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

[OAR Docket #04-1189]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review.

RULES:

Subchapter 11. Medical Micropigmentation

510:5-11-1. Purpose [REVOKED]

510:5-11-2. Definitions [REVOKED]

510:5-11-3. Duties and Responsibilities [REVOKED]

SUBMITTED TO GOVERNOR:

June 25, 2004

SUBMITTED TO HOUSE:

June 25, 2004

SUBMITTED TO SENATE:

June 25, 2004

[OAR Docket #04-1189; filed 6-25-04]

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

[OAR Docket #04-1190]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 3. ~~Special Volunteer Osteopathic Medical~~
License Licensure Requirements

510:10-3-10. Purpose [NEW]

510:10-3-11. Procedure for Volunteer License [NEW]

510:10-3-12. Annual Renewal [NEW]

SUBMITTED TO GOVERNOR:

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[OAR Docket #04-1190; filed 6-25-04]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY CHAPTER 1. GENERAL RULES OF THE DEPARTMENT OF PUBLIC SAFETY

[OAR Docket #04-1165]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review.

RULES:

Subchapter 1. Organization of the Department of Public Safety

595:1-1-3. Function of each division which deals directly with and affects the public [AMENDED]

Subchapter 3. Rules of Practice

595:1-3-3. Administrative hearings [AMENDED]

Subchapter 9. Inspection and Copying of Final Orders, Decisions, Opinions and Open Records

595:1-9-2. Inspection and copies of open records [AMENDED]

595:1-9-3. ~~Open records~~ Records of the Department of Public Safety [AMENDED]

595:1-9-5. Obtaining ~~public~~ open records [AMENDED]

SUBMITTED TO GOVERNOR:

March 29, 2004

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March 29, 2004

SUBMITTED TO SENATE:

March 29, 2004

[OAR Docket #04-1165; filed 6-25-04]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY CHAPTER 10. DRIVER LICENSES AND IDENTIFICATION CARDS

[OAR Docket #04-1166]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review.

RULES:

Subchapter 1. Procedures for Obtaining and Maintaining A Driver License or Identification Card

Part 2. Application for Initial Driver License

595:10-1-3. Procedures for obtaining an initial driver license [AMENDED]

595:10-1-7. Adoption by reference [AMENDED]

Part 13. Motor License Agents

595:10-1-50. Identification required [AMENDED]

Submissions for Review

595:10-1-52. Photographic procedures [AMENDED]
595:10-1-55. Instructions for printing black border cards [REVOKED]
595:10-1-65. Informational stickers on driver licenses or identification cards [REVOKED]
Part 19. Driver License and Identification Card Content
595:10-1-91. Information displayed on driver licenses [AMENDED]
595:10-1-92. Driving restriction codes [AMENDED]
595:10-1-93. Information displayed on identification cards
Subchapter 3. Examination
595:10-3-3. Study guides [AMENDED]
595:10-3-7. Knowledge test [AMENDED]
Subchapter 9. Certified Schools and Designated Examiners
595:10-9-15. Prohibited acts; conduct [AMENDED]
Subchapter 11. Certified Schools and Designated Class D Examiners
595:10-11-7. Examination requirements and standards [AMENDED]
595:10-11-14. ~~Other prohibited~~ Prohibited acts; conduct [AMENDED]
Subchapter 13. Parent-taught Driver Education
595:10-13-4. Requirements and application for certification as a parent-taught driver education course; certification renewal [AMENDED]
595:10-13-5. Requirements for parents and students [AMENDED]

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March 29, 2004

[OAR Docket #04-1166; filed 6-25-04]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY CHAPTER 15. FINANCIAL RESPONSIBILITY

[OAR Docket #04-1167]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review.

RULES:

Subchapter 1. Vehicle Liability Insurance Cancellation
595:15-1-1. Purpose [AMENDED]
595:15-1-2. Definitions [AMENDED]
595:15-1-3. Notification to the Department [AMENDED]
595:15-1-4. Suspension for no vehicle liability insurance [AMENDED]

SUBMITTED TO GOVERNOR:

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March 29, 2004

[OAR Docket #04-1167; filed 6-25-04]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY CHAPTER 25. WRECKERS AND TOWING SERVICES

[OAR Docket #04-1168]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review.

RULES:

Subchapter 1. General Provisions
595:25-1-2. Definitions [AMENDED]
595:25-1-3. General policies [AMENDED]
Subchapter 3. Wrecker License
595:25-3-1. General requirements [AMENDED]
595:25-3-2. Applications [AMENDED]
595:25-3-3. Renewal [AMENDED]
595:25-3-4. Trade name [AMENDED]
Subchapter 5. All Wrecker Operators
595:25-5-1. Physical requirements for storage facility [AMENDED]
595:25-5-2. Equipment requirements for all vehicles [AMENDED]
595:25-5-3. Operation [AMENDED]
595:25-5-4. Insurance [AMENDED]
595:25-5-5. Records [AMENDED]
595:25-5-6. ~~Storage rates; Schedule of after hour release fees; service fees~~ indoor storage [AMENDED]
595:25-5-7. Tow request and authorization forms [AMENDED]
Subchapter 7. Class AA Operators
595:25-7-1. Equipment requirements for all Class AA vehicles [AMENDED]
595:25-7-2. ~~Operation of storage facility~~ Release and holding of vehicle by Class AA wrecker operators [AMENDED]
Subchapter 9. Oklahoma Highway Patrol Rotation Log - Additional Requirements
595:25-9-1. Oklahoma Highway Patrol Rotation Log [AMENDED]
595:25-9-2. Operator requirements [AMENDED]
595:25-9-3. "Rotation" calls for ~~Class AA~~ Class AA-TL truck wreckers [AMENDED]
Subchapter 11. Denial, Suspension, Revocation or Cancellation of License; Denial or Removal of Class AA Operators from Rotation Log of the Oklahoma Highway Patrol
595:25-11-1. Failure to qualify [AMENDED]
595:25-11-2. Violation of rules [AMENDED]
595:25-11-3. Procedure [AMENDED]

SUBMITTED TO GOVERNOR:

March 29, 2004

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March 29, 2004

SUBMITTED TO SENATE:

March 29, 2004

[OAR Docket #04-1168; filed 6-25-04]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 30. SIZE AND WEIGHT PERMITS**

[OAR Docket #04-1169]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review.

RULES:

- Subchapter 1. General Provisions
- 595:30-1-1. Purpose [AMENDED]
- Subchapter 3. Size and Weight Permit Load
- 595:30-3-3. Requesting, obtaining, and paying for a permit [AMENDED]
- 595:30-3-17. Requirements for escort vehicles and escort vehicle operators [AMENDED]
- 595:30-3-17.1. Certification of operators of escort vehicles for hire [AMENDED]
- Subchapter 5. Special Combination Vehicles
- 595:30-5-8. Load sequence [AMENDED]

SUBMITTED TO GOVERNOR:

March 29, 2004

SUBMITTED TO HOUSE:

March 29, 2004

SUBMITTED TO SENATE:

March 29, 2004

[OAR Docket #04-1169; filed 6-25-04]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 35. ENFORCEMENT OF OKLAHOMA MOTOR CARRIER SAFETY AND HAZARDOUS MATERIALS TRANSPORTATION ACT**

[OAR Docket #04-1170]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review.

RULES:

- 595:35-1-4. Adoption by reference [AMENDED]
- 595:35-1-6. Deletions, substitutions, and additions to federal rules adopted by reference [AMENDED]

SUBMITTED TO GOVERNOR:

March 29, 2004

SUBMITTED TO HOUSE:

March 29, 2004

SUBMITTED TO SENATE:

March 29, 2004

[OAR Docket #04-1170; filed 6-25-04]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 40. DRIVER TRAINING AND IMPROVEMENT**

[OAR Docket #04-1171]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review.

RULES:

- Subchapter 1. Driver Education Instruction
- 595:40-1-3. Driver education instructor permit/license [AMENDED]
- 595:40-1-4. Qualifications for instructors [AMENDED]
- 595:40-1-9. Prescribed course of study [AMENDED]
- 595:40-1-11. Specification for vehicles other than motorcycles [AMENDED]
- 595:40-1-12. Insurance [AMENDED]
- 595:40-1-13. Reports [AMENDED]
- 595:40-1-15. Requirements for all commercial driver education schools and classrooms [AMENDED]
- 595:40-1-16. Prohibited acts; conduct [AMENDED]

SUBMITTED TO GOVERNOR:

March 29, 2004

SUBMITTED TO HOUSE:

March 29, 2004

SUBMITTED TO SENATE:

March 29, 2004

[OAR Docket #04-1171; filed 6-25-04]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 45. BOATING AND WATER SAFETY**

[OAR Docket #04-1172]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review.

RULES:

- 595:45-1-2. Definitions [AMENDED]
- 595:45-1-3. Adoption of ~~federal boat safety act~~ 46 USC §4301 et seq. (formerly known as the Federal Boat Safety Act of 1971) [AMENDED]
- 595:45-1-4. Application [AMENDED]

Submissions for Review

595:45-1-5. Procedures followed for termination of use of unsafe ~~boats or~~ vessels [AMENDED]
595:45-1-6. Flashing red lights [AMENDED]
595:45-1-9. Signals [REVOKED]
595:45-1-10. Rules of the waterways for vessels [AMENDED]
595:45-1-11. Traffic lanes [AMENDED]
595:45-1-13. Equipment [AMENDED]
595:45-1-16. Operating any lifting and suspending device - parasail, parachute or any similar device [AMENDED]
595:45-1-18. Hull identification number for homemade vessels and identification numbers for motors [AMENDED]

SUBMITTED TO GOVERNOR:

March 29, 2004

SUBMITTED TO HOUSE:

March 29, 2004

SUBMITTED TO SENATE:

March 29, 2004

[OAR Docket #04-1172; filed 6-25-04]

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 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

[OAR Docket #04-1159A]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

- Correction to what was published on June 15, 2004
- Subchapter 1. General Provisions
 - Part 1. General
 - 165:5-1-7. Procedure for adoption of rules [AMENDED]
 - Subchapter 3. Fees
 - Part 1. General Provisions
 - 165:5-3-2. Fees for the Petroleum Storage Tank Division [AMENDED]
 - Subchapter 7. Commencement of a cause
 - Part 3. Oil and Gas
 - 165:5-7-11. Change of operator [AMENDED]
 - 165:5-7-14. Tax exemptions pursuant to OAC 165:10, Subchapter 21 [AMENDED]

GUBERNATORIAL APPROVAL:

May 11, 2004

[OAR Docket #04-1159A; filed 6-22-04]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY CHAPTER 1. GENERAL RULES OF THE DEPARTMENT OF PUBLIC SAFETY

[OAR Docket #04-1173]

RULEMAKING ACTION:

Gubernatorial approval.

RULES:

- Subchapter 1. Organization of the Department of Public Safety
 - 595:1-1-3. Function of each division which deals directly with and affects the public [AMENDED]
- Subchapter 3. Rules of Practice
 - 595:1-3-3. Administrative hearings [AMENDED]
- Subchapter 9. Inspection and Copying of Final Orders, Decisions, Opinions and Open Records
 - 595:1-9-2. Inspection and copies of open records [AMENDED]
 - 595:1-9-3. Open records Records of the Department of Public Safety [AMENDED]
 - 595:1-9-5. Obtaining public open records [AMENDED]

GUBERNATORIAL APPROVAL:

May 17, 2004

[OAR Docket #04-1173; filed 6-25-04]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY CHAPTER 10. DRIVER LICENSES AND IDENTIFICATION CARDS

[OAR Docket #04-1174]

RULEMAKING ACTION:

Gubernatorial approval.

RULES:

- Subchapter 1. Procedures for Obtaining and Maintaining A Driver License or Identification Card
 - Part 2. Application for Initial Driver License
 - 595:10-1-3. Procedures for obtaining an initial driver license [AMENDED]
 - 595:10-1-7. Adoption by reference [AMENDED]
 - Part 13. Motor License Agents
 - 595:10-1-50. Identification required [AMENDED]
 - 595:10-1-52. Photographic procedures [AMENDED]
 - 595:10-1-55. Instructions for printing black border cards [REVOKED]
 - 595:10-1-65. Informational stickers on driver licenses or identification cards [REVOKED]
 - Part 19. Driver License and Identification Card Content
 - 595:10-1-91. Information displayed on driver licenses [AMENDED]
 - 595:10-1-92. Driving restriction codes [AMENDED]
 - 595:10-1-93. Information displayed on identification cards
- Subchapter 3. Examination
 - 595:10-3-3. Study guides [AMENDED]
 - 595:10-3-7. Knowledge test [AMENDED]
- Subchapter 9. Certified Schools and Designated Examiners
 - 595:10-9-15. Prohibited acts; conduct [AMENDED]
- Subchapter 11. Certified Schools and Designated Class D Examiners
 - 595:10-11-7. Examination requirements and standards [AMENDED]
 - 595:10-11-14. ~~Other prohibited~~ Prohibited acts; conduct [AMENDED]
- Subchapter 13. Parent-taught Driver Education
 - 595:10-13-4. Requirements and application for certification as a parent-taught driver education course; certification renewal [AMENDED]
 - 595:10-13-5. Requirements for parents and students [AMENDED]

Gubernatorial Approvals

GUBERNATORIAL APPROVAL:

May 17, 2004

[OAR Docket #04-1174; filed 6-25-04]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY CHAPTER 15. FINANCIAL RESPONSIBILITY

[OAR Docket #04-1175]

RULEMAKING ACTION:

Gubernatorial approval.

RULES:

Subchapter 1. Vehicle Liability Insurance Cancellation

595:15-1-1. Purpose [AMENDED]

595:15-1-2. Definitions [AMENDED]

595:15-1-3. Notification to the Department [AMENDED]

595:15-1-4. Suspension for no vehicle liability insurance [AMENDED]

GUBERNATORIAL APPROVAL:

May 17, 2004

[OAR Docket #04-1175; filed 6-25-04]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY CHAPTER 25. WRECKERS AND TOWING SERVICES

[OAR Docket #04-1176]

RULEMAKING ACTION:

Gubernatorial approval.

RULES:

Subchapter 1. General Provisions

595:25-1-2. Definitions [AMENDED]

595:25-1-3. General policies [AMENDED]

Subchapter 3. Wrecker License

595:25-3-1. General requirements [AMENDED]

595:25-3-2. Applications [AMENDED]

595:25-3-3. Renewal [AMENDED]

595:25-3-4. Trade name [AMENDED]

Subchapter 5. All Wrecker Operators

595:25-5-1. Physical requirements for storage facility [AMENDED]

595:25-5-2. Equipment requirements for all vehicles [AMENDED]

595:25-5-3. Operation [AMENDED]

595:25-5-4. Insurance [AMENDED]

595:25-5-5. Records [AMENDED]

595:25-5-6. ~~Storage rates; Schedule of after-hour release fees; service fees~~ indoor storage [AMENDED]

595:25-5-7. Tow request and authorization forms [AMENDED]

Subchapter 7. Class AA Operators

595:25-7-1. Equipment requirements for all Class AA vehicles [AMENDED]

595:25-7-2. ~~Operation of storage facility~~ Release and holding of vehicle by Class AA wrecker operators [AMENDED]

Subchapter 9. Oklahoma Highway Patrol Rotation Log - Additional Requirements

595:25-9-1. Oklahoma Highway Patrol Rotation Log [AMENDED]

595:25-9-2. Operator requirements [AMENDED]

595:25-9-3. "Rotation" calls for ~~Class AA~~ truck wreckers (Class AA-TL) [AMENDED]

Subchapter 11. Denial, Suspension, Revocation or Cancellation of License; Denial or Removal of Class AA Operators from Rotation Log of the Oklahoma Highway Patrol

595:25-11-1. Failure to qualify [AMENDED]

595:25-11-2. Violation of rules [AMENDED]

595:25-11-3. Procedure [AMENDED]

GUBERNATORIAL APPROVAL:

May 17, 2004

[OAR Docket #04-1176; filed 6-25-04]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY CHAPTER 30. SIZE AND WEIGHT PERMITS

[OAR Docket #04-1177]

RULEMAKING ACTION:

Gubernatorial approval.

RULES:

Subchapter 1. General Provisions

595:30-1-1. Purpose [AMENDED]

Subchapter 3. Size and Weight Permit Load

595:30-3-3. Requesting, obtaining, and paying for a permit [AMENDED]

595:30-3-17. Requirements for escort vehicles and escort vehicle operators [AMENDED]

595:30-3-17.1. Certification of operators of escort vehicles for hire [AMENDED]

Subchapter 5. Special Combination Vehicles

595:30-5-8. Load sequence [AMENDED]

GUBERNATORIAL APPROVAL:

May 17, 2004

[OAR Docket #04-1177; filed 6-25-04]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 35. ENFORCEMENT OF OKLAHOMA MOTOR CARRIER SAFETY AND HAZARDOUS MATERIALS TRANSPORTATION ACT**

[OAR Docket #04-1178]

RULEMAKING ACTION:

Gubernatorial approval.

RULES:

- 595:35-1-4. Adoption by reference [AMENDED]
- 595:35-1-6. Deletions, substitutions, and additions to federal rules adopted by reference [AMENDED]

GUBERNATORIAL APPROVAL:

May 17, 2004

[OAR Docket #04-1178; filed 6-25-04]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 40. DRIVER TRAINING AND IMPROVEMENT**

[OAR Docket #04-1179]

RULEMAKING ACTION:

Gubernatorial approval.

RULES:

- Subchapter 1. Driver Education Instruction
- 595:40-1-3. Driver education instructor permit/license [AMENDED]
- 595:40-1-4. Qualifications for instructors [AMENDED]
- 595:40-1-9. Prescribed course of study [AMENDED]
- 595:40-1-11. Specification for vehicles other than motorcycles [AMENDED]
- 595:40-1-12. Insurance [AMENDED]
- 595:40-1-13. Reports [AMENDED]
- 595:40-1-15. Requirements for all commercial driver education schools and classrooms [AMENDED]
- 595:40-1-16. Prohibited acts; conduct [AMENDED]

GUBERNATORIAL APPROVAL:

May 17, 2004

[OAR Docket #04-1179; filed 6-25-04]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 45. BOATING AND WATER SAFETY**

[OAR Docket #04-1180]

RULEMAKING ACTION:

Gubernatorial approval.

RULES:

- 595:45-1-2. Definitions [AMENDED]
- 595:45-1-3. Adoption of ~~federal boat safety act~~ 46 USC §4301 et seq. (formerly known as the Federal Boat Safety Act of 1971) [AMENDED]
- 595:45-1-4. Application [AMENDED]
- 595:45-1-5. Procedures followed for termination of use of unsafe ~~boats or~~ vessels [AMENDED]
- 595:45-1-6. Flashing red lights [AMENDED]
- 595:45-1-9. Signals [REVOKED]
- 595:45-1-10. Rules of the waterways for vessels [AMENDED]
- 595:45-1-11. Traffic lanes [AMENDED]
- 595:45-1-13. Equipment [AMENDED]
- 595:45-1-16. Operating any lifting and suspending device - parasail, parachute or any similar device [AMENDED]
- 595:45-1-18. Hull identification number for homemade vessels and identification numbers for motors [AMENDED]

GUBERNATORIAL APPROVAL:

May 17, 2004

[OAR Docket #04-1180; filed 6-25-04]

**TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION
CHAPTER 1. GENERAL**

[OAR Docket #04-1154]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

- Subchapter 3. Operating Policies
- 780:1-3-2. [AMENDED]
- 780:1-3-3. [AMENDED]
- Subchapter 13. Printing and Publications
- 780:1-13-1. [AMENDED]

GUBERNATORIAL APPROVAL:

May 17, 2004

[OAR Docket #04-1154; filed 6-21-04]

Gubernatorial Approvals

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 10. ADMINISTRATION AND SUPERVISION

[OAR Docket #04-1155]

RULEMAKING ACTION:

Gubernatorial approval

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]

GUBERNATORIAL APPROVAL:

May 17, 2004

[OAR Docket #04-1155; filed 6-21-04]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 15. ~~AREA~~ ~~VOCATIONAL-TECHNICAL SCHOOLS~~ TECHNOLOGY CENTERS

[OAR Docket #04-1156]

RULEMAKING ACTION:

Gubernatorial approval

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]

780:15-3-5. [AMENDED]

780:15-3-6. [AMENDED]

780:15-3-7. [AMENDED]

780:15-3-8. [AMENDED]

GUBERNATORIAL APPROVAL:

May 17, 2004

[OAR Docket #04-1156; filed 6-21-04]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 20. PROGRAMS AND SERVICES

[OAR Docket #04-1157]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

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]

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. [AMENDED]

GUBERNATORIAL APPROVAL:

May 17, 2004

[OAR Docket #04-1157; filed 6-21-04]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 25. BUSINESS AND INDUSTRY SERVICES

[OAR Docket #04-1158]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 5. Business and Industry Development

780:25-5-1. [AMENDED]

Subchapter 11. Business and Industry Services Programs

780:25-11-1. [AMENDED]

GUBERNATORIAL APPROVAL:

May 17, 2004

[OAR Docket #04-1158; filed 6-21-04]

**TITLE 780. OKLAHOMA DEPARTMENT OF
CAREER AND TECHNOLOGY EDUCATION
CHAPTER 30. SKILLS CENTERS**

[OAR Docket #04-1159]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 3. Skills Centers Programs

780:30-3-2. [AMENDED]

780:30-3-3. [AMENDED]

GUBERNATORIAL APPROVAL:

May 17, 2004

[OAR Docket #04-1159; filed 6-21-04]

Gubernatorial Disapprovals

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

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

**TITLE 580. DEPARTMENT OF CENTRAL
SERVICES
CHAPTER 10. FACILITIES MANAGEMENT**

[OAR Docket #04-1151]

RULEMAKING ACTION:

Gubernatorial disapproval of permanent rules

RULES:

Subchapter 5. Use of Public Areas of Capitol and Plazas
580:10-5-6. [AMENDED]

GUBERNATORIAL DISAPPROVAL:

Written disapproval received May 17, 2004

[OAR Docket #04-1151; filed 6-14-04]

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 580. DEPARTMENT OF CENTRAL SERVICES CHAPTER 10. FACILITIES MANAGEMENT

[OAR Docket #04-1163]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 2. General Provisions [AMENDED]

580:10-2-2. [AMENDED]

Subchapter 5. Use of Public Areas of Capitol and Plazas [AMENDED]

580:10-5-2. [AMENDED]

Subchapter 9. Operation of Buildings Owned, Used or Occupied by or on Behalf of the State [AMENDED]

Part 4. Access to the J. Howard Edmondson and Robert S. Kerr Office Buildings [NEW]

580:10-9-15. [NEW]

580:10-9-16. [NEW]

AUTHORITY:

Department of Central Services; 74 O.S., Section 63

DATES:

Adoption:

January 14, 2004

Approved by the Governor:

February 12, 2004

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:

None

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The Department of Central Services finds that a compelling public interest requires these emergency rules be adopted to further establish access and security procedures for the Capitol and the J. Howard Edmondson and Robert S. Kerr Office Buildings to ensure safety for visitors and state employees as well as protect the Capitol, the state office buildings, their contents, which are each necessary for the preservation of public health, safety and welfare.

ANALYSIS:

Amendments to rules in Subchapter 2 add a definition for the Capitol Complex and establish information for access to the State Capitol which include defining access entrances during operating hours, procedures related to security screening, and required compliance with official signs in the Capitol and on the Capitol Complex.

New rules in Subchapter 9, Part 4 establish requirements and procedures for access to the J. Howard Edmondson and Robert S. Kerr Office Buildings, which include operating hours and access requirements.

CONTACT PERSON:

Gerry Smedley, Administrative Rules Liaison, 521-2758

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

SUBCHAPTER 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.

Emergency Adoptions

"**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.

(bc) 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.

(ee) 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.

(df) 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.

(eh) 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.

[OAR Docket #04-1163; filed 6-25-04]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 45. PLAN OF OPERATION FOR OKLAHOMA STATE AGENCY FOR SURPLUS PROPERTY

[OAR Docket #04-1164]

RULEMAKING ACTION: EMERGENCY adoption

RULES:

- 580:45-1-1. through 580:45-1-19. [REVOKED]
580:45-1-21. through 580:45-1-57. [NEW]
Appendix A. [NEW]
Appendix A. [REVOKED]

AUTHORITY

Department of Central Services; 80 O.S., Section 34.2.B.

DATES:

Adoption:

April 23, 2004

Approved by Governor:

June 4, 2004

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2005, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The Department of Central Services finds that a compelling public interest requires these emergency rules be adopted to ensure the Plan of Operation for the Oklahoma State Agency for Surplus Property is current and approved in accordance with its federal oversight agency, the Government Services Administration (GSA). The GSA requires each state plan to have Governor's approval. Also, Senate Bill 900, approved by the Governor on April 20, 2004 and effective November 1, 2004, adds military equipment to property available through the state program. Oklahoma's State Plan of Operation was last adopted and approved through the administrative rulemaking process in 1990 and, therefore, was in need of revisions and updates to ensure compliance, greater accountability and efficiency of operation.

CONTACT PERSON:

Gerry Smedley, Administrative Rules Liaison, 521-2758

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):

580:45-1-1. Purpose [REVOKED]

Under the provisions of Public Law 94-519, the State Agency for Surplus Property will operate under a plan of operation and the regulations of the General Services Agency Administration, Federal Property Management Regulations 101-44. This plan of operation for the State of Oklahoma meets the requirements of the federal government and provides guidance for the distribution of property as provided by law.

580:45-1-2. Definitions [REVOKED]

The following words and terms when used in Chapter 45 of Title 580, shall have the following meaning, unless the context clearly indicates otherwise:

"Donee" (recipient) means a service education activity; a state, political subdivision, municipality, or tax-supported institution action on behalf of a public airport; a public agency using surplus personal property in carrying out or promoting for the residents of a given political area one or more public purposes such as conservation, economic development, education, parks and recreation, public health, and public safety; an eligible nonprofit, tax-exempt educational or public health institution or organization; the American National Red Cross; a public body; an eleemosynary institution; or any state or local government agency, and any non-profit organization or institution which receives funds appropriated for programs for older individuals under the Older Americans Act of 1965, as amended, under Title IV or Title XX of the Social Security Act, or under Titles VIII and X of the Economic Opportunity Act of 1964 and the Community Services Block Grant Act, Providers of Assistance to the Homeless Individuals, and others approved by the federal government.

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"State Agency" and "State Agency for Surplus Property" mean the Oklahoma State Agency for Surplus Property operating as the Property Distribution Division of the Oklahoma Office of Public Affairs.

"State Agent" means the administrator of the Property Distribution Division of the Oklahoma Office of Public Affairs.

580:45-1-3. Authority [REVOKED]

The Oklahoma State Agency for Surplus Property operates under the supervision of the Office of Public Affairs by authority of Section 34.1 et seq. of Title 80 of the Oklahoma Statutes.

580:45-1-4. Designation of state agency [REVOKED]

(a) Oklahoma State Statutes Title 80, Section 34.3, 34.4, 34.5 vest the Surplus Property Agent with the authority, under the supervision of the Office of Public Affairs, to ascertain from the federal government any surplus property available for sale, lease or donation either within or outside the State of Oklahoma and cause such notice of availability of such property to be made available to state departments, boards, commissions, institutions, and agencies, and to counties, cities, and towns, and school districts, to secure from the entities estimates of their need for surplus property, and to collect reimbursement for expenses incurred. The Administrator of the Property Distribution Division of the Office of Public Affairs services as the Surplus Property Agent for the State of Oklahoma.

(b) The Oklahoma State Agency has a fully qualified staff in each of its departmental areas which are represented in the organizational chart in Appendix A of this Chapter.

(c) The Oklahoma State Agency is located on approximately seven and one half (7.5) acres at 3100 North Creston, Oklahoma City, Oklahoma. The land is state owned and the buildings are state agency owned. The area is allocated in the following manner:

Office	2,640 square feet
Receiving (presently pad only)	2,080 square feet
Inside Storage	19,760 square feet
Property Repair	600 square feet
Sheds	3,648 square feet
Outside Storage	89,567 square feet
Parking	Unlimited

580:45-1-5. Inventory control and accounting systems [REVOKED]

(a) Inventory control.
 (1) The State Agency will maintain an inventory accounting system which will reflect all property received, donated, and warehoused. All property identified in

federal law, rules and regulations for special compliance requirements and all passenger motor vehicles and vessels over 50 feet long will be segregated on inventory records. All records will be kept by a data processing system. Property will be checked in and coded on the Standard Form 123 with overages and shortages noted for further reporting in accordance with Federal Property Management Rules. Inventory records will be kept in conformity with generally accepted governmental accounting principles as set forth by the office of the Oklahoma State Auditor and Inspector.

(2) Monthly inventory reports will be prepared to reflect accumulated data for the month. Reports will be based on acquisition cost when available on the Form 123 or fair value if acquisition cost is not listed on the Form 123 and will include property received, property donated, other distribution, method of distribution (whether from State Agency facility or direct from Holding Agency), and a breakdown of distribution by class of all eligible donees.

(3) At the request of the donee or his agent, direct allocation of property will be arranged. Discounted service and handling charges will be billed in accordance with 580:45-1-7.

(4) An annual physical inventory will be conducted for all property on hand; and inventory records will be adjusted to correspond with physical count upon approval of the State Agent. Approval from the General Services Administration will be requested on any major compliance item.

(5) A written report will be submitted to the General Services Administration, Office of Public Affairs and any other party deemed necessary.

(6) The Agency will keep files on all eligible donees. Each donee will have a correspondence folder and a distribution document folder. A separate file will be maintained for distribution documents listing all property identified in federal law, rules and regulations for special compliance requirements and all passenger motor vehicles, aircraft, or vessels over 50 feet long.

(b) Accounting system.

(1) Service charge payments may be made only by warrant or check drawn on an account of the receiving donee.

(2) An accounts receivable file will be maintained for all open accounts. The accounts receivable file will be maintained according to accounting principles as prescribed by the Office of the State Auditor and Inspector. All accounts will be aged on a regular basis to determine accounts that have become delinquent. Accounts receivable will be considered delinquent after 90 days.

580:45-1-6. Return of donated property [REVOKED]

(a) The donee shall be required to advise the State Agency of any item of donated property that has not been placed in use by the donee for the purposes for which it was donated within one year of donation, or ceases to be used by the donee for such purposes within one year of being placed in use.

(b) The State Agency shall require the donee, for such items as the State Agency considers to be still usable, to return the property to the State Agency at the donee's expense; to make the property available for retransfer to another donee, State Agency, or Federal Agency; or, to see or otherwise dispose of the property as the State Agency may direct.

(c) The State Agency shall emphasize these requirements, periodically, at donee meetings and in bulletins, catalogs, or other notices issued by the State Agency to donees. Also, State Agency personnel will emphasize these requirements when making surveys of donated property or on visits to donee activities.

(d) When property is returned to the State Agency, the following service charge applies, PROVIDED the property is returned in the same condition as donated:

If returned within 30 days	Full Credit
30 to 60 days	90% Credit
60 to 90 days	75% Credit
90 days to 6 months	50% Credit
Over 6 months	To be determined by State Agency Director

(e) At the discretion of the State Agent, credit issued may be altered for justifiable reasons.

580:45-1-7. Financing and service charges [REVOKED]

(a) The primary means of financing the Oklahoma State Agency for Surplus Property is the service and handling charge placed on donated property, minor remunerations from administration of sales and compliance enforcement. Funds on hand October 17, 1977, and funds received from that time forward will be used for Agency operation and improvement, replacement and expansion of Agency facilities and equipment. These funds will be deposited with the State Treasurer and will be expended by warrants issued by the Office of State Finance and drawn on Agency funds. A maximum working capital reserve may be maintained equivalent to the operating expenses for the preceding twelve months plus any specified capital improvements. The State Agency will re evaluate operational expenses annually and, in the event of an excess in the working capital reserve, service and handling charges will be discounted to all donees until such excess is depleted.

(b) Property which is located, transported, and warehoused by the State Agency will be assessed a service and handling charge based on Agency costs for administration, screening, accounting, warehousing, maintenance and replacement of facilities and equipment, utilization survey expense, and document processing. The original acquisition cost, age, condition, desirability and usability or fair market value of an item will be considered in establishing the fair and equitable charges. Generally the charge will be 5-20% of governmental acquisition cost but the charge may exceed these percentages when exceptionally low government acquisition costs, or unusually high expenses are involved.

(c) Additional direct charges may be passed to the donee, for direct delivery to the donee by the State Agency, excessive freight costs, ascertaining condition, upgrading and/or rehabilitating of property, and additional federal costs involved in obtaining property through federal sale or from overseas.

(d) All aircraft and vessels of 50 feet or more are excluded from any of the above services and handling charge criteria and will be handled on an individual basis.

(e) Property made available to providers of assistance to homeless individuals shall be distributed at a nominal cost for care and handling of the property.

580:45-1-8. Terms and conditions on donated property [REVOKED]

(a) All property donated by the Oklahoma State Surplus Property Agency must be put into use within a period of one year and continue to be used for the purpose acquired for one year. Federal terms and conditions on property, as well as state terms and conditions, are shown on each issue document and agreed to by the donee when the issue document is signed.

(b) Property may be used for short term projects of less than one year, when justified. The issue document shall state "short-term project property" and be issued on a rental basis to cover the cost of administration, operations and allowance to check out and return the property to its originally issued condition.

(c) Property with a unit acquisition cost equal to or in excess of amounts set forth for special compliance requirements by the General Services Administration and passenger motor vehicles, regardless of acquisition costs, carry additional restrictions. This property must be placed in use within one year and used for the purpose acquired for a period of eighteen (18) months from the date placed in use.

(d) Aircraft and vessels 50 feet or more in length will be subject to the terms and restrictions on the Conditional Transfer Document.

(e) The State Agency will, regardless of unit acquisition costs, impose such conditions involved in special handling or use limitations as the General Services Administration may determine necessary because of the characteristics of the property, pursuant to FPMR 101.44.108, and any other restrictions deemed necessary by the State Agency.

(f) After federal restrictions have been satisfied on any items with government acquisition cost equal to or in excess of the General Services Administration amounts set forth for special compliance requirements or any passenger motor vehicle, and aircraft or vessels 50 feet or more, the State Agent with approval of the Director of the Office of Public Affairs may suspend any additional state restrictions if the donee request is submitted in writing giving justifiable reasons.

580:45-1-9. Non-utilized donable property [REVOKED]

(a) Property in the possession of the State Agency which cannot be utilized by a donee will be disposed of in one of the following ways:

(1) By transfer to another State Surplus Property Agency, subject to disapproval by the General Services

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Administration after 30-day notice. The State Agency may seek reimbursement as provided in FPMR 101-44.205.

(2) By destruction or abandonment where property has no commercial value, or a government acquisition cost of \$500 or less per item, subject to disapproval of the General Services Administration after 30 days notice.

(3) By sale or auction or any other method authorized by the General Services Administration, the State Agency to be reimbursed for expenses incurred as provided in FPMR 101-44.205.

(b) Any type of property disposal or transfer shall be accomplished in such manner as prescribed by the Administrator pursuant to the provisions of FPMR 101-44.205.

580:45-1-11. Eligibility [REVOKED]

(a) The two types of eligibilities will be covered by the form used by the State Agency for Surplus Property and determination of eligibility will be made by the State Agency based on information provided. Questionable applications will be referred to the General Services Administration for review and recommendation.

(b) The application for public agencies will request the following information:

- (1) Legal name and address of agency.
- (2) Function of agency.
- (3) Explanation of program.
- (4) Funding.
- (5) Certificate of adopted resolution (for written authorization).
- (6) Certification of compliance with Title VI of the Civil Rights Act of 1964 and Title VI, Section 606 of the Federal Property and Administration Services Act of 1949, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended.
- (7) Evidence of approval, accreditation or licensing (where applicable).

(c) The application for non profit institutions will request the following information:

- (1) Legal name and address of institution or directions from nearest city or town.
- (2) Function of institution (health or education or others approved by the federal government).
- (3) Evidence of tax exemption under Section 501 of the Internal Revenue Code of 1954.
- (4) Explanation of program.
- (5) Funding.
- (6) Evidence of approval, accreditation or licensing.
- (7) Certification of adopted resolution.
- (8) Certification of compliance with Title VI of the Civil Rights Act of 1964 and Title VI, Section 606 of the Federal Property and Administrative Services Act of 1949, as amended.

(d) The eligibility of a donee will be re-evaluated every three (3) years or as required by the General Services Administration. Any change in status of the donee in the interim will also necessitate a re-evaluation.

(e) In determining the eligibility of an applicant, the State Agent will follow the guidelines shown in FPMR 101-44.207.

(f) The State Agency for Surplus Property may suspend temporarily the eligibility of any donee and may indefinitely suspend any donee, with approval from the Director of the Office of Public Affairs (or his/her designee), from participating in the Surplus Property Program until reason for suspension has been corrected.

580:45-1-12. Compliance and utilization [REVOKED]

(a) All property, regardless of acquisition cost, must, by federal regulations, be placed in use within a period of one year from receipt and continue to be used for the purpose for which acquired for one year. If not, it shall, at the request of the State Agency, be made available to another donee or returned to the State Agency at the donee's expense in accordance with 580:45-1-6.

(b) Within one (1) year of distribution the State Agency will conduct a compliance and utilization review of any items of property having a unit acquisition cost of amounts equal to or in excess of the General Services Administration amounts set forth for special compliance requirements and any passenger vehicle, aircraft, and vessels over 50 feet in length. Review will be made by physical inspection or written reports requested by a State Agency representative. Any evidence of non-compliance shall cause the State Agency to effect action to enforce the agreed terms, conditions, reservations, and restrictions which were imposed on the property. Investigations will be initiated in cases of alleged fraud or misuse of property and the State Agency shall notify the State Attorney General's Office, Federal Bureau of Investigation and the General Services Administration immediately. The State Agency, shall, in such cases, assist the General Services Administration or other responsible federal or state agencies in investigation and prosecution of such cases.

(c) State Agency compliance and utilization reviews will include a check of the general utilization of property donated, and compliance with all terms and conditions including special handling and use limitations. Evidence of stockpiling, effectiveness of the program, need for more property by the donee, and a request for any recommendations that may improve service will be noted.

(d) Copies of all compliance review reports and copies of the physical utilization review will be given to the State Agent for his review and approval.

(e) Donees will be reminded, at intervals, through the State Agency newsletter or personal correspondence of all compliance restrictions.

(f) Donees may be charged with fines and costs of utilization surveys, when compliance surveys made are requested by the donee or a compliance survey is conducted and misuse of property is discovered. The State Agency may recover expenses involved in performing and documenting such surveys.

(g) Imposed terms, conditions, and restrictions may be amended as shown in 580:45-1-6.

580:45-1-13. Consultation with advisory groups-public and private [REVOKED]

(a) ~~The State Agency will actively seek participation in local or statewide conferences of organizations representing city, county and state public agencies, education, health, civil defense, libraries, multi jurisdictional groups, museums, and other eligible entities. Speakers and/or slide presentations will be available. Discussions as to the needs, resources and utilization of property by donees and their recommendations will be welcome and will receive full consideration. Donees will be encouraged to give to the State Agency their expression of special needs for transmittal to the General Services Administration.~~

(b) ~~When requested, orientation tours of the Agency facilities and program briefings will be available for any eligible group.~~

(c) ~~In the event of problem areas arising, representatives of eligible groups will be invited for round table discussion and solutions sought by mutual agreement and understanding.~~

(d) ~~Contact will be made with all eligible donees via a regular newsletter. This newsletter will provide program information, availability of property, and any other data pertinent to the donation program.~~

580:45-1-14. Audits [REVOKED]

(a) ~~The State Agency will be subject to audits by the Oklahoma State Auditor and Inspector at least every two year or as required by law or requested by State Agency. These audits will be based on agency operations and conformity to federal property management regulations, the state plan, and other applicable state statutes. A copy of the audit report will be furnished to the regional office of the General Services Administration and the General Services Administration will be informed of any corrective measures taken because of recommendations indicated by the audit.~~

(b) ~~The General Services Administration may, for appropriate reasons, conduct its own audit of the State Agency following due notice of the chief executive office of the state of the reasons for such audit.~~

(c) ~~The State Agency will make its books and records available to federal agencies, i.e., Governmental Accounting Office, Office of Management and Budget, etc., for their inspection.~~

(d) ~~Internal audits of Agency financial affairs and procedures will be made at the request of the State Agent.~~

580:45-1-15. Cooperative agreements [REVOKED]

~~Cooperative agreements will be made for use of surplus property by the Oklahoma Surplus Property Agency, for return of overseas property, for transfer of property between states, for use of the Federal Telecommunications System, and others which may be necessary for an efficient and effective operation of the donation program in the State of Oklahoma.~~

580:45-1-16. Liquidation [REVOKED]

(a) ~~If it becomes necessary because of a lack of property, lack of operating funds, or change in federal or state law, to~~

~~liquidate the Surplus Property Agency in Oklahoma, the following plan will be followed:~~

(1) ~~The General Services Administration will be notified immediately and a cut off date set.~~

(2) ~~All holdings will be liquidated within six (6) months from the cut off date.~~

(3) ~~All property on inventory will be donated or returned to the General Services Administration for sale or further disbursement, in accordance with FPMR 101-44.205.~~

(4) ~~The buildings and equipment will be offered for sale through competitive bidding by the Office of Public Affairs, net proceeds to go into the State Surplus Property Revolving Fund,~~

(5) ~~The land will revert to the State of Oklahoma.~~

(6) ~~All operating expenses including outstanding debts, compensation to personnel (including accumulated annual leave) will be paid.~~

(7) ~~Remaining funds will be disbursed, according to percentages of service and handling fees, by participating donees over the preceding two years.~~

(8) ~~Records of receipt and disbursement will be prepared and submitted for approval.~~

(b) ~~State Agency records will be stored with the State Archives under the direction of the State Department of Libraries for a period of no less than two years.~~

580:45-1-17. Forms [REVOKED]

~~Forms referred to in OAC 580:45 include:~~

(1) ~~Form #1 Surplus Property Distribution Document.~~

(2) ~~Form #2 and #2a Aircraft (combat and non combat) Conditional Transfer Documents.~~

(3) ~~Form #3 Conditional Transfer Document for Vessels 50 Feet Long or More.~~

580:45-1-18. Records [REVOKED]

~~All official records of the State Agency will be retained by the State Agency for a period of five (5) years, except:~~

(1) ~~Records involving property subject to restrictions for more than two (2) years will be kept for one (1) year beyond the specific period of restriction.~~

(2) ~~Records involving property in compliance status at the end of the period of restriction will be kept for at least one (1) year after the compliance time period is met. All official records of the State Agency will be retained by the State Agency for a minimum period of five (5) years, or one (1) year subsequent to any compliance restrictions.~~

580:45-1-19. General notice [REVOKED]

~~The plan of operation contained in Chapter 45 of Title 580 has been promulgated in accordance with the Federal Property Management Rules and the Oklahoma Administrative Procedures Act (75 O.S. Sections 250.1 et seq.) which provides for public comment, gubernatorial approval and legislative review.~~

580:45-1-20. [RESERVED]

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580:45-1-21. Purpose

(a) The Director of Central Services promulgates the rules of this chapter pursuant to authority of 80 O. S., Section 34.2 and subject to provisions of the Administrative Procedures Act, 75 O. S., Section 251, et seq.

(b) Pursuant to provisions of Title 40, United States Code - Public Buildings, Property and Works, Subtitle I, Chapter 5, Section 549, the State Agency for Surplus Property shall operate pursuant to a state plan of operation and Federal Management Regulation, Subchapter B - Personal Property, Part 102-37.

(c) The state plan of operation for the State of Oklahoma shall provide provisions for the State Agency for Surplus Property to acquire and distribute federal surplus personal property to donees that the agency determines meet the requirements of federal laws and regulations to receive the property. The agency shall acquire and distribute the property in accordance with the provisions of federal laws and regulations, state laws and the state plan.

580:45-1-22. [RESERVED]

580:45-1-23. Definitions

As used in this chapter, the following terms, unless the context clearly indicates otherwise, shall mean:

"Aircraft" means a civilian or demilitarized aircraft.

"Department" means the Department of Central Services.

"Direct allocation" means shipment of property directly to a donee.

"Director" means the Director of Central Services or a person the Director designates.

"Donee" means a service educational activity, public agency that uses surplus personal property to carry out or promote one or more public purposes, nonprofit tax-exempt educational or public health institution to include a provider of assistance to homeless or impoverished families or individuals, state or local government agency, or nonprofit organization or institution that receives funds appropriated for a program for older individuals. (Note: Public airports are only considered donees when they elect to receive surplus property through the state agent. This does not include transactions of property where a public airport elects to receive surplus property through the Federal Aviation Administration (FAA)).

"GSA" means the General Services Administration of the government of the United States of America.

"Item" means a single unit or measurable lot of property.

"Original acquisition cost" or "OAC" mean the original cost the GSA reports the federal government paid to acquire an item.

"Property" means federal surplus personal property.

"Revolving fund" means the fund created by 80 O. S., Section 34.6 that serves as the depository and working capital reserve fund for the agency.

"State Agency for Surplus Property" and "Agency" mean the Oklahoma State Agency for Surplus Property operating as the Property Distribution program of the Department of Central Services.

"State plan" means a plan of operation for the state agency for surplus property.

"State Surplus Property Agent" and "Agent" mean the administrator of the Property Distribution program of the Department of Central Services or a person the agent assigns to perform agency tasks.

"Vessel" means a watercraft exceeding 50 feet in length.

580:45-1-24. [RESERVED]

580:45-1-25. Citations

(a) Statutory citations in this chapter refer to the most recent codification of state and federal statute.

(b) Regulation citations in this chapter refer to the most recent codification of federal regulations.

580:45-1-26. [RESERVED]

580:45-1-27. Authority

The State Agency for Surplus Property operates under the authority and supervision of the Director of Central Services of the Department of Central Services pursuant to the provisions of 80 O. S., Section 34.1 et seq., Title 40, United States Code - Public Buildings, Property and Works, Subtitle I, Chapter 5, Section 549, FMR 102-37.140 through FMR 102-37.170, FMR 102-37, Appendix B-Section (b).

580:45-1-28. [RESERVED]

580:45-1-29. Designation of state agency

(a) As appointed by the Governor, the Director of Central Services shall appoint a State Surplus Property Agent and employ persons the agent supervises to ensure that the agent meets requirements of FMR 102-37 and the state plan of operation for property acquisition, transportation, inventory control, warehousing, eligibility, compliance and program related responsibilities.

(b) The agent shall administer the State Agency for Surplus Property pursuant to the provisions of the state plan that satisfies the requirements of 80 O. S., Section 34.1 et seq., Title 40, United States Code - Public Buildings, Property and Works, Subtitle I, Chapter 5, Section 549 and FMR 102-37.

(c) Under the supervision of the Director, the agent shall acquire, warehouse and distribute property to donees and reasonably ensure that donees comply with property use restrictions and requirements.

(d) The agency occupies approximately seven and one half (7.5) acres of land owned by the State of Oklahoma at 3100 North Creston Drive, Oklahoma City, Oklahoma. The property

includes an administrative office building, receiving and distribution warehouses, outdoor display and storage areas, mechanic shop, maintenance shop and paved and gravel parking areas.

580:45-1-30. [RESERVED]

580:45-1-31. Inventory control and accounting systems

(a) Inventory control system.

- (1) The agency shall use, maintain and support an automated inventory control system to document and track property receipt, warehouse location, transfer, sale, utilization and disposal.
- (2) The agent shall assign an inventory control identifier to property that the inventory control system shall recognize the quantity received, property location, quantity distributed, service charges and other information the agent requires.
- (3) The agent shall conduct an annual physical inventory of property on-hand. The agent shall reconcile physical inventory findings to system produced records and report results to the GSA.
- (4) The agent may request that GSA allocate property the agent receives for use by the agency. The agent shall issue a request to GSA and retain and maintain records of property GSA allocates for use by the agency separate and apart from records of the inventory control system of property available for donation.

(b) Accounting system.

- (1) The agent shall record and maintain financial records in an accounting system. The Director and the agent shall adhere to methods the State Auditor and Inspector and state finance officials prescribe for the accounting system. System records shall indicate payments due and received for property to accurately indicate donee accounts status including balances due to the agency.
- (2) The accounting system shall age accounts on a periodic basis so that the agent may identify accounts that may become past due.
- (3) The Director and the agent shall ensure that the system provides financial information that the Director and agent may use to evaluate agency financial performance.

580:45-1-32. [RESERVED]

580:45-1-33. Return of donated property

- (a) If the agent determines that an item is usable by the agency, a donee that acquires the item shall place it into use within one year after acquiring it.
- (b) If the donee fails to place the item in use within one year after acquiring it, the agent shall advise the donee of actions the donee shall take to return, transfer or dispose of the item at the expense of the donee.
- (c) If a donee ceases to use an item within one year of acquiring it and one year of placing it into use, the agent shall advise

the donee of actions the donee shall take to return, transfer or dispose of the item at the expense of the donee.

(d) A donee shall return, transfer or dispose of usable items at the expense of the donee as the agent directs. The agent shall direct the donee to:

- (1) return the item to the agency;
- (2) transfer the item directly to another donee within the state;
- (3) with GSA approval, transfer the item to another state agency for surplus property or a federal agency;
- (4) with GSA approval, dispose of the item by the method the agent directs.

(e) If the agent determines an item is unusable, the agent shall direct a donee to dispose of the item at the expense of the donee specified by the agent and in accordance with FMR 102-37-305 and FMR 102-37.320.

- (1) The agent shall require that the donee provide documentation of disposal to the agent.
- (2) If GSA authorizes disposal by sale of the item, the agent shall advise the donee and provide instructions to the donee.

(f) If an item is usable and the donee fails to adhere to instructions the agent provides for return, transfer or disposal of the item, the agent shall attempt to retrieve the item with retrieval expenses incurring to the donee. If the agent is unable to retrieve the item, the agent shall utilize provisions of 580:45-1-45(g) to notify GSA of donee noncompliance.

(g) If a donee acquires an item from the agency and believes the item is not suitable for the donee intended purpose, the agent may authorize the donee to return the item to the agency and determine the amount of credit the donee shall receive for the item, not to exceed the original service charge for the item. The agent shall utilize the table shown below to determine the return credit if the item is in the same condition as at the time of acquisition:

- (1) Returned within 30 days - Up to 100% Credit
- (2) Exceeding 30 to 60 days - Up to 90% Credit
- (3) Exceeding 60 to 90 days - Up to 75% Credit
- (4) Exceeding 90 to 180 days - Up to 50% Credit
- (5) Exceeding 180 days - As determined by the agent

580:45-1-34. [RESERVED]

580:45-1-35. Agency financing and service charges

(a) The agent shall assess service charges to property, which includes facilities, the agent makes available for acquisition by donees as authorized by 80 O. S., Section 34.2 and the state plan.

(b) The agent shall assess service charges in a fair and equitable manner based on the original acquisition cost or fair market value of property. Service charges assessed by the agent shall cover costs the agent incurs to screen, retrieve, receive, package, crate, warehouse ship and transport property. Funds accumulated from service charges may be used to maintain and improve the agency in accordance with FMR 102-37-.280.

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(c) For items the agent makes available to donees, the agent shall assess a service charge determined as a percentage of the OAC or fair market value of an item.

(1) The agent shall use the following table to assess service charges to items:

(A) OAC or Fair Market Value not exceeding \$1000: 0% to 50% of OAC or Fair Market Value

(B) OAC or Fair Market Value exceeding \$1000 and not exceeding \$20,000: 0% to 40% of OAC or Fair Market Value

(C) OAC or Fair Market Value exceeding \$20,000: 0% to 30% of OAC or Fair Market Value

(2) If the agent uses a fair market value of an item to determine a service charge, the agent shall retain documents establishing the fair market value of the item.

(3) The agent may authorize direct allocation of items to donees. If the agent authorizes direct allocation, the service charge shall not exceed 10% of OAC. The agent may establish a minimum service charge of \$10.00 for direct allocation for property, if total items OAC do not exceed \$100.00.

(4) The agent shall provide property to eligible donees that provide assistance to homeless individuals at a nominal service charge.

(d) The agent may assess an additional charge to an item for repairs the agent effects to repair the item. The agent shall prepare a work order detailing expenses the agent incurs to repair the item and advise the amount of a work order prior to a donee acquiring the item.

(e) The Director shall deposit funds the agent receives from service charges in the revolving fund in accordance with 80 O.S., Section 34.6. The State Treasurer shall manage the revolving fund for the benefit of donees and the agency.

(f) The Director and the agent shall expend the funds for allowable costs of the agency, including, staff salaries, agency facilities maintenance and improvement, equipment and administrative expenses, for the benefit of donees and performance of duties pursuant to 80 O. S., Section 34.1, et seq. and the state plan.

(g) If the Director determines that excess funds exist in the revolving fund the Director shall advise the agent to reduce service charges for property.

(h) Disposition of any financial assets realized upon the sale or other disposal of the facilities will be made in accordance with FMR 102-37.365 if the State were to decide to liquidate the SASP. Financial assets realized upon the sale or other disposal of the facilities, other than to liquidate the SASP would be utilized to acquire new facilities.

580:45-1-36. [RESERVED]

580:45-1-37. Property use restrictions and requirements

(a) The agent shall inform donees that property the donee receives is subject to use restrictions and requirements FMR

102-37, GSA and this section specify. Donees shall acknowledge and agree to restrictions and requirements at the time of acceptance of property.

(b) A donee shall present an encumbrance or certification document to the agent certifying adequate funds to pay services charges the donee incurs to acquire the property.

(c) A donee accepts property as is, with no expressed or implied warranty, except that a donee may return property to the agency pursuant to provisions of 580:45-1-33(g).

(d) The state and federal governments are not liable for and held harmless from actions incident to acquisition of the property, its use or final disposition.

(e) A donee shall use property to carry out or promote the public purpose of the donee entity.

(f) A donee shall not encumber property the donee acquires from the agency by lien or other method of encumbrance.

(g) A donee shall place donated property in-use within one year of donee receipt of the property.

(h) A donee shall return property to the agent if the donee does not use the property within one year of receipt at the expense of the donee.

(i) A donee shall retain and use items with an OAC not exceeding \$5,000 for one year after the donee places the property in-use.

(j) A donee shall retain passenger motor vehicles or items with an OAC of or exceeding \$5,000 in its possession for 18 months after the donee places the property in-use.

(k) A donee that acquires an aircraft or vessel shall meet additional use requirements.

(1) A donee shall submit a letter of intent stating uses for which the donee intends to use the aircraft or vessel. The agent shall advise the donee of information a letter of intent may include.

(2) A donee shall use an aircraft or vessel for a period of five years. The period of restriction for combat-configured aircraft is perpetuity.

(3) A donee shall apply to FAA to register an aircraft for flight use within 30 calendar days of donee receipt of the aircraft.

(4) A donee shall apply to register or document a vessel pursuant to applicable federal, state and local laws within 30 calendar days of donee receipt of the vessel and record each document with the U. S. Coast Guard.

(5) A donee shall include with its request for registration or documentation a fully executed copy of the transfer document and a copy of the donee letter of intent.

(6) Upon receipt, a donee shall provide a copy of FAA registration or Coast Guard documentation to the agent and GSA.

(7) A donee shall use an aircraft or vessel in accordance with the executed conditional transfer document and as set forth in the donee letter of intent.

(8) A donee may request amendments to the donee letter of intent by submitting amendments in writing to the agent and GSA.

(9) A donee shall use an aircraft or vessel for purposes the donee states in the donee letter of intent unless the

agent and GSA provide approval of amendments to the letter of intent.

(10) If required by FAA or the Coast Guard, a donee shall provide a copy of approved letter if intent amendments to the FAA or Coast Guard.

(11) If a donee breaches the terms and conditions of a conditional or an amended transfer document, title to the aircraft or vessel may revert to the federal government, GSA may require the donee to return the aircraft or vessel and GSA may require the donee to pay for disposal, transaction costs and use.

(12) A donee may submit a request to return an aircraft or vessel during a period of use restriction to the agent. The agent shall notify GSA of the request and request GSA to provide written instructions for disposition. If GSA approves and provides instructions for disposal, the agent shall provide notice and disposal instructions to the donee.

(13) A donee shall not modify military aircraft the donee receives for ground training or static display for flight purposes.

(14) A donee that receives an aircraft for non-flight use shall provide the agent with aircraft historical records within 30 calendar days of donee receipt of the aircraft. The agent shall forward the records to GSA.

(l) A donee holds conditional title to property the donee receives during periods of use restrictions and full title to the property vests to the donee after the donee meets all property use requirements.

(m) A donee shall not remove the property from the state for permanent use or sell, trade, lease, loan or otherwise dispose of property during periods of use restriction without written authorization from the agent.

(n) The agent shall evaluate a donee request for removal or property disposition as described in this subsection and, if required, seek GSA approval of the action. The agent shall notify the donee of approval or disapproval of the request.

(o) A donee shall report information pertaining to property to the agent, as the agent requires, during periods of use restrictions.

(p) If a donee insures property and the donee experiences an insured loss of the property during a period of use restriction, the agent or GSA is eligible to claim reimbursement from insurance proceeds for an amount equal to the un-amortized amount of the fair market value for the insured item.

(q) A donee may request authorization to cannibalize property from the agent. If the agent determines that property cannibalization would result in increased use of an item, the agent may authorize cannibalization.

(1) A cannibalization request a donee submits shall identify components of an item the donee intends to utilize.

(2) The agent shall determine the value of components of the item the donee intends to utilize.

(3) The agent shall evaluate a donee request for cannibalization pursuant to conditions of the transfer document and approve or disapprove the request.

(4) If the agent approves the request, the agent shall advise the donee of item components use restrictions and requirements.

(r) Components with an OAC or fair market value of or exceeding \$5,000 shall remain subject to use restrictions and requirements as the transfer document states.

(s) The agent shall advise the donee of conditions for use, retention, return or disposal of components with an OAC or fair market value of less than \$5,000. The donee shall adhere to provisions of subsection l of this section for property disposal.

(t) A donee may request that the agent release the donee from use restrictions and use time periods of state imposed restrictions for an item.

(1) The agent may approve a request for release from state requirements if the agent determines by item review or inspection that the property retains no capacity for useful purpose.

(2) A donee may request release from a special handling condition or use limitation GSA imposes by submission of a request to the agent. The agent shall forward the request to GSA, provide additional information GSA may require and advise the donee of the GSA determination.

(3) Upon request from a donee, the agent may, with GSA approval, grant an extension of the time period to place property in-use if the agent determines that a delay results from factors beyond the predictable control of the donee.

(u) A donee may request that the agent exchange an item that the donee used for a minimum of six months subject to item use restrictions and requirements for one like item having similar use potential if the exchange will result in increased utilization value to the donee.

(1) The use restrictions and requirement time period for the item the donee receives in exchange shall commence upon donee receipt of the item.

(2) The agent shall ensure that the OAC or fair market value of the item the donee receives in exchange is of equal or greater value than the item the donee originally received.

580:45-1-38. [RESERVED]

580:45-1-39. Disposition of undistributed property

(a) The agent shall adhere to provisions of this section to dispose of, abandon or destroy property the agent is unable to distribute to donees. If the agent determines that items are not usable, the agent shall provide a signed request to GSA to seek approval to abandon or destroy the items.

(1) The agent shall list items and advise GSA of reasons the agent believes the items warrant abandonment or destruction in accordance with FMR 102-37.320.

(2) The agent shall provide a description of each item, the condition of the items and the OAC.

(3) The agent shall advise the method the agent prefers for abandonment or destruction of the item.

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(4) The agent shall state that the method of abandonment or destruction the agent prefers shall not pose a detriment or health hazard to other persons, will not cause risk to public safety or infringe on the rights of other persons.

(5) Within 30 calendar days after the agent issues the request, GSA will approve, disapprove, provide alternate disposition instructions or not respond for the items to the agent. If GSA does not respond to the agent within 30 calendar days, the agent may abandon or destroy the items.

(6) If the agent reasonably believes that unusable items may have value as scrap, the agent shall implement a cooperative agreement or adhere to provisions of an executed cooperative agreement with GSA to act as agent for GSA to affect sale of the scrap items.

(b) If at least nine months after receiving items, the agent does not distribute the items and the agent determines that undistributed items are usable, the agent shall adhere to provisions of this subsection to dispose of the items.

(1) The agent shall offer the items to state agencies for surplus property within the GSA region of the agency.

(2) If no state agency for surplus property within the region indicates interest in the property, the agent may offer the property to state agencies for surplus property outside the region.

(3) If another state agency for surplus property requests to acquire the property, the agency and requesting agency shall adhere to provisions of FMR 102-37.295 to affect transfer of the items.

(4) The agent may recoup costs the agent incurred for the transfer or sale items to the requesting state agency for surplus property pursuant to provisions of FMR 102-37.315.

(5) The agent shall adhere to provisions of FMR 102-37.290 through FMR 102-37.310 for disposal of usable undistributed items that another state agency for surplus property does not want. The agent may recoup items disposal expenses pursuant to FMR 102-37.315.

580:45-1-40. [RESERVED]

580:45-1-41. Fair and equitable distribution

(a) The agent shall employ measures to ensure fair and equitable distribution of property to donees. (b) The agent shall provide priority distribution to donees responding to disaster or emergency situations.

(c) The agent shall solicit advice from donees on types of items donees prefer to acquire from the agency.

(d) The agent shall offer donees opportunities to request specific items. The agent shall compile a list of the items, seek the items and, if the agent receives the items, make the items available to the requesting donee with the longest standing request.

(e) The agent may request GSA assistance to acquire specific items for a donee.

(f) The agent may authorize and assist direct shipment of property to donees.

(g) The agent may provide property to eligible donees in another state pursuant to provisions of FMR 102-37.265 and FMR 102-37.335.

580:45-1-42. [RESERVED]

580:45-1-43. Eligibility

(a) Pursuant to provisions of Title 40, United States Code - Public Buildings, Property and Works, Subtitle I, Chapter 5, Section 549, provisions of FMR 102-37.380 through FMR 102-37.430 and provisions of this section, the agent shall accept and review applications from donee applicants and determine whether an applicant conforms to one of the categories of eligible donees and meets eligibility requirements to receive surplus property.

(b) The agent shall utilize a standard application form for completion and submission by public and nonprofit donee applicants, for use by the agent to determine whether the applicant meets eligibility requirements. The agent may request GSA assistance to determine whether an applicant meets eligibility requirements.

(c) The application form shall request the following information:

(1) Legal name, address and, if necessary, directions to the physical location of the donee applicant;

(2) Function of the donee applicant as a public agency or an eligible non-profit agency;

(3) Explanation of the donee applicant program or mission;

(4) Donee applicant funding sources;

(5) Donee applicant certification of compliance with applicable federal nondiscrimination statutes, including Title 40, United States Code - Public Buildings, Property and Works, Subtitle I, Chapter 5, Section 122, Title VI of the Civil Rights Act of 1964 (42 U. S. C. 2000d-2000d-4), Section 606 of title VI of the Federal Property and Administrative Services Act of 1949 (40 U. S. C. 476), as amended, section 504 of the Rehabilitation Act of 1973 (29 U. S. C. 794), as amended, and section 303 of the Age Discrimination Act of 1975 (42 U. S. C. 6101-6107) and Title IX of the Education Amendment of 1972 (20 U.S.C. 1681-1688 (as amended));

(6) If applicable, donee applicant certification of recognition as a state public agency by adopted resolution of a governing body;

(7) Evidence of donee applicant approval, accreditation, or licensing or other standards of operation documentation as defined by FMR 102-37.395;

(8) Certification that the donee applicant is not currently debarred, suspended, declared ineligible or otherwise excluded from any federal program including procurement programs; and,

(9) Require that a nonprofit and tax-exempt applicant donee provide evidence that it is tax-exempt pursuant to section 501 of the Internal Revenue Code;

(d) The agent may request a donee applicant to submit additional documentation to substantiate or clarify information the applicant submits on the eligibility form.

(e) The agent shall maintain donee eligibility records in donee specific files.

(f) In determining the eligibility of a donee applicant, the agent will follow the guidelines of FMR 102-37.380 through FMR 102-37.430.

(g) The agent shall seek update information from donees as required to ensure the agent maintains current donee information. The agent shall update eligibility records as needed, but no less than every three years from the eligibility approval date.

(1) If a donee changes its chief executive officer prior to expiration of the eligibility time period the agent established, the donee shall submit a new application to the agent. The application must designate at least one person to act for the donee in acquiring property.

(2) The agent shall establish an eligibility expiration date for nonprofit donees to correspond with the expiration of annual appropriations, licensing or certification.

(h) If a donee fails to submit documents to substantiate continued eligibility, the agent shall terminate distribution of property to the donee and seek recovery of usable property subject to use restrictions and requirements at the expense of the donee. If the agent is unable to retrieve the property, the agent shall utilize provisions of 580:45-1-45(g) to notify GSA of donee noncompliance.

(i) If the agent renders a negative eligibility determination, the donee applicant may appeal the decision.

(1) The applicant shall provide written notice to the agent requesting appeal of the determination. The agent, will, in turn, forward all related documentation to GSA. GSA's decision will be final.

(2) The agent shall provide written notice to the applicant citing reasons for denial.

(3) The applicant may request GSA review of the agent determination.

(4) If the applicant requests GSA review, the agent shall abide by the final GSA determination.

(j) The agent may grant conditional eligibility and provide property to a donee applicant pursuant to provisions of FMR 102-37.420 through FMR 102-37.430.

580:45-1-44. [RESERVED]

580:45-1-45. Compliance and utilization

(a) The agent shall employ methods to ensure that donees adhere to property use restrictions and requirements pursuant to provisions of FMR 102-37 and 580:45-1-37.

(b) For items with an OAC of less than \$5,000, at any time during property use restriction or requirement time periods, the agent may conduct a utilization review to determine whether a donee complies with property use restrictions and requirements for an item.

(1) The agent may issue notice or contact a donee and request the donee to provide information or conduct an

on-site inspection to determine whether the donee is complying with property use restrictions and requirements.

(2) The agent shall record the findings and advise the donee of the findings.

(3) If the agent determines that a donee does not meet property use restrictions or requirements, the agent shall advise the donee of actions the agent intends to take pursuant to subsection f of this section.

(c) For items with an OAC of or exceeding \$5,000 and passenger vehicles, the agent shall provide an in-use form to a donee at the time the donee acquires the item.

(1) The in-use form shall state property use restrictions and requirements.

(2) A donee shall provide data elements the form contains and submit the form to the agent. The donee shall advise the agent the date the donee placed the item in use, the location of the item and how the donee will use the item.

(3) Following receipt of an in-use form, the agent shall log information a donee provides.

(4) At least once during the time period of property use restrictions and requirements, the agent shall conduct a utilization review by contact with a donee or an on-site inspection and request the donee to provide information to determine whether the donee complies with the restrictions or special handling limitations imposed by GSA.

(5) The agent shall record and advise the donee of the findings.

(6) If the agent determines that a donee does not meet property use restrictions or requirements, the agent shall advise the donee of actions the agent intends to take pursuant to subsection f of this section.

(d) For aircraft and vessels the agent shall provide an in-use form to a donee at the time of property transfer or when the agent issues an invoice to the donee.

(1) The in-use form shall state aircraft and vessel use restrictions and requirements.

(2) A donee shall provide data elements the form contains and submit the form to the agent. The donee shall advise the agent the date the donee placed the aircraft or vessel in use, the location of the property and how it will be used.

(3) Following receipt of an in-use form, the agent shall log information the donee provides.

(4) On an annual basis, the agent shall solicit information from the donee or perform an on-site inspection to confirm that the donee uses the aircraft or vessel subject to use restrictions and requirements. Whether by request or on-site inspection, the agent shall acquire photographs of the aircraft or vessel.

(5) At least once during the time period of aircraft or vessel use restrictions and requirements, the agent shall conduct a utilization review by on-site inspection, photograph the aircraft or vessel and request the donee to provide information to determine whether the donee is complying with the restrictions and requirements.

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- (6) The agent shall record the findings and retain the findings and photographs in a donee specific compliance file.
- (7) If the agent determines that a donee does not meet aircraft or vessel use restrictions or requirements, the agent shall advise the donee of actions the agent intends to take pursuant to subsection f of this section.
- (e) If the agent does not receive an in-use form from the donee within 30 days after the property invoice date, the agent shall issue an in-use reminder form to the donee.
- (1) The in-use reminder form shall advise the donee of actions the agent may take if the donee fails to submit the form to the agent.
- (2) The in-use reminder form shall state property use restrictions and requirements.
- (3) The in-use reminder form shall contain data elements the donee shall submit to the agent. The donee shall advise the agent the date the donee placed the item in use, the location of the item and how the donee will use the item.
- (4) If a donee does not submit an in-use reminder form to the agent within 30 days of the form issue date, the agent shall advise the donee of actions the agent may take pursuant to subsection f of this section.
- (f) If the agent determines that a donee fails to pay service charges to the agency within 90 days of property acquisition, the agent shall advise the donee that failure of a donee to pay service charges within 180 days will cause the agent to perform actions of subsection f of this section.
- (g) If the agent determines that a donee fails to adhere to property use restrictions and requirements, including nonpayment of services charges after 180 days of property acquisition, the agent shall document actions the agent took to bring the donee into compliance and report donee noncompliance to GSA. The agent shall coordinate subsequent actions with GSA in accordance with provisions of FMR 102-37.480 through FMR 102-37.495, and provide GSA assistance as GSA directs.
- (1) The agent will promptly remit funds the agent may derive from enforcement of compliance efforts to GSA for deposit into the Treasury of the United States. The agent shall provide supporting documentation indicating the source of the funds and essential background information.
- (2) The agent shall retain funds derived from compliance actions involving violations of state-imposed use restrictions.
- (h) If the agent finds evidence that an agency employee engaged in unethical or illegal acts, the agent shall advise GSA and, if applicable, local law enforcement authorities with jurisdiction and coordinate subsequent actions with them.

580:45-1-46. [RESERVED]

580:45-1-47. Consultation with advisory groups-public and private

- (a) Pursuant to provisions of FMR 102-37, Appendix B, Section (k) and 80 O. S., Section 34.3, the agent shall consult

with donees and seek participation in public or private groups that include donees to determine relative needs and resources of donees, proposed utilization of property by donees and how distribution of property can be effected to fill existing needs of donees.

- (b) The agent shall offer speakers and presentations to represent the agency through participation in meetings of public or private groups that include donees or potential donees.

(1) The agent shall encourage participation in agency programs by donees and potential donees.

(2) The agent shall encourage donees to provide requests for types of property specific to an individual donee or group of donees for transmission to GSA.

(3) The agent shall provide information on factors the agent considers to determine donee eligibility.

(4) The agent shall provide information on property use restriction and requirements.

- (c) The agent shall encourage potential donees to tour the agency or meet with agency staff to provide specific or in-depth agency information.

(d) The agent shall maintain contact with donees through a periodic newsletter or other communication, whether distributed as printed or electronic media.

(e) The Director may appoint an advisory body consisting of legislators and persons representing public and nonprofit donee types to advise and support the management and operation of the agency. If the Director appoints an advisory body, the Director shall determine the number and makeup of members.

580:45-1-48. [RESERVED]

580:45-1-49. Audits

(a) The agent shall meet requirements for agency audits and donee audit submission requirements pursuant to FMR 102-37.345 through FMR 102-37.355.

(b) The State Auditor and Inspector or an auditor the Director or Auditor designates shall audit the agency for any year that the agency receives property of or exceeding \$300,000 or other Federal assistance during the year pursuant to requirements of OMB Circular No. A-133.

(c) The agency shall provide the GSA two copies of an audit report or sections of an audit report that pertain to the agency made pursuant to OMB Circular A-133.

(d) If the GSA or Comptroller General conducts an audit of the agency, the agent shall ensure cooperation with the GSA or Comptroller General.

(e) The agent may request the Director to authorize an internal or external audit of the agency at any time.

(f) The agent shall provide copies of agency management audit responses outlining corrective actions for noncompliant audit results with scheduled completion dates for related actions to the GSA.

(g) The agent shall advise donees that if a donee receives property with a value of or exceeding \$300,000 during a fiscal year, that the donee shall provide the agent with a copy of an audit of the donee conducted in accordance with OMB Circular No. A-133. The agent shall advise the donee that it is the

donee's responsibility to identify and determine the amount of property received by the donee and to arrange for audits.

580:45-1-50. [RESERVED]

580:45-1-51. Cooperative agreements

FMR 102-37.325 through FMR 102-37.340 and Title 40, United States Code - Public Buildings, Property and Works, Subtitle I, Chapter 5, Section 549 authorize cooperative agreements with federal agencies and provide for support to agency operations and facilitate transfer or disposal of property. The agent may enter into, renew or revise cooperative agreements.

580:45-1-52. [RESERVED]

580:45-1-53. Liquidation

(a) Whereas the Legislature authorizes state participation in federal assistance programs to provide federal surplus property to donees in the state, assigns the Director of Central Services to appoint the Surplus Property Agent and authorizes the agent to effect property transfer to donees, should the Legislature determine that the state should terminate participation, the Director and the agent shall effect public notice final distribution of property, liquidation of agency assets, distribution of liquidation proceeds, designation of a successor agency to perform continuing agency obligations and retention of agency records pursuant to a liquidation plan as required by FMR 102-37.365 and FMR 102-37.370.

(b) If the Legislature acts to terminate the agency, the Director and agent shall issue notice to GSA within 10 days of the date of final legislative and gubernatorial action advising effective dates of the action, reasons and, if applicable, terms the action specifies for agency termination.

(c) Within 20 days of the date of final legislative and gubernatorial action, the Director and agent shall submit a liquidation plan to GSA of proposed steps and a timetable to effect agency liquidation.

(1) The liquidation plan shall include methods of property distribution, transfer to federal agencies, transfer to other state agencies for surplus property and transfer to donees.

(2) The liquidation plan shall include methods and dates of public notice.

(3) The liquidation plan shall include legislative requirements or Director proposals for distribution of agency financial and physical assets.

(4) The liquidation plan must include methods and dates for disposal of federal property and agency physical assets through public auction.

(5) The Director and agent shall specify a successor agency to ensure continuing agency obligations on property donated prior to the closing of the agency are fulfilled as a part of its liquidation plan.

(6) The liquidation plan shall include methods of record retention and location of records storage for two years following liquidation.

(7) The liquidation plan shall include methods to finalize disbursement of agency funds for liquidation activities.

(8) The liquidation plan shall include a final agency termination date.

(d) Within 30 days of submission of the liquidation plan to GSA, the Director shall commence the liquidation plan.

(e) The Director may include GSA recommendations in the liquidation plan.

(f) The Director shall include GSA requirements in the liquidation plan.

(g) The Director shall issue notice to GSA upon completion of agency liquidation that includes summaries of property and asset distribution and disposal, and financial assets distribution and disbursement.

580:45-1-54. [RESERVED]

580:45-1-55. Forms

(a) The agent shall utilize forms to enable property receipt and distribution, donee eligibility and other components of agency operations. The agent shall comply with Department requirements for form review and approval.

(b) For forms that require GSA approval, following Department approval, the agent shall submit forms to GSA for review and possible approval.

(1) If GSA approves the form, the agent shall record the beginning date of form use.

(2) If GSA disapproves the form, the agent shall incorporate form amendments GSA requires. Following incorporation of GSA amendments and, if applicable, further Department or GSA review and approval, the agent shall record the beginning date of form use.

580:45-1-56. [RESERVED]

580:45-1-57. Records

(a) The agent shall retain agency property acquisition records to comply with state and federal records retention requirements. The agent shall retain agency records for a minimum of three years following completion of the period of use restrictions and requirements.

(b) The agent shall retain records pertaining to items with use restrictions and requirements as shown in the table, below.

(1) Combat configured aircraft - Perpetual Period of Restriction (POR) - Perpetual Records Retention after POR;

(2) Firearms - Perpetual Period of Restriction (POR) - Perpetual Records Retention after POR;

(3) Non-combat aircraft - 5 Year Period of Restriction (POR) - 3 Year Records Retention after POR;

(4) Vessels - 5 Year Period of Restriction (POR) - 3 Year Records Retention after POR;

(5) Motor vehicles and items with OAC of or exceeding \$5,000 - 18 months Period of Restriction (POR) - 3 Year Records Retention after POR;

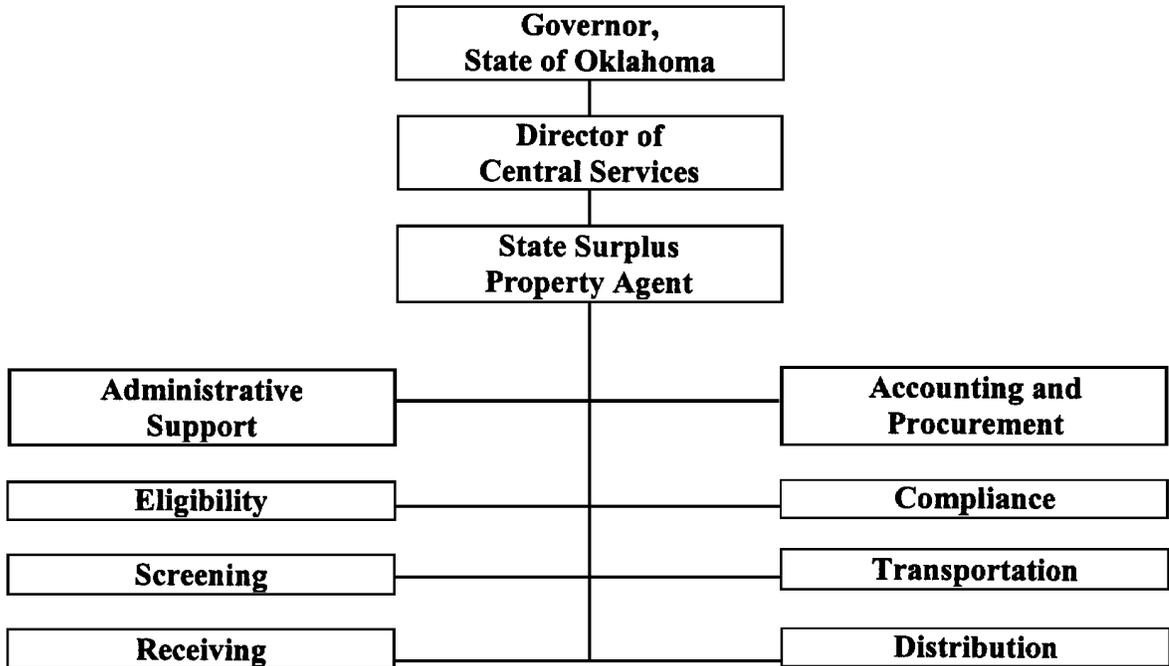
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(6) Items with OAC less than \$5,000 - 1 Year Period of Restriction (POR) - 3 Year Records Retention after POR.

(c) The agent shall retain records pertaining to noncompliance cases for a minimum of three years following the conclusion of the noncompliance case.

**APPENDIX A. ORGANIZATIONAL CHART FOR THE STATE AGENCY FOR SURPLUS PROPERTY
[REVOKED]**

**APPENDIX A. ORGANIZATIONAL CHART FOR THE STATE AGENCY FOR SURPLUS PROPERTY
[NEW]**



[OAR Docket #04-1164; filed 6-25-04]

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 25. OKLAHOMA AERONAUTICS COMMISSION CHAPTER 15. OAC GRANT PROGRAM

[OAR Docket #04-1161]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

25:15-1-1. through 25:15-1-4. [AMENDED]

AUTHORITY:

Oklahoma Aeronautics Commission powers and duties, 3 O.S., § 81 through 93.

DATES:

Comment period:

February 16, 2004 through March 17, 2004

Public hearing:

No public hearing was scheduled due to a lack of demand for one.

Adoption:

March 18, 2004

Submitted to Governor:

March 23, 2004

Submitted to House:

March 23, 2004

Submitted to Senate:

March 23, 2004

Gubernatorial approval:

May 5, 2004

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 14, 2004

Final adoption:

May 14, 2004

Effective:

July 25, 2004

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

The rules describe the policies to participate in the OAC grant program administered by the Oklahoma Aeronautics Commission.

CONTACT PERSON:

Erin Wright, Aviation and Government Affairs Liaison, Oklahoma Aeronautics Commission, 3700 N. Classen Blvd., Ste. 240, Oklahoma City, OK 73118, (405) 604-6900.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDRED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JULY 25, 2004:

25:15-1-1. Purpose

The purpose of this chapter is to set forth the requirements for participation in the various grant programs administered by the Oklahoma Aeronautics Commission, and to establish the procedures to be followed by the ~~Aeronautics Division of the Oklahoma Department of Transportation~~ Commission in the administration and enforcement of its duties under Title 3, Oklahoma Statutes, Section 81-93 and Title 68, Oklahoma Statutes, Section 6003.1.

25:15-1-2. Definitions

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

"Aeronautics ~~Division~~ Commission" means the organizational unit of the ~~Oklahoma Department of Transportation~~ responsible for administering aviation grant programs for the State of Oklahoma and the Federal Aviation Administration.

"Aeronautics Capital Improvement Program" means a list of ~~aviation-related airport capital projects annually approved for implementation within five years~~ approved by the Commission for implementation within a three-year planning horizon showing a description of the project, the cost of each phase of the project, when the project is expected to occur, and the sources of funding.

(A) **"~~Five Year Program~~"** means a list all airport projects scheduled for implementation within the five year horizon of the program and shows the costs of each phase of the improvement, indicates when the improvement is to occur, and shows the sources of funding.

(B) **"Biennial Element"** means a list of those projects in the ~~five year program~~ Capital Improvement Program scheduled for ~~construction~~ implementation in the most immediate two-year period.

"Airport Development Worksheet" means a ~~written description of each listing of the capital projects needed at an airport participating in the state grant program. The description includes the physical and operating characteristics of the airport, past improvements, current deficiencies and needed improvements over a ten-year planning horizon together with the estimated cost, construction type, objective code, and airport component for each project. Projects identified for a particular airport must be consistent with the service level, functional classification, design standard, and airport reference code identified for the airport in the Oklahoma Airport System Plan. An airport development worksheet is developed and maintained~~

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for each system plan airport cooperatively by the airport sponsor and the Aeronautics Commission staff.

"**Airport sponsor**" means the owner of an airport. To be eligible for the state grant program, the airport sponsor must be a public organization and the airport must be included in the Oklahoma Airport System Plan.

"**Aviation Oklahoma Airport System Plan**" means the plan, adopted by the Commission, which identifies State aviation needs, sets priorities, forecasts revenues, and establishes standards the airports included in the State's airport system and identifies the service level, functional classification, design standard, and airport reference code for each system airport.

"**Chief Elected Administrative Official**" means the publicly elected person charged with administrative responsibility for the financial operation of the airport sponsor or an official of the airport sponsor who is authorized to legally bind the airport.

"**Emergency**" means a condition that could not have been foreseen and which affects the safety of the airport sufficiently that the airport or runway may need to be closed if the situation is not remedied.

"**FAA**" means the Federal Aviation Administration, a unit of the U.S. Department of Transportation.

"**Letter of Interest**" means a letter expressing the desire of an airport sponsor to have one or more projects included in the Aeronautics Capital Improvement Program.

"**Letter of Intent**" means a letter expressing the desire of an airport sponsor to have one or more projects included in the Biennial Program.

"**Long range**" means a period of fifteen to twenty years.

"**Notification Letter**" means correspondence prepared by the Aeronautics Division Commission staff informing an airport sponsor that one or more of their projects has have advanced to the biennial element Biennial Program of the Aeronautics Capital Improvement Program. The letter sets forth the terms the Aeronautics Division Commission imposes on projects airport sponsors participating in the state grant program, and describes the project, authorizes the airport sponsor to begin engineering or work for the project and directs the sponsor to prepare a grant application.

"**Oklahoma Aeronautics Commission**" means a unit established under Title 3 of Oklahoma Statutes and is referred to as the "Commission".

"**State Grant Program**" means those monies annually appropriated by the Oklahoma Legislature for assistance to publicly owned airports in the State of Oklahoma (Title 3, O.S.).

25:15-1-3. Planning

(a) **Planning and Programming Process.**

(1) The Oklahoma Aeronautics Commission shall assist publicly owned, publicly used airports in identifying aviation needs, deficiencies, and participating in FAA and State Aviation Grant Programs. Airport sponsors eligible to participate in the State Grant program are all publicly owned, public use airports in The State of Oklahoma, in consultation with airport sponsors, prepare and maintain

the Oklahoma Airport System Plan. The Commission shall adopt and approve changes to the plan.

(2) The Aeronautics Division Commission shall prepare written guidelines for distribution to airport sponsors defining the requirements and process to participate in the Aeronautics Capital Improvement Program assist publicly owned, publicly used airports in identifying airport needs and deficiencies. Airport sponsors eligible to participate in grant programs are sponsors of publicly owned, public use airports included in the Oklahoma Airport System Plan. The Aeronautics Commission staff shall, in consultation with each airport sponsor, prepare and maintain an airport development worksheet for each airport included in the Oklahoma Airport System Plan. The airport development worksheet shall be reviewed and updated at least once every three years. The airport development worksheet shall identify the capital projects needed at the airport over a 10-year planning horizon, together with the estimated cost, construction type, objective code, and airport component for each project. The identified projects shall be consistent with the service level, functional classification, design standard, and airport reference code identified for the airport in the Oklahoma Airport System Plan.

(3) The Aeronautics Division Commission in consultation with airport sponsors, shall prepare Airport Development Worksheets for each airport participating in the State Grant Program. The Airport Development Worksheet will be reviewed and updated at least once every three years. The Worksheet shall identify needed improvements at each airport and will: staff shall, in consultation with airport sponsors, prepare and update annually the Capital Improvement Program. The Aeronautics Commission shall approve the Capital Improvement Program.

- (A) Assess the condition of the airport;
- (B) Indicate past and current levels of activity;
- (C) Identify deficiencies;
- (D) Specify recent and needed improvements; and
- (E) Provide cost estimates for identified improvements.

(4) The Aeronautics Division, in consultation with airport sponsors, shall prepare and maintain the long range Aviation System Plan for approval by the Commission.

(5) The Aeronautics Division, in consultation with airport sponsors, shall prepare and maintain a financially constrained Aeronautics Improvement Program which shall consist of five year and biennial programs for approval by the Commission.

(b) **Aeronautics Capital Improvement Program: Five Year Program Content.**

(1) **Content.** The Capital Improvement Program shall contain a list of proposed State and FAA funded projects that can be implemented with forecast revenues within the three-year planning horizon.

- (A) The Five Year Program will contain a list of proposed State and/or FAA funded improvements that can be constructed with forecasted revenues within the defined five year period.

- (B) ~~Projects included in the Five Year Program shall advance the goals of the State Aviation System Plan.~~
 - (C) ~~The Five Year Program will show all sources of proposed funding for projects.~~
 - (D) ~~The Five Year Program will indicate the proposed implementation schedule for included projects.~~
 - (2) ~~The Five Year Program may include a list of proposed improvements for which revenue sources have not been identified. Projects included for an airport in the Capital Improvement Program shall be consistent with service level, functional classification, design standard, and airport reference code identified for the airport in the Oklahoma Airport System Plan.~~
 - (3) ~~The Capital Improvement Program shall show the proposed sources of funding for each project.~~
 - (4) ~~The Capital Improvement Program shall show the proposed implementation schedule for each project.~~
 - (5) ~~The Capital Improvement Program shall include other priorities, policies, and procedures as adopted by the Aeronautics Commission.~~
 - (c) **Preparation. Capital Improvement Program Development.**
 - (1) ~~On a two year cycle, the Aeronautics Division will invite airport sponsors to submit Letters of Interest identifying projects to be included in the Aeronautics Improvement Program. The invitation to participate shall identify Aeronautics Division improvement priorities, which are: The Capital Improvement Program lists projects for which expenditures are expected to begin within the three-year planning horizon.~~
 - (A) ~~Safety~~
 - (B) ~~Preservation~~
 - (C) ~~Standards~~
 - (D) ~~Upgrades~~
 - (E) ~~Capacity~~
 - (2) ~~Projects shall be initiated by the airport sponsors by:~~
 - (A) ~~Listing the project on the Airport Development Worksheet, and~~
 - (B) ~~Sending a Letter of Interest to the Aeronautics Division, signed by the Sponsor's Chief Administrative Officer. On a two-year cycle, the Aeronautics Commission staff shall invite each airport sponsor to submit a Letter of Interest identifying projects requested to be included in the Capital Improvement Program. The Letter of Interest shall include, for each requested project, the project description, project justification, project cost, project time frame, and a statement that the local matching funds for the project will be available. The sponsor's administrative official must sign the Letter of Interest.~~
 - (3) ~~The Letter of Interest requesting a project be included in the Aeronautics Improvement Program shall: The Aeronautics Commission staff shall evaluate each Letter of Interest and recommend projects for inclusion in the Capital Improvement Program based on:~~
 - (A) ~~Specify the improvements to be made; Airport system development priorities, policies, and procedures adopted by the Commission and/or the FAA.~~
 - (B) ~~Estimate the project cost; and The project descriptions, justifications, and cost estimates provided by the sponsor in the Letter of Interest.~~
 - (C) ~~Indicate the time frame for the project. The amount of aviation activity, the types of airplanes served, the numbers of based airplanes at the airport, and the population included in the airport's service area.~~
 - (D) ~~Other factors as may be relevant (for example, the services provided at the airport, the sponsor's demonstrated ability to maintain and operate the airport, the sponsor's ability to address safety inspection deficiencies, the airport's pavement condition index, pavement life-cycle consideration as developed by the pavement management program, etc.)~~
 - (4) ~~The Aeronautics Division will recommend projects to the Commission for inclusion in the Five Year Program based on:~~
 - (A) ~~The priorities listed in 25:15-1-3(e)(1);~~
 - (B) ~~The amount of local matching funds;~~
 - (C) ~~Activity at the airport; and~~
 - (D) ~~her factors as may be relevant.~~
 - (5) ~~The Aeronautics Commission, at its discretion, may amend the Aeronautics Improvement Program as circumstances warrant.~~
- (d) ~~**Aeronautics Capital Improvement Program: - Biennial Program.**~~
 - (1) ~~Content. The Biennial Program lists projects The Biennial Program lists projects listed in the Capital Improvement Program for which expenditures are expected to begin within the next two years.~~
 - (2) ~~Preparation. Development.~~
 - (A) ~~The Aeronautics Division Commission will annually identify projects in the Five Year Program to recommend to the Commission for inclusion in the Biennial Program. The Commission determines which projects to advance to the Biennial Program based on: staff shall request from each airport sponsor a Letter of Intent for projects being recommended for inclusion in the Biennial Program. The request for the Letter of Intent shall provide the proposed project description based on the available funding.~~
 - (i) ~~The length of time a project has been in the Five Year Program;~~
 - (ii) ~~Airport sponsor commitment;~~
 - (iii) ~~The priorities in 25:15-1-3(e)(1); and~~
 - (iv) ~~Other factors as the Commission may determine to be relevant.~~
 - (B) ~~The airport sponsor commitment shall be expressed through a Letter of Intent, requested by the Aeronautics Division Commission from the airport sponsor. The Letter must be signed by the Sponsor's Chief Administrative Officer and shall: The airport sponsor's Letter of Intent shall include the project description, project justification, an updated project~~

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cost estimate, and a statement that the local matching funds are available. The sponsor's administrative official must sign the Letter of Intent.

- (i) Describe the project; and
- (ii) Provide a current estimate of the project's cost.

~~(C) The Aeronautics Commission, at its discretion, may amend the Biennial Program as circumstances warrant. The Biennial Program shall be developed based on the Letters of Intent. A project will not be included in the Biennial Program that is not supported by a Letter of Intent.~~

(D) The Aeronautics Commission shall approve the Biennial Program annually. The Aeronautics Commission may, at its discretion, amend the Biennial Program in response to changed conditions.

(E) An emergency project request, with verifiable justification, may be submitted to the Aeronautics Commission for inclusion in the Biennial Program any time.

25:15-1-4. Programming Implementation

(a) Notification to proceed with ~~plans and specifications.~~

~~(1) The Aeronautics Division Commission will send a notification letter to airport sponsors whose projects appear in the biennial element upon adoption of the biennial element by the Aeronautics Commission. This letter shall: staff shall send a notification letter to each airport sponsor that has a project included in the Biennial Program.~~

~~(A) Advise the sponsor that their project has advanced to the implementation phase;~~

~~(B) Authorize the airport sponsor to initiate engineering on the project including:~~

- ~~(i) Engaging a Consultant.~~
- ~~(ii) Developing plans and specifications.~~
- ~~(iii) Updating the cost estimate.~~

~~(C) Set forth the expectations and policies of the Aeronautics Division with respect to:~~

- ~~(i) Cost sharing.~~
- ~~(ii) Responsibilities for operations and maintenance,~~
- ~~(iii) Construction inspections,~~
- ~~(iv) Auditing of expenditures,~~
- ~~(v) Reimbursable expenses,~~
- ~~(vi) Other policies and regulations as may apply.~~

~~(2) Upon receipt of the notification letter, the airport sponsor may: The notification letter shall:~~

~~(A) Commence work on the engineering phases of the project; Advise the sponsor that their project has advanced to the implementation phase, the proposed cost sharing for the project, and identify project development items eligible for funding.~~

~~(B) Request in writing a delay in initiating the project along with the reasons for the delay; Authorize or direct the airport sponsor to:~~

~~(i) confirm in writing within 30 days the sponsor's intention to proceed with the project as programmed;~~

~~(ii) select an engineering consultant;~~

~~(iii) prepare project plans and specifications and to coordinate the project design with the Aeronautics Commission staff;~~

~~(iv) update project costs based on the final design;~~

~~(v) proceed to bid when directed by the Aeronautics Commission staff; and~~

~~(vi) prepare the grant application.~~

~~(C) Indicate that the sponsor no longer wishes to proceed with the project; or~~

~~(D) Request changes in the conditions applied to the project by the Aeronautics Division.~~

(b) Grant application.

~~(1) Upon completion of the engineering phases of the project, the airport sponsor shall prepare a grant application for submission the Aeronautics Division. The grant application shall: The airport sponsor shall complete the grant application form(s) for reimbursement of the cost of engineering; or~~

~~(A) Be based on plans and specifications prepared by a qualified engineer;~~

~~(B) Indicate the cost sharing and source of funds for the project;~~

~~(C) Provide a schedule for construction; and~~

~~(D) Address other issues requested by the Aeronautics Division in the notification letter.~~

~~(2) The grant application shall be formally endorsed by the airport sponsor's governing body and indicate the sponsor's commitment to the project. Upon completion of the bid process, the airport sponsor shall complete the grant application form(s) for the planning project or the construction project.~~

~~(3) All grant applications will be processed through the Aeronautics Division. The sponsor's administrative official must sign the grant application form(s).~~

~~(4) The Commission shall consider all grant applications.~~

~~(5) Reimbursement for the cost of engineering is contingent upon submission of the final set of plans and specifications to the Commission staff.~~

~~(6) The grant application forms shall indicate the following:~~

~~(A) the period of the grant agreement;~~

~~(B) the cost sharing and source of funds for the project;~~

~~(C) the amount of State funds to be deposited in a designate account;~~

~~(D) the amount of State funds to deposited into an Commission controlled escrow account;~~

~~(E) verification of Sponsor's funding share;~~

~~(F) force Account requirements;~~

~~(G) pavement maintenance requirements;~~

~~(H) land ownership requirements;~~

~~(I) acknowledgement of the use of State funds;~~

- (J) sponsor compliance with the "Public Competitive Bidding Act of 1984 (Oklahoma Statutes of 1991, title 61, Section 101 et seq.);
 - (K) the Sponsor's responsibility for funding short-falls or excesses;
 - (L) identify remedies for Sponsor non-compliance;
 - (M) project audit requirements;
 - (N) acknowledgement that the State Auditor may conduct audit or investigation of entity receiving State funds;
 - (O) sponsor's legal authority and power to operate the facility;
 - (P) sponsor responsibilities for operations and maintenance of the facility;
 - (Q) sponsor's requirement to make the facility available to all types, kinds, and classes of aeronautical use;
 - (R) no exclusive rights;
 - (S) construction time limits;
 - (T) acknowledgement of work started or completed;
 - (U) project engineering requirements and costs;
 - (V) project inspection requirements and costs;
 - (W) material testing cost and delivery of results;
 - (X) project final inspection, acceptance, and financial close-out requirements;
 - (Y) compliance of Title 3, Section 103 (Height Hazard Zoning);
 - (Z) project schedule;
 - (AA) sponsor compliance with the Municipal Airports Act of 1948 and certification of an Airport Fund.
- (c) **Endorsement by the Aeronautics Commission.**
- (A1) ~~Compliance with the notification letter.~~ Upon receipt of the fully executed and complete grant application, the Aeronautics ~~Division~~ Commission staff will shall verify compliance with the terms of the notification letter.
 - (B2) If the grant application is found to be in compliance with the terms of the notification letter, the Aeronautics ~~Division~~ Commission staff will shall forward the grant application to the Aeronautics Commission for ~~review with a "do approve" recommendation action.~~
 - (C3) If the Commission approves the grant application, the Aeronautics ~~Division~~ Commission staff will shall communicate that approval to the airport sponsor with authorization to proceed ~~with construction.~~
 - (2) ~~Non-compliance with the notification letter.~~
 - (A4) If the Aeronautics ~~Division~~ Commission staff finds that the grant application is not in compliance with the terms of the notification letter, the Aeronautics ~~Division~~ Commission staff will shall notify the airport sponsor of the non-compliance and suggest possible remedies.
 - (B5) Upon receipt of the Aeronautics ~~Division's~~ Commission staff's finding of non-compliance, the airport sponsor may:
 - (A) Modify the grant application to bring it into compliance with the terms of the notification letter; or

- (B) State the reason that the airport sponsor believes it is in compliance and request that the grant application be forwarded to the Aeronautics Commission for action; or
- (C) Agree that it is not in compliance and request that the grant application be forwarded to the Aeronautics Commission as is.
- (6) The Aeronautics ~~Division~~ Commission staff will shall forward non-compliant grant applications to the Aeronautics Commission ~~with a "do not approve" recommendation for action.~~
- (7) The Aeronautics Commission staff shall notify the airport sponsor of the Aeronautics Commission action.
- (d) ~~The Aeronautics Division will communicate in writing the Aeronautics Commission's actions to all airport sponsors.~~
- (e) ~~Upon approval of the grant application by the Aeronautics Commission, the Aeronautics Division will administer all actions necessary to complete the authorized project.~~

[OAR Docket #04-1161; filed 6-23-04]

**TITLE 25. OKLAHOMA AERONAUTICS
COMMISSION
CHAPTER 20. AIRCRAFT EXCISE TAX
CREDIT PROGRAM**

[OAR Docket #04-1162]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

25:20-1-1. through 25:20-1-5. [NEW]

AUTHORITY:

Oklahoma Aeronautics Commission powers and duties, 3 O.S., § 81 through 93.

DATES:

Comment period:

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Public hearing:

No public hearing was scheduled due to a lack of demand for one.

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Failure of the Legislature to disapprove the rules resulted in approval on May 14, 2004

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May 14, 2004

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July 25, 2004

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

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ANALYSIS:

The rules describe the procedures and requirements to participate in the aircraft excise tax credit program administered by the Oklahoma Aeronautics Commission.

CONTACT PERSON:

Erin Wright, Aviation and Government Affairs Liaison, Oklahoma Aeronautics Commission, 3700 N. Classen Blvd., Ste. 240, Oklahoma City, OK 73118, (405) 604-6900.

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 25, 2004:

25:20-1-1. Purpose

(a) The purpose of this chapter is to set forth the requirements for participation in the aircraft excise tax credit program administered by the Oklahoma Aeronautics Commission, and to establish the procedures to be followed by the Aeronautics Commission.

(b) Title 68, Revenue and Taxation found in Section 6003.1 of the Oklahoma Statutes, allows a credit against the excise tax levied with respect to the sale of aircraft with a selling price in excess of \$2,500,000.

(c) To be eligible to be claimed as a credit, the person/business owing the tax must:

- (1) Spend funds for the benefit of public airports in Oklahoma.
- (2) Be certified as such by the Aeronautics Commission.

25:20-1-2. Definitions

"Aeronautics Commission" means the organizational unit responsible for administering the aviation grant program for the State of Oklahoma and the Federal Aviation Administration.

"Aircraft" means and includes every self-propelled plane, airplane, helicopter, or balloon or sailplane manufactured by mass production or individually constructed or assemble, use, or designated for navigation or flight in the air or airspace, and subject to registration with the Federal Aviation Administration;

"Airport" means any area of land or water which is used, or intended for use, for the landing and take off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings and facilities located thereon.

"Beneficiary Airport" the airport that directly benefits from the expenditure of excise tax credit funds.

"Director" means the director of the Oklahoma Aeronautics Commission.

"Expenditures" means eligible project items that have been identified and approved by the Commission.

"Letter of intent" means a letter from the sponsor's chief administrative officer describing the project and providing an estimate of the project's cost.

"Purchase price" means the total amount paid for the aircraft whether paid in money or otherwise. "Purchase price" is

further defined as the fair market value when no current purchase is involved.

"Use" means and includes the operation or basing of an aircraft on or from any airport in this state for a period of thirty (30) days or more.

25:20-1-3. Project Identification

(a) The person/business who intends to purchase an eligible aircraft shall contact the Director and indicate their interest in participating in the program.

(b) The purchaser shall meet with the Director and/or Aeronautics Commission staff and outline the proposed project. The proposed project, in as much as possible, shall be consistent with the Aeronautics Commission's Aeronautical Improvement Program and/or the Airport Development Worksheet of the beneficiary airport. The proposed project shall benefit all the users of the airport and not just for the exclusive use and benefit of the purchaser or any entity or individual.

(c) The Director and Aeronautics Commission staff shall inform the purchaser as to the eligibility of the proposed project.

(d) The purchaser, Aeronautics Commission staff, and staff of the beneficiary airport shall determine the specific project.

(e) By way of Letter of Intent, the purchaser shall provide to the Aeronautics Commission and beneficiary airport a detailed plan, estimated costs, and time frame for completion of the project.

25:20-1-4. Project Certification

(a) The Aeronautics Commission staff shall present the request of the purchaser for an excise tax credit to the Aeronautics Commission for its determination as to whether the expenditures and project should be certified as benefiting the beneficiary airport.

(b) The Director shall advise the purchaser in writing of the Aeronautics Commission's determination concerning the purchaser's request for an excise tax credit.

(c) Within twenty (20) days after legal ownership or possession of the aircraft the purchaser shall expend funds equal to the excise tax owed on a Aeronautics Commission certified project, deposit an equal amount in an escrow account governed by an escrow agreement provided by the Aeronautics Commission, or pay the excise tax due to the Oklahoma Tax Commission.

(d) If the purchaser expends the funds on the certified project or deposits them in an approved escrow account, the Director shall advise the Oklahoma Tax Commission of the following:

- (1) The Aeronautics Commission's prior certification of the expenditures and project;
- (2) The purchaser/taxpayer's name and federal identification number;
- (3) The aircraft selling price;
- (4) The amount of the expenditure or the amount deposited in an approved escrow account (both amounts must be equal to the excise tax which would be owed on the aircraft).
- (5) Provide a copy of the Federal Aviation Administration registration.

25:20-1-5. Project Implementation

- (a) The purchaser shall commence the project in accordance with the Letter of Intent.
- (b) The purchaser is responsible to assure that the project is in compliance with the design and construction standards of the Federal Aviation Administration and/or the Oklahoma Department of Transportation.
- (c) Representatives of the Aeronautics Commission and beneficiary airport shall make periodic project inspections.
- (d) Final acceptance of the project shall be by the purchaser, the Aeronautics Commission staff, and the beneficiary airport staff.

[OAR Docket #04-1162; filed 6-23-04]

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE
CHAPTER 65. OKLAHOMA QUALITY JOBS PROGRAM

[OAR Docket #04-1160]

RULEMAKING ACTION:

PERMANENT Final Adoption

RULES:

- Subchapter 1. Quality Jobs Program
- 150:65-1-2. [AMENDED]
- 150:65-1-12. [AMENDED]

AUTHORITY:

Oklahoma Department of Commerce; 68 O.S. §§ 3601 et seq., and 74 O.S. §§ 5001 et seq.

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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

- Subchapter 1. Quality Jobs Program
- 150:65-1-2. Definitions [AMENDED]
- 150:65-1-12. Subunit [AMENDED]

Gubernatorial approval:

August 7, 2003

Register publication:

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04-156

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

The amendments provide clarification to applicants to the Quality Jobs Program.

CONTACT PERSON:

Donald R. Hackler, Jr. (405) 815-5359

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 25, 2004:

SUBCHAPTER 1. QUALITY JOBS PROGRAM

150:65-1-2. Definitions

For purposes of this chapter, the following words and terms shall have the following meaning unless the context clearly indicates otherwise.

"Baseline employment" means an establishment's total number of jobs which existed in this state prior to approval of the establishment's application by the Oklahoma Department of Commerce. A job shall be deemed to exist in this state prior to approval of an establishment's application if the activities and functions for which the particular job exists have been ongoing at anytime within six months prior to approval of the establishment. Upon approval of an application or upon the start date of a project if it is more than sixty days later than the approval date, the Department shall determine an establishment's baseline employment to be its current employment or its average employment over the last four quarters, ~~whichever is greater.~~

"Combination" means an establishment, provided it meets the requirements of 68 O.S. Supp. 1994, Section 3601 et seq. and the requirements set out in 150:65-1-13 of this chapter.

"Cost-benefit analysis" means the analysis the Oklahoma Department of Commerce is required to perform to determine the estimated direct state benefits and estimated direct state costs.

"Date of determination" means the date assigned by the Department on the Incentive Offer on which a subunit and the entity of which the subunit is a part, must demonstrate a net increase in total employment in accordance with 150:65-1-12 (b) and (c) of this chapter.

"Employment of the remainder of the entity of which the subunit is a part" means total number of jobs of an entity of which the subunit is a part which existed in this state prior to approval of the subunit as an establishment by the Oklahoma Department of Commerce. Such jobs shall be deemed to exist in this state prior to approval of a subunit as an establishment if the activities and functions for which the particular job exists have been ongoing at any time within six months prior to approval of the subunit as an establishment. Upon approval of an application or upon the start date of a project of a subunit as an establishment, if it is more than sixty days later than the approval date, the Department shall determine the employment of the remainder of the entity of which the subunit is a part to

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be its current employment or its average employment over the last four quarters, whichever is greater.

"Entity of which the subunit is a part" means the business or governmental entity of which a subunit is a separate part as described in 68 O.S. Supp. 1994, Section 3603(8)(a) and 150:65-1-12 of this chapter.

"Estimated direct state benefits" means the tax revenues projected...to accrue to the state as a result of new direct jobs. [68:3603(A)(4)] Such revenues shall include:

(A) State income tax receipts from employees holding new direct jobs. The Oklahoma Department of Commerce will determine the estimated direct state benefit from personal income tax receipts by reviewing:

- (i) historical data on similar or existing projects;
- (ii) information provided by the establishment;
- (iii) data from federal agencies such as United States Bureau of the Census and the United States Department of Labor;
- (iv) the most recent historical data from the Oklahoma Tax Commission on average personal tax rates by income class; and,
- (v) private sector financial reports; and

(B) State sales and use tax receipts, excise tax receipts, gasoline tax receipts and other anticipated tax receipts resulting from purchases by employees holding new direct jobs. The Department will determine the estimated direct state benefit from such taxes by reviewing:

- (i) information supplied by the establishment;
- (ii) data from federal agencies such as the United States Department of Labor;
- (iii) Oklahoma Tax Commission sales and use tax reports; and,
- (iv) private sector financial reports.

"Estimated direct state costs" means the costs projected to accrue to the state as a result of new direct jobs employing new state residents and/or new state service beneficiaries. Such costs shall include:

(A) The costs of educating new state resident children. The Oklahoma Department of Commerce will determine the estimated direct state costs of such educations by using:

- (i) information supplied by the establishment;
- (ii) the most recent average student allocation per pupil formula provided by the Oklahoma Department of Education; and,
- (iii) United States Department of Labor statistics;

(B) The costs of government services such as public health, public safety and transportation provided to new residents and/or state service beneficiaries. The Department will determine the estimated direct state costs for such government costs by examining the state's per capita cost of providing non-common education services and estimating the amount of the state's excess capacity; and

(C) The costs of any industrial access road paid for with state funds and provided by the Oklahoma Department of Transportation; provided, the road is clearly from the facility to the thoroughfare and is clearly and primarily utilized by the establishment.

"Estimated net direct state benefits" means the estimated direct state benefits less the estimated direct state costs. [68:3603(A)(5)]

"Full-time equivalent employment" means employment which has a minimum six-month duration during any twelve-month time period, regardless whether the same employee holds the employment for said time.

"Line of business" means the SIC code that is reflected by the end product or services of a given project resulting in new direct jobs.

"Net benefit rate" means the estimated net direct state benefits computed as a percentage of gross payroll... [T]he net benefit rate may be variable and shall not exceed five percent (5%). [68:3603(A)(6)]

"New direct jobs" means full-time equivalent employment by a qualified establishment but does not include jobs which constitute an establishment's baseline employment as determined by the Oklahoma Department of Commerce pursuant to the definitions of this section. An establishment must maintain a total number of jobs equal to its baseline employment number before any job of the establishment shall be considered a new direct job.

"Quality jobs representative" means an Oklahoma Department of Commerce professional or economic development professional, trained in the Oklahoma Quality Jobs Program, who is so designated by the Executive Director, and whose responsibilities in the program include direct contact with applicants and clients, analysis of data, initiation of project proposals, preparation of project profiles and preparation of incentive offers.

"Subunit" means an establishment, provided it meets all requirements of 68 O.S. Supp. 1994, Section 3601 et seq. and the requirements set out in 150:65-1-12 of this chapter.

150:65-1-12. Subunit

(a) In order to determine the presence or to project the likelihood in a timely manner, of all the conditions that the Oklahoma Department of Commerce must require a subunit to meet in order to be determined to be an establishment under the terms of the Quality Jobs Program Act as set forth in 68 O.S. Supp. 1994, Section 3603(8)(a), the Department may consider the following:

- (1) All information and conditions to determine if an entity is qualified to be an establishment pursuant to 68 O.S. Supp. 1994, Sections 3601 et seq. and 150:65-1-3 through 150:65-1-9 of this chapter;
- (2) Unique or new product line within the state;
- (3) New business ventures;
- (4) Technologies involved and state of the art;
- (5) Distribution channels;
- (6) Licenses held;
- (7) Financing and tax structure;
- (8) Local control of operations decisions;

- (9) Autonomous administrative control over capital, expenditures and hiring;
- (10) Other data of management practices or of a background or financial nature requested by the Department.
- (b) *The Department shall establish criteria for determining the period of time within which [job] gain must be demonstrated.* [68:3603(8)(b)].
 - (1) The Department shall assign the date of determination on which an individual subunit and the entity of which it is a part must demonstrate net gain in total employment.
 - (2) In order for the subunit to continue to receive incentive payments beyond the date of determination, net gain in total employment must be realized at the date of determination. If no net gain exists, the subunit is disqualified as an establishment and incentive payments cease and shall not be resumed.
 - (3) If net gain exists at the date of determination, incentive payments shall be paid upon claim presentment as long as conditions for payments are met ~~and as long as a net gain in total employment is documented at the time of claim. If net gain is not documented, incentive payments shall not be made and shall not be resumed until such time as the documentation submitted with a claim reflects a net gain in total employment.~~ In no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits.
 - (4) The Department shall set out the date of determination on the approval transmitted to the Oklahoma Tax Commission.
 - (5) Additionally, the Department shall identify the entity of which the subunit is a part by name and nature of establishment, whatever legal form and include any necessary description of the structure of the entity of which the subunit is a part.
 - (6) In determining the date of determination to be assigned to an individual subunit, the Department ~~shall~~ may require a plan to be submitted by the subunit and by the remainder of the entity of which the subunit is a part which includes information consisting of:
 - (A) employment forecasts for the ten years it is anticipated the subunit will receive incentive payments, for both the subunit and the remainder of the entity of which it is a part;
 - (B) baseline of subunit;
 - (C) employment of the remainder of the entity of which the subunit is a part;
 - (D) business decisions of the entity of which the subunit is a part such as merger, downsizing, relocation of working units, etc., and explanations or analyses of trends or strategies of the entity reflected by the decisions;
 - (E) effect on Oklahoma operations of such trends and strategies and discussion of less than positive net gain in employment, if applicable;
 - (F) recommendation of a date of determination;
 - (G) and, such other similar information as the Department determines is necessary to set a date of determination.

- (7) Provided, the date of determination shall not extend beyond five years from the date of approval or date of project start-up, whichever is later;
- (8) The plan submitted and all information considered by the Department in determining whether a subunit is an establishment shall be the criteria to set the date of determination.
- (c) *The Department of Commerce shall promulgate rules to determine whether a subunit of an entity [and the remainder of the entity of which it is a part] achieve a net gain in total employment...and a method for determining net gain in total employment.* [68:3303(8)(b)]. The method to determine whether or not a subunit, and the remainder of the entity of which the subunit is a part, achieve net gain in total employment follows:
 - (1) Add the baseline of the subunit and the employment of the remainder of the entity of which the subunit is a part.
 - (2) Add the employment numbers as reflected by the quarterly or monthly report to the Oklahoma Tax Commission for the period immediately preceding the date of determination of the subunit and the remainder of the entity of which it is a part.
 - (3) The sum of the latter, (paragraph (2) of this subsection) must exceed the sum of the former, (paragraph (1) of this subsection, by at least one, for a net gain in total employment to exist.
- (d) Signatories for the incentive offer shall be officers of the entity of which the subunit is a part and the local chief operating officer or employee of the subunit.

[OAR Docket #04-1160; filed 6-23-04]

**TITLE 300. GRAND RIVER DAM
AUTHORITY
CHAPTER 10. PUBLIC PURPOSE SUPPORT
AND ASSISTANCE**

[OAR Docket #04-1152]

RULEMAKING ACTION
PERMANENT final adoption

RULES:
300:10-1-1. [NEW]
300:10-1-2. [NEW]

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Grand River Dam Authority; 82 O.S. §§ 862(r) and (s).

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n/a

ANALYSIS:

These rules prescribe the circumstances under which the Grand River Dam Authority would approve or deny requests for financial assistance to qualified groups to promote economic/industrial development, tourism and recreational activities and conservation and development of natural resources in the communities and industrial areas the Authority serves, all of which are deemed to be governmental public purposes. Such support and assistance would include marketing, consumer education, community relations and customer service functions which the Authority performs.

CONTACT PERSON:

Robert A. Nance, attorney for the Grand River Dam Authority, 405-843-9909.

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 25, 2004:

300:10-1-1. Objectives

- (a) To state the policy of the Authority with regard to requests for public purpose, support and assistance.
- (b) To establish a procedure whereby determinations to approve or deny requests for public purpose support and assistance are standardized.
- (c) To promote economic/industrial development, tourism and recreational activities, and conservation and development of natural resources in the communities and industrial areas it serves, all of which are deemed to be governmental public purposes. This support and assistance will include marketing, consumer education, community relations and customer service functions the Authority performs.

300:10-1-2. Policy.

It shall be the policy of the Authority to fulfill the above objectives by establishing the following provisions:

- (1) GRDA supports and assists activities, organizations, and causes which advance both governmental public purposes, as well as corporate purposes of GRDA by promoting community and economic development, tourism and recreational activities, and conservation and development of natural resources in the communities and industrial areas it serves. This support and assistance will be in compliance with state laws governing GRDA's activities including marketing, consumer education, community relations and customer service functions which it performs.
- (2) GENERAL

(A) GRDA is a body corporate and politic created by statute and is an agency of the state of Oklahoma. As a result thereof, all funds generated, received and

expended by GRDA are public funds and subject to state laws and regulations governing the receipt and expenditure of public funds in the same manner as all other state agencies. Among other activities prescribed by law, GRDA produces, sells and distributes electricity throughout its statutory district, as well as other areas. It is in competition with other electric utilities in the provision of these services.

(B) GRDA has had a longstanding practice of supporting and assisting organizations which promote certain public purposes as described above in GRDA's Policy Statement. This practice has been deemed by the Board of Directors of GRDA to enhance its competitive position and to be important generally in carrying out the prudent operation of the business of GRDA.

(C) The Board of Directors historically viewed requests for support and assistance in light of whether such a request furthers a public purpose, as well as the corporate purposes of GRDA. The Board finds it necessary and desirable and in the best interest of GRDA and its ratepayers to affirm the application of the public purpose/corporate purpose standard and to better define the working framework for the handling of requests for support and assistance.

(3) GUIDELINES FOR GRDA'S SUPPORT

(A) GRDA may support the following organizational types:

- (i) Community and Economic Development Organizations
- (ii) Chambers of Commerce
- (iii) Tourism and Recreational Organizations
- (iv) Agricultural Organizations
- (v) Environmental Organizations

(B) GRDA may support and assist communities that are either served by GRDA, or in which any of its facilities are located, and the GRDA lakes (Grand Lake and Lake Hudson). They are the following:

- (i) Claremore
- (ii) Collinsville
- (iii) Cushing
- (iv) Mannford
- (v) Miami
- (vi) Pawnee
- (vii) Pryor
- (viii) Sallisaw
- (ix) Siloam Springs, AR - Located outside 24-country service district, but are GRDA customers
- (x) Skiatook
- (xi) Stillwater
- (xii) Stilwell
- (xiii) Stroud
- (xiv) Tahlequah
- (xv) Wagoner
- (xvi) Lindsay - Located outside 24-country service district, but are GRDA customers

- (xvii) Coffeyville, KS - Located outside 24-country service district, but are GRDA customers
- (xviii) Vinita - GRDA facility location
- (xix) Chouteau - GRDA facility location
- (xx) North Grand Lake
- (xxi) South Grand Lake
- (xxii) East Grand Lake
- (xxiii) West Grand Lake
- (xxiv) Lake Hudson
- (xxv) Fort Gibson Lake
- (xxvi) Communities may which at any time may be served by GRDA.

(C) A budget per community/region will be set based on what is in the best interest of GRDA. Factors taken into consideration will include the number of citizens benefiting from the programs/projects, revenue to GRDA, and the overall need of the community. Any support and assistance provided by GRDA shall be at its sole discretion, provided however, that such support and assistance shall be limited to an amount not to exceed a total of fifteen thousand dollars (\$15,000) per year for one (1) or more projects or efforts that are for the benefit of or impact the quality of life for each city or community which GRDA serves or in which it has facilities.

(D) GRDA will not monetarily support the following:

- (i) Individuals
- (ii) Political campaigns/parties
- (iii) Religious organizations
- (iv) Private Schools
- (v) Private for-profit organizations
- (vi) Solicitations received by form letters
- (vii) Groups that discriminate on the basis of age, race, sex, or national origin
- (viii) Activities, organizations or causes which do not advance a public purpose and a GRDA corporate purpose

(4) RESPONSIBILITIES AND EVALUATION OF REQUESTS

- (A) Community Relations Director will:
- (i) Budget for support and assistance.
 - (ii) Classify all expenditure requests for accounting purposes.
 - (iii) Evaluate requests to determine whether they meet a public purpose and a corporate purpose within guidelines established by GRDA management and the Board of Directors.
 - (iv) Process requests including ensuring required approvals.
 - (v) Prepare a quarterly report summarizing expenditures disbursements for presentation to the Board.
 - (vi) Perform evaluations on expenditure disbursements.
- (I) All \$5000 or greater expenses will be evaluated and documented on a quarterly basis.

(II) 5% of all other expenses will be subject to be evaluated and documented on a quarterly basis.

(B) Requester will submit request for monetary support to the Community Relations Director. It should contain a concise proposal which may include:

- (i) Purpose and mission of group requesting funds.
- (ii) Expected or intended results for use of funds.
- (iii) Such other documentation as is appropriate to evaluate the request.

(5) APPROVAL PROCESS

(A) The only GRDA employee authorized to process requests for support and assistance will be the Community Relations Director.

(B) The following approval levels are applicable to the total commitment made to any single request:

- (i) Expenditures \$500.00 or below: Marketing Superintendent or the Community Relations Director
- (ii) Expenditures \$500.01 to \$9,999.99: General Manager
- (iii) Expenditures \$10,000 and above: General Manager and the Board of Directors

[OAR Docket #04-1152; filed 6-21-04]

**TITLE 300. GRAND RIVER DAM
AUTHORITY
CHAPTER 20. PURCHASING POLICY**

[OAR Docket #04-1153]

RULEMAKING ACTION:

PERMANENT final adoption

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300:20-1-1. through 300:20-1-14. [NEW]

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n/a

ANALYSIS:

These rules prescribe the policies and procedures under which the Grand River Dam Authority would make purchases of goods and services from outside vendors. The rules establish responsibility within the Grand River Dam Authority for purchases of various values. The rules also provide for means to select vendors, assess bids, and call for the use of State of Oklahoma open contracts under certain circumstances.

CONTACT PERSON:

Robert A. Nance, attorney for the Grand River Dam Authority, 405-843-9909.

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 25, 2004:

300:20-1-1. Introduction to purchasing policy

(a) The material contained herein is designed to explain and facilitate understanding of the Purchasing Department, its functions, policies and procedures, serve as an operating guide to the Operating Departments, and to serve as a tool to provide information and direction to the various departments and functions of GRDA. Its primary purpose is to communicate policies and give guidance to buying personnel, personnel assigned to the purchasing function and others with delegated purchasing authority.

(b) The included policy statements represent the basic intentions and goals of the GRDA Board of Directors. They represent the permanent foundation upon which the Authority operates, and are expected to be relatively independent of the changing technologies and methods used to carry them out. It is the responsibility of all who have been delegated the authority to commit GRDA funds through the purchasing function to adhere to the policies contained herein.

(c) The procedures set forth are expressly designed to implement the Board's policy and State law. Procedure will be conformed to meet changes in policy or law and as needed to refine the purchasing process.

(d) Definitions

(1) Purchasing. Identification and recognition of the required need for goods and services in all parts of the organization, and the assurance of satisfaction of those needs at the lowest possible cost, consistent with the best quality of goods required. Purchasing reflects the role of a service department by serving as the primary contact between the various functions of GRDA and its suppliers.

(2) Policies. Policies, as referred to herein, are pre-decisions made by Management and the Board of Directors for the purpose of giving information and direction. Policies establish basic philosophies and climates, and determine the major values upon which the Purchasing function must operate.

(3) Procedures. Procedures are the prescribed means of accomplishing policy. Their intent is to provide GRDA personnel with the guidelines and, where appropriate, the

specific action sequences to ensure uniformity, compliance and control of all policy-related activities.

300:20-1-2. Purpose

(a) In order for GRDA to continue to provide low-cost power to GRDA customers, it is imperative that we continually strive for lower costs in every area of our business operation. A large element of cost is purchased material and services, so this activity provides us with an opportunity for cost reduction and control. The overall policy goal is to maintain at all times a continuous supply of goods and services necessary to support the production of power by GRDA. Individual aspects of this policy are:

(1) To comply with, in all aspects and without qualification or evasion, the laws of the State of Oklahoma and the GRDA Bylaws governing policy and procedures for purchases.

(2) To ensure the uninterrupted flow of production by obtaining and ensuring delivery of an acceptable quality of goods and services at the maximum end-use value per dollar spent.

(3) The management of inventories of purchased goods so as to meet the use requirements of all GRDA departments at the lowest possible cost.

(4) To develop reliable alternate sources of supply to meet GRDA requirements.

(5) To treat all prices and technical information submitted by suppliers as confidential until after bid openings in order to preserve a good business reputation and obtain competitive pricing.

(6) The amicable resolution of complaints on all purchased goods and services.

(7) The standardization of materials, supplies, equipment, services and procedures.

(8) To dispose of, to the best advantage, all materials and equipment declared to be surplus or obsolete by the GRDA Board of Directors. Such disposal shall be in accordance with the Oklahoma Surplus Property Act (74 O.S. § 62.1 et seq.).

(b) Purchasing is an important activity, the primary responsibility of the Purchasing Department being to provide and operate a system for the purchase of materials, supplies and services, with the objective that they will be available at the proper time, in the proper place, in quantity, quality and price consistent with the needs of the Authority. It is necessary that the responsibility for buying materials and services be assigned to a group of people skilled in purchasing techniques.

(c) To achieve this overall objective, the responsibilities, authorities and controls set forth in this policy must be adhered to by all GRDA employees.

300:20-1-3. Scope

These policies apply to all Board members, officers, and employees of the Authority. These policies apply to all purchase and purchase-related documents prepared or processed within the Authority

300:20-1-4. Responsibilities

- (a) The Board of Directors is primarily responsible for promulgating a comprehensive Purchasing Policy and for approving purchases above \$25,000.00.
- (b) The General Manager is responsible for the actions of the Assistant General Managers and their subordinates while performing the purchasing procedures and for approving emergency purchases above \$25,000.00.
- (c) The Assistant General Managers shall have commitment authority not to exceed \$5,000.00 to commit GRDA for materials, equipment, supplies or services. With the approval of the General Manager, an Assistant General Manager may issue a standing order delegating any portion of his commitment authority to supervisors assigned to the Assistant General Manager's area of responsibility.
- (d) Unless otherwise directed by the Board of Directors, an Assistant General Manager designated by the General Manager shall supervise and direct purchasing in compliance with the GRDA purchasing manual.
- (e) The Purchasing Department has the responsibility for obligating the Authority and for making the final determination of source of supply, ultimate quantities purchased, delivery schedule, price, and commercial terms. These decisions will be made in conjunction with other departments as appropriate.
- (f) The Purchasing Department is responsible for initiating and maintaining effective and professional relationships with suppliers, both actual and potential.
- (g) The Purchasing Department is to serve as the exclusive channel through which all requests regarding prices and products are handled. The Department and no other will conduct all correspondence with suppliers involving prices or quotations. In cases where technical details are necessary, the using department may correspond with suppliers. In such cases, the Purchasing Department should be provided with copies of all such correspondence. Close communication and coordination between the Purchasing Department and the using departments must occur. This Subsection G does not apply to emergency purchases and small-dollar purchases (less than \$250).
- (h) All employees involved in purchasing activities will work to maintain and enhance the Authority's image by their personal conduct and methods of doing business.
- (i) All employees engaged in purchasing activities will recognize and practice good public relations by giving all callers and visitors courteous treatment.
- (j) Purchasing Department personnel are to seek to obtain and purchase all goods at the lowest possible end-use cost, considering the guidelines of prices, service, quality and delivery.
- (k) Purchasing Department personnel are to inform requisitioning departments whenever the quantity or specifications of materials ordered are inconsistent with sound purchasing practices or market conditions.
- (l) Purchasing Department personnel will work to establish and encourage timely delivery of specified goods and services in correct quantities.
- (m) Purchasing Department personnel will negotiate the return of rejected equipment or supplies to the supplier.

(n) The Purchasing/Contracting and Acquisitions Administrator and Purchasing Department personnel will advise management of economic conditions and changes significant to GRDA's interests.

(o) Purchasing Department personnel shall coordinate with the General Counsel to assure compliance with the Oklahoma Public Competitive Bidding Act (61 O.S. § 101 et seq.).

300:20-1-5. Gifts and gratuities

This policy provides guidance in the purchasing function concerning the receiving of gifts and/or gratuities. The manager in charge of purchasing personnel has the responsibility to ensure that they have the understanding of all relevant policy and procedure when they are first employed.

(1) No Board member, officer or employee shall directly solicit or accept any compensation, gift, loan, entertainment, favor or service for the purpose of influencing such Board member, officer, or employee in the discharge of their official duties.

(2) No employee shall permit any influence which could conflict with the best interest of the Authority or prejudice the Authority's reputation.

(3) Association with supplier representatives at luncheons or business organization meetings are helpful in establishing better business understanding, provided the buyer keeps himself free of obligations. To ensure this, purchasing personnel can act as hosts on occasion. Such efforts should be part of their operation expense.

(4) The responsibility for adherence to this policy is a joint one. Individuals who represent GRDA must be beyond challenge or reproach in every business transaction, and not allow themselves to be put into a position where their judgments can be influenced.

(5) Pens, pencils, notepads, etc., which bear a vendor's advertising are considered to be of nominal value and are acceptable.

300:20-1-6. Inspections and defects

Sound receiving and inspection procedures shall be utilized at all locations where materials or services are received. Every reasonable effort shall be expended to verify the condition of merchandise received and quantities delivered. Discrepancies shall be communicated to the Purchasing Department as soon as possible.

300:20-1-7. Local purchases

Purchases from vendors in the State of Oklahoma will be referred to as local vendors. It will be the policy to encourage meaningful participation of local vendor sources whenever possible to provide useful and acceptable quality services or materials at competitive prices. Purchasing personnel are responsible for making every effort to solicit local vendor bids for products and services. However, their bids will be evaluated the same as out-of-state vendors with no preferences given.

Permanent Final Adoptions

300:20-1-8. State of Oklahoma open contracts

Open State Contracts are provided by the Department of Central Services, for use by certain local governments and state agencies. These contracts cover a variety of needs common to many agencies. A list of available contracts is provided by Central Purchasing and those applicable to GRDA operations will be obtained. As a matter of policy, requisitions will be reviewed for State Contract availability before orders are placed. Open State Contracts will be used when the end result is timely delivery of an acceptable quality of goods and services at the maximum end-use value per dollar spent.

300:20-1-9. Purchases for employees

It shall be the duty of the Purchasing Department to procure for the Authority and not attempt to invest Authority time in procurement for the personal gain of its employees. This policy does not, of course, include the Authority's program for supplying safety eye glasses for the employee at discounted rates.

300:20-1-10. Requisition review

This policy applies to all ordinary procurements. The Purchasing Department shall have the responsibility and authority to review specifications and sources within the following guidelines:

(1) The user and Purchasing shall be jointly responsible for developing a list of acceptable vendors of a specific product or service whenever necessary, with the user being responsible for the technical aspects of the evaluation and Purchasing being responsible for the financial and service aspects. Once a list of acceptable vendors has been established, Purchasing shall be responsible for the selection of vendors from that list who best can respond to the requirements of each particular order.

(2) Purchasing shall review the specifications of each purchase requisition. The review shall include: requests for "sole source or sole brand" purchases; requests for goods of a quality or quantity that seem to be greater or less than required; requests that do not conform to Authority standards; and requests without proper authorization. Buyers shall not materially alter specifications without discussion with the requestor.

(3) Requisitions which do not contain enough specific information will be returned to the requestor for further attention. "Sole source or sole brand" requisitions shall be accompanied by a "Sole Source or Sole Brand Affidavit" completely showing the factual basis substantiating the exclusion of other bidders.

300:20-1-11. Vendor selection, quotations, evaluation, and disputes

This policy applies to ordinary transactions on material or services with an estimated value in excess of \$2,500.00.

(1) The selection of vendors is primarily the responsibility of Purchasing and requires a consideration of several factors. In making the selection, Purchasing will coordinate closely with other departments to obtain adequate

and reasonable specifications. Whenever possible, identification of brand names, or sufficient detail, should be obtained to ensure that the order can be properly filled. Direct access to the manufacturers will be obtained whenever possible. One major decision required during the purchasing process is vendor selection. It is the purpose of this policy to define the responsibility for and provide basic guidelines for vendor selection.

(2) Purchases shall be investigated by GRDA to assure the quality of the product and the viability of the vendor.

(A) Subsequent travel and expenses necessary or advisable to assure quality assurance, timely delivery or technical compliance shall be evaluated during the bidding process.

(B) Buyers should endeavor to place orders with regard to the dependability and service record of the vendor, price and quality of merchandise, and should give special attention to:

(i) Suppliers who are developing new and improved products or equipment, or who are designing and developing a special product for the company's exclusive use.

(ii) Suppliers located near the operation.

(iii) Suppliers with adequate financial strength who also have a reputation for adhering to specifications and delivery schedules.

(iv) Suppliers who are local vendors.

(v) Suppliers who are certified minority vendors.

(3) The Superintendent of Fiscal Services has the responsibility for maintaining a uniform set of procedures and forms to serve the bid process. Considerations should include the need for forms for vendor notifications, bid analysis and summary, bidder mailing list applications, competitive invitations, instructions to bidders, policy statement of bid award, and sealed bid envelopes. Purchasing Department personnel are responsible for obtaining bids on all material or services covered under this policy for both estimating purposes and purchases. Quotations shall be of the following types, depending upon the size and nature of the potential purchase:

(A) Verbal - Not to exceed \$2,500.00

(B) Written - Over \$2,500.00

(C) Sealed Bids - Over \$25,000.00

(D) Verbal/written follow-up on auxiliary boiler fuel, vehicle fuel and emergency confirmatory purchases

(4) If a dispute arises on purchased goods and services concerning vendor selection, quotation, or evaluation, the affected vendor may contact the Contracting and Acquisitions Agent assigned to the particular purchase for possible resolution of the dispute. If a dispute arises on purchased goods and services concerning the amount due, or non-payment, to a vendor, the affected vendor may contact the Accounts Payable Supervisor for possible resolution of the dispute. In both cases, should the dispute not be resolved to the vendor's satisfaction, the vendor may

contact the Superintendent of Fiscal Services for further discussion.

(5) The Purchasing/Contracting and Acquisitions Administrator will cause to be included in each bid request file a bid analysis summary, required affidavits, and insurance requirement forms. Purchase orders requiring insurance will be sent to the Assistant General Manager of Regulatory Compliance and Risk Management for review. The following factors in combination, not necessarily listed in their order of importance, will be considered in reviewing bids and awarding contracts:

- (A) Price
- (B) Quality and conformance to specifications, affidavits and insurance requirements
- (C) Bidder's previous record of performance and service
- (D) Ability of bidder to render satisfactory service, delivery, etc.
- (E) FOB points and shipping charges
- (F) Last purchase cost

(6) The right is reserved to reject any and all bids and to contract as the best interests of the Authority may require.

300:20-1-12. Change orders

This Policy provides guidance in the Purchasing function concerning change orders and when they are required to be utilized.

(1) A change order or cumulative change orders which fall within the below listed amounts shall require formal approval by the GRDA Board of Directors accepting such additional adjusted amount prior to GRDA being responsible for payment thereof:

- (A) Change orders to purchase orders or to construction or service contracts more than \$25,000.00 up to \$1,000,000.00 shall not exceed a 15% cumulative increase in the original amount.
- (B) Change orders to purchase orders or to construction or service contracts more than \$1,000,000.00 shall not exceed a 10% cumulative increase in the original amount.

(2) Any change orders to purchase orders or to construction or service contracts not falling within the two categories specified in Paragraph XI. A. above shall require written approval by the General Manager of GRDA prior to GRDA being responsible for payment thereof. However, GRDA Board of Director approval is not required for change orders in this category unless the total amount of the resulting change order exceeds \$25,000.00, and in such case, formal GRDA Board of Director approval is required.

(3) Any change orders to public construction contracts for the purpose of making any public improvements or constructing any public building or making repairs to the same, all of which is defined within the Oklahoma Public Competitive Bidding Act (61 O.S. § 101 et seq.), shall be issued in accordance with such Act.

(4) Any and all Board Resolutions previously adopted by the GRDA Board of Directors and to the contrary,

including Resolution No. 4659 adopted September 16, 1981, are hereby rescinded and are no longer in force or effect.

300:20-1-13. Emergency confirmatory purchase orders

In the event it becomes necessary to purchase an item or service, or a series of related items or services, in which the total amount exceeds \$25,000 prior to receiving formal Board approval authorizing such purchase, and such purchase is mandatory to keep the facilities operating and/or to ensure continuous transmission service, the general manager is authorized to declare an emergency situation and immediately purchase the necessary materials or services. Emergency purchases in this category will be presented to the GRDA Board for formal approval as confirmatory purchase orders at the next regularly scheduled Board meeting.

300:20-1-14. Purchasing procedure

The Purchasing Department shall, in conjunction with all other departments, promulgate, publish and maintain uniform procedures for the implementation of this Policy.

[OAR Docket #04-1153; filed 6-21-04]

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

[OAR Docket #04-1194]

RULEMAKING ACTION:

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RULES:

- Subchapter 1. General Provisions [NEW]
- 460:3-1-5. [AMENDED]
- Subchapter 3. [RESERVED]
- Subchapter 5. Proceeding for Suspension or Revocation of Permits under the Mining Lands Reclamation Act [NEW]
- 460:3-5-1. through 460:3-5-8. [NEW]

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ANALYSIS:

Pursuant to statutory law, 45 O.S. Sections 728(d), 732(b), and 736, the Department has the authority to issue Show Cause Orders to suspend or revoke a mining permit but the Department does not have judicial procedures to be followed administratively when doing such actions. The addition of Subchapter 5 creates the procedures to be followed. The changes to Subchapter 1 are to clearly reflect the distinctions between the procedures for conferences and those for formal administrative reviews.

CONTACT PERSON:

Cathy Frank, Legal Officer, Department of Mines Wagoner Field Office, 29858 E. 690 Road, Wagoner, OK 74467-9154, (918)485-3999

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 26, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

460:3-1-5. Conducting hearings for formal review

(a) The Department may hold hearings for formal review on any matter within the Department's jurisdiction. Hearings for formal review may be instituted and conducted where expressly required by law and where deemed necessary to the proper execution and discharge of any of the powers or duties conferred or imposed upon the Department by law. Hearings may be instituted by application, petition, complaint (herein generally and collectively referred to as "application") or similar request of an interested or aggrieved person or by the Department on its own initiative.

(b) All hearings for formal review held under the authority of 45 O.S. (1981), Section 721 et seq., shall be in compliance with 75 O.S. (1981), Section 301 et seq., as amended, and with this Chapter.

(c) Hearings for formal review shall be conducted by an authorized Hearing Examiners who shall be designated by the Chief Mine Inspector. Hearing Examiners are authorized to issue subpoenas, administer oaths, to supervise, direct, preside over and conduct the hearing proceedings; to make and enter interlocutory rulings; to make and enter rulings on any other motions or objections arising during the course of the hearings; and, generally to do all things necessary and incidental to conducting and completing the hearing.

(d) Hearings for formal review may be held at the main offices of the Department in Oklahoma City, or at such other locations as may be designated by law, rule or regulation.

(e) All testimony and evidence given at hearings for formal review shall be electronically recorded in duplicate. A summary of the testimony shall be transcribed and filed in the administrative record. Upon receipt of notice of appeal to the District Court pursuant to the Administrative Procedures Act or upon other proper request of an interested party of record, the Department shall transcribe the testimony verbatim. The cost of transcribing the hearings and furnishing a certified

copy of the record to the District Court shall be borne by the appellant, petitioner or requesting party. When a completed hearing record has been transcribed and certified, a copy of the transcript may be obtained, upon written request, from the Department. There will be a transcription fee, as determined by the Department, payable by the requesting party. [75 O.S. (1981), Sections 309, 320].

(f) When deemed necessary and proper for the purposes of a hearing for formal review, pre-hearing discovery by an interested party may be allowed as provided under the Administrative Procedures Act and this Chapter. Depending upon the nature of the hearing, pre-hearing discovery may be made at any time subsequent to the filing (and acceptance for filing) of an application or petition, or otherwise, at any time subsequent to the institution of proceedings on the application. Requests for pre-hearing discovery must be timely made and the Hearing Examiner may impose reasonable and necessary limitations on the period of time within which discovery requests may be presented and entertained.

(1) In any hearing proceeding, the Hearing Examiner may direct, on the Examiner's own motion or at the request of an interested party, that the parties appear for a pre-hearing conference. Interested parties of record shall be notified of such conferences in advance. Pre-hearing conference may be held to facilitate simplification of issues presented, admissions and stipulations, the identification of documents and witnesses proposed to be offered, discovery and production of relevant documents and other information, to consolidate parties and issues, and any other matters as may aid in the conduct of the hearing.

(2) The Hearing Examiner, on the Examiner's own motion or at the request of an interested party, may, in the name of the Department, issue subpoenas for witnesses and/or the production of books, records, papers or other information or objects. Subpoenas may be personally served by any authorized Department member or by certified mail, return receipt requested. Subpoenas must be served no less than three (3) days prior to the date of the hearing. [75 O.S. (1981), Section 315].

(g) The Hearing Examiner shall open the hearing for formal review at the time and place set forth in the notice.

(1) The Hearing Examiner shall state the purpose of the hearing and read and admit into evidence and into record the following:

- (A) The application, which initiated the proceeding; and
- (B) The notice of hearing; and
- (C) The affidavit of publication or other proof of service of notice required by law; and
- (D) All other pleadings and documents submitted; and
- (E) Any other relevant information.

(2) After opening the hearing for formal review, the Hearing Examiner shall determine whether notice of the hearing was properly given as required by law. Should it be determined that the required notice was not given or is materially, substantially or prejudicially defective

in form or content, the Hearing Examiner shall adjourn the hearing, set a new hearing date and a new and proper notice thereof shall be given. In addition to the required notice, all parties of record shall be given written notice of the new hearing date.

(3-2) After opening the hearing for formal review and ~~making a determination on notice~~, the Hearing Examiner shall request that all ~~interested~~ parties enter their appearances for the record ~~by stating their names, addresses, who they represent if other than themselves~~ and whether they are appearing in support of or in opposition to the application. Interested Parties ~~parties~~ may appear personally, by authorized representative and/or by legal counsel, provided, attorneys appearing as legal counsel for and ~~in~~ on behalf of ~~a an interested~~ party must be duly licensed to practice law in the State of Oklahoma or must complete the oath [5 O.S. ~~1981~~, Section 17.1 and Article II, Section 5 of the Rules of the Oklahoma Bar Association] set forth in Appendix A. of this Chapter. The applicant ~~and or protestants~~ protestant must appear at the hearings, either personally, by representative or by legal counsel. The failure of any party to appear shall be deemed to constitute a default and abandonment of interest by the party failing to appear and shall preclude the party from being heard further unless good cause for such failure to appear is shown five (5) days from the date of the hearing.

(43) After all ~~interested~~ parties have entered their appearances, the Hearing Examiner shall proceed to entertain presentation of evidence and testimony. The testimony of a witness shall be taken only upon sworn oath or affirmation. Witnesses shall be sworn individually. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses, to object to the introduction of evidence, to impeach witnesses, and to rebut evidence presented. [75 O.S. ~~(1981)~~, Section 310]

(54) As provided under the Administrative Procedures Act, the strict and formal rules of evidence and pleading such as are applied and prevail in a court of law need not be observed in Department hearings for formal review. All evidence and testimony offered must be relevant and material to the matter subject of the application and hearing. Evidence and testimony which is clearly irrelevant, immaterial, incompetent or unduly repetitious or cumulative may be excluded or limited. Evidence may be received by stipulation and agreement of all interested parties. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available and upon request, ~~an interested~~ party may be given the opportunity to compare the copy with the original. Copies of proposed exhibits shall be supplied to adverse parties and one original copy submitted to the Hearing Examiner. Each exhibit offered shall be tendered for identification. Each exhibit entered into evidence shall become a part of the administrative record. No exhibit shall be accepted after the conclusion of the hearing.

~~(6) The Hearing Examiner may waive presentation of oral testimony in uncontested proceedings where all evidence required for the issuance of an order has been sworn under oath or verified and any other evidence or facts necessary to the proceedings is a matter of which the Hearing Examiner may properly take official notice. [75 O.S. (1981), Section 309]~~

(75) Files and records of the Department which pertain to the subject of the hearing, and books, reports, and other papers or writings which have been prepared and published by any governmental or public agency, may at the discretion of the Hearing Examiner, be officially noticed and received into evidence as exhibits and incorporated by reference. The original or a copy in the possession of the Department shall be made available for inspection and copying by any party; ~~each~~ Each such matter shall be appropriately identified and designated by number in the record as an exhibit. Certification of such files and records may be waived when it appears there is not valid reason to doubt the authenticity of the document presented. Official notice may also be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the Department's specialized knowledge. [75 O.S. ~~(1981)~~, Section 310]

(86) The Hearing Examiner may, at the Examiner's discretion, continue or adjourn a hearing to another date. Hearing continuances may be granted at the request of any party for good cause or by agreement of all parties or may be ordered on motion of the Hearing Examiner. Continuances or adjournments for further hearing shall be to date, time and place certain announced in open session of the hearing. Where granted or ordered prior to the scheduled hearing date, the party at whose request the continuance was granted or ordered shall notify all other interested parties of record of the date, time, and place set by the Hearing Examiner for further hearing. At the conclusion of a hearing, the Hearing Examiner may, at the Examiner's discretion for good cause shown and without prejudice to any party, leave the hearing record open to allow presentation and rebuttal of additional material or information necessary to a full, fair and complete submission and disposition of the matter subject of the hearing.

(97) Upon conclusion of a hearing for formal review, the Hearing Examiner may request that all parties ~~shall~~ file proposed findings of fact and conclusion of law for review and consideration by the Hearing Examiner. The Hearing Examiner may request all parties to submit legal briefs. [75 O.S. ~~(1981)~~, Section 312]

~~(408) After all parties have had an opportunity to be heard and present evidence, and after expiration of any additional time allowed, the hearing shall be deemed completed and submitted for final Order and Ruling and the hearing record shall be deemed closed. The matter subject of the hearing thereupon be taken under advisement for final decision and order by the Department.~~

~~(419) As expeditiously as possible after completion of the hearing~~ for formal review, the Hearing Examiner shall review, consider and evaluate all matters presented

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and relevant to the hearing issues, and, based thereon, the Hearing Examiner shall prepare a proposed final Order containing necessary findings of fact and conclusions of law. The Examiner's proposed Order shall be presented to the ~~Chief Mine Inspector~~ Director of the Department for review, consideration and action. All parties of record shall be furnished a copy of the Examiner's proposed Order, at least 15 days in advance of the final order of the ~~Chief Mine Inspector~~ Director, and may file Exceptions thereto. [75 O.S.(1981), Section 311]

(4210) At such time as the Examiner's proposed Order is to be considered and acted upon by the ~~Chief Mine Inspector~~ Director, no new testimony or evidence may be presented or entertained. Upon request, oral arguments and supporting briefs on the Examiner's proposed Findings of Fact, Conclusions of Law and Order may be presented, but a reasonable time limit for argument shall be fixed. Oral argument shall be recorded and shall become a part of the record. All ~~interested~~ parties of record shall be furnished a copy of the final Findings of Facts, Conclusion of Law, and Order of the ~~Chief Mine Inspector~~ Director of the Department. [75 O.S.(1981), Section 312]

(4311) As allowed by and subject to compliance with the requirements imposed under the Administrative Procedures Act, any party may request rehearing, reopening or reconsideration of any final Department action, decision or Order. The Department may, ~~at any time and~~ on its own motion, order rehearing, reopening or reconsideration of any Department action, decision ~~or~~ order. Appeals from any final Department action, decision or ruling, may be taken as allowed and provided by and subject to the requirements of the Administrative Procedures Act. Subject to the provisions of the Administrative Procedures Act and unless otherwise directed or ordered by the Department, no Department action, decision or Order shall be stayed ~~deemed stayed~~ pending, rehearing, reopening, reconsideration or appeal. [75 O.S.(1981), Sections 317, 319]

SUBCHAPTER 3. [RESERVED]

SUBCHAPTER 5. PROCEEDING FOR SUSPENSION OR REVOCATION OF PERMITS UNDER THE MINING LANDS RECLAMATION ACT

460:3-5-1. Scope

This Subchapter sets forth the procedures for obtaining formal administrative review of the Departments Order to Show Cause to suspend or revoke a permit pursuant to 45 O.S. Section 728(D), 732(b), and 736.

460:3-5-2. Initiation of proceedings

(a) The Department shall determine if a permit shall be suspended or revoked for failure to comply with the Act, the permit, or the mining requirements and shall issue a Show Cause Order as to why the subject permit should not be suspended or revoked.

(b) A Show Cause Order shall set forth:

(1) A list of the violations upon which said Show Cause Order is based;

(2) A copy of each notice or order which contains one or more of the violations upon which the said Show Cause Order is based;

(3) A Finding as to whether the permit should be suspended or revoked, including the length and terms of suspension.

(c) The Department shall notify the permittee and other interested parties of said Show Cause Order.

460:3-5-3. Answer

The permittee shall have 20 days from receipt of a Show Cause Order issued pursuant to this Subchapter in which to file an answer with the Department.

460:3-5-4. Content of answer

The permittee's answer to a Show Cause Order shall contain a statement setting forth:

(1) The reasons, in detail, why the Department should not suspend or revoke said permit and all reasons for contesting said order, including the permittee's dispute of all fact of the violations alleged by the Department;

(2) All mitigating factors the permittee believes exist in determining the Department's basis for revocation or suspension, or the terms of suspension;

(3) Any other alleged relevant facts; and

(4) Whether a hearing on the Show Cause Order is desired.

460:3-5-5. Burden of proof in suspension or revocation

In proceeding to suspend or revoke a permit under this Subchapter, the Department shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

460:3-5-6. Determination by the hearing examiner

(a) Upon a determination by the hearing examiner that a permit shall be revoked or suspended, the hearing examiner shall order the permit either suspended or revoked. In making such a determination, the hearing examiner need not find that all the violations listed in the Show Cause Order occurred, but only that sufficient violations occurred to establish the basis for suspension or revocation.

(b) If the permit is suspended, the amount of time for which the permit is suspended shall be determined by the Department

as contained within the Show Cause Order. A suspension of indefinite period may be imposed by the hearing examiner as contained within the Show Cause Order, so long as such suspension furthers the purpose of the Act.

(c) The decision of the hearing examiner shall be issued within a reasonable time frame following the date the hearing record is closed by the hearing examiner or within 20 days of receipt of the answer, if no hearing is requested.

(d) At any stage of a suspension or revocation proceeding being conducted by a hearing examiner, the parties may enter into a settlement agreement, subject to the approval of the Director.

460:3-5-7. Summary disposition

(a) In a proceeding for suspension or revocation of a permit under this Subchapter, where the permittee fails to appear at a hearing, the permittee shall be deemed to have waived its rights to a hearing and the hearing examiner may assume for the purpose of the proceeding that:

- (1) Each violation listed in the Show Cause Order occurred;
(2) Such violations were caused by the permittee; and
(3) Nothing herein shall authorize a permittee to dispute the fact of the violations and orders contained within the Show Cause Order, so long as said violations or orders have become final.

460:3-5-8. Appeals

Any party to a proceeding for suspension or revocation of a permit under this Subchapter, may appeal the final order of the Director in accordance with judicial review pursuant to the Oklahoma Administrative Procedures Act, 75 O.S. Section 308, et seq.

[OAR Docket #04-1194; filed 6-28-04]

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

[OAR Docket #04-1193]

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RULES:

Subchapter 17. Review, Public Participation and Approval of Permit Applications and Permit Terms and Conditions

460:10-17-11. [AMENDED]

Subchapter 19. Permit Revisions, Amendments, and Renewals, and Transfers

460:10-19-1. [AMENDED]

460:10-19-2. [AMENDED]

460:10-19-3. [AMENDED]

460:10-19-6. [NEW]

Subchapter 29. Performance Bond Forfeiture

460:10-29-5. [REVOKED]

AUTHORITY:

45 O.S. Section 1.5, 45 O.S. Section 732, Oklahoma Mining Commission

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ANALYSIS:

With the continuing lengthening of the informal conference process due to increased citizen involvement and transcription time, the Department is amending the decision time requirement of Subchapter 17, from thirty days to a reasonable time after the close of the conference record. Subchapter 19 is being amended to provide for permit transfers to reflect a statutory change enacted by the 2003 Senate Bill 444. Subchapter 5 involving the determination of bond forfeiture amounts is being eliminated due to inconsistency with 45 O.S. Section 728(B).

CONTACT PERSON:

Cathy Frank, Legal Officer, Oklahoma Department Of Mines Wagoner Field Office, 29858 E. 690 Road, Wagoner, OK 74467-9154

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 26, 2004:

SUBCHAPTER 17. REVIEW, PUBLIC PARTICIPATION AND APPROVAL OF PERMIT APPLICATIONS AND PERMIT TERMS AND CONDITIONS

460:10-17-11. Permit approval or denial actions

(a) The Department shall approve, require modification of, or deny all application for permits on the basis of:

- (1) Complete applications for permits and revisions or renewals and transfers or sales thereof; and
(2) Public participation; and
(3) Process and review of application as required by this Subchapter.

(b) The Department shall take action as required under (a) of this Section, within the following times:

- (1) If a conference has been held under section 460:10-17-7 within 30 days a reasonable time after of the close of the conference; or
(2) If no conference has been held under Section 460:10-17-7 then within 30 days after receipt by the Department of the complete application. The Department

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shall determine the time for processing and take into account:

- (A) The time needed for proper investigation of the proposed permit and adjacent areas;
 - (B) The complexity of the application; and
 - (C) Whether written objections have been filed with the Department.
- (3) Notwithstanding any of the foregoing provisions of this Section, no time limit under ~~the~~ this Chapter or this section requiring the Department to act shall be considered expired from the time the Department initiates a proceeding under section 460:10-17-9(d) until the final decision of the hearing.
- (c) If a conference is held under Section 460:10-17-7 the Department shall give its written findings to the permit applicant and to each person who is a party to the conference, approving, modifying or denying the application in whole, or in part, and stating the specific reasons therefore in the decision.
- (d) If no such conference has been held, the Department shall give its written findings to the permit applicant, approving, modifying or denying the application in whole, or in part, and stating the specific reasons in the decision.

SUBCHAPTER 19. PERMIT REVISIONS, AMENDMENTS, AND RENEWALS, AND TRANSFERS

460:10-19-1. Purpose

This Subchapter establishes the minimum requirements for revisions to permits previously issued by the Department and renewal and transfer or sale of permits previously issued by the Department.

460:10-19-2. Objectives

The objectives of this Subchapter are to provide for procedures for the Department to review, ~~and renew,~~ and transfer or sale of permits.

460:10-19-3. Responsibilities

The Department shall:

- (1) Ensure that permits are revised prior to changes in non-coal surface mining and reclamation operations;
- (2) Effectively review and act on applications to renew existing permits, in a timely manner to ensure that non-coal surface mining and reclamation operations continue, if they comply with 45 O.S. ~~(1981),~~ Section 721 et seq., and this Chapter.
- (3) Review and ensure that all transfers or sales of non-coal mining permit comply with the requirements of 45 O.S., Section 721 et seq., this Subchapter, and this Chapter.

460:10-19-6. Permit transfers or sales

- (a) Permits issued to an operator may be transferred to another operator, provided the new operator can demonstrate to

the Department, prior to the transfer of interests, that conditions and obligations required for the permit will be met and the new operator has submitted a reclamation bond or other reclamation guarantee, or has obtained the bond coverage equivalent to the original permittee.

(b) **Application requirements.** An applicant for the transfer or sale of an existing permit or permit rights shall file a complete application for such transfer or sale with the Department. The application shall include, at a minimum:

- (1) The name and address of the Applicant;
- (2) The name and address of the existing permittee and the permit number to be transferred;
- (3) A brief description of the proposed transfer or sale, including verification by the predecessor-in-interest of the proposed transfer or sale; and
- (4) The legal, financial, compliance, and related information required by Subchapter 11 of this Chapter pertaining to the Applicant of the transfer or sale of permit rights.

(c) **Newspaper advertisement and proof of publication.** An Applicant shall place an advertisement in a newspaper of general circulation in the county of the existing permit. The advertisement shall not be placed earlier than thirty (30) days before the filing of the application for a transfer or sale with the Department. The advertisement shall be published at least once a week for two (2) consecutive weeks and Proof of Publication of the advertisement shall be submitted to the Department prior to approval of the transfer or sale. The advertisement shall contain, at a minimum:

- (1) The name and address of the Applicant;
- (2) The name and business address of the existing permittee, including the permit number or other identifier;
- (3) The legal description of the location of the permit;
- (4) The address of the Department to which written comments or objections may be submitted.
- (3) Obtain appropriate performance bond coverage in the amount sufficient to cover the proposed operations.

(d) **Public participation.** Any person having an interest which is or may be affected by a decision on the transfer or sale of permit rights, including officials of any federal, state or local governments agency, may submit written comments on the application to the Department within 14 days after the last date of publication of the advertisement.

(e) **Reclamation bond requirements.** The Applicant for the permit transfer or sale must file with the Department a reclamation bond satisfying the requirements of Subchapter 21 of this Chapter, prior to the Department's approval of the transfer or sale. The reclamation bond post with the Department by the existing permittee shall remain in full force and effect until the Department finds that the successor-in-interest has posted the appropriate reclamation bond.

(f) **Approval criteria.** The Department may approve a transfer or sale of permit rights to a successor if it finds in writing that the successor:

- (1) Is eligible to receive a permit in accordance with rules and regulations of the Department;

(2) Has submitted a performance bond or other reclamation guarantee in accordance with the rules and regulations of the Department;

(3) Meets any other requirements as provided by the rules and regulations of the Department.

(g) Continued operation under existing permit. The existing permittee shall be entitled to continue operations until such time as the Department approves the sale or transfer of the permit. Upon approval, the successor-in-interest shall assume the liability and reclamation responsibilities of the existing permit and shall conduct surface non-coal mining and reclamation operations in full compliance with the regulatory programs, and the terms and conditions of the existing permit.

(h) The provisions of this section shall not be utilized to effect a revision to an existing permit under Section 460:10-19-4 of this Chapter.

SUBCHAPTER 29. PERFORMANCE BOND FORFEITURE

460:10-29-5. Determination of forfeiture amount [REVOKED]

~~The Department shall determine the amount of the bond to be forfeited on the basis of the estimated cost to the Department or its contractor to complete the reclamation plan and other regulatory requirements in accordance with 45 O.S. (1981), et seq., this Chapter, and the requirements of the permit.~~

[OAR Docket #04-1193; filed 6-28-04]

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

[OAR Docket #04-1195]

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RULES:

- Subchapter 25. Surface Mining Permit Applications: Minimum Requirements for Information on Environmental Resources 460:20-25-11. [AMENDED]
- Subchapter 29. Underground Mining Permit Applications: Minimum Requirements for Information Environmental Resources 460:20-29-11. [AMENDED]
- Subchapter 31. Underground Mining Permit Applications: Minimum Requirements for Reclamation 460:20-31-13. [AMENDED]
- Subchapter 43. Permanent Program Performance Standards: Surface Mining Standards 460:20-43-14. [AMENDED]
460:20-43-46. [AMENDED]
460:20-43-52. [AMENDED]
- Subchapter 45. Permanent Program Performance Standards: Underground Mining Activities 460:20-45-46. [AMENDED]
460:20-45-47. [AMENDED]
- Subchapter 57. State Inspectors 460:20-57-6. [AMENDED]

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ANALYSIS:

There were numerous changes made throughout this Chapter. The elimination of 460-20-25-11(a)(11) and 460:20-29-11(a)(11) was made pursuant to a federal act because their requirements were provided for elsewhere within the Chapter. The changes in 460:20-31 and 460:20-45-47 eliminated a pre-subsidence survey and a rebuttal presumption of subsidence based on the angle of draw both of which had been struck down by federal courts. Under 460:20-43-14(a) and 460:20-43-52, a new requirement was added in that impoundments not be any closer than 100 feet from a public road right-of-way. In 460:20-43-46 and 460:20-45-46, the need for approval by the state forestry and wildlife agencies, for every fish and wildlife habitat plan, was eliminated but at the same time the Department adopted the same standards required by these agencies. Requirements establishing informal conference procedures for citizen complaints were added to 460:20-57-6.

CONTACT PERSON:
Cathy Frank, Legal Officer, Oklahoma Department of Mines Wagoner Field Office, 29858 E. 690 Road, Wagoner, OK 74467-9154, (918)485-3999.

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SUBCHAPTER 25. SURFACE MINING PERMIT APPLICATIONS: MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

- 460:20-25-11. Cross sections, maps, and plans**
- (a) The application shall include cross sections, maps, and plans showing:
- (1) Elevations and locations of test borings and core samplings;
 - (2) Elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application;
 - (3) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be

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mined, each stratum of the over burden, and the stratum immediately below the lowest coal seam to be mined;

(4) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(5) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit and adjacent areas;

(6) Location and extent of subsurface water, if encountered, within the proposed permit or adjacent areas;

(7) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within the proposed permit and adjacent areas;

(8) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(9) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(10) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent area;

~~(11) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:~~

~~(A) Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations specified by the Department.~~

~~(B) Where the area has been previously mines, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the Department to be representative of the premining configuration of the land.~~

~~(C) Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.~~

(b) Cross sections, maps, and plans included in a permit application as required by this Section shall be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, a professional geologist, a qualified registered, professional land surveyor, with assistance from experts in related fields such as landscape architecture, and shall be updated as required by the Department.

SUBCHAPTER 29. UNDERGROUND MINING PERMIT APPLICATIONS: MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

460:20-29-11. Cross sections, maps, and plans

(a) The application shall include cross sections, maps, and plans showing:

(1) Elevations and locations of test borings and core samplings;

(2) Elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application;

(3) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the over burden, and the stratum immediately below the lowest coal seam to be mined;

(4) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(5) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit and adjacent areas;

(6) Location and extent of subsurface water, if encountered, within the proposed permit or adjacent areas;

(7) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within the proposed permit and adjacent areas;

(8) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(9) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(10) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent area;

~~(11) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:~~

~~(A) Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations specified by the Department.~~

~~(B) Where the area has been previously mines, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the Department to be representative of the premining configuration of the land.~~

~~(C) Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.~~

(b) Cross sections, maps, and plans included in a permit application as required by this Section shall be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, a professional geologist, a qualified registered, professional land surveyor, with assistance from experts in related fields such as landscape architecture, and shall be updated as required by the Department.

**SUBCHAPTER 31. UNDERGROUND MINING
PERMIT APPLICATIONS: MINIMUM
REQUIREMENTS FOR RECLAMATION**

460:20-31-13. Subsidence control plan

- (a) **Presubsidence survey.** Each application must include:
- (1) A map of the permit and adjacent areas at a scale of 1:12,000, or larger if determined necessary by the Department, showing the location and type of structures and renewable resource lands that subsidence may materially damage or for which value or reasonably foreseeable use may be diminished by subsidence, and showing the location and type of drinking, domestic, and residential water supplies that could be contaminated, diminished, or interrupted by subsidence.
 - (2) A narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish, or interrupt drinking, domestic, or residential water supplies.
 - (3) Except for the areas where unplanned subsidence is projected to be used, A survey of the condition of all non-commercial buildings or occupied residential dwellings and structures related thereto, that may be materially damaged or for which the reasonably foreseeable use may be diminished by the subsidence, within the area encompassed by the applicable angle of draw; as well as a survey of the quantity and quality of all drinking, domestic, and residential water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the applicant will notify the owner, in writing, of the effect the denial of access will have as described in 460:2045-47(c)(4) 4 of this Chapter. The applicant must pay for any technical assessment or engineering evaluation to determine the premining condition or value of such non-commercial buildings or occupied residential dwellings or structures related thereto and the quantity and quality of the drinking, domestic, or residential water supplies. The applicant must provide copies of the survey and any technical assessment or engineering evaluation to the property owner and Department.
- (b) **Subsidence control plan.** If the survey conducted under paragraph (a) of this section shows that no structures, or drinking, domestic, or residential water supplies, or renewable resource lands exist, or that no material damage or diminution in value or reasonably foreseeable use of such structures or lands, and no contamination, or interruption of such water supplies would occur as a result of mine subsidence, and if the Department agrees with this conclusion, no further information need be provided under this section. If the survey shows that structures, renewable resource lands, or water supplies exist and that subsidence could cause material damage or diminution in value or foreseeable use, or contamination, diminution, or interruption of protected water supplies, or if the Department determines that damage, diminution in value or foreseeable

use, or contamination, diminution, or interruption could occur, that application shall include a subsidence control plan that contains the following information:

- (1) A description of the method of coal removal, such as longwall mining, room-and-pillar removal, hydraulic mining, or other extraction methods, including the size, sequence, and timing for the development of underground workings.
- (2) A map of underground workings which describes the location and extent of areas in which planned-subsidence mining methods will be used and which includes all areas where the measures described in (4), (5) and (b)(7) of this Section will be taken to prevent or minimize subsidence and subsidence related damage; and where appropriate, to correct subsidence-related material damage.
- (3) A description of the physical conditions, such as depth of cover, seam thickness, and lithology, which affect the likelihood or extent of subsidence and subsidence-related damage.
- (4) A description of monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce, or correct material damage in accordance with 460:20-45-47 (c) of this Chapter.
- (5) Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage, including, but not limited to:
 - (A) Backstowing or backfilling of voids;
 - (B) Leaving support pillars of coal;
 - (C) Leaving areas in which no coal is removed, including by leaving coal in place; and
 - (D) Taking measures on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface.
- (6) A description of the anticipated effects of planned subsidence, if any.
- (7) For those areas where planned subsidence is projected to be used, a description of methods to be employed to minimize damage from planned subsidence to non-commercial buildings and occupied residential dwellings and structures related thereto; or the written consent of the owner of the structure or facility that minimization measures not be taken; or unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs minimizing damage exceed the anticipated costs repair.
- (8) A description of the measures to be taken in accordance with 460:20-45-8 and 460:20-45-47(c) of this Chapter to replace adversely affected protected water supplies or to mitigate or remedy any subsidence-related material damage to the land and protected structures; and
- (9) Other information specified by the Department as necessary to demonstrate that the operation will be conducted in accordance with the performance standards of Section 460:20-45-47 of this Chapter for subsidence control.

SUBCHAPTER 43. PERMANENT PROGRAM PERFORMANCE STANDARDS: SURFACE MINING STANDARDS

460:20-43-14. Impoundments

(a) **General requirements.** The requirements of this subsection apply to both temporary and permanent impoundments.

(1) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-V1-TR60, Oct. 1985), shall comply with "Minimum Emergency Spillway Hydrologic criteria" table in TR-60 and the requirements of this section. The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 5529a) and 1 CFR Part 51. Copies may be obtained from the national technical Information Service (NTIS), 5285 Port royal Road, Springfield, Virginia 22161, order No. PB 87-157509/AS. Copies can be inspected at the OSM headquarters Office, office of Surface Mining Reclamation and Enforcement, administrative Records, Room 660, 800 North Capitol Street, Washington, D.C. or at the Office of the Federal register, 800 North Capitol Street, NW, ~~suite~~ Suite 700, Washington, D.C.

(2) Impoundments meeting the criteria of 30 CFR Section 77.216 shall comply with the requirements of 30 CFR Section 77.216 and this Section. The plan required to be submitted to the District Manager Of MSHA under 30 CFR Section 77.216 shall also be submitted to the Department as part of the permit application.

(3) Design Certification. The design of impoundments shall be certified **in** accordance with Section 460:20-27-14(a) of this Chapter as designed to meet the requirement of this ~~part~~ Subchapter using current, prudent, engineering practices and any design criteria established by the Department. The qualified, registered, professional engineer or qualified , registered, professional, land surveyor shall be experienced ~~ibn~~ in the design and construction of impounds.

(4) **Stability.**

(A) An impoundment meeting the Class B or C criteria for dams in TR- 60, or the size or other criteria of 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(B) Impoundments not included in Section (a)(4)(A) of this Section, except for a coal mine waste impounding structure, or located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.3 for normal pool with a steady state seepage saturation conditions or meet the requirements of Section 460:20-27-14(c)(3).

(5) **Freeboard.** Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

(6) **Foundation.**

(A) Foundation and abutments for the impoundment structure shall be stable under all conditions of construction and operation of the impoundment and shall be designed based on accurate and adequate information on the foundation conditions. For an impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), sufficient foundation investigations and laboratory testing of foundation material shall be performed in order to determine the design requirements for foundation stability.

(B) All vegetative and organic materials shall be removed and foundation excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(7) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden draw-down.

(8) Faces of embankments and surrounding areas shall be vegetated, except the faces where water is impounded may be ripped on otherwise stabilized in accordance with accepted design practices.

(9) **Spillways.** An impoundment shall include either a combination of principal emergency spillways or a single spillway configured as specified in (a)(9)(A) of this Section, designed and constructed to safety pass the applicable design precipitation event specified in (a)(9)(B) of this Section, except as set forth in (c)(2) of this Section.

(A) The ~~department~~ Department may approve a single open-channel spillway that is:

(i) Of nonerodible construction and designed to carry sustained flows; or

(ii) Earth-or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) Except as specified in (c)(2) of this Section, the required design precipitation event for an impoundment meeting the spillway requirements of (a)(9) of this Section is:

(i) For an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or grater event as specified by the Department.

(ii) For an impoundment meeting or exceeding the size or other criteria of 30 CFR 77.216(a), a 100-year 6-hour event, or greater event as specified by the Department.

(iii) For an impoundment not meeting the requirements of Subsection ~~(a)(9)(B)(i)~~ (a)(9)(B)(i)

- or (ii) of this Section or, a 25-year 6-hour event, or greater event as specified by the Department.
- (10) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of highwall to provide adequate safety and access for the proposed water users.
- (11) **Inspections.** Except as provided in (a)(11)(D) of this section, a qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, shall inspect each impoundment as provided in (a)(11)(A) of this Section. The professional engineer or specialist shall be experienced in the construction of impoundments.
- (A) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.
- (B) The qualified registered professional engineer, or qualified registered professional land surveyor as specified in (a)(11)(D) of this Section, shall promptly after each inspection required in (a)(11)(A) of this Section provide to the Department a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this Chapter. The report shall include discussion of any appearance of instability, structural weakness or other hazardous condition, depth and elevation of any impounded waters, existing storage capacity, and existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.
- (C) A copy of the report shall be retained at or near the minesite.
- (D) A qualified registered professional land surveyor may inspect any temporary or permanent impoundment that does not meet the SCS Class B or C criteria for dams in TR-60 or the size or other criteria of 30 CFR 77.216(a) and certify and submit the report required by (a)(11)(B) of this Section, except that all coal mine waste impounding structure covered by Section 460:20-43-31 of this Chapter shall be certified by a qualified registered professional engineer. The professional land surveyor shall be experienced in the construction of impoundments.
- (12) Impoundments meeting the SCS Class B or C criteria for dams in TR-60 or other criteria of 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3. Other impoundments shall be examined at least quarterly by a qualified person designated by the operator for the appearance of structural weakness and other hazardous conditions.
- (13) **Emergency procedures.** If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the Department of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or

implemented, the Department shall be notified immediately. The Department shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(14) The embankment slopes of each impoundment shall not be closer than 100 feet to any public road right-of-way unless otherwise approved under procedures established in 460:20-7-4(4) and 460:20-7-5(d). The area between the road right-of-way and the impoundment slopes, clear zone slopes, shall not be steeper than a 1V:6H grade.

- (b) **Permanent impoundments.** A permanent impoundment of water may be created, if authorized by the Department in the approved permit based upon the following demonstration:
- (1) The size and configuration of such impoundment will be adequate for its intended purposes.
 - (2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable State and Federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable State and Federal water quality standards.
 - (3) The water level will be sufficiently stable and be capable of supporting the intended use.
 - (4) Final grading will provide for adequate safety and access for proposed water users.
 - (5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural industrial, recreational, or domestic uses.
 - (6) The impoundment will be suitable for the approved postmining landuse.
- (c) **Temporary Impoundments.**
- (1) The Department may authorize the construction of temporary impoundments as part of a surface coal mining operation.
 - (2) In lieu of meeting the requirements of (a)(9)(A) of this Section, the Department may approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered land surveyor in accordance with Section 460:20-27-14(a) of this Chapter that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where:
 - (A) In the case of an impoundment meeting the SCS Class B or C criteria for dams in TR-60, or other size or other criteria of Section 77.216(a) of 30 CFR, it is designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the Department, or

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(B) In the case of an impoundment not included in Subsection (c)(2)(A) of this Section it shall be designed to control the precipitation of a 100- year 6-hour event, or greater event as specified by the Department.

460:20-43-46. Revegetation: standards for success

(a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of Section 460:20-43-43.

(1) Standards for success and statistically valid sampling techniques for measuring success are identified in the Bond Release Guidelines published by the Department.

(2) Comparison of ground cover and productivity may be made on the basis either of reference areas or of technical standards representative of unmined lands in the area. Management of reference areas, if required for the approved postmining land use of the permit area. Species composition of the vegetation of the reference area and the reclaimed area must be comparable. Ground cover, production, or stocking shall be considered equal to the approved success standard (reference area of technical standard) when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided t-test with a 0.10 alpha error).

(b) The following minimum success standards must be achieved:

(1) For areas with a post-mining land use of pasture land or grazing land, the minimum ground cover of desirable living plants on the revegetated area shall be equal (as defined above) to the ground cover of living plants of the approved reference area(s) or to a standard of ninety percent desirable living ground cover if no reference area is used. The minimum production of desirable living plants on the revegetated area shall be at least equal (as defined in (a)(2) of this Section to the production of desirable living plants on the approved reference area or to technical standards. For permits using reference areas, at no time shall an area reclaimed to improved pasture be released from Phase III or III liability if it is composed of less than 70 percent ground cover of desirable living plants or, if reclaimed with desirable native grasses, less than 50 percent desirable cover.

(2) For areas developed for use as cropland, crop production on the revegetated area shall be at least equal (as defined in (a)(2) of this Section to that of a reference area or technical standards.

(3) For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

(A) Minimum stocking and planting arrangements for fish and wildlife habitat shall be specified by

~~the Department on the basis of local and regional conditions and after consultation with and approved by the State agencies responsible for the administration of forestry and wildlife programs and will be incorporated into an approved reclamation plan. Consultation and approval will occur on a permit specific basis.~~

(i) If trees or shrubs are to be planted, the following are required to be included in the wildlife habitat plan. The minimum tree and shrub stocking rate will be 250 per acre. Of that 250, there will be 100 hard mast producing trees of at least three native species such as red oak, post oak, bur oak, black oak, willow oak, shumard oak, water oak. Of that 250, there will be 100 soft mast producing trees of at least three native species such as sugarberry, sweet gum, black cherry, black gum sycamore, hackberry. In addition to the hard mast and soft mast producing trees, 50 soft mast producing shrubs of at least two native species such as American plum, Mexican plum, deciduous holly, Carolina buckthorn or rusty blackhaw must be planted.

(ii) If native grasses and forbs are to be planted, the following are required to be included in the wildlife habitat plan. At a minimum seeding rate of two lbs of pure live seed per species per acre, at least three of the following grasses must be planted: big bluestem, little bluestem, indiagrass, switchgrass, and sideoats grama. A minimum seeding rate of one lb. of pure live seed per species per acre, at least three of the following forbs must be planted: maximilian sunflower, showy partridge peas, Illinois bundleflower, partridge pea, purple prairie clover, roundhead, common and Korean lespeza.

(iii) If the applicant chooses not to follow (b)(3)(A)(1) or (b)(3)(A)(2) of this subsection then an alternative wildlife habitat plan must be submitted to the Department for review, along with written approval of the alternative planting rates and species from the state agency responsible for the management of Fish and Wildlife.

(B) Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for at least three years or 60% of the responsibility period.

(C) The technical standard for vegetative ground cover on these areas is 80 percent. In no cases shall vegetative ground cover be less than that required to achieve the approved postmining land use and must be sufficient to control erosion.

(D) Comments from state Agencies responsible for management of Fish and Wildlife are required.

(4) Bare areas shall not exceed one-sixteenth acres in size and total not more than one percent of the area planted.

(5) For areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion.

(6) For areas previously disturbed by mining that were not reclaimed to the requirements of this Chapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion. In general this is considered to be at least 70% vegetative ground cover.

(c) Responsibility period.

(1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the Department in accordance with (c)(4) of this Section.

(2) In areas of more than 26.0 inches average annual precipitation, the period of responsibility shall continue for a period of not less than:

(A) Five full years, except as provided in paragraph (c)(2)(B) of this section. The vegetation parameters identified in Subsection (b) of this Section for grazing land or pasture land and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other uses identified in Subsection (b) of this Section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(B) Two full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by subsection (b)(6), the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than:

(A) Ten full years, except as provided in subsection (c)(3)(B) below. Vegetation parameters identified in Subsection (b) of this Section shall equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period.

(B) Five full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by subsection (b)(6), the lands shall equal or exceed the standards

during the growing seasons of the last two consecutive years of the responsibility period.

(4) The Department has approved selective husbandry practices that, when accomplished in accordance with (c)(4)(A) through (G) of this Section, do not extend the period of responsibility for revegetation success and bond liability. The approved practices shall be required to continue as part of the postmining land use and shall also be considered a normal husbandry practice within the region for unmined lands having uses similar to the approved postmining land use of the disturbed area. Since no absolute limits for individual parameters for fertility, liming, etc. can be set by the Department, established approved and published information sources and other variables involved shall be considered in determining what is approved selective husbandry practice. Evaluations shall include professional judgements and the incorporation of guidelines provided by approved source documents and information provided by Oklahoma State University (OSU) and the United States Department of Agriculture National Resources Conservation Service (NRCS). OSU has established and publishes many recommended fertility and management practices for row crops, hayland, and grazingland tailored for soil conditions, crop rotations, tillage and application practices plus OSU also has Extension Offices through out the state that can provide more site specific recommendations. The Department will judge management practices on mined lands against the recommended practices provided by OSU and NRCS to judge if the practices are normal husbandry practices and shall through routine inspection process, monitor liability starts dates, liming and fertilization activities and the success of the reclamation. The Department shall review and assess whether site specific activities are outside the normal husbandry practices and the liability period must restart. Giving allowance for flexibility to maintain conditions and latitude for proper management of reclaimed areas, the Department's review and assessment, for determination of whether or not site specific activities are outside the normal husbandry practice, shall incorporate the following:

(A) The Department will consider limited re-seeding and associated fertilizing and liming as non-augmentative if the area is small in relation to the permit area, watershed(s) or surface property boundary(ies), whichever is smaller. Also, the size of the area relative to the surrounding area and the ability of the reclaimed area to meet the postmining land use will be considered. Removal and reclamation of temporary structures identified in (c)(4)(E) of this Section would not be considered augmentation. Repair of rills and gullies that are not in excess of the stipulations within (c)(4)(D) of this Section would not be considered augmentation. The Department will require any minor reseeded areas to be fully established and meet the requirements of (a) and (b) of this Section at the time of the bond release.

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(B) Approved agricultural practices described by the Oklahoma State University (OSU) Cooperative Extension Service are not considered augmentation. These practices include but are not limited to: fertilizing, liming, weed and pest control, and mulching. The OSU Cooperative Extension Services publishes recommended agricultural practices as Fact Sheets and are available by contacting the state or local OSU Extension Office.

(C) On all lands with a postmining land use other than cropland, any areas reseeded or replanted as a part or result of a normal husbandry practice must be sufficiently small in size and limited in extent of occurrence, as described in (c)(4)(A) of this Section, or as a part of a hay management plan that is an agricultural practice described by the OSU Cooperative Extension Service. The reestablished vegetation must be in place for a sufficient length of time to not adversely affect the Department's ability to make a valid determination at the time of bond release as to whether the site has been properly reclaimed.

(D) Pursuant to (c)(4) of this Section, the repair of rills and gullies will not be allowed in Oklahoma without restarting the revegetation liability period. However, the repair of rills and gullies will not be considered an augmentation practice if the occurrences and treatment of such rills and gullies constitutes a normal conservation practice in the region as defined by the Department. In Oklahoma the normal range of precipitation during the fall or spring seeding seasons may result in the formation of rills and gullies of permanent vegetative cover for any land use. The Department has determined the NRCS prepared guidelines for the treatment of and repair of these rills and gullies constitutes the treatment practice which is the usual degree of management customarily performed to prevent exploitation, destruction, or neglect of the soil resource and maintain the productivity of the land use. This treatment would not be prohibited as an augmentative practice because the NRCS guidance is the standard developed for the normal treatment of rills and gullies that may develop on permanent cover of vegetation on unmined lands in Oklahoma. After initial vegetation establishment, the Department defines the treatment of rills and gullies requiring permanent reseeding of more than 10 acres in a contiguous block or 10% of a permit area initially seeded during a single year to be an augmentative practice because of the potential for delayed seeding of large areas to reduce the probability of revegetation success. The NRCS guidelines for repair of rills and gullies require that acreage with active furrows, rills, ditches, or gullies be filled to aid the conservation practice application. The rills and gullies should be contoured or smoothed if the site is large.

(i) These areas must be seeded during the appropriate seeding season with approved perennial

species followed by an application of mulch. If permanent seeding of the area must be delayed due to weather conditions, then appropriate temporary erosion control measures must be utilized. Mulch that is to be applied must be free of noxious weeds, anchored during or immediately after application, and may be applied at the following rates:

(I) Hay or straw shall be applied at the rate of 2 tons/acre and crimped into the soil, or 1 ton/acre with the additional application of 300 gallons/acre of asphalt emulsion spray to bind the mulch to the soil. Hay mulch must be less than 2 years old. Straw derived from small grain species shall not be used as mulch.

(II) Wood chips shall be applied at a rate of 11-15 tons/acres alone or 6/tons/acre with the additional application of 300 gallon/acre of asphalt emulsion spray to bind the mulch to the soil.

(III) Strawy manure shall be applied at the rate of 10 tons/acre. Strawy manure need not be anchored if it contains heavy solids.

(ii) The use of hay bales and rock rip-rap to fill or repair rills and gullies will be approved on a case by case basis. Monitoring will be required to assure that the treatment provides long term erosion control, does not disrupt the postmining land use, and that permanent vegetation becomes established. If this treatment is not effective then filling of the rills and gullies with topsoil then revegetating the areas will be required. If the drainage area is of sufficient size to create continued problems with rills and gullies, the operator shall install terraces to control the amount and velocity of water moving across the area. These terraces shall be designed and constructed accordance with this Chapter.

(E) Liming, fertilization, mulching, seeding or stocking following the reclamation of any temporary roads, remaining after a Phase I Bond Release approval, temporary sediment or hydraulic control structures, areas disturbed by the installation or removal of oil and gas wells or utility lines, and areas where the vegetation was disturbed by vehicular traffic not under the control of the permittee will not be considered augmentation.

(F) Irrigation, reliming, refertilization of revegetated areas; reseeding cropland; renovating pastureland by overseeding with legumes after a Phase II bond release shall be considered normal husbandry practices and shall not restart liability period if the amount and frequency of these practices used on unmined land within the region.

(G) Other normal husbandry practices that may be conducted on postmining land uses of fish and wildlife habitat, recreation, and forestry without restarting the liability period are disease, pest, and

vermin control; pruning; and transplanting and re-planting trees and shrubs in accordance with (b)(3) of this Section.

460:20-43-52. Roads: general

(a) **Road Classification system.**

- (1) Each road, as defined in Section 460:20-3-5 of this Chapter shall be classified as either a primary road or an ancillary road.
- (2) A primary road is any road which is:
 - (A) Used for transporting coal or spill;
 - (B) Frequently used for access or other purposes for a period in excess of six months; or
 - (C) To be retained for an approved postmining land use.
- (3) An ancillary road is any road not classified as a primary road.

(b) **Performance standards.** Each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to:

- (1) Control or prevent erosion, siltation, and air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;
- (2) Control or prevent damage to fish, wildlife, or their habitat and related environmental values;
- (3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;
- (4) Neither cause or contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;
- (5) Refrain from seriously altering the normal flow of water in streambeds or drainage channels;
- (6) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the National Parks System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Acts of Congress;
- (7) Use non-acid-and nontoxic-forming substances in road surfacing;

(c) **Design and construction limits and establishment of design criteria.** To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices, any necessary design criteria established by the Department.

(d) **Location.**

- (1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically

approved by the Department in accordance with applicable Sections 460:20-43-8, through 460:20-43-10, and 460:20-43-16 of this Chapter.

(2) Roads shall be located to minimize downstream sedimentation and flooding.

(3) Relocation of a public road shall comply with 460:20-43-14(a)(14).

(e) **Maintenance.**

(1) A Road shall be maintained to meet the performance standards of this ~~part~~ Subchapter and any additional criteria specified by the Department.

(2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as practicable after the damage has occurred.

(f) **Reclamation.** A road not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable and is no longer needed for mining and reclamation operations. This reclamation shall include:

- (1) Closing the road to traffic;
- (2) Removing all bridges and culverts unless approved as part of the postmining land use;
- (3) Removing or otherwise disposing of road-surfacing materials that are incompatible with postmining land use vegetation requirements.
- (4) Reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain;
- (5) Protecting the natural drainage patterns by installing dikes and cross drains as necessary to control surface runoff and erosion; and
- (6) scarifying and ripping the roadbed; repairing topsoil or substitute material, and revegetating disturbed surfaces in accordance with Sections 460:20-43-7 and 460:43-43, through 460:20-43-46 of this Chapter.

SUBCHAPTER 45. PERMANENT PROGRAM PERFORMANCE STANDARDS: UNDERGROUND MINING ACTIVITIES

460:20-45-46. Revegetation: standards for success

(a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of Section 460:20-43-43.

(1) Standards for success and statistically valid sampling techniques for measuring success are identified in the Bond Release Guidelines published by the Department.

(2) Comparison of ground cover and productivity may be made on the basis either or reference areas or of technical standards representative of unmined lands in the area. Management of references areas, if required for the approved postmining land use of the permit area. Species composition of the vegetation of the reference area and

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the reclaimed area must be comparable. Ground cover, production, or stocking shall be considered equal to the approved success standard (reference area of technical standard) when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided t-test with a 0.10 alpha error).

(b) The following minimum success standards must be achieved:

(1) For areas with a post-mining land use of pasture land or grazing land, the minimum ground cover of desirable living plants on the revegetated area shall be equal (as defined above) to the ground cover of living plants of the approved reference area(s) or to a standard of ninety percent desirable living ground cover if no reference area is used. The minimum production of desirable living plants on the revegetated area shall be at least equal (as defined in (a)(2) of this Section to the production of desirable living plants on the approved reference area or to technical standards. For permits using reference areas, at no time shall an area reclaimed to improved pasture be released from Phase III or III liability if it is composed of less than 70 percent ground cover of desirable living plants or, if reclaimed with desirable native grasses, less than 50 percent desirable cover.

(2) For areas developed for use as cropland, crop production on the revegetated area shall be at least equal (as defined in (a)(2) of this Section to that of a reference area or technical standards.

(3) For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

(A) ~~Minimum stocking and planting arrangements for fish and wildlife habitat shall be specified by the Department on the basis of local and regional conditions and after consultation with and approved by the State agencies responsible for the administration of forestry and wildlife programs and will be incorporated into an approved reclamation plan. Consultation and approval will occur on a permit specific basis.~~

(i) If trees and shrubs are to be planted, the following are required to be included in the wildlife habitat plan. The minimum tree and shrub stocking rate is 250 per acre. Of that 250, there will be 100 hard mast producing trees of at least three native species such as red oak, post oak, bur oak, black oak, willow oak, shumard oak, water oak. Of that 250, there will be 100 soft mast producing trees of at least three native species such as sugarberry, sweet gum, black cherry, black gum sycamore, hackberry. In addition to the hard mast and soft mast producing trees, 50 soft mast producing shrubs of at least two native species

such as Americam plum, Mexican plum, deciduous holly, Carolina buckthorn or rusty blackhaw must be planted.

(ii) If native grasses and forbs are to be planted the following are required. A minimum of two lbs of pure live seed per species per acre, at least three of the following grasses must be planted: big bluestem, little blue stem, indiagrass, switchgrass, and side oats grama. At a minimum seeding rate of one lb of pure live seed per species per acre, at least three of the following forbs must be planted: maximilian sunflower, showy partridge pea, Illinois bundleflower, purple prairie clover, roundhead, common and Korean lespedeza.

(iii) If the Applicant chooses not to follow (b)(3)(1) or (b)(3)(2) of this Subsection then an alternative wildlife habitat plan must be submitted to the Department for review, along with written approval of the alternative planting rates and species from the state agency responsible for the management of Fish and Wildlife.

(B) Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for at least three years or 60% of the responsibility period.

(C) The technical standard for vegetative ground cover on these areas is 80 percent. In no cases shall vegetative ground cover be less than that required to achieve the approved postmining land use and must be sufficient to control erosion.

(D) Comments from State agencies responsible for management of Fish and wildlife are required.

(4) Bare areas shall not exceed one-sixteenth acres in size and total not more than one percent of the area planted.

(5) For areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion.

(6) For areas previously disturbed by mining that were not reclaimed to the requirements of this Chapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion. In general this is considered to be at least 70% vegetative ground cover.

(c) **Responsibility time frame.**

(1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding

husbandry practices that are approved by the Department in accordance with (c)(4) of this Section.

(2) In areas of more than 26.0 inches average annual precipitation, the period of responsibility shall continue for a period of not less than:—4

(A) Five full years, except as provided in paragraph (c)(2)(B) of this section. The vegetation parameters identified in Subsection (b) of this Section for grazing land or pasture land and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other uses identified in Subsection (b) of this Section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(B) Two full years for lands eligible for reining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by subsection (b), the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than:

(A) Ten full years, except as provided in subsection (c)(3)(B) below. Vegetation parameters identified in Subsection (b) of this Section shall equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period.

(B) Five full years for lands eligible for reining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by subsection (b), the lands shall equal or exceed the standards during the growing seasons of the last two consecutive years of the responsibility period.

(4) The Department has approved selective husbandry practices that, when accomplished in accordance with (c)(4)(A) through (G) of this Section, do not extend the period of responsibility for revegetation success and bond liability. The approved practices shall be required to continue as part of the postmining land use and shall also be considered a normal husbandry practice within the region for unmined lands having uses similar to the approved postmining land use of the disturbed area. Since no absolute limits for individual parameters for fertility, liming, etc. can be set by the Department, established approved and published information sources and other variables involved shall be considered in determining what is approved selective husbandry practice. Evaluations shall include professional judgements and the incorporation of guidelines provided by approved source documents and information provided by Oklahoma State University (OSU) and the United States Department of Agriculture National Resources Conservation Service (NRCS). OSU has established and publishes many recommended fertility

and management practices for row crops, hayland, and grazingland tailored for soil conditions, crop rotations, tillage and application practices plus OSU also has Extension Offices through out the state that can provide more site specific recommendations. The Department will judge management practices on mined lands against the recommended practices provided by OSU and NRCS to judge if the practices are normal husbandry practices and shall through routine inspection process, monitor liability starts dates, liming and fertilization activities and the success of the reclamation. The Department shall review and assess whether site specific activities are outside the normal husbandry practices and the liability period must restart. Giving allowance for flexibility to maintain conditions and latitude for proper management of reclaimed areas, the Department's review and assessment, for determination of whether or not site specific activities are outside the normal husbandry practice, shall incorporate the following:

(A) The Department will consider limited reseeded and associated fertilizing and liming as non-augmentative if the area is small in relation to the permit area, watershed(s) or surface property boundary(ies), whichever is smaller. Also, the size of the area relative to the surrounding area and the ability of the reclaimed area to meet the postmining land use will be considered. Removal and reclamation of temporary structures identified in (c)(4)(E) of this Section would not be considered augmentation. Repair of rills and gullies that are not in excess of the stipulations within (c)(4)(D) of this Section would not be considered augmentation. The Department will require any minor reseeded areas to be fully established and meet the requirements of (a) and (b) of this Section at the time of the bond release.

(B) Approved agricultural practices described by the Oklahoma State University (OSU) Cooperative Extension Service are not considered augmentation. These practices include but are not limited to: fertilizing, liming, weed and pest control, and mulching. The OSU Cooperative Extension Services publishes recommended agricultural practices as Fact Sheets and are available by contacting the state or local OSU Extension Office.

(C) On all lands with a postmining land use other than cropland, any areas reseeded or replanted as a part or result of a normal husbandry practice must be sufficiently small in size and limited in extent of occurrence, as described in (c)(4)(A) of this Section, or as a part of a hay management plan that is an agricultural practice described by the OSU Cooperative Extension Service. The reestablished vegetation must be in place for a sufficient length of time to not adversely affect the Department's ability to make a valid determination at the time of bond release as to whether the site has been properly reclaimed.

(D) Pursuant to (c)(4) of this Section, the repair of rills and gullies will not be allowed in Oklahoma

without restarting the revegetation liability period. However, the repair of rills and gullies will not be considered an augmentation practice if the occurrences and treatment of such rills and gullies constitutes a normal conservation practice in the region as defined by the Department. In Oklahoma the normal range of precipitation during the fall or spring seeding seasons may result in the formation of rills and gullies of permanent vegetative cover for any land use. The Department has determined the NRCS prepared guidelines for the treatment of and repair of these rills and gullies constitutes the treatment practice which is the usual degree of management customarily performed to prevent exploitation, destruction, or neglect of the soil resource and maintain the productivity of the land use. This treatment would not be prohibited as an augmentative practice because the NRCS guidance is the standard developed for the normal treatment of rills and gullies that may develop on permanent cover of vegetation on unmined lands in Oklahoma. After initial vegetation establishment, the Department defines the treatment of rills and gullies requiring permanent reseeding of more than 10 acres in a contiguous block or 10% of a permit area initially seeded during a single year to be an augmentative practice because of the potential for delayed seeding of large areas to reduce the probability of revegetation success. The NRCS guidelines for repair of rills and gullies require that acreage with active furrows, rills, ditches, or gullies be filled to aid the conservation practice application. The rills and gullies should be contoured or smoothed if the site is large.

(i) These areas must be seeded during the appropriate seeding season with approved perennial species followed by an application of mulch. If permanent seeding of the area must be delayed due to weather conditions, then appropriate temporary erosion control measures must be utilized. Mulch that is to be applied must be free of noxious weeds, anchored during or immediately after application, and may be applied at the following rates:

(I) Hay or straw shall be applied at the rate of 2 tons/acre and crimped into the soil, or 1 ton/acre with the additional application of 300 gallons/acre of asphalt emulsion spray to bind the mulch to the soil. Hay mulch must be less than 2 years old. Straw derived from small grain species shall not be used as mulch.

(II) Wood chips shall be applied at a rate of 11-15 tons/acre alone or 6/tons/acre with the additional application of 300 gallon/acre of asphalt emulsion spray to bind the mulch to the soil.

(III) Strawy manure shall be applied at the rate of 10 tons/acre. Strawy manure need not be anchored if it contains heavy solids.

(ii) The use of hay bales and rock rip-rap to fill or repair rills and gullies will be approved on a

case by case basis. Monitoring will be required to assure that the treatment provides long term erosion control, does not disrupt the postmining land use, and that permanent vegetation becomes established. If this treatment is not effective then filling of the rills and gullies with topsoil then revegetating the areas will be required. If the drainage area is of sufficient size to create continued problems with rills and gullies, the operator shall install terraces to control the amount and velocity of water moving across the area. These terraces shall be designed and constructed accordance with this Chapter.

(E) Liming, fertilization, mulching, seeding or stocking following the reclamation of any temporary roads, remaining after a Phase I Bond Release approval, temporary sediment or hydraulic control structures, areas disturbed by the installation or removal of oil and gas wells or utility lines, and areas where the vegetation was disturbed by vehicular traffic not under the control of the permittee will not be considered augmentation.

(F) Irrigation, reliming, refertilization of revegetated areas; reseeding cropland; renovating pastureland by overseeding with legumes after a Phase II bond release shall be considered normal husbandry practices and shall not restart liability period if the amount and frequency of these practices used on unmined land within the region.

(G) Other normal husbandry practices that may be conducted on postmining land uses of fish and wildlife habitat, recreation, and forestry without restarting the liability period are disease, pest, and vermin control; pruning; and transplanting and replanting trees and shrubs in accordance with (b)(3) of this Section.

460:20-45-47. Subsidence control

(a) **Operator measures to prevent or minimize damage.**

(1) The operator shall either adopt measures consistent with known technology which prevents subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface land; or adopt mining technology which provides for planned subsidence in a predictable and controlled manner. Nothing in this Subchapter shall be construed to prohibit the standard method of room-and-pillar mining.

(2) If an operator employs mining technology that provides for planned subsidence in a predictable and controlled manner, the operator must take necessary and prudent measures, consistent with mining method employed, to minimize material damage to the extent technologically and economically feasible to noncommercial buildings and occupied residential dwellings and structures related thereto except that measures required to minimize material damages to such structures are not required if:

- (A) The operator has the written consent of their owners or
- (B) Unless the anticipated damage would constitute a threat to health or safety, costs of such measures exceed the anticipated costs of repair.
- (3) Nothing in this part prohibits the standard method of room-and pillar- mining.
- (b) **Operator compliance.** The operator shall comply with all provisions of the approved subsidence control plan prepared pursuant to Section 460:20-31-13 of this Chapter.
- (c) **Repair of damage to surface lands.** The operator shall:
 - (1) Correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses which it was capable of supporting before subsidence; and
 - (2) Promptly repair, or compensate the owner for, material damage resulting ~~from~~ from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. If repair option is selected, the operator must fully rehabilitate, restore, or replace the damaged structure. If compensation is selected, the permittee must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence-related damage. The operator may provide compensation by the purchase, before mining, of non-cancelable premium-prepaid insurance policy. The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.
 - (3) Either correct material damages resulting from subsidence caused to any structures or facilities not protected by paragraph (c)(2) of this section by repairing the damage or compensate the owner of the structure or facilities for the full amount of the decrease in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase, before mining, of a non-cancelable premium-prepaid insurance policy.
 - (4) ~~Be governed by a rebuttable presumption of causation by subsidence.~~
 - (A) ~~**Rebuttable presumptions of causation for damage with angle of draw.** If damage to any non-commercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outmost boundary of any underground mining workings to the surface of the land, a rebuttable presumption exists that the permittee caused the damage. The presumption will normally apply to a 30-degree angle of draw. A the Department may amend its program to apply the presumption to a different angle of draw if the Department shows in writing that the angle has a more reasonable basis than the 30-degree angle of~~

~~draw, based on geotechnical analysis of the factors affecting potential surface impacts of underground coal mining operations in the State.~~

~~(B) **Approval of the site specific angle of draw.** An operator or permit applicant may request that the presumption apply to an angle of draw different from that established in the program. The Department may approve application of the presumption to a site specific angle of draw different than that contained in the State or Federal program based on a site specific analysis submitted by the applicant. To establish a site specific angle of draw, an applicant must demonstrate and the Department must determine in writing that the proposed angle of draw has a more reasonable basis than the standard set forth in the State program, based on a site specific geotechnical analysis of the potential surface impacts of the mining operation.~~

~~(C) **No presumption where access for presubsidence survey is denied.** If the operator was denied access to the land or property for the purpose of conducting the pre subsidence survey in accordance with 460:20-31-13 of this Chapter, no rebuttable presumption will exist.~~

~~(D) **Rebuttal of presumption.** The presumption will be rebutted if, for example, the evidence establishes that: the damage predated the mining in question; the damage was proximately caused by some other factor or factors and was not proximately caused by subsidence; or the damage occurred outside the surface area within which subsidence was actually caused by the mining in question.~~

~~(E) **Information to be considered in determination of causation.** In any determination of whether damage to protected structures were caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the Department.~~

- (5) **Adjustments of bond amounts for subsidence damage.** When subsidence-related material damage to land, structures, or facilities protected under paragraph (c)(1) through (c)(3) of this section occurs, or when contamination, diminution, or interruption to a water supply protected under 460:2045-8(j) occurs, the Department must require the operator to obtain additional performance bond in the amount of the estimated cost of repairs if the operator will be repairing, or in the amount of the decrease in value if the operator will be compensating the owner, or in the amount of the estimated cost to replace the protected water supply if the operator will be replacing the water supply, until the repair, compensation, or replacement is completed within 90 days of the occurrence of damage, no additional bond is required. The Department may extend a 90-day time frame, but not to exceed one year, if the operator demonstrates and the Department finds in writing that the subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonably anticipated changes have occurred affecting the protected water

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supply, and that therefore it would be unreasonable to complete within 90 days the repair of the subsidence-related material damage to lands or protected structures, or the replacement of the protected water supply.

(d) Underground mining activities shall not be conducted beneath or adjacent to:

- (1) Public buildings and facilities;
- (2) Churches, schools, and hospitals; or
- (3) Impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, such features or facilities. If the Department determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above or to any aquifer or body of water that serves as a significant water source for any public supply system, it may limit the percentage of coal extracted under or adjacent thereto.

(e) If subsidence causes material damage to any of the features or facilities covered by Subsection (d) of this Section, the Department may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.

(f) The Department shall suspend underground mining activities under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

(g) Within a schedule approved by the Department, the operator shall submit a detailed plan of the underground workings. The detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the Department. Upon request of the operator, information submitted with the detailed plan may be held as confidential, in accordance with the requirements of Section 460:20-15-5 (d) of this Chapter.

SUBCHAPTER 57. STATE INSPECTIONS

460:20-57-6. Review of decision not to inspect or enforce

(a) Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may ~~ask the Director to~~ request the Department to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in request for a State inspection under Section 460:20-57-3. The request for review ~~shall follow the procedures set forth in this Section shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.~~

~~(b) The Director shall conduct the review and inform the person, in writing, of the results of the review within 30 days of his receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the person who is or may be adversely affected shall not be disclosed unless confidentiality has been waived or disclosure is required under law. **Informal Conference.** Any person requesting review under paragraph (a) of this Section shall:~~

~~(1) Briefly summarize in writing how the requestor is or may be affected and the issues to be raised by the requestor at the conference.~~

~~(2) State whether the requestor desires to have the conference conducted in the locality of the mine site; and~~

~~(3) Be filed within thirty days of the departmental decision.~~

~~(4) The conference shall be conducted by a representative of the Department who may accept oral or written statements and any other relevant information from any party to the conference. An electronic record shall be made of the conference, unless waived by the parties.~~

~~(c) Except as provided in (d) of this Section, if an informal conference is requested in accordance with (b) of this Section, the Department shall hold an informal conference within a reasonable time following the receipt of the request. The informal conference shall be conducted as follows:~~

~~(1) If requested under (b)(2) of this Section, it shall be held in the locality of the mine site.~~

~~(2) The date, time, and location of the informal conference shall be sent to the requestor and other parties to the conference and advertised by the Department in a newspaper of general circulation in the locality of the mine site at least two weeks before the scheduled conference.~~

~~(d) If all parties requesting the informal conference withdraw their request before the conference is held, the informal conference may be canceled.~~

~~(e) Informal review under this Section shall not affect any right to formal review by the Director under 45 O.S. 4981, Section 786, or to a citizen's suit under 45 O.S. 4981, Section 774.~~

~~(f) Any determination made under (b) of this Section shall constitute a decision of the Department within the meaning of the Department's Rules of Practice and Procedure and shall contain a right of an appeal to formal administrative review the Office of Hearing and Appeals in accordance with the Rules of Practice and Procedure.~~

[OAR Docket #04-1195; filed 6-28-04]

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

[OAR Docket #04-1192]

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PERMANENT final adoption

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Subchapter 1. General Requirements
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n/a

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n/a

ANALYSIS:

These amendments clarify who is totally exempt from the requirements of Chapter 25 and who is just permit exempted but must still comply with the performance standards when explosives and/or blasting agents are used as an incidental part of Federal, State, or local government-financed construction. It is the actual contractor who is totally exempt while his subcontractor, if using explosives or blasting agents, must still comply with the performance requirements within the Chapter.

CONTACT PERSON:

Cathy Frank, Legal Officer, Department of Mines Wagoner Field Office, 29858 E. 690 Road, Wagoner, OK 74467-9154, (918)485-3999

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 26, 2004:

SUBCHAPTER 1. GENERAL REQUIREMENTS

460:25-1-6. Applicability

(a) Chapter 25 applies to all uses of explosives and blasting by all persons except those exempted in (b) of this section.

(b) **Exemptions.** The following persons are exempt from the requirements of Chapter 25.

- (1) **Oil and Gas Exploration** any person engaged in shooting wells or seismographic operations for the purpose of oil and gas production;
- (2) **Mining operations** any mining operation regulated by Title 45 of the Oklahoma Statutes, which includes Coal and Non-Coal mining;
- (3) **Non-Commercial use** any persons using explosives or blasting agents for noncommercial use on their own land, owned in fee or by contract, for the removal

of trees, rocks and dams or for other normal agricultural purposes;

(4) **Incidental or Construction** any person who is using explosives or blasting ~~agent~~ agents as an incidental part of Federal, State or local government-financed highway or other Federal, State, or local government-financed construction; this exemption shall not apply to contractors of the person who is a party to the government-financed contract;

(5) Duly qualified bomb technicians of municipal, county, state, and federal law enforcement agencies for transportation, storage or disposal of any explosive chemical, compound or device, when such technician is performing responsibilities for the preservation of public peace, safety, or criminal investigation.

(c) The following persons are exempt from the permitting requirements of this Chapter, which are contained within Subchapter 3 through Subchapter 9, but must comply with the remaining Subchapters of these rules promulgated by the Oklahoma Mining Commission;

(1) Any municipalities or counties in this state using any blasting agents, explosives or conducting, supervising or controlling a blasting operation in this state.

(2) The Department of Transportation in the conducting, supervision or controlling of any blasting operations in this state.

(3) Contractors of persons using explosives or blasting as an incidental part of government-financed highway construction.

(d) A request for Permit Exemption with the accompanying Application for Permit Exemption must be filed with a written notification, Affidavit of Permit Exemption, obtained from the Department of Mines by any person seeking to qualify as permit exempt.

[OAR Docket #04-1192; filed 6-28-04]

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

[OAR Docket #04-1191]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. CCB Placement Applications
460:30-3-7. [AMENDED]

AUTHORITY:

45 O.S. Section 1.5, 45 O.S. Sections 723 and 940, Oklahoma Mining Commission

DATES:

Comment period:

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Permanent Final Adoptions

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Failure of Legislature to disapprove the rules resulted in final approval on May 20, 2004

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SUPERSEDED EMERGENCY RULES:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

After the promulgation of this Chapter last year, a Scribner's error was found in 460:30-3-7 where the regulation required CCB analyzing to be done bi-annually when the word should be biennially. This amendment corrects that error.

CONTACT PERSON:

Cathy Frank, Legal Officer, Department Of Mines Wagoner Field office, 29858 E. 690 Road, Wagoner, OK, (918)485-3999

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 26, 2004:

SUBCHAPTER 3. CCB PLACEMENT APPLICATIONS

460:30-3-7. CCB placement: Analysis

Each application shall contain a complete analysis of the CCB to be placed in the mining permit area. An additional analysis of CCB placed in the mining permit area will be submitted to the Department ~~bi-annually~~ biennially and annually. Specific parameters to be analyzed initially, ~~bi-annually~~ biennially and annually thereafter shall be:

(1) Ash testing parameters: initial, ~~bi-annually~~ biennially, annually and if the source ash changes.

(A) T.C.L.P. analysis (Conducted ~~bi-annually~~ biennially and if the source of ash changes)

- (i) Arsenic
- (ii) Barium
- (iii) Cadmium
- (iv) Chromium (total)
- (v) Lead
- (vi) Selenium

(B) Chemical analysis of pH (Conducted annually and if the source of ash changes)

(2) CKD testing parameters: initial, ~~bi-annually~~ biennially, annually and if manufacturing/production processes that effect CKD change;

(A) T.C.L.P. analysis (Conducted ~~bi-annually~~ biennially and if manufacturing/production processes that effect CKD change.

- (i) Antimony
- (ii) Arsenic
- (iii) Barium
- (iv) Beryllium
- (v) Cadmium
- (vi) Chromium (total)

- (vii) Lead
- (viii) Mercury
- (ix) Nickel
- (x) Silver
- (xi) Selenium
- (xii) Thallium

(B) Chemical analysis of pH (Conducted annually and if manufacturing/production processes that effect CKD change.)

[OAR Docket #04-1191; filed 6-28-04]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY CHAPTER 1. GENERAL RULES OF THE DEPARTMENT OF PUBLIC SAFETY

[OAR Docket #04-1181]

RULEMAKING ACTION:

PERMANENT final adoption.

RULES:

- Subchapter 1. Organization of the Department of Public Safety
595:1-1-3. Function of each division which deals directly with and affects the public [AMENDED]
- Subchapter 3. Rules of Practice
595:1-3-3. Administrative hearings [AMENDED]
- Subchapter 9. Inspection and Copying of Final Orders, Decisions, Opinions and Open Records
595:1-9-2. Inspection and copies of open records [AMENDED]
595:1-9-3. ~~Open records~~Records of the Department of Public Safety [AMENDED]
- 595:1-9-5. Obtaining ~~public~~open records [AMENDED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. §§ 2-108, 2-123, and 6-117

DATES:**Comment Periods:**

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Failure of the Legislature to disapprove the rules resulted in approval on May 20, 2004.

Final Adoption:

May 20, 2004

Effective:

July 25, 2004

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Amendments to this chapter:
update information related to divisions within the Department;
clarify the method of conducting hearings of the Department;
clarify that certain records open for examination are also available as a copy or reproduction;
define "legal representative" for the purpose of collision reports;

clarify which records of the Department are open and which are not; and clarify how to obtain records from the Department.

The proposed actions are amendments to existing rules.

The circumstances which created the need for these rules are the clarification of the organization of the agency, including creation of the Bomb Squad Section of the Highway Patrol in EHB 1313 (2003) and reorganization of the Driver License Division in EHB 2302 (2002), and various procedures relating to hearings and open records.

The intended effect of these rules is to allow the Department of Public Safety to perform its duties as required or authorized by law.

CONTACT PERSON:

David W. Beatty, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2024. Email: dbeatty@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 25, 2004:

SUBCHAPTER 1. ORGANIZATION OF THE DEPARTMENT OF PUBLIC SAFETY

595:1-1-3. Function of each division which deals directly with and affects the public

(a) **Oklahoma Highway Patrol Division.** The Oklahoma Highway Patrol Division provides safety and protection for the citizens on the highways of Oklahoma. The headquarters of the Oklahoma Highway Patrol Division is located at the Department of Public Safety. Telephone: (405) 425-2424 [47 O.S. §2-103] The division is divided into the following field and specialty troops and sections located throughout the state:

(1) **Field troops.** Field troops of the Highway Patrol have primary law enforcement authority on state, federal, and interstate highways, excluding those portions within city limits. Following is a list of the field troops, the location of their headquarters, and their telephone numbers:

- (A) Troop A: Oklahoma City, (405) 425-2285
- (B) Troop B: Tulsa, (918) 627-3881
- (C) Troop C: Muskogee, (918) 683-3256
- (D) Troop D: McAlester, (918) 423-3636
- (E) Troop E: Durant, (580) 924-2601
- (F) Troop F: Ardmore, (580) 223-8800
- (G) Troop G: Lawton, (580) 353-0783
- (H) Troop H: Clinton, (580) 323-2424
- (I) Troop I: Guymon, (580) 338-3366
- (J) Troop J: Enid, (580) 234-6147
- (K) Troop K: Pawnee, (918) 762-3662
- (L) Troop L: Vinita, (918) 256-3388
- (M) Troop M: Altus, (580) 477-2765

(2) **Turnpike troops.** Turnpike troops of the Highway Patrol have sole law enforcement authority on the turnpikes of this state. Following is a list of the turnpike troops, the turnpike each patrols, and their telephone numbers:

- (A) Troop XA: Will Rogers, (918) 356-7476
- (B) Troop XB: Muskogee, (918) 683-1782
- (C) Troop XC: Indian Nation, (918) 548-3512

- (D) Troop XD: Cherokee, (918) 868-2372
- (E) Troop XE: Creek, (918) 299-6599
- (F) Troop YA: Cimarron, (405) 724-3564
- (G) Troop YB: Turner, (918) 968-3000
- (H) Troop YC: H.E. Bailey, (405) 222-3165
- (I) Troop YD: Chickasaw, (580) 223-8800
- (J) Troop YE: Kilpatrick, (405) 425-7410

(3) **Specialty troops.** Specialty troops of the Highway Patrol perform specialized law enforcement functions within the scope of the mission and operation of the Department of Public Safety. Following is a list of the specialty troops, their functions, and their telephone numbers:

- (A) Troop O: Aircraft, (405) 789-4012
- (B) Troop P: Public Information [see (j) of this Section]
- (C) Troop R: Capitol Patrol Section [see (4)(C) of this subsection]
- (D) Troop S:
 - (i) Motor Carrier Safety, (405) 521-6103,
 - (ii) Hazardous Materials Transportation, (405) 521-6103,
 - (iii) Size and Weight Enforcement Section [see (4)(A) of this subsection]
- (E) Troop SO: Special Operations, (405) 425-2440
- (F) Troop T: Training, (405) 425-2410
- (G) ~~Troop V: Motor Vehicle Inspection [see (h) of this Section]~~
- ~~(H) Troop W: Lake Patrol Section [see (4)(B) of this subsection]~~
- ~~(H) Troop Z: Internal Affairs, (405) 425-2137~~
- ~~(J) Driver License Fraud Investigation, (405) 425-2477~~

(4) **Troops created by statute.** Following are sections within the Highway Patrol Division which are created by statute:

- (A) **Size and Weight Enforcement Section (Troop S).** The Size and Weight Enforcement Section has the primary duty of enforcing the provisions of the size, weight and load laws [47 O.S. §14-101 et seq.] and rules [OAC 595:30]. Telephone: (405) 521-6103. [47 O.S. §116.11]
- (B) **Lake Patrol Section (Troop W).** The Lake Patrol Section has the primary duty of enforcing state boat registration laws [63 O.S. §4001 et seq. and §4101 et seq.], boating and water safety laws [63 O.S. §4200 et seq.], federal regulations, and rules [OAC 595:45] pertaining to Oklahoma lakes, rivers and adjacent shores. The address for the headquarters of the Lake Patrol Section is RR 1, Box 721, Barnsdall, OK 74002-9739. Telephone: (918) 847-2001. [47 O.S. §2-105.6]
- (C) **Capitol Patrol Section (Troop R).** The Capitol Patrol Section has the primary duty of providing law enforcement services to all state buildings and properties within Oklahoma County, including the State Capitol Park and the Governor's mansion, and Tulsa County, including the State Capitol Complex,

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and enforcing all parking, traffic, and criminal laws within the boundaries of Oklahoma and Tulsa Counties. Telephone: (405) 521-4541 [47 O.S. §2-105.7]

(D) Bomb Squad Section (Troop R). The Bomb Squad Section has the primary duty of carrying out the duties prescribed in 63 O.S. §122.2. Telephone: (405) 425-2471 [47 O.S. §2-105.4B]

(b) Communications Division. The Communications Division is the link between the general public and public safety services provided by the Department and other law enforcement agencies or emergency providers. These services may be obtained by telephone or in person at any of the thirteen Field Troop Headquarters statewide [see (a) in this Section for telephone numbers]. [47 O.S. §2-105.8]

(c) Legal Division. The Legal Division provides legal services for the Department and administratively enforces Oklahoma's implied consent law [47 O.S. §751 et seq.]. Specific legal advice is not made available to the general public. The division is located at the Department of Public Safety, Room 102. Telephone: (405) 425-2148. Associate Counsel is also currently located in Jenks, Oklahoma. [47 O.S. §2-121]

(d) Records Management Division. The Records Management Division is the designated repository for all official traffic accident reports and records required to be submitted by law enforcement officers of municipal, county and state agencies, and for court abstracts and other records concerning motor vehicle and related convictions and offenses required to be reported by municipal and district courts. This division also ensures that appropriate entries from the above documents are made to the respective individual driver's record master file. This division is also responsible for providing documents available to the public under the provisions of the Open Records Act [see 595:1-9-5 and 595:1-9-6 (relating to obtaining open records)]. The division is located at the Department of Public Safety, Room 206. Telephone: (405) 425-2192. [47 O.S. §2-103]

(e) Size and Weight Permit Division. The Size and Weight Permit Division issues appropriate permits for eligible oversize and overweight vehicles and loads. The central location of the division is located at the Department of Public Safety, Room 207. For information concerning operation and for addresses and telephone numbers of branch offices, call (405) 425-2206. [47 O.S. §2-103]

(f) Driver License Division Administration. The Driver License ~~Division Administration~~ unit is divided into ~~three~~ bureaus ~~four divisions~~ [47 O.S. §2-106]:

(1) Examiners—Bureau Driver License Examining Division. ~~The Examiners—Bureau—Driver License Examining Division~~ provides licensing for commercial driver training schools and instructors, issues permits for driver education instructors, and administers tests for the purpose of issuing driver licenses. ~~The bureau division~~ is located at the Department of Public Safety, Room ~~203~~ 113. Telephone: (405) 425-7745.

(2) Driver License Services Bureau Division. The Driver License Services ~~Bureau—Division~~ provides administrative services related to the issuance and renewal of driver licenses and identification cards, coordinates the

issuance of driver licenses and identification cards with motor license agents, and issues parking permits for the physically disabled. ~~The bureau division~~ is located at the Department of Public Safety, Room 203. Telephone: (405) 425-2026.

(3) Driver Improvement Bureau Division. The Driver Improvement ~~Bureau Division~~ may suspend, deny, cancel, revoke, or disqualify individual driving privileges, subject to statutory authorization. ~~The bureau division~~ administers rules relating to the point system and discretionary suspensions [OAC 595:10-7], medical aspects [OAC 595:10-5], alcohol and drug substance abuse courses [595:10-5-12], and mature driver accident prevention [OAC 595:10-5]. It also administers the *Nonresident Violator Compact* [47 O.S. §§789 and 790]. ~~The bureau division~~ is located at the Department of Public Safety, Room 201. For information concerning operation and availability of branch office services, call (405) 425-7034.

(g) Financial Responsibility Division. The Financial Responsibility Division is charged with enforcement of the provisions of the financial responsibility laws of this state (47 O.S. § 7-101 et seq.) and the Compulsory Insurance Law (47 O.S. §7-600 et seq.). The division is located at the Department of Public Safety, Room 201. For information concerning operation and the availability of branch office services, call (405) 425-2098. [47 O.S. §2-103]

(hg) Wrecker Licensing Services Division. The Wrecker ~~Licensing Services~~ Division is responsible for the licensing and governance of wrecker or towing services [47 O.S. §951 et seq.]. The division provides notification to owners and lien holders of the location of vehicles impounded at the request of law enforcement agencies within the state, and receives and maintains records of vehicles impounded from private property and of vehicles stored over thirty (30) days by wrecker or towing services. The division is located at the Department of Public Safety, Room 109. Telephone: (405) 425-2312. [47 O.S. §2-103]

(ih) Public Information Office. The Public Information Office acts as the liaison between the Department and the public, the media, and other city, county, state, and federal agencies. Information provided includes traffic safety campaigns, press releases, traffic statistics, road conditions, and services provided by each of the Department's divisions. Telephone: (405) 425-7707. [47 O.S. 2-103]

(ji) Oklahoma Highway Safety Office. The Oklahoma Highway Safety Office (OHSO) is the state organization responsible for developing an annual statewide plan (Highway Safety Plan) to decrease fatalities and injuries on Oklahoma roadways. Each state has a highway safety program under the direction of the state governor. The Governor's Representative for Highway Safety is currently the Commissioner of Public Safety. The OHSO administers federal highway safety funds in the form of highway safety projects with state and local agencies, nonprofit organizations, and private contractors. Project applications are normally due in February or March of each year for the following federal fiscal year, which begins on October 1. The OHSO is located at 3223 N. Lincoln, Oklahoma City, OK 73105. Telephone: ~~405-521-3314~~ 405-523-1570.

Fax: ~~405-524-4906~~ 405-523-1586. [69 O.S. §§4008, 4009, and 4009.1]

(kj) **Oklahoma Law Enforcement Telecommunications System.** The Oklahoma Law Enforcement Telecommunications System (OLETS) is a statewide telecommunications network which serves city, county, state, federal, and military law enforcement and criminal justice agencies in Oklahoma. Additionally, OLETS provides direct computer interfaces to the computer systems of the Department of Public Safety, the Oklahoma Tax Commission, the Oklahoma State Bureau of Investigation, the National Crime Information Center (NCIC), the National Law Enforcement Telecommunications System (NLETS), and the National Weather Service Computer System and Network in Oklahoma City, Oklahoma. OLETS is managed and operated by the Department of Public Safety. The division is located at the Department of Public Safety. Telephone: (405) 425-2224. [47 O.S. §2-124]

(kk) **Transportation Division.** The Transportation Division is responsible for the purchase, repair, and disposal of all Department vehicles. Repairs may be done at private facilities or at the Department garage with funding coordinated by the Division. Department vehicles are disposed of by sale to other law enforcement agencies in Oklahoma or by public auction. The location of the Transportation Division is at 2300 N.E. 36th Street at the Department of Public Safety. Telephone (405) 425-2122. [47 O.S. §2-103]

(km) **Finance Division.** The Finance Division is responsible for paying the bills of the Department within its approved budget and accounting for and depositing receipts collected for fees, fines, penalties, and other monies as provided by law. The Division also processes sales of surplus and forfeited property as provided in Subchapter 15 of this Chapter. The location of the Finance Division is at the Department of Public Safety. Telephone (405) 425-2091. [47 O.S. §2-103]

SUBCHAPTER 3. RULES OF PRACTICE

595:1-3-3. Administrative hearings

(a) All hearings of the Department of Public Safety shall be conducted according to the rules of this Chapter to the extent not otherwise provided for by statute or other rule.

(b) A person has the right to request a hearing before the Department of Public Safety whenever he or she has been aggrieved or adversely affected by an act or refusal to act, or by the issuance of an order or decision by the Department which is subject to review under any applicable statute. Hearings before the Department fall into four categories:

(1) **Hearings under Title 47.** Hearings which are specifically provided for and follow those procedures set forth under Title 47 of the Oklahoma Statutes:

(A) **Implied consent hearings.** Implied consent hearings, involving driving privilege revocation for refusal to take or failure of a breath or blood test for alcohol concentration, are specifically provided for and follow the procedures of the Oklahoma statutes. [47 O.S. §751 et seq.].

(B) **Impounded vehicle hearings.** Impounded vehicle hearings follow the procedures specifically provided for under 47 O.S. §903A.

(C) **Parking violations on certain state property.** Hearings involving parking violations on certain state property, as set forth under 47 O.S. §11-1009, are conducted according to state law.

(2) **Hearings under the Administrative Procedures Act - Wrecker or towing service hearings.** Wrecker or towing service hearings resulting in wrecker license cancellation, revocation, or refusal to issue or renew the license, follow the procedures set forth under the Administrative Procedures Act [75 O.S. Art. II] except for those hearings related to vehicles impounded by public agencies which are specifically provided for and conducted according to 47 O.S. §903A.

(3) **Hearings under Department rules.** Hearings provided for by specific rules set forth by divisions within the Department:

(A) **Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act.** Hearings involving penalties for violation of the Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act [47 O.S. §230.1 et seq.] are conducted as set forth in 595:35-1-9. [47 O.S. §230.9(F)]

(B) **Oversize and overweight vehicles.** Hearings involving the denial or suspension of a permit for oversize and overweight vehicles are conducted as set forth in 595:30-5-3.

(4) **Hearings set forth in this Chapter.** Hearings conducted according to the rules of this Chapter:

(A) **Points violations.** Hearings on points violations resulting in suspension of driving privileges [47 O.S. §6-206].

(B) **Medical aspects.** Hearings on medical aspects relating to a driver's affliction with physical or mental ailments which may cause loss or partial loss of control of or incapability of properly controlling a vehicle [47 O.S. §6-119 et seq.].

(C) **Financial responsibility hearings.** Financial responsibility hearings involving the suspension of driving privileges for an owner or driver of a motor vehicle involved in a collision resulting in personal injury, death, or property damage of over three hundred dollars (\$300.00) where there is no security (liability insurance) [47 O.S. §7-101].

(D) **Other hearings.** Other hearings conducted within the discretion of the Commissioner of Public Safety [47 O.S. §2-115].

SUBCHAPTER 9. INSPECTION AND COPYING OF FINAL ORDERS, DECISIONS, OPINIONS AND OPEN RECORDS

595:1-9-2. Inspection and copies of open records

(a) The Department maintains various records which are open for public inspection in accordance with the Open

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Records Act [51 O.S. §24A.1. et seq.]. Final orders, decisions, opinions, and open records, as described in 595:1-9-3, may be inspected at the Department of Public Safety. Copies of these records may be obtained pursuant to the fee schedule as set forth in 595:1-9-4 and as posted in the office of the County Clerk, Oklahoma County, Oklahoma, as required by 51 O.S. §24A.5.(3).

(b) Any record that is open to a person for examination, as provided in 47 O.S. §10-115 (B), shall be available to that person by copying or reproduction in the same medium as the record is available to the person for examination and for the fee required to be charged for the record.

(c) For the purposes of 47 O.S. §40-102 (A)(2)(b), "legal representatives of a party involved in the collision" shall mean persons who have a blood, marital, or legal relationship with the person involved in the collision, including but not limited to:

- (1) a spouse, widow, or widower,
- (2) an executor of the person's estate,
- (3) an adult child,
- (4) the biological or adoptive parent,
- (5) a person given authority by a notarized affidavit from a person described in (1), (2), (3), or (4) of this subsection,
- (6) an adult sibling, or another adult relative who can provide proof to the satisfaction of the Department that such relative is actively involved in the care of or is responsible for the person, the person's estate, or the person's family,
- (7) the medical service provider, or
- (8) any other person, at the discretion of the Commissioner or the Director of the Records Management Division of the Department.

595:1-9-3. Open records Records of the Department of Public Safety

(a) **General.** The Department of Public Safety is a law enforcement agency, as defined under the Oklahoma Open Records Act, 51 O.S. § 24A.1 et seq., and also acts as a motor vehicle department, as defined under the Driver's Privacy Protection Act (DPPA), 18 U.S.C. § 2721, et. seq. Both of these acts place restrictions on records of the Department.

(b) **Records open for inspection.** Open records include ~~any~~ All records of the Department which are not designated as confidential by any provision or requirement of Oklahoma law, federal law or regulation, or rule of the Department of Public Safety [OAC 595], and which are kept in connection with the transaction of public business, expenditure of public funds, or the administering of public property are open records.

(c) **Records not open for inspection.** Law enforcement records and records which contain personal or confidential information obtained in connection with a person's driver license, if kept in any form, are not open records, including, but not limited to:

- (1) Legal documents and materials prepared in anticipation of litigation and records protected by the state evidentiary privilege, including investigatory reports. These

records are confidential and will not be released pursuant to the Open Records Act;

(2) Personal notes and personally created materials prepared as an aid to memory or research leading to the adoption of a public policy or implementation of a public project. These records may be kept confidential prior to taking action [51 O.S. § 24A.9].;

(3) Minutes of meetings lawfully closed to the public, such as executive sessions as authorized by the Open Meeting Act [24 O.S. § 301 et seq.; 51 O.S. § 24A.5.1.b];

(4) Records that, if disclosed, would give an unfair advantage or disadvantage to competitors. [51 O.S. § 24A.10.B];

(5) Confidential information obtained in connection with a person's driver license;

(6) Copies of traffic warnings;

(7) Audio tapes, from Oklahoma Highway Patrol officers or dispatchers, of traffic incidents;

(8) Cell phone logs;

(9) Arrest reports, citations, or other information regarding a traffic arrest prior to final disposition for that arrest;

(10) Employee information normally kept in an employee's personnel file;

(11) Disciplinary actions which do not result in discharge, suspension, or loss of pay;

(12) Implied consent audio tapes in actions which are set aside by the hearing officer.

(13) Information concerning an individual where the driver license number or the name and date of birth is not provided.

(14) the requestor is not a lawful recipient.

(15) Collision reports, except to lawful recipients under 47 O.S. § 40-102 or § 6-117 or under rules of this subchapter.

(16) Oklahoma Highway Patrol Operations Manual.

(17) Training materials for Oklahoma Highway Patrol officers.

(18) Information contained on the Department's mainframe which would require programming or reprogramming in order to produce.

(19) Magnetic tapes, reels, or computer disks which contain confidential or privacy information.

(20) Citizen complaints prior to final disposition.

(21) Radio logs other than those applicable to a specific event.

595:1-9-5. Obtaining public open records

(a) **In person.** Public Records Open records may be obtained from 8:00 A.M. to 4:00 P.M., Monday through Friday, excluding holidays, from the Records Management Division, Room 206, Department of Public Safety, 3600 North Martin Luther King Avenue, Oklahoma City, Oklahoma.

(b) **Written or telephone requests.** Records may be physically located in a division other than the Records Management Division. A request for a copy of a record as designated in 595:1-9-4 may be submitted directly to the office of the division director having custody of the particular type of record

~~requested. However, for~~ For the convenience of the public, a request for any Department open record may be submitted to the Records Management Division ~~which will locate the appropriate division for the request. The division director having custody of a requested record is authorized to release the record unless the record is confidential or privileged as provided for by law, in one of the following manners:~~

- (1) **Telephone.** Call (405) 425-2192.
- (2) **United States mail or other delivery service.** Mailing address is: Department of Public Safety, Records Management Division, P.O. Box 11415, Oklahoma City, Oklahoma 73136-0415.
- (3) **Other mail delivery service.** Mailing address is: Department of Public Safety, Records Management Division, 3600 North Martin Luther King Avenue, Oklahoma City, Oklahoma 73111.

[OAR Docket #04-1181; filed 6-25-04]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 10. DRIVER LICENSES AND IDENTIFICATION CARDS**

[OAR Docket #04-1182]

RULEMAKING ACTION:

PERMANENT final adoption.

RULES:

- Subchapter 1. Procedures for Obtaining and Maintaining A Driver License or Identification Card
- Part 2. Application for Initial Driver License
- 595:10-1-3. Procedures for obtaining an initial driver license [AMENDED]
- 595:10-1-7. Adoption by reference [AMENDED]
- Part 13. Motor License Agents
- 595:10-1-50. Identification required [AMENDED]
- 595:10-1-52. Photographic procedures [AMENDED]
- 595:10-1-55. Instructions for printing black border cards [REVOKED]
- 595:10-1-65. Informational stickers on driver licenses or identification cards [REVOKED]
- Part 19. Driver License and Identification Card Content
- 595:10-1-91. Information displayed on driver licenses [AMENDED]
- 595:10-1-92. Driving restriction codes [AMENDED]
- 595:10-1-93. Information displayed on identification cards
- Subchapter 3. Examination
- 595:10-3-3. Study guides [AMENDED]
- 595:10-3-7. Knowledge test [AMENDED]
- Subchapter 9. Certified Schools and Designated Examiners
- 595:10-9-15. Prohibited acts; ~~conduct~~ [AMENDED]
- Subchapter 11. Certified Schools and Designated Class D Examiners
- 595:10-11-7. Examination requirements and standards [AMENDED]
- 595:10-11-14. ~~Other prohibited~~ Prohibited acts; ~~conduct~~ [AMENDED]
- Subchapter 13. Parent-taught Driver Education
- 595:10-13-4. Requirements and application for certification as a parent-taught driver education course; certification renewal [AMENDED]
- 595:10-13-5. Requirements for parents and students [AMENDED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. § 6-101.

DATES:

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Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 20, 2004.

Final Adoption:

May 20, 2004

Effective:

July 25, 2004

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

49 C.F.R. Parts 383, 384, 390, and 391

Incorporating rules:

595:10-1-7

Availability:

8:00 a.m. to 4:30 p.m., Monday through Friday, at the Oklahoma Department of Public Safety, Driver License Examining Division, 3600 North M.L. King, P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone (405) 425-7745.

ANALYSIS:

Amendments to this chapter clarify and update procedures related to the issuance of driver licenses and identification cards, to the training and examination of applicants, to the technical procedures used when creating driver licenses and identification cards, to prohibited acts of certified schools and designated examiners, to the conduct of designated examiners, and to administrative procedures for parent-taught driver education courses.

The proposed actions are amendments to existing rules.

The circumstances, other than clarifying language, which created the need for these rules is to provide conformity with statutory provisions, to update the driver license and identification card creation and issuance process, and to update and refine procedures used for training and examining applicants.

The intended effect of these rules is to allow the Department of Public Safety to perform its duties as required or authorized by law.

CONTACT PERSON:

David W. Beatty, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2024. Email: dbeatty@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 25, 2004:

SUBCHAPTER 1. PROCEDURES FOR OBTAINING AND MAINTAINING A DRIVER LICENSE OR IDENTIFICATION CARD

PART 2. APPLICATION FOR INITIAL DRIVER LICENSE

595:10-1-3. Procedures for obtaining an initial driver license

- (a) **Application.** Every applicant for an initial Oklahoma driver license must first appear before a Driver License Examiner [47 O.S. §6-110]. An application for a driver license

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must be completed by the applicant at the Driver License Examination Station prior to the commencement of the required examination. Upon submitting a completed and approved application, providing proof of identity [see (b) regarding required identification documents], meeting all statutory requirements, and successfully completing every required examination [see Subchapter 3 of this Chapter relating to examinations], the applicant may then proceed to a motor license agent or the Department of Public Safety Headquarters, Driver License Services Bureau, with a DL-10 form with primary and secondary identification presented to the examiner, issued by the Driver License Examiner, and pay the required fees and be issued a driver license.

(b) **Required identification.** Every applicant must furnish both primary and secondary documentary proof of identity and proof of full legal name and birth date beyond any reasonable doubt when applying for an initial Oklahoma driver license [47 O.S. § 6-101(L)]. Any document furnished must be either a certified or original copy and issued by the proper authority; notarized documents will not be accepted. Any document that has been or appears to have been duplicated, traced over, mutilated, defaced, tampered with, or altered in any manner or that can not be read by the Driver License Examiner shall not be accepted or used for identification purposes. All identification documents must be approved by the Examiner before acceptance. The Examiner may, at his or her discretion, request additional identification documentation of the applicant.

(1) **Primary proof of identification.** The following ~~documents~~ shall be accepted as primary ~~documents~~ for proof of identification:

(A) Certified birth certificate, as issued by the appropriate state, ~~county, or city~~ agency from the state of birth. A sealed Hospital Birth Certificate will be accepted. A birth registration is not acceptable,

(B) Passport. The name on the passport must be the same as the name used by the applicant on the driver license or identification card. An I-94 card, which must be accompanied by the applicant's passport when applicable, shall not be considered a separate identification document. The following passport classifications shall not be accepted:

- (i) B-1, temporary visitor for business,
- (ii) B-2, temporary visitor for pleasure,
- (iii) C-1, alien in continuous transit through the United States,
- (iv) C-2, alien and family in transit to the United Nations,
- (v) C-3, foreign government official and family transiting the United States,
- (vi) D-1, member of ship's crew who can not change ships or employers,
- (vii) D-2, member of ship's crew who may change ship's or employers,
- (viii) I-185/586, Mexican or Canadian nationals with border crossing cards
- (ix) I-444, Mexican or Canadian nationals with border crossing cards,
- (x) Q, international cultural exchange visitor,

- (xi) TWOV, transit without visa,
- (xii) WT, visa waiver pilot program for tourist,
- or
- (xiii) WB, visa waiver pilot program for business,

(C) Identification documents issued by the United States Armed Services:

- (i) Military discharge (DD-214), unless specified not to be used for identification,
- (ii) Military identification card, or
- (iii) Military dependent identification card,

(D) United States Bureau of Indian Affairs identification card or a Oklahoma tribal photo identification card which identifies the person and includes the following information:

- (i) color photograph of the person,
- (ii) full legal name of the person,
- (iii) birth date of the person,
- (iv) signature of the person,
- (v) signature of person who verifies records, and
- (vi) tribal seal.

(E) State of Oklahoma identification card issued by Department of Public Safety,

(F) Documents issued by the United States Immigration and Naturalization Service, The name on the document must be the same as the name used by the applicant on the driver license or identification card:

- (i) Citizenship naturalization documents, or
- (ii) Alien registration card, ~~or~~
- (iii) ~~I-94 card, which must be accompanied by the applicant's passport,~~

(G) Out-of-state driver license, ~~;~~

(H) Oklahoma driver license, ~~or~~

(I) Finger image comparison, if a Department-generated finger image is already on file with the Department,

(J) The applicant is personally known by the motor license agent (renewal or replacement only), or

(K) If none of the forms of identification listed in this paragraph are available, any other documentation as approved by the Driver License Examiner Supervisor or Director, and listed on the DL-10 form by the Driver License Examiner.

(2) **Secondary proof of identification.** The following ~~documents~~ shall be accepted as secondary ~~documents~~ for proof of identification:

(A) Any primary proof of identification listed in (1) of this subsection not used as the primary identification document of the applicant,

(B) For any person under the age of 18, an affidavit signed by the parent or legal guardian,

(C) Photo identification card that is issued by an Oklahoma:

- (i) public, private, or parochial secondary school,
- (ii) institution of higher education,
- (iii) technology center school, or

- (iv) employer,
 - (D) Oklahoma gun permit,
 - (E) Pilot license,
 - (F) Oklahoma lifetime hunting or fishing license,
 - (G) Oklahoma voter identification card,
 - (H) Social Security card,
 - (I) Health insurance card,
 - (J) Motor vehicle registration or title,
 - (K) ~~Marriage license certificate,~~
 - (L) Separation or divorce judgment,
 - (M) High school, technology center school, college, or university diploma
 - (N) Professional degree, certificate, or license,
 - (O) Deed or title to property in Oklahoma, including a burial plot deed,
 - (P) Health, life, or home insurance policy issued to the applicant,
 - (Q) Automobile insurance policy or security verification form issued to the applicant,
 - (R) ~~Medical records from a doctor or hospital~~ A valid U.S.D.O.T. health card, as required by 49 C.F.R. Part 391, or
 - (S) Digital photograph comparison, if a Department-generated digital photograph is already on file with the Department,
 - (T) The applicant is personally known by the motor license agent, or
 - (U) If none of the forms of identification listed in this paragraph are available, any other documentation as approved by the Driver License Examiner Supervisor or Director, and listed on the DL-10 form by the Driver License Examiner.
- (3) **Additional identification requirements.** The Department may require additional identification documents:
- (A) when the Department unable to determine the reliability or validity of the identification document(s) presented, or
 - (B) as provided in OAC 595:10-1-35.
- (c) **Driver license numbers.**
- (1) Driver license numbers will be assigned by computer. Use of the applicant's Social Security number as the driver license number is prohibited [47 O.S. § 6-106(B)].
 - (2) Any licensee may request to change his or her driver license number to any nine-digit number by making a written request to the Department. Upon approval by the Department, the licensee shall obtain a replacement driver license from a motor license agent, and the licensee shall pay the required fee for the replacement license [see OAC 595:10-1-18 regarding replacement driver licenses]. The driver license number may be changed no more than two (2) times in any four-year period without prior approval of the Driver License Fraud Division of the Department.
- (d) ~~Vehicle registration prior to issuance of a driver license.~~ Every applicant for an Oklahoma driver license must state on the application whether he or she owns any vehicle, or vehicles, and if the vehicle is or vehicles are located in Oklahoma, must give the license plate number and state or country

by which the plate is issued for up to two (2) of those vehicles [47 O.S. §6-106(B) and (E)]. If either vehicle owned by the applicant is not registered in Oklahoma at the time of the application, the applicant will be denied an Oklahoma driver license [47 O.S. §6-106(E)], unless the applicant submits proof that he or she is a member of the Armed Forces of the United States assigned to duty in this state in compliance with official military or naval orders or the spouse of a such a member of the Armed Forces [47 O.S. §1151(A)(3)].

595:10-1-7. Adoption by reference

The Department of Public Safety adopts by reference the United States Department of Transportation regulations pertaining to licensing of commercial motor vehicle operators, as contained in Title 49 of the Code of Federal Regulations (49 C.F.R.) [47 O.S. §6-101(L)]. Information relative to this adoption is available through various sources, such as the Labelmaster publication, "Federal Motor Carrier Safety Regulations." Copies of this publication are available by contacting the Oklahoma Trucking Association at (405) 843-9488. Those regulations pertaining to licensing of commercial motor vehicle operators adopted by reference under this Section are:

- (1) Part 383, Commercial Driver's License Standards; Requirements and Penalties, ~~Subparts B, E, F, G, H, and J;~~
- (2) Part 384, State Compliance with Commercial Driver's License Program;
- (3) Part 390, Federal Motor Carrier Safety Regulations: General;
- (4) Part 391, Qualifications of Drivers, ~~Subparts A, B, D, and E.~~

PART 13. MOTOR LICENSE AGENTS

595:10-1-50. Identification required

(a) **General requirements.** Anyone applying for a renewal or replacement driver license or identification card must furnish documentary proof of identity, name, and birth date [47 O.S. §§ 6-114 and 6-115].

(b) **Required identification to renew driver licenses and identification cards.**

- (1) **Renewal with expiring or expired driver license or identification card.** The expiring or expired driver license or identification card ~~must~~ shall be surrendered as the primary identification. The person must provide secondary identification as prescribed in OAC 595:10-1-3(b)(2), ~~unless personally known by the tag agent.~~
- (2) **Renewal without driver license or identification card.**

(A) **Persons twenty-one (21) but less than twenty-seven (27) years of age.** Any person at least twenty-one (21) but less than twenty-seven (27) years of age, must submit [47 O.S. § 6-114 (A)]:

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(i) as primary proof of identity, *at a minimum a birth certificate* [see OAC 595:10-1-3(b)(1)(A) regarding birth certificates], and

(ii) *a notarized affidavit of another licensed Oklahoma driver over the age of twenty-one (21) which verifies the identity of the applicant* [47 O.S. § 6-114 (A)].

(B) **Other persons.** Any other person, not subject to (A) of this paragraph, who does not have the expiring or expired driver license or identification card must provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b), ~~unless personally known by the tag agent.~~

(c) **Required identification to replace lost, stolen, or mutilated driver licenses and identification cards.**

(1) **Persons twenty-one (21) but less than twenty-seven (27) years of age.** Any person at least twenty-one (21) but less than twenty-seven (27) years of age, must submit [47 O.S. § 6-114 (A)]:

(A) as primary proof of identity, *at a minimum a birth certificate* [see OAC 595:10-1-3(b)(1)(A) regarding birth certificates], and

(B) *a notarized affidavit of another licensed Oklahoma driver over the age of twenty-one (21) which verifies the identity of the applicant* [47 O.S. § 6-114 (A)].

(2) **Other persons.** Any other person, not subject to (1) of this subsection must provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b), ~~unless personally known by the tag agent.~~

(d) **Required identification to change information and replace driver licenses and identification cards.**

(1) **Name change.** Any person who requests a replacement driver license or identification card in order to make a name change must comply with the primary and secondary identification requirements prescribed in OAC 595:10-1-3(b), ~~unless personally known by the tag agent,~~ and with OAC 595:10-1-35. The person requesting the name change must surrender to the motor license agent the license or card issued previous to the one being issued because of the name change.

(2) **Address change.** Any person who requests a replacement driver license or identification card in order to make an address change must provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b), ~~unless personally known by the tag agent.~~ The person requesting the address change must surrender to the motor license agent the license or card issued previous to the one being issued because of the address change.

(3) **Endorsement or restriction change.** Any person who requests a replacement driver license in order to change endorsement or restriction information on the license must provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b), ~~unless personally known by the tag agent.~~ The person requesting the information change must surrender to the motor license agent the license issued previous to the one being issued because of the information change.

(e) **Permissible documents.** Any document accepted must be either the original or a certified copy.

(f) **Unacceptable documents.** Any document which has been or appears to have been duplicated, traced over, mutilated, defaced, tampered with or altered in any manner or that can not be read shall not be accepted or used for identification purposes.

595:10-1-52. Photographic procedures

(a) In order to provide a photo which clearly identifies the licensee or cardholder, photographs shall be of the applicant's head and shoulders.

(1) A photo, which in the opinion of the Commissioner or his designee, distracts from the identification purpose, will not be allowed to appear on an Oklahoma driver license or identification card.

(2) Objects, costumes, and gestures are not permitted.

(3) ~~No hats, head scarves, prescription~~ Head coverings are not permitted if the head covering:

(A) obscures or obstructs a full front view of the face.

(B) displays any:

(i) logo,

(ii) insignia, symbol, or regalia,

(iii) word or words,

(iv) letter, number, or character, or any combination thereof, or

(v) graphic design, other than the overall pattern of the fabric or material, or

(C) casts a shadow onto the face of the person.

(4) ~~Prescription or non-prescription sunglasses or profile~~ are not permitted.

(5) ~~Profile style photos will be permitted, unless authorized by the Commissioner or his designee~~ are not permitted.

(46) Retaking of pictures because the applicant does not like the first one is not permitted when the photo clearly identifies the licensee.

(b) Retakes are permitted only at time of making license, not after licensee has left the agency. Retaking of photo is permitted for the following reasons:

(1) Closed eyes

(2) Data wrong

(3) Card not signed

(4) Color specification not as required

(5) Camera problem.

(c) Agencies shall not take an additional photo unless authorized by the Commissioner or his designee.

595:10-1-55. Instructions for printing black border cards [REVOKED]

(a) **Type.** ~~All information MUST be printed from Department of Public Safety computer files.~~

(b) **Quality.** ~~The use of correctional fluid or erasures is prohibited. Agents are prohibited from typing or writing any information on the black border card.~~

- (c) **Condition.** Agents are not to use black border cards that have been damaged, wrinkled or soiled.
- (d) **Alignment.** In preparing a black border card, the agent must take care to center the typed data under the appropriate heading.
- (e) **Information recorded on the black border card.**
 - (1) **Class of license or card.** The class of license or card shall be centered under the appropriate heading.
 - (2) **License number.**
 - (A) The license number of the applicant must always be no more than nine (9) digits. This number will be one (1) of the following:
 - (i) Applicant's Social Security number (provided they have one and it has been entered on the application by the Driver License Examiner).
 - (ii) If Social Security number is not available or the applicant desires not to use the Social Security number, the number is assigned by the Department of Public Safety.
 - (iii) Any applicant may choose to change their license number. However, license numbers must be verified by the Driver License Services Division.
 - (B) The number shall be centered under the appropriate heading.
 - (3) **Sex.** The sex of the applicant shall be centered under the appropriate heading.
 - (4) **Issue date.** The date the license or card is issued shall be centered under the appropriate heading. If a replacement license or card is issued, a "D" will appear at the end of the issue date.
 - (5) **Date of birth.** The date of birth shall be numerically centered under the appropriate heading, in a shaded area.
 - (6) **Expiration.** The expiration shall be centered under the appropriate heading.
 - (7) **Organ Donor.** Each applicant must be given the opportunity to check the organ donor box.
 - (8) **Weight.** The applicant's weight shall be centered under the appropriate heading.
 - (9) **Height.** The applicant's height shall be centered under the appropriate heading.
 - (10) **Eyes.** The applicant's eye color shall be centered under the appropriate heading.
 - (11) **Restrictions.** Any restrictions shall be centered under the appropriate heading.
 - (12) **Endorsements.** Any endorsement shall be centered under the appropriate heading.
 - (13) **Signature.** Care must be taken to insure the applicant signs the license or card in longhand on the signature line. The applicant may sign their usual signature. A printed signature should be avoided if at all possible, as it defeats the purpose of identification. If an applicant cannot read and write, they may place their "mark" on the appropriate line.
 - (14) **Name.** The name will appear in the appropriate heading, as it appears on the department file (LAST NAME, FIRST NAME, MIDDLE NAME OR INITIAL).

- (15) **Address.** The address will appear in the appropriate heading, as it appears on the department file. Abbreviations are permitted.
- (16) **Under 21 until.** If an applicant is under the age of 21, the computer will calculate the date and print it in the shaded area; lower right corner. If the applicant is over 21, no date will appear.
- (17) **Control number.** A small number will appear below the shaded area in the lower right corner.

595:10-1-65. Informational stickers on driver licenses or identification cards [REVOKED]

- (a) **Hard of hearing label.**
 - (1) When a licensee or cardholder requests a hard of hearing label, he or she must appear before a driver license examiner. The driver license examiner will update the file, issue a DL-10 form, and refer the licensee or cardholder to a motor license agency.
 - (2) The motor license agent will be responsible for placing the label along the right side of the laminate of the license or card. If the request is for a replacement or renewal, the person requesting the proper fee is required.
- (b) **Do Not Resuscitate sticker.**
 - (1) When a licensee or cardholder requests an Oklahoma Do Not Resuscitate sticker [47 O.S. § 6-111(A)], the motor license agent will provide the sticker to the requesting person and advise the requester that the sticker is to be attached to the back of the license on the clear laminate at either end of the license. The agent is not to attach the sticker to the license.
 - (2) The requester should also be advised that the sticker alone does not enact the Advanced Directive law of Oklahoma because *do not resuscitate identification as set forth in the Oklahoma Do Not Resuscitate Act shall consist of either a medical condition bracelet, necklace, or card with the inscription of the patient's name, date of birth in numerical form, and "Oklahoma do not resuscitate" on it. No other identification or wording shall be deemed to comply with the provisions of the Oklahoma Do Not Resuscitate Act. This identification shall be issued only upon presentation of a properly executed do not resuscitate consent form as set forth in Section 5 of this act. The Director of the Department of Human Services, no later than one (1) year after the effective date of this act, shall be responsible for establishing a system for distribution of the do not resuscitate forms and identification bracelets, necklaces, or cards.* [63 O.S. § 3131.12(B,C)]

PART 19. DRIVER LICENSE AND IDENTIFICATION CARD CONTENT

- 595:10-1-91. Information displayed on driver licenses**
 Each driver license will display the following information about the person to whom the license was issued [47 O.S. §6-111(A)]:
- (1) color photo,

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- (2) name,
- (3) mailing address,
- (4) signature,
- (5) sex,
- (6) date of birth,
- (7) weight,
- (8) height,
- (9) color of eyes,
- (10) driver license class,
- (11) driver license number,
- (12) driver license issue date,
- (13) driver license expiration date,
- (14) any driving restriction code(s) (if applicable),
- (15) any driver license endorsement(s) (if applicable),
- (16) date upon which the person reaches twenty-one (21) years of age and the words "UNDER 21" [47 O.S. §6-101.1(A)] (if applicable), and
- (17) organ donor ~~checkoff~~ indicator (if applicable).

595:10-1-92. Driving restriction codes

A restriction or restrictions may be placed upon a person's driving privilege as deemed necessary by the Department [47 O.S. §6-113]. The restriction(s) will appear as a code on the person's driver license. Following are the various driving restriction codes and their meanings:

- (1) 1. Corrective lenses
- (2) 2. Left outside rearview mirror
- (3) 3. Restriction 1 or 2
- (4) 4. Automatic transmission
- (5) 5. Turn indicators, power steering, or steering knob
- (6) 6. Food, fruit, or candy within reach of driver
- (7) 7. Adequate artificial limbs
- (8) 8. Detailed restriction - Inquire Oklahoma driver license file (This restriction code is used when other restrictions are not applicable. A narrative explaining the restriction will appear on the person's driver license file.)
- (9) 9. Accompanied by licensed driver age 21 or older in front seat
- (10) 0. Motorcycle only - if under age 16, restricted to 250 cc motorcycle or motor scooter between the hours of 4:30 a.m. and 9:00 p.m.
- (11) A. Regardless of age, when operating a motorcycle must be in view of licensed driver at least 21 years old
- (12) B. When operating Class B vehicle, restricted to automatic transmission
- (13) C. When operating Class C vehicle, restricted to automatic transmission
- (14) D. When operating Class A vehicle, restricted to automatic transmission
- (15) E. When operating passenger bus, restricted to ~~class~~ Class B or C vehicle
- (16) F. When operating passenger bus, restricted to class C vehicle
- ~~(17)~~ G. Inquire Oklahoma driver license file until age 17 or older
- ~~(18)~~ K. CDL intrastate only

(19) L. Restricted CDL - must be accompanied in front passenger seat by driver age 21 or older with CDL for class and type of vehicle being operated

~~(20)~~ R. Ignition interlock device

~~(21)~~ V. Vehicle without air brakes

(22) W. When operating an airbrake vehicle, restricted to air over hydraulic

595:10-1-93. Information displayed on identification cards

Each identification card will display the following information about the person to whom the card was issued [47 O.S. §6-111(A)]:

- (1) color photo,
- (2) name,
- (3) mailing address,
- (4) signature,
- (5) sex,
- (6) date of birth,
- (7) weight,
- (8) height,
- (9) color of eyes,
- (10) "ID" to indicate identification card,
- (11) identification card number,
- (12) identification card issue date,
- (13) identification card expiration date,
- (14) date upon which the person reaches twenty-one (21) years of age and the words "UNDER 21" [47 O.S. §6-101.1(A)] (if applicable), and
- (15) organ donor ~~checkoff~~ indicator (if applicable).

SUBCHAPTER 3. EXAMINATION

595:10-3-3. Study guides

The official study guides for applicants shall be the Oklahoma Driver's Manual, the Oklahoma Motorcycle Manual, and the Oklahoma Commercial Driver's Manual which are distributed by the Department of Public Safety. Copies are available free of charge:

- (1) from motor license agencies,
- (2) by mail from: Department of Public Safety, Driver License Services Bureau, P.O. Box 11415, Oklahoma City, Oklahoma 73136-0415,
- (3) in person at the Department of Public Safety, Driver License Services Bureau, 3600 North M. L. King Avenue, Oklahoma City, or
- (4) from the Department's website at <http://www.dps.state.ok.us/dls/> on the world wide web ~~(does not include the Oklahoma Motorcycle Manual).~~

595:10-3-7. Knowledge test

(a) **General.** A knowledge test is administered to each applicant for a driver license to determine the person's ability to read and understand highway signs and the person's knowledge of the traffic laws of this state. The knowledge test, if it is not waived, and the vision test shall be successfully passed by the

applicant before the skills test is administered. The knowledge test includes, when applicable, any separate endorsement/restriction test as described in this Section.

(b) **Class D driver license.** The knowledge test administered for a Class D driver license shall consist of a minimum of twenty (20) multiple choice questions. The minimum passing score for a Class D knowledge test shall be seventy-five percent (75%).

(c) **Class A, B, or C commercial driver license.**

(1) **Knowledge test.** The knowledge test administered for a Class A, B, or C commercial driver license shall consist of a minimum of thirty-three (33) multiple choice questions. The minimum passing score for a Class A, B, or C knowledge test shall be eighty percent (80%). In addition, the combination test administered for a Class A license shall consist of a minimum of twenty (20) multiple choice questions. The minimum passing score shall be eighty percent (80%).

(2) **Written pre-trip inspection test.** The written pre-trip inspection test administered for a Class A, B, or C commercial driver license shall consist of seven (7) multiple-choice questions. The minimum passing score shall be six (6) questions correct out of the seven (7) questions.

(3) **Physical pre-trip inspection test.** The physical pre-trip inspection test administered for a Class A, B, or C commercial driver license shall consist of a minimum of nine (9) and a maximum of twenty-seven (27) items of inspection and shall be performed only on commercial vehicles with air brakes, depending on the type and axle configuration of the vehicle. The test shall include the items prescribed in 595:10-3-8.

(d) **Endorsement.** The minimum number of multiple choice questions and the minimum passing score for each endorsement/restriction test shall be as follows:

- (1) "P" Passenger - 20 questions - 80% score
- (2) "H" Hazardous Materials - 30 questions - 80% score
- (3) "N" Tank Vehicle - 20 questions - 80% score
- (4) "M" Motorcycle - 20 questions - 75% score
- (5) "S" School Bus - 20 questions - 80% score.

On and after July 15, 2004, the Department shall begin implementation of the "S" endorsement on commercial driver license for any person who is certified by the State Department of Education to operate a school bus. On and after July 15, 2004, and until and through September 30, 2005, any person who presents valid and current evidence of completion of a twenty-five (25) hour school bus driver certification course sanctioned by the State Department of Education along with his or her current Oklahoma commercial driver license, with a passenger endorsement, shall be authorized to apply for the "S" endorsement without additional examinations. Expired school bus certifications shall not be accepted. On and after October 1, 2005, any applicant for a school bus endorsement shall be required to take both knowledge and skills examinations, administered by examiners or certified designated examiners of the Department.

(6) "T" Double or triple Trailers - 20 questions - 80% score

(e) **Restriction.** Failure to pass at least 80% of the 25 questions regarding air brakes will result in a restriction code "V" (Vehicle Without Air Brakes) being placed on the applicant's license upon issuance. The applicant shall be prohibited from taking the skills examination in a vehicle with air brakes.

(f) **Alternate method of testing.** The Department may provide an alternate method of testing the knowledge of the individual who cannot read or has a language barrier.

(g) **Retesting.** An applicant failing the knowledge, combination, or endorsement test may be granted the opportunity to retest on the next regular business day. ~~However, additional waiting time shall be imposed by the examiner conducting the examination after three unsuccessful attempts to pass the examination.~~

(h) **Discretionary tests.** Tests may be administered as required for the establishment and authorization of special endorsements or of permits for the operation of certain vehicles.

(i) **Restricted Class A, B, or C commercial driver license.** Any person eighteen (18) years of age or older may apply for a Class A, B, or C commercial driver license, as provided in 47 O.S. §6-101(F), solely for the purpose of behind-the-wheel training while accompanied by a licensed driver twenty-one (21) years of age or older holding a valid license for the class of vehicle being driven including any and all required endorsements.

(1) The restricted commercial driver license shall be issued as provided for 47 O.S., § 6-101(F)(2). Any person may reapply for another restricted commercial driver license by complying with all requirements for the class of restricted license desired.

(2) A hazardous materials (H) endorsement shall not be placed on a restricted commercial driver license for anyone under twenty-one (21) years of age.

SUBCHAPTER 9. CERTIFIED SCHOOLS AND DESIGNATED EXAMINERS

595:10-9-15. Prohibited acts; conduct

(a) **Certified schools - prohibited acts.** A certified school shall not:

- (1) permit to be used any form of alcoholic beverage or drugs in or about the school premises, including the examination route, or in any motor vehicle being used for the purpose of administering an examination,
- (2) require or permit the administration of an examination to any driver license applicant with physical handicaps,
- (3) require or permit the administration of an examination to any person who has not enrolled in and successfully completed a course at that certified school,
- (4) require or permit any person other than a designated examiner to administer any examination, ~~or~~
- (5) require or permit the administration of an examination in a vehicle required to be placarded for hazardous materials.

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- (6) commit or omit any act which constitutes a violation of any of the rules of this subchapter or the laws of this state governing designated examiner certification.
- (b) **Designated examiner - prohibited acts.** A designated examiner shall not:
- (1) use or permit to be used any form of alcoholic beverage or drugs in or about the school premises, including the examination route, or in any motor vehicle being used for purpose of administering an examination,
 - (2) administer an examination to any driver license applicant with physical handicaps,
 - (3) administer an examination to any person who has not enrolled in and successfully completed a course at the certified school employing the designated examiner,
 - (4) administer an examination to any person who has not been issued and does not possess a restricted commercial driver license for the class of vehicle in which the examination is to be given, or
 - (5) administer an examination in a vehicle required to be placarded for hazardous materials.
 - (6) administer an examination to any person related by consanguinity (by blood relation) or affinity (by marriage) within the third degree.
 - (7) accept any present or favor from an applicant or any other person who has or may have an interest in the outcome of an examination, or accept any employment which represents a conflict of interest to the examination process.
 - (8) use the designated examiner position for any personal advantage.
 - (9) commit or omit any act which constitutes a violation of any of the rules of this subchapter or the laws of this state governing designated examiner certification.
- (c) **Designated examiner - conduct.** A designated examiner shall:
- (1) Recognize that his or her position is of the highest public trust and that, on the wisdom of his or her decision, the lives of many people daily depend.
 - (2) Impartially administer all official duties without regard to race, creed, position, or influence, according no applicant more reasonable treatment than any other.
 - (3) Conduct each examination in a manner which reflects:
 - (A) its importance to society,
 - (B) its seriousness to the individual, and
 - (C) the unquestioned competence of the examiner.
 - (4) Exercise only such legal authority as has been duly vested in the position of a designated driver examiner.
 - (5) Fully appreciate and fulfill the responsibilities of his or her certification in order to strengthen public confidence in driver license testing.

SUBCHAPTER 11. CERTIFIED SCHOOLS AND DESIGNATED CLASS D EXAMINERS

595:10-11-7. Examination requirements and standards

- (a) **Application.** Before an examination may be given to a driver license applicant by a designated examiner, the applicant ~~must~~ shall provide proper primary and secondary identification to the designated examiner and completely fill out and submit to the examiner an Oklahoma driver license application (DPS Form DL-18-CT) [see OAC 595:10-1-3 and 595:10-11-12].
- (b) **Standards.** Current minimum standards for the examination of applicants for an Oklahoma Class D driver license, as set forth in state statutes and Department rules shall be provided to all certified schools and designated examiners by the Department.
- (c) **Examinations.**
- (1) The driving skills examination for an Oklahoma Class D driver license administered by a designated examiner shall:
 - (A) include all specified maneuvers as required by the Department, and
 - (B) meet or exceed all requirements of the Department for the Class D driver license.
 - (2) The written examination for an Oklahoma Class D driver license shall consist of questions whose number and content have been approved by the Department.
 - (3) If a student fails an examination for an Oklahoma Class D driver license administered by the designated examiner, the examiner shall notify the Division by facsimile transmission of such failure on the same day as the failure. The notification shall include, at a minimum, the student's:
 - (A) name and birthdate,
 - (B) driver license number, if applicable;
 - (C) score on the failed examination, along with any details of the failure which the examiner deems pertinent to the Department's records.
- (d) **Location of examination.** All written examinations shall be administered at the school employing the designated examiner. All driving skills examination shall be administered on the route approved for the certified school employing the designated examiner which shall be a different route than any route used for training the student being examined.
- (e) **Vehicle used for driving skills examination.** The student or parent or legal guardian of the student may specify the vehicle in which the driving skills examination for an Oklahoma Class D driver license is administered. The vehicle shall meet the requirements as set out in OAC 595:10-3-8. The school shall not charge the student for the use of a vehicle which is not owned or leased by the school.

595:10-11-14. ~~Other prohibited~~ Prohibited acts; conduct

- (a) **Certified schools - prohibited acts.** A certified school shall not:
- (1) permit to be used any form of alcoholic beverage or drugs in or about the school premises, including the examination route, or in any motor vehicle being used for the purpose of administering an examination,

- (2) require or permit the administration of an examination to any driver license applicant with physical handicaps,
- (3) require or permit the administration of an examination to any person who has not enrolled in and successfully completed a course at that certified school, or
- (4) require or permit any person other than a designated examiner to administer any examination,
- (5) commit or omit any act which constitutes a violation of any of the rules of this subchapter or the laws of this state governing designated examiner certification.

(b) **Designated examiner - prohibited acts.** A designated examiner shall not:

- (1) use or permit to be used any form of alcoholic beverage or drugs in or about the school premises, including the examination route, or in any motor vehicle being used for purpose of administering an examination,
- (2) administer an examination to any driver license applicant with physical handicaps,
- (3) administer an examination to any person who has not enrolled in and successfully completed a course at the certified school employing the designated examiner,
- (4) administer an examination on the same route on which the student was trained, or
- (5) administer an examination to any person:
 - (A) who does not have a valid Oklahoma restricted driver license, or
 - (B) who does not present a DL-18-CT issued by the Department of Public Safety,
- (6) administer an examination to any person related by consanguinity (by blood relation) or affinity (by marriage) within the third degree.
- (7) accept any present or favor from an applicant or any other person who has or may have an interest in the outcome of an examination, or accept any employment which represents a conflict of interest to the examination process.
- (8) use the designated examiner position for any personal advantage.
- (9) commit or omit any act which constitutes a violation of any of the rules of this subchapter or the laws of this state governing designated examiner certification.

(c) **Designated examiner - conduct.** A designated examiner shall:

- (1) Recognize that his or her position is of the highest public trust and that, on the wisdom of his or her decision, the lives of many people daily depend.
- (2) Impartially administer all official duties without regard to race, creed, position, or influence, according no applicant more reasonable treatment than any other.
- (3) Conduct each examination in a manner which reflects:
 - (A) Its importance to society.
 - (B) Its seriousness to the individual.
 - (C) The unquestioned competence of the examiner.
- (4) Exercise only such legal authority as has been duly vested in the position of a designated driver examiner.

- (5) Fully appreciate and fulfill the responsibilities of his or her certification in order to strengthen public confidence in driver license testing.

SUBCHAPTER 13. PARENT-TAUGHT DRIVER EDUCATION

595:10-13-4. Requirements and application for certification as a parent-taught driver education course; certification renewal

(a) **Requirements and application for certification.** To be certified as a parent-taught driver education provider, an individual, organization, company, or other entity must meet the following requirements:

- (1) Have offered parent-taught driver education, for the previous two years, or have been a licensed driver education instructor or commercial driving school instructor for five years immediately preceding the application date.
- (2) Submit an application to the Department on a form prescribed by the Department [See 595:10-13-8(a) regarding the application form].
- (3) Must furnish the Department with curriculum which should meet or exceed the course of study prescribed in 595:10-13-6. If the applicant is approved and certified by the Department as a parent-taught driver education provider, the curriculum may not be changed in any manner without prior inspection and approval from the Department.
- (4) Must furnish the Department with the complete costs to be charged to a customer for the course, along with a blank copy of the contract or application intended for use with the course. If the applicant is approved and certified by the Department as a parent-taught driver education provider, no changes in costs or to the contract shall be made without prior notification to and approval and certification by the Department.
- (5) Must have a built-in comprehensive monitoring system to assure quality control of the instruction of course materials, both classroom and behind the wheel instruction. The term "comprehensive monitoring program" means a system of monitoring the progress of the instruction by the parent instructor so that the provider can certify the validity of the training.
- (6) Agree to meet all requirements in subsection (b).

(b) **Certification and requirements of parent-taught driver education providers.** All Parent-taught driver education providers approved and certified by the Department shall, upon certification and during the period of certification:

- (1) Include with the course, at no additional cost to the customer, a minimum of a Two Million Dollar (\$2,000,000.00) (aggregate amount) liability insurance policy, and a One Million Dollar (\$1,000,000.00) professional liability insurance policy. ~~Such policy shall cover applicants while in the performance of behind the wheel instruction and shall be supplemental to required insurance provided by the parent or owner of the vehicle.~~ The provider shall agree to hold harmless and free from any

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liability the Department, any of the Department's employees, and the State of Oklahoma.

(2) Maintain a surety bond, specifically and individually in the name of the State of Oklahoma, in the amount of \$10,000. In the event the provider is unable to meet its contractual obligations with Oklahoma parents who have purchased a parent-taught driver education course from the provider, the bond will be forfeited for the purpose of disbursing reimbursements for all outstanding contracts of the provider which were entered into in Oklahoma as a result of this Subchapter;

(3) Furnish the Department, at times and in a manner agreed to by the Department and the provider with a listing of all approved applications, whether the course is completed or not.

(4) Provide the student with a completion certificate, bearing the seal of the provider, upon successful completion of the course by the student.

(5) Maintain all records received from students and parents pertaining to this Subchapter, including, but not limited to, correspondence, applications, contracts, and test answer sheets. All records shall be segregated by individual student, and all records for each student shall be maintained by the provider for at least one (1) year.

(6) Agree to:

(A) Allow access by the Department to all records maintained by the provider for each student, for purposes of monitoring and auditing.

(B) Ensure that no behind-the-wheel instruction is recognized if the student fails to first obtain an instruction permit from the Department.

(C) Provide immediate written notification to the Division of any impropriety or misconduct of any parent teaching a parent-taught driver education course.

(D) Acknowledge that the Department reserves the right to take prompt and appropriate remedial action against the certification of any parent instructor or parent-taught driver education provider who fails to comply with any state law or rule regarding a parent-taught driver education course.

(E) Maintain curriculum meeting the standards established by the Department [see 595:10-13-6 regarding curriculum].

(F) Allow a Department representative to conduct on-site compliance inspections, as necessary, to review records and to observe procedures. All records must be accessible during normal business hours of the parent-taught driver education provider for inspection upon request by a Department representative.

~~(G) Provide the Department with brochures about the course for distribution to interested parents and students. The brochure shall be a single tri-fold sheet, 8 1/2 inches by 11 inches; both sides of the sheet may contain information. Information contained in the brochure shall include, but not be limited to, the following:~~

~~(i) the cost of the course,~~

~~(ii) a description of the course, and~~

~~(iii) a contract or application for the course~~
Ensure that the affidavit required by OAC 595:10-13-5 has been approved prior to instruction.

(c) **No renewal of certification is required.** Certification by the Department is issued to a provider with the understanding that no renewal of the certification is required. However, the Department may cancel the certification as provided in OAC 595:10-13-9.

(d) **Changes to certified information.** The provider shall notify the Department immediately, in writing, of any changes to the information on the original application for certification. The provider shall temporarily suspend the sale of courses to any new applicants until the Department has approved the changes. If a change of ownership occurs, the Department reserves the right to request the provider to halt all future business in Oklahoma as a parent-taught driver education provider and to reapply for certification.

(e) **Solicitation and advertising.** Any provider approved and certified by the Department may advertise and solicit business for its course in Oklahoma. The phrase "Certified by the Department of Public Safety, State of Oklahoma" must be included in any printed matter. However, at no time shall the provider state or imply that the course offered by the provider is recommended by the Division, the Department, any employee of the Department, or the state of Oklahoma.

595:10-13-5. Requirements for parents and students

(a) **General information.** Prior to teaching a Department-approved and -certified parent-taught driver education course, a parent must first request a parent-taught driver education packet from the Department. The request can be made:

- (1) in writing to: Oklahoma Department of Public Safety, Driver License Examining Division, P.O. Box 11415, Oklahoma City, OK 73136-0415
- (2) by telephone to: (405) 425-7746
- (3) by e-mail to: parent@dps.state.ok.us

(b) **Packet contents.** The packet will contain:

- (1) A list of approved parent-taught driver education providers and the cost of their respective courses;
- (2) ~~Brochures from the parent-taught driver education providers describing their courses;~~
- (3) ~~An application for each parent-taught driver education provider~~ A copy of the rules in this Subchapter, OAC 595:10-13 Parent-taught Driver Education ; and
- (4) An affidavit to be completed and returned to the Department prior to commencement of training by parent instructor(s).

(c) **Requirements for parents.**

- (1) A parent-taught driver education course must be instructed by a parent as defined in 595:10-13-3.
- (2) Every parent instructor must have a valid driver license which must be in the parent instructor's possession at all times while performing behind-the-wheel instruction and must:

- (A) not have had his or her driving privileges and driver license suspended, canceled, revoked, or denied within the past twelve (12) months;
 - (B) not have been convicted of possession or use of alcohol or drugs within the past twelve (12) months;
 - (C) not reflect more than five (5) point violations on his or her driving record; and
 - (D) have no administrative action by the Department pending pursuant to 47 O.S. §§ 753, 754, or 754.1 relating driving under the influence or pursuant to 47 O.S. §761 relating to driving while impaired.
- (3) Every parent instructor shall exercise all due caution while instructing a behind-the-wheel session, taking into account:
- (A) the alertness and responsiveness of the student,
 - (B) the traffic, weather, atmospheric, and road conditions,
 - (C) the time of day, and
 - (D) any other factors the parent deems may adversely influence the ability of the student to perform safely during the behind-the-wheel session.
- (d) **Requirements for students.** Students must be at least fifteen and one-half (15 ½) years of age. The student must apply for and have been issued an instruction permit prior to the commencement of any behind-the-wheel training. The permit must be in the student's possession at all times while performing behind-the-wheel training.
- (e) **Requirements for the vehicle used in parent-taught driver education behind-the-wheel instruction and training.** Behind-the wheel instruction and training of a parent-taught driver education course may only be performed in the vehicle(s) listed on the affidavit submitted by the parent(s) to the Department. The vehicle(s) listed:
- (1) must be properly registered and display a valid license plate [see 47 O.S. Chapter 74 regarding vehicle registration laws],
 - (2) must comply with vehicle equipment and safety standards [see 47 O.S. Chapters 12 and 13 for state vehicle equipment and safety laws], including, but not limited to, being equipped with seatbelts,
 - (3) must comply with the vehicle liability insurance requirements of Oklahoma's Compulsory Insurance Law [See 47 O.S. § 7-600 et seq. regarding compulsory vehicle liability insurance]. Current proof of insurance must be carried in the vehicle at all times, and
 - (4) may be equipped with a second rear-view mirror for use by the parent performing the instruction. The Department recommends the use of a second rear-view mirror by the parent.
- (f) **Limitation on vehicle occupancy.** The number of occupants in any vehicle being used for behind-the-wheel instruction in a parent-taught driver education course shall be limited to not more than two (2) parent instructors and not more than two (2) students.
- (g) **Submission of affidavit.** Every parent shall submit the affidavit required by the Department, completed in full with all required information and signed by each parent desiring to be a parent instructor. The parent must wait to begin a parent-taught

- driver education course until the affidavit has been accepted by the Department.
- (h) **Acceptance of affidavit.** Upon acceptance of the affidavit, the Department shall return a copy of the affidavit, marked "Accepted", to the parent(s). The parent(s) may then begin the parent-taught driver education course. The accepted affidavit shall be carried in the vehicle at all times it is being used for a behind-the-wheel session of an approved parent-taught driver education course.
- (i) **No renewal of acceptance is required.** Acceptance of the affidavit by the Department is issued to the parent(s) with the understanding that no renewal of the acceptance is required with regard to the student(s) named on the affidavit. However, the Department may cancel the acceptance as provided in OAC 595:10-13-9.
- (j) **Changes to information on affidavit.** The parent(s) shall notify the Department immediately, in writing, of any changes to the information on the accepted affidavit. The parent(s) shall temporarily suspend the instruction of the parent-taught driver education course until the Department has approved the changes.

[OAR Docket #04-1182; filed 6-25-04]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 15. FINANCIAL RESPONSIBILITY

[OAR Docket #04-1183]

RULEMAKING ACTION:

PERMANENT final adoption.

RULES:

- Subchapter 1. Vehicle Liability Insurance Cancellation
- 595:15-1-1. Purpose [AMENDED]
- 595:15-1-2. Definitions [AMENDED]
- 595:15-1-3. Notification to the Department [AMENDED]
- 595:15-1-4. Suspension for no vehicle liability insurance [AMENDED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. §§ 7-608 and 7-609

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n/a

Permanent Final Adoptions

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Amendments to this chapter modify and clarify insurance cancellation reporting procedures and conditions under which suspension for insurance cancellation will not apply.

The proposed actions are amendments to existing rules.

The circumstances which created the need for these rules are to provide more flexibility and clearer instructions to insurance companies and to inform the public of conditions under which suspension for insurance cancellation will not apply.

The intended effect of these rules is to allow the Department of Public Safety to perform its duties as required or authorized by law.

CONTACT PERSON:

David W. Beatty, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2024. Email: dbeatty@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 25, 2004:

SUBCHAPTER 1. VEHICLE LIABILITY INSURANCE CANCELLATION

595:15-1-1. Purpose

(a) Insurance carriers who issue vehicle liability insurance policies to first time policyholders, as defined in 595:15-1-2, shall notify the Department of the termination of such policies for nonpayment or refund of premium or, for any policy which has been issued for a period of less than six (6) months, which expires without renewal. [47 O.S. §7-608(A)]

(1) The termination shall be determined as final and must occur within the first one hundred eighty (180) days of the inception of the policy. Expiration of any applicable grace period shall be taken into consideration.

(2) Notice must be sent to the Department within a reasonable time.

(3) Notice may be made either by electronic or written means.

(b) Once the Department receives notice of termination from an insurance carrier, the Department shall notify the vehicle owner. The owner shall provide a copy of the proof of insurance within thirty (30) days from the date of notice along with the form notification provided by the Department.

(c) ~~When proof of insurance is not provided, the~~ The Department shall suspend the owner's driving privilege and driver license, as well as the registration(s) and license plate(s) of any motor vehicle registered in the owner's name which is not covered by security unless one of the following conditions exists [47 O.S. §7-609]:

(1) The owner provides proof of current liability insurance on the vehicle to the Department;

(2) The person is not the owner of any motor vehicle.

(3) The person is not subject to the Compulsory Insurance Law of this state (47 O.S. §7-600 et seq.).

(4) The vehicle was sold or repossessed prior to the insurance termination date.

(5) The vehicle became inoperable prior to the insurance termination date, or

(6) The vehicle was not owned by the person at the time of insurance termination.

595:15-1-2. Definitions

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

"**Applicable grace period**" means a period of time determined by the insurance carrier only.

"**Date of notice**" means the date of the ~~letter~~ notification issued by the Department requesting proof of insurance.

"**Department**" means the Department of Public Safety.

"**Electronic means**" means notification to the Department from insurance carriers by ~~magnetic tape~~ electronic media or electronic data transfer methods. Each termination reported shall be on a record format made available upon request from the Financial Responsibility Division of the Department.

"**First one hundred eighty (180) days**" means the first one hundred eighty (180) days of the inception of a vehicle liability insurance policy issued to a first time policyholder.

"**First time policyholder**" means a policyholder who has applied for an initial vehicle liability insurance ~~coverage~~ policy from an insurance carrier ~~for the first time~~. This shall include any policy issued for a period including or less than one hundred eighty (180) days. Until such time as a policyholder maintains more than one hundred eighty (180) days of vehicle liability insurance under this policy, this section shall apply.

"**Insurance carrier**" means a company authorized to do business in Oklahoma, as provided in 47 O.S. §§7-321 ~~and 7-322~~. Individual agents are not included in this definition.

"**Policy**" means all vehicles insured by vehicle liability coverage issued by an insurance carrier to a first time policyholder.

"**Prescribed form**" means a form designed and provided by the Department.

"**Proof of insurance**" means a copy of a current security verification form issued by an insurance carrier or proper documentation from a carrier verifying security.

~~"Proper documentation" means verification of vehicle liability insurance on letterhead stationary from an insurance carrier.~~

"**Reasonable time**" means notification to the Department from an insurance carrier within ~~thirty (30)~~ sixty (60) days of the termination date of the policy.

"**Termination for nonpayment**" means a policyholder fails to make a premium payment in accordance with the terms of the vehicle liability insurance policy, as determined by the insurance carrier.

"**Termination for refund of premium**" means a policyholder has requested and the insurance carrier has issued a refund of premium.

"**Timely**" means within thirty (30) days as provided in 47 O.S. §7-609(A)].

"**Vehicle liability policy**" means an individual policy as defined under 47 O.S. §7-324(A), as opposed to a company policy.

"**Written means**" means written notification to the Department by an insurance carrier ~~via in the designated record format designed and made available upon request from~~ of the Financial Responsibility Division of the Department.

595:15-1-3. Notification to the Department

(a) This provision ~~is limited~~ applies to policies that are terminated for nonpayment or refund of premium or for failure to renew policies issued for a period less than 180 days. It shall include first time policyholders who apply for vehicle liability insurance where the insurance carrier denies or refuses coverage. ~~This shall apply to cases only where a security verification form was issued at the application level.~~

(b) Change of vehicle status on a vehicle liability insurance policy does not fall under the provisions of this section.

(c) Insurance carriers notifying the Department of ten (10) terminations or more per report shall do so by electronic means and shall comply with reporting requirements.

(d) Insurance carriers notifying the Department by written means shall be limited to nine (9) terminations or less per report per week and shall comply with reporting requirements.

(e) All notifications to the Department shall not exceed ~~one month~~ sixty (60) days from the termination date of the vehicle liability policy whether by electronic or written means.

(f) If an insurance carrier desires the electronic tape media returned, a properly identified postage pre-paid envelope must accompany the tape media.

(g) When an insurance carrier has knowledge that the relinquishment of vehicle ownership is the reason for termination or expiration without renewal of policy, that fact shall be included in the notification to the Department.

(h) Each cancellation notice shall contain:

- (1) the insurance company code, as issued by the Oklahoma State Insurance Commission,
- (2) the name, driver license number and state of issuance, date of birth, and address of the vehicle owner or policy holder,
- (3) the full vehicle identification number, and
- (4) the number, effective date, and expiration date of the policy.

595:15-1-4. Suspension for no vehicle liability insurance

(a) When the owner fails to timely furnish proof of vehicle liability insurance or of meeting any other condition as prescribed in 595:15-1-1(c), the Department shall immediately suspend the owner's driving privilege and driver license and the registration(s) and license plate(s) of any uninsured motor vehicle registered in the owner's name.

(b) The suspension shall remain in effect until payment of the required fees as provided by statute and proof of insurance is presented. [47 O.S. §7-609(A)]

(c) The suspension shall be set aside and the fees will not be required if the person proves to the satisfaction of the Department:

- (1) the person is not the owner of any motor vehicle,
- (2) the person is not subject to the Compulsory Insurance Law of this state [47 O.S. §7-600 et seq.],
- (3) there exists current vehicle liability insurance effective after the reported termination date but prior to the suspension date,
- (4) there exists continuous vehicle liability insurance on the vehicle,
- (5) compliance with provisions of 47 O.S. 7-600 et. seq. prior to suspension,
- (6) the vehicle was sold or repossessed prior to the insurance termination date,
- (7) the vehicle became inoperable prior to the insurance termination date, or
- (8) the vehicle was not owned by the person at the time of insurance termination.

[OAR Docket #04-1183; filed 6-25-04]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 25. WRECKERS AND TOWING SERVICES**

[OAR Docket #04-1184]

RULEMAKING ACTION:

PERMANENT final adoption.

RULES:

- Subchapter 1. General Provisions
- 595:25-1-2. Definitions [AMENDED]
- 595:25-1-3. General policies [AMENDED]
- Subchapter 3. Wrecker License
- 595:25-3-1. General requirements [AMENDED]
- 595:25-3-2. Applications [AMENDED]
- 595:25-3-3. Renewal [AMENDED]
- 595:25-3-4. Trade name [AMENDED]
- Subchapter 5. All Wrecker Operators
- 595:25-5-1. Physical requirements for storage facility [AMENDED]
- 595:25-5-2. Equipment requirements for all vehicles [AMENDED]
- 595:25-5-3. Operation [AMENDED]
- 595:25-5-4. Insurance [AMENDED]
- 595:25-5-5. Records [AMENDED]
- 595:25-5-6. ~~Storage rates; Schedule of after-hour release fees; service fees indoor storage~~ [AMENDED]
- 595:25-5-7. Tow request and authorization forms [AMENDED]
- Subchapter 7. Class AA Operators
- 595:25-7-1. Equipment requirements for all Class AA vehicles [AMENDED]
- 595:25-7-2. Operation of storage facility; Release and holding of vehicle by Class AA wrecker operators [AMENDED]
- Subchapter 9. Oklahoma Highway Patrol Rotation Log - Additional Requirements
- 595:25-9-1. Oklahoma Highway Patrol Rotation Log [AMENDED]
- 595:25-9-2. Operator requirements [AMENDED]
- 595:25-9-3. "Rotation" calls for ~~Class AA~~ truck wreckers (Class AA-TL) [AMENDED]
- Subchapter 11. Denial, Suspension, Revocation or Cancellation of License; Denial or Removal of Class AA Operators from Rotation Log of the Oklahoma Highway Patrol
- 595:25-11-1. Failure to qualify [AMENDED]
- 595:25-11-2. Violation of rules [AMENDED]
- 595:25-11-3. Procedure [AMENDED]

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AUTHORITY:

Commissioner of Public Safety; 47 O.S. § 952

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Final Adoption:

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n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Amendments to this chapter would clarify and update procedures for the licensing and operation of wrecker services.

The proposed actions are amendments to existing rules.

The circumstances, other than clarifying and updated language, which created the need for these rules are to improve the record keeping requirements and working environment of the wrecker and towing services, including residency requirements prescribed in ESB 968 (2002) and ESB 379 (2003), rotation log requirements in ESB 379 (2003), the expanded definition of "wrecker service" as prescribed in ESB 425 (2003), moving certain rules to more appropriate sections, and removing obsolete language, such as references to the storage notification fee (repealed effective July 1, 1997).

The intended effect of this rule is to allow the Department of Public Safety to perform its duties as required or authorized by law.

CONTACT PERSON:

David W. Beatty, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2024. Email: dbeatty@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 25, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

595:25-1-2. Definitions

Any reference to "this Act" means 47 O.S. § 951 et seq. unless otherwise specified. The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Call**" means each request for service of an operator resulting in an operator being able to receive compensation for these services.

"**Class AA wrecker operator**" means any wrecker operator who is licensed under this Act and who meets all

requirements of the rules of this Chapter, pertaining to wrecker vehicles as defined in this Chapter. This operator also meets all the requirements of 47 O.S. § 952(D); for towing for law enforcement agencies.

"**Class AA truck wrecker operator**" means any wrecker operator who is licensed under this act and who meets all requirements of the rules of this Chapter pertaining to wrecker vehicles as defined in this Chapter also meets all the requirements of 47 O.S. § 952(D) for towing for law enforcement agencies.

"**Commissioner**" means the Commissioner of Public Safety, as defined by 47 O.S. § 1-109 and as described in 47 O.S. § 2-102.

"**Department**" means the Department of Public Safety.

"**Licensee**" means the person or legal entity to whom a wrecker license has been issued.

"**Junk vehicle**" means a vehicle which is ten (10) years old or older and worth less than three hundred dollars (\$300.00) [42 O.S. § 91].

"**Officer**" means any peace officer.

"**Operator**" means any person or legal entity owning or operating a licensed wrecker vehicle or a licensed wrecker or towing service and any employee thereof.

"**Place of business**" means a permanent structure, occupied by the licensee wrecker operator, as shown on the wrecker license, with phone service, where normal business is transacted and all wrecker records are maintained. Effective January 1, 2005, the place of business must be located in Oklahoma

"**Rotation log**" means a list of holders for each Highway Patrol Troop of the Department of current Class AA wrecker licenses for operators of a wrecker or towing service granted by the Commissioner in each Troop of the Oklahoma Highway Patrol whose places of business are within the geographical boundaries of the Troop and who have requested and been approved by the Department to be on the list. This list governs the alternation among licensed approved Class AA wrecker operators meeting the qualification of various categories of Class AA wrecker services except Class AA-TL wrecker vehicles.

"**Storage fee**" means all fees or charges to the consumer applied to the storage, protection and release of vehicles.

"**Tow/Towing**" means the use of a wrecker vehicle to lift, pull, move, haul or otherwise transport any other vehicle by means of: (a) attaching the vehicle to and pulling the vehicle with the wrecker vehicle, or (b) loading the vehicle onto and transporting the vehicle upon the wrecker vehicle". [47 O.S. § 951(3)]

"**Tow dolly**" means a wheeled device which is used to support one end of a motor vehicle for towing.

"**Traffic tie-up**" means any situation in which any officer deems it necessary to control the orderly flow of traffic.

"**Truck wreckers (Class AA wrecker vehicles only)**" means every motor vehicle properly designed and equipped according to Department of Public Safety specifications with wrecker body and winch or lifting apparatus suitably designed to safely move, pull or tow wrecked, damaged or disabled trucks, truck-tractors, road tractors, trailers, semi-trailers,

buses and/or other vehicles and conveyances that use the highways of the state of Oklahoma. The designation as a truck wrecker shall be used for Class AA-TL wrecker vehicles only.

"Truck wrecker rotation log (Class AA wrecker vehicles only)" means a list of licensees for each Highway Patrol Troop of the Department of current Class AA wrecker operators, with appropriately licensed truck wrecker vehicles licensed for operation of a truck wrecker or towing service meeting the qualifications of Class AA truck wrecker services, whose places of business are within the geographical boundaries of the Troop and who have requested and been approved by the Department to be on the list. This list governs the alternation among approved Class AA-TL truck wrecker operators only.

"Wrecker dolly" means a wheeled device which is used to support one end of a motor vehicle for towing.

"Wrecker license" means the wrecker license as provided by 47 O.S. § 951, et. seq.

"Wrecker operator" means any operator who is licensed under this Chapter and the laws of this state and who meets all requirements of the rules of this Chapter, pertaining to wrecker vehicles as defined in this Chapter.

"Wrecker or towing service", "wrecker service", or "towing service" means engaging in the business of or performing the act of towing or offering to tow any vehicle, except:
(a) where the operator owns the towed vehicle and displays on both sides of the wrecker vehicle in plainly visible letters not less than two (2) inches in height the words "NOT FOR HIRE",
(b) where the service is performed by a transporter as defined in [47 O.S.] section 1-181 of this title, or
(c) where service is performed in conjunction with the transportation of household goods and property, (d) where the wrecker vehicle is owned or operated by the United States government, the State of Oklahoma, or any department or political subdivision thereof, or
(e) where the service is performed by an out-of-state wrecker service at the request of the vehicle owner or operator, and the vehicle is being towed: (1) in either direction across the border between Oklahoma and a neighboring state, or (2) through Oklahoma in transit to another state; provided, the out-of-state wrecker service shall comply with all other requirements regarding interstate commerce as set forth in law. [47 O.S. § 951(6)]

"Wrecker" or "wrecker vehicle", as defined by 47 O.S. § 951, et. seq., means any vehicle, other than a transport as defined in 47 O.S. § 1-181, equipped with a winch, cable or other device designed to lift, pull or move a disabled vehicle incapable of self-propulsion. (Does not include a vehicle with a push bumper only.)

(A) Class AA -- Any wrecker vehicle not less than nine thousand pounds (9,000#—lbs.) GVWR and meeting minimum requirements as established for Class AA Wreckers in this Chapter.

(B) Class AA-TM -- Any wrecker vehicle not less than twenty-four thousand pounds (24,000# lbs.) GVWR and meeting minimum requirements as established for Class AA-TM Wreckers in this Chapter.

(C) Class AA-TL -- Any wrecker vehicle not less than forty-four thousand pounds (44,000# lbs.)

GVWR and meeting minimum requirements as established for Class AA-TL Wreckers in this Chapter.

(D) Class General -- All other wrecker vehicles as defined by 47 O.S. § 951, et. seq.

595:25-1-3. General policies

(a) All operators of wrecker or towing services shall conduct operations in accordance with all applicable laws of the State of Oklahoma and all applicable rules of the Department of Public Safety.

(b) Each licensee operator shall be ~~eognizant~~ knowledgeable of the laws of this state, as found in 47 O.S. § 951 et.seq., and the rules of this Chapter relating to wrecker and towing services and wrecker vehicles. Each licensee operator shall maintain at least one (1) copy of said laws and rules on the premises of the place of business at the address specified on the license and shall require every employee to be ~~eognizant~~ knowledgeable of the contents thereof laws and rules.

(c) All rules in this Chapter are subject to the Administrative Procedures Act 75 O.S. § 309, et. seq., and ~~the Wrecker and Towing Services Act, to~~ 47 O.S. § 951 et. seq., which shall be incorporated herein by reference, as applicable to the Department and all parties as fully as if set forth verbatim herein governed by this Chapter.

(d) The Department shall be charged with the duty of enforcing the provisions of ~~the Wrecker and Towing Services Act~~ 47 O.S. §951 et seq. Its duly appointed officers shall have authority to make arrests for violation of ~~the act~~ law and the provisions of the rules of this Chapter.

(e) Any Oklahoma statute of the State of Oklahoma now existent or duly enacted in the future shall supersede any conflicting provision of the rules of this Chapter to the extent of such conflict, but shall not affect the remaining provisions herein.

(f) Any violation of the rules of this Chapter may result in license suspension, revocation and/or penalty provisions in accordance with 47 O.S. § 951, et. seq.

(g) Every operator shall cooperate with the Department should it become necessary to review, audit, examine, or investigate any records relating to the operation of the wrecker service.

SUBCHAPTER 3. WRECKER LICENSE

595:25-3-1. General requirements

The following are the requirements for obtaining a wrecker license:

(1) **License required.** No operator as defined by law, regardless of storage location, shall operate a wrecker vehicle upon any public street, road or highway of ~~the State~~ this state for the offering ~~and/or~~ to tow vehicles or to transport property or the actual towing of vehicles or transporting of property without first obtaining from the Department a license as provided herein in this Chapter. Any wrecker vehicle being operated on any public street, road, highway or turnpike in violation of Oklahoma Law

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law or these rules may be removed from service by Oklahoma law enforcement officers.

(2) **Display and use.** An operator's wrecker service license shall be personal to the holder thereof and a wrecker vehicle license shall be unique to the vehicle ~~and they.~~ Each license shall be issued only to a person, a corporation or some definite legal entity. The licenses are non-transferable and any change in ownership, whether of a wrecker service or wrecker vehicle, shall cancel the applicable license. The wrecker service license shall be conspicuously displayed at the primary place of business. The license shall be valid only at the place of business as shown on ~~said~~ the license. Additional or satellite places of business shall not be permitted or approved on the same license but shall require a new separate application and permit license.

(3) **Reason for application.** No showing of public convenience or necessity need to be made in support of an application for a wrecker or towing license.

(4) **Issuance.** No license for operation of a wrecker or towing service shall be issued until:

(A) Certificates of insurance as prescribed by the Department are on file with the Department, and

(B) Each wrecker vehicle has been inspected by an officer of the Department to verify that equipment requirements of this Chapter have been met, ~~and~~

~~(C) Storage rates and after hour release fee have been filed and approved in accordance with rules promulgated by the Department.~~

(5) **Carry license.** A copy of the wrecker vehicle license issued ~~for each vehicle by the Department~~ shall be carried at all times in the wrecker vehicles operated by the licensee-vehicle for which the license was issued.

(6) **Return license to Department.** Any wrecker operator that disposes of or deletes ~~a any~~ wrecker vehicle(s) from his operation shall return the license issued ~~to~~ for that particular vehicle to the Department of Public Safety.

(7) **Additional wreckers.** Any wrecker operator that adds a wrecker vehicle(s) shall:

(A) Notify the Department of the make, model and serial number of the vehicle.

(B) Send notification to the Department from ~~wrecker service~~ the insurance carrier of the wrecker operator that the vehicle has been added to present insurance coverage.

(C) Have the vehicle inspected and approved by a member an employee of this the Department.

(8) **Sticker required on each vehicle.** Each wrecker vehicle which is used by an operator in pulling or towing a vehicle shall display in the lower right hand corner of the windshield a valid sticker furnished by the Department indicating the classification of wrecker service.

(9) **License number.**

(A) The wrecker license number issued to the operator by the Department for the operation of a wrecker or towing service, along with the name of the wrecker service, shall be clearly visible at all times and shall be conspicuously displayed and vertically centered

on each side of every vehicle used by the operator in his business the wrecker or towing service.

(B) On wrecker vehicles in use on or before July 14, 2002, the wrecker license number shall be at least two inches (2") in height. On wrecker vehicles put into use on or after July 15, 2002, the number and business name shall be at least three inches (3") in height.

(C) The signage required by this paragraph shall be permanent in nature and shall not contain any misleading or false information. Magnetic signs are not approved; provided, if requested of and approved by the Director, a magnetic sign may be used for a period of thirty (30) days in an emergency situation.

(10) **Service of notice.** Any notice required by law or by the rules of the Department served upon any holder of a wrecker or towing license shall be served personally or mailed to the last known address of such person as reflected by the records on file with the Department. It is the duty of every holder of a certificate or license to notify the Department of Public Safety, Wrecker Services Division, in writing as to any change in the address of such person or his principle of the place of business.

(11) **License prohibited.** Any person who, within the previous five (5) years, has committed been released from incarceration under the custody of the Department of Corrections, or one of its contractors, or the equivalent state agency in another state or has been convicted in any court of law for larceny or any felony by a preponderance of the evidence shall not be licensed, nor shall any licensee operator employ any person or continue to employ any person who has been convicted of such offense within the previous five (5) years.

(12) **Itemized statement.** All wrecker operators ~~will~~ shall develop and maintain for each vehicle towed or serviced an itemized statement [see OAC 595:25-5-5(b) regarding records] and ~~will shall~~ shall furnish the owner, or their the agent of the owner, of each vehicle with an itemized statement, and a bill or invoice of the towing and storage charges incurred and, which shall include, but not be limited to, the beginning and ending times of service and the beginning and ending mileage of the wrecker vehicle or vehicles used for the service. The itemized statement may be listed on the bill or invoice or may be listed separately but shall, in any case, be provided to the owner or agent .

(13) ~~To whom issued.~~ Any person, corporation, legal entity issued a Class AA wrecker license, in a given geographical area, defined as any Highway Patrol Troop area, may only at the discretion of the Department, be issued a Class AA wrecker license in any other person(s), corporation(s) or legal entity(s) name.

(14) ~~Who may request wrecker service.~~ At the discretion of any peace officer ~~the owner, representative of the owner or driver may request service of any wrecker service licensed under this Act.~~

(15) ~~Arrangements for removal of vehicle.~~ An owner, representative of the owner or driver of any vehicle which ~~does not constitute a traffic hazard and upon approval by~~

any peace officer may make arrangements for legal removal of said vehicle.

~~(16) Failure to properly respond to rotation call requests. Class AA wrecker services using answering services as a means of dispatch may, at the discretion of the Commissioner, following appropriate due process hearing procedures, have his Class AA license revoked for failure to properly respond to rotation call requests, and may not be re-licensed as a Class AA wrecker service utilizing the same answering service as a means of dispatch.~~

~~(17) One Class AA license per location place of business. Applicants will not Wrecker operators shall be issued no more than one Class AA wrecker license for any one location place of business.~~

~~(18) 14) One Class AA wrecker service on Oklahoma Highway Patrol's rotation log in same rotation area. A licensee will not An operator shall be permitted to rotate no more than one Class AA wrecker service in the same Highway Patrol rotation area on the Highway Patrol's rotation log. For purposes of this paragraph, "Class AA wrecker service" shall include those services with a Class AA-TL wrecker vehicle.~~

~~(19) Procedures for two vehicle accident when two wrecker services called. If two vehicles are involved in an accident and two wrecker services are called the following will apply:~~

~~(A) The first wrecker service arriving at the scene will tow the vehicle causing the greatest traffic hazard which will be determined by the investigating officer.~~

~~(B) If a requested wrecker service is first on the scene, said wrecker service will assist in removing vehicle causing traffic hazard from roadway, then pick up requested tow.~~

595:25-3-2. Applications

(a) ~~Applicant Every applicant shall file with the Department a written application on a form prescribed by the Department and shall tender with the application a fee of one hundred dollars. One Hundred Dollars (\$100.00) in by check or money order. Every applicant shall submit with the application a current original Oklahoma State Bureau of Investigation (O.S.B.I.) criminal record check for each individual, partner or corporate officer as shown on the application. Upon the return of any dishonored check the application shall be canceled forthwith.~~

(b) ~~Upon receipt of the application, a permit number shall be assigned. Upon receipt and approval of the application, this number shall be the Department shall assign to the operator a permanent identification number for all matters relating to the applicant's approved wrecker and towing service. The Department may issue a temporary 30-day license permit, after inspection, which will authorize the wrecker service to operate while paperwork for the permanent license is being processed. The temporary 30-day license permit may be presented by the operator to the Tax Commission or a motor license agent for the purpose of being issued a wrecker license plate pursuant to 47 O.S. § 1134.3. The temporary 30-day permit shall only~~

be valid for use if a wrecker license plate is purchased and affixed to the wrecker vehicle.

(c) The filing of an application for a license does not authorize wrecker or towing service operations by the applicant. Operation may commence only after all requirements have been met and proper authorization has been issued by ~~this~~ the Department.

(d) The application shall be an affidavit containing the following information together with any additional information the Department may require.

(1) The trade name (business name) of the wrecker service. If the business name is registered with the Oklahoma Secretary of State, such registered name ~~must~~ shall be used.

(2) The name of the individual (owner/applicant); or, in the event of a legal entity such as a corporation, the names of any two of the following officers:

~~(A) Name of the President or~~

~~(B) Vice-President, and~~

~~(BC) Name of other Another officer, such as the Secretary.~~

(3) A statement substantially as follows: "Under oath, I affirm the information submitted in this application is true and I further affirm that I have read the rules of the Department of Public Safety and hereby agree in good faith to abide by the applicable laws and rules governing the wrecker and towing services for which this application is made."

(4) Date of application.

(5) ~~Signature Notarized signature of the above named individual applicant or of each company officers notarized officer, as named on the application.~~

(e) If, within ninety (90) days of receipt of an application, the Department is unable to verify all information as required by these rules, the application shall be denied. Such applicant may reapply any time ~~but proof of compliance must be attached to the subsequent application.~~

~~(f) Application after suspension. It is within the Department's discretion to disallow the licensing of a wrecker operator, should it appear, by a preponderance of the evidence, that the identity of the business is substantially the same as that of one that is currently under suspension by the Department.~~

595:25-3-3. Renewal

(a) 47 O.S. § 953, provides that the wrecker license shall expire on the 31st day of December of each year. The Department shall send a renewal application to each ~~licensee operator~~ not later than the first day of December of each year.

(b) The ~~licensee operator~~ shall return the completed renewal application with a ~~fifty dollar Fifty Dollar~~ Fifty Dollar (\$50.00) renewal fee to the Department not later than the 31st day of December of the same year.

595:25-3-4. Trade name

(a) Each ~~licensee operator~~ shall use a unique trade name, approved by the Department ~~as designated, which shall be printed and appear~~ on the license, which and shall be clearly

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distinguishable from the trade name of any other licensee operator. Provided, however, the Department shall approve any trade name which has been accepted and currently registered with the Oklahoma's Secretary of the State of Oklahoma.

(b) Upon written request by the licensee operator, the Department may change the trade name of a wrecker or towing service if there is no change in ownership. The identifying number shall be retained and no license fee shall be assessed.

(c) Any change in ownership due to sale, merger, dissolution, death or other reason shall reserve the wrecker service trade name for a period of thirty (30) days, during which time the successor or owner may apply for a wrecker license using the same trade name or another trade name. However, the successor may not operate as a licensed wrecker service until the application has been accepted and approved by the Department.

(c) Facility location and number.

(1) A minimum of one (1) primary storage facility shall be located within a two (2) mile radius of the place of business address as reflected on the wrecker license and, effective January 1, 2005, shall be located within Oklahoma. Secondary storage facilities may be located outside the two (2) mile radius, provided an office is maintained at each facility.

(2) Each vehicle stored must be initially stored and held at the primary storage facility. After thirty (30) days from date of initial storage, vehicles may be moved to a secondary storage facility. No vehicle shall be stored in an area which has not been inspected and approved by the Department. The provisions of this paragraph shall not apply to junk vehicles.

(d) **Alternate primary storage facility.** In lieu of or in addition to the primary storage facility and the secondary storage lot described in this Section, a wrecker operator that tows a vehicle pursuant to a contract with a municipality or county may store such vehicle in a facility meeting the requirements set forth in such contract; provided, that:

(1) A copy of the proposed contract is furnished to the Department, along with documentation that requirements specified in this Section will be or have been met.

(2) Only vehicles towed at the request of the municipality shall be stored in such facilities unless such facility meets all the requirements of this Section.

(3) The wrecker operator shall have assumed full responsibility with respect to the owner of such towed vehicle for any damages or loss of contents occurring during such time as the towed vehicle is stored in the facility.

(4) If the storage facility is not owned by the licensee operator, the owner/operator of such storage facility shall also assume joint responsibility for damages or loss of contents to the vehicle secured during such time as the vehicle is stored at such facility.

(5) Such storage facility must meet or exceed the requirements of this Section.

(6) If such storage facility is not operated by the licensee operator, the licensee operator shall have made arrangements with the owner/operator of such storage facility to enable the owner of the vehicle to make full payment for towing and storage costs at the storage facility location and thereby obtain full release of the vehicle.

(7) A wrecker operator may not store any vehicle in a facility which has not been inspected and approved by the Department.

(8) Except for vehicles stored at the request of the owner or at the request of a governmental entity, the wrecker operator shall within seventy two (72) hours of the time indicated on the storage form, request the Oklahoma Tax Commission or other appropriate motor license agent, to furnish the name and address of the current owner and any lienholders of such towed vehicle. The towing service shall, within seven (7) days from receipt of the requested information from the Oklahoma Tax Commission or motor license agent, notify the owner and lienholders of the location of the vehicle.

SUBCHAPTER 5. ALL WRECKER OPERATORS

595:25-5-1. Physical requirements for storage facility

(a) **General requirements.** All wrecker operators, who, in conjunction with or as part of a licensed wrecker operation, store, park or maintain possession of a towed vehicle, shall store such vehicles in a storage facility meeting which shall meet the following minimum physical requirements: prescribed in this Section. No vehicle shall be stored in any facility or area which has not been inspected and approved by the Department.

(b) Outdoor storage facilities.

(1) **Storage lots** Every outdoor storage facility:

(A) shall be designed to be adequate in size for the individual wrecker services' need for storing vehicles;

(B) shall be surrounded by a fence. Construction material for fences shall be of wood or metal design or of no less quality wire than 14½ gauge hog wire. The wood, metal, or hog wire portion of the fence must not shall be not less than five feet (5') in height, and shall be topped with two (2) or more strands of barbed wire at the top so that it will be which bring the overall height of the fence to at least six feet (6') in height. Barbed wire is not required if the existing fence, or newly constructed any replacement fence, is of the material described above and is at least six feet (6') high or higher in height, and

(C) All lots shall have at least one (1) gate of the same quality of material as the fence.

(2) **Provided, however, if such** If the construction requirements in paragraph (1) of this subsection upon existing lot(s) would be are in violation of municipal zoning ordinances or other laws, regulations, or ordinances, the operator may file with the Department a petition for exemption and a proposed security plan with the Department in lieu of the above requirements, which the Department may approve. The licensee operator shall attach a copy of such zoning ordinance or other laws, regulations, or ordinances with the petition.

(9f) Final approval under this provision shall be determined by the Commissioner.

(be) **Indoor storage facility.** An operator may also provide an indoor storage facility as either a primary or secondary storage facility. An indoor storage facility shall be a permanent structure that meets the following minimum physical requirements:

- (1) A solid roof,
- (2) A solid hard-surface floor, and
- (3) Solid walls which fully enclose all sides, i.e. reach from corner to corner on each side and from the floor to the roof on all sides. The walls may be penetrated by windows and doors which must be fully operable so as to make the facility fully enclosed when the windows and doors are closed.

(ef) **Each wrecker service is a separate entity.** Each wrecker service shall be licensed as a separate legal entity. Each Class AA wrecker service shall maintain a primary storage facility that is physically separated from any other entity's storage facility as determined by the Department, so that the responsibility and accountability of the operator relating to compliance with these rules is maintained.

(dg) **Shared storage prohibited.** Shared use of a any outdoor or indoor storage facility by two (2) or more wrecker companies services is not permitted, except as may be determined by the Commissioner.

(eh) Wrecker operators intending to lease or rent any storage facilities from established business firms shall file such plan of lease or rent with the Department for approval. Such plan must include specific terms therein delineating the responsibility of the operator relating to compliance with the rules of this Chapter and assurance that accountability is maintained.

(fi) Any primary storage facility used to store vehicles at the request of law enforcement shall be accessible to the public by way of an all-weather road. This provision shall not apply to primary storage facilities which have been approved prior to July 14, 2003.

595:25-5-2. Equipment requirements for all vehicles

(a) Each vehicle, wrecker which is used by an operator in the performance of a wrecker or towing service, shall be equipped with the following items:

- (1) One (1) or more dry chemical, B.C. rating, fire extinguisher having a minimum of ten ~~(10#)~~ pounds (10 lbs.) total capacity, which shall be mounted and readily accessible.
- (2) At least one (1) amber rotating or flashing light visible from 360 degrees and approved by an officer of the Department. The amber rotating light is for use only at the scene of an emergency or where a traffic hazard exists and there is the necessity to warn approaching vehicles, such as at a routine vehicle pickup [47 O.S. §12-227(C)]. Vehicles Wreckers presently approved will not be required to replace have lights of another color replaced with an amber light until such time as the present lights become defective to the point of needing replacement. Then, at which time it must shall be replaced with an amber light. Any wrecker service approved after April 27, 1990, ~~will~~

shall be required to have the amber light. Any wrecker vehicle approved after July 15, 2004, shall be required to have the amber light or light bar permanently mounted on each wrecker. In addition to the required amber rotating light, the ~~vehicle wrecker~~ may be equipped with a red or blue flashing light, or a combination of red and blue flashing lights, for use only at the scene of an emergency [47 O.S. §12-227(C)]. Under no circumstances are any of the rotating or flashing lights intended for use when traveling on the streets or highways [47 O.S. §12-227(C)]. White rotating lights are not authorized under Oklahoma statutes.

(3) Two (2) chains of sufficient grade to assist in securing the towed vehicle; one (1) push-type broom; one (1) shovel; one (1) set of tire chains, mud and snow tires or other device to assist wrecker ~~vehicle~~ to maintain traction in mud, snow or ice.

(4) Warning devices, applicable to trucks as required in 47 O.S. § 12-407, capable of protecting the scene of ~~an accident~~ a collision by day or night.

(5) ~~Wrecker/wrecker~~ vehicles Wreckers must be equipped to operate a towed vehicle's stop, turn and clearance lights (if applicable), or be equipped with a light bar or other lighting equipment to provide the highway lighting requirements for vehicles. When used, the light bar or tow lights shall be affixed securely to the towed vehicle to assure a minimum of movement while traveling on the highway and to prevent any damage to the towed vehicle.

(6) Two (2) safety chains or wheel straps of sufficient capacity to keep the towed vehicle attached to the ~~towing vehicle wrecker~~ in the event of disengagement.

(b) When a ~~tow wrecker~~ dolly is used as the lift or towing device, both the ~~tow wrecker~~ dolly and the ~~towing vehicle wrecker~~ shall first be approved and licensed as a unit by the Department. In addition to the requirements in (a) of this Section for all ~~wrecker vehicles wreckers~~, a ~~tow wrecker~~ dolly towing vehicle shall also be equipped at a minimum with the following:

- (1) A ball or pintle hook of sufficient size and capacity to safely control the ~~tow wrecker~~ dolly, securely fastened to the appropriate frame member of ~~tow vehicle the wrecker~~.
- (2) Two safety chains of sufficient capacity to keep the ~~tow wrecker~~ dolly attached to the ~~towing vehicle wrecker~~ in the event of hitch failure.

595:25-5-3. Operation

All operators using the public roads and highways within the State of Oklahoma shall comply with the following:

- (1) All operators shall require each driver of a wrecker vehicle be proficient in the operation thereof, and be properly licensed for the type vehicle operated.
- (2) No ~~licensee operator~~ shall knowingly permit any operator of a wrecker vehicle to consume beer, wine, intoxicating beverages, drugs or other stimulants or depressants while subject to call; nor knowingly permit any operator to come on duty after having inhaled or consumed any such beverage, drug or other stimulants or depressants.
- (3) No operator shall, within the previous five (5) years:

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- (A) have an unpardoned conviction for larceny or any felony, nor knowingly employ any person with such record, or
- (B) have been released from incarceration under the custody of the Department of Corrections, or one of its contractors, or the equivalent state agency in another state.
- (4) No operator shall proceed to the scene of ~~an accident~~ a collision or traffic tie-up without being requested to do so by a law enforcement agency or the owner or driver of a vehicle involved.
- (5) Any operator traveling on the roads and highways of the State of Oklahoma during the normal course of his business may, upon arriving at the scene of ~~an accident~~ a collision or traffic tie-up, stop ~~if he feels he may be of assistance~~ and assist in rendering emergency aid. However, the operator shall not solicit business directly or indirectly from the owner or drivers at the scene.
- (6) An operator at the scene of ~~an accident~~ a collision or traffic tie-up is subject to the same traffic-control directions issued by an officer to the motoring public.
- (7) An operator shall not use the rotating or flashing light while traveling ~~down on~~ enroute en route to any location. The use of the flashing or rotating light is authorized only in the vicinity of hook-up or at the scene of ~~an accident~~, a collision to protect the scene and the vehicle involved.
- (8) Each ~~owner or~~ operator must be a person of good moral character and reputation in his community, as determined by the Commissioner of Public Safety, and conduct the operation of ~~his~~ the storage facilities and towing service in a responsible manner so as not to endanger the public safety of persons or property of others in ~~his~~ the custody of the operator.
- (9) No operator shall tow a vehicle when the combined weight of the wrecker vehicle and the wrecker supported weight of the towed vehicle exceeds the factory gross vehicle weight rating of the wrecker vehicle, regardless of the weight for which the wrecker vehicle is licensed.
- (10) No wrecker service shall suspend or abandon said service without prior written notice to this Department of such intent and returning of all wrecker licenses issued.
- (11) Wrecker services ~~must~~ shall comply with 47 O.S. § 11-1110(C).
- (12) Except in those instances when a roll-back or other special equipment is specifically requested by the law enforcement agency, a wrecker operator shall respond to law enforcement agencies' wrecker service requests with a wrecker vehicle and operator capable of efficiently uprighting an overturned vehicle, pulling or winching a vehicle back onto the roadway, lifting a vehicle off of a victim, or assisting with opening a vehicle to extricate a victim. In addition, the wrecker vehicle ~~will~~ shall be equipped to remove a disabled vehicle without inflicting further damage to the disabled vehicle.
- (13) Upon payment of the reasonable cost of removal, ~~notification~~ and storage of a stored vehicle, the vehicle shall be released to:

- (A) the owner, upon presentation of evidence of ownership which is satisfactory to the wrecker operator and required by 47 O.S. § 904, such as a certificate of title or registration;
- (B) a person representing the owner ~~who has in his possession~~, upon presentation of the certificate of title ~~and~~, a notarized letter from the owner permitting said person to act in ~~their~~ the behalf of the owner, with and proper personal identification, such as a driver license, of the representative;
- (C) an individual ~~who has in his possession~~ with possessory interest in the vehicle, upon presentation of an agreement with the owner of the vehicle giving that individual a present possessory interest in the vehicle;
- (D) a lienholder or a duly authorized agent of a lienholder, upon a ~~showing~~ satisfactory presentation of evidence satisfactory to the wrecker operator that the lienholder has a present possessory interest in the vehicle; or
- (E) the insurer of or the insurer accepting liability for or purchasing a motor vehicle as provided in 47 O.S., Section 904, 953.1, or 953.2.
- (14) Personal property, which shall include everything in a stored vehicle except the vehicle and its factory-installed equipment, shall be released, upon request, to the owner or owner's representative, upon showing of proof as described in (13) of this section, without the requirement that the owner or owner's representative pay towing and storage fees owing the wrecker service as a condition of release of the personal property. The owner or owner's representative shall be required to comply with any city or county regulation or ordinance requiring the payment of fees due to the city or county. The wrecker service may assess and collect lawful fees, such as after hours fees or subcontractor fees but other than towing and storage fees, as a condition of release of personal property to the owner or owner's representative. Wrecker operators shall allow the vehicle owner or owner's representative to have access to the vehicle for the sole purpose of retrieving ownership documentation, such as title or registration.
- (15) If two or more vehicles are involved in a collision and two or more wrecker services are called the following shall apply:
- (A) The first wrecker service arriving at the scene will tow the vehicle causing the greatest traffic hazard, which shall be determined by the investigating officer.
- (B) If a requested wrecker service is first on the scene, said wrecker service will assist in removing the vehicle causing the traffic hazard from roadway, then will proceed to pick up the vehicle it has been requested to tow.
- (16) Wrecker operators shall not call hazardous materials remediation companies unless at the direction of the vehicle owner or a governmental agency.

595:25-5-4. Insurance

(a) **Liability for operator's negligent acts.** Each operator, from the time he ~~moves of movement of~~ or otherwise ~~makes~~ making contact with any vehicle to be towed, may be liable for injury to persons, damage to property, fire or theft resulting from the operator's negligent acts.

(b) **Insurance policy.** Each operator shall maintain a valid insurance policy issued by a surety or an insurance company currently authorized to issue policies of insurance covering risks in the State of Oklahoma. ~~The aforementioned~~ insurance policy shall protect the public against loss of life, bodily injury to person, and damage to property in the following amounts:-

(1) **Class General or Class AA.**

(A) Bodily Injury and Property Damage - Not less than One Hundred Thousand Dollars (\$100,000.00) combined single limit coverage for bodily injury and/or property damage as a result of the operation of the wrecker vehicle and/or as a result of the on-hook vehicle causing the bodily injury and/or property damage.

(B) Garagekeeper's Legal Liability - Not less than Fifty Thousand Dollars (\$50,000.00) in Garagekeeper's Legal Liability with a deductible no greater than five hundred dollars (\$500.00), which must include comprehensive perils and collision to the towed vehicle under the care, custody, and control of the wrecker operator.

(2) **Class AA-TM.**

(A) Bodily Injury and Property Damage - Not less than Two Hundred Thousand Dollars (\$200,000.00) combined single limit coverage for bodily injury and/or property damage as a result of the operation of the wrecker vehicle and/or as a result of the on-hook vehicle causing the bodily injury and/or property damage.

(B) Garagekeeper's Legal Liability - Not less than One Hundred Thousand Dollars (\$100,000.00) in Garagekeeper's Legal Liability with a deductible no greater than five hundred dollars (\$500.00), which must include comprehensive perils and collision to the towed vehicle under the care, custody, and control of the wrecker operator.

(3) **Class AA-TL.**

(A) Bodily Injury and Property Damage - Not less than Three Hundred Thousand Dollars (\$300,000.00) combined single limit coverage for bodily injury and/or property damage as a result of the operation of the wrecker vehicle and/or as a result of the on-hook vehicle causing the bodily injury and/or property damage.

(B) Garagekeeper's Legal Liability - Not less than One Hundred Fifty Thousand Dollars (\$150,000.00) in Garagekeeper's Legal Liability with a deductible no greater than five hundred dollars (\$500.00), which must include comprehensive perils and collision to the towed vehicle under the care, custody, and control of the wrecker operator.

(4) **All Wrecker Classes.** Bailee Coverage - Not less than ~~two thousand five hundred dollars~~ Two Thousand Five Hundred Dollars (\$2,500.00) for loss of contents of the vehicle with a deductible not greater than Five Hundred Dollars (\$500.00), ~~which must include, but not be limited to, the following perils:~~

- (A) ~~fire,~~
- (B) ~~lightning,~~
- (C) ~~explosion,~~
- (D) ~~windstorm and hail,~~
- (E) ~~malicious mischief and~~
- (F) ~~theft.~~

(c) **Judgment.** Any final judgment rendered by a court of competent jurisdiction against a wrecker service or an owner or employee thereof, arising out of any services provided by the ~~licensee operator~~ of or any employee of the wrecker service, including towing or storage of towed vehicles, must be satisfied within thirty (30) days. If such judgment is not timely satisfied, the wrecker license shall be revoked and such revocation shall remain in effect until the judgment is satisfied. Provided, however, a release or written agreement signed by the judgment creditor and approved by the Department shall reinstate eligibility. Provided, if judgment is covered by insurance up to the amount and to the extent required in the rules, this Subsection shall not apply.

(d) **Carrier certification.** ~~Insurance companies will~~ The insurance company of each wrecker service shall certify to the Department on a form prescribed by the Department that the insurance policy issued to a wrecker service will not be canceled until thirty (30) company will notify the Department in writing at least ten (10) days after the Department has received written notice of the intent to cancel before the date the company cancels such policy.

(e) **Insurance information.** An operator shall provide contact and other pertinent information regarding the insurance company and policy covering the wrecker service to any person who might be eligible to file a claim against the operator's insurance policy.

595:25-5-5. Records

(a) Each operator shall comply with the provisions of 47 O.S. § 4-105(c), and provide a thirty (30) day vehicle report to the Department. A junk vehicle may be reported beginning on the fifth day of storage of the junk vehicle, and the vehicle report shall be notated with the word "JUNK."

(b) Each ~~wrecker service operator~~ shall maintain, on a form prescribed and furnished or approved by the Department, a record system covering all services performed in pulling or towing all vehicles impounded for law enforcement or at the request of private property owners, and such records shall include the following:

- (1) The day and time the operator was contacted and requested to perform the service.
- (2) The name of the person requesting this service.
- (3) The location of the vehicle.
- (4) A description of the towed vehicle, including license tag and vehicle identification number.
- (5) The owner or driver of the vehicle when known.

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- (6) The service charge and fees.
- (c) The operator shall maintain said records for at least three (3) calendar years from the date the records are created. ~~Operators are not released from responsibility for notification fees that may have been due and owing beyond those three years.~~
- (d) All records herein shall be stored in a manner which makes such records readily retrievable for inspection or examination of an individual record by the Department.
- (e) Every operator shall cooperate with the Department whenever the Department requests copies of or finds it necessary to review, audit, examine, or investigate any records relating to the operation of the wrecker service.

595:25-5-6. Storage rates; Schedule of after-hour release fees; service fees indoor storage

- (a) ~~All original applications for wrecker license shall include, on a form provided by or approved by the Department of Public Safety, a complete schedule of the licensee's storage rates and after-hour release fees. The Department shall be notified of any change in storage rates and after-hour release fees at least fifteen (15) days before the effective date of such changes.~~
- ~~(b) The licensee operator shall at all times keep a copy of the current schedule of storage rates and after-hour release fees, provided by the Department, posted in a conspicuous place, readily accessible to the public.~~
- (e) ~~Service fees~~ Fees for vehicles towed at the request of any law enforcement agency shall not exceed ~~service~~ fees for similar vehicles towed at the request of a driver or owner when said service is provided under the same or similar conditions.
- (c) The operator shall charge fees based upon the classification of the towed vehicle, as prescribed by the Department [47 O.S. §§ 953.1 and 953.2].
- (d) The licensee operator shall not charge for indoor storage unless indoor storage:
- (1) Has been specifically requested by the owner or operator of the vehicle,
 - (2) Has been ordered by the law enforcement officer requesting the towing and storage of the vehicle, or
 - (3) Is necessary to prevent further damage to the vehicle and/or property if left outside in inclement weather conditions.

595:25-5-7. Tow request and authorization forms

- (a) Wrecker services shall complete the Tow Request and Authorization Form prior to removal of abandoned vehicles from real property.
- (b) One copy of the Tow Request and Authorization Form shall be forwarded to the Department of Public Safety, ~~Vehicle Inspection Wrecker Services~~ Division, P. O. Box 11415, Oklahoma City, Oklahoma 73136, and the local law enforcement agency, within seventy-two (72) hours from time of removal.
- (c) The Tow Request and Authorization Form can be obtained from the ~~Vehicle Inspection Wrecker Services~~ Division, Department of Public Safety, Oklahoma City, Oklahoma 73136. Disposition of copies are as follows:
- (1) Original copy to the Department of Public Safety. Facsimile in lieu of the original will be accepted.

- (2) One copy to the local law enforcement agency.
 - (3) One copy to be retained by the wrecker service.
 - (4) One copy to the real property owner, legal possessor or agent.
- (d) Each wrecker operator shall be responsible for verifying the identity of the person signing the tow request and authorization form and shall put the driver license number or state-issued identification card number of that person on the tow request and authorization form.

SUBCHAPTER 7. CLASS AA OPERATORS

595:25-7-1. Equipment requirements for all Class AA vehicles

- (a) Each Class AA wrecker vehicles not less than nine thousand (9,000#) pounds GVWR-vehicle, in addition to the equipment required by OAC 595:25-5-2, shall be equipped with:
- (1) Two (2) "scotch" blocks or similar type device capable of adding stability to the wrecker in preparing the disabled vehicle for towing. (NOTE: Roll-back wrecker vehicles, when not used as primary responders to law enforcement requests, are exempt from this requirement.)
 - (2) "Dollies" for the purpose of providing a method of towing a disabled vehicle which is otherwise incapable of being towed safely on either axle. (NOTE: Roll-back wrecker vehicles are exempt from this requirement.)
 - (3) ~~Two (2) chains of sufficient grade to assist in securing the towed vehicle; one (1) push-type broom; one (1) One (1) axe; one (1) shovel; one (1) set of tire chains, mud/snow tires or other device to assist wrecker vehicle to maintain traction in mud, snow or ice; and one (1) pry-bar or wrecking bar capable of prying open doors.~~
 - (4) One (1) "sling" and "stay-bar," wheel lift device or other type of device capable of safely loading and protecting the disabled vehicle while being towed.
 - (5) At least one (1) set of dual rear wheels for stability in towing another vehicle.
 - (6) A winch or winches with have a minimum factory rated capacity of eight thousand pounds (8,000 lbs.) and equipped with a cable to be compatible with manufacturer's specifications.
 - (7) Absorbent capable of absorbing liquid spills from vehicles (not cargo spills); provided, the wrecker service or wrecker operator shall not be required to pick up or dispose of the used absorbent.
- (b) Each Class AA-TM wrecker (Medium Truck Wreckers medium truck wrecker) shall meet the following standards:
- (1) Minimum vehicle chassis requirements:
 - (A) ~~Factory gross weight (GVWR) shall not be less than twenty-four thousand (24,000#) pounds.~~
 - ~~(B)~~ Factory or certified installed full air brakes with a full tractor package (hand control, in line foot valve, air hoses and trailer emergency valve) capable of releasing the air brakes on a tractor-trailer and capable of operating the brakes of the towed vehicle with the same application as the towing vehicle.
 - ~~(C)~~ Air activated spring parking brake.

(2) Minimum wrecker body and equipment requirements:

(A) Wrecker body and equipment shall be compatible with the chassis GVWR in size and ~~will~~ shall be suitable by design to operate under emergency conditions.

(i) Vehicle body must be capable of safely anchoring scotch blocks.

(ii) Vehicle must be designed to adequately anchor snatch blocks.

(iii) Booms(s) must be constructed as to be compatible with winch rating.

(iv) Vehicle must have a minimum of two (2) snatch blocks compatible with cable size and cable rating.

(v) Winch(s) must have a minimum factory rated capacity of thirty thousand ~~(30,000#)~~ pounds (30,000 lbs.) and be equipped with a cable to be compatible with manufacturer's specifications.

~~Two (2) chains of sufficient grade to assist in securing the towed vehicle; one (1) push type broom; In addition to the equipment required by OAC 595:25-5-2, one (1) axe; one (1) shovel; and one (1) set of tire chains, mud/snow tires or other device to assist wrecker vehicle to maintain traction in mud, snow or ice; and one (1) pry-bar or wrecking bar capable of prying open doors.~~

(vii) One (1) "sling" and "stay-bar," wheel or frame lift device or other type of device capable of safely loading and protecting the disabled vehicle while being towed.

(c) ~~Each Class AA-TL wrecker (Large Truck Wreckers large truck wrecker)~~ shall meet the following standards:

(1) ~~Minimum manufacturer's gross vehicle weight (GVWR) forty four thousand (44,000#) pounds. Minimum vehicle chassis requirements:~~

(A) ~~Factory-installed~~ or certified installed full air brakes with a full tractor package (hand control, in-line foot valve, air hoses, and trailer emergency valve) capable of releasing the air brakes on a tractor-trailer and capable of operating the brakes of the towed vehicle with the same application as the ~~towing vehicle wrecker.~~

(B) Air activated spring parking brake.

(2) Minimum front axle and suspension, ~~of~~ twelve thousand ~~(12,000#)~~ pounds (12,000 lbs.). (Note: GVWR ratings are altered or affected by tires, springs and axles.)

(3) Minimum rear axle and suspension combination ~~of~~ thirty-two thousand ~~(32,000#)~~ pounds (32,000 lbs.). (Note: ~~Recommended thirty eight thousand (38,000#) pounds.~~)

(4) Be equipped with full-driven tandem axle (NOTE: A drag axle or pusher axle is not acceptable).

(5) Minimum wheel base ~~of~~ two hundred ~~(200)~~ inches (200").

(6) Wrecker body and equipment shall be compatible with chassis GVWR and size and ~~will~~ shall be suitable by design to operate under emergency conditions.

(A) Body must be capable of safely anchoring scotch blocks.

(B) Must be designed to adequately anchor snatch blocks.

(C) Boom(s) must be constructed as to be compatible with winch rating and must be capable of being adjusted to accomplish proper weight distribution.

(D) Winch(s) must have a factory rated capacity of at least forty thousand ~~(40,000#)~~ pounds (40,000 lbs.) and must be equipped with a cable to be compatible with manufacturer's specifications.

~~Two (2) chains of sufficient grade to assist in securing the towed vehicle; one (1) push type broom; In addition to the equipment required by OAC 595:25-5-2, one (1) axe; (1) shovel; one (1) set of tire chains, mud/snow tires or other device to assist wrecker to maintain traction in mud, snow or ice; and one (1) pry-bar or wrecking bar capable of prying open doors.~~

595:25-7-2. Operation of storage facility Release and holding of vehicle by Class AA wrecker operators

(a) **Release.** The Class AA ~~Operator~~ wrecker operator shall at all times have a capable person available to release impounded or stored vehicle within thirty (30) minutes.

(b) **Exceptions to release of impounded or stored vehicles.**

(1) Officers may have a legitimate need and reason to preserve the secured status of an impounded or stored vehicle, ~~for myriad reasons, e.g. including but not limited to:~~

(A) ~~Until Failure to pay taxes due the State have been paid thereon;~~

(B) ~~Evidence, such as paint scraping or photographs;~~

~~(C) Forfeiture proceedings under the Controlled Dangerous Substances Act [63 O.S. § 2-506]; or~~

(C) Evidentiary proceedings.

(2) In the event an officer determines a need exists to preserve the secured status of an impounded or stored vehicle, ~~he~~ the officer may direct the operator to place a hold thereon, which the operator ~~is obligated to~~ shall honor, subject to the following procedures:

~~(3A) If the hold is because taxes due the State have not been paid as evidenced by an expired tag which is delinquent under 47 O.S. § 1151(5), and the grace period has passed under 47 O.S. § 1151(C), these laws provide the operator shall not release the vehicle until the owner must furnish, or another person as described in OAC 595:25-5-3(13), has furnished proof from the Oklahoma Tax Commission or Motor License Agent a motor license agent to the operator that the vehicle has been duly registered and the license fee thereon has been paid before the vehicle may be released to the owner thereof. Inquiry regarding this law may be made to the Oklahoma Tax Commission.~~

~~(4B) If the stated reason for the hold is a forfeiture proceeding under the Uniform Controlled Dangerous~~

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Substance Act, the operator may not release the vehicle unless authorization is received either from the District Attorney's Office of the county from which the vehicle was impounded; or from the impounding officer.

(A) If, after the expiration of seventy-two (72) hours from the time of impoundment (excluding Saturday, Sunday and legal holidays), the operator has not received either the court case number under which a forfeiture proceeding has been accepted and filed or a release of the hold from the impounding officer, the operator shall contact the Law Enforcement Law Enforcement agency storing ~~said the~~ vehicle, between 7:00 a.m. and 12:00 noon following such seventy-two (72) hours period, advising the ranking supervisor on duty or dispatcher of the following information;

- (i) That the vehicle is being held for the filing of forfeiture proceedings;
- (ii) That no court case number of forfeiture proceedings has been received;
- (iii) Description of vehicle, including tag and vehicle identification number;
- (iv) Vehicle owner, if known;
- (v) Date and time of impoundment;
- (vi) County from which the vehicle was impounded;
- (vii) Name of impounding officer;
- (viii) Name and telephone number of operator submitting the above information.

(~~B~~) The supervisor may direct the impounding officer to verify the decision of the District Attorney and to notify the operator:

- (i) Of the forfeiture proceedings style and case number; or
- (ii) That the hold is canceled because the District Attorney has declined forfeiture proceedings and therefore, the vehicle may then be released in accordance with (a) and (b) of this Section.

(~~C~~ ~~iii~~) Any vehicle seized or stored for forfeiture proceedings under the Uniform Controlled Dangerous Substance Act is considered to be in the custody of the District Attorney of the county where the property was seized [63 O.S. § 2-506 (K)] and therefore the operator may contact that office regarding any matter relating to such vehicle, in addition to the foregoing procedure.

(~~5~~ ~~iv~~) If the hold is for evidentiary proceedings or for any stated reason other than taxes or forfeiture described above (~~3~~ or if the officer fails to state a reason), then ~~such the~~ hold shall expire forty-eight (48) hours from the time of impoundment (if not released earlier by the officer), and the operator shall not honor the hold beyond the forty-eight (48) hour period without express ~~approval of the Law Enforcement~~ direction of the law enforcement agency storing said vehicle. The vehicle may then be released in accordance with ~~(a) and (b) of this Section~~ the provisions of this Chapter.

(c) ~~Remitting storage notification fee. Vehicles impounded or stored, at the request of an official or officer of~~

~~a governmental entity prior to July 1, 1997, at an approved storage facility of a licensed wrecker operator are subject to a notification fee of \$10.00 to be remitted to the Department of Public Safety, upon release by such operator to the vehicle owner or lienholder. The following procedure will be followed for remittance of such fee:~~

~~(1) The Department will provide the licensee with a copy of the notification letter sent to any owner or lienholder of a vehicle impounded prior to July 1, 1997, together with a demand for payment of the \$10.00 fee.~~

~~(2) The licensee will remit such fee on the last working day of the month, following release of such vehicle, to the Department of Public Safety.~~

~~(3) If the licensee is not able to release such impounded vehicle to the owner or lienholder, but must dispose of the vehicle through a lien foreclosure sale or other disposal method, then licensee will return the Department's payment demand together with copies of the vehicle disposal documents to the Department of Public Safety on the last day of the month following such disposal.~~

(~~4~~) **Court orders regarding impounded or stored vehicles.** If any rule provided herein conflicts with a court order served upon the operator relating to impoundments, release, storage or other matter relating to the wrecker service, the court order shall take precedence.

SUBCHAPTER 9. OKLAHOMA HIGHWAY PATROL ROTATION LOG - ADDITIONAL REQUIREMENTS

595:25-9-1. Oklahoma Highway Patrol Rotation Log

(a) **Official Rotation Log.** The Department of Public Safety maintains ~~an two (2)~~ two (2) official Oklahoma Highway Patrol Rotation ~~Log Logs~~, a Class AA wrecker log and a Class AA-TL wrecker log, each of which shall consist of licensed wrecker services *for the performance of services carried out pursuant to the request of or at the direction of any officer of the Department* [47 O.S. §952(D)].

(b) **Request for placement on the Rotation Log.** A licensed Class AA wrecker service desiring to be placed on the Highway Patrol Rotation Log in the Highway Patrol Troop District in which the place of business and the primary storage facility of the wrecker service is located shall file a written request with the Department, pursuant to (e) of this Section. In addition, the wrecker service may file a separate written request, pursuant to (e) of this Section, for placement on the Rotation Log in another Troop District adjacent to the Troop District in which the place of business and the primary storage facility of the wrecker service is located, if the wrecker service is in proximity to and within a reasonable radius of the boundary of the other Troop District, as determined by the Director of the Wrecker Services Division of the Department in consultation with the Troop Commander of the other Troop District. [47 O.S. §952(D)]

(c) **Assignment to the Rotation Log.** If a request for placement on the Rotation Log is approved by the Department, the wrecker service shall be assigned by the Department to the

Highway Patrol Troop District specified on the request. Both the Troop Commander of the Troop District and the wrecker service will be notified by the Department of the assignment of the wrecker service to the Rotation Log. [47 O.S. §952(D)]

(d) **Geographical areas of rotation.** [47 O.S. §955(B)]

(1) The ~~Troop Commander~~ Director of the Wrecker Services Division shall be responsible for establishing geographical areas of rotation within the Troop District to which wrecker services on the District's Rotation Log will be assigned for operation when responding to calls for service from the Rotation Log. The ~~Troop Commander~~ Director shall notify each wrecker service of the geographical area of rotation to which it is assigned.

(2) The ~~Troop Commander~~ Director will establish each geographical area of rotation based upon a reasonable radius from the primary storage facility of each wrecker service operating within the geographical area. The reasonable radius will be determined by the ~~Troop Commander~~ Director based upon:

- (A) the estimated time it will take the wrecker service to respond to calls for service,
- (B) the number of wrecker services available on the Rotation Log,
- (C) conformity with 47 O.S. §955(B),
- (D) consideration of the economic impact of the wrecker services fees and charges [see 47 O.S. §953.1 regarding maximum fees and charges for wrecker services] on the owner or lienholder of the vehicle; and
- (E) other factors within the Troop District as deemed appropriate by the ~~Troop Commander~~ Director.

(3) The ~~Troop Commander~~ Director may overlap geographical areas of rotation whenever necessary to ensure adequate response to requests for wrecker services.

(4) The ~~Troop Commander~~ Director may modify geographical areas of rotation for the Troop District at any time and for just cause, but shall notify as soon as practicable each wrecker service affected of such modifications.

(5) The ~~Troop Commander~~ Director may extend any geographical area of rotation by a reasonable radius beyond the boundaries of the Troop District to include on the rotation log of the District a wrecker service:

- (A) which is located outside of but in proximity to the boundary of the District, and
- (B) upon receiving notification from the Department of the approval of the wrecker service for placement on the rotation log for the District of the Commander.

(6) Nothing in this Section shall prohibit the Troop Commander from using the services of any licensed wrecker service:

- (A) outside of its assigned geographical area of rotation, or
- (B) which has not been assigned to the Rotation Log of the Troop District.

(e) **Forms.** A request for placement on any rotation log shall be filed by the wrecker service with the Department of Public

Safety on a form prescribed and provided by the Department [47 O.S. §952(D)]. The wrecker service shall provide on the request one (1) telephone number to be used for request of services during the day and one (1) telephone number to be used for request of services during the night, specifying the time period of normal use; these numbers shall also be on file with the Wrecker Services Division. Any change in the telephone numbers shall be immediately transmitted to:

- (1) the Troop Commander(s) of the Oklahoma Highway Patrol Troop District(s) on whose Rotation Log the wrecker service has been assigned, and
- (2) the Wrecker Services Division of the Department of Public Safety.

595:25-9-2. Operator requirements

Operators on the Rotation Log shall comply with the following:

- (1) When more than one (1) vehicle is towed on one (1) call, each tow shall be counted as another call to that operator.
- (2) When an operator receives a request for services from the Oklahoma Highway Patrol and no services are rendered for which the operator is able to receive compensation, the operator shall not lose position on the Rotation Log.
- (3) If an operator has received a request for services, but does not respond to the scene within a reasonable length of time, including but not limited to such factors as distance from the scene, weather, and nature of the accident collision or traffic tie-up, the Oklahoma Highway patrol may request the services of the next operator on the Rotation Log. Under these circumstances, the operator who receives the first request shall lose position on the Rotation Log.
- (4) When an emergency condition exists, the Oklahoma Highway Patrol reserves the right to request the services of any appropriately equipped and licensed wrecker service best able to handle the emergency and can reach the scene in the shortest time, regardless of the operator's position on the Rotation Log. Said call shall count as a call on the Rotation Log.
- (5) Only one (1) wrecker service shall be approved for Highway Patrol ~~Rotation~~ rotation at any one place of business and/or storage facility, unless otherwise approved by the Commissioner.
- (6) Wrecker services shall respond to Highway Patrol requests only in a wrecker vehicle licensed to the requested wrecker service, unless otherwise approved by the Commissioner.
- (7) ~~Maintain~~ Every wrecker service on the Highway Patrol Rotation Log shall maintain twenty-four (24) hour service.
- (8) ~~Accept no A~~ A wrecker service called from the Highway Patrol Rotation Log shall not accept a request for services unless the operator has a vehicle immediately available to perform the requested service.

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- (9) ~~Require~~ Each operator shall require each driver responding to a request to maintain the appropriate driver license for the type vehicle being operated.
- (10) ~~Require~~ Each operator shall require each driver to obey in good faith the rules of the road.
- (11) ~~Prohibit loitering~~ Each operator shall prohibit any known thief or felon from loitering, visiting, or otherwise being on the business premises by any known thief or convicted felon of the place of business or any storage facility of the wrecker service.
- (12) ~~Accept each~~ Every operator shall accept each Oklahoma Highway Patrol call unless there exists a valid reason for refusal.
- (13) ~~Provide~~ Each operator shall provide service for a minimum of seventy-five (75%) percent or more of the requests made by the Highway Patrol to be computed on a quarterly basis. Failure to meet this standard for any reason shall be grounds for removal from the Oklahoma Highway Patrol Rotation Log.
- (14) Any Class AA wrecker operator who uses an answering service as a means of dispatch and who fails to properly respond in a timely manner, as determined by the Director of the Wrecker Services Division, to a rotation call request may have the Class AA license revoked for failure to properly respond to rotation call requests. The operator shall not be licensed as a Class AA wrecker service while utilizing the same answering service as a means of dispatch.

595:25-9-3. "Rotation" calls for Class AA truck wreckers (Class AA-TL)

Rules governing the rotation calls for Class AA-TL ~~Truck Wreckers truck wrecker operators~~ shall be the same as the rules governing the rotation calls for all other Class AA wrecker ~~licensees operators~~, except that in the case of truck wreckers the involved Trooper and/or the dispatcher shall have and be free to exercise ~~the following his or her discretion as provided for in this section.~~ If, in the judgment of any involved ~~Trooper trooper and/or Dispatcher dispatcher~~, a Class AA-TL truck wrecker ~~licensee operator~~ within a service area ~~that has equipment meeting all or any part of, "Class AA TL (Large Truck Wrecker)" is needed because of an emergency situation,~~ such wrecker service may be called without regard to position on the truck wrecker log except in relation to other ~~licensees operators~~ also meeting the additional Class AA qualities in the service area.

SUBCHAPTER 11. DENIAL, SUSPENSION, REVOCATION OR CANCELLATION OF LICENSE; DENIAL OR REMOVAL OF CLASS AA OPERATORS FROM ROTATION LOG OF THE OKLAHOMA HIGHWAY PATROL

595:25-11-1. Failure to qualify

The Department may deny or cancel the license, and/or remove from the Rotation Log, as ~~the case may be applicable,~~

any operator who fails to qualify therefore as provided in the rules of this Chapter and the laws of 47 O.S.

595:25-11-2. Violation of rules

The Department may deny, suspend, cancel, or revoke the license, and/or remove from the Rotation Log, as the case may be, any operator who has committed a violation of the rules of this Chapter or the laws of 47 O.S.

595:25-11-3. Procedure

In the event that the Department has determined that a license should be denied, suspended, revoked or canceled; ~~and/or, or~~ that an operator should be denied or removed from the Rotation Log for any reason, or both, the following procedures shall apply in accordance with the Administrative Procedures Act, 75 O.S. § 309, et seq.

(1) The Department shall send by certified mail, return receipt requested, Notice of Department Action containing all information required by 75 O.S. § 309, et seq., to the concerned applicant, or operator or licensee at his the last known address as reflected by the records of the Department.

(2) The notice shall provide that the Department action shall become effective ~~ten (10) fifteen (15)~~ days after receipt thereof by the ~~licensee applicant or operator~~, unless the ~~licensee applicant or operator~~ timely files a written request for a hearing with the Department of Public Safety, ~~Vehicle Inspection Wrecker Services~~ Division. Such request shall be timely when filed prior to the effective date of the Department Action.

(3) If a timely hearing is requested ~~such, the~~ hearing shall be scheduled not less than seven (7) days nor more than fifteen (15) days from the date the Department receives the request.

(4) The Department hearing officer shall be designated by the Commissioner, and each party shall be afforded an opportunity to be heard and to present evidence.

(5) The hearing officer shall render a decision ~~thereon~~ based upon the law and the evidence presented and shall enter an appropriate final order thereon and each regarding the matter. Each party shall be promptly notified either personally or by mail.

(6) Unless the hearing officer timely receives a written request for a rehearing, reopening or reconsideration of the decision as provided by the Administrative Procedures Act, the final order will become effective ten (10) days after the entry of the decision.

(7) If an applicant operator fails to appear at the scheduled hearing without a good cause, the hearing officer shall record the nonappearance and enter a final order reflecting the effective date prescribed in (2) of this Subsection, in lieu of the decision and final order as prescribed in (5) and (6) of this Subsection. Each party shall be promptly notified thereof either personally or by mail.

(8) If the Department representative fails to appear without good cause, the hearing officer shall record the nonappearance and enter a final order of dismissal of the

Department Actions; ~~such~~. The order of dismissal shall be without prejudice if the basis for the action constitutes noncompliance or a continuing violation of these rules. Each party shall be promptly notified thereof either personally or by mail.

(9) Where a timely written request for a rehearing, reopening or reconsideration of the case is received, the Department Action shall be stayed until ten (10) days after an order is issued concerning the request for rehearing, reopening or reconsideration of the case.

(10) Notwithstanding (2) through (9) of this Subsection, Department Action shall become effective immediately where:

(A) An original application for a license or placement on the Rotation Log is denied for failure to qualify under this Chapter.

(B) The Department finds that the health, safety, or welfare of the public imperatively requires such action and finding to that effect is incorporated in its order, pursuant to the Administrative Procedures Act, 75 O.S. § 314(c).

(11) Where the Department has determined that a minor disqualification and/or violation exists which may be readily rectified by the applicant, or operator or licensee, the Department of Public Safety may informally notify such party by mail or telephone of such minor disqualification or violation, with a request for compliance with a specified period of time. If such party fails to rectify the minor disqualification or violation, the Department may proceed according to other provisions of this Subchapter.

[OAR Docket #04-1184; filed 6-25-04]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 30. SIZE AND WEIGHT PERMITS**

[OAR Docket #04-1185]

RULEMAKING ACTION:

PERMANENT final adoption.

RULES:

- Subchapter 1. General Provisions
- 595:30-1-1. Purpose [AMENDED]
- Subchapter 3. Size and Weight Permit Load
- 595:30-3-3. Requesting, obtaining, and paying for a permit [AMENDED]
- 595:30-3-17. Requirements for escort vehicles and escort vehicle operators [AMENDED]
- 595:30-3-17.1. Certification of operators of escort vehicles for hire [AMENDED]
- Subchapter 5. Special Combination Vehicles
- 595:30-5-8. Load sequence [AMENDED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. §§ 2-108 and 14-101 et seq

DATES:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Amendments to this chapter would clarify and update procedures for the permitting the operation of over-dimension vehicles and loads in this state.

The proposed actions are amendments to existing rules.

The circumstances, other than clarifying and updated language, which created the need for these rules are to improve the operating environment of over-dimension vehicles and loads on the highways as well as to ensure the safety and protect the property of the motoring public of Oklahoma.

The intended effect of these rules is to allow the Department of Public Safety to perform its duties as required or authorized by law.

CONTACT PERSON:

David W. Beatty, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2024. Email: dbeatty@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 25, 2004:

SUBCHAPTER 1. GENERAL PROVISIONS

595:30-1-1. Purpose

The Department of Public Safety issues permits for over-size, overweight vehicles. The purpose of this chapter is to set forth the guidelines and procedures for obtaining size and weight permits. [47 O.S., §§ 2-108(b) and 14-116(A), 14-118(A), 14-118.1, 14-120(C), 14-120.1(D), and 14-121(B)]

SUBCHAPTER 3. SIZE AND WEIGHT PERMIT LOAD

595:30-3-3. Requesting, obtaining, and paying for a permit

(a) **Requesting and obtaining a permit.** A permit may be requested and obtained from the Size and Weight Permit Division of the Department of Public Safety, by contacting a permit office either in person or by telephone. A permit for movement of a manufactured home shall be requested and obtained in accordance with 68 O.S. §2813 and 47 O.S. §14-103D. The permit office will make a determination as to whether or not the permit will be issued based upon the size of load, the route

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to be traveled, the clearance of overhead structure, weather conditions, and traffic conditions.

(b) **Location and hours of permit offices.** All permit offices are open Monday through Friday, except on state holidays. Location, telephone numbers, and office hours of permit offices are:

(1) Oklahoma City (main office), 3600 N. Martin Luther King Avenue, (877) 425-2390 (toll free). Office hours: 7:00 a.m. to 4:30 p.m.

(2) Offices at Oklahoma Highway Patrol district headquarters, (877) 425-2390 (toll free):

(A) Enid, 5725 W. Garriott Road. Office hours: 7:30 a.m. to 12:00 p.m. (noon), and 1:00 p.m. to 3:45 p.m.

(B) Tulsa, 9191 E. Skelly Dr. Office hours: 8:00 a.m. to 12:00 p.m. (noon), and 1:00 p.m. to 4:15 p.m.

(3) Field Offices:

(A) Elk City, JCT S.H. 66 and S.H. 6 at Merritt Road, (580) 243-0306. Office hours: 8:00 a.m. to 12:00 p.m. (noon), and 1:00 p.m. to 4:15 p.m.

(B) Pauls Valley, Court House, Room #2, (405) 238-5850. Office hours: 8:00 a.m. to 12:00 p.m. (noon), and 1:00 p.m. to 4:15 p.m.

(C) ~~Seminole, Municipal Building, 404 N. Main, (405) 382-3022. Office hours: 8:00 a.m. to 12:00 p.m. (noon), and 1:00 p.m. to 4:15 p.m.~~

(D) Woodward, 102 Temple Houston Dr., (405) 256-3651. Office hours: 7:00 a.m. to 11:00 a.m., and 12:00 p.m. (noon) to 3:15 p.m.

(c) **Payment for a permit.** Payment for a permit is to be made by one of the following methods:

(1) Cash. Please do not mail cash.

(2) Certified cashier's check. Make checks payable to "Oklahoma Department of Public Safety."

(3) Money order. Make money orders payable to "Oklahoma Department of Public Safety."

(4) Personal or company check. Make checks payable to "Oklahoma Department of Public Safety." If a personal or company check is not honored by the bank upon which it is drawn, the Department of Public Safety reserves the right to refuse all further checks from the person or company who issued the check.

(5) Credit card. Discover, MasterCard, or Visa will be accepted for payment. Permits paid for by credit card which are to be faxed to the permittee will be faxed only to private fax lines.

(6) Monthly billing account. [See 595:30-3-7 regarding monthly billing accounts.]

595:30-3-17. Requirements for escort vehicles and escort vehicle operators

(a) **General requirements for escort vehicles.** Any vehicle to be used as an escort vehicle must be either a pickup truck of not less than one-quarter (1/4) ton rated load capacity or an automobile of not less than 2,000 pounds. The escort vehicle must be properly licensed under the statutes of the State of Oklahoma [47 O.S. § 1101 et seq.] or properly licensed in another state. If commercially licensed, an escort for an intrastate move

must obtain a temporary registration from the Oklahoma Tax Commission Motor Vehicle Registration Division.

(b) **Identification of escort vehicles.** The owner of an escort vehicle must have displayed on each side of the escort vehicle the name and city of the escort vehicle company, the owner of the escort vehicle, or both. Well known company logos are acceptable. Such identifying markings must be:

(1) Plainly legible and visible to the motoring public.

(2) Readily legible during daylight hours from a distance of fifty (50) feet while the vehicle is stationary.

(3) Kept and maintained in a manner to preserve legibility.

(4) In a color or colors which sharply contrast with the background on which they are placed.

(c) **Equipment of escort vehicles.** An escort vehicle must carry the following items of equipment at all times when escorting an oversize/overweight vehicle or load:

(1) **Flags.** Red flags, at least twelve (12) inches square, must be attached to standards angled upward to the left and right at forty-five (45) degrees and mounted on the top of the cab. No flags shall be displayed unless the escort vehicle is actually engaged in escorting.

(2) **Mirrors.** The vehicle shall be equipped with an outside rear-view mirror on each side of the vehicle.

(3) **Radio.** Escort and towing vehicles shall be equipped with a two-way radio which is capable of transmitting and receiving voice messages over a minimum distance of one-half (1/2) mile and which is compatible with radios in the escorted vehicle and any other escort vehicle(s).

(4) **Fire extinguisher.** One (1) ten-pound or two (2) five-pound ABC fire extinguishers. Extinguishers shall be checked annually to ensure they are operational.

(5) **Flares or reflectors.** Four (4) fifteen minute flares or three (3) portable triangle reflector units.

(6) **Sign.** The regulation "Oversize Load" sign, as provided in 595:30-3-16 [see Appendix A of this Chapter regarding signs], shall be placed on the front of front escort vehicles and on the rear of rear escort vehicles while escorting an oversize vehicle or load. The sign will be clearly visible without an obstruction. No signs shall be displayed unless the escort vehicle is actually engaged in escorting.

(7) **Warning lights.** One AAMVA-approved rotating or flashing amber beacon or a flashing amber light bar system shall be mounted on top of the escort vehicle and shall be of sufficient intensity when illuminated to be visible from five hundred (500) feet in normal sunlight. The rotating beacon shall be at least ten (10) inches in diameter and eight (8) inches in height and shall rotate, oscillate or flash through 360 degrees. Blue, red, or white rotating lights are not authorized under Oklahoma statutes. In addition:

(A) Headlights of escort vehicles shall be lighted at all times during movement.

(B) Warning lights in conformance with 47 O.S. § 12-220(D) and § 12-227(C) may be used in conjunction with the headlights.

- (C) No warning lights shall be displayed unless the escort vehicle is actually engaged in escorting.
- (8) **Measuring pole.** A current height measuring pole made of non-conductive, flexible, non-fragile material when escorting a load or vehicle exceeding fifteen (15) feet and nine (9) inches in height.
- (9) **Traffic control sign.** A standard eighteen (18) inch "STOP" and "SLOW" paddle sign.
- (10) **Safety clothing.** A hard hat and a jacket or vest, both in safety orange color, for each person who may be assigned to traffic control, setting reflectors or any other duties conducted on or near a roadway.
- (11) **Flashlight.** A flashlight equipped with and powered by at least two (2) D cell batteries.
- (12) **Spare tire.** A full-size spare tire for the escort vehicle, tire jack and lug wrench.
- (d) **Prohibitions when operating escort vehicles.** The escort vehicle shall not:
 - (1) Carry any item, equipment or load in or upon the vehicle which:
 - (A) Exceeds the height, length or width of the vehicle, overhangs the escort vehicle; or otherwise impairs its immediate recognition as an escort vehicle by the motoring public.
 - (B) Impairs the view of the operator of the escort vehicle or the escorted vehicle.
 - (C) Obstructs the view of signs or flags used by the escort vehicle or causes safety risks to the motoring public.
 - (D) Impairs the performance of the escort vehicle.
 - (2) Tow any trailer or other vehicle, except that an escort vehicle operator not required to be certified by the Department *may tow a trailer when escorting a manufactured home. Such trailer shall not exceed eight and one-half (8 1/2) feet in width and twenty (20) feet in length with siding not to exceed four (4) feet in height measured from the bed of the trailer. The trailer may only be used to transport supplies and equipment necessary to carry out the mission of escort vehicle operators* [47 O.S. § 14-120.1(C)] and shall not be used to carry other supplies, equipment, or cargo.
- (e) **Duties of escort vehicle operators.**
 - (1) **Traffic control.** In the performance of duties as the operator of an escort vehicle, the operator is authorized to direct traffic to stop, slow down or proceed in situations where such direction is necessary to allow traffic or the escorted vehicle or load to continue moving safely, except as provided below.
 - (A) The operator of the escort vehicle shall require the escorted vehicle or load to stop, and the escorted vehicle shall move as far off of the roadway as practicable and stop to allow other traffic to pass, under the following conditions:
 - (i) When the escorted vehicle or load becomes disabled.
 - (ii) When the movement of the escorted vehicle or load on a particular section of roadway presents a safety risk or unreasonable risk to or

unreasonably interferes with the efficient movement of other traffic, based upon such factors as the widths of the escorted vehicle or load, roadway, volume of traffic, limited visibility or mountainous terrain.

(iii) When driving conditions for the escorted vehicle or load are hazardous for any reason including weather.

(B) When the escorted vehicle or load stops, the escort vehicle operator may direct other traffic past the escorted vehicle or load as necessary until such time as the escorted vehicle or load can reenter the roadway and continue moving without presenting a safety risk or unreasonably interfering with efficient movement of other traffic.

(2) **Escort vehicle operation.**

(A) The operator of an escort vehicle must comply with all applicable traffic laws of this state and with the requirements of this Chapter when escorting a vehicle on all routes of the state highway system, including but not limited to the Dwight D. Eisenhower National System for Interstate and Defense Highways, all turnpikes, and such other roads, streets, or public ways that the Commissioner of Public Safety and the Oklahoma Department of Transportation shall deem appropriate.

(B) On two-lane highways, the first escort vehicle will travel far enough to the front and the second escort vehicle, if required, will travel far enough to the rear of the escorted vehicle or load to timely warn approaching motorists. On multi-lane highways, the first escort vehicle will travel far enough to the rear of the escorted vehicle or load to timely warn motorists approaching from the rear.

(f) **Insurance.** Each escort vehicle operator who operates in interstate commerce shall maintain a valid insurance policy issued by a surety or an insurance company currently authorized to issue policies of insurance covering risks in the State of Oklahoma. The insurance policy shall protect the public against loss of life, bodily injury to persons, and damage to property, and shall provide not less than One Million Dollars (\$1,000,000.00) combined single limit coverage for bodily injury and/or property damage as a result of the operation of the escort vehicle, the escorted vehicle, or both causing the bodily injury and/or property damage. This subsection shall not apply to any operator who operates only in intrastate commerce or in interstate commerce into or through states which do not have escort vehicle certification requirements for the type of vehicle and/or load being escorted and who applies for and is granted intrastate/non-certified state certification as provided for in OAC 595:30-3-17.1(c)(3).

595:30-3-17.1. Certification of operators of escort vehicles for hire

(a) **Requirements.** Every person who drives an escort vehicle for hire to escort a permitted over-dimensional load or vehicle in this state must be certified by the Department

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of Public Safety. To be certified, the person must meet the following requirements:

- (1) Be at least eighteen (18) years of age.
 - (2) Possess a valid driver license from the state or jurisdiction in which the person is a resident.
 - (3) Submit an application for certification to the Size and Weight Permit Division of the Department of Public Safety on the form provided by the Department. The application must contain all required information.
 - (4) Attend a course in escort vehicle certification, as prescribed by the Department, and successfully pass the escort vehicle certification examination.
- (b) **Course and examination.** The course will be taught by the Oklahoma State University Center for Local Government Technology (OSU Tech). Courses will be taught at locations throughout the state. Class size shall be determined by OSU Tech. Locations, times, and enrollment information will be made available after July 14, 2001, by calling (405) 744-9905.
- (c) **Certification.** The Department of Public Safety will grant a certification card to any person who completes an escort vehicle course prescribed by the Department and passes the escort vehicle certification examination and satisfy all other requirements.
- (1) The term of the certification shall be for a maximum period of five (5) years, subject to subsection (d), and shall expire automatically five (5) years after the date of issuance. Upon expiration of the certification, the operator must again comply with the requirements in (a)(1), (a)(2), and (a)(3) of this Section before the Department of Public Safety will issue a new certificate.
 - (2) Operators must notify the Department of Public Safety, Size and Weight Permit Division in writing within thirty (30) days of any change of address or name.
 - (3) Operators who operate only in intrastate commerce or in interstate commerce into or through states which do not have escort vehicle certification requirements for the type of vehicle and/or load being escorted may apply for an intrastate/non-certified state certification. Such certification shall be exempt from the insurance requirements of OAC 595:30-3-17(f).
- (d) **Denial or withdrawal of certification.** The following circumstances shall result in denial or withdrawal of certification:
- (1) Failure to satisfy the requirements of or failure to give required or correct information on the application for certification as an escort vehicle operator, or the commission of any fraud in making the application.
 - (2) Violation of rules established by the certifying state.
 - (3) Suspension, revocation, cancellation, or denial of the driver license of the certified operator. The certified operator shall notify the Department of Public Safety, Size and Weight Permit Division, within five (5) days of any such suspension, revocation, cancellation, or denial, and shall provide the Division a copy of the Order of the Department.
 - (4) An accumulation of 10 points against the driver license of the certified operator.

(e) **Hearing.** Any party aggrieved by the denial or withdrawal of certification under this Section may request a hearing, in writing, with the Department pursuant to OAC 595:1-3.

(f) **Certification by other states.** No application for certification need be made if the driver of the escort vehicle for hire is a resident of a state other than Oklahoma which has a reciprocal agreement recognizing escort vehicle operator certifications issued by that state [47 O.S., §14-120.1(E)] and is in possession of a current escort vehicle operator certification issued by ~~another that~~ state. However, an escort vehicle operator who is an Oklahoma resident must have an Oklahoma certification.

~~(g) **Initial certification.** Escort vehicle operators doing business in this state must complete initial certification no later than July 1, 2002.~~

SUBCHAPTER 5. SPECIAL COMBINATION VEHICLES

595:30-5-8. Load sequence

The heaviest trailer or semitrailer should be placed in front and the lightest at the rear whenever possible and practicable. In no case shall either trailer or semitrailer be placed ahead of another trailer or semitrailer which carries an appreciably heavier load. An empty trailer or semitrailer ~~will~~ shall not precede a loaded trailer or semitrailer.

[OAR Docket #04-1185; filed 6-25-04]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY

CHAPTER 35. ENFORCEMENT OF OKLAHOMA MOTOR CARRIER SAFETY AND HAZARDOUS MATERIALS TRANSPORTATION ACT

[OAR Docket #04-1186]

RULEMAKING ACTION:

PERMANENT final adoption.

RULES:

595:35-1-4. Adoption by reference [AMENDED]

595:35-1-6. Deletions, substitutions, and additions to federal rules adopted by reference [AMENDED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. § 230.4

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n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

49 C.F.R. Part 383

Incorporating rules:

595:35-1-4

Availability:

8:00 a.m. to 4:30 p.m., Monday through Friday, at the Oklahoma Department of Public Safety, Troop S, 3600 North M.L. King, P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone (405) 521-6105.

ANALYSIS:

Amendments to this chapter would bring rules into conformity with federal regulations.

The proposed actions are amendments to existing rules.

The circumstances which created the need for these rules were the need to adopt by reference certain federal regulations and to conform with federal regulations regarding hours-of-service operation by a motor carrier.

The intended effect of these rules is to allow the Department of Public Safety to perform its duties as required or authorized by law.

CONTACT PERSON:

David W. Beatty, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2024. Email: dbeatty@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 25, 2004:

595:35-1-4. Adoption by reference

The Department of Public Safety adopts by reference the United States Department of Transportation regulations pertaining to motor carrier safety and hazardous materials transportation, as contained in Title 49 of the Code of Federal Regulations (49 CFR) [47 O.S. §230.5(2)]. Information relative to this adoption is available through various sources, such as the Labelmaster publication, "Federal Motor Carrier Safety Regulations." Copies of this publication are available by contacting the Oklahoma Trucking Association at (405) 843-9488. Those regulations pertaining to motor carrier safety and hazardous materials transportation adopted by reference under this Section are:

- (1) Part 40 Procedures for Transportation Workplace Drug and Alcohol Testing Programs. [49 CFR §40.1 et seq.]
- (2) Part 107 Hazardous Materials Programs and Procedures. [49 CFR §107.1 et seq.]
- (3) Part 171 Hazardous Materials Regulations...General Information, Regulations, and Definitions. [49 CFR §171.1 et seq.]
- (4) Part 172 Hazardous Materials Tables and Hazardous Material Communication Regulations and Emergency Response Information Requirements. [49 CFR §172.1 et seq.]

- (5) Part 173 Shippers-General Requirements for Shipments and Packagings. [49 CFR §173.1 et seq.]
- (6) Part 177 Carriage by Public Highway. [49 CFR §177.800 et seq.]
- (7) Part 178 Shipping Container Specifications. [49 CFR §178.0 et seq.]
- (8) Part 180 Continuing Qualification and Maintenance of Packagings. [49 CFR §180.00 et seq.]
- (9) Part 382 Controlled Substances and Alcohol Use and Testing. [49 CFR §382 et seq.]
- (10) Part 383 Commercial Driver's License Standards: Requirements and Penalties [49 CFR §383.1 et seq.], in so much as it does not conflict with state law
- (11) Part 385 Safety Fitness Procedures. [49 CFR §§ 385.1 through 385.8]
- ~~(12)~~ Part 390 Federal Motor Carrier Safety Regulations: General. [49 CFR §390.1 et seq.]
- ~~(13)~~ Part 391 Qualifications of Drivers. [49 CFR §391.1 et seq.]
- ~~(14)~~ Part 392 Driving of Motor Vehicles. [49 CFR §392.1 et seq.]
- ~~(15)~~ Part 393 Parts and Accessories Necessary for Safe Operation. [49 CFR §393.1 et seq.]
- ~~(16)~~ Part 395 Hours of Service of Drivers. [49 CFR §395.1 et seq.]
- ~~(17)~~ Part 396 Inspection, Repair, and Maintenance. [49 CFR §396.1 et seq.]
- ~~(18)~~ Part 397 Transportation of Hazardous Materials; Driving and Parking Rules. [49 CFR §397.1 et seq.]

595:35-1-6. Deletions, substitutions, and additions to federal rules adopted by reference

- (a) **Changes.** The changes in this Section to the federal rules adopted by reference in 595:35-1-4 apply only to intrastate commerce.
- (b) **Terminology.** Unless otherwise specified, the following terminology shall apply:
 - (1) "Department," as defined in 595:35-1-2, shall be substituted wherever the term "Department of Transportation" or "Federal Motor Carrier Safety Administration" is used.
 - (2) "Commissioner," as defined in 595:35-1-2, shall be substituted wherever the term "Federal Motor Carrier Safety Administrator" or "Regional Director" is used.
 - (3) "Troop S," as defined in 595:35-1-2, shall be substituted wherever the term "Office of Motor Carriers" or "Motor Carrier Division" is used.
- (c) **Scope of Definitions.** The definitions provided in (b) of this Section are limited in application to the Act and the rules adopted to carry out the Act. These definitions do not alter, replace or change any other definitions contained in Title 47 of the Oklahoma Statutes.
- (d) **Exceptions in the transportation of hazardous materials.**
 - (1) Cargo Tank Specifications [49 CFR §173.33(a)], concerning the qualifications and maintenance of cargo tanks used to transport hazardous materials, shall include

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the following exemption: Intrastate movements of petroleum products in nonspecification cargo tanks of 3,500 gallons and less by motor carriers transporting petroleum products solely in intrastate commerce may continue, provided the cargo tanks meet the general packaging requirements of 49 CFR §173.24, except specification packages as stated in paragraph (c), and have been in actual operation transporting similar materials prior to October 1, 1987. This provision will expire on January 1, 1999. Any retrofitting of cargo tanks after October 1, 1987 shall be made to meet specification requirements for the type of hazardous material transported in them. This exemption does not apply if at any time after October 1, 1987 the cargo tank is sold or ownership of the cargo tank is otherwise transferred.

(2) The transportation of agricultural product other than a Class 2 material, over local roads between fields of the same farm, is excepted from the requirements of 49 CFR §§100 through 199 when transported by a farmer who is an intrastate private motor carrier.

(3) The transportation of an agricultural product to and from a farm, within 150 miles of the farm, is excepted from the requirements in subparts G and H of part 172 of 49 CFR §§100 through 199 when:

(A) It is transported by a farmer who is an intrastate private motor carrier.

(B) The packaging conforms to the requirements of 49 CFR §173.24 in so far as it does not leak, and the total amount of the agricultural product being transported on a single vehicle does not exceed:

(i) 16,094 pounds (7,300 kilograms) of ammonium nitrate fertilizer properly classed as Division 5.1, PG III, in a bulk packaging, or

(ii) 502 gallons (1,900 liters), for liquids or gases, or 5,070 pounds (2,300 kilograms), for solids, of any other agricultural product.

(C) Each person having any responsibility for transporting the agricultural product or preparing the product for shipment has been instructed in the applicable requirements of 49 CFR §§100 through 199.

(D) Formulated liquid agricultural products in specification packagings of 58 gallons (220 liters) or less capacity, with closures manifolded to a closed mixing system and equipped with positive dry disconnect devices, may be transported by a private motor carrier between a final distribution point and an ultimate point of application or transported for loading aboard an airplane for aerial application.

(E) Pertaining to nurse tanks of anhydrous ammonia [see 49 CFR §173.315(m)].

(4) Permission to drive a transport vehicle in intrastate commerce containing a hazardous material in an emergency without the proper markings or placards, as provided under Marking and Placarding Motor Vehicles [49 CFR §177.823(a)(2)] shall be obtained from the following: Department of Public Safety, Troop S, Commercial Vehicle Enforcement Division, P. O. Box 11415, Oklahoma City, OK 73136-0415, Phone: (405) 521-6104.

(e) **Motor Carrier Identification Report.**

(1) **Applicability.** All motor carriers conducting operations in intrastate commerce shall file a Motor Carrier Identification Report (Form MCS-150) before commencing operations, or if already operating, as soon as practical.

(2) **Availability.** The Motor Carrier Identification Report with complete instructions, is available from:

(A) Department of Public Safety:

(i) in person: Troop S Headquarters, 32 NE 23rd Street, Oklahoma City

(ii) by mail: Troop S, P.O. Box 11415, Oklahoma City, OK 73136-0415

(iii) by telephone: (405) 521-6103

(B) Corporation Commission:

(i) in person: 2101 N. Lincoln Blvd., Oklahoma City

(ii) by mail: P.O. Box 52000, Oklahoma City, OK 73152-2000

(iii) by telephone: (405) 521-2251

(C) Oklahoma Division Office of the Federal Motor Carrier Safety Administration:

(i) in person or by mail: 300 N. Meridian, Suite 106 S., Oklahoma City, OK 73107

(ii) by telephone: (800) 823-5660

(iii) from the internet: <http://www.fm-csa.dot.gov/>

(3) **Filing.** The completed Motor Carrier Identification Report shall be filed:

(A) **Intrastate carriers.** For intrastate carriers, the Report must be filed with either:

(i) Department of Public Safety, Commercial Vehicle Enforcement Section, 32 NE 23rd Street, P.O. Box 11415, Oklahoma City, OK 73136-0415, or

(ii) Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000.

(B) **Interstate carriers.** For interstate carriers, the Report must be filed at the address as indicated on the Motor Carrier Identification Report.

(4) **Motor carrier name.** Only the legal name or single trade name of the motor carrier may be used on the Motor Carrier Identification Report.

(5) **Penalties.** A motor carrier who fails to file a Motor Carrier Identification Report or who, upon the report, furnishes misleading information or makes false statements is subject to the penalties prescribed in 47 O.S., § 230.9.

(6) **Issuance and display of USDOT number.** Upon receipt and processing of the Motor Carrier Identification Report, an identification number (USDOT number) will be issued to the motor carrier. The motor carrier must display the number on each self-propelled commercial motor vehicle, as defined in 595:35-1-5, along with the additional information required by 49 C.F.R., Part 390.21. Intrastate USDOT numbers shall be displayed as follows:

(A) the letters "USDOT",

(B) the identification number itself, and

(C) the suffix letters "OK".

(f) **Qualification of drivers.** The following addition is made to the federal requirement in Qualifications of Drivers [49 CFR §391.11(b)(1)] that a driver be twenty-one (21) years of age or older: A driver in solely intrastate commerce must be at least eighteen (18) years old and be at least twenty-one (21) years old for the transportation of hazardous materials which are required to be placarded or marked in accordance with 49 CFR §177.823 or for transporting more than eight (8) passengers for compensation or more than fifteen (15) passengers not for compensation.

(g) **Maximum driving and on-duty time.** The following exception is added to the federal restrictions on Maximum Driving and On-Duty Time [49 CFR §395.3(a)(1)] as required by the Act [47 O.S. §230.15(d)]: More than ~~ten (10)~~ eleven (11) hours following ~~eight (8)~~ ten (10) consecutive hours off duty, except the maximum driving time within a work period is twelve (12) hours and the maximum on-duty time is fifteen (15) hours following eight (8) consecutive hours off duty if the vehicle:

- (1) is engaged solely in intrastate commerce, and
- (2) is not:
 - (A) transporting hazardous materials which are required to be placarded or marked in accordance with 49 CFR §177.823, or using
 - (B) a vehicle designed to transport ~~more than~~ 15 passengers, ~~including the driver.~~

(h) **Relief from regulations.**
(1) Anyone requesting relief from the hours of service regulations must contact the Troop Commander or, if declared to be unavailable by personnel at the Troop headquarters, the duty supervisor at the Troop headquarters for the region in which the emergency exists. This contact must be made and the prior approval obtained before the requesting party may claim relief from the regulations. The requesting party must provide the following information:

- (A) the type of emergency,
 - (B) if applicable, the company on whose behalf the requesting party is seeking the exception,
 - (C) the region the emergency covers,
 - (D) the type of work required to restore services in the area, and
 - (E) the approximate time to restore those services.
- (2) The decision to declare an emergency and grant relief from the regulations rests in the sound discretion of the Troop Commander or duty supervisor.
- (3) Upon completion of the emergency restoration services, any on duty hours accumulated during the emergency will be counted against the driver's allowable on duty hours and the driver may not drive as long as the amount of accumulated on duty hours exceeds those allowed by 49 CFR §395.3. However, any period of eight (8) consecutive days may end with the beginning of an off-duty period of twenty-four (24) or more successive hours when taken at the end of any emergency restoration service.
- (4) Within thirty (30) days after completion of the emergency restoration services, the individual who had

been granted relief from the hours of service regulations must submit a report detailing the following:

- (A) Nature and extent of the emergency,
 - (B) Type of services restored during the emergency,
 - (C) Names and driver license numbers of those drivers for which the exemption was granted, and
 - (D) Total hours on duty during the declared emergency for each driver.
- (5) Said report must be sent to the following address: Department of Public Safety, Troop S, P. O. Box 11415, Oklahoma City, OK 73136-0415.

[OAR Docket #04-1186; filed 6-25-04]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 40. DRIVER TRAINING AND IMPROVEMENT**

[OAR Docket #04-1187]

RULEMAKING ACTION:

PERMANENT final adoption.

RULES:

- Subchapter 1. Driver Education Instruction
- 595:40-1-3. Driver education instructor permit/license [AMENDED]
- 595:40-1-4. Qualifications for instructors [AMENDED]
- 595:40-1-9. Prescribed course of study [AMENDED]
- 595:40-1-11. Specification for vehicles other than motorcycles [AMENDED]
- 595:40-1-12. Insurance [AMENDED]
- 595:40-1-13. Reports [AMENDED]
- 595:40-1-15. Requirements for all commercial driver education schools and classrooms [AMENDED]
- 595:40-1-16. Prohibited acts; conduct [AMENDED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. §§ 6-105 and 802

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Failure of the Legislature to disapprove the rules resulted in approval on May 20, 2004.

Final Adoption:

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July 25, 2004

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Amendments to this chapter would clarify and update procedures relating to driver education instructors and instruction.

Permanent Final Adoptions

The proposed actions are amendments to existing rules.

The circumstances, other than clarifying language, which created the need for these rules are to recognize new technologies and to ensure reliable service to the citizens of Oklahoma.

The intended effect of these rules is to allow the Department of Public Safety to perform its duties as required or authorized by law.

CONTACT PERSON:

David W. Beatty, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2024. Email: dbeatty@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 25, 2004:

SUBCHAPTER 1. DRIVER EDUCATION INSTRUCTION

595:40-1-3. Driver education instructor permit/license

(a) **Requirement of Driver Education Instructor Permit/license.** A Driver Education Instructor Permit/license is required for instructors who teach Driver Education as prescribed under 47 O.S. §6-105 (D) and 47 O.S. § 801, who offer behind the wheel instruction to students who do not possess a valid Oklahoma driver license.

(b) **Application for Driver Education Instructor permit/license.**

(1) **Public schools.** The State Department of Education, Comprehensive Health/Driver and Traffic Safety Section, shall provide an application for Driver Education instructor permits/licenses and renewal permit/licenses for public schools upon request.

(A) The instructor shall make application to the State Department of Education by mail to: State Department of Education, Comprehensive Health/Driver Education, Room 314, 2500 Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

(B) The State Department of Education shall review the application as to teacher qualification and prescribed course of study and forward the application to the Department of Public Safety.

(2) **Commercial schools.**

(A) All applications for an original or a renewal school and/or instructor license shall be made on a form provided by the Department of Public Safety.

(B) Each application for original school license shall be accompanied by:

- (i) A fee of Twenty-five Dollars (\$25.00) for each place of business and/or location.
- (ii) Five (\$5.00) fee for instructor permit.
- (iii) A schedule of fees and charges.
- (iv) Certificates of insurance from a company licensed to conduct business in this State certifying proper commercial insurance coverage.

(v) Make, model, vehicle identification number, and registration number of all vehicles used for training purposes, except motorcycle training.

(C) Each place of business and/or location will be considered a separate school and require separate license.

(D) No license fee shall be refunded in the event the license is rejected, suspended or revoked by the Commissioner of Public Safety.

(E) All applications must be approved by the Department of Public Safety prior to the date a school will be permitted to open for business.

(F) All applications for renewal licenses shall be made no later than December 1 of each calendar year.

(G) Every owner/operator of a Commercial Driver school is required to have a Commercial Instructor License.

(H) Application for Driver Education Instructor license for non-public schools may be obtained from the Department of Public Safety, ~~Troop N, at: Department of Public Safety, Troop N~~ Driver Examining Division, P.O. Box 11415, Oklahoma City, Oklahoma 73136-0415.

(I) Effective for all schools who are licensed or whose licenses are renewed for any year beginning after December 31, 2004, all schools shall meet the requirements of OAC 595:40-1-15.

(3) **Private and parochial schools:**

(A) All applications for an original or a renewal non public school and/or instructor license shall be made on a form provided by the Department of Public Safety.

(B) Each application for original school license shall be accompanied by:

(i) Certificates of insurance from a company licensed to conduct business in this State certifying proper commercial insurance coverage.

(ii) Make, model, vehicle identification number, and registration number of all vehicles used for training purposes, except motorcycle training.

(C) All applications must be approved by the Department of Public Safety prior to the date a school will be permitted to open for business.

595:40-1-4. Qualifications for instructors

(a) **All driver education instructors.** Instructors of public, private, commercial driver education schools and other non-public schools must:

- (1) be employed by a school which offers a prescribed course of study;
- (2) possess a valid Oklahoma driver license and be properly licensed for the type of vehicle used for instruction;
- (3) be at least twenty-one (21) years of age;
- (4) have never been convicted of a felony;
- (5) have had driving privileges reinstated for at least twelve (12) months, if driving privileges were suspended,

canceled, revoked, denied, or disqualified for a driving-related conviction or for Department action related to driving under the influence or driving while impaired. If driving privileges are suspended, canceled, revoked, denied, or disqualified only for a non-driving-related conviction or reason, the applicant shall be eligible immediately upon reinstatement of driving privileges;

(6) not have been convicted of misdemeanor possession or use of alcohol or drugs within the past twelve (12) months;

(7) have not more than five (5) point violations on the driving record;

(8) have no administrative action pending pursuant to 47 O.S. §§ 753, 754, or 754.1; and

(9) possess a high school diploma or general education diploma.

(b) **All commercial school instructors.** ~~All Commercial~~ Every four (4) years, all commercial school instructors must:

(1) receive a score of at least eighty percent (80%) on driver license written examination ~~bi-annually.~~

(2) pass standard driver license road test with a passing score of at least eighty percent (80%) ~~bi-annually.~~

(c) **Public school instructors only.** Qualifications for public driver education instructors are set out in the rules for Oklahoma High School Driver and Traffic Safety Education by the Oklahoma State Board of Education.

(d) **Non-public school instructors.**

(1) **Specific qualification for non-public schools.** The qualification for instructors of Driver Education for non-public schools except commercial schools shall be as follows:

(A) valid Oklahoma secondary, elementary-secondary, library media specialist, speech-language pathology or technology center school license/certificate;

(B) credential in Driver and Traffic Safety Education;

(C) valid and unexpired Oklahoma driver license;

(D) acceptable driving record as set forth in 595:40-1-5 and approved by the Department of Public Safety.

(2) **Exemption for non public schools instructors except commercial schools.** Those instructors who taught Driver Education at a private, parochial or other non-public school and who were issued an instructor's license for the school year 1988-1989 and had previously held an Oklahoma secondary, elementary-secondary pathology or technology center school license/certificate and have remained continuously employed will not be required to meet item (1) (A) or (B) of this subsection.

(e) **Commercial school instructors other than truck and motorcycle training instructors.** Commercial Driver education school instructors other than truck and motorcycle training instructors are required:

(1) to possess a minimum of six (6) semester hours of Driver Education I and Driver Education II, and a minimum of three (3) semester hours of General Safety Education from:

~~(1) an accredited college or university, or;~~

(2) ~~an equivalent~~ a course equivalent to that described in paragraph (1) offered by a nationally recognized commercial driver instructor course approved by the Department of Public Safety; or

(3) to have been certified by the State Department of Education as a driver education instructor for at least five (5) years immediately preceding application and approval as a commercial driver education school instructor and have taught driver education for at least five (5) years in public, private, or parochial school.

(f) **Commercial truck driver training school instructors.**

(1) Commercial truck driver training school instructors must have a high school diploma or equivalent and a minimum of five (5) years verifiable experience in the type of vehicle used by the school for instruction purposes.

(2) The Department of Public Safety shall provide all schools a form which shall be presented to the prospective student prior to enrollment and payment of fees to the school. The form shall inform the student applicant as to the physical qualifications required for truck drivers. These qualifications are adopted from the Federal Motor Carrier Safety Regulations Pocketbook as prescribed by the United States Department of Transportation Federal Highway Administration, Subpart E-Physical Qualifications and Examinations, Section 391.41. This form shall be signed by the applicant and shall become a part of his school record.

(g) **Commercial motorcycle training school instructor qualifications.** Commercial motorcycle training school instructors must possess:

(1) a high school diploma or equivalent,

(2) an instructor's certificate issued by the Motorcycle Safety Foundation, and

(3) a letter from the motorcycle training school verifying employment.

595:40-1-9. Prescribed course of study

(a) A prescribed course of study of Driver Education shall be designed to develop knowledge of those provisions of the Oklahoma Vehicle Code and other laws of this state relating to the operation of motor vehicles, acceptance of personal responsibility in traffic, appreciation of the causes, seriousness, and consequences of traffic ~~accidents~~ collisions, and to develop the knowledge, attitudes, habits, and skills necessary for the safe operation of motor vehicles.

(b) Public Schools must be in compliance with Oklahoma State Board of Education rules and regulations. Non public/Commercial schools must meet the following requirements:

(1) Students must be at least fifteen (15) years of age and regularly enrolled and certified by the instructor as taking a prescribed driver education course, certified by the Department of Public Safety.

(2) Private and Parochial students shall receive a minimum of thirty (30) hours of classroom instruction and a minimum of six (6) hours of actual driving in the Driver Education vehicle, while accompanied by and under the supervision of a qualified Driver Education instructor.

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(3) Each commercial student, except for commercial truck and motorcycle students, shall receive a minimum of ten (10) hours of classroom instruction and a minimum of six (6) hours of actually driving the Driver Education vehicle, while accompanied by and under the supervision of a qualified Driver Education instructor who is occupying the front seat of the vehicle.

(4) Instruction shall include, but not be limited to, the following:

- (A) Signs, signals, highway markings and highway design.
 - (B) Rules of the road, state laws, and local ordinances.
 - (C) Driving attitude toward motorcyclists, bicyclists, and pedestrians.
 - (D) Basic driving maneuvers.
 - (E) Operation of motor vehicle on streets and highways.
 - (F) Familiarity with the Oklahoma Driver's Manual, distributed by the Oklahoma Department of Public Safety. Copies of this manual have been deposited with the Publications Clearinghouse of the Oklahoma Department of Libraries.
 - (G) Insurance laws of the State.
 - (H) Financial responsibility.
 - (I) Seat belt use and laws.
 - (J) Effects of natural laws on driving.
 - (K) Alcohol and drug substance abuse and the effect on driving.
 - (L) Basic vehicle maintenance including fluid levels, tire pressure and lighting systems.
 - (M) Skills:
 - (i) Starting.
 - (ii) Backing.
 - (iii) Parallel parking.
 - (iv) Hill parking.
 - (v) Starting on hill.
 - (vi) Intersection movement and observance.
 - (vii) Lane observance and changing.
 - (viii) Left and right turns.
 - (ix) Pedestrian and vehicle right-of-way.
 - (x) Proper use of automatic and/or standard transmission.
 - (xi) Use of brake and accelerator.
 - (xii) Traffic lights or signals.
- (5) All passengers, students and instructors in the ~~Driver Education~~ driver education vehicle ~~must have seat-belt properly fastened~~ shall comply with the Oklahoma Mandatory Seat Belt Use Act, 47 O.S. §§ 12-416 through 12-420, whenever the vehicle is in operation.
- (6) A student roster list must be filed on forms provided for this purpose and approved by the Department of Public Safety before behind-the-wheel instruction begins.
- (7) Driving instruction shall not be conducted within a one mile radius of the Department of Public Safety or any district office thereof.

(c) In addition to the requirements in (a) and (b) of this Section, commercial truck driver training schools must offer the following curriculum:

- (1) Commercial truck driver curriculum:
 - (A) Classroom Instruction including but not limited to:
 - (i) Introduction.
 - (ii) Defensive Driving Tactics.
 - (iii) Uniform Vehicle Code.
 - (iv) Federal Motor Carrier Safety Regulations as prescribed by the United States Department of Transportation Federal Highway Administration, Parts 383, 390-399.
 - (v) Techniques of First Aid (Instructor must have valid First Aid Instructor's Card).
 - (vi) Driver attitude.
 - (vii) Fire Prevention & Fire Fighting (Instructor must have been accepted by the State Fire Marshal).
 - (viii) Map reading and routing.
 - (ix) Credentials, including:
 - (I) Cab cards.
 - (II) Port of Entry.
 - (III) Size and Weights permits.
 - (x) Elective of Cargo Handling.
 - (B) Skill and off-street instruction:
 - (i) Every student shall be properly licensed before receiving behind-the-wheel instruction.
 - (ii) Instruction shall include practice time and observation time on the following basic truck driving skills:
 - (I) Basic handling of vehicle.
 - (II) Pre-trip inspection.
 - (III) Hook and unhook of trailer.
 - (IV) Position on roadway.
 - (V) Shifting of transmission gears.
 - (iii) Upon satisfactory completion of the skills listed in (ii) of this subparagraph, each student must complete actual driving time and observation time conducted on two-lane roadways (urban), multi-lane roadway (urban), and city driving for each of the following truck driving skills:
 - (I) Skip-shifting.
 - (II) Off track driving.
 - (III) Intersection movement.
 - (IV) Right and left turns.
 - (V) Railroad crossings.
 - (VI) Overhead clearances.
 - (VII) Slowing for curves.
 - (VIII) Passing and being passed.
 - (IX) Stop signs and traffic signals.
- (2) Commercial truck driver curriculum for a refresher and recertification course for experienced truck drivers shall include the following:
 - (A) Classroom instruction including but not limited to:
 - (i) Introduction.
 - (ii) Defensive driving tactics.

- (iii) Uniform Vehicle Code.
- (iv) Federal Motor Carrier Safety Regulations as prescribed by the United States Department of Transportation Federal Highway Administration, Parts 383, 390-399.
- (v) Techniques of First Aid (Instructor must have valid First Aid Instructor's Card).
- (vi) Driver attitude.
- (vii) Fire Prevention & Fire Fighting (Instructor must have been accepted by the State Fire Marshal).
- (viii) Map reading and routing.
- (ix) Credentials, including:
 - (I) Cab cards.
 - (II) Port of Entry.
 - (III) Size and Weights permits.
 - (IV) Elective of cargo handling.
- (x) CDL training for written test, pre-trip inspection and air brake test.
- (B) Skill and off-street instruction:
 - (i) Every student in a Commercial Truck Driver Training School shall be properly licensed before receiving behind-the-wheel instruction.
 - (ii) Instruction shall include practice time and observation time on the following basic truck driving skills:
 - (I) Basic handling of vehicle.
 - (II) Pre-trip inspection.
 - (III) Hook and unhook of trailer.
 - (IV) Position on roadway.
 - (V) Shifting of transmission gears.
 - (iii) Upon satisfactory completion of the skills listed in (ii) of this subparagraph, each student must complete actual driving time conducted on two-lane roadways (urban), multi-lane roadway (urban), and city driving for each of the following truck driving skills:
 - (I) Skip-shifting.
 - (II) Off track driving.
 - (III) Intersection movement.
 - (IV) Right and left turns.
 - (V) Railroad crossings.
 - (VI) Overhead clearances.
 - (VII) Slowing for curves.
 - (VIII) Passing and being passed.
 - (IX) Stop signs and traffic signals.
- (3) The following provisions relating to vehicle equipment apply to Commercial Truck Driving Schools only:
 - (A) Tractor shall meet the minimum standards established by the Commercial Vehicle Safety Alliance.
 - (B) ~~Tractor shall be equipped with seat for each student and separate seat for instructor. All seats shall be equipped with seat belts. While tractor is in motion, all~~ All students and instructors in driver education shall have seatbelt fastened as it is designed to be used shall comply with the Oklahoma Mandatory Seat Belt Use Act, 47 O.S. §§ 12-416 through 12-420, whenever the vehicle is in operation.

- (C) Tractor and trailer shall be marked on each side and behind with sign bearing the words, "COMMERCIAL DRIVER TRAINING", or as required by the law.
- (D) All tractors and trailers shall be used only for the purpose of driver training and no school shall accept payment in any way for services rendered from such vehicle. All trailers used shall bear a sign plainly visible from the rear with words, "NOT FOR HIRE". This sign is in addition to other signs as required in this Subchapter. An exception to this prohibition is that the school shall be allowed to lease tractor and/or trailer to the general public for the sole purpose of Commercial Driver testing only.
- (E) Signs shall appear on vehicle as follows:
 - (i) All vehicles used for instruction of driver training shall be marked on each side and on the rear with the words "Student Driver" with letters no less than two (2) inches in height.
 - (ii) Any additional markings must be approved by the Department of Public Safety.
- (d) The Motorcycle Safety Foundation Curriculum is hereby adopted by reference.
 - (1) A copy of the curriculum is available at the Department of Public Safety Legal Division.
 - (2) Every school shall develop written and skills test to determine the students knowledge and performance in accordance with the prescribed curriculum.

595:40-1-11. Specification for vehicles other than motorcycles

Specification for vehicles other than motorcycles for use in public schools is set forth in the Oklahoma State Board of Education rules. For non-public/commercial schools:

- (1) The vehicle must be equipped with dual controls, side view mirrors (right and left), and front and rear seat belts.
- (2) The vehicle shall be clearly identified "STUDENT DRIVER" at the front and back of the vehicle, with letters at least 3" two inches (2") high, in a clearly visible place and legible from a distant of at least one hundred (100) feet.
- (3) All vehicles which are used for the purpose of demonstration or practice of driving lessons shall be equipped with:
 - (A) dual controls on foot brakes, clutch on vehicles with manual transmissions, and otherwise be equipped in accordance with Title 47, Chapter 12 of the Oklahoma Statutes;
 - (B) extra inside rear view mirror on the instructor's side on Class D vehicles only; provided the mirror used shall not be the vanity or visor mirror;
 - (C) applicable mechanical devices when used in the training of physically handicapped students.
- (4) No more than ~~four (4)~~ three (3) students may be in ~~the a~~ a Class D vehicle during behind-the-wheel instruction.

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595:40-1-12. Insurance

(a) A private, parochial or non-public/commercial school which offers Driver Education must be insured by a company licensed to do business in this state with a commercial liability insurance policy for each vehicle used to conduct behind-the-wheel instruction. The minimum amount of insurance shall consist, for any one collision, of at least Fifty Thousand Dollars (\$50,000.00) for bodily injury to or death of one person ~~in any one accident~~; One Hundred Thousand Dollars (\$100,000) for bodily injury to or death of two or more persons ~~in any one accident~~; and Fifty Thousand Dollars (\$50,000) for damage to property ~~in any one accident~~. The above coverage shall be carried on all vehicles used by the school for driver training purposes.

(b) In the event the insurance coverage is canceled, a copy of the written notice of cancellation must be furnished forthwith to the Department by registered or certified mail. Behind-the-wheel instruction will be immediately suspended until proper verification of insurance is provided to the Department of Public Safety.

(c) Each school shall send a copy of the Declaration of Insurance coverage when applying for instructor's original or renewal license.

595:40-1-13. Reports

(a) The Comprehensive Health/Driver and Traffic Safety Education section of the State Department of Education will furnish all forms for the required reports for public schools. These reports are addressed in the rules of the State Department of Education. For private, parochial, Commercial, and other non-public schools, the Department of Public Safety, ~~Troop N~~ Driver Examining Division, will provide the following report forms which must be completed and filed with the Department of Public Safety:

(1) A current list of all students enrolled in Driver Education shall be submitted to the Department of Public Safety prior to beginning behind the wheel instruction, listing the complete legal name, date of birth and grade of those students who will be receiving instruction.

(2) A copy of the forms prescribed in (a) of this Section, must be on file in the office of the school and a readable approved copy must be in the vehicle at all times while the students are receiving instruction.

(3) At the discretion of the Commissioner of Public Safety, an affidavit may be required from the principal of the school, or one of equivalent authority verifying that the curriculum offered the Driver Education student meets the requirements of these rules.

(4) Other reports may be requested by the Department of Public Safety.

(b) Driver Education schools must furnish the Department of Public Safety, ~~Troop N~~ Driver Examining Division, with a copy of an official accident collision report on any driver education vehicle which is involved in an accident collision while used for training purposes. This is in addition to the collision report required by law.

595:40-1-15. Requirements for all commercial driver education schools and classrooms

(a) **Location and classroom facility of commercial driver education schools.** An application for a Commercial Driver Training School license shall not be approved if the school is located or driving instruction is conducted within a one (1) mile ~~radius~~, using the most direct driving route, of the Department of Public Safety or any district office thereof. ~~The classroom must~~ school shall:

(1) have at least one (1) permanent classroom. Each classroom shall be used exclusively for classroom instruction during the time of such instruction. A classroom shall not be located in:

(A) a residence or residential facility or complex,

(B) a motor vehicle, or converted motor vehicle,

(C) a hotel or motel, or

(D) any other facility which has a bar, lounge, or other business which sells alcohol for public consumption on the premises;

(2) post a permanent sign which shall comply with local sign ordinances, in easy view of the public, setting forth the hours the school is open for business.

(3) display a its current and valid Commercial Driver Training License in the licensee's principal place of business at all times. The license or a copy of the license shall also be made available for inspection to students, or prospective students and their parents;

(4) comply with local municipal ordinances regarding lighting, heating, ventilation, and ~~toilet~~ restroom facilities. Separate restroom facilities shall be provided for males and females, shall be fully plumbed with at least one toilet and one sink in each restroom, and shall be located in the same building as the classroom. The requirement for separate restroom facilities may be waived if a single restroom facility is provided that has a door which is capable of being locked from the inside; and

(5) have adequate room for equipment such as chalkboard, projector, tables and chairs for the number of students enrolled in the class being taught at the time.

(b) **Advertising.**

(1) No Commercial Driver Training School shall use or conduct any business under any name other than its fully licensed name.

(2) A sign reading "This school is licensed by the Department of Public Safety, State of Oklahoma" or similar language may be displayed on the school premises.

(3) The school may place language such as "This school is licensed by the Department of Public Safety, State of Oklahoma" in any advertisements and publications of the school. However, a school may not use advertisement or publicity that states or implies that the school is approved, certified, specifically or uniquely recognized, recommended, or endorsed, or directly supervised by the Department of Public Safety.

(34) No fraudulent or deceptive statements such as "License secured here," "We help you get license," or "No

~~charge for road test failures", promotions, or fee incentives shall be used on any sign or in advertisement, whether written or oral.~~

(45) No school shall advertise, by any means, or otherwise state or imply that a driver license or permit is guaranteed or assured to any student or individual who will take or complete any instruction offered by the school.

(c) **Agreements and schedule of fees.**

(1) A sample copy of all contracts or agreements with students must be submitted to the Department with the application for licensing.

(2) Prior to enrollment or payment of fee all prospective students shall be provided the following information, in writing:

- (A) the type of instruction offered, whether classroom or behind the wheel;
- (B) length of each lesson;
- (C) rate per lesson;
- (D) rate for use of school vehicle for road test, if extra charge is made;
- (E) terms of payment and disclosure of any interest charged;
- (F) a statement indicating the specific date and time when instruction is to start.

~~(3) A schedule of maximum fees and charges shall be approved by the Department. Any proposed change in the schedule of fees so filed shall not become effective until thirty (30) days after the proposed change has been filed with and approved by the Department.~~

(4) The schedule of fees shall be posted in easy view of students and prospective students.

(54) If any school fails to comply with the provisions, the school shall refund, on a prorated basis, all monies collected from the student.

(d) **Records to be maintained.**

(1) Each school shall maintain a permanently bound book with pages ~~consistently~~ consecutively numbered or a computer spreadsheet, setting forth the name of the school; the name of the student; the contract or agreement number; the type and date of instruction given, whether classroom or behind-the-wheel. All entries shall be made in ink.

(2) All student instruction records, including a duplicate copy of each contract or agreement entered into between the school and the student (the original must be given to the student) must be kept on file in the office of each school for a period of (1) calendar year after the student has concluded instruction at or with the school. Each school shall furnish the student, if requested, a duplicate of his/her instruction record when all of the contracted courses are completed or the student otherwise ceases taking instruction at or with the school.

(3) The student instruction record shall contain a copy of a receipt for any monies paid to the school by the student. The receipt form shall contain:

- (A) The name of the school.
- (B) The name of the student.
- (C) The date of payment.

(D) The amount of payment.

(E) The signature of the person receiving the payment.

(4) The student instruction record file maintained by the school shall be available at all times for inspection or copying by an authorized representative of the Department of Public Safety.

595:40-1-16. Prohibited acts; conduct

(a) No school owner, agent, instructor or employee shall:

- (1) solicit any individual for the purpose of enrolling ~~them~~ the person in any driver training program within fifteen hundred (1,500) feet of any premises owned, leased, rented, or used by the Department of Public Safety;
- (2) instruct on or near the driver testing route used by the Department of Public Safety;
- (3) use, or permit to be used, any form of alcoholic beverage or drugs in or about the premises of the school or a motor vehicle being used for driver education;
- (4) engage in any conduct involving moral turpitude;
- or
- (5) commit or omit any act which constitutes a violation of any of the rules of this subchapter or the laws of this state governing designated examiner certification.

(b) Instructors shall at all times be cognizant of their primary obligation to render impartial, efficient, and effective service to the public in the discharge of their duties and to always regard their position as a public trust.

[OAR Docket #04-1187; filed 6-25-04]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 45. BOATING AND WATER SAFETY**

[OAR Docket #04-1188]

RULEMAKING ACTION:

PERMANENT final adoption.

RULES:

- 595:45-1-2. Definitions [AMENDED]
- 595:45-1-3. Adoption of ~~federal boat safety act~~ 46 USC §4301 et seq. (formerly known as the Federal Boat Safety Act of 1971) [AMENDED]
- 595:45-1-4. Application [AMENDED]
- 595:45-1-5. Procedures followed for termination of use of unsafe ~~boats or~~ vessels [AMENDED]
- 595:45-1-6. Flashing red lights [AMENDED]
- 595:45-1-9. Signals [REVOKED]
- 595:45-1-10. Rules of the waterways for vessels [AMENDED]
- 595:45-1-11. Traffic lanes [AMENDED]
- 595:45-1-13. Equipment [AMENDED]
- 595:45-1-16. Operating any lifting and suspending device - parasail, parachute or any similar device [AMENDED]
- 595:45-1-18. Hull identification number for homemade vessels and identification numbers for motors [AMENDED]

AUTHORITY:

Commissioner of Public Safety; 63 O.S. §§ 4009 and 4202

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Permanent Final Adoptions

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Failure of the Legislature to disapprove the rules resulted in approval on May 20, 2004.

Final Adoption:

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Effective:

July 25, 2004

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Amendments to this chapter bring rules into conformity with federal regulations.

The proposed actions are amendments to existing rules.

The circumstance which created the need for these rules is to remove or update language which is not in conformity with or is contradictory to federal regulations.

The intended effect of these rules is to allow the Department of Public Safety to perform its duties as required or authorized by law.

CONTACT PERSON:

David W. Beatty, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2024. Email: dbeatty@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 25, 2004:

595:45-1-2. Definitions

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

"Administering entity" means the United States Army Corps of Engineers, the Oklahoma Department of Tourism and Recreation, the Grand River Dam Authority, or any other municipal, county, state or federal government entity that manages, maintains or otherwise controls any waters of this state under their jurisdiction.

"Approved" means boat vessel devices or equipment approved by the United States Coast Guard or Secretary of United States Department of Transportation.

"Associated equipment" means a system, accessory, component, marine safety article or appurtenance of a recreational vessel excluding radio equipment.

"Builder" means person who constructs or assembles one or more vessels per year or modifies any vessel carrying a plate in such a manner as to change its weight capacity.

"Burdened vessel" means vessel which normally must stay clear of vessels with the right of way.

"Cross signals" means improper answering of signals between vessels.

"Course" means direction or path of travel a vessel is navigating upon the water.

"Danger Signal" means not less than four short and rapid blasts of the whistle.

"Disabled vessel" means vessel disabled due to mechanical failure or malfunction or damage sustained from collision.

"Lifting and suspending device" means an airborne device (parasail or parachute or similar device) towed by a vessel.

"Look-out" means a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make full appraisal of the situation and risk of collision.

"Overtaking" means passing another vessel traveling in the same direction.

"Other unsafe conditions" means a vessel that:

(A) does not display proper lights during prescribed times;

(B) is operated by an individual who is under the influence of alcohol or any substance included in the Uniform Controlled Dangerous Substances Act [63 O.S. §2-101 et seq.];

(C) has fuel leakage from either the fuel system or the engine, or has an accumulation of fuel in the bilges;

(D) does not meet applicable ventilation requirements;

(E) is operated in hazardous weather or water conditions; or

(F) is operated under any condition which would be deemed by a reasonable person as a risk to life or property.

"Port" means:

(A) the left side of a vessel facing forward and displaying a red navigation light; or

(B) a designation geographical destination or harbor.

"Privileged vessel" means vessel which normally has the preferential right of way.

"Rules of the waterways" means nautical traffic rules for preventing collisions on water.

"Short blast" means a blast of about one second duration.

"Starboard" means right side of a vessel facing forward and displaying a green navigation light.

"Termination of unsafe use" means reasonable steps necessary to correct an unsafe condition for the safety for those on board, including directing operator to proceed to nearest Omooring and remain there until the unsafe condition or hazard has been corrected.

"Towing" vessel means vessel engaged in or intending to engage in the service of pulling, pushing or hauling along side or combination thereof.

"Traffic lane" means unobstructed passageway on water for which vessels pass upon; open water for vessel traffic.

"True emergency" means a situation where there is a high probability of death or serious injury or significant

property loss; where the action of the officer could reduce the severity of the situation.

"Visual distress signals" means signals by flag, dye marker, flare, smoke, light, sound or arm signals.

595:45-1-3. Adoption of federal boat safety act ~~46~~ USC §4301 et seq. (formerly known as the Federal Boat Safety Act of 1971)

~~The Title 46 USC §4301 et seq. (formerly known as the Federal Boat Safety Act of 1971 (46 USCA §1451 et seq.), Inland Navigation Rules and Regulations (33 CFR §2001 et seq.) and annexes thereto, and the minimum federal safety standards (found in 33 CFR §§ 175.1 et seq., 181.1 et seq., and 183.1 et seq.) are hereby adopted. Official notification of any amendment to this Act and/or the minimum federal safety standards shall be published in the Oklahoma Register prior to enforcement under these rules.~~

595:45-1-4. Application

The provisions of the Oklahoma Boating Safety Regulation Act [63 O.S. §4200 et seq.] shall apply to the waters of the state as defined in 63 O.S. §4002(27)(33). No vessel owner or operator shall perform any act forbidden, or fail to perform any act required by the Oklahoma Boating Safety Regulation Act [63 O.S. §4200 et seq.].

595:45-1-5. Procedures followed for termination of use of unsafe boats or vessels

(a) **Hazardous conditions on vessel.** If an officer observes a ~~boat or~~ vessel being used without sufficient approved lifesaving or fire fighting devices or in an overloaded or other unsafe condition as defined in these rules or the laws of this State, and ~~in the judgment~~ the judgement of the officer such use creates a hazardous condition, ~~he the~~ the officer shall direct the operator to take whatever immediate and reasonable steps necessary for the safety of those aboard the vessel, including directing the operator to return to mooring or port and to remain there until the situation creating the hazard is corrected or ended.

(b) **Hazardous weather.** A vessel operator shall not operate or give permission to operate a vessel when wind warnings have been posted or any other hazardous weather or water conditions exist which would be deemed by a reasonable person as a risk to life or property. Such disregard for life or property shall be grounds to terminate the vessel and may constitute operation of a vessel in a reckless or negligent manner.

595:45-1-6. Flashing red lights

No vessel shall display a flashing red light except ~~vessels~~ a vessel designated by law as an authorized emergency ~~vessels~~ vessel.

595:45-1-9. Signals [REVOKED]

(a) **General.**

(1) **One short blast.** One short blast of the whistle signifies intention to direct course to own starboard, except

when two vessels are approaching each other at right angles or obliquely, then it signifies intention of a vessel which is to starboard of the other to hold course and speed.

(2) **Two short blasts.** Two short blasts of the whistle signify intention to direct course to own port.

(3) **Four short blasts.** If, when vessels are approaching each other, either vessel fails to understand the course or intention of the other, the vessel so in doubt shall immediately signify the same by giving not less than four short and rapid blasts of the whistle (the danger signal).

(4) **No cross signals.** Vessels are forbidden to use what has become technically known among pilots as "cross signals", that is, answering one whistle with two, and answering two whistles with one.

(b) **Distress signals.**

(1) **Daytime:**

(A) slowly and repeatedly raising and lowering arms outstretched to each side,

(B) continuous sounding of the whistle or fog apparatus.

(2) **Nighttime:**

(A) continuous sounding of the whistle or fog apparatus,

(B) firing of flare device at intervals of about one minute,

(C) slowly and repeatedly raising and lowering a flare held outstretched.

(c) **Vessels passing each other.** The signals for passing by the sounding of the whistle or other device, shall be given and answered by operators in compliance with these rules, both when meeting "head to head", and also in the process of passing.

(1) Passing to starboard — one short blast (1 second in duration).

(2) Passing to port — one short blast (1 second in duration).

(3) Going astern — three short blasts

(4) Danger — four (4) or more rapid whistle blasts.

595:45-1-10. Rules of the waterways for vessels

(a) **Maneuvering.**

(1) **Head-on.** When two boats are approaching each other "head on" in any manner that involves risk of collision, each boat shall bear to the right and pass the other boat on its left side.

(2) **Rivers.** On rivers, or those sections of rivers which are state waters, boats proceeding down stream shall have the right of way over boats proceeding up stream.

(3) **Right angles.** When boats approach each other obliquely, or at right angles, the boat approaching on the right side has the right of way.

(4) **Overtaking.** One boat may overtake another on either side, but shall grant right of way to the overtaken boat.

(5) **Boats starboard.** Boats approaching from starboard have the right of way.

(6) **Right of way.** Sailboats and rowboats usually have the right of way over powered boats.

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- (7) **Sailing vessels.** When a motorized vessel and a sailing vessel are proceeding in such a direction as to involve risk of collision, the motorized vessel shall keep out of the way of the sailing vessel.
- (8) **Avoid crossing.** Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances permit, avoid crossing ahead of the other.
- (9) **Deviations.** The prudential rule for navigation permits operators to deviate from the above rules if it is deemed necessary in order to avoid immediate collision.
- (b) **Narrow channel navigation rules.**
- (1) **Keep to outer limit.** A vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limit of the channel or fairway which lies on her starboard side as is safe and practicable, notwithstanding, a power driven vessel operating on rivers and proceeding downbound with a following current shall:
- (A) have the right of way over an upbound vessel,
 - (B) propose the manner and place of passage, and
 - (C) initiate the maneuvering whistle signals as appropriate.
 - (D) The vessel proceeding upbound against the current shall hold as necessary to permit safe passing.
- (2) **Do not impede passing.** A vessel of less than twenty (20) meters in length or a sailing vessel shall not impede the passage of a vessel that can safely navigate only within a narrow channel or fairway.
- (3) **Vessels engaged in fishing.** A vessel engaged in fishing shall not impede the passage of any other vessel navigating within a narrow channel or fairway.
- (4) **Crossing.** A vessel shall not cross a narrow channel or fairway if such crossing impedes the passage of a vessel which can safely navigate only within that channel or fairway. The latter vessel shall use the danger signal of 5 short rapid whistle blasts if in doubt as to the attention of the crossing vessel.
- (5) **Overtaking.** When overtaking in a narrow channel or fairway, the vessel intending to overtake shall indicate her intention by sounding 2 whistle blasts and take steps to permit safe passing. The overtaken vessel, if in agreement, shall sound the same signal. If in doubt, sound 5 short rapid blasts. This rule does not relieve the overtaking vessel of the responsibility to keep out of the way of the overtaken vessel.
- (6) **Obstructions.** A vessel nearing a bend or area of a narrow channel or fairway where other vessels may be obscured by an intervening obstruction shall navigate with particular alertness and caution and shall sound 1 pronged whistle blast.
- (7) **Avoid anchoring.** Every vessel shall avoid anchoring in a narrow channel if the circumstances permit.
- (c) **Navigation rules for sailing vessels.**
- (1) **Windward side.** For the purpose of this rule, the windward side shall be deemed to be the side opposite to that on which the mainsail is carried or, in the case of a square rigged vessel, the side opposite to that on which the largest fore and aft sail is carried.
- (2) **Wind on port side.** When each has the wind on a different side, the vessel which has the wind on the port side shall keep out of the way of the other;
- (3) **Wind on same side.** When both have the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is leeward; and
- (4) **Keep clear.** If a vessel with the wind on the port side sees a vessel to windward and cannot determine with certainty whether the other vessel has the wind on the port or starboard side, she shall keep out of the way of the other.
- (d) **Responsibilities between vessels.**
- (1) **Power driven vessel underway.** Power driven vessel underway shall keep out of the way of:
- (A) a vessel not under command;
 - (B) a vessel restricted in her ability to maneuver;
 - (C) a vessel engaged in fishing; and
 - (D) a sailing vessel (except a sailing vessel under power).
- (2) **Sailing vessels underway.** Sailing vessel underway shall keep out of the way of:
- (A) a vessel not under command;
 - (B) a vessel restricted in her ability to maneuver; and
 - (C) a vessel engaged in fishing.
- (3) **Vessels engaged in fishing underway.** Vessel engaged in fishing when underway shall, so far as possible, keep out of the way of:
- (A) a vessel not under command; and
 - (B) a vessel restricted in her ability to maneuver.
- (4) **Seaplane.** Seaplane on the water shall keep well clear of all vessels and avoid impeding their navigation. In circumstances where risk of collision exists, she shall comply with the rules of this part.
- (5) **Look-out.** While underway, no vessel shall come about, turn to port or starboard or otherwise commit to any maneuver without proper look out, and no "burdened vessel" shall fail to yield the right of way to any "privileged vessel".
- (6) **Overtaking.** No vessel shall overtake or pass another vessel proceeding in the same direction whether, the overtaking or passing maneuver is to port or starboard, without proper look out and sufficient clearance that will enable the overtaking or pass by to be accomplished without creating a hazard to either vessel.
- The following additional rules for waterways shall also apply:
- (71) **Swells or wakes.** A person may shall not operate any vessel or encircle another vessel so as to create large swells or wakes thereby posing a threat to life or property.
- (82) **Observe before starting vessel.** No vessel operator shall:
- (A) start a vessel until he the operator is certain the immediate area of the propeller is free of obstructions and clear of persons in the water and nor, or
 - (B) proceed in any direction from a stopped, standing, moored or docked position until such movement can be made with reasonable safety.

595:45-1-11. Traffic lanes

The following additional rules for traffic lanes shall also apply:

~~(1 a) Obstruction of passage or open water traffic lanes.~~ A person may not anchor a ~~boat vessel~~ or other floating device for fishing, ski jumping, or other purposes in such a position as to obstruct a ~~passage or open water~~ ordinarily used by other boats for a period of more than eight hours traffic lane or place such a device in a traffic lane in such a manner to create a navigation hazard without first obtaining a permit or approval of the Lake Administrator in accordance with the written permit from the administering entity. Such permit shall set forth the date and time such device will be placed and removed, location of the device, type of device, name, address and phone number of the person in charge of said device, and other terms and provisions specified by administering entity. The written permit shall be available for inspection at all times during the period authorized for said device to be in place. The administering entity shall forward a copy of said permit to the Lake Patrol Section of the Highway Patrol Division of the Department of Public Safety within ten (10) days of the date the permit was issued.

~~(2 b) Exceptions.~~ This section shall not apply to any vessel declaring a true emergency by means of visual distress signals. Those vessels actually assisting a disabled vessel whether on stand-by or engaged in towing, including the towed vessel shall be deemed a single unit and is to be considered as ~~the "privileged a vessel" restricted in its ability to maneuver~~ when utilizing lights and sound devices and until such time the disabled vessel has been towed to port.

595:45-1-13. Equipment

(a) General Fire extinguisher systems.

(1) Fire extinguisher system installed in engine space. When a ~~boat vessel~~ has an approved fixed fire extinguisher system installed in the engine space, the system is installed in the engine space with a temperature operated release control or, if manual, the release is to be installed outside of the engine space, and must be of an approved carbon dioxide or Halon type. The record of service must indicate that service has been completed and the cylinders have been weighed within the past year.

(2) Fixed fire extinguisher system in machinery space. ~~Boats Vessels~~ whose fixed fire extinguisher system in the machinery space does not comply with the above requirements shall comply with the requirements of those ~~boats vessels~~ without such assistance.

(b) Fire equipment Hand portable fire extinguisher requirements.

(1) In general. Hand portable fire extinguishers shall be capable of extinguishing burning fuel, U.S. Coast Guard approved, in good serviceable condition and be readily accessible to the vessel operator.

(2) Fixed fire extinguisher system. ~~Motor boats~~ The minimum number of hand portable fire extinguishers

required for power-driven vessels with fixed fire extinguisher system in the machinery space: shall be:

~~(A) Class II motor boats are required to have Power-driven vessels less than twenty-six feet (26') in length require no additional fire extinguishers.~~

~~(B) Power-driven vessels twenty-six feet (26') to less than forty feet (40') in length shall be equipped with at least one (1) B-I Coast Guard approved fire extinguisher readily accessible to the operator and in good and serviceable condition.~~

~~(B) Class III motor boats are required to have~~

~~(C) Power-driven vessels forty feet (40') to less than sixty-five feet (65') in length shall be equipped with at least two B-I (2) B-I or one B-II Coast Guard approved fire extinguisher readily accessible to the operator and in good and serviceable condition extinguishers.~~

(23) Without fixed fire extinguisher system. ~~Motor boats~~ The minimum number of hand portable fire extinguishers required for power-driven vessels without fixed fire extinguisher system and in the machinery space shall be:

~~(A) Class A and Class I (16' but less than 26') motor boats are required to have Power-driven vessels less than twenty-six feet (26') in length shall be equipped with at least one B-I fire extinguisher which is (1) B-I Coast Guard approved, readily accessible to the operator and in good and serviceable condition fire extinguisher.~~

~~(B) CLASS II (26' but less than 40') motor boats are required to have Power-driven vessels at least twenty-six feet (26') but less than forty feet (40') in length shall be equipped with at least three (3) B-I or one B-II and one B-I Coast Guard approved fire extinguisher readily accessible to the operator and in good and serviceable condition extinguishers.~~

~~(C) Power-driven vessels at least forty feet (40') but less than sixty-five (65') in length shall be equipped with at least three (3) B-I or one B-II and one B-I Coast Guard approved fire extinguishers.~~

(c) Capacity plates.

(1) Requirements. Monohull vessels less than twenty feet (20') in length, manufactured or imported into this State for sale after July 1, 1974, designed to carry two or more persons and to be propelled by machinery as its principal source of power, shall have a capacity plate affixed permanently ~~thereto, on the vessel~~ by the builder.

(2) Visibility. A capacity plate shall bear the required information ~~permanently marked thereon using permanent markings and~~ in such a manner as to be clearly visible and legible from the position designed for, or normally intended to be occupied by, the operator of the ~~boat vessel~~ when under way.

(3) Information. A capacity plate shall bear the following information:

(A) Total weight of persons, motor, gear and other articles placed aboard which the vessel is capable of carrying with safety under normal conditions.

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(B) Recommended number of persons commensurate with the weight capacity of the vessel and the presumed weight in pounds of each such person. In no instance shall ~~such~~ the presumed weight per person be less than one hundred fifty (150) pounds.

(C) Clear notice that the information appearing on the capacity plate is applicable under normal conditions and that the weight of the outboard motor and its associated equipment is considered to be part of the total weight capacity.

(D) Maximum horsepower ~~shall be stated on the capacity plate~~, for all vessels designed for or represented by the builder or manufacturer as being suitable for use with outboard motor.

(4) **Exemptions.** The Commissioner of Public Safety or ~~his authorized representative~~ an officer of the Lake Patrol Section of the Oklahoma Highway Patrol may, upon written application from the vessel owner, exempt any ~~boat vessel~~ from the requirements of this section if, after ~~written application and an~~ inspection by the Commissioner or officer, ~~he finds~~ it is determined that compliance would not materially contribute to and enhance the safe operation of the ~~boat vessel~~.

595:45-1-16. Operating any lifting and suspending device - parasail, parachute or any similar device

A person may not operate any lifting and suspending device such as parasail or parachute or similar device unless said

person is wearing a ~~US~~ U.S. Coast Guard approved lifesaving device of the proper size and of type I, II, III or V.

595:45-1-18. Hull identification number for homemade vessels and identification numbers for motors

(a) Upon being issued an OTC Form 717 by the Oklahoma Tax Commission, the owner of a vessel ~~will~~ shall contact the Oklahoma Highway Patrol for an inspection of the vessel. Upon completion of a successful visual inspection of the vessel by the Highway Patrol, a hull identification number ~~will~~ shall be assigned and installed by the Highway Patrol. The owner may then return to the Commission to request issuance of a title and registration for the vessel. [63 O.S. §4009]

(b) Upon being issued an OTC Form 717 by the Oklahoma Tax Commission, the owner of an outboard motor ~~will~~ shall contact the Oklahoma Highway Patrol for an inspection of the outboard motor. Upon completion of a successful visual inspection of the outboard motor by the Highway Patrol, an identification number ~~will~~ shall be assigned and installed by the Highway Patrol. The owner may then return to the Commission to request issuance of a title and registration for the outboard motor. [63 O.S. §4009.1]

[OAR Docket #04-1188; filed 6-25-04]