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Brad Henry, Governor
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Secretary of State
Peggy Coe, Managing Editor

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Notices of Rulemaking Intent

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

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

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

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #04-1274]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 4. New Source Performance Standards
252:100-4-15. [AMENDED]
- Subchapter 17. Incinerators
- Part 9. Commercial and Industrial Solid Waste Incineration Units
252:100-17-63. [AMENDED]
- Subchapter 41. Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants
- Part 1. General Provisions
252:100-41-1. [REVOKED]
252:100-41-2. [REVOKED]
252:100-41-3. [NEW]
252:100-41-4. [NEW]
- Part 3. Hazardous Air Contaminants
252:100-41-15. [AMENDED]
- Part 5. Toxic Air Contaminants
252:100-41-35. [REVOKED]
252:100-41-36. [REVOKED]
252:100-41-37. [REVOKED]
252:100-41-38. [REVOKED]
252:100-41-39. [REVOKED]
252:100-41-40. [REVOKED]
252:100-41-41. [REVOKED]
252:100-41-42. [REVOKED]
252:100-41-43. [REVOKED]
252:100-41-44. [REVOKED]
- Subchapter 42. Control of Toxic Air Pollutants (TAPs)
[NEW]
- Appendix E. Primary Ambient Air Quality Standards
[REVOKED]
- Appendix E. Primary Ambient Air Quality Standards
[NEW]
- Appendix F. Secondary Ambient Air Quality Standards
[REVOKED]
- Appendix F. Secondary Ambient Air Quality Standards
[NEW]
- Appendix O. [NEW]

SUMMARY:

The Department proposes to incorporate by reference New Source Performance Standards (NSPS) contained in 40 CFR Part 60 into 252:100-4-15.

The Department proposes to add language to subsection 63 (j) of OAC 252:100-17 Incinerators, that will make clear that air curtain incinerators are subject to the Title V permitting requirements found in 252:100-17-73. The added reference will not change the interpretation of the rule, but is intended to clarify the current requirements for air curtain incinerators.

The Department proposes to amend Section 15 of Subchapter 41 Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants to incorporate by reference new National Emission Standards for Hazardous Air Pollutants contained in 40 CFR Parts 61 and 63.

In a separate hearing, the Department will also propose to partition the existing Subchapter 41 into two subchapters. The proposed amendments will clarify and modify the state-only requirements for emissions from stationary sources and relocate these requirements into the new Subchapter 42 and Appendix O. Subchapter 41 will contain the federal requirements for HAPs and asbestos. The remaining Sections 15 and 16 of Subchapter 41 that incorporate by reference National Emission Standards for Hazardous Air Pollutants (NESHP) in 40 CFR Parts 61 and 63 and specific asbestos requirements will be retained in Subchapter 41. Also, two new sections will be added as 252:100-41-3 and -4.

The Department proposes to add the 24-hour and annual PM 2.5 standards to both the Primary and Secondary Ambient Air Quality Standards contained in Appendices E and F.

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., §§ 2-2-101, 2-2-201; and Oklahoma Clean Air Act, §§ 2-5-101 *et seq.*

COMMENT PERIOD:

Written comments on the proposed rulemakings will be accepted prior to and at the hearing on October 20, 2004. To be thoroughly considered by staff prior to the hearing, written comments should be submitted to the contact person by October 13, 2004. Oral comments may be made at the October 20, 2004 hearing and the November 16, 2004 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Council at 9:00 a.m. on Wednesday, October 20, 2004 at the Forest Heritage Center, Cedar-Cypress Room, Beaver's Bend State Park near Broken Bow, Oklahoma. Before the Environmental Quality Board at 9:30 a.m. on

Notices of Rulemaking Intent

November 16, 2004 at the Miami Civic Center, 129 5th St. N.W., Miami, Oklahoma.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

The proposed rules are available for review at the Air Quality Division of DEQ and on the DEQ website (www.deq.state.ok.us), Air Quality Division, What's New, or copies may be obtained from the contact person by calling (405) 702-4100.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person.

CONTACT PERSON:

Please send written comments to Max Price (e-mail: max.price@deq.state.ok.us) for Subchapters 4 and 41-15, Lisa Donovan (e-mail: lisa.donovan@deq.state.ok.us) for Subchapters 17 and 41, Brad Cook (e-mail: brad.cook@deq.state.ok.us) for Subchapter 42 and Appendix O, and Leon Ashford (e-mail: leon.ashford@deq.state.ok.us) for Appendices E & F at the Department of Environmental Quality, Air Quality Division, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-4100, fax (405) 702-4101.

PERSONS WITH DISABILITIES:

Should you desire to attend but have a disability and need an accommodation, please notify the Air Quality Division three (3) days in advance at (405) 702-4100.

[OAR Docket #04-1274; filed 8-25-04]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 10. AD VALOREM

[OAR Docket #04-1273]

RULEMAKING ACTION:

Notice of proposed **EMERGENCY and PERMANENT** rulemaking.

PROPOSED RULES:

Chapter 10. Ad Valorem [AMENDED]

SUMMARY:

Pursuant to the authority set out in 68 O.S. § 2875(D)(4), the Oklahoma Tax Commission shall promulgate rules describing

the methodology and sources utilized to establish the schedules of values provided to aid county assessors in the assessment of personal properties.

AUTHORITY:

68 O.S. §§ 203, 2875(D)(4); Oklahoma Tax Commission

COMMENT PERIOD:

Persons wishing to make written submissions may do so by 4:30 p.m., October 18, 2004, to the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194. Those wishing to make oral comments at the public hearing should request placement on the docket well in advance of the hearing date, at the numbers provided below.

PUBLIC HEARING:

A public hearing will be held to provide an additional means by which suggestions may be offered on the content of the proposed rules, **2:00 p.m., October 19, 2004**, at the main offices of the Oklahoma Tax Commission, M. C. Connors Building, Room 1-24, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

A Rule Impact Statement will be prepared and will be available for review no later than September 30, 2004 from the same source listed above for obtaining copies of proposed rules.

CONTACT PERSON:

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

[OAR Docket #04-1273; filed 8-24-04]

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 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 20. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

[OAR Docket #04-1261]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

252:20-1-3. [AMENDED]

252:20-1-6. [AMENDED]

SUBMITTED TO GOVERNOR:

June 23, 2004

SUBMITTED TO HOUSE:

June 23, 2004

SUBMITTED TO SENATE:

June 23, 2004

[OAR Docket #04-1261; filed 8-16-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #04-1262]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 8. Permits for Part 70 Sources

Part 5. Permits for Part 70 Sources

252:100-8-2. [AMENDED]

252:100-8-4. [AMENDED]

252:100-8-6. [AMENDED]

252:100-8-6.1. [AMENDED]

252:100-8-6.3. [AMENDED]

252:100-8-7. [AMENDED]

SUBMITTED TO GOVERNOR:

June 23, 2004

SUBMITTED TO HOUSE:

June 23, 2004

SUBMITTED TO SENATE:

June 23, 2004

[OAR Docket #04-1262; filed 8-16-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 300. LABORATORY ACCREDITATION

[OAR Docket #04-1263]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 21. Categories

252:300-21-1. [AMENDED]

Appendix A. Analytes for Drinking Water Laboratory
Categories [REVOKED]

Appendix A. Analytes for Drinking Water Laboratory
Categories [NEW]

SUBMITTED TO GOVERNOR:

June 23, 2004

SUBMITTED TO HOUSE:

June 23, 2004

SUBMITTED TO SENATE:

June 23, 2004

[OAR Docket #04-1263; filed 8-16-04]

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 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 20. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

[OAR Docket #04-1264]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

252:20-1-3. [AMENDED]

252:20-1-6. [AMENDED]

GUBERNATORIAL APPROVAL:

August 5, 2004

[OAR Docket #04-1264; filed 8-16-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #04-1265]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 8. Permits for Part 70 Sources

Part 5. Permits for Part 70 Sources

252:100-8-2. [AMENDED]

252:100-8-4. [AMENDED]

252:100-8-6. [AMENDED]

252:100-8-6.1. [AMENDED]

252:100-8-6.3. [AMENDED]

252:100-8-7. [AMENDED]

GUBERNATORIAL APPROVAL:

August 5, 2004

[OAR Docket #04-1265; filed 8-16-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 300. LABORATORY ACCREDITATION

[OAR Docket #04-1266]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 21. Categories

252:300-21-1. [AMENDED]

Appendix A. Analytes for Drinking Water Laboratory Categories [REVOKED]

Appendix A. Analytes for Drinking Water Laboratory Categories [NEW]

GUBERNATORIAL APPROVAL:

August 5, 2004

[OAR Docket #04-1266; filed 8-16-04]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 75. CHILD WELFARE

[OAR Docket #04-1282]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 7. Foster Home Care

Part 5. Eligibility and Payments

340:75-7-52. [AMENDED]

(Reference APA WF 04-15)

GUBERNATORIAL APPROVAL:

August 9, 2004

[OAR Docket #04-1282; filed 8-26-04]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 105. AGING SERVICES DIVISION

[OAR Docket #04-1281]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 10. Policies and Procedures Manual for Title III of the Older Americans Act of 1965, as Amended

Part 5. Area Agencies on Aging

340:105-10-41. [AMENDED]

340:105-10-43. [AMENDED]

Part 7. Program Standards for Services Funded Under Title III

340:105-10-72. [AMENDED]

Part 9. Fiscal and Administrative Policies for Area Agencies on Aging and Title III Projects

340:105-10-101. [AMENDED]

340:105-10-117. [AMENDED]

Gubernatorial Approvals

340:105-10-118. through 340:105-10-119. [REVOKED]
340:105-10-120. through 340:105-10-122. [AMENDED]
(Reference APA WF 04-13)

GUBERNATORIAL APPROVAL:

August 9, 2004

[OAR Docket #04-1281; filed 8-26-04]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 110. LICENSING SERVICES**

[OAR Docket #04-1279]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 3. Licensing Standards for Child Care Facilities

Part 5. Requirements for Family Child Care Homes and
Large Family Child Care Homes

340:110-3-86. [AMENDED]

Part 9. Requirements for Residential Child Care Facilities

340:110-3-154.3. [AMENDED]

340:110-3-163. [AMENDED]

Subchapter 5. Requirements for Child-Placing Agencies

Part 5. Requirements for Foster Family Homes

340:110-5-60. [AMENDED]

(Reference APA WF 04-11)

GUBERNATORIAL APPROVAL:

August 9, 2004

[OAR Docket #04-1279; filed 8-26-04]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 110. LICENSING SERVICES**

[OAR Docket #04-1280]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 3. Licensing Standards for Child Care Facilities

Part 1. Requirements for Child Care Centers

340:110-3-29. [AMENDED]

Part 2. Requirements for Part-Day Children's Programs

340:110-3-49.5. [AMENDED]

Part 5. Requirements for Family Child Care Homes and
Large Family Child Care Homes

340:110-3-87. [AMENDED]

Part 9. Requirements for Residential Child Care Facilities

340:110-3-154.5. [AMENDED]

Part 14. Requirements for School-Age Programs

340:110-3-239. [AMENDED]

Subchapter 5. Requirements for Child-Placing Agencies

Part 5. Requirements for Foster Family Homes

340:110-5-57. [AMENDED]

340:110-5-60. [AMENDED]

(Reference APA WF 04-12)

GUBERNATORIAL APPROVAL:

August 9, 2004

[OAR Docket #04-1280; filed 8-26-04]

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 160. DEPARTMENT OF CONSUMER CREDIT CHAPTER 5. FEES

[OAR Docket #04-1268]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

160:5-1-2. [AMENDED]

AUTHORITY:

Administrator of Consumer Credit; 14A O.S., §6-104(1)(e)

DATES:

Adoption:

June 30, 2004

Approved by Governor:

August 11, 2004

Effective:

Immediately upon Governor's approval or July 13, 2004, whichever is later.

Expiration:

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

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATION BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The Administrator of Consumer Credit finds that there is a compelling public interest requiring emergency amendments to the existing rule. The compelling public interest is the amendments to the Mortgage Broker Licensure Act that are effective July 1, 2004, pursuant to House Bill 1503 from the 2004 Second Regular Session of the 49th Legislature.

ANALYSIS:

The amended rule adds a new fee and amends fees for mortgage brokers and mortgage loan originators pursuant to House Bill 1503 from the 2004 Second Regular Session of the 49th Legislature.

CONTACT PERSON:

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR JULY 13, 2004, WHICHEVER IS LATER:

160:5-1-2. Fees

Fees charged by the Department are as follows:

- (1) Supervised Lenders
 - (A) \$150.00 application fee for license, except that for any license granted after June 30, the fee shall be \$75.00 [14A:3-503(1)]
 - (B) \$225.00 investigation fee for license [14A:3-503(1)]
 - (C) \$150.00 annual renewal fee [14A:3-504(5)] and a \$50.00 late fee for a late application for renewal of a license received after December 1 [14A:3-504(5)]
 - (D) For any examination under one-half hour, no fee. For any examination over one-half hour up to eight (8) hours, \$300.00. For any examination in excess of eight (8) hours, \$300.00 plus \$50.00 per examiner per hour for each full hour, or pro rata for each partial hour, over eight (8) hours. A \$50.00 late fee shall be imposed when the examination fee is not received within thirty (30) days of the invoice date. No licensee shall be assessed a total fee in excess of Six Hundred Fifty Dollars (\$650.00) for each licensed office in any calendar year. [14A:3-506(1)]
 - (E) \$25.00 fee for a duplicate or amended license [14A:3-504(5)]
 - (F) \$25.00 fee for a returned check [14A:3-506(10)]
 - (G) All fees are non-refundable unless the Code or these rules require otherwise.
- (2) Notifications
 - (A) \$20.00 annual filing fee [14A:6-203(1)]
 - (B) sellers, lessors, lenders and assignees shall pay the \$20.00 annual filing fee plus \$10.00 per \$100,000.00 of business conducted in Oklahoma [14A:6-203(2) and (3)]
 - (C) All fees are non-refundable unless the Code or these rules require otherwise.
- (3) Pawnbrokers
 - (A) \$100.00 application fee for license, except that for any application filed after June 30, the fee shall be \$50.00 [59:1505(A)]
 - (B) \$125.00 investigation fee for license [59:1505(A)]
 - (C) \$100.00 annual renewal fee [59:1506(C)]
 - (D) \$200.00 annual examination fee [59:1508(A)]
 - (E) All fees are non-refundable unless the Act or these rules require otherwise.
- (4) Rent-to-Own Businesses

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- (A) \$100.00 application fee for license, except that for any application filed after June 30, the fee shall be \$50.00 [59:1953]
- (B) \$100.00 annual renewal fee [59:1953]
- (C) \$200.00 annual examination fee [59:1955(B)]
- (D) All fees are non-refundable unless the Act or these rules require otherwise.
- (5) Health Spas
- (A) \$200.00 initial registration fee [59:2002(A)(4)]; this fee shall be applied without regard to the date of filing.
- (B) \$200.00 annual renewal fee [59:2002(A)(4)]
- (C) All fees are non-refundable unless the Act or these rules require otherwise.
- (6) Credit Services Organizations
- (A) \$100.00 application fee for license [24:143(A)]; this fee shall be applied without regard to the date of filing.
- (B) \$100.00 investigation fee for license [24:143(A)]
- (C) \$100.00 annual renewal fee [24:143(A)]
- (D) \$200.00 annual examination fee [24:146(A)]
- (E) All fees are non-refundable unless the Act or these rules require otherwise.
- (7) Precious Metals and Gem Dealers
- (A) \$50.00 application fee for license for dealers, \$25.00 application fee for license for each employee [59:1525(A) and (B)]; these fees shall be applied without regard to the date of filing.
- (B) \$50.00 investigation fee for license [59:1525(A)]
- (C) \$50.00 annual renewal fee for dealers, \$25.00 annual renewal fee for each employee [59:1526(A) and (B)]
- (D) All fees are non-refundable unless the Act or these rules require otherwise.
- (8) Mortgage Brokers
- (A) \$750.00 application fee for a mortgage broker license; this fee shall be applied without regard to the date of filing [59:2085(A)(2)]
- (B) ~~\$300.00~~ \$100.00 initial license fee for a mortgage broker license [59:2085(I)(1)]; this fee shall be applied without regard to the date of filing.
- (C) ~~\$300.00 triennial~~ \$100.00 annual renewal fee for a mortgage broker license [59:2085(I)(1)]
- (D) \$25.00 late fee per day for a late application for renewal of a mortgage broker license received after December 31 and on or before January 31 [59:2085(D)]
- (E) ~~\$150.00 triennial~~ \$50.00 annual license fee for a branch office license [59:2085(I)(2)]; this fee shall be applied without regard to the number of licenses sought or the date of filing.
- (F) \$50.00 inactive status fee for a mortgage broker license [59:2085(I)(3)]; this fee shall be paid for each year of inactive status [59:2085(E)]
- (G) Reactivation fees for a mortgage broker license [59:2085(F)]
- (i) If a mortgage broker license has been inactive for ~~one~~ licensing year, then the reactivation fee is ~~\$200~~ \$100.00.
- (ii) If a mortgage broker license ~~has been inactive for two consecutive licensing years, then the reactivation fee is \$100~~ reactivation application is filed on or before June 30 of an inactive license year, then the reactivation fee is \$100.00.
- (iii) If a mortgage broker license is ~~reactivated during~~ reactivation application is filed after June 30 of an inactive license year, then the reactivation fee is the prorated portion of the \$300 license fee to cover the remainder of the three year license period \$50.00.
- (H) \$10.00 change of address fee [59:2085(H) and (I)(4)]
- (I) ~~\$100.00~~ \$50.00 initial license fee for a mortgage loan originator license [59:2085(I)(5)]; this fee shall be applied without regard to the date of filing.
- (J) ~~\$100.00 triennial~~ \$50.00 annual renewal fee for a mortgage loan originator license [59:2085(I)(5)]
- (K) \$10.00 change of sponsor fee [59:2085(I)(6)]
- (~~KL~~) \$150.00 license test fee; this fee is required for each test taken without regard to test results or the number of times that a person takes the test [59:2092(C)]
- (~~L~~M) Test handbook fee equal to the actual cost of producing and distributing the handbook [59:2092(E)]
- (~~M~~N) All fees are non-refundable unless the Act or these rules require otherwise.
- (9) Deferred Deposit Lenders
- (A) \$250.00 application fee for license; this fee is required of each applicant without regard to the number of licenses sought or the date of filing [59:3113(D)]
- (B) \$500.00 investigation fee for license; this fee is required of each applicant without regard to the number of licenses sought or the date of filing [59:3113(D)]
- (C) \$250.00 annual renewal fee; this fee is required of each applicant without regard to the number of licenses sought [59:3113(E)]
- (D) For any examination under one-half hour, no fee. For any examination over one-half hour up to eight (8) hours, \$300.00. For any examination in excess of eight (8) hours, \$300.00 plus \$50.00 per examiner per hour for each full hour, or pro rata for each partial hour, over eight (8) hours. A \$50.00 late fee shall be imposed when the examination fee is not received within thirty (30) days of the invoice date. [59:3114(A)]
- (E) \$25.00 late fee for any annual report received after May 1 [59:3114(F)]
- (F) All fees are non-refundable and non-abatable unless the Act or these rules require otherwise. [59:3113(D)]
- (10) Other

- (A) \$0.25 fee per page for copies [51:24A.5(3)]
- (B) \$1.00 fee per copied page for a certified copy [51:24A.5(3)]
- (C) Reasonable search fee of the hourly rate of lowest paid employee capable of performing search when records are requested solely for commercial purpose or the request would clearly cause excessive disruption of the Department's essential functions [51:24A.5(3)]

[OAR Docket #04-1268; filed 8-17-04]

**TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 55. MORTGAGE BROKERS**

[OAR Docket #04-1269]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- Subchapter 3. Licensing
- 160:55-3-1.1. [AMENDED]
- 160:55-3-1.4. [AMENDED]
- 160:55-3-4. [AMENDED]
- 160:55-3-10.1. [AMENDED]

AUTHORITY:

Administrator of Consumer Credit; 59 O.S., §§2084 and 2085(A)(1) and 75 O.S., §302(A)(2)

DATES:

Adoption:

June 30, 2004

Approved by Governor:

August 11, 2004

Effective:

Immediately upon Governor's approval or July 13, 2004, whichever is later.

Expiration:

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

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATION BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The Administrator of Consumer Credit finds that there is a compelling public interest requiring emergency amendments to existing rules. The compelling public interest is the amendments to the Mortgage Broker Licensure Act that are effective July 1, 2004, pursuant to House Bill 1503 from the 2004 Second Regular Session of the 49th Legislature.

ANALYSIS:

The amended rules provide regulations for the change in the licensure period from three years to one year pursuant to House Bill 1503 from the 2004 Second Regular Session of the 49th Legislature.

CONTACT PERSON:

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR JULY 13, 2004, WHICHEVER IS LATER:

SUBCHAPTER 3. LICENSING

160:55-3-1.1. Licensure forms

(a) License application.

(1) The license application shall be completed by the person seeking a mortgage broker license or a mortgage loan originator license and shall include all fees, forms and exhibits requested.

(2) The Administrator may require any applicant to provide additional information. An application is not considered final until all requested information has been submitted and the applicant has passed a license test, if required. [59:2085(A)(1)(c), (A)(9) and (L)(4), and 2092(B)]

(3) The Administrator shall grant or deny a license application within thirty (30) days from final application unless the period is extended by written agreement between the applicant and the Administrator. [59:2085(C)]

(4) An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application and not a denial. If any applicant pays for a license test, but does not take the license test, the license test fee shall be returned to the applicant. If an applicant for a mortgage broker license fails to comply with the application process, the initial license fee shall be returned to the applicant, but the Administrator shall retain the application fee.

(b) License test. The examination approved by the Administrator that is required to be taken and passed by applicants for mortgage broker licenses, unless waived by the Administrator. [59:2085(A)(1)(c) and (A)(9), and 2092(A) and (B)] The examination approved by the Administrator that is required to be taken and passed by applicants for mortgage loan originator licenses that do not have the required experience, unless waived by the Administrator. [59:2085(A)(9) and (L)(4), and 2092(A) and (B)]

(c) Licenses. No license is transferable or assignable. [59:2085(A)(7)] Expired licenses shall not be renewed; however, a new license may be issued if the applicant satisfies all of the licensing requirements of an initial license. [59:2085(D)]

(1) Mortgage broker license. The license, executed under the hand of the Administrator and delivered, is evidence of a person's authority to engage in the mortgage business within Oklahoma. The license shall be prominently displayed in an area of the principal place of business that is used or visited by a majority of the borrowers [59:2085(G)].

(2) Mortgage loan originator license. The license, executed under the hand of the Administrator and delivered, is evidence of an individual's authority to make, negotiate or offer to make or negotiate a mortgage loan for or on behalf of a mortgage broker.

(3) Branch office license. The license, executed under the hand of the Administrator and delivered, is evidence of a location in addition to the principal place of business noted on the mortgage broker license where mortgage business may be transacted. Any branch office license shall be prominently displayed in an area of the branch

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office that is used or visited by a majority of the borrowers [59:2085(H)].

(d) **Renewal application.**

(1) The license renewal application shall be completed by persons previously issued a license and shall be submitted with all fees and postmarked on or before the first day of December ~~of the final year of validity of each license~~ each year, unless the person holds a three year license for which the renewal application with all fees shall be submitted and postmarked on or before the first day of December of the final year of validity. As a courtesy, the Department may send a notice of renewal to each person, but the failure to do so shall not relieve any person of the duty to renew timely or impair the authority of the Administrator against any person.

(2) If the license is not renewed by December 15 ~~of the final year of validity of each license~~, a delinquency notice shall be sent to the person. If the license is not renewed by December 31, the license shall be suspended. A suspended license may be renewed with a completed license renewal application submitted with all fees and postmarked on or before January 31. If the license is not renewed by January 31, the license shall expire. [59:2085(D)]

(e) **Inactive and reactivation applications.** In lieu of renewal, a mortgage broker may place its license on inactive status for the following license year by completing an inactive application and submitting the application with its license and fee postmarked on or before the first day of December ~~of the final year of validity of the license.~~ [59:2085(E)] If a mortgage broker applies for inactive status when the license is not eligible for inactive status, the Administrator shall notify the mortgage broker that the license is subject to the renewal requirements.

(1) At the end of the first inactive license year, the mortgage broker shall complete an inactive application or a reactivation application and submit it with the proper fee postmarked on or before the first day of December. [59:2085(E) and (F)] If a mortgage broker applies for inactive status when the license is not eligible for inactive status, the Administrator shall notify the mortgage broker that the license is subject to the reactivation requirements.

(2) If the mortgage broker license is on inactive status for two (2) consecutive years, then at the end of the second inactive license year, the mortgage broker shall complete a reactivation application and submit it with the fee postmarked on or before the first day of December. [59:2085(E) and (F)]

(3) If a mortgage broker license is not inactivated or reactivated by December 31, then the license shall expire. [59:2085(E)]

(4) During an inactive license year, the mortgage broker license may be reactivated for the remainder of the ~~three-year license period~~ by completing a reactivation application and submitting the application with the fee. [59:2085(F)]

160:55-3-1.4. Mortgage brokers continuing education

(a) **Purpose.** The purpose of this section is to set forth the requirements for continuing education which a mortgage broker must meet, and to set forth the requirements for approval by the Administrator of a proposed continuing education course.

(b) **Definitions.** The following words or terms, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"CEC"** means continuing education credit.

(2) **"Certificate of course completion"** means a form acceptable to the Administrator and completed by the provider that signifies satisfactory completion of the approved course and reflects hours of credit earned.

(3) **"Credit hour"** means at least a fifty (50) minute classroom instructional session unless a correspondence or self-study course.

(4) **"Education verification form"** means a form acceptable to the Administrator and completed by the mortgage broker that states under oath to compliance with the continuing education requirements.

(5) **"Provider"** means the Commission; a technology center school; a college or university; a private school; the Oklahoma Association of Mortgage Brokers, the National Association of Mortgage Brokers or any affiliate thereof; the Oklahoma Bar Association, American Bar Association or any affiliate thereof; or an education provider that provides approved continuing education courses to mortgage brokers. [59:2093(B)]

(c) **Continuing education requirements.**

(1) **Credit hours.**

(A) All mortgage brokers shall complete ~~forty eight (48) sixteen (16)~~ sixteen (16) credit hours of continuing education ~~during each thirty six (36) month period before December 31, 2006.~~ [59:2093(A)] ~~The thirty six (36) month period ends December 31 of the final year of validity of the license.~~ Following the renewals in 2006, all mortgage brokers shall complete sixteen (16) credit hours annually for license renewal. Courses taken in excess of the required hours shall not carry forward.

(B) A minimum of ~~sixteen (16) seven (7)~~ seven (7) of the ~~forty eight (48) sixteen (16)~~ sixteen (16) credit hours shall consist of:

(i) ~~four (4) one (1)~~ one (1) credit hour covering the Real Estate Settlement Procedures Act;

(ii) ~~four (4) one (1)~~ one (1) credit hour covering the Truth In Lending Act;

(iii) ~~four (4) one (1)~~ one (1) credit hour covering federal laws related to fair lending - the Equal Credit Opportunity Act, the Fair Housing Act and the Home Mortgage Disclosure Act; and

(iv) four (4) credit hours covering ethics. [59:2093(A)]

(C) Courses must be of a meaningful nature and shall not include items such as prospecting, motivation, sales techniques, psychology, recruiting, time management, phone etiquette, and subjects not relating to the mortgage broker's license. Courses

conducted in conjunction with other meetings must have a separate continuing education course component; the method to monitor attendance must be stated and approved by the Administrator.

- (2) **Correspondence and video courses.**
 - (A) **Correspondence courses.** A mortgage broker who completes an approved course by correspondence and provides satisfactory proof of completion will receive credit for the number of hours assigned for the course.
 - (B) **Video courses.** In order for a mortgage broker to receive credit for viewing an approved course presented by video, the mortgage broker must view the video under the supervision of a contact person with the provider and swear by affidavit that the video was viewed in its entirety. The affidavit must also be signed by the supervising contact person.
- (3) **Credit for instructors.** An instructor who is a mortgage broker shall receive the same continuing education credit for presenting approved course materials as a mortgage broker who attends an approved classroom instructional session.
- (4) **Certificates of course completion required for license renewal or reactivation.** Each mortgage broker shall attach an education verification form and certificates of course completion for the required number of credit hours to the renewal or reactivation application. [59:2093(A)]
- (5) **Repeating courses.** A mortgage broker may repeat a course ~~within the thirty six (36) month period before renewal.~~ if the maximum credits designated for the course were not attained in the first attempt. By repeating the course, the mortgage broker may not earn more than the maximum credits designated for the course. A mortgage broker may repeat a course after two (2) license renewal dates have elapsed and receive the maximum credits designated for the course.
- (6) **Exceptions.** The requirements for continuing education in this section shall not apply to:
 - (A) a mortgage broker whose license is on inactive status; or,
 - (B) a non-resident mortgage broker who is licensed in a state having continuing education requirements and the mortgage broker meets all the requirements of that state. The non-resident mortgage broker shall be responsible for providing satisfactory proof of compliance with the other state's requirements. [59:2093(E)]
- (7) **Extensions.** For good cause shown, the Administrator may grant an extension of time during which the continuing education requirements may be completed. The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding ~~thirty six (36) month period renewal.~~ "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the mortgage broker and shall

include details and any documentation to support the request. Each request must be received by the Administrator no less than thirty (30) days before the ~~expiration of the thirty six (36) month period renewal.~~

- (d) **Approval of continuing education courses.**
 - (1) **Information required.** Each provider shall apply for approval of each course. All providers, including publicly funded educational institutions, shall provide:
 - (A) Name and address of the provider.
 - (B) Contact person and his or her address and telephone number(s).
 - (C) The location of the course, unless it is an individual study or correspondence course.
 - (D) The number of CEC hours requested for each course. Courses must consist of a minimum of one (1) credit hour.
 - (E) Subject outlines which list the summarized subjects covered in each course and a copy of any course materials.
 - (i) If a classroom course, a timed outline including any breaks.
 - (ii) If a correspondence course, a copy of text or table of contents with page numbers.
 - (F) The names and qualification of instructors. An instructor shall have one (1) of the following qualifications:
 - (i) Three (3) years of recent experience in the subject area being taught; or
 - (ii) A degree related to the subject area being taught; or
 - (iii) Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college and/or vocational technical school credit hours in the subject area being taught.
 - (2) **Application deadline for course approval.** At least thirty (30) days prior to the course date, the provider shall apply to the Administrator for course approval. The Administrator shall grant or deny approval in writing based upon information submitted regarding each course. The Administrator will assign the number of CEC hours awarded for an approved course. Each course approval shall be valid for a period of twelve (12) months. Course materials must be resubmitted at the time of expiration.
 - (3) **Withheld or withdrawn approval.** The Administrator may withhold or withdraw approval for any course for non-compliance with any provision of this section. This withdrawal will not affect any CEC hours attained under the course previous to the withdrawal.
 - (4) **List of approved courses.** A list of approved courses shall be available from the Administrator. [59:2093(C)]
 - (5) **Certificate of Course Completion.** At the completion of each course, the provider shall provide each mortgage broker with a "Certificate of Course Completion" form.
 - (6) **List of mortgage brokers completing course to Administrator.** At the completion of each course, the

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provider shall provide the Administrator a list of all mortgage brokers who completed the course. This list shall reflect the mortgage broker's name and license number.

(7) **Course records.** Providers shall maintain course records for at least seven (7) years.

160:55-3-4. Licensure periods

Any license issued during a year shall run only to December 31 of the third calendar year, except three year licenses shall run to December 31 of the third calendar year.

160:55-3-10.1. Loss or change of licensed mortgage broker sponsor

(a) When a mortgage broker cancels the sponsorship of a mortgage loan originator, the mortgage broker shall submit the mortgage loan originator's license to the Department within three (3) business days.

(b) The Department shall return the license to the mortgage loan originator with the name of the new sponsoring mortgage broker after all requested forms, exhibits ~~and~~ information and fee have been submitted.

(c) The Department's holding of the mortgage loan originator license does not change the licensure period.

(d) The person remains subject to all licensing and renewal requirements for the mortgage loan originator license whether the person or the Department holds the license.

[OAR Docket #04-1269; filed 8-17-04]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 300. LABORATORY ACCREDITATION

[OAR Docket #04-1260]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 21. Categories

252:300-21-1. [AMENDED]

Appendix A. Analytes for Drinking Water Laboratory Categories [REVOKED]

Appendix A. Analytes for Drinking Water Laboratory Categories [NEW]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201 and Article IV, Laboratory Services and Certification, §§ 2-4-101 *et seq.*

DATES:

Comment period:

May 3 through June 10, 2004; and June 22, 2004

Public hearing:

June 10, 2004; and June 22, 2004

Adoption:

June 22, 2004

Approved by Governor:

August 5, 2004

Effective:

Effective immediately upon the Governor's signature

Expiration:

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

SUPERSEDED EMERGENCY ACTIONS:

None

INCORPORATIONS BY REFERENCE:

None

FINDING OF EMERGENCY:

The Environmental Quality Board finds that a compelling public interest necessitates the seeking of emergency certification of the rule being adopted today. Recent changes to monitoring requirements for public water supplies under the Safe Drinking Water Act have expanded the scope of monitoring for radionuclides in drinking water. The revision adds a radionuclide category for Drinking Water Laboratory accreditation so that accredited laboratories can monitor for radionuclides for public water supplies in the state.

ANALYSIS:

The DEQ proposes an emergency rule to comply with recent changes to monitoring requirements for public water supplies under the Safe Drinking Water Act which have expanded the scope of monitoring for radionuclides in drinking water. The proposed rules have been revised to add a Radionuclide Category for Drinking Water Laboratory accreditation. Radionuclide testing is a very specialized service that few laboratories are qualified to perform. Businesses that are qualified to perform radionuclide analysis will have the opportunity to offer that service to public water supplies in the state.

CONTACT PERSON:

David Caldwell, State Environmental Laboratory, Customer Services Division, Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, 73102, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677. Phone (405) 702-1000. Fax (405) 702-1001. E-mail David.Caldwell@deq.state.ok.us

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

SUBCHAPTER 21. CATEGORIES

252:300-21-1. Categories for drinking water certification

A laboratory may be accredited in a drinking water classification for metals, general chemistry, microbiology, asbestos, non-volatile synthetic organic chemicals (SOCs) ~~and/or~~, volatile organic compounds (VOCs) and/or radionuclides. Analytes for each category are specified in Appendix A.

APPENDIX A. ANALYTES FOR DRINKING WATER LABORATORY CATEGORIES [REVOKED]

APPENDIX A. ANALYTES FOR DRINKING WATER LABORATORY CATEGORIES [NEW]

Analytes considered for drinking water laboratory accreditation include the following:

Category I - Metals.

- (A) Antimony
- (B) Arsenic
- (C) Barium
- (D) Beryllium
- (E) Cadmium
- (F) Calcium
- (G) Chromium
- (H) Copper
- (I) Lead
- (J) Mercury
- (K) Nickel
- (L) Selenium
- (M) Silica, filtered
- (N) Sodium
- (O) Thallium

Category II - General Chemistry.

- (A) Alkalinity
- (B) Conductivity
- (C) Cyanide
- (D) Fluoride
- (E) pH
- (F) Residual Disinfectant - Chlorine
- (G) Residual Disinfectant - Ozone
- (H) Residual Disinfectant - Chlorine Dioxide
- (I) Temperature
- (J) Turbidity
- (K) Nitrate-N
- (L) Nitrite-N
- (M) O-Phosphate
- (N) Total organic carbon (TOC)
- (O) Bromate
- (P) Chlorite

Category III - Microbiology.

- (A) Total coliform bacteria
- (B) Fecal coliform bacteria

Category IV - Asbestos.

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Category V - Non-Volatile Synthetic Organic Chemicals (SOCs).

- (A) Adipates
- (B) Alachlor
- (C) Aldicarb
- (D) Aldicarb Sulfoxide
- (E) Aldicarb sulfone
- (F) Atrazine
- (G) Carbofuran
- (H) Chlordane
- (I) Dalapon
- (J) Dibromochloropropane (DBCP)
- (K) 2,4-D
- (L) Dinoseb
- (M) Diquat
- (N) Endothall
- (O) Endrin
- (P) Ethylene dibromide (EDB)
- (Q) Glyphosate
- (R) Heptachlor
- (S) Heptachlor epoxide
- (T) Hexachlorobenzene
- (U) Hexachlorocyclopentadiene
- (V) Lindane
- (W) Methoxychlor
- (X) Oxamyl (Vydate)
- (Y) PAHs
- (Z) Pentachlorophenol
- (AA) Phthalates
- (BB) Picloram
- (CC) Polychlorinated biphenyls (PCBs)- Screen
- (DD) Simazine
- (EE) 2,3,7,8 TCDD (Dioxin)
- (FF) 2,4,5-TP (Silvex)
- (GG) Total Trihalomethanes (TTHM)
- (HH) Maximum Trihalomethane Potential (MTP)
- (II) Haloacetic acids

Category VI - Volatile Organic Contaminants (VOC).

- (A) Benzene
- (B) Carbon Tetrachloride
- (C) Chlorobenzene
- (D) p-Dichlorobenzene
- (E) o-Dichlorobenzene
- (F) 1,2-Dichloroethane
- (G) 1,1-Dichloroethylene
- (H) c-1,2-Dichloroethylene
- (I) t-1,2-Dichloroethylene
- (J) Dichloromethane (Methylene chloride)
- (K) 1,2-Dichloropropane

- (L) Ethylbenzene
- (M) Styrene
- (N) Tetrachloroethylene
- (O) Toluene
- (P) 1,2,4-Trichlorobenzene
- (Q) 1,1,1-Trichloroethane
- (R) 1,1,2-Trichloroethane
- (S) Trichloroethylene
- (T) Vinyl chloride
- (U) Xylene - Total

Category VII - Radionuclides

- (A) Gross alpha
- (B) Radium 226/228
- (C) Uranium
- (D) Gross beta
- (E) Tritium
- (F) Strontium 90

[OAR Docket #04-1260; filed 8-16-04]

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TITLE 265. STATE FIRE MARSHAL COMMISSION CHAPTER 25. ADOPTED NATIONAL CODES AND STANDARDS

[OAR Docket #04-1259]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

265:25-1-3. Incorporated national codes and standards [AMENDED]

AUTHORITY:

74 O.S. §§ 324.7 and 324.9; State Fire Marshal Commission

DATES:

Adoption:

July 9, 2004

Approved by Governor:

July 14th, 2004

Effective:

Immediately upon the Governor's approval or July 14, 2004, whichever is later.

Expiration:

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

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

International Building Code, 2003 Edition

Incorporating rules:

265:25-1-3

Availability:

8:00 a.m. to 4:30 p.m., Monday through Friday, Office of the State Fire Marshal, 2401 NW 23rd Street, Suite 4, Oklahoma City, OK

FINDING OF EMERGENCY:

Due to the late passing in the Legislative year of HB 2674 giving the Agency statutory authority to charge fees, budget reductions and the reductions of agency personnel.

ANALYSIS:

Pursuant 74 O.S. §§ 324.7 and 324.9 these rules adopting the national codes and standards of the International Building Code, 2003 Edition, and authorizes the Agency to assess fees for services rendered.

CONTACT PERSON:

Jerry Pruner (405) 522-5010

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR JULY 14, 2004, WHICHEVER IS LATER:

265:25-1-3. Incorporated national codes and standards

The following national codes and standards are incorporated by reference:

(1) ~~BOCA Basic~~ **International Building Code, 1999 2003 Edition, with the following modifications:**

(A) Section ~~112.2.1~~ 108.1 Fee Schedule: Add ~~new~~ additional wording to read as follows: A fee for each plan examination, building permit, and inspection shall be paid in accordance with the following schedule:

(i) Exemptions: the following entities are exempt from the fees associated with this section, except for archiving fees: ~~Agencies of the State of Oklahoma, School Boards and Districts, Detention centers that require an inspection are exempt inspection fees~~ and Fire Departments duly constituted and meeting the reporting requirements of the State Fire Marshal Agency.

(ii) Building Plan Review:

(I) Preliminary review (no permit issued) - ~~\$35.00~~ 55.00

(II) Review of plans submitted with an application for a building permit. 20% of total permit fee. (This fee is not refundable, but will be credited to the total permit fee, the remainder of which is due upon the issuance of a permit.

(iii) Alteration, Renovation, Repair:

(I) Minimum permit fee - ~~\$15.00~~ 25.00

(II) Rate per \$1,000 of project evaluation - ~~\$2.20~~ plus \$.08 square foot

(III) Demolition fee, first story, per square foot - ~~\$.05~~ additional stories, each - \$5.00

(IV) Required annual inspections, per building - ~~\$15.00~~ 20.00

(iv) New Construction: permit fees include the cost of a 50% and 100% on-site inspection and occupancy permit. Additional on-site inspection caused by failure to comply with applicable codes or deviation from approved plans will be billed at ~~\$27.00 per hour~~ the actual cost to the agency ~~including mileage.~~

(I) Minimum permit fee - ~~\$15.00~~ 25.00

(II) Rates where total exceeds the minimum

a. warehouse buildings, canopies: per square foot up to 50,000 - ~~\$.08~~ .10; per square foot over 50,000 - \$.05

b. commercial buildings, office buildings, ~~and office spaces~~ occupancy: per square foot up to 50,000 - ~~\$.08~~ \$.10 per square foot over 50,000 - \$.05

c. industrial buildings: per square foot up to 50,000 - \$.05; per square foot over 50,000 - ~~\$.02~~ .03

d. sprinkler plan review only: per square foot - ~~\$.008~~ .010

e. fire alarm plan review only: per square foot - ~~\$.008~~ .010

(v) Emergency Plan Review: Emergency request for short notice or emergency plan reviews will be billed at the actual cost of the employee involved in addition to other permit costs.

(vi) Above Ground Fuel Storage:

(I) Inspection and permit fee - ~~\$25.00~~ 100.00

(vii) Fireworks:

(I) Class B Fireworks display permit - ~~\$25.00~~ 75.00

- (II) Class C pyrotechnic display permit -~~\$25.00~~ 150.00
- (viii) Change of Use of Existing Building
 - (I) Analysis - \$35.00 \$27.00 per hour.
- (ix) Required plan Review Fees: Fees may be waved or reduced due to plan review charges by local authority.
- (x) Marinas:
 - (I) On site plan review of facility will be billed at \$27.00 per hour. Building Permit - \$35.00 55.00
- (xi) Fast-Track plan review fee schedule
 - (I) Definition of Fast-Track review; A plan review which disrupts normal plan review schedules, and requires review in 72 hours or less. Note: If plans cannot be reviewed in 72 hours or less, notification will be given, but fee schedule still applies.
 - a. Review time - ~~\$18.00 x 1.5 =~~ \$27.00 per hour
 - (II) Check shall be made payable to: Of-
fice of the State Fire Marshal
- (xii) Electrical Generation Facility Plan Re-
view:
 - (I) Each turbine - \$500.00
 - (II) Each site inspected - \$54.00
 - (III) Fire Protection review justification -
\$500.00
 - (IV) Fire Protection Engineer review - 40
hours x \$35.00 = \$1,400.00
- (xiii) Explosive Storage Facility: Inspection and
permit fee is a minimum of \$108.00 per magazine
- (B) Add new wording into paragraph "~~116.4~~ 113.4
Violation penalties" Any person who shall violate a
provision of this code or shall fail to comply with any
of the requirements thereof or shall erect, construct,
alter or repair a building or structure in violation of an
approved plan or directive of the code official, or of a
permit or certificate issued under the provision of this
code, shall be subject to an administrative fine as per
State Statute 74 O.S., 1991 Section 324.9 as amended
July 1, 1999. The first repeat notice of violation or
failure to provide a plan of correction a person may be
subject to a warning or a fine of ~~\$50.00~~ 100.00. Sec-
ond violation notice ~~\$75.00~~ 150.00, third violation
notice ~~\$100.00~~ 200.00. Also, each day that a viola-
tion continues after due notice had been served shall
be deemed a separate offense.
- (C) Add new paragraph ~~119.7~~ 112.4 "Procedures
for Appeal of Condemnation," Procedure to be fol-
lowed when appealing condemnation shall be those
outlined 74 O. S. Subsection 317.
- (D) ~~Eliminate Section 121.2 in its entirety and
substitute in its place the following: Section
121.2.1112.3: Qualifications: Two (2) members
of the Board shall be licensed architects, One(1)
member shall be a licensed professional engineer
and two (2) members shall be building/fire officials~~

- ~~with a minimum of 2 years experience in building
code related work. Add Section 101.4.8 NFPA 101
2003 edition. The provisions of the NFPA 101, 2003
edition shall only apply when the AHJ approves
those provisions to be applicable. Where differences
occur between provisions of this code and NFPA
101, the provisions of this code shall apply.~~
- ~~(E) Section 305.2: Day Care Facilities: Day Care
facilities shall be constructed and protected in accor-
dance with the current adopted Edition of the Life
Safety Code, NFPA 101, 2000 Edition, Chapter 16 or
17 for new and existing facilities, respectively.~~
- ~~(F) Delete language in Section 31.3 requiring
Sprinkler and Exit requirements in Bed and Break-
fast establishments and substitute the language in
O.S. Supp. 1995, Title 74 Section 317.1.~~
- (2) **BOCA National International Fire Prevention
Code, 1999/2003 Edition, with the following modifica-
tions:**
 - (A) Adding new wording to Section ~~F 112.3~~ 109.3
to read as follows: Any person who shall violate a
provision of this code or shall fail to comply with any
of the requirements thereof or shall erect, construct,
alter or repair a building or structure in violation of an
approved plan or directive of the code official, or of a
permit or certificate issued under the provisions of
this code, shall be subject to an administrative cita-
tion per State Statute 74 O.S. 1991, Section 324.9 as
amended July 1, 1999. The first repeat notice of viola-
tion or failure to provide a plan of correction a person
may be subject to a warning or a fine of ~~\$50.00~~ 100.00.
Second violation notice ~~\$75.00~~ 150.00, third violation
notice ~~\$100.00~~ 200.00. Also, each day that a viola-
tion continues after due notice had been served shall
be deemed a separate offense.
 - (B) ~~Change Section F113.2.1 to read as follows:
Each member shall be a licensed professional engi-
neer or architect or a building or fire official with at
least two (20) years experience. Not more than two
members shall be from the same profession or occu-
pation. Section 111.4 adding new wording: Fine of
not less than \$50.00 or more than \$200.00.~~
 - (C) ~~Change Section F403.1 to read as follows:
General: Open burning shall be allowed without
prior notification to the Code Official subject to the
provisions of Delete Section 307. Follow Oklahoma
Statute Title 2 relating to unlawful burning. The Code
Official shall enforce the Oklahoma Statute Title 2,
Section 1301-206 concerning Emergency Drought
Conditions. See Section 116.4 Violation Penalties.~~
 - (D) ~~Add new Section F 406 to read: Throwing
flaming or glowing object or substance from vehicle.
Any person throwing a lit cigarette, cigar, match or
other flaming or glowing object or substance from
any vehicle on a public right of way shall be sub-
ject to administrative citations assessed as shown in
the National Fire Prevention Code, Section F 112.3.
Add following to 102.7 NFPA 101, 2003 Edition is~~

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allowed to used where approved by AHJ. Where differences occur between this code and NFPA 101, the provisions of this code shall apply, except approved by the AHJ.

~~(E) There shall be a minimum of two (2) fire exit drills per semester and follow NFPA 101 Life Safety Code 2000 Edition, Section 15.7.1.2.~~

~~(F) Change Section F 703.3 to read; records will be kept in accordance with 63 O.S. Section 176.~~

~~(G) Each record shall contain the following information:~~

- ~~(i) Date the drill was conducted~~
- ~~(ii) Time of day.~~
- ~~(iii) Weather conditions~~
- ~~(iv) Number of occupants evacuated.~~
- ~~(v) Total time for evacuation~~
- ~~(vi) Other information relevant to the drill.~~

~~(H) Change Section F750.3 to read: Records: A record of all fire exit drills shall be documented in writing and such records shall be preserved and made available to the State Fire Marshal or his agent upon request. Each record shall contain the following information:~~

- ~~(i) Date the drill was conducted~~
- ~~(ii) Time of day.~~
- ~~(iii) Weather conditions~~
- ~~(iv) Number of occupants evacuated.~~
- ~~(v) Total time for evacuation~~
- ~~(vi) Other information relevant to the drill.~~

~~(I) Delete Section F 3208.11.~~

~~(J) Delete in their entirety the following sections: (All have to do with having to obtain permits or conflicts with existing State Law)~~

- ~~(i) F403.3 through~~
- ~~(ii) F403.6;~~
- ~~(iii) F404.2~~
- ~~(iv) F601.5:~~

~~(K) Delete in their entirety Chapters 18 and 31.~~

~~(L) Delete Section 705.5.1 to read: Installation. All smoke detector installation shall comply with State Statute 74 O.S. 1991, Section 324.11A concerning installation of smoke detectors.~~

(3) **International Property Maintenance Code, 2000/2003 Edition**

(A) Delete Section 106.3.

~~(B) Eliminate Section 111.2 qualifications of the board of appeal in its entirety. Substitute in place 111.2 the following Qualifications: Two (2) members of the Board shall be licensed architects, one (1) member shall be a licensed professional engineer and two (2) members shall be building/fire officials with a minimum of 2 years experience. The Board shall be appointed by the Fire Marshal.~~

~~(C) Add new wording in Section 106.4 to read as follows: Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or shall erect, construct, alter or repair a building or structure in violation of an~~

approved plan or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be subject to an administrative fine-per State Statute 74 O.S. 1991, Section 324.9 as amended July 1, 1999. The first repeat notice of violation or failure to provide a plan of correction, a person may be subject to a warning, or a fine of ~~\$50.00~~ 100.00. Second violation continues after due notice has been served shall be deemed a separate offense.

~~(D) Delete Section 704 to read as follows: 704 Installation: All smoke detector installation shall comply with State Statute 74 O. S. 1991, Section 324.11A concerning installation of smoke detectors.~~

(4) NFPA #10 Portable Fire Extinguishers, 1998 Edition

(5) NFPA # 13 Installation of Sprinkler Systems 1999 Edition

(6) NFPA #13 D Installation of Sprinklers in One and Two-Family Dwellings, 1999 Edition

(7) NFPA # 13R Sprinkler Systems in Residential Occupancies up to and including Four Stories in Height, 1999 Edition

~~(8) NFPA # 25 the inspection, testing, and maintenance of water based extinguishing systems, 1998 Edition only the sections which are referenced in the BOCA National Fire Prevention Code, 1999 Edition and the 1999 Edition of NFPA #13.~~

~~(9) NFPA # 30 Flammable and Combustible Liquids Code, 2000 Edition~~

~~(10) NFPA # 30A Automotive and Marine Service Station Code, 2000 Edition~~

~~(11) NFPA #54 National Fuel Gas Code, 1999 Edition~~

~~(12) NFPA #72 National Fire Alarm Code, 1999 2002 Edition~~

~~(13) NFPA # 90A Air Conditioning and Ventilating Systems, 1999 Edition~~

~~(14) NFPA #96 Installation of Equipment of the removal of Smoke & grease-Laden Vapors from Commercial Cooking Equipment, 1998 2001 Edition~~

~~(15) NFPA #101 Life Safety Code, 2000 2003 Edition.~~

~~(16) Add new section 1-8 7 Violation penalties to read as follows: any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof, or shall erect, construct, alter or repair a building or structure in violation of an approved plan or directive of the code official, or of a permit or certificate issued under the provisions of this code shall be subject to an administrative citation per State Statute 74 O.S. 1991, Section 324.9 as amended July 1, 1999. The first repeat notice of violation or failure to provide a plan of correction a person may be subject to a warning or a fine of ~~\$50.00~~ 100.00. Second violation notice ~~\$75.00~~ 150.00, third violation notice ~~\$100.00~~ 200.00. Also, each day that a violation continues after due notice had been served shall be deemed a separate offense. Failure to comply with applicable codes, causing a re-inspection, will be billed at \$27.00 per hour.~~

- (4714) NFPA #850 Electric Generating Plants and High Voltage Direct Converter Stations, 2000 Edition
- (4815) NFPA #1123 Outdoor Display of Fireworks, 2000 Edition
- (4916) NFPA #1124 Manufacturing, transportation and Storage of Fireworks, 1998 Edition
- (2017) NFPA #1126 Use of Pyrotechnics before a Proximate Audience, 2001 Edition

[OAR Docket #04-1259; filed 8-12-04]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 75. CHILD WELFARE

[OAR Docket #04-1278]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 7. Foster Home Care
 Part 5. Eligibility and Payments
 340:75-7-52. [AMENDED]
 (Reference APA WF 04-15)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Section 7206 of Title 10 of the Oklahoma Statutes; and House Bill (HB) 2048.

DATES:

Adoption:

July 27, 2004

Approved by Governor:

August 9, 2004

Effective:

Upon Governor's approval or August 1, 2004 whichever is later.

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:

Emergency rulemaking approval is requested as the Oklahoma Department of Human Services (OKDHS) finds compelling public interest to preserve the health, safety, and welfare of abused and neglected children by modifying a rule that supports foster families in providing the best possible services to these children. HB 2048, effective July 1, 2004, sets forth additional funds to promote the health, safety, and welfare of children in OKDHS custody. The revised rule meets this mandate by moving the description of foster care rates to an OKDHS Appendix to provide a mechanism for rapid implementation of rate changes in the future.

ANALYSIS:

The revisions to Subchapter 7 of Chapter 75 are required as a result of funds appropriated pursuant to HB 2048 that became effective July 1, 2004. The rule revisions provide the flexibility to increase payments to foster resource families as specified in HB 2048. The revisions modify the rule that sets forth foster care payment rates. HB 2048 appropriates funds to provide a \$0.50 increase per child per day to foster care families. The rate increase improves the overall Child Welfare (CW) system by increasing funds that are utilized to provide clothing, room, board, and other essentials for children in the custody of Oklahoma Department of Human Services (OKDHS).

340:75-7-52 is revised to move specified foster care payment rates to OKDHS Appendix C-20, Children and Family Services Division Rates Schedule, which sets forth rate payments in correspondence to the child's age.

CONTACT PERSON:

Dena Thayer, Oklahoma Department of Human Services, 405-521-4326

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR, AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR AUGUST 1, 2004, WHICHEVER IS LATER:

SUBCHAPTER 7. FOSTER HOME CARE

PART 5. ELIGIBILITY AND PAYMENTS

340:75-7-52. Foster care contracts and rates of reimbursement

(a) **Foster care contracts.** The rules in OAC 340:75-7-52 and the provisions of a contract for services define the responsibilities of foster parents and the Oklahoma Department of Human Services (OKDHS) regarding the care of children in a foster home. Foster care contracts are signed when all conditions for approval are met, per OAC 340:75-7-18.

(1) Foster care contracts are perpetually renewed and considered in effect unless a specific action by one of the parties to the contract terminates the contract. Foster parents are eligible for foster care reimbursement effective the date the contract is signed. Kinship parents are eligible for foster care reimbursement effective the date the home is approved.

(2) Reimbursements are authorized for intervals of care provided to a child in foster care placed through OKDHS or a tribe with an approved Tribal State Agreement with OKDHS.

(3) Kinship families may be approved for expedited reimbursements, per OAC 340:75-7-24.

(4) Kinship families who meet the degree of relationship, per OAC 340:10-9-1, may file ~~apply~~ for assistance through Temporary Assistance for Needy Families (TANF) at the local OKDHS office pending foster home approval and entry into a contract, per OAC 340:75-7-52(a)(1) through (3) ~~and OAC 340:10-9.~~

(b) **Foster care reimbursement.** The foster care contract authorizes reimbursement to offset the cost of each child's care and a difficulty of care (DOC) adjustment to address the additional expense of caring for a child with extraordinary needs. The OKDHS Committee on Rates and Standards authorizes the amount of reimbursement available through the foster care reimbursement and the DOC adjustment, per OAC 340:75-7-53.

(1) Foster care payments correspond to the child's age: set out in OKDHS Appendix C-20, Children and Family Services Division Rates Schedule, as amended from time to time, as approved by the Commission for Human Services.

~~(A) birth through 5 years, the monthly rate is \$300 and the daily rate is \$10;~~

~~(B) 6 through 12 years, the monthly rate is \$360 and the daily rate is \$12; and~~

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- ~~(C) 13 years and older, the monthly rate is \$420 and the daily rate is \$14.~~
- (2) Foster care payments are provided to address the costs of room, board, clothing, and incidentals.
- (3) Foster parents receive a ~~monthly and quarterly~~ clothing allowance for each child, per OAC 340:75-13-45.
- (4) The medical expense of a child in foster care is covered through Medicaid, ~~if~~ when private insurance is not available to the child, per OAC 340:75-13.
- (5) Reimbursement received through the foster care contract is not considered income pursuant to Section 131 of Title 26 of the United States Code Annotated and the foster family does not receive Form 1099 from OKDHS at year's end. Foster parents should consult their own tax advisor for advice.
- (6) Foster care reimbursement and DOC rates are a fixed monthly amount.
- (7) When a partial month of foster care service is provided, reimbursement begins on the child's date of entry to the home and concludes on the day before the child's departure from the home. A prorated sum is paid based on the number of days of service provided multiplied by the daily rate, per ~~OAC 340:75-7-52(b)(1)~~ OKDHS Appendix C-20.
- (8) When a change in the child's age qualifies for a new rate, the new rate becomes effective on the first day of the month following the child's birthday.
- (9) When a child is out of the foster home for family reunification purposes or is absent without leave (AWOL) for up to seven consecutive days, the foster parent receives reimbursement if the child is expected to return to the foster home.
- (10) The foster parent is eligible for prorated foster care reimbursement and DOC payments when the child attends an Indian boarding school, Oklahoma School for the Deaf, Oklahoma School for the Blind, or a similar residential program and returns to the foster home for weekends or school vacations. When the child returns to the foster home for a summer vacation, the monthly rate is used.
- ~~(11) The standard rate includes room, board, clothing, care, and incidental expenses.~~
- ~~(1211)~~ The foster parent is eligible for foster care reimbursement and DOC payment for up to 20 days of each event of hospitalization for the child's treatment of health or mental health concerns when there is no evidence of foster parent misconduct contributing to the event.
- ~~(1312)~~ The foster care reimbursement is an automatic electronic filing system based on the child's placement episode in the KIDS system.
- ~~(1413)~~ A foster care contract is signed for approved Interstate Compact on the Placement of children (ICPC) foster families residing in another state providing care for children in OKDHS custody, per OAC 340:75-1-86. No foster care contract is signed for ICPC foster families living in Oklahoma caring for children in the custody of another state.
- (14) There is no reimbursement after the effective date of cancellation or termination of the contract.

(c) **Cancellation of the foster care contract.** Cancellation of the foster care contract occurs when:

- (1) the foster family fails to meet the terms and conditions of the contract. Cancellation of the contract results from:
- (A) a criminal felony conviction, per OAC 340:75-7-15(h)(1);
 - (B) the receipt of findings of the Oklahoma State Bureau of Investigation (OSBI) records search and Federal Bureau of Investigation (FBI) national criminal history records search when a child has been placed through kinship or in the home initially approved; or
 - (C) a serious and significant violation of the foster care contract, OKDHS rule, or law. Serious and significant violations include, but are not limited to, behaviors by the foster parent or other person in the foster home that place the child at significant risk of harm;
- (2) OKDHS closes a foster family home that no longer meets OKDHS requirements, per OAC 340:75-7-12; or
- (3) the foster parent fails to implement provisions of Form DCFS-115, Written Plan of Compliance, per OAC 340:75-7-94, designed to resolve conditions that present a risk to the child and do not conform with the requirements of the foster care contract or rules, per OAC 340:75-7-52.
- (d) **Termination of the foster care contract.** A foster parent requests termination of the foster care contract verbally or in writing. Verbal requests are witnessed whenever possible.
- (1) Contract termination occurs subsequent to a request by the foster family only if when there are no pending issues of concern.
- (2) When the relationship between the foster parents is dissolved, and the person who wishes to continue providing foster care services, per OAC 340:75-7-18, is not the primary foster parent, that foster parent signs a new foster care contract. Removal of the child from the home is not necessary during contract transition when the foster parent is determined fit and continued placement is in the child's best interests.

[OAR Docket #04-1278; filed 8-26-04]

TITLE 340. DEPARTMENT OF HUMAN SERVICES

CHAPTER 105. AGING SERVICES DIVISION

[OAR Docket #04-1277]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 10. Policies and Procedures Manual for Title III of the Older Americans Act of 1965, as Amended

Part 5. Area Agencies on Aging

340:105-10-41. [AMENDED]

340:105-10-43. [AMENDED]

Part 7. Program Standards for Services Funded Under Title III

340:105-10-72. [AMENDED]

Part 9. Fiscal and Administrative Policies for Area Agencies on Aging and Title III Projects

340:105-10-101. [AMENDED]

340:105-10-117. [AMENDED]

340:105-10-118. through 340:105-10-119. [REVOKED]

340:105-10-120. through 340:105-10-122. [AMENDED]

(Reference APA WF 04-13)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and the Older Americans Act, as amended.

DATES:

Adoption:

July 27, 2004

Approved by Governor:

August 9, 2004

Effective:

Upon Governor's approval or August 15, 2004 whichever is later.

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:

Emergency rulemaking approval is requested as the Oklahoma Department of Human Services (OKDHS) finds that compelling public interest requires revision of Aging Services Division rules to ensure provision of OAA services to older Oklahomans. These revisions affect the method in which AAAs advertise funds, provide services, and award grants. Since AAAs and their funded projects operate on the federal fiscal year (FFY), October 1 through September 30, they are already well into their time line for advertising funds and selecting grantees. In order to allow them to implement these changes during FFY 2005, emergency rulemaking is requested. If these changes are not implemented at the beginning of FFY 2005, it is anticipated that services to older Oklahomans statewide may be compromised.

ANALYSIS:

The revisions to Subchapters 3 and 5 of Chapter 110 update and clarify requirements for: (1) advertising availability of funds; (2) grantee staffing of Area Agencies on Aging (AAAs) and Title III projects, according to local need; (3) providing direct services; (4) monitoring the program and fiscal reports of Title III projects; and (5) developing personnel policies and procedures.

340:105-10-41 is revised to clarify that direct services are provided or prohibited based on the Older Americans Act and the State Plan on Aging.

340:105-10-43 is revised to clarify that the Area Agency on Aging (AAA) monitors and evaluates Title III projects except when the State Agency has agreed with the AAA to provide the service.

340:105-10-72 is revised to clarify that: (1) AAAs are the final authority on appropriate staffing patterns in the Title III projects; (2) site visits are limited to one per day per registered dietitian (RD) or nutrition consultant; (3) the RD verifies requirements are met by signing the monthly form; and (4) the RD provides nutrition education and counseling, as appropriate, to meal participants.

340:105-10-101 is revised to clarify: (1) procedures in the request for proposals (RFP) process, including directing the announcement of availability of funds to newspapers and existing and potential service providers known to the AAA in the planning and service area (PSA); and (2) when the AAA has authority to provide a direct service.

340:105-10-117 is revised to clarify the authority of the AAAs in recruiting, selecting, and advancing employees.

340:105-10-118 and 340:110-10-119 are revoked as they are superseded by amendments to other sections.

340:105-10-120 is revised to clarify that AAAs and Title III projects develop, document, and update job descriptions based on local need.

340:105-10-121 is revised to clarify that AAAs and Title III projects assign job descriptions and salaries according to local market value and state and federal limits.

340:105-10-122 is revised to update cross references and define public agency.

CONTACT PERSON:

Dena Thayer, Oklahoma Department of Human Services, 405-521-4326

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR, AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR AUGUST 15, 2004, WHICHEVER IS LATER:

SUBCHAPTER 10. POLICIES AND PROCEDURES MANUAL FOR TITLE III OF THE OLDER AMERICANS ACT OF 1965, AS AMENDED

PART 5. AREA AGENCIES ON AGING

340:105-10-41. Direct Title III direct services waivers

(a) **Policy.** ~~No Provisions under the Older Americans Act (OAA), including subsequent amendments, specify which Title III direct services are directly provided by the Area Agency on Aging (AAA), unless authorized as well as prohibited under the law. Direct services otherwise prohibited by OAA may be permitted by the State Agency if, in the judgment of the State Agency, provision of such services is:~~

- (1) necessary to ensure an adequate supply of such services;
- (2) related to the administrative functions of the Area Agency on Aging (AAA); or
- (3) more economical and of comparable quality ~~to the competing grantees.~~

(b) **Authority.** The authority for this Section is Section 307(a)(8) of the Older Americans Act of 1965, as amended.

(c) **Procedures.** The State Agency determines that one or more of the criteria listed in (a) of this Section are met for an AAA to provide direct services when the requirement:

- (1) necessary to ensure an adequate supply of services is considered met. The AAA can document that it has not received any proposals to deliver a service in all or a portion of the planning and service area, after the AAA has ~~twice~~ carried out the request for proposals (RFP) process in accordance with OAC 340:105-10-101;
- (2) services related to AAA administrative functions is considered met. Services consist of advocacy, assessment and screening, follow-up and evaluation, information and assistance, and placement. The State Plan on Aging:
 - (A) indicates all AAAs are allowed to directly provide information and assistance (I&A) services and outreach services; and
 - (B) names the AAAs allowed to directly provide case management services; or
- (3) more economical and of comparable quality is considered met. The AAA service grant application substantiates that, according to AAA standard RFP evaluation criteria, it proposes to provide a priority service that is more cost effective and of a comparable quality ~~comparable to the competing grantees.~~ The cost is calculated on a per unit of service basis.

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(d) **Cross references.** See OAC 340:105-10-40 and 340:105-10-101.

340:105-10-43. Monitoring and evaluation of Title III projects

(a) **Policy.** The Area Agency on Aging (AAA) ~~monitors and evaluate~~ evaluates all funded Title III projects ~~in order to assure that ensure~~ services are ~~being~~ provided in accordance with federal and state policy; and ~~to assure that the~~ objectives of the service grant or contract are ~~being~~ met.

(b) **Authority.** The authority for OAC 340:105-10-43 is ~~45 CFR Part 1321.65 and Section 1321.53(a) of Title 45 of the Code of Federal Regulations.~~

(c) **Procedures.** ~~The Area Agency will fulfill~~ Except on specific projects where the State Agency has agreed with the AAA to provide a service, the AAA fulfills its responsibility ~~of monitoring and evaluation of~~ to monitor and evaluate Title III projects by carrying out the ~~following activities described in this subsection. The AAA:~~

(1) ~~Developing~~ develops a policy and procedures manual for Title III projects ~~which that~~ includes all federal and state mandates;

(2) ~~Monitoring~~ monitors the program and fiscal reports of Title III projects;

(3) ~~Conducting~~ conducts quarterly on-site program assessments with each Title III project ~~which that~~ include evaluation of the ~~following extent to which:~~

(A) ~~The extent to which~~ the proposed service output, as outlined in the project grant or contract, is ~~being~~ met, ~~i.e., such as~~ numbers of persons served, units of each service provided, and expenditures by source and service;

(B) ~~The extent to which~~ each objective, and related action steps, are ~~being~~ completed by the targeted dates as indicated in the grant/ or contract;

(C) ~~The extent to which~~ provider responsibilities regarding general Title III service standards, outlined in OAC 340:105-10-51, ~~(General Title III service standards)~~ are ~~being~~ met;

(D) ~~The extent to which~~ service specific standards are being met; and

(E) ~~The extent to which~~ federal, state, and local laws and regulations, such as Civil Rights Act and Americans with Disabilities Act, are ~~being~~ followed; ~~e.g., Civil Rights laws, Americans With Disabilities Act, etc.;~~

(4) ~~Conducting~~ conducts semi-annual on-site fiscal assessments with each Title III project during the first year of operation, and annually thereafter if funding is continued. ~~(see OAC 340:105-10-114 through 340:105-10-116 for complete describe~~ rules on financial management, procurement, and property management standards for Title III projects);

(5) ~~Forwarding~~ forwards written results of all assessments and monitoring visits to projects in a timely fashion, with remedial actions and due dates for compliance outlined;

(6) ~~Following~~ follows up with projects on remedial action compliance; and

(7) ~~Utilizing~~ utilizes termination, suspension of funding, ~~and/ or other appropriate action with projects failing when a project fails~~ to achieve compliance with outlined requirements.

(d) **Cross references.** See OAC 340:105-10-31(a)(9), 340:105-10-36(c)(5)- through (8), 340:105-10-51, and 340:105-10-114 through 340:105-10-116.

PART 7. PROGRAM STANDARDS FOR SERVICES FUNDED UNDER TITLE III

340:105-10-72. Congregate meals project staffing requirements

(a) **Policy.** Each congregate meals project maintains sufficient staff to carry out the required service activities.

(b) **Authority.** The authority for this Section is Part 1321.11 of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** The congregate meals project is required to:

(1) employ a full-time director who is empowered with the necessary authority to conduct the daily management and administrative functions of the project;

(2) obtain the services of a licensed registered dietitian (RD) to provide nutrition consultation. The RD is an employee or independent consultant hired by the project or the Area Agency on Aging (AAA). A paid caterer is not acceptable in this position. Where feasible, the RD coordinates with a nutrition consultant, such as a dietetic student, person with a Bachelor's bachelor of Science science degree in nutrition, or certified dietary manager. ~~The RD signs off on all nutrition education, in service training, and Form SUOA S 74, Dietary Consultant's Report.~~ If the RD coordinates with a nutrition consultant, the RD visits every site a minimum of every other month. ~~The RD verifies by signature on the monthly Form SUOA-S-74, Dietary Consultant's Report, the monthly consultation includes requirements, including:~~

(A) ~~spending a minimum of five hours on site per month per kitchen. Drive time does not count in the five hour total. A minimum of three hours on site per month per satellite site. Drive time does not count in the three hour total. Site limiting site visits are limited to one site visit per day per RD or nutrition consultant;~~

(B) monitoring food service to include measurement of food temperatures and portion sizes, and assessment of food quality and adherence to contract specifications;

(C) training staff and volunteers in areas of food service management, nutrition, and sanitation;

(D) assessing participant satisfaction and preferences;

(E) reviewing menu and commodity utilization;

(F) coordinating nutrition education programs;

(G) providing educational—handouts nutrition education and counseling, when appropriate, to homebound meal participants; and

(H) monitoring perpetual inventory;

(I) documenting site recommendations for improvement;

(J) documenting on the date of the site visit the number of:

- (i) reservations;
- (ii) meals prepared;
- (iii) meals served; and
- (iv) leftovers; and

(~~H~~K) providing participants whose nutritional score is six or more on Form AG-2-A, Part I, Older Americans Act Assessment, page 3, Determine Your Nutritional Health, with individual consultation for:

- (i) congregate meal participants, upon participant's approval; and
- (ii) homebound meal participants, where feasible and upon participant's approval;

(3) provide quarterly nutrition consultation, which includes:

(A) assessing food preferences; and

(B) preparing menus and documenting nutrition analysis to meet one third recommended dietary allowance for each meal; and

(34) determine appropriate staffing patterns for each meal site in the project service area as specified in the AAA policy manual or Request for Proposal Application guide. AAAs are the final authority on appropriate staffing patterns in the Title III projects. The guidelines include:

(A) determining the maximum staff hours per site by adding all hours for all positions in a given site;

(B) determining the maximum salary cost per site by multiplying the hours in each position by the corresponding allowable salary on the Aging Services Division (ASD) Nutrition Salary Schedule. The maximum allowable salary as specified on the ASD Nutrition Salary Schedule may not be exceeded using Title III funds;

(C) adding the corresponding allowable salaries to arrive at the total allowable project labor cost; and

(D) adding the maximum staff hours for each site to determine total allowable project staff hours. The maximum hours in a site may exceed allowables on ASD Staffing Guidelines For Nutrition Sites but any deviations and the resulting cost increases may not cause total project labor costs to exceed total allowable project labor costs.

(d) **Cross references.** See OAC 340:105-10-50.1(a)(4) and (7), 340:105-10-51, 340:105-10-68 through 340:105-10-71, 340:105-10-73 through 340:105-10-80, and 340:105-10-86.

PART 9. FISCAL AND ADMINISTRATIVE POLICIES FOR AREA AGENCIES ON AGING AND TITLE III PROJECTS

340:105-10-101. Request for proposal procedures

(a) **Policy.** All Older Americans Act pass through funds are awarded in an open, competitive, and fair manner via the request for proposals (RFP) process. Awards are made to applicants whose proposals include all components of the service(s) outlined in the RFP and who best meet the specifications of the RFP. The Area Agency on Aging (AAA) board of directors is directly responsible for reviewing proposals and awarding funds. This responsibility may not be delegated. The board of directors may not award funds to the AAA or to another subdivision of the sponsoring agency under the auspices of the same board of directors. The board of directors may not award funds to board members or the agencies or organizations they represent. Awarding funds through the RFP process during the plan year is required when:

- (1) funds are allocated to the AAA at the beginning of the fiscal year;
- (2) there is significant expansion of a service(s) already funded;
- (3) funding a new service(s); or
- (4) funding of an existing service is transferred from a defunct or terminated grantee.

(b) **Authority.** The authority for this Section is Part 1321.11 of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** The requirements for implementing this Section are outlined in this subsection.

(1) To initiate RFP, the AAA:

(A) develops specifications for each service to be procured which clearly define the service and how units of service are measured. Such specifications include and make reference to general and service specific standards outlined in paragraph (7) of this subsection. The specifications also include the minimum units of services to be provided, the minimum unduplicated number to be served, and geographic service areas as appropriate;

(B) develops an RFP guide, grant application package, based on the State Agency standard format;

(C) submits a proposal guide to the State Agency for approval at least 30 days prior to the announcement of availability of funds as outlined in (1)(D) of this subsection;

(D) announces the availability of funds in the legal journal section of and documents the announcement in newspapers in the planning and service area (PSA), and concurrently sends a news release to the editor of at least three newspapers and to existing and potential service providers known to the AAA in the PSA;

(i) The announcement runs at least two times in daily papers or two weeks in weekly papers prior to the closing of the application period and in a sufficient number of papers to ensure complete coverage within the PSA.

(ii) The announcement begins at least 21 calendar days prior to the closing of the application period and is repeated at least once no less than five calendar days prior to the date of the proposers' conference.

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(iii) All announcements include:

(I) a listing of services for which funding is available and the geographic areas that must be covered for each service;

(II) the address at which service specifications and proposal guide may be obtained;

(III) the closing date and time for application submittal;

(IV) the name and telephone number of a person to contact for additional information; and

(V) the date, time, and location of the proposers' conference, and notification that attendance at the conference is required in order to be considered for funding;

(E) makes proposal guides available for pick up at the AAA office;

(F) mails copies of the proposal guide upon request;

(G) conducts a conference for proposers prior to the deadline for submitting applications and requires applicants to attend the conference in order to be considered for funding;

(H) provides other reasonable technical assistance to applicants who request assistance, in writing, no later than seven calendar days prior to the closing of the application period; and

(I) at the close of the application period, evaluates and rates all proposals according to standard criteria based on requirements of the proposal guide. The AAA disqualifies incomplete proposals from evaluation and funding.

(2) The AAA advisory council reviews the proposals and makes recommendations on funding to the AAA board of directors. All decisions related to funding recommendations are conducted in accordance with applicable state and federal conflict of interest laws. The advisory council review is conducted during a scheduled meeting with a quorum present.

(3) The AAA board of directors:

(A) or a subcommittee of the board, reviews all proposals and the recommendations of the AAA staff and advisory council;

(B) approves funding of proposals that best meet or exceed the service specifications and the requirements of the proposal guide. All decisions related to granting awards are made in accordance with applicable state and federal conflict of interest laws, and documented through signed resolutions and minutes of meetings. All decisions are acted on as a board with at least a quorum present at a meeting. The AAA board of directors may not delegate its responsibilities related to granting awards;

(C) issues notification of grant awards (NGAs) to applicants who are approved for funding.

(i) The AAA submits to the State Agency for approval all proposed funding awards to for-profit,

full-service providers at least 21 days prior to the scheduled issue of NGAs.

(ii) This rule does not apply to public or not-for-profit providers who subgrant or contract with a for-profit entity for a component(s) of the full Title III service, such as a for-profit food service; and

(D) provides an opportunity for appeal to applicants whose proposals for funding are denied, per OAC 340:105-10-102.

(4) If no complete proposals are submitted for a service(s) or if the AAA board of directors determines that no proposals for a service(s) meet the specifications of the RFP, the AAA, with State Agency approval, has the option of:

(~~A~~) reprogramming the funds and issuing a new RFP for a different service(s); or

(~~B~~) requesting authority to provide a direct service as provided in OAC 340:105-10-41; or

(~~C~~) revising the initial specifications for the same service(s) and reissuing a new RFP; and

(~~D~~) initiating community development activities to create a potential provider of the service(s) as specified in the RFP and, in the interim, requesting approval from the State Agency to temporarily provide the service as a direct service.

(d) **Cross references.** See OAC 340:105-10-40, 340:105-10-102, and 340:105-10-104(c)(7).

340:105-10-117. Employment policies and procedures

(a) **Policy.** Each Area Agency on Aging (AAA) and Title III project, or grantee, maintains a system of personnel administration approved by the grantor agency, and complies with all state and federal statutes.

(b) **Authority.** The authority for this Section is Sections 2 and 208 of the Inter-governmental Personnel Act of 1970 and Part 1321.11 of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** The procedures for implementing this Section require the grantee agency to:

(1) recruit, select, and advance employees on their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointments;

(A) The grantee agency promptly notifies the grantor agency of an AAA director or project director vacancy.

(B) The grantor agency monitors the grantee's ability to sustain the continuity of operation during any transition and ensures the vacancy is filled in a fair and equitable manner.

(C) The grantor agency may participate in the interview process for the AAA director or project director vacancy;

(2) provide equitable and adequate compensation to all employees;

(3) provide training to employees, as needed, to ensure quality performance;

- (4) retain employees on the basis of the adequacy of their performance, separating from employment employees whose inadequate performance cannot be corrected;
- (5) ensure fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religion, age, or disability and with proper regard for their privacy and constitutional rights as citizens. This fair treatment principle includes compliance with all federal equal employment opportunity and non-discrimination laws, such as Civil Rights Act and Americans with Disabilities Act;
- (6) protect employees from coercion for partisan political purposes and prohibit employees from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office;
- (7) provide reasonable grievance procedures to applicants and employees and post the procedures in a public place; and
- (8) develop personnel policies: that include:
 - (A) work schedules;
 - (B) leave;
 - (C) compensation for overtime;
 - (D) employee code of conduct;
 - (E) disciplinary procedures;
 - (F) travel and reimbursement;
 - (G) benefits, such as insurance and retirement;
 - (H) training;
 - (I) political activity;
 - (J) recruitment, appointment, and advancement;
 - (K) appeal procedures;
 - (L) lobbying prohibition;
 - (M) Civil Rights Act requirements;
 - (N) Rehabilitation Act and Americans with Disabilities Act requirements;
 - (O) nepotism regarding related employees and grantor or contractor prohibitions; and
 - (P) Family and Medical Leave Act of 1993.

(d) **Cross references.** See OAC 340:105-10-118 120 through 340:105-10-122.

340:105-10-118. Recruitment of Area Agency on Aging or Title III project personnel [REVOKED]

- (a) **Policy.** New or vacant Area Agency on Aging (AAA) or Title III project positions are filled using an open and equitable recruitment process which meets all state and federal statutes.
- (b) **Authority.** The authority for this Section is Part 1321.11 of Title 45 of the Code of Federal Regulations.
- (c) **Procedures.** Requirements for implementing this Section are outlined in (1) through (6):
 - (1) Current employees in the AAA or Title III project make application for new or vacant positions in the same manner as outside applicants, except in the case of an upgraded position.
 - (2) In the case of an upgraded position, the incumbent employee may fill the new position without going through the recruitment process if he or she meets the position qualifications.

- (3) Positions are advertised at least one weekend. Advertisement for professional positions are placed in at least one major metropolitan newspaper for at least one weekend.
- (4) **Recruitment announcements include:**
 - (A) position title;
 - (B) hours;
 - (C) education and experience requirements;
 - (D) salary range;
 - (E) Equal Opportunity Employer disclaimer; and
 - (F) closing date of announcement, as appropriate.

(5) ~~Positions are advertised at least one additional weekend if the initial announcement yields fewer than five qualified applicants for the position. This requirement may be waived by the grantor agency upon receipt of a written justification from the grantee.~~

(6) ~~The grantee makes demonstrable efforts to reach minority and disabled populations with position announcements, such as advertising in minority publications.~~

(d) **Cross references.** See OAC 340:105-10-117 and 340:105-10-119 through 340:105-10-122.

340:105-10-119. Selection of Area Agency on Aging and Title III project staff [REVOKED]

(a) **Policy.** The selection of Area Agency on Aging and Title III project employees is carried out in a fair and consistent manner.

(b) **Authority.** The authority for this Section is Part 1321.11 of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** The requirements for implementing this Section are outlined in (1) through (8):

- (1) ~~The grantee agency promptly notifies the grantor agency of all vacancies.~~
- (2) ~~The grantee has written screening criteria for narrowing the field of applicants to those who are qualified and who will be interviewed. The grantee maintains documentation that reflects why each applicant was eliminated from consideration.~~
- (3) ~~The grantee interviews at least five of the eligible applicants for each position. This requirement may be waived by the grantor agency upon receipt of written justification from the grantee.~~
- (4) ~~The grantee appoints a selection committee of at least three individuals. Advisory Council members and board of directors members may serve on the selection committee.~~
- (5) ~~Each member of the selection committee is provided with copies of the resume or applications of those applicants who are to be interviewed, for review prior to the interview process.~~
- (6) ~~The selection committee interviews each candidate using a standardized format, questions, and ranking system. The grantor agency has the option of approving the format, questions, and ranking system prior to the interview process.~~
- (7) ~~The grantee agency selects an applicant who ranks among the top three interviewed candidates.~~

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(8) The grantee agency may not underfill a position at a lower level within the same class except when the grantee agency demonstrates:

(A) there are not enough funds to support the higher level classification; or

(B) the agency is unable to recruit a qualified candidate for the vacant position at the higher classification level.

(d) ~~Cross references. See OAC 340:105-10-117 through 340:105-10-118, and 340:105-10-120 through 340:105-10-122.~~

340:105-10-120. Area Agency on Aging and Title III Project project position job descriptions (job specifications)

(a) ~~Policy. Area Agencies on Aging (AAAs) and Title III Projects shall projects utilize position job descriptions issued or approved by the State Agency grantee agency in the Area Plan or Request for Proposal Guide.~~

(b) ~~Authority. The authority for OAC 340:105-10-120 is 45 CFR Part 1321.11 of Title 45 of the Code of Federal Regulations.~~

(c) ~~Procedures. The procedures for implementing this Section are as follows: outlined in this subsection.~~

(1) ~~Area Agencies AAAs and Title III Projects will utilize State Agency issued position descriptions for selection, training and evaluation of staff projects develop their own job descriptions relevant to their local needs. Job descriptions meet minimum job descriptions set by the State Agency. Duties may be combined between multiple state job descriptions to meet local needs; and~~

(2) ~~For positions not included in standard State Agency descriptions, the Area Agency or Title III Project shall develop a proposed description and submit the description to the State Agency for approval at least 30 days prior to its proposed implementation date (or as part of a grant application, as appropriate) Except as otherwise specifically stated elsewhere for full-time AAA director, full-time nutrition project director, and 20 hours per week information and assistance specialist, AAAs and Title III projects determine the number of positions and types of positions based on local need.~~

(d) ~~Cross references. See OAC 340:105-10-117 through 340:105-10-119, 340:105-10-121, and 340:105-10-122.~~

340:105-10-121. Area Agency on Aging and Title III project salary schedules

(a) ~~Policy. Area Agencies on Aging (AAAs) and Title III projects utilize salary schedules issued or approved by the State Agency develop competent staff to perform programmatic and financial duties based on local needs and market value, provided persons with comparable job family descriptors (JFDs) may not be paid more than the midpoint of a JFD paid within the salary cap set by the State Agency. The total administration costs charged to the Title III grant may not exceed the maximum provided in federal law.~~

(b) ~~Authority. The authority for this Section is Part 1321.11 of Title 45 of the Code of Federal Regulations.~~

(c) ~~Procedures. The requirements for implementing this Section are outlined in (1) through (3) of this subsection.~~

(1) ~~The State Agency issues a standard salary schedule for AAA and selected Title III project positions.~~

(A) ~~The salary schedule provides a minimum and maximum salary rate.~~

(B) ~~The entrance salary for any position on the schedule is at the minimum salary, step one. The AAA or Title III project may submit a written request to raise the entrance salary for a particular position when the AAA or Title III project is able to document the AAA or Title III project is unable to recruit qualified candidates, or when a prospective employee has unusually high qualifications. Such special entrance rates may not exceed the third step of the salary schedule.~~

(C) ~~A current employee may be hired to a different position. When the employee accepts a position in:~~

(i) ~~the same grade, the salary is the employee's current step before the transfer;~~

(ii) ~~a higher grade, the salary is the closest step on the salary schedule to the employee's current step before the transfer plus one step. If the position transfer results in an increase above one step, the third step of the salary schedule may not be exceeded; or~~

(iii) ~~a lower grade, the salary is the step where the employee's current salary before the transfer is not exceeded. The third step of the salary schedule may not be exceeded.~~

(D) ~~Salary advancements of one step annually may be paid from grant funds on employment anniversary dates and at 12 month intervals thereafter. Salary advancements are based on acceptable work performance, as evidenced by continued employment with the AAA or Title III project. The grantor or grantee agency may disapprove salary advancements due to funding limitations or uncertain allocation levels.~~

(E) ~~Longevity payments may be made to all AAA and Title III project employees who have two or more years continuous service and work at least 86 hours per month. Longevity is paid in the month following the employee's annual employment anniversary date, in a lump sum, beginning with anniversary dates of October 1, 1988. Employees who terminate their employment before their anniversary date receive the pro rata portion of their budgeted longevity payment for the year. Payment is based upon the number of years of service according to the State Longevity Pay Schedule for Area Agencies on Aging and Projects.~~

(F) ~~The grantee agency may pay AAA or Title III project staff at rates higher than the rates allowed under the State Agency issued salary schedule. Any amount paid by the grantee agency above the allowed rate is entirely at the expense of the sponsoring~~

agency, and is not considered an allowable local match for grant funds.

(2) AAAs and Title III projects utilize State Agency issued salary schedules for preparation of budgets in grant or contract applications and for hiring additional staff during the project year determine starting salary for positions based on local needs and market value, provided persons with comparable JFDs may not be paid more than the midpoint of the salary range paid by the State Agency for the JFD most like the job in question being done by the AAAs or Title III projects.

(3) For positions not included in the State Agency issued salary schedule, the AAA or Title III project develops a proposed salary with justification and submits the proposed salary to State Agency for approval.

(2) Salary advancements are based on acceptable work performance, as evidenced by continued employment with the AAA or Title III project. The AAA may disapprove salary advances of its grantees due to uncertain funding allocations or funding levels. The State Agency may disapprove salary advances of AAAs that it believes may cause the AAA to exceed the maximum administrative cost allowed in federal law.

(3) Longevity payments may be made to all AAA and Title III employees who have two or more years continuous service and work at least 86 hours per month. Longevity is paid in the month following the employee's annual employment anniversary date, in a lump sum, beginning with anniversary dates of October 1, 1988. Employees who terminate employment before their anniversary date receive the pro rata portion of their budgeted longevity payment for the year. Payment is based upon the number of years of service according to the State Longevity Pay Schedule for AAAs and Title III projects.

(d) **Cross references.** See OAC 340:105-10-117, through 340:105-10-120, and 340:105-10-122.

340:105-10-122. Fair labor practices for Area Agencies on Aging and Title III projects

(a) **Policy.** Area Agencies on Aging and Title III projects comply with fair labor practices as outlined in applicable state and federal statutes.

(b) **Authority.** The authority for this Section is Part 1321.11 of Title 45 and Part 553.20 of Title 29 of the Code of Federal Regulations.

(c) **Procedures.** The requirements for implementing this Section are outlined in (1) through (9) of this subsection.

(1) ~~Employees are~~ An employee is compensated for hours worked at ~~their~~ the appropriate wage unless ~~they are~~ the position is an exempt positions that include executive, administrative, or professional ~~positions~~ position.

(2) ~~Employees~~ An employee may not perform volunteer activities for ~~their~~ an employer that are the same or similar to ~~their~~ the employee's job duties. Such activities are compensated as hours worked.

(3) ~~Employers are~~ The employer is responsible for:

(A) assigning employee work hours and supervising employee start and end times; ~~Employers are responsible for and~~

(B) compensating the employee for all hours the supervisor assigns to the employee and has reasonable knowledge that the employee works.

(4) ~~Non-exempt employees~~ A non-exempt employee who ~~are is~~ is full-time ~~are is~~ is given at least a 30 minute uninterrupted break from compensated work time for a meal. ~~Employees are~~ An employee is offered a 15 minute break during compensated work time for every four hour period worked. Break time is considered compensated work time and may not be used for arriving late, leaving early, or extending the lunch period.

(5) ~~Non-exempt employees~~ A non-exempt employee of a public agency who ~~work works~~ works in excess of 40 hours within a seven day work period ~~are is~~ is compensated with one and one-half hours of compensatory time per hour of overtime or paid at a rate of one and one-half times ~~their~~ the hourly wage for each hour of overtime. A public agency is a state, political subdivision of a state, or interstate governmental agency.

(6) ~~Non-exempt employees~~ A non-exempt employee of a private agency who ~~work works~~ works in excess of 40 hours within a seven day work period ~~are is~~ is compensated with one and one-half hours of pay at a rate of one and one-half times ~~their~~ the hourly wage for each hour of overtime. A private agency may not replace overtime in one work week with compensatory time in another week.

(7) All overtime is approved in advance by the employee's supervisor. The supervisor may adjust the employee's regular work schedule to avoid having the employee work in excess of 40 hours in a seven day work period. Employee work shifts may exceed eight hours per day.

(8) Employers of public agencies require ~~employees~~ the employee to use compensatory time within 180 days, or pay the employee at the appropriate overtime rate.

(9) ~~Employees~~ An employee who ~~fail fails~~ fails to adhere to ~~their~~ the assigned working hours, ~~do does~~ does not keep accurate time sheets, or ~~claim claims~~ unauthorized overtime are is subject to disciplinary action by ~~their~~ the employer, which could result in ~~the~~ the termination of ~~their~~ the employment.

(10) Employers who base employees out of their own homes do not give out the employee's home telephone number to the general public. Arrangements are made to have a telephone number at a convenient location for the ~~worker~~ employee to take calls. An emergency response telephone number and procedure are established to avoid having persons contacting employees during non-working hours. ~~Employees report~~ The employee reports to their ~~the~~ the employer all contacts during non-working hours that are business related.

(d) **Cross references.** See OAC 340:105-10-117, through 340:105-10-120, and 340:105-10-121.

[OAR Docket #04-1277; filed 8-26-04]

Emergency Adoptions

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 110. LICENSING SERVICES

[OAR Docket #04-1276]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. Licensing Standards for Child Care Facilities
Part 1. Requirements for Child Care Centers
340:110-3-29. [AMENDED]
Part 2. Requirements for Part-Day Children's Programs
340:110-3-49.5. [AMENDED]
Part 5. Requirements for Family Child Care Homes and Large Family Child Care Homes
340:110-3-87. [AMENDED]
Part 9. Requirements for Residential Child Care Facilities
340:110-3-154.5. [AMENDED]
Part 14. Requirements for School-Age Programs
340:110-3-239. [AMENDED]
Subchapter 5. Requirements for Child-Placing Agencies
Part 5. Requirements for Foster Family Homes
340:110-5-57. [AMENDED]
340:110-5-60. [AMENDED]
(Reference APA WF 04-12)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Oklahoma Child Care Facilities Licensing Act, Sections 401 et seq. of Title 10 of the Oklahoma Statutes; and Senate Bill 1224.

DATES:

Adoption:

July 27, 2004

Approved by Governor:

August 9, 2004

Effective:

October 1, 2004

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:

Emergency rulemaking approval is requested as the Oklahoma Department of Human Services (OKDHS) finds that compelling public interest exists to comply with state law, and preserve the public health, safety, and well-being of children.

ANALYSIS:

The revisions to Subchapters 3 and 5 of Chapter 110 are a result of the passage of Senate Bill (SB) 1224, effective March 31, 2004, that mandates changes with regard to transportation of children and child passenger restraint systems. SB 1224 was passed to address child safety during transportation in a motor vehicle. According to the Oklahoma SAFE KIDS Coalition at the University of Oklahoma Medical Center, more than 20 children under six years of age die each year in motor vehicle crashes, and more than 1,100 children are injured permanently. The revisions comply with SB 1224 to allow licensing requirements to be consistent with state law regarding child care centers, part-day, school-age, family child care, residential child care, and child-placing agencies as it relates to foster homes to further protect children while they are transported by a licensed child care facility.

CONTACT PERSON:

Dena Thayer, Oklahoma Department of Human Services, 405-521-4326

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR, AS SET FORTH IN 75 O.S.,

SECTION 253(D), WITH A LATER EFFECTIVE DATE OF OCTOBER 1, 2004:

SUBCHAPTER 3. LICENSING STANDARDS FOR CHILD CARE FACILITIES

PART 1. REQUIREMENTS FOR CHILD CARE CENTERS

340:110-3-29. Transportation

(a) **Center responsibility.** When transportation, including field trips, is provided by paid staff or volunteers, all requirements regarding transportation are met.

(1) The vehicle and operator of a vehicle used to transport children are in compliance with all applicable state laws.

(2) Written permission from parents or guardian for transportation of their child is on file at the center.

(3) Parents receive prior notification of each field trip. Written parental permission is only required for participation in swimming and other potentially dangerous activities, in accordance with OAC 340:110-3-25.2(c)(5).

(4) Supervision of the children begins at the designated pick-up time.

(5) The driver is responsible for leaving the child only with the person or school designated by the parent. Written instructions and approval from the parent for such a plan is required.

(b) **Driver qualifications.** All drivers, including volunteers:

(1) are at least 18 years old and have an operator's license of the type appropriate for the vehicle that is valid in the driver's state of residence; and

(2) have no conviction of driving under the influence of alcohol or drugs or other impaired driving offense within the last three years.

(c) **Staff-child ratios.** ~~Staff child ratios are listed in this subsection.~~

(1) When transporting children who are younger than four years of age, proper staff-child ratios are maintained without counting the driver. ~~However, centers~~ Centers with only one staff person, or who transport one or two children, may provide transportation locally without a second staff person.

(2) For children four years old and older, the driver may be counted toward meeting the staff-child ratio.

(d) **Procedure.** Requirements pertaining to transportation procedure are listed in this subsection.

(1) A schedule showing accurate route and itinerary is planned and kept at the center to show approximately where the vehicle is at all times. If the vehicle is equipped with a mobile communication system, route information is not required.

(2) The driver is provided with:

(A) a copy of the scheduled route;

(B) the name, address, and telephone number of the child care center;

- (C) names of children being transported; and
- (D) a method to contact the children's parents in case of an emergency.
- (3) Safe conduct to and from all vehicles and safe off-street loading space is provided to protect children from:
 - (A) backing vehicles;
 - (B) ~~from~~ being between vehicles; and
 - (C) ~~from~~ all traffic hazards.
- (4) Attendance is checked each time children board and exit the vehicle.
- (5) Children are not permitted to ride more than 60 minutes one way. Exceptions for a special field trip may be allowed, but these exceptions are infrequent, and allowance is made for rest and stretch stops during the trip.
- (6) Children remain seated while the vehicle is in motion, and no part of a child's body extends from windows.
- (7) Vehicles containing children are never left unattended.
- (8) The use of tobacco products is prohibited while children are ~~being~~ transported.
- (e) **Passenger restraints.** Children who are ~~being~~ transported in a passenger car, stationwagon, van, bus, or truck are properly secured in a child passenger restraint system (car seat) or individual seat belt. Buses with a capacity of ten or more passengers that meet state and federal requirements for school buses are exempt from this requirement.
 - (1) ~~When transported in a seat equipped with a shoulder belt, children who have not entered kindergarten and weigh less than 60 pounds are properly secured in a child passenger restraint system, such as a car seat or booster seat. Children who have entered kindergarten and older are protected by use of a car seat, booster seat, or individual seat belt transported in compliance with applicable state law. [47 O.S. § 11-1112]~~
 - (2) The car seat is:
 - (A) federally approved;
 - (B) installed according to the manufacturer's instructions;
 - (C) appropriate to the height, weight, and physical condition of the child, according to the manufacturer's instructions; and
 - (D) properly maintained.
 - (3) Each seat belt is properly anchored to the vehicle and fits snugly across ~~children's~~ the child's hips or securely anchors the car seat.
 - (4) All adult passengers, except those in a full-size school bus, and the driver are properly secured by seat belts unless the driver or passenger has written verification from a doctor licensed in Oklahoma that the individual is unable to use a seat belt for medical reasons.
 - (5) Children 12 years of age and younger or under five feet in height are prohibited from sitting in the front seat of a passenger vehicle.
- (f) **Vehicle requirements.** Any vehicle used to transport children complies with the requirements listed in this subsection.

- (1) The vehicle's maximum seating capacity is not exceeded. Maximum seating capacity of the vehicle is based on the manufacturer's designated seating capacity for children or on a minimum of 13 inches of seating space per child.
- (2) All passengers are able to sit comfortably in a stationary padded seat with a back that is properly anchored to the vehicle.
- (3) Vehicles used to transport children are maintained in a clean, safe, operating condition, free of hazardous objects or other nonessential items that could injure children.
- (4) Children are not transported in vehicles or parts of vehicles ~~which that~~ were not designed for the purpose of transporting people, ~~for example, such as~~ truck beds, campers, and trailers.
- (5) When transporting children, vehicles, with the exception of public transportation, are visibly marked with the name of the facility or sponsoring organization.
- (6) Each vehicle operated by a center for transportation of children has door locks. The driver is responsible for keeping the doors locked when the vehicle is moving.
- (7) The transporting vehicle is covered by medical and liability insurance as required by Oklahoma laws.
- (8) A vehicle used to transport children has an operable heater that is capable of maintaining a temperature of 50 degrees Fahrenheit in the vehicle, and a ventilation system.
- (9) A first aid kit described in OAC 340:110-3-27(h) is taken on each field trip.

PART 2. REQUIREMENTS FOR PART-DAY CHILDREN'S PROGRAMS

340:110-3-49.5. Transportation

- (a) **Program responsibility.** ~~Whenever~~ When transportation, including field trips, is provided by paid staff or volunteers, all requirements regarding transportation shall be met.
 - (1) The part-day children's program (program) shall ensure that the vehicle and operator of a vehicle used to transport children are in compliance with all applicable state laws.
 - (2) The program shall have on file written permission from parents or guardian for transportation of their child.
 - (3) Parents shall receive prior notification of each field trip. Written parental permission is only required for participation in swimming and other potentially dangerous activities, ~~[See also in accordance with OAC 340:110-3-49].~~
 - (4) The program shall be responsible for supervision of the children beginning at the designated pick-up time.
 - (5) The driver is responsible for leaving the child only at the designated drop-off point or with the person designated by the parent. The program shall obtain written instructions and approval from the parent for such a plan.
- (b) **Driver qualifications.** All drivers, including volunteers, shall be at least 18 years old and have an operator's license of

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the type appropriate for the vehicle that is valid in the driver's state of residence.

(c) **Staff-child ratios.** Staff-child ratios specified in this ~~paragraph~~ subsection shall be met.

(1) When transporting children ~~under younger than~~ four years of age, proper staff-child ratios shall be maintained without counting the driver. ~~However, local~~ Local transportation may be provided for children without a second staff person when:

- (A) a program has only one staff person;
- (B) ~~when~~ only one or two children ~~will be~~ are transported; or
- (C) no more than four children, who are at least two years of age, are ~~being~~ transported.

(2) For children four years old and ~~above~~ older, the driver may be counted toward meeting the staff-child ratio.

(d) **Procedure.** Requirements pertaining to transportation procedure contained in this subsection shall be met.

(1) A schedule showing accurate route and itinerary shall be planned and kept at the program to show approximately where the vehicle is at all times.

(2) The driver shall be provided with:

- (A) a copy of the scheduled route;
- (B) the name, address, and telephone number of the ~~part-day~~ program;
- (C) names of children being transported; and
- (D) a method to contact the children's parents in case of an emergency.

(3) Safe conduct to and from all vehicles and safe off-street loading space shall be provided so that the children are protected from:

- (A) backing vehicles;:
- (B) ~~from~~ being between vehicles;:
- (C) ~~from~~ all traffic hazards.

(4) Attendance shall be checked ~~whenever each time~~ children are boarding board and exiting exit the vehicle.

(5) Children shall not ride more than 60 minutes one way except for field trips.

(6) Children shall remain seated while the vehicle is in motion, and no part of a child's body may extend from windows.

(7) Vehicles containing children shall never be left unattended.

(8) The use of tobacco products is prohibited while children are ~~being~~ transported.

(e) **Passenger restraints.** Children ~~who are being~~ transported in a passenger car, ~~station wagon~~ stationwagon, van, bus, or truck shall be properly secured in a child passenger restraint system (car seat) or seat belt. ~~However, buses~~ Buses with a capacity of ~~10~~ ten or more passengers that meet state and federal requirements for school buses are exempt from this requirement.

(1) Children ~~under two years of age shall be secured in a car seat. However, a car seat is recommended for children up to four years of age~~ are transported in compliance with applicable state law. [47 O.S. § 11-1112]

(2) The car seat shall be:

- (A) federally approved;

(B) installed according to the manufacturer's instructions;

(C) appropriate to the height, weight, and physical condition of the child according to the manufacturer's instructions; and

(D) properly maintained.

(3) Children ~~under the age of~~ younger than four years shall be properly secured in a rear seat of the vehicle.

(4) Each seat belt shall be properly anchored to the vehicle and fit snugly across ~~children's~~ the child's hips.

(5) All adult passengers, except those in a full-size school bus, and the driver shall be properly secured by seat belts unless the driver or passenger has written verification from a doctor licensed in this state that ~~her~~ he or she is unable to use a seat belt for medical reasons.

(f) **Vehicle requirements.** All vehicles used to transport children shall meet the requirements contained in this subsection.

(1) A vehicle shall not be used to transport children in excess of the maximum seating capacity. ~~(The maximum~~ Maximum seating capacity of the vehicle is based on the manufacturer's designated seating capacity for children or on a minimum of 13 inches of seating space per child.)

(2) All passengers shall be able to sit comfortably in a stationary padded seat with a back that is properly anchored to the vehicle.

(3) Vehicles used to transport children shall be maintained in a clean, safe, operating condition, free of hazardous objects or other non-essential items which could injure children if thrown about as a result of a collision.

(4) Children shall not be transported in vehicles or parts of vehicles ~~which that~~ were not designed for the purpose of transporting people, e.g., such as truck beds, campers, and trailers.

(5) Each vehicle shall have door locks, ~~and doors~~ Doors shall be kept locked ~~whenever~~ when the vehicle is moving.

(6) The transporting vehicle shall be covered by medical and liability insurance as required by Oklahoma laws.

(7) A first aid kit as described in OAC 340:110-3-49.3(h) shall be taken on each field trip.

(8) In addition, vehicles owned by the program shall:

(A) be visibly marked with the name of the facility or sponsoring organization; and

(B) have an operable heater, capable of maintaining a temperature of 50 degrees ~~F.~~ Fahrenheit in the vehicle, and a ventilation system.

PART 5. REQUIREMENTS FOR FAMILY CHILD CARE HOMES AND LARGE FAMILY CHILD CARE HOMES

340:110-3-87. Transportation

(a) **Written permission.** The caregiver has written permission from the parent or guardian to transport children.

(b) **Verifications.** The person driving the vehicle is at least 18 years old and has a current driver's license, ~~and the~~ The

vehicle has a current inspection sticker and is covered by liability insurance.

(c) **Records.** The driver has the names of the children being transported and a method to contact the children's parents or guardians in case of an emergency.

(d) **Passenger restraints.** Children ~~under four years of age and weighing less than 60 pounds are properly secured in a child passenger restraint system, and children four years of age and older are protected by use of an individual car seat or seat belt transported in compliance with applicable state law.~~ [47 O.S. § 11-1112]

- (1) The car seat is:
 - (A) federally approved;
 - (B) installed according to the manufacturer's instructions;
 - (C) appropriate to the height, weight, and physical condition of the child, according to the manufacturer's instructions; and
 - (D) properly maintained.
- (2) Each seat belt is properly anchored to the vehicle and fits snugly across ~~children's~~ the child's hips or securely anchors car seats.

(e) **Supervision.** Children are not left unattended in the vehicle at any time.

PART 9. REQUIREMENTS FOR RESIDENTIAL CHILD CARE FACILITIES

340:110-3-154.5. Transportation

(a) **Vehicle requirements.** ~~Facilities Residential child care facilities (facilities)~~ facilities comply with the vehicle requirements described in (1) - ~~and~~ (2) of this subsection. A vehicle used for transportation of residents:

- (1) conforms to all applicable state motor vehicle laws and regulations; ~~and~~
- (2) ~~A vehicle used for transportation of residents is~~ maintained in a safe operating condition.

(b) **Driver requirements.** Facilities comply with driver requirements described in (1) - ~~and~~ (2) of this subsection. The driver of a vehicle used for the purpose of transporting:

- (1) possesses a valid driver's license appropriate for that type of vehicle; ~~and~~
- (2) ~~The driver~~ does not transport more persons than the manufacturer's designated capacity ~~of~~ for the vehicle.

(c) **Safety practices.** Facilities comply with the safety practices described in ~~(1) - (4)~~ of this subsection.

- (1) The interior of each vehicle is maintained in a clean, safe condition with clear passage to operable doors.
- (2) Residents who are transported in a passenger car, ~~station wagon~~ stationwagon, van, bus, or truck are properly secured in a child passenger restraint system or seat belt. The facility has policies to ~~assure~~ ensure the safety of residents involved in farm and ranch work. Buses with a capacity of ~~40~~ ten or more passengers that meet state and federal requirements for school buses are exempt from this requirement.

(A) Children ~~under four years of age and weighing less than 60 pounds are properly secured in a child passenger restraint system, and children four and five years of age are protected by use of a car seat or seat belt transported in compliance with applicable state law.~~ [47 O.S. § 11-1112]

- (B) The car seat is:
 - (i) federally approved;
 - (ii) installed according to the manufacturer's instructions;
 - (iii) appropriate to the height, weight, and physical condition of the child, according to the manufacturer's instructions; and
 - (iv) properly maintained.

(3) Each seat belt is properly anchored to the vehicle and fits snugly across the child's hips or securely anchors car seats.

(4) In accordance with state law, all adult passengers, except those in a full-size school bus, and the driver are properly secured by seat belts unless the driver or passenger has written verification from a doctor licensed in Oklahoma that the individual is unable to use a seat belt for medical reasons.

(5) Vehicles containing residents ~~under~~ younger than age 12 years are never left without adult supervision.

(d) **Transportation records.** Facilities maintain transportation records.

(1) The facility maintains on file the name of each driver who transports residents and a copy of a ~~the~~ valid driver's license for that person.

(2) ~~Insurance~~ In accordance with state law, insurance verification is kept in the vehicle used to transport residents ~~in accordance with state law.~~

(e) **Insurance.** If the facility's transportation services are provided by a private individual, a firm under contract, or by another arrangement, the facility maintains on file a copy of the individual's or firm's insurance coverage.

(f) **Emergency planning.** The facility has a plan for transporting residents in case of emergency.

PART 14. REQUIREMENTS FOR SCHOOL-AGE PROGRAMS

340:110-3-239. Transportation

(a) **Program responsibility.** When transportation, including field trips, is provided by paid staff or volunteers, all requirements regarding transportation for school-age programs (programs) are met.

- (1) The vehicle and operator or a vehicle used to transport children are in compliance with all applicable state laws.
- (2) Written permission from parents or guardian for transportation of their child is on file at the program.
- (3) Parents receive prior notification of each field trip. Written parental permission is only required for participation in swimming and other potentially dangerous activities, in accordance with OAC 340:110-3-234.

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- (4) Supervision of the children begins at the designated pick-up time.
 - (5) The driver is responsible for leaving the child only at the designated drop-off point or with the person designated by the parent. Written instructions and approval from the parent for such a plan is required.
- (b) **Driver qualifications.** All drivers, including volunteers:
- (1) are at least 18 years old;
 - (2) have an operator's license that is valid in the driver's state of residence and of the type appropriate for the vehicle; and
 - (3) have no conviction of driving under the influence of alcohol or drugs or other impaired driving offense within the last three years.
- (c) **Staff-child ratios.** The driver is counted toward meeting the 1:20 staff-child ratio when transporting children.
- (d) **Procedure.** ~~Requirements pertaining to transportation procedure are contained in this subsection.~~
- (1) A schedule showing accurate route and itinerary is planned and kept at the program to show approximately where the vehicle is at all times. When the vehicle is equipped with a mobile communication system, route information is not required.
 - (2) The driver is provided with:
 - (A) the name, address, and telephone number of the program;
 - (B) the names of the children being transported; and
 - (C) a method to contact the children's parents in case of an emergency.
 - (3) Safe conduct to and from all vehicles and safe off-street loading space is provided to protect children from:
 - (A) backing vehicles;:
 - (B) ~~from~~ being between vehicles;: and
 - (C) ~~from~~ all traffic hazards.
 - (4) Attendance is checked when children board and exit the vehicle.
 - (5) Children are not permitted to ride more than 60 minutes one way except for field trips.
 - (6) Children remain seated while the vehicle is in motion, and no part of a child's body extends from windows.
 - (7) Vehicles containing children are never left unattended.
 - (8) Use of tobacco products is prohibited while children are ~~being~~ transported.
- (e) **Passenger restraints.** Children ~~who~~ are ~~being~~ transported in a ~~passenger car, station wagon, van, bus, or truck~~ are ~~properly secured by a seat belt compliance with applicable state law.~~ [47 O.S. § 11-1112] Buses with a capacity of ten or more passengers that meet state and federal requirements for school buses are exempt from this requirement. Seat belts fit snugly across ~~children's~~ the child's hips and are:
- (1) federally approved;
 - (2) installed according to the manufacturer's instructions;

- (3) appropriate to the height, weight, and physical condition of the child according to the manufacturer's instructions;
 - (4) properly maintained; and
 - (5) properly anchored to the vehicle.
- (f) **Vehicle requirements.** Any vehicle used to transport children complies with the requirements listed in this subsection.
- (1) The vehicle's maximum seating capacity is not exceeded. Maximum seating capacity of the vehicle is based on the manufacturer's designated seating capacity for children or on a minimum of 13 inches of seating space per child.
 - (2) All passengers are able to sit comfortably in a stationary padded seat with a back that is properly anchored to the vehicle.
 - (3) Vehicles used to transport children are maintained in a clean, safe, operating condition, free of hazardous objects or other nonessential items that could injure children.
 - (4) Children are not transported in vehicles or parts of vehicles ~~which that~~ were not designed for the purpose of transporting people, ~~for example,~~ such as truck beds, campers, or trailers.
 - (5) When transporting children, vehicles, with the exception of public transportation, are visibly marked with the name of the ~~facility~~ program or sponsoring organization.
 - (6) Each vehicle operated by a program for transportation of children has door locks. The driver is responsible for keeping the doors locked when the vehicle is moving.
 - (7) The transporting vehicle is covered by medical and liability insurance as required by Oklahoma law.
 - (8) A vehicle used to transport children has an operable heater, capable of maintaining a temperature of 50 degrees ~~F.~~ Fahrenheit in the vehicle, and a ventilation system.
 - (9) A first aid kit, in accordance ~~in~~ with OAC 340:110-3-237(h), is taken on each field trip.

SUBCHAPTER 5. REQUIREMENTS FOR CHILD-PLACING AGENCIES

PART 5. REQUIREMENTS FOR FOSTER FAMILY HOMES

340:110-5-57. Requirements for child-placing agencies

- (a) **Agency responsibility.** A licensed child-placing agency (agency) retains legal responsibility for supervision, decision-making, and ensuring continuity of care, ~~and~~ The agency is responsible for certification of foster family homes to Division of Child Care (DCC) Licensing, on forms provided by the Oklahoma Department of Human Services (OKDHS) ~~which~~ that verify that they meet minimum requirements.
- (1) **Criminal history investigations.** The agency shall conduct a criminal history investigation through the Oklahoma State Bureau of Investigation (~~O.S.B.I.~~ OSBI) for each member of the foster family who is 18

years of age or older. ~~Also see in accordance with OAC 340:110-5-57(b)(2)(F).~~

(2) **Certification.** A copy of the certification is maintained in the foster family file.

(A) Certification of any foster family home applies only to the location of the residence at the time the home study is made.

(B) If the family moves, the agency shall certify the new location.

(3) **Policy.** The agency shall provide foster parents with agency policy relative to foster care.

(4) **Medical services.** The agency shall ensure that foster children receive appropriate medical services.

(5) **Case planning.** The agency is responsible for case planning.

(6) **Supervision.** The agency shall provide supervision at least once a month to each foster child, which includes private visits with the foster child and on-site visits to the home, to assess the continued suitability of the foster home environment.

(7) **Written agreement.** The agency shall have a written agreement with each foster family, and both the agency and foster parents shall have a copy of the agreement. The agreement includes:

(A) the financial agreement, if applicable, between the agency and the foster home;

(B) a statement that the foster home will not accept a non-relative child from any source other than through the child-placing agency without the approval of the certifying agency or provide child care on a regular basis;

(C) the agency's right to remove a foster child at its discretion;

(D) a statement that the foster child shall be discharged from foster care only with the consent of the agency;

(E) a statement that visitation by the child's parents or relatives shall be approved by the agency;

(F) agreements regarding absences of the child from the home, including respite care, as per agency policy;

(G) a statement from the foster parents agreeing to cooperate with agency staff in evaluating the foster home and in the ~~on-going~~ ongoing supervision of the foster home; and

(H) foster parents' agreement to contact the agency if a household member is alleged to have committed an act described in OAC 340:110-5-8(c)(6).

(8) **Grievance policy and procedure.** The agency shall have grievance policy and procedure for foster parents and children.

(b) **Foster family home certification.** Certification of the foster family home includes written documentation of:

(1) application for foster home certification which includes prior child care experience with other agencies; and

(2) documentation of:

(A) an initial tuberculin skin test, or chest x-ray if appropriate, of all household members;

(B) appropriate immunizations for the foster parents' children; ~~and~~

(C) a statement from a licensed physician certifying that all members of the household have had a physical examination by a licensed physician within one year prior to application and verifying that they are in good health and do not have a condition that would interfere with their ability to care for children;

(D) three non-relative written references who have knowledge of family functioning;

(E) a foster home study which shall be completed and current before the home is approved; and

(F) a criminal history investigation conducted by the ~~O.S.B.I.~~ OSBI for each household member who is 18 years of age or older. ~~Also see per OAC 340:110-5-57(a)(1).~~

(c) **Foster home study.** The agency shall prepare a written home study before approving a foster family home and prior to placement of a foster child in that home and at a minimum contain information listed in (1) - through (18) of this subsection. ~~Additionally, the~~ The home study shall be updated annually to include any significant change.

(1) **Interviews and home visits.** Interviews and home visits shall include documentation of at least:

(A) one separate interview with each parent, school-age child, and any other household member;

(B) one joint interview; and

(C) a home visit.

(2) **Household composition.** Information regarding household composition shall include each person residing in the home.

(3) **Criminal history investigation.** A criminal history investigation shall be conducted by the ~~O.S.B.I.~~ OSBI on any household member who is 18 years of age or older prior to initial approval of the home and when a new household member, age 18 and older, moves into the home.

(4) **Foster child preferred.** The foster home study shall include statements from the applicants regarding age, gender, and special needs of the foster child preferred.

(5) **Motivation, attitudes, and expectations.** The foster home study shall include motivation and attitudes toward foster care and expectations regarding foster children.

(6) **Health.** Health information shall include:

(A) the present physical health of each household member;

(B) the emotional stability of each household member;

(C) each household member's medical history; and

(D) any history of drug or alcohol use.

(7) **Family functioning.** The foster home study shall include information regarding family functioning.

(8) **Foster parents' marital status.** The foster home study shall include information regarding the marital status of the foster parents, such as present marital status,

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history of previous marriages or significant relationships, date of present marriage, and description of the marriage or relationship.

(9) **Employment.** The foster home study shall include the employment history of family members.

(10) **Financial information.** Financial information in the foster home study shall include documentation of annual income.

(11) **Education.** The study shall include information regarding the education of family members.

(12) **Religion.** Information regarding religion shall include the family's religious preference and practices.

(13) **Description of the home.** ~~Included in the~~ The description of the home ~~are~~ includes the:

(A) type of dwelling and a physical description; and

(B) location of the home and a description of the neighborhood.

(14) **Weapons and firearms.** The foster home study shall include the location of weapons and firearms, if any, and an explanation of safety precautions.

(15) **Transportation.** Information regarding transportation shall include:

(A) a statement regarding the family's means of transportation; and

(B) verification of:

(i) a valid driver's license for each family member who would will transport a foster child, current vehicle safety sticker;

(ii) license tag and;

(iii) insurance; and passenger restraint system(s)

(iv) a statement that all children and adults transported are in compliance with applicable state law. [47 O.S. § 11-1112]

(16) **Family history.** The study shall include information regarding family history, such as including:

(A) names of parents and siblings;

(B) dates and places of birth;

(C) physical health and mental stability;

(D) relationship with family members;

(E) social, cultural, and religious orientation; and

(F) information regarding their childhood including how they were disciplined.

(17) **Written references.** The foster home study shall include three written references from individuals who have information relative to the family's ability to provide foster care to include:

(A) name, address, and telephone number;

(B) when and how the individual became acquainted with the applicants;

(C) how often the person has contact with the family;

(D) information regarding family functioning; and

(E) opinions regarding personal qualities and ability to provide care for foster children.

(18) **Recommendation.** The foster home study shall include a recommendation regarding approval of the home.

The recommendation is signed and dated by the person who conducted the home study and the child placement supervisor. If the recommendation is to approve the foster home, the recommendation shall contain the type of foster child and number of foster children for which the home is approved.

(d) **Foster parent training.** The agency provides and documents that each foster parent has received at a minimum:

(1) six hours of orientation or preservice training prior to approval of the foster home or placement of a child and includes at a minimum:

(A) organizational structure of the agency;

(B) agency policy;

(C) program philosophy;

(D) confidentiality;

(E) mandatory reporting of child abuse;

(F) grievance process;

(G) emergency medical procedures; and

(H) fire and disaster plans;

(2) six additional hours of training within the first calendar year of certification ~~which that~~ is relevant to the needs of the child placed in their care and is documented by the agency to include but is not be limited to:

(A) normal child development;

(B) behavior management;

(C) separation and loss; and

(D) infection control and injury prevention; and

(3) 12 hours of training each calendar year thereafter ~~which that~~ is relevant to foster parents' roles and responsibilities and may include workshops and video presentations.

340:110-5-60. Foster home requirements

(a) **General requirements.** A foster home shall be clean, safe, and in good repair.

(1) The home and the exterior around the home ~~must~~ shall be free from objects, materials, and conditions ~~which~~ that constitute a danger to the children served.

(2) The foster home shall be accessible to or ~~be~~ able to arrange transportation to school, church, recreational and health facilities, and other community resources, as needed.

(3) The home shall comply with all applicable fire, health, and safety laws, ordinances, and regulations.

(b) **Safety requirements.** ~~The foster home shall meet the safety requirements contained in this subsection.~~

(1) Clear glass doors shall be plainly marked to avoid accidental impact. ~~However, foster Foster~~ homes providing infant care only are exempt from this requirement.

(2) Children shall be protected from hazardous materials, such as flammable liquids, and poisonous materials.

(3) All weapons and firearms shall be kept locked.

(4) The premises are free of illegal drugs and paraphernalia.

(5) When children are in care, smoking is prohibited inside the home and when transporting children.

~~(4) Stairways, inside and outside,~~ over four steps, inside and outside, shall have railings. Safety gates at

stairways shall be provided if infants and toddlers are in care. ~~However, foster Foster~~ homes providing infant care only are exempt from this requirement.

(57) Any play activity ~~which that~~ involves water shall be supervised constantly. Ponds or pools shall not be left accessible to children. Wading pools shall be emptied after each use.

(c) **Fire safety requirements.** ~~Each foster home shall meet the fire safety requirements contained in this subsection.~~

(1) A fire extinguisher rated for Class ABC fires shall be installed in the kitchen area.

(2) A foster home shall be equipped with at least one operable smoke detector in the vicinity of the sleeping areas or more as required by the child-placing agency.

(3) Each floor used as living space shall have at least two means of escape, at least one of which shall be a door leading to an unobstructed path to the outside. The second means of escape may be an unobstructed, operable window 20" X 24" minimum dimensions.

(4) All heating and air conditioning equipment shall be installed in accordance with state and local mechanical codes and manufacturer's instructions.

(d) **Health requirements.** Foster homes shall meet the health requirements contained in this subsection.

(1) Water supply, sewage disposal, and solid waste disposal shall meet local city ordinances and ~~state~~ Oklahoma Department of Environmental Quality regulations.

(2) Rooms used by children shall be well lighted and ventilated.

(3) Windows and doors used for ventilation shall be screened.

(4) The foster parents shall take measures to keep the house and grounds free of rodents, insects, and stray animals.

(5) One sink, one toilet, and one tub or shower to every six occupants living in the home shall be available.

(6) Each child shall be provided with individual combs, toothbrushes, wash cloths, and towels. There shall be individual eating and drinking utensils for each child.

(7) Linens shall be changed when needed.

(8) Animals or household pets are permitted provided that there is proof of annual rabies vaccinations for each animal. Pets or animals in the foster home, indoors or outdoors, shall be in good health, show no evidence of carrying disease, be friendly toward children, and present no threat to the health, safety, and well-being of children.

(e) **Sleeping arrangements.** A separate bed shall be provided for each child. ~~However, siblings under the age of~~ Siblings younger than six years old may share a bed if their history indicates that this is appropriate and the decision is made in consultation with the child-placing agency.

(1) It is preferable that no more than two children share a sleeping room. Consideration is given to related children according to age and emotional needs.

(2) Separate sleeping rooms shall be provided for children ~~over age~~ older than four years who are of different sex.

(3) Foster children over the age of one year shall not share sleeping quarters with adults in the household unless an emergency exists and the child-placing agency is informed.

(f) **Emergency plans.** Each foster home shall comply with the requirements pertaining to emergency plans contained in this subsection.

(1) There shall be a planned source of medical care available, such as a hospital emergency room, clinic, or physician known to the foster family.

(2) The home shall have a telephone with ~~the following~~ emergency numbers posted: ~~nearby for the~~ physician or clinic, fire department, police department, ambulance service, and substitute caregiver.

(3) The foster parent shall have an emergency evacuation plan in the event of fires, tornadoes, floods, ~~ete~~ and other emergencies.

(4) First aid procedures and supplies shall be readily available.

(5) The foster parent shall ensure that each child, as appropriate to age and developmental level, knows how to evacuate from the home in the event of a fire ~~and~~. The foster parent conducts periodic evacuation drills.

(g) **Equipment.** Equipment and furniture shall be safe for children, ~~and the~~. The foster home shall have child care equipment, such as bedding, high chairs, proper auto restraints, and toys appropriate for children placed in the home.

(h) **Transportation.** The foster family shall have emergency transportation available, ~~and when Foster~~ children are transported, ~~car seats or seat belts, in keeping with each child's size and age, shall be used~~ compliance with applicable state law. [47 O.S. § 11-1112]

(i) **Nutrition.** Each child ~~shall be assured of is~~ provided a balanced, nutritious, and developmentally appropriate diet.

(1) The food shall be wholesome in quality, ample in quantity, and of sufficient variety.

(2) Instructions for feeding infants, including the use of formula, recommended by the physician shall be followed.

[OAR Docket #04-1276; filed 8-26-04]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 110. LICENSING SERVICES**

[OAR Docket #04-1275]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:

Subchapter 3. Licensing Standards for Child Care Facilities
Part 5. Requirements for Family Child Care Homes and Large Family Child Care Homes
340:110-3-86. [AMENDED]

Part 9. Requirements for Residential Child Care Facilities
340:110-3-154.3. [AMENDED]
340:110-3-163. [AMENDED]

Subchapter 5. Requirements for Child-Placing Agencies
Part 5. Requirements for Foster Family Homes
340:110-5-60. [AMENDED]

(Reference APA WF 04-11)

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AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Oklahoma Child Care Facilities Licensing Act, Sections 401 et seq. of Title 10 of the Oklahoma Statutes; and Sections 1247 et seq. of Title 21 of the Oklahoma Statutes, Smoking in Public Places and Indoor Workplaces Act.

DATES:

Adoption:

July 27, 2004

Approve by Governor:

August 9, 2004

Effective:

October 1, 2004

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:

Emergency rulemaking approval is requested as the Oklahoma Department of Human Services (OKDHS) finds that compelling public interest exists to comply with state law, and preserve the public health, safety, and well-being of children.

ANALYSIS:

The revisions to Subchapters 3 and 5 of Chapter 110 are requested to bring family child care homes, residential facilities, and foster homes licensed under OKDHS child-placing requirements into compliance with the Smoking in Public Places and Indoor Workplaces Act, Sections 1247 et seq. of Title 21 of the Oklahoma Statutes, effective September 1, 2003. Recent OKDHS legal counsel opinion has determined that the Smoking in Public Places and Indoor Workplaces Act applies to all licensed child care facilities. This act was passed in an effort to reduce exposure to secondhand tobacco smoke inside public places and workplaces, and applies to OKDHS licensed child care centers, family child care homes, part-day, school-age, residential facilities, and foster homes licensed under child-placing requirements. Currently, only child care center, part-day, and school-age requirements are consistent with the law. These revisions ensure these programs have requirements that are consistent with the law and coordinate with OKDHS Children and Family Services Division rules regarding implementation. Proposed revisions regarding illegal drugs and paraphernalia further ensure the safety of children and their environment.

CONTACT PERSON:

Dena Thayer, Oklahoma Department of Human Services, 405-521-4326

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR, AS SET FORTH IN 75 O.S., SECTION 253(D), WITH A LATER EFFECTIVE DATE OF OCTOBER 1, 2004:

SUBCHAPTER 3. LICENSING STANDARDS FOR CHILD CARE FACILITIES

PART 5. REQUIREMENTS FOR FAMILY CHILD CARE HOMES AND LARGE FAMILY CHILD CARE HOMES

340:110-3-86. Home environment

(a) Physical conditions.

(1) **Accessibility to licensing staff.** All areas of the home are accessible to licensing staff.

(2) **Indoor space.** There is minimum indoor space available for child care of not less than 35 square feet per child exclusive of hallways, bathrooms, kitchen, and space not intended for children's use.

(3) **Maintenance.** The home is in a good state of repair and maintained in a clean and sanitary condition.

(4) **Toilet facilities.** The home has a sink with hot and cold running water and an operable toilet available for children's use.

(5) **Hazards.** The premises are free of hazards, indoor and out.

(A) All medicines, cleaning products, hazardous items, and smoking materials are inaccessible to children.

(B) The premises are free of illegal drugs and paraphernalia.

(BC) Clear glass doors are plainly marked at the child's eye level to avoid accidental impact.

(CD) All stairways with four or more steps have railings. Indoor stairways are made inaccessible when infants and toddlers are in care.

(6) **Weapons.** All weapons are stored unloaded in a locked container, cabinet, or closet. Ammunition is stored in a locked area separate from weapons.

(7) **Trampolines.** The use of trampolines by children in care is prohibited.

(8) **Lighting/ and ventilation.** Rooms used by children are well-lighted and ventilated.

(9) **Tobacco products.** When children are in care, smoking is prohibited inside the home and in the presence of children. Other tobacco products are not used in the presence of children or in areas designated for children's use. Parents are informed upon enrollment of the presence of smokers in the home.

(10) **Indoor temperature.** The indoor temperature is maintained between 65 and 85 degrees ~~F~~ Fahrenheit.

(11) **Screens.** When windows or doors are kept open, screens are maintained to minimize the entry of insects.

(12) **Outdoor play area.** There is an outdoor play area of not less than 75 square feet per child. This area must be hazard free, away from traffic, water, and other dangers. A fence beginning at ground level that is in good repair is required in most instances; ~~however, the~~ The Oklahoma Department of Human Services (OKDHS) may grant an exception when the safety of children can be assured.

(13) **Fire safety.** The home complies with all fire safety requirements. [OAC 340:110-3-97]

(14) **Water supply and waste disposal.** Water supply, sewage disposal, and solid waste disposal meet local city ordinances and Oklahoma Department of Environmental Quality ~~(DEQ)~~ regulations.

(15) **Water testing.** When not on a public water supply, water is tested initially for lead and annually for bacteria and nitrates.

(16) **Questionable conditions.** If the fire, safety, or health conditions are questionable, the appropriate state or local agency is requested to inspect the home.

(b) **Water safety.**

- (1) **Supervision.** Any play activity ~~which that~~ involves water is supervised constantly.
 - (2) **Accessibility of ponds, pools, and hot tubs.** No ponds, pools, or hot tubs are left accessible to children.
 - (3) **Fencing.** Pools are fenced to prevent unsupervised access. All doors and gates leading to the pool are locked. There is:
 - (A) a sturdy fence at least four feet high that cannot be easily climbed; or
 - (B) a fence which connects to the top of an above-ground pool and extends two feet above the pool.
 - (4) **Wading pools.** The use of portable wading pools is prohibited.
 - (5) **Swimming.** In accordance with state law, swimming pools used by the child care home are considered public bathing places and must be in compliance with the water quality, occupancy, and fencing standards in Design Standards and Operational Criteria for Public Bathing Places, ~~OSDH~~ Oklahoma State Department of Health Engineering Bulletin. This includes wading pools, ~~in-ground~~ inground pools, and above-ground pools. When children swim in a pool:
 - (A) the caregiver is at or in the water and is appropriately dressed to enter the water at any time; and
 - (B) a person with a Community Water Safety Certificate or a comparable certificate as approved by ~~DHS~~ OKDHS is in attendance at all times.
 - (6) **Restrictions.** ~~The restrictions which are complied with are contained in (A) (B) of this paragraph.~~
 - (A) The use of hot tubs by ~~child-care~~ children in care is prohibited. The hot tub must be equipped with a hard cover.
 - (B) Swimming and wading is not permitted at a lake, pond, or other body of water.
- (c) **Animals and household pets.** ~~The requirements pertaining to animals are listed in (1) (9) of this subsection.~~
- (1) Potential patrons are advised of the presence of animals.
 - (2) Animals are in good health, do not show evidence of carrying disease, are friendly toward children, and do not present a threat to the health, safety, and well-being of children.
 - (3) There is documentation of rabies vaccinations administered by a licensed veterinarian for dogs and cats kept on the premises.
 - (4) Ferrets, turtles, and any wild or dangerous animals are kept in an area that is inaccessible to children.
 - (5) Reptiles such as crocodiles, alligators, poisonous snakes and lizards, pythons, and boa constrictors are not kept on the premises.
 - (6) Animals are restricted from areas where food is ~~being~~ prepared or served and from children's sleeping surfaces.
 - (7) Animal litter boxes are not located in food preparation areas and are not easily accessible to children in other areas of the home.
 - (8) Outdoor play areas are cleaned of animal waste before children play outside.
 - (9) If an animal bites a child and the skin is broken, the child's parent is contacted immediately. The licensing representative and the county or state ~~health~~ health department of ~~health~~ are notified within 24 hours.
- (d) **Emergency procedures.** The caregiver is familiar with emergency procedures.
- (1) There is a planned source of medical care: such as a hospital emergency room, clinic, or other medical facility or physician acceptable to parents.
 - (2) The caregiver has emergency transportation available.
 - (3) The home has an operable telephone ~~with the~~ Emergency information posted next to the telephone includes:
 - (A) address of the home; ~~and the following emergency numbers posted:~~
 - (B) physician or clinic;
 - (C) fire department;
 - (D) police department;
 - (E) poison control, ~~(1-800-764-7661) 1-800-222-1222;~~ and ~~the~~
 - (F) substitute caregiver.
 - (4) First aid supplies ~~including are available in the home but made inaccessible to children.~~ Supplies include:
 - (A) a thermometer;
 - (B) disposable nonporous gloves;
 - (C) blunt-tipped scissors;
 - (D) tweezers;
 - (E) bandage tape;
 - (F) sterile gauze;
 - (G) non-medicated adhesive strips;
 - (H) current standard first aid text or equivalent first aid guide; and
 - (I) syrup of ipecac ~~are available in the home but made inaccessible to children,~~ which is Syrup of ipecac:
 - (Ai) ~~is~~ used as a vomiting agent only under direction of the poison control center or a physician;
 - (Bii) ~~is~~ not used before checking the expiration date to ensure it has not expired; ~~and~~
 - (Ciii) ~~is~~ labeled with the telephone number for the poison control center.
 - (5) Fire and tornado drills are conducted quarterly, ~~and a record kept of the drills is maintained at the home.~~

PART 9. REQUIREMENTS FOR RESIDENTIAL CHILD CARE FACILITIES

340:110-3-154.3. Health and medical services

- (a) **Medical plan.** The facility has an operational medical plan to meet the total medical needs of the residents.
- (b) **Physical examination.** Each resident receives a physical examination annually, or at more frequent intervals as recommended by a health care professional.

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(c) **Medical care.** Each resident receives proper medical and dental care. When a serious accident or illness occurs to a resident, the facility takes the necessary emergency action and notifies the parents or custodian immediately.

(d) **Immunizations.** Each resident is immunized against communicable diseases in accordance with the rules and regulations of the Oklahoma State Department of Health.

(e) **Medication.** The facility has current, written medication policy.

(1) On each shift, a staff member is designated to ensure compliance with the facility's medication policy.

(2) When any medication is administered to a resident, a precise record is kept that includes:

(A) the resident's name;

(B) the name of the medication;

(C) the dosage, date and time given, and the signature of the person who administered it;

(D) ~~The~~ the reason ~~for~~ the medication is ~~noted given;~~ and

(E) any unusual reaction ~~is documented.~~ The resident, the parents or custodian, and all staff members responsible for the resident are informed of the side effects of the medication prescribed for the resident.

(3) Prescription medications are administered by the designated staff member only as part of a prescribed therapeutic treatment.

(4) All medications are kept in a locked container and under the supervision of the designated staff member.

(f) **First aid supplies.** The facility maintains first aid supplies.

~~(g) **Tobacco use.** The facility prohibits the use of any tobacco product by residents. The facility prohibits staff members from using tobacco products in the presence of residents or in any rooms used by residents.~~

340:110-3-163. Health regulations: Buildings, utilities, and grounds

The requirements in this Section apply to all residential child care facilities constructed after the effective date of these requirements. Licensed facilities in operation on the effective date of the requirements continue to comply with the construction and safety regulations applicable to the issuance of their license.

(1) **Building.** Buildings used to house residential child care facilities are structurally sound. Structures comply with the building code adopted by the Oklahoma State Fire Marshal Office, the plumbing code, mechanical code, and fuel gas code adopted by the Oklahoma State ~~Health~~ Department of Health and the latest editions of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Standards Numbers 55, 62, and 90.

(A) Exterior and interior surfaces are maintained in sound condition, free of holes, peeling paper, and paint.

(B) Windows and doors are in good repair, and free of broken glass or hazards.

(C) Floors are cleanable and in good repair.

(D) All uncovered floors, including concrete and wood floors, are sealed.

(2) **Premises.** The premises are maintained in accordance with the requirements listed in this paragraph.

(A) The premises are free of harborage for insects, rodents, and other vermin.

(B) Safe, effective measures are taken to minimize the presence of, and to protect against, the entry of vermin.

(C) The premises are otherwise maintained free of hazards to children.

~~(D) The premises are free of illegal drugs and paraphernalia.~~

~~(3) **Tobacco use.** The facility prohibits the use of any tobacco product by residents. Smoking is prohibited in buildings used by residents or in the presence of residents. The facility prohibits staff members from using tobacco products in the presence of residents or in any rooms used by residents.~~

~~(34) **Screening.** Every window, exterior door, and hatchway or similar device is rodent proof and reasonably water tight and weather tight and is kept in working condition and good repair. During the portion of the year when there is a need for protection against mosquitoes, flies, and other flying insects, every door and window is provided with a 16-mesh, properly fitting screen. Air conditioned habitable areas are adequate to meet this requirement when properly operated unless vermin are able to enter to such extent that a nuisance or hazard is created.~~

~~(45) **Ventilation.** Each habitable room has at least one window facing outdoors which ~~that~~ can be easily opened. Window area requirements meet requirements of the State Fire Marshal. Non-habitable areas, such as bathrooms and food preparation areas, may provide other approved ventilation systems in lieu of windows or skylights. ~~How-~~ ~~ever,~~ adequately ~~Adequately~~ designed, maintained, and operated central heating and cooling systems are deemed to meet the ventilation requirements.~~

~~(56) **Laundry.** Laundry areas are maintained in a clean, safe condition. Equipment is installed to meet safety requirements.~~

~~(67) **Water supply.** The water supply is adequate, of a safe and sanitary quality, meets state quality standards, and is approved by the Oklahoma Department of Environmental Quality.~~

(A) When not on a public water supply, such as well water, water meets local and state testing requirements and is tested annually.

(B) All areas where food is prepared or equipment, utensils, or containers are used have hot and cold water under pressure.

~~(78) **Sewage disposal.** All sewage, including mop water, is disposed of in a public sewage system or, in its absence, in a manner approved by the Oklahoma Department of Environmental Quality.~~

~~(89) **Plumbing.** Plumbing is sized, installed, and maintained in a safe manner and in accordance with the Oklahoma Plumbing License Act.~~

(A) Plumbing constructed after June 1, 1987, is installed in compliance with the International Plumbing Code or applicable local ordinances.

(B) Any cross-connection between the potable water supply and any nonpotable or questionable water supply, or any source of pollution through which the potable water supply might become contaminated, is prohibited.

(C) Water closets, lavatories, bathtubs, and showers are properly connected to a water and sewer system approved by the OSDH health officer and in good working condition.

(D) Every lavatory basin and bathtub or shower is supplied with hot and cold water under pressure at all times.

(910) **Electrical.** The electrical distribution system is sized, installed, and maintained in a safe manner and in accordance with the Oklahoma Electrical Licensing Act. Portions of the electrical system constructed, repaired, or replaced after June 1, 1987, are installed in compliance with the current National Electrical Code. Lighting is at least 20 foot candles at desk level.

(4011) **Garbage and rubbish disposal.** Prior to disposal, all garbage and rubbish containing food wastes or diapers are kept in leak-proof, non-absorbent containers and covered with tight-fitting lids when filled, stored, or not in continuous use.

(A) The containers are adequate for the storage of all food waste and rubbish accumulating on the premises.

(B) Each container is thoroughly cleaned when soiled.

(C) Garbage disposal units, if used, are of suitable construction and installed in compliance with state and local standards.

(D) All garbage and rubbish are disposed of frequently and in such a manner to prevent a nuisance.

(E) All hazardous material is disposed of properly.

(412) **Swimming pools.** In accordance with state law, swimming pools used by children in a residential facility are considered public bathing places and must meet the requirements of the Design Standards and Operational Criteria for Public Bathing Places of the Oklahoma State Department of Health OSDH. This includes in-ground in-ground and above-ground pools.

(A) If a private swimming pool is used, it then becomes a public pool and ~~meets~~ must meet the requirements of the Oklahoma State Department of Health OSDH.

(B) The use of wading pools is prohibited.

(C) A certified life guard or person having a current emergency water safety certificate with CPR and first aid is in attendance at all times when the pool is in use.

(4213) **Animals.** ~~The requirements pertaining to animals are listed in (A)–(F) of this subsection.~~

(A) Harboring animals on the premises is in accordance with local ordinances.

(B) Animals may be kept on the premises only when the health and safety of each animal and the residents can be reasonably assured.

(C) Animals with which residents have contact are maintained in a state of good health and are free of diseases communicable to humans.

(D) Dogs and cats kept on the premises are vaccinated annually by a licensed veterinarian.

(E) Areas of confinement are cleaned of excrement regularly. Animals are maintained in a visibly clean manner.

(F) The county or state health department of health is immediately notified if a resident ~~has been~~ is bitten by an animal.

SUBCHAPTER 5. REQUIREMENTS FOR CHILD-PLACING AGENCIES

PART 5. REQUIREMENTS FOR FOSTER FAMILY HOMES

340:110-5-60. Foster home requirements

(a) **General requirements.** A foster home shall be clean, safe, and in good repair.

(1) The home and the exterior around the home ~~must~~ shall be free from objects, materials, and conditions ~~which~~ that constitute a danger to the children served.

(2) The foster home shall be accessible to or ~~be~~ able to arrange transportation to school, church, recreational and health facilities, and other community resources, as needed.

(3) The home shall comply with all applicable fire, health, and safety laws, ordinances, and regulations.

(b) **Safety requirements.** ~~The foster home shall meet the safety requirements contained in this subsection.~~

(1) Clear glass doors shall be plainly marked to avoid accidental impact. ~~However, foster~~ Foster homes providing infant care only are exempt from this requirement.

(2) Children shall be protected from hazardous materials, such as flammable liquids, ~~and~~ and poisonous materials.

(3) All weapons and firearms shall be kept locked.

(4) The premises are free of illegal drugs and paraphernalia.

(5) When children are in care, smoking is prohibited inside the home and when transporting children.

(46) Stairways, ~~inside and outside,~~ over four steps, inside and outside, shall have railings. Safety gates at stairways shall be provided if infants and toddlers are in care. ~~However, foster~~ Foster homes providing infant care only are exempt from this requirement.

(57) Any play activity ~~which~~ that involves water shall be supervised constantly. Ponds or pools shall not be left accessible to children. Wading pools shall be emptied after each use.

(c) **Fire safety requirements.** ~~Each foster home shall meet the fire safety requirements contained in this subsection.~~

Emergency Adoptions

- (1) A fire extinguisher rated for Class ABC fires shall be installed in the kitchen area.
 - (2) A foster home shall be equipped with at least one operable smoke detector in the vicinity of the sleeping areas or more as required by the child-placing agency.
 - (3) Each floor used as living space shall have at least two means of escape, at least one of which shall be a door leading to an unobstructed path to the outside. The second means of escape may be an unobstructed, operable window 20" X 24" minimum dimensions.
 - (4) All heating and air conditioning equipment shall be installed in accordance with state and local mechanical codes and manufacturer's instructions.
- (d) **Health requirements.** Foster homes shall meet the health requirements contained in this subsection.
- (1) Water supply, sewage disposal, and solid waste disposal shall meet local city ordinances and state Oklahoma Department of Environmental Quality regulations.
 - (2) Rooms used by children shall be well lighted and ventilated.
 - (3) Windows and doors used for ventilation shall be screened.
 - (4) The foster parents shall take measures to keep the house and grounds free of rodents, insects, and stray animals.
 - (5) One sink, one toilet, and one tub or shower to every six occupants living in the home shall be available.
 - (6) Each child shall be provided with individual combs, toothbrushes, wash cloths, and towels. There shall be individual eating and drinking utensils for each child.
 - (7) Linens shall be changed when needed.
 - (8) Animals or household pets are permitted provided that there is proof of annual rabies vaccinations for each animal. Pets or animals in the foster home, indoors or outdoors, shall be in good health, show no evidence of carrying disease, be friendly toward children, and present no threat to the health, safety, and well-being of children.
- (e) **Sleeping arrangements.** A separate bed shall be provided for each child. ~~However, siblings under the age of~~ Siblings younger than six years old may share a bed if their history indicates that this is appropriate and the decision is made in consultation with the child-placing agency.
- (1) It is preferable that no more than two children share a sleeping room. Consideration is given to related children according to age and emotional needs.
 - (2) Separate sleeping rooms shall be provided for children ~~over age~~ older than four years who are of different sex.
 - (3) Foster children over the age of one year shall not share sleeping quarters with adults in the household unless an emergency exists and the child-placing agency is informed.
- (f) **Emergency plans.** Each foster home shall comply with the requirements pertaining to emergency plans contained in this subsection.
- (1) There shall be a planned source of medical care available, such as a hospital emergency room, clinic, or physician known to the foster family.
 - (2) The home shall have a telephone with ~~the following~~ emergency numbers posted: nearby for the physician or clinic, fire department, police department, ambulance service, and substitute caregiver.
 - (3) The foster parent shall have an emergency evacuation plan in the event of fires, tornadoes, floods, ~~etc~~ and other emergencies.
 - (4) First aid procedures and supplies shall be readily available.
 - (5) The foster parent shall ensure that each child, as appropriate to age and developmental level, knows how to evacuate from the home in the event of a fire ~~and~~. The foster parent conducts periodic evacuation drills.
- (g) **Equipment.** Equipment and furniture shall be safe for children, ~~and the~~. The foster home shall have child care equipment, such as bedding, high chairs, proper auto restraints, and toys appropriate for children placed in the home.
- (h) **Transportation.** The foster family shall have emergency transportation available, ~~and when Foster~~ children are transported, ~~car seats or seat belts, in keeping with each child's size and age, shall be used~~ compliance with applicable state law. [47 O.S. § 11-1112]
- (i) **Nutrition.** Each child ~~shall be assured of~~ is provided a balanced, nutritious, and developmentally appropriate diet.
- (1) The food shall be wholesome in quality, ample in quantity, and of sufficient variety.
 - (2) Instructions for feeding infants, including the use of formula, recommended by the physician shall be followed.

[OAR Docket #04-1275; filed 8-26-04]

TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #04-1271]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. Organization of Board
550:1-3-3. [AMENDED]

AUTHORITY:

Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)

DATES:

Adoption:

July 21, 2004

Approved by Governor:

August 11, 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:

This agency finds that a compelling public interest requires emergency rules. The proposed amendments are necessary to remove a contradiction

which currently exists within the provisions of the rule. At the time it was recognized that a contradiction existed, it was too late for the promulgation of permanent rules during the last legislative session; and, the next election process will begin before permanent rules could become effective during the next legislative session.

ANALYSIS:

The proposed amendment pertains to the mailing of a cover letter pertaining to the process for electing Board members. The rule currently in effect states that each member in a district under election "will receive" such a letter. The rule further states that "[t]he System shall make no attempt to forward/resend any mailing returned by the United States Postal Service as undeliverable unless it is found that the mailing was sent to an incorrect address due to an administrative error on the part of the System." These provisions in the rule are contradictory. Also, because the rule currently says that each member "will receive" the mailing, a member who does not receive the mailing, even if it is due to the member's failure to provide the System with a current address, could potentially contest the results of an election.

CONTACT PERSON:

Linda Ruckman, Administrative Officer, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 22.

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

SUBCHAPTER 3. ORGANIZATION OF BOARD

550:1-3-3. Nomination of Board members

(a) **Nomination procedure.** The following procedure shall govern the nomination of Board members:

(1) Each member in the district under election will ~~receive~~ ~~be sent~~ a letter from the Executive Director briefly describing the reason for the nomination/election, the general procedures to elect a Board member and the responsibilities of a Board member.

(2) Included with a cover letter will be a nomination petition. The nomination petition for districts 1, 2, 3, and 4 will include a list of participating municipalities whose active members are eligible to be nominated. To be placed on the ballot for districts 1, 2, 3, and 4, nominees must receive signatures from 5% of the eligible active members in their respective district and the petition must include at least one signature from five different participating municipalities. To be placed on the ballot for districts 5 and 6, nominees must receive signatures from 5% of the eligible active members in their respective district. To be placed on the ballot for district 7, nominees must receive signatures from 25 retired members of the district with at least one signature being from retirees of five different municipalities. Members eligible to receive nomination petitions and election ballots; their mailing addresses; and, for districts 1, 2, 3, 4, 5, and 6, the number of signatures required to be placed on the ballot, will be determined at least one week prior to the date the nomination petition is to be mailed.

(3) The cover letter and the nomination petition will be placed in individual envelopes addressed to each active member separately in care of their mailing address on

file with the System. The envelopes will be mailed First Class to the member. Mailings to retired members will be made to the address used to mail year-end tax notices (1099R). Nomination petitions will be mailed at least six weeks prior to the date the election ballot is to be mailed. The System shall make no attempt to forward/resend any mailing returned by the United States Postal Service as undeliverable unless it is found that the mailing was sent to an incorrect address due to an administrative error on the part of the System.

(4) Nomination petitions must be returned by certified mail with return receipt or delivered in person to the certified public accounting firm supervising the election or to the System. The cover letter mailed with the nomination petition will specify the date by which the nomination petition must be received by the certified public accounting firm or by the System. The nominee must also provide a 25 words or less biographical sketch to be included in the election ballot. The names of the nominees will be posted in the System's office for public view for not less than seven days.

(5) Should only one member be nominated for any district, that member will automatically become the Board member for that district.

(6) If no nominations are received by the deadline, the nomination petitions will be remailed and handled in accordance with the normal procedures. The time frame for such remailing shall be set by the Board.

(7) The Executive Director will verify that each nominee is eligible to be elected to the Board.

(b) **Certified public accounting firm procedures.** A certified public accounting firm shall:

(1) Meet with the Executive Director and determine the timing of the initial nomination mailing to each member in the districts electing a board member.

(2) Obtain from the Executive Director a copy of a list of municipalities included in each district holding an election.

(3) Obtain from the Executive Director a copy of a cover letter to be sent with the nomination mailing outlining the duties of a Board member, nomination and election process, critical dates, etc.

(4) Review a mailing list obtained from the Oklahoma Police Pension and Retirement System which contains the name and mailing address of each member in each district conducting an election.

(5) Obtain from the Executive Director a copy of the nomination petition and determine if any changes to the form are required.

(6) Review nomination package before mailing. Judgmentally select members listed on the mailing list and verify that they are to receive a nomination package. Judgmentally select nomination packages and verify that members are listed on correct district mailing list.

(7) Accumulate nomination responses and determine that each petition has the proper number of signatures from the appropriate municipalities.

Emergency Adoptions

- (8) Require the Executive Director to verify that each nominee is eligible to be elected to the Board.
- (c) **Oklahoma Police Pension and Retirement System procedures.** The Oklahoma Police Pension and Retirement System shall:
- (1) Obtain a mailing list for each district conducting an election. The mailing list should contain the name and mailing address of each member in the district eligible to receive a nomination petition and election ballot.
 - (2) Obtain the nomination petition.
 - (3) Photocopy the nomination petition. Make enough copies for each member on district mailing list.
 - (4) Assemble the Executive Director's cover letter, nomination petition and list of eligible municipalities into a package, and mail a package to each member on district mailing list.
 - (5) Prepare the ballot for each district holding an election. Include each nominee's biographical sketch.
 - (6) Ballot to be posted in the office of the Oklahoma Police Pension and Retirement System for public view during regular office hours not less than seven business days before the ballot is to be mailed.

[OAR Docket #04-1271; filed 8-24-04]

TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM CHAPTER 15. OKLAHOMA POLICE DEFERRED OPTION PLAN

[OAR Docket #04-1272]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

550:15-1-3. [AMENDED]

AUTHORITY:

Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)

DATES:

Adoption:

July 21, 2004

Approved by Governor:

August 11, 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:

This agency finds that a compelling public interest requires emergency rules. The proposed amendments are necessary to remove a contradiction between the current rule and the provisions of 11 O.S. Section 50-111.3(H)(2) as a result of Senate Bill 1422 which became effective June 9, 2004.

ANALYSIS:

The proposed amendment deletes the portion of the rule that provides for a member electing to participate in the Oklahoma Police Deferred Option Plan under the back drop provision to be refunded the accumulated contributions the member made to the fund from the back drop date to the termination date, but excluding any interest.

CONTACT PERSON:

Linda Ruckman, Administrative Officer, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 22.

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):

550:15-1-3. Back drop

(a) **Definitions.** For purposes of this section, the definitions as stated in 11 O.S. Section 50-111.3(H)(1) shall apply.

(b) **Application.**

(1) The applicant must have greater than twenty (20) years of credited service with the Oklahoma Police Pension and Retirement System to be eligible.

(2) The applicant must submit his/her completed application for participation in the Oklahoma Police Deferred Option Plan under the back drop provision. Forms will be provided by the Oklahoma Police Pension and Retirement System.

(3) The effective date of membership will be the first day of the month.

(4) Once the Board has approved a member's application, the member's participation in the Oklahoma Police Deferred Option Plan under the back drop provision is irrevocable.

(c) **Contributions and benefits.**

(1) At the termination date, a member's monthly pension benefit shall be determined based on the earlier attained credited service and on the final average salary as of the back drop date.

(2) The member's individual deferred option account shall be credited with an amount equal to the deferred benefit balance, the member shall terminate employment with all participating municipalities as a police officer and shall start receiving the member's accrued monthly retirement benefit from the Oklahoma Police Pension and Retirement System.

~~(3) The member shall, upon application approved by the State Board and upon receipt of the completed payment selection form, be refunded from the fund an amount equal to the accumulated contributions the member made to the fund from the back drop date to the termination date, but excluding any interest.~~

(4) A member shall not participate in the back drop pursuant to subsection H of Section 50-111.3 of Title 11 of the Oklahoma Statutes if the member has elected to participate in the Oklahoma Police Deferred Option Plan pursuant to subsections A, B, C, D, E and F of Section 50-111.3 of Title 11 of the Oklahoma Statutes.

~~(5) The provisions of subsections B, C, E, F and G of Section 50-111.3 of Title 11 of the Oklahoma Statutes apply to the back drop.~~

(d) **Interest.** The methodology for computing interest described in OAC 550:15-1-2(d) applies with regard to this section.

(e) **Payment.** The provisions for payments in the forward drop pursuant to OAC 550:15-1-2(e) also apply to payments in the back drop.

[OAR Docket #04-1272; filed 8-24-04]

Executive Orders

As required by 75 O.S., Sections 255 and 256, Executive Orders issued by the Governor of Oklahoma are published in both the *Oklahoma Register* and the *Oklahoma Administrative Code*. Executive Orders are codified in Title 1 of the *Oklahoma Administrative Code*.

Pursuant to 75 O.S., Section 256(B)(3), "Executive Orders of previous gubernatorial administrations shall terminate ninety (90) calendar days following the inauguration of the next Governor unless otherwise terminated or continued during that time by Executive Order."

TITLE 1. EXECUTIVE ORDERS

1:2004-27.

EXECUTIVE ORDER 2004-27

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the power vested in me by Section 2 of Article VI of the Oklahoma Constitution hereby declare the following:

1. Joint State and local damage assessments have been made in Sequoyah County and the City of Pocola in LeFlore County, which received damages as a result of severe rain storms and flooding that occurred July 2nd through 7th, 2004.

2. It may be necessary to provide for the rendering of mutual assistance among the State and political subdivisions of the State with respect to carrying out disaster emergency functions during the continuance of the State emergency pursuant to the provisions of the Oklahoma Emergency Management Act of 2003.

3. There is hereby declared a disaster emergency caused by severe rain storms and flooding in Sequoyah County and the City of Pocola in LeFlore County that threatened the lives and property of the people of this State and the peace, health and safety of the public.

4. The State Emergency Operations Plan has been activated and resources of all State departments and agencies available to meet this emergency are hereby committed to the reasonable extent necessary to protect lives and to prevent, minimize, and repair injury and damage. These efforts shall be coordinated by the Director of the Department of Emergency Management with comparable functions of the federal government and political subdivisions of the State.

5. This declaration of emergency shall terminate as provided in 63 O.S. §683.9.

Copies of this Executive Order shall be distributed to the Director of Emergency Management who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 13th day of August, 2004.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:

M. Susan Savage
Secretary of State

[OAR Docket #04-1267; filed 8-16-04]

1:2004-28.

EXECUTIVE ORDER 2004-28

I, Brad Henry, Governor of the State of Oklahoma, by the authority vested in the Office of the Governor by the Constitution of the State of Oklahoma, hereby order:

A. There is hereby established until February 1, 2005, the "Fuel Cell Initiative Task Force".

B. The Task Force shall be composed of twelve (12) members to be appointed by, and to serve at the pleasure of, the Governor as follows:

1. A member of the House of Representatives;

2. A member of the Senate

3. The Secretary of Energy or a designee;

4. The Secretary of Environment or a designee;

5. A representative from the State Energy office housed at the Oklahoma Department of Commerce;

6. Two lay members of the private sector;

7. One representative from the University of Oklahoma

8. One representative from Oklahoma State University;

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9. The Executive Director of Oklahoma Center for the Advancement of Science and Technology or a designee;

10. A representative from the Electric Vehicle Training Center; and

11. A representative from the Oklahoma Technology Commercialization Center.

C. The chair and vice-chair shall be appointed by the Governor. The chair shall convene the first meeting of the Task Force. The members of the Task Force shall elect from their membership any other officers during the first meeting and upon a vacancy in any office. The Task Force shall meet as often as necessary. Members shall serve without compensation. Task Force members employed by a state agency shall be reimbursed travel expenses related to their service on the Task Force by their respective state agency. Legislative members of the Task Force shall be reimbursed by their respective houses for necessary travel expenses incurred in the performance of their duties. Remaining Task Force members shall also be reimbursed travel expenses related to their service on the Task Force by the Department of Commerce.

D. Administrative support for the Task Force, including, but not limited to, personnel necessary to ensure the proper performance of the duties and responsibilities of the Task Force, shall be provided by the Department of Commerce. All participating state agencies and entities shall provide for any administrative support requested by the Task Force.

E. The Task Force shall study and make recommendations regarding:

1. The state of the industry or of specific components of the industry, alternative programs to accelerate the commercial availability of fuel cells, including similar efforts by other states;

2. Programs considered to encourage the industry to locate manufacturing, system integration or related component parts or services to this state;

3. The development of a statewide plan for the coordinated effort of the commercialization of fuel cell generation in this state, including the ongoing monitoring of the industry and communication with fuel cell manufacturers; and

4. Tax or other economic incentives.

F. The Task Force shall make a written report to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the appropriate committees of the State Senate and the Oklahoma House of Representatives by January 1, 2005.

This Executive Order shall be distributed to the Secretary of Commerce and Tourism, and to all other members of the Governor's Cabinet. It shall be the duty of each affected board, commission, agency or other entity of the Executive Branch of state government to facilitate the purposes of this Order and to cooperate fully with designated Cabinet secretaries.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 18th day of August, 2004.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #04-1270; filed 8-19-04]
