifty dollars ($50.00) or more. OST shall protect the interests of the holder to the extent of the value of property reported and delivered. Unclaimed property due unknown owners, held by the holders incorporated in the State of Oklahoma or held by unincorporated holders having their principal place of business in Oklahoma, ~~may~~ shall also be reported and remitted in the aggregate.

735:80-3-7. Requirement to report and remit current balance

~~(a)~~ Holders of presumed abandoned intangible property shall annually report and remit all proceeds accrued to date; i.e., the current balance held by the holder. When and if any part of the proceeds has been held for the statutory abandonment period or longer, the holder must report and remit all interest, additions, and increments accrued to the owner's account. Any additional amounts accruing to an owner who has been reported previously will be reported and remitted on an annual basis; i.e., additional amounts from the "as of date" of the previous report year through the "as of date" of the current report year. ~~Holders of mineral interest proceeds are not required to report or remit current balances.~~

~~(b) The holder shall include, in addition to the amounts remitted in subsection(a) of this Section, all interest due on the unpaid proceeds in accordance with 52 O.S. §570.10.~~

PART 3. FINANCIAL INSTITUTIONS

735:80-3-10. Banks, savings and loans or other financial institutions; reporting requirements

(a) Any deposit with a banking or financial organization, including deposits that are automatically renewable, or a mutual investment certificate, or any other interest in a banking or financial organization, is presumed abandoned unless the owner has, within the previous five (5) years (15 years in the case of automatically renewable time deposits):

(1) In the case of a deposit, increased or decreased the amount of the deposit or presented the passbook for the crediting of interest;

(2) Communicated in writing with the banking or financial organization indicating an interest in the property;

(3) Owned other property to which paragraph (1) or (2) of this subsection is applicable and, if the banking or financial organization communicated in writing with the owner in regard to the property that would otherwise be presumed abandoned under this subsection at the address to which communications regarding the other property are regularly sent; or

(4) Had another relationship with the banking or financial organization concerning which the owner has:

(A) Communicated in writing with the banking or financial organization; or

(B) Otherwise made contact with the banking or financial organization, and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship are regularly sent.

(b) For the purpose of this Section, property includes, but is not limited to, undelivered shares and the interest or dividends associated with them.

(c) Any property described in 60 O.S. §652 (d), that is automatically renewable, such as a certificate of deposit having rollover provisions, is matured for purposes of that Section upon the expiration of its initial time period. But in the case of any renewal to which the owner consents by communicating in writing with the banking or financial organization at or about the time of renewal, or otherwise indicates consent, as evidenced by a memorandum or other record on file prepared by an employee of the organization, the property is matured upon the expiration date of the last time period for which consent was given. However, loss of contact with the owner will be considered to have occurred if the statement or any communication mailed by the bank, savings and loan, or other financial institution has come back undelivered. If, at the time for delivery to OST provided by the Uniform Unclaimed Property Act, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery shall be extended until the time when no penalty or forfeiture would result. Automatically renewable time deposits may be retained, at the holder's option, or delivered to OST.

(d) The following categories of property normally held by a bank or financial institution shall be subject to reporting under the Uniform Unclaimed Property Act (the Act):

(1) Checking or demand accounts, savings accounts or matured time deposits, including any interest or dividend thereon. Any charges withheld must be withheld at the express or implied consent of the owner.

(2) Monies paid toward the purchase of shares or other interest or any deposit thereon. Any charges withheld must be withheld at the express or implied consent of the owner.

(3) Certified checks, travelers checks, cashier checks, drafts, certificates of deposit and expense and vendor checks. If cashier checks or certified checks are reported, the bank or financial institution shall include on the report ~~the name of the purchaser or remitter as well as the name of the payee~~if known, the names and last known addresses of the payee(s), payor(s) and the purchaser(s).

(4) Monies or personal property removed from a safe-deposit box or other safekeeping repository, or surplus amounts arising from the sale of such contents.

(5) Any other intangible personal property not otherwise covered by the Act. [See: 60 O.S. 652]

PART 7. CITY/COUNTY TREASURERS

735:80-3-20. ~~City or~~ County treasurers; reporting requirements

~~City or~~ County treasurers shall report unclaimed intangible property to include, but not be limited to:

~~(1) Funds from non-incorporated municipalities which have been carried on the treasurer's general fund ledger for a period of one (1) year or more ;~~

(~~2~~1) Outstanding treasury checks, vouchers, or warrants that have remained outstanding and unclaimed for a period of one (1) year or more;

(~~3~~2) Amounts due bond holders wherein the bonds or warrants have matured or have been paid and the bonds or warrants have not been surrendered to the holder by the

owner for a period of one (1) year or more following the date such bonds or warrants became payable to the owner; and

(~~4~~3) Trust Deposit receipts.

PART 13. MINERAL INTERESTS

735:80-3-35. Mineral interest proceeds; reporting requirements

(a) Monies derived from mineral interests shall be reportable as unclaimed property to OST.

(b) For each owner reported, the following minimum information shall be included in the holder's annual report:

(1) Name and last known address of the owner. Lack of current mailing address does not relieve the holder from the responsibility of reporting the owner's address prior to the date contact with the owner was lost;

(2) Legal description of the property interest;

(3) Decimal percentage of ownership interest;

(4) Owner's Social Security Number or Federal Employer Identification Number;

(5) Amount of lease bonus, delay rental, working interest, overriding royalty interest and royalty income due the owner as of the annual report date ~~(September 1, current year)~~;

~~(6) Amount of interest due the owner under 52 O.S. §570.10;~~ and

(~~7~~6) First payable date.

(c) Any tax or withholding report required to be filed with the federal government, any state government or political subdivision thereof, concerning monies held in suspense, shall be made by either the producer, operator, purchaser or holder as required by said governmental entity.

(d) None of the Rules implemented for the administration of the Uniform Unclaimed Property Act shall be interpreted as relieving the holder of such monies from the responsibility for the maintenance of those records on mineral interests, such as records of lease bonuses, delay rentals and royalty interests, after such time that the funds have been transmitted to OST. [See: 60 O.S. §658]

SUBCHAPTER 7. CLAIMS PROCESS

735:80-7-2. Proof of ownership

(a) Information required to prove ownership of unclaimed property may consist of a copy of the claimant's driver's license or other identification, a document proving Social Security or Federal Employer Number and, one or more of the documents itemized below. A document proving Social Security or Federal Employer Identification Number (or both) may be required to administer the State's tax laws. The OST Unclaimed Property Division will consider all documents submitted in making a reasonable assessment of whether a valid claim of ownership has been presented.

(1) Copy of birth certificate(s);

(2) Copy of will(s);

(3) Copy of probate distribution(s);

(4) Copy of marriage certificate(s);

(5) Copy of divorce decree(s);

(6) Copy of documentation providing a connection with the reported address or business for the year cited as the "Date of last Transaction" in the holder's report;

(7) Copy of Letters Testamentary;

(8) Notarized copy of contract if a representative is claimant;

(9) Copy of guardianship or trust agreement;

(10) A letter from the holder authorizing release of funds reported and remitted by the holder;

(11) Proof of payment by holder to owner in the form of:

(A) A copy of front and back of a canceled check; or

(B) List of documentation furnished in support of payment of claim; or

(C) Both of the above items A and B.

(12) Affidavit executed by an individual other than the claimant having knowledge of, and in support of, a claim when requested information or documentation is not available;

(13) Other documentation that may be used in support of the claim. This documentation may be an income tax return, adoption records, court records, CD's, stale dated checks, an affidavit of proof of death and heirship from a disinterested party, etc.

(b) In addition to items set out in (a) of this Section, the documents described in this subsection needed to establish ownership may be requested:

(1) Checking accounts: A check (blank or canceled) showing the account number for that bank, or a statement on that account which contains the account number;

(2) Savings account: A copy of the passbook, deposit slip, monthly statement, quarterly statement, or "1099 Int" Form issued by the bank, showing the account number or correspondence referencing the account number;

(3) Safe-Deposit box: A copy of the safe-deposit box rental receipt or correspondence referencing that rental;

(4) Wages: Copies of W-2 forms, 1099's, state income tax returns, federal income tax returns, or other tax records or correspondence relating to that employment;

(5) Stock and/or dividends: Copies of a stock certificate of the business entity reported, correspondence relating to that stock certificate or a statement from the broker showing purchase or sale of that stock;

(6) Bearer bonds and certificates of deposit: A copy of the record of purchase;

(7) Insurance: A copy of the policy, or correspondence relating to that policy by policy number;

(8) Mineral proceeds: One or more of the following as specified in the letter requesting documents:

(A) Mineral deed;

(B) Surface deed which includes mineral retained, sold, or purchased;

(C) Probate inventory;

(D) Oil and gas lease;

(E) Purchase documents for an overriding royalty interest;

(F) Current Division Order;

(G) Certification of current pay status; or

(H) A letter from the holder authorizing release of funds reported and remitted by the holder.

(9) Court Clerk funds: A copy of the court decree or court order for the case that was the source of the funds. (i.e., probate, condemnation, quiet title, divorce, child support, appearance bond, etc.)

(10) Vendor checks: Copies of accounts receivable billing, invoices, bills of lading or correspondence with the holder reporting and remitting the funds that show a business relationship for each payment, or a statement that the funds are still considered to be due and owing on the account;

(11) Property held for deceased owners: If the listed owner is deceased, the following is required:

(A) For property valued at more than Ten Thousand Dollars ($10,000.00), a certified copy of Letters of Administration or Letters Testamentary naming claimant as the personal representative of the listed owner, or a certified copy of the Decree of Distribution of the estate of the listed owner, determining claimant's entitlement to receive unclaimed property.

(B) For property valued at Ten Thousand Dollars ($10,000.00) or less, a copy of the death certificate and a signed affidavit executed by the claimant, stating that:

(i) The claimant is entitled to receive unclaimed property;

(ii) The reason for entitlement to such property; i.e., exact relationship with the listed owner and the basis of the entitlement;

(iii) That there has been no probate of the estate of the deceased owner;

(iv) That no such probate is contemplated; and

(v) That claimant will indemnify the State for any loss, including attorney fees, should another claimant assert a prior right to the property.

(C) A copy of the death certificate and an affidavit signed by the claimant or a person authorized to act in the claimant's legal capacity by a limited power of attorney which specifically grants authority to make the claim under 60 O.S. §674.2 will be accepted. [See: 60 O.S. §674.2]

(12) Cashier's checks: Cashier's Checks shall be claimed by the payee as the owner unless the purchaser submits sufficient documentation to prove a superior claim. ~~An indemnity bond may be required if, due to insufficient owner and property information, the claimant is unable to provide satisfactory proof of ownership of property.~~

(13) Claims by heirfinders or agents of listed owner:

(A) If the claim is based on a contract with the owner or heir of the owner, the heirfinder shall provide:

(i) A copy of the contract showing the percentage of the value of the funds or property charged for services (not to exceed 25%), names, current addresses, and social security numbers or Federal Employer Identification numbers of all parties to the contract; and

(ii) An executed special power of attorney from the owner or heir of the owner, which specifically authorizes the person to make an unclaimed property claim under the Oklahoma Unclaimed Property Act, Title 60 O.S. §651 et seq. to file a claim on his or her behalf.

(B) The Unclaimed Property Division may contact the owner(s) or claimant(s) to make sure that the owner or the claimant is aware of the full amount of unclaimed property involved. The claim form(s) shall be signed by the owner(s) or claimant(s) or by a person duly authorized to make the claim on his or her behalf by special power of attorney which specifically authorizes the person to make the claim under the Oklahoma Unclaimed Property Act, Title 60 O.S. §651 et seq.

(C) A claim made by an heirfinder or an agent of a listed owner will require the same items of proof as would a claim made by the owner.

(14) Claims based on transfer of mineral interest:

(A) Where a mineral interest has been sold by the owner(s) or the heir(s), all monies accrued prior to the date of delivery of deed, conveyance, or assignment which have been reported as unclaimed property or forced pooled monies will be paid to the grantor(s) and monies reported after the date of delivery of deed, conveyance, or assignment will be paid to the grantee(s) except:

(i) Monies accrued prior to the date of delivery of deed, conveyance, or assignment which have been reported will be paid to the grantee if the deed, conveyance, or assignment clearly states grantee is entitled to such monies;

(ii) The grantee provides an affidavit setting forth:

(I) The reasons grantee is entitled to monies accrued prior to the date of delivery of deed, conveyance, or assignment;

(II) Reasonable notice has been given to grantor at his or her last known address of the existence of monies reported which accrued prior to the date of delivery of deed, conveyance, or assignment;

(III) The name and last known of address of grantor; and

(iii) Grantee provides evidence that reasonable notice has been given to grantor at his or her last known address, advising grantor that monies attributable to the conveyed mineral interest have been reported, which accrued prior to the date of delivery of the deed, conveyance, or assignment,

and the grantor may contact OST to obtain further information concerning said monies.

(B) If the owner(s) is deceased and the heir(s) is entitled to monies accrued prior to date of delivery of deed, conveyance, or assignment, the unclaimed monies will be distributed to the heir(s) in accordance with subsection (b)(11) of this Section.

(C) The purchaser of the mineral interest will provide current mailing address(es) of the owner(s) or the heir(s) so that OST can pay all monies reported prior to the date of delivery of the deed.

SUBCHAPTER 15. AMNESTY

735:80-15-5. Conditions and restrictions of Amnesty Program

A Holder, who is qualified to take advantage of an Amnesty Program and who properly reports under this Subchapter, will not be liable for the interest and penalties imposed on Holders under the Unclaimed Property Act on reported and remitted amounts. The interest which is waived, will not include interest on property owed to an Owner which may have accrued on the property prior to the time the property should have been reported, such as an interest-bearing bond. ~~Holders who have been contacted for an examination by the Unclaimed Property Division or a third party under contract with OST before the beginning of the Amnesty Period, are ineligible for the Amnesty Program. Holders who have not reported and remitted pursuant to the Amnesty Program and who are contacted for an examination by the Unclaimed Property Division or a third party under contract with OST during the Amnesty Period, will no longer be eligible for the Amnesty Program.~~ OST reserves the right to cooperate with other States and share information through reciprocal agreements and the States National Audit Program. OST or a third party under contract with OST may, however, seek interest and penalties from holders who fail to report unclaimed property in their Amnesty Holder Reports or in the accompanying remittances to OST, any unclaimed property which should have been reported and remitted for the look back period.

[OAR Docket #04-1126; filed 6-7-04]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 1. GENERAL

[OAR Docket #04-1132]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Operating Policies
780:1-3-2. [NEW]
780:1-3-3. [NEW]
Subchapter 13. Printing and Publications
780:1-13-1. [AMENDED]

AUTHORITY:
State Board of Career and Technology Education; 70 O.S. 2001, §14-104, as amended; 75 O.S. 2001, §250 et. seq., as amended
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Failure of the Legislature to disapprove the rules resulted in approval on May 25, 2004.
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule outlines the additional notice that will be provided to the public when the State Board proposes to conduct a meeting by teleconference (as that term is defined in the statute.) The rule addresses the procedures to be followed in the event there is an interruption in the telecommunication link. A rule is being proposed to clarify the procedures the State Board and staff will utilize in proposing to conduct, and conducting, meetings authorized to be conducted by teleconference. The passage of H.B. 2028 (2000) allowed the State Board to conduct meetings by teleconference. These administrative rules are to help the public understand what procedures would be applicable for the State Board's meetings, including any meetings held by teleconference. The proposed rule amendment specifies that documents published for other entities will not be sent to the Publications Clearinghouse. Further, it specifies the number of documents that are currently sent to the Publications Clearinghouse. The action taken provides clarification of the Publications Clearinghouse function and processes. The Printing Plant publishes documents for other entities, which would not fall under this rule. Also, the Publications Clearinghouse does not require 25 copies of curriculum products. The rule amendment identifies the correct individual who serves as Publications Officer. The action identifies the Manager of Creative Services as the Publications Officer. The official name of the Art Division changed to the Creative Services Division in February 2003. To clarify the correct title of the Publications Officer. Publications Clearinghouse activities updated.
CONTACT PERSON:
Marie Saatkamp, (405) 743-5455

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, 2004:

SUBCHAPTER 3. OPERATING POLICIES

780:1-3-2. Meetings

All meetings of the State Board of Career and Technology Education (Board) will be conducted in accordance with the Oklahoma Open Meeting Act, 25 Oklahoma Statutes, Section

301 et.seq., as amended and other applicable provisions of Oklahoma law.

780:1-3-3. Meetings by teleconference

The Board may hold meetings by teleconference as defined by state law. Advance notice will be given of all meetings to be held by teleconference, identifying all the meeting sites. All meeting sites will be accessible to the public. Any written material provided at one site will be provided at all sites. In the event of an interruption in the telecommunications link, the meeting will recess while efforts are made to restore service. If the link cannot be reestablished, the meeting may continue at whichever site(s) that may be reconnected and that have at least a quorum of the Board. If sufficient links to establish a quorum cannot be reestablished, the meeting shall be adjourned and/or rescheduled.

SUBCHAPTER 13. PRINTING AND PUBLICATIONS

780:1-13-1. Publications Clearinghouse; cost information

(a) **Publications Clearinghouse.** Information published ~~by~~ for the Department, regardless of the source of funds, will be deposited with the Publications Clearinghouse, with a minimum of 25 copies of non-curriculum products and 2 copies of curriculum products. Such information includes that which is intended for distribution to the public and that which is reproduced solely to meet the internal operating needs of the agency, its divisions and/or units of government that have a direct relationship to the state agency in regard to its ability to carry out its responsibilities.

(b) **Cost information.**

(1) **Inclusion of costs paragraph.** The Department shall list cost information on each state publication issued, whether the printing is accomplished by the agency internally or through an outside public or private entity. Cost information will be set forth in a separate paragraph within the document and will conform to the following format: This publication is printed and issued by the Oklahoma Department of Career and Technology Education as authorized by 70 O.S. 1991, §14-103, as amended. _____ copies have been prepared and distributed at a cost of $_____. Copies have been deposited with the Publications Clearinghouse of the Oklahoma Department of Libraries.

(2) **Location of bibliographic information.** To achieve bibliographic control of state government publications and to assure that the identity of a publication can be ascertained in terms of the issuing authority, author, and subject matter sufficient to distinguish it from other publications, the following information shall be included on the title page or other suitable place near the beginning of each state publication required to be deposited with the Publications Clearinghouse:

(A) Full name of the issuing agency, including the division or subdivision responsible for publication, and the parent body;

(B) Name of any personal author to whom credit is intended to be given;

(C) Title of the publication;

(D) Date and place of publication;

(E) Frequency of issue, if a periodical is weekly, monthly, etc.;

(F) Volume and number of issue, if appropriate; and,

(G) Date, or month and year of issue, if appropriate.

(3) **Publications officer.** The Department has designated the Manager of the ~~Art~~ Creative Services Division as the Publications Officer. The Publications Officer shall have the duties to provide copies of all state publications of the agency, to compile and forward required semiannual lists of the state publications of the agency, and to provide other related information as may be requested by the Publications Clearinghouse.

[OAR Docket #04-1132; filed 6-9-04]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 10. ADMINISTRATION AND SUPERVISION

[OAR Docket #04-1133]

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PERMANENT final adoption
RULES:
Subchapter 3. State Technical Assistance, Supervision, and Services
780:10-3-2. [AMENDED]
780:10-3-3. [AMENDED]
780:10-3-8. [AMENDED]
780:10-3-10. [AMENDED]
780:10-3-12. [AMENDED]
Subchapter 5. Finance
780:10-5-4. [AMENDED]
Subchapter 7. Local Programs: Application; Student Accounting; Evaluation
780:10-7-1. [AMENDED]
780:10-7-3. [AMENDED]
Subchapter 9. Service Contracts and Equipment Guidelines
780:10-9-2. [AMENDED]
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Failure of the Legislature to disapprove the rules resulted in approval on May 25, 2004.

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SUPERSEDED EMERGENCY ACTIONS:

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n/a

ANALYSIS:

In the 2000 legislative session the Oklahoma legislature changed the official name in the statues from Area Vocational Technical Schools to Technology Centers. The name change will more accurately convey the true nature of the area vocational-technical system and the need to accurately convey a more modern depiction of the area vocational-technical system and to ensure compliance. Proposed amendment further clarifies that state funding of programs is what is being approved or non-approved and more clearly defines that state funding of new programs is determined by reviewing all new program request. Technology center personnel have requested interpretation of this rule the current rue's ambiguity has made interpretation difficult. This will ensure it is clear that the Department has the responsibility to approve or not approve state funding for all new programs requested. Proposed amendment updates the rules governing the responsibilities of the agency ICT staff and give basis for implementing the State's Information Security Policy. Ongoing technology deployment in the agency, staffing requirements to develop and support the agency's technology systems and resources, and compliance with the State's Information Security Policy created the need for updating the rule. The effect is to accurately outline the existing responsibilities of the SDCS and ETR staff and give basis for implementing the State's Information Security Policy. The proposed action taken updates stated responsibilities for the SDCS and ETR staff. Proposed amendment changes Applied Technology/Academic Education (ATAE) to TechConnect and/or TechConnect Plus programs receiving program incentive assistance and teacher salary supplement and reflects the name change for the previous program name and better clarifies the funds. The TechConnect program format was adopted by the state CareerTech Board and this created a reason for this rule change and the effect of this rule is to change the program name from ATAE to TechConnect and clarification. Proposed amendment adds the new TechConnect program name in place of the previous ATAE program name and adds TechConnect to Standards to replace ATAE. TechConnect was adopted by the state CareerTech Board to replace the existing ATAE programs and this officially makes the program name change. Proposed amendments clarify the manner in which program assistance monies may be spent, and that these monies are not specified as grants. This action taken provides clarification to comprehensive school administrators, program specialist and state program administrators on how the program assistance monies may be spent. Clarification is needed on the ways program assistance monies may be spent by the state agency, teachers and administrators in comprehensive schools. The effect is informed ODCTE staff, teachers and administrators in comprehensive schools. Clarifies the manner in which new program starts may receive matching funding. The action taken provides clarification to comprehensive school administrators, program specialist and state program administrators on the availability of funds for new programs. Clarification is needed on matching funds for new program starts and informing ODCTE staff, teachers and administrators in comprehensive schools. The proposed amendment allows the local education agency additional days to submit the Salary and Teaching Schedule to the Department and it adds OCAS class coding whic has been added to the Salary and Teaching Schedule. The action taken provides an additional 15 days for submittal of form. Many school districts throughout the state started school after Labor Day this year and requested an extension and this allows school districts with CareerTech teachers more time to submit the Salary and Teaching schedule. Proposed amendment is a rule that has not been enforced for a number of years and is not being utilized; therefore consideration should be given to delete the rule. Program administrators of each division should assume the responsibility on how equipment is delivered or transferred. The rule is not being utilized at this time. School districts and divisions are not being invoiced. It will eliminate equipment delivery charges for school districts. Proposed amendment clarifies the guidance services that are offered by technology centers. The amendment clarifies the guidance services offered at technology centers and the guidance services needs in order to better identify what technology centers are doing or need to be doing in terms of career guidance services. The effect of the rule is to help technology centers better implement career guidance practices. Consolidates on-site assistance and in-service programs and activities and consolidates the statement terms on site assistance and in-service programs and activities into the same description. The terms on site assistance and inservice programs and activities can be used interchangeably. The effect of the rule is to bring the terms on site assistance and inservice programs and activities into the same group. Proposed amendment defines responsibilities of eligible recipients regarding program local applications and contracts, clarifies the language regarding program local applications and contracts, clarification was needed to better define the language regarding program local applications and contracts, and the amendment will clarify the responsibility of eligible recipients regarding local applications and contracts. Proposed amendment clarifies the role of the division using current language and clarifies the divisions' responsibility for the system. Area schools are now called technology center and public information has changed to communications and marketing. The agency will coordinate statewide efforts for marketing and communications. Proposed rule clarifies language and updates roles and aligns with the responsibilities of communications and marketing professionals of technology centers. Roles of communications and marketing professionals have expanded and better defines role of the agency. Rule is incorporated into rule (b) and eliminates the need for an additional rule. The scope of responsibilities can be better encompassed in one rule which defines job responsibilities. The rule amendment identifies the expanded nature of materials developed and disseminated. The action specifies a broader range of materials developed beyond curriculum. Products developed now include such items as tests, online courses, CDs, videos, etc. which are now included in the broader term "instructional materials". To clarify to customers the scope of materials offered. The rule amendment corrects the sources of pricing information. The action clarifies the sources of pricing information regarding these materials. CIMC is no longer affiliated with an online partner, so this source of pricing information was modified. To clarify to customers the correct sources of pricing information. The rule amendment identifies two additional forms of payment that are accepted by Customer Service. The action specifies a broader range of payment options for CIMC and MAVCC customers. Payment may now be accepted by credit card or personal check in addition to purchase orders. To clarify to customers the payment options available when purchasing instructional materials. The rule amendment adds the payment option of credit cards and eliminates a step in the confirmation of purchase orders. The action clarifies the payment options and correct steps when using purchase orders. Curriculum Customer Service accepts credit cards for orders and has eliminated a step in the confirmation of purchase orders. To clarify to customers the payment options and correct steps in the use of purchase orders. The rule amendment eliminates a piece of information no longer acquired by Customer Service. The action clarifies the information acquired during the placing of an order. Curriculum Customer Service no longer asks for teacher name when placing orders for instructional materials. To clarify to customers the information gathered during the ordering process. The rule amendment corrects the available options for payment when faxing order. The action clarifies the options customers have for payment when faxing orders. Customer Service now accept credit cards as well as purchase orders as payment on faxed orders. To clarify to customers the options they have for payment when faxing orders. The rule amendment corrects the available options for placing orders for CIMC materials. The action clarifies the options customers have for placing ordrs for CIMC materials. CIMC no longer is affiliated with an online partner, so this ordering option is no longer available. To clarify to customers the options they have for placing orders with CIMC. The rule amendment identifies an additional form of payment that is accepted by Customer Service. The action specifies a broader range of payment options for CIMC and MAVCC customers. Payment may now be accepted by credit card in addition to a United States money order. To clarify to customers the payment options available when purchasing instructional materials. The rule amendment specifies the broader options and source of payment policies for CIMC online curriculum. The action clarifies that online curriculum might come from a variety of sources and the payment policies are those of CIMC. CIMC is working cooperatively with a number of online curriculum delivery providers, so this statement has been broadened. Further, CIMC is no longer affiliated with an online partner, so the payment policies are CIMC's only. To clarify to customers the online delivery options and payment policies affiliated with CIMC. The rule amendment identifies the availability of a new product line for customers. The action identifies the availability of online testing and the fact that this system is free to Oklahoma CareerTech programs. The online testing system was implemented in October 2001 and is available free to Oklahoma CareerTech programs and for a fee to other states and entities. To notify customers of the availability and costs associated with the online testing system. The rule amendment clarifies that

returned materials must be in resalable condition. The action limits items that can be returned to those items that can be re-sold to another customer. CIMC experiences revenue losses due to materials being returned in poor condition. To communicate to customers the stipulation of items being in resalable condition in order to receive full credit. The rule amendment clarifies that returned materials must be in resalable condition. The action limits items that can be returned to those items that can be re-sold to another customer. CIMC experiences revenue losses due to materials being returned in poor condition. To communicate to customers the stipulation of items being in resalable condition in order to receive full credit. The rule amendment identifies the stipulations associated with returning instructional materials for full credit. The action identifies the conditions that must be met in order for a customer to receive full credit for returned instructional materials. The agency experiences revenue losses due to materials being returned in poor condition, after the prescribed return period, or without authorization. To communicate to customers the stipulations associated with receiving full credit for returned instructional materials and thus avoid receipt of items that fall outside those parameters. The rule amendment identifies the stipulations associated with returning CIMC products for credit. The action identifies the three conditions that must be met in order for a customer to receive full credit for a CIMC returned materials. CIMC experiences revenue losses due to materials being returned in poor condition, after the prescribed return period, or without authorization. To communicate to customers the stipulations associated with receiving full credit for CIMC returned materials and thus avoid receipt of items that fall outside those parameters. The rule amendment identifies an additional fee that will be assessed to customers who return CIMC materials outside the stipulations for full credit. The action identified notifies customers of the presence of a restocking fee for CIMC materials returned outside the stipulations for full credit. Products may be returned outside the stipulations for full credit under certain conditions. If this occurs, a restocking fee will be assessed. To clarify to customers the presence of a restocking fee in instances where a product is returned outside the stipulations for full credit. The rule amendment broadens the method of notifying Curriculum Customer Sevice of receipt of damaged materials. The action identified allows customers to notify Curriculum Customer Service of receipt of damaged materials in methods other than written notification. Curriculum Customer Service finds that it's equally efficient to receive notification of receipt of damaged materials via e-mail or phone to receiving this notification via written notice. To increase options to customers in notifying Curriculum Customer Service of receipt of damaged materials. The rule amendment eliminates a specific percent being designated as a shipping charge. A specific shipping charge will not be specified in rules as this varies and will easily become outdated . Customer Service now uses and Oracle sales system and shipping charges vary according to specific orders, rather than being one standard percentage. To allow shipping charges to be applied through the Oracle program, varying according to the circumstances, rather than charging a flat 10% rate.

CONTACT PERSON:

Marie Saatkamp, (405) 743-5455

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, 2004:

SUBCHAPTER 3. STATE TECHNICAL ASSISTANCE, SUPERVISION, AND SERVICES

780:10-3-2. Career guidance and counseling, career information, ~~financial aid,~~ disability services, integrated academics, essential skills and career development

(a) **Career guidance to technology centers. ~~area schools~~.** The Department shall provide coordination and leadership for career guidance and counseling to area ~~vocational-technical schools (hereinafter referred to as "area schools")~~ technology centers and other entities whose primary purpose is the delivery of career guidance and counseling. Technology centers shall have an identifiable guidance program in place that addresses the career development needs of all students. Technology centers shall provide all students with information and advisement about career and educational options, administer assessment instruments such as interest inventories, aptitude tests, and achievement tests or acquire the results of such assessments prior to enrollment to provide guidance in program selection and placement, and provide support for students to help them be successful in their career pathway.

(b) **Career Information.** The Department shall provide technical assistance to schools, institutions, and agencies for ~~the Oklahoma Career Search Programs~~ career development software and career information materials. ~~The local education agencies who use career information materials must meet the following criteria:~~

~~(1) Purchase the career information materials on a cost-recovery basis. These materials include curriculum, computer software, and videos;~~

~~(2) The purchase of a Career Search Computerized Career Information Delivery System includes duplication rights for the site that purchased the system;~~

~~(3) The purchase of the Career Search Careers for the 21st Century Video Series does not include duplication rights; and,~~

~~(4) Career information materials are developed according to the school-to-work model for the areas of career awareness, exploration and preparation for user reference. User duplication rights are delineated within each career information product.~~

(c) **Financial Aid Services.** ~~The Department shall provide technical assistance to schools to help them establish and strengthen their financial aid programs and related services for postsecondary students. In-service opportunities for *Career*Tech financial aid administrators will be provided, as well as one-on-one technical assistance to ensure that programs meet current state and federal regulations that govern the administration of financial aid programs and the operation of postsecondary programs~~. The Department shall represent the Oklahoma career and technical education system by performing a liaison function with the Student Financial Aid Office (SFA) of the US Department of Education. As such, the Department will determine the in-service needs of technology center financial aid personnel and arrange for knowledgeable individuals, from SFA or other professional organizations, to conduct workshops and training sessions. The purpose of these in-service opportunities is to strengthen financial aid programs at technology centers ensuring adherence to current state and federal regulations governing the administration of financial aid programs. This operational unit shall collect all statistical data related to financial aid activities at technology centers and report this information where appropriate. This operational unit shall also administer the Oklahoma GI Bill program which provides tuition assistance to qualified ~~Viet Nam era~~ Vietnam-era veterans.

(d) **Career Specialists.**

~~(1) **On-site assistance** Career Specialists shall provide on-site assistance to local education agencies to develop~~

~~and/or implement career programs including career guidance, career information and career resource centers within the local education agency. Career Specialists shall operate in areas designated by the Department. The local education agency shall request the assistance and shall designate a local career development liaison to coordinate the services to be delivered.~~ Career Specialists shall provide on-site and in-service activities to local education agencies to develop and/or implement career programs including career guidance, career information, career resource centers and assistance in the use and implementation of materials and services provided by the Department to the local education agency. Career Specialists shall operate in regions designated by the Department. The local education agency shall request the assistance and shall designate a local career development liaison to coordinate the services to be delivered.

~~(2) **In-service programs and activities.** Career Specialists shall provide in-service programs and activities to local education agencies, as requested, to assist in developing and implementing local career programs. Career Specialists shall also provide in-service programs and activities pertaining to the use and implementation of materials and services provided through the Department to local education agencies.~~

(e) **Disabilities services.** The Department shall coordinate and provide technical assistance to assure appropriate services and program accessibility for individuals with disabilities and other members of special populations in technology centers ~~area schools~~ and in *Career*Tech programs in local education agencies.

(f) **Integrated academics and essential skills.** The Department shall coordinate developmental activities and provide technical assistance to technology centers ~~area schools~~ and skills centers for education enhancement, career assessment, and employability skills development.

780:10-3-3. ~~Curriculum development, instructional materials, and customer service~~ Instructional materials development and dissemination

(a) **Purpose.** The Curriculum and Instructional Materials Center (CIMC) and the Testing Division shall develop, warehouse, and disseminate instructional materials.

(b) **In-state sales.** The Department curriculum and instructional materials shall be made available for purchase in state upon request according to the prices designated in the CIMC catalog or ~~as published by our~~ online ~~partner~~ catalog. All prices are subject to change without notice.

(c) **Out-of-state sales.** The Department will review the Out-of-State Pricing Policy annually and establish a pricing structure for selling the instructional materials developed by the agency.

(d) **Ordering.** Orders for CIMC materials shall be made using the catalog order form, by telephone, fax, or Internet. All orders for Testing Division products will be filled following standard CIMC ordering procedures.

(1) **Mail orders.**

(A) **Inclusion of item number and title in orders.** When using the order form in the CIMC catalog, both the item number and the title shall be included to avoid processing errors.

(B) ~~**Purchase order number**~~ **Payment.** All school and other institutional orders shall be accompanied by an official purchase order number, credit card number, or personal check.

(2) **Telephone orders.**

(A) **Placing an Order.** Telephone orders may be placed by calling the Curriculum Customer Service Division of the Oklahoma Department of Career and Technology Education.

(B) **Order confirmation.** An authorized purchase order or credit card number shall be available when the order is placed. ~~If a hard copy of the purchase order is sent, it shall be marked CONFIRMING ORDER.~~

~~(C) **Teacher name.** The name of the teacher who will use the materials should be provided for all school and university orders.~~

(3) **Fax orders.** All fax orders shall contain items to be purchased and a purchase order or credit card number.

(4) **Internet orders.** All orders taken from the CIMC home page Internet catalog should be mailed, e-mailed, or faxed to Curriculum Customer Service. ~~Orders for CIMC online curriculum may be made through our online partner, by telephone or from its web site.~~

(e) **Shipping charges.** Shipping charges shall be included in the invoice statement for all materials.

(f) **Payments.**

(1) **Invoices and payments.** All orders with an authorized purchase order number shall be invoiced within five (5) working days after the materials have been shipped. Payment of materials shall be upon receipt of invoice.

(2) **Individual purchases.** Individual purchases shall be shipped upon receipt of a check, credit card, or money order for the amount of purchase plus sales tax (only if Oklahoma customer) plus ~~10 percent for~~ shipping.

(3) **Acceptable currency.** Checks shall be drawn upon a United States bank and payable in United States currency.

(4) **Credit card purchases.** Any purchase can be shipped upon authorization of the following credit cards: VISA, MasterCard, and Discover.

(5) **International orders.** All orders received from out of the continental United States shall be shipped upon receipt of a valid credit card number or United States money order for the amount of purchase plus 20 percent for shipping.

(6) **Online Curriculum.** Payment for ~~online~~ curriculum delivered through the CTLN or other online partners will be in accordance with the published payment policies of ~~CIMC's online partner~~ CIMC.

(7) **Online testing.** Access to the department's online testing system will be free to in-state CareerTech programs. Access to this system will be available to all other users at established rates upon receipt of an official

purchase order number, credit card number, or personal check.

(g) **Authorization to return materials.**

(1) **In-state return.** In-state customers shall request authorization to return materials. Upon approval, the materials shall be returned prepaid, in resalable condition, within ~~six months~~ 90 days from the invoice statement date.

(2) **Out-of-state return.** Out-of-state customers shall request authorization to return materials. Upon approval the materials shall be returned prepaid, in resalable condition, within 30 days from the invoice statement date.

(3) **Stipulations for full credit.** The following stipulations apply to all in-state and out-of-state returns:

(A) ~~**Stipulations for full credit**~~ **Authorization.** After authorized returned goods are received, full credit will be issued for current editions of materials that are unmarked and in resalable condition. ~~ITEMS RETURNED TO THE CIMC THAT ARE NOT IN RESALABLE CONDITION OR ARE NOT AUTHORIZED FOR RETURN WILL BE RETURNED TO THE PURCHASER WITHOUT CREDIT~~ Items returned to the CIMC that are not in resalable condition, are not within the approved return period, or are not authorized for return will be returned to the purchaser without credit.

(B) **Shipping costs.** Original shipping costs must be paid by purchaser on all returns unless there was an error by ~~the~~ CIMC customer service or warehouse.

(C) **Shipping guidelines.** After receiving authorization, the materials should be shipped to Oklahoma Department of Career and Technology Education, Instructional Materials Warehouse, 1201 North Western, Stillwater, Oklahoma 74074.

(D) **Invoice number.** The invoice number on which the materials were billed should be included with the returned materials.

(E) **Restocking fee.** Materials returned outside the stipulations for full credit and authorization will be assessed a 15% restocking fee.

(h) **Damaged materials.**

(1) **Credit.** For credit to be authorized, Curriculum Customer Service shall receive ~~written notice~~ notification of damaged materials within five days of receipt of materials. Credit for goods in defective condition will be 100 percent of invoice price or free replacement.

(2) **Damage incurred in transit.** If materials were damaged in shipment, claims must be filed against the carrier. The CIMC is not responsible for damage incurred in transit.

780:10-3-8. Planning

(a) **Development of state plans.** The Department shall be responsible for developing annual and long-range state plans for the direction of career and technology education in the state of Oklahoma.

(b) **Applications.** The Department will be responsible for disseminating and collecting local applications for programs, services, and activities to local education agencies and other eligible recipients.

(c) **Review of new program requests.** The Department shall have the responsibility to review all new program requests and make recommendations regarding approval or nonapproval of state funding based on statewide and local job demand data and local need.

(d) **Special projects.** The Department shall coordinate and develop special projects as assigned by the State Director.

780:10-3-10. Communications and Marketing

(a) **Coordination of efforts.** The Communications and Marketing Division shall be responsible for coordinating ~~the~~ statewide ~~public information~~ communications and marketing efforts ~~among area schools~~ for the system.

(b) ~~**Coordination of officers.**~~ **Support for communications and marketing activities.** Communications and Marketing Division ~~staff~~ shall ~~coordinate area school public information officers in designing, developing, and~~ assist technology center communications and marketing professionals in implementing ~~public relations materials and activities to encourage student enrollment in CareerTech education and create a positive impression toward career and technology education.~~ Communications and marketing plans, professional development and to provide technical assistance.

~~(c) **Assistance to officers.** Communications and Marketing Division staff shall provide technical assistance and professional development activities to area school public information officers.~~

780:10-3-12. Systems design and computer services

(a) **Responsibilities.** The Systems Design and Computer Services Division (SDCS) and Educational Technology Resources (ETR) shall be responsible for the following: ~~is responsible for designing, developing, and implementing data processing systems, networks, and telecommunications applications to meet the information handling needs of the Department.~~

(1) Design, develop, secure, and implement information and communications technology (ICT) systems.

(2) Design, maintain, secure, and support the network infrastructure.

(3) Ensure the availability of the Department's ICT resources in a 24/7 format.

(4) Deliver software training, technical assistance, and help desk services.

(5) Procure, administer, and be accountable for Department owned, leased, and/or rented ICT assets (hardware and software) and administer lease and/or license agreements.

(6) Design, develop, and deliver e-learning services and other digital content.

(7) Provide videoconferencing, video production, and on-site conference/workshop services.

~~(b) **Statewide telecommunications planning.** The Department shall collect appropriate data from Area Vocational Technical Schools to be combined with departmental~~

~~data for compilation of a comprehensive statewide telecommunications plan in accordance with O.S.L. 1992, c. 268.~~

~~(c) **Statewide Telecommunications Network Service (SYSNET).** The Department shall provide and maintain a telecommunications network (SYSNET) for sending messages (e-mail) and transmitting data between field offices and between field offices and the Department. Access requirements can be obtained by contacting the Systems Design and Computer Services Division.~~

~~(d) **Field office computer applications.** The Department may develop computer applications and provide associated support for field offices in those cases where the best interest of Oklahoma career and technology education is served as determined jointly by the Technology Centers Area Vocational-Technical Schools and Oklahoma Department of Career and Technology Education administration.~~

SUBCHAPTER 5. FINANCE

780:10-5-4. Program funding

(a) **Secondary and full-time adult programs in technology centers. ~~area schools.~~**

(1) **Formula payments.** The State Board will fund a portion of the cost of programs and services in accordance with an approved technology center ~~area school~~ funding formula. The Department shall consider enrollment, number of school sites in the district, number of programs approved, transportation, availability of funds, and appropriate state and federal laws in developing the annual technology center ~~area school~~ funding budget.

(2) **Formula adjustment.** The failure of a program to meet minimum standards may result in an adjustment of the funding.

(b) **Secondary programs in comprehensive schools.**

(1) **Budgets.** The State Board will assist local districts in providing for excess costs of *Career*Tech programs. The Department shall prepare budgets to be approved annually based upon availability of funds and appropriate state and federal laws.

(2) **Program assistance ~~grants~~. monies.** All approved *Career*Tech programs shall receive the program assistance ~~grant~~ monies annually. ~~This grant~~ These monies shall be used to support the additional costs ~~for~~ of ~~operating~~ the *Career*Tech program including purchase of equipment, instructional supplies, and staff development.

(3) **Equipment matching funds.** New *Career*Tech programs will receive equipment matching funds in the first year of operation ~~if needed.~~ ,if funding is available. If funding is available~~,~~ equipment matching funds will be provided to existing programs.

(4) **Location of equipment.** Any program equipment purchased with state or federal funds shall remain in the program area for which it is intended.

(5) ***Career*Tech teacher contracts.** *Career*Tech teacher contracts shall be a minimum of 10 months and shall begin on or before August 1 of each year.

(6) **Teacher salary supplement.** The Department shall determine annually the amount to reimburse each school district to augment the salary of each teacher of a 10-month *Career*Tech program in a comprehensive school.

(7) **Additional salary.** In those programs where the instructor is employed and approved by the State Board beyond 10 calendar months, the additional salary will be calculated on the basis of 1/10 of the base salary as prescribed by the school district for an instructor of like qualifications employed on a 10-month basis. The career and technology instructor's summer pay is to be calculated on the local school base schedule (including increments and any flat raises provided by the legislature over and above the minimum salary and increments) for instructors of like qualifications.

(8) **Part-time programs.** In order to receive 100 percent funding, a program must be full-time. Any exceptions to the offering of a full-time program shall constitute a reduction in funding of 50 percent.

(c) **Local directors for comprehensive schools.**

(1) **Eligibility for funding.** A comprehensive school district employing 12 or more full-time, reimbursed *Career*Tech teachers shall be eligible for a local director of *Career*Tech education, and the maximum reimbursement shall be set by the State Board annually.

(2) **Duties and qualifications for local directors.**

(A) **Duties.** The Local Director shall, under the direction and supervision of the local school board and superintendent, be the principal administrative officer who is responsible for the C*areer*Tech programs. He/she shall be responsible for the organization, curriculum, evaluation, and improvement of the *Career*Tech courses offered in the comprehensive school(s). The Local Director shall maintain close contact with business and industry, advisory committees, potential employers, and other agencies and institutions relative to employment needs and job opportunities in order that training may be closely coordinated with current needs and anticipated opportunities in the employment market. The Local Director shall evaluate programs continuously and bring about changes and improvements which shall assure that students will obtain the occupational skills and knowledge for which instruction is being provided. The Local Director may assume other responsibilities within the comprehensive school system but shall devote no less than 50 percent of his/her time to the above responsibilities relating to Department-funded *Career*Tech programs.

(B) **Qualifications.** The qualifications for the Local Director shall include at least three years experience in teaching, supervision, or administration of *Career*Tech program(s). All certification requirements appropriate for other teaching/administrative responsibilities shall be maintained as defined in the **Teacher Education and Certification Handbook**

published by the State Department of Education. Initial selection and employment of the Local Director is subject to approval by the Department.

(d) **Applied Technology/Academic Education (ATAE). TechConnect and TechConnect Plus** Reimbursement for approved ~~ATAE~~ TechConnect and TechConnect Plus programs shall include incentive assistance and teacher salary supplement in the same manner as with other comprehensive school programs. The ~~incentive~~ program assistance (state) funds are provided to meet the minimum program operation requirements. Federal career and technology (vocational) education funds and/or local funds may be used to meet the program operation recommendations.

(e) **Business and Industry Services programs.** The Department shall reimburse Business and Industry Services programs based on the availability of funds and approved by the Business and Industry Services Division.

(f) **Skills Centers programs.** The Department shall reimburse Skills Centers programs based on the availability of funds and approved by the Skills Centers Division.

(g) **Postsecondary institutions-collegiate.** Funds shall be allocated to postsecondary institutions as set forth in agreements between the State Board and the Oklahoma State Regents for Higher Education or as mandated by P.L. 101-392.

(h) **Apprenticeship.** Local education agencies conducting apprenticeship-related training programs shall qualify for reimbursement at a rate approved by the Department.

(i) **Work-site learning.** Approved work-site learning programs shall meet the standards established by the Department. Reimbursement for these programs shall be based on availability of funds and approval by the Department.

(j) **Program closures due to changes in funding.** The Oklahoma Department of Career and Technology Education may also recommend closure for secondary and postsecondary education programs based upon loss of funding, lack of funding, revenue shortfalls or other changes in funding. The rules dealing with probationary status and reevaluation shall not apply to a program being considered for closure based upon changes in funding. The State Board shall make the determination for program closure based on economic factors, vocational need, duplication of programs, school-to-work connection, student demand, student placement, student completion/ retention, and program standards and the decision of the Board shall be final.

SUBCHAPTER 7. LOCAL PROGRAMS: APPLICATION; STUDENT ACCOUNTING; EVALUATION

780:10-7-1. Application; approval; contract for programs

(a) ~~**Program local application.**~~ **Local Application for CareerTech Programs.**

(1) **Description.** Any ~~local education agency~~ comprehensive school district or other eligible recipient requesting funds for *Career*Tech education programs, services, and/or activities must submit an annual ~~local application.~~ Local Application for Secondary and Full-time Adult Career and Technology Education Programs, which includes a listing of programs being funded and assurances of compliances. Approval and return of the assurances of compliance to the Department indicates the school district's intent to form a contract for CareerTech programs and comply with all terms set forth in the local application.

(2) ~~**Deadlines.**~~ **Application Dates.** The local application, ~~which includes a listing of programs being funded,~~ shall be mailed from the Department to the superintendent of each ~~local education agency, area vocational and technical school, and other eligible recipients~~ school district on or around March 1 ~~preceding each~~ for the next fiscal year. The local application shall be returned by the deadline indicated on the application. ~~end of the same fiscal year. Approval and return of the local application by the area vocational and technical school to the Department indicates the area vocational and technical school's willingness to form a contract for CareerTech programs and comply with all terms set forth in the local application.~~

(3) **Contents.** The local application gives school districts the opportunity to ~~request~~ verify ongoing programs, request ~~and~~ new or expanded programs, or ~~to~~ request the deletion or reduction of programs.

(4) **Additions and revisions.** Additions and/or revisions may be made to the local application any time during the fiscal year. Changes or revisions must be sent to the Department.

(5) **Special funding.** Any special discretionary funds available for programs or projects shall be awarded on a proposal basis with all eligible recipients being notified. The criteria for selection will be stated in a "Request for Proposals." Selection of funding recipients will be based upon the stated criteria.

(b) **Criteria for approval of secondary and full-time adult programs.** The criteria for approving secondary (grades 7 through 12) and full-time adult programs shall include the following:

(1) Employment opportunities for program completers;
(2) Availability of students;
(3) Impact upon other *Career*Tech programs;
(4) Availability of similar programs;
(5) Facilities and equipment;
(6) Program priority; and,
(7) Availability of funds.

(c) **Contract for C*areer*Tech programs.**

~~(1)~~ ~~**Application.**~~ **Description.** All comprehensive school districts ~~that have been~~ approved by the State Board to receive reimbursement for *Career*Tech secondary and full-time adult programs must submit the signed "Contract for Secondary and Full-Time Adult *Career*Tech Programs," which includes a listing of programs being funded. Approval and return of the contract and the Salary and Teaching Schedule by the ~~comprehensive~~ school district to the Department indicates the ~~comprehensive~~ school~~'s~~ district's willingness to comply with all terms set forth in the contract.

(2) **Contract dates.** The "Contract for Secondary and Full-Time Adult *Career*Tech Programs" will be mailed from the Department on or around October 1 of the current fiscal year to the superintendent of each ~~comprehensive~~ school district. The contract is to be presented to the local board of education for approval before being returned to the Department by the ~~due~~ date

(3) **Salary and Teaching Schedule.** The Salary and Teaching Schedule is a part of the contract for *Career*Tech programs. ~~Local education agencies, area vocational and technical schools,~~ comprehensive school districts, technology centers, and other recipients must complete and return the "Salary and Teaching Schedule" for each *Career*Tech teacher in the school. The form must be completed to indicate teaching schedule, OCAS class codes, numbers of students enrolled, teacher salary, beginning and ending date of employment, and expiration date of teacher's certificate. The form must be signed by the appropriate individuals and returned to the Department by ~~September 15~~ September 30 before any funding can be provided.

780:10-7-3. Standards; accreditation; review

(a) **Minimum standards.**

(1) **Establishment; program funding.** Minimum standards shall be established by the State Board for postsecondary and secondary *Career*Tech programs. These standards shall be comprehensive, reflecting state and federal mandates as they relate to quality *Career*Tech education. Program funding approval is contingent upon programs meeting minimum standards or making satisfactory progress toward meeting those standards.

(2) **Standards.** Program standards shall include the following:

(A) STANDARD I-Instructional Planning and Organization

(B) STANDARD II-Instructional Materials Utilization

(C) STANDARD III-Qualified Instructional Personnel

(D) STANDARD IV-Enrollment and Student-Teacher Ratio

(E) STANDARD V-Equipment and Supplies

(F) STANDARD VI-Instructional Facilities

(G) STANDARD VII-Safety Training and Practices

(H) STANDARD VIII-Advisory Committee and Community Relations

(I) STANDARD IX-*Career*Tech Student Organizations (excluded in Small Business Management, Agricultural Business Management, and most Skills Centers programs)

(J) STANDARD X-Coordination Activities (excluded in Technology Education, ~~ATAE~~, TechConnect and most Skills Centers programs)

(K) STANDARD XI-Student Accounting and Reports

(L) STANDARD XII-Adult Education (if applicable)

(3) **Revisions.** The standards are revised periodically based upon input from appropriate sources and relevant data regarding factors that influence student learning and the quality of *Career*Tech programs. Any such revisions will be taken to the State Board for approval.

(4) **Dissemination.** The standards will be disseminated to *Career*Tech personnel throughout the state. Results of program evaluations will be considered in the processes of planning and funding programs.

(5) **Program Evaluation and Improvement.** Each instructor shall annually review the progress of the program based on the accountability measures developed as required by P.L. 105-332 which include:

(A) Student attainment of challenging State established academic, and vocational and technical skill proficiencies.

(B) Student attainment of a secondary school diploma or its recognized equivalent, a proficiency credential in conjunction with a secondary school diploma, or a postsecondary degree or credential.

(C) Placement in, retention in, and completion of, postsecondary education or advanced training, placement in military service, or placement or retention in employment.

(D) Student participation in and completion of career and technology (vocational and technical) education programs that lead to nontraditional training and employment.

(6) **Monitoring.** Programs not meeting minimum standards will be monitored on an annual basis.

(7) **Technical assistance.** The Department staff will provide technical assistance to help *Career*Tech programs meet the standards established by the State Board and other accrediting agencies.

(b) **Postsecondary accreditation.**

(1) **Approval/accreditation agency.** For the purpose of determining eligibility for federal student assistance programs administered by the Department of Education, the Oklahoma State Board of Career and Technology Education is recognized by the United States Secretary of Education for the approval/accreditation of all public postsecondary *Career*Tech institutions and programs that are not offered for college credit or under jurisdiction of the Oklahoma State Regents for Higher Education.

(2) **Adopted procedures.** Schools seeking and maintaining postsecondary approval/accreditation status shall follow the State Board's adopted procedures as prescribed in the publication **Approval, Evaluation, Accreditation, and Audit Procedures of Schools for Postsecondary Programs.** This publication shall be made available to interested parties from the Accreditation Unit of the Department.

(3) **Noncompliance of corrective action plan.** The State Board shall have the authority to assume the administration and supervision of any technology center ~~area vo-tech school~~ that after being placed on "Probational

Accreditation Status" continues to be in noncompliance of the corrective action plan as approved by the State Board.

(c) **Secondary evaluation.** Substandard secondary *Career*Tech education programs shall be formally evaluated, utilizing minimum program standards, as adopted by the State Board.

(d) **Review of substandard programs.**

(1) **Probationary status.** A *Career*Tech program may be placed on a probationary status if:

(A) The program fails to meet program standards and the deficiencies are documented in writing as a result of a program visit or a team evaluation, and/or

(B) The program does not meet the specifications as outlined in the **Rules for Career and Technology Education.**

(2) **Written notification.** Written notification of probationary status that identifies the deficiencies and outlines recommended steps for program improvement shall be given to the school administration.

(3) **Reevaluation.** A program on probationary status shall be reevaluated within one year.

(A) **Removal of probation.** If the documented deficiencies have been corrected upon reevaluation, the probationary status shall be removed.

(B) **Reevaluation failure.** If the program has failed to make improvement on documented deficiencies upon reevaluation, a report shall be made in writing to the Associate State Director of Educational Services Department and the program may be recommended for program closure or reduction in funding for the following school year.

(i) **Written notification; appeal.** The Associate State Director of Educational Services Department will notify, in writing, the superintendent of the school in which the program is located that the Department is recommending closure or reduction in funding for the program for the following school year. An appeal process will be included for those superintendents who can show evidence of projected program improvement.

(ii) **Recommended program closures.** The Associate State Director of Educational Services will make a presentation of recommended program closures for State Board approval at the March board meeting.

(e) **Evaluation of recipients receiving federal funds.** Programs of eligible recipients receiving federal funds under P.L. 105-332 shall be evaluated annually. Such contracts and agreements shall be in accordance with state and federal laws.

SUBCHAPTER 9. SERVICE CONTRACTS AND EQUIPMENT GUIDELINES

780:10-9-2. Equipment

(a) **State-owned equipment.**

(1) **Donated or purchased equipment.** Equipment donated to the Department or purchased by the Department through full or partial reimbursement with non-federal funds shall be considered the property of the Department.

(2) **Maintenance.** The receiving institution shall be responsible for maintaining equipment supplied by the Department.

(3) **Written notification to Inventory Specialist.** The Program Administrator of the training program shall notify the Inventory Specialist, in writing, when a program or class is to be terminated or completed.

(b) **Loaning of equipment.** Equipment purchased for use by the Business and Industry Development Division may be loaned to other eligible training sites. The equipment shall be subject to any restrictions and is subject to recall on notice by the Department when needed for industrial training.

~~(c) **Transportation charges.** Charges for transporting equipment will be invoiced to the requesting school or project.~~

(d) **Identification and disposal.**

(1) **Identification tag; disposal.** All agency purchased equipment and instructional equipment reimbursed with state funds having a value of $500 or more shall be affixed with an appropriate identifying tag. Disposal of state-owned equipment shall be in accordance with state law as administered by the Department of Central Services.

(2) **Ownership of state-owned equipment.** The ownership of state-owned equipment over five years of age may be transferred upon approval of the Department to the local education agency in possession of equipment unless said equipment is essential for operation of industry-specific or new industry training programs. Notification of transfer of ownership shall be made by the Inventory Specialist of the Department.

(3) **Inventory records.** The Department shall maintain inventory records on all tagged equipment. Identification tags will be assigned by the Department and sent to technology centers ~~area vocational-technical schools~~ and public schools to be affixed to the equipment.

(4) **Annual inventory.** Tagged equipment will be inventoried annually.

(A) **List.** A printout list of equipment to be inventoried will be mailed to equipment users by the Department.

(B) **Update printouts.** Users of tagged equipment should update the printouts and return them to the Department no later than 60 days after receiving the printout.

(C) **Inventory removal requests.** Department personnel will inspect and/or make recommendations on lost, stolen, or salvage equipment that is requested to be removed from the user's inventory.

(D) **Adjustments.** The Department will make necessary adjustments to the inventory.

(5) **Transfers.** In no case shall an item be transferred from one school to another or disposed of without approval from the Department. A form will be provided by the Department for making a request for transfers, trade-ins, or salvage.

(e) **Equipment distribution.** Equipment purchased through funding agencies which require that the equipment be used in specific programs shall be placed in those types of programs and shall be subject to appropriate state and federal laws and regulations.

[OAR Docket #04-1133; filed 6-9-04]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 15. ~~AREA VOCATIONAL TECHNICAL SCHOOLS~~ TECHNOLOGY CENTERS

[OAR Docket #04-1134]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
780:15-1-1. [AMENDED]
Subchapter 3. Technology Centers~~Area Vocational Technical~~ Education
780:15-3-1. [AMENDED]
780:15-3-2. [AMENDED]
780:15-3-3. [AMENDED]
780:15-3-4. [AMENDED]
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780:15-3-6. [AMENDED]
780:15-3-7. [AMENDED]
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In the 2000 legislation session the Oklahoma legislature changed the official name in the statues from Area Vocational Technical Schools to Technology Centers. The name change will more accurately convey the true nature of the area vocational-technical system and the need to accurately convey a more modern depiction of the area vocational-technical system and to ensure compliance. Proposed amendment allows for the graduation of revenue reductions to technology centers due to de-annexation elections, for the removal of advalorem tax collections to a technology center on an identified schedule in order to allow for financial adjustment to be made, allow for the immediate removal of advalorem collections from the technology center following a de-annexation election. This methodology does not consider the impact on the technology center or its ability to continue to provide programs and services to patrons remaining in the district. The intent is to allow the technology center to adjust program offerings and services to patrons that remain in the district. The immediate removal of funds does not allow patrons of other sending districts to complete programs due to a reduction in course offerings. It is further intended to allow the technology center to honor teacher and vendor contracts that were signed prior to the de-annexation election. The technology center board of education has scaled the size of the operation according to the demand of services and the resources available. The immediate removal of resources and demand by one sending population should not have immediate affects upon the entire technology center district. Proposed amendment addresses emerging student needs and a greater number of students will be able to access programs that are currently not available to them. An increased need for more students to access career and technology education programs and services at an earlier age and better meet individual student needs. Provide clarification as to which students the area vocational-technical school is responsible for transporting. The area vocational-technical school is responsible for transporting secondary students who are enrolled in a three period block of instruction during the day program at the area vocational-technical school. No new action proposed it provides clarification in response to recent questions about the intent of the existing rule. Proposed amendment states that not all funds flow to technology centers through a formula allocation plan and clarifies who can approve allocation of funds to technology centers. The existing rule has become outdated and this will clarify and make more efficient. Proposed amendment clarifies current practice includes review and approval of all building projects, which are designed to house CareerTech programs and/or services, by the technology center local board and the technology center services division of the Oklahoma Department of Career and Technology Education. The technology center services division has used a standardized review process for several years to ensure compliance with applicable state and federal laws. The 2002 Oklahoma Legislature amended 70§ 14-108 so "The board of education of a technology center school district may, without prior approval of the State Board of Career and Technology Education, approve all plans and specifications for technology center school buildings, additions, and major modifications to school buildings that are designed to provide programs and services when the cost of the building project is to be paid with local levies." Ensures continued review of all technology center building plans and specifications, which are designed to provide CareerTech programs and services, by the Oklahoma Department of Career and Technical Education. The need is 2002 Amendment 70§ 14-108 and to ensure compliance with all applicable state and federal rules and regulations. Proposed amendment clarifies in-district students should derive maximum benefit from the technology center and should not be expected to subsidize the costs associated with out-of-district students. Reciprocity agreements should apply to in-district students, not out-of-district students. In-district students will derive the greatest benefit from the technology center. Reciprocity agreements between technology centers will enable students from all technology center districts to receive educational services at in-district cost. Recognition that there is an emerging trend for out-of-district students to enroll in technology center programs. Priority should be given to in-district students. Maximize the benefit in-district students receive from the technology center. The proposed amendment clarifies the responsibility of the technology centers to serve the larger public without imposing arbitrary or inappropriate barriers and correctly identifies the federal authorizing legislation. The amendment updates the current authorizing federal legislation and clarifies the procedures for determining admission criteria. The authorizing federal legislation was renamed thus making the terminology obsolete. Clarification was needed to assure adherence to the open admissions foundation of career and technology education. The correct federal authorizing legislation is cited for reference. Technology Centers will appropriately implement admission procedures for all students. Proposed amendments clarify the regulatory responsibility of technology centers regarding the discipline of students with disabilities and clarifies the procedures necessary for disciplining students with disabilities, and to assure compliance with the applicable federal regulations. Technology Centers will appropriately implement discipline procedures for students with disabilities in accordance with federal regulations. Update language to that which is aligned with the Perkins Act of 1998, align language in agency rules with that in federal legislation. The latest reauthorization of the Perkins legislation moved further away from an academic services model that targeted remedial services (education enhancement) and more emphatically toward a model that requires the integration of academic instruction with the technology instruction for all students, regardless of their academic

functioning level. Integrated academic instruction would be perceived as and delivered as substantial, rigorous instruction that would support the progress of all students in all programs, regardless of their extant academic functional level. The proposed amendment states a de-annexation election cannot be held within one (1) year from the last unsuccessful de-annexation election for that territory. The petition for de-annexation shall contain certain required language, and must be personally signed by the elector. Clarification of the approval process by the State Board and the required content of the petition for de-annexation. Citizen calls and inquiries have indicated that the present rule contains some ambiguities that need to be clarified to enable the process to work efficiently and to clarify the requirements for a petition for de-annexation from a Technology Center School District. Proposed amendment defines administrative cost and imposes penalties for excessive administrative cost. Adopting the standard federal definition of administrative cost and penalizing technology centers, which exceed established caps. Public interest in the amount of administrative cost in education and a demand for accountability. The rule intent is to establish parameters for acceptable administrative cost and to establish monetary penalties for technology centers that exceed acceptable limits.

CONTACT PERSON:

Marie Saatkamp, (405) 743-5455

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, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

780:15-1-1. Purpose

This chapter describes procedures for the establishment and operation of local technology centers ~~area vocational-technical schools~~.

SUBCHAPTER 3. TECHNOLOGY CENTERS ~~AREA VOCATIONAL TECHNICAL~~ EDUCATION

780:15-3-1. Rationale; corporation status; taxing authority

(a) **Clientele.** The concept of technology centers, ~~area vocational and technical schools, hereinafter referred to as area schools,~~ embraces training for all who need it and want it. Specifically, the ~~Vocational Education Act of 1963~~ Carl D. Perkins Vocational Education Act of 1984 (PL98-524) and subsequent amendments thereto provide training for high school students; persons who have completed or left high school; persons employed but who need training or retraining to achieve stability or advancement in employment; and for persons who are academically or socioeconomically disadvantaged or who have physical or mental disabilities that prevent them from succeeding in regular *Career*Tech programs. Admission to the technology center or to specific programs shall not be contingent upon any single measure but upon a combination of factors including but not limited to achievement levels, aptitude, interest, work history, and ability to benefit in terms of employment.

(b) **Establishment.** Technology center ~~Area school~~ districts may be established through criteria and procedures established by the State Board and shall be operated in accordance with the rules and regulations of the State Board [70 O.S. 1988, §14-104 and Section 9B, Article X, Oklahoma Constitution].

(c) **Official name-technology centers.** ~~area schools~~**.** *Its official name shall be designated by the State Board of Career and Technology Education, in which name it may sue and be sued, and be capable of contracting and being contracted with, and holding real and personal estate* [70 O.S. 1988, §14-108(B)]. The State Board shall authorize local area school districts to utilize ~~abbreviated or~~ unofficial names for marketing purposes. ~~If the local area school board elects to promote its district in such a manner, it may select from the following lists.~~ The State Board recognizes the term Technology Center. Any exceptions ~~to the list~~ must be approved by the State Board.

~~(1) Tech~~
~~(2) Vo-Tech~~
~~(3) Vo-Tech Center~~
~~(4) Vo-Tech School~~
~~(5) Area Vo-Tech Center~~
~~(6) Technical Center~~
~~(7) Technology Center~~

(d) **Corporation status.** *A technology center* ~~*An area vocational-technical school*~~ *district shall be a body corporate and shall possess the usual powers of a corporation for public purposes* [70 O.S. 1988, §14-108(B)].

(e) **Operational mill levy.** Constitutional authorization has been granted to vote up to five mills on the dollar valuation of the taxable property in a technology center ~~an area school~~ district for operational purposes. If approved by the majority of the voting electors, it needs to be voted only once, unless there is a need to increase or decrease a millage levy currently under five mills. If the existing millage levy is less than five mills, and it is necessary to increase the millage, the question to be voted should be on the increased millage only and not on the total millage, and should be so specified on the voting ballot.

(f) **Building fund levy.** Authorization has been granted to vote up to five mills on the dollar valuation of the taxable property in a technology center ~~an area school~~ district for building purposes pursuant to the provisions of 70 O.S.Supp.1995, Section 1-118.1. Any millage levy voted is effective for one year. If a building fund levy is needed for multiple years, it shall be voted upon each year.

(g) **Local incentive levy.** Authorization has been granted to vote up to five mills local incentive levy on the dollar valuation of the taxable property in a technology center ~~an area school~~ district. This levy may be used for operational or capital needs purposes. This levy, when approved, shall be made each fiscal year thereafter until repealed by a majority of the electors of the technology center ~~area school~~ district voting on the question at an election called for that purpose. If the existing millage levy is less than five mills, and it is necessary to increase the millage, the question to be voted should be on the increased millage only and not on the total millage, and should be so specified on the voting ballot.

(h) **Capital outlay bonds.** Authorization has been granted to vote for capital improvements (such as land, buildings, and equipment) that are financed by the issuance of the technology center area school district's general obligation bonds. Bonds

so voted upon and approved by a majority of the votes cast, once issued, shall not cause the technology center ~~area school~~ district to become indebted in an amount, including existing indebtedness, in the aggregate exceeding five percent of the valuation of the taxable property in the technology center ~~area~~ district.

780:15-3-2. Establishment of a technology center ~~an area vocational-technical school~~ district; sites and buildings

(a) **Establishment.** A technology center ~~an area school district or area~~ district shall be established in accordance with the steps outlined in this section.

(b) **State Board study of proposed technology center ~~area school~~ district.**

(1) **Proposed district study.** The State Board, upon request of the public school(s) within a proposed district, board of county commissioners, or citizens within a proposed district, shall make a study of the proposed district in regard to the following factors:

(A) Size;

(B) Total population;

(C) Assessed valuation;

(D) Current school enrollments;

(E) Estimated secondary school enrollments;

(F) Estimated full-time adult enrollments;

(G) Other information pertinent to determining the feasibility of a technology center ~~an area school~~ district.

(2) **Costs.** The study shall also include building and equipment costs, as well as estimated annual operating costs.

(3) **Sharing of study information.** The information compiled as a result of the study shall be shared with the local schools and/or county commissioners and other interested persons within the proposed technology center ~~area school~~ district.

(c) **State Board determination of technology center ~~area school~~ feasibility.**

(1) **Decision by State Board.** After a study of the proposed technology center ~~area school~~ district has been completed and reviewed by the interested and affected schools and/or county commissioners, a decision will be reached as to the course of action to be taken. The State Board shall finally determine if the proposed technology center ~~area school~~ district meets the criteria and requirements prescribed, if there is a need for the district, and if the operation of the district can be adequately funded.

(2) **Valuation of district; waivers.** A proposed technology center ~~area school~~ district shall have a minimum valuation of $100,000,000 after homestead exemptions. In situations involving low valuations and/or sparsely populated areas where this requirement is not feasible, the State Board, upon presentation of sufficient justification, may give special permission to waive the minimum criteria.

(d) **Presentation of resolutions.**

(1) **Resolutions signees.** If the State Board determines the proposed technology center ~~area school~~ district is feasible and needed, resolutions shall be presented to the State Board signed by:

(A) Local boards of education of districts desiring to become a part of a technology center ~~an area school~~ district,

(B) A majority of the membership of a board of county commissioners, or

(C) A combination of (A) and (B) of this subsection where there exists a county and school districts outside that county desiring to become a part of the same technology center ~~area school~~ district.

(2) **Cooperation.** The State Board shall work with the area in order to establish a district that is feasible and will fit into its state plan.

(3) **Established school districts.** The State Board shall protect the attendance area of established technology centers ~~area schools~~ and not approve any part of an existing technology center ~~area school~~ district for inclusion into a new area district unless that area cannot be served adequately by the existing technology center ~~area school.~~ (Deannexation proceedings may have to be followed first.)

(e) **Technology center ~~Area school~~ district formation election.**

(1) **Call for election.** The State Board shall call an election in each district submitting a resolution, or in each district within a county submitting the resolution, if a technology center ~~an area school~~ district is found to be feasible and needed.

(2) **Election.** An election will be held in each independent and elementary school district, and/or entire county, having territory that would be included in the proposed technology center ~~area school~~ district, for the purpose of permitting electors of the district to vote on the question of whether the territory comprising the independent or elementary school district, and/or entire county, shall be included in the proposed technology center ~~area school~~ district.

(f) **Elections relative to the creation of new technology center ~~area school~~ district (general rules).** The rules of this subsection shall be used for conducting elections relative to the creation of at technology center ~~an area school~~ district, electing the initial board of education, voting the initial operating levy, and for annexation of an independent or elementary school district to an existing technology center ~~area school~~ district.

(1) **Election date.** The State Board with advice and counsel of local boards of independent and elementary school districts and/or county commissioners shall designate the date on which an election shall be conducted.

(2) **Responsibilities of county election board; State Board.** The State Board shall cooperate with the county election board designated to conduct the election. The county election board shall receive notice from the State Board and shall conduct the elections in the school district at the time specified by the State Board. The State Board shall prepare the publication notice and submit it to at least one newspaper of general circulation in each county

officially calling the election, stating the purpose of the election and listing the polling places in the county. The State Board shall assume the cost of such publication.

(3) **Forms.** All forms to be used in technology center ~~vocational-and-technical school~~ district elections will be provided by the County Election Board.

(4) **Hours.** The polls for election shall be open from 7 a.m. until 7 p.m.

(5) **Certification of results.** The county election boards shall, when appropriate, certify to the local school boards the results of an election. The county election boards shall certify to the State Board, also, the results of any election pertaining to the creation of a new technology center ~~area school~~ district, the initial board of education election, and the initial operating levy election.

(6) **Costs of elections.** When holding the election for the creation of a technology center ~~an area school~~ district, the election of the original board of education, and the election for the first operation levy, the cost for these elections will be borne by the State Board.

(7) **Annexation election costs.** Annexation election costs of individual independent and elementary school districts will be borne by the State Board.

(g) **Formation election results determination.**

(1) **Election results.** Results of the election for the formation of a technology center ~~an area~~ district shall be submitted to the State Board and each school district involved. If the results of the election satisfy the criteria for the formation of a technology center ~~an area school~~ district, the State Board may declare the district formed.

(2) **Election results from resolutions from school districts.**

(A) **Inclusion in the proposed district.** The territory comprising an independent or elementary school district shall be included in the proposed technology center ~~area school~~ district if a majority of the electors who voted cast ballots in favor of the question.

(B) **Establishment after an unfavorable vote.** Notwithstanding an unfavorable vote in an independent or elementary school district(s), a technology center ~~an area school~~ district may be established and the territory comprising other independent and elementary school districts in which the votes have been favorable may be included in the technology center ~~area school~~ district, if criteria prescribed by the State Board can be met.

(i) **Study of election results.** The State Board shall study the results of the elections to determine if a sufficient number of the school districts voted in favor of becoming a part of a technology center ~~an area school~~ district. If the area is deemed sufficient, the State Board shall form the district.

(ii) **Valuation; reconsideration of districts.** If the valuation of the area that voted in favor of the proposition is not sufficient to form the district, the State Board shall continue to work with the proposed area; and if the school districts that were opposed to becoming a part of the technology center ~~area school~~ district wish to vote again on the proposition, they may do so by presenting another resolution to the State Board.

(C) **District establishment suspension; second election.** If the criteria cannot be met because of unfavorable votes in one or more independent or elementary school districts, the State Board may hold establishment of the proposed technology center ~~area school~~ district in suspension for a period not to exceed one year, and in the meantime may, but no sooner than after ninety (90) days, at the request of the local board of education where the election failed, call another election on the same question.

(3) **Election results from resolutions by a majority of a board of commissioners.**

(A) **Voters.** The majority of the votes cast in the county shall determine whether the territory of the county becomes a part of a technology center ~~an area school~~ district. The electors residing in any portion of a county that is already a part of an existing technology center ~~area school~~ district shall not be allowed to participate in this election.

(B) **Electors in adjoining county.** A local school district that has its main buildings within the county calling the election but has electors residing in an adjoining county should pass a resolution for that part and present it to the State Board, which shall call an election as provided in these rules and regulations.

(C) **Addition of adjoining county electors to the technology center ~~area school~~ district.** If the majority of the voting electors in the county vote to establish a technology center ~~an area school~~ district, then that part of the local district located in the adjoining county shall become part of the new district, provided a majority of those voting cast ballots in the affirmative, and they shall be entitled to the rights and privileges and be subject to the assessments as are all other patrons in the district.

(D) **Second election.** If the election fails, the State Board may call another election in the county at the request of the county commissioners after a period of three months or 90 days has elapsed since the previous election.

(4) **Declaration; number designation.** Whenever there has been a compliance with these rules and regulations, the State Board may issue an order declaring the technology center ~~area school~~ district to be established and designating its number.

(5) **Validation period.** Results of school districts and/or counties that voted to become a part of a technology center ~~an area school~~ district shall be held valid for a period of 12 months, or one year, to allow time for the passage of an operational mill levy election.

(6) **Branch campuses.** Branch campuses may be established by the technology center ~~area school~~ board of education to serve special needs or remote areas of the district. In the event the local board elects to pursue an additional campus or provide an ongoing occupational

program at a site other than the main campus, prior approval must be granted by the State Board. Factors that will be used in determining approval will include, but not be limited to, student travel time to nearest available *Career*Tech programs, district valuation, student enumeration, and local industry needs. If the branch campus is able to provide a minimum of five full-time programs, then it may be recognized as an official satellite campus and will be eligible for additional funding under a formula approved by the State Board.

(h) **Zoning of the new technology center ~~area school~~ district.**

(1) **Advisement.** When the State Board forms a technology center ~~an area school~~ district, it shall then zone the ~~area~~ district with the advice and counsel of the local school districts.

(2) **Five zones.** After consultation with the local school officials, the State Board will divide each technology center ~~area school~~ district into five numbered zones of approximately equal population.

(i) **Election of members to the board of education of the new technology center ~~area school~~ district.**

(1) **Call to elect members.** When a technology center ~~an area school~~ district is established, the State Board shall call, and the appropriate county election board(s) shall conduct an election to choose a board of education, which shall consist of five (5) members except as hereinafter provided, elected by all of the school district electors of the technology center ~~area school~~ district.

(2) **Composition of board.** Candidates for zone offices of the board shall be residents of the zone. Electors shall vote on all candidates in board elections.

(3) **Terms.** The newly elected board members will serve initial terms as follows:

(A) Office Number 1, Zone 1: One year
(B) Office Number 2, Zone 2: Two years
(C) Office Number 3, Zone 3: Three years
(D) Office Number 4, Zone 4: Four years
(E) Office Number 5, Zone 5: Five years

(4) **Cycle of elections; terms.** At the first regular school election, as prescribed by the state statutes, after the technology center ~~area school~~ district has become operative for one year, an election shall be held to fill the office that expires in one year. The terms of other offices shall expire in the sequence noted in the schedule above. After the initial terms of offices expire, each school board member shall be elected for a five-year term.

(5) **Notification and declaration of intent.** Each candidate shall file a written notification and declaration of intent to be a candidate for the zone in which he/she resides or as a candidate-at-large. The notification and declaration of intent shall be filed with the county election board within the time prescribed by the election board.

(6) **Seven-member board.** In the event the total area of five or more counties is involved, a seven (7) member board of education may be elected to serve the technology center ~~area school~~ district.

(7) **Seven-member terms.** When there are seven board members, they shall be elected in the same manner as board of education members of other technology center ~~area school~~ districts. The terms of office of members shall be staggered so that the term of office of only one member shall expire each year. Offices shall be numbered one through seven.

(8) **Relations with State Board.** Representatives of the State Board shall meet with the elected board and administer the oath of office, which shall be the same as for boards of independent school districts. The State Board shall provide guidance, direction, and technical assistance to the newly elected board members.

(j) **Operational tax levy election for a new technology center ~~area school~~.**

(1) **Call for election.** As soon as practical, and when it can legally do so, after members of the board of education of a technology center ~~an area school~~ district are first elected following the establishment of the district, the board of education shall call an election to vote on an operational tax levy for the district.

(2) **Educational plan.** The elected board of the technology center ~~area school~~ district shall make a study utilizing the services of the State Board and all other agencies that may be at its disposal to determine an educational plan for the district.

(3) **Tax levy; estimate of needs.** No technology center ~~area school~~ district shall begin operations until the electors have approved a tax levy as provided by Section 9B, Article 10, Oklahoma Constitution and 70 O.S. Sup. 2000, § 14-108, and the county excise board has approved an "Estimate of Needs" for the district.

(4) **Second election.** If an election for an operational levy is held and the proposed levy fails to receive a majority of the votes cast, a second election will be held within 180 days after the original election for the purpose of voting again on an operational levy.

(5) **Dissolution of district; board.** The State Board has the authority to disband a newly formed technology center ~~area school~~ district, release the board of education of its obligations, and release all public school districts from any obligation in the new technology center ~~area~~ district when an operational levy is rejected by the voters a second time. Disbanding or dissolving a newly created technology center ~~area~~ district will be done only after consultation with the local school districts involved.

(6) **School planning.** After passage of a successful operational levy, the technology center ~~area school~~ board shall employ professional help, engage the services of an architect to plan buildings, and take such action as necessary to establish the technology center ~~school~~.

(k) **Selection of the technology center ~~area school~~ superintendent.**

(1) **Choice of superintendent.** Following passage of a successful operational tax levy, the local board of education shall employ a technology center ~~an area school~~ district superintendent.

(2) **Duties; qualifications.** The duties and minimum qualifications of technology center ~~area school~~ superintendents shall be as follows:

(A) **Duties.** The technology center ~~area school~~ superintendent shall be the principal administrative officer of the technology center ~~area school~~. He/she shall be responsible for the organization, curriculum development, evaluation, and improvement of the technology center ~~area school~~ program. The technology center ~~area school~~ superintendent shall maintain close contact with the employment services, advisory committees, potential employers, and all agencies and institutions relative to employment needs and job opportunities in order that training may be closely coordinated with current needs and anticipated opportunities in the employment market. He/she shall evaluate programs continuously and bring about changes and improvements which will ensure that students will obtain the occupational skills and knowledge for which instruction is being provided. The technology center ~~area school~~ superintendent shall be responsible for maintaining a system of complete and accurate records and shall make such financial, statistical, and descriptive reports as may be required by the State Board.

(B) **Qualifications.** First, the technology center ~~area school~~ superintendent shall have a superintendent's certificate as defined in the **Teacher Education, Certification and Assignment Handbook** published by the State Department of Education. Second, the technology center ~~area school~~ superintendent shall have had at least five years of experience as a teacher, supervisor, or administrator of an approved *Career*Tech program. Third, the technology center ~~area school~~ superintendent shall hold a valid Oklahoma *Career*Tech teaching certificate. Persons having these three qualifications shall be issued a Standard Technology Center ~~Area School~~ Administrator Credential.

(3) **Provisional technology center ~~area school~~ credential.** A person without a valid Oklahoma *Career*Tech teaching certificate shall be issued a provisional technology center ~~area school~~ credential and be given three years from the date of issuance to complete the requirements for a standard technology center ~~area school~~ credential. The issuance of the technology center ~~area school~~ standard credential shall be based on the completion of a minimum of eight semester hours from three of the following areas:

(A) History and Philosophy of Career and Technology Education;

(B) Technology Center ~~Area School~~ Finance;

(C) Curriculum for Career and Technology Education; and,

(D) Career and Technology Education Program Planning Development and Evaluation.

(4) **Issuance by the Technology Center Services Division.** The Technology Center Services ~~Area Schools~~ Division of the Oklahoma Department of Career and Technology Education shall be responsible for the issuance of the technology center ~~area school~~ credential.

(5) **Technology Center ~~Area School~~ Administration Credential.** Other school administrators who are responsible for the evaluation of certified faculty under the provisions of the Education Improvement Act of 1985 shall also be required to have a Technology Center ~~an Area School~~ Administrator Credential as provided for above in 780:15-3-2(k)(2) & (3) of the rules and regulations governing technology centers ~~area schools~~. The technology center ~~area school~~ superintendent shall be responsible for assigning appropriate administrative personnel to evaluate the technology center's ~~area school's~~ certified faculty and determining that such persons have a technology center ~~an area school~~ administrator credential.

(l) **Other actions necessary to establish a new technology center. ~~area school.~~**

(1) **Funding for buildings and equipment.** The elected board may submit a building fund levy proposal or a capital outlay bond proposal to finance new buildings and equipment after a study has been made and professional help has been employed.

(2) **Election guidelines.** The building fund levy election or capital outlay bond election shall be conducted in accordance with the prescribed election rules and regulations.

(m) **State Board approval of site.** The location of a site for a technology center ~~an area school~~ district building shall be approved by the State Board.

(n) **~~State Board~~ ~~a~~ Approval of buildings.** All plans and specifications for technology center ~~area school~~ buildings, additions thereto and major modifications thereof that are designed to have ~~*Career*Tech~~ career tech education programs and services shall be approved by the ~~State Board~~. Local board and the technology center services division of the Oklahoma Department of Career and Technology Education.

(o) **Ownership of instructional equipment.** Instructional equipment purchased or reimbursed with state and/or federal funds will remain the property of the State Board except as provided in 780:10-9-2(d)(2). When a program can no longer be justified, the State Board may remove the equipment and transfer it to another technology center ~~school~~ or place it in the equipment pool warehouse.

(p) **Insurance and equipment maintenance.** The technology center ~~area school~~ district shall be responsible for insurance and maintenance and repair of state-owned equipment while it is being utilized in training programs conducted by the district.

(q) **Architect involvement.** Technology center ~~Area school~~ buildings that are to be remodeled, repaired, or constructed at a cost of greater than $40,000 shall have an architect engaged in the planning of such building as provided in 59 O.S. Supp. 1986, §46.3.

(r) **Accommodations for individuals with disabilities.** It shall be the responsibility of the board of education of a technology center ~~an area school~~ district to follow the provisions of the Uniform Federal Accessibility Standards or the Americans

with Disabilities Act Accessibility Guidelines for Buildings and Facilities when constructing new facilities or altering existing structures.

780:15-3-3. Elections in existing technology center ~~area school~~ districts

(a) **Election of five-year term board member.** A regular election shall be held in each technology center ~~area~~ district as may be prescribed by law, at which time the technology center ~~school~~ district electors shall elect a member of the board of education to succeed the outgoing member for a term of five years and, if necessary, elect a member of the board to fill any vacancy that occurred since the previous election.

(b) **Board vacancies.** Vacancies for members of the board of education of every technology center ~~vocational-technical school~~ district shall be filled by appointment by the board. Persons appointed to fill vacancies shall serve only until the next succeeding election, at which time the office which they hold shall be placed on the ballot for the balance of the unexpired term. Vacancies filled by appointment following the delivery of the resolution calling for regular elections to the secretary of the county election board shall be filled until the regular elections the following year; however, if the board of education does not fill the vacancy by appointment within sixty (60) days of the date the board declared the seat vacant, the board of education shall call a special election to fill the vacancy for the unexpired term.

(c) **Notification and declaration of candidacy.** Candidates for election as members of the board of education of an existing technology center ~~area school~~ district shall file a notification and declaration of candidacy with the county election board at the time specified by law.

(d) **Run-off election.** If no candidate receives more than 50 percent of the votes cast in the election, an election between the two candidates with the highest number of votes shall be conducted in accordance with 26 O.S. Supp. 1992, §13A-103.

(e) **County election board.** All technology center ~~area school~~ elections shall be conducted by the county election board in accordance with 26 O.S. Supp. 1988, §13A-101 et seq.

(f) **Notification of results.** The county election board shall notify the State Board and local school district boards of the results of the initial election of board members. Thereafter, the county election board shall notify the existing area school board of education of the election results.

(g) **Organization of the school board.** The school board of a technology center ~~an area school~~ district shall be organized in accordance with 70 O.S. Supp. 1992, §5-119.

(h) **Responsibilities of the board.** The board of education of a technology center ~~an area school~~ district shall have powers, duties, and obligations in accordance with 70 O.S. Supp. 1992, §5-117. The board will perform all functions necessary for the administration of a technology center ~~school~~ district in Oklahoma as specified in the Oklahoma School Code, and in addition thereto, those powers necessarily implied but not delegated by law to any other agency or official.

780:15-3-4. Financial management procedures for technology centers ~~area schools~~

(a) **Annual "Estimate of Needs. "** The board of education of a technology center ~~an area school~~ district shall file an "Estimate of Needs" annually with the county excise board of the county in which the technology center ~~school~~ site of the district is located or is to be located. If the district has, or is to have, more than one technology center ~~school~~ site, the "Estimate of Needs" shall be filed with and approved by the county excise board designated by the technology center ~~area school~~ board of education.

(b) **Preliminary "Estimate of Needs. "** Only when an election is called to increase or decrease the levy shall a preliminary "Estimate of Needs" be published. The date of publication must be at least ten days before the election. Such elections may be called by the board of education whenever it determines it to be in the best interest of the district to do so.

(c) **Response to levy petition.**

(1) **Operating levy.** It shall be mandatory for the board of education to call an election upon receiving a petition relative to the operating levy millage bearing the signatures of a majority of the qualified technology center ~~school district~~ electors of the district. The petition shall be filed with the clerk of the board of education. The election shall be held at the next annual election as prescribed by law.

(2) **Incentive levy.** It shall be mandatory for the board of education to call an election to decrease the local incentive levy upon receiving a petition from the electors of the technology center ~~area school~~ district. Such petition shall be signed by at least fifty (50) percent of the number of technology center ~~school~~ district electors who voted in the last school board election in the technology center ~~area school~~ district. The election shall be held at the next annual election as prescribed by law.

(d) **Preparation of the budget.** The "Estimate of Needs," or budget, shall be prepared, published, and filed at the same times specified for independent school districts, and shall include such financial statements, estimates, and information as may be prescribed by the State Board.

(e) **Duties of county assessor; distribution of tax monies.** After approving the "Estimate of Needs," the county excise board shall certify the required levies to the county assessor of each county having property within the boundaries of the area district. The county assessor shall include the levies on the tax rolls for collection by the county treasurer. The taxes collected by the county treasurer shall be apportioned and remitted to the treasurer of the technology center ~~area school~~ district in the same manner as that provided by law for tax collections accruing to the benefit of independent school districts.

(f) **Alternate system of accounting.** All technology center ~~area school~~ districts are authorized to use the alternate system of accounting set forth in 70 O.S. Supp. 1990, §5-135.

(g) **Guidelines.** As a general rule all technology centers ~~area schools~~ will adhere to the **State Board of Education Policies and Procedures for Implementation of the Oklahoma Cost Accounting System (OCAS) and School Finance** in

the areas that are not covered by the technology center ~~area vocational-technical schools~~ rules and regulations.

(h) **Classification of funds, cash accounts, expenditures and receipts.**

(1) **Coding of revenue.** All technology center ~~area school~~ districts are required to maintain an ongoing record of income that will ensure a complete and accurate income report as required by the Department. All income will be identified in separate categories for local, state, and federal funds. Effective July 1, 1993, for FY 1994, all technology center ~~area school~~ districts will be required to use the Oklahoma cost accounting system for coding revenue.

(2) **Coding of expenditures.** All technology center ~~area school~~ districts will be required to use the Oklahoma cost accounting system for coding expenditures.

(3) **Final expenditure report.** All technology center ~~area school~~ districts are required to file a completed "Cost Per Program Report" using guidelines furnished by the Department on or before October 1 of each year.

(i) **Management of and Responsibilities for the Activity Fund (70 O. S. Supp. 1990, §5-129).** All technology center ~~area school~~ districts shall adhere to the State Board of Education's Policies and Procedures for Implementation of the Oklahoma Cost Accounting System (OCAS) and School Finance section entitled "School Activity Fund."

(j) **Factors in determining the ~~area vocational-technical school~~ allocation formula for technology centers.**

(1) **Formula allocation plan.** ~~The State Board will provide state and federal funds under a formula allocation plan to area schools to aid in their operating expenses for CareerTech training.~~ The State Board will approve allocation of funds to Technology Centers.

(2) **Finance of operational programs.** ~~These funds, in addition to local revenue derived from tax levies, basically finance the area school operational programs.~~ The State Board shall provide state funds to technology centers based on a formula developed by the Oklahoma Department of Career and Technology Education.

(3) **Formula factors.** Factors considered in determining the formula may include enrollment capacity, local funding resources, program count incentive for maximum local support and allowable general fund balance.

~~(4) **Formula revisions.** Formula revisions will be approved by the State Board.~~

(~~5~~4) **Annual approval of programs.** Programs to be offered at the technology centers ~~area schools~~ shall be approved each year in order:

(A) That high school credit may be given to the students enrolled;

(B) That any other accreditation factors may be in proper form; and,

(C) For the State Board to participate in the funding.

(k) **Audit resolution process.**

(1) **Independent audits.** The Department shall be responsible for ensuring that audits are performed by independent auditors in a timely manner and are in accordance with OMB Circular A-133 and the Single Audit Act.

(2) **Audits from technology centers ~~area schools~~.** Upon receipt of an independent audit from a technology center ~~an area school~~, the Department will review and categorize any audit exceptions, comments or findings.

(A) **Notification of findings.** The Department shall notify the technology center ~~area school~~ of the findings and will request a letter of commitment of corrective action for procedural finding(s) and finding(s) involving questioned costs.

(B) **Assurance of settlement.** In the case of a legal requirement, the technology center ~~area school~~ shall supply written documentation that the issue has been settled.

(C) **Response to letter of commitment.** If the commitment from the technology center ~~area school~~ is satisfactory as determined by the Department, the school will be notified of the decision.

(C) **Return of funds.** If the commitment is determined to be unsatisfactory, the Department may request the return of funds connected with the questioned cost(s) or the questioned procedure(s).

(D) **Disallowed costs.** If the finding involves disallowed costs, the Department will request the refund of funds for the questioned costs.

780:15-3-5. Changes in districts' status

(a) **Rezoning of existing technology center ~~area school~~ districts.**

(1) **Review of zone population.** In order to comply with the federal and state rules of equal representation in all units of government, it will be necessary from time to time to review the population of the zones as originally designed to see that reasonably equal zones exist as far as population is concerned. Between August 1 and December 31 of the year following the submission of the official Federal Decennial Census, the board of education will reapportion the school district into board districts. The local technology center ~~area school~~ will formulate the rezoning plan, that must be submitted to the State Board for approval.

(2) **Board of education; zone size.**

(A) **Five members.** The board of education shall consist of five (5) members, except as provided in 70 O.S. Supp. 1990, §5-107A, 70 O.S. Supp. 1990, §14-110, 70 O.S. Supp. 1990, §4419, 780:15-3-2(I)(6) rules and regulations governing technology center ~~area school~~ districts, and 780:15-3-5(a)(2)(E) of this section.

(B) **Size of zones.** Internal boundaries of board districts shall follow clearly visible, definable, and observable physical boundaries that are based upon criteria established and recognized by the Bureau of the Census of the United States Department of Commerce for the purposes of defining census blocks for its decennial census and shall follow, as much as is possible, precinct boundaries. Board districts shall be compact, contiguous and shall be as equal in population as practical with not more than a ten percent

(10%) variance between the most populous and least populous board districts.

(C) **Restructure of noncontiguous zones.** Technology center ~~Area school~~ districts that are not contiguous shall structure their zones where there are no intervening zones between the noncontiguous portion of the district and the remainder of the same zone that contains the noncontiguous portion of said technology center ~~area school~~ district.

(D) **Zone residency.** All members shall reside in the zone that they represent.

(E) **Seven-member zones; annexation.** Any technology center ~~area school~~ district that consisted of a seven (7) member school board on July 1, 1987, and later has added or will add more geographical territory by annexation, shall continue to have a seven (7) member school board whose terms of office shall be the same as previously served.

(b) **Annexations.**

(1) **Proposed annexations**

(A) **Annexation, as proposed by a board of education.** Boards of education of a public school district desiring their district or a part of their district to annex to an existing technology center ~~area school~~ district shall submit a resolution to the State Board requesting an election be called for that purpose. A study of the proposed annexation will be conducted by the Department to ascertain whether the annexation would unlawfully exclude students on the basis of race, color, national origin, or disability. If the board of education of the technology center ~~area school~~ district agrees to the annexation, and if the resolution is approved, the State Board after counseling with the local school district board will set the election date and shall request the county election board to conduct the aforementioned annexation election. If a majority of the electors voting vote for the proposition, the State Board shall declare the public school district, or that portion designated, annexed to the local technology center. ~~area school~~.

(B) **Annexation, as proposed by patrons/electors.** In the event the patrons of any designated territory comprising all or part of a local public school district desire to have such designated territory annexed to a technology center ~~an area school~~ district, a petition may be submitted to the State Board calling for an election on the desired annexation. The petition shall be signed by at least 50 percent of the number of school district electors who voted in the last school board election in the territory proposed to be annexed, as determined by the secretary of the county election board, who shall certify the adequacy of the number of signatures on the petition. The State Board, after obtaining approval of the technology center ~~area school~~ district to which the territory is sought for annexation, shall request the county election board to conduct the requested annexation election-provided the period of time from which the petition was initiated to its time of filing with the State Board did not exceed 90 days. All qualified voters within the local school district shall be entitled to vote at such election. If a majority of the electors voting at such election vote in favor of the proposition, as certified by the county election board, the designated territory shall thereupon be declared by the State Board to be annexed to the respective technology center ~~area school~~ districts.

(C) **Annexation, as proposed by a board of county commissioners.** When a large area such as a county, or portions thereof, desires to be annexed to an established technology center ~~area school~~ district, the board of county commissioners may submit a resolution to the State Board requesting the State Board to call an annexation election for the area so designated. If a majority of the electors voting in the designated area vote for the proposition, the State Board shall declare the area annexed.

(D) **Annexations or transfers of independent and elementary school districts, or portions thereof.** Technology center ~~Area school~~ district membership resulting from annexation or transfers of territory shall be determined by the following:

(i) When an elementary or independent school district, whose territory is a part of a technology center ~~an area school~~ district, is annexed to another elementary or independent school district whose territory is not a part of a technology center ~~an area school~~ district, the annexation shall not affect the status of the annexing district with respect to the technology center ~~area school~~ district.

(ii) When an elementary or independent school district, or a portion thereof, whose territory is not a part of a technology center ~~an area school~~ district, is annexed or transferred to another elementary or independent school district whose territory is a part of a technology center ~~an area school~~ district, the territory of the annexed or transferred elementary or independent school district shall become a part of the technology center ~~area school~~ district.

(iii) When an elementary or independent school district or a portion thereof, whose territory is already a part of a technology center ~~an area school~~ district is annexed or transferred to another elementary or independent school district whose territory is a part of a second technology center ~~area school~~ district, the territory of the annexed or transferred elementary or independent school district shall become a part of the second technology center ~~area school~~ district.

(2) **Liability of annexed territory for bonded indebtedness of technology center ~~area school~~ district.** If the territory is annexed to a technology center ~~an area school~~ district, the assessed valuation of property in the territory will be subject to taxes thereafter levied to pay existing bonded indebtedness that was incurred by the

technology center ~~area school~~ district before the territory was annexed.

(3) **Benefits of annexed territory.** When a public school district or a part of a public school district is annexed to a technology center ~~an area school~~ district, the people residing in the newly annexed district or part of a district shall immediately become eligible to all the rights and privileges as those residing in the technology center ~~area school~~ district and shall be subject to the tax levies of the technology center ~~area school~~ district provided by Section 9B Article 10 of the Oklahoma Constitution.

(c) **Deannexation.**

(1) **Proposed deannexation.**

(A) **Approval of State Board.** Territory shall not be deannexed from a technology center ~~an area school~~ district without the approval of the State Board. No territory may be included in a petition for deannexation within one (1) year from the date of an unsuccessful election for deannexation where that territory was a part of the territory seeking to deannex. A study of the proposed deannexation will be conducted by the Department to ascertain whether deannexation would unlawfully exclude students on the basis of race, color, national origin, or disability.

(B) **Petition.** A petition form shall be developed by the Oklahoma Department of Career and Technology Education. Any petition to be circulated must be on that form or must incorporate the exact language of the form, in addition to the reason for deannexing. To effect the deannexing of territory, a petition requesting the deannexation must be:

(i) submitted to the technology center ~~area school~~ board of education, and

(ii) filed with the State Board.

(C) **Petition content.** The petition shall state the reason for deannexing and shall be signed by at least 50 percent of the number of school district electors who voted in the last school board election in the territory proposed to be deannexed. Each page of the petition shall contain the same information except for signatures of school district electors. Electors must personally sign their own name to any petition and must swear or affirm that they have read the contents of the petition and are signing the document as a free and voluntary act.

(D) **Order and Notice of Election.** If the State Board determines that there is a valid reason for the deannexation, it will issue an "Order and Notice of Election," and the election will be held and conducted by the County Election Board at some public place in the technology center ~~area school~~ district. Copies of the "Order and Notice of Election" will be published in one issue of a newspaper of general circulation in the technology center ~~area school~~ district.

(E) **Eligible electors.** If, prior to the issuance of the "Order and Notice of Election," the board of education of the technology center ~~area school~~ district shall have given written notice of approval of the deannexation to the State Board, only those school district electors who reside in the territory proposed to be deannexed shall be eligible to vote at the election. In the event the board of education of the technology center ~~area school~~ district will not give written approval of the deannexation, then school district electors of the entire technology center ~~area school~~ district shall be eligible to vote on the deannexation question.

(F) **Exceptions.** In situations where the reason for deannexation is because an approved consolidation has resulted in a sending school district with membership in two or more technology center ~~area school~~ districts, approval from the local technology center ~~area school~~ board is not necessary and upon approval from the State Board, only those school district electors who reside in the territory proposed to be deannexed shall be eligible to vote at the election.

(G) **Deannexation approval.** If a majority of the eligible school district electors voting at the election approve the deannexation, the State Board shall issue an order deannexing the territory from the technology center ~~area school~~ district and will transmit copies thereof to the county clerk, county assessor, and county treasurer of each county in which any of the deannexed area lies.

(H) **Property valuation; taxation.** If the territory is deannexed from a technology center ~~an area school~~ district, the assessed valuation of property in the deannexed territory will be subject to taxes thereafter levied to pay bonded indebtedness that was incurred by the technology center ~~area school~~ district while the deannexed territory was a part of the technology center ~~area school~~ district.

(I) Should a successful deannexation election occur the collection of advalorem from patrons in the deannexing territory shall continue for a period of five consecutive tax cycles following the successful deannexation election. Collections will be prorated from the date of the election according to the following schedule:

(i) Cycle one following the election, 85% of the current technology center rate.

(ii) Cycle two following the election, 70% of the current technology center rate.

(iii) Cycle three following the election, 55% of the current technology center rate.

(iv) Cycle four following the election, 40% of the current technology center rate.

(v) Cycle five following the election, 25% of the current technology center rate.

(vi) Cycle six following the election no advalorem taxes will be collected from patrons in the territory voting to deannex from the technology center.

(2) **Annexation/detachment without an election.** The State Board may annex or detach territory from a technology center ~~an area school~~ district as authorized

in 70 O.S. Supp. 1990, §14-108, provided such action is in the best interest of the citizens of Oklahoma and in a situation where there are no qualified electors residing in the affected area. Such action will not require an election and will take effect immediately following the adoption of a resolution by the State Board.

(d) **School consolidation.**

(1) **Nondiscrimination study.** When consolidation of school districts is being considered, the Department of Career and Technology Education will conduct a study to ascertain whether or not consolidation would unlawfully exclude students on the basis of race, color, national origin, or disability.

(2) **Consolidation of technology center ~~area school~~ member district and nonmember district.** When two common school districts consolidate to form a new district and one of the school districts has a majority of its territory located in a technology center ~~an area school~~ district, then the State Board shall call a separate election to be held on the same day as the consolidation election, in that part of the new district that is not already a part of the technology center ~~area school~~ district, for membership in the technology center ~~area school~~ district.

(3) **Consolidation of districts with membership in different technology center ~~area school~~ districts.** When two or more common school districts consolidate to form a new district and each district already is included in a different technology center ~~area school~~ district, the location of the high school shall determine the technology center ~~area school~~ membership for the entire consolidated district. When more than one high school will be located within the new consolidated district, a feasibility study will be performed by the State Board. After consideration of the feasibility study and such other information as may be deemed relevant, the State Board shall determine the technology center ~~area school~~ membership for the entire consolidated district.

(4) **Consolidation of three or more districts.** When three or more common school districts consolidate to form a new district and at least one of the school districts has a majority of its territory located in a technology center ~~an area school~~ district and one or more of the other districts to be merged is not a part of any technology center ~~area school~~ district, a feasibility study performed by the State Board shall include a recommendation for membership in a technology center ~~an area school~~ district and, on the same date as the consolidation election, the State Board shall call a separate election in that part of the newly formed district, that is not already a part of a technology center ~~an area school~~ district, for membership in the recommended technology center ~~area school~~ district.

780:15-3-6. Technology center ~~Area vocational-technical school~~ students

(a) **Student eligibility.**

(1) **High school students.** For students currently enrolled in high school, the technology center ~~area school~~ is an extension of the student's high school and shall be subject to the regulations thereof. The student's home high school shall transcript the units of instruction earned by high school students attending the technology center. ~~area school~~. High school students who successfully complete their occupational plans of study shall be awarded a competency/completion certificate by the technology center. ~~area school~~. The technology center ~~area school~~ is a separate entity in that it also serves adult students.

(2) **Admission criteria and enrollment procedures.** High school students shall meet the admission criteria established by the technology center ~~area school~~ for the specific program of study in which they wish to enroll. All high school students shall be enrolled through a cooperative effort of the sending comprehensive high school and the technology center ~~area vocational-technical school~~, except in cases where the student's parent or guardian has provided an affidavit and sufficient evidence that he/she is participating in a home-schooled education plan in accordance with 70 O.S. 1981, §10-105.

(3) **Approval to withdraw and withdrawal procedures.** Students who wish to withdraw from a technology center ~~an area school~~ must have approval of both the technology center ~~area school~~ and the comprehensive high school. Specific procedures for withdrawal are established cooperatively by the technology center ~~area school~~ and the respective home high school.

(4) **Student discipline.** High school students' discipline and control shall be a cooperative effort between the comprehensive (home) high school and the technology center ~~area school.~~ Each institution shall enforce rules and regulations in accordance with their board-approved policies. Both institutions shall recognize the students' rights to "due process."

(A) **Qualified Students with Disabilities under IDEA.** Discipline for students with disabilities who have an IEP shall be in accordance with current federal and state legislation and rule of law.

(B) **Qualified Students with Disabilities under Section 504/ADA.** Qualified students with disabilities under Section 504 of the Rehabilitation Act of 1973 as amended or the Americans with Disabilities Act of 1990 as amended who are disabled by drug addiction or alcoholism may be disciplined to the same extent as other students. However, a student who is disabled by some other condition in addition to drug addiction or alcoholism must be evaluated and afforded due process prior to disciplinary action that would constitute a significant change in placement. Denial of access, and/or a significant change in placement, should not occur when there is a definable relationship between the misconduct and the disability. The student's 504/ADA team should meet and make this determination. There is no requirement in Section 504 or the ADA for the continuation of educational services following the expulsion of a student for behavior unrelated to the student's disability.

(5) **Certified coursework.** Units of coursework earned by a student in an approved technology center ~~area~~

~~school~~ in Oklahoma shall be certified by the technology center ~~area school~~ to the sending high school in which the student is regularly enrolled. These units of coursework shall be counted toward meeting local and state requirements for graduation. The technology center ~~area school~~ is considered to be an extension of the sending school curriculum and shall be subject to the regulations thereof.

(6) **Hours of attendance.** High school students attending a technology center ~~an area school~~ may spend one-half day pursuing a high school diploma or GED and one-half day completing a *Career*Tech program in the technology center ~~area school~~. The students are counted as attending a full day at the home high school.

(7) ~~**Sophomores.**~~ **Secondary Students.** Secondary *Career*Tech programs in the technology centers ~~area schools shall~~ may be offered ~~only~~ to ~~11th and 12th grade~~ secondary students. ~~Special permission may be granted for sophomores to enroll under the following provisions:~~

~~(A) Sophomores may be enrolled at the discretion of the high school principal and the technology center AVTS administration. Factors to be considered for sophomore enrollment include over-age students, potential dropouts, and students with special needs. The high school principal shall present to the Accreditation Section of the State Department of Education a list of any sophomores included under this provision.~~

~~(B)~~ Students who are on an Individualized Education Program may participate in the technology center ~~AVTS~~ program for up to four years.

(8) **Postsecondary/adult students.** The technology center ~~area school~~ functions as a separate postsecondary-level educational institution for adult students who are beyond the age of compulsory school attendance and/or are not enrolled in high school. Postsecondary/adult students may attend full-time programs in the technology center ~~area school~~ or short-term classes held any time during the day on or off campus. Postsecondary/adult students are subject to the policies and procedures established for adult students by the technology center ~~area school.~~ Units of coursework completed at a technology center ~~an area school~~ by a postsecondary/adult student are transcripted by the technology center ~~area school~~ as postsecondary level credit. Postsecondary/adult students who successfully complete their occupational plan of study shall be awarded a competency/completion certification by the technology center ~~area school~~. Units of instruction and/or credits earned by postsecondary/adult students may also be applied toward an associate degree, in accordance with the cooperative agreements developed by each technology center ~~area school~~.

(9) **Residency.** Students that meet the residency requirements of 70 O.S. Supp. 1996, Section 1-113, shall have the same opportunity to access technology center ~~area vo-tech school~~ programs as any other in-district student. These students may enroll in an appropriate program following the same admission and enrollment procedures as other students.

(b) **Tuition.**

(1) **Resident high school students.** High school students who are residents of the technology center ~~area school~~ district attend on a tuition-free basis.

(2) **Tuition charge.** Technology centers ~~Area schools~~ are authorized to charge tuition to postsecondary students. Amounts charged by a technology center ~~an area school~~ district for tuition are subject to the approval of the State Board.

(3) **Out of District Tuition.** Technology center ~~Area school~~ districts shall charge a tuition to any secondary student who does not reside in the technology center ~~area school~~ district. The fee for tuition shall be ~~within 10 percent of~~ not less than twice the amount of the local cost of providing the program for the student. The State Board may waive this requirement in situations where the ~~local~~ technology center ~~area school~~ district has shown evidence that such requirement will be detrimental to the mission of the local technology center ~~area school~~ district. ~~Reciprocity agreements may be made between area school districts and approved by the Oklahoma Department of Career and Technology Education.~~ Reciprocity agreements to benefit in-district students may be made between technology centers and approved by the Oklahoma Department of Career and Technology Education.

(c) **Transportation.**

(1) **Responsibility.** The technology center ~~area vocational technical school~~ is responsible for providing transportation of daytime

~~(2) secondary students to and from in-district, sending schools for those students who are enrolled in a three-period block of instruction. Transportation for students requesting alternative schedules or programs shall be determined by an agreement between the comprehensive school and the area vo-tech school~~. secondary students to and from in-district, sending schools for those students who are enrolled in a three-period block of instruction. Transportation for students requesting alternative schedules or programs shall be determined by an agreement between the comprehensive school and the technology center.

(2) **Operation under Oklahoma school laws.** All technology centers ~~area schools~~ owning or leasing and operating school buses that transport students to and from points being served by the technology center ~~area school~~ shall operate under the current school laws of Oklahoma.~~, where regulations have not been established by the State Board.~~

(3) **Adult transportation.** Upon approval of the technology center ~~area school~~ board of education, postsecondary students enrolled in *Career*Tech programs may be transported, as space is available, on established bus routes and related auxiliary activities.

(d) **Student accounting.** Program enrollment information shall be submitted to the Information Management Division as outlined in OAC 780:10-7-2.

780:15-3-7. Special provisions

(a) **Sex discrimination.** It shall be the responsibility of the board of education of the technology center ~~area school~~ district to review and conform to all regulations that prohibit sex discrimination. *No person in the United States shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance* [Public Law 92-318, Title IX, Sec. 901 (A)]. Any reference to discriminatory language or practices relative to race, creed, or national origin should be deleted.

(b) **Basic education.** No technology center district ~~area school district~~ shall be required to provide any training or instruction that is ~~not in the field~~ independent of career and/or technology education. However, foundational and contextual academic education ~~may~~ should be provided to persons in order to bring them up to a level ~~where~~ at which they may successfully accomplish occupational training.

(c) **Programs in other districts.** No technology center ~~area school~~ district shall offer *Career*Tech education programs and/or services to any entities inside another technology center ~~area school~~ district without prior approval of that district. Territory not presently a part of any technology center ~~area school~~ district may be served by a technology center ~~an area school~~ district in accordance with the policy and procedures approved by the State Board.

(d) **Agreements between technology center ~~area schools~~ and two-year colleges.** Cooperative agreements negotiated between technology centers ~~area schools~~ and two-year colleges, which would permit postsecondary students to receive college credit for *Career*Tech programs offered at the technology center ~~area school~~, shall be approved by the State Board. The merits of each request will be evaluated by the following criteria:

(1) Increased utilization of existing resources;

(2) Increased student access to additional educational options;

(3) Continued credibility of the instructional programs at both institutions;

(4) Increased student employability; and,

(5) Consistency with goals and objectives of *Career*Tech education in Oklahoma.

(e) **Rules; regulations.** In the absence or omission of specific rules and regulations pertaining to the technology center ~~area school~~ districts, the state statutes and the rules and regulations governing independent school districts will prevail.

(f) **Present rules supersede.** The rules and regulations contained herein supersede all rules and regulations in existence prior to the date of this publication.

(g) **Review of the Policy and Procedures manual.** The **Policy and Procedures** manual approved by the State Board should be reviewed in connection with developing *Career*Tech training programs.

780:15-3-8. Calculation of administrative costs

Administrative Cost for technology centers shall be calculated annually in accordance with the definition of administrative cost provided by the National Center for Educational Statistics. Administrative cost expressed as a percentage of the total program expense for each technology center will be used as a measurement to determine if the administrative cost is within acceptable limits. Should administrative cost for a technology center exceed acceptable limits penalties will be assessed by the state agency to the funding formula dollars of the technology center on a dollar for dollar basis.

(1) Acceptable administrative cost is outlined as follows:

(A) If total program expense is less than $3,000,000, the administrative cost limit is 8%.

(B) If total program expense is $3,000,001 to $5,000,000, the administrative cost limit is 6%.

(C) If total program expense is $5,000,001 to $10,000,000, the administrative cost limit is 5%.

(D) If total program expense is more than $10,000,001, the administrative cost limit is 3%.

(2) Changes to the acceptable administrative amounts may be made by the State Agency staff and approved by the director when necessary.

[OAR Docket #04-1134; filed 6-9-04]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 20. PROGRAMS AND SERVICES

[OAR Docket #04-1135]

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PERMANENT final adoption
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Subchapter 3. Secondary, Full-time and Short-term adult CareerTech programs
780:20-3-1. [AMENDED]
780:20-3-2. [AMENDED]
780:20-3-3. [AMENDED]
780:20-3-4. [AMENDED]
780:20-3-5. [AMENDED]
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In the 2000 legislative session the Oklahoma legislature changed the official name in the statues from Area Vocational Technical Schools to Technology Centers. The name change will more accurately convey the true nature of the area vocational-technical system and the need to accurately convey a more modern depiction of the area vocational-technical system and to ensure compliance. The proposed amendments add the TechConnect Plus high school program to the existing Trade and Industrial Education program offerings and offer continuing education/training where students are unable to attend programs at the local technology center. This was created to meet the needs of students that were unable to attend existing technology center programs and this will offer continued training for students in the 11th& 12th grades that are unable to attend existing technology center programs. Adds the TechConnect and TechConnect Plus programs to the related courses listing and the description of a full-time TechConnect Plus program. Proposed amendment will include the program name change and the hours required to be considered to be a full time TechConnect Plus program. The circumstances for creating this rule amendment were the TechConnect Plus program name change for 11th& 12th program offerings in the comprehensive schools and establishing the required hours of instruction required for a TechConnect Plus program. Adds the maximum enrollment for a Technology Education and TechConnect program and defines the maximum number of students to be enrolled in each period per day for an effective Technology Education and TechConnect program. The Technology Education maximum enrollments decreased from 25 to 24 per period. The TechConnect program maximum enrollment period will be 20 per period. Rule defines the maximum students permitted to enroll in each period for a Technology Education and TechConnect program. TechConnect Plus program, and adds a reference guide for program facilities and defines a state developed guide to be used as a reference, also schools have requested more assistance in remodeling and building programs this gives them a standard to use and this will define quality program facilities. The proposed amendments drop VICA from the SkillsUSA student organization. This is due to the SkillsUSA student organization dropping VICA from its national organization name. This will make us current with the name change for SkillsUSA. Adds the new TechConnect program name in place of the previous ATAE program name. TechConnect was adopted by the state CareerTech Board to replace the existing ATAE program. Proposed amendment denotes supervision of Technology Education and TechConnect programs. This adds Technology Education as the primary division supervising the TechConnect programs. Adds the number of technology systems and cluster areas included in a Technology Education program and defines the minimum number of periods per day for an effective Technology Education program. The minimum number of periods was not listed in the previous revisions and this will define a full time Technology Education program. The proposed amendment adds a rule that requires schools to assign a letter grade to indicate a student's progress when enrolled in a supervised work-based/cooperative education experience. Proposed amendment will add a rule to Section 780:20-3-1. (e) (5) Scholastic credit. An incident where a school wanted to give work-based/cooperative education students that are participating in supervised on-the-job training a (S) Satisfactory or (U) Unsatisfactory grade because this is the way they grade their work-release students. The rule would allow students to be rewarded for performing in a manner that reflects quality rather than being graded for just showing up to work The big difference between work release and work-based cooperative education is that work-based cooperative education serves the laboratory for students to practice what is being taught in the marketing management programs. All work-based cooperative students have Memorandums of Training, Training Plans and receive written performance evaluations conducted each grading period. All of this is done under the supervision of the Marketing Education teacher-coordinator. Some of these are mandated by Federal Statutes and the other are required under our current "Rules for CareerTech" which are designed to raise student expectations. Proposed amendments address the maximum enrollment in a family and consumer sciences program, provided a department has adequate space, equipment and laboratories available in the facility. The proposed action is a name change for (II) and (III) to correlate with name changes already in effect at schools and capacity change for (III). The proposed name changes are necessary to align with course names that have changed. The proposed capacity change will assist districts with enrollment and allow more students to enroll. The intended effect of the rule is to be used as a guide for enrollments in family and consumer sciences courses for safety and quality education. Clarifies the responsibilities of the family and consumer sciences program instructor and requirements for a part-time program schedule. Provides clarification of the instructor's duties and requirements for a part time program schedule. There are school districts where the family and consumer sciences instructor is required to perform additional full time duties. These additional responsibilities do not allow time for the instructor to perform the necessary and required duties of a family and consumer sciences instructor. Reinforce the fact that each CareerTech instructor has specific duties associated with a the program, FCCLA meetings, activities, state staff development meetings. The proposed amendment will increase the maximum number of students allowed in each Agricultural Education program if appropriate space is available and this will relieve enrollment restrictions, current enrollment policies do not allow full utilization of facilities and equipment. The school district will be able to utilize the Agricultural Education facility to its full potential. Clarifies the responsibilities of the agricultural education program instructor and instructor duties. There are school districts where the agricultural education instructor is required to perform additional full-time duties. These additional responsibilities do not allow time for the instructor to perform the necessary and required duties of an agricultural education instructor.

Reinforce the importance that each instructor has specific duties associated with the program, supervised agricultural experience projects, and other program functions. Clarifies the responsibilities of the agricultural education instructor for submitting a summer program of work and the process for summer leave. There is currently no consistency from school to school on summer requirements. This amendment will assist the instructor and school administration by providing structure for the summer responsibilities and summer leave of the instructor. Reinforce the importance that each instructor has specific duties associated with the summer months. Clarifies the responsibility of the school district to provide transportation services to each agricultural education program (instructor). The action taken provides clarification of the transportation services requirement. There are school districts with multiple teacher agricultural education programs who are not meeting the transportation requirements or their teachers. Reinforce the importance of transportation services being provided to each agricultural education instructor. Each instructor has specific duties associated with the program, supervised agricultural experience projects, and other program functions. The proposed amendments reflect the name change of the division and unify language, clarify methods of delivery, and reflect name change of the student organization for the Business and Information Technology Education Division. Change FBLA/PBL, Future Business Leaders of America/Phi Beta Lambda to BPA, Business Professional of America. Change in direction of curriculum has led us to change the student organization name to BPA, Business Professionals of America. Proposed amendments specify how many non-funded courses may be taught and required conference periods for comprehensive high school instructors. Provides specific guidelines for Health Occupations Education that was not present in past rules and regulations. Clarifies the length of programs in comprehensive high schools, technology centers, and for adult programs. Rules provides an individualized approach to defining program length. Clarification was needed to represent what variances occur within individualized settings. Clarifies that accrediting agencies often set student per instructor ratios. Provides further clarification to full time program capacity. Clarification was needed to point out the exception for those whose student per instructor ratio is set by accreditation. Maintain appropriate ratio in adult full time programs. Updates teachers and administration what is to be located in each Health Occupation Education instructor's file. Provides clarification for expectations for Health Occupations Education instructors. The proposed amendments align the state rules with a the requirements of the Carl Perkins Act of 1998, the Individual with Disabilities Education Act Amendments of 1997, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. The action taken emphasizes the importance of meeting the individual needs of students with disabilities through the participation of career and technology education personnel in the IEP and/or accommodation plan development process. Clarification was needed to make compliance with the applicable federal and state laws easier to accomplish. Career and technology education personnel will be better prepared to meet the individual needs of students with disabilities in career and technology education programs.Establishes the guidelines for granting units for a career practicum. The action taken establishes the career practicum and its requirements. Clarification of the career practicum was

needed in order help comply with applicable accreditation standards. The intended effect of the rule is to help LEAs and technology centers implement career practicums. Clarifies the scope of the guidance services offered by technology centers. The action taken provides direction for the guidance services offered at technology centers. Clarification of the guidance services was needed in order to better identify what technology centers are doing or need to be doing in terms of career guidance services offered to their students. The intended effect of the rule is to help technology centers better implement career guidance practices. Defines the process for applying for programs designed to serve special populations. Rule amendment deletes the process as a separate means for establishing programs designed to serve special populations. There no longer exists a separate process to establish programs designed to serve special populations. Defines responsibilities regarding the funding, reporting, and monitoring of Carl D. Perkins federal funds. Clarifies the language regarding eligible recipients and administrators of Carl D. Perkins federal funds. Clarification was needed to better define the language regarding eligible recipients, funding, reporting, and monitoring of federal funds.

CONTACT PERSON:

Marie Saatkamp, (405) 743-5455

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, 2004:

SUBCHAPTER 3. SECONDARY, FULL-TIME AND SHORT-TERM ADULT CAREERTECH PROGRAMS

780:20-3-1. Administration and supervision

(a) **Advisory committee.** Each full-time *Career*Tech program must have an occupational advisory committee that is formally organized and meets at least once annually. The membership of the advisory committee must be diversified with the majority of membership representative of occupations for which the program is training.

(b) **Civil rights compliance.** In order to receive federal funds, local administrators must comply with all civil rights procedures and prohibitions that include, but are not limited to, the following:

(1) **Annual public notification.** All recipients offering *Career*Tech programs shall, at the beginning of the school year, advise parents, employees, students, and the general public that all occupational opportunities will be offered without regard to race, color, national origin, sex, age, or disability.

(2) **Employment.** Recipients offering *Career*Tech programs shall not engage in any employment practice that discriminates on the basis of race, color, national origin, sex, age, or disability.

(3) **Accommodations for individuals with disabilities.** ~~Secondary~~ ~~*Career*Tech~~ Students with disabilities shall be placed in the regular educational environment of any ~~*Career*Tech~~ career and technology education program unless it can be demonstrated that the education of the individual with a disability, even with the use of ~~supplementary aids and~~ support services, cannot be achieved satisfactorily.

(A) ~~**Supplementary aids and**~~ **Support services.** ~~Supplementary aids and~~ Support services include curriculum modification, equipment modification, classroom modification, supportive personnel ~~(i.e., classroom assistants)~~, and instructional aids ~~and~~ devices~~.~~, and other services deemed necessary by the IEP team. Documentation shall exist as to the types of ~~supplementary aids and~~ support services that were considered and reasons why they were rejected.

(B) **Individual needs.** When students with disabilities are enrolled in any ~~*Career*Tech~~ career and technology education program, evidence must exist as to how the student's individual needs are being met.

(C) **Participation in and review of IEP.** A representative of the area technology center shall be on the IEP team when enrollment in a career and technology education program is considered to be an appropriate part of the student's IEP. Career and technology education instructors, whether teaching in an area technology center or in a comprehensive school program, shall have access to a copy of the IEP before the identified student enters the program.

(D) **Accommodation plans.** Students who have provided appropriate documentation of a disability, who have been determined under Section 504 of the Rehabilitation Act or the Americans with Disabilities Act as a qualified individual with a disability in relation to the career and technology education program, and who require necessary accommodations in order to participate in and benefit from career and technology education will have an accommodation plan in place. This plan will be developed by a group of persons knowledgeable about the student, including the student, and will specify the agreed upon services necessary for the student to participate in and benefit from career and technology education.

(E) **Staff Development.** Regular staff development shall include instruction in maintaining confidentiality, modifying instruction, and reviewing and interpreting special needs documents.

(4) **Apprenticeship.** Agreements entered into for the provision or support of apprenticeship training shall not discriminate on the basis of race, color, national origin, sex, age, or disability, and should so state.

(5) **Comparable facilities.**

(A) **Facilities.** Changing rooms, showers, and other facilities provided for *Career*Tech students of one sex shall be comparable to those provided to *Career*Tech students of the other sex.

(B) **Nondiscrimination.** *Career*Tech facilities may not be located, constructed, modified, or renovated in a manner that creates, maintains, or increases student segregation on the basis of race, color, national origin, sex, age, or disability.

(6) **Financial assistance.** Financial assistance in the form of loans, grants, scholarships, special funds, subsidies, compensation for work, or prizes shall be provided to *Career*Tech students without regard to race, color, national

origin, sex, age, or disability, except where necessary to overcome the effects of past discrimination.

(7) **Printed materials.** Counseling and other printed materials shall be provided to *Career*Tech students for program selection recruitment, career/employment selection, and promotional activities without regard to race, color, national origin, sex, age, or disability.

(8) **Work-site learning.**

(A) **Nondiscrimination.** Work-site learning opportunities shall be made available to *Career*Tech students without regard to race, color, national origin, sex, age, or disability.

(B) **Nondiscrimination on the job.** All written agreements between school and employer must contain an assurance from the employer that students will be accepted and assigned to jobs and otherwise treated without regard to race, color, national origin, sex, age, or disability.

(c) **Local administration supervision.** The school administration shall provide program supervision and coordinate the *Career*Tech program activities as an integral part of the overall educational program in the school.

(d) **Local teacher supervision.** Each *Career*Tech teacher shall be responsible for providing appropriate activities that will contribute to the development of each *Career*Tech student according to the student's occupational objective and for conducting and reporting student follow-up upon exit from or completion of the program.

(e) **Cooperative programs.**

(1) **Cooperative education.** The cooperative method of education is a joint effort between the school system and business and industry.

(2) **Supervision of students.** Schools offering cooperative *Career*Tech programs shall provide adequate time for teacher-coordinators to supervise and coordinate the activities of student learners. Adequate time shall be determined by applying the following formula:

(A) 0-25 cooperative students - 1 period (hour) per day

(B) 26-50 cooperative students - 2 consecutive periods (hours) per day

(3) **Exemption of planning period.** The one-hour planning period shall not be considered coordination time.

(4) **Responsibilities of the teacher-coordinator.**

(A) **Responsibilities.** The teacher-coordinator shall have the responsibility of coordinating classroom instruction, on-the-job activities or hands-on experience, and placement of students.

(B) **Training station visits.** The teacher-coordinator shall make a minimum of one (1) on-site visit per grading period to each training station employing cooperative *Career*Tech students. The purpose of these visits shall be to document and coordinate the learning experiences of the students. Training station visits shall be documented and put on file in the teacher's classroom.

(C) **Student files.** A "Memorandum of Training" and a training plan shall be on file for each cooperative student, and a copy shall be sent to the employer and parents.

(D) **Employer evaluation.** Each employer shall complete a written evaluation of the student's progress at least one time per grading period, and a copy of this evaluation shall be on file in the teacher's office. Employers are also required to have proof of age on file and a work permit if the employee is under 18 years of age.

(5) **Scholastic credit.**

(A) **Credit for on-the-job training/internship.** Additional units of credit may be added to the unit(s) earned in the classroom for being employed in an occupationally appropriate training station during the school year by applying the following:

(i) an average of 10 periods (hours) per week for a minimum of 30 weeks of on-the-job training under the supervision of a teacher-coordinator = 1 unit;

(ii) an average of 20 periods (hours) per week for a minimum of 30 weeks on-the-job training under the supervision of a teacher-coordinator = 2 units;

(iii) in the case of block schedules, where a student completes the requirements for a unit of class work in one semester, a student could also earn an additional $\frac{1}{2}$ unit for 10 hours per week for 15 weeks of on-the-job training under the supervision of a teacher-coordinator, or

(iv) a student could earn an additional 1 unit for 20 hours per week for 15 weeks of on-the-job training under the supervision of a teacher-coordinator.

(v) Employers or their representatives shall complete a written evaluation of the cooperative students worksite performance for each grading period. The teacher is responsible for converting the employer's evaluation into the appropriate letter grade for the student's on-the-job grade. Not to be confused with the pass/fail or satisfactory/unsatisfactory grade sometimes given to students participating in a work release program.

(B) **Documentation of work hours.** Teachers must maintain, in the school files, documentation of the number of hours each cooperative student works.

(C) **Extra assignments.** If extenuating circumstances exist, and the student is not employed, the teacher must document extra assignments equal to one hour of classroom instruction per day for every hour under the required 10 hours per week of employment.

(D) **School release time.** A student who is employed in accordance to 5(A) above and is receiving credit for a supervised cooperative work experience may be released up to two hours per day from the normal six-hour school day.

(E) **Classroom credit only.** If the teacher cannot document extra assignments and/or hours worked, the student shall receive only credit for the classroom activities.

(f) **Records and reports.** Each local education agency or eligible recipient shall submit student accounting and other required reports on the specified due date.

(g) **Maintenance of confidential records.** Each technology center ~~area vocational and technical school~~ shall develop and implement a local policy regarding the confidentiality of all personally identifiable information and education records. This policy shall meet the requirements of the Individuals with Disabilities Act (IDEA) CFR 300.560-300.574 and the Family Educational Rights and Privacy Act (FERPA) 34 CFR 99.1-99.67 concerning collection, storage, disclosure, and destruction of confidential student records.

(h) **Career practicum.** A career practicum is defined as a planned program of worksite learning experiences that are relevant to the student's career major, coordinated with the academic/school-based curriculum, and includes work-site mentoring. Units for a career practicum may be granted when the following guidelines are met:

(1) The career practicum shall:

(A) be based upon a student's plan of study or career pathway

(B) be based on a written plan of identified progressive work site experiences or work processes which are coordinated with the academic/school-based curriculum.

(C) require regular contact through work-site visits and other communication, and

(D) measure progress made toward the attainment of identified career practicum competencies.

(2) a school site contact must hold a secondary license/certificate to coordinate the career practicum.

(3) every student participating in a career practicum shall be assigned a trained, work site mentor. Mentors will be oriented to the purpose and goals of the career practicum, will facilitate the attainment of competencies, will be responsible for evaluating the student's performance, and will consult with the school site coordinator and employer.

(4) the career practicum shall conform to applicable safety, child labor, labor standards, and equity laws.

(5) a career practicum agreement will be developed which outlines the responsibilities of the student, school site coordinator, parent/guardian, mentor and employer.

(6) a student must be 16 years of age and enrolled in grade eleven or twelve.

(7) one unit may be granted for the career practicum when all of the above guidelines are met, and the student is involved in a work site learning experience an average of 10 hours per week during the school year or the student is involved in a work site learning experience a minimum of 300 hours during the school year.

(8) not more than two (2) units earned may be granted for a career practicum and applied toward high school graduation. Units may be granted for work site learning experiences as part of a career practicum in an accredited summer high school program.

(i) Career guidance and counseling for secondary and full time programs. Technology centers shall have an identifiable guidance program in place that addresses the career development needs of all students. Technology centers shall provide all students with information and advisement about career and educational options, administer assessment instruments such as interest inventories, aptitude tests, and achievement tests or acquire the results of such assessments to provide guidance in program selection and placement, and provide support for students to help them be successful in their career pathway. This includes but is not limited to:

(1) All students in accredited program have developed and on file, an individual career plan for assessment, guidance, program placement and other services to be provided for maximized program success and employability.

(2) All students are enrolled or placed in a technology center program on the basis of their documented interest and ability to benefit from training, work history, IEP provisions, accommodation plans, and/or their plans of study developed at the sending school or on cooperation with other agencies.

(3) The technology center guidance staff coordinates all services with guidance and counseling staff from sending schools, higher education institutions and other agencies through regularly planned informational meetings and/or correspondence.

(4) Counselors shall be appropriately certified and credentialed for the grade levels to which they are assigned. School counselors shall hold a valid Oklahoma School Counselor Certificate appropriate to grade levels to which they are assigned. (State accreditation standards: 210:35-9-45)

780:20-3-2. Programs: admissions, operations, enrollment, and length

(a) **Nondiscrimination; admission guidelines.** Students shall be provided access to *Career*Tech programs and facilities without regard to race, color, national origin, sex, or disability.

(1) **Agricultural Education.** Agricultural Education programs are designed for junior high and high school students (grades 8 through 12) and adults. Secondary students must have a supervised agricultural experience ~~program.~~project. ~~Transportation services shall be provided for all supervised agricultural experience activities.~~ Each ODCTE funded agricultural education program shall be provided transportation services, by the local school district, for all agricultural education/FFA (FFA is an integral part of the agricultural education program) program related duties and activities.

(2) ~~*Career*Tech~~ **Business and Information Technology Education.** ~~*Career*Tech~~ Business and Information Technology Education programs are designed to prepare high school students (grades 8 through 12) and adults for pathways to careers in business. and information technology.

(3) **Family and Consumer Sciences Education.**

(A) **Family and Consumer Sciences Education in comprehensive schools.** Family and Consumer Sciences programs are designed for junior high and high school students (grades 6 through 12).

(B) **Family and Consumer Sciences Occupational Education.** Occupational Family and Consumer Sciences programs are designed for high school students (grades 11 and 12) and/or adults to train or retrain in a specific family and consumer sciences related occupation.

(4) **Health Occupations Education.**

(A) ***Career*Tech health occupations.** Health Occupations Education programs are designed to prepare high school students (grades 9 through 12) and adults for employment in a health occupation of their choice.

(B) **Requirements for applicants.** Applicants for admission to Health Occupations Education programs must meet requirements as set by the individual program, state statutes, and any other requirements of the appropriate licensing or accrediting agency.

(5) **Marketing Education.** Marketing Management and Entrepreneurship Education programs are designed to prepare students (grades 9 through 12) and adults for career clusters in marketing, business management and entrepreneurship. Students may also earn additional units by participating in a supervised on-the-job internship.

(6) **Technology Education/TechConnect.** Technology Education programs are designed for students in grades ~~6~~ 5 through 10 who desire an opportunity to explore and experience technological occupations.

(7) **Trade and Industrial Education/TechConnect Plus.** Trade and Industrial Education programs in comprehensive schools are designed for students in grades 10 through 12. TechConnect Plus programs are designed for 11th and 12th grade students when access to advanced career and technology programs are not available or special needs are identified. Schools must apply with the appropriate division for approval of a TechConnect Plus program. Trade and Industrial Education programs in technology centers ~~area schools~~ are designed for students in grades 11 and 12 and/or adults. In technology center ~~area school~~ programs, tenth-grade students, or over-age students in a grade lower than the eleventh, may be enrolled upon approval of the sending school.

(b) **Program operations.**

(1) **Recommendation for program approval.** The appropriate *Career*Tech program administrator shall recommend approval of a program when criteria for the approval of new programs are met and funds are available.

(2) **Program composition.** Programs shall offer hands-on experience or supervised occupational experiences in the laboratory or clinical setting as well as classroom instruction to provide opportunities for students to achieve career objectives.

(3) **Course titles.** *Career*Tech course offerings must be in agreement with the course titles listed in the current ***Standards for Accreditation of Oklahoma Schools***, published by the State Department of Education. These same course titles (or abbreviated titles) should be the class titles entered on the student's transcript.

(4) **Units of credit.** The units of credit shall be determined by the number of periods the student is in class plus on-the-job training, clinical training, or internship served. (Refer to the ***Standards for Accreditation of Oklahoma Schools.***)

(5) **Full-time programs.** A full-time program in a comprehensive school shall consist of five *Career*Tech instruction class periods and one planning period for a six-period day, and six *Career*Tech instruction class periods and one planning period for a seven-period day. Exceptions to this rule shall include the following:

(A) **Two planning periods.** Teachers who supervise students' agricultural experience programs shall have a minimum of two periods to plan, supervise, and coordinate the activities of student learners (see 780:20-3-1(e) and 780:20-3-2(b)(7)(A)). It is recommended that the last hour of the school day be utilized as one of the planning periods. Schools offering Agricultural Education courses the final period of the day must provide a written explanation to the program administrator.

(B) **Teaching of related courses.** Teachers of Marketing Management and Entrepreneurship Education, Technology Education, TechConnect Individualized Cooperative Education (ICE), and TechConnect Plus ~~Applied Technology/Academic Education (ATAE)~~ may be allowed to teach one related course, subject to the approval of the appropriate program administrator.

(C) **Trade and Industrial Education/TechConnect Plus.** Two three-hour block courses shall constitute a full-time program in Trade and Industrial Education in a Technology Center. Three two-hour block courses shall constitute a full-time program in a TechConnect Plus program in a seven period day at a comprehensive school.

(D) **Marketing Education.** Teachers of Marketing Management and Entrepreneurship Education may be allowed to teach one related course (if the school is on a standard six- or seven-period teaching day), subject to the approval of the Marketing Education program administrator.

(E) **Health Occupations Education.** Teachers of Health Occupations may be allowed to teach one or two related courses with at least one conference period (if the school is on a standard six or seven-period teaching day), subject to the approval of the Health Occupations Education program Administrator.

(6) **Adult Training and Development.** Adult Training and Development (short-term adult) programs in comprehensive schools may be organized under the supervision of the *Career*Tech teacher and must be occupationally specific. These programs are organized on request or as the need indicates. They may vary in length.

(7) **Program operations by occupational division.**

(A) **Agricultural Education.**

(i) **Secondary programs.** The agricultural education instructor is a full-time, 12-month employee and shall teach only approved agricultural education courses. Agricultural education instructor shall have no other extra curricular duties or responsibilities other than those required through the FFA student organization and normal school supervisory duties. Coaching, administration, or other similar full-time duties will not be approved.

(ii) **Summer program.** The agricultural education instructor shall formulate a summer program of work and a calendar of activities, which are to be ~~on file with the local education agency and state department office~~ submitted to the local education agency at the completion of the school year.

(iii) **Activities.** Summer activities shall include supervision of students' activities; educational field days and tours; in-service and professional development activities; and, working with adults, agricultural organizations, and industries.

(iv) **Summer leave.** Agricultural Education teachers are entitled to two weeks of summer leave. ~~Leave requests must be approved by the local school authorities and be on file in the office of the Program Administrator.~~ In lieu of ~~this~~ these two weeks of vacation, three weeks each year may be allowed for professional improvement~~. in agricultural education or courses designed for professional improvement, if requested by the local school authorities and approved by the Program Administrator.~~ Summer leave should be coordinated with the local administration. If there is a question in regard to summer leave, the program administrator should be contacted for approval.

(v) **Full-time adult programs.** Full-time adult Agricultural Business Management programs vary in length and are designated for and intended to meet the needs of adults engaged in agriculture and agricultural business operations.

(B) ~~*Career*Tech~~ **Business and Information Technology Education.**

(i) **Methods of delivery.** The ~~*Career*Tech~~ Business and Information Technology Education programs provide three methods of delivery:

(I) Business and ~~computer~~ Information Technology Education ~~technology~~ internships in the comprehensive school shall consist of one or two block periods of classroom instruction and supervised work-site training through part-time employment in training-specific positions in business for students in grades 11 or 12.

(II) ~~*Career*Tech~~ Business and Information Technology Education courses in the comprehensive school shall consist of one or two block periods of instruction offered in grades 9 through 12. Instructors shall teach only approved business and information technology education courses. Nine week and semester rotation courses are not approved for Business and Information Technology Education programs. Business and Information Technology Education instructors shall have no other extra curricular duties or responsibilities other than those required through the BPA student organization and normal school supervisory duties. Coaching, administration, or other similar full-time duties will not be approved.

(III) Business and ~~computer~~ Information T~~t~~echnology Education programs in technology centers ~~area schools~~ shall consist of three-hour block periods of classroom instruction for students in grades 11 or 12 and should include a work-site learning component. Any exceptions must be approved in writing by the Program Administrator of Business and Information Technology Education.

(ii) **Course levels.** Comprehensive school ~~*Career*Tech~~ Business and Information Technology Education programs shall not mix levels of courses in the same period without written permission from the State Department of Education.

(iii) **Technology/equipment.** ~~*Career*Tech~~ Business and Information Technology Education programs shall provide technology that is appropriate for the defined occupational objectives and is reflective of a modern business environment. A written plan integrating curriculum, training materials, and technology shall be maintained to guide program development and maintain relevance to the marketplace.

(C) **Family and Consumer Sciences Education in comprehensive schools.**

(i) **Full-time programs.** A full-time program shall consist of at least three levels of family and consumer sciences classes with one or more conference periods in the daily schedule, and the instructor shall teach only approved family and consumer sciences courses. Family and consumer sciences instructors shall have no other extra curricular duties or responsibilities other than those required through the FCCLA student organization and normal school supervisory duties. Coaching, administration, or other similar full-time duties will not be approved.

(ii) **Part-time programs.** Programs that are less than full-time will be funded as a half-time program and will be approved only through permission of the program administrator. A part-time program shall include a minimum of two family and consumer sciences classes and a conference period for a six period day and three family and

consumer sciences classes and a conference period for a seven period day.

(iii) **Course coordination.** Comprehensive school Family and Consumer Sciences Education programs shall not mix levels of courses in the same class period without written permission from the State Department of Education. This written permission does not ensure programs are meeting Oklahoma Department of Career and Technology Education standards.

(iv) **Adult programs for Family and Consumer Sciences Education.**

(I) **Adult Training and Development.** The Family and Consumer Sciences Education Division staff shall authorize Family and Consumer Sciences Education programs to include instruction for out-of-school and adult groups to be conducted as Adult Training and Development (short-term adult) programs.

(II) **Local organization of courses.** Adult training and development classes may be organized under the supervision and control of the local board of education and are designed for persons 16 years of age and older who are not enrolled in regular day school classes.

(D) **Family and Consumer Sciences Occupational Education.**

(i) **Full-time occupational programs in comprehensive schools.** A full-time family and consumer sciences related occupational education program in the comprehensive school will include two or more classes, two to three periods in length for 11th- and 12th-grade students.

(ii) **Full-time occupational programs in technology centers ~~area schools~~.** A full-time family and consumer sciences related occupational education program in a technology center ~~an area school~~ will include two classes, three periods in length for 11th- and 12th-grade students and adults.

(iii) **Length; order.** Two years of occupational training may be offered. No student shall be enrolled in Occupational Training II until Occupational Training I has been successfully completed.

(E) **Health Occupations Education.**

(i) **Secondary programs.** Programs in comprehensive high schools vary in length and may be offered in one, two or three blocks of time. At the 9th - 12th-grade level. Secondary programs in technology centers ~~area schools~~ may be one or two academic years in length and ~~three periods a day~~ vary in hours per day.

(ii) **Full-time adult programs.** Full-time adult programs vary in length in accordance with accrediting bodies.

(F) **Marketing Education.**

(i) **Secondary programs.** The three basic methods of offering secondary Marketing Management and Entrepreneurship Education programs shall be as follows:

(I) Project class, providing classroom instruction and application only;

(II) Project with shadowing component, providing a combination of classroom instruction and participating in a shadowing experience with business; and,

(III) Cooperative method/internship, providing classroom instruction plus a supervised work-site learning experience in a cooperating business.

(ii) **First- and second-year students.** Comprehensive school Marketing Management and Entrepreneurship Education programs shall not mix first-and second-year marketing management students in the same class without written permission from the State Department of Education.

(G) **~~Applied Technology/Academic Education (ATAE).~~ Technology Education/TechConnect.**

(i) **Program operation requirements.**

(I) **Program design.** The primary purpose of the ~~ATAE program is to help youth in grades 9 through 10 meet their career goals through the integration of applied academics and directed occupational training.~~ Technology Education/TechConnect is a career and technology education program designed to transition ninth and tenth grade students to the next level of career development. These programs provide foundational competency experiences by focusing on integration of rigorous academics, all aspects of the industry, employability and technical skills. ~~ATAE~~ Technology Education/TechConnect programs are targeted for grades 9 and 10, but they may be extended an additional two years through an 11th and 12th grade TechConnect Plus ~~to a four year~~ program where access to advanced *Career*Tech programs is unavailable and/or limited or where special student needs are identified. Enrollment priority should be considered for students who are at-risk or who are members of special populations; however, enrollment should not be limited to these students only. Through the infusion of *Career*Tech preparation strategies in academic classes, ~~ATAE~~ Technoloyg Education/TechConnect students develop an understanding of how principles of math, science, and English are applied in the workplace and why it is necessary for them to master academic skills. ~~ATAE~~ Technology Education/TechConnect programs are designed to provide students a solid foundation in academic skills, practical "hands-on" activities, and the ability to relate abstract concepts to the "hands-on" activities. An essential component of an ~~ATAE~~ Technology Education/TechConnect program is the

development and implementation of a comprehensive career guidance program, so ~~ATAE~~ Technology Education/TechConnect students will be able to make more meaningful career choices by developing a better understanding of their own interests, skills, and abilities; understanding labor market projections; and learning to formulate a plan of study to achieve their individual career goals. The school guidance program should include a total occupational assessment of each student as well as components that address the student's personal, social, educational and career development needs. ~~ATAE~~ Technology Education/TechConnect programs shall consist of occupational instruction for two consecutive periods. Programs shall have laboratory experiences, where appropriate, to provide the progressive situations necessary for general occupational skills training. In order to integrate academics and *Career*Tech education, teachers of the ~~ATAE~~ Technology Education/TechConnect programs shall participate in appropriate professional improvement activities including the summer *Career*Tech conference, professional improvement meetings, and other related activities. ~~ATAE~~ Technology Education/TechConnect students shall have access to appropriate career and technology student organizations that are consistent with the related *Career*Tech programs as well as other personal development components. ~~ATAE~~ Technology Education/TechConnect program enrollment numbers shall be consistent with related *Career*Tech program guidelines with particular attention given to work situations and available resources. ~~ATAE~~ Technology Education/TechConnect teacher certification shall be consistent with related *Career*Tech program areas. Exceptions shall be approved by the appropriate occupational division administrator.

(II) **Occupational preparation.** Programs shall be designed to introduce students to careers in "clusters" of closely related occupations, including but not limited to Construction, Mechanical-Construction, Mechanics, Electrical/Electronics, Communications, Horticulture, Food Services, Hospitality, Child/Elder Care, Health Services, Metals, Food Services, Agricultural Related, Business, and Family and Consumer Sciences Related.

(III) **Full-time program.** The offering of at least two classes, which are each two consecutive periods in length or four one-hour periods in length, in a six period day ~~,~~ shall be considered a full-time ~~ATAE~~ Technology Education/TechConnect *Career*Tech program. One two-period block or less than four one-hour period block will constitute a half-time program in a six period day. A seven period day will require three two hour blocks for a full time program.

(IV) **Full-time teacher.** A teacher who is teaching two or more ~~ATAE~~ Technology Education/TechConnect classes, which are each two consecutive periods in length, shall be considered as a full-time *Career*Tech teacher in a six period day. ~~An ATAE~~ A Technology Education/TechConnect teacher may be assigned three two period or six one period *Career*Tech classes ~~each~~ in a seven period day.

(V) **~~ATAE~~ Technology Education/TechConnect program operation recommendations.** ~~ATAE~~ Technology Education/TechConnect students should have access to comprehensive guidance services. These services should include the development of a plan of study that provides direction through course enrollment leading toward high school graduation. The plan should be flexible with periodic review to ensure program/course relevance in attainment of the student's career goal(s). Schools should offer applied academic courses in English, mathematics, and science for ~~ATAE~~ Technology Education/TechConnect students. Enrollment in applied courses should be consistent with each ~~ATAE~~ Technology Education/TechConnect student plan of study. Enrollment in the Technology Education/TechConnect applied academic courses should not be limited to ~~ATAE~~ Technology Education/TechConnect students. Teachers of the applied academic courses should participate in appropriate professional improvement activities including summer *Career*Tech conference, professional improvement meetings, and other related activities. ~~ATAE~~ Technology Education/TechConnect students should be provided support services to enhance academic competence. These services may be provided through an education enhancement center, tutoring services, or other activities that will assist the student in attainment of academic/occupational competencies.

(ii) **Supervision.** The State Board shall provide state and federal funds to enhance special populations students equal access and full participation in *Career*Tech programs. Programs shall be supervised by the appropriate occupational and Technology Education division.

~~(iii) **Programs for special populations.** Programs designed to serve special populations are established by submitting an application to the Department and are approved for one fiscal year at a time. Applications are mailed to eligible recipients annually by the Planning Division.~~

(H) **Technology Education.**

~~(i) **Two types.** There are two types of programs: Technology Education (*Career*Tech funded) and Industrial Arts/Technology Education (not funded by *Career*Tech).~~

~~(ii) **Technology Education program.**~~

(i~~I~~) **Course duration.** Each technology education course shall be taught in a one-period block of time (45-55 minutes).

(ii~~II~~) **Curriculum.** The curriculum shall include ~~four~~ five technology systems: construction, communications, manufacturing, and transportation ,and bio-tech to include the sixteen cluster areas.

(iii~~III~~) **Four periods per day.** Each program shall implement the technology education curriculum into a minimum of four periods per day, with one additional period allotted for a conference/planning period.

(iv~~IV~~) **Equipment.** Technology Education programs shall provide technically up-to-date equipment to allow students opportunities for modernistic hands-on experiences. Schools are encouraged to use state ~~incentive~~ program assistance funds to purchase this equipment.

(I) **Trade and Industrial Education Technology Center.** All secondary trade and industrial education students shall be enrolled for three consecutive periods daily, five days a week. All secondary Tech-Connect Plus students shall be enrolled for two consecutive periods daily, five days a week. Adult trade and industrial education students may enroll for one-half day (three periods) or a full day (six periods). The Program Administrator of Trade and Industrial Education must approve any exceptions in writing. ~~Any exceptions must be approved in writing by the Program Administrator of Trade and Industrial Education.~~

(J) **Integrated Academics.** Academics taught in the technology center shall be delivered in the context of the program in which each student is enrolled. If academic instruction is offered for credit through the sending school, it shall be structured so as to meet current legislation and State Department of Education guidelines.

(c) **Enrollment for full-time programs.**

(1) **Guidelines compliance.** Program enrollments shall comply with the established guidelines of the appropriate occupational division. Exceptions must have written approval by the appropriate program administrator prior to the second week of class. Consideration shall be given to the availability of work stations, clinical experiences and individual student needs.

(2) **Enrollments specific to occupational divisions and programs.**

(A) **Agricultural Education.**

(i) **Student enrollment limits.** If a department has adequate space, equipment, and laboratory sites, a maximum of ~~20~~ 25 students may be enrolled in each agricultural education class with the exception of lab classes, such as Horticulture and Ag Mechanics, and they shall be limited to 15 per class. Exceptions to these numbers must have written approval by the appropriate program administrator.

(ii) **Maximum class enrollment.** The maximum enrollment in each agricultural mechanics and horticulture class shall be 15 students per class period.

(iii) **Course prerequisite.** Agricultural Science I is the prerequisite for all other agricultural education courses with the exception of eighth-grade Agricultural Orientation.

(iv) **Employment in Agribusiness.** The Agricultural Education course, Employment in Agribusiness, is considered a **Cooperative Program** in which students can earn scholastic credit if the course meets all requirements listed under section (780:20-3-1 section e). It must be taught and supervised by the agricultural education instructor. Note: The work-site experience must be directly related to the curriculum offered in the program.

(B) ~~***Career*Tech**~~ **Business and Information Technology Education.**

(i) ~~***Career*Tech**~~ **Business and Information Technology Education programs in comprehensive schools.** A maximum of 25 students per class shall be enrolled in the business and computer technology internship. Other ~~*Career*Tech business~~ Business and Information Technology Education courses may enroll a maximum of 25 students at a ratio of one work station per student.

(ii) **Business and computer technology programs in technology centers ~~area schools.~~** ~~A business and computer technology program in an area school shall have a maximum of 25 students per class.~~ Business and Information Technology Education courses may enroll a maximum of 25 students at a ratio of one work station per student.

(C) **Family and Consumer Sciences Education.**

(i) **Family and Consumer Sciences programs in comprehensive schools.** ~~A minimum of 30 students shall be enrolled per teacher unless approved by the program administrator. Schools with minimum enrollment in a full-time program shall offer during the school day (1) adult education or (2) consumer education and/or nutrition education programs for grades K-6.~~ If a department has adequate space, equipment and laboratory sites, maximum enrollment for the following courses shall be: (Not all class offerings are listed, but those not listed have enrollment determinatives in common with one of the courses listed.)

(I) Personal Development, Teen Ecology, and Life Management-20 Students

(II) ~~Foundations for Living~~ Family and Consumer Sciences I and II-20 Students

(III) ~~Basic~~ Healthy Life Choices ~~Skills-20~~ 25 Students

(IV) Hospitality Careers Orientation, Career Orientation, and Adult and Family Living-25 Students

(V) In-depth semester courses and/or Family and Consumer Sciences III and IV-25 Students

(ii) **Family and Consumer Sciences Occupational Education.** A minimum of 10 and a maximum of 20 students shall be enrolled in each section of family and consumer sciences related occupational education.

(D) **Health Occupations Education.**

(i) **Secondary health occupations programs.** A minimum of 10 and a maximum of 18 students shall be enrolled in each section of a secondary health occupations education program.

(ii) **Full-time adult health occupations programs.** A minimum of 8 and a maximum of 12 students per instructor shall be enrolled in a full-time adult Health Occupations Education program~~.~~,or the limit set by national accrediting agencies.

(E) **Marketing Education.**

(i) **Student enrollment limits.** The maximum number of cooperative students in a full-time cooperative Marketing Management and Entrepreneurship program shall not exceed 50 students per marketing management teacher-coordinator.

(ii) **Project class enrollment.** Where the marketing management teacher-coordinator teaches a marketing management project class in conjunction with the cooperative programs, enrollment in the project class is determined by the size of the classroom facility and SDE policies.

(iii) **"Marketing management project students. "** Sophomore, junior or senior students may be allowed to enroll in each existing cooperative class for the theory and classroom application portion only. These students would not be required to obtain work-site learning experience and would receive only one unit of credit.

(iv) **Half-time program enrollment.** The maximum number of cooperative students in a half-time cooperative program is 25 per teacher-coordinator.

(F) **Technology Education and TechConect.** The maximum enrollment for each period of Technology Education shall be ~~25~~ 24 students. The maximum enrollment for each period of TechConnect shall be 20 students. Consideration should be given to the size of the facility and the number of students that the modular ~~work-stations~~ workstations are designed to accommodate.

(G) **Trade and Industrial Education and TechConnect.**

(i) **Maximum enrollment.** The maximum enrollment for each Trade and Industrial Education, TechConnect Plus program section shall be 20 students, with the exceptions of cosmetology, which may have a maximum of 22 students, and ICE programs, which may have 50 students per ICE teacher.

(ii) **Alternate program enrollment.** The Trade and Industrial Education Division shall establish a reduced maximum enrollment for any program not meeting adequate size or layout of teaching facilities, number of training stations, appropriate quality and quantity of tools, and equipment and supplies. Individual student needs, student safety and supervision shall also be considered when determining maximum student enrollment.

(iii) **Inclusion of on-the-job students.** Students involved in on-the-job training shall be included in the maximum enrollment for the program unless each school has an on-the-job training coordinator.

(d) **Length of programs.** *Career*Tech programs shall be 10 or 12 calendar months as approved by the appropriate program administrator. Exceptions must be approved by the Department.

780:20-3-3. Materials and facilities

(a) **Approved materials.** *Career*Tech teachers in all *Career*Tech programs shall use instructional materials developed by the Department or materials approved by the appropriate program administrator.

(b) **Equipment.**

(1) **Responsibility.** The local education agency is responsible for providing equipment and supplies to support the *Career*Tech program in order to assure quality training. Equipment must meet or exceed all appropriate safety standards.

(2) **Modern equipment.** Equipment shall be indicative of that currently used in business and industry and in conformity with modern technology.

(3) **Maintenance; replacement.** A policy for maintenance and replacement shall be developed by the local education agency.

(4) **State-reimbursed equipment.** All state-reimbursed equipment must be state-tagged and located in the proper classroom or laboratory for use by the students.

(5) **Consultation before selection.** The program administrator shall be consulted before the equipment is selected for acquisition.

(6) **Inventory of state-owned equipment.** It is the responsibility of the local education agency to provide appropriate maintenance and repair of state-owned equipment and to maintain an accurate inventory of state-owned equipment.

(c) **Facilities.**

(1) ***Career*Tech programs facilities.** The local education agency shall provide *Career*Tech programs with facilities to assure safe and orderly, quality instruction to meet each program's objectives. The guidelines used shall be from the Oklahoma Department of Education "Planning for Education: Space Guidelines for Planning /Educational Facilities" booklet 70 O.S. 3-104. The appropriate program administrator shall be consulted regarding plans for new and remodeled facilities.

(2) **Health Occupations Education.** Clinical facilities shall be adequate in number and quality to provide the experiences necessary for an effective program and must meet the requirements of the respective accrediting agency.

(3) **Marketing Education.** The local education agency shall provide an office with telephone within or accessible to the marketing management classroom.

780:20-3-4. Instructors

(a) **Certification on file.** All *Career*Tech secondary teachers shall have (on file in the local education agency) an appropriate teaching certificate issued by the Certification Section of the State Department of Education.

(b) **Administrative responsibility.** It shall be the responsibility of school administration to assure that a *Career*Tech teacher applicant meets *Career*Tech certification requirements before placing the applicant under contract. Certification requirements are found in the ***Teacher Education and Certification Handbook*** (Oklahoma State Department of Education).

(1) **Occupational division approval.** All *Career*Tech teachers must have the *Career*Tech certification application approved by the program administrator in the appropriate occupational division.

(2) **Occupational division renewal of certification.** All *Career*Tech teachers must complete the specific occupational division's requirements for *Career*Tech certification renewal and be approved by the appropriate program administrator.

(c) **Health Occupations Education.**

(1) **Faculty requirements.** Faculty shall hold current credentials in the appropriate health field and must meet the requirements of the local education agency, Health Occupations Education Division, and the respective accrediting agency.

(2) **Degree-seeking faculty.** Faculty with less than a baccalaureate degree shall have a degree plan on file and provide documentation of progress toward obtaining a degree.

(3) **On-file applications.** Faculty shall have an application on file in the Health Occupations Education office~~.~~ ,including a Statement of Qualifications form, all current transcripts and, if appropriate, teaching certificate or application for teaching certificate.

(4) **Clinical experience.** Faculty must have a minimum of two years' clinical experience within the last five years prior to their first teaching experience. The program administrator must approve any variations.

(d) **Professional development.** New instructors shall participate in preservice professional development activities as required by the appropriate divisions. All secondary and full-time adult *Career*Tech instructors and staff shall participate in professional inservice as required by the appropriate divisions, including summer conference and mid-year activities.

780:20-3-5. Career and Technology Student Organizations

(a) **Student organizations as an integral part of the *Career*Tech program.** The Oklahoma Department of Career and Technology Education is the responsible entity for governance and administration of the career and technology student organizations and therefore has the authority to develop and enforce policy of the student organizations consistent with *Career*Tech program design and operation. Each secondary *Career*Tech program shall have an active and appropriate student organization as an integral part of its program.

(b) **Membership in appropriate organization.** Each student who participates in student organization activities shall be a member of the student organization designed for the occupational program in which the student is enrolled.

(c) **Organizations.** Career and technology student organizations shall include:

(1) DECA/Delta Epsilon Chi (Marketing Education)

(2) ~~FBLA/PBL (*Career*Tech Business), Future Business Leaders of America/Phi Beta Lambda~~ BPA (Business and Information Technology Education), Business Professionals of America.

(3) FFA (Agricultural Education)

(4) FCCLA (Family and Consumer Sciences Education), Family, Career and Community Leaders of America

(5) HOSA (Health Occupations Education), Health Occupations Students of America

(6) TSA (Technology Education), Technology Students Association

(7) SkillsUSA ~~VICA~~ (Trade and Industrial Education)

(d) **Accountability; loss of program funding.**

(1) The school and the career and technology student organization chapter will be held accountable for the actions of the student organization members and the advisor participating in any career and technology student organization activity. Failure to comply with the official rules of such activities may, after an opportunity to present reasons why said action should not occur, result in the loss of the state funding for that *Career*Tech program.

(2) The school and the FFA chapter will be held accountable for the actions of the FFA members and the FFA advisor participating in any FFA activity. Any Agricultural Education program that has a student/FFA member who is the owner of an animal testing positive for illegal or improper drugs or additives, has altered the appearance of the animal(s) surgically (other than normal and customary practice), and/or violates the eligibility rules for ownership of animals shall, after hearing, and after consideration by the State Board, and upon determination that there has

been a violation of this policy, lose state funding for that program.

SUBCHAPTER 5. PROGRAMS, SERVICES, AND ACTIVITIES FUNDED THROUGH P.L. 105-332 CARL D. PERKINS VOCATIONAL AND TECHNICAL EDUCATION ACT OF 1998

780:20-5-1. Services and Activities

(a) **Supervision and technical assistance for P. L. 105-332 services and activities.** Staff will provide technical assistance, ~~as requested~~, to local administrators, and teachers in meeting federal compliance requirements for *Career*Tech students.

(b) **Compliance-related activities.**

(1) **Monitoring.** The Department shall monitor ~~local schools'~~ eligible recipients' compliance with federal mandates regarding the use of funds under P.L. 105-332.

(2) **Assist local administrators.** The Department will assist local administrators in meeting ~~legal~~ federal mandates by providing in-service training and on-site consultations~~, as requested~~.

(c) **Allocations for ~~special populations~~ eligible recipients.**

(1) **Program funding.** The State Board shall provide federal funds, through the Carl Perkins Vocational and Technical Education Act of 1998, to eligible recipients offering *Career*Tech programs or postsecondary technical degree programs.

(2) **Application for funding.** The funding shall be applied for by eligible recipients through the local application. To qualify for federal funds, the ~~local~~ school ~~superintendent~~ administrator must complete and return the required local application forms on the established due dates. The ~~local~~ school administrator must sign assurances of compliance when accepting the federal funds.

(d) **Reporting requirements.** Eligible recipients using federal funds shall report annual expenditures and the kinds of services provided. These reports shall be submitted by the specified due date(s).

(e) Funding requirements. Eligible recipients who apply for federal funds must meet specific guidelines in their applications as stated in P.L. 105-332. Funds may be used only for the populations and allowable activities as specified on the application and in P.L. 105-332.

[OAR Docket #04-1135; filed 6-9-04]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 25. BUSINESS AND INDUSTRY SERVICES

[OAR Docket #04-1136]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Business and Industry Development
780:25-5-1. [AMENDED]
Subchapter 11. Business and Industry Services Programs
780:25-11-1. [AMENDED]

AUTHORITY:
State Board of Career and Technology Education; 70 O.S. 2001, §14-104, as amended; 75 O.S. 2001, §250 et. seq., as amended

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ANALYSIS:
In the 2000 legislative session the Oklahoma legislature changed the official name in the statutes from Area Vocational Technical Schools to Technology Centers. The name change will more accurately convey the true nature of the area vocational-technical system and the need to accurately convey a more modern depiction of the area vocational-technical system and to ensure compliance. Proposed amendment clarifies the Business and Industry programs that are ineligible for formula funding and specifies the programs ineligible for formula funding should be listed in the Oklahoma Department of Career and Technology Education's program and student accounting guidelines and clarifies the out-of-district tuition policy for Business and Industry Training programs. The proposed action aligns rules requirements with the Oklahoma Department of Career and Technology Education's program and student accounting guidelines. The revision schedule for the Rules for Career and Technology Education and the Oklahoma Department of Career and Technology Education's program and student accounting guidelines do not coincide. This creates inconsistent program and student accounting requirements. The program and student accounting rules will reflect current guidelines. The action establishes an out-of-district tuition policy for Business and Industry Training programs. Establishing an out-of-district tuition policy is needed to assist taxpayers who pay ad-valorem taxes to support technology centers by implementing standardized practices for technology center districts. Adults who do not reside in a technology center district will be charged two times the in-district tuition rate because they do not pay ad-valorem taxes to support a technology center district. Therefore, adults who do reside in a technology center district will benefit because they will not subsidize expenditures for adults who do not pay ad-valorem taxes to support a technology center district. The rule amendment clarifies the audit criteria guidelines for Business and Industry Services programs and provides an avenue to update audit criteria annually to ensure accountability. The proposed action aligns rules requirements with the Oklahoma Department of Career and Technology Education's program and student accounting guidelines. The revision schedule for the Rules for Career and Technology Education and the Oklahoma Department of Career and Technology Education's program and student accounting guidelines do not coincide. This creates inconsistent audit criteria and student accounting requirements. The audit criteria and student accounting rules will be consistent and reflect current guidelines.

CONTACT PERSON:
Marie Saatkamp, (405) 743-5455

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, 2004:

SUBCHAPTER 5. BUSINESS AND INDUSTRY DEVELOPMENT

780:25-5-1. New or expanding industries

(a) **Programs and services.** Training for Industry Programs (TIP) has the responsibility of working with the appropriate delivery agency to provide new job slot training for new or expanding business and industry. This training is provided to targeted business and industry in selected manufacturing, processing, and national or regional offices of business and industry that are creating new employment opportunities or others that have significant economic impact on Oklahoma's economy. These companies are traditionally considered exporters of goods and/or services and importers of capital.

(b) **Development of training agreements.**

(1) **Statement of Understanding.** A "Statement of Understanding" shall define the specific responsibilities of each party involved in a training program, including the company, the community, the technology center ~~area school~~, and the appropriate Training for Industry staff.

(2) **Training agreements.** Training agreements will be developed jointly, using a training needs analysis, by company representatives, local technology center ~~area school~~ personnel, and Training for Industry Programs staff.

(3) **Changes.** Any changes in training agreements will be subject to approval by Training for Industry Programs staff.

(c) **Availability of funds.** State support for TIP training is based upon the availability of funds and administered by the Business and Industry Development Division in accordance with TIP guidelines and procedures.

(d) **Equipment.** Equipment used for training shall be furnished by the local technology center ~~area school~~ or the Department (either from the Equipment Pool inventory or transferred from another technology center ~~area school~~). In the case of highly specialized equipment, the company will be requested to loan or lease this equipment to Training for Industry Programs for the purposes of training.

(e) **Utilities.** In programs operated in a technology center ~~an area school~~, costs of the utilities will be borne by the technology center. ~~area school~~. Costs of utilities for a program operated in a company's facilities will be borne by the company. If a training program is operated out of a temporary facility, utility (water, gas, electricity, local phone service-allowable long distance) expenses will be a coordinated effort of the community and Training for Industry Programs staff.

(f) **Training materials and expendable supplies.**

(1) **Purchaser.** Training materials and expendable supplies will be provided at the expense of Training for Industry Programs. Materials used by trainees in the process of their training will be retained and disposed of by the Department.

(2) **Resulting products.** Products produced during the training program will be the property of the Department and will be picked up by or returned to the Equipment Pool or Training for Industry Programs staff via accepted Department inventory practices.

(g) **Training aids.** Training aids, such as technical manuals, videotapes, and slide/tape presentations will be developed for training programs when determined by the needs analysis, and only when the lead time schedule allows for the completion in time to be used during the training defined by the Statement of Understanding. Training aids will be developed at the expense of Training for Industry Programs in cooperation with the company.

(h) **Instructors.** Instructors shall be secured locally, whenever possible.

(i) **Consultants.** When deemed necessary by Training for Industry Programs, consultants may be used to assist in the development and delivery of training programs per staff recommendation/ approval.

(j) **Reimbursements.** All reimbursements for the delivery/performance of training, as specified in a Statement of Understanding, will be made to the local technology center ~~area school~~ and/or the company. All reimbursements shall be submitted in accordance with established TIP guidelines and procedures.

(k) **Reporting procedures.** Program and enrollment information shall be submitted to the Information Management Division of the Oklahoma Department of Career and Technology Education as outlined in 780:10-7-2.

SUBCHAPTER 11. BUSINESS AND INDUSTRY SERVICES PROGRAMS

780:25-11-1. Business and Industry Training programs

(a) **Program and student accounting.**

(1) **Program reports.** Business and Industry Training programs for which enrollments are submitted must indicate the appropriate type of class or appropriate codes assigned by the Oklahoma Department of Career and Technology Education.

(2) **Reporting procedures.** Program and enrollment information shall be submitted to the Information Management Division of the Oklahoma Department of Career and Technology Education as outlined in 780:10-7-2.

(b) **Program funding.** State funds shall be available to support training and programs designed for and delivered to adult students to prepare them for success in the workplace.

(1) **Funding mechanism.** State funds to support Business and Industry Training programs shall be provided through the technology center ~~area school~~ funding formula.

(2) **Program definition.** For funding purposes, a Business and Industry Training program is considered to be 1,050 clock hours of training. The number of programs calculated in the Funding Formula is determined by dividing the total clock hours of training by 1,050.

(3) **Availability of funds.** State support for Business and Industry Training in the funding formula is based on the availability of funds and program approval by the Technology Center Services Division of the Oklahoma Department of Career and Technology Education.

(4) **Program intent.** Formula funding for Business and Industry Training will be limited to those programs that are designed for and intended to meet the employability needs of adults. (An adult is defined as a person at least 16 years of age.)

(5) **Ineligible programs.** Student and other services that are part of the quality foundation services shall not be reported for program funding. Such services include, but are not limited to~~:~~ counseling, assessment, basic skills enhancement, financial aid administration, job development, and the administration or coordination of Business and Industry Services. Training programs that do not qualify for formula funding are specified in the Oklahoma Department of Career and Technology Education's reporting guidelines. ~~In addition, the following programs will not be considered for formula funding:~~

(A) Professional development for technology center ~~area school~~ personnel, ~~public school personnel~~ or technology center Boards of Education;

(B) Political or community fund-raising activities;

(C) Religious organization meetings or functions;

(D) Receptions, meal functions or style shows;

(E) Commercial exhibits, fairs or promotional activities;

~~(F) Professional or civic organization meetings or functions;~~

(G) Open houses or student organization meetings;

(H) Industry, public school ,or organizational staff meetings, conventions, or ~~functions~~ team meetings;

(I) Driver training, DUI school, ~~55 Alive~~, non-occupationally specific driver improvement or defensive driving programs ~~delivered as "open enrollment" programs~~;

(J) Job search, career exploration, employment skills, career development and career search;

(K) Training programs designed specifically ~~conducted~~ for the incarcerated; and

(L) Hunter safety, ~~and~~ boat safety; concealed weapons training, and~~,~~ recreational activities/training.

~~(M) Programs conducted by employees of the Oklahoma Department of Career and Technology Education.~~

(6) **Technology center ~~Area school~~ operations.** Business and Industry Training programs will comply with the procedures for operation of technology center ~~area vocational-technical schools~~ as outlined in Chapter 15 of this title.

(c) **Audit criteria.**

(1) **Accountability.** To demonstrate accountability for formula funds supporting Business and Industry Services programs requires the collection of complete and accurate data on these programs. Documentation of reported data as required in (2) of this unit is clearly the responsibility of the local technology center ~~area school~~ and is not submitted to the Oklahoma Department of Career and Technology Education as a matter of record. The electronic data reporting process does not provide for the submission of reports signed by the authorized local administrator; therefore, the following paragraph will have an implied and binding effect on each report submitted, just as if the signed statement appeared on each report submitted: I, the authorized administrator, do testify that the program here identified meets all state guidelines and documentation exists to support the eligibility of the program for funding.

(2) **Documentation.** Technology centers shall maintain records specified in the "Technology Center Instructions for Providing Enrollment and Program Data" booklet that is updated annually, ~~A file for each reported program shall be maintained by the area school and be available for audit review for a period of one year after the end of the fiscal year for which the records pertain and shall contain the following supporting documentation:~~

~~(A) A statement of program objectives in terms of specific skills to be developed and their relationship to job entry, job upgrade, or job transfer capability;~~

~~(B) A syllabus or outline of the program that clearly identifies the instructional approach in developing the specific skills in the program objective;~~

~~(C) A copy of the handouts, curriculum, or other appropriate materials used in delivering the program; and,~~

~~(D) An explanation of the analytical process and the rationale for conducting basic skills programs as Customized Business and Training (Type 16).~~

(d) **Out-of-District Tuition.** Technology Center districts shall charge twice the in-district tuition rate to any adult student who does not reside in a technology center district. The Oklahoma Department of Career and Technology Education may waive this requirement in situations where the local technology center district has shown evidence that such requirement may be detrimental to the mission of the local technology center district.

[OAR Docket #04-1136; filed 6-9-04]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 30. SKILLS CENTERS

[OAR Docket #04-1137]

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PERMANENT final adoption

RULES:
Subchapter 3. Skills Centers Programs
780:30-3-2. [AMENDED]
780:30-3-3. [AMENDED]
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ANALYSIS:
The proposed amendment clarifies the fact that all Skills Centers program buildings, once built, become the property of the State Department of Corrections or the Office of Juvenile Affairs and clarifies current Agency designation of administrative staff. The action taken ensures that all new program facilities being built by the Skills Centers are pre-approved by the appropriate State Board of the funding agency. Clarification was needed to ensure the actions of the administration of Skills Centers are in compliance with Board intent. Purchase and construction of new facilities by the Skills Centers are done after Board's approval. The rule amendment brings the rule in line with current Agency designation of administrative staff. The action taken corrects administrator job title. There has been a recent functional reorganization of Skills Centers' administration. Clarification of the rules intent.
CONTACT PERSON:
Marie Saatkamp, (405) 743-5455

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, 2004:

SUBCHAPTER 3. SKILLS CENTERS PROGRAMS

780:30-3-2. Sites; buildings; expansions

(a) **Site approval.** The site for a new, Agency owned skills center facility ~~and all plans for skills center buildings, additions, and modifications, except minor modification (projects or new construction costing less than $40,000)~~ shall have prior approval of the State Board.

(b) **Plans review.** The Skills Centers superintendent shall ~~review plans for new construction and alterations of all buildings where structural changes are proposed. The superintendent will~~ review and make recommendations for all new, Agency owned program facilities and, when appropriate, be assisted by the staff of the occupational divisions before submitting the plans to the State Board for approval.

(c) **Facility standards.** All facilities will be constructed and maintained in accordance with appropriate state and federal safety and civil rights requirements.

780:30-3-3. Local administration of Skills Centers; program operations and evaluation

(a) **Local administration.**

(1) **Skills Centers administration.** Each ~~director~~ Skills Center Administrator shall be directly responsible to the Skills Centers School System's superintendent for the proper functioning of Skills Centers operations.

(2) **Civil Rights compliance.** All Skills Centers staff members will comply with the civil rights procedures and prohibitions listed in 780:20-3-1(b) of these policies and procedures.

(3) **Staff employment.** The Skills Centers School System staff shall meet the minimum qualifications for employment established by the Department.

(4) **Records and reports.** Periodic reports will be prepared by all training sites to show progress made and to provide status reports to all funding agencies.

(b) **Program operations.**

(1) **Aim.** Programs may have live work projects to provide the progressive situations necessary to enhance training for employment.

(2) **Live Work Policy.** A live work project policy shall be established for each center doing live work and will be subject to the approval of the Skills Centers superintendent.

(c) **Evaluation.**

(1) **Program evaluation criteria.** Skills Centers programs shall be evaluated using the criteria outlined in Section 780:10-7-3 of these policies and procedures.

(2) **Staff evaluation.** The Skills Centers superintendent or his designee will observe and evaluate all staff using an agency-approved system.

[OAR Docket #04-1137; filed 6-9-04]

Executive Orders

As required by 75 O.S., Sections 255 and 256, Executive Orders issued by the Governor of Oklahoma are published in both the *Oklahoma Register* and the *Oklahoma Administrative Code*. Executive Orders are codified in Title 1 of the *Oklahoma Administrative Code.*

Pursuant to 75 O.S., Section 256(B)(3), "Executive Orders of previous gubernatorial administrations shall terminate ninety (90) calendar days following the inauguration of the next Governor unless otherwise terminated or continued during that time by Executive Order."

TITLE 1. EXECUTIVE ORDERS

1:2004-19a.

AMENDED EXECUTIVE ORDER 2004-19 OF MAY 21, 2004

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the power vested in me by Section 2 of Article VI of the Oklahoma Constitution hereby declare the following:

1. Joint State and local damage assessments have been made in Cherokee, Kay and Nowata Counties, which received damages as a result of severe rain storms that occurred March 3rd through 6th, 2004.

2. It may be necessary to provide for the rendering of mutual assistance among the State and political subdivisions of the State with respect to carrying out disaster emergency functions during the continuance of the State emergency pursuant to the provisions of the Oklahoma Emergency Management Act of 2003.

3. There is hereby declared a disaster emergency caused by severe rain storms in Cherokee, Kay and Nowata Counties that threatened the lives and property of the people of this State and the peace, health and safety of the public.

4. The State Emergency Operations Plan has been activated and resources of all State departments and agencies available to meet this emergency are hereby committed to the reasonable extent necessary to protect lives and to prevent, minimize, and repair injury and damage. These efforts shall be coordinated by the Director of the Department of Emergency Management with comparable functions of the federal government and political subdivisions of the State.

5. This declaration of emergency shall terminate as provided in 63 O.S. §683.9.

Copies of this Executive Order shall be distributed to the Director of Emergency Management who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 9th day of June 2004.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #04-1149; filed 6-14-04]

1:2004-21.

EXECUTIVE ORDER 2004-21

I, Brad Henry, Governor of the State of Oklahoma, by the authority vested in me by the Oklahoma Constitution, hereby establish the Governor's Ethnic American Advisory Council.

The council shall consist of not less than five (5) or more than fifteen (15) representatives of Ethnic Americans of the Middle East / Near East community of the State of Oklahoma. Additional members of the council representing State Government may be designated by the Governor as deemed necessary to serve in a nonvoting Ex-Officio capacity. All members shall be appointed by the Governor to serve at his pleasure. The Council shall elect a chair and vice chair from its membership at the first meeting of each year.

The Council shall:

1. Provide advice and assistance to the Governor on the development and implementation of policies, plans, and programs relating to the needs and values of the Ethnic American community;

2. Provide advice and assistance to the Governor in matters involving civil liberties, equal right protection and freedom of religion of the Ethnic American community;

3. Develop, coordinate and assist other public and private organizations with understanding problems concerning the Ethnic American community;

4. Conduct training programs for community leadership;

5. Cooperate with the Department of Education in advising and assisting school districts concerning Ethnic American issues; and

6. Secure appropriate recognition of Ethnic American accomplishments and contributions to the State of Oklahoma.

The Council shall meet quarterly, and each meeting shall result in formal written minutes which will be presented to the Governor with executive summary of the issues discussed and resolved. Additional meetings may be called by the chair or by order of the Governor.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 27th day of May, 2004.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #04-1108; filed 6-4-04]

1:2004-22.

EXECUTIVE ORDER

I, Brad Henry, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff on Wednesday, June 2, 2004, from 8:00 a.m. until 5:00 p.m., to honor former Representative C.H. Spearman, who died on Thursday, May 27, 2004.

On April 27, 1930, C.H. Spearman was born in Edmond, Oklahoma and remained a lifelong resident. He graduated from Edmond High School in 1949. Spearman graduated from Central State College and received his Juris Doctorate from the University of Oklahoma School of Law in 1955. During his career he served as Municipal Judge for the City of Edmond and as State Judge for the Department of Corrections. Spearman served four consecutive terms in the Oklahoma House of Representatives from 1965 until 1972. C.H. Spearman was an accomplished and thoughtful public servant.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 2nd day of June, 2004.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #04-1109; filed 6-4-04]

1:2004-23.

EXECUTIVE ORDER 2004-23

I, Brad Henry, Governor of the State of Oklahoma, in honor and tribute to the memory of President Ronald Reagan, the fortieth President of the United States, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff for a period of thirty days from the day of his death.

President Reagan was the icon of modern American politics. The First Lady and I join all Oklahomans in mourning the passing of a giant in American political history.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 7th day of June, 2004.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
Vickie L. Mitchell
Acting Assistant Secretary of State

[OAR Docket #04-1127; filed 6-7-04]

1:2004-24.

EXECUTIVE ORDER 2004-24

On June 6, 2004, George W. Bush, President of the United States, issued a Proclamation declaring Friday, June 11, 2004, as a National Day of Mourning throughout the United States to pay homage to the memory of President Ronald Reagan.

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the power vested in me under the provisions of Section 82.1 of Title 25 of the Oklahoma Statutes, hereby declare Friday, June 11, 2004, a holiday and Day of Mourning in the State of Oklahoma. All official business in the State of Oklahoma on Friday, June 11, 2004, shall be suspended while our state and nation mourn the death of President Ronald Reagan, the fortieth President of the United States. This Executive Order shall not apply to the Oklahoma State Election Board.

This Executive Order shall be forwarded to the Secretary for Human Resources and Administration who shall cause the provisions of this order to be implemented by all appropriate agencies of state government. Copies of this Executive Order shall be supplied to each Cabinet Secretary.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 8th day of June, 2004.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #04-1148; filed 6-9-04]

1:2004-25.

EXECUTIVE ORDER 2004-25

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the power vested in me by Section 2 of Article VI of the Oklahoma Constitution hereby declare the following:

1. Joint State and local damage assessments have been made in Adair Counties, which received damages as a result of severe rain storms that occurred April 23rd and 24th, 2004.

2. It may be necessary to provide for the rendering of mutual assistance among the State and political subdivisions of the State with respect to carrying out disaster emergency functions during continuance of the State emergency pursuant to the provisions of the Oklahoma Emergency Management Act of 2003.

3. There is hereby declared a disaster emergency caused by severe rain storms in Adair Counties that threatened lives and property of the people of this State and the peace, health and safety of the public.

4. The State Emergency Operations Plan has been activated and resources of all State departments and agencies available to meet this emergency are hereby committed to the reasonable extent necessary to protect lives and to prevent, minimize, and repair injury and damage. These efforts shall be coordinated by the Director of the Department of Emergency Management with comparable functions of the federal government and political subdivisions of the State.

5. This declaration of emergency shall terminate as provided in 63 O.S. §683.9.

Copies of this Executive Order shall be distributed to the Director of Emergency Management who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 10th day of June, 2004.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #04-1150; filed 6-14-04]

TITLE 165. CORPORATION COMMISSION CHAPTER 30. MOTOR CARRIERS

TRANSFER OF RULEMAKING AUTHORITY:

Effective July 1, 2004, *rules promulgated by the Tax Commission related to the administration of the International Registration Plan authorized by Section 1120 of Title 47 of the Oklahoma Statutes, the International Fuel Tax Agreement authorized by Section 607 of Title 68 of the Oklahoma Statutes, or the enforcement of Section 1115.1 of Title 47 of the Oklahoma Statutes [were] transferred to the Corporation Commission and [have] become a part of the administrative rules of the Corporation Commission. . . . From and after July 1, 2004, any amendment, repeal or addition to the transferred rules shall be under the jurisdiction of the Corporation Commission* [Senate Bill 141 (2004)].

As directed by SB 141, notice is hereby given that the following Tax Commission rules in OAC 710:60, Subchapter 4 have now been placed under the Corporation Commission's rules in OAC 165:30, Subchapter 19, and will be published as such in the 2004 Supplement to the *Oklahoma Administrative Code*:

Old number	New number
710:60-4-1	165:30-19-1
710:60-4-2	165:30-19-2
710:60-4-3	165:30-19-3
710:60-4-4	165:30-19-4
710:60-4-5	165:30-19-5
710:60-4-6	165:30-19-6
710:60-4-7	165:30-19-7
710:60-4-8	165:30-19-8
710:60-4-9	165:30-19-9
710:60-4-10	165:30-19-10
710:60-4-11	165:30-19-11
710:60-4-12	165:30-19-12
710:60-4-13	165:30-19-13
710:60-4-14	165:30-19-14
710:60-4-15	165:30-19-15
710:60-4-16	165:30-19-16
710:60-4-17	165:30-19-17
710:60-4-18	165:30-19-18
710:60-4-19	165:30-19-19
710:60-4-20	165:30-19-20

For additional information relating to this transfer, see Senate Bill 141 (2004).

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 60. MOTOR VEHICLES

TRANSFER OF RULEMAKING AUTHORITY:

Effective July 1, 2004, *rules promulgated by the Tax Commission related to the administration of the International Registration Plan . . . , the International Fuel Tax Agreement . . . , or the enforcement of Section 1115.1 of Title 47 of the Oklahoma Statutes [were] transferred to the Corporation Commission and [have] become a part of the administrative rules of the Corporation Commission . . . .* [Senate Bill 141 (2004)].

For additional information, see Editor's Notice published in this issue for Title 165, Chapter 30.

TITLE 185. CRIME VICTIMS COMPENSATION BOARD CHAPTER 1. ADMINISTRATIVE OPERATIONS

The date of gubernatorial disapproval was cited incorrectly as April 9, 2008 in the Notice of Gubernatorial Disapproval for 185:1 that was filed by the Crime Victims Compensation Board and published on page 1507 in the June 1, 2004 issue of the *Register* [21 Ok Reg 1507, Docket #04-775]. **The correct date of gubernatorial disapproval is April 9, 2004.**

TITLE 185. CRIME VICTIMS COMPENSATION BOARD CHAPTER 10. CRIME VICTIMS COMPENSATION PROGRAM

The date of gubernatorial disapproval was cited incorrectly as April 9, 2008 in the Notice of Gubernatorial Disapproval for 185:10 that was filed by the Crime Victims Compensation Board and published on page 1507 in the June 1, 2004 issue of the *Register* [21 Ok Reg 1507, Docket #04-776]. **The correct date of gubernatorial disapproval is April 9, 2004.**

TITLE 185. CRIME VICTIMS COMPENSATION BOARD CHAPTER 15. SEXUAL ASSAULT EXAMINATION FUND

The date of gubernatorial disapproval was cited incorrectly as April 9, 2008 in the Notice of Gubernatorial Disapproval for 185:15 that was filed by the Crime Victims Compensation Board and published on page 1507 in the June 1, 2004 issue of the *Register* [21 Ok Reg 1507, Docket #04-777]. **The correct date of gubernatorial disapproval is April 9, 2004.**

TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

The Notice of Gubernatorial Approval for 165:5 filed by the Corporation Commission and published on page 1931 of the June 15, 2004 issue of the *Register* [21 Ok Reg 1931, Docket #04-994] listed the wrong RULES, as well as the wrong date of gubernatorial approval. The Corporation Commission intends to file another Notice of Gubernatorial Approval for publication in a later issue.

TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

The preamble to the permanent rule document for 165:5 filed by the Corporation Commission and published on page 2015 of the June 15, 2004 issue of the *Register* [21 Ok Reg 2015, Docket #04-1004] incorrectly identified the date of **Gubernatorial approval** as May 13, 2004. **The correct date of Gubernatorial approval is May 11, 2004.**