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Oklahoma Center for the Advancement of **SCIENCE** and Technology	650
SECRETARY of State	655
Department of **SECURITIES**	660
Board of Regents of **SEMINOLE** State College	665
SHEEP and Wool Commission	670
State Board of Licensed **SOCIAL** Workers	675
SOUTHERN Growth Policies Board	680
Oklahoma **SOYBEAN** Commission *(abolished 7-1-97)*	685
Board of Examiners for **SPEECH–LANGUAGE** Pathology and Audiology	690
STATE Agency Review Committee	695
STATE Use Committee (*Formerly:* Committee on Purchases of Products and Services of the Severely **HANDICAPPED**) – *See* Title 304	
Oklahoma **STUDENT** Loan Authority	700
TASK Force 2000	705
Oklahoma **TAX** Commission	710
Oklahoma Commission for **TEACHER** Preparation	712
TEACHERS' Retirement System	715
State **TEXTBOOK** Committee	720
Oklahoma **TOURISM** and Recreation Department	725
Department of **TRANSPORTATION**	730
Oklahoma **TRANSPORTATION** Authority	731
State **TREASURER**	735
Board of Regents of **TULSA** Community College	740
Oklahoma **TURNPIKE** Authority *(name changed - see Title 731)*	745
Board of Trustees for the **UNIVERSITY** Center at Tulsa	750
UNIVERSITY Hospitals Authority	752
UNIVERSITY Hospitals Trust	753
Board of Regents of the **UNIVERSITY** of Oklahoma	755
Board of Regents of the **UNIVERSITY** of Science and Arts of Oklahoma	760
Oklahoma **USED** Motor Vehicle and Parts Commission	765
Oklahoma Department of **VETERANS** Affairs	770
Board of **VETERINARY** Medical Examiners	775
Oklahoma Department of **CAREER** and Technology Education (*Formerly:* Oklahoma Department of **VOCATIONAL** and Technical Education)	780
Oklahoma **WATER** Resources Board	785
Board of Regents of **WESTERN** Oklahoma State College	790
Oklahoma **WHEAT** Commission	795
Department of **WILDLIFE** Conservation	800
WILL Rogers and J.M. Davis Memorials Commission	805

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 38. LICENSED ALCOHOL AND DRUG COUNSELORS CHAPTER 1. ADMINISTRATION

[OAR Docket #05-1036]

RULEMAKING ACTION:

Notice of proposed EMERGENCY and PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. INDIVIDUAL PROCEEDINGS [NEW]

38:1-1-1. [NEW]
38:1-1-2. [NEW]
38:1-1-3. [NEW]
38:1-1-4. [NEW]
38:1-1-5. [NEW]
38:1-1-6. [NEW]
38:1-1-7. [NEW]
38:1-1-8. [NEW]
38:1-1-9. [NEW]
38:1-1-10. [NEW]
38:1-1-11. [NEW]
38:1-1-12. [NEW]
38:1-1-13. [NEW]
38:1-1-14. [NEW]
38:1-1-15. [NEW]
38:1-1-16. [NEW]
38:1-1-17. [NEW]

Subchapter 3. Administrative Operations [NEW]

38:1-3-1. [NEW]
38:1-3-2. [NEW]
38:1-3-3. [NEW]
38:1-3-4. [NEW]
38:1-3-5. [NEW]
38:1-3-6. [NEW]

SUMMARY:

In accordance with the Administrative Procedures Act, the proposed rules implement 59 O.S. §§ 1870 through 1885, which creates, with an emergency effective date of May 19, 2004, the Oklahoma Board of Licensed Alcohol and Drug Counselors. Section 1875 requires the Board to promulgate rules necessary to implement the provisions of the Licensed Alcohol and Drug Counselors Act. In addition, this section of the Act mandates the promulgation of rules of conduct governing the practice of, and continuing education requirements for, certified and licensed alcohol and drug counselors.

AUTHORITY:

Oklahoma Board of Licensed Alcohol and Drug Counselors; 59 O.S. § 1875.

COMMENT PERIOD:

Persons wishing to submit written comments may do so until 5:00 p.m., July 15, 2005 to the attention of Linda Winton, Rules Liaison Officer. Written comments may be mailed to P.O. Box 53277, Oklahoma City, OK 73152-3277, hand delivered to 1200 N.E. 13th Street, Oklahoma City, OK or by facsimile, at (405) 522-3867.

PUBLIC HEARING:

The Board will conduct a public hearing on July 18, 2005 at 1:30 p.m. in conference room 40B at Shepherd Mall, 2400 NW 23rd Street, Oklahoma City, OK 731207.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

ODMHSAS asks business entities affected by the proposed rules to provide written information to the Board, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information until 5:00 p.m., July 15, 2005 to P. O. Box 53277, Oklahoma City, OK 73152-3277, Attention: Linda Winton.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from Linda Winton, Rules Liaison Officer, at the above address.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D) the Board will prepare a rule impact statement which will be available beginning June 30, 2005. Copies may be obtained from Linda Winton, Rules Liaison Officer, at the address above.

CONTACT PERSON:

Linda Winton, Rules Liaison Officer (405) 522-6765.

[OAR Docket #05-1036; filed 5-26-05]

TITLE 38. LICENSED ALCOHOL AND DRUG COUNSELORS CHAPTER 10. LICENSURE AND CERTIFICATION OF ALCOHOL AND DRUG COUNSELORS

[OAR Docket #05-1037]

RULEMAKING ACTION:

Notice of proposed EMERGENCY and PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions [NEW]
38:10-1-1. [NEW]
38:10-1-2. [NEW]
38:10-1-3. [NEW]
38:10-1-4. [NEW]
38:10-1-5. [NEW]
38:10-1-6. [NEW]
38:10-1-7. [NEW]
38:10-1-8. [NEW]
38:10-1-9. [NEW]
Subchapter 3. Rules Of Professional Conduct [NEW]
38:10-3-1. [NEW]
38:10-3-2. [NEW]
38:10-3-3. [NEW]
38:10-3-4. [NEW]
38:10-3-5. [NEW]
38:10-3-6. [NEW]
Subchapter 5. Fitness Of Applicants [NEW]
38:10-5-1. [NEW]
38:10-5-2. [NEW]
38:10-5-3. [NEW]
Subchapter 7. Application [NEW]
38:10-7-1. [NEW]
38:10-7-2. [NEW]
38:10-7-3. [NEW]
38:10-7-4. [NEW]
38:10-7-5. [NEW]
38:10-7-6. [NEW]
38:10-7-7. [NEW]
38:10-7-8. [NEW]
38:10-7-9. [NEW]
Subchapter 9. Supervision [NEW]
38:10-9-1. [NEW]
38:10-9-2. [NEW]
38:10-9-3. [NEW]
38:10-9-4. [NEW]
Subchapter 11. Fees [NEW]
38:10-11-1. [NEW]
38:10-11-2. [NEW]
38:10-11-3. [NEW]
Subchapter 13. Continuing Education Requirements [NEW]
38:10-13-1. [NEW]
38:10-13-2. [NEW]
38:10-13-3. [NEW]
38:10-13-4. [NEW]
38:10-13-5. [NEW]
38:10-13-6. [NEW]

SUMMARY:

In accordance with the Administrative Procedures Act, the proposed rules implement 59 O.S. §§ 1870 through 1885, which creates, with an emergency effective date of May 19, 2004, the Oklahoma Board of Licensed Alcohol and Drug Counselors. Section 1875 requires the Board to promulgate rules necessary to implement the provisions of the Licensed Alcohol and Drug Counselors Act. In addition, this section of the Act mandates the promulgation of rules of conduct governing the practice of, and continuing education requirements for, certified and licensed alcohol and drug counselors.

AUTHORITY:

Oklahoma Board of Licensed Alcohol and Drug Counselors; 59 O.S. § 1875.

COMMENT PERIOD:

Persons wishing to submit written comments may do so until 5:00 p.m., July 15, 2005 to the attention of Linda Winton, Rules Liaison Officer. Written comments may be mailed to P.O. Box 53277, Oklahoma City, OK 73152-3277, hand delivered to 1200 N.E. 13th Street, Oklahoma City, OK or by facsimile, at (405) 522-3867.

PUBLIC HEARING:

The Board will conduct a public hearing on July 18, 2005 at 1:30 p.m. in conference room 40B at Shepherd Mall, 2400 NW 23rd Street, Oklahoma City, OK 731207.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

ODMHSAS asks business entities affected by the proposed rules to provide written information to the Board, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information until 5:00 p.m., July 15, 2005 to P. O. Box 53277, Oklahoma City, OK 73152-3277, Attention: Linda Winton.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from Linda Winton, Rules Liaison Officer, at the above address.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D) the Board will prepare a rule impact statement which will be available beginning June 30, 2005. Copies may be obtained from Linda Winton, Rules Liaison Officer, at the address above.

CONTACT PERSON:

Linda Winton, Rules Liaison Officer (405) 522-6765.

[OAR Docket #05-1037; filed 5-26-05]

TITLE 152. COMMUNITY HOSPITALS AUTHORITY
CHAPTER 1. GENERAL AGENCY RULES

[OAR Docket #05-857]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 1. General Agency Rules

AUTHORITY:

Community Hospitals Authority; 63 O.S. § 3240.1, et seq.

COMMENT PERIOD:

Persons wishing to present their view orally or in writing may do so before 5:00 p.m. on Friday, July 15, 2005, at the following address: CHA Executive Director, 1924 S. Utica Ave., Tulsa, Oklahoma 74104.

PUBLIC HEARING:

A public hearing will be held at 9:00 a.m. on Monday, July 18, 2005, at the Community Hospitals Authority, 1924 S. Utica Ave., Tulsa, Oklahoma 74104.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Community Hospitals Authority requests that business entities affected by these proposed rules provide the Authority, within the comment period, in dollar amounts if possible, the increase in the level of direct services, revenue loss, or other costs expected to be incurred by the business entity due to the proposed rules. Business entities may submit this information in writing to : CHA Executive Director, 1924 S. Utica Ave., Tulsa, Oklahoma 74104.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Community Hospitals Authority, 1924 S. Utica Ave., Tulsa, Oklahoma 74104.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement will be prepared and may be obtained from the Community Hospitals Authority at the above address beginning June 1, 2005.

CONTACT PERSON:

CHA Executive Director, 1924 S. Utica Ave., Tulsa, Oklahoma 74104.

[OAR Docket #05-857; filed 5-12-05]

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

[OAR Docket #05-1023]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions
252:100-1-3. [AMENDED]
Subchapter 8. Permits for Part 70 Sources
Part 1. General Provisions
252:100-8-1.1. [AMENDED]
Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas
252:100-8-30. [AMENDED]
252:100-8-31. [AMENDED]
252:100-8-32. [REVOKED]
252:100-8-32.1. [NEW]
252:100-8-32.2. [NEW]
252:100-8-32.3. [NEW]
252:100-8-33. [AMENDED]
252:100-8-34. [AMENDED]
252:100-8-35. [AMENDED]
252:100-8-35.1. [NEW]
252:100-8-35.2. [NEW]
252:100-8-36. [AMENDED]
252:100-8-36.1. [NEW]
252:100-8-36.2. [NEW]
252:100-8-37. [AMENDED]
252:100-8-38. [NEW]
252:100-8-39. [NEW]
252:100-8-40. [NEW]
252:100-8-41. [NEW]
Part 9. Major Sources Affecting Nonattainment Areas
252:100-8-50. [AMENDED]
252:100-8-50.1. [NEW]
252:100-8-51. [AMENDED]
252:100-8-51.1. [NEW]
252:100-8-52. [AMENDED]
252:100-8-53. [AMENDED]
252:100-8-55. [NEW]
252:100-8-56. [NEW]
252:100-8-57. [NEW]
252:100-8-58. [NEW]
252:100-8-59. [NEW]
Subchapter 37. Control of Emission of Volatile Organic Compounds (VOCs)
Part 1. General Provisions
252:100-37-2. [AMENDED]
Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas
Part 1. General Provisions
252:100-39-2. [AMENDED]
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]

SUMMARY:

The Department of Environmental Quality is proposing amendments to Subchapter 8, Part 70 Sources, that will incorporate the Environmental Protection Agency's revisions to the New Source Review (NSR) permitting program under the Federal Clean Air Act. The proposed amendments include revisions to the method of determining if a modification to an NSR source is a major modification and other NSR revisions not previously incorporated by the Department. The amendments also include Clean Unit Exclusions, Pollution Control Project (PCP) Exclusions, and Plantwide Applicability Limitations (PALs) Exclusions.

The Department is proposing to amend Subchapters 1, 37, and 39 to accommodate the new definition for Volatile Organic Compound (VOC) contained in 40 CFR 51.100(s). Section 252:100-1-3 is also being amended to incorporate definitions associated with the revisions described above for NSR.

The Department proposes to revoke the 1-hour Ozone standard from 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 July 20, 2005. For comments received at least 5 business days prior to the council meeting, staff will post written responses on our web page at least 1 day prior to the Council meeting and provide hard copy written responses to these comments to the council and the public at that council meeting. Oral comments may be made at the July 20, 2005 hearing and at the appropriate Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Council at 9:00 a.m. on Wednesday, July 20, 2005, at the Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma. Before the Environmental Quality Board August 23, 2005, location to be announced.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities or any other members of the public affected by these rules provide the Department, 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 30 days prior to the hearing at the Air Quality Division of the Department of Environmental Quality and on the Department 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:

On Subchapters 1, 37, and 39, contact Max Price, Air Quality Division (405) 702-4100. Please send written comments to Max Price e-mail: max.price@deq.state.ok.us. On Subchapter 8, contact Joyce Sheedy, Air Quality Division, (405) 794-6800. Please send written comments to Joyce Sheedy e-mail: joyce.sheedy@deq.state.ok.us. On Appendices E and F, contact Leon Ashford, Air Quality Division (405) 702-4100. Please send written comments to Leon Ashford e-mail: leon.ashford@deq.state.ok.us. Or written comments may be submitted to the contact 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, 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 #05-1023; filed 5-26-05]

Submissions for Review

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

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

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 20. PHYSICAL THERAPISTS AND ASSISTANTS

[OAR Docket #05-838]

RULEMAKING ACTION:

Statement of submission for gubernatorial and legislative review.

RULES:

Subchapter 9. Continuing Education

435:20-9-2. Continuing education requirements for renewal [AMENDED]

SUBMITTED TO GOVERNOR:

May 9, 2005

SUBMITTED TO HOUSE:

May 9, 2005

SUBMITTED TO SENATE:

May 9, 2005

[OAR Docket #05-838; filed 5-10-05]

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 10. OKLAHOMA ACCOUNTANCY BOARD
CHAPTER 15. LICENSURE AND REGULATION OF ACCOUNTANCY

[OAR Docket #05-897]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 3. Requirements to Practice Public Accountancy
10:15-3-1. [AMENDED]
10:15-3-2. [AMENDED]
10:15-3-3. [AMENDED]
10:15-3-4. [AMENDED]
Subchapter 5. Examination Procedures [REVOKED]
10:15-5-1. [REVOKED]
10:15-5-2. [REVOKED]
10:15-5-4. [REVOKED]
10:15-5-5. [REVOKED]
Subchapter 7. Application to Take An Examination [REVOKED]
10:15-7-1. [REVOKED]
10:15-7-2. [REVOKED]
10:15-7-3. [REVOKED]
10:15-7-4. [REVOKED]
10:15-7-5. [REVOKED]
10:15-7-6. [REVOKED]
10:15-7-7. [REVOKED]
Subchapter 9. Examination Content [REVOKED]
10:15-9-2. [REVOKED]
10:15-9-3. [REVOKED]
10:15-9-4. [REVOKED]
Subchapter 11. Grading of Examinations [REVOKED]
10:15-11-1. [REVOKED]
10:15-11-2. [REVOKED]
10:15-11-4. [REVOKED]
10:15-11-6. [REVOKED]
10:15-11-7. [REVOKED]
10:15-11-8. [REVOKED]
10:15-11-9. [REVOKED]
Subchapter 13. Conditional Credit on Examination [REVOKED]
10:15-13-1. [REVOKED]
10:15-13-2. [REVOKED]
10:15-13-4. [REVOKED]
Subchapter 15. Transfer of Examination Credits [REVOKED]
10:15-15-1. [REVOKED]
10:15-15-2. [REVOKED]
Subchapter 17. Procedures upon Failure to Apply for Or Take Examination [REVOKED]
10:15-17-1. [REVOKED]
10:15-17-2. [REVOKED]
10:15-17-3. [REVOKED]
Subchapter 18. ~~Transitioning from the Paper and pencil Examination to the~~ Computer-Based Examination
10:15-18-1. [AMENDED]
10:15-18-2. [AMENDED]
10:15-18-3. [AMENDED]
10:15-18-4. [NEW]
10:15-18-5. [NEW]
10:15-18-6. [NEW]
10:15-18-7. [NEW]
10:15-18-8. [NEW]
10:15-18-9. [NEW]
10:15-18-10. [NEW]
10:15-18-11. [NEW]
10:15-18-12. [NEW]
10:15-18-13. [NEW]
10:15-18-14. [NEW]
Subchapter 19. Proctoring of Candidates Taking Examinations [REVOKED]
10:15-19-1. [REVOKED]
10:15-19-2. [REVOKED]
10:15-19-3. [REVOKED]
10:15-19-4. [REVOKED]
Subchapter 21. Reciprocity
10:15-21-1. [AMENDED]
10:15-21-7. [NEW]
Subchapter 22. Substantial Equivalency
10:15-22-1. [AMENDED]
Subchapter 23. Registration
10:15-23-1. [AMENDED]
10:15-23-2. [AMENDED]
Subchapter 25. Permits
10:15-25-2. [AMENDED]
10:15-25-3. [AMENDED]
10:15-25-4. [AMENDED]
10:15-25-5. [AMENDED]
Subchapter 27. Fees
10:15-27-1. [REVOKED]
10:15-27-2. [REVOKED]
10:15-27-3. [REVOKED]
10:15-27-3.1. [AMENDED]
10:15-27-4. [REVOKED]
10:15-27-5. [AMENDED]
10:15-27-6. [REVOKED]
10:15-27-7.2. [NEW]
10:15-27-8. [AMENDED] [1]
10:15-27-9. [AMENDED] [1]

10:15-27-14. [NEW]
Subchapter 29. Continuing Professional Education
10:15-29-1.1. [AMENDED]
10:15-29-3. [AMENDED]
10:15-29-4. [AMENDED]
10:15-29-5. [AMENDED]
10:15-29-6. [AMENDED]
10:15-29-7. [AMENDED]
10:15-29-8. [AMENDED]
10:15-29-9. [AMENDED]
10:15-29-10. [AMENDED]
Subchapter 30. Continuing Professional Education [NEW]
10:15-30-1. [NEW]
10:15-30-2. [NEW]
10:15-30-3. [NEW]
10:15-30-4. [NEW]
10:15-30-5. [NEW]
10:15-30-6. [NEW]
10:15-30-7. [NEW]
10:15-30-8. [NEW]
Subchapter 32. Standards For Continuing Professional Education (CPE) Programs
10:15-32-1. [AMENDED]
10:15-32-5. [AMENDED]
Subchapter 33. ~~Quality/~~Peer Review
10:15-33-1. [AMENDED]
10:15-33-2. [AMENDED]
10:15-33-3. [AMENDED]
10:15-33-4. [AMENDED]
10:15-33-5. [AMENDED]
10:15-33-6. [AMENDED]
10:15-33-7. [AMENDED]

GUBERNATORIAL APPROVAL:
May 10, 2005

EDITOR'S NOTE: *[1] Although the agency withdrew these two rules (10:15-27-8 and 10:15-27-9) from this rulemaking action prior to legislative approval and final adoption (see Docket #05-916 under Withdrawn Rules in this issue), amendments to the same two rules, as were included in a different rulemaking action (see Docket #05-983 under Permanent Final Adoptions in this issue), were not withdrawn.*

[OAR Docket #05-897; filed 5-17-05]

TITLE 10. OKLAHOMA ACCOUNTANCY BOARD
CHAPTER 15. LICENSURE AND REGULATION OF ACCOUNTANCY

[OAR Docket #05-898]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 27. Fees
10:15-27-8. [AMENDED]
10:15-27-9. [AMENDED]

GUBERNATORIAL APPROVAL:
May 10, 2005

[OAR Docket #05-898; filed 5-17-05]

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

[OAR Docket #05-959]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Fee Schedules
35:2-3-13. [AMENDED]
35:2-3-18. [AMENDED]
GUBERNATORIAL APPROVAL:
May 16, 2005

[OAR Docket #05-959; filed 5-23-05]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY
CHAPTER 3. FINE MATRICES

[OAR Docket #05-960]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Fine Schedules
Part 15. Plant and Consumer Services Violations [AMENDED]
Part 17. ~~Water Quality~~ Agricultural Environmental Management Violations [NEW]
GUBERNATORIAL APPROVAL:
May 16, 2005

[OAR Docket #05-960; filed 5-23-05]

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

[OAR Docket #05-961]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 19. Poultry Regulations [AMENDED]
Subchapter 22. Swine Pseudorabies [AMENDED]
Subchapter 40. Bovine Tuberculosis [AMENDED]

GUBERNATORIAL APPROVAL:
May 16, 2005

[OAR Docket #05-961; filed 5-23-05]

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

[OAR Docket #05-962]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 36. Scrapie [NEW]
GUBERNATORIAL APPROVAL:
May 16, 2005

[OAR Docket #05-962; filed 5-23-05]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 17. WATER QUALITY

[OAR Docket #05-963]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Registered Poultry Feeding Operations
35:17-5-11. [AMENDED]
Subchapter 7. Poultry Waste Applicators Certification
35:17-7-8. [AMENDED]
GUBERNATORIAL APPROVAL:
May 16, 2005

[OAR Docket #05-963; filed 5-23-05]

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

[OAR Docket #05-964]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 17. Combined Pesticide
Part 1. Commercial and Non-Commercial Categories of Pesticide Application
35:30-17-1. [AMENDED]
Part 3. Certification, Conduct of Examinations, and Recertification
35:30-17-4. [AMENDED]
GUBERNATORIAL APPROVAL:
May 16, 2005

[OAR Docket #05-964; filed 5-23-05]

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

[OAR Docket #05-965]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 25. Seed
35:30-25-14. [NEW]
GUBERNATORIAL APPROVAL:
May 16, 2005

[OAR Docket #05-965; filed 5-23-05]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 37. FOOD SAFETY

[OAR Docket #05-966]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Meat Inspection [AMENDED]
Part 14. Official Marks, Devices, and Certificates [NEW]
Subchapter 5. Poultry Products Inspection [AMENDED]
Subchapter 7. Construction Standards for Meat Packing Plants [AMENDED]
Subchapter 9. Oklahoma Rabbit and Rabbit Products Inspection Regulations [AMENDED]
Subchapter 11. Exotic Livestock and Exotic Livestock Products [AMENDED]
GUBERNATORIAL APPROVAL:
May 16, 2005

[OAR Docket #05-966; filed 5-23-05]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 45. WATER QUALITY STANDARDS IMPLEMENTATION PLAN

[OAR Docket #05-967]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. Water Quality Standards Implementation Plan [AMENDED]
GUBERNATORIAL APPROVAL:
May 16, 2005

[OAR Docket #05-967; filed 5-23-05]

TITLE 87. OKLAHOMA STATE EMPLOYEES BENEFITS COUNCIL CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #05-880]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Organization and Administration
87:1-3-1. [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-880; filed 5-16-05]

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

[OAR Docket #05-881]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 17. Benefit Plan Election
87:10-17-3. [AMENDED]
87:10-17-4. [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-881; filed 5-16-05]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT CHAPTER 5. FEES

[OAR Docket #05-884]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
160:5-1-2. [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2005

[OAR Docket #05-884; filed 5-16-05]

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

[OAR Docket #05-885]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
160:45-1-2. [AMENDED]
Subchapter 9. Special Rules for Certain Home Mortgage Transactions
160:45-9-2. [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2005

[OAR Docket #05-885; filed 5-16-05]

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

[OAR Docket #05-886]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
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]
GUBERNATORIAL APPROVAL:
May 10, 2005

[OAR Docket #05-886; filed 5-16-05]

TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

[OAR Docket #05-1026]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
Part 1. General
165:5-1-10. Exemption from the Registration of Out of State Attorneys Act [NEW]

GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-1026; filed 5-26-05]

TITLE 165. CORPORATION COMMISSION CHAPTER 25. UNDERGROUND STORAGE TANKS

[OAR Docket #05-1027]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 25. [AMENDED]
GUBERNATORIAL APPROVAL:
May 16, 2005

[OAR Docket #05-1027; filed 5-26-05]

TITLE 165. CORPORATION COMMISSION CHAPTER 26. ABOVEGROUND STORAGE TANKS

[OAR Docket #05-1028]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 26. [AMENDED]
GUBERNATORIAL APPROVAL:
May 16, 2005

[OAR Docket #05-1028; filed 5-26-05]

TITLE 165. CORPORATION COMMISSION CHAPTER 27. INDEMNITY FUND

[OAR Docket #05-1029]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
165:27-1-1. Purpose [AMENDED]
165:27-1-2. Definitions [AMENDED]
165:27-1-3. Scope [AMENDED]
165:27-1-5. Citation of rules [AMENDED]
165:27-1-6. Prescribed forms [AMENDED]
Subchapter 3. Eligibility Requirements
165:27-3-1. General requirements [AMENDED]
165:27-3-2. Eligible person [AMENDED]
165:27-3-3. Eligible release [REVOKED]
Subchapter 5. Qualifications for Reimbursement
165:27-5-1. Qualifications for reimbursement [AMENDED]
165:27-5-2. Application for reimbursement [AMENDED]
165:27-5-3. Application for supplemental reimbursement [AMENDED]
Subchapter 7. Reimbursement
165:27-7-1. Reimbursable expenses [AMENDED]
165:27-7-2. Reimbursement [AMENDED]
165:27-7-2.1 Limitations on Reimbursement [NEW]
165:27-7-5. Methods for reimbursement [REVOKED]
165:27-7-6. Conditions for reimbursement [AMENDED]
165:27-7-7. Exclusions from reimbursement [AMENDED]
165:27-7-8. Withholding reimbursement [AMENDED]
165:27-7-9. The Pre-Approval Program [AMENDED]
165:27-7-9.1. Pre-Approval for Emergency Responses - Exceptions [NEW]
165:27-7-10. Pay-For-Performance procedures [AMENDED]
165:27-7-11. Purchase order procedures [AMENDED]
Subchapter 9. Administrative Provisions
165:27-9-2. Changes to rules [AMENDED]
165:27-9-3. Notices [AMENDED]
GUBERNATORIAL APPROVAL:
May 16, 2005

[OAR Docket #05-1029; filed 5-26-05]

TITLE 165. CORPORATION COMMISSION CHAPTER 29. REMEDIATION OF PETROLEUM STORAGE TANK RELEASES

[OAR Docket #05-1030]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
Part 3. Definitions
165:29-1-11. Definitions [AMENDED]
Subchapter 3. Release Prevention, Detection and Correction
Part 1. Release Prohibition, Reporting, and Investigation
165:29-3-1. Release prohibition [AMENDED]
165:29-3-2. Release reporting [AMENDED]
165:29-3-3. Release investigation; confirmed release; suspected release; emergency suspected release and release reporting ~~of release~~ [AMENDED]
Part 3. Removal and Closure of Petroleum Storage Tank Systems
165:29-3-65. Assessing the site at closure or change in service [AMENDED]
Part 5. Corrective Action Requirements
165:29-3-71. General applicability; exception [AMENDED]
165:29-3-72. Prescribed forms [AMENDED]

165:29-3-73. Initial response [AMENDED]
165:29-3-74. Initial abatement measures and site check [AMENDED]
165:29-3-75. Initial Site Characterization and Corrective Action Plan [AMENDED]
165:29-3-76. Tier 1A ORBCA [AMENDED]
165:29-3-78. Free product removal [AMENDED]
165:29-3-79. Tier 2 and Tier 3 ORBCA [AMENDED]
165:29-3-80. Remedial Action Plan [AMENDED]
165:29-3-81. Property owners affected by releases; notice [AMENDED]
165:29-3-82. Closure of a case [AMENDED]
165:29-3-83. Laboratory analysis [AMENDED]
Part 7. Licensing for Remediation Consultants
165:29-3-90. Licensing for Remediation Consultants involved with closures, investigations, removals and the remediation of releases from underground or aboveground storage tanks [AMENDED]
Subchapter 5. Administrative Provisions
165:29-5-3. Notices [AMENDED]

GUBERNATORIAL APPROVAL:
May 16, 2005

[OAR Docket #05-1030; filed 5-26-05]

TITLE 165. CORPORATION COMMISSION CHAPTER 35. ELECTRIC UTILITY RULES

[OAR Docket #05-865]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 13. Disposition of Electric Energy
165:35-13-1. Resale of electricity [AMENDED]
Subchapter 15. Meter Requirements
Part 1. Installation, Reading, and Records
165:35-15-2. Meter reading, meter reading records, cards, and charts [AMENDED]
Part 3. Meter Location, Testing, and Operation
165:35-15-21. Referee meter tests by Commission [REVOKED]
Subchapter 19. Consumer Data, Deposits, and Billing
Part 1. Consumer Records, Information, and Interruptions of Service
165:35-19-2. Consumer information [AMENDED]
165:35-19-4. Restoration of service [AMENDED]
Part 3. Deposits
165:35-19-10. Deposits and interest [AMENDED]
Part 7. Application for Service and Tampering of Equipment
165:35-19-41. Tampering with measuring equipment or other property [AMENDED]
Subchapter 21. Disconnection of Service
Part 1. Disconnection of Service
165:35-21-2. Disconnection of service by a utility [AMENDED]
Part 3. Special Provisions Regarding Residential Disconnection
165:35-21-10. Delays to disconnection of residential service [AMENDED]
165:35-21-11. Commission notification procedure for the elderly and/or consumers with disabilities [AMENDED]
Part 9. Mediation and Commission Review
165:35-21-40. Mediation [AMENDED]

GUBERNATORIAL APPROVAL:
April 28, 2005

[OAR Docket #05-865; filed 5-13-05]

TITLE 165. CORPORATION COMMISSION CHAPTER 45. GAS SERVICE UTILITIES

[OAR Docket #05-866]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 3. Plant, Equipment, and Facilities
165:45-3-2. Extent of system in which utility shall maintain service [AMENDED]
165:45-3-6. Tampering with measuring or regulating equipment [AMENDED]
Subchapter 5. Meters and Regulators
Part 1. General Provisions
165:45-5-3. Information as to reading of meters [AMENDED]
Part 3. Testing
165:45-5-15. Meter tests monitored by the Commission [AMENDED]
Subchapter 9. Records And Reports
165:45-9-2.1. Restoration of service [AMENDED]
Subchapter 11. Customer Service
Part 1. Initiation of Service
165:45-11-1. Deposits and interest [AMENDED]
Part 3. Disconnection of Service
165:45-11-11. Physical disconnection of service by a utility [AMENDED]
165:45-11-13. Commission notification procedures for the elderly and/or consumers with disabilities [AMENDED]
165:45-11-14. Delays to disconnection of residential service [AMENDED]
165:45-11-16. Notice of disconnection of service [AMENDED]
165:45-11-17. Manner of disconnection of service [AMENDED]
165:45-11-18. Disconnection of service without notice [AMENDED]
165:45-11-19. Reconnection of service [AMENDED]
Subchapter 15. Miscellaneous Provisions

165:45-15-1. Resale of gas prohibited [AMENDED]
GUBERNATORIAL APPROVAL:
April 28, 2005

[OAR Docket #05-866; filed 5-13-05]

TITLE 170. DEPARTMENT OF CORRECTIONS
CHAPTER 15. PRIVATE PRISON CONTRACTOR COMPLIANCE MONITORING

[OAR Docket #05-993]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
170:15-1-1. through 170:15-1-3. [AMENDED]
Subchapter 3. ~~Auditing~~Monitoring Process
170:15-3-1. through 170:15-3-3. [AMENDED]
170:15-3-5. [AMENDED]
170:15-3-6. through 170:15-3-7. [NEW]
Subchapter 5. Appeal of ~~Audit~~Audits
170:15-5-1. [AMENDED]
Subchapter 7. Costs
170:15-7-1. [AMENDED]
170:15-7-3. through 170:15-7-5. [NEW]
Subchapter 9. Private Prison Custody [NEW]
170:15-9-1. through 170:15-9-3. [NEW]
Subchapter 11. Private Prison Contract Application [NEW]
170:15-11-1. [NEW]
170:15-11-2. [NEW]
Subchapter 13. Private Prison Emergency Plans [NEW]
170:15-13-1. through 170:15-13-3. [NEW]
Subchapter 15. Indemnification and Insurance [NEW]
170:15-15-1. [NEW]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-993; filed 5-25-05]

TITLE 170. DEPARTMENT OF CORRECTIONS
CHAPTER 35. EMPLOYEE RECRUITMENT REFERRAL INCENTIVE PROGRAM

[OAR Docket #05-992]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
170:35-1-1. through 170:35-1-9. [NEW]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-992; filed 5-25-05]

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

[OAR Docket #05-976]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 11. Early Childhood Education Programs
210:15-11-2. [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-976; filed 5-23-05]

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

[OAR Docket #05-977]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Priority Academic Student Skills
Part 5. Language Arts
210:15-3-11.1. [AMENDED]
210:15-3-20. [AMENDED]
210:15-3-21. [AMENDED]
210:15-3-22. [AMENDED]
210:15-3-23. [AMENDED]
Part 7. Mathematics
210:15-3-41. [AMENDED]
210:15-3-42. [AMENDED]
210:15-3-43. [AMENDED]
210:15-3-44. [AMENDED]
Part 9. Science
210:15-3-76. [AMENDED]
210:15-3-77. [AMENDED]
210:15-3-78. [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-977; filed 5-23-05]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 25. FINANCE

[OAR Docket #05-978]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Funding Criteria
210:25-3-7. [AMENDED]
Subchapter 5. Budgeting and Business Management
Part 1. Implementation
210:25-5-4. [AMENDED]
210:25-5-5. [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-978; filed 5-23-05]

TITLE 230. STATE ELECTION BOARD
CHAPTER 10. THE COUNTY ELECTION BOARD

[OAR Docket #05-999]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Election Personnel
Part 1. The County Election Board
230:10-3-8. Salary of the Secretary [AMENDED]
230:10-3-9.2. Employment and supervision of County Election Board personnel when office of Secretary is vacant [NEW]
230:10-3-12. Compensation of the Assistant Secretary [AMENDED]
230:10-3-14. Compensation of the Chief Clerk [AMENDED]
230:10-3-16.1. Compensation for temporary personnel must be funded [NEW]
Part 3. The Precinct Election Board
230:10-3-28.1. Special-purpose precinct workers [NEW]
Subchapter 7. General Administration of the County Election Board
Part 5. Maintaining the Office
230:10-7-44. Retention of ballots [AMENDED]
Part 7. Public Records
230:10-7-66. Lists of registered voters [AMENDED]
230:10-7-66.1. Voter registration records available on electronic media from State Election Board [AMENDED]
Part 13. Precincts and Subprecincts
230:10-7-103. Subprecincts [AMENDED]
GUBERNATORIAL APPROVAL:
May 9, 2005

[OAR Docket #05-999; filed 5-26-05]

TITLE 230. STATE ELECTION BOARD
CHAPTER 15. VOTER REGISTRATION

[OAR Docket #05-1000]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Application for Voter Registration
Part 7. Time for Registration
230:15-5-30. Change of political affiliation [AMENDED]
Part 21. Voter Registration Application by Mail
230:15-5-83. Applying for voter registration by mail [AMENDED]
230:15-5-83.1. Voter registration for Address Confidentiality Program participants [AMENDED]
230:15-5-84. Information required on voter registration application [AMENDED]
230:15-5-85. Other information requested on applications for voter registration [AMENDED]
Subchapter 9. Receiving and Processing Voter Registration Applications
Part 5. Processing Voter Registration Applications
230:15-9-18. Entering applications for voter registration in OEMS [AMENDED]
230:15-9-18.1. Assigning voter registration addresses in the Street Guide [AMENDED]
230:15-9-22. Processing applications for change of political affiliation [AMENDED]
230:15-9-22.1. Processing application for change of political affiliation during prohibited period [AMENDED]
Subchapter 11. Voter Registration List Maintenance
Part 1. Cancellation of Voter Registration
230:15-11-4. Processing cancellations of registration [AMENDED]
230:15-11-6.1. Cancellation of registration of deceased voter upon notice of nursing home administrator [NEW]
230:15-11-8. Cancellation for felony conviction [AMENDED]
GUBERNATORIAL APPROVAL:
May 9, 2005

[OAR Docket #05-1000; filed 5-26-05]

TITLE 230. STATE ELECTION BOARD
CHAPTER 20. CANDIDATE FILING

[OAR Docket #05-1001]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Filing for State and County Office
Part 1. When and Where to File
230:20-3-1. Filing period [AMENDED]
Part 3. Qualifications for County Office
230:20-3-18. Resignation required [REVOKED]
Part 9. Withdrawals of Candidates
230:20-3-47. Withdrawal after filing period [AMENDED]
230:20-3-50. Withdrawals from Runoff Primary [AMENDED]
GUBERNATORIAL APPROVAL:
May 9, 2005

[OAR Docket #05-1001; filed 5-26-05

TITLE 230. STATE ELECTION BOARD
CHAPTER 30. ABSENTEE VOTING

[OAR Docket #05-1002]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
230:30-1-2. Definitions [AMENDED]
Subchapter 3. Authorization for Absentee Voting
230:30-3-3. Voters eligible for absentee ballots [AMENDED]
Subchapter 5. Applications for Absentee Ballots
230:30-5-1.1. Applications for absentee ballots [AMENDED]
230:30-5-8.1. Time for absentee ballot applications [AMENDED]
230:30-5-8.2. Validity of applications for absentee ballots for all elections [AMENDED]
Subchapter 7. Absentee Voting Boards
230:30-7-2. Parties submit lists of names by ~~August~~ July 1 [AMENDED]
230:30-7-5. Compensation for Absentee Voting Board members [AMENDED]
230:30-7-6. Scheduling Absentee Voting Boards for an election [AMENDED]
230:30-7-9. Procedure for the nursing home Absentee Voting Board [AMENDED]
230:30-7-11. Procedure for in-person Absentee Voting Board to receive applications and issue ballots [AMENDED]
230:30-7-13. In-person absentee voting procedure for ~~military discharge or military leave~~ uniformed services voter or overseas voter [AMENDED]
230:30-7-14. Verifying voter registration information and status of in-person absentee voters [AMENDED]
230:30-7-15. Procedure for provisional voting during in-person absentee voting [NEW]
Subchapter 9. Processing Applications
230:30-9-2. Forms needed for processing [AMENDED]
230:30-9-3. Processing applications for absentee ballots [AMENDED]
230:30-9-5. Processing applications from ~~military~~ uniformed services voters and overseas voters [AMENDED]
230:30-9-5.1. Faxing absentee ballots to uniformed services and overseas voters [NEW]
Subchapter 11. Receiving and Processing Absentee Ballots
230:30-11-2. Opening outer envelopes and examining affidavits [AMENDED]
230:30-11-6. Transmitting absentee ballots [AMENDED]
230:30-11-6.1. Receiving voted absentee ballots by fax from uniformed services and overseas voters [NEW]
230:30-11-7. Undeliverable absentee ballots returned by postal service to County Election Board [AMENDED]
Subchapter 13. Federal Write-in Absentee Ballot
230:30-13-1. Voters permitted to use federal write-in absentee ballots [AMENDED]
230:30-13-3. Rules for counting federal write-in absentee ballots [AMENDED]
Subchapter 15. State Write-in Absentee Ballots
230:30-15-1. Voters eligible to use state write-in absentee ballot [AMENDED]
230:30-15-2. Applications for state write-in absentee ballot [AMENDED]
230:30-15-3. Time for state write-in absentee ballot applications [AMENDED]
230:30-15-5. Processing applications for state write-in absentee ballots [AMENDED]
230:30-15-7. Voters who request both regular and state write-in absentee ballots [AMENDED]
230:30-15-8. Time for return of state write-in absentee ballots [AMENDED]
230:30-15-9. Rules for counting state write-in absentee ballots [AMENDED]
Subchapter 19. Counting the Ballots
Part 1. Counting Absentee Ballots on Election Day [NEW]
230:30-19-4. Procedure for counting absentee ballots on election day [AMENDED]
230:30-19-6. Marking substitute ballot to count write-in or faxed ballots [NEW]
Part 3. Receiving and Counting Overseas Absentee Ballots for Runoff Primary Election After Election Day [NEW]
230:30-19-15. Absentee ballots from overseas voters shall be received and counted after Runoff Primary Election day for federal offices [NEW]

230:30-19-16. Determining outstanding overseas absentee ballots on Runoff Primary Election night [NEW]
230:30-19-17. Receiving, processing, and counting overseas absentee ballots for Runoff Primary Election after election [NEW]

GUBERNATORIAL APPROVAL:
May 9, 2005

[OAR Docket #05-1002; filed 5-26-05]

TITLE 230. STATE ELECTION BOARD CHAPTER 35. ELECTION CONDUCT

[OAR Docket #05-1003]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 3. County Election Board Responsibilities
Part 1. Before the Filing Period
230:35-3-2. Orders for election supplies required by ~~June~~ May 1 [AMENDED]
230:35-3-3. Assembling precinct supplies [AMENDED]
Part 5. Precinct Official Payroll
230:35-3-30. Pre-Election Expense Claim [AMENDED]
230:35-3-31. Secretary shall verify names [AMENDED]
230:35-3-31.1. Secretary shall determine mileage for Precinct Officials [AMENDED]
230:35-3-32. Verify supply of vouchers [AMENDED]
230:35-3-33. Funds for Precinct Official compensation [AMENDED]
230:35-3-34. Funds for statewide elections [AMENDED]
230:35-3-35. Prepare and register vouchers for Precinct Officials and Absentee Voting Board members [AMENDED]
230:35-3-36. Inspector receives vouchers [AMENDED]
230:35-3-37. Inspector distributes vouchers [AMENDED]
230:35-3-38. Inspector receives compensation [AMENDED]
230:35-3-39. Alternative procedure for distribution of vouchers [AMENDED]
230:35-3-40. Substitute vouchers [AMENDED]
230:35-3-41. Itemized claim for election expenses [AMENDED]
230:35-3-47. Reconciliation of Precinct Official and Absentee Voting Board compensation [AMENDED]
230:35-3-48. Reconciliation for the county's share of Precinct Official compensation [AMENDED]
Part 7. Final Preparations
230:35-3-57. Requesting and printing Precinct Registries [AMENDED]
230:35-3-58. ~~Thursday~~ Wednesday preparations [AMENDED]
Part 9. Distributing Supplies and Ballots
230:35-3-65. Notifying Inspectors [AMENDED]
230:35-3-66. Issuing supplies and ballots [AMENDED]
230:35-3-69. Appointment of Watchers [AMENDED]
230:35-3-70. Pollsters [AMENDED]
Part 11. Election Day
230:35-3-79. Election day confirmation of timely, valid voter registration application [REVOKED]
Part 13. After the Polls Close
230:35-3-84. Assembly line required for receiving returns and materials from Inspectors [AMENDED]
230:35-3-84.1. Determining number of signatures on Provisional Ballot Rosters [NEW]
230:35-3-85.1. Election night recounts [AMENDED]
230:35-3-86. Sheriff to provide security for voted ballots [AMENDED]
230:35-3-87. Accumulating and producing election results [AMENDED]
Part 15. Certification of Results
230:35-3-91. Certifying county election results [AMENDED]
230:35-3-92. Tie votes [AMENDED]
230:35-3-93. Credit for voting [AMENDED]
Part 17. Disposition of Materials
230:35-3-101. Processing FORMS FOR USE BY PRECINCT OFFICIALS booklets [AMENDED]
230:35-3-101.1. Processing transfers of address on election day [AMENDED]
Part 19. Verifying and Counting Provisional Ballots [NEW]
230:35-3-125. Handling provisional ballot affidavit envelopes [NEW]
230:35-3-126. Criteria for verification of provisional ballot affidavit information [NEW]
230:35-3-127. Provisional ballot verification procedure for voter not in Precinct Registry [NEW]
230:35-3-128. Provisional ballot verification procedure for voter without required identification [NEW]
230:35-3-129. Provisional ballot verification procedure for voter who disputes political affiliation [NEW]
230:35-3-130. Provisional ballot verification procedure for voter who disagrees with school district or municipal assignment [NEW]
230:35-3-131. Opening provisional ballot affidavit envelopes and counting provisional ballots [NEW]
230:35-3-132. Obtaining provisional ballot results [NEW]
230:35-3-133. Voter may learn of disposition of own provisional ballot [NEW]
230:35-3-134. Retention of provisional ballot materials [NEW]
Subchapter 5. Instructions for Precinct Election Officials
Part 5. Preparations on Election Day
230:35-5-29. Location and materials for Judge [AMENDED]
230:35-5-31.1. Location and materials for provisional voting [NEW]
Part 7. General Guidelines
230:35-5-39. Violations of the law [AMENDED]
Part 9. Opening the Polls

230:35-5-47. Before processing first voter [AMENDED]
Part 11. Processing the Voter
230:35-5-52. Persons entitled to vote [AMENDED]
230:35-5-52.1. Voters eligible to vote when two or more entities hold elections on same date [AMENDED]
230:35-5-55. Routine for Judge [AMENDED]
230:35-5-60. Registration Officials [NEW]
Part 15. After the Polls Close
230:35-5-75.3. Completing election night tasks [AMENDED]
230:35-5-76. Repacking supplies [AMENDED]
230:35-5-79. Inspector returns to the County Election Board office [AMENDED]
Part 21. Voters Listed in Precinct Registry Who Have Problems With Eligibility
230:35-5-111. Voter whose name is not in Precinct Registry — Challenged Voter Procedure [REVOKED]
230:35-5-111.1. Person who applied for voter registration but has not received voter identification card [REVOKED]
230:35-5-113.2. Determining voter's school district or municipality [AMENDED]
230:35-5-113.3. Identification Required voter [NEW]
230:35-5-114. Military or Overseas Voter [AMENDED AND RENUMBERED TO 2303:35-5-175]
Part 27. Watchers and Pollsters
230:35-5-134. Watchers [AMENDED]
230:35-5-136. Pollsters [AMENDED]
Part 29. Violations of the Law
230:35-5-145. Persons authorized inside election enclosure [AMENDED]
Part 34. Provisional Voting Procedures [NEW]
230:35-5-171. Voter's name not found in Precinct Registry [NEW]
230:35-5-172. Identification required voter with no identification [NEW]
230:35-5-173. Voter disputes political affiliation indicated in Precinct Registry [NEW]
230:35-5-174. Voter disputes school district or municipal assignment in Precinct Registry [NEW]
230:35-5-175. Uniformed Services or Overseas Voter [NEW]
230:35-5-176. Filling out a Provisional Ballot Voucher [NEW]
230:35-5-177. Provisional voting procedure [NEW]
Subchapter 9. HAVA Requirements [NEW]
Part 1. General Provisions
230:35-9-1. Purpose [NEW]
Part 3. Provisional Voting [NEW]
230:35-9-6. Provisional voting for all elections [NEW]
230:35-9-7. Voters who may cast a provisional ballot [NEW]
230:35-9-8. Provisional Voting Officer authorized [NEW]
230:35-9-9. Extension of provisional ballot verification period [NEW]
Part 5. Voter Identification [NEW]
230:35-9-16. Some voters required to present identification when voting for first time in election for federal office [NEW]
Part 7. Voter Information [NEW]
230:35-9-17. Public posting of voting information on election day [NEW]
Part 9. Complaints [NEW]
230:35-9-21. Purpose [NEW]
230:35-9-22. Complaints [NEW]
230:35-9-23. Receiving complaints [NEW]
230:35-9-24. Investigation of complaint [NEW]
230:35-9-25. Hearing [NEW]
230:35-9-26. Resolution of complaint [NEW]
230:35-9-27. Alternative dispute resolution for complaint [NEW]

GUBERNATORIAL APPROVAL:
May 9, 2005

[OAR Docket #05-1003; filed 5-26-05]

TITLE 230. STATE ELECTION BOARD
CHAPTER 40. TYPES OF ELECTIONS

[OAR Docket #05-1004]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 3. Special Elections
Part 1. Calling Special Elections
230:40-3-1.1. Times for special elections [AMENDED]
Part 3. Vacancies
230:40-3-8. Vacancies in the Legislature [AMENDED]
230:40-3-9. Vacancies for County Commissioner [AMENDED]
Subchapter 5. Municipal Elections
Part 1. Cities with Home Rule Charters
230:40-5-2. Copy of charter required [AMENDED]
230:40-5-4. Absentee voting required in home rule charter cities [AMENDED]
230:40-5-4.1. Provisional voting required in home rule charter cities [NEW]
230:40-5-5. Statutory election dates required for home rules charter cities [NEW]
Part 3. Nonpartisan Municipal Elections
230:40-5-9. Municipal elections shall be nonpartisan [AMENDED]
230:40-5-10. Partisan elections authorized by ordinance [AMENDED]
230:40-5-11. Ordinance must be attached to resolution [AMENDED]
Part 5. Statutory Municipalities
230:40-5-16. Statutory municipalities [AMENDED]
230:40-5-18. Notice of elections [AMENDED]
Part 7. Town Meetings

230:40-5-25. Town meetings required [AMENDED]
230:40-5-26. Ordinance required to hold elections [AMENDED]
230:40-5-27. Election laws apply [AMENDED]
230:40-5-28. Ordinance requiring election repealed [AMENDED]
230:40-5-29. Town meetings not required in municipalities with home rule charters [AMENDED]
Part 9. Procedures
230:40-5-34. Conduct of municipal elections [AMENDED]
230:40-5-35. Filing period for regular elections [AMENDED]
230:40-5-36. No filing fees [AMENDED]
230:40-5-38. Persons eligible to be candidates in nonpartisan elections [AMENDED]
230:40-5-41. Date for nonpartisan municipal election [AMENDED]
230:40-5-42. Dates of partisan municipal Primary and General Elections [AMENDED]
230:40-5-43. No Runoff Primary [AMENDED]
230:40-5-44. Certification [AMENDED]
230:40-5-46. Maps required [AMENDED]
230:40-5-47. Dates cannot conflict [AMENDED]
Part 11. Ballot Printing
230:40-5-52. Materials and ballots [AMENDED]
230:40-5-53. Order of names [AMENDED]
Part 13. Expenses
230:40-5-59. Pre-Election Expense Claim [AMENDED]
230:40-5-60. Claim for balance of election expenses [AMENDED]
Part 15. Municipalities in More Than One County
230:40-5-65. Municipalities in more than one county [AMENDED]
Part 17. Special Elections
230:40-5-77. Special elections for municipal offices [AMENDED]
230:40-5-78. Special election for municipal questions [AMENDED]
Part 19. Statistical Reports
230:40-5-84. ~~Report on analysis~~ Analysis of Municipal ~~Elections~~ Election reports [AMENDED]
Subchapter 7. School Elections
Part 1. Dates for Annual School Election
230:40-7-1. Annual School Elections [AMENDED]
Part 9. Procedures
230:40-7-39.1. Provisional voting [AMENDED]
230:40-7-42. Certification [AMENDED]
Part 23. Multi-County School Districts
230:40-7-104.1. Provisional voting [NEW]
230:40-7-109. Certification by parent County Election Board [AMENDED]

GUBERNATORIAL APPROVAL:
May 9, 2005

[OAR Docket #05-1004; filed 5-26-05]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #05-828]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
265:1-1-2. [AMENDED]
265:1-1-3. [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-828; filed 5-10-05]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 3. INDIVIDUAL PROCEEDINGS

[OAR Docket #05-829]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Procedures
265:3-3-4. [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-829; filed 5-10-05]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 10. SMOKE DETECTORS

[OAR Docket #05-830]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Rationalization
265:10-3-1. [AMENDED]
265:10-3-2. [AMENDED]
265:10-3-3. [AMENDED]
265:10-3-4. [AMENDED]
Subchapter 5. Compliance
265:10-5-1. [AMENDED]
265:10-5-2. [AMENDED]

265:10-5-4. [AMENDED]
265:10-5-5. [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-830; filed 5-10-05]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 15. PROTECTIVE CLOTHING AND BREATHING APPARATUS

[OAR Docket #05-831]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions [REVOKED]
265:15-1-1. [REVOKED]
265:15-1-2. [REVOKED]
Subchapter 3. [REVOKED]
Subchapter 5. Protective Clothing [REVOKED]
265:15-5-1. [REVOKED]
265:15-5-2. [REVOKED]
265:15-5-3. [REVOKED]
265:15-5-4. [REVOKED]
265:15-5-5. [REVOKED]
265:15-5-6. [REVOKED]
Subchapter 7. Self-Contained Breathing Apparatus (SCBA) [REVOKED]
265:15-7-1. [REVOKED]
265:15-7-2. [REVOKED]
265:15-7-3. [REVOKED]
265:15-7-4. [REVOKED]
265:15-7-5. [REVOKED]
265:15-7-6. [REVOKED]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-831; filed 5-10-05]

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

[OAR Docket #05-832]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
265:25-1-3. [AMENDED]
265:25-1-4. [NEW]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-832; filed 5-10-05]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 30. INSPECTION OF RACE TRACKS

[OAR Docket #05-833]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
265:30-1-1. [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-833; filed 5-10-05]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 35. FIELD CITATIONS

[OAR Docket #05-834]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
265:35-1-1. [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-834; filed 5-10-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 4. CERTIFICATE OF NEED HEARINGS

[OAR Docket #05-917]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
PROPOSED RULES:
310:4-1-5. [AMENDED]
310:4-1-7.1. [AMENDED]
310:4-1-13. [AMENDED]
310:4-1-15. [REVOKED]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-917; filed 5-19-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 205. ALARM INDUSTRY

[OAR Docket #05-918]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
PROPOSED RULES:
Subchapter 1. General Provisions
310:205-1-2. [AMENDED]
310:205-1-3. [AMENDED]
Subchapter 3. License Requirements
310:205-3-1. [AMENDED]
310:205-3-2. [AMENDED]
310:205-3-3. [AMENDED]
310:205-3-4. [AMENDED]
310:205-3-7. [AMENDED]
Subchapter 5. Special Provisions
310:205-5-1. [AMENDED]
310:205-5-2. [AMENDED]
Appendix A. Table of Alarm Industry Licensing Requirements [REVOKED]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-918; filed 5-19-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 210. ~~BARBER REGULATIONS~~BARBERS

[OAR Docket #05-919]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
PROPOSED RULES:
Subchapter 3. Examinations
310:210-3-3. [AMENDED]
Subchapter 5. Licensing
310:210-5-6. [AMENDED]
310:210-5-8. [AMENDED]
Subchapter 7. General Sanitation
310:210-7-13. [AMENDED]
Subchapter 9. Barber School and College Requirements
310:210-9-3. [AMENDED]
310:210-9-8. [AMENDED]
310:210-9-11. [AMENDED]
Subchapter 11. Barber School or College Management Requirements
310:210-11-6. [REVOKED]
Appendix B. Barber Instructor Curriculum and Hours [REVOKED]
Appendix B. Barber Instructor Curriculum and Hours [NEW]
Appendix C. Barber Apprentice Curriculum and Hours [REVOKED]
Appendix C. Barber Apprentice Curriculum and Hours [NEW]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-919; filed 5-19-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 250. FEE SCHEDULE FOR ~~ENVIRONMENTAL~~CONSUMER HEALTH SERVICES

[OAR Docket #05-920]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
PROPOSED RULES:
Subchapter 3. License Classifications and Associated Fees For ~~Environmental~~Consumer Health Services
310:250-3-6. [NEW]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-920; filed 5-19-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 256. FOOD SERVICE ESTABLISHMENTS

[OAR Docket #05-921]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
PROPOSED RULES:
Subchapter 1. General Provisions
310:256-1-2. [AMENDED]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-921; filed 5-19-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 276. HOME INSPECTION INDUSTRY

[OAR Docket #05-922]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

PROPOSED RULES:
Subchapter 1. General Provisions
310:276-1-2. [AMENDED]
Subchapter 5. License Requirements, License Fees, License Period, Re-Examination, Display and Insurance.
310:276-5-2. [AMENDED]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-922; filed 5-19-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 320. PUBLIC BATHING ~~PLACE OPERATIONAL REGULATIONS~~PLACES

[OAR Docket #05-923]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
PROPOSED RULES:
Subchapter 3. Operational Provisions
310:320-3-13. [NEW]
Subchapter 5. Forms and Tables
310:320-5-6. [AMENDED]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-923; filed 5-19-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 403. LICENSED BEHAVORIAL PRACTITIONERS

[OAR Docket #05-924]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 13. Academic Requirements
310:403-13-1. [AMENDED]
310:403-13-2. [AMENDED]
310:403-13-3. [AMENDED]
Subchapter 15. Supervised Experience Requirement
310:403-15-5. [AMENDED]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-924; filed 5-19-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 405. LICENSED PROFESSIONAL COUNSELORS

[OAR Docket #05-925]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
PROPOSED RULES:
Subchapter 9. Academic Requirements
310:405-9-1. [AMENDED]
310:405-9-2. [AMENDED]
Subchapter 11. Supervised Experience Requirement
310:405-11-4. [AMENDED]
Subchapter 17. Continuing Education Requirements
310:405-17-2. [AMENDED]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-925; filed 5-19-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 566. COMPREHENSIVE BREAST AND CERVICAL CANCER DETECTION AND TREATMENT

[OAR Docket #05-926]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
PROPOSED RULES:
Subchapter 1. General Provisions [NEW]
310:566-1-1. through 310:566-1-7. [NEW]
Subchapter 3. Service Provision [NEW]
310:566-3-1. through 310:566-3-3. [NEW]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-926; filed 5-19-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 620. CERTIFICATE OF NEED STANDARDS FOR HEALTH CARE FACILITY ACQUISITIONS

[OAR Docket #05-927]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
PROPOSED RULES:
Subchapter 1. General
310:620-1-3. [REVOKED]

Subchapter 3. Standards
310:620-3-1. [AMENDED]
310:620-3-3. [AMENDED]
310:620-3-4.1. [AMENDED]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-927; filed 5-19-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 630. CERTIFICATE OF NEED STANDARDS FOR LICENSED NURSING FACILITY BEDS

[OAR Docket #05-928]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
PROPOSED RULES:
310:630-1-3. [AMENDED]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-928; filed 5-19-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 641. EMERGENCY MEDICAL SERVICES

[OAR Docket #05-929]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
PROPOSED RULES:
Chapter 641. Emergency Medical Services [AMENDED]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-929; filed 5-19-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 663. CONTINUUM OF CARE AND ASSISTED LIVING

[OAR Docket #05-930]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
PROPOSED RULES:
Subchapter 21. Applying for a license
310:663-21-2. [AMENDED]
310:663-21-4. [AMENDED]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-930; filed 5-19-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 667. HOSPITAL STANDARDS

[OAR Docket #05-931]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
PROPOSED RULES:
Subchapter 1. General Provisions
310:667-1-3. [AMENDED]
Subchapter 5. Compliance With Federal, State, and Local Laws
310:667-5-4. [AMENDED]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-931; filed 5-19-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 669. TRAUMA CARE ASSISTANCE REVOLVING FUND

[OAR Docket #05-932]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
PROPOSED RULES:
Subchapter 1. General Provisions
310:669-1-2. [AMENDED]
Subchapter 3. Data Accumulations
310:669-3-1. [AMENDED]
Subchapter 5. Reports and Financial Statements
310:669-5-1. [AMENDED]
310:669-5-2. [AMENDED]
310:669-5-4. [AMENDED]
Subchapter 7. Fund Distribution
310:669-7-1. [AMENDED]
310:669-7-2. [AMENDED]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-932; filed 5-19-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 670. JAIL STANDARDS

[OAR Docket #05-933]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
PROPOSED RULES:
Subchapter 1. General Provisions
310:670-1-2. [AMENDED]
Subchapter 3. Standards for Lockup Facilities
310:670-3-1. [AMENDED]
Subchapter 5. Standards for Jail Facilities/Detention Center
310:670-5-1. [AMENDED]
310:670-5-2. [AMENDED]
310:670-5-3. [AMENDED]
310:670-5-6. [AMENDED]
310:670-5-7. [AMENDED]
310:670-5-8. [AMENDED]
310:670-5-10. [AMENDED]
Subchapter 7. Standards for Jails Holding Juveniles
310:670-7-1. [AMENDED]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-933; filed 5-19-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 675. NURSING AND SPECIALIZED FACILITIES

[OAR Docket #05-934]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
PROPOSED RULES:
Subchapter 3. Licenses
310:675-3-5.1. [AMENDED]
310:675-3-8. [AMENDED]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-934; filed 5-19-05]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 677. NURSE AIDE TRAINING AND CERTIFICATION

[OAR Docket #05-935]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
PROPOSED RULES:
Subchapter 1. General Provisions
310:677-1-6. [NEW]
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-935; filed 5-19-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #05-902]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-2.1. [NEW]
(Reference APA WF # 04-11)
GUBERNATORIAL APPROVAL:
May 5, 2005

[OAR Docket #05-902; filed 5-18-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #05-903]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-20.1. [NEW]
(Reference APA WF # 04-21)
GUBERNATORIAL APPROVAL:
May 5, 2005

[OAR Docket #05-903; filed 5-18-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #05-904]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 5. Individual Providers and Specialties
Part 5. Pharmacists
317:30-5-72. [AMENDED]
(Reference APA WF # 04-22)
GUBERNATORIAL APPROVAL:
May 5, 2005

[OAR Docket #05-904; filed 5-18-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #05-905]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 5. Pharmacists
317:30-5-86.1. [AMENDED]
(Reference APA WF # 04-08)
GUBERNATORIAL APPROVAL:
May 5, 2005

[OAR Docket #05-905; filed 5-18-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #05-906]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 6. Inpatient Psychiatric Hospitals
317:30-5-95.3. [AMENDED]
(Reference APA WF # 04-15)
GUBERNATORIAL APPROVAL:
May 5, 2005

[OAR Docket #05-906; filed 5-18-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #05-907]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 9. Long Term Care Facilities
317:30-5-129. [AMENDED]
Part 57. Hospice Care
317:30-5-525. through 317:30-5-527. [REVOKED]
(Reference APA WF # 04-26A)
GUBERNATORIAL APPROVAL:
May 5, 2005

[OAR Docket #05-907; filed 5-18-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #05-908]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 21. Outpatient Behavioral Health Services
317:30-5-240. through 317:30-5-241. [AMENDED]
317:30-5-243. [REVOKED]
317:30-5-247. [REVOKED]
317:30-5-248. [AMENDED]
(Reference APA WF # 04-06)
GUBERNATORIAL APPROVAL:
May 5, 2005

[OAR Docket #05-908; filed 5-18-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #05-940]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider Policies
Part 3. General Medical Program Information

317:30-3-40. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 51. Habilitation Services
317:30-5-482. [AMENDED]
(Reference APA WF # 04-16A)
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-940; filed 5-20-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #05-941]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 2. Physician Assistants
317:30-5-30. through 317:30-5-31. [AMENDED]
317:30-5-34. [REVOKED]
(Reference APA WF # 04-04)
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-941; filed 5-20-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #05-942]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 6. Inpatient Psychiatric Hospitals
317:30-5-96. [AMENDED]
(Reference APA WF # 04-12)
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-942; filed 5-20-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #05-943]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 9. Long Term Care Facilities
317:30-5-123. [AMENDED]
(Reference APA WF # 04-03A)
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-943; filed 5-20-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #05-944]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 9. Long Term Care Facilities
317:30-5-131.2. [AMENDED]
(Reference APA WF # 04-01)
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-944; filed 5-20-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #05-945]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 9. Long Term Care Facilities
317:30-5-134. [AMENDED]
(Reference APA WF # 04-10)

GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-945; filed 5-20-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #05-946]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 79. Dentists
317:30-5-700. [AMENDED]
(Reference APA WF # 04-05)
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-946; filed 5-20-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #05-947]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 90. Diagnostic Testing Entities [NEW]
317:30-5-907. through 30-5-907.3. [NEW]
(Reference APA WF # 04-09)
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-947; filed 5-20-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-ELIGIBILITY

[OAR Docket #05-909]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
317:35-1-2. [AMENDED]
Subchapter 5. Eligibility and Countable Income
Part 1. Determination of Qualifying Categorical Relationships
317:35-5-4. [AMENDED]
317:35-5-4.1. [NEW]
Part 5. Countable Income and Resources
317:35-5-41. through 317:35-5-42. [AMENDED]
317:35-5-49. [NEW]
Subchapter 7. Medical Services
Part 5. Determination of Eligibility for Medical Services
317:35-7-36. [AMENDED]
Part 7. Certification, Redetermination and Notification
317:35-7-61. [AMENDED]
317:35-7-61.1. [NEW]
(Reference APA WF # 04-19 and 04-20)
GUBERNATORIAL APPROVAL:
May 5, 2005

[OAR Docket #05-909; filed 5-18-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-ELIGIBILITY

[OAR Docket #05-910]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Eligibility and Countable Income
Part 1. Determination of Qualifying Categorical Relationships
317:35-5-2. [AMENDED]
317:35-5-8. [NEW]
Subchapter 7. Medical Services
Part 5. Determination of Eligibility for Medical Services
317:35-7-37. [AMENDED]
317:35-7-48. [NEW]
Part 7. Certification, Redetermination and Notification
317:35-7-60. [AMENDED]
317:35-7-60.1. [NEW]
(Reference APA WF # 04-14)
GUBERNATORIAL APPROVAL:
May 5, 2005

[OAR Docket #05-910; filed 5-18-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-ELIGIBILITY

[OAR Docket #05-911]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. Medical Services
Part 5. Determination of Eligibility for Medical Services
317:35-7-38. [AMENDED]
Subchapter 10. Medical Aid to Families with Dependent Children
Part 5. Income
317:35-10-38. [NEW]
(Reference APA WF # 04-25 and 04-26B)
GUBERNATORIAL APPROVAL:
May 5, 2005

[OAR Docket #05-911; filed 5-18-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-ELIGIBILITY

[OAR Docket #05-948]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 6. Soonercare Health Benefits for Categorically Needy Pregnant Women and Families with Children
Part 7. Certification, Redetermination and Notification
317:35-6-64.1. [NEW]
(Reference APA WF # 04-02)
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-948; filed 5-20-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-ELIGIBILITY

[OAR Docket #05-949]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 19. Nursing Facility Services
317:35-19-14. [AMENDED]
(Reference APA WF # 04-03B)
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-949; filed 5-20-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-ELIGIBILITY

[OAR Docket #05-950]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 21. Breast and Cervical Cancer Treatment Program [NEW]
317:35-21-1. through 35-21-13. [NEW]
(Reference APA WF # 04-13)
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-950; filed 5-20-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 40. DEVELOPMENTAL DISABILITIES SERVICES

[OAR Docket #05-912]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
317:40-1-1. [AMENDED]
Subchapter 5. Client Services
Part 1. Companion/Adult Foster Care Services by Agency~~Agency Companion Services~~
317:40-5-1. [AMENDED]
317:40-5-3. through 317:40-5-6. [AMENDED]
317:40-5-7. [REVOKED]
317:40-5-8. through 317:40-5-11. [AMENDED]
317:40-5-12. [REVOKED]
317:40-5-13. [AMENDED]
317:40-5-14. through 317:40-5-15. [REVOKED]
Part 3. Guidelines to Staff
317:40-5-37. through 317:40-5-39. [REVOKED]
317:40-5-40. [NEW]
Subchapter 7. Waiver Employment Services
317:40-7-1. through 317:40-7-8. [AMENDED]
317:40-7-11. through 317:40-7-13. [AMENDED]
317:40-7-15. [AMENDED]
317:40-7-19. [REVOKED]

317:40-7-20. through 317:40-7-21. [AMENDED]
(Reference APA WF # 04-17)
GUBERNATORIAL APPROVAL:
May 5, 2005

[OAR Docket #05-912; filed 5-18-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 40. DEVELOPMENTAL DISABILITIES SERVICES

[OAR Docket #05-913]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Client Services
Part 5. Specialized Foster Care
317:40-5-50. through 317:40-5-52. [AMENDED]
317:40-5-53. [REVOKED]
317:40-5-54. through 317:40-5-64. [AMENDED]
317:40-5-65. [REVOKED]
317:40-5-66. through 317:40-5-67. [AMENDED]
Part 7. Standards and Guidelines for Specialized Foster Care
317:40-5-75. through 317:40-5-76. [REVOKED]
(Reference APA WF # 04-18)
GUBERNATORIAL APPROVAL:
May 5, 2005

[OAR Docket #05-913; filed 5-18-05]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 40. DEVELOPMENTAL DISABILITIES SERVICES

[OAR Docket #05-951]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Client Services
Part 9. Service Provisions
317:40-5-113. [NEW]
(Reference APA WF # 04-16B)
GUBERNATORIAL APPROVAL:
May 12, 2005

[OAR Docket #05-951; filed 5-20-05]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #05-936]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 11. Finance
Part 8. General Provisions
340:2-11-91. [AMENDED]
Part 13. Electronic Benefit Disbursement [NEW]
340:2-11-150. [NEW]
(Reference APA WF 05-02)
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-936; filed 5-20-05]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 40. CHILD CARE SERVICES

[OAR Docket #05-937]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 13. Child Care Rates and Provider Issues
340:40-13-5. [AMENDED]
Subchapter 15. Overpayments
340:40-15-1. [AMENDED]
(Reference APA WF 04-09 and 05-01)
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-937; filed 5-20-05]

TITLE 365. INSURANCE DEPARTMENT
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #05-888]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 9. Description of Forms and Instructions
365:1-9-15.1. License renewals and reinstatements [AMENDED]

GUBERNATORIAL APPROVAL:
May 9, 2005

[OAR Docket #05-888; filed 5-16-05]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 10. LIFE, ACCIDENT AND HEALTH

[OAR Docket #05-889]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Minimum Standards; Contract Guidelines
Part 1. Minimum Standards And Benefits For Accident And Health Insurance
365:10-5-4. Prohibited policy provisions [AMENDED]
Part 5. Long-Term Care Insurance
365:10-5-43. Policy practices and provisions [AMENDED]
Part 13. Medicare Supplement Insurance Minimum Standards [AMENDED]
365:10-5-123. Definitions [AMENDED]
365:10-5-124. Policy definitions and terms [AMENDED]
365:10-5-125. Policy provisions [AMENDED]
365:10-5-126. Minimum benefit standards for policies or certificates issued for delivery prior to July 1, 1992 [AMENDED]
365:10-5-127. Benefit standards for policies or certificates issued or delivered on or after July 1, 1992 [AMENDED]
365:10-5-128. Standard Medicare Supplement benefit plans [AMENDED]
365:10-5-128.1. Medicare Select Policies and Certificates [AMENDED]
365:10-5-129.1. Guaranteed issue for eligible persons [AMENDED]
365:10-5-131. Loss ratio standards and refund or credit of premium [AMENDED]
365:10-5-132. Filing and approval of policies and certificates and premium rates [AMENDED]
365:10-5-134. Required disclosure provisions [AMENDED]
365:10-5-135. Requirements for application forms and replacement coverage [AMENDED]
365:10-5-138. Appropriateness of recommended purchase and excessive insurance [AMENDED]
Appendix Q. Medicare Supplement [REVOKED]
Appendix Q. Medicare Supplement [NEW]
Appendix S. Outline of Coverage Tables [REVOKED]
Appendix S. Outline of Coverage Tables [NEW]
Appendix T. Notice To Applicant Regarding Replacement Of Medicare Supplement Insurance [REVOKED]
Appendix T. Notice To Applicant Regarding Replacement Of Medicare Supplement Insurance [NEW]
Appendix V. Disclosure Statements [REVOKED]
Appendix V. Disclosure Statements [NEW]
Appendix FF. Medicare Supplement Insurance Questions [NEW]
GUBERNATORIAL APPROVAL:
May 9, 2005

[OAR Docket #05-889; filed 5-16-05]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 15. PROPERTY AND CASUALTY

[OAR Docket #05-890]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
365:15-1-3. Property and casualty form filings [AMENDED]
Subchapter 7. Commercial Property And Casualty Competitive Loss Cost Rating Regulation
365:15-7-6. Excess consent rate filings [AMENDED]
365:15-7-16. Statistical plans [AMENDED]
365:15-7-17. Suspension or modification of filing requirements [AMENDED]
365:15-7-18. Technicians [AMENDED]
365:15-7-26. Weather related claims [NEW]
365:15-7-27. Credit related policies [NEW]
365:15-7-28. Use of lack of prior insurance in underwriting or rating [NEW]
Subchapter 9. Medical Professional Liability Rate Setting
365:15-9-3. Notice to Policyholders [AMENDED]
365:15-9-6.1. Umbrella medical professional liability coverage [NEW]
365:15-9-8. Miscellaneous [AMENDED]
365:15-9-9. Rate change application is a public record [NEW]
GUBERNATORIAL APPROVAL:
May 9, 2005

[OAR Docket #05-890; filed 5-16-05]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 25. LICENSURE OF AGENTS, ADJUSTERS, BAIL BONDSMEN, COMPANIES, PREPAID FUNERAL BENEFITS, AND VIATICAL AND LIFE SETTLEMENTS PROVIDERS AND BROKERS

[OAR Docket #05-891]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:

Subchapter 3. Agents, Brokers, Adjusters and Limited Representatives
365:25-3-1. Insurance agents continuing education [AMENDED]
365:25-3-13. Surplus line insurance with non-admitted insurer; approval prior to issuance; collection and remittance of taxes; claims for tax adjustments; procedures; forms [AMENDED]
365:25-3-14. Insurance adjusters continuing education [AMENDED]
Subchapter 11. Viatical Settlements Regulation
365:25-11-3. License requirements for viatical settlement brokers [AMENDED]
Subchapter 13. Life Settlements Regulation
365:25-13-3. License requirements for life settlement brokers [AMENDED]
Subchapter 15. Captive Insurance Companies Regulation [NEW]
365:25-15-1. Purpose and authority [NEW]
365:25-15-2. Annual reporting requirements [NEW]
365:25-15-3. Annual Audit [NEW]
365:25-15-4. Independent certified public accountant [NEW]
365:25-15-5. Deposit requirement [NEW]
365:25-15-6. Organizational examination [NEW]
365:25-15-7. Reinsurance [NEW]
365:25-15-8. Insurance managers and intermediaries [NEW]
365:25-15-9. Executive officers and directors [NEW]
365:25-15-10. Conflict of interest [NEW]
365:25-15-11. Rescission of captive license [NEW]
365:25-15-12. Acquisition of control of or merger with domestic company [NEW]
365:25-15-13. Change of business [NEW]
365:25-15-14. Prior approval [NEW]
365:25-9-Appendix C. Application For Original Permit [REVOKED]
365:25-9-Appendix C. Application For Original Permit [NEW]

GUBERNATORIAL APPROVAL:

May 9, 2005

[OAR Docket #05-891; filed 5-16-05]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 35. PRIVACY

[OAR Docket #05-892]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 3. Standards For Safeguarding Customer Information Regulation [NEW]
365:35-3-1. Preamble [NEW]
365:35-3-2. Definitions [NEW]
365:35-3-3. Information security program [NEW]
365:35-3-4. Objectives of information security program [NEW]
365:35-3-5. Examples of methods of development and implementation [NEW]
365:35-3-6. Assess risk [NEW]
365:35-3-7. Manage and control risk [NEW]
365:35-3-8. Oversee service provider arrangements [NEW]
365:35-3-9. Adjust the program [NEW]
365:35-3-10. Violation [NEW]
365:35-3-11. Effective date [NEW]

GUBERNATORIAL APPROVAL:

May 9, 2005

[OAR Docket #05-892; filed 5-16-05]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 3. ADMINISTRATIVE SERVICES

[OAR Docket #05-839]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. Office of the Executive Director
Part 3. Office of the Advocate General
377:3-1-25. [AMENDED]
377:3-1-28. [AMENDED]
Subchapter 15. Management Information System
377:3-15-15. [REVOKED]
377:3-15-16. [REVOKED]
377:3-15-17. [REVOKED]
Subchapter 16. Office of Planning and Research [NEW]
377:3-16-1. [NEW]
377:3-16-2. [NEW]
377:3-16-3. [NEW]
377:3-16-4. [NEW]
Subchapter 13. Office of Public Integrity
Part 3. Requirements for Secure Juvenile Detention Centers
377:3-13-36. [AMENDED]
377:3-13-43. [AMENDED]
377:3-13-44. [AMENDED]
377:3-13-47. [AMENDED]

GUBERNATORIAL APPROVAL:

April 13, 2005

[OAR Docket #05-839; filed 5-11-05]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 5. DIVISION OF THE PAROLE BOARD

[OAR Docket #05-840]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions [NEW]
377:5-1-1. [NEW]
377:5-1-2. [NEW]
377:5-1-3. [NEW]
Subchapter 3. Pre-release Planning [NEW]
377:5-3-1. [NEW]
377:5-3-2. [NEW]
377:5-3-3. [NEW]
377:5-3-4. [NEW]
377:5-3-5. [NEW]
Subchapter 5. Hearings [NEW]
377:5-5-1. [NEW]
377:5-5-2. [NEW]
377:5-5-3. [NEW]
377:5-5-4. [NEW]
377:5-5-5. [NEW]
GUBERNATORIAL APPROVAL:
April 13, 2005

[OAR Docket #05-840; filed 5-11-05]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 10. DEPARTMENT OF JUVENILE JUSTICE

[OAR Docket #05-841]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 9. Services to Juveniles in Out-of-home Placements
Part 3. Grand Staffing
377:10-9-10. [AMENDED]
377:10-9-11. [REVOKED]
377:10-9-12. [REVOKED]
GUBERNATORIAL APPROVAL:
April 13, 2005

[OAR Docket #05-841; filed 5-11-05]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 25. JUVENILE SERVICES UNIT

[OAR Docket #05-842]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. Custody
Part 5. Rules of Supervised Community Placement
377:25-7-30. [REVOKED]
Part 7. Parole [REVOKED]
77:25-7-40. [REVOKED]
377:25-7-41. [REVOKED]
377:25-7-42. [REVOKED]
GUBERNATORIAL APPROVAL:
April 13, 2005

[OAR Docket #05-842; filed 5-11-05]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 30. RESIDENTIAL SERVICES

[OAR Docket #05-843]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Division of the Parole Board [REVOKED]
377:30-5-1. [REVOKED]
377:30-5-2. [REVOKED]
377:30-5-3. [REVOKED]
377:30-5-4. [REVOKED]
377:30-5-5. [REVOKED]
377:30-5-6. [REVOKED]
377:30-5-7. [REVOKED]
GUBERNATORIAL APPROVAL:
April 13, 2005

[OAR Docket #05-843; filed 5-11-05]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 35. INSTITIUTIONAL SERVICES

[OAR Docket #05-844]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions [AMENDED]
Subchapter 3. Security and Control [AMENDED]
Subchapter 5. Food Services, Sanitation, Safety and Hygiene [AMENDED]
Subchapter 7. Medical and Health Care [AMENDED]
Subchapter 9. Juvenile Rights [AMENDED]

Subchapter 11. Juvenile Rules/discipline [AMENDED]
Subchapter 19. Release and Revocations (Delinquent Programs) [REVOKED]

GUBERNATORIAL APPROVAL:
April 13, 2005

[OAR Docket #05-844; filed 5-11-05]

TITLE 445. BOARD OF MEDICOLEGAL INVESTIGATIONS
CHAPTER 10. MEDICAL EXAMINER CASES

[OAR Docket #05-864]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
445:10-1-11. Fees for Forensic Science and Laboratory Services [AMENDED]

GUBERNATORIAL APPROVAL:
March 23, 2005

[OAR Docket #05-864; filed 5-13-05]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 1. ADMINISTRATION

[OAR Docket #05-1015]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Information
450:1-1-1.1. [AMENDED]
450:1-1-5. [AMENDED]
450:1-1-7. [AMENDED]
Subchapter 5. Procedure in Individual Administrative Proceedings
450:1-5-4. [AMENDED]
Subchapter 7. Charges and Eligibility for ODMHSAS Services
450:1-7-4. [REVOKED]
Subchapter 9. Certification and Designation of Facilities and Services
450:1-9-4. [AMENDED]
450:1-9-6. [AMENDED]
450:1-9-7. [AMENDED]
450:1-9-8. [AMENDED]
450:1-9-9. [AMENDED]

GUBERNATORIAL APPROVAL:
April 28, 2005

[OAR Docket #05-1015; filed 5-26-05]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 15. CONSUMER RIGHTS

[OAR Docket #05-1017A]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 3. Consumer Rights
Part 1. Mental Health and Drug or Alcohol Abuse Services Consumer Bill of Rights
450:15-3-1. [AMENDED]
450:15-3-3. [AMENDED]
450:15-3-27. [AMENDED]
Subchapter 7. Office of Consumer Advocacy
Part 2. Investigations
450:15-7-9. [AMENDED]
450:15-7-14. [AMENDED]
450:15-7-15. [AMENDED]

GUBERNATORIAL APPROVAL:
April 28, 2005

[OAR Docket #05-1017A; filed 5-26-05]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 18. STANDARDS AND CRITERIA FOR ALCOHOL AND DRUG TREATMENT PROGRAMS

[OAR Docket #05-1018A]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions
450:18-1-1. [AMENDED]
450:18-1-2. [AMENDED]
450:18-1-4. [AMENDED]
Subchapter 3. Substance Abuse Treatment Services
Part 1. Levels of Care
450:18-3-1. [AMENDED]
450:18-3-2. [AMENDED]
450:18-3-3. [NEW]
Part 3. Outpatient Services
450:18-3-21. [AMENDED]
Part 5. Intensive Outpatient Services

450:18-3-41. [AMENDED]
450:18-3-42. [AMENDED]
Part 7. Medically Supervised Detoxification
450:18-3-61. [AMENDED]
Part 9. Non-Medical Detoxification
450:18-3-81. [AMENDED]
Part 11. Residential Treatment
450:18-3-101. [AMENDED]
Part 13. Residential Treatment for Persons with Dependent Children
450:18-3-121. [AMENDED]
Part 15. Adult Residential Treatment For The Dually Diagnosed
450:18-3-141. [AMENDED]
Part 17. Residential Treatment For Adolescents
450:18-3-161. [AMENDED]
Part 19. Halfway House Services
450:18-3-181. [AMENDED]
Part 20. Adolescent Halfway House Services
450:18-3-190. [AMENDED]
Part 21. Halfway House Services for Persons With Dependent Children
450:18-3-201. [AMENDED]
Part 25. ~~Opioid Substitution Treatment Programs and Opiate Antagonists and Opiate Agonists~~ Medication Assisted Treatment
450:18-3-241. [AMENDED]
450:18-3-242. [AMENDED]
Subchapter 5. Ancillary Services and Activities
450:18-5-3.1. [NEW]
450:18-5-3.2. [NEW]
450:18-5-4. [AMENDED]
450:18-5-5. [AMENDED]
450:18-5-6. [AMENDED]
450:18-5-8. [AMENDED]
450:18-5-9. [REVOKED]
Subchapter 7. Facility Record System
Part 1. Record System
450:18-7-1. [AMENDED]
450:18-7-2. [AMENDED]
450:18-7-3.1. [AMENDED]
450:18-7-4. [AMENDED]
Part 3. Intake And Admission Assessment
450:18-7-21. [AMENDED]
Part 5. Biopsychosocial Assessment
450:18-7-41. [AMENDED]
Part 9. Treatment Planning
450:18-7-81. [AMENDED]
Part 11. Progress Notes
450:18-7-101. [AMENDED]
Subchapter 9. Services Support and Enhancement
Part 1. Staff Support
450:18-9-2. [AMENDED]
450:18-9-3. [AMENDED]
Part 2. Organizational and Facility Management
450:18-9-20. [AMENDED]
Subchapter 11. Consumer Rights
450:18-11-1. [AMENDED]
450:18-11-2. [REVOKED]

GUBERNATORIAL APPROVAL:
April 28, 2005

[OAR Docket #05-1018A; filed 5-26-05]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 19. STANDARDS AND CRITERIA FOR DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS

[OAR Docket #05-1019A]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions
450:19-1-2. [AMENDED]
450:19-1-6. [AMENDED]
Subchapter 3. ~~Services~~ Domestic Violence and Sexual Assault Programs
Part 1. Required DV/SA Shelter Program Components [REVOKED]
450:19-3-1. [AMENDED]
450:19-3-2. [AMENDED]
450:19-3-3. [REVOKED]
450:19-3-4. [REVOKED]
450:19-3-6. [REVOKED]
Part 2. Other Service Components [REVOKED]
450:19-3-7. [AMENDED]
450:19-3-8. [AMENDED]
450:19-3-9. [AMENDED]
450:19-3-10. [AMENDED]
Subchapter 5. Client Records and Confidentiality
450:19-5-3.1. [AMENDED]
Subchapter 7. DV/SA Shelter Program Physical Environments
450:19-7-1. [AMENDED]
450:19-7-3. [AMENDED]
450:19-7-6. [AMENDED]
450:19-7-7. [NEW]
Subchapter 9. Program Management and Performance Improvement
450:19-9-10. [AMENDED]
Subchapter 13. Personnel and Volunteers
Part 3. Training
450:19-13-20.1. [AMENDED]
450:19-13-20.2. [AMENDED]
450:19-13-27. [AMENDED]
450:19-13-29. [AMENDED]

GUBERNATORIAL APPROVAL:
April 28, 2005

[OAR Docket #05-1019A; filed 5-26-05]

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

[OAR Docket #05-1020A]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Certification of Alcohol and Drug Substance Abuse Courses (ADSAC), Organizations and Facilitators
450:21-1-3. [AMENDED]
450:21-1-5. [AMENDED]
450:21-1-8. [AMENDED]
450:21-1-9. [AMENDED]
450:21-1-10. [AMENDED]
Subchapter 5. Course Attendance and Completion
450:21-5-1. [AMENDED]
450:21-5-2. [AMENDED]
GUBERNATORIAL APPROVAL:
April 28, 2005

[OAR Docket #05-1020A; filed 5-26-05]

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

[OAR Docket #05-1021A]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
450:22-1-1.1. [AMENDED]
450:22-1-3. [AMENDED]
450:22-1-5. [AMENDED]
450:22-1-7. [AMENDED]
450:22-1-8. [AMENDED]
450:22-1-9. [AMENDED]
450:22-1-10. [AMENDED]
450:22-1-11. [AMENDED]
450:22-1-12. [AMENDED]
450:22-1-13. [REVOKED]
450:22-1-14. [REVOKED]
450:22-1-15. [AMENDED]
450:22-1-16. [AMENDED]
GUBERNATORIAL APPROVAL:
April 28, 2005

[OAR Docket #05-1021A; filed 5-26-05]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 30. ~~CLINICAL CARE~~ STATE-OPERATED INPATIENT SERVICES

[OAR Docket #05-1022A]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 15. Forensic Review Board [NEW]
450:30-15-1. [NEW]
450:30-15-2. [NEW]
450:30-15-3. [NEW]
GUBERNATORIAL APPROVAL:
April 28, 2005

[OAR Docket #05-1022A; filed 5-26-05]

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

[OAR Docket #05-893]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 2. Rules of Practice And Procedures For The Coal Reclamation Act Of 1979 [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-893; filed 5-17-05]

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

[OAR Docket #05-894]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Chapter 10. Non-Coal Rules And Regulations [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-894; filed 5-17-05]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #05-971]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. Indiviudal Proceedings
535:1-7-5. Subpoenas
Subchapter 11. Fees
535:1-11-1. Annual licenses, permits and renewals [AMENDED]
535:1-11-4. Public access, open records
GUBERNATORIAL APPROVAL:
May 16, 2005

[OAR Docket #05-971; filed 5-23-05]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 10. PHARMACISTS; INTERNS, PRECEPTORS AND TRAINING AREAS

[OAR Docket #05-972]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 9. Pharmaceutical Care
535:10-9-3. Intern role in pharmaceutical care [AMENDED]
GUBERNATORIAL APPROVAL:
May 16, 2005

[OAR Docket #05-972; filed 5-23-05]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 12. UNUSED PRESCRIPTION DRUG PROGRAM FOR OKLAHOMA'S MEDICALLY INDIGENT

[OAR Docket #05-973]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
PROPOSED RULES:
535:12-1-1. [NEW]
535:12-1-2. [NEW]
535:12-1-3. [NEW]
535:12-1-4. [NEW]
535:12-1-5. [NEW]
535:12-1-6. [NEW]
535:12-1-7. [NEW]
535:12-1-8. [NEW]
535:12-1-9. [NEW]
535:12-1-10. [NEW]
535:12-1-11. [NEW]
535:12-1-12. [NEW]
GUBERNATORIAL APPROVAL:
May 16, 2005

[OAR Docket #05-973; filed 5-23-05]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 15. PHARMACIES

[OAR Docket #05-974]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Pharmacies
535:15-3-6. [AMENDED]
535:15-3-7. [AMENDED]
535:15-3-13. [AMENDED]
535:15-3-15. [NEW]
535:15-3-16. [NEW]
Subchapter 5. Hospital Pharmacies
535:15-5-9. [AMENDED]
Subchapter 6. Hospital Drug Room Rules
535:15-6-6. [AMENDED]
GUBERNATORIAL APPROVAL:
May 16, 2005

[OAR Docket #05-974; filed 5-23-05]

TITLE 570. STATE BOARD FOR PROPERTY AND CASUALTY RATES
CHAPTER 10. FILING PROCEDURES, INTERPRETATIONS

[OAR Docket #05-887]

AND ADDITIONAL BOARD RULES
RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
570:10-1-4. Certification [AMENDED]
570:10-1-5. Bureau deviations [AMENDED]
570:10-1-13. Homeowners filings [REVOKED]
570:10-1-32. Weather related claims [REVOKED]
570:10-1-34. Credit related polices [REVOKED]
570:10-1-35. Property and casualty policies [REVOKED]
570:10-1-36. Use of lack of prior insurance in underwriting or rating [REVOKED]
570:10-1-37. Use of auto accidents in underwriting or rating [REVOKED]
570:10-1-41. Worker's compensation excess insurance [NEW]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-887; filed 5-16-05]

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

[OAR Docket #05-1038]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Use of Public Areas of Capitol and Plazas
580:10-5-6. [AMENDED]
Subchapter 7. Use of State Capitol Park
580:10-7-3. [AMENDED]
580:10-7-4. [NEW]
GUBERNATORIAL APPROVAL:
May 13, 2005

[OAR Docket #05-1038; filed 5-26-05]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 15. CENTRAL PURCHASING

[OAR Docket #05-1039]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 2. General Provisions
580:15-2-2. [AMENDED]
580:15-2-7. [AMENDED]
580:15-2-11. [AMENDED]
Subchapter 4. Supplier Provisions
580:15-4-5. [AMENDED]
580:15-4-7. [AMENDED]
580:15-4-8. [AMENDED]
580:15-4-11. [AMENDED]
580:15-4-13. [AMENDED]
580:15-4-16. [AMENDED]
Subchapter 6. State Agency Provisions
580:15-6-2. [AMENDED]
580:15-6-3. [AMENDED]
580:15-6-5. [AMENDED]
580:15-6-8. [AMENDED]
580:15-6-9. [AMENDED]
580:15-6-11. [AMENDED]
GUBERNATORIAL APPROVAL:
May 13, 2005

[OAR Docket #05-1039; filed 5-26-05]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 20. CONSTRUCTION AND PROPERTIES

[OAR Docket #05-1040]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. ~~Bidding Procedures~~ Construction Contracting
580:20-1-2. [AMENDED]
580:20-1-22. [NEW]
580:20-1-23. [NEW]
GUBERNATORIAL APPROVAL:
May 13, 2005

[OAR Docket #05-1040; filed 5-26-05]

TITLE 630. SCENIC RIVERS COMMISSION
CHAPTER 10. LICENSING AND USE PERMITS

[OAR Docket #05-985]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
630:10-1-3. Definitions [AMENDED]

630:10-1-4. User fees [AMENDED]
630:10-1-5. Commercial licensing procedures, requirements, and annual use fees [AMENDED]
Subchapter 2. Public Access Areas
630:10-2-1. Definitions [AMENDED]
630:10-2-2. Camping fees [AMENDED]
630:10-2-4. Conditions of public access area use [AMENDED]

GUBERNATORIAL APPROVAL:
May 10, 2005

[OAR Docket #05-985; filed 5-24-05]

TITLE 630. SCENIC RIVERS COMMISSION CHAPTER 15. PROTECTION OF NATURAL RESOURCES

[OAR Docket #05-986]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
630:15-1-2. Commission responsibilities and objectives [AMENDED]
630:15-1-5. Role of Scenic River Rangers [REVOKED]
630:15-1-6.1. Operation of jet skis, airboats, hovercrafts, and similar water craft prohibited [AMENDED]
630:15-1-10. Voting for Commissioners [AMENDED]
630:15-1-15. Tying flotation devices prohibited [NEW]

GUBERNATORIAL APPROVAL:
May 10, 2005

[OAR Docket #05-986; filed 5-24-05]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 10. AD VALOREM

[OAR Docket #05-900]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 2. Business Personal Property Valuation Schedules [NEW]
710:10-2-1. General provisions [NEW]
710:10-2-2. Agricultural products and related equipment [NEW]
710:10-2-3. Business related equipment [NEW]
710:10-2-4. Industrial related equipment [NEW]
710:10-2-5. Petroleum related equipment [NEW]
710:10-2-6. Other equipment [NEW]

GUBERNATORIAL APPROVAL:
May 10, 2005

[OAR Docket #05-900; filed 5-18-05]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 70. TOBACCO, TOBACCO PRODUCTS, AND CIGARETTES

[OAR Docket #05-901]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 2. Cigarette Stamp Tax
Part 1. General Provisions [NEW]
710:70-2-5. Filing requirements for persons making "delivery sales of cigarettes" [RENUMBERED to 710:70-2-50]
710:70-2-6. Requirements placed on vendors making delivery sales of cigarettes [RENUMBERED to 710:70-2-51]
710:70-2-7. Payment of taxes due on delivery sales of cigarettes [RENUMBERED to 710:70-2-52]
710:70-2-9. Cigarette stamp tax rates [NEW]
710:70-2-10. Discount on cigarette tax stamps purchased [NEW]
Part 3. Delivery Sales [NEW]
710:70-2-50. Filing requirements for persons making "delivery sales of cigarettes" [NEW]
710:70-2-51. Requirements placed on vendors making delivery sales of cigarettes [NEW]
710:70-2-52. Payment of taxes due on delivery sales of cigarettes [NEW]
Subchapter 5. Excise on Tobacco Products
710:70-5-12. Oklahoma tobacco products tax rates [NEW]
Subchapter 7. Cigarette and Tobacco Products Sales by Federally-recognized Indian Tribes and Nations
710:70-7-2. Definitions [NEW]
710:70-7-8. Cigarette stamp tax rates for sales by federally-recognized Indian tribes and nations [NEW]
710:70-7-9. Tobacco products tax rates for sales by federally-recognized Indian tribes and nations [NEW]
Subchapter 9. Reporting Required by the Prevention of Youth Access to Tobacco Act and the Master Settlement Agreement Complementary Act [AMENDED]
710:70-9-1. Purpose [AMENDED]
710:70-9-4. Quarterly escrow installments required from certain nonparticipating manufacturers pursuant to the Master Settlement Agreement Complementary Act [NEW]

GUBERNATORIAL APPROVAL:
May 10, 2005

[OAR Docket #05-901; filed 5-18-05]

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

[OAR Docket #05-820]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
715:1-1-15. [NEW]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-820; filed 5-9-05]

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

[OAR Docket #05-821]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 17. Post-Retirement Employment
715:10-17-14. [NEW]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-821; filed 5-9-05]

TITLE 720. STATE TEXTBOOK COMMITTEE
CHAPTER 10. TEXTBOOK SELECTION

[OAR Docket #05-915]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Bidding Procedures
720:10-3-5. Materials to be considered for adoption [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-915; filed 5-18-05]

TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT
CHAPTER 15. FISCAL, PERSONNEL AND GENERAL OPERATIONS

[OAR Docket #05-822]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 31. Refunds
Part 3. State Parks
725:15-31-10. [AMENDED]
725:15-31-11. [AMENDED]
Part 5. Golf Courses
725:15-31-20. [AMENDED]
725:30-31-21. [AMENDED]
Part 7. State Lodges
725:15-31-30. [AMENDED]
725:15-31-31. [AMENDED]
725:15-31-32. [AMENDED]
Part 9. Oklahoma Today Magazine
725:15-31-41. [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-822; filed 5-9-05]

TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT
CHAPTER 30. DIVISION OF STATE PARKS

[OAR Docket #05-823]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 6. Fees, Discounts and Waivers
725:30-6-1. [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-823; filed 5-9-05]

TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT
CHAPTER 30. DIVISION OF STATE PARKS

[OAR Docket #05-824]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 4. Public Use and Recreation
725:30-4-10. [AMENDED]

725:30-4-26. [AMENDED]
Subchapter 8. Camping and Day Use
725:30-8-1. [AMENDED]
725:30-8-3. [AMENDED]
Subchapter 12. Reservations and Use of Cabins, Group Camps, Shelters, Reserved/Assigned Camping Facilities, Amphitheaters, Community Buildings and Meeting Rooms
725:30-12-5. [AMENDED]
Subchapter 24. Golf
725:30-24-1. [AMENDED]

GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-824; filed 5-9-05]

TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT
CHAPTER 30. DIVISION OF STATE PARKS

[OAR Docket #05-825]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 22. Concession Leases
725:30-22-8. [NEW]

GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-825; filed 5-9-05]

TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT
CHAPTER 30. DIVISION OF STATE PARKS

[OAR Docket #05-826]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 23. Mineral Leases and Operations [NEW]
725:30-23-1. [NEW]
725:30-23-2. [NEW]
725:30-23-3. [NEW]
725:30-23-4. [NEW]
725:30-23-5. [NEW]

GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-826; filed 5-9-05]

TITLE 735. STATE TREASURER
CHAPTER 80. UNCLAIMED PROPERTY

[OAR Docket #05-851]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 3. Reporting Requirements
Part 1. General Application
735:80-3-1. [AMENDED]
735:80-3-7. [AMENDED]
Part 3. Financial Institutions
735:80-3-10. [AMENDED]
Subchapter 11. Field Audit
Part 9. Insurance Corporations
735:80-11-25. [AMENDED]

GUBERNATORIAL APPROVAL:
May 4, 2005

[OAR Docket #05-851; filed 5-11-05]

Withdrawn Rules

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

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

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

TITLE 10. OKLAHOMA ACCOUNTANCY BOARD
CHAPTER 15. LICENSURE AND REGULATION OF ACCOUNTANCY

[OAR Docket #05-916]

RULEMAKING ACTION:
Withdrawal of PERMANENT rulemaking
WITHDRAWN RULES:
Subchapter 27. Fees
10:15-27-8. [AMENDED]
10:15-27-9. [AMENDED]
DATES:
Adoption:
March 18, 2005
Submitted to Governor:
March 28, 2005
Submitted to House:
March 28, 2005
Submitted to Senate:
March 25, 2005
Withdrawn:
May 18, 2005

EDITOR'S NOTE: *Although these two sections (10:15-27-8 and 10:15-27-9) are being withdrawn from this rulemaking action, amendments to the same two sections were not withdrawn from a different rulemaking action. That rulemaking action was considered finally adopted on 5-20-05 and is being published in this issue, with an effective date of 7-1-05 [see Permanent Final Adoptions, Title 10, Chapter 15, Docket #05-983].*

[OAR Docket #05-916; filed 5-18-05]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 20. CONSTRUCTION AND PROPERTIES

[OAR Docket #05-836]

RULEMAKING ACTION:
Withdrawal of EMERGENCY rulemaking
RULES:
Subchapter 1. Bidding Procedures
580:20-1-13. [AMENDED]
580:20-1-24. [NEW]
DATES:
Adoption:
January 24, 2005
Submitted to Governor:
February 1, 2005
Submitted to House:
February 1, 2005
Submitted to Senate:
February 1, 2005
Withdrawn:
March 10, 2005

[OAR Docket #05-836; filed 5-10-05]

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 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #05-975]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 19. Competencies for Licensure and Certification of Administrative Personnel
210:20-9-182. [AMENDED]
210:20-9-189. [NEW]
AUTHORITY:
70 O. S. § 3-104, State Board of Education
DATES:
Adoption:
March 17, 2005
Approved by Governor:
May 4, 2005
Effective:
Immediately upon Governor's approval
Expiration:
Effective through July 14, 2006, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
FINDING OF EMERGENCY:
This is considered to be an emergency because the rule changes reflect a competency related to collaboration to create professional learning communities and an additional competency related to integrity, fairness, and ethical administration decision-making. These changes will bring the Competencies for Oklahoma Administrator Certification in to alignment with the Standards for Advanced Programs in Educational Leadership as presented by the National Policy for Educational Administration.
ANALYSIS:
The proposed rule change would bring our state competencies in alignment with national competencies for administrator certification. The changes would also add skills in developing professional learning communities and ethical decision making to administrator certification competencies.
CONTACT PERSON:
Connie Holland, 405-521-3308

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 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 19. COMPETENCIES FOR LICENSURE AND CERTIFICATION OF ADMINISTRATIVE PERSONNEL

210:20-9-182. Competency II; leadership knowledge and skills

(a) **Knowledge and skills.** Administrative candidates shall possess leadership knowledge and skills including, but not limited to:

(1) group dynamics and group processes;
(2) information collection;
(3) problem analysis;
(4) judgment/ethics;
(5) organizational oversight;
(6) implementation;
(7) delegation;
(8) district culture; and
(9) collaboration among colleagues and institutions~~.~~ in developing a professional learning community.

(b) **Rationale.** As a result of the expanding duties within the school, today's administrator must possess an array of skills in organization and management, in addition to a knowledge of learning theory and best teaching practices.

(c) **What the principal/superintendent candidate will know.** The candidate for licensure and certification as principal/superintendent has, and can demonstrate, knowledge of:

(1) Socioeconomic and educational trends, innovations, and new paradigms to meet the needs of schools.
(2) Various information sources relevant to school needs.
(3) School finance, budgeting, planning, and managing school resources.
(4) The various roles and responsibilities of all staff members in the school setting.

(d) **What the principal/superintendent candidate will be able to do.** The candidate for licensure and certification as principal/superintendent has, and can demonstrate, the skills to:

(1) Facilitate the development of a written vision for the school/district and a well-developed educational philosophy and be able to market that vision and philosophy.

(2) Facilitate and foster innovation which leads to school improvement including integrating that innovation into the mission of the organization.
(3) Facilitate the preparation of a comprehensive assessment of the school's climate and instructional programs with input from teachers, students, and parents.
(4) Demonstrate creative problem-solving techniques.
(5) Use effective decision-making strategies and recognize how bias affects the decision making process.
(6) Initiate appropriate management strategies to implement long and short term plans, work with faculty, parents, students and other school constituencies to translate a shared vision into a strategic plan.
(7) Demonstrate the ability to prepare a grant proposal and facilitate that process with the staff.
(8) Delegate authority and empower teachers to work as peers.
(9) Work with other schools and districts in areas of in-service curriculum development and school organization when appropriate.
(10) Build self-respect in staff and students.
(11) Promote the value of understanding and celebrating school/community cultures.
(12) Respect and encourage diversity among people and programs.
(13) Manage time effectively.
(14) Facilitate cooperation among groups.

(e) **Implications for administrator preparation programs.** Administrator preparation programs will provide course work relevant to the duties and responsibilities of an administrator.

210:20-9-189. Competency VIII; principles of ethical leadership.

(a) **Knowledge and skills.** The administrator candidate shall have knowledge and skills necessary to be an educational leader who promotes the success of all students by acting with integrity.

(b) **Rationale.** Educational leaders should set the tone for how employees and students interact with one another and with members of the school, district, and larger community. The leader's contacts with students, parents, and employees must reflect concern of others as well as for the organization and the position. Educational leaders must develop the ability to examine personal and professional values that reflect a code of ethics. They must be able to serve as role models, accepting responsibility for using their position ethically and constructively on behalf of the school/district community. Educational leaders must act as advocates for all children.

(c) **What the principal/superintendent candidate will know.** The candidate for principal/ superintendent will:
(1) have a respect for the rights of others with regard to confidentiality and dignity and engage in honest interactions.
(2) know how to combine impartiality, sensitivity to student diversity, and ethical considerations in their interactions with others.
(3) know how to make and explain decisions based upon ethical and legal principles.

(d) **Implications for administrator preparation programs.** Administrator preparation programs shall emphasize the need for administrators to base decisions on ethical and legal principles. Programs shall use a variety of different methods of introducing candidates to ethical decision-making processes.

[OAR Docket #05-975; filed 5-23-05]

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

[OAR Docket #05-899]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
300:20-1-4. Responsibilities [AMENDED]
300:20-1-11. Vendor selections, quotations, evaluations, and disputes [AMENDED]
300:20-1-12. Change orders [AMENDED]
300:20-1-13. Emergency confirmatory purchase orders [AMENDED]
AUTHORITY:
82 § 861A (B)(1); 82 § 863.2 (B); See Enrolled Senate Bill NO. 377 signed by Governor Brad Henry on June 9th, 2004 amending Section 3, Chapter 459, O.S.L. 2003 (82 O.S. Supp. 2003, Section, 863.2 Part O); Grand River Dam Authority.
DATES:
Adoption:
November 17, 2004
Approved by Governor:
December 20, 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
INCORPORATION BY REFERENCE:
N/A
FINDING OF EMERGENCY:
These emergency rules are being promulgated to meet a compelling public interest and to remedy an imminent peril that exists to the preservation of the public health, safety, and welfare. First, GRDA is required to comply with a recent change in state statute. See Enrolled Senate Bill NO. 377 signed by Governor Brad Henry on June 9th, 2004 amending Section 3, Chapter 459, O.S.L. 2003 (82 O.S. Supp. 2003, Section, 863.2 Part O). It is always a compelling public interest for a state agency to be in compliance with state law. Second, independent research has identified GRDA's facilities as a prime target for terrorists. Because of this threat to Northeastern Oklahoma and the state at large, the Office of Homeland Security and Governor Henry awarded GRDA a Homeland Security Grant in the Fall of 2004. By increasing the dollar amount from $25,000 to $50,000 for contracts which require approval from the GRDA Board of Directors, the General Manager of GRDA will be able to purchase materials more quickly for the GRDA Homeland Security Grant Projects which include protection of Grand Lake, Lake Hudson, Pensacola Dam, Salina Pumped Storage Project, the Coal-Fired Complex, and utility transmissions.
ANALYSIS:
The proposed rules change the dollar amount from $25,000.00 to $50,000.00 f or contracts which require Board approval.
CONTACT PERSON:
Michael Kiefner, GRDA General Counsel (918) 256-5545

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):

300:20-1-4. Responsibilities

(a) The Board of Directors is primarily responsible for promulgating a comprehensive Purchasing Policy and for approving purchases above ~~$25,000.00~~ $50,000.00.

(b) The General Manager is responsible for the actions of the Assistant General Managers and their subordinates while performing the purchasing procedures and for approving emergency purchases above ~~$25,000.00~~ $50,000.00.

(c) The Assistant General Managers shall have commitment authority not to exceed $5,000.00 to commit GRDA for materials, equipment, supplies or services. With the approval of the General Manager, an Assistant General Manager may issue a standing order delegating any portion of his commitment authority to supervisors assigned to the Assistant General Manager's area of responsibility.

(d) Unless otherwise directed by the Board of Directors, an Assistant General Manager designated by the General Manager shall supervise and direct purchasing in compliance with the GRDA purchasing manual.

(e) The Purchasing Department has the responsibility for obligating the Authority and for making the final determination of source of supply, ultimate quantities purchased, delivery schedule, price, and commercial terms. These decisions will be made in conjunction with other departments as appropriate.

(f) The Purchasing Department is responsible for initiating and maintaining effective and professional relationships with suppliers, both actual and potential.

(g) The Purchasing Department is to serve as the exclusive channel through which all requests regarding prices and products are handled. The Department and no other will conduct all correspondence with suppliers involving prices or quotations. In cases where technical details are necessary, the using department may correspond with suppliers. In such cases, the Purchasing Department should be provided with copies of all such correspondence. Close communication and coordination between the Purchasing Department and the using departments must occur. This Subsection G does not apply to emergency purchases and small-dollar purchases (less than $~~250~~ 250.00).

(h) All employees involved in purchasing activities will work to maintain and enhance the Authority's image by their personal conduct and methods of doing business.

(i) All employees engaged in purchasing activities will recognize and practice good public relations by giving all callers and visitors courteous treatment.

(j) Purchasing Department personnel are to seek to obtain and purchase all goods at the lowest possible end-use cost, considering the guidelines of prices, service, quality and delivery.

(k) Purchasing Department personnel are to inform requisitioning departments whenever the quantity or specifications of materials ordered are inconsistent with sound purchasing practices or market conditions.

(l) Purchasing Department personnel will work to establish and encourage timely delivery of specified goods and services in correct quantities.

(m) Purchasing Department personnel will negotiate the return of rejected equipment or supplies to the supplier.

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

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

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

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

(1) The selection of vendors is primarily the responsibility of Purchasing and requires a consideration of several factors. In making the selection, Purchasing will coordinate closely with other departments to obtain adequate and reasonable specifications. Whenever possible, identification of brand names, or sufficient detail, should be obtained to ensure that the order can be properly filled. Direct access to the manufacturers will be obtained whenever possible. One major decision required during the purchasing process is vendor selection. It is the purpose of this policy to define the responsibility for and provide basic guidelines for vendor selection.

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

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

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

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

(ii) Suppliers located near the operation.

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

(iv) Suppliers who are local vendors.

(v) Suppliers who are certified minority vendors.

(3) The Superintendent of Fiscal Services has the responsibility for maintaining a uniform set of procedures and forms to serve the bid process. Considerations should include the need for forms for vendor notifications, bid analysis and summary, bidder mailing list applications, competitive invitations, instructions to bidders, policy statement of bid award, and sealed bid envelopes. Purchasing Department personnel are responsible for

obtaining bids on all material or services covered under this policy for both estimating purposes and purchases. Quotations shall be of the following types, depending upon the size and nature of the potential purchase:

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

(B) Written - Over $2,500.00

(C) Sealed Bids - Over ~~$25,000.00~~ $50,000.00

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

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

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

(A) Price

(B) Quality and conformance to specifications, affidavits and insurance requirements

(C) Bidder's previous record of performance and service

(D) Ability of bidder to render satisfactory service, delivery, etc.

(E) FOB points and shipping charges

(F) Last purchase cost

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

300:20-1-12. Change orders

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

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

(A) Change orders to purchase orders or to construction or service contracts more than ~~$25,000.00~~ $50,000.00 up to $1,000,000.00 shall not exceed a 15% cumulative increase in the original amount.

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

(2) Any change orders to purchase orders or to construction or service contracts not falling within the two categories specified in Paragraph XI. A. above shall require written approval by the General Manager of GRDA prior to GRDA being responsible for payment thereof. However, GRDA Board of Director approval is not required for change orders in this category unless the total amount of the resulting change order exceeds ~~$25,000.00~~ $50,000.00, and in such case, formal GRDA Board of Director approval is required.

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

(4) Any and all Board Resolutions previously adopted by the GRDA Board of Directors and to the contrary, including Resolution No. 4659 adopted September 16, 1981, are hereby rescinded and are no longer in force or effect.

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

In the event it becomes necessary to purchase an item or service, or a series of related items or services, in which the total amount exceeds ~~$25,000~~ $50,000.00 prior to receiving formal Board approval authorizing such purchase, and such purchase is mandatory to keep the facilities operating and/or to ensure continuous transmission service, the general manager is authorized to declare an emergency situation and immediately purchase the necessary materials or services. Emergency purchases in this category will be presented to the GRDA Board for formal approval as confirmatory purchase orders at the next regularly scheduled Board meeting.

[OAR Docket #05-899; filed 5-17-05]

TITLE 304. STATE USE COMMITTEE CHAPTER 10. OPERATIONAL PROCEDURES

[OAR Docket #05-835]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
304:10-1-2. [AMENDED]
304:10-1-3. [AMENDED]
304:10-1-4. [AMENDED]
304:10-1-5. [AMENDED]
304:10-1-10. [AMENDED]
304:10-1-11. [AMENDED]
304:10-1-12. [AMENDED]

AUTHORITY:
State Use Committee, 74 O.S., Section 3009

DATES:
Adoption:
March 9, 2005
Approved by Governor:
May 4, 2005
Effective:
Immediately upon gubernatorial approval
Expiration:
Effective through July 14, 2006, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
FINDING OF EMERGENCY:
The State Use Committee finds that a compelling public interest requires these emergency rules be adopted to ensure effective oversight of State Use Committee funds. Revisions to the rules address issues related to the payments and processing of payments of the 1% contract levy fee. Revisions to 74 O.S., Section 3004.1 require payment of the fee to the State Use Committee by qualified organizations rather than the payment by state agencies. These rules provide information and procedures to ensure timely reporting and payment of the contract fees. Rule revisions also provide clarification of definitions and rule language.
ANALYSIS:
The emergency rules provide information and procedures to effectively and consistently administer requirements necessary for payments of the 1% contract levy fee prescribed in 74 O.S., Section 3004.1. Provisions are included to address the failure to timely report and make payments to the State Use Committee to ensure oversight of Committee funds.
CONTACT PERSON:
Gerry Smedley, Rules Liaison, 521-2758

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

304:10-1-2. Definitions

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

~~**"Agency"** means a qualified nonprofit agency for the severely handicapped.~~

"Committee" means the Oklahoma State Use Committee.

"Contracting officer" means the person employed by the Department of Central Services as a contracting officer in the Purchasing Division, appointed by the State Purchasing Director with the advice of the Committee and designated specifically to solicit, develop, and negotiate contracts with agencies and individuals.

"FEI" means Federal Employer Identification.

"Individual" means a ~~person with a severe disability~~ severely disabled person that is self-employed and has been certified by the Committee to supply products and services, seventy-five percent (75%) of which, is actually manufactured, produced, processed, assembled, performed or offered by the severely disabled person.

"IRS" means the Internal Revenue Service.

"Qualified nonprofit agency for the severely handicapped" *means a nonprofit agency which is certified as a sheltered workshop by the wage and hour division of the U.S. Department of Labor and employing severely disabled persons who constitute at least seventy-five percent (75%) of the personnel engaged in direct production of products or services offered by the agency for procurement by this state.* [75 O.S., Section 3003(3)]

"Qualified organization" means a blind person, qualified nonprofit agency for the severely handicapped or severely disabled person contracting to supply goods or services. [75 O.S., Section 3003(5)]

"Severely disabled person" *means an individual who has a physical or mental disability constituting a substantial handicap to employment and preventing the person from engaging in normal competitive employment and includes any blind person.* [75 O.S., Section 3003(4)]

"Substantial handicap to employment" means a residual, limiting physical or mental condition resulting from an injury, disease, or congenital defect which so limits the person's mobility, communication, self-care, self-direction, work tolerance, or work skills that the person is unable to engage in normal competitive employment over an extended period of time.

"The Act" means the provisions of 74 O.S., Section 3001 et seq. which relate to the purchase of products and services from ~~individuals and agencies~~ qualified organizations.

304:10-1-3. Qualifications

(a) **Qualification by Committee.** To ensure compliance with the Act, the Committee shall qualify individuals and nonprofit agencies prior to contract award ~~to the individual or agency~~.

(b) **Individual qualification.** An individual shall apply for qualification to the Committee and submit the following documents:

(1) To indicate the individual meets the statutory definition of a severely disabled person, the individual shall provide:

(A) a copy of the application and supporting documentation the individual submitted to the Social Security Administration for determination of disability and a copy of the final disability determination from the Administration;

(B) a narrative report, prepared and signed by a person licensed in the state of Oklahoma as a physician describing physical disabilities, or a psychiatrist or psychologist describing mental disabilities. The report shall fully describe the nature of the disability constituting a substantial handicap to employment with supporting medical records; and

(C) any additional information the Committee may require related to work history, vocational assessments and work related documents.

(2) an affidavit that the individual will perform 75% of the work to produce the products or services the individual offers for procurement by the state; and

(3) a statement which describes the nature and extent as expressed in a percentage of work a subcontractor, other person or entity may perform to produce the products or services.

(c) **Agency qualification.** ~~An~~ A nonprofit agency that has been approved by the Wage and Hour Division of the U.S. Department of Labor as a sheltered workshop shall apply for qualification to the Committee and submit the following documents that indicate the nonprofit agency meets the ~~statutory definition~~ requirements of a qualified ~~nonprofit agency for the severely handicapped~~ organization:

(1) a tax-exempt FEI number issued by the IRS, or a certificate from the IRS verifying that the entity meets the requirements for nonprofit status as defined by the IRS; and,

(2) a statement describing the nature and extent as expressed in a percentage of the work a subcontractor, other person or entity may perform to produce the products or services the nonprofit agency provides per a contract the Committee awards.

(3) a copy of certification as a sheltered workshop issued by the U. S. Department of Labor.

(4) a current copy of the nonprofit agency's certificate of insurance for worker's compensation insurance.

(d) **Continuation of qualification.** On January 31st of each year succeeding initial qualification by the Committee, ~~an individual or agency~~ the qualified organizations shall provide evidence to the Committee of continued ability to qualify as follows:

(1) ~~An agency~~ A qualified nonprofit agency for the severely handicapped shall submit:

(A) a current copy of its certification as a sheltered workshop from the U.S. Department of Labor; and

(B) a report for products and services on the Committee's procurement schedule indicating the qualified nonprofit agency for the severely handicapped's total ~~agency~~ labor hours in direct production by disabled workers and total agency labor hours in direct production by non-disabled workers during the previous calendar year.

(C) a current copy of the qualified nonprofit agency for the severely handicapped's ~~agency's~~ certificate of insurance for worker's compensation insurance.

(2) An individual shall submit:

(A) a work history for the previous calendar year that indicates the number of hours the individual worked and the number of hours a subcontractor or other individuals worked in direct production of the products and services on the Committee's procurement schedule; and

(B) a current physician, psychiatrist or psychologist statement indicating the current status of the condition which constitutes a substantial handicap to employment, which shall include changes in the condition since the previous date of qualification by the Committee.

(e) **Failure to meet qualifications.** Whenever an ~~individual or agency~~ a qualified organization fails to meet qualifications, the Committee may:

(1) Remove the ~~individual or agency~~ qualified organization's products and services from the procurement schedule; or,

(2) Revoke the qualification of the ~~individual or agency~~ qualified organization.

(f) **Notice of failure to meet qualifications.** The Committee shall direct the contracting officer to send written notice to ~~an individual or agency~~ the qualified organization at least thirty days prior to the effective date of the action taken pursuant to subsection (e) of this section.

304:10-1-4. Determination of fair market price

The contracting officer shall recommend a fair market price for products and services in the manner described in this section.

(1) The contracting officer shall prepare a current market analysis to determine the fair price for the products or services requisitioned or used by state agencies utilizing internal as well as external sources and established pertinent criteria. When appropriate, the criteria may include, but not be limited to:

(A) A survey of comparable private contracts for like products and services;

(B) Research of other governmental entities within and outside the State of Oklahoma;

(C) Comparison, when appropriate, of wholesale and retail pricing of like commodities.

(2) Based on the data described in OAC 304:10-1-4 (1), the contracting officer shall recommend a fair market price with supporting documentation to the Committee for consideration.

(3) The Committee shall, by majority vote, approve, modify, amend or disapprove the recommended fair market price.

(4) Whenever the Committee establishes a price, the price shall become the fair market price.

(5) If the product or service is one for which the pricing does not vary by state agency or location, the fair market price as approved, modified, or amended, shall remain in effect until the Committee establishes a new fair market price. ~~Any state agency contracts the Committee approves for the products and services at the fair market price shall be awarded by the contracting officer.~~

(6) If the product or service is one for which the price does vary depending on the state agency or location, the Committee shall approve, by majority vote, each contract for the product or service.

(7) In the event of an emergency, with approval of the State Purchasing Director, the contracting officer may award a contract to an individual or agency for a maximum period of three (3) months without prior Committee approval, but subject to Committee approval at the next regular Committee meeting.

(A) If the Committee approves the contract, the contract shall terminate at the end of the contract period.

~~(B) If the Committee disapproves or does not act upon the contract, the contract shall terminate within 30 days of the meeting date.~~

304:10-1-5. Procurement schedule

(a) **Compilation of procurement schedule.** The contracting officer shall maintain and publish a current list of all products and services offered by ~~individuals and agencies~~ qualified organizations.

(b) **Approval of procurement schedule.** The Committee shall approve items on the list or delete items from the list, consistent with the provisions of the Act, and shall designate the final list of approved items as the Procurement Schedule by majority vote. If additional products or services are offered by individuals or agencies, the Committee may add products and services to the Procurement Schedule by majority vote.

304:10-1-10. Meetings

(a) **Number of regular meetings.** The Committee shall conduct a minimum of six meetings per year, in compliance with the Open Meeting Act. The schedule for regular meetings will be adopted at the last regular meeting of each calendar year.

(b) **Special meetings.** Special meetings shall be called by the Committee Chairperson.

(c) **Quorum.** A majority of all current members of the Committee shall constitute a quorum.

(d) **Request for notices of meeting.** Upon written request, the Committee Vice-Chairperson shall notify any person, state agency, qualified organization or contractor, at least ten days prior to meeting dates, and shall make available the minutes of all meetings.

304:10-1-11. Reports

(a) **Failure to provide reports or documentation.** ~~Any reports~~ Reports or documentation requested from ~~an individual or agency~~ a qualified organization by the Committee through the contracting officer, shall be completed within thirty (30) days of the date requested. The Committee may cancel contracts of otherwise qualified ~~individuals or agencies~~ organizations who fail to provide reports, documentation or information required by utilization terms of a contract.

(b) **Sales to political subdivisions other than the state.** ~~An individual or agency~~ A qualified organization shall provide a quarterly report of purchases made by a political subdivision, excluding state agencies, from a contract the Committee awards. The report shall include:

(1) the name and address of each political subdivision;

(2) total amount of sales made to each political subdivision.

(c) **Notice of contract cancellation.** The Committee shall direct the ~~contracting officer~~ Contracting Officer to send written notice to ~~an individual or agency~~ a qualified organization at least thirty days prior to the cancellation date of a contract pursuant to subsection (a) of this section.

304:10-1-12. Contract levy

~~(a) **Payment due date.** The percentage of the acquisition price for products or services as mandated by 74 O.S., Section 3004.1 shall be paid no less than quarterly to the Department of Central Services.~~

~~(b) **Delinquent accounts.** State agencies that are delinquent sixty (60) days or more with payment to the Department shall be considered in arrears. Written notice of the delinquency and outstanding balance will be sent to the agency appointing authority.~~

(a) **Contract levy.** Pursuant to 74 O.S., Section 3004.1, a one percent (1%) fee assessment shall be levied against qualified organizations for every contract awarded under the act for products and services of the severely disabled.

(b) **Monthly reports and contract levy payments.** Qualified organizations shall submit a monthly report by the 15th of each month to the State Use Contracting Officer. The report shall contain the total amount of payments received from state agencies and the one percent (1%) fee assessment based on the total amount of payments stated in the report.

(c) **Failure to submit monthly reports and payments.** Any fee assessment payment that is past due more than sixty (60) days shall be considered delinquent. A written notice of delinquency shall be sent by the State Use Contracting Officer to each qualified organization considered delinquent. The notice shall state the amount due and requirements for compliance.

(d) **Revocation of a qualified organization.** Failure to provide monthly reports and payments will be reported to the State Use Committee and the State Purchasing Director and may result in the revocation of the "qualified organization" procurement schedule and/or termination of their contracts.

[OAR Docket #05-835; filed 5-10-05]

TITLE 540. PHYSICIAN MANPOWER TRAINING COMMISSION
CHAPTER 10. OKLAHOMA RURAL MEDICAL EDUCATION LOAN AND SCHOLARSHIP FUND

[OAR Docket #05-882]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 4. Eligibility; amount; method of payment; renewal
540:10-1-4. [AMENDED]

AUTHORITY:
Physician Manpower Training Commission; 70 O.S. 1990 Section 625.4

ADOPTION:
April 14, 2005

APPROVED BY GOVERNOR:
May 10, 2005

EFFECTIVE:
Immediately upon Governor's approval

EXPIRATION:
Effective through July 14, 2006 unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

FINDING OF EMERGENCY:
These amendments to the Oklahoma Rural Medical Education Loan and Scholarship Fund are needed to reflect amendments to 70 O.S. 2001, Section 625.5 that became effective July 1, 2004 in Senate Bill 908.

ANALYSIS:

Provisions related to the eligibility, amount, method of payment and renewal of the Oklahoma Rural Medical Education Loan and Scholarship Fund have been revised to reflect statutory amendments in Senate Bill 908 that modified the maximum scholarship amount for medical students participating in this scholarship program and making language gender neutral.

CONTACT PERSON:

Cindy A. Carter, Executive Secretary, Physician Manpower Training Commission, 1140 Northwest 63rd Street, Suite 302, Oklahoma City, Oklahoma 73116, (405) 843-5667.

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):

540:10-1-4. Eligibility; amount; method of payment; renewal

(a) *An applicant may be eligible for the award of a scholarship ~~when the following conditions are met~~ upon demonstration that the applicant:*

(1) *~~That he desires~~ Desires a scholarship to any accredited school of medicine or school of osteopathic medicine in the United States of America;*

(2) *~~That he is~~ Is a bona fide resident of Oklahoma;*

(3) *~~That his~~ Has personal financial resources ~~are~~ such that, in the absence of scholarship aid, ~~he~~ will be unable to pursue the program of study ~~which he desires~~ desired;*

(4) *Is a person of good moral character;*

(~~4~~5) *~~that he has~~ Has successfully completed the program of instruction pre-requisite for admission to the program of study provided for in ~~this act~~ Section 625.1 et seq. of this title and has ~~been accepted~~ applied for admission to a medical school;*

(~~5~~6) *~~That he has~~ Has capacity to profit by the course of study for which ~~he~~ the applicant seeks aid;*

(~~6~~7) *~~That he desires~~ Desires to practice medicine in a rural community in Oklahoma, and;*

(~~7~~8) *~~That he submits~~ Submits proof that ~~he~~ the applicant has not accepted or will not accept any other scholarship assistance which has a conflicting service obligation requirement. [70:625.5(s)(1)-(8)]*

(b) *The amount of each scholarship grant shall not exceed ~~$6,000.00~~ $15,000.00 per academic year for students engaged in their first ~~year of study, or equivalent number of terms completed in an education program in a given period of months, and shall not exceed $12,000.00 per academic year for students engaged in their~~ second, third or fourth year of study, or equivalent ~~education period~~ number of terms completed in an education program in a given period of months. [70:625.5(b)]*

(c) *The method of payment of funds to each recipient of a scholarship grant shall be in accordance with rules formulated by the Commission governing the grants for each type of scholarship. [70:625.5(c)]*

(d) *Each scholarship is renewable annually for the number of years required to complete the course of study in which the recipient is engaged. The Commission shall grant such annual renewal only upon the recipient's application and upon the Commission's finding that the recipient:*

(1) *~~The recipient has~~ Has completed successfully the work of the preceding year and presented evidence that ~~he~~ the recipient is a student in good standing;*

(2) *~~He remains~~ Remains a resident of Oklahoma; and*

(3) *~~His~~ Is in a financial situation ~~continues to warrant~~ that warrants the award of a scholarship under the standards set forth in ~~this act~~ Section 625.1 et. seq. of this title. [70:625.5(d)]*

(e) In addition to the above requirements, an applicant must attend a medical school in the continental United States accredited by either the Liaison Committee on Medical Education of the American Medical Association or the Association of American Medical Colleges and Bureau of Professional Education through the American Osteopathic Association.

[OAR Docket #05-882; filed 5-16-05]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 20. CONSTRUCTION AND PROPERTIES

[OAR Docket #05-837]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. Bidding Procedures Construction Contracting [AMENDED]

580:20-1-2. [AMENDED]

580:20-1-22. [NEW]

580:20-1-23. [NEW]

AUTHORITY:

Department of Central Services, 61 O.S., Section 209.

DATES:

Adoption:

January 24, 2005

Approved by Governor:

March 10, 2005

Effective:

Immediately upon gubernatorial approval

Expiration:

Effective through July 14, 2006, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Department of Central Services finds that a compelling public interest requires these emergency rules be adopted to address public issues related to payments and processing of payments on construction contracts. In response to the issues, the Oklahoma legislature passed revisions to Title 15 in Enrolled Senate Bill No. 1561 (Effective November 1, 2004) and Enrolled House Bill No. 2554 (effective July 1, 2004) creating the Fair Pay for Construction Act to ensure timely and efficient management of construction contracts. These rules provide information and procedures to ensure the Construction and Properties Division of the Department of Central Services implement payment policies and procedures to be used in state government. These proposed rules implement procedures to address contractor and consultant claims and disputes related to state construction projects and contracts in an expeditious and cost effective manner to better serve the interests of the state. These rules also contain procedures to ratify an unauthorized commitment by a state agency to a contractor.

ANALYSIS:

These emergency rules provide information and procedures to effectively and consistently administer requirements necessary for payments on construction contracts as described in the Fair Pay for Construction Act and duties of the Construction and Properties Division prescribed in 61 O.S., Section 204. Provisions to timely address consultant and contractor claims and disputes are included in the proposed rules along with procedures to ratify an unauthorized commitment by a state agency to a contractor.

CONTACT PERSON:

Gerry Smedley, Rules Liaison, 521-2758

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

SUBCHAPTER 1. ~~BIDDING PROCEDURES~~ CONSTRUCTION CONTRACTING

580:20-1-2. Definitions

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

"Administrator" means the State Construction Administrator of the Construction and Properties Division of the Department of Central Services.

"Alternate bid" (or "Alternate") means an amount stated in the bid to be added to or deducted from the amount of the base bid if the corresponding change in the work, as described in the bidding documents, is accepted.

"Base bid" means the sum stated in the bid for which the bidder offers to perform the work described in the bidding documents as the base. Work may be added or deleted for sums stated in the alternate bids.

"Bid" means the cost proposal submitted by a construction firm in response to a request or solicitation for bids from the Division for a construction project described in plans and/or specifications provided by the State.

"Claim" means a demand or assertion by a contractor seeking, as a matter of right, adjustment or interpretation of contract terms, payment of money, extension of time or other relief with respect to the terms of the contract. The term "Claim" also includes other disputes and matters in question between the owner and contractor arising out of or relating to the contract.

"Department" means the Department of Central Services.

"Design consultant" means either the architectural/engineering firm under contract to the Division or a representative of the Construction and Properties Division used for the design and construction monitoring of the construction project.

"Director" means the Director of the Department of Central Services.

"Division" means the Construction and Properties Division of the Department of Central Services.

"State agency" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 61.

580:20-1-22. Contractor appeals process

(a) If a contractor's claim has not been resolved after consideration by the consultant in accordance with the General Conditions for Construction Contracts, the claim shall be submitted in writing to the owner. The owner will render to the parties the owner's written decision relative to the claim, including any change in the contract sum or contract time or both within ten (10) calendar days.

(b) The contractor may appeal the owner's decision by submitting written notice of a protest to the Director of Central Services within ten (10) calendar days of receiving the owner's decision.

(c) The Director will review the protest and determine to hear the appeal or assign the appeal to an administrative law judge the Department retains.

(1) If the appeal is assigned to an administrative law judge, the administrative law judge shall review the appeal for legal authority and jurisdiction.

(2) If legal authority and jurisdictional requirements are met, the administrative law judge shall conduct an administrative hearing in accordance with the Administrative Procedures Act, 75 O.S. Section 309 et seq., and provide findings of fact and conclusions of law to the Director.

(d) The Director shall send written notice to the contractor of the final decision sustaining or denying the contractor's appeal.

(e) If the Director denies a contractor's appeal, the contractor may appeal pursuant to provisions of 75 O.S., Section 309 et seq. of the Administrative Procedures Act.

580:20-1-23. Consultant appeals process

(a) The owner and consultant shall endeavor to resolve claims, disputes and other matters in question between them by participating in a meeting to obtain a mutual agreement. If an agreement cannot be attained, the consultant may appeal by submitting written notice of a protest to the Director of Central Services within twenty-one (21) days of the settlement meeting immediately preceding the protest.

(b) The Director will review the protest and determine to hear the appeal or assign the appeal to an administrative law judge the Department retains.

(1) If the appeal is assigned to an administrative law judge, the administrative law judge shall review the protest for legal authority and jurisdiction.

(2) If legal authority and jurisdictional requirements are met, the administrative law judge shall conduct an administrative hearing in accordance with the Administrative Procedures Act, 75 O.S. Section 309 et seq., and provide findings of fact and conclusions of law to the Director.

(c) The Director shall send written notice to the consultant of the final decision sustaining or denying the consultant's appeal.

(d) If the Director denies a consultant's appeal, the consultant may appeal pursuant to provisions of 75 O.S., Section 309 et seq. of the Administrative Procedures Act.

[OAR Docket #05-837; filed 5-10-05]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 70. TOBACCO, TOBACCO PRODUCTS, AND CIGARETTES

[OAR Docket #05-896]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 2. Cigarette Stamp Tax
710:70-2-11. Record Retention [NEW]
Subchapter 5. Excise on Tobacco Products
710:70-5-13. Record Retention [NEW]
AUTHORITY:
Oklahoma Tax Commission; 68 O.S. §§ 203, 312.1 and 403.1
DATES:
Adoption:
April 5, 2005 (Commission Order No. 2005-04-05-02)
Approved by Governor:
May 10, 2005
Effective:
Immediately upon Governor's approval.
Expiration:
Effective through July 14, 2006, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
FINDING OF EMERGENCY:
A compelling public interest was determined to exist in order to set a policy with respect to record retention for retailers to insure the state's ability to track cigarette and tobacco product sales and tax remittances thereby improving compliance with and the enforcement of the provisions of Articles 3 and 4 of Title 68, consistent with Section 1 of SB 966 [2004].
ANALYSIS:
These rules prescribe the recordkeeping framework to be used by retailers of cigarettes and tobacco products in this State. Specifically, the rules set forth the type of documentation to be retained, the content thereof, and the document retention period and location.
CONTACT PERSON:
Carolyn Swifthurst, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, OK 73194, 405-521-3133.

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

SUBCHAPTER 2. CIGARETTE STAMP TAX

710:70-2-11. Record retention

(a) Retailers shall keep copies of invoices or equivalent documentation for every transaction in which the retailer receives or purchases cigarettes at each of its facilities. The invoices or documentation must show the name and address of the distributor from whom, or the address of another facility of the same retailer from which, the cigarettes were received, and the quantity of each brand style received in such transaction.

(b) The invoices or equivalent documentation must be kept on the premises described in the license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the Oklahoma Tax Commission. With the permission of the Tax Commission, retailers with multiple places of business may retain centralized records, but must transmit duplicates of the invoices or the equivalent documentation to each place of business within twenty-four (24) hours upon the request of the Tax Commission. Written requests for permission to keep centralized records should be submitted to the Audit Division of the Oklahoma Tax Commission by mail at 2501 Lincoln Blvd., Oklahoma City, Ok 73194 or by FAX at (405) 522-4450.

(c) The invoices or equivalent documentation must be retained for a period of three (3) years from the date of the transaction.

SUBCHAPTER 5. EXCISE ON TOBACCO PRODUCTS

710:70-5-13. Record retention

(a) Retailers shall keep copies of invoices or equivalent documentation for every transaction in which the retailer receives or purchases tobacco products at each of its facilities. The invoices or documentation must show the name and address of the distributor from whom, or the address of another facility of the same retailer from which, the tobacco products were received, and the quantity of each tobacco product received in such transaction.

(b) The invoices or equivalent documentation must be kept on the premises described in the license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the Oklahoma Tax Commission. With the permission of the Tax Commission, retailers with multiple places of business may retain centralized records, but must transmit duplicates of the invoices or the equivalent documentation to each place of business within twenty-four (24) hours upon the request of the Tax Commission. Written requests for permission to keep centralized records should be submitted to the Audit Division of the Oklahoma Tax Commission by mail at 2501 Lincoln Blvd., Oklahoma City, Ok 73194 or by FAX at (405) 522-4450.

(c) The invoices or equivalent documentation must be retained for a period of three (3) years from the date of the transaction.

[OAR Docket #05-896; filed 5-17-05]

Permanent Final Adoptions

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

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

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

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

TITLE 10. OKLAHOMA ACCOUNTANCY BOARD
CHAPTER 15. LICENSURE AND REGULATION OF ACCOUNTANCY

[OAR Docket #05-982]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Requirements to Practice Public Accountancy
10:15-3-1. through 10:15-3-4. [AMENDED]
Subchapter 5. Examination Procedures [REVOKED]
10:15-5-1. [REVOKED]
10:15-5-2. [REVOKED]
10:15-5-4. [REVOKED]
10:15-5-5. [REVOKED]
Subchapter 7. Application to Take An Examination [REVOKED]
10:15-7-1. through 10:15-7-7. [REVOKED]
Subchapter 9. Examination Content [REVOKED]
10:15-9-2. through 10:15-9-4. [REVOKED]
Subchapter 11. Grading of Examinations [REVOKED]
10:15-11-1. [REVOKED]
10:15-11-2. [REVOKED]
10:15-11-4. [REVOKED]
10:15-11-6. through 10:15-11-9. [REVOKED]
Subchapter 13. Conditional Credit on Examination [REVOKED]
10:15-13-1. [REVOKED]
10:15-13-2. [REVOKED]
10:15-13-4. [REVOKED]
Subchapter 15. Transfer of Examination Credits [REVOKED]
10:15-15-1. [REVOKED]
10:15-15-2. [REVOKED]
Subchapter 17. Procedures upon Failure to Apply for Or Take Examination [REVOKED]
10:15-17-1. through 10:15-17-3. [REVOKED]
Subchapter 18. ~~Transitioning from the Paper and Pencil Examination to the~~Computer-Based Examination
10:15-18-1. through 10:15-18-3. [AMENDED]
10:15-18-4. through 10:15-18-14. [NEW]
Subchapter 19. Proctoring of Candidates Taking Examinations [REVOKED]
10:15-19-1. through 10:15-19-4. [REVOKED]
Subchapter 21. Reciprocity
10:15-21-1. [AMENDED]
10:15-21-7. [NEW]
Subchapter 22. Substantial Equivalency
10:15-22-1. [AMENDED]
Subchapter 23. Registration
10:15-23-1. [AMENDED]
10:15-23-2. [AMENDED]
Subchapter 25. Permits
10:15-25-2. through 10:15-25-5. [AMENDED]
Subchapter 27. Fees
10:15-27-1. [REVOKED]
10:15-27-2. [REVOKED]
10:15-27-3. [REVOKED]
10:15-27-3.1. [AMENDED]
10:15-27-4. [REVOKED]
10:15-27-5. [AMENDED]
10:15-27-6. [REVOKED]
10:15-27-7.2. [NEW]
10:15-27-14. [NEW]
Subchapter 29. Continuing Professional Education
10:15-29-1.1. [AMENDED]
10:15-29-3. through 10:15-29-10. [AMENDED]
Subchapter 30. Continuing Professional Education [NEW]
10:15-30-1. through 10:15-30-8. [NEW]
Subchapter 32. Standards For Continuing Professional Education (CPE) Programs
10:15-32-1. [AMENDED]
10:15-32-5. [AMENDED]
Subchapter 33. ~~Quality/~~Peer Review
10:15-33-1. through 10:15-33-7. [AMENDED]
AUTHORITY:
Oklahoma Accountancy Board, 59 O.S. Section 15.5.B.6
DATES:
Comment Period:
January 18, 2005 through February 25, 2005
Public Hearing:
February 25, 2005
Adoption:
March 18, 2005
Submitted to Governor:
March 28, 2005
Submitted to House:
March 28, 2005
Submitted to Senate:
March 25, 2005
Gubernatorial Approval:
May 10, 2005
Legislative Approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 20, 2005
Final Adoption:
May 20, 2005
Effective:
July 1, 2005
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 21. Reciprocity
10:15-21-7. [NEW]
Subchapter 22. Substantial Equivalency
10:15-22-1. [AMENDED]
Subchapter 23. Registration
10:15-23-1. [AMENDED]
10:15-23-2. [AMENDED]
Subchapter 25. Permits
10:15-25-2. [AMENDED]
10:15-25-4. [AMENDED]
Subchapter 29. Continuing Professional Education
10:15-29-3. [AMENDED]
10:15-29-4. [AMENDED]
10:15-29-5. [AMENDED]
Subchapter 33. ~~Quality/~~Peer Review
10:15-33-4. [AMENDED]
10:15-33-6. [AMENDED]
Gubernatorial approval:
December 21, 2004

Register publication:
22 Ok Reg 387
Docket number:
04-1611
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Substantive amendments to the licensing rules provide a procedure by which an individual may file a written request for a review if his/her work experience has been denied and, in accordance with Section 15.9.E of the Oklahoma Accountancy Act (Act), add the requirement for the completion of an ethics examination. Because the paper and pencil CPA/PA examination is now obsolete, the subchapters pertaining to it are revoked and all rules pertaining to the computer-based examination are combined into one subchapter. Substantive amendments to the reciprocity rules add the requirement for the completion of an ethics examination in accordance with Section 15.9.E of the Act, clarify that an individual must apply for a reciprocal certificate or license within 120 days of engaging in the practicing public accounting in Oklahoma, and set forth the means by which an individual with foreign credentials may apply for international reciprocity in Oklahoma, as provided in Section 15.13A of the Act. Amendments to the substantial equivalency rules clarify that, in accordance with Section 15.12A.A.1 of the Act, no notice is required of individuals entering the state to practice under this provision from another jurisdiction if no notice is required of an Oklahoma certificate or license holder to enter that jurisdiction to practice. The deadlines for registration for firms and individuals are amended in accordance with recent amendments to Sections 15.14 and 15.15 of the Act. In addition, amendments provide that postmarks will be considered when determining whether an application is timely filed. As provided in Section 15.14A of the Act, firm permits filed on a timely basis will bear a date of issuance of June 1 and an expiration date of May 31. Fees pertaining to the paper and pencil CPA/PA examination are obsolete and are therefore revoked. Other substantive amendments pertaining to fees clarify that each applicant and candidate shall pay a fifty dollar fee for each application filed with the Board; re-establish, in accordance with Section 15.13.E of the Act, the reciprocal application administrative fee that was inadvertently deleted in 2003; and create a peer review fee, as provided for in Section 15.30.E of the Act, thus allowing the Board to establish for the protection of the public a peer review program for all individuals and firms that provide auditing and/or review services to clients. Substantive amendments to the continuing professional education (CPE) rules provide that Subchapter 29 will be in effect only through December 31, 2005. A new Subchapter 30 is established, to take effect January 1, 2006. This subchapter simplifies the CPE rules and provides for the mandatory CPE requirement of 120 hours over a 3-year period with a minimum of 20 hours in any year for all certificate and license holders, as provided in Section 15.35.C of the Act. This subchapter also establishes the criteria for exemptions from the CPE requirement. Other substantive changes to the current CPE rules provide that, under certain circumstances, new CPAs and PAs, new reciprocals, and individuals applying for initial interim permits will be allowed to re-use the CPE reported for their initial permits on their first renewals. Frequently, these individuals apply for initial permits toward the end of the permit period and could be required to complete eighty (80) hours of CPE in a very short time. The Board believes this to be excessively burdensome to these individuals and therefore wishes to allow double-reporting under these specific circumstances until the new minimum of 20-hours in any one year becomes effective on January 1, 2006. Amendments to the CPE standards provide that all certificate and license holders should participate in CPE and eliminate the limitation for presentation and preparation credit for instructors and discussion leaders. Amendments to the peer review rules clarify when registrants who perform review or audit services must participate in the peer review program.
CONTACT PERSON:
Edith Steele (405) 521-2397

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 3. REQUIREMENTS TO PRACTICE PUBLIC ACCOUNTANCY

10:15-3-1. Who may practice public accountancy

Except for qualified individuals practicing under substantial equivalency, ~~Public~~ public accounting may be practiced in this state only by ~~either an individual or a firm~~ a registrant which holds a valid permit to practice issued by the Board. Registrants may not practice public accounting through an entity which does not hold a valid permit except under the provisions of ~~10:15-39-8(d)(2)~~ 10:15-39-8(a)(2). The Board grants certificates, licenses, or permits to practice to applicants on condition that the registrants comply with the provisions of the Oklahoma Accountancy Act and the rules adopted for the implementation of that Act.

10:15-3-2. Certificate as a certified public accountant

~~(a)~~ A certificate may be issued to a qualified applicant only after:

(1) The examination has been satisfactorily completed;

(2) Evidence, by means established in 10:15-37-11(e), is obtained that the applicant is of good moral character; ~~and~~

(3) Effective with all initial examination candidates for the November 2003 examination, documentation must be provided that the certification applicant has a total of Eighteen hundred (1,800) hours of part time or full time work experience in accounting as defined in Title 59, Section 15.9.D. of the Act. Work experience must have been obtained within the four (4) years immediately prior to filing the application for certification. This requirement may be satisfied through work experience in government, industry, academia, or public practice. Acceptable work experience includes accounting, attest, tax, and related services. Approved documentation of experience must be provided on a form prescribed by the Board. If the work experience is denied, the applicant may file a written request with the Board for a review of the denial. The applicant shall have the burden of demonstrating to the Board that the requirements under this section have been met. Any evidence submitted by the applicant shall be in documentary form, and

(4) Evidence of successful completion of the AICPA ethics examination or its equivalent as determined by the Board.

~~(b) A certificate may be issued by reciprocity to an applicant upon satisfactorily meeting the requirements for such certificate.~~

10:15-3-3. License as a public accountant

~~(a)~~ A license may be issued to a qualified applicant only after:

(1) The examination has been satisfactorily completed;

(2) Evidence, by means established in 10:15-37-11(e), is obtained that the applicant is of good moral character; ~~and~~

(3) Effective with all initial examination candidates for the November 2003 examination, documentation must be provided that the licensure applicant has a total of Eighteen hundred (1,800) hours of part time or full time work experience in accounting as defined in Title 59, Section 15.9.D. of the Act. Work experience must have been obtained within the four (4) years immediately prior to filing the application for certification. This requirement may be satisfied through work experience in government, industry, academia, or public practice. Acceptable work experience includes accounting, attest, tax, and related services. Approved documentation of experience must be provided on a form prescribed by the Board. If the work experience is denied, the applicant may file a written request with the Board for a review of the denial. The applicant shall have the burden of demonstrating to the Board that the requirements under this section have been met. Any evidence submitted by the applicant shall be in documentary form, and

(4) Evidence of successful completion of the AICPA ethics examination or its equivalent as determined by the Board.

~~(b) A license may be issued by reciprocity to an applicant upon satisfactorily meeting the requirements for such license.~~

10:15-3-4. Permits to practice

In addition to a license or certificate, any individual or firm wishing to practice public accounting in this state shall also be required to have a valid permit to practice except for qualified individuals practicing under substantial equivalency.

SUBCHAPTER 5. EXAMINATION PROCEDURES [REVOKED]

10:15-5-1. Eligibility to take examination [REVOKED]

~~(a) An applicant shall comply with the requirements of Sections 15.8 and 15.9 of the Oklahoma Accountancy Act in order to be eligible to take the examination and to receive a certificate or license.~~

~~(b) Written notice of eligibility to take an examination shall be given to candidate at least thirty (30) calendar days prior to the commencement of the examination.~~

10:15-5-2. Schedule of examinations [REVOKED]

~~Examination of candidates for certification and for licensing shall be held at such times and places as the Board designates.~~

10:15-5-4. Restrictions [REVOKED]

~~Failure of a candidate to furnish all information requested by the Board within the time frame set by the Board shall be grounds for denying such candidate admission to the examination.~~

10:15-5-5. Prohibited acts regarding the examination process [REVOKED]

~~Any candidate who commits one (1) or more of the following acts shall be subject to disciplinary action by the Board:~~

~~(1) Giving false information to the Board in order to be eligible to take the examination.~~

~~(2) Conduct which violates the standards of test administration.~~

~~(3) Failure to cooperate with the testing officials.~~

~~(4) Communicating with any other candidate during the administration of the examination.~~

~~(5) Obtaining answers from another candidate during the administration of the examination.~~

~~(6) Communicating answers or allowing another candidate to obtain an answer during the administration of the examination.~~

~~(7) Possession of any books, notes, written or printed materials, personal calculators or data of any kind other than the distributed examination materials during the administration of the examination.~~

~~(8) Impersonating a candidate for the purpose of taking the examination for that candidate.~~

~~(9) Allowing another individual to take an examination for the candidate.~~

~~(10) Communicating to another person the contents of the nondisclosed examination.~~

SUBCHAPTER 7. APPLICATION TO TAKE AN EXAMINATION [REVOKED]

10:15-7-1. Requirements for filing applications [REVOKED]

~~(a) Any individual seeking to take an examination to receive a certificate or license shall file an application to take the appropriate examination on such form as prescribed and furnished by the Board.~~

~~(b) The last day for filing an application shall be no later than sixty (60) calendar days, as evidenced by a postmark, prior to the first day on which the examination applied for is to commence. When the 60th day falls on a Saturday, Sunday, or state holiday the date announced by the Board will be extended to include the next state working day.~~

10:15-7-2. Educational requirements [REVOKED]

~~(a) An applicant shall show to the satisfaction of the Board that the applicant has graduated from an accredited four-year college or university listed in the "Education Directory Colleges and Universities" as published by the Superintendent of Documents, Washington, D.C.~~

~~(1) As to an applicant whose college credits are reflected in quarter hours, each quarter hour of credit shall be considered as two-thirds (2/3) of one (1) semester hour when determining semester hour credits necessary to qualify for examination or transfer of credits.~~

~~(2) When determining eligibility based on educational qualifications the Board shall consider only educational credit reflected on official transcripts.~~

~~(3) The specific requirement that each applicant shall have completed at least one (1) course in auditing may only be satisfied with an auditing or assurance course taken for credit from an accredited two-year or four-year college or university listed in the "Education Directory Colleges and Universities" as published by the Superintendent of Documents, Washington, D.C.~~

~~(b) When determining eligibility of an applicant for examination the Board shall not consider any combination of education and experience.~~

~~(c) The Board will also consider an applicant who has graduated from a college or university located outside the United States if an educational evaluation performed by the Foreign Academics Credentialing Service (FACS) or another credentialing agency which is a member of the National Association of Credential Evaluation Services, Inc. certifies in writing that the applicant's course of study and degree are equivalent to the requirements set forth in Section 15.8 of the Act.~~

~~(d) On and after July 1, 2003, one hundred fifty (150) semester hours or its equivalent of collegiate education is required to qualify for any examination as set forth in Section 15.8.D. of the Oklahoma Accountancy Act. Any MIS or AIS course, or derivative thereof, as defined in Code 10:15-1-2, used by the applicant to qualify must have a substantial relationship, either direct or indirect, to the accounting profession. However, only AIS courses will qualify for the core accounting courses as required in Section 15-8.D.~~

~~(e) Any candidate who has qualified to take the examination on the basis of education prior to July 1, 2003, as provided in Sections 15.8.B and C, is not subject to subparagraph (d) of this subsection.~~

10:15-7-3. Candidate for reexamination [REVOKED]

~~(a) A candidate who fails to receive a grade of seventy-five (75) on all subjects on the first examination taken may apply for reexamination.~~

~~(b) Each candidate for reexamination must comply with applicable filing dates.~~

~~(c) Each candidate for reexamination shall be reexamined on all subjects for which a candidate does not hold valid conditional credit at the time of the reexamination.~~

10:15-7-4. Evaluation of application [REVOKED]

~~Evaluation of qualifications and approval of applications to take an examination or for transfer of credits shall be performed by the Executive Director, subject to the limitations set forth in Subchapter 10:15-37-11.~~

10:15-7-5. Denial of application [REVOKED]

~~(a) Any applicant who has not met the applicable qualifications and whose application has been denied shall be notified in writing. The written notice shall include the reason(s) for the denial.~~

~~(b) If an application is denied, the applicant may file a written request with the Board for a review of the denial. The applicant shall have the burden of demonstrating to the Board that the qualifications required by the Oklahoma Accountancy Act and the rules implementing the Act have been met. Any evidence submitted by the applicant shall be in documentary form.~~

10:15-7-6. Board review of denied applications [REVOKED]

~~(a) The Board shall consider all requests for review of denied applications.~~

~~(b) The issues considered for review shall include, but not be limited to, the statutory eligibility requirements and rules upon which the denial of the application was based.~~

~~(c) The applicant who has requested the review shall be notified in writing of the Board's decision. If the denial is sustained by the Board, the written notice shall include the reason(s) for sustaining the denial.~~

~~(d) If the denial of the application is sustained, and the applicant is not satisfied with the decision of the Board, the applicant may request in writing a public hearing before the Board. Such request shall be granted only if the applicant can provide additional information to the Board which was not previously available to the Board at the time of the initial evaluation or review. Any additional evidence shall be in documentary form. If any additional evidence is to be presented by oral testimony, a written synopsis of that oral evidence shall accompany the request for a public hearing.~~

~~(e) If the Board grants a public hearing to the applicant, the hearing may be held in conjunction with the next regular meeting of the Board or at a special meeting of the Board.~~

10:15-7-7. Payment of fee [REVOKED]

~~Each application to take an examination shall be accompanied by the required fee.~~

SUBCHAPTER 9. EXAMINATION CONTENT [REVOKED]

10:15-9-2. Content of examinations [REVOKED]

~~(a) The examination for certification as a certified public accountant shall be the Uniform Certified Public Accountant Examination prepared and graded by the American Institute of Certified Public Accountants. At the initial examination for certification as a certified public accountant the candidate shall take all four subjects. The examination subjects are:~~

~~(1) Business Law and Professional Responsibilities;~~

~~(2) Auditing;~~

~~(3) Accounting and Reporting Taxation, Managerial, and Governmental and Not-for-Profit Organizations; and~~

~~(4) Financial Accounting and Reporting Business Enterprises.~~

~~(b) The examination for licensing as a public accountant shall be parts of the Uniform Certified Public Accountant Examination prepared and graded by the American Institute of~~

~~Certified Public Accountants. At the initial examination for licensing as a public accountant the candidate shall take all three subjects. The examination subjects are:~~

~~(1) Auditing;~~

~~(2) Accounting and Reporting Taxation, Managerial, and Governmental and Not-for-Profit Organizations; and~~

~~(3) Financial Accounting and Reporting Business Enterprises.~~

10:15-9-3. Examination documents [REVOKED]

~~Requests for return of any portion of an examination or examination answers shall be subject to the uniform procedures for administration of the examination.~~

10:15-9-4. Confidentiality agreement required [REVOKED]

~~All individuals having access to examination materials, including examiners, board members, and candidates, shall be required to agree in writing to hold the content of the examination confidential. Persons who breach the agreement will be subject to disciplinary action by the Board.~~

SUBCHAPTER 11. GRADING OF EXAMINATIONS [REVOKED]

10:15-11-1. Grading service [REVOKED]

~~The Board shall use the Uniform Certified Public Accountant Examination and Advisory Grading Service of the American Institute of Certified Public Accountants to grade the Uniform Certified Public Accountant Examination.~~

10:15-11-2. Grade requirements [REVOKED]

~~(a) A grade of seventy-five (75) in each required subject area shall be the minimum passing grade for purposes of earning conditional credit.~~

~~(b) Subchapter 13 sets forth the minimum grade required to be earned in each subject at each examination in order to be granted conditional credit at the same examination.~~

10:15-11-4. Successful completion of examination [REVOKED]

~~(a) When a candidate for a certificate has successfully passed all four (4) required subject areas of the examination within the applicable time period or number of examinations, the candidate shall be considered to have passed the examination as a whole.~~

~~(b) When a candidate for a license has successfully passed the three (3) required subject areas of the examination within the applicable time period or number of examinations, the candidate shall be considered to have passed the examination as a whole.~~

10:15-11-6. Notification of grade [REVOKED]

~~(a) Each candidate shall be advised in writing of the grade earned in each subject for which the candidate was examined.~~

~~(b) On the day after the announced uniform grade mailing date for each examination, the names and addresses of successful candidates shall be made public.~~

10:15-11-7. Procedures to request review of the grading process [REVOKED]

~~(a) A candidate may request, through the Board, a review of his or her nonpassing examination papers by the Advisory Grading Service of the American Institute of Certified Public Accountants (AICPA). The review shall be conducted in accordance with the uniform procedures established by the AICPA for such reviews.~~

~~(b) A review is the process whereby a candidate may verify the accuracy of the grading process.~~

~~(c) The cost of the review, as established by the AICPA, shall be paid by the candidate.~~

10:15-11-8. Appeal [REVOKED]

~~(a) After the grades have been released, a candidate may have access to a copy of his or her nonpassing examination papers for the purpose of viewing the incorrectly answered questions in accordance with the procedures established by the American Institute of Certified Public Accountants (AICPA).~~

~~(b) Such request must be made in writing through the Board.~~

~~(c) The fees assessed by the AICPA in connection with the appeal procedure shall be paid by the candidate.~~

10:15-11-9. Destruction of papers [REVOKED]

~~The Board's designated agent shall destroy the examination papers ninety (90) days following the uniform grade mailing date for each examination.~~

SUBCHAPTER 13. CONDITIONAL CREDIT ON EXAMINATION [REVOKED]

10:15-13-1. Conditional credit for candidates for certificates [REVOKED]

~~(a) A candidate for a certificate shall be entitled to conditional credit upon receiving a passing grade of seventy-five (75) in two (2) or more of the required subjects on a single examination, provided the candidate complies with the provisions of Code 10:15-9-2(a).~~

~~(b) After the first conditional credit is earned, conditional credit will be given for the successful completion of the examination in a single additional subject, provided the candidate took all subjects for which the candidate does not hold valid conditional credit.~~

~~(c) All conditional credit shall lapse if the candidate:~~

~~(1) does not take at least one (1) out of three (3) consecutive examinations given by the Board; or~~

~~(2) does not pass all remaining subjects within the next six (6) examinations given by the Board following the examination at which the conditional credit was first earned.~~

~~(d) Effective with the November 1999 examination, a candidate shall be entitled to conditional credit upon receiving a passing grade of seventy-five (75) in two (2) or more of the required subjects on a single examination, provided:~~

~~(1) the candidate takes all subjects for which the candidate does not hold conditional credit; and~~

~~(2) the candidate attained a minimum grade of 50 in each subject examined at the same examination.~~

~~(e) Effective with the November 1999 examination, after the first conditional credit is earned, conditional credit will be given for the successful completion of the examination in a single additional subject.~~

~~(f) Effective with the November 1999 examination, all conditional credit shall lapse if the candidate:~~

~~(1) does not take at least one (1) out of three (3) consecutive examinations given by the Board; or~~

~~(2) does not pass all remaining subjects within the next six (6) examinations given by the Board following the examination at which the conditional credit was first earned.~~

~~(g) Upon submission of an application to take an examination for a license, and upon successful completion of the examination for the license, candidate may not request that those conditional credits be applied toward the subjects necessary to obtain a certificate.~~

10:15-13-2. Conditional credit for candidates for licenses [REVOKED]

~~(a) A candidate for a license shall receive conditional credit when the candidate has received a passing grade of seventy-five (75) in at least one (1) of the three (3) required subjects on a single examination, provided the candidate complies with the provisions of Code 10:15-9-2(b).~~

~~(b) After the first conditional credit is earned, conditional credit will be given for the successful completion of the examination in one or more single other required subjects, provided the candidate took all subjects for which the candidate does not hold valid conditional credit.~~

~~(c) All conditional credit shall lapse if the candidate:~~

~~(1) does not take at least one (1) out of three (3) consecutive examinations given by the Board, or~~

~~(2) does not pass all subjects within the six (6) consecutive examinations following the examination at which the conditional credit was first earned.~~

~~(d) A candidate who has passed the subject area of Auditing and the subject area of Accounting and Reporting-Taxation, Managerial, and Governmental and Not-for-Profit Organizations and the subject area of Financial Accounting and Reporting-Business Enterprises, may request that a license be issued to the candidate.~~

~~(1) Such request shall be made in writing within three (3) years from the date that such subjects were passed.~~

~~(2) The conditional credit for certification which such individual may hold on the date the license is issued will remain valid but shall be subject to lapse in the same manner as provided for other holders of conditional credits.~~

~~(e) Effective with the November 1999 examination, a candidate shall receive conditional credit when the candidate has received a passing grade of seventy-five (75) in at least one (1) of the three (3) required subjects on a single examination, provided:~~

~~(1) the candidate takes all subjects for which the candidate does not hold conditional credit; and~~

~~(2) the candidate attained a minimum grade of 50 in each subject examined at the same examination.~~

~~(f) Effective with the November 1999 examination, after the first conditional credit is earned, conditional credit will be given for the successful completion of the examination in a single other subject.~~

~~(g) Effective with the November 1999 examination, all conditional credit shall lapse if the candidate:~~

~~(1) does not take at least one (1) out of three (3) consecutive examinations given by the Board; or~~

~~(2) does not pass all subjects within the next six (6) examinations given by the Board following the examination at which the conditional credit was first earned.~~

10:15-13-4. Requests for extension of time [REVOKED]

~~(a) A candidate may apply for an extension of the time limits set by this Subchapter if the candidate is called to active military service or becomes incapacitated as a result of illness or injury.~~

~~(b) The candidate shall file a written request with the Board for an extension after receiving the call to active military service and shall furnish a copy of the orders to active military service or furnish written evidence of incapacitation or injury.~~

~~(c) Within sixty (60) calendar days after the candidate is discharged from active military service, the candidate shall furnish the Board with copies of the discharge orders. The candidate shall then be required to take one (1) of the next two (2) examinations for which the candidate is eligible following the candidate's discharge from military service or rehabilitation from illness or injury.~~

SUBCHAPTER 15. TRANSFER OF EXAMINATION CREDITS [REVOKED]

10:15-15-1. Application for transfer of credits [REVOKED]

~~(a) An individual who has taken the Uniform Certified Public Accountant Examination in the District of Columbia or any state or territory of the United States may apply to the Board for the transfer of conditional credits.~~

~~(b) The application shall be in such form as the Board prescribes.~~

~~(c) The applicant shall submit written verification of the valid conditional credits from the examining authority responsible for administering the examination at which such credits were earned.~~

~~(d) The applicant shall meet all other eligibility requirements established to take the examination in Oklahoma.~~

10:15-15-2. Requirements to qualify for transfer of credits [REVOKED]

~~(a) Upon the filing of an application to transfer conditional credits on the Uniform Certified Public Accountant Examination, the Board shall accept and transfer such credits, if at the time the application to transfer credits is filed with the Board, the applicant has met the following requirements:~~

~~(1) The credits were earned by the applicant while taking an examination administered by the examining authority responsible for conducting such examinations pursuant to the laws of the District of Columbia or any state or territory of the United States.~~

~~(2) The applicant was examined and passed all subjects of the Uniform Certified Public Accountant Examination in the same manner as required for Oklahoma candidates.~~

~~(3) All credits were earned within the seven (7) examinations immediately preceding the date the application to transfer credits is filed with the Board.~~

~~(b) Applicants for the transfer of credits shall comply with the announced application filing dates for the examination.~~

~~(c) In the case of an applicant who has met all eligibility requirements and seeks to transfer conditional credits, the acceptance of such credits by the Board shall result in the applicant being approved to take the examination in the subjects for which no conditional credit was transferred.~~

~~(d) In the case of an applicant for a certificate who has met all eligibility requirements and seeks to transfer the four (4) conditional credits, the acceptance of such credits by the Board shall result in the issuance of a certificate to the applicant.~~

~~(e) In the case of an applicant for a license who has met all eligibility requirements and seeks to transfer the three (3) conditional credits, the acceptance of such credits by the Board shall result in the issuance of a license to the applicant.~~

SUBCHAPTER 17. PROCEDURES UPON FAILURE TO APPLY FOR OR TAKE EXAMINATION [REVOKED]

10:15-17-1. Processing fee to retake examination [REVOKED]

~~If for any reason a candidate who has qualified to take an examination fails to take the examination, a processing fee shall be required with the next application to take an examination.~~

10:15-17-2. Failure to apply to take succeeding examinations [REVOKED]

~~If a candidate fails to take at least one (1) examination within the next three (3) examinations, that candidate shall no longer be considered a current candidate and shall forfeit all fees paid. No further notices of examination shall be sent to the candidate.~~

10:15-17-3. Reestablishment of eligibility [REVOKED]

~~An individual shall be required to reapply as a new applicant and reestablish eligibility after the individual is determined to no longer be a current candidate. On and after July 1, 2003 an applicant who seeks to reestablish eligibility to take the examination shall be required to comply with the provisions of Section 15.8D of the Act.~~

SUBCHAPTER 18. ~~TRANSITIONING FROM THE PAPER-AND-PENCIL EXAMINATION TO THE~~ COMPUTER-BASED EXAMINATION

10:15-18-1. Applications for examination

~~Notwithstanding any contrary provisions in this Code, upon the implementation of a computer-based examination:~~

(~~1~~ a) An ~~initial~~ application for qualification on a form prescribed by the Board, will not be considered filed until the application and all required examination fees, as provided by §15.8 of the Act and supporting documents, including photographs and official transcripts as proof that the applicant has satisfied the education requirement, are received by the Board.

(~~2~~ b) A candidate's ~~re-examination~~ application for examination will not be considered filed until the form prescribed by the Board and the application fee~~, examination fee and photograph~~ as provided by §15.10A of the Act, are received by the Board.

(c) Failure of a candidate to furnish all information requested by the Board within the time frame set by the Board shall be grounds for denying such candidate admission to the examination.

(d) Any candidate who gives false information to the Board in order to be eligible to take the examination shall be subject to disciplinary action by the Board.

10:15-18-2. Time and place of examination

~~Upon the implementation of a computer-based examination, eligible~~ Eligible candidates shall be notified of the Notice to Schedule (NTS) as issued by the National Association of State Boards of Accountancy (NASBA). The candidate shall independently contact the test center operator to schedule the time and place for the examination at a~~n approved~~ test site approved by the Board within a six month period from the date the NTS is issued.

10:15-18-3. Retake and granting of credit requirements

~~Notwithstanding any contrary provisions in this Code, upon the implementation of a computer-based examination:~~

(~~1~~ a) A grade of seventy-five (75) in each required ~~subject area~~ test section shall be the minimum passing grade for purposes of granting credit.

(~~2~~ b) A candidate may take the required test sections individually and in any order. Credit for any test section(s) passed shall be valid for eighteen months from the ~~actual~~ date the candidate took that test section, without having to attain a

minimum score on any failed test section(s) and without regard to whether the candidate has taken other test sections.

(~~A~~1) A CPA candidate must pass all four test sections of the AICPA Uniform CPA Examination within a rolling eighteen-month period, which begins on the date that the first test section(s) passed is taken. In the event all four test sections of the AICPA Uniform CPA Examination are not passed within the rolling eighteen-month period, credit for any test section(s) passed outside the eighteen-month period will expire and that/those test section(s) must be retaken.

(~~B~~2) A PA candidate must pass the Financial Accounting and Reporting (FAR), Auditing and Attestation (AUD), and Regulation (REG) ~~the three applicable~~ sections of the AICPA Uniform CPA E~~e~~xamination within a rolling eighteen-month period, which begins on the date that the first test section(s) passed is taken. In the event all three test sections of the PA Examination are not passed within the rolling eighteen-month period, credit for any test section(s) passed outside the eighteen-month period will expire and that/those test section(s) must be retaken.

(~~C~~3) A candidate cannot retake a failed test section(s) in the same examination window. An examination window refers to a three-month period in which a candidate has an opportunity to take the CPA/PA examination (comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered while routine maintenance is performed and the item bank is refreshed). Thus, a candidate will be able to test two out of the three months within an examination window.

~~(D) In the event all four test sections of the AICPA Uniform CPA Examination are not passed within the rolling eighteen-month period, credit for any test section(s) passed outside the eighteen-month period will expire and that/those test section(s) must be retaken.~~

~~(E) In the event all three test sections of the PA Examination are not passed within the rolling eighteen-month period, credit for any test section(s) passed outside the eighteen-month period will expire and that/those test section(s) must be retaken.~~

(~~3~~ c) A candidate having earned conditional credits on the paper-and-pencil examination, as of the launch date of the computer-based AICPA Uniform CPA Examination, will retain conditional credits for the corresponding test sections of the computer-based CPA examination as follows:

(~~A~~1) A candidate having earned conditional credits on the paper-and-pencil examination in Auditing will retain conditional credits in Auditing and Attestation (AUD) on the computer-based examination.

(~~B~~2) A candidate having earned conditional credits on the paper-and-pencil examination in Financial Accounting and Reporting (FARE) will retain conditional credits in Financial Accounting and Reporting (FAR) on the computer-based examination.

(~~C~~3) A candidate having earned conditional credits on the paper-and-pencil examination in Accounting and Reporting (ARE) will retain conditional credits in Regulation (REG) on the computer-based examination.

(~~D~~4) A candidate having earned conditional credits on the paper-and-pencil examination in Business Law and Professional Responsibilities (LPR) will retain conditional credits in Business Environment and Concepts (BEC) on the computer-based examination.

(~~4~~ d) A candidate who has attained conditional status as of the launch date of the computer-based AICPA Uniform CPA Examination will be allowed a transition period to complete any remaining test sections of the CPA/PA examination. The transition is the maximum number of opportunities that a candidate who has conditioned under the paper-and-pencil examination has remaining, at the launch of the computer-based examination, to complete all remaining test sections or the number of remaining opportunities under the paper-and-pencil examination, multiplied by six months, whichever is first exhausted.

(~~5~~ e) If a previously conditioned candidate does not pass all remaining test sections during the transition period, conditional credits earned under the paper-and-pencil examination will expire and the candidate will lose credit for the test sections earned under the paper-and-pencil examination. However, any test section(s) passed during the transition period is subject to the conditioning credit provisions of the computer-based examination as indicated in the aforementioned ~~conditioning recommendation~~ credit requirements, except that a previously conditioned candidate will not lose conditional credit for a test section of the computer-based examination that is passed during the transition period, even though more than eighteen months may have elapsed from the date the test section is passed, until the end of the transition period.

(~~6~~ f) ~~A candidate shall retain credit for any and all test sections of an examination passed in another state if such credit would have been given, under applicable requirements, as if the candidate had taken the examination in Oklahoma.~~

~~(7)~~ A candidate shall be deemed to have passed the CPA examination once the candidate holds at the same time valid credit for passing each of the four test sections of the examination within the rolling eighteen month period. For purposes of this section, credit for passing a test section of the computer-based examination is valid from the actual date of the testing event for that test section, regardless of the date the candidate actually receives notice of the passing grade.

(~~8~~ g) A candidate shall be deemed to have passed the PA examination once the candidate holds at the same time valid credit for passing each of the three test sections of the examination within the rolling eighteen month period. For purposes of this section, credit for passing a test section of the computer-based examination is valid from the actual date of the testing event for that test section, regardless of the date the candidate actually receives notice of the passing grade.

10:15-18-4. Educational requirements

(a) An applicant shall show, to the satisfaction of the Board, that the applicant has graduated from an accredited four-year college or university listed in the Directory of Post Secondary Schools as published by the U.S. Department of Education, or its successor.

(1) As to an applicant whose college credits are reflected in quarter hours, each quarter hour of credit shall be considered as two-thirds (2/3) of one (1) semester hour when determining semester hour credits necessary to qualify for examination or transfer of credits.

(2) When determining eligibility based on educational qualifications, the Board shall consider only educational credit reflected on official transcripts from an accredited two-year or four-year college or university listed in the Directory of Post Secondary Schools as published by the U.S. Department of Education, or its successor.

(3) The specific requirement that each applicant shall have completed at least one (1) course in auditing may only be satisfied with an auditing or assurance course taken for credit from an accredited two-year or four-year college or university listed in the Directory of Post Secondary Schools as published by the U.S. Department of Education, or its successor.

(b) When determining eligibility of an applicant for qualification, the Board shall not consider any combination of education and experience.

(c) The Board will also consider an applicant who has graduated from a college or university located outside the United States if an educational evaluation performed by a national credential evaluation service, as approved by the Board, certifies in writing that the applicant's course of study and degree are equivalent to the requirements set forth in Section 15.8 of the Act.

(d) On and after July 1, 2003, one hundred fifty (150) semester hours or its equivalent of collegiate education is required to qualify for any examination as set forth in Section 15.8.C. of the Oklahoma Accountancy Act. Any MIS or AIS course, or derivative thereof, as defined in Code 10:15-18-13, used by the applicant to qualify must have a substantial relationship, either direct or indirect, to the accounting profession. However, only AIS courses will qualify for the core accounting courses as required in Section 15-8.C.

(e) Any candidate who has qualified to take the examination on the basis of education prior to July 1, 2003, as provided in Section 15.8.B, is not subject to subparagraph (d) of this subsection.

10:15-18-5. Evaluation of application

Evaluation of qualifications and approval of applications to take an examination or for transfer of credits shall be performed by the Executive Director, or his/her designee, subject to the limitations set forth in Subchapter 10:15-37-11.

10:15-18-6. Denial of application

(a) Any applicant who has not met the applicable qualifications and whose application has been denied shall be notified in writing. The written notice shall include the reason(s) for the denial.

(b) If an application is denied, the applicant may file a written request with the Board for a review of the denial. The applicant shall have the burden of demonstrating to the Board that the qualifications required by the Oklahoma Accountancy Act and the rules implementing the Act have been met. Any evidence submitted by the applicant shall be in documentary form.

10:15-18-7. Board review of denied applications

(a) The Board shall consider all requests for review of denied applications.

(b) The issues considered for review shall include, but not be limited to, the statutory eligibility requirements and rules upon which the denial of the application was based.

(c) The applicant who has requested the review shall be notified in writing of the Board's decision. If the denial is sustained by the Board, the written notice shall include the reason(s) for sustaining the denial.

(d) If the denial of the application is sustained, and the applicant is not satisfied with the decision of the Board, the applicant may request in writing a public hearing before the Board. Such request shall be granted only if the applicant can provide additional information to the Board which was not previously available to the Board at the time of the initial evaluation or review. Any additional evidence shall be in documentary form. If any additional evidence is to be presented by oral testimony, a written synopsis of that oral evidence shall accompany the request for a public hearing.

(e) If the Board grants a public hearing to the applicant, the hearing may be held in conjunction with the next regular meeting of the Board or at a special meeting of the Board.

10:15-18-8. Content of examinations

The examination for certification as a certified public accountant shall be the AICPA Uniform Certified Public Accountant Examination. The examination for licensing as a public accountant shall be parts of the AICPA Uniform Certified Public Accountant Examination.

10:15-18-9. Notification of grade

Each candidate shall be advised of the grade earned in each test section for which the candidate was examined. The names of candidates who have been granted credit for all test sections of the CPA and PA examination will be made public after the Board certified the grades.

10:15-18-10. Procedures to request review of the grading process

(a) A candidate may request a review or appeal of his or her nonpassing examination with the appropriate review or appeal organization.

(b) The cost of the review or appeal shall be paid by the candidate.

10:15-18-11. Requests for extension of time

(a) A candidate may apply for an extension of the time limits set by this Subchapter if the candidate is called to active military service or becomes incapacitated as a result of illness or injury.

(b) The candidate shall file a written request with the Board for an extension after receiving the call to active military service and shall furnish a copy of the orders to active military service or furnish written evidence of incapacitation or injury.

(c) Within sixty (60) calendar days after the candidate is discharged from active military service, the candidate shall furnish the Board with copies of the discharge orders. The candidate shall then be required to take one (1) test section for which the candidate is eligible within the next six (6) months following the candidate's discharge from military service or rehabilitation from illness or injury.

10:15-18-12. Application for transfer of credits

(a) An individual who has taken the AICPA Uniform Certified Public Accountant Examination in any jurisdiction may apply to the Board for the transfer of credits granted.

(b) The application shall be in such form as the Board prescribes.

(c) The applicant shall submit written verification of the valid credits from the examining authority responsible for administering the examination at which such credits were earned.

(d) The applicant shall meet all other eligibility requirements established to take the examination in Oklahoma at the time of filing the application.

10:15-18-13. Requirements to qualify for transfer of credits

(a) Upon the filing of an application to transfer credits on the AICPA Uniform Certified Public Accountant Examination, the Board shall accept and transfer such credits, if, at the time the application to transfer credits is filed with the Board, the applicant has met the following requirements:

(1) The credits were earned by the applicant while taking an examination administered by the examining authority responsible for conducting such examinations pursuant to the laws of any jurisdiction.

(2) The applicant was examined and passed all subjects of the AICPA Uniform Certified Public Accountant Examination in the same manner as required for Oklahoma candidates.

(3) All credits were earned pursuant to Rule 10:15-18-3 immediately preceding the date the application to transfer credits is filed with the Board.

(b) In the case of an applicant for examination who has met all eligibility requirements and seeks to transfer credits, the acceptance of such credits by the Board shall result in the applicant being approved to take the examination in the subjects for which no credit was transferred.

(c) In the case of an applicant for a certificate who has met all requirements as provided in §15.9 and seeks to transfer the four (4) credits, the acceptance of such credits by the Board shall result in the issuance of a certificate to the applicant.

(d) In the case of an applicant for a license who has met all requirements as provided in §15.9 and seeks to transfer the three (3) credits, the acceptance of such credits by the Board shall result in the issuance of a license to the applicant.

10:15-18-14. Failure to apply to take succeeding examinations

If a candidate fails to sit for a test section for eighteen (18) months after approval, or fails to sit for one (1) test section for an eighteen (18) month period, that individual shall no longer be considered a candidate and must reapply as an applicant. The individual shall meet the current qualification requirements in effect to reapply.

SUBCHAPTER 19. PROCTORING OF CANDIDATES TAKING EXAMINATIONS [REVOKED]

10:15-19-1. Request for Board proctoring service [REVOKED]

~~Candidates for examination from other states may be permitted to take the examination under the proctorship of the Board pursuant to a written request received from the examining authority of the District of Columbia, another state, territory of the United States or their designated agents.~~

10:15-19-2. Payment of fee [REVOKED]

~~A nonrefundable processing fee for providing proctoring services by the Board shall be paid by the candidate prior to the examination.~~

10:15-19-3. Limitations and restrictions on proctored examinations [REVOKED]

~~(a) Failure of a candidate to pay the required fee or to furnish all information requested by the Board within the time parameters set by the Board prior to commencement of the examination shall be grounds for denying such candidate admission to the examination.~~

~~(b) Upon payment of the required fee and the timely furnishing of all information requested by the Board, proctoring of candidates taking examinations shall be restricted only by the availability of seating space at the examination sites.~~

10:15-19-4. Oklahoma candidates taking examination in other states [REVOKED]

~~(a) An candidate for examination may request to take an examination in another state only if such candidate provides evidence acceptable to the Board of:~~

~~(1) the candidate or the spouse of the candidate is attending school in another state, district or territory of the United States;~~

~~(2) the candidate is on a temporary job assignment incident to the regular, full time employment of the candidate within this state; or~~

~~(3) the candidate, or the spouse of the candidate, is on active military duty stationed outside this state and such candidate or spouse maintains Oklahoma as his or her domicile or military home of record.~~

~~(b) If eligible, the Board shall issue its request in writing to the other examining authority for candidate.~~

~~(c) A candidate applying to take the examination in another state shall file the application with the Oklahoma Accountancy Board to take the examination and the request to take the examination in another state on or before the final application filing date. In addition to complying with the Oklahoma Accountancy Act and the rules implementing that Act, the candidate shall comply with all state laws and rules of the jurisdiction where the candidate will be taking the examination. If for any reason satisfactory arrangements for taking the examination in another state cannot be made the candidate shall be permitted to take the examination at one of the Oklahoma sites.~~

~~(d) Candidates shall be solely responsible for any fees required to be paid to the other examining authority to provide proctoring.~~

SUBCHAPTER 21. RECIPROCITY

10:15-21-1. Application for certificate or license

An applicant seeking to obtain an Oklahoma reciprocal certificate~~,~~ or license~~, or permit to practice public accounting in this state~~ who holds a valid certificate or license pursuant to the laws of another jurisdiction shall provide the Board with:

(1) written proof of test scores received on all examinations from the ~~other~~ examining ~~authority~~ jurisdiction;

(2) written information that the applicant met or currently meets all Oklahoma requirements for eligibility as provided by statute, §15.13, Title 59, Oklahoma Statutes and these rules;

(3) a current certificate of good standing from the ~~examining authority of the district, state or territory~~ jurisdiction who issued the certificate or license upon which the reciprocal certificate or license is based (the certificate of good standing must have been issued not more than sixty (60) days prior to filing the application); ~~and~~

(4) written proof of having met all Oklahoma continuing professional educational requirements for those applicants seeking a permit to practice public accounting~~.~~ ; and

(5) Evidence of successful completion of the AICPA ethics examination or its equivalent as determined by the Board.

(6) An applicant shall file for a reciprocal certificate or license within one hundred twenty (120) days of engaging in the practice of public accounting in Oklahoma.

10:15-21-7. International reciprocity

In addition to the requirements found in Rule 10:15-21-1, the Board may rely on the International Qualifications Appraisal Board for evaluation of foreign credential equivalency for a foreign reciprocal certificate. Such foreign applicant shall report any investigations undertaken, or sanctions imposed, by a foreign credentialing body against the applicant's foreign credential. Suspension or revocation of, or refusal to renew, the applicant's foreign accounting credential by the foreign credentialing body, or conviction of a felony or any crime involving dishonesty or fraud under the laws of a foreign country may be evidence of conduct reflecting adversely upon the foreign reciprocal certificate holder's fitness to retain the certificate and may be a basis for Board action. The Board shall notify the appropriate foreign credentialing authorities of any sanctions imposed against the foreign reciprocal certificate holder. The Board may participate in joint investigations with foreign credentialing bodies and rely on evidence supplied by such bodies in disciplinary hearings.

SUBCHAPTER 22. SUBSTANTIAL EQUIVALENCY

10:15-22-1. Notification

(a) A qualified individual seeking practice privileges in this state pursuant to Section 15.12A of the Oklahoma Accountancy Act shall comply with the notice requirement as follows:

(1) Notice may be given electronically or in writing on forms prescribed by the Board;

(2) Notice is immediately due and shall be received by the Board within thirty (30) days after the individual knowingly avails him/herself of the laws of this State by:

(A) Accepting an engagement or an assignment to render professional services in this State, or

(B) Offering to render professional services through direct solicitation or marketing targeted to persons in this state.

(3) In lieu of the procedure set out in paragraph (a)(2), at anytime prior to entering this State, an individual, directly or through the individual's firm, may be included in a master notice to all participating substantially equivalent jurisdictions including the Board by giving notice to the NASBA National Qualification Appraisal Service or other comparable service designated by the Board; and, provided the firm accepts responsibility for each individual's compliance with the accountancy laws and rules of this State for as long as the individual is included in the firm's master notice, keeps the master notice reasonably current and renews the notice annually. In any event, the individual seeking practice privileges is responsible for complying with the requirement that the notification required under this Section has been made.

(4) Staff will inform the individual if he/she must withdraw based on findings. Withdrawal must be immediate. Individuals may appeal, and practice in this State may continue during the appeal process.

(b) Notice shall be renewed annually on the anniversary date of the original notice for so long as the individual intends to use Substantial Equivalency privileges in this State.
(c) Notice shall be amended within thirty (30) days after the individual changes his/her principal place of business or within 30 days after the certificate or license has been denied, revoked, or suspended in any jurisdiction.
(d) A non-resident individual shall not be deemed to have entered this State for purposes of the Section and notice is not required under this Section if the individual's contact with this State is limited to any of the following activities:

(1) teaching either a college or continuing professional education course,
(2) delivering a lecture,
(3) moderating a panel discussion,
(4) rendering professional services to the individual's employer or to persons employed by the individual's employer, including affiliated, parent, or subsidiary entities, provided such services are not rendered for the employer's clients.

(e) No notice shall be required for a certificate or license holder of a jurisdiction that does not require notice by an Oklahoma certificate or license holder entering that jurisdiction to practice public accounting.

SUBCHAPTER 23. REGISTRATION

10:15-23-1. Registration of individuals

(a) On or before ~~June 30~~ July 31, all individuals shall register biennially as provided in Section 15.14 of the Oklahoma Accountancy Act and shall file a registration statement with the Board on a form prescribed by the Board.
(b) All registration statements shall be accompanied by a registration fee.

(1) In the case of a registrant who has reached the age of sixty-five (65), the registration fee shall be reduced, as provided in Subchapter 27.
(2) In the case of a registrant who is disabled beyond gainful employment, as provided in Section 15.14 of the Oklahoma Accountancy Act, the registration fee may be waived for the period of disability.
(3) All requests for a reduction or waiver of the registration fee shall be addressed to the Board, in writing.
(4) The Board shall use its discretion in determining the conditions required for retirement or disability.

(c) In addition to the regular registration fee paid by an individual, there shall be a fee for registering after ~~close of business on June 30~~ July 31 but within twelve (12) months after the lapse date of the certificate or license.
(d) In addition to the regular registration fee paid by an individual, there shall be a fee for registering later than twelve (12) months following the lapse date of the certificate or license.
(e) Evaluation of qualifications and approval of registrations filed by individuals shall be performed by the Executive Director, subject to the review and supervision of the Board.
(f) Denial of individual registrations shall be by the Board.
(g) During the period when a certificate or license is suspended by the Board, the suspended registrant shall be required to file annually with the Board an informational report on a form prescribed by the Board. No fee shall be required with such filing.
(h) Biennial filings mailed to the Board office by United States postal service with a postmark on or before July 31 shall be deemed timely filed.

10:15-23-2. Registration of firms

(a) On or before ~~August 31~~ May 31 of each year all firms of certified public accountants and all firms of public accountants qualified to register shall file a registration statement with the Board on a form prescribed by the Board.
(b) The registration statement filed on behalf of a firm of certified public accountants shall be made by a partner or shareholder ~~who holds a valid Oklahoma certificate~~.
(c) The statement filed on behalf of a firm of public accountants shall be made by a partner or shareholder ~~who holds a valid Oklahoma license or certificate~~.
(d) Evaluation of qualifications and approval of registrations filed by firms shall be performed by the Executive Director, subject to the review and supervision of the Board.
(e) Denial of firm registrations shall be by the Board.
(f) Except for sole proprietorships, all registration statements filed on behalf of a firm shall be accompanied by an annual registration fee and ~~all~~ the applicable permit fee~~s~~ for the firm, as provided in Subchapter 27.
(g) Firm filings mailed to the Board office by United States postal service with a postmark on or before May 31 shall be deemed timely filed.

SUBCHAPTER 25. PERMITS

10:15-25-2. Date of issue

(a) Permits renewed on a timely basis shall bear a date of issue of July 1 for individuals and June 1 for firms except sole proprietorships. All other permits, except for b and c below, shall bear a date of issue based on the date the acceptable application for a permit is ~~approved by~~ received in the Board office ~~unless such registrant has been granted an exception by the Board. Permits renewed on a timely basis will be effective July 1 for individuals and September 1 for firms~~.
(b) When the Board has granted an extension in accordance with 10:15-29-10, the date of issuance will be determined on a case by case basis.
(~~b~~ c) If an application for a permit which has been returned to the holder for correction or completion of information is returned to the Board in acceptable form within thirty (30) calendar days of the first denial, the permit shall bear the date on which the permit application was first received in the office of the Board. Failure to resubmit ~~the corrected~~ an acceptable application within the thirty-day period shall cause the permit to be dated with the date the acceptable application is received in the ~~office of the~~ Board office.

~~(c) Permits applied for and issued after July 1, for individuals; and after September 1, for partnerships and professional corporations; and except for (a) and (b) above, shall bear an issue date of the day such application for a permit is accepted in the office of the Board.~~

10:15-25-3. Individual permit

(a) An individual permit shall have a maximum term of one (1) year and shall expire on June 30 following the date of issuance.

(b) Any registrant ~~who performs any of the services described in Section 15.1A(27) of the Oklahoma Accountancy Act~~ engaged in the practice of public accounting, regardless of whether such services are rendered for compensation, must have a permit if the registrant is holding out as a CPA or PA in any manner as described in the Act. However, for purposes of this section, an individual may not be considered to be in the practice of public accounting if the individual performs an incidental amount of non-compensated services for immediate family members. In order to obtain a permit, an individual must have a valid certificate or license, be properly registered, pay all applicable fees, and comply with the continuing education requirements ~~unless the registrant is exempt from CPE compliance as provided in Code 10:15-29-3 or 10:15-29-10~~.

(c) ~~Any certified or licensed person employed by a firm located outside this state~~ Each partner, shareholder, owner, member and certified or licensed employee of a firm located outside this state shall be required to hold a valid permit or to notify the Board of his/her intent to practice public accountancy in this State in accordance with the Substantial Equivalency provision in order to serve clients in this State unless such service is incidental to other responsibilities in the firm or involves the internal review procedures of the firm.

(d) The application for renewal of a permit shall be filed with the Board on a form prescribed by the Board prior to the expiration of the permit currently held and no later than June 30.

(e) At the time the application for a permit is filed, the registrant shall attest to compliance with the continuing education requirement for the applicable compliance period as specified by the Board.

(f) An application for a permit may be filed at any time during the year by a registrant who is entering or reentering the practice of public accounting. Such registrant shall attest to compliance with the applicable continuing education requirement.

(g) The fees to obtain a permit to practice shall accompany the application. The fees for the renewal of permits are set forth in Subchapter 27.

10:15-25-4. Firm permits

(a) Each firm permit shall have a maximum term of one (1) year and shall expire on ~~August 31~~ May 31 following the date of issuance.

(b) The application for renewal of a permit shall be filed with the Board on a form prescribed by the Board prior to the expiration of the permit currently held and no later than ~~August 31~~ May 31.

(c) Each firm applying for a permit to practice as a certified public accountant firm or as a public accountant firm shall submit a written affidavit signed by an owner, partner, member or shareholder demonstrating compliance with the requirements set out in Section 15.15A of the Oklahoma Accountancy Act and attesting that each partner, shareholder, owner, member and certified or licensed employee of the firm serving Oklahoma clients holds a valid individual permit or has notified the Board of his/her intent to practice public accountancy in this State in accordance with the Substantial Equivalency provision.

(d) A firm is required to hold a valid permit if that firm is serving Oklahoma clients from outside this state unless such service is incidental to other responsibilities in the firm or involves the internal review procedures of the firm.

(e) Each firm ~~office~~ that serves Oklahoma clients shall be required to hold a ~~separate~~ permit and pay the applicable fee ~~for each office permit~~.

10:15-25-5. Transitional period for individuals entering and re-entering public practice

(a) A registrant who immediately gives written notice to the Board upon changing to public accounting status from nonpublic status may be granted a period of sixty (60) days from the date ~~of such notification~~ the registrant begins the practice of public accounting in which to complete the continuing education credit required for issuance of the permit. Such courses shall comply with the criteria set forth in Subchapter 29 or 30. The procedure for administering the code is as follows:

(1) ~~A registrant who changes to public accounting status from nonpublic status shall immediately give written notification of such change to the Board and may request that the registrant be granted a period of sixty (60) days from the date the registrant begins the practice of public accounting in which to complete the continuing education credit required for issuance of a permit~~. The registrant shall furnish a letter if self employed or from the employer, if employed, attesting to the beginning date of the registrant's self employment or employment, and shall furnish a list of courses in which the registrant has enrolled during the 60-day period. The list should include course title, name of sponsor, CPE credits to be awarded, and approximate date course is to be completed.

(2) Upon receipt of the written notification, the Executive Director shall review the request for sufficiency of information and shall ascertain whether the registrant is to be granted the transitional CPE compliance period.

(3) The registrant shall be notified by letter within five (5) working days whether the transitional period has been granted. Such letter shall grant permission for the registrant to practice public accounting, without penalty, for the sixty (60) day transitional period or shall state the specific reason why the transitional period was not granted. A copy of the letter notifying the registrant that the transitional period was not granted will also be mailed to the registrant's employer, if employed.

(b) If a registrant is unable to qualify for the permit within the sixty (60) days provided for herein, the registrant may apply

in writing one time to the Board for an additional thirty (30) day period in which to qualify for the permit. The procedure for doing so is as follows:

(1) ~~The self-employed practitioner or the registrant's employer may petition for an additional thirty (30) days in which to comply~~. The written petition shall set forth the reason(s) for the registrant's inability to satisfy the CPE requirement within the sixty (60) days previously granted. The petition shall set forth the precise manner in which the registrant will satisfy the requirement for the issuance of a permit if the additional thirty (30) days is granted.

(2) Upon receipt of the petition from the self employed registrant or the employer, the Executive Director shall decide whether the registrant is to be granted the additional thirty (30) days in which to comply.

(3) If granted, the thirty (30) day period shall commence following the last day of the sixty (60) day period. The registrant and the employer, if applicable, shall be notified by the Board within five (5) working days following the Board's receipt of the employer's petition.

(4) If the additional thirty (30) day period is denied, the registrant and the employer, if applicable, will be informed in writing of the specific reason(s) for the denial within five (5) working days following receipt of the petition.

(5) Upon denial of the additional thirty (30) day period, the registrant and the employer, if applicable, will be notified in writing that the registrant must cease practicing public accounting until such time as the registrant has been issued the permit.

(c) Approval by the Board of such request(s) shall authorize the registrant to practice public accounting during the time period(s) referred to in this Subchapter.

SUBCHAPTER 27. FEES

10:15-27-1. Initial application to take CPA examination [REVOKED]

~~Each application submitted for the first time to take the paper and pencil examination to obtain a certificate shall be accompanied by a fee of Three Hundred Dollars ($300.00). Upon implementation of a computer based examination, this section shall no longer be applicable.~~

10:15-27-2. Initial application to take PA examination [REVOKED]

~~Each application submitted for the first time to take the paper and pencil examination to obtain a license shall be accompanied by a fee of Two Hundred Twenty Five Dollars ($225.00). Upon implementation of a computer based examination, this section shall no longer be applicable.~~

10:15-27-3. Reexamination [REVOKED]

~~(a) Each application for reexamination for a certificate by paper and pencil examination shall be accompanied by a fee of Seventy Five Dollars ($75.00) for each subject in which the candidate is to be reexamined. Upon implementation of a computer based examination, this section shall no longer be applicable.~~

~~(b) Each application for reexamination for a license by paper and pencil examination shall be accompanied by a fee of Seventy Five Dollars ($75.00) for each subject in which the candidate is to be reexamined. Upon implementation of a computer based examination, this section shall no longer be applicable.~~

10:15-27-3.1. ~~Computer based test fee~~ Qualification and examination fees

~~Upon implementation of a computer based examination, fees as provided in 10:15-27-1 through 10:15-27-3 shall no longer be applicable and the~~ Applicants and candidates shall, for each application filed with the Board, pay a Fifty-Dollar ($50.00) ~~Board examination~~ fee and shall be responsible for all fees charged by the American Institute of Certified Public Accountants, National Association of State Boards of Accountancy (NASBA), and test delivery service provider which are payable to NASBA prior to scheduling the examination.

10:15-27-4. Examination processing fee [REVOKED]

~~If for any reason a candidate fails to take an examination for which that candidate has been approved, a processing fee of Fifty Dollars ($50.00) shall be required with the next application to take an examination. Upon implementation of the computer based examination, this section shall no longer be applicable.~~

10:15-27-5. Transfer of ~~conditional~~ credits

The application fee required with an application to transfer ~~conditional~~ credits shall be One Hundred Twenty Dollars ($120.00).

10:15-27-6. Out of state candidates [REVOKED]

~~The Board shall charge each candidate to be proctored a nonrefundable processing fee of One Hundred Dollars ($100.00) per examination. Upon implementation of the computer based examination, this section shall no longer be applicable.~~

10:15-27-7.2. Reciprocal application

Each reciprocal application shall be accompanied by an administrative fee of One Hundred Twenty Dollars ($120.00).

10:15-27-14. Peer review fee

There shall be a peer review fee of One Hundred Dollars ($100.00) for every modified, adverse or report which requires follow up filed with the Board.

SUBCHAPTER 29. CONTINUING PROFESSIONAL EDUCATION

10:15-29-1.1. Burden of proof

The burden of proof rests solely upon the registrant to demonstrate to the satisfaction of the Board, in accordance with the Oklahoma Accountancy Act, that all continuing education courses reported meet all of the requirements as to content and subject matter related to the profession and enhances the registrant's ability to provide services in the practice of public accounting, or in the industry of the permit holder or registrant's employer. This rule is effective through December 31, 2005.

10:15-29-3. CPE compliance period for new CPAs and PAs

(a) When a new CPA or PA becomes certified or licensed ~~as a result of successfully completing the examination, including those individuals who are certified or licensed as the result of transferring all credits earned on an examination from another jurisdiction~~, the new CPA or PA shall ~~be exempt from reporting~~ report a minimum of forty (40) hours of CPE, including two (2) hours of professional ethics,1) completed within the calendar year immediately preceding the filing of the application for the permit, or (2) completed within the three hundred sixty-five (365) day period immediately preceding the date of the application for permit for the initial permit to practice public accounting.

(b) A new CPA or PA shall provide evidence of successful completion of the AICPA ethics examination or its equivalent as determined by the Board as part of their CPE requirement. The passing score is determined by the Board.

(c) For the first renewal after the initial permit to practice public accounting has been issued to a new CPA or PA, in order to renew the permit, the new CPA or PA shall be required to report~~:~~

~~(1)~~ Forty (40) hours of acceptable CPE, including two (2) hours of professional ethics~~, must be reported if the certification or licensure was issued during the months of July, August or September;~~

~~(2) Thirty (30) hours of acceptable CPE, including two (2) hours of professional ethics, must be reported if the certification or licensure was issued during the months of October, November or December;~~

~~(3) Twenty (20) hours of acceptable CPE, including two (2) hours of professional ethics must be reported if the certification or licensure was issued during the months of January, February or March; or~~

~~(4) Ten (10) hours of acceptable CPE, including two (2) hours of professional ethics must be reported if the certification or licensure was issued during the months of April, May or June.~~

(d) This rule is effective through December 31, 2005.

10:15-29-4. Required CPE for issuance of a permit

(a) An individual who applies for a permit to practice public accounting shall comply with the CPE requirements prior to filing the application for a permit.

(b) An individual who applies to renew a permit, other than a new CPA, new PA, or reciprocal applicant shall document that the applicant has:

(1) completed a minimum of forty (40) hours of qualifying CPE, including two (2) hours of professional ethics, within the calendar year immediately preceding the filing of the application for the permit; or

(2) completed a minimum of forty (40) hours of qualified CPE, including two (2) hours of professional ethics, within the three hundred sixty-five (365) day period immediately preceding the date of the application for the permit.

(c) An individual who applies for an initial interim permit shall document that the individual has completed within the previous calendar year or within the 365 days immediately preceding the date of application, a minimum of ~~CPE prorated according to the following schedule:~~

~~(1) If permit is applied for any time in July, August, or September,~~ forty (40) hours of acceptable CPE, including two (2) hours of professional ethics~~, are required;~~

~~(2) If permit is applied for any time in October, November, or December, thirty (30) hours of acceptable CPE, including two (2) hours of professional ethics, are required;~~

~~(3) If permit is applied for any time in January, February, or March, twenty (20) hours of acceptable CPE, including two (2) hours of professional ethics, are required; or~~

~~(4) If permit is applied for any time in April, May or June, ten (10) hours of acceptable CPE, including two (2) hours of professional ethics, are required~~.

(~~5~~d) An individual applying for an initial interim permit shall provide evidence of successful completion of the AICPA ethics examination or its equivalent as determined by the Board as part of their CPE requirement.

(~~d~~e) Unless exempted by 10:15-29-10, every permit holder shall complete at least two (2) hours of professional ethics CPE as a part of the qualifying CPE requirement.

(~~e~~f) An individual other than a new CPA or PA who applies for a permit after the permit has been suspended or revoked, or has lapsed~~,~~ shall have completed forty (40) hours of qualifying CPE, including two (2) hours of professional ethics, within the three hundred sixty-five (365) day period immediately preceding the date of the application for a permit.

(~~f~~g) Regardless of the time frame in which CPE credit is earned, once credit has been claimed to the Board toward the issuance of a permit to practice, such credit may not be claimed again, except in the following circumstances:

(1) An individual who applies for a permit as a new CPA or PA with a minimum of 40 hours of CPE, including two (2) hours of professional ethics, may use the same credit when applying for the first renewal of the initial permit as long as the permit has not lapsed and as long as the credit was completed within the previous calendar year or within the 365 days immediately preceding the date of application for permit renewal.

(2) An individual who applies for an initial permit with a minimum of 40 hours of CPE, including two (2) hours of professional ethics, in conjunction with an application for

reciprocity may use the same credit when applying for the first renewal of the initial permit as long as the permit has not lapsed and as long as the credit was earned within the previous calendar year or within the 365 days immediately preceding the date of application for permit renewal; or

(3) An individual who applies for an initial interim permit with a minimum of 40 hours of CPE, including two (2) hours of professional ethics, may use the same credit when applying for the first renewal of the initial permit as long as the permit has not lapsed and as long as the credit was earned within the previous calendar year or within the 365 days immediately preceding the date of application for permit renewal.

(~~g~~h) Qualified CPE credit hours from any one course may not be split in any manner between two consecutive compliance periods. Multiple CPE courses taken on the same day may be claimed between two consecutive compliance periods, but only if the sponsor of each separate CPE course issues a separate letter or certification attesting to the completion of each individual course.

(i) This rule is effective through December 31, 2005.

10:15-29-5. Reciprocity

(a) An individual who applies for a certificate or license by reciprocity shall comply with the CPE requirements provided for in the Oklahoma Accountancy Act and the rules implementing that Act, except that an applicant who is not practicing public accounting shall not be required to report CPE in conjunction with the application for reciprocity.

(b) An individual who applies for an initial permit shall document that the applicant has completed within the previous calendar year or within the 365 days immediately preceding the date of application, a minimum of ~~CPE prorated according to the following schedule~~:

~~(1) If permit is applied for any time in July, August, or September,~~ forty (40) hours of acceptable CPE, including two (2) hours of professional ethics~~, are required;~~

~~(2) If permit is applied for any time in October, November, or December, thirty (30) hours of acceptable CPE, including two (2) hours of professional ethics, are required;~~

~~(3) If permit is applied for any time in January, February, or March, twenty (20) hours of acceptable CPE, including two (2) hours of professional ethics, are required; or~~

~~(4) If permit is applied for any time in April, May or June, ten (10) hours of acceptable CPE, including two (2) hours of professional ethics, are required~~.

(~~5~~c) An individual applying for a certificate by reciprocity shall provide evidence of successful completion of the AICPA ethics examination or its equivalent as determined by the Board as part of their CPE requirement. The passing score is determined by the Board.

(d) This rule is effective through December 31, 2005.

10:15-29-6. Reporting and documentation by registrants

(a) Each applicant seeking to obtain a permit shall certify, in writing, on a form prescribed by the Board, information regarding the CPE hours claimed for credit in the CPE compliance period.

(b) CPE hours claimed for credit may be claimed only for the compliance period in which the course was completed and credit granted.

(c) At the time of completing each course, the registrant shall obtain a letter or certificate attesting to completion of the course from the sponsor of the course. Such letters or certificates shall be retained for a period of five (5) years after the end of the compliance period in which the program is completed and shall include the specific information set forth in the Board's CPE Standards.

(d) Participants in structured CPE programs shall also retain descriptive material which reflects the content of a course in the event the participant is requested by the Board to substantiate the course content.

(e) This rule is effective through December 31, 2005.

10:15-29-7. Qualifying subjects

(a) Acceptable CPE subjects include the fields of study which enhance a CPA's or PA's ability to serve and deliver professional services, as defined in Section 15.1A.~~27~~ 31 of the Oklahoma Accountancy Act, to clients or employers including accounting, auditing, advisory services, specialized knowledge and applications, practice management, personal development, taxation, professional ethics, and subjects specifically related to the industry of the permit holder or applicant's employer. Other subjects may be acceptable to the Board if such subjects relate to the practice of public accounting or maintain or increase the technical and nontechnical professional skills of the applicant for a permit.

(b) If a CPA's or PA's main area of employment is industry, at least 24 hours of the qualifying CPE completed by the permit holder shall be in subject areas related to the practice of public accounting.

(c) The responsibility for demonstrating to the satisfaction of the Board that nontechnical courses maintain or increase the professional skills of the individual rests solely with the permit holder or the applicant for a permit. Failure to demonstrate to the satisfaction of the Board that a nontechnical CPE course will maintain or increase professional competence will result in the disallowance of credit for such course.

(d) This rule is effective through December 31, 2005.

10:15-29-8. Verification

(a) The Board may periodically conduct verification of the CPE credit reported by registrants.

(b) Such verification shall be conducted by requesting the registrant to submit to the Board the documentation and evidence required to be retained by the registrant.

(c) The Board may revoke permits or deny applications for permits for deficiencies in the documentation submitted or for

failure to submit the documentation and evidence required to be retained.

(d) If a CPE course is not accepted for credit, the permit holder will be notified and the Board may grant a period of time for the permit holder to correct the deficiency.

(e) In order to determine compliance with the CPE standards, the Board may inspect the records of CPE program sponsors and CPE program developers.

(f) Registrants shall automatically be included in the subsequent verification of CPE in any of the following instances:

(1) If the registrant failed to satisfactorily comply with CPE requirements as determined by the Board;

(2) If the registrant holding a permit has been the subject of an enforcement action by the Board during the preceding credit verification~~; or~~.

(g) This rule is effective through December 31, 2005.

10:15-29-9. Penalties for noncompliance with the CPE requirement

(a) A false or misleading statement by an individual or firm permit holder or an applicant for a permit relating to information about CPE credits shall constitute a cause for disciplinary action pursuant to the provisions of the Oklahoma Accountancy Act.

(b) Failure of an individual permit holder who is engaged in the practice of public accounting serving Oklahoma clients to file an acceptable application for renewal of a permit by July 1, shall be subject to disciplinary action pursuant to the provisions of the Oklahoma Accountancy Act.

(c) This rule is effective through December 31, 2005.

10:15-29-10. Exceptions

(a) The Board may grant partial or complete exemptions from or modifications of CPE requirements for:

(1) retirement;

(2) Military Service;

(3) Disability~~; or~~

(4) Inactive; or

(5) Other good cause as determined by the Board on an individual basis.

(b) Registrants who are not engaged in the practice of public accounting and who elect not to hold a permit are exempt from the CPE requirement.

(c) This rule is effective through December 31, 2005.

SUBCHAPTER 30. CONTINUING PROFESSIONAL EDUCATION

10:15-30-1. Burden of proof

Beginning January 1, 2006, the burden of proof rests solely upon certificate and license holders to demonstrate to the satisfaction of the Board, in accordance with the Oklahoma Accountancy Act, that all continuing education courses reported meet all the requirements as to content and subject matter related to the profession as provided in subchapter 32 of this Code.

10:15-30-2. Required CPE for issuance of an original permit

Beginning January 1, 2006, all certificate and license holders applying for their first permit to practice public accounting must report a minimum of forty (40) hours of CPE, including two (2) hours of professional ethics, earned within the previous calendar year or within 365 days immediately preceding the date of the application before a permit will be issued. A certificate or license holder shall also provide evidence of the successful completion of the AICPA Ethics Examination or its equivalent as determined by the Board. The passing score is determined by the Board.

10:15-30-3. Required CPE for issuance of a lapsed permit

Beginning January 1, 2006, all certificate and license holders previously holding a permit to practice public accounting must report a minimum of forty (40) hours of CPE, including two (2) hours of professional ethics, earned within the previous calendar year or within 365 days immediately preceding the date of the application before a permit will be issued. A certificate or license holder shall also provide evidence of the successful completion of the AICPA Ethics Examination or its equivalent as determined by the Board. The passing score is determined by the Board.

10:15-30-4. Required CPE for renewal of a permit

Beginning January 1, 2006, all certificate and license holders must comply with the provisions of 10:15-30-5 when renewing their permit to practice public accounting.

10:15-30-5. Reporting and documentation by certificate and license holders

(a) Beginning January 1, 2006, all certificate and license holders not otherwise exempt must complete one hundred twenty (120) hours of qualifying CPE within three (3) calendar years. A certificate or license holder's three (3) year period begins January 1 in the year the certificate or license holder was required to report CPE. A minimum of twenty (20) hours of acceptable CPE, including two (2) hours of professional ethics, shall be completed each calendar year.

(b) Each certificate and license holder required to report CPE shall certify, in a format prescribed by the Board, information regarding the CPE hours claimed for credit for the calendar year.

(c) CPE hours claimed for credit may be claimed only for the compliance period in which the course was completed and credit granted.

(d) At the time of completing each course, the certificate or license holder shall obtain a letter or certificate attesting to completion of the course from the sponsor of the course. Such letters or certificates shall be retained for a period of five (5) years after the end of the compliance period in which the program is completed and shall include the specific information set forth in the Board's CPE Standards.

(e) Participants in structured CPE programs shall also retain descriptive material for five (5) years which reflects the content

of a course in the event the participant is requested by the Board to substantiate the course content.

(f) If a certificate or license holder's main area of employment is industry and the certificate or license holder holds a permit to practice, at least seventy-two (72) hours of the one hundred twenty (120) hour requirement within a three (3) year period of the qualifying CPE completed by the certificate or license holder shall be in subjects related to the practice of public accounting.

10:15-30-6. Verification of CPE credit

(a) Beginning January 1, 2006, the Board may periodically conduct verification of the CPE credit reported by certificate and license holders.

(b) Such verification shall be conducted by requesting the certificate or license holder to submit to the Board the documentation and evidence required to be retained by the certificate or license holder.

(c) If a CPE course is not accepted for credit, the certificate or license holder will be notified and the Board may grant a period of time for the certificate or license holder to correct the deficiency.

(d) In order to determine compliance with the CPE standards, the Board may inspect the records of CPE program sponsors and CPE program developers.

(e) Certificate and license holders shall automatically be included in the subsequent verification of CPE in any of the following instances:

(1) If the certificate or license holder failed to satisfactorily comply with CPE requirements as determined by the Board;

(2) if a certificate or license holder has been the subject of an enforcement action by the Board during the preceding credit verification.

10:15-30-7. Penalties to certificate and license holders for noncompliance with the CPE requirement

Beginning January 1, 2006, failure by a certificate or license holder to document CPE credits shall constitute a cause for disciplinary action pursuant to the provisions of the Oklahoma Accountancy Act.

10:15-30-8. Exceptions to CPE reporting requirements

(a) Beginning January 1, 2006, the Board exempts from the requirements of CPE the following classifications:

(1) Retired certificate or license holders who are no longer employed or practicing public accounting;

(2) Certificate or license holders who are on active military service;

(3) Disabled certificate or license holders who are no longer employed or practicing public accounting due to medical circumstances;

(4) Inactive certificate or license holders who are (A) not employed due to circumstances other than retirement, military service or disability or (B) certificate or license holders employed but not performing the following services:

(A) keeping books, preparing trial balances, financial statements or reports

(B) preparing tax returns, consulting on tax matters, conducting studies on tax matters, preparing reports on tax matters

(C) preparing personal financial or investment plans

(D) providing management advisory services

(5) Other good cause as determined by the Board on an individual basis.

(b) All certificate and license holders holding a permit must comply with CPE reporting requirements.

(c) A certificate or license holder exempt from the requirement of CPE by reason of retirement or inactive status must indicate "retired" or "inactive" if they use their "CPA" or "PA" designation.

SUBCHAPTER 32. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION (CPE) PROGRAMS

10:15-32-1. Standards for ~~permit~~ certificate and license holders

(a) All ~~permit~~ certificate and license holders should participate in learning activities that maintain and/or improve their professional competence.

(1) Selection of learning activities should be a thoughtful, reflective process addressing the individual registrant's current and future professional plans, current knowledge and skills level, and desired or needed additional competence to meet future opportunities and/or professional responsibilities.

(2) Registrants' fields of employment do not limit the need for CPE. Those performing professional services need to have a broad range of knowledge, skills, and abilities. Thus, the concept of professional competence should be interpreted broadly. Accordingly, acceptable continuing education encompasses programs contributing to the development and maintenance of both technical and non-technical professional skills.

(3) Acceptable subjects include accounting, assurance/auditing, consulting services, specialized knowledge and applications, management, taxation, and ethics. Other subjects, including personal development, may also be acceptable if they maintain and/or improve the registrant's professional competence.

(4) To help guide their professional development, registrants may find it useful to develop a learning plan. The learning plan can be used to evaluate learning and professional competence development. It should be reviewed periodically and modified as professional competence needs change.

(b) ~~Permit~~ Certificate and license holders should comply with all applicable CPE requirements and should claim CPE credit only for CPE programs when the CPE program sponsors

have complied with the Standards for CPE Program Presentation and Standards for CPE Program Reporting.

(1) ~~Permit~~ Certificate and license holders are responsible for compliance with all applicable CPE requirements, rules, and regulations of state licensing bodies, other governmental entities, membership associations, and other professional organizations or bodies. They should contact each appropriate entity to which they report to determine its specific requirements or any exceptions it may have to the standards presented herein.

(2) Periodically, registrants participate in learning activities which do not comply with all applicable CPE requirements, for example specialized industry programs offered through industry sponsors. If registrants propose to claim credit for such learning activities, they should retain all relevant information regarding the program to provide documentation to state licensing bodies and/or all other professional organizations or bodies that the learning activity is equivalent to one which meets all these Standards.

(c) Registrants are responsible for accurate reporting of the appropriate number of CPE credits earned and should retain appropriate documentation of their participation in learning activities, including:

(1) name and contact information of CPE program sponsor;

(2) title and description of content;

(3) date(s) of program; and

(4) number of CPE credits, all of which should be included in documentation provided by the CPE program sponsor.

(d) To protect the public interest, regulators require CPAs and PAs to document maintenance and enhancement of professional competence through periodic reporting of CPE. For convenience, measurement is expressed in CPE credits. However, the objective of CPE must always be maintenance/enhancement of professional competence, not attainment of credits. Compliance with regulatory and other requirements mandates that registrants keep documentation of their participation in activities designed to maintain and/or improve professional competence. In the absence of legal or other requirements, a reasonable policy is to retain documentation for a minimum of five years from the end of the year in which the learning activities were completed.

(e) Participants must document their claims of CPE credit. Examples of acceptable evidence of completion include:

(1) For group and independent study programs, a certificate or other verification supplied by the CPE program sponsor;

(2) For self-study programs, a certificate supplied by the CPE program sponsor after satisfactory completion of an examination;

(3) For instruction credit, a certificate or other verification supplied by the CPE program sponsor;

(4) For a university or college course that is successfully completed for credit, a record or transcript of the grade the participant received;

(5) For university or college non-credit courses, a certificate of attendance issued by a representative of the university or college; and

(6) For published articles, books, or CPE programs, (1) a copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor, (2) a statement from the writer on a form prescribed by the Board supporting the number of CPE hours claimed, and (3) the name and contact information of the independent reviewer(s) or publisher.

(f) Individuals who complete sponsored learning activities that maintain or improve their professional competence should claim the CPE credits recommended by CPE program sponsors.

(g) Registrants may participate in a variety of sponsored learning activities, such as workshops, seminars and conferences, self-study courses, Internet-based programs, and independent study. While CPE program sponsors determine credits, CPAs should claim credit only for activities through which they maintained or improved their professional competence. CPAs who participate in only part of a program should claim CPE credit only for the portion they attended or completed.

(h) Registrants may engage in independent study under the direction of a CPE program sponsor who has met the applicable standards for CPE program sponsors when the subject matter and level of study maintain or improve their professional competence.

(i) Independent study is an educational process designed to permit a participant to learn a given subject under the guidance of a CPE program sponsor one-on-one. Participants in an independent study program should:

(1) Enter into a written learning contract with a CPE program sponsor who must comply with the applicable standards for CPE program sponsors.

(2) Accept the written recommendation of the CPE program sponsor as to the number of credits to be earned upon successful completion of the proposed learning activities. CPE credits will be awarded only if:

(A) All the requirements of the independent study as outlined in the learning contract are met;

(B) The CPE program sponsor reviews and signs the participant's report;

(C) The CPE program sponsor reports to the participant the actual credits earned; and

(D) The CPE program sponsor provides the participant with contact information.

(3) Retain the necessary documentation to satisfy regulatory requirements as to the content, inputs, and outcomes of the independent study.

(4) Complete the program of independent study in 15 weeks or less.

(j) The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual time involved.

10:15-32-5. Standards for CPE program measurement

(a) Sponsored learning activities are measured by program length, with one 50-minute period equal to one CPE credit. One-half CPE credit increments (equal to 25 minutes) are permitted after the first credit has been earned in a given learning activity.

(1) For learning activities in which individual segments are less than 50 minutes, the sum of the segments should be considered one total program. For example, five 30-minute presentations would equal 150 minutes and should be counted as three CPE credits. When the total minutes of a sponsored learning activity are greater than 50, but not equally divisible by 50, the CPE credits granted should be rounded down to the nearest one-half credit. Thus, learning activities with segments totaling 140 minutes should be granted two and one-half CPE credits.

(2) While it is the participant's responsibility to report the appropriate number of credits earned, CPE program sponsors must monitor group learning activities to assign the correct number of CPE credits.

(3) For university or college credit courses that meet these CPE Standards, each unit of college credit shall equal the following CPE credits:

(A) Semester System 15 credits; and

(B) Quarter System 10 credits;

(4) For university or college non-credit courses that meet these CPE standards, CPE credits shall be awarded only for the actual classroom time spent in the non-credit course.

(5) Credit is not granted to participants for preparation time.

(6) Only the portions of committee or staff meetings that are designed as programs of learning and comply with these standards qualify for CPE credit.

(c) CPE credit for self-study learning activities must be based on a pilot test of the average completion time. A sample of intended professional participants should be selected to test program materials in an environment and manner similar to that in which the program is to be presented. The sample group of at least three individuals must be independent of the program development group and possess the appropriate level of knowledge before taking the program. The sample does not have to ensure statistical validity. CPE credits should be recommended based on the average completion time for the sample. If substantive changes are subsequently made to program materials further pilot tests of the revised program materials should be conducted to affirm or amend, as appropriate, the average completion time.

(d) Instructors or discussion leaders of learning activities should receive CPE credit for both their preparation and presentation time to the extent the activities maintain or improve their professional competence and meet the requirements of these CPE standards. ~~The maximum credit for preparation and presentation shall not exceed fifty percent (50%) of the total CPE credit required in a reporting period.~~

(1) Instructors, discussion leaders, or speakers who present a learning activity for the first time should receive CPE credit for actual preparation time up to two times the number of CPE credits to which participants would be entitled, in addition to the time for presentation.

(2) For repeat presentations, CPE credit can be claimed only if it can be demonstrated that the learning activity content was substantially changed and such change required significant additional study or research.

(e) Writers of published articles, books, or CPE programs should receive CPE credit for their research and writing time to the extent it maintains or improves their professional competence. CPE credit from this activity shall be limited to twenty-five percent (25%) of the CPE credit required in a compliance period and will be determined by the Board on a case by case basis. Writing articles, books, or CPE programs for publication is a structured activity that involves a process of learning. CPE credits should be claimed only upon publication.

(f) CPE credits recommended by a CPE program sponsor of independent study must not exceed the time the participant devoted to complete the learning activities specified in the learning contract. The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual time involved.

SUBCHAPTER 33. ~~QUALITY/~~ PEER REVIEW

10:15-33-1. Establishment of ~~quality/~~peer review program

The following rules are effective July 1, 2005 and thereafter.

(1) Pursuant to the Oklahoma Accountancy Act, §15.30, the Board establishes a ~~Quality/Peer~~ peer review program to monitor ~~firm's~~ firms' compliance with applicable accounting and auditing standards adopted by generally recognized standard-setting bodies. The program shall emphasize education, including appropriate remedial procedures, which may be recommended or required when financial statement reports do not comply with professional standards. In the event a firm does not comply with established professional standards, or a firm's professional work is so inadequate as to warrant disciplinary action, the Board shall take appropriate action to protect the public interest.

(2) This subchapter shall not require any firm to become a member of any sponsoring organization.

10:15-33-2. Special definitions

Effective July 1, 2005, the following words and terms used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Adverse report" means there are significant deficiencies in the design of the firm's system of quality control, pervasive instances of noncompliance with the

system as a whole, or both, resulting in several material failures to adhere to professional standards on engagements.

(2) "Modified report" means the design of the firm's system of quality control created a condition in which the firm did not have reasonable assurance of complying with professional standards or that the firm's degree of compliance with its quality control policies and procedures did not provide it with reasonable assurance of complying with professional standards. A report modified due to scope limitations specifically related to compilations would not be considered modified for the purposes pursuant to these~~s~~ rules.

~~(3) "Performance of Services" is deemed to start when an engagement letter is signed or agreement reached.~~

(~~4~~ 3) ~~"Quality/Peer Review Due Date"~~ "Peer review due date" must be a date within six (6) months after the peer review year end, plus any extensions granted by the sponsoring organization or the Board.

(~~5~~ 4) ~~"Quality/Peer Review Year End"~~ "Peer review year end" means the year end as determined by the firm and its reviewer.

(5) "Performance of services" is deemed to start when an engagement letter is signed or agreement reached.

(6) "Review program" means the ~~Quality/Peer~~ peer review conducted under the ~~Quality/Peer~~ peer review program.

(7) "Review year" means the ~~Quality/Peer~~ peer review covers a one-year (twelve-month) period. Engagements selected for ~~Quality/Peer~~ peer review normally would have periods ending during the year under ~~Quality/Peer~~ peer review.

(8) "Sponsoring organization" means an individual or entity that meets the standards specified by the Board for administering the ~~Quality/Peer~~ peer review. The Board shall periodically publish a list of sponsoring organizations, which have been approved by the Board.

(9) "Unmodified ~~Report~~ report" means the reviewed firm system of quality control has been designed to meet the requirements of the quality control standards for an accounting and auditing practice and the system was being complied with during the ~~quality/~~peer review year to provide the firm with reasonable assurance of complying with professional standards.

10:15-33-3. Standards for ~~quality/~~peer reviews and sponsoring organizations

The following rules are effective July 1, 2005 and thereafter.

(1) The Board adopts "Standards for Performing and Reporting on Peer Reviews" promulgated by the American Institute of Certified Public Accountants, as its minimum standards for ~~Quality/Peer~~ peer review of registrants, or other standards as approved by the Board.

(2) Qualified sponsoring organizations shall be any organization approved by the Board.

10:15-33-4. Enrollment and participation

~~The following rules are effective July 1, 2005 and thereafter.~~

(~~1~~ a) Participation in the program is required of each firm holding a permit from the Board that performs any review or audit services after July 1, 2004, unless the firm ceases performing review or audit services before July 1, 2005.

(~~2~~ b) Firm enrollment is required as follows:

(~~A~~ 1) An existing firm required to participate under subsection ~~(1)~~ (a) shall enroll in the ~~Quality/Peer~~ peer review program of an approved sponsoring organization within one (1) year from the performance of services that require a ~~quality/~~peer review. The firm shall adopt the ~~Quality/Peer Review Due Date~~ peer review due date assigned by the sponsoring organization, and must notify the Board of the date within thirty (30) days of its assignment. In addition, the firm shall schedule and begin an additional ~~quality/~~peer review within three (3) years of the previous ~~Quality/Peer Review Due Date~~ peer review due date, or earlier as may be required by the sponsoring organization. It is the responsibility of the firm to anticipate its needs for ~~quality/~~peer review services in sufficient time to enable the reviewer to complete the ~~quality/~~peer review by the assigned review due date.

(~~B~~ 2) An existing firm that subsequently begins providing services as set forth in subsection ~~(1)~~ (a) shall notify the Board of the change in status within thirty (30) days and provide the Board with enrollment information within twelve (12) months of the date the services were first provided and have a ~~quality/~~peer review within eighteen (18) months of the year end of the engagement performed. This provision shall also apply to any new firm that provides the services set forth in subsection ~~(1)~~ (a).

(~~3~~ c) In the event that a firm is merged, otherwise combined, dissolved, or separated, the sponsoring organization shall determine which firm is considered the succeeding firm. Any dispute of the sponsoring organization's determination shall be resolved by the Board. The succeeding firm shall retain its ~~quality/~~peer review status and the ~~quality/~~peer review due date.

(~~4~~ d) The Board will accept extensions granted by the sponsoring organization to complete a ~~quality/~~peer review, provided the Board is notified by the firm within thirty (30) days of the date that an extension is granted.

(~~5~~ e) A firm that has been rejected by a sponsoring organization for whatever reason shall notify the Board of:

(~~A~~ 1) Name of sponsoring organization rejecting the enrollment;

(~~B~~ 2) Reasons for the rejection;

(~~C~~ 3) Name of subsequently selected sponsoring organization.

(~~6~~ f) A firm choosing to change to another sponsoring organization may do so only once a final acceptance letter has been issued indicating that all outstanding corrective actions have been completed and outstanding fees paid.

10:15-33-5. Effect of successive modified/adverse reports

The following rules are effective July 1, 2005 and thereafter.

(1) A firm, including a succeeding firm, which receives two (2) consecutive modified and/or one (1) adverse report(s), may be required by the Board or its designee to have an accelerated ~~Quality/Peer~~ peer review within eighteen (18) months of the firm's last ~~Quality/Peer~~ peer review.

(2) If the accelerated review required by subsection (1) above results in a modified or adverse report:

(A) The firm may complete any review and audit engagement for which field work has already begun only if:

(i) Prior to issuance of any report, the engagement is reviewed and approved by a third party reviewer acceptable to the Board or its designee; and

(ii) The engagement is completed within ninety (90) days of the acceptance of the ~~quality/~~peer review report, letter of comments, and letter of response by the sponsoring organization;

(B) The firm shall be referred to the Vice Chair of the Board for enforcement investigation.

(C) A firm may petition the Board for a waiver from the provisions of this rule subsection (2).

10:15-33-6. Reporting to the board

~~The following rules are effective July 1, 2005 and thereafter.~~

(~~1~~ a) A firm shall submit to the Board effective with its 2005 firm registration:

(~~A~~ 1) A copy of the report and the final letter of acceptance from the sponsoring organization, if such report is unmodified with or without comments; or

(~~B~~ 2) A copy of the report, letter of comments, letter of response, the signed agreement to the conditional letter of acceptance, and final letter of acceptance when corrective actions are complete if the report is modified in any respect or adverse; and

(~~C~~ 3) A copy of the Public Committee Accounting Oversight Board (PCAOB) report, if applicable.

(~~2~~ b) Any report or document required to be submitted under subsection ~~(1)~~ (a) shall be filed with the Board within thirty (30) days of receipt from the sponsoring organization.

(~~3~~ c) Any document submitted to the Board under this subsection is confidential pursuant to the Act.

10:15-33-7. ~~Quality/peer~~ Peer review committee

The following rules are effective July 1, 2005 and thereafter.

(1) The Board shall appoint a Peer Review Committee for the purpose of:

(A) Monitoring sponsoring organizations to provide reasonable assurance that ~~Quality/Peer~~ peer reviews are being conducted and reported on in accordance with ~~Quality/Peer~~ peer review minimum standards;

(B) Reviewing the policies and procedures of sponsoring organization applicants as to their conformity with the ~~Quality/Peer~~ peer review minimum standards; and

(C) Reporting to the Board on the conclusions and recommendations reached as a result of performing functions in paragraphs (A) and (B) of this subsection.

(2) The ~~Quality/~~Peer Review Committee shall consist of three (3) members nominated by the Chair and approved by the Board, none of whom is a current member of the Board. Initial appointment of the three (3) committee members shall be as follows: one (1) member appointed for three (3) years; one (1) member appointed for two (2) years; and one member appointed for one (1) year. Subsequent committee members shall serve three (3) year terms. A committee member shall not be allowed to be reappointed until a three (3) year period has lapsed after his/her previous appointment. Compensation, if any, of ~~Quality/~~Peer Review Committee members shall be set by the Board, not to exceed One Hundred Twenty Five Dollars ($125.00) per hour. Each member of the ~~Quality/~~Peer Review Committee must be active in the practice of public accounting at a supervisory level or above in the accounting or auditing function while serving on the committee or any employee involved at a supervisory level or above in an audit function of a state or local government. The member or member's firm must be enrolled in an approved practice/monitoring program and have received an unmodified report on its most recently completed ~~Quality/Peer~~ peer review. A majority of the committee members must satisfy the qualifications required of system ~~Quality/Peer~~ peer review team captains as established and reported in the AICPA Standards for Performing and Reporting on Peer Reviews.

(A) No more than one ~~Quality/~~Peer Review Committee member may be from the same firm.

(B) A ~~Quality/~~Peer Review Committee member may not concurrently serve as:

(i) A member of the AICPA's or any state's CPA society's ethics committee; or

(ii) A member of the AICPA's or any state's CPA society's ~~Quality/~~Peer Review Committee for a period of eighteen (18) months following that person's service on such ~~Quality/~~Peer Review Committee.

(C) A ~~Quality/~~Peer Review Committee member may not participate in any discussion or have any vote with respect to a reviewed firm when the committee member lacks independence or has a conflict of interest. The Board may appoint alternate committee member(s) to serve in these situations.

(3) Information concerning a specific firm or reviewer obtained by the ~~Quality/~~Peer Review Committee during oversight activities shall be confidential, and the firm's or

reviewer's identity shall not be reported to the Board. Reports submitted to the Board will not contain information concerning specific registrants, firms or reviewers.

(4) As determined by the Board, the ~~Quality/~~Peer Review Committee shall make periodic recommendations to the Board, but not less than annually, as to the continuing qualifications of each sponsoring organization as an approved sponsoring organization.

(5) The ~~Quality/~~Peer Review Committee may:

(A) When necessary in reviewing reports on ~~Quality/Peer~~ peer reviews, prescribe actions designed to assure correction of the deficiencies in the reviewed firm's system of quality control policies and procedures and provide such results to the Board;

(B) Monitor the prescribed remedial and corrective actions to determine compliance by the reviewed firm;

(C) Establish and perform procedures for ensuring that reviews are performed and reported on in accordance with the AICPA Standards for Performing and Reporting on Peer Reviews or other standards as approved by the Board and the rules promulgated herein by the Board;

(D) Establish a report acceptance process, which facilitates the exchange of viewpoints among committee members and sponsoring organization; and

(E) Communicate to the governing body of the sponsoring organization on a recurring basis:

(i) Problems experienced by the enrolled registrants in their systems of quality control as noted in the peer reviews conducted by the sponsoring organization;

(ii) Problems experienced in the implementation of the ~~Quality/Peer~~ peer review program; and

(iii) A summary of the historical results of the ~~Quality/Peer~~ peer review program.

(6) Committee members shall become disqualified to serve on ~~Quality/~~Peer Review Committee if any of the provisions that qualify the committee member no longer exist or by majority vote of the Board.

[OAR Docket #05-982; filed 5-23-05]

TITLE 10. OKLAHOMA ACCOUNTANCY BOARD
CHAPTER 15. LICENSURE AND REGULATION OF ACCOUNTANCY

[OAR Docket #05-983]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 27. Fees
10:15-27-8. [AMENDED]
10:15-27-9. [AMENDED]
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Subchapter 27. Fees
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February 8, 2005
Register publication:
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05-208
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section 15.14.E of the Oklahoma Accountancy Act allows for a registration fee of $200 for each two year period. Since 1977, the Board has charged only half the amount allowed in the statute. The proposed amendments increase the registration fee to $50 per year. The amendments also provide for a fee for late registration after July 31 but within 12 months after the lapse date of the certificate or license of $100. The fee for registering later than 12 months following the lapse date of the certificate or license is increased to $200. Section 15.14.E.3 of the Act allows for a maximum limit for these late registration fees of $300 and $600 respectively. The registration fee for an individual who has reached the age of 65 is increased to $25 per year, which is only slightly more than $2 a month. The late fee for these individuals is increased to $50. Section 15.14.F of the Act provides that the Board "shall use its discretion in determining conditions required for retirement or disability." The registration fee for firms other than sole proprietorships is increased to $50 per year. Section 15.15 of the Act allows for an annual firm registration fee of $100 and a late fee of $200. Amendments increase the individual permit fee to $100, the maximum amount allowed for in Section 15.14A.E of the Act, but revoke the requirement for a fee for late filing of the permit. Section 15.15A.E of the Act allows for a maximum fee for the firm permit of $200. The proposed amendments increase the firm permit fee to $100, only half the allowed amount. In addition, the requirement for each individual office of a public accounting firm to pay an annual permit fee is revoked.
CONTACT PERSON:
Edith Steele (405) 521-2397

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 27. FEES

10:15-27-8. Registration

(a) The registration fee for an individual shall be ~~Twenty-Five Dollars ($25.00)~~ Fifty Dollars ($50.00) per year.

(1) In addition to the regular registration fee there shall be a fee for registering after ~~June 30~~ July 31, but within twelve (12) months after the lapse date of the certificate or license, of ~~Fifty Dollars ($50.00).~~ One Hundred Dollars ($100.00).

(2) In addition to the regular registration fee, there shall be a fee for registering later than twelve (12) months following the lapse date of the certificate or license~~d~~, of ~~One Hundred and Fifty Dollars ($150.00).~~ Two Hundred Dollars ($200.00).

(b) An individual who has reached the age of sixty-five (65) shall pay a registration fee of ~~Ten Dollars ($10.00)~~ Twenty-five Dollars ($25.00) per year. In addition to the regular registration fee there shall be a fee for registering after ~~June 30~~ July 31, but within twelve (12) months after the lapse date of the certificate or license, of ~~Twenty Dollars ($20.00).~~ Fifty Dollars ($50.00).

(c) The registration fee for a firm, except a sole proprietorship, of certified public accountants or public accountants shall be ~~Twenty-Five Dollars ($25.00)~~ Fifty Dollars ($50.00) per year.

10:15-27-9. Permit

(a) Before June 30 of each year the permit fee to renew an individual permit shall be ~~Fifty Dollars ($50.00).~~ One Hundred Dollars ($100.00).

~~(b) After June 30, the permit fee to renew an individual permit which was subject to renewal before the immediately preceding June 30 shall be One Hundred Dollars ($100.00).~~

(~~c~~b) The fee for an individual permit which is not a renewal permit shall be ~~Fifty Dollars ($50.00).~~ One Hundred Dollars ($100.00).

(~~d~~c) A fee of ~~Fifty Dollars ($50.00)~~ One Hundred Dollars ($100.00) shall be paid at the time a firm, except a sole proprietorship, which provides public accounting services to Oklahoma clients applies for a permit. ~~Other than sole proprietorships, each office of a firm that provides public accounting services to Oklahoma clients shall pay the annual Fifty Dollar ($50.00) permit fee.~~

[OAR Docket #05-983; filed 5-23-05]

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

[OAR Docket #05-883]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
40:50-1-1. Explanation of terms and actions [NEW]
40:50-1-2. Procedure for device approval [NEW]
40:50-1-3. Technical requirements [NEW]
40:50-1-4. Miscellaneous requirements [NEW]
40:50-1-5. Maintenance and calibration requirements [NEW]
40:50-1-6. Approval, denial, and withdrawal of approval [NEW]
40:50-1-7. Certification and inspection of service centers [NEW]
40:50-1-8. Service representative [NEW]
40:50-1-9. Ignition interlock inspector [NEW]
40:50-1-10. Appeal of final administrative order [NEW]
40:50-1-11. Approved ignition interlock devices [NEW]
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40:50-1-1. Explanation of terms and actions [NEW]
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40:50-1-4. Miscellaneous requirements [NEW]
40:50-1-5. Maintenance and calibration requirements [NEW]
40:50-1-6. Approval, denial, and withdrawal of approval [NEW]
40:50-1-7. Certification and inspection of service centers [NEW]
40:50-1-8. Service representative [NEW]
40:50-1-9. Ignition interlock inspector [NEW]
40:50-1-10. Appeal of final administrative order [NEW]
40:50-1-11. Approved ignition interlock devices [NEW]
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NA
ANALYSIS:
The Department of Public Safety had maintained these rules and the Board of Tests for Alcohol and Drug Influence maintained the files and approved the devices. The Department had ask the Board to take control of the rules, yet we had not. Then several situations arose indicating these rules where not sufficient. The Board then agreed to take them over and legislation passed laws requiring the Board to do so.
CONTACT PERSON:
McBeth Sample, Jr.; State Director of Tests for Alcohol and Drug Influence, 405-425-2460 or **msample@dps.state.ok.us**

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

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

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

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

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

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

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

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

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

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

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

(j) **Certification:**

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

(A) inspectors,

(B) service representatives, and

(C) service centers.

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

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

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

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

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

(n) **Fees:** The non-refundable original administrative fees plus any and all costs incurred by the Board for approval, or revaluation, of any device. Additionally the cost established by the Board in the form of inspection fees payable by either the manufacturer or vendor, whichever is appropriate. Fees for Reinstatement of an inactivated certificate, revoked certificate, suspended certificate or any other fees which the Board deems necessary to maintain the IID program in a safe and dependable way. Failure to pay or reimburse the Board for these reasonable costs shall result in the denial or loss of certification of affected service center(s). This will be fees charged under Chapter 55 of the Boards Rules and listed in the appropriate sections.

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

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

(q) **Director:** Refers to the position of the State Director of Tests for Alcohol and Drug Influence as defined in OAC 40:50-1-3, and will be under the overall guidance of the Chairman of the Board, and with the assistance of the Administrative Assistant to the Board, to conduct and administer the affairs and functions of the Board between meetings thereof. The appeals made by an ignition interlock manufacturer, vendor or employee will go from the State Director to the Board to 40:50-1-10 of this rule.

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

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

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

(u) **Free re-start:** The condition in which a test is successfully completed and the motor vehicle is started, and then at

some point the engine stops for any reason (including stalling). A free re-start is the ability to start the engine again, within a reasonable time as approved by the Board, without completion of another breath-alcohol analysis. This free re-start does not apply, however, if the IID was awaiting a rolling re-test that was not delivered.

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

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

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

(y) **Inactivation:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ll) **Revocation:**

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

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

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

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

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

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

(mm) **Rolling re-start:** After passing the test allowing the engine to start, the IID shall require a second test within a randomly variable interval ranging from 5-15 minutes. The third and subsequent retests shall be required at intervals not to exceed 15 to 45 minutes from the previously requested test for the duration of the travel. See re-test set point.

(nn) **Rolling re-test violation:** An event, recorded in the data storage system when the rolling retest requirements is not met.

(oo) **Service center:** The physical location where the service representative performs their IID services. Also see certified service center.

(pp) **Service representative:** See Certified service representative.

(qq) **Startup set point:** A pre-set or pre-determined alcohol concentration setting at which, or above, the device will prevent the ignition of a motor vehicle from operating. That value shall be an alcohol concentration of 0.02g/210 liters of breath.

(rr) **Suspension:** Suspension refers to the immediate cancellation or curtailment of certification and may be applied to any certified IID entity when, because of unreliability, incompetence, or violation of these rules that entity is not in compliance with the provisions stated in these rules or when continuance of such certification is the opinion of the Board would not uphold the scientific integrity of the IID program. A suspension can be initiated by an IID inspector or designated representative of the Board. Prior to appeal to the Board, suspensions may be set aside or sustained only after investigation by the Board. The minimum period of suspension as determined by the Board will be for a period of time not less than 30 days. The IID inspector or a designated representative of the Board may recommend a specific period of suspension to the Board.

(1) A suspension cancels any certification issued to a suspended inspector or service representative for a period of suspension until recertification. During a suspension, the suspended entity is barred from providing any service in the IID program.

(2) A suspension curtails any certification issued to a suspended service center for a period of suspension until recertification. During a suspension, the suspended service center may continue to provide service to those IID customers in existence prior to the suspension, but shall not acquire new IID customers during the period of suspension.

(3) To regain certification after the period of suspension requires a written request from the suspended entity to the Board. Upon receipt of the written request, the applicant will be advised of the necessary steps to be taken in order to regain certification. Suspension will not be considered by the Board to be a disciplinary action but shall be for the purpose of maintaining the scientific integrity of the ignition interlock program and upholding these rules. Suspension may be appealed in accordance to 40:50-1-10 of these rules.

(ss) **Tampering:** An overt or conscious attempt to physically disable, disconnect the IID from its power source, wire around the device or otherwise use an artificial air source and thereby allow the operator to start the engine without taking and passing the requisite breath. This attempt, whether successful or not, shall be recorded in the data storage system as a violation.

(tt) **Vendor:** The person or entity representing the manufacturer(s) of an approved IID and responsible for the day-to-day operations and continuing of an IID service center. Must have manufacturer's approval for use of a particular approved IID either through purchase or lease agreement. May be synonymous with manufacturer's representative.

(uu) **Violation:** Any of several events including but not limited to such things as high alcohol, whether from a violation set point or from a retest set point, rolling retest violation, tampering or an illegal start. These events, recorded in the data storage system, must be reported as per appropriate judicial requirements and which, when accumulated to a total determined by the appropriate judicial authority, shall enter a lockout condition within a period to exceed seven (7) days and require a violation reset.

(vv) **Violation re-set:** An unscheduled service of the IID and download of the data storage system by the service center required because an accumulation of violations has reached a

number (predetermined by appropriate judicial authority) that generates a lock out condition. This information shall be reported to the appropriate judicial authority within 48 hours after the vendor confirms the violation. Completion of this service will include restoring the IID to a state that will allow the vehicle to be started.

(ww) **Violation set point:** A pre-set or pre-determined alcohol concentration setting at which, or above, the device will record the high alcohol result in data storage system as a violation. Until modified by the Board of Tests for Alcohol and Drug Influence, said pre-set point shall be 0.05.

(xx) **Withdrawal of approval:** Cancellation of approval of a device; to wit, not meeting or maintaining these regulations.

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

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

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

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

(1) A manufacturer or manufacturer's representative requesting approval of a device must submit a product model of the device, along with a written request for approval. It shall be the responsibility of the manufacturer or manufacture's representative to incur costs of mailing, shipping or physically bring the device to and from the Board. It shall also be the responsibility of the manufacturer or the manufacture's representative to submit a certified check or money order in the amount of $75.00, as designated on the Boards fee schedule posted in Chapter 55 (this is an administrative processing fee and is non-refundable). In the event of non-approval, additional requests for approval may be limited by the Board. The Board shall not get involved in research and development procedures of these devices.

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

(A) the name and location of the laboratory;

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

(C) a description of the test preformed;

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

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

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

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

(2) Address of these individuals.

(3) Phone number of these individuals.

(4) Qualifications of these individuals.

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

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

(e) An annual reevaluation of the approved IID, pursuant to Board of Tests for Alcohol and Drug Influence Title 40 Chapter 50 shall be required in order for continued approval ($75.00). This reevaluation shall consider those requirements, and 40:50-1-3, 40:50-1- 4 and 40:50-1-5 of this title (relating to Technical Requirements, Miscellaneous Requirements, and Maintenance and Calibration Requirements). The cost of this reevaluation shall be the same as for the initial approval process noted in subsection c (1) of this section.

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

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

40:50-1-3. Technical requirements

(a) **Accuracy.** The startup set point value for the interlock device shall be an alcohol concentration of 0.020g/210L of breath. The accuracy of the device shall be 0.020g/210L ± 0.01g/210L. The accuracy will be determined by analysis of an external standard generated by a reference sample device, wet bath simulator, dry gas or other methodologies approved by the Board.

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

(c) **Precision.** The device shall correlate with a known alcohol concentration of 0.020g/210L with accuracy set forth in subsection set forth in subsection (a) of this section. A correlation of 95% will be considered reliable precision; 95 of 100 times the device must respond to, detect, and prevent the motor vehicle engine from operating when the operator has alcohol concentration of 0.02g/210L or greater, or any other limits as set by the Board.

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

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

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

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

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

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

40:50-1-4. Miscellaneous requirements

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

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

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

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

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

(b) **Operational features.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) If the out of business or revoked service center is being replaced, the manufacture shall make all reasonable efforts to obtain participant records and data from certified service center being replaced and provide them to the new service center. The Board shall be notified of this event within thirty (30) days.

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

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

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

(3) If neither subsection (e) (1) nor subsection (e) (2) of this section can be accomplished, the manufacturer shall be responsible for notifying the clients and appropriate judicial authority that service will be terminated within sixty (60) days, and then removing the device at no cost to the clients in question.

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

(a) Upon proof of compliance with these rules, an ignition interlock device will be approved by Brand and/or Model and will be placed on a list of approved devices. Notification of approval shall be made in writing to the manufacturer. It will be the responsibility of the manufacturer to provide proof that each individual device installed in any motor vehicle meets or exceeds the minimum standards of these rules and is the same model and/or class approved by the Board. It will further be the responsibility of the manufacturer to provide expert or other testimony in any civil or criminal proceedings as to the method of manufacturer of the device, how said device functions, and the testing protocol by which the device was approved.

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

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

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

(3) for misconduct as determined by the Board.

(c) The denial or withdrawal of an approval may be appealed by the process established in 40:50-1-10 of these rules and the cost for recertification will be $100.00.

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

(a) All IID service centers conducting business in this state, whether fixed or mobile, must have the approval of and be certified by the Board and pay a fee for site inspection of $100.00.

(b) To initiate certification for an IID service center, a vender or IID manufacturer's representative shall submit an application to the Board for approval. The application, available from the Board, shall show physical location of service center, the brand and/or model of the ignition interlock device(s) to be merchandised and reference sample device(s) to be used. The application shall also contain a statement acknowledging permission from the IID manufacturer to vend the IID described by application. Only IID's listed on the approved (40:50-1-11) list referenced in 40:50-1-2 of this title (relating to Procedure for Device Approval) may be merchandised. A vendor applying for certification of an IID service center must agree to:

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

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

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

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

(5) pay fees for inspection of site as stated in (a) of this section.

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

(1) A certified IID service center shall be located in a facility which properly and successfully accommodates installing, inspection, downloading, calibrating, repairing, monitoring, maintaining, servicing an /or removing a specific IID device(s). The service center must incorporate the use of analysis of a reference sample such as head space gas from a mixture of water and known weight of alcohol at a known temperature, the results of which must agree with the reference sample predicted value as in 40:50-1-5 of this title (relating to Maintenance and Calibration Requirements), or other methodology that may be approved by the Board (40:50-1-3, Technical Requirements, (a) Accuracy) Preparatory documentation (such as certificate of analysis) on then reference sample solution(s) shall be available to the Board. Only reference sample devices approved by the Board may be used in certified IID operations.

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

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

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

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

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

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

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

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

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

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

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

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

(1) program administration;
(2) reports;
(3) records and forms;
(4) inspections;
(5) methods of operation and testing techniques;
(6) personnel training and qualifications;
(7) criminal history considerations for service representative; and
(8) records custodian.

(h) Certification of an IID service center may be denied, withdrawn, inactivated, suspended, or revoked by the Board if a vendor, service center, service representative, or IID equipment fails to meet all criteria stated in this section, or if the vendor violates any law of this state that applies to the vendor. An IID service center whose pending application for certification has been denied, or an IID service center whose certification has been withdrawn, inactivated, suspended or revoked may appeal may be made by following the appeal process established in 40:50-1-10 of these rules. The Board may allow the pending application for certification of the IID service center, or the Board may reinstate certification of the IID service center appealing the withdrawal, activation, suspension or revocation of certification under such conditions deemed necessary.

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

(j) Recertification of a service center whose certification has been withdrawn, inactivated, suspended or revoked will require a fee as show in Chapter 55 of the Boards Rules before recertification will take place.

40:50-1-8. Service representative

(a) **Initial certification.**

(1) In order to apply for certification as a service representative of an ignition interlock device service center, an applicant must successfully attain the following and pay a fee of $100.00:

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

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

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

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

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

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

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

(4) Upon successful completion of the requirements for initial certification, the Board or its designee will issue the individual a service representatives certificate valid for a period of time designated by the Board unless certification is withdrawn, inactivated, suspended, or revoked.

(b) **Renewal of current certification.** The service representative is required to renew certification prior to its expiration date. The minimum requirement for renewal of service representative certification will be:

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

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

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

(C) Renewal fee of $75.00 has been paid.

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

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

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

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

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

(c) Certification of the service representative may denied, withdrawn, inactivated, suspended or revoked by the director if the service representative fails to meet the requirements of

these rules. A person whose pending application for certification has been denied, or service representative whose certification has been withdrawn, inactivated, suspended or revoked may appeal such action as established in 40:50-1-10 of this rules. The Board may allow the pending application for certification as an IID service representative, or the Board may reinstate certification of the IID service representative appealing the withdrawal, inactivation, suspension or revocation of certification under such conditions deemed necessary.

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

(e) Recertification of a service representative whose certification has been withdrawn, inactivated, suspended or revoked will require a reinstatement fee, this fee will be found in Chapter 55 of the Boards Rules.

40:50-1-9. Ignition interlock inspector

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

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

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

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

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

(C) legal aspects of the IID program.

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

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

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

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

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

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

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

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

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

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

(c) **Fees.** Vendors shall reimburse the Board for conducting each inspection of the vendor's facility under this section. These fees shall be $100.00 for initial and $75.00 renewal each year there after. This cost shall be uniform for all facilities inspected.

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

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

(d) Certified IID inspector will be **appointed by** the State Director of Tests and this appointment will be reviewed and approved by the Board and a fee of $100.00 for initial issuance and $75.00 for renewal.

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

(f) A person whose pending application for certification has been denied, or an IID inspector whose certification has been withdrawn, inactivated, suspended or revoked **may appeal** such action as required in 40:50-1-10 of these rules. The Board may allow the pending application for certification as an IID inspector, or the Board may reinstate certification of the IID inspector appealing the withdrawal, inactivation, suspension or revocation of certification under such conditions deemed necessary.

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

40:50-1-10. Appeal of final administrative order

A appeal of a final administrative order of the Board of Tests for Alcohol and Drug Influence under the provisions of

these sections may be made in accordance with the provisions of the Oklahoma Administrative Procedures Act, 75 O.S. 250, et seq.

40:50-1-11. Approved ignition interlock devices

(a) Draeger Interlock Model 920 and Model XT
(b) CSI, Inc., Model 1001A
(c) Guardian Interlock System AMS 2000
(d) Lifesaver Interlock System Model FC100
(e) SmartStart Instrument Model SSI-1000

[OAR Docket #05-883; filed 5-16-05]

TITLE 87. OKLAHOMA STATE EMPLOYEES BENEFITS COUNCIL CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #05-994]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 3. Organization and Administration
87:1-3-1. [AMENDED]
AUTHORITY:
Oklahoma State Employees Benefits Council; Employees Benefits Act, 74 O.S. §1361 et seq.
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Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2005.
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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
The proposed change to Chapter 1 correct the month of the year in which the Council may elect officers in order to be consistent with the existing statutory date. The statutory date is found at 74 O.S. § 1364(H) which states that, "The Council shall, in July of each year, hold a regular meeting which shall be the annual meeting, at which meeting it shall elect officers." Currently OAC 87:1-3-1(b) states that, "The Council shall elect officers each year at is January regular meeting."
CONTACT PERSON:
Russell Nash, (405) 232-1190 ext. 103, 200 N. Harvey, Suite 1200, Oklahoma City, OK 73102

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 3. ORGANIZATION AND ADMINISTRATION

87:1-3-1. Organization and meetings

(a) The Council consists of five (5) members. Section 1364 of Title 74 of the Oklahoma Statutes provides for their appointment and service.
(b) The officers of the Council are the Chairperson, the Vice-Chairperson and the Secretary. The Council shall elect officers each year at its ~~January~~ July regular meeting. An officer shall serve until replaced.
(c) The Chairperson shall preside over meetings and perform other duties as required by the Council. In the Chairperson's absence, the Vice-Chairperson shall assume the Chairperson's duties. In the absence of the Chairperson and the Vice-Chairperson, the Secretary shall assume the Chairperson's duties.
(d) Upon written notice by the Chairperson or by agreement of three members, a special meeting may be called. Notice of special meetings shall be delivered to all members not less than seven days prior to the date of the meeting. Lack of this notice may be waived by each member.
(e) A quorum of the Council is three members. A quorum must be present for the Council to conduct any business. Any action or decision of the Council requires an affirmative vote by at least three members of the Council.
(f) All meetings of the Council shall be conducted in accordance with the Open Meetings Act, Sections 301 through 314 of Title 25 of the Oklahoma Statutes.
(g) The Executive Director shall preserve all records of the Council.

[OAR Docket #05-994; filed 5-25-05]

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

[OAR Docket #05-994A]

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Subchapter 17. Benefit Plan Election
87:10-17-3. [AMENDED]
87:10-17-4. [AMENDED]
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Gubernatorial approval:
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Final adoption:
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
The proposed changes to Chapter 10 memorialize longstanding eligibility rules administered by the Employees Benefits Council and eliminate a rule requiring retroactive changes in certain situations. More specifically, the proposed changes to Chapter 10 require coverage for all dependents when one dependent is covered under a flexible benefits plan; prohibit an employee from enrolling as a principle insured and also a dependent for any flexible benefit plan except dependent life; and require an employee to live or work within an HMO's service area as a condition to choosing HMO coverage. In addition, the proposed rules delete language that requires retroactive corrections in the event a dependent loses eligibility by reason of divorce, death or the attainment of a specified age.
CONTACT PERSON:
Russell Nash, (405) 232-1190 ext. 103, 200 N. Harvey, Suite 1200, Oklahoma City, OK 73102

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 17. BENEFIT PLAN ELECTION

87:10-17-3. Employee election of benefit plans

(a) Choices of benefit plans shall be made by a new eligible employee within thirty (30) days after date of employment. This thirty (30) day period shall be known as the employee's enrollment period. Each new employee failing to make such a valid election will be deemed to have elected employee-only coverage under the basic State health plan, basic State dental plan, basic State life plan, and basic State disability plan.

(b) Choices of benefit plans shall be made on a Plan Year basis by the eligible employees during the enrollment period as set by the Plan Administrator. The Plan Administrator will establish eligibility requirements for all benefit plan options each year.

(c) Eligible employees are required to elect medical, dental, life and disability plans except as provided in the following paragraphs. Employees who fail to make a valid election during each designated enrollment period will be deemed to have elected the same plans elected during the most recent enrollment period during which a valid election was made. Where the plan(s) will no longer be available for the upcoming Plan Year, employees will be deemed to have elected HealthChoice High Option health plan and/or HealthChoice Dental.

(1) An eligible employee who has retired from a branch of the United States military and has been provided with health coverage through a federal plan can elect not to participate in the Flexible Benefits Plan only if the following conditions are met prior to the close of each annual enrollment period beginning with the enrollment period for Plan Year 2004:

(A) The employee must provide proof that he or she is retired from a branch of the United States military; and

(B) The employee must provide proof of health coverage through a federal plan; and

(C) The employee must make a proper election not to participate in the Flexible Benefits Plan.

(2) The Council has the authority to determine the type of information that satisfies the requirements of this subsection.

(3) An eligible employee making an election not to participate under paragraph (1) of this subsection must make such an election each Plan Year.

(A) An employee who is eligible to make an election not to participate under paragraph (1) of this subsection and has never previously made an election not to participate under paragraph (1) of this subsection, may, during the enrollment period, enroll in the Flexible Benefits Plan or may make an election not to participate under paragraph (1) of this subsection. If the employee who is eligible to, but has never previously made an election not to participate under paragraph (1) of this subsection, fails to enroll in the Flexible Benefits Plan and fails to make an election not to participate under paragraph (1) of this subsection, the employee will be deemed to have elected coverage that was in effect during the previous Plan Year. Where the plan(s) will no longer be available for the upcoming Plan Year, employees will be deemed to have elected HealthChoice High Option health plan and/or HealthChoice Dental.

(B) An employee who is eligible to make an election not to participate under paragraph (1) of this subsection and has previously made an election not to participate under paragraph (1) of this subsection, may, during the enrollment period, enroll in the Flexible Benefits Plan, or may make an election not to participate under paragraph (1) of this subsection. If an employee who has previously made an election not to participate under paragraph (1) of this subsection fails to enroll in the Flexible Benefits Plan and fails to make an election not to participate under paragraph (1) of this subsection during the annual enrollment period, the employee will be deemed to have elected employee-only coverage under the HealthChoice High Option health plan, the HealthChoice dental

plan, the basic State life plan, and the basic State disability plan.

(4) Except as provided by the applicable provisions of OAC 87:10-17-4, an eligible employee making an election not to participate under paragraph (1) of this subsection is prohibited from participating in any health plan, dental plan, life plan, supplemental life plan, dependent life plan, and disability plan at any time during the Plan Year for which he or she made the election. Upon re-entry into the state benefits package either through an acceptable midyear event or at the annual Option Period enrollment, benefit options which were declined through the opt-out election by retired military state employees will not automatically be reinstated. The retired military employee must reapply for and be approved through satisfactory evidence of coverage (EOI) before any amounts of Supplemental Life Insurance will again be issued. Only the Basic Life amount (20,000) will be automatically reinstated upon such re-entry. No Guaranteed Issue levels of Supplemental Life will be available. Furthermore, if no proof is submitted showing previous dental coverage, then the $250 limit of benefits for HealthChoice Dental will be applied for the first year following reenrollment.

(5) Except as provided by the applicable provisions of OAC 87:10-17-4, an eligible employee making an election not to participate under paragraph (1) of this subsection is prohibited from electing coverage for his or her dependents under any health plan, dental plan, life plan, supplemental life plan, dependent life plan, and disability plan prior to or at any time during the Plan Year for which he or she made the election.

(6) An eligible employee making an election not to participate under paragraph (1) of this section may continue participation in any of the following:

(A) Benefit plans available under the Flexible Benefit Plan other than a health plan, dental plan, life plan, supplemental life plan, dependent life plan, and a disability plan;

(B) Health Care Reimbursement Account Option;

(C) Dependent Care Reimbursement Account Option; and the

(D) Insurance Premium Conversion Option.

(d) Each employee who meets the eligibility requirements but fails to make a proper election under the Flexible Benefits Plan shall be deemed a participant in the Flexible Benefits Plan.

(e) Coverage shall be effective for a new participant beginning on the first day of the month following the participant's first day in an active pay status.

(f) Eligible employees may elect to cover a dependent under the following insurance plans: health insurance, dental insurance, dependent life insurance, or vision insurance. When one eligible dependent is covered, all eligible dependents must be covered for all plans except the dependent life insurance plan. An eligible employee cannot be enrolled as a principal insured and also as a dependent for any benefit options except dependent life.

(~~f~~g) Primary participants electing coverage for eligible dependents cannot enroll the dependents in a benefit plan or a coverage that differs from the benefit plan or coverage chosen by the primary participant.

(~~g~~h) An affirmative election of a vision plan is required for each Plan Year.

(i) In order for an eligible employees to choose health plan coverage under a Health Maintenance Organization (HMO) plan, the eligible employee must reside or be employed within the selected HMO's service area.

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

(a) A participant may change an election only in accordance with the provisions of this Plan. This Section does not remove the requirement that every employee must enroll in at least the basic plan of coverage except for those employees declining participation pursuant to 87:10-17-3(c)(1).

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

(c) Provided that all other eligibility requirements are met, and written or electronic notice is provided to the Plan Administrator within thirty (30) days of a qualifying event, including receipt of a Qualified Medical Child Support Order, the effective date of such change of benefits coverage will be the first of the month following receipt of acceptable notice as determined by the Plan Administrator as long as the correct premium is paid. All enrollments and elections are for the entire Plan Year and are irrevocable during same Plan Year unless a change is requested based on one of the following permitted exceptions to the irrevocability rule. A change must comply with the IRS consistency rule as found in Treasury Regulations 1.125-4 as may be amended. Only the permitted exceptions provided for in this chapter shall be allowed as changes to benefits elections unless those changes are prohibited under the Premium Conversion Option, the Dependent Care Reimbursement Account Option or the Health Care Reimbursement Account Option as provided for in subchapters 23, 25, and 27 respectively. All changes shall become effective on a prospective basis and not earlier than the first day of the month following receipt of acceptable notice of the requested change which must be on account of and corresponding with the event. Permitted exceptions to the irrevocability rule as allowed within Plan guidelines are as follows:

(1) HIPAA Special Enrollment Rights (marriage, birth, adoption or placement for adoption, loss of other coverage including exhaustion of COBRA coverage)

(2) Change in Employee's Legal Marital Status

(3) Change in the Number of Employee's Dependents

(4) Change in Employment Status of Employee, Spouse or Dependent that affects eligibility

(5) Event Causing Employee's Dependent to satisfy or cease to satisfy Eligibility Requirements

(6) Change in Place of Residence of Employee, Spouse or Dependent

(7) Commencement or Termination of Adoption Proceedings

(8) Judgments, Decrees or Orders (changes allowed only to Health, Health Care Reimbursement Account and Dental)

(9) Medicare or Medicaid (changes allowed only to Health and Health Care Reimbursement Account)

(10) Significant Change in Cost or a Change in Coverage (changes allowed only to Dependent Care Reimbursement Account)

(11) Changes in Coverage of Spouse or Dependent under Other Employer's Plan

(12) FMLA Leave

(13) Such other events, which may permit such modification or election under the IRS consistency rule as found in Treasury Regulations 1.125-4 and in accordance with other applicable and prevailing Internal Revenue Code regulations promulgated thereunder, and in accordance with this chapter.

(d) The following are the only permitted exceptions that may become effective on a retroactive basis beginning the first day of the event month. Such events require receipt of acceptable notice by the Plan Administrator or its designee within thirty (30) days of the event:

(1) Newborn children who may be covered from the first of the birth month provided the proper documentation is submitted within thirty (30) days of the birth event and provided that the full monthly premium is paid.

(2) Adopted eligible dependent children, those placed for adoption, and eligible children for whom guardianship has been newly granted to the insured or to the insured's spouse and for whom coverage may begin from the first day of physical custody even though a full month's premium must be paid; or at the insured's option may be covered beginning the first of the month following placement.

~~(e) Termination of coverage for a spouse and/or dependents who have ceased to satisfy eligibility as a result of divorce, death or attaining a specified age shall become effective on the first of the month following the date of the event.~~

(~~f~~e) The Plan Administrator reserves the right to make any corrections necessary if an error was made regarding the effective date.

[OAR Docket #05-994A; filed 5-25-05]

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

[OAR Docket #05-970]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 1. Quality Jobs Program
150:65-1-3. [AMENDED]
150:65-1-4. [AMENDED]
150:65-1-5. [AMENDED]
150:65-1-6. [AMENDED]
150:65-1-7. [AMENDED]
150:65-1-8. [AMENDED]
150:65-1-9. [AMENDED]
150:65-1-10. [AMENDED]
150:65-1-11. [AMENDED]
AUTHORITY:
Director of the Oklahoma Department of Commerce; 68 O.S. §§ 3601 et seq.; 74 O.S. §§ 5001 et seq.
DATES:
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Failure of the Legislature to disapprove the rules resulted in approval on March 31, 2005.
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March 31, 2005
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June 25, 2005
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The amendments provide clarification to applicants to the Quality Jobs Program.
CONTACT PERSON:
Donald R. Hackler, Jr. (405) 815-5359

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 1. QUALITY JOBS PROGRAM

150:65-1-3. Eligible entities

Eligible entities which may apply for the Oklahoma Quality Jobs Program are establishments that:

(1) Meet the definition of a "basic industry" as set forth in Section 3603 of Title 68 of the Oklahoma Statutes;

(2) Offer medical benefits to the holders of new direct jobs through a health benefits plan meeting the requirements of the Oklahoma Quality Jobs Program Act and this chapter;

(3) Have an annual gross payroll for new direct jobs projected to equal or exceed Two Million Five Hundred Thousand Dollars ($2,500,000.00) within three (3) years of the date of the first incentive payment. Provided, that for establishments applying as a Central Administrative Office only payroll from those jobs associated with the Central Administrative Office function shall be allowed; and

(4) Have a number of full-time employees working an average of twenty-five (25) or more hours per week in new direct jobs equal to or in excess of eighty percent (80%) of

the total number of new direct jobs. Provided, full-time employees provided through lease or ~~agreement~~ contract by a third party employer ~~shall not~~ may be included ~~in the~~ if they meet the definition of new direct jobs of the applicant.

(5) Industry Group Numbers 3111 through 3119 of the NAICS Manual shall be required to meet the requirements set forth at 68 O.S. § 3604(D).

(6) An establishment which locates its principal business activity on a site containing at least ten (10) acres which, that meets the requirements set forth in 68 O.S. § 3604(E)(1) shall be required to meet the requirements set forth in 68 O.S, § 3604(E)(2) through 68 O.S. § 3604(E)(4).

(7) New direct jobs must be paid an annualized wage which equals or exceeds the thresholds set forth in 68 O.S. § 3604(F)(1) and (2), except for those otherwise qualified establishments that locate in an opportunity zone as set forth in 68 O.S. § 3604(G).

150:65-1-4. ~~Project profile~~ Application

(a) A project profile shall be prepared for establishments that meet the requirements of 150:65-1-3. In order to prepare a project profile the establishment shall be required to provide the following information:

(1) The calendar year and quarter in which the project first starts,

(2) The employment resulting from the project over ten (10) years,

(3) The third year average salary of the new workers hired in the new direct jobs,

~~(4) An estimate of the percentage of non-Oklahoma workers likely to be hired. If an estimate is not provided, the Department shall use an average percentage determined by the Department based upon research conducted by the Department,~~

(~~5~~4) A description of the establishment's operations and the lines of business and operations of the project for which an application is being submitted, and

(~~6~~5) Such other information as may be required by the ~~quality jobs representative~~ Department.

(b) ~~The project profile, which includes the~~ A preliminary analysis and the estimate of the net benefit rate and the total possible incentive available to the establishment, will be sent to the eligible establishment for ~~approval~~ review.

(c) ~~Upon approval of the project profile, the establishment shall return the signed project profile to the quality jobs representative.~~ The establishment shall also provide a copy of its basic health benefits plan offered to employees or a description of the plan that will be offered within one hundred and eighty (180) days of the date that it receives the first incentive payment.

~~(d) A project profile that has been approved, signed and returned to the Department by an establishment will serve as the application for the Oklahoma Quality Jobs Program.~~

150:65-1-5. Detailed cost-benefit analysis; review of information

(a) In addition to the initial cost-benefit analysis included in the project profile, the ~~Oklahoma~~ Department ~~of Commerce~~ may conduct a more detailed cost-benefit analysis before an incentive offer is made. The Department will determine if a more detailed cost-benefit analysis is necessary based on a review of the reasonableness of the projected average wage rates, the forecast of in-migration rates and other factors. Additional information may be required from an establishment. An establishment may request that the Department conduct a more detailed cost-benefit analysis.

(b) A copy of the detailed cost-benefit analysis will be sent to the establishment for review and approval.

(c) Before an incentive ~~offer~~ contract is ~~made~~ sent to an establishment, the Department shall review the establishment's project profile, health benefits plan, baseline employment, average annual wage projections, the net benefit rate and the maximum benefits allowable. After such review is completed, the Department may ~~authorize~~ recommend the development of an incentive ~~offer~~ contract.

150:65-1-6. Incentive ~~offer~~ contract

(a) After an incentive ~~offer~~ contract is ~~authorized~~ recommended by the ~~Oklahoma~~ Department ~~of Commerce~~, ~~a quality jobs representative~~ the office of General Counsel shall prepare an incentive ~~offer~~ contract for the ~~Executive~~ Director's review and signature. The signed incentive ~~offer~~ contract shall then be forwarded to the establishment. An incentive ~~offer~~ contract may be accepted by the establishment within sixty (60) days of the date of signing by the ~~Executive~~ Director.

(b) The incentive ~~offer~~ contract shall be on a form prescribed by the Department which shall include the following information:

(1) The net benefit rate which will be multiplied by verified gross quarterly payroll to determine the amount of quarterly payments;

(2) The estimated ~~net~~ direct state benefits which is the maximum amount of benefit~~s~~ payments available;

(3) The ~~approval~~ project start date ~~of the incentive offer~~;

(4) The baseline employment ~~if applicable~~; ~~and~~

(5) The projected number of new jobs;

(6) The average annual wage; and

(~~5~~7) Any other information the Department deems necessary.

(c) Upon ~~acceptance and certification~~ execution of the incentive ~~offer~~ contract, the establishment shall return the incentive ~~offer~~ contract to the Department. The original incentive ~~offer~~ contract, signed by the chief executive officer or authorized representative, shall be returned to the Department by certified mail with return receipt requested or by personal delivery or by other means acceptable to the Department.

(d) For all purposes of the Oklahoma Quality Jobs Program Act, the effective date of approval of the incentive ~~offer~~ contract will be the date the signed and accepted incentive ~~offer~~ contract is received by the Department. Provided, however, the

approved project may have a start date which is different than the effective date of approval.

150:65-1-7. Transmittal of information

The ~~Oklahoma~~ Department ~~of Commerce~~ shall notify the ~~Oklahoma Tax~~ Commission of each approved incentive offer. The Department shall provide the Commission with a copy of each approved incentive offer, project profile and the results of the cost-benefit analysis.

150:65-1-8. Origination fees

The ~~Oklahoma~~ Department ~~of Commerce~~ shall charge an origination fee of ~~Five Hundred~~ One Thousand Dollars ~~($500.00~~$1,000.00) for each approved incentive ~~offer~~ contract. The fee shall be ~~due at the time an establishment receives~~ deducted from its first incentive payment ~~from~~ payable by the ~~Oklahoma Tax~~ Commission. ~~Upon receipt of the first incentive payment, the establishment shall remit the fee to the Department.~~

150:65-1-9. Required information

(a) The ~~Oklahoma~~ Department ~~of Commerce~~ may require establishments to provide any of the following information in order to determine eligibility under the provisions of the Oklahoma Quality Jobs Program Act, 68 O.S. Supp. 1993, Section 3601, et seq:

(1) ~~SIC~~ NAICS code number;
(2) Business plans;
(3) Feasibility studies;
(4) Financing proposals;
(5) OESC Form 3 or its electronic equivalent;
(6) OTC Income Tax Withholding form;
(7) Financial statements or sales contracts; ~~and~~
(8) Marketing plans~~.~~;
(9) Registration with the Oklahoma Secretary of State;
(10) Registration with the Commission; and
(11) Application for a Manufacturing Sales Tax Exemption, if applicable.

(b) Additional information that the Department may consider in evaluating eligibility may include, but shall not be limited to:

(1) Industry trends;
(2) Service Contracts in place or anticipated of establishments and of both the subunit establishment and the entity of which it is a part, if applicable. In considering this factor, the Department may require information such as length of contracts, likelihood of extension, track record or historical data regarding receipt of contracts and retention of them if subject to renewal;
(3) Historical data on management in place;
(4) Organization structure of the establishment and any related business or governmental entities and the nature of the relationships; particularly, the Department may inquire whether any establishment files a joint tax return with any of its related entities;
(5) Likelihood of job shifting or utilization of employees of the entity of which the subunit is a part or within a combination or amongst other related entities of an establishment and the percentage of employees affected;
(6) Expansion of existing markets;
(7) Extension of existing product line;
(8) labor market; and
(9) other relevant information.

(c) All materials described in (a) and (b) of this section may be kept confidential by the Department pursuant to the terms of its exemptions contain in the Oklahoma Open Records Act.

(d) The Department may require establishments approved to receive incentive payments to provide any information necessary in order to administer the program and prepare program reports.

150:65-1-10. Incentive payments; Expansions

(a) An establishment that has qualified under the Oklahoma Quality Jobs Program may receive incentive payments only in accordance with the provisions under which it initially applied and was approved. [68:3606] Provided however with the Department's written approval the incentive contract may be assigned to another eligible entity upon the existing terms and conditions.

(b) The ~~Oklahoma~~ Department ~~of Commerce~~, in order to decide if any expansion project qualifies for incentive payments, shall determine the baseline employment for the establishment.

150:65-1-11. Additional incentive payments

~~(a) An establishment that is receiving incentive payments may not apply for additional incentive payments for any new projects begun within the first twelve (12) quarters after receipt of the first incentive payment.~~

~~(a) An establishment that is receiving incentive payments may not apply for additional incentive payments as a result of an additional expansion within the first twelve (12) quarters after receipt of the first incentive payment. After this twelve (12) quarter period, an establishment may apply for additional incentive payments based on the gross payroll anticipated from an expansion only.~~

(a) *An establishment that is receiving incentive payments may not apply for additional incentive payments for any new projects until twelve (12) quarters after receipt of the first incentive payment, or until the establishment's actual verified gross payroll for new direct jobs equals or exceeds Two Million Five Hundred Thousand Dollars ($2,500,000.00) during any four consecutive-calendar-quarter period, whichever comes first. After meeting the requirements of this subsection, an establishment may apply for additional incentive payments based upon the gross payroll anticipated from an expansion only.* 68 O.S. § 3606(F).

(b) An establishment that has ceased to receive incentive payments for a period of twelve (12) consecutive quarters, may withdraw from the Oklahoma Quality Jobs Program and reapply to the Department for a new incentive contract pursuant to

OAC 150:65-1-4 provided that the establishment qualifies as an eligible entity.

[OAR Docket #05-970; filed 5-23-05]

TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

[OAR Docket #05-1031]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
Part 1. General
165:5-1-10. Exemption from the Registration of Out of State Attorneys Act [NEW]
AUTHORITY:
Oklahoma Corporation Commission; Article IX, Section 18, 19; Oklahoma Constitution **DATES:**
COMMENT PERIOD:
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SUBMITTED TO SENATE:
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GUBERNATORIAL APPROVAL:
May 4, 2005
LEGISLATIVE APPROVAL:
Failure of the Legislature to disapprove the rules resulted in approval on May 25, 2005.
FINAL ADOPTION:
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EFFECTIVE:
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SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 1. General Provisions
Part 1. General
165:5-1-10. Exemption from the Registration of Out of State Attorneys Act [NEW]
Approved by governor:
January 10, 2005
Register issue:
22 Ok Reg 488
Docket number:
05-134
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
The purpose of this rulemaking is to add section OAC 165:5-1-10, titled "Exemption from the Registration of Out of State Attorneys Act", to exempt out-of-state attorneys from complying with HB 2661, 5 O.S. 2004 § 1.1, *et seq*., which requires out-of-state attorneys appearing before the Oklahoma Corporation Commission to register with the Oklahoma Bar Association.
CONTACT PERSON:
Jennifer Barger (405) 522-5843

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. GENERAL

165:5-1-10. Exemption from the Registration of Out of State Attorneys Act

(a) Attorneys practicing before the Oklahoma Corporation Commission shall be deemed exempt from the requirements of "Registration of Out-of-State Attorneys Act", 5 O.S. 2004 § 1.1, *et seq*., when appearing before the Commission.

(b) An attorney who is not a member of the Oklahoma Bar Association shall comply with the requirements of Chapter 1, Appendix 1, Article II, Section 5 of Title 5 of the Oklahoma Statutes, prior to appearing before the Oklahoma Corporation Commission.

[OAR Docket #05-1031; filed 5-26-05]

TITLE 165. CORPORATION COMMISSION CHAPTER 25. UNDERGROUND STORAGE TANKS

[OAR Docket #05-1032]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
Part 3. Definitions
165:25-1-11. Definitions [AMENDED]
Part 5. Scope Of Rules
165:25-1-21. Overview of applicability and enforcement [AMENDED]
Part 6. Administrative Provisions
165:25-1-25. Citation of rules [AMENDED]
165:25-1-28. Variances [AMENDED]
Part 9. Notification and Reporting Requirements
165:25-1-41. General reporting requirements [AMENDED]
165:25-1-42. New tank systems [AMENDED]
165:25-1-48. Tank and line tightness testing [AMENDED]
Part 11. Recordkeeping
165:25-1-54. Repair records [AMENDED]
165:25-1-56. Release detection and cathodic protection records [AMENDED]
165:25-1-57. Spill and overfill records [AMENDED]
Part 13. Fees
165:25-1-64. Fees [AMENDED]
Part 15. Shutdown of Operations
165:25-1-67. Shutdown of operations [AMENDED]
Subchapter 2. General Requirements for Underground Storage Tank Systems
Part 1. Codes and Standards
165:25-2-4. Financial responsibility [AMENDED]
Part 3. Design and Installation
165:25-2-33. Approved tanks, tank design [AMENDED]
165:25-2-36. Tank system installation [AMENDED]
165:25-2-38. Fill pipe requirements [AMENDED]
165:25-2-39. Spill and overfill protection [AMENDED]
165:25-2-40 Tank system testing [AMENDED]
Part 5. Protection Against Corrosion
165:25-2-51. Corrosion protection [AMENDED]
165:25-2-52. Compliance with corrosion protection requirements and manufacturer's specifications [AMENDED]
165:25-2-53. Frequency and criteria of inspections and tests [AMENDED]
165:25-2-55 Underground storage tank internal lining requirements [AMENDED]

Part 7. Dispensers
165:25-2-71. Dispensers [AMENDED]
165:25-2-72. Dispenser hose [AMENDED]
165:25-2-77. Electrical equipment [AMENDED]
Subchapter 3. Release Prevention and Detection Requirements
Part 1. Release Prohibition and Detection Requirements
165:25-3-1. Release prohibition [AMENDED]
165:25-3-5.3. Testing or monitoring for vapors [AMENDED]
165:25-3-5.4. Testing or monitoring for liquids on the groundwater [AMENDED]
165:25-3-6. Monitoring requirements for piping [AMENDED]
Part 2. Release Reporting Requirements
165:25-3-7. Release reporting [AMENDED]
Part 3. Release Investigation Requirements
165:25-3-8. Release investigation and confirmation [AMENDED]
Part 9. Licensing of Underground Storage Tank Installers
165:25-3-50. Licensing procedure for UST Installers [AMENDED]
165:25-3-51. Licensing procedure for UST Removers [AMENDED]
Part 13. Removal and Closure of Underground Storage Tank Systems
165:25-3-60. Tank removal and closure [AMENDED]
165:25-3-64. Permanent closure [AMENDED]
165:25-3-64.1. Underground storage tank removal [AMENDED]
165:25-3-65. Assessing the site at closure or change in service [AMENDED]
Subchapter 5. Upgrades [NEW]
165:25-5-1. Tank upgrading requirements [NEW]
165:25-5-2. Alternatives allowed [NEW]
165:25-5-3. Piping upgrading requirements [NEW]
165:25-5-4. Spill and overfill prevention requirements [NEW]
Subchapter 6. Special Requirements for Underground Storage Tank Systems Utilized by Airports Open to the Public
Part 5. Dispenser Requirements
165:25-6-13. Dispenser hose [AMENDED]
Subchapter 8. Special Requirements for Underground Storage Tank Systems Utilized by Marinas
Part 3. Piping Requirements
165:25-8-5. Underground piping materials [AMENDED]
165:25-8-7. Aboveground piping at marinas [AMENDED]
165:25-8-8. Installation and monitoring requirements for piping [AMENDED]
Part 9. Dispensing Procedures
165:25-8-29 Attendants at marinas
Part 11. Miscellaneous Safety Requirements
165:25-8-36. Fire extinguishers [AMENDED]
Subchapter 18. Inspections, Notices of Violation, ~~Warning~~ and ~~Fine~~ Citations ~~and Penalties~~
Part 3. Notices of Violation ~~and Warning~~ and ~~Fine~~ Citations
165:25-18-10. ~~Purpose of~~ Notices of Violation~~, Warning Citations~~ and ~~Fine~~ Citations [AMENDED]
165:25-18-11. Notices of Violation [AMENDED]
165:25-18-12. Re-inspection and Fine Citation [AMENDED]
165:25-18-13. Payment of fine or hearing [AMENDED]
Part 5. Penalties
165:25-18-19. Penalties [AMENDED]

AUTHORITY:
Oklahoma Corporation Commission; Article IX, Section 18, 19 Oklahoma Constitution; and 17 O.S. §301 *et seq.*; 27A O.S. § 1-1-201 *et seq.* and § 1-3-101 *et seq.*; 42 U.S.C. § 6991

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Effective:
July 1, 2005

SUPERSEDED EMERGENCY ACTIONS:
None

INCORPORATIONS BY REFERENCE:
None

ANALYSIS:
OAC 165:25-1-11 Definitions is amended to include the term "Agent", "EPA", "Generation facilities", "PST", "Public Utility", "Responsible person", "TCLP". The definition of "Ancillary equipment" is amended to reflect equipment examples included. "BTEX" is amended to correct a typo. The definition of "Bulk plant" is amended to specify such plants as having petroleum storage tank facilities. "Change in service" is amended to reference petroleum storage tanks. The definition of "Division" is amended to reference PSTD. "Fleet and commercial" is amended to delete the reference to person and substitute facility. "In service" is amended to include tanks not abandoned. The definition of "Person in charge" is amended to reflect supervision of a petroleum storage tank facility and strikes unnecessary language. "Private airstrip" is amended to delete unnecessary language. The definition of "Regulated substances" is amended to align the definition with statutory language. "Release detection is amended for grammatical purposes. The definition of "Repair" has been amended to reflect a repair on a petroleum storage tank system. "Source of ignition" is amended to include all types of combustible tobacco products. The definition of "Temporary closure" is amended to delete unnecessary language. The terms "Abandoned System", "Director", "Facility", "Liquid Trap", Observation tube", "Operator", "OWRB", "Owner", "Permit", "Person", "Petroleum", "Pollution", "Release", "Storage Tank Advisory Council", "Storage tank system", and "Transporter" have been revoked.

OAC 165:25-1-25 Citation of rules is amended to strike the word general in reference to these rules.

OAC 165:25-1-28 Variances is amended to reflect that variances will not be granted by PSTD instead will be subject to application, notice, hearing and Commission order.

OAC 165:25-1-41 General reporting requirements is amended to reflect the Commission's current website address.

OAC 165:25-1-42 New tank systems is amended to require copies of test performed on the system must be submitted with the notification form.

OAC 165:25-1-48 Tank and line tightness testing is amended to include employees and agents capable of reporting failed tests.

OAC 165:25-1-54 Repair records is amended for grammatical purposes only.

OAC 165:25-1-57 Spill and overfill records is amended to require reports of spills or overfills be kept for 3 years after occurrence.

OAC 165:25-1-64 Fees is amended to change the reference from monitoring well license to Monitor Well Technicians.

OAC 165:25-1-67 Shutdown of operations is amended to include requirements of Commission order as being satisfied before a system can be put back in operation.

OAC 165:25-2-4 Financial responsibility is amended for grammatical purposes only.

OAC 165:25-2-33 Approved tanks, tank design is amended to strike the wording lining and affirmatively as being redundant.

OAC 165:25-2-36 Tank system installation is amended to strike language that allows PSTD to accept minimum slopes less than one-eighth.

OAC 165:25-2-38 Fill pipe requirements is amended to encourage color coding of tank covers.

OAC 165:25-2-39 Spill and overfill protection is amended to disallow ball float vent valves on suction type systems and 95% full automatic shut off unless a ball float system can be proven in place and operative. Drop tube overfill device is striken.

OAC 165:25-2-40 Tank system testing is amended to provide for a 1 hour minimum test and must include a function test on all line leak detection at installation.

OAC 165:25-2-51 Corrosion protection is amended to provide acronyms for National Association of Corrosion Engineers ("NACE") and Underwriters Laboratories ("UL").

OAC 165:25-2-52 Compliance with corrosion protection requirements and manufacturer's specifications is amended for grammatical purposes only.

OAC 165:25-2-53 Frequency and criteria of inspections and tests is amended for grammatical purposes only.

OAC 165:25-2-55 Underground storage tank internal lining requirements is amended to strike the language referring to 1998 upgrades.

OAC 165:25-2-71 Dispensers is amended for grammatical reasons "Activated" is substituted for "Actuated".

OAC 165:25-2-72 Dispenser hose is amended to reference facilities instead of service stations and requires immediate replacement of hose in certain circumstances.

OAC 165:25-3-1 Release prohibition is amended to include reporting as part of the required duties of an owner/operator investigating a release or suspicion of release.

OAC 165:25-3-5.3 Testing or monitoring for vapors is amended to strike a one monitoring well requirement and requires a minimum of 2 monitoring wells for multi-tank excavations.

OAC 165:25-3-5.4 Testing or monitoring for liquids on the groundwater is amended to strike a one monitoring well requirement and requires a minimum of 2 monitoring wells for multi-tank excavations.

OAC 165:25-3-6 Monitoring requirements for piping is amended to require new installations and facilities replacing existing piping to have double-walled piping and one sump sensor.

OAC 165:25-3-7 Release reporting is amended for grammatical purposes only.

OAC 165:25-3-8 Release investigation and confirmation is amended to remove unnecessary language and reference regulated substance as a marker and provides TPH concentrations as a benchmark if BTEX is below commission action levels.

OAC 165:25-3-50 Licensing procedures for UST installers is amended to expand other rule violations, provide for revocation of license for criminal acts or incompetence, as established by the burden of substantial evidence.

OAC 165:25-3-51 Licensing procedures for UST removers is amended to substitute "Petroleum" for "Underground".

OAC 165:25-3-60 Tank removal and closure is amended to include operators giving notice for tank or line removal/closure, and only allows variances granted by the Commission after notice and hearing, instead of PSTD.

OAC 165:25-3-64 Permanent closure is amended to reflect only the Commission may grant a variance after application, notice and hearing. The party seeking a variance has the burden of proof.

OAC 165:25-3-64.1 Underground storage tank removal is amended to include lines removal being performed by a licensed UST Remover.

OAC 165:25-3-65 Assessing the site at closure or change in service is amended to include line repair or replacement as a further component of testing for a release. The amendment also provides for notice to PSTD and the potential for penalty if notice is not given pursuant to this rule.

OAC 165:25-5-1 is new at the request of EPA for enforcement purposes, re-instating a previously revoked rule.

OAC 165:25-5-2 is new at the request of EPA for enforcement purposes, re-instating a previously revoked rule.

OAC 165:25-5-3 is new at the request of EPA for enforcement purposes, re-instating a previously revoked rule.

OAC 165:25-5-4 is new at the request of EPA for enforcement purposes, re-instating a previously revoked rule.

OAC 165:25-6-13 Dispenser hose is amended to require immediate hose replacement in the event of defect, deterioration, soft spots, damage or kinking.

OAC 165:25-8-5 Underground piping materials is amended to defer upgrades from 7/15/2005 to 7/15/2007.

OAC 165:25-8-7 Aboveground piping at marinas is amended to defer implementation of upgrades for aboveground piping at marinas from 7/15/2005 to 7/15/2007 and substitutes the reference for water tight transition from "underground to aboveground" to "onshore to over-water piping".

OAC 165:25-8-8 Installation and monitoring requirements for piping is amended to defer implementation date from 7/15/2005 to 7/15/2007.

OAC 165:25-8-29 Attendants at marinas is amended to comply with recently enacted legislation which allows unattended fueling sites at marinas.

OAC 165:25-8-36 Fire extinguishers is amended to classify the minimum requirement for a fire extinguisher as 40 pounds, Class B, C rated. Also the emergency knife requirement for cutting mooring lines is amended to make the knife readily accessible.

OAC 165:25-18-10 Notices of Violation, Warning Citations and Fine Citations is amended to strike language referring to out of time issuance of a NOV and language that precludes court for violations. Further stricken is language referring to the NOV as a warning and issue a new NOV on re-inspection for enforcement action. Additional language provides for facility shut down for failure to pay a Commission fine and strikes redundant language referencing hearings.

OAC 165:25-18-11 Notices of Violation is amended to strike references to NOV issued for out of time correction and strike warning NOVs.

OAC 165:25-18-12 Re-inspection and Fine Citation allows for inspector discretion in issuing new a NOV or referring the violation for enforcement.

OAC 165:25-18-13 Payment of fine or hearing is amended to allow facility shutdown for failure to pay a fine.

OAC 165:25-18-19 Penalties is amended to strike language that is set forth in the statute as being redundant.

CONTACT PERSON:

Jeff Southwick (405) 522-4457

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 3. DEFINITIONS

165:25-1-11. Definitions

In addition to the terms defined in 17 O.S. § 303, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"ANSI" means the American National Standards Institute.

"API" means the American Petroleum Institute.

"ASTM" means the American Society for Testing and Materials.

~~**"Abandoned system"** means a storage tank system that has not been removed but has been taken out of service and is not intended to be returned to service, or that has been rendered permanently unfit for use as determined by the Commission, including all tanks closed prior to April 21, 1989.~~

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Airport" means landing facility for aircraft that is are routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private airstrips or private airports.

"Ancillary equipment" means any device including, but not limited to~~,~~ : devices, such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from an underground storage tank.

"ATG" means automatic tank gauging.

"Backfill" is the ~~earthen~~ material that is placed in a tank and/or piping excavation to support and separate the tank and/or piping, from the natural environment.

"Beneath the surface of the ground" means beneath the ground's surface or otherwise covered with materials so that physical inspection is precluded or impaired.

"BTEX" means benzene, toluene, ~~ethylbenezne~~ ethylbenzene and xylene.

"Bulk plant" means a petroleum storage tank facility where gasoline, aviation fuel, diesel and/or volatile blending materials used in motor fuels, like kerosene and ethanol, are received by tank vessels, pipelines, tank cars or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distribution by a tank vessel, pipeline, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, protection can be accomplished with an impressed current or galvanic anode system.

"Change in service" means discontinuing the use of a petroleum storage tank system for purposes regulated by the Commission.

"Commission" means the Oklahoma Corporation Commission and includes its designated agents or representatives.

"Compatible" means the ability of two or more substances to maintain their respective physical properties upon contact with one another for the design life of the petroleum storage tank system under conditions likely to be encountered in the system.

"Construction tank" means a fuel tank used for a limited period of time at a construction site.

"Contaminants" or **"contamination"** means concentrations of chemicals at levels that may cause adverse human health or environmental effects and/or nuisance conditions.

"Corrosion expert" means a person who has knowledge of the physical sciences and principles of engineering and mathematics, acquired by education and/or experience, and is qualified to engage in the practice of corrosion control on buried or submerged metal tanks and metal piping systems. The person must be NACE-certified or be a Registered Professional Engineer who has education and experience in corrosion control of buried or submerged metal tanks and metal piping systems.

"Corrosion technician" or **"cathodic protection tester"** means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"Dielectric material" means a material that does not conduct direct electric current. Dielectric coatings are used to electrically isolate portions of tank systems under or in contact with the ground. Dielectric bushings are used to electrically isolate portions of the underground storage tank system (e.g., tank from piping).

~~**"Director"** means the Director of the Petroleum Storage Tank Division of the Oklahoma Corporation Commission.~~

"Division ~~or PSTD~~" means the Petroleum Storage Tank Division (PSTD) of the ~~Oklahoma~~ Corporation Commission.

"EPA" means the United States Environmental Protection Agency.

"Excavation zone" or **"excavation area"** means the volume containing the underground storage tank system and backfill materials, bounded by the ground surface, walls, and floor of the pit and trenches into which the underground storage tank system is placed at the time of installation.

~~**"Facility"** means any location or part thereof containing one or more underground storage tanks or systems.~~

"Farm" means the planting, growing, cultivation and harvesting of shrubs, flowers, trees and other plants for sale. Farms also include ranching and dairy operations. Rural residential or non-commercial agricultural tanks are not included.

"Flammable liquids" means all grades of gasoline, kerosene, diesel fuel, and aviation fuel having a vapor pressure not exceeding forty (40) pounds per square inch (psi) absolute at one hundred (100) degrees Fahrenheit.

(A) Class I liquids.

(i) Class IA liquids have flash points below 73 degrees Fahrenheit and boiling points below 100 degrees Fahrenheit.

(ii) Class IB liquids have flash points below 73 degrees Fahrenheit and boiling points at or above 100 degrees Fahrenheit.

(iii) Class IC liquids have flash points at or above 73 degrees Fahrenheit and boiling points below 100 degrees Fahrenheit.

(B) Class II liquids. Class II liquids have flash points at or above 73 degrees Fahrenheit and below 140 degrees Fahrenheit.

(C) Class III liquids.

(i) Class IIIA liquids have flash points at or above 140 degrees Fahrenheit and below 200 degrees Fahrenheit.

(ii) Class IIIB liquids have flash points at or above 200 degrees Fahrenheit.

"Fleet and commercial" means any ~~person~~ facility as defined in this Chapter that uses underground storage tanks to store gasoline or diesel fuel for use in its own vehicles.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

"Generation facilities" means those tanks that are permanently installed, which routinely contain fuel to be used in emergency generators in the event of a power failure.

"Impervious barrier" means a barrier of sufficient thickness, density, and composition that is impenetrable to a regulated substance, has a permeability of at least 1×10^{-6} cm/sec., and will prevent the discharge into the environment of any regulated substance for a period of at least as long as the maximum anticipated time during which the regulated substance will be in contact with the impervious material.

"In service" means a petroleum storage tank that ~~is not abandoned,~~ contains a regulated substance, and/or has a regulated substance regularly added to or withdrawn from it.

~~**"Liquid trap"** means sumps, well cellars, and other traps used in association with oil or gas production, gathering, and extraction operations (including gas production plants), to collect oil, water, and other liquids. Liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.~~

"Marina" means any fuel storage facility located by the water for the purpose of fueling watercraft.

"Monitor well" means a piezometer or other cased and screened excavation, boring or drilled hole, installed in any way that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors.

~~**"Observation tube"** means a leak detection device placed within the tank field that reaches two feet (2') below the tank bottom and can be inspected periodically to determine whether contamination by a regulated substance has occurred.~~

"Operational life" means the period beginning from the time installation of the tank or system is commenced until it is properly closed or removed as provided for in this Chapter.

~~**"Operator"** means any person in control of or having responsibility for the daily operation of the underground storage tank system, whether by lease, contract, or other form of agreement. The term also includes a past operator at the time of a release or violation of state statutes or Commission rules.~~

"Out of service" means an underground storage tank or system that:

(A) Is not in use (i.e., does not have regulated substances added to or withdrawn from the tank system); and

(B) Is intended to be placed back in service.

"Overfill" means a release that occurs when an underground storage tank is filled beyond its capacity.

~~**"OWRB"** means the Oklahoma Water Resources Board.~~

~~**"Owner"** means any person who holds title to, controls or possesses an interest in a storage tank system or a piece of property that has a storage tank system used to store motor fuels. In the case of a storage tank system no longer in use, the term "owner" also means any person who held title to, controlled, or possessed an interest in a system immediately before the discontinuation of its use. The term "owner" does not include a person who holds an interest in a tank system solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the system.~~

~~**"Permit"** means any registration, permit, license or other authorization issued by the Commission to operate a storage tank system.~~

~~**"Person"** means any individual, trust, firm, joint stock company or corporation, limited liability company, partnership, association, any representative appointed by order of a court, municipality, county, school district, or other political subdivision or agency of the state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, the United States Government, a federal agency, including a government corporation, or any other legal entity.~~

"Person in charge" means the owner or person designated by the owner or operator as the one with direct supervisory responsibility for an activity or operation at a petroleum storage tank system or facility~~, such as the transfer of regulated substances to or from any points at a facility~~.

~~**"Petroleum"** means ethylene glycol based antifreeze, motor oil, gasoline, diesel, aviation fuel, and/or volatile blending materials used in motor fuels, like kerosene and ethanol.~~

~~**"Pollution"** means the presence in the environment of any regulated substances as a result of a release from a regulated petroleum storage tank system. It includes quantities requiring reporting under this Chapter, as well as quantities that are or may be potentially harmful to human health, welfare, or aesthetic sensibilities, or to property, animals, plant life or the environment.~~

"Positive sampling, testing, or monitoring results" means the results of sampling, testing, or monitoring using any of the release detection methods described in this Chapter that indicate that a release from an underground storage tank system may have occurred.

"Private airport" means an airport used only by its owner and regulated as a fleet and commercial facility.

"Private airstrip" means a personal residential takeoff and landing facility ~~attached to~~ part of the airstrip owner's ~~home, analogous to a garage and driveway used only by the owner.~~ residential property.

"PST" means petroleum storage tank.

"Public Utility" means any entity providing gas, electricity, water, or telecommunications services for public use.

"Regulated substance" ~~means ethylene glycol based antifreeze, gasoline, aviation fuel, diesel and/or volatile blending materials used in motor fuel, like kerosene and ethanol. It does not include compressed natural gas.~~ means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel. It does not include compressed natural gas.

~~**"Release"** means any spilling, overfilling, or leaking from a storage tank system that goes beyond the excavation zone, tankpit, or secondary containment facility into the native environment.~~

"Release detection" means determining whether a release of regulated substances has occurred from a petroleum storage tank or system into the environment or into the interstitial area between the underground storage tank system and its secondary barrier.

"Repair" means to restore a tank or petroleum storage tank system component that has ~~failed, causing~~ caused a release of product from the petroleum storage tank system.

"Residential tank" means an underground storage tank or system located on the property where contents are used by the residential occupants of the property.

"Responsible person" means a person other than a petroleum storage tank system owner or operator, such as an adjacent property owner, impacted party, or city, seeking corrective action of real property, and submits itself to the jurisdiction of the Commission.

"Retail facility" means a service station, convenience store or any other facility that is open to the general public.

"Sacrificial anode" means a device used to reduce or prevent corrosion of a metal in an electrolyte by galvanic coupling to a more anodic metal.

"Secondary containment" means a system installed around an underground storage tank or system that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled tank system) or excavation area (in the case of a liner or vault system) before the release can be detected. Such a system may include, but is not limited to, impervious barriers (both natural and synthetic), double walls, or vaults.

"Source of ignition" means ~~cigarettes, cigarette~~ flammable tobacco products or smoking materials, lighters or operating internal combustion engines and includes fixed sources of ignition like open flame heaters, pilot lights, electric heating elements or electric motors with exposed brushes or any machinery that produces exposed sparks while in operation.

~~**"Storage Tank Advisory Council"** means a committee appointed pursuant to 17 O.S. § 340 et seq., which has the authority to recommend rules and make written comments and recommendations to the Commission, and to provide a public forum for the discussion of issues it considers relevant to its area of jurisdiction.~~

~~**"Storage tank system"** means one or more tanks used to contain regulated substances, including the piping, hoses, dispensers and other ancillary equipment associated with the tanks.~~

"TCLP" means ~~a test for highly volatile metals in the soil~~ toxicity characteristic leaching procedure, a test procedure for determining if a solid waste is hazardous because it exhibits toxicity characteristics as enforced under Resource Conservation and Recovery Act.

"Tank tightness testing" or **"precision testing"** means a procedure for testing an underground storage tank system's ability to prevent an inadvertent release of any stored regulated substances into the environment.

"Temporary closure" or "TOU" means the status of an underground storage tank system that has been taken out of service ~~but not removed from the ground or filled with inert solid material~~.

"TPH" means total petroleum hydrocarbons.

~~**"Transporter"** means any person who transports, delivers, or distributes any quantity of regulated substance from one point to another for wholesale or retail gain.~~

"Underground storage tank" or **"UST "** or **"tank"** means a regulated storage tank that has ten percent or more of its volume beneath the surface of the ground.

"Underground storage tank system" means an underground storage tank and any connected aboveground or underground piping, dispensers, and ancillary equipment.

"Used Oil" is any oil or similar petroleum substance that has been refined from crude oil or synthetic oil; used for its designed or intended purposes, and contaminated as a result of such use by physical or chemical impurities.

PART 5. SCOPE OF RULES

165:25-1-21. Overview of applicability and enforcement

This Chapter applies to the owners, ~~and~~ operators of all underground storage tank systems for which the Commission has been given regulatory responsibility by 27A O.S. (Supp. 1999) § 1-3-101 (E) (5) (b) and 17 O.S. § 301 et seq., which includes tanks that contain gasoline, kerosene, diesel or aviation fuel, including but not limited to tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities as well as pumps, hoses, dispensers, automatic gauging systems, and other ancillary equipment.

PART 6. ADMINISTRATIVE PROVISIONS

165:25-1-25. Citation of rules

This Chapter will be known as the Oklahoma Corporation Commission's ~~General~~ Rules and Regulations Governing Underground Storage Tanks and is to be cited as OAC 165:25.

165:25-1-28. Variances

(a) A variance to a provision of this Chapter ~~should~~ may be granted by the ~~Petroleum Storage Tank Division~~ Commission after application, notice and hearing, any time enforcement of the provision would impose a significant expense without furthering the purpose of the provision.

(b) ~~Inspectors and other compliance personnel must work with tank owners and operators and other government agency personnel and grant variances as needed~~ Variances may be granted to help citizens avoid being caught between the conflicting rules of different agencies.

PART 9. NOTIFICATION AND REPORTING REQUIREMENTS

165:25-1-41. General reporting requirements

The Commission may require owners, ~~and~~ operators, of underground storage tank systems to provide information it deems necessary for the protection of human health, property and the environment. Use of the designated OCC form(s) is required for tank registration, change in ownership, monthly release detection, testing, temporary change in service, permanent closure, or return to service. These forms are available at the OCC website, ~~PST Division~~ PSTD webpage: ~~www.occ.state.ok.us~~, www.occeweb.com, follow link to Petroleum Storage Tank Division and link to ~~PST~~ PSTD Forms.

165:25-1-42. New tank systems

(a) Persons intending to install a new underground storage tank and/or new underground piping must give the Petroleum Storage Tank Division notification of the installation at least 24 hours before the tank and/or lines are to be installed.

(b) Owners of all new underground storage tank systems must notify the Commission of a new installation before any fuel is dispensed at a facility. The notice must be given on a form specified by the Commission and include at a minimum,

the date of installation, the location, type of tank construction and piping construction, size of tank installed, the type of release detection method utilized, and the type of regulated substance being stored. Copies of the tank tightness testing, line tightness testing, and line leak detector testing performed at installation must be submitted with the notification form.

(c) Owners of new systems must certify, either in the notification form or attachments to the form, the following:

(1) Installation of tanks and piping meets the requirements of this Chapter.

(2) Cathodic protection of steel tanks meets the requirements of this Chapter.

(3) The release detection method utilized meets the requirements of this Chapter.

(4) If monitoring wells are the selected method of leak detection, the plans for their placement must be approved by the Petroleum Storage Tank Division before they are installed. The installation and use of monitoring wells for the purpose of monthly release detection must comply with 165:25-3-5.3 and/or 165:25-3-5.4.

(d) All owners of new underground storage tank systems must ensure that the installer certifies in the notification form that the methods used to install the tanks and piping complies with the requirements of this Chapter.

(e) Any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of the tank of the owner's installation notification obligations under this Chapter.

165:25-1-48. Tank and line tightness testing

(a) The results of any tank and line tightness testing required by this Chapter in which any part of the tank system tested fails to perform in accordance with the requirements of this Chapter must be reported by the owner and/or operator or their employees or agents within 10 days of the testing. The notice shall include:

(1) The types of testing equipment used.

(2) The name of the company performing the test.

(3) The name of the tester performing the test.

(4) The method of testing used.

(5) The results of the test.

(6) The details of steps taken or to be taken by the owner to repair, replace or remove the tank system.

(b) Hydrostatic line tightness tests and line leak detector tests must be conducted and reported on the prescribed Commission form.

(c) The tester performing line and leak detector tests must also certify that the line leak detector is installed properly.

PART 11. RECORDKEEPING

165:25-1-54. Repair records

Owners and operators of underground storage tank systems regulated by this Chapter must maintain records that identify the location and nature of the ~~repair~~ repairs, including documentation regarding the ~~repair~~ repairs. These records must be kept for the remaining operating life of the storage tank system. In the event of a transfer of ownership the records transfer to the new owner.

165:25-1-56. Release detection and cathodic protection records

(a) Owners and operators of underground storage tank systems regulated by this Chapter must maintain release detection records for a minimum of one year.

(b) Owners and operators of underground storage tank systems regulated by this Chapter who use cathodic protection must maintain records that demonstrate compliance with the performance standards of this Chapter.

(1) Records must include the original cathodic protection design with drawings or plans depicting all of the ~~Cathodic Protection~~ cathodic protection system components, along with the credentials of the company which designed the system.

(2) Rectifier readings for impressed current systems conducted at least every 60 days.

(3) Results of the last three inspections or ~~Cathodic Protection~~ cathodic protection system tests completed by a corrosion technician.

(c) If external leak detection methods are used, the records must include the dates the monitoring wells were checked, the name of the person performing the inspection, the type of instrument used, and calibration data on the instrument.

165:25-1-57. Spill and overfill records

Owners and operators of underground storage tank systems must keep records of spills and overfills for review and inspection by the Commission for a period of 3 years, from date of such spill or overfill.

PART 13. FEES

165:25-1-64. Fees

This Chapter requires the following persons to pay fees according to the schedule set out in 165:5-3-2:

(1) Owners or operators of all underground storage tank systems in use during the fiscal year.

(2) Licensed UST Installers, UST Removers, or ~~individuals who hold a monitoring well license~~ Monitor Well Technicians who become licensed pursuant to the provisions of this Chapter.

PART 15. SHUTDOWN OF OPERATIONS

165:25-1-67. Shutdown of operations

(a) The Commission may close (shut down) a UST system:

(1) If the system poses an imminent threat to health, safety, or the environment.

(2) If the owner or operator is operating tanks for which permit fees have not been paid.

(3) If the owner or operator fails to comply with a Commission order.

(b) Only Commission Petroleum Storage Tank Division designated employees have the authority to lock or seal dispensers and/or fill pipes of any UST system violating subsection (a) of this Section. The PSTD employee must explain to the owner or operator the reason the UST system is being locked or sealed.

(c) Owners or operators who remove a lock or seal without permission from the Commission will be subject to penalties imposed by this Chapter.

(d) Upon confirmation that the UST system no longer poses an imminent threat to health, safety, or the environment, ~~or the~~ permit fees ~~have been~~ paid, or Commission order requirements satisfied, the authority to remove a lock or seal by the owner or operator may be obtained as follows:

(1) Verbal or written permission from the ~~Commission~~ PSTD employee who placed the lock or seal on the device; or

(2) Verbal or written permission from the Manager of Compliance and Inspection ~~and Compliance~~; or

(3) Application to and order of the Commission.

(e) If a facility is closed under the provisions of this Section, the owner or operator of the facility will be afforded a hearing within ten (10) days of receipt by the Commission of ~~an~~ the owner's or operator's application for a hearing.

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

PART 1. CODES AND STANDARDS

165:25-2-4. Financial responsibility

(a) An owner or operator may satisfy the requirements of Title 40 Code of Federal Regulations (CFR), 280.90 through 280.111, in (b) above, by use of the Petroleum Storage Tank ~~Release Environmental Cleanup~~ Indemnity Fund (Indemnity Fund) (ref: Okla. Stat. Tit. 17 §350 et seq.) (ref: Okla. Stat. Tit. 17 §350 et seq.). There is a $5,000 deductible for use of ~~this mechanism~~ mechanisms and for which compliance may be demonstrated by use of any of the ~~mechanism~~ mechanisms outlined in 40 CFR 280.90 through 280.111.

(b) ~~The following above regulations~~ Regulations promulgated on or before November 9, 1989 by the United States Environmental Protection Agency are hereby adopted as provisions of this Chapter as though set forth herein with the exception that, and unless the context otherwise dictates, all references therein to "Implementing Agency" shall be considered references to the "Oklahoma Corporation Commission," and all references to "Administrator," "Regional Administrator," "Director," or "State Director" shall be considered references to the "Director of the Petroleum Storage Tank Division of the Oklahoma Corporation Commission."

PART 3. DESIGN AND INSTALLATION

165:25-2-33. Approved tanks, tank design

The material used in the construction ~~or lining~~ of a new UST must be compatible with the regulated substance to be stored in the UST. Tanks must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion as specified below:

(1) Fiberglass-reinforced plastic tanks must conform to the standards contained in UL 1316 or ASTM D4021-86.

(2) Steel tanks clad with fiberglass-reinforced plastic must conform to the standards contained in UL 1746 or ACT-100.

(3) Tanks constructed of steel and cathodically protected must conform to the standards in UL 1746 and NACE RP-0285 and must be protected in the following manner:

(A) The tank must be coated with a suitable dielectric material.

(B) Field-installed cathodic protection systems must be designed by a corrosion expert.

(C) Impressed current systems must be designed to allow determination of current operating status as required by this Chapter and manufacturer's specifications.

(D) Cathodic protection systems must be operated and maintained according to this Chapter and manufacturer's specifications.

(4) The Commission may permit alternative types of tank construction, design, and corrosion protection if the owner ~~affirmatively~~ demonstrates to the Commission's satisfaction that the alternative construction, design, and corrosion protection system will prevent the release of any stored regulated substance in a manner no less protective of human health and the environment than those set out in this Section.

165:25-2-36. Tank system installation

(a) Backfill material

(1) Backfill material used below, around, and/or above a new underground storage tank system installation must be clean, unused, non-corrosive porous material such as sand, crushed rock or pea gravel specified by the tank manufacturer.

(2) In the case of fiberglass-reinforced plastic tanks, the backfill material used must be in accordance with the tank manufacturer's specifications.

(b) UST installation

(1) Following the required 24-hour notification of new UST installations, the assigned Fuel Specialist will obtain the construction schedule from the contractor. An on-site inspection may be required at the following critical junctures. The Fuel Specialist may observe and/or inspect:

(A) The air/soap test of tanks.

(B) The tank pit prior to the placement of tank(s).

(C) The backfilling of the lower quadrant of tank(s).

(D) The air/soap test and layout of piping prior to backfilling.

(E) The tightness test of tanks and piping, and leak detector tests prior to startup.

(2) Precautions must be taken to prevent damage to the tank or piping coating during installation. Any damage to the coating must be repaired in accordance with the manufacturer's instructions prior to the completion of the installation.

(3) Piping must be arranged to minimize crossed lines and interference with conduits and other tank system components. If crossing is unavoidable, adequate clearance must be provided to prevent contact between piping segments.

(4) Underground piping must have a minimum slope of one-eighth inch (1/8") per foot toward the tank~~, unless otherwise approved by the Commission~~.

(5) The owner and/or tank installer must continuously supervise backfilling operations to ensure that ~~the~~ proper procedures are followed.

(6) If a tank is installed in an area with a high water table, anchoring must be used to prevent tank flotation, or the tank must be installed according to manufacturer's specifications to eliminate flotation if the tank is empty.

(7) Anchoring straps and associated equipment must be installed in a manner that will prevent damage to the tank and/or its coating.

165:25-2-38. Fill pipe requirements

(a) Fill pipes that enter the top of a tank must have drop tubes installed and terminate within 6 inches (6", or 15 cm) of the bottom of the tank.

(b) Fill pipes should be installed or arranged so that vibration is minimized.

(c) Each fill pipe for liquid storage must be identified by a tag or other permanent marking to show the product for which the tank is used. The marking must be maintained in legible condition throughout the life of the tank installation. Color coding ~~may~~ should also be used in addition to marking.

165:25-2-39. Spill and overfill protection

(a) Underground storage tanks must have spill and overfill protection on the tanks.

(b) Owners and operators of aboveground storage tank systems, as well as those who transport regulated substances to these systems must do everything reasonably possible to ensure that releases due to spilling and overfilling do not occur.

~~(c) The ball float vent valve overfill system must not be installed on tanks with a suction type system.~~

(~~d~~c) Tight fill connections must be used on all deliveries made to underground storage tanks.

(~~e~~d) Tampering with overfill protection is not permitted. Any violation of this Section will be subject to the enforcement procedures of this Chapter and any other fines or contempt proceedings as provided by law.

(~~f~~e) Except as provided in ~~(g)~~ (f) of this Section, in order to prevent spilling and overfilling associated with product transfer to the ~~underground~~ petroleum storage tank system, the following prevention equipment must be used:

(1) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill bucket or a drain system).

(2) Overfill prevention equipment that will~~:~~

~~(A) Automatically~~ automatically shut off flow into the tank when the tank is no more than 95 percent full. ~~; or~~ A drop tube with overfill device is required on all tank systems installed after July 1, 2001. Tanks installed before July 1, 2001, must be upgraded to meet these standards before July 1, 2002, unless documentation can be provided at the time of inspection for compliance that proves the petroleum storage tank system is equipped with a ball float overfill device. A ball float vent valve cannot be used on tanks with a suction type system.

~~(B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high level alarm.~~

(~~g~~f) The spill and overfill prevention equipment specified in ~~(f)~~ (e) of this Section is not required if:

(1) The underground storage tank system is filled by transfers of no more than 25 gallons at one time; or

(2) Alternative equipment is used that is determined by the Commission to be no less protective of human health and the environment than the equipment specified in (a) of this Section.

~~(h) A drop tube with overfill device is required on all tank systems installed after July 1, 2001, regardless of any other overfill device used. Tanks installed before July 1, 2001, must be upgraded to meet these standards before July 1, 2002, unless documentation can be provided at the time of inspection for compliance that proves the underground storage tank system is equipped with a ball float overfill device.~~

165:25-2-40. Tank system testing

(a) All tanks must be tested with air pressure prior to installation, and/or tested according to manufacturer's specifications. Pressure must not exceed 5 pounds per square inch (psi). The entire tank must be soaped during this period and inspected for bubbling.

(b) All suction piping must be tested while disconnected from the tank, pumps, and dispensing units. The piping must be subjected to an air test with the following specifications:

(1) The piping must be subjected to an air test of at least 50 psi.

(2) The test must have a duration time of not less than 60 minutes.

(3) All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks.

(4) As an alternative to the preceding methods in (1), (2,) and (3) above, the piping may be subjected to a vacuum test while connected to tanks, pumps and dispensing units.

(c) Pressurized piping must be tested while connected to tanks, pumps and dispensing units and must be subjected to an air test of at least 50 psi.

(d) Tightness (also called precision) tests for tanks and piping must be performed after all paving over the tanks and piping has been completed and before the system is placed in operation, and must be performed in accordance with the applicable requirements of this Chapter.

(1) A precision tightness test must be performed by a certified tester, and in accordance with manufacturer's instructions; or

(2) The following alternative to a precision tightness test will be accepted, but only if conducted before the system is put into service:

(A) The tank must be filled to at least 80 percent capacity.

(B) A certified automatic tank gauge capable of detecting a leak of 0.10 gallons per hour must be used to test the filled portion of the tank.

(3) The product line(s) must be hydrostatically tested by a nationally recognized testing device capable of detecting a leak of 0.10 gallons per hour with a test pressure of 50 psi or $1\frac{1}{2}$ times the operating pressure, whichever is greater. The lines must be tested for a minimum of one hour.

(4) Mechanical leak detector(s) must be tested in accordance with manufacturer's instructions; ~~or~~

(5) If an ATG system with electronic line leak detector(s) is installed, it must complete a leak detector test in each of the modes in which it is certified as capable of detecting a leak (e.g. 3 gph, 0.2 gph and 0.1 gph).

(6) A function test must be performed on all line leak detectors at installation.

(e) Alternate methods of tank system testing may be approved by the Commission, upon demonstration that the method chosen is effective.

PART 5. PROTECTION AGAINST CORROSION

165:25-2-51. Corrosion protection

(a) Any portion of a metallic tank or piping system in contact with the soil must be protected from corrosion. A cathodic protection system must be engineered by a corrosion expert, installed and maintained in accordance with recognized standards of design, such as:

(1) American Petroleum Institute Publication 1632, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;

(2) Underwriters Laboratories of Canada ULC-S603.1 M, Standard for Galvanic Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids;

(3) Steel Tank Institute Standard No. Sti-P3®, Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks;

(4) National Association of Corrosion Engineers Standard RP-01-69 (1996 rev.), Recommended Practice, Control of External Corrosion of Underground or Submerged Metallic Piping Systems;

(5) National Association of Corrosion Engineers ("NACE") Standard RP-02-85-95, Recommended Practice, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems; and

(6) Underwriters Laboratories Inc., ("UL") Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks, UL 1746, Part 1.

(b) Approved or listed corrosion-resistant materials or systems include special alloys, fiberglass reinforced plastic, or fiberglass reinforced plastic coatings.

165:25-2-52. Compliance with corrosion protection requirements and manufacturer's specifications

Corrosion protection systems ~~must~~ shall be operated and maintained in accordance with manufacturer's instructions and specifications to provide continuous corrosion protection to the metal components of the storage tank system that are routinely in contact with the ground.

165:25-2-53. Frequency and criteria of inspections and tests

Cathodic protection systems ~~must~~ shall be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(1) All cathodic protection systems must be tested within 6 months of installation and/or repair, and at least every 3 years thereafter.

(2) Every 60 days impressed current cathodic protection systems must be inspected by the owner or operator (or owner's designated representative) to ensure that the equipment is working properly.

(3) The criteria that are used to determine whether cathodic protection is adequate must be in accordance with a code of practice developed by a nationally recognized organization, such as NACE RP-0285.

165:25-2-55. Underground storage tank internal lining requirements

~~(a) Underground storage tanks that have not yet met the 1998 upgrade requirements may not use tank lining as a means of corrosion protection.~~

(~~b~~a) A lined steel tank that fails precision tightness testing may not be repaired and must be removed.

(~~c~~b) Within 10 years after lining, and every five years thereafter, lined USTs must be internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

(~~d~~c) Standards that must be referenced during the periodic inspection of lined USTs:

(1) American Petroleum Institute (API) Publication 1631.

(2) Ken Wilcox Associates, Inc. "Recommended Practices for Inspecting Buried Lined Steel Tanks Using a Video Camera, First Edition, 1999, Methods A and D.

(~~e~~d) UST owners must obtain a certificate of performance (Interior Lining Inspection Form) from the inspection provider attesting that the UST meets the performance requirements for the UST and lining material. Any UST failing to meet the performance requirements must be repaired and upgraded with a cathodic protection system within six months of the lining repair, or be removed. Suitability of the tanks for upgrade by adding cathodic protection must be determined prior to application.

(~~f~~e) USTs upgraded by the addition of both internal lining and cathodic protection do not require internal periodic inspection if the cathodic protection system has been properly installed and maintained on the UST system.

PART 7. DISPENSERS

165:25-2-71. Dispensers

(a) Liquids must be transferred from storage tanks by means of fixed pumps designed and equipped to allow control of the flow and prevent leakage or accidental discharge.

(b) Dispensing devices for Class I liquids must be listed.

(1) Existing listed or labeled dispensing devices may be modified provided the modifications made are "Listed by Report" by an approved testing laboratory or as otherwise approved by the Commission.

(2) Modification proposals must contain a description of the component parts used in the modification and the recommended methods of installation on specific dispensing devices, and must be made available to the Commission upon request.

(c) A control must be provided that will permit the pump to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to the dispensing device and only when the switch on this dispensing device is manually ~~actuated~~ activated. This control must also stop the pump when all nozzles have been returned either to their brackets or to the normal non-dispensing position.

(d) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each hose dispensing any class of liquids. These devices must be installed and maintained in accordance with the manufacturer's instructions. Where hoses are attached to a hose-retrieving mechanism, the listed emergency breakaway device must be installed between the point of attachment of the hose-retrieving mechanism to the hose and the hose nozzle valve.

165:25-2-72. Dispenser hose

(a) Listed hose assemblies must be used to dispense fuel.

(1) Hose length at ~~automotive service stations~~ facilities must not exceed 18 feet (18', or 5.5 m).

(2) Hose at ~~retail~~ facilities must be checked daily for evidence of blistering, carcass saturation or separation, cuts, nicks or abrasions that expose reinforcement material and for slippage, misalignment or leaks at couplings.

(3) Two lengths of hose must not be coupled together.

(b) Defective hoses must be removed from service.

(c) At least once each month the hose must be completely extended and inspected.

(1) The hose couplings and the first twelve inches (12") of hose adjacent to the couplings must be examined.

(2) Structural weakness must be checked by pressing the hose in the area around its entire circumference for soft spots.

(3) Hoses that show evidence of soft spots must be removed immediately.

165:25-2-77. Electrical equipment

(a) All electrical work must be installed by a state or federally licensed electrical contractor.

(b) All electrical wiring and electrical utilization equipment must be of a type specified by and must be installed in accordance with NFPA 70, National Electrical Code.

(c) All electrical wiring and electrical utilization equipment must be suitable for the locations in which they are installed.

(d) NFPA 30A regulations should be used to delineate and classify areas for the purpose of installation of electrical wiring and electrical utilization equipment. The designation of classes and divisions of classified locations is defined in Chapter 5, Article 500, of NFPA 70, National Electrical Code.

(e) Electrical wiring and electrical utilization equipment integral to the dispensing hose or nozzle must be suitable for use in Class I, Division 1 classified locations.

(f) Where Class I liquids are stored, handled, or dispensed, electrical wiring and electrical utilization equipment must be designed and installed in accordance with the requirements for Class I Division 1 or 2 classified locations, set forth in NFPA 70, National Electrical Code.

(g) Clearly identified and easily accessible switch(es) or circuit breaker(s) must be provided at a location remote from dispensing devices, including remote pumping systems, to shut off the power to all dispensing devices in the event of an emergency.

(h) Electrical components for dispensing liquids must be installed according to the guidelines established in Electrical Installations of NFPA 30A. All electrical equipment must be installed and used in accordance with the requirements of NFPA 70, National Electrical Code, as it applies to wet, damp, and hazardous locations.

(i) Electrical equipment that was installed in compliance with a state or national code in existence before July 15, 2002 will not be required to change unless the equipment is hazardous to people or property ~~in the vicinity~~.

SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION REQUIREMENTS

PART 1. RELEASE PROHIBITION AND DETECTION REQUIREMENTS

165:25-3-1. Release prohibition

The intentional release of regulated substances from an underground storage tank or system is strictly prohibited. No

person shall knowingly allow a confirmed or suspected release of regulated substances from an underground storage tank or system to continue without investigation and reporting as required by this Chapter. Owners and operators of underground storage tank systems, as well as persons who transport regulated substances must ensure that spills and overfills do not occur.

165:25-3-5.3. Testing or monitoring for vapors

(a) Before installing a new vapor monitoring system or continuing to use an existing vapor monitoring system for monthly release detection a site-specific site assessment must be conducted to determine the following:

(1) The exact location and total depth of the tank(s) and piping to avoid damage to the UST system during well installation and to determine the number and placement of wells.

(2) That the backfill is sufficiently porous to allow diffusion of vapors from a release to migrate readily to the monitoring wells (i.e., sand, pea gravel or crushed rock).

(3) That background levels of contamination or naturally occurring organic hydrocarbons are low enough to allow a release from the tank(s) or piping to be detected. To determine background concentrations, a temporary vapor well can be installed in the UST excavation area and the device that will be used for monitoring can be used to get an initial reading.

(4) The location and historical levels of groundwater at the site. If the backfill is saturated with water, because of a perched water table, fluctuating water table, rainfall, etc., a vapor monitoring system should not be used because dispersion of vapors would be restricted and a release could go undetected.

(5) Volatility of the stored product and its compatibility with the monitoring device that will be used.

(b) Individuals performing this site assessment must be a Commission Licensed Remediation Consultant.

(c) The vapor monitoring wells must be installed within the tank excavation and/or piping trench backfill. ~~In the tank excavation, wells must be spaced to cover a maximum 20-foot radius of influence. If a one tank installation requires only one well, it should be installed on the downgradient side of the excavation. For multiple tank installations or where more than one well is installed, at least one of the wells should be placed on the downgradient side of the excavation~~. A minimum of 2 wells is recommended for multi-tank excavations. Wells must be spaced to cover a maximum 20-foot radius. One well may be acceptable for single tanks of 3,000 gallons or less capacity, or for not more than 2-2,000 gallon tanks in one excavation provided the well is near the center of the excavation.

(d) In piping trenches, vapor monitoring wells must be placed at all piping joints and where piping changes direction, and be spaced to cover a maximum 20-foot radius of influence. A well must also be placed at each dispenser island, in backfill material and in a location least likely to be impacted by a surface spill caused by vehicle overfilling.

(e) Monitoring wells must be installed in accordance with OAC 785:35, Oklahoma Water Resources Board (OWRB), Well Driller and Pump Installer Licensing. OWRB rules allow an OCC-licensed UST Installer to install monitoring wells during tank installations only. An OWRB-licensed driller must perform all other well installations.

(f) In addition to 165:25-3-5.3(e), vapor monitoring wells must meet these minimum requirements:

(1) Be constructed from two- or four-inch polyvinyl chloride (PVC) or stainless steel casing with factory milled 0.01-inch well screen.

(2) The well screen section should begin approximately two-feet below ground surface (bgs) for tank excavations and one-foot bgs for piping trenches. The well screen must extend to a depth of two feet below the tank bottom and/or piping.

(3) A filter pack of graded gravel or uncontaminated quartz sand, silica, or other material that will not affect the groundwater quality must be placed around the entire length of the well screen.

(4) The area above the well screen must be sealed (annular seal) to prevent surface spills from contaminating the well, which would result in a false indication of a release. An anti-shrink concrete or grout seal must extend at least 12 inches from within the monitoring well manhole. The remainder of the well above the well screen must be sealed with a cement-bentonite mixture or bentonite pellets.

(5) A concrete or cement surface pad must be installed around the casing at the surface with minimum dimensions of 3 feet in diameter by 3.5 inches thick. The surface pad must be sloped so to ensure that all surface water flows away from the well. The surface pad is not required if the well is completed in competent concrete or asphalt paving.

(6) The well(s) must be installed within manholes competent to withstand ~~the~~ anticipated traffic flow. The well casing must be secured with a tight fitting cap and the manhole cover bolted to prevent unauthorized tampering. The manhole cover must be clearly marked with an equilateral triangle to identify the well as a monitoring well or site assessment observation well.

(g) Records demonstrating compliance with this Section must be submitted to the Petroleum Storage Tank Division before a new vapor monitoring system may be used or before an existing vapor monitoring system may continue to be used after ~~June~~ July 15, 2005. At a minimum, these records must include a site map that includes the location of tanks, piping, dispensers and all monitoring wells, copies of the OWRB Multi-Purpose Completion Report for each well, name of the company and individual performing the assessment.

(h) All vapor monitoring wells must be checked by a licensed monitoring well technician.

(i) The vapor monitoring equipment must be designed and operated to allow the threshold level to be preset specifically for the type of regulated substance stored in the tank system and be capable of detecting any significant increase in the concentration of regulated substance, component or components of that substance or a tracer placed in the tank system above background levels.

~~(j) Vapor monitoring devices must be able to read in parts per million. If the device has a maximum recording level below 4,000 ppm, any well that causes the meter to reach its reading limit must be reported.~~

(~~k~~j) Monitoring well readings above 4,000 units/ppm for gasoline and above 1,500 ppm for diesel, or above 1,500 units/ppm for a tank pit containing both gasoline and diesel tanks, must be reported to the Commission by telephone at (405) 521-6575 or toll free at 1-888-621-5878 within 24 hours of the owner or operator or any of his or her employees knowing the reading.

(~~l~~k) An increase in vapor levels of 500 units/ppm above background or historical levels detected by monthly monitoring, even though below the 24-hour reporting level, must be reported if the increase does not correct itself in the second month of monitoring. The report must be made within 24 hours of the owner or operator or any of his or her employees knowing the second month's monitoring results.

(~~m~~l) If a monitoring report under the circumstances above is not made within 24 hours, the owner or operator must be prepared to show documentation or evidence that would reasonably indicate his or her knowledge of monitoring results or release conditions was delayed.

165:25-3-5.4. Testing or monitoring for liquids on the groundwater

(a) Before installing a new groundwater monitoring system, or continuing to use an existing groundwater monitoring system for monthly release detection a site-specific site assessment must be conducted to determine the following:

(1) The exact location and total depth of the tank(s) and piping to avoid damage to the UST system during well installation and to determine the number and placement of wells.

(2) That the backfill is sufficiently porous to allow migration of product from a release to the monitoring wells (i.e., sand, pea gravel or crushed rock).

(3) That background levels of contamination or naturally occurring organic hydrocarbons are low enough to allow a release from the tank(s) or piping to be detected. Groundwater monitoring may not be effective if the site has had prior spills or releases. If residual free product is discovered, it must be removed prior to initiating groundwater monitoring.

(4) The location and historical levels of groundwater at the site. Groundwater monitoring cannot be used if the water table is less than three feet below ground surface or more than 20 feet below ground surface.

(5) Fluctuation of groundwater. The well screen must intercept the water table at both high and low elevations. Free product floating on top of the water surface cannot enter a well if the water level is higher than the well screen, nor can free product enter a well if the water level is below the bottom of the well screen. It must be determined that groundwater conditions are such that a release would not go undetected.

(6) The stored product's compatibility with the monitoring device that will be used. The detection device must be able to detect the presence of at least one-eighth of an inch of free product on top of the groundwater in the monitoring wells. Groundwater monitoring is only effective if the stored product is lighter than water (i.e., has a specific gravity less than 1.0), which allows the product to float on the water surface. The stored product must not be soluble in water. Products that are highly soluble in water would not be detected as a separate liquid phase.

(b) Individuals performing this site assessment must be Commission licensed remediation consultants.

(c) The groundwater monitoring wells must be installed in the tank excavation and/or piping trench backfill. ~~In the tank excavation, wells must be spaced to cover a maximum 20-foot radius of influence. If a one tank installation requires only one well, it must be installed on the downgradient side of the excavation. For multiple tank installations or where more than one well is installed, at least one of the wells must be placed on the downgradient side of the excavation.~~

~~(d) In piping trenches, groundwater monitoring wells must be placed at all piping joints and where piping changes direction, and be spaced to cover a maximum 20-foot radius of influence. A well must also be placed at each dispenser island, in backfill material and in a location least likely to be impacted by a surface spill caused by vehicle overfilling.~~ Two wells may be sufficient for single tanks of 3,000 gallons or less capacity or for not more than 2-2,000 gallon tanks in one excavation. For multiple tanks, a minimum of 3 wells must be installed with at least one of the wells placed on the downgradient side. A sufficient number of wells must be installed so that the entire UST system is covered. Under normal circumstances, groundwater monitoring on piping runs would not be appropriate due to the depth to groundwater and the time required to detect a leak.

(~~e~~d) Monitoring wells must be installed in accordance with OAC 785:35, Oklahoma Water Resources Board (OWRB), Well Driller and Pump Installer Licensing. OWRB rules allow a Commission licensed UST Installer to install monitoring wells during tank installations only. An OWRB-licensed driller must perform all other well installations.

(~~f~~e) Groundwater monitoring wells must meet these minimum requirements:

(1) Be constructed from two- or four-inch polyvinyl chloride (PVC) or stainless steel casing with factory milled 0.01-inch well screen.

(2) The well screen section should begin approximately two-feet below ground surface (bgs) for tank excavations and one-foot bgs for piping trenches. The well screen must extend to a depth of two feet below the tank bottom and/or piping.

(3) A filter pack of graded gravel or uncontaminated quartz sand, silica, or other material that will not affect the groundwater quality must be placed around the entire length of the well screen unless the tank and/or piping is backfilled with pea gravel.

(4) The well screen must terminate at least 18-inches below ground surface. The area above the well screen must be sealed (annular seal) to prevent surface spills from contaminating the well, which would result in a false indication of a release. An anti-shrink concrete or grout seal

must extend at least 12 inches from within the monitoring well manhole. The remainder of the well above the well screen must be sealed with a cement-bentonite mixture or bentonite pellets.

(5) A concrete or cement surface pad must be installed around the casing at the surface with minimum dimensions of 3 feet in diameter by 3.5 inches thick. The surface pad must be sloped so to ensure that all surface water flows away from the well. The surface pad is not required if the well is completed in competent concrete or asphalt paving.

(6) The well(s) must be installed within manholes competent to withstand the anticipated traffic flow. The well casing must be secured with a tight fitting cap and the manhole cover bolted to prevent unauthorized tampering. The manhole cover must be clearly marked with an equilateral triangle to identify the well as a monitoring well or site assessment observation well.

(~~g~~f) Records demonstrating compliance with this Section must be submitted to the Petroleum Storage Tank Division before a new groundwater monitoring system may be used or before an existing groundwater monitoring system may continue to be used after July 15, 2005. At a minimum, these records must include a site map that includes the location of tanks, piping, dispensers and all monitoring wells, copies of the OWRB Multi-Purpose Completion Report for each well, name of the company and individual performing the assessment.

(1) Any indication of free product floating on the water table must be reported to the Commission by telephone at (405) 521-6575 within 24 hours of the owner or operator or any of his or her employees discovering the product.

(2) If a monitoring report under the circumstances of (g) (1) above is not made within 24 hours, the owner or operator must be prepared to show documentation or evidence that would reasonably indicate his or her knowledge of the existence of free product was delayed.

(~~h~~g) All groundwater monitoring wells must be checked by a licensed monitoring well technician.

165:25-3-6. Monitoring requirements for piping

Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets ~~one of~~ the following requirements:

(1) **Pressurized piping.**

(A) Underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector installed and in operation in accordance with this Chapter.

(B) ~~Installations with automatic line leak detectors~~ New installations and facilities replacing a piping system must ~~also~~ have at least one sump sensor, float or similar mechanical device at each submersible pump, or at the lowest sump at the lowest island for each tank, whichever is at the lowest end of the piping gradient.

(C) ~~Installations~~ New installations and facilities replacing a piping system must have double-walled piping. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs.

(D) The underground ~~satellite~~ pressure piping from the master dispenser to the satellite must be designed and installed so that the satellite piping is tested by the automatic line leak detector. An annual line tightness test is required on the satellite underground piping.

(2) **Suction piping.** Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every 3 years by a certified tester, or use a monthly monitoring method conducted in accordance with this Chapter. No release detection is required for suction piping designed and constructed to meet the following standards:

(A) The below-grade piping operates at less than atmospheric pressure.

(B) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released.

(C) Only one check valve is included in each suction line.

(D) The check valve is located directly below and as close as is practical to the suction pump.

(3) **Methods of release detection for pressurized piping.** Each method of release detection for piping must be done in accordance with the following requirements.

(A) **Automatic mechanical line leak detectors and annual line tightness testing.**

(i) Methods which alert the owner and/or operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 psi line pressure within 1 hour.

(ii) An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements.

(iii) Automatic line leak detectors installed on or after September 22, 1991 must be capable of detecting the leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(iv) A hydrostatic line tightness test must be done annually by a certified tester in accordance with this ~~Chapter unless one of the following requirements are met~~ chapter.

(B) **Sump sensors.**

(i) Sump sensors, floats or similar mechanical devices at each dispenser and tank sump may be used in lieu of annual line tightness testing.

(ii) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors must also be checked monthly to insure that they are operational.

~~(ii) Installations with automatic line leak detectors must also have at least one sump sensor, float or similar mechanical device installed at each~~

~~submersible pump or at the lowest sump at the lowest island for each tank, whichever is at the lowest end of the piping gradient.~~

(C) **Electronic line leak detection.** A certified electronic line leak detector may be used in lieu of an automatic mechanical line leak detector and annual tightness test only if:

(1) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and

(2) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every month; and

(3) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually, AND the system is tested annually, and if necessary, calibrated in accordance with manufacturer's specifications.

(D) **Monthly vapor ~~or groundwater~~ monitoring.** Monthly vapor ~~or groundwater~~ monitoring may be used in lieu of an annual line tightness test only if the vapor ~~or groundwater~~ monitoring system is installed and monitored in accordance with 165:25-3-5.3 for vapor monitoring ~~or 165:25-3-5.4 for groundwater monitoring~~.

(E) **Other methods applicable to tanks and lines.** Any of the acceptable methods for tanks listed in Subchapter 3 of this Chapter (Vapor monitoring~~,~~ ~~groundwater monitoring,~~ and interstitial monitoring for double-walled piping and tanks) may be used in lieu of annual line tightness testing if it is designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

PART 2. RELEASE DETECTION REQUIREMENTS AND METHODS

165:25-3-7. Release reporting

(a) The reporting requirements of this Part do not relieve the owner or operator of the responsibility to take necessary corrective action pursuant to OAC 165:29, the Commission's Rules on Remediation, to protect the public health, safety and the environment, including the containment and cleanup of spills and overfills that are not required to be reported by this Chapter.

(b) All underground storage tank system owners, operators, their employees or agents, or transporters must report any of the following events to the Commission by telephone at (405) 521-6575 or toll free at 1-888-621-5878 (if after hours or on weekends or holidays, a detailed message must be left on the Commission's answering machine) within 24 hours of knowing of any of the following situations. Owners or operators must provide written confirmation to follow within 20 days in accordance with the requirements established in this Chapter.

(1) The discovery of released regulated substances at the underground storage tank system facility or in the surrounding area (such as the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water).

(2) Any unusual operating conditions observed by owners and/or operators, such as the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the underground storage tank system, or an unexplained presence of water in the tank, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced.

(A) In the case of inventory control, two consecutive months where the Total Gallons Over/Short is greater than the "Leak Check" (1 percent of product sales plus 130 gallons) must be reported to the Commission within 24 hours of the owner or operator knowing the inventory control results.

(B) Any UST system failure from a third party-certified Statistical Inventory Reconciliation (SIR) analysis must be reported to the Commission within 24 hours of the owner or operator knowing of the failure. An immediate investigation into the cause of the failed report must be conducted and results reported to the Commission within 7 days.

(C) An "Inconclusive" report from an SIR monthly analysis must be reported within 24 hours of the owner or operator knowing of the report. An Inconclusive means that the UST system has failed to meet leak detection requirements for that month.

(3) An unusual level of vapors on the site that is of unknown origin. A vapor monitor well reading in excess of 4,000 units/ppm from a pit containing gasoline tanks, and in excess of 1,500 units/ppm for a pit containing diesel or both gasoline and diesel, must be reported to the Commission within 24 hours of the owner or operator or any of his or her employees at the facility knowing the monitoring results. Within 10 days, the owner or operator must submit to the Commission all vapor monitoring well data, including background data, for the last 12 months. Upon examination of the submitted data, the Commission will advise the owner or operator what action, if any, he or she needs to take. When a 1,500 units/ppm reading is reported, the Petroleum Storage Tank Division will perform a preliminary investigation at its own expense prior to opening a cleanup case; if it finds no reason to open a case, the owner or operator is not liable for any expenses.

(4) An increase in vapor levels of 500 units/ppm above background or historical levels detected by monthly monitoring, even though below the 24-hour reporting level, must be reported if the increase does not correct itself in the second month of monitoring. It must be reported to the Commission within 24 hours of the owner or operator or any of his or her employees at the facility knowing the monitoring results.

(5) Monitoring results from a release detection method required by this Chapter that indicate a release may have occurred unless the monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.

(c) While aboveground releases of petroleum of less than 25 gallons need not be reported, they must be recorded by the

owner or operator and contained and cleaned up immediately. All of the following releases must be reported by telephone within 24 hours of discovery, with a written confirmation to follow within 20 days in accordance with the requirements established in this Chapter:

(1) All known belowground releases in any quantity; for example, a release resulting from a line broken during an excavation.

(2) Any aboveground release of petroleum greater than 25 gallons.

(3) Any aboveground release of petroleum which is less than 25 gallons, but cannot be contained and cleaned up within 24 hours.

(d) All owners and/or operators of underground storage tank systems must maintain records of all reportable and nonreportable events listed in this section sufficient to permit adequate inspection and review by the Commission. These records must be kept for 3 years following the date of the event.

(e) If any of the possible, probable or definite release conditions in subsections (a) through (c) above are not reported within 24 hours, the owner or operator must be prepared to provide documentation or evidence that would reasonably indicate his or her knowledge of release conditions or monitoring results was delayed.

PART 3. RELEASE REPORTING REQUIREMENTS

165:25-3-8. Release investigation and confirmation

(a) This Section applies to the investigation of all reportable releases unless the Commission's staff~~, in the exercise of common sense,~~ specifically waives any part of this Section in writing.

(b) Owners and/or operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under this Chapter within 7 days of receipt of notice from the Commission, using the following steps or another procedure approved by the Commission:

(1) **System test.** Owners and/or operators must conduct tests (according to the requirements for tightness testing in this Chapter) that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping, or both.

(A) Owners and/or operators must repair, replace, or upgrade the underground storage tank system and begin investigation in accordance with (b)(2) of this Section if the test results for the system, tank, or delivery piping indicate that a leak exists.

(B) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and ~~if indicator~~ chemical concentrations of regulated substances detected in soil or water are not the basis for suspecting a release.

(C) Owners and/or operators must conduct a site check as described in (b)(2) of this Section if the test results for the system, tank and delivery piping do not indicate that a leak exists but ~~indicator chemical~~ indicate concentrations of regulated substances detected in soil or water are above action levels cited in (c).

(2) **Site check.** Owners and/or operators must measure for the presence of a release where released chemicals are most likely to be present at the underground storage tank system site. In selecting sample types, sample locations, sample depths, and measurement methods, owners and/or operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Sample locations should be approximately 5 feet (5') from the outside of the UST system in native soil or another location approved by the Commission. Analyses for both BTEX constituents and the appropriate TPH must be obtained in all cases. For sites where used oil may be involved, as determined through a TPH analysis, TCLP analysis for metals, semi-volatiles, and volatiles will be required. The TCLP results will be used on a case-by-case basis to establish cleanup levels or to refer the case to the Oklahoma Department of Environmental Quality for regulation. The selected method must be able to detect the most stringent cleanup levels required in this Chapter. The Total Petroleum Hydrocarbon (TPH) Laboratory Methodology 418.1 will not be accepted for this Chapter.

(A) If the test results for soil and/or groundwater taken outside the excavation zone or the underground storage tank system site confirm that a release has occurred, owners and/or operators must begin corrective action in accordance with OAC 165:29, the Commission's Rules on Remediation.

(B) If the test results for the native soil and/or groundwater or the underground storage tank system site do not indicate that a release has occurred, further investigation is not required.

(c) Levels of chemical constituent concentrations that ~~shall~~ may confirm a release at the direction of the Commission are:

(1) Benzene
- (A) Native Soils - 0.5 mg/kg
- (B) Groundwater - 0.005 mg/l

(2) Toluene
- (A) Native Soils - 40.0 mg/kg
- (B) Groundwater - 1.0 mg/l

(3) Ethyl Benzene
- (A) Native Soils - 15.0 mg/kg
- (B) Groundwater - 0.7 mg/l

(4) Xylene
- (A) Native Soils - 200.0 mg/kg
- (B) Groundwater - 10.0 mg/l

(5) TPH
- (A) Native Soils - 50.0 mg/kg
- (B) Groundwater - 2.0 mg/l
- (C) If BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil shall be required to confirm a case at the direction of the ~~commission~~ Commission.

(d) Within 20 days after the reporting of a release, the owner and/or operator must submit a report to the Commission summarizing the steps taken under (a) of this Section and any resulting information or data. If a release is confirmed through performance of the steps taken under this Section, then the report must be submitted in accordance with a format established by the Commission, after which a remediation may be undertaken under the provisions of Chapter 29.

PART 9. LICENSING OF UNDERGROUND STORAGE TANK INSTALLERS

165:25-3-50. Licensing procedure for UST Installers

(a) Any individual who would like to become a licensed UST Installer must:

(1) Complete an application form prepared by the Commission.

(2) Provide sufficient proof of two years related work experience, with confirmed active participation in the completion of at least three installations. If applicant is a current UST installer license holder in another state, the work experience may be substituted for each confirmed year he or she held the license.

(3) The individual must pass an examination administered by the Commission.

(4) Installers must pay fees for applications, examinations, and licensing according to the schedule provided in OAC 165:5, the Commission's Rules of Practice.

(5) Installers must also certify that they will comply with all Commission rules and requirements for underground storage tanks.

(b) All examinations and licensing procedures must be completed within one (1) year of approval of the application. Failure to complete will result in forfeiture of fees and will require a new application and appropriate fees.

(c) Continuing education is required to maintain a UST Installer license; this consists of four hours of continuing education through a Commission-accredited program every two years.

(d)The Commission has the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any underground storage tank installer who is found guilty of:

(1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.

(2) Any gross negligence, incompetence or misconduct in installation work performed pursuant to this Chapter.

(3) Knowingly making false statements or signing false statements, certificates or affidavits to the Commission or to clients with the intention to induce payment.

(4) Aiding or assisting another person in violating any provision of this Chapter.

(5) Signing a verification statement for work performed pursuant to this Chapter that was not performed by the UST Installer.

(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.

(7) Failure to comply with this Chapter, Chapters 26, 27, 29 and the Oklahoma ~~Underground~~ Petroleum Storage Tank Regulation Act (17 O.S. § 301 et seq.) Oklahoma Petroleum Storage Tank Release Indemnity Program will result in the Commission being authorized to seek a suspension and/or revocation of the UST Installer license.

(8) If under indictment or convicted of any criminal offense.

(e) Prior to any license suspension, revocation, or refusal to renew, the Director of the Petroleum Storage Tank Division will have the matter investigated and a report made for his or her consideration. ~~If the Director elects to proceed with suspension, revocation, or refusal to renew, a Notice of Intent will be mailed to the licensee~~. If the Director elects to pursue suspension, revocation, or refusal to renew, the Commission will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of ~~clear and convincing~~ proof is substantial evidence of violations of this Chapter, ~~or~~ applicable state law, or incompetence and rests upon the Petroleum Storage Tank Division.

(f) This Section in no way exempts the UST Installer from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.

(g) After the effective date of these rules, UST Installers are no longer allowed to remove underground storage tanks and will be required to obtain a separate UST Remover license before they can remove underground storage tanks.

165:25-3-51. Licensing procedure for UST Removers

(a) Any individual who would like to become a licensed UST Remover must:

(1) Complete an application form prepared by the Commission.

(2) Provide sufficient proof of two years related work experience, with confirmed active participation in the completion of at least three (3) removals. If applicant is a current UST remover license holder in another state, the work experience may be substituted for each confirmed year he or she held the license.

(3) Pass an examination administered by the Commission.

(4) Pay fees for applications, examinations, and licensing according to the schedule provided in OAC 165:5, the Commission's Rules of Practice.

(5) Certify that they will comply with all Commission rules and requirements for removal of underground storage tanks.

(b) All examinations and licensing procedures must be completed within one (1) year of approval of the application. Failure to complete will result in forfeiture of fees and will require a new application and appropriate fees.

(c) Continuing education is required to maintain a UST Removers license; this consists of four hours of continuing education through a Commission approved program every two years.

(d)The Commission has the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any underground storage tank installer who is found guilty of:

(1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.

(2) Any gross negligence, incompetence or misconduct in removal work performed pursuant to this Chapter.

(3) Knowingly making false statements or signing false statements, certificates or affidavits to the Commission or to clients with the intention to induce payment.

(4) Aiding or assisting another person in violating any provision of this Chapter.

(5) Signing a verification statement for work performed pursuant to this Chapter that was not performed by the UST Remover.

(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.

(7) Failure to comply with this Chapter and the Oklahoma ~~Underground~~ Petroleum Storage Tank Regulation Act (17 O.S. § 301 et seq.) will result in the Commission being authorized to seek a suspension and/or revocation of the UST Remover license.

(e) Prior to any license suspension, revocation, or refusal to renew, the Director of the Petroleum Storage Tank Division will have the matter investigated and a report made for his or her consideration. If the Director elects to proceed with suspension, revocation, or refusal to renew, a Notice of Intent will be mailed to the licensee. If the Director elects to pursue suspension, revocation, or refusal to renew, the Commission will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of clear and convincing proof of violations of this Chapter or applicable state law rests upon the Petroleum Storage Tank Division.

(f) This Section in no way exempts the UST Remover from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.

PART 13. REMOVAL AND CLOSURE OF UNDERGROUND STORAGE TANK SYSTEMS

165:25-3-60. Tank removal and closure

(a) Owners and Operators of all underground storage tank systems must notify the Petroleum Storage Tank Division at least 14 days prior to the removal or permanent closure of underground storage tanks and/or lines. If events require ~~the owner to~~ a change in the date of removal, the Division ~~should~~ shall be given 48 hours notice of the new date.

(b) An authorized agent of the Commission may be present to observe the removal and to inspect the closed tank system and the surrounding environment prior to backfilling.

(c) Tanks and lines must be removed upon closure unless the ~~Petroleum Storage Tank Division~~ Commission grants a variance that allows the tanks to be closed in place by filling.

(d) All underground storage tanks must be removed by a licensed UST Remover.

(e) Any company that removes underground storage tank systems must have a licensed UST Remover on the job site during removal.

165:25-3-64. Permanent closure

(a) All permanent tank closures must be performed by a licensed UST Remover.

(b) All permanent tank closures must be completed by removing the tank and lines from the ground, unless the Commission ~~waives~~ grants a variance of this requirement and allows the ~~tank~~ tanks to be filled in place with inert material. ~~Generally, waivers will be granted only in situations where redevelopment of the property is unlikely, superficial contamination would pose no threat to people or the environment and removal would place an undue hardship upon the owner or threaten an existing structure.~~ A variance will only be granted by application, notice and hearing. The burden of proof rests on the person seeking a variance.

165:25-3-64.1. Underground storage tank removal

All underground storage tanks and/or lines must be removed by a licensed UST Remover who shall be at the job site at all times during the removal.

165:25-3-65. Assessing the site at closure or change in service

(a) Before permanent closure, or a change in service, or tank or line repair and/or replacement is completed, the owner must measure for the presence of a release where contamination is most likely to be present at the underground storage tank system site. The Commission, at its discretion, may have a witness present to verify that sampling is completed appropriately. Failure of the owner or the owner's representative to schedule the sampling 14 days in advance with the ~~Commission~~ PSTD and to advise ~~the Commission~~ PSTD at least 48 hours in advance of schedule changes, may result in the ~~Commission~~ PSTD requiring a post-closure site assessment, and Commission initiated enforcement.

(b) In selecting sample types, sample locations, and measurement methods, the owner must consider the method of closure, the nature of the stored substance, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence of a release. Sample locations should be outside of the UST system in native soil or another location approved by the Commission. All samples required to be collected and analyzed pursuant to this Section must be analyzed by an Oklahoma Department of Environmental Quality certified laboratory.

(1) For tank systems containing petroleum product, analyses must be done for both TPH and BTEX .

(2) Levels of contamination in native soils and groundwater that shall require further action, at the direction of the commission, are:

(A) Benzene

(i) Native Soils - 0.5 mg/kg

(ii) Groundwater - 0.005 mg/l

(B) Toluene

(i) Native Soils - 40.0 mg/kg
(ii) Groundwater - 1.0 mg/l
(C) Ethyl Benzene
(i) Native Soils - 15.0 mg/kg
(ii) Groundwater - 0.7 mg/l
(D) Xylene
(i) Native Soils - 200.0 mg/kg
(ii) Groundwater - 10.0 mg/l
(E) TPH
(i) Native Soils - 50.0 mg/kg
(ii) Groundwater - 2.0 mg/l
(iii) If BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil shall be required to confirm a case a the direction of the commission.

(c) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered, the owner must begin corrective action in accordance with OAC 165:29, the Commission's Rules on Remediation.

(d) ~~Any~~ All sampling at closures must be under the supervision of a ~~licensed~~ Licensed Remediation Consultant.

(e) Only soil and/or groundwater sampling results will be acceptable for site assessment at closure. Monitoring well records and/or inventory reconciliation records will not be accepted.

SUBCHAPTER 5. UPGRADES

165:25-5-1. Alternatives allowed

No later than December 23, 1998, owners of existing underground storage tank systems shall:

(1) Comply with the requirements for new underground storage tank systems under Subchapter 2 of this Chapter; or

(2) Comply with the upgrading requirements in 165:25-5-2; or

(3) Permanently close the underground storage tank system and take any necessary corrective action, in accordance with this Chapter.

165:25-5-2. Tank upgrading requirements

Existing steel tanks must be upgraded to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

(1) Interior lining. A tank may be upgraded by interior lining if:

(A) The tank is repaired in accordance with Subchapter 3, Part 11 of this Chapter and the liner is installed in recognized association or an independent testing laboratory.

(B) Within 10 years after lining and every 5 years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

(2) Cathodic protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets Commission requirements and the integrity of the tank is ensured using one of the following methods:

(A) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion.

(B) The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with Commission requirements.

(C) The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting 2 tightness tests that meet Commission requirements. The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between 3 and 6 months following the first operation of the cathodic protection system.

(D) The tank is assessed for corrosion holes by a method that is determined by the Commission to prevent releases in a manner that is no less protective of human health and the environment that (A), (B), or (C) of this paragraph.

(3) Internal lining combined with cathodic protection. A tank may be upgraded by both internal lining and cathodic protection if:

(A) The lining is installed in accordance with the requirements of Subchapter 2, Part 5 of this Chapter.

(B) The cathodic protection system meets Commission requirements.

(4) The following codes and standards may be used to comply with 165:25-5-2: API 1631, API 1632, NLPA 631, and NACE RP-0285.

165:25-5-3. Piping upgrading requirements

Metal piping of an existing underground storage tank system that routinely contains regulated substances and is in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet Commission requirements.

165:25-5-4. Spill and overfill prevention requirements

Existing underground storage tank systems shall be in compliance with the specific spill and overfill requirements by December 23, 1998.

SUBCHAPTER 6. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED BY AIRPORTS OPEN TO THE PUBLIC

PART 5. DISPENSER REQUIREMENTS

165:25-6-13. Dispenser hose

(a) Aircraft fueling hose that is frequently used must be inspected before use each day.

(1) The hose must be checked for evidence of blistering, carcass saturation or separation, cuts, nicks or abrasions that expose reinforcement material, and for slippage, misalignment or leaks at couplings.

(2) If coupling slippage or leaks are found, the cause of the problem must be determined.

(b) Defective hoses must be removed immediately from service.

(c) At least once each month the hose must be thoroughly inspected.

(1) The hose couplings and the hose must be examined for a length approximately 12 inches (12", or 305 mm) adjacent to the couplings.

(2) Structural weakness must be checked by pressing the hose in the area around its entire circumference for soft spots.

(3) Hoses that show evidence of soft spots must be immediately removed from service.

(4) The nozzle screens must be examined for rubber particles. The presence of rubber particles indicates possible deterioration of the interior, and the hose must be immediately removed from service.

(5) A hose assembly that has been subjected to abuse, such as severe end-pull, flattening or crushing by a vehicle, or sharp bending or kinking, must be immediately removed from service.

(6) If inspection shows that a portion of a hose has been damaged, the hose must be immediately replaced. Two lengths of hose must not be coupled together.

(7) Before any hose assembly is placed in service, it must be visually inspected for evidence of damage or deterioration.

(8) Kinks or short loops in fueling hose must be avoided.

SUBCHAPTER 8. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED BY MARINAS

PART 3. PIPING REQUIREMENTS

165:25-8-5. Underground piping materials

(a) All underground product piping ~~at new facilities and all underground suction piping~~ at existing facilities must be installed or upgraded before the deadline date of July 15, ~~2005~~ 2007 as follows:

(1) Non-metallic;

(2) Double-walled;

(3) A tracer locator wire must be installed in all piping trenches; and

(4) Dispenser and piping transition sumps must be installed and monitored with sensors.

(b) Existing facilities that have metallic piping that fails due to corrosion or are replacing the piping system must upgrade all piping pursuant (a) above and come into full compliance with the rules of this Chapter and Subchapter immediately. If the metallic line fails due to corrosion, the line must be immediately removed, and cannot be reused.

165:25-8-7. Aboveground piping at marinas

All aboveground product piping ~~at new facilities and all aboveground product piping~~ at existing facilities before the deadline date of July 15, ~~2005~~ 2007 must be installed or upgraded as follows:

(1) The design, fabrication, assembly, test and inspection of the piping system from the fuel tank to the fuel dispensers must be in accordance with NFPA 30, NFPA 30A, and the piping manufacturer's installation recommendations and instructions. Piping must be listed and approved by the manufacturer for aboveground installations.

(2) A water tight transition or piping sump must be buried and installed as close as practical to the shore line as a transition from ~~underground piping to aboveground piping~~ onshore to over-water piping. A sufficient amount of concrete should be poured over the transition sump to keep it from floating if the sump is installed below the flood plain. There should be a normally closed explosion proof solenoid valve and pressure relief valve installed in each product line inside the transition sump. If a pressure system is used, all sensors should automatically control the electricity to both the solenoid valve and submerged pump. If a suction system is used, all sensors should automatically control the electricity to both the solenoid valve and suction pump motor.

(3) Piping at all hinge locations must be installed according to the double wall piping manufacturer recommendations. The dock or ramp piping must be designed and installed at least level but preferably with a slope between sumps in order to eliminate any air pockets in the piping and also to insure that any leakage into the interstice piping will drain into the sumps. Due to the constant movement of the water and the floating dock, piping shall be installed with proper support and strain relief in order to eliminate the physical stress on the piping and piping connections. Fuel piping and electrical conduit shall be rigidly attached to the dock before the piping enters the sump area, in order to prevent strain on the sump entry boots and primary pipe fittings.

(4) All marina floating docks and pier installations must have double-walled piping and either stainless steel or fiberglass clad steel sumps with monitoring sensors that automatically control the electricity to the pumping device and solenoid valves.

(5) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point shall be installed on each line serving the dock. The breakaway device shall be installed at the point that the dock piping will separate from the shore or secured ramp piping. The piping shall be secured at both ends of the breakaway

device so that the piping will withstand the forces and pressures exerted upon it.

(6) All aboveground piping and system components must be protected from being damaged by fire, collision and abrasion.

(7) All flexible piping installed aboveground, on the dock or ramp shall be a metallic ducted flexible double wall system or an approved double wall piping system installed inside a metal conduit or chase.

(8) All piping installed above the water on the dock shall be installed inside a metal conduit or chase for the purpose of eliminating sagging in the piping thus assuring that any leak in the piping interstice will drain into the sumps.

165:25-8-8. Installation and monitoring requirements for piping

All piping that routinely contains regulated substances must be monitored for releases in a manner that meets the following requirements:

(1) **Pressurized piping.**

(A) All piping that conveys regulated substances under pressure must be equipped with an automatic mechanical or electronic line leak detector installed and in operation.

(B) Aboveground dock piping systems upgraded before the deadline date of July 15, ~~2005~~ 2007, must have double-walled piping and dispenser, piping or transition sumps. Each sump shall be monitored with a sensor, float or similar mechanical device and automatically control the electricity to both the solenoid valve and submerged pump. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs. However, the interstitial piping boot on the piping leaving the piping sump located on shore as in 165:25-8-7(b) must be kept sealed in order to eliminate any leakage from leaving that sump and allowed to enter the dock dispenser or piping sumps.

(2) **Suction piping.** Aboveground dock piping systems upgraded before the deadline date of July 15, ~~2005~~ 2007, must have double-walled piping and pump, piping and transition sumps. Each sump shall be monitored with a sensor, float or similar mechanical device at each sump and automatically control the electricity to both the solenoid valve and suction pump motor. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs. However, the interstitial piping boot on the piping leaving the piping sump located on shore as in 165:25-8-7(b) must be kept sealed in order to eliminate any leakage from leaving that sump and allowed to enter the dock dispenser or piping sumps.

(3) **Methods of release detection for pressurized piping.** The method of release detection for pressurized piping must be done in accordance with the following requirements:

(A) **Automatic mechanical line leak detectors and annual line tightness testing.** Methods which alert the owner and/or operator to the presence of a leak by restricting or shutting off the flow of regulated substances through the piping may be used only if they detect leaks of 3 gallons per hour at 10 psi line pressure within 1 hour. An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements. Automatic mechanical line leak detectors installed on or after September 22, 1991 must be capable of detecting the leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05. A hydrostatic line tightness test must be done annually by a certified tester in accordance with this Chapter in addition to any other line leak detection method; and

(B) **Sump sensors.** Sump sensors, floats or similar mechanical devices at each dispenser, piping and transition sump shall also be used in addition to automatic line leak detectors. The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors must also be checked monthly to insure that they are operational.

(C) **Alternative to automatic mechanical line leak detector and annual line tightness testing.** A certified electronic line leak detector may be used in lieu of an automatic mechanical line leak detector and annual line tightness test only if:

(i) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and

(ii) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every month; and

(iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually, and the system is tested annually in accordance with manufacturer's specifications.

(4) **Methods of release detection for suction piping.** The method of release detection for suction piping must be done in accordance with the following requirement:

(A) **Sump sensors.** Each sump shall be monitored with a sensor, float or similar mechanical device and automatically control the electricity to both the solenoid valve and suction pump motor. The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors must also be checked monthly to insure that they are operational.

PART 9. DISPENSING PROCEDURES

165:25-8-29. Attendants at marinas

~~Each marine service station must~~ Marinas may have an attendant or supervisor on duty when the ~~station~~ marina is open for business. The attendant's primary function will be

to supervise, observe, and control the dispensing of fuels to ensure that all safety requirements are met, and to ensure that the waters of the state are not contaminated by fuel.

PART 11. MISCELLANEOUS SAFETY REQUIREMENTS

165:25-8-36. Fire extinguishers

(a) Each marina must be provided with listed fire extinguishers that have a minimum capability of ~~40:BC~~ 40 pounds, Class B,C.

(b) A minimum of two extinguishers must be located at the fuel dock, and one or more must be located within 100 feet (100', or 30 m) of each pump, dispenser, underground fill pipe opening and lubrication or service room.

(c) Where practical, there should be a frost-proof water hydrant with a minimum of five-eighths inch (5/8") diameter hose on the fuel dock. Piers that extend more than 500 feet (500', or 152 m) in travel distance from shore must have a Class III standpipe installed in accordance with NFPA 14, Standard for the Installation of Standpipe and Hose Systems.

(d) There must be a knife readily accessible at the fuel dock for quickly cutting mooring lines in an emergency and a push pole for shoving away a boat.

SUBCHAPTER 18. INSPECTIONS, NOTICES OF VIOLATION~~, WARNING~~ AND ~~FINE~~ CITATIONS ~~AND PENALTIES~~

PART 3. NOTICES OF VIOLATION ~~AND WARNING~~ AND ~~FINE~~ CITATIONS

165:25-18-10. ~~Purpose~~ Notices of Violation~~, Warning Citations~~ and ~~Fine~~ Citations

The purpose of this Section is to create a procedure that allows the Commission's Petroleum Storage Tank Division Fuel Specialists to issue Notices of Violation (NOVs); and for the Manager of Inspection and Compliance to issue citation(s) for any violation(s) found during Fuel Specialists' onsite inspections of storage tank systems and facilities ~~that are not corrected within the time limit given by the Fuel Specialist in the NOV~~. The issuance of a Notice of Violation or citation will allow petroleum storage tank owners and operators to quickly address and correct storage tank violation(s) ~~without having to go to court at the Commission~~.

165:25-18-11. Notices of Violation

(a) When a Petroleum Storage Tank Division Fuel Specialist finds a violation of any rule or order of the Commission regarding the regulation of petroleum storage tanks, the Fuel Specialist may issue a Notice of Violation (NOV) pursuant to Appendix S.

(1) A Notice of Violation is to alert the tank owner or operator that a violation has been found. The NOV will describe the violation and ~~act as a warning~~ advise that further Commission enforcement action ~~will~~ may occur ~~if the violation is not corrected~~.

~~(2) There are some violations that are not eligible for a warning. For these violations, a Fine Citation will be issued to the tank owner or operator.~~

(~~3~~2) In all situations where an NOV is issued, it must explain to the person to whom it is given what the offense is and how the person can correct it.

(b) Notices of Violation will state the following information:

(1) A clear description of the violation(s).

(2) A date by which the violation(s) must be corrected.

(3) The name of the Fuel Specialist issuing the NOV, along with a telephone number and address so that the tank owner or operator can ask the Fuel Specialist questions.

(c) A Fuel Specialist will give the NOV(s) to the owner or operator of the storage tank facility, if he or she is at the facility. If the owner or operator is not present, managers at the storage tank facility can be given NOVs.

(d) The Fuel Specialist will mail or fax a copy of all NOVs to any facility's corporate office at that company's request. The company must make a request in writing to the Manager of Inspection and Compliance of the Petroleum Storage Tank Division.

165:25-18-12. Re-inspection and Fine Citation

(a) On or after the date that the violation is to be corrected, a Fuel Specialist will re-inspect the storage tank facility to verify that the violation has been corrected.

(b) If the re-inspection shows that the violation has not been corrected, the Fuel Specialist may:

(1) Issue a new NOV and refer ~~Refer~~ the violation to the ~~Commission's~~ Inspection and Compliance Manager for enforcement action; and/or

(2) If the storage tank facility constitutes an immediate hazard, it may be shut down pending a correction of the problem or a Commission hearing on the issue.

165:25-18-13. Payment of fine or hearing

(a) The storage tank owner or operator can either pay the amount of the fine as stated in the Fine Citation or request an evidentiary hearing.

(b) The tank owner or operator will have thirty (30) days from the date the citation was issued to pay the fine.

(1) A fine may be paid with cash, a money order, or check. Any cash payment must be made at the Commission's cashier window. All checks must be made payable to the Oklahoma Corporation Commission - Petroleum Storage Tank Division. If sending payment through the mail, a copy of the citation must be sent with the payment to ensure proper credit.

(2) Payment of a fine within the 30-day timeframe will not be considered an agreement or disagreement with the citation.

(c) If the storage tank owner or operator disagrees with the citation, he or she ~~can~~ may have a hearing at the Commission.

(1) To request a hearing, the procedure as provided on the citation should be followed and must be made within seven (7) days from the date the citation was issued.

(2) The Commission will set a date for a hearing and will notify the tank owner or operator of the date and time of the hearing.

(3) If found guilty at the hearing, the tank owner or operator must pay the amount of the fine, as well as an administrative cost of $250.00.

(d) If a Fine Citation has not been paid within ninety (90) days of being issued or within ninety (90) days of a Commission order confirming the fine, the amount of the fine will double. Refusal to comply with an order of the Commission may result in an additional fine ~~to be set~~ being levied after notice and hearing in an amount as allowed by law, and shutdown of the facility for failure to pay fines.

(e) Failure of a tank owner or operator to appear at the hearing will result in additional enforcement action. ~~These actions may include the addition of a larger fine and/or assessment of an administrative fee and/or having the violation sent to the Office of General Counsel for legal proceedings.~~

(f) An appeal from the ~~evidentiary~~ hearing must be to the Commission en banc in accordance with OAC165:5.

(g) A tank owner or operator is still responsible for following the Commission's rules regarding petroleum storage tanks regardless of paying a fine or correcting a violation.

PART 5. PENALTIES

165:25-18-19. Penalties

~~(a)~~ Pursuant to 17 O.S. § 306, any owner or operator of an underground storage tank system located within the State who violates any of the provisions of this Chapter may be issued a citation or may be subject to an administrative penalty not to exceed $10,000.00 for each day that the violation continues.

~~(b) 17 O.S. § 311 provides that any person who has been determined by the Commission to have violated any provisions of the Storage Tank Regulation Act or any rule promulgated or order issued pursuant to the provisions of the Oklahoma Storage Tank Regulation Act may be held liable for an administrative penalty of not more than $10,000.00 per day that the violation continues and 17 O.S. § 365(H) provides that owners or operators who fail to comply with any order issued by the Commission for corrective or enforcement action may be subject to an administrative penalty not to exceed $25,000.000 for each tank for each day of violation. Under this Chapter the Manager of Inspection and Compliance may issue citations under the authority of 17 O.S. § 306 and Part 5 of this Subchapter, but only the Corporation Commissioners can impose the larger fines allowed by 17 O.S. §§ 311 and 365 H.~~

[OAR Docket #05-1032; filed 5-26-05]

TITLE 165. CORPORATION COMMISSION CHAPTER 26. ABOVEGROUND STORAGE TANKS

[OAR Docket #05-1033]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
Part 1. Purpose and Definitions
165:26-1-2. Definitions [AMENDED]
Part 3. Scope of Rules
165:26-1-21. Overview of applicability [AMENDED]
Part 4. Administrative Provisions
165:26-1-28. Variances [AMENDED]
165:26-1-30.3. Licensing procedure for aboveground storage tank ~~installers~~licensee [AMENDED]
165:26-1-30.4. Fees [AMENDED]
Part 7. Notification and Reporting Requirements
165:26-1-41. General reporting requirements [AMENDED]
165:26-1-42. New tank systems [AMENDED]
165:26-1-44. Tank closure or change in service [AMENDED]
Subchapter 2. Installation, Repair and Removal
Part 1. Tank Design, Construction and Location
165:26-2-1. Approved tanks, tank design [AMENDED]
165:26-2-2. Emergency pressure release [AMENDED]
165:26-2-3. Aboveground storage tank spacing [AMENDED]
165:26-2-4. Distance to be kept around tanks [AMENDED]
165:26-2-5. Requirements on fill pipes [AMENDED]
165:26-2-6. Vent piping requirements [AMENDED]
165:26-2-7. Collision barriers [AMENDED]
Part 3. Secondary Containment
165:26-2-31. Double-walled tanks [AMENDED]
Part 5. Piping
165:26-2-53. Valves on piping [AMENDED]
165:26-2-54. Aboveground storage tank piping materials [AMENDED]
165:26-2-55. Underground piping materials [AMENDED]
165:26-2-56. Installation and monitoring requirements for piping [AMENDED]
Part 7. Vault Requirements
165:26-2-71. Vaults [AMENDED]
Part 9. Dispenser Requirements
165:26-2-92. Dispenser hose [AMENDED]
Part 15. Electrical
165:26-2-151. Electrical requirements [AMENDED]
Part 17. Installation of Aboveground Storage Tank Systems
165:26-2-171. Aboveground storage tank system installation [AMENDED]
Part 19. Repairs to Aboveground Storage Tank Systems
165:26-2-191. Repairs to aboveground tank systems [AMENDED]
Part 21. Removal and Closure of Aboveground Storage Tank Systems
165:26-2-213. Permanent closure [AMENDED]
165:26-2-214. Assessing the site at tank closure or change in service [AMENDED]
165:26-2-215. Requirements for returning to service [AMENDED]
Subchapter 3. Recordkeeping, Release Prevention, Detection, Investigation and Reporting
Part 3. Recordkeeping
165:26-3-11. Availability of records [AMENDED]
165:26-3-12. Repair records [AMENDED]
165:26-3-13. Tank installation, closure and removal records [AMENDED]
165:26-3-14. Release detection and corrosion protection records [AMENDED]
Part 5. Spill and Overfill Prevention Requirements
165:26-3-21. General spill and overfill prevention requirements [AMENDED]
Part 19. Release Reporting Requirements
165:26-3-191. Release reporting [AMENDED]
Subchapter 4. Inspections, Penalties and Field Citations
Part 1. Inspections
165:26-4-1. Owner/operator cooperation [AMENDED]
165:26-4-2. Authority of the Commission [AMENDED]

165:26-4-6. Exception and Variances [AMENDED]
Part 3. Penalties
165:26-4-10. Penalties [AMENDED]
Part 5. Notices of Violation~~, Warning Citations~~ and ~~Fine~~ Citations
165:26-4-16. Notices of Violation [AMENDED]
165:26-4-17. Re-inspection and ~~Fine~~ Citation [AMENDED]
165:26-4-18. Payment of fine or hearing [AMENDED]
Subchapter 6. Requirements for Aboveground Storage Tank Systems Utilized by Airports Open to the Public
Part 1. General Application and Compliance Provisions
165:26-6-1. Application [AMENDED]
165:26-6-2. Timeframes for registration and compliance with rules [AMENDED]
Part 15. Dispenser Requirements
165:26-6-61. Dispenser hose [AMENDED]
Subchapter 8. Requirements for Aboveground Storage Tank Systems Utilized by Marinas
Part 1. General Application and Compliance Provisions
165:26-8-1. Application
165:26-8-2. Timeframes for registration and compliance with rules [AMENDED]
Part 3. Tank Design, Construction, Capacity and Location Requirements
165:26-8-13. Location of aboveground storage tanks at marinas [AMENDED]
Part 9. Piping Requirements
165:26-8-40. Aboveground piping at marinas [AMENDED]
165:26-8-41. Installation and monitoring requirements for piping [AMENDED]
Part 15. Dispenser Requirements
165:26-8-62. Nozzles [AMENDED]
165:26-8-63. Dispenser location at marinas [AMENDED]
Part 19. Dispensing Procedures
165:26-8-80. Attendants at marinas [AMENDED]
Part 21. Miscellaneous Safety Provisions
165:26-8-86. Required signs [AMENDED]
165:26-8-88. Fire extinguishers [AMENDED]
Subchapter 10. Requirements for Aboveground Storage Tank Systems Utilized by Retail Facilities
Part 1. General Application and Compliance Provisions
165:26-10-1. Application [AMENDED]
165:26-10-2. Timeframes for registration and compliance with rules [AMENDED]
Subchapter 12. Requirements for Aboveground Storage Tank Systems Utilized at Fleet and Commercial Facilities
Part 1. General Application and Compliance Provisions
165:26-12-2. Timeframes for registration and compliance with rules [AMENDED]
Subchapter 14. Requirements for Aboveground Storage Tank Systems Utilized by Bulk Plant Facilities
Part 1. General Application and Compliance Provisions
165:26-14-1. Application [AMENDED]
165:26-14-2. Timeframes for registration and compliance with rules [AMENDED]
Subchapter 16. Requirements for Aboveground Storage Tank Systems Utilized by Emergency Generators
Part 1. General Application and Compliance Provisions
165:26-16-2. Timeframes for registration and compliance with rules [AMENDED]
Subchapter 18. Financial Responsibility
165:26-18-1. Applicability [AMENDED]
165:26-18-3. Evidence of financial responsibility [AMENDED]

AUTHORITY:
Oklahoma Corporation Commission; Article IX, Section 18, 19 Oklahoma Constitution; and17 O.S. § 301 *et seq.*; 27A O.S. §§ 1-1-201 and 1-3-101 *et seq.*

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None

INCORPORATIONS BY REFERENCE:
None

ANALYSIS:
OAC 165:26-1-2 concerning the definitions section is amended to include the following terms: "Agent", "Ancillary equipment", "ATG", "Backfill", "BTEX", Contaminants", "Flow through process tank", "Monitor well", "Out of service", "Residential tank", "Responsible person", "Retail facility", "Secondary containment", "TCLP", "TPH", "Tank tightness testing", "Temporary closure", "Used Oil". The definition of "Aboveground storage tank" has been amended to include regulated substances and deletes specific named substances. "Bulk plant" has been amended to limit regulated plants to those containing petroleum. The definition of "Change in service" is amended to include the word petroleum. "Compatible" is changed to remove the reference to aboveground storage tank system and refer to it as the PST system. The definition of "Corrosion expert" is amended to provide the expert must be certified. "Division" is amended to reflect PSTD as shorthand for the Petroleum Storage Tank Division. The definition of "Farm" is amended to further define Farms as ranches and dairy operations and excludes rural residences. "Flammable liquids" is amended grammatically. The definition of "In service" is amended to contain regulated substances. "Marina" is amended for grammatical purposes only. "Person in charge" is amended to reflect the person in charge of a regulated petroleum storage tank facility. The definition of "Positive sampling, testing, or monitoring results is amended for grammatical purposes. "Private airstrip" is amended to limit the definition to residential property use only. The definition of "Regulated substances" is amended to align with a statutory definition. The definition of "Release detection" is amended to include interstitial tank wall as a release detection area. The definition of "Repair" is amended to emphasize repairs are to be to PSTD standards. "Source of ignition" is amended to expand igniting materials. The definitions of "Abandoned system", "Director", "Facility", "Hazardous substance", "Observation tub", "Operator", "Owner", "Permit", "Person", "Petroleum", "Pollution", "Release", "Storage Tank Advisory Council", "Storage tank system", "Transporter", "Vault", has been revoked.

OAC 165:26-1-21 Overview of Applicability is amended to remove specific references and insert the general reference.

OAC 165:26-1-28 Variances is amended to provide a variance may only be granted after Notice and Hearing by Commission Order.

OAC 165:26-1-30.3 Licensing procedure for aboveground storage tank installers is amended to refer to those doing AST work as Licensees, provides for license revocations for criminal acts, establishes the burden of proof for revocation and allows Licensees to install and remove ASTs.

OAC 165:26-1-30.4 Fees is amended to change the reference from installer to licensee.

OAC 165:26-1-41 General reporting requirements is amended to reflect the changes in the Commission's email address.

OAC 165:26-1-42 New tank system is amended to reflect notification to the Commission within 30 days of tank installation.

OAC 165:26-1-44 Tank closure or change in service is amended to reflect the name change from installer to Licensee.

OAC 165:26-2-1 Approved tanks, tank design is amended for grammatical purposes only.

OAC 165:26-2-2 Emergency Pressure release is amended for grammatical purposes only.

OAC 165:26-2-3 Aboveground storage tank spacing is amended for grammatical purposes only.

OAC 165:26-2-4 Distance to be kept around tanks is amended for grammatical purposes only.

OAC 165:26-2-5 Requirements on fill pipes is amended for grammatical purposes only.

OAC 165:26-2-6 Vent piping requirements is amended for grammatical purposes only.

OAC 165:26-2-7 Collision barriers is amended for grammatical purposes only.

OAC 165:26-2-31 Double-walled tanks is amended for grammatical purposes only.

OAC 165:26-2-53 valves on piping is amended for grammatical purposes only.

OAC 165:26-2-54 Aboveground storage tank piping materials is amended for grammatical purposes only.

OAC 165:26-2-55 Underground piping materials is amended to strike a rule reference.

OAC 165:26-2-56 Installation and monitoring requirements for piping is amended to include all piping must have automatic line leak detectors, strikes exceptions to hydrostatic line tightness testing, strikes sump sensor installation data, strikes obsolete language and inserts grammatical changes.

OAC 165:26-2-92 Dispenser hose is amended to substitute facilities for automotive service stations and require immediate hose replacement in certain circumstances.

OAC 165:26-2-171 Aboveground storage tank system installation is amended to strike specific references and insert regulated substances, amends the installer references, establishes a minimum line testing time of 1 hour, provides for testing of automatic tank gauging systems and function tests on line leak detectors at installation.

OAC 165:26-2-191 Repairs to aboveground tank systems is amended to substitute licensee for installer.

OAC 165:26-2-213 Permanent closure is amended to require the presence of a AST Licensee during AST or line removal.

OAC 165:26-2-214 Assessing the site at tank closure or change in service is amended to include operator as a responsible person.

OAC 165:26-2-215 Requirements for returning to service, grammatical amendments only.

OAC 165:26-3-11 Availability of Records, grammatical amendments only.

OAC 165:26-3-12 Repair Records, grammatical amendments only.

OAC 165:26-3-13 Tank installation, closure and removal records, grammatical amendments only.

OAC 165:26-3-14 Release detection and corrosion protection records, grammatical amendments only.

OAC 165:26-3-21 General spill and overfill prevention requirements is amended to require alarms or an overfill valve.

OAC 165:26-3-191 Release reporting, grammatical amendments only.

OAC 165:26-4-1 Owner/operator cooperation amendments are grammatical amendments only.

OAC 165:26-4-2 Authority of the Commission is amended to allow testing on-site or offsite of a facility where a release has occurred.

OAC 165:26-4-6 Exception and variances is amended to strike unnecessary language.

OAC 165:26-4-10 Penalties is amended to set forth notice and hearing as a pre-requisite for formal enforcement action.

OAC 165:26-4-16 Notice of Violation is amended to remove warning notice alternatives and provide for immediate citation, if necessary.

OAC 165:26-4-17 Re-inspection and citation is amended to provide for formal enforcement and remove discretion of a fuel specialist to forward a violation for enforcement.

OAC 165:26-4-18 Payment of fine or hearing is amended to make grammatical changes and strike reference to further legal proceedings.

OAC 165:26-6-1 Application is amended to include aboveground as part of the reference, strike superfluous language and exempts private airstrips.

OAC 165:26-6-61 Dispenser hose is amended to require immediate hose replacement in certain instances.

OAC 165:26-8-1 Application is amended to include regulated substances as to marinas and strikes reference to gasoline and diesel.

OAC 165:26-8-2 Marina time frames for registration and compliance with rules is amended to extend the 7/15/05 deadline for two years or to 7/15/07.

OAC 165:26-8-13 Location of aboveground storage tank at marinas is amended to allow onshore installation of tanks only.

OAC 165:26-8-40 Aboveground piping at marinas is amended to reference transition from onshore to over-water piping and deletes the reference to underground to aboveground transition.

OAC 165:26-8-41 installation and monitoring requirement for marina piping is amended to extend the deadline for compliance from 7/15/2005 to 715/2007.

OAC 165:26-8-62 Nozzles is amended to substitute marina for marine service stations.

OAC 165:26-8-63 Dispenser locations of marinas is amended to substitute marina for marine service stations.

OAC 165:26-8-80 Attendants at marinas is amended to comply with recently enacted legislation which allows unattended fueling sites at marinas.

OAC 165:26-8-86 Required signs is amended to substitute marina for marina service stations.

OAC 165:26-8-88 Fire extinguishers is amended to specify the type and weight of fire extinguishers.

OAC 165:26-10-1 Application is amended to refer to regulated substances instead of specific flammable liquids.

OAC 165:26-10-2 Timeframes for registration and compliance with rules is amended to require compliance if a system poses a threat to property, people or the environment.

OAC 165:26-12-2 Timeframes for registration and compliance with rules is amended to require compliance if a system poses a threat to property, people or the environment.

OAC 165:26-14-1 Application is amended to strike obsolete language.

OAC 165:26-14-2 Timeframes for registration and compliance with rules is amended to require compliance if a system poses a threat to property, people or the environment.

OAC 165:26-16-2 Timeframes for registration and compliance with rules is amended to require compliance if a system poses a threat to property, people or the environment, and strikes language regarding emergency generator tanks in or on a building.

OAC 165:26-18-3 Evidence of financial responsibility is amended to strike the reference to the director of PSTD.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. PURPOSE AND DEFINITIONS

165:26-1-2. Definitions

In addition to the terms defined in 17 O.S. § 301 et seq., the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

~~**"Abandoned system"** means a storage tank system which has not been removed but which:~~

~~(A) Has been taken permanently out of service as a storage vessel for any reason or is not intended to be returned to service;~~

~~(B) Has been out of service prior to April 21, 1989, or~~

~~(C) Has been rendered permanently unfit for use for the storage of motor fuels as determined by the Commission, and removed from service.~~

"Aboveground storage tank" or **"AST"** means any stationary tank not included within the definition of a~~n underground~~ petroleum storage tank in OAC 165:25-1-11, which is designed to contain~~,~~ any PST regulated substances without structural support of earthen material~~, gasoline, diesel, aviation fuel and/or volatile blending materials used in motor fuels, like kerosene and ethanol~~.

"Aboveground storage tank system" means an aboveground storage tank and any connected aboveground or underground piping, dispensers and associated equipment and fixtures.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Airports" mean landing facilities for aircraft which are routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private airstrips or private airports.

"Ancillary equipment" means any device including, but not limited to: devices, such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from an petroleum storage tank.

"ATG" means automatic tank gauging.

"Backfill" is the material that is placed in a tank and/or piping excavation to support and separate the tank and/or piping, from the natural environment.

"Beneath the surface of the ground" means beneath the ground's surface or otherwise covered with materials so that physical inspection is precluded or impaired.

"BTEX" means benzene, toluene, ethylbenzene and xylene.

"Bulk ~~plants~~ plant" ~~mean~~ means petroleum storage tank ~~facilities~~ facility ~~where gasoline, aviation fuel, diesel and/or volatile blending materials used in motor fuels, like kerosene and ethanol,~~ regulated substances are received by tank vessels, pipelines, tank cars, or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distributing them by a tank vessel, pipeline, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, protection can be accomplished ~~by means of~~ with an impressed current system or a galvanic anode system.

"Change in service" means discontinuing use of the petroleum storage system for purposes regulated by the Commission.

"Commission" means the Oklahoma Corporation Commission and includes its designated agents or representatives.

"Compatible" means the ability of two or more substances to maintain their respective physical properties upon contact with one another for the design life of the ~~tank~~ PST system under conditions likely to be encountered in the ~~aboveground storage tank~~ system.

"Construction tank" means a fuel tank used for a limited period of time at a construction site.

"Contaminants" or **"contamination"** means concentrations of chemicals at levels that may cause adverse human health or environmental effects and/or nuisance conditions.

"Corrosion expert" means a person who has knowledge of the physical sciences, principles of engineering and mathematics, acquired by education and/or experience, and is qualified to engage in the practice of corrosion control on buried or submerged metal tanks and metal piping systems. The person must be ~~certified as qualified by~~ NACE certified or be a registered professional engineer who has education and experience in corrosion control of buried or submerged metal tanks and metal piping systems.

"Corrosion technician" or **"cathodic protection tester"** means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, ~~the person~~ such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"Dielectric material" means a material that does not conduct direct electric current. Dielectric coatings can be used to electrically isolate portions of tank systems under or in contact with the ground. Dielectric bushings are used to electrically isolate portions of the storage tank system (e.g., tank from piping).

~~**"Director"** means the Director of the Petroleum Storage Tank Division of the Corporation Commission.~~

"Division" means the Petroleum Storage Tank Division (PSTD) of the Corporation Commission.

"EPA" means the United States Environmental Protection Agency.

"Excavation area" means the volume containing the underground piping system and backfill materials, bounded by the ground surface, walls, and floor of the pit and trenches into which the underground piping system is placed at the time of installation.

~~**"Facility"** means any place containing one or more storage tanks or systems.~~

"Farm" means the planting, growing, cultivation, and harvesting of shrubs, flowers, trees and other plants for sale. ~~Farm tanks~~ Farms also include ranching and dairy operations. Rural residential or non-commercial agricultural tanks are not included.

"Fire resistant tank" means a UL listed aboveground storage tank that provides fire-resistant protection from exposures to a high intensity liquid pool fire.

"Flammable liquids" means all grades of gasoline, kerosene, diesel fuel, and aviation fuel having a vapor pressure not exceeding forty (40) pounds per square inch (psi) absolute at one hundred (100) degrees Fahrenheit.

(A) Class I liquids.

(i) Class IA liquids ~~include those having~~ have flash points below 73 degrees Fahrenheit and ~~having a~~ boiling ~~point~~ points below 100 degrees Fahrenheit.

(ii) Class IB liquids ~~include those having~~ have flash points below 73 degrees Fahrenheit and ~~having a~~ boiling ~~point~~ at or above 100 degrees Fahrenheit.

(iii) Class IC liquids ~~include those having~~ have flash points at or above 73 degrees Fahrenheit and boiling points below 100 degrees Fahrenheit.

(B) Class II liquids. Class II liquids ~~include those having~~ have flash points at or above ~~100~~ 73 degrees Fahrenheit and below 140 degrees Fahrenheit.

(C) Class III liquids.

(i) Class IIIA liquids ~~include those having~~ have flash points at or above 140 degrees Fahrenheit and below 200 degrees Fahrenheit.

(ii) Class IIIB liquids ~~include those having~~ have flash points at or above 200 degrees Fahrenheit.

"Fleet and Commercial" means any facility that uses aboveground storage tanks to store gasoline or diesel fuel for use in its own vehicles.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

"Generation facilities" means those tanks that are permanently installed, which routinely contain fuel to be used in emergency generators in the event of a power failure.

~~**"Hazardous substance"** means gasoline, diesel, aviation fuel, and/or volatile blending materials used in motor fuels, like kerosene and ethanol.~~

"Impervious barrier" means a barrier of sufficient thickness, density, and composition that it is impenetrable to the regulated substance, has a permeability of at least 1 X 10^{-6} cm/sec., and will prevent the discharge to the environment of any regulated substance for a period of at least as long as the maximum anticipated time during which the regulated substance will be in contact with the impervious material.

"In service" means ~~an aboveground~~ a petroleum storage tank ~~which is not abandoned, contains~~ that contains a regulated substance, and/or has a regulated substance ~~by this Chapter, and/or has regulated substances regularly~~ added to or withdrawn from it.

"~~Marinas~~ Marina " means any fuel storage facility located by the water for the purpose of fueling watercraft.

"Monitor well" means a piezometer or other cased and screened excavation, boring or drilled hole, pursuant to Oklahoma Water Resources Board (OWRB) standards that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors.

~~**"Observation tube"** means a leak detection device placed within the tank field which reaches 2 feet below the tank bottom and can be inspected periodically to determine whether contamination by a regulated substance has occurred.~~

"Operational life" is the period beginning from the time installation of the tank or system is commenced until it is properly closed or removed as provided for in this Chapter.

~~**"Operator"** means any person in control of or having responsibility for the daily operation of the storage tank system, whether by lease, contract, or other form of agreement. The term operator also includes a past operator at the time of a release or a violation of the Oklahoma Storage Tank Regulation Act or of a rule promulgated thereunder.~~

"Out of service" means a petroleum storage tank or system that:

(A) Is not in use (i.e., does not have regulated substances added to or withdrawn from the tank system); and

(B) Is intended to be placed back in service.

"Overfill" means a release that occurs when a petroleum storage tank is filled beyond its capacity.

~~**"Owner"** means any person who holds title to, controls, or possesses an interest in a storage tank system or a piece of property which has a storage tank system that is used for storage, use, or dispensing of gasoline, diesel, aviation fuel, or blending materials used in motor fuels. In the case of a storage tank system no longer in use, the term "owner" means any person who held title to, controlled or possessed an interest in the system immediately before the discontinuation of its use. The term "owner" does not include a person who holds an interest in a tank system solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the system.~~

~~**"Permit"** means any registration, permit, license or other authorization issued by the Commission to operate a storage tank system.~~

~~**"Person"** means any individual, trust, firm, joint stock company or corporation, limited liability company, partnership association, any representative appointed by order of a court, municipality, county, school district, or other political subdivision or agency of the state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, the United States Government, a federal agency, including a government corporation, or any other legal entity.~~

"Person in charge" means the owner or person designated by the owner or operator as the one with direct supervisory responsibility for an activity or operation at a petroleum storage tank system or facility.

"Pier" means dock, floating dock, and wharf.

~~**"Petroleum"** means gasoline, diesel, aviation fuel, and/or volatile blending materials used in motor fuels, like kerosene and ethanol.~~

~~**"Pollution"** means the presence in the environment of any regulated substances as a result of a release from an aboveground storage tank system. It includes quantities requiring reporting under this Chapter as well as quantities which are or may be potentially harmful or injurious to human health, welfare, or aesthetic sensibilities, or to property, animals, plant life, or the environment.~~

"Positive sampling, testing, or monitoring results" ~~refers~~ means to the results of sampling, testing or monitoring using any of the release detection methods described in this Chapter that indicate that a release from an ~~aboveground~~ petroleum storage tank system may have occurred.

"Private airport" means an airport used only by its owner and regulated as a fleet and commercial facility.

"Private airstrip" means a personal residential takeoff and landing facility attached to the airstrip owner's ~~home, analogous to a garage and driveway~~ residential property and used only by the owner.

"Protected tank" means an aboveground storage tank that is listed in accordance~~.~~ with UL 2085, *Standard for Insulated Aboveground Tanks for Flammable and Combustible*

Liquids, or an equivalent test procedure that consists of a primary tank provided with protection from physical damage and fire-resistive protection from exposure to a high-intensity liquid pool fire.

"Public Utility" means any entity providing gas, electricity, water, or telecommunications services for public use.

"Regulated substances" means ~~gasoline, aviation fuel, diesel and/or volatile blending materials used in motor fuel. It does not include compressed natural gas.~~ antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel.

~~**"Release"** means any spilling, overfilling, or leaking from a storage tank system that goes beyond the excavation zone, tankpit, or secondary containment facility into the native environment.~~

"Release detection" means the methodology used in determining whether a release of regulated substances has occurred from a petroleum storage tank or system into the environment or into the interstitial area between the petroleum storage tank system and its secondary barrier.

"Repair" means to restore a tank or petroleum storage tank system component to PSTD standards that has caused a release of ~~product~~ regulated substances from the petroleum storage tank system.

"Residential tank" means a petroleum storage tank or system located on the property where contents are used by the residential occupants of the property.

"Responsible person" means a person other than a petroleum storage tank system owner or operator, such as an adjacent property owner, impacted party, or city, seeking corrective action of real property, and submits itself to the jurisdiction of the Commission.

"Retail facility" means a service station, convenience store or any other facility that is open to the general public.

"Sacrificial anode" means a device to reduce or prevent corrosion of a metal in an electrolyte by galvanic coupling to a more anodic metal.

"Secondary containment" means a system installed around a petroleum storage tank or system that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled tank system) or excavation area (in the case of a liner or vault system) before the release can be detected. Such a system may include, but is not limited to, impervious barriers (both natural and synthetic), double walls, or vaults.

"Source of ignition" means ~~cigarettes, cigarette~~ flammable tobacco products or smoking materials, lighters or operating internal combustion ~~engine~~ engines and includes ~~"~~fixed sources of ignition~~"~~ like open flame heaters, pilot lights, electric heating elements or electric motors with exposed brushes or any machinery ~~which its operation produces exposed sparks.~~ that produces exposed sparks while in operation.

~~**"Storage Tank Advisory Storage Council"** means a committee appointed pursuant to 17 O.S. § 340 et seq., which has the authority to recommend rules, and make recommendations to the Commission and to provide a public forum for the discussion of issues concerning petroleum storage tanks.~~

~~**"Storage tank system"** means one or more tanks used to contain regulated substances, including the piping, hoses, dispensers, and other ancillary equipment associated with the tanks.~~

"TCLP" means toxicity characteristic leaching procedure, a test procedure for determining if a solid waste is hazardous because it exhibits toxicity characteristics as enforced under Resource Conservation and Recovery Act.

"TPH" means total petroleum hydrocarbons.

"Tank tightness testing" or **"precision testing"** means a procedure for testing an petroleum storage tank system's ability to prevent an inadvertent release of any stored regulated substances into the environment.

"Temporary closure" or "TOU" means the status of a petroleum storage tank system that has been taken out of service but not removed.

~~**"Transporter"** means a person who transports, delivers or distributes a regulated substance from one point to another for the purpose of wholesale or retail gain.~~

~~**"Vault"** means an above or below grade room or storage compartment. When used for a storage tank system, the vault must be large enough for a person to visually inspect all areas around the storage tank.~~

"Used Oil" is any oil or similar petroleum substance that has been refined from crude oil or synthetic oil; used for its designed or intended purposes, and contaminated as a result of such use by physical or chemical impurities.

PART 3. SCOPE OF RULES

165:26-1-21. Overview of applicability

This Chapter will apply to owners and operators of aboveground storage tanks which the Commission is authorized to regulate pursuant to 27A O.S. (Supp. 1999) § 1-3-101 (E) (5) (b) and 17 O.S. § 301 et seq., which gives the Commission the responsibility of regulating aboveground storage tanks that contain ~~gasoline, kerosene, diesel or aviation fuel~~ regulated substances, including but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below, excluding tanks at refineries or at the upstream or intermediate shipment points of pipeline operations, and excluding compressed natural gas whether used as a motor fuel or not. The Commission references the National Fire Protection Association 30 and 30A, Standard Number 30, 2003, "Flammable and Combustible Liquids Code" and Standard Number 30A, 2003, "Automotive and Marine Service Station Code". New editions of NFPA 30 and NFPA 30A supersede all previous editions.

PART 4. ADMINISTRATIVE PROVISIONS

165:26-1-28. Variances

(a) A variance to a provision of these rules ~~should~~ may be granted by the ~~Petroleum Storage Tank Division~~ Commission after notice and hearing any time enforcement of the provision would impose a significant expense without furthering the

purpose of the provision. ~~For example, where the fencing requirements around tanks cannot be reasonably met on a site and other equally effective security systems are in place or available, they should be allowed.~~

(b) Inspectors and other compliance personnel should work with tank owner/operators and the personnel of other government agencies and ~~grant~~ support variances as needed to avoid citizens being caught between the conflicting rules of different agencies.

(c) Tank systems that were ~~well~~ properly installed pursuant to earlier fire codes should not be required to change unless:

(1) The system or some part of it has become hazardous; or

(2) The changes or upgrades are a mandatory requirement of the Environmental Protection Agency or Oklahoma Corporation Commission~~: i.e., leak detection and monthly monitoring requirements or doublewall piping for suction systems~~. These types of changes must be installed as listed in this Chapter and various facility Subchapters before the deadline dates established. Variances will not be granted for this type of change.

165:26-1-30.3. Licensing procedure for aboveground storage tank ~~installers~~ licensee

(a) Any individual who would like to become an aboveground storage tank ~~installer~~ licensee must:

(1) Complete an application form prepared by the Commission.

(2) Provide sufficient proof of 2 years' related work experience and of active participation in the completion of 3 aboveground storage tank handling activities, 2 of which must be installations.

(3) Pass an examination administered by the Commission.

(4) Pay fees for applications, examinations, and licensing according to the schedule provided in OAC 165:5-3-2.

(5) Certify that they will comply with all Commission rules and requirements for aboveground storage tanks.

(b) The Commission shall have the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any aboveground storage tank installer who is found guilty of:

(1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.

(2) Any gross negligence, incompetence or misconduct in installation work performed pursuant to this Chapter.

(3) Knowingly making false statements or signing false statements, certificates or affidavits to the Commission or to clients with the intention to induce payment.

(4) Aiding or assisting another person in violating any provision of this Chapter.

(5) Signing a verification statement for work performed pursuant to this Chapter which was not performed by the aboveground storage tank ~~installer~~ licensee.

(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.

(7) Be under indictment or convicted for a criminal act.

(c) Prior to any license suspension, revocation, or refusal to renew, the Director of the Petroleum Storage Tank Division shall have the matter investigated and a report made to the Director for consideration. ~~If the Director elects to proceed with suspension, revocation, or refusal to renew, a Notice of Intent will be mailed to the licensee.~~ If the Director elects to pursue suspension, revocation, or refusal to renew, the Commission will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of ~~clear and convincing proof of violations of this Chapter, as well as adherence to applicable state law~~ substantial evidence rests upon the Petroleum Storage Tank Division.

(d) This Section in no way exempts the aboveground storage tank ~~installer~~ licensee from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.

(e) Any person who holds an AST license may install or remove AST systems.

165:26-1-30.4. Fees

This Chapter requires the following persons to pay fees according to the schedule set out in 165:5-3-2:

(1) Owners or operators of all aboveground storage tank systems in use during the fiscal year.

(2) ~~Licensed~~ AST ~~Installers~~ licensees who become licensed pursuant to the provisions of this Chapter.

PART 7. NOTIFICATION AND REPORTING REQUIREMENTS

165:26-1-41. General reporting requirements

The Commission may require owners and operators of aboveground storage tank systems to provide information the Commission deems necessary for the protection of human health, the environment and to assure the safety of people and property. Use of the designated OCC form(s) is required for tank registration, change in ownership, monthly release detection, testing, temporary change in service, permanent closure, or return to service. These forms are available at the OCC website, PST Division webpage: ~~www.occ.state.ok.us~~ www.occeweb.com follow link to Petroleum Storage Tank Division and link to PST Forms.

165:26-1-42. New tank systems

(a) Owners of all aboveground storage tanks regulated pursuant to this Chapter must notify the Commission of the existence of their tanks if the tanks are covered by these rules and have not already been registered. The notice must be on a form prescribed by the Commission (Form 7530 Registration for Petroleum Storage Tanks) and specify, ~~as~~ at a minimum, the date of installation if known, the location, type of tank construction and piping construction, size of tank installed, the type of release detection method utilized, type of secondary containment, and type of regulated substance being stored unless otherwise specified. Thereafter, owners must notify the

Commission of new tanks within 30 days of ~~installation~~ tank installations by application of Form 7530.

(b) Persons intending to install a new aboveground storage tank and/or new aboveground or underground piping must give the Petroleum Storage Tank Division notification of the installation at least 24 hours before the tank and/or lines are to be installed.

(c) Owners of new systems must certify, either in the notification form or attachments to the form, the following:

(1) Installation of tanks and piping meets the requirements of this Chapter.

(2) The release detection method utilized meets the requirements of this Chapter.

(d) All owners of new aboveground storage tank systems must ensure that the ~~installer~~ AST licensee certifies in the notification form that the methods used to install the tanks and piping comply with the requirements of this Chapter.

165:26-1-44. Tank closure or change in service

Owners of aboveground storage tank systems must notify the Petroleum Storage Tank Division at least 14 days prior to the removal of the aboveground storage tanks and / or lines. If events require the owner to change the date of removal, the Division should be given 48 hours notice of the new date. An authorized agent of the Commission may be present to observe the removal operations and to inspect the closed tank system and the surrounding environment. Any company that removes aboveground storage tank systems must have ~~a licensed~~ an AST ~~Installer~~ Licensee on the jobsite during removal.

SUBCHAPTER 2. INSTALLATION, REPAIR AND REMOVAL

PART 1. TANK DESIGN, CONSTRUCTION AND LOCATION

165:26-2-1. Approved tanks, tank design

(a) Only storage tanks designed and listed for aboveground use can be used aboveground. Tanks designed and built for underground use cannot be installed for aboveground use.

(b) Only installers who have been licensed by the Commission's Petroleum Storage Tank Division can install aboveground tank systems or make modifications to existing aboveground tank systems including both aboveground and underground piping.

(c) Atmospheric tanks, including those incorporating secondary containment, must be built in accordance with recognized standards of design or approved equivalents. Atmospheric tanks must be built, installed and used within the ~~scopes~~ scope of their ~~approvals~~ approval or within the ~~scopes~~ scope of any of the following:

(1) Underwriters Laboratories Inc., Standard for "Steel Aboveground Tanks for Flammable and Combustible Liquids," UL 142; Standard for "Aboveground Flammable Liquid Tank Systems," UL 2244; Standard for "Steel Inside Tanks for Oil Burner Fuel," UL 80; or Standard for "Insulated Aboveground Tanks for Flammable Liquids," UL 2085.

(2) American Petroleum Institute Standard No 650, "Welded Steel Tanks for Oil Storage," eighth edition.

(3) American Petroleum Institute Specifications 12B, "Bolted Tanks for Storage of Production Liquids," twelfth edition; 12D, "Field Welded Tanks for Storage of Production Liquids," eighth edition; or 12F, "Shop Welded Tanks for Storage of Petroleum Liquids," seventh edition.

(d) Fuel shall not be dispensed from the tank by either gravity flow or pressurization of the tank.

(e) All openings shall be located above the maximum liquid level of the aboveground tank on tanks installed after August 18, 2000.

165:26-2-2. Emergency pressure release

(a) Aboveground storage tanks must have some form of construction or device that will relieve ~~excessive~~ excess internal pressure caused by exposure to fires and have some form of emergency pressure venting.

(1) This requirement applies to each compartment of a compartmented tank, the interstitial space (annulus) of a secondary containment-type (double-walled) tank and the enclosed space of tanks of closed-top dike construction.

(2) This requirement applies to spaces or enclosed volumes, such as those intended for insulation, membranes, or weather shields, that can contain liquid because of a leak from the primary vessel. The insulation, membrane, or weather shield must not interfere with emergency venting.

(b) In a vertical tank, the construction must take the form of a floating roof, lifter roof, a weak roof-to-shell seam, or other approved pressure-relieving construction.

(1) The weak roof-to-shell seam must be constructed to fail preferential to any other seam.

(2) Design methods that will provide a weak roof-to-shell seam construction are contained in API 650, "Welded Steel Tanks for Oil Storage", and UL 142, "Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids".

(c) Where entire dependence for emergency pressure relief is placed upon pressure-relieving devices, the total venting capacity of both normal and emergency vents must be enough to prevent rupture of the shell or bottom of the tank if vertical, or of the shell or heads if horizontal.

(1) These devices must be vapor tight. They may be a self-closing manhole cover, or one using long bolts that permit the cover to lift under internal pressure, or an additional or larger relief valve or valves.

(2) The total capacity of both normal and emergency venting devices must not be less than that derived from the table in Appendix I.

(d) Where tank spacing is based on a weak roof-to-shell seam design, the user must present to the Commission upon request evidence certifying the construction.

(e) For the purpose of this Section, a floating roof tank is defined as one that incorporates either:

(1) A pontoon or double-deck metal floating roof in an open-top tank in accordance with API 650, "Welded Steel Tanks for Oil Storage," or

(2) A fixed metal roof with ventilation at the top and roof eaves in accordance with API 650 and containing a metal floating roof or cover meeting any one of the following requirements:

(A) A pontoon or double-deck metal floating roof meeting the requirements of API 650, or;

(B) A metal floating cover supported by liquid-tight metal floating devices that provide sufficient buoyancy to prevent the liquid surface from being exposed when half of the flotation is lost.

(3) An internal metal floating pan, roof, or cover that does not meet the requirements above, or one that uses plastic foam (except for seals) for flotation, even if encapsulated in metal or fiberglass, will be considered a fixed roof tank.

165:26-2-3. Aboveground storage tank spacing

Spacing (shell to shell) between any two adjacent aboveground tanks for tanks storing Class I, II, or IIIA stable liquids must be according to the table in Appendix H. The minimum distance between tanks shall be no less than 3 feet. Variances can be made by the ~~Petroleum Storage Tank Division~~ Commission for pre-existing facilities where deviation from these rules does not pose a serious hazard to people or property.

165:26-2-4. Distance to be kept around tanks

(a) The following distances, at a minimum, must be kept around aboveground storage tanks.

(1) 50 ft (15~~m~~ meters) from the nearest important building on the same property;

(2) 50 ft (15 ~~m~~ meters) from any fuel dispenser;

(3) 50 ft (15 ~~m~~ meters) from the nearest side of a public way; and

(4) 100 ft (30 ~~m~~ meters) from any property line that is or might be built upon, including the opposite side of a public way.

(b) The distances as set forth in (a) of this may be reduced by 50 percent if the tanks are fire-resistant. The distances as set forth in (a) may be further reduced if the tanks are a protected type aboveground tank or tanks in vaults as per NFPA 30A-4.3.2.4.

(c) Generally, variances may be granted for pre-existing facilities where compliance would be difficult and expensive and the current distances between tanks, property lines or dispensers pose no serious threat to people or property.

165:26-2-5. Requirements on fill pipes

(a) Fill pipes that enter the top of a tank must terminate within 6 in. (15 ~~cm~~ centimeters) of the bottom of the tank. Fill pipes should be installed or arranged so that vibration is minimized.

(b) Each fill pipe for liquid storage must be identified by an identification tag or other marking to identify the product for which the tank is used. The marking must be maintained in legible condition throughout the life of the tank installation. Color coding may also be used in addition to marking.

165:26-2-6. Vent piping requirements

(a) Normal vents must be sized in accordance with either:

(1) API 2000, Venting Atmospheric and Low-Pressure Storage Tanks, or

(2) Other accepted standards; or

(3) Must be at least as large as the filling or withdrawal connection, whichever is larger, but in no case less than 1 1/4 in. (7 ~~cm~~ centimeters) nominal inside diameter.

(b) Where vent pipe outlets for tanks storing Class I liquids are adjacent to buildings or public ways, they must be located so that the vapors are released at a safe point outside of buildings and not less than 12 ft. (3.6 ~~m~~ meters) above the adjacent ground level.

(c) In order to aid in ~~their~~ dispersion, vapors must be discharged upward. Vent outlets must be located so that flammable vapors will not be trapped by eaves or other obstructions and be at least 5 ft. (1.5 ~~m~~ meters) from building openings.

(d) Vent pipes that are provided for normal tank venting must extend at least 12 ft. (3.6 ~~m~~ meters) above ground level or ~~3~~ 5 ft. above the roof line at the highest point of attachment.

165:26-2-7. Collision barriers

(a) Aboveground storage tanks exposed to traffic must be resistant to damage from the impact of a motor vehicle or be protected by suitable collision barriers. The secondary containment dike may serve as a collision barrier provided that it can not be penetrated by a motor vehicle.

(b) When guard posts or collision barriers are installed, the following design shall be acceptable:

(1) They shall be constructed of steel not less than 4 in. (100 ~~mm~~ millimeters) in diameter and shall be filled with concrete.

(2) They shall be spaced not more than 4 ft. (1.2 ~~m~~ meters) on center.

(3) They shall be set not less than 3 ft (0.9 ~~m~~ meters) deep in a concrete footing of not less than 15-in. (380 ~~mm~~ millimeters) diameter.

(c) Dispensing devices, except those attached to containers, must either be mounted on a concrete island or otherwise protected against collision damage by suitable means and must be securely bolted in place. If located indoors, the dispensing device will be located in a position where it cannot be struck by a vehicle that is out of control descending a ramp or other slope. The installation must be in accordance with the manufacturer's instructions.

PART 3. SECONDARY CONTAINMENT

165:26-2-31. Double-walled tanks

Double-walled tanks do not require additional containment if all the following conditions are met:

(1) The capacity of the tank does not exceed 12,000 gallons (45,420~~L~~ liters).
(2) All piping connections to the tanks are made above the normal maximum liquid level.
(3) A mechanism is provided to prevent the release of liquid from the tank by siphon flow.
(4) A mechanism is provided for determining the level of liquid in the tank, which is accessible to the delivery operator.
(5) A mechanism is provided to prevent overfilling by sounding an alarm when the liquid level in the tank reaches 90 percent of capacity and by automatically stopping the delivery of liquid to the tank when the level in the tank reaches 95 percent of capacity. In no case will these provisions restrict or interfere with the proper functioning of the normal vent or the emergency vent.
(6) Spacing between adjacent tanks is not less than 3 ft (0.9~~ m~~ meters).
(7) The tank is capable of resisting damage from the impact of a motor vehicle or suitable collision barriers are provided in locations where the tank is exposed to traffic.
(8) Where the interstitial space is enclosed, it is provided with emergency venting.
(9) A means is provided to establish the integrity of the interstitial space of the double wall tank.

PART 5. PIPING

165:26-2-53. Valves on piping

(a) If a submersible pump system is used, a UL listed emergency shutoff valve must be installed at each dispensing device. Both the emergency shutoff valve and dispensing device shall be rigidly anchored in place.
(b) If a suction pump-type dispensing device is used, a UL listed, vacuum-actuated shutoff valve, with a shear section or equivalent-type valve must be installed directly under each dispensing device. Tanks installed in below-grade vaults are not required to comply with this requirement.
(c) Shutoff and check valves must be equipped with a pressure-relieving device that will relieve the pressure generated by thermal expansion back to the tank.
(d) Each outlet connection to an aboveground tank through which liquid can normally flow must be provided with an internal or an external emergency fire valve located as close as practical to the shell of the tank or submerged pump.
(e) All valves must meet the construction criteria of 165:26-2-54.

165:26-2-54. Aboveground storage tank piping materials

(a) The design, fabrication, assembly, test and inspection of the piping system from the fuel tank to the fuel dispensers must be in accordance with NFPA 30, NFPA 30A, and the piping manufacturers installation recommendations and instructions.
(b) Pipes, valves, faucets, couplings, flexible connectors, fittings and other pressure-containing parts must meet the material specifications and pressure and temperature limitations of ANSI B31.3, Petroleum Refinery Piping, or ANSI B31.4, Liquid Petroleum Transportation Piping Systems. Materials must be designed to specifications embodying recognized engineering principles, and be compatible with the fluid service.
(c) Nodular iron must conform to ASTM A 395 Ferritic Ductile Iron Pressure-Retaining Castings for Use at Elevated Temperatures.
(d) Valves at storage tanks and their connections to the tank must be of steel or nodular iron. Low melting point materials such as aluminum, copper, brass or non-ductile material such as cast iron may be used in aboveground piping provided that they are located downstream of an approved steel or nodular iron emergency valve that has been installed and located as close as practical to the shell of the tank or submerged pump.
(e) Valves at storage tanks may be other than steel or nodular iron if the valves are installed internal to the tank. Where installed external to the tank, the material must have a ductility and melting point comparable to steel or nodular iron so as to withstand reasonable stresses and temperatures involved in fire exposure or be protected by materials having a fire resistance rating of not less than 2 hours.
(f) Low melting point materials such as aluminum, copper, and brass, and materials that soften on fire exposure such as plastics, or non-ductile material such as cast iron may be used underground for all liquids within the pressure and temperature limits of ANSI B31, American National Standard Code for Pressure Piping. If these materials are used outdoors in aboveground piping systems handling Class I or Class II liquids, or within buildings handling any liquid, they must be either:
(1) Resistant to damage by fire,
(2) Located so that any leakage resulting from the failure will not unduly expose persons, important buildings, or structures,
(3) Located where leakage can readily be controlled by operation of an accessible remotely located valve(s), or
(4) Located pursuant to 165:26-2-54(d).
(g) Piping, valves, and fittings may have combustible or noncombustible linings.
(h) Nonmetallic piping, including piping systems incorporating secondary containment, must be built in accordance with recognized standards of design or approved equivalents. Nonmetallic piping must be built, installed, and used within the scope of their approvals or within the scope of Underwriters Laboratories Inc.'s Standard for Nonmetallic Underground Piping for Flammable Liquids, UL 971.
(i) If materials were installed in compliance with state or national codes in existence at the time of the installation, the Petroleum Storage Tank Division will not require a change unless they ~~currently~~ pose a hazard to people or property ~~in the vicinity~~.

165:26-2-55. Underground piping materials

(a) All underground product piping at new facilities and all underground suction piping at existing facilities must be installed or upgraded before the deadline dates established for the various facilities, as follows:
(1) Non-metallic;
(2) Double-walled;

(3) A tracer locator wire must be installed in all piping trenches; and

(4) Dispenser sumps must be installed and monitored with sensors as per 165:26-2-56~~(a)(4) or 165:26-2-56(b)(1)~~.

(5) Piping transition sumps must be installed and monitored with sensors if the interstice area of connecting piping cannot be connected in an approved manner.

(b) Existing facilities that have metallic piping that fail due to corrosion or are replacing the piping system must upgrade all piping per (a) above and come into full compliance with the rules of this Chapter and Subchapters. If the metallic line fails due to corrosion, the line must be immediately removed, and cannot be reused.

(c) Existing facilities that have metallic or single-walled nonmetallic piping and are relocating, or removing and replacing a fuel island must install dispenser sumps with sensors as per 165:26-2-56~~(a)(4) or 165:26-2-56(b)(1)~~. Any additions to the metallic piping must be nonmetallic single or double-walled piping. However, suction piping will have to be upgraded before the deadline dates established for the various facilities.

(d) Existing facilities that are replacing dispensers where the fuel islands are not being relocated, removed or replaced may add to the existing piping using the same piping material. Dispenser sumps do not have to be installed. However, suction piping will have to be upgraded before the deadline dates established for the various facilities.

(e) Tracer locator wire is not required to be installed in existing piping trenches containing piping which otherwise meets the requirements in subsection (a) unless the trench is opened to repair, move, or replace the piping.

165:26-2-56. Installation and monitoring requirements for piping

Underground piping that routinely contains regulated substances must be installed and monitored for releases in a manner that meets the following requirements:

(1) **Pressurized piping.**

(A) ~~Underground piping~~ Piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector installed and operated in accordance with this Chapter.

~~(B) An automatic line leak detector shall not be required if all piping is visible.~~

(~~C~~B) New installations and facilities replacing a piping system after July 15, 2002 must have non-metallic double-walled piping, sumps under all dispensers and transition sumps if applicable. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs.

(~~D~~C) New installations and facilities replacing a piping system after July 15, 2002 must ~~also~~ have at least one sump sensor, float or similar mechanical device for each tank system, located at the bottom of the lowest piping gradient sump.

(~~E~~D) Underground pressure piping from a master dispenser to a satellite dispenser must be designed and installed so that the satellite piping is tested by the automatic line leak detector. An annual line tightness test is required on the satellite underground piping.

(2) **Suction piping.** Installations and all suction systems upgraded before the deadline date established for the various facilities must have non-metallic double-walled piping, sumps under all suction pumps and transition sumps if applicable. Sensors must be installed in each sump. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs.

(3) **Methods of release detection for pressurized piping.** Each method of release detection for underground pressurized piping must be performed in accordance with the following requirements:

(A) **Automatic mechanical line leak detectors and annual line tightness testing.**

(i) Methods which alert the owner and/or operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or by triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 psi line pressure within 1 hour.

(ii) An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements.

(iii) Automatic line leak detectors installed on or after September 22, 1991 must be capable of detecting the leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(iv) A hydrostatic line tightness test must be performed annually by a certified tester. ~~in accordance with this Chapter except for systems installed as per 165:26-2-56(c)(2)(B).~~

(B) **Sump sensors.**

~~(i) Installations after July 15, 2002 with automatic line leak detectors must also have at least one sump sensor, float or similar mechanical device installed at the lowest gradient sump for each tank.~~

(~~ii~~i) Sump sensors, floats or similar mechanical devices at each dispenser, transition and tank sump may be used in lieu of annual line tightness testing.

(~~iii~~ii) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors must also be checked monthly to insure that they are operational.

(C) **Electronic line leak detection.** A certified electronic line leak detector may be used in lieu of an automatic mechanical line leak detector and annual tightness test only if:

(i) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and

(ii) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every month; and

(iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually~~,~~ ; and

(iv) The ~~the~~ system ~~is~~ must be tested annually in accordance with manufacturer's specifications and by an actual leak test to test the integrity of the electronic line leak detection equipment.

(4) **Methods of release detection for suction piping.** The method of release detection for suction piping must be ~~done~~ performed in accordance with the following requirements. ~~Sump sensors.~~

(A) Each sump shall be monitored with a sensor, float or similar mechanical device.

(B) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors must also be checked monthly to insure that they are operational.

PART 7. VAULT REQUIREMENTS

165:26-2-71. Vaults

A vault is a superior installation system that is not required. When used they are allowed above or below grade, and must meet the following standards:

(1) A vault must completely enclose each tank. There can be no openings in the vault enclosure except those necessary for access to, inspection of, and filling, emptying, and venting of the tank.

(2) The walls and floor of the vault must be constructed of reinforced concrete at least 6 in. (15 cm) thick.

(3) The top of an above-grade vault must be constructed of noncombustible material and be designed to be weaker than the walls of the vault, to ensure that the thrust of any explosion occurring inside the vault is directed upward before significantly high pressure can develop within the vault.

(4) The top of an at-grade or below-grade vault must be designed to safely relieve or contain the force of any explosion occurring inside the vault.

(5) The top and floor of the vault and the tank foundation must be designed to withstand the anticipated loading, including loading from vehicular traffic, where applicable.

(6) The walls and floor of any vault installed below grade must be designed to withstand anticipated soil and hydrostatic loading.

(7) The vault must be substantially liquid tight with no backfill around the tank

(8) There must be enough space between the tank and the vault for inspection of the tank and its appurtenances.

(9) Abovegrade vaults must be resistant to damage from the impact of a motor vehicle, or suitable collision barriers must be provided.

(10) Each tank must be in its own vault.

(11) Adjacent vaults may share a common wall.

(12) Connections must be provided to permit venting of each vault to dilute, disperse, and remove any vapors prior to personnel entering the vault.

(13) Vaults that contain tanks of Class I liquids must be provided with continuous ventilation at a rate of not less than one cubic foot per minute per one square foot of floor area.

(A) Failure of the exhaust air flow must automatically shut down the dispensing system.

(B) The exhaust system must be designed to provide air movement across all parts of the vault floor.

(C) Supply and exhaust ducts must extend to within 3 in. (7.6 cm), but not more than 12 in. (30.5 cm), of the floor.

(D) The exhaust system must be installed in accordance with the provisions of NFPA 91, Standard for Exhaust Systems for Air Conveying of Materials.

(E) Means must be provided to automatically detect any flammable vapors and to automatically shut down the dispensing system upon detection of flammable vapors in the exhaust duct at a concentration of 25 percent of the lower flammable limit.

(14) Each vault must be equipped with a detection system capable of detecting liquids, including water, and of activating an alarm.

(15) Means must be provided to recover liquid from the vault. If a pump is used to meet this requirement, it must not be permanently installed in the vault. Electric-powered portable pumps must be suitable for use in Class I, Division 1 locations, as defined in NFPA 70, National Electrical Code.

(16) Vent pipes that are provided for normal tank venting must extend at least 12 ft. (3.6 q) above ground level.

(17) Emergency vents must be vapor tight and may be permitted to discharge inside the vault. Long-bolt manhole covers will not be permitted for this purpose.

(18) Each vault must be provided with a way for personnel entry. At each entry point, a warning sign indicating procedures for safe entry must be posted. Each entry point must be secured against unauthorized entry and vandalism.

(19) Each vault must be provided with a suitable means to admit a fire suppression agent.

(20) The interior of any vault containing a tank that stores a Class I liquid will be designated a Class I, Division 1 location, as defined in NFPA 70, National Electrical Code. Class I liquids may not be stored or handled within a building having a basement or pit into which flammable vapors can travel unless the area is provided with ventilation that will prevent the accumulation of flammable vapors.

(21) Vaults that were constructed in compliance with earlier state or national codes in existence at the time of construction will not be required to change unless they ~~currently~~ pose a danger to persons or property ~~in the vicinity~~ or to persons having to work in or around the vault.

PART 9. DISPENSER REQUIREMENTS

165:26-2-92. Dispenser hose

(a) Listed hose assemblies must be used to dispense fuel.

(1) Hose length at ~~automotive service stations~~ facilities will not exceed 18 ft (5.5 m).

(2) Hose at retail and marina facilities must be checked daily for evidence of blistering, carcass saturation or separation, cuts, nicks or abrasions that expose reinforcement material and for slippage, misalignment or leaks at couplings.

(3) Two lengths of hose must not be coupled together.

(b) Defective hoses must be immediately removed from service.

(c) At least once each month the hose must be completely extended and inspected.

(1) The hose couplings and the first twelve inches of hose adjacent to the couplings must be examined.

(2) Structural weakness must be checked by pressing the hose in the area around its entire circumference for soft spots.

(3) Hoses that show evidence of soft spots must be immediately removed.

PART 15. ELECTRICAL

165:26-2-151. Electrical requirements

(a) All electrical work must be installed by a state or federally licensed electrical contractor.

(b) All electrical wiring and electrical utilization equipment must be of a type specified by and must be installed in accordance with NFPA 70, National Electrical Code.

(c) All electrical wiring and electrical utilization equipment must be suitable for the locations in which they are installed.

(d) Refer to the NFPA 30A regulations for the table on Electrical Equipment Classified Areas - Motor Fuel Dispensing Facilities. This table should be used to delineate and classify areas for the purpose of installation of electrical wiring and electrical utilization equipment. The designation of classes and divisions of classified locations is defined in Chapter 5, Article 500, of NFPA 70, National Electrical Code.

(e) Electrical wiring and electrical utilization equipment that is integral with the dispensing hose or nozzle must be suitable for use in Class I, Division 1 classified locations.

(f) Where Class I liquids are stored, handled, or dispensed, electrical wiring and electrical utilization equipment must be designed and installed in accordance with the requirements for class I Division 1 or 2 classified locations, as set forth in Table as in (d) above and in NFPA 70, National Electrical Code.

(g) Clearly identified and easily accessible switch(es) or circuit breaker(s) must be provided at a location remote from dispensing devices, including remote pumping systems, to shut off the power to all dispensing devices in the event of an emergency.

(h) Electrical components for dispensing liquids must be installed according to the guidelines established in Electrical Installations of NFPA 30A. All electrical equipment must be installed and used in accordance with the requirements of NFPA 70, National Electrical Code, as it applies to wet, damp, and hazardous locations.

(i) Electrical equipment that was installed in compliance with an earlier state or national code will not be required to change unless the equipment is ~~now~~ hazardous to people or property ~~in the vicinity~~.

PART 17. INSTALLATION OF ABOVEGROUND STORAGE TANK SYSTEMS

165:26-2-171. Aboveground storage tank system installation

(a) All owners and operators of ~~retail, marina, fleet/commercial, airport, emergency generator and bulk plant~~ regulated aboveground storage tank systems must ensure that the ~~installer~~ person they employ has been licensed by the Commission in accordance with OAC 165:26-1-30.3, "Licensing procedure for aboveground storage tank ~~installers~~ licensees."

(b) Tanks must be installed in accordance with this Chapter.

(c) A tightness test must be completed on tank and lines during construction and before being put into service after the lines have been covered.

(1) Aboveground singlewall tanks shall be air tested according to NFPA 30-2.4.2.1 or the manufacturers recommendations. The entire tank must be soaped and inspected for bubbling prior to installation. Doublewall tanks must be tested according to the manufacturer's instructions.

(2) Aboveground product piping shall be subjected to a air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of doublewall piping must be tested according to the manufacturer's instructions.

(3) All suction product piping must be tested while disconnected from the pumps, and dispensing units. The piping must be subjected to an air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of doublewall piping must be tested according to the manufacturer's instructions

(4) All pressurized piping must be tested while connected to tanks, pumps and dispensing units if installed at the time of installation. The piping must be subjected to an air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of doublewall piping must be tested according to the manufacturer's instructions.

(5) All piping should be air tested and monitored continuously after the installation and until the completion of the installation or precision tightness test. All underground pressurized and suction piping must have a precision tightness test performed after all paving over

the piping has been completed and before the system is placed in operation. The precision tightness test must be performed by a certified tester, and in accordance with manufacturer's instructions. The product line(s) must be hydrostatic tested by a nationally recognized testing device capable of detecting a leak of 0.10 gallons per hour with a test pressure of 50 psi or $1\frac{1}{2}$ times the operating pressure, whichever is greater. The lines must be tested for a minimum of one hour.

(6) Mechanical leak detector(s) must be tested in accordance with manufacturer's instructions.

(7) If an ATG system with electronic line leak detector(s) is installed it must complete a leak detector test in each of the modes in which it is certified as capable of detecting a leak (e.g. 3gph, 0.2gph, and 0.1gph).

(8) A function test must be performed on all line leak detectors at installation.

(~~7~~9) Containment sumps must be tested after all piping and conduit has been installed by filling sumps with water and monitoring the liquid level for an 8 hour period.

(~~8~~10) Alternate methods of tank system testing may be approved by the Commission, upon demonstration that the method chosen is effective.

PART 19. REPAIRS TO ABOVEGROUND STORAGE TANK SYSTEMS

165:26-2-191. Repairs to aboveground tank systems

Repairs to an aboveground storage tank must be performed by ~~a licensed~~ an aboveground storage tank ~~installer~~ licensee pursuant to OAC 165:26-1-30.3.~~, "Licensing procedure for aboveground storage tank installers."~~ Routine maintenance such as painting and repairs to a product dispensing unit will not be considered repairs to the storage tank system.

PART 21. REMOVAL AND CLOSURE OF ABOVEGROUND STORAGE TANK SYSTEMS

165:26-2-213. Permanent closure

Owners and/or operators of aboveground storage tank systems who do not intend to use the tanks for fuel storage in the future must close the tank systems after they have been out of service for more than 12 months by performing the following:

(1) Empty, clean, purge and devaporize the tank of all flammable products.

(2) Separate the piping from the tank.

(3) Perform a site assessment pursuant to 165:26-2-214, "Assessing the site at tank closure or change in service".

~~(4) Any company that removes aboveground storage tank systems must have a licensed AST Installer.~~

(4) An AST licensee must be on site at all times during the removal of an aboveground storage tank and/or lines.

165:26-2-214. Assessing the site at tank closure or change in service

(a) Before permanent closure or a change in service is completed, the owner or operator must measure for the presence of a release where contamination is most likely to be present at the aboveground storage tank system site. The Commission, at its discretion, may have a witness present to verify that sampling is completed appropriately. Failure of the owner, operator or ~~the owner's~~ their representative to schedule the sampling 14 days in advance with the Commission and to advise the Commission at least 48 hours in advance of schedule changes may result in the Commission requiring a post-closure site assessment.

(b) In selecting sample types, sample locations, and measurement methods, the owner must consider the method of closure, the nature of the stored substance, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence of a release. Sample locations should be approximately 5 feet (5') from the outer edge of the AST system in native soil or another location approved by the Commission. All samples required to be collected and analyzed pursuant to this Section must be analyzed by an Oklahoma Department of Environmental Quality certified laboratory.

(1) For tank systems containing petroleum product, analyses must be done for both TPH and BTEX.

(2) Levels of contamination in native soils and groundwater that shall require further action at the direction of the commission, are:

(A) Benzene
- (i) Native Soils - 0.5 mg/kg
- (ii) Groundwater - 0.005 mg/l

(B) Toluene
- (i) Native Soils - 40.0 mg/kg
- (ii) Groundwater - 1.0 mg/l

(C) Ethyl Benzene
- (i) Native Soils - 15.0 mg/kg
- (ii) Groundwater - 0.7 mg/l

(D) Xylene
- (i) Native Soils - 200.0 mg/kg
- (ii) Groundwater - 10.0 mg/l

(E) TPH
- (i) Native Soils - 50.0 mg/kg
- (ii) Groundwater - 2.0 mg/l
- (iii) If BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil shall be required to confirm a case at the direction of the commission.

(c) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered, the owner must begin corrective action in accordance with OAC 165:29, the Commission's Rules on Remediation.

(d) Any sampling at closures must be under the supervision of a licensed Remediation Consultant.

(e) Only soil and/or groundwater sampling results will be acceptable for site assessment at closure. Monitoring well records and/or inventory reconciliation records will not be accepted.

(f) The requirements of this Section do not apply to aboveground storage tanks which are located in or on buildings.

165:26-2-215. Requirements for returning to service

(a) A tightness test must be completed on the underground portion of out of service systems if more than 12 months have elapsed since the last tightness test.

(b) Systems out of service for more than 12 months ~~may be~~ are required to meet all the requirements of this Chapter.

SUBCHAPTER 3. RECORDKEEPING, RELEASE PREVENTION, DETECTION, INVESTIGATION AND REPORTING

PART 3. RECORDKEEPING

165:26-3-11. Availability of records

(a) Owners and operators of regulated aboveground storage tank systems ~~regulated by this Chapter~~ must cooperate with Commission requests for submission of inventory and monitoring records. All leak detection records, including sampling, testing, inventory and monitoring records must be available for each tank for at least the preceding twelve months. Copies of all records required to be kept pursuant to this Chapter shall be kept:

(1) At the facility and available for immediate inspection by the Commission; or

(2) Available for inspection by the Commission upon request.

(b) Failure to have the required records available when requested by the Commission may result in an enforcement action.

(c) The owner may voluntarily forward the required records for compliance inspection monthly to the ~~Petroleum Storage Tank Division~~ PSTD. These records will be made electronically available only to the PSTD Fuel Specialist, who will have all necessary records upon arrival at the facility to be inspected. For participants in this program only, records necessary for compliance inspections need not be at the facility.

(d) Release detection records must be maintained on forms specified by the Commission.

(e) When a change in an owner or operator of a petroleum storage tank system occurs, all records required by the Commission must be transferred at no cost to the new owner or operator.

165:26-3-12. Repair records

Owners and operators of regulated aboveground storage tank systems ~~regulated by this Chapter~~ must maintain records which identify the location and nature of the repair, including documentation regarding the repair. These records must be kept for the remaining operating life of the storage tank system. "Repairs" are defined as work done to restore a storage tank system component that has failed causing a release of fuel from the system.

165:26-3-13. Tank installation, closure and removal records

(a) Owners and operators of aboveground storage tank systems must maintain records regarding the installation for the lifetime of the system; or, at the owner's option, give copies of installation records to the Petroleum Storage Tank Division for retention in the Division's files. Owners who have purchased systems must maintain the installation information if it is available.

(b) Owners and operators of aboveground storage tank systems must maintain records capable of demonstrating compliance with the closure and removal requirements for tanks that are temporarily taken out of service or permanently removed. These closure and removal records must:

(1) Provide the results of any excavation area site assessment required in 165:26-2-214, "Assessing the site at tank closure or change in service." These results must be maintained for at least 3 years after removal of the tanks and permanent closure of the system in one of the following ways:

(A) By the owner or operator who took the aboveground storage tank system out of service,

(B) By the current owner or operator of the property where the tanks were located, or

(C) By mailing these records to the Commission.

(c) The owner or the owner's representative (as directed by the owner) must submit a report in writing to the Commission within 45 days from the date the tanks are taken out of service or removed. The information must include, but is not limited to, the following:

(1) Owner's name, address, and facility location.

(2) An accurate drawing showing the location of the tank, piping runs, dispensing units, property lines, and any sampling locations.

(3) Disposition of the soil removed from the tank and piping areas.

(4) Disposition of the tanks.

(5) Copies of laboratory reports on ~~any~~ all samples collected. The lab reports must show the facility address and sample identification matching code systems used in the closure report. The part of a closure report pertaining to sampling must contain a verification statement signed by the licensed storage tank consultant in supervisory control of the sampling.

165:26-3-14. Release detection and corrosion protection records

(a) Owners and operators of regulated aboveground storage tank systems ~~regulated by this Chapter~~ must maintain release detection records for a minimum of one year.

(b) Owners and operators of regulated aboveground storage tank systems ~~regulated by this Chapter~~ who use cathodic protection ("CP") must maintain records that demonstrate compliance with the performance standards of this Chapter.

(1) Records must include the original cathodic protection design with drawings or plans depicting all of the CP system components, along with the credentials of the company which designed the system.

(2) Rectifier readings for impressed current systems conducted at least every 60 days.

(3) Results of the last three inspections or CP system tests completed by a corrosion technician.

(c) If external leak detection methods are used, the records must include the dates the monitoring wells were checked, the name of the person performing the inspection, the type of instrument used, and calibration data on the instrument.

PART 5. SPILL AND OVERFILL PREVENTION REQUIREMENTS

165:26-3-21. General spill and overfill prevention requirements

(a) Owners and operators of aboveground storage tank systems, as well as those who transport regulated substances to these systems must do everything reasonably possible to ensure that releases due to spilling and overfilling do not occur.

(b) Tanks with a fill pipe must be filled through a liquid tight connection mounted inside at least a 5 gallon spill container. Where an aboveground tank is filled by means of fixed piping, either a check valve and shutoff valve with a quick-connect coupling or a check valve with a dry-break coupling shall be installed in the piping at a point where connection and disconnection is made inside the spill containment between the tank and the delivery vehicle. This device shall be protected from tampering and physical damage.

(c) A 90 percent alarm and 95 percent overfill valve are required for any tank installed after July 15, 2000 if the tank is greater than 1,100 gallon capacity or if the tank is filled by a tight fill method.

(d) Tanks installed prior to July 15, 2000 ~~may~~ must have a 90 percent alarm or a 95 percent overfill valve.

(e) A 90 percent alarm is required on tanks less than 1,100 gallons that are filled with a delivery nozzle from a delivery vehicle.

(f) Means shall be provided for determining the liquid level in each tank and this means shall be accessible to the delivery operator. Tank filling shall not begin until the delivery operator has determined that the tank has sufficient available capacity (ullage).

PART 19. RELEASE REPORTING REQUIREMENTS

165:26-3-191. Release reporting

(a) The reporting requirements of this Part do not relieve the owner or operator of the responsibility to take necessary corrective action pursuant to OAC 165:29, the Commission's Rules on Remediation, to protect the public health, safety and the environment, including the containment and cleanup of spills and overfills that are not required to be reported by this Chapter.

(b) All aboveground storage tank system owners, operators, their employees or agents, or transporters must report any of the following events to the Commission by telephone at (405) 521-6575 or toll free at 1-888-621-5878 (if after hours or on weekends or holidays, a detailed message must be left on the Commission's answering machine) within 24 hours of knowing of any of the following situations. Owners or operators must provide written confirmation to follow within 20 days in accordance with the requirements established in this Chapter. Qualifying events include:

(1) The discovery of released regulated substances at the aboveground storage tank system facility or in the surrounding area (such as the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water);

(2) Any unusual operating conditions observed by owners and/or operators, such as the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the aboveground storage tank system, or an unexplained presence of water in the tank, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced.

(A) In the case of inventory control, two consecutive months where the Total Gallons Over/Short is greater than the "Leak Check" (1 percent of product sales plus 130 gallons) must be reported to the Commission within 24 hours of the owner or operator knowing the inventory control results.

(B) Any AST system failure from a third party-certified Statistical Inventory Reconciliation (SIR) analysis must be reported to the Commission within 24 hours of the owner or operator knowing of the failure. An immediate investigation into the cause of the failed report must be conducted and results reported to the Commission within 7 days.

(C) An "Inconclusive" report from an SIR monthly analysis must be reported within 24 hours of the owner or operator knowing of the report. An Inconclusive means that the AST system has failed to meet leak detection requirements for that month.

(3) An unusual level of vapors on the site that is of unknown origin. A vapor monitor well reading in excess of 4,000 units/ppm from a pit containing gasoline tanks, and in excess of 1,500 units/ppm for a pit containing diesel or both gasoline and diesel, must be reported to the Commission within 24 hours of the owner or operator or any of his or her employees at the facility knowing the monitoring results. Within 10 days, the owner or operator must submit to the Commission all vapor monitoring well data, including background data, for the last 12 months. Upon examination of the submitted data, the Commission will advise the owner or operator what action, if any, he or she needs to take. When a 1,500 units/ppm reading is reported, the Petroleum Storage Tank Division will perform a preliminary investigation at its own expense prior to opening a cleanup case; if it finds no reason to open a case, the owner or operator is not liable for any expenses.

(4) An increase in vapor levels of 500 units/ppm above background or historical levels detected by monthly monitoring, even though below the 24-hour reporting level, must be reported if the increase does not correct itself in

the second month of monitoring. It must be reported to the Commission within 24 hours of the owner or operator or any of his or her employees at the facility knowing the monitoring results.

(5) Monitoring results from a release detection method required by this Chapter that indicate a release may have occurred unless the monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.

(c) While aboveground releases of petroleum of less than 25 gallons need not be reported, they must be recorded by the owner or operator and contained and cleaned up immediately. All of the following releases must be reported by telephone within 24 hours of discovery, with a written confirmation to follow within 20 days in accordance with the requirements established in this Chapter:

(1) All known belowground releases in any quantity; for example, a release resulting from a line broken during an excavation.

(2) Any aboveground release of petroleum greater than 25 gallons.

(3) Any aboveground release of petroleum which is less than 25 gallons, but cannot be contained and cleaned up within 24 hours.

(d) All owners and/or operators of aboveground storage tank systems must maintain records of all reportable and nonreportable events listed in this section sufficient to permit adequate inspection and review by the Commission. These records must be kept for 3 years following the date of the event.

(e) If any of the possible, probable or definite release conditions in subsections (a) through (c) above are not reported within 24 hours, the owner or operator must be prepared to provide documentation or evidence that would reasonably indicate his or her knowledge of release conditions or monitoring results was delayed.

SUBCHAPTER 4. INSPECTIONS, PENALTIES AND FIELD CITATIONS

PART 1. INSPECTIONS

165:26-4-1. Owner/operator cooperation

(a) Owners and operators of regulated aboveground storage tank systems ~~regulated by this Chapter~~ must cooperate with inspections, monitoring, and testing requested by or conducted by the Commission.

(b) Upon ~~the~~ request of the Commission, owners and operators must, at all reasonable times:

(1) Furnish information relating to the owners' or operators' storage tank facilities, the contents of those facilities, and the associated equipment connected to those facilities.

(2) Conduct monitoring or testing of storage tank facilities.

(3) Permit the Commission to have access to, and to review, inspect, and copy records relating to storage tank facilities.

165:26-4-2. Authority of the Commission

The Commission has the responsibility and authority at any reasonable time to:

(1) Enter any storage tank facility or other place where a storage tank system is located within the State.

(2) Inspect and obtain samples from any facility of any regulated substances stored in the storage tank system.

(3) Conduct monitoring or testing of the tanks, piping, associated equipment, contents, or the environment at regulated facilities and any location impacted or potentially impacted by a release at a regulated facility ~~at these facilities~~.

165:26-4-6. Exception and Variances

(a) The rules of this Chapter are designed to protect the environment from pollution and persons and property from fire and explosions. If a tank system has been constructed to effectively accomplish these goals, it ~~should~~ may not be required to change simply because it does it in a manner different from those spelled out in this Chapter unless the commission determines they pose a serious threat to people, property or the environment.

(b) Old tanks that were built and installed in compliance with earlier editions of the National Fire Protection Association codes ~~should~~ may not be required to upgrade to comply with more recent fire codes, unless in their current condition they pose a serious threat to people, property or the environment.

(c) Fuel storage tanks that are specifically regulated by another government agency to accomplish the goals of this Chapter ~~should~~ may not be required to comply with this Chapter if they are complying with the rules of the other agency.

(d) The demands of these rules should be modified to avoid placing a tank owner in conflict with another government agency. ~~For example, marinas often lease their space from the Corps of Engineers, state agencies or municipal governments, which may place restrictions on what the marina operator can do with the land.~~

PART 3. PENALTIES

165:26-4-10. Penalties

(a) Pursuant to 17 O.S. § 306, any owner or operator of ~~an~~ a regulated aboveground storage tank system located within the State who violates any of the provisions of this Chapter may be issued a citation or may be subject to an administrative penalty not to exceed $10,000.00 for each day that the violation continues.

(b) 17 O.S. § 311 provides that any person who has been determined by the Commission to have violated any provisions of the Storage Tank Regulation Act or any rule promulgated or order issued pursuant to the provisions of the Oklahoma

Storage Tank Regulation Act may be held liable for an administrative penalty of not more than $10,000.00 per day ~~that the~~ of continuing violation ~~continues~~ and 17 O.S. § 365(H) provides that owners or operators who fail to comply with any order issued by the Commission for corrective or enforcement action may be subject to an administrative penalty not to exceed ~~$25,000.000 for each~~ $25,000.00 per tank ~~for each~~ per day of violation. Under this Chapter the Manager of Inspection and Compliance may issue citations under the authority of 17 O.S. § 306 and Part 5 of this Subchapter, but only the ~~Corporation Commissioners~~ Commission after notice and hearing may ~~can~~ impose ~~the~~ a larger ~~fines allowed by 17 O.S. §§ 311 and 365 H~~ fine.

PART 5. NOTICES OF VIOLATION~~, WARNING CITATIONS~~ AND ~~FINE~~ CITATIONS

165:26-4-16. Notices of Violation

(a) When a Fuel Specialist of the Petroleum Storage Tank Division finds a violation of any rule or order of the Commission regarding the regulation of petroleum storage tanks, the Fuel Specialist may issue a Notice of Violation (NOV) pursuant to Appendix G.

(1) A Notice of Violation is to alert the tank owner or operator that a violation has been found. The NOV will describe the violation, and ~~act as a warning~~ warn that further Commission enforcement action ~~will~~ may occur if the violation is not corrected.

(2) There are some violations ~~that are not eligible for a warning. For these violations,~~ where a Citation will be issued to the tank owner or operator.

(3) In all situations where an NOV is issued, it must explain to the person to whom it is given what the offense is and how the person can correct it.

(b) Notices of Violation will state the following information:

(1) A clear description of the violation(s).

(2) A date by which the violation(s) must be corrected.

(3) The name of the Fuel Specialist issuing the NOV, along with a telephone number and address so that the tank owner or operator can ask the Fuel Specialist questions.

(c) A Fuel Specialist will give the NOV(s) to the owner of the storage tank facility, if the owner is at the facility. If the owner is not present, operators or managers at the storage tank facility can be given NOVs.

(d) The Fuel Specialist will mail or fax a copy of all NOVs to any facility's corporate office at the company's request. The company must make a request in writing to the Manager of Inspection and Compliance of the Petroleum Storage Tank Division.

165:26-4-17. Re-inspection and ~~Fine~~ Citation

(a) On or after the date that the violation is to be corrected, a Fuel Specialist will re-inspect the storage tank facility to verify that the violation has been corrected.

(b) If the re-inspection shows that the violation has not been corrected, the Fuel Specialist ~~may~~ will:

(1) Refer the violation to the Commission's Inspection and Compliance Manager for formal enforcement action; and/or

(2) If the storage tank facility constitutes an immediate hazard it may be shut down pending a correction of the problem or a hearing on the issue.

165:26-4-18. Payment of fine or hearing

(a) The storage tank owner or operator can either pay the amount of the fine as stated in the ~~Fine Citation~~ citation or request an evidentiary hearing.

(b) The tank owner or operator will have thirty (30) days from the date the citation was issued to pay the fine.

(1) A fine may be paid with cash, a money order, or check. Any cash payment must be made at the Commission ~~Cashier's window~~ cashier. All checks must be made payable to the Oklahoma Corporation Commission - Petroleum Storage Tank Division. If sending payment through the mail, a copy of the citation must be sent with the payment to ensure proper credit.

(2) Payment of ~~a fine~~ the citation within the 30 day time frame will not be considered an agreement or disagreement with the citation.

(c) If the storage tank owner or operator disagrees with the citation, he or she can have a hearing at the Commission.

(1) To request a hearing, the procedure as provided on the citation should be followed and must be made within seven (7) days from the date the citation was issued.

(2) The Commission will set a date for a hearing and will notify the tank owner or operator of the date and time of the hearing.

(3) If found guilty at the hearing, the tank owner or operator must pay the amount of the ~~fine~~ citation, as well as an administrative cost of $250.00.

(d) If a ~~Fine Citation~~ citation has not been paid within ninety (90) days of being issued or within ninety (90) days of a Commission order confirming the fine, the amount of the fine will double. Refusal to comply with an order of the Commission may result in ~~an additional fine to be set~~ formal enforcement after notice and hearing in an amount as allowed by law.

(e) Failure of a tank owner or operator to appear at the hearing will result in additional enforcement actions. These actions may include the addition of a larger fine and/or assessment of an administrative fee ~~and/or having the violation sent to the Office of General Counsel for legal proceedings~~.

(f) An appeal from the ~~evidentiary~~ hearing ~~must~~ may be made to the Commission en banc in accordance with OAC 165:5.

(g) A tank owner or operator is still responsible for following the Commission's rules regarding petroleum storage tanks regardless of paying a fine or correcting a violation.

SUBCHAPTER 6. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY AIRPORTS OPEN TO THE PUBLIC

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-6-1. Application

(a) This Subchapter applies to aboveground storage tank systems for aircraft fuel at airports. A storage tank system consists of a stationary tank and the pipes, pumps and dispensers attached to it. It does not extend to aircraft fuel servicing vehicles.

(b) The purpose of this Subchapter is to protect the environment from pollution and people and property from fire and explosion.

(c) It extends into airport operations only in so far as they relate to the installation, operation, maintenance and inspection of fuel storage tank systems.

(d) ~~Oklahoma has two large national/international airports almost fifty regional airports, forty district airports, almost forty community airports, and hundreds of private airports. The facilities needed, the staffing, the traffic and the safety requirements for these airports are quite different. The private~~ Private airstrips are excluded from this Subchapter ~~entirely but this still leaves a very diverse group, ranging from heavily used airports, with many very large fuel tanks to those that have little traffic and minimal fuel service. This Subchapter tries to take these differences into consideration~~.

(e) Subchapters 1, 2, 3, and 4 shall also apply in addition to this Subchapter.

165:26-6-2. Timeframes for registration and compliance with rules

(a) Stationary tanks greater than 110 gallons must be registered with the Petroleum Storage Tank Division of the Corporation Commission.

(b) Airport tank systems must come into full compliance with the rules of this Chapter and subchapters before July 15, 2005, though compliance may be required sooner for any part of an existing system which poses a current threat to ~~nearby~~ property, to people, ~~in the area~~ or to the environment.

(c) All underground product piping at new facilities and all underground suction piping at existing facilities must be installed or upgraded, before the deadline date of July 15, 2005, in accordance with 165:26-2-55, "Underground piping materials," and with 165:26-2-56, "Installation and monitoring requirements for piping."

PART 15. DISPENSER REQUIREMENTS

165:26-6-61. Dispenser hose

(a) Aircraft fueling hose that is frequently used must be inspected before use each day.

(1) The hose must be checked for evidence of blistering, carcass saturation or separation, cuts, nicks or abrasions that expose reinforcement material, and for slippage, misalignment or leaks at couplings.

(2) If coupling slippage or leaks are found, the cause of the problem must be determined.

(b) Defective hoses must be immediately removed from service.

(c) At least once each month the hose must be thoroughly inspected including:

(1) The hose couplings and the hose must be examined for a length approximately 12 in. (305 mm) adjacent to the couplings.

(2) Structural weakness must be checked by pressing the hose in the area around its entire circumference for soft spots.

(3) Hoses that show evidence of soft spots must be immediately removed from service.

(4) The nozzle screens must be examined for rubber particles. The presence of rubber particles indicates possible deterioration of the interior, and the hose must be immediately removed from service.

(5) A hose assembly that has been subjected to abuse, such as severe end-pull, flattening or crushing by a vehicle, or sharp bending or kinking, must be immediately removed from service.

(6) If inspection shows that a portion of a hose has been damaged, the hose must be immediately replaced. Two lengths of hose must not be coupled together.

(7) Before any hose assembly is placed in service, it must be visually inspected for evidence of damage or deterioration.

(8) Kinks or short loops in fueling hose must be avoided.

SUBCHAPTER 8. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY MARINAS

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-8-1. Application

(a) This Subchapter applies to the storage, handling and use of ~~gasoline and diesel fuel~~ regulated substances kept in aboveground storage tanks at marinas.

(b) Subchapters 1, 2, 3 and 4 shall also apply in addition to this Subchapter.

165:26-8-2. Timeframes for registration and compliance with rules

(a) Tanks that are greater than 110 gallons must be registered with the Petroleum Storage Tank Division of the Commission. The tank and piping system must come in compliance with the rules of this Chapter and Subchapter before July 15, ~~2005~~ 2007. However, compliance may be required sooner for any part of ~~an existing~~ a system which poses a ~~current~~ threat to ~~nearby~~ property, ~~to~~ people, ~~in the area~~ or to the environment.

(b) All underground ~~product~~ piping ~~at new facilities and all underground suction piping~~ at existing facilities ~~must be installed~~ or upgraded before the deadline date of July 15, ~~2005~~

2007, must be done in accordance with165:26-2-55, "Underground piping materials," and with 165:26-2-56, "Installation and monitoring requirements for piping."

(c) All dock or pier product piping from the shore transition sump to the dispensers at new facilities must be installed according to 165:26-8-40, "Aboveground piping at marinas," and 165:26-8-41, "Installation and monitoring requirements for piping."

(d) All dock or pier product piping from the shore transition sump to the dispensers at existing facilities must be upgraded before the deadline date of July 15, ~~2005~~ 2007 according to 165:26-8-40, ~~,~~ "Aboveground piping at marinas," and 165:26-8-41, "Installation and monitoring requirements for piping."

(e) Temporary tanks may not be used at marinas.

PART 3. TANK DESIGN, CONSTRUCTION, CAPACITY AND LOCATION REQUIREMENTS

165:26-8-13. Location of aboveground storage tanks at marinas

(a) Tanks supplying ~~marine service stations~~ marinas and pumps not integral with the dispensing device must be onshore ~~or on a pier of the solid fill type~~. ~~But where shore location would require excessively long supply lines to dispensers, tanks may be located on a pier, provided spacing, containment, piping and electrical classification are complied with and the quantity stored does not exceed 1,100 gallons (4164 L) aggregate capacity. The best way to accomplish this on a pier is the use of a double walled tank which requires no other secondary containment.~~

(b) All new aboveground storage tanks located at marinas must be located above the flood stage level.

PART 9. PIPING REQUIREMENTS

165:26-8-40. Aboveground piping at marinas

(a) The design, fabrication, assembly, test and inspection of the piping system from the fuel tank to the fuel dispensers must be in accordance with NFPA 30, NFPA 30A, and the piping manufacturers installation recommendations and instructions. Piping must be listed and approved by the manufacturer for aboveground installations.

(b) A water tight transition or piping sump must be buried and installed as close as practical to the shore line as a transition from ~~underground piping to aboveground piping~~ onshore piping to over-water piping. A sufficient amount of concrete should be poured over the transition sump to keep it from floating if the sump is installed below the flood plain. There should be a normally closed explosion proof solenoid valve and pressure relief valve installed in each product line inside the transition sump. If a pressure system is used all sump sensors should automatically control the electricity to both the solenoid valve and submerged pump. If a suction system is used the ~~all~~ sump sensors should automatically control the electricity to both the solenoid valve and suction pump motor.

(c) Piping at all hinge locations must be installed according to the double wall piping manufacturer recommendations. The dock or ramp piping must be designed and installed at least level but preferably with a slope between sumps in order to eliminate any air pockets in the piping and also to insure that any leakage into the interstice piping will drain into the sumps. Due to the constant movement of the water and the floating dock, piping shall be installed with proper support and strain relief in order to eliminate the physical stress on the piping and piping connections. Fuel piping and electrical conduit shall be rigidly attached to the dock before the piping enters the sump area, in order to prevent strain on the entry boots and primary pipe fittings.

(d) All marina floating docks and pier installations must have double-walled piping and either stainless steel or fiberglass clad steel sumps with monitoring sensors that automatically control the electricity to the pumping device and solenoid valves.

(e) A listed emergency breakaway device designed to retain liquid on both sides of the_breakaway point shall be installed on each line serving the dock. The breakaway device shall be located where the dock piping will separate from the shore or secured ramp piping. The piping shall be secured at both ends of the breakaway device so that the piping will withstand the forces and pressures exerted upon it.

(f) All aboveground piping and system components must be protected from being damaged by fire, collision and abrasion.

(g) All flexible piping installed aboveground on the shore, in the water, or secured to the dock or ramp shall be a metallic ducted flexible double wall system or an approved double wall piping system installed inside a metal conduit or chase.

(h) All piping installed above the water on the dock shall be installed inside a metal conduit or chase for the purpose of eliminating sagging in the piping thus assuring that any leak in the piping interstice would end up in the sumps.

165:26-8-41. Installation and monitoring requirements for piping

All piping that routinely contains regulated substances must be monitored for releases in a manner that meets the following requirements:

(1) **Pressurized piping.**

(A) All piping that conveys regulated substances under pressure must be equipped with an automatic mechanical or electronic line leak detector installed and in operation.

(B) Aboveground dock piping ~~installed after July 15, 2002 and all systems~~ upgraded before the deadline date of July 15, ~~2005~~ 2007, must have double-walled piping and dispenser, piping or transition sumps. Each sump shall be monitored with a sensor, float or similar mechanical device and automatically control the electricity to both the solenoid valve and submerged pump. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs. However, the interstitial piping boot on the piping leaving the piping sump located on shore as in 165:26-8-40(b)

must be kept sealed in order to eliminate any leakage from leaving that sump and allowed to enter the dock dispenser or piping sumps.

(2) **Suction piping.** Aboveground dock piping ~~installed after July 15, 2002 and all systems~~ upgraded before the deadline date of July 15, ~~2005~~ 2007, must have double-walled piping and pump, piping and transition sumps. Each sump shall be monitored with a sensor, float or similar mechanical device at each sump and automatically control the electricity to both the solenoid valve and suction pump motor. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs. However, the interstitial piping boot on the piping leaving the piping sump located on shore as in 165:26-8-40(b) must be kept sealed in order to eliminate any leakage from leaving that sump and allowed to enter the dock dispenser or piping sumps.

(3) **Methods of release detection for pressurized piping.** The method of release detection for pressurized piping must be done in accordance with the following requirements:

(A) **Automatic mechanical line leak detectors.** Methods which alert the owner and/or operator to the presence of a leak by restricting or shutting off the flow of regulated substances through the piping may be used only if they detect leaks of 3 gallons per hour at 10 psi line pressure within 1 hour. An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements. Automatic mechanical line leak detectors installed on or after September 22, 1991 must be capable of detecting the leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05. A hydrostatic line tightness test must be done annually by a certified tester in accordance with this Chapter in addition to any other line leak detection method; and

(B) **Sump sensors.** Sump sensors, floats or similar mechanical devices at each dispenser, piping and transition sump shall also be used in addition to automatic line leak detectors. The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors must also be checked monthly to insure that they are operational.

(C) **Alternative to automatic mechanical line leak detector and annual line tightness testing.** A certified electronic line leak detector may be used in lieu of an automatic mechanical line leak detector and annual line tightness test only if:

(i) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and

(ii) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every month; and

(iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually, and the system is tested annually in accordance with manufacturer's specifications.

(4) **Methods of release detection for suction piping.** The method of release detection for suction piping must be done in accordance with the following requirement: Sump sensors**.** Each sump shall be monitored with a sensor, float or similar mechanical device and automatically control the electricity to both the solenoid valve and suction pump motor. The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors must also be checked monthly to insure that they are operational.

PART 15. DISPENSER REQUIREMENTS

165:26-8-62. Nozzles

Dispensing nozzles used at ~~marine service stations~~ marinas must be the automatic closing type without a latch-open device.

165:26-8-63. Dispenser location at marinas

Dispensing devices at ~~marine service stations~~ marinas may be located on open piers, wharves, floating docks, shores or on piers of the solid-fill type, but must be located apart from other structures to provide room for safe ingress and egress of watercraft for fueling. Dispensing devices must be in all cases at least 20 ft. (6 m) from any activity involving fixed sources of ignition.

PART 19. DISPENSING PROCEDURES

165:26-8-80. Attendants at marinas

~~Each marine service stations~~ Marinas ~~must~~ may have an attendant or supervisor on duty when the ~~station~~ marina is open for business. The attendant's primary function will be to supervise, observe, and control the dispensing of fuels to insure that all safety requirements are met, and to insure that the waters of the state are not contaminated by fuel.

PART 21. MISCELLANEOUS SAFETY PROVISIONS

165:26-8-86. Required signs

All ~~marine service stations~~ marinas must have a sign printed in 2-in. (5-cm) red block capital letters on a white background conspicuously posted in the dispensing area which says:

(1) BEFORE FUELING:

(A) Stop all engines and auxiliaries.

(B) Shut off all electricity, open flames and heat sources.

(C) Check all bilges for fuel vapors.

(D) Extinguish all smoking materials.

(E) Close access fittings and openings to prevent fuel vapors from entering enclosed spaces of the vessel.

(2) DURING FUELING:

(A) Maintain nozzle contact with the fill pipe.

(B) Wipe up spills immediately.

(C) Avoid overfilling.

(D) Fuel filling nozzle must be attended at all times.

(3) AFTER FUELING:

(A) Inspect bilges for leakage and fuel odors.

(B) Ventilate until odors are gone.

165:26-8-88. Fire extinguishers

(a) Each marina must be provided with listed fire extinguishers which have a minimum capability of ~~40:BC~~ 40 pounds, Class B,Class C.

(b) A minimum of two extinguishers must be located at the fuel dock and one or more located so they will be within 100 ft. (30 m) of each pump, dispenser, underground fill pipe opening and lubrication or service room.

(c) Where practical, there should be a frost-proof water hydrant with at least a 5/8" hose on the fuel dock. Piers which extend more than 500 ft. (152 m) in travel distance from shore must have a Class III standpipe installed in accordance with NFPA 14, Standard for the Installation of Standpipe and Hose Systems.

(d) There must be a knife at the fuel dock for quickly cutting mooring lines in an emergency and a push pole for shoving away a boat.

SUBCHAPTER 10. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY RETAIL FACILITIES

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-10-1. Application

(a) This Subchapter applies to the storage, handling and use of all ~~grades of gasoline, kerosene and diesel fuel~~ regulated substances which are kept in aboveground storage tanks, at facilities which engage in the retail sale of motor fuel.

(b) Subchapters 1, 2, 3, and 4 shall also apply in addition to this Subchapter.

165:26-10-2. Timeframes for registration and compliance with rules

(a) Tanks at retail facilities except marinas that are greater than 110 gallons must be registered with the Petroleum Storage Tank Division of the Commission before January 15, 2001. The tank system must come in compliance with the rules of this Chapter and Subchapter before July 15, 2007.

(b) All underground product piping at new facilities and all underground suction piping at existing facilities must be installed or upgraded, before the deadline date of July 15, 2007, in accordance with165:26-2-55, "Underground piping materials," and with 165:26-2-56, "Installation and monitoring requirements for piping."

(c) However, compliance may be required sooner for any part of an existing system which poses a ~~current~~ threat to ~~nearby~~ property, ~~to~~ people ~~in the area~~ or to the environment.

(d) Temporary tanks may not be used at retail facilities.

SUBCHAPTER 12. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED AT FLEET AND COMMERCIAL FACILITIES

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-12-2. Timeframes for registration and compliance with rules

(a) Tanks at fleet or commercial facilities ~~that are~~ with a capacity greater than 2,100 gallons must be registered with the Petroleum Storage Tank Division of the Commission. The tanks must come in compliance with the rules of this Chapter and Subchapter before July 15, 2007.

(b) All underground product piping at new facilities and all underground suction piping at existing facilities must be installed or upgraded, before the deadline date of July 15, 2007, in accordance with165:26-2-55, "Underground piping materials," and with 165:26-2-56, "Installation and monitoring requirements for piping."

(c) However, compliance may be required sooner for any part of an existing system which poses a ~~current~~ threat to ~~nearby~~ property, ~~to~~ people ~~in the area,~~ or to the environment.

(d) Temporary tanks may not be used at fleet and commercial facilities.

(e) ~~It is anticipated that contractors in particular may have solved problems of installation and safety in ingenious and diverse ways.~~ Where ~~those~~ alternative solutions are as good as, or better than, those set out in this Subchapter, changes ~~will~~ may not be required. ~~But alternatives~~ Alternatives that fail to protect ~~the~~ property, ~~of others, or the safety of~~ people or ~~that pose an unreasonable threat to~~ the environment will not be accepted. ~~In some cases this may only require a small change in the system; in others more. In every case, the Petroleum Storage Tank Division will approach the situation with an open mind.~~

SUBCHAPTER 14. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY BULK PLANT FACILITIES

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-14-1. Application

(a) This Subchapter applies to the storage, handling and use of ~~gasoline, aviation fuel, diesel fuel and volatile blending materials used in motor fuel like kerosene and ethanol~~ regulated substances at bulk plant facilities which are kept in aboveground storage tanks. Bulk plants built after July 15, 2000 must comply with this Chapter and Subchapter.

(b) ~~Those bulk plants already in existence when these rules were adopted, vary in size, in the way they are built, in their local surroundings, in the customers they serve and in their role in the local economy. It is difficult to make good rules that can be fairly applied to all these older bulk plants. The goal in the application of this Subchapter to pre-existing bulk plants is to achieve the maximum safety that is practically possible at the least possible expense.~~ Bulk plants, already in existence on July 15, 2000 will not be required to comply with these rules unless they pose a threat to ~~the safety of nearby~~ property, ~~or to~~ people ~~in the vicinity,~~ or ~~pose a serious threat to~~ the environment. If a safety or environmental threat does exist at a bulk plant, the owner will ~~only~~ be required to correct the specific problem ~~and to do so in the most cost-effective way possible. If the problem is not one requiring an urgent solution the bulk plant would have the full 10 years to comply; for example improved containment around the complex. If the problem is urgent like a serious current danger of fire or explosion because of exposed wiring immediate corrective action may be required~~.

(c) Subchapters 1, 2, 3, and 4 shall also apply in addition to this Subchapter.

165:26-14-2. Timeframes for registration and compliance with rules

(a) Tanks at bulk plants must be registered with the Petroleum Storage Tank Division of the Commission. The tanks must come in compliance with the rules of this Subchapter before July 15, 2010.

(b) All underground product piping at new facilities and all underground suction piping at existing facilities must be installed or upgraded, before the deadline date of July 15, 2010, in accordance with165:26-2-55, "Underground piping materials," and with 165:26-2-56, "Installation and monitoring requirements for piping."

(c) However, compliance may be required sooner for any part of an existing bulk plant which poses a ~~current~~ threat to ~~nearby~~ property, ~~to~~ people ~~in the area~~ or ~~to~~ the environment.

(d) Temporary tanks will not be allowed at bulk plant facilities.

SUBCHAPTER 16. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY EMERGENCY GENERATORS

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-16-2. Timeframes for registration and compliance with rules

(a) Tanks that are greater than 110 gallons that contain fuel for emergency generators must be registered with the ~~Petroleum Storage Tank Division~~ PSTD of the Commission. The tanks must come in compliance with the rules of this Chapter and Subchapter before July 15, 2005. However, compliance may be required sooner for any part of an existing system which poses a ~~current~~ threat to ~~nearby~~ property, people ~~in the area~~ or ~~to~~ the environment.

(b) All underground product piping at new facilities and all underground suction piping at existing facilities must be installed or upgraded, before the deadline date of July 15, 2005, in accordance with165:26-2-55, "Underground piping materials," and with 165:26-2-56, "Installation and monitoring requirements for piping."

(c) There are emergency generators manufactured which have a fuel storage tank built into the unit. A manufactured unit will be accepted as being in full compliance with these rules if:

(1) The storage tank is double-walled and installed according to the manufacturer's specifications or;

(2) The storage tank is single walled with secondary containment built into the unit and installed according to the manufacturer's specifications; or

(3) Its location does not pose ~~an unnecessary hazard~~ a threat to people, ~~or~~ property or the environment.

(d) If a manufactured unit has a single walled tank without built in containment, it must be installed in compliance with the containment provision of this Chapter.

(e) If the fuel storage tank is separate from the generator unit, it must meet and be installed according to this Chapter.

~~(f) All aboveground storage tanks and associated fuel piping supporting emergency generators and located in or on a building structure (which could include a structure's basement or roof), will be accepted as being in full compliance with these rules if:~~

~~(1) The storage tank is double-walled and installed according to the manufacturer's specifications; or~~

~~(2) The storage tank is single-walled with a secondary containment vault or curbing and the secondary containment is alarmed for the release of fuel into the containment; and~~

~~(3) The building in or on which the storage tank is housed has some form of containment not specified in paragraph (2) above which prevents any fuel release from leaving the confines of the building.~~

SUBCHAPTER 18. FINANCIAL RESPONSIBILITY

165:26-18-1. Applicability

(a) This Subchapter applies to owners and operators of all petroleum aboveground storage tank (AST) systems except as otherwise provided in this Section.

(b) State and Federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this Subchapter.

(c) The requirements of this Subchapter do not apply to owners and operators of any AST system described in 165:26-1-22, "Exclusions."

(d) If the owner and operator of a petroleum aboveground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance.

(e) An owner or operator may satisfy the requirements of this Subchapter by use of the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund. There is a ~~$5,000~~ deductible for use of this mechanism and for which compliance may be demonstrated by use of any of the mechanisms listed in 165:26-18-3.

165:26-18-3. Evidence of financial responsibility

~~At the direction of the Division Director of the Petroleum Storage Tank Division, owners~~ Owners and operators of AST systems will provide evidence of financial responsibility through the mechanisms set forth below, or any other mechanism that is pre-approved by the Division Director of the PSTD:

(1) Self insurance
(2) Guarantee
(3) Insurance
(4) Surety bond
(5) Letter of Credit
(6) Trust fund or standby trust fund
(7) Securities pledge
(8) Cash or cash equivalent pledge

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TITLE 165. CORPORATION COMMISSION CHAPTER 27. INDEMNITY FUND

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RULES:
Subchapter 1. General Provisions
165:27-1-1. Purpose [AMENDED]
165:27-1-2. Definitions [AMENDED]
165:27-1-3. Scope [AMENDED]
165:27-1-5. Citation of rules [AMENDED]
165:27-1-6. Prescribed forms [AMENDED]
Subchapter 3. Eligibility Requirements
165:27-3-1. General requirements [AMENDED]
165:27-3-2. Eligible person [AMENDED]
165:27-3-3. Eligible release [REVOKED]
Subchapter 5. Qualifications for Reimbursement
165:27-5-1. Qualifications for reimbursement [AMENDED]
165:27-5-2. Application for reimbursement [AMENDED]
165:27-5-3. Application for supplemental reimbursement [AMENDED]
Subchapter 7. Reimbursement
165:27-7-1. Reimbursable expenses [AMENDED]
165:27-7-2. Reimbursement [AMENDED]
165:27-7-2.1 Limitations on Reimbursement [NEW]
165:27-7-5. Methods for reimbursement [REVOKED]
165:27-7-6. Conditions for reimbursement [AMENDED]
165:27-7-7. Exclusions from reimbursement [AMENDED]
165:27-7-8. Withholding reimbursement [AMENDED]
165:27-7-9. The Pre-Approval Program [AMENDED]
165:27-7-9.1. Pre-Approval for Emergency Responses - Exceptions [NEW]
165:27-7-10. Pay-For-Performance procedures [AMENDED]
165:27-7-11. Purchase order procedures [AMENDED]
Subchapter 9. Administrative Provisions
165:27-9-2. Changes to rules [AMENDED]
165:27-9-3. Notices [AMENDED]

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ANALYSIS:
OAC 165:27-1-1 concerning the purpose of the promulgated rules, is an amendment to include cooperation with other agencies of the state.

OAC 165:27-1-2 concerning the definition section, is amended to include the following terms; "Active Case", "Administrative Application", "Agent", "Assignment of Benefits", "Assignment of Rights", "Chemicals of Concern", "Closed Case", "Disbursement", "Eligible Person", Eligible Release", "Fund", "Impacted Party", "Licensed Remediation Consultant", "Pay for Performance", Petroleum storage tank system", "PSTD", "Remedial Action Plan", "Remediation", "Site assessment", "Suspicion of Release", The definition of "associated costs is amended to specify such costs are not subject to reimbursement, "claim" is amended to include suspicion of release. The definition of "closed file" is amended to expand the closure event and delete individual reference. "Commission" is amended to include the abbreviation, OCC. The definition of "Dispenser" is amended to restrict material dispensed to PSTD Regulated Substances. "Investigation" is amended to strike irrelevant language. The definition of "Reimbursement" is amended to recognize assignees as payees. "Work Plan" is amended to reflect current practices regarding purchase orders. The following definitions are revoked, "Extensive Corrective Action", "facility", "New System", "Open File", "Operator", "Owner", "Service Station".

OAC 165:27-1-6 is amended to strike specific form references and refers to forms available at PSTD offices or downloadable from the Commission website.

OAC 165:27-3-1 concerning general requirements is amended to remove obsolete language and reform the rule to comply with recently enacted legislation.

OAC 165:27-3-2 concerning eligible persons is amended to comply with recently enacted legislation.

OAC 165:27-3-3 concerning eligible release is revoked.

OAC 165:27-5-1 concerning qualifications for reimbursement is amended to reflect the current purchase order and assignment of benefits practice.

OAC 165:27-5-2 concerning application for reimbursement is amended to simplify the application process for the regulated community and staff.

OAC 165:27-5-3 concerning application for supplemental reimbursement has been amended to make provisions of original invoices optional instead of mandatory.

OAC 165:27-7-1 concerning reimbursable expenses has been amended to clarify reimbursement practices and simplify the reimbursable event.

OAC 165:27-7-2 concerning reimbursement is amended to remove superfluous language and align the rule with recent legislative enactments.

OAC 165:27-7-2.1 concerning limitations on reimbursements is amended to clarify the calculation of throughput.

OAC 165:27-7-5 concerning methods for reimbursement is revoked.

OAC 165:27-7-6 concerning conditions for reimbursement is amended to clarify the use of purchase orders, strike superfluous language, and adopt reasonable cost as a measure for reimbursement, and conforms the rule to recent legislative enactment.

OAC 165:27-7-7 concerning exclusions from reimbursement, is amended to prohibit reimbursement for release of non-regulated substances, or releases from a non-regulated storage tank system.

OAC 165:27-7-8 concerning withholding of reimbursement is amended to withhold reimbursement to parties investigated or indicted for crimes.

OAC 165:27-7-9 concerning the pre-approval plan is amended to encourage use of a pre-approval plan for cost reimbursement.

OAC 165:27-7-9.1 concerning pre-approval for emergency responses - exceptions is amended to separately address emergency response.

OAC 165:27-7-10 concerning pay for performance procedures is amended to contemplate including closing costs in the PFP.

OAC 165:27-7-11 concerning purchase order procedures is amended to reflect that purchase orders will not be issued for work previously performed unless the work was pre-approved, additionally, PSTD will have 30 days to review and respond to the purchase order, and by approved by the reviewer. If disapproved, a new purchase order must be submitted within 30 days or will be considered void. Work not done under a purchase order within 120 days will be void. Reimbursement on approved purchase orders claims will be made within 30 days of claim presentation. Purchase order disputes may be resolved by application, notice and hearing.

OAC 165:27-9-2 concerning changes to rules is amended to substitute PSTD for Commission.

OAC 165:27-9-3 concerning notices is amended to reflect current mailing and delivery addresses.

CONTACT PERSON:

Jeff Southwick (405) 522-4457

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

165:27-1-1. Purpose

The Indemnity Fund Program will provide for rehabilitation of as many pollution sites as possible that have resulted from releases of petroleum from storage tank systems. The Indemnity Fund Program will also encourage voluntary corrective action in a manner and to a level of completion which will protect the public health, safety and welfare and minimize damage to the environment. In order to accomplish these purposes, the Indemnity Fund Program will reimburse allowable costs incurred for corrective action to eligible parties, and advise, consult, cooperate with and assist other agencies of this state.

165:27-1-2. Definitions

In addition to the terms defined in 17 O.S. Sections 303, 352, and ~~402 and~~ in OAC 165:25-1-11 and 165:26-1-2, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Active Case" means a Confirmed Release Notice has been issued by OCC Regulatory to the regulatory contact for the specified location.

"Administrative Application" means an Application for eligibility and reimbursement made to the PSTD Indemnity Fund by the Director of the Petroleum Storage Tank Division on behalf of an unavailable or unwilling Applicant to facilitate meeting the Program's obligation to protecting public health, safety and welfare.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Assignment of Benefits" means a written directive from the Applicant of Record instructing the PSTD Indemnity Fund to pay reimbursement directly to the named Assignee.

"Assignment of Rights" (aka "Limited Power of Attorney") means a transfer of authority granting the Assignee the legal right to act on the Assignee's behalf for specified matters.

"Associated costs" means ~~those~~ expenses that are not integral to the corrective action and not subject to reimbursement.

"Backfill" is the material that is placed in a tank and/or piping excavation to support and separate the tank and/or piping.

"Chemicals of Concern (COC)" means chemicals that may pose a threat to human health and the environment.

"Claim or Claims" means a properly submitted request for reimbursement from the ~~Indemnity~~ Fund ~~Program~~ for an SOR or eligible case when the deductible is paid.

"Closed Case" means a Confirmed Release for which PSTD has issued a Closure Letter advising that no further actions are necessary.

"Closed file" means a file for which final ~~payment or denial of payment~~ resolution has been made of all invoices submitted for corrective action taken under an ~~individual~~ application for reimbursement from the Indemnity Fund.

"Commission or OCC" means the Oklahoma Corporation Commission.

"Contamination" means pollution in the native environment caused by a release of a regulated substance above action levels for that substance as set by the Commission.

"Disbursement" includes all monies, actually paid, expended, encumbered, reserved or attributable to a reimbursable event(s).

"Dispenser" means ~~that~~ equipment, gauge(s), hose(s), nozzle(s), immediately associated pipe or fittings and other such appurtenances located aboveground and intended for dispensing ~~petroleum~~ PSTD-regulated substances from a tank system. The dispenser is not part of a tank system for purposes of the Indemnity Fund Program.

"Eligible Person" means the party who has made application to the Indemnity Fund and met applicable criteria to become eligible to receive reimbursement on an OCC confirmed release, and who has been issued an Eligibility Letter from the Indemnity Fund. An eligible person may be an impacted party or adjacent owner.

"Eligible Release" means a release of a petroleum product that qualifies for Indemnity Fund eligibility and/or reimbursement, and generally includes only those products and/or a release from a storage tank system regulated by the OCC.

~~**"Extensive corrective action"** means contamination that requires at least 3 months to remediate beginning after approval of the Corrective Action Plan by the Commission.~~

~~**"Facility"** means any location or part thereof containing one or more storage tanks or systems.~~

"Fund" means the Petroleum Storage Tank Indemnity Fund.

"Impacted Party" means an owner whose property has been impacted by a release from an on-site or off-site petroleum storage tank system that was never owned or operated by the impacted party and who has no OCC regulatory responsibility. An Impacted Party can apply for Fund eligibility and reimbursement, and the Fund deductible is not applicable.

"Investigation" means activities taken to identify, confirm, monitor or delineate the physical extent of a release and which result in the selection of an appropriate means to remediate a release and specific design criteria for such remediation upon currently used costing programs and/or reasonable ~~which~~ competitive bids. ~~may be reasonably based.~~

"Licensed Remediation Consultant" means an individual who has a current license issued by the PSTD.

~~**"New system (tank)"** means an underground storage tank system for which installation began on or after April 21, 1989 or an aboveground tank for which installation began on or after July 1, 1990.~~

~~**"Open file"** means a file for which all documents required by the Indemnity Fund Program to complete an application have been received and the application accepted by the Indemnity Fund Program, and for which final payment or denial of payment of submitted invoices has not been made.~~

~~**"Operator"** means any person in control of or having responsibility for the daily operation of the storage tank system, whether by lease, contract, or other form of agreement.~~

~~**"Owner"** means:~~

~~(A) In the case of an underground storage tank system in use on November 8, 1984, or brought into use after that date, any person who holds title to, controls or possesses an interest in an underground storage tank system used for the storage, use, or dispensing of regulated substances, or~~

~~(B) In the case of an underground storage tank system in use before November 8, 1984, but no longer in service on that date, any person who holds title to, controls or possesses an interest in an underground storage tank system immediately before the discontinuation of its use; or~~

~~(C) In the case of an aboveground storage tank system any person who holds title to, controls or possesses an interest in an aboveground tank at a service station in use on or after July 1, 1990.~~

"Pay-for-Performance (PFP)" - A process where an environmental consulting company (Consultant) guarantees by contract that a release of a regulated substance will be remediated to Chemicals of Concern (COC) levels agreed to by the PSTD, the Consultant and tank owner/operator that are protective of human health, safety and the environment. This performance-based process encompasses several steps, but is not limited to the contract signed by an officer/owner of the environmental consulting company, the applicant and the Administrator of the Indemnity Fund and an agreed to reasonable price. Scheduled payments are distributed only as performance-based goals are attained.

"Person" means any and all persons, including any individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body. It also includes a consortium, a joint venture, a commercial entity, and the United States Government.

"Petroleum storage tank system" means a closed-plumbed system including storage tank(s), line(s) and dispenser(s) for a given product, e.g. a facility site can have a gasoline and a diesel system, or systems for different grades of gasoline, or even separate systems for the same grade of gasoline. It also includes a transport truck when attached to a tank system, and a used oil tank.

"PSTD" means Petroleum Storage Tank Division, or Division.

"Reimbursement" ~~means either:~~

~~(A) Repayment of an approved claim to an eligible person for allowable costs resulting from an eligible release; or~~

~~(B) Payment of an approved claim submitted on behalf of an eligible person for allowable costs resulting from an eligible release.~~ means repayment of a claim to a qualified Claimant or Assignee, or for an Administrative Application, or for such a claim submitted on behalf of a qualified Claimant, for incurred allowable costs resulting from an eligible release.

"Remedial Action Plan" means a plan implementing the required and approved remediation.

"Remediation" means the process or technique used to reduce concentration levels of regulated substances in the soil and groundwater, and/ or to reduce the presence of free product in the environment to levels that are protective of human health, safety and the environment.

~~**"Service station"** means any facility including but not limited to businesses serving the public, marinas, and airports where flammable liquids are stored in aboveground storage tanks and dispensed for retail sales into the fuel tanks of airplanes, vessels or motor vehicles of the public.~~

"Site assessment" means a multi-step process designed to determine if a site has possibly been impacted by an amount of regulated substance(s).

"Site characterization" means a report submitted to the Commission that defines the extent of the contamination. The report should include, as a minimum, all things required by ~~OAC 165:25~~ OAC 165:29 for such a report.

"Suspicion of Release" ("SOR") means preliminary investigative work performed under a PSTD Purchase Order to determine if a release has occurred. The PSTD eligibility process is not required for Fund reimbursement on a Suspicion

of Release (SOR), however, a modified eligibility process for a SOR will be required.

~~**"Transporter"** means any person who transports, delivers, or distributes any quantity of regulated substance from one point to another for the purpose of wholesale or retail gain.~~

"Work Plan" means a ~~plan describing the actions taken or to be taken to monitor, maintain, minimize, eliminate or cleanup a release from a tank system and includes the work to be completed, schedules for action and costs or estimated costs~~. proposed scope of work to implement corrective action. This shall be submitted through a purchase order request and/or remediation plan.

165:27-1-3. Scope

This Chapter ~~will provide~~ provides a basis that will allow the Indemnity Fund Program to organize and maintain itself, define eligible parties, allowable costs, methods, limitation of reimbursement, corrective action, completed work, and standards that will protect the health, safety and welfare of the state and its environment, and offers specific procedures and policies for speedy and timely reimbursement of allowable costs to eligible parties.

165:27-1-5. Citation of rules

This Chapter shall be known as the Oklahoma Corporation Commission's General Rules and Regulations Governing the Petroleum Storage Tank ~~Release~~ Indemnity ~~Program~~ Fund and may be cited as OAC 165:27.

165:27-1-6. Prescribed forms

~~(a) The following forms are prescribed for filing purposes:~~

~~(1) Form IF100 - Application for reimbursement.~~

~~(2) Form IF101 - Supplemental reimbursement request.~~

~~(3) Form IF102 - Affidavit certifying costs are true and correct.~~

~~(4) Form IF104-1 Detail of invoices being submitted for Professional Services.~~

~~(5) Form IF104-2 Detail of invoices being submitted for Environmental/Contractor Expenses.~~

~~(6) Form IF110 - Leak Detection Data Sheet.~~

~~(7) Form IF111 - Resubmittal Reimbursement Request.~~

~~(8) Form IF112B - Bidder's Affidavit of Non Collusion.~~

~~(9) Form IF112C - Contractor's Affidavit of Non Collusion.~~

~~(10) Form PO-100 Purchase Order (Appendix A).~~

~~(11) Form CO-100 Change Order form (Appendix B).~~

~~(b) Forms are available from the Indemnity Fund office or on the Indemnity Fund web page @ OCC.STATE.OK.US.~~ All current, recognized and approved division forms must be used and are available from the PSTD or on the web page at www.occeweb.com or in person or by written request.

SUBCHAPTER 3. ELIGIBILITY REQUIREMENTS

165:27-3-1. General requirements

~~In order to qualify for reimbursement from the Indemnity Fund, a person must initially meet the following three requirements:~~

~~(1) The person must be a storage tank owner or operator who is an "eligible person".~~

~~(2) The eligible person must have an eligible release.~~

~~(3) The eligible person must be in substantial compliance with the rules governing storage tanks at the time of reporting of the release and must fully cooperate with the Commission in responding to the release.~~

In order to qualify for reimbursement from the Fund, a person must meet the following requirements:

(1) The person must be a storage tank owner or operator, adjacent property owner, or impacted party who has met applicable criteria for Fund reimbursement, to include Fund eligibility for an OCC confirmed release case, or a PSTD-authorized Purchase Order for a Suspicion of Release, that does require modified eligibility. The Director of PSTD may make an administrative application without meeting eligibility criteria.

(2) The claimant must have incurred eligible expenses for an eligible release for which reimbursement is requested.

(3) The claimant must submit timely and properly completed forms for reimbursement to the Fund in accordance with governing statutes and the Rules of this Chapter set forth in OAC 165:27 et seq.

165:27-3-2. Eligible person

~~(a) An eligible person is any owner or operator of a storage tank system who has incurred liability as the result of an eligible release from such system, and who fulfills the requirements of 17 O.S. 1991 § 356 and OAC 165:25 or OAC 165:26. Because the definitions of owner and operator require current possession or control of the storage tank system from which the eligible release emanated, the Indemnity Fund Program will not accept an application from a past tank owner, unless the past owner owned the tanks before November 8, 1984 and was the owner of the tanks when they were last used, nor will the Indemnity Fund Program accept an application from a prospective tank purchaser for reimbursement from the Indemnity Fund.~~

~~(b) The Indemnity Fund Program will honor limited Power of Attorney from an eligible person empowering previous or prospective owners or operators to act as an agent(s) to pursue cleanup and reimbursement, and will honor a clear and proper assignment of benefits from the Indemnity Fund to another.~~

~~(c) For underground tank systems in use prior to November 8, 1984 but not in use on November 8, 1984, the person who last possessed or controlled an interest in the tank system may be an eligible person.~~

~~(d) A person who on or after November 8, 1984, purchases property on which an underground storage tank system is located may be an eligible person if the tank was on the property on November 8, 1984, the purchaser could not have known of the tank's existence, the owner or operator cannot be found and/or made to clean up the property, and the Leaking Underground Storage Tank Trust Fund cannot be used to clean up the property.~~ An eligible person can be any of the following who has costs incurred as the result of a confirmed eligible release from a petroleum storage tank system, who has satisfied requirements for PSTD eligibility, and has been issued an Indemnity Fund Eligibility Letter by the PSTD Director.

(1) An owner or operator of a storage tank system who fulfills the requirements of 17 O.S. Sec 356 and OAC 165:25 or OAC 165:26.

(2) An owner whose property has been impacted by a release from an on-site or off-site petroleum storage tank system that was never owned or operated by the property owner and has no responsibility for the release.

(3) A town or city which has obtained assignments from the property owners to act in their stead as "eligible party" and/or be deemed an "eligible party" itself for purposes of investigation and remediation of abandoned tank sites where a release of regulated substances has occurred on the property where the tanks are or were located and/or on nearby property within the limits of a single town or city. In any case where an abandoned petroleum storage tank system has released regulated substances on to the property where tanks are located or on to nearby property, within the limits of a single town or city, the city or town may obtain assignments from the property owners to act in their stead as "eligible party" and/or be deemed an "eligible party" itself for the purposed of investigation and remediation of the site(s).

(4) Adjacent property owner or impacted party.

165:27-3-3. Eligible release [REVOKED]

~~An eligible release is a release for which allowable costs, as determined by the Indemnity Fund Program, are reimbursable to, or on behalf of, an eligible person(s). In addition, among other requirements, the following items must be met before the release is determined to be eligible:~~

~~(1) The release must be petroleum from an underground or aboveground tank system.~~

~~(2) The release must be one for which the eligible person has met or has been instructed to meet the requirements of 17 O.S. 1991 §§ 301 et seq., 17 O.S. 1991, §§ 401 et seq., OAC 165:25 and/or OAC 165:26.~~

~~(3) The costs incurred for the release must be on or after December 23, 1988.~~

SUBCHAPTER 5. QUALIFICATIONS FOR REIMBURSEMENT

165:27-5-1. Qualifications for reimbursement

In order to receive reimbursement from the Indemnity Fund, a person must, among other requirements:

~~(1) Be eligible.~~

~~(2) Apply for reimbursement.~~

~~(3) Apply only at the end of a calendar quarter or for not less than $2,500.00 per claim.~~

~~(4) Submit reimbursement requests on a time interval basis. All reimbursement requests shall be submitted for the specific time interval the work was performed. The time interval for which the reimbursement request is being submitted and the work was performed shall be clearly indicated on the IF Form 102 with a beginning and ending date. All costs incurred during the time interval indicated on the IF Form 102 shall be submitted in a single reimbursement request. Reimbursement requests with overlapping or repeated time intervals will not be considered for reimbursement unless reviewed and approved by the Administrator.~~

~~(5) Use a certified UST consultant required by OAC 165:25-3-90.~~

(1) In order to receive reimbursement every scope of work must have a pre-approved Purchase Order and/or a Pay for Performance Contract. The scope of work must be completed in accordance with the standards, requirements, rules, and regulations of the PSTD. Initially submitted claims and resubmitted claims shall be evaluated by the Division under the system of evaluation employed by the program at the time the claim is originally submitted or re-submitted.

(2) The Applicant must be eligible and approved in the Fund for a confirmed release case. Modified eligibility in the Fund is required for reimbursement on Suspicions of Release, and other investigations.

(3) The Applicant must apply for reimbursement with timely and properly completed forms, including a certified affidavit by a Licensed Remediation Consultant that the costs incurred are true and correct with supporting documentation as set forth on the Purchase Order.

(4) Investigation and remediation work must be supervised/performed by a Licensed Remediation Consultant. Reimbursement will be paid to the Applicant unless the Applicant provides the Fund with a written "Assignment of Benefits" directing reimbursement be paid directly to an Assignee. Any revocation of "Assignment of Benefits" must be provided to the PSTD in writing. The Fund may also reimburse directly to a vendor engaged by PSTD for ancillary services deemed necessary to support a project upon presentation of a reimbursement request form accompanied by an original invoice.

(5) Investigation and remediation costs expended prior to Commission submission, shall be subject to Commission audit and reimbursement of costs based upon allowed costs at the time the submitted costs were incurred.

165:27-5-2. Application for reimbursement

~~In order to be considered complete, the application for reimbursement shall be made to the Administrator of the Indemnity Fund Program on Form IF100 and include:~~

~~(1) Evidence that the applicant is the legal owner of the storage tank system or a certified affidavit stating that applicant is the operator of the storage tank system and stating why the operator should be reimbursed from the Indemnity Fund Program instead of the owner. Applicable legal documents should be referenced and attached.~~

~~(2) A certified affidavit that incurred costs are true and correct, with invoice numbers, dates of invoices, and amounts of invoices being submitted. (Use Form IF102)~~

~~(3) A sworn statement from the applicant showing how other financial responsibility requirements will be met or if there is any other liability coverage.~~

~~(4) Original invoices backing up itemized invoices on Form IF102 and IF104.~~

~~(5) A sworn statement from the applicant declaring the nature and extent of damage or best estimate thereof to property and physical injury to non-employees or agents of the owner or to a third party as a result of the release.~~

~~(6) Evidence of an approved initial site characterization report.~~

~~(7) A closure letter from the appropriate regulatory agency evidencing the corrective action was completed as approved, if remediation is already completed; or evidence of an approved corrective action plan.~~

~~(8) Completed, signed and dated application by the applicant to include legal address, S.S.N. or Federal Employee I.D. Number and phone number of the applicant. (Use Form IF100)~~

~~(9) Copy of any and all bids as required by 165:27-7-6.~~

~~(10) A sworn non-collusion statement (Form IF-112B) accompanying all bids.~~

~~(11) Copies of all contracts between applicant or applicant's representative and consultant/contractor for incurred expenses integral to the application. Verbal contracts not acceptable, emergency work excepted.~~

~~(12) A sworn non-collusion statement (Form IF112C) accompanying all contracts.~~

~~(13) Leak detection data sheet (Form IF110), with supporting documents and other information verifying regulatory compliance at the time of the reporting of the release.~~

An application for PSTD Eligibility on a confirmed release shall be made to the Administrator of the Indemnity Fund Program on applicable forms and include:

(1) A properly completed "Indemnity Fund Application" form with all requested information provided.

(2) A sworn Non-Collusion Affidavit from the Applicant.

(3) A sworn Non-Collusion Affidavit from the Contractor.

(4) A sworn Non-Collusion Affidavit from the Licensed Consultant.

(5) A Leak Detection Data Sheet (if applicable) with supporting documents and other information verifying regulatory compliance at the time of the reporting of the release.

(6) Non-Ownership/Participation Affidavit

(7) Assignment of Benefits

(8) Damage Statement (I.A.)

(9) Other Financial Mechanisms (I.A.)

(10) Information deemed by PSTD staff to substantiate a claim as an impacted party or adjacent property owner.

(11) Any other information requested by the PSTD or Fund. When deemed warranted to support PSTD's charge to protect the public health, safety and welfare, the Director of the PSTD may execute an Administrative Application to the Fund on behalf of an unavailable or unwilling owner.

165:27-5-3. Application for supplemental reimbursement

In order to be considered complete, a request for supplemental reimbursement shall contain:

(1) Supplemental Indemnity Fund reimbursement request. ~~(Use Form IF101)~~

(2) A certified affidavit that incurred costs are true and correct, with invoice numbers, dates of invoices and amounts of invoices being submitted. ~~(Use Form IF102)~~

(3) Itemized original invoices, if requested by PSTD.

~~(4) Itemized support documents for invoices. (Use Form IF104)~~

(~~5~~4) Other information as may be required by the ~~Indemnity~~ Fund ~~Program~~.

SUBCHAPTER 7. REIMBURSEMENT

165:27-7-1. Reimbursable expenses

The ~~owner/operator~~ Fund may ~~be reimbursed~~ reimburse eligible persons for:

(1) Integral costs which are ~~those~~ directly related to the corrective action. These costs may include such items as waste disposal, soil and groundwater remediation techniques, laboratory analyses, professional services, drilling, sampling, coring, transportation, etc.

(2) Backfill on confirmed cases

(3) Suspicion of release, and other costs deemed investigatory in nature

(4) Third Party property damages and medical costs as set forth in 17 O.S. 356.

~~(2) Third party property damages, including off-site remediation.~~

~~(3) Medical costs for injury to persons other than employees of the eligible person or their agents and independent contractors retained to conduct corrective action when such injuries are the direct result of the eligible release.~~

165:27-7-2. Reimbursement

(a) Among other requirements an applicant for reimbursement is required to show:

(1) Allowable costs were incurred on or after December 23, 1988.

(2) The ~~Commission~~ PSTD has determined that the release or suspicion of release ~~will no longer~~ may pose a threat to human health or the environment. ~~, subsequent to implementation of the approved corrective action plan and that the site is or will be cleaned up to meet the Commission's required cleanup levels.~~

(3) ~~Such owner or operator~~ The eligible person, to the extent possible, has fully cooperated with ~~the Commission~~ PSTD in responding to the release.

(b) The Petroleum Storage Tank Division ~~Indemnity Fund Program~~ shall reimburse from the Indemnity Fund an eligible person for allowable costs in excess of Five Thousand Dollars ($5,000.00) but not more than:

(1) One million dollars ($1,000,000.00) per occurrence providing the storage tank is used in petroleum marketing or if the system has a throughput in excess of ten thousand (10,000) gallons per month based on annual throughput for the previous calendar year, and

(A) One Million Dollars ($1,000,000.00) annual aggregate for owners of one to one hundred storage tank systems, or

(B) Two million dollars ($2,000,000.00) annual aggregate for owners or operators with more than one hundred storage tank systems or,

(2) Five hundred thousand dollars ($500,000.00) per occurrence providing the system is not used in petroleum marketing, and if the storage tank system has a throughput of ten thousand (10,000) gallons or less per month based on annual throughput for the previous calendar year, and

(A) One million dollars ($1,000,000.00) annual aggregate for owners of one to one hundred storage tank systems or,

(B) Two million dollars ($2,000,000.00) for owners with more than one hundred storage tank systems.

(c) Reimbursement shall not be made from the Indemnity Fund pursuant to this Section until the Indemnity Fund Program has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

165:27-7-2.1. Limitations on Reimbursement

PSTD shall reimburse from the Indemnity Fund allowable costs in excess of the deductible as set forth in 17 OS § 356.

(1) One million dollars ($1,000,000.00) per occurrence providing the storage tank system is used in petroleum marketing or if the system has a throughput in excess of ten thousand (10,000) gallons per month based on annual throughput for the last year of operation or part thereof on a new installation that has not been operational for a full year.

(A) One Million Dollars ($1,000,000.00) annual aggregate for owners of one to one hundred storage tank systems, or

(B) Two million dollars ($2,000,000.00) annual aggregate for owners or operators with more than one hundred storage tank systems or,

(2) Five hundred thousand dollars ($500,000.00) per occurrence providing the system is not used in petroleum marketing, and if the storage tank system has a throughput of ten thousand (10,000) gallons or less per month based on annual throughput for the last year of operation or part thereof on a new installation that has not been operational for a full year.

(A) One million dollars ($1,000,000.00) annual aggregate for owners of one to one hundred storage tank systems or,

(B) Two million dollars ($2,000,000.00) for owners with more than one hundred storage tank systems.

(C) Reimbursement shall not be made from the Indemnity Fund pursuant to this Section until the Indemnity Fund Program has determined that the costs for which reimbursement is requested were actually incurred, and were reasonable, integral and necessary.

165:27-7-5. Methods for reimbursement [REVOKED]

~~The applicant shall provide information on the application that will enable the Indemnity Fund Program to determine which reimbursement method to use.~~

~~(1) **One time payment.** Applicants will qualify for a one time payment if they have~~

~~(A) Received notification of case closure by the appropriate regulatory agency prior to making application.~~

~~(B) Been determined eligible to access the Indemnity Fund.~~

~~(2) **Initial, supplemental and final payments.** Applicants may submit an Initial Reimbursement Request and periodic Supplemental Reimbursement Requests followed by a Final Reimbursement Request after case closure if they~~

~~(A) Make application prior to receiving notification of case closure by the appropriate regulatory agency .~~

~~(B) Have been determined to be eligible to access the Indemnity Fund.~~

~~(C) Require extensive corrective action.~~

165:27-7-6. Conditions for reimbursement

(a) ~~Corrective action~~ Action taken as a result of an eligible release other than in an emergency shall be made by competitive bid of at least two (2) bidders. Acquisition or contracts or subcontracts for corrective action or for labor or equipment which exceed Two Thousand Five Hundred Dollars ($2,500.00) from any one vendor or subcontractor for any one site shall be awarded to the lowest and best bidder. Professional engineering, geological, land surveying and other professional services or services provided by a ~~Corporation Commission certified underground storage tank consultant~~ PSTD Licensed Remediation Consultant required for investigation and the preparation of ~~corrective action~~ work plans and/or purchase orders, proposed corrective action plans and oversight of ~~corrective action~~ remediation ~~shall be selected~~

~~based upon professional qualifications and technical experience of the consultant at a fair and reasonable negotiated fee.~~ will be reimbursed at current approved reasonable costs, or at the PSTD Director's discretion.

(b) When current costing systems cannot accommodate specific situations, contracts awarded should be to the lowest and best bidder. The Indemnity Fund Program requires proof of such competitive bidding.

(c) The owner/applicant and Licensed Remediation Consultant shall keep, and have available for review by the Indemnity Fund Program, records pertaining to the corrective action. These include but are not limited to:

(1) Corrective action plans.

(2) Remedial action plans.

(~~2~~3) Contracts and contract negotiations.

(~~3~~4) Accounts

(~~4~~5) Invoices

(~~5~~6) Sales tickets

(7) Subcontractor invoices

(~~6~~8) Other forms of documentation for expenses incurred relating to such investigation, corrective action, remedial action, injury or damage.

(d) All records of costs incurred shall be certified by affidavit as true and correct and shall contain invoice dates, invoice numbers and amount of invoices being submitted.

~~(e) Only one assignment per claim will be accepted. Claims with more than one assignment will be returned without consideration for reimbursement.~~

~~(f) Any case that has had an application submitted to the Indemnity Fund Program prior to case closure by the appropriate regulatory agency must submit all reimbursement requests within 180 calendar days from the date of such regulatory closure.~~

~~(g) Any case that has received case closure by the appropriate regulatory agency prior to submitting an application to the Indemnity Fund Program has one year from the date of such closure to submit an application together with all reimbursement requests for a one time reimbursement.~~

(~~h~~e) Reimbursement shall be made by the ~~Indemnity~~ Fund ~~Program~~ only for costs that the ~~Indemnity Fund Program~~ PSTD determines were actually incurred, ~~and~~ were reasonable, and are integral and necessary ~~to the corrective action~~ towards the cleanup of the site.

(f) An Applicant with a release or whose property has been impacted by a release, shall not retain an environmental consulting firm to perform remediation in which the Applicant has more than a 10% interest.

(g) An Applicant shall provide application information that will enable the Fund to determine which reimbursement method to use.

(1) One time payment. Applicants will qualify for a one time payment if they have:

(A) Received notification of case closure by PSTD.

(B) Been determined eligible to access the Fund.

(2) Initial, supplemental and final payments. Applicants may submit an Initial Reimbursement Request and periodic Supplemental Reimbursement Requests followed by a Final Reimbursement Request after case closure if they:

(A) Make application prior to receiving notification of case closure by the PSTD within two years from the date of closure.

(B) Been determined to be eligible to access the Fund.

(3) An application for eligibility and all claims for reimbursement to the Fund must be made within two (2) years of the effective date of case closure by the PSTD. Eligible persons are encouraged to submit claims for reimbursement as the costs are incurred and in the order incurred.

165:27-7-7. Exclusions from reimbursement

(a) Tanks and/or systems owned or operated by state and federal governments are not eligible for reimbursement from the ~~Indemnity~~ Fund ~~Program~~.

(b) Tanks or systems are not eligible if owned by a Class I Railroad.

(c) No reimbursement shall be made to any person who has received, or is eligible, for reimbursement from any other state or federal agency or third party payor for the corrective action taken.

(d) No reimbursement shall be made for loss of time.

(e) No reimbursement shall be made for loss of business and taking of property associated with the corrective action.

(f) No reimbursement shall be made for punitive damages from civil actions resulting from the eligible release.

(g) No reimbursement shall be made for attorney's or legal fees.

(h) No reimbursement shall be made for associated but non-integral costs of the corrective action such as but not limited to costs of renovating, removing or disposing of tanks and other such related items. ~~unless the removing of such items (tanks, concrete, concrete accessories lines, dispenser or other site improvements) is required and pre-approved by the Indemnity Fund Program~~.

(i) No reimbursement shall be made for releases from storage tank systems on Individual Allottee Indian Trust lands or Tribal Trust lands.

(j) No reimbursement shall be made for costs incurred prior to confirmation of release or SOR investigation.

(k) No reimbursement shall be made for non-regulated petroleum storage tank system releases or of non-regulated substances.

165:27-7-8. Withholding reimbursement

The ~~Indemnity~~ Fund ~~Program~~ may withhold reimbursement payments if any of the following apply:

(1) Offsetting charges.

(2) Conflicting, duplicate or unclear assignments.

(3) Subrogation of reimbursements.

(4) Pending legal action pertaining to reimbursement or claims.

(5) Clarification of possible third party payors.

(6) Investigation or pending investigation of suspected illegal or improper activity.

165:27-7-9. The Pre-Approval Program

(a) The purpose of the Pre-Approval Program is to reduce, if not eliminate, disallowances of reimbursement for costs incurred and associated with corrective action, as well as to foster a spirit of cooperation between the Licensed Remediation ~~consultant~~ Consultant, the ~~regulator,~~ PSTD and the tank owner. ~~and the Indemnity Fund~~.

(b) With the above in mind, all parties are ~~invited~~ encouraged to ~~become involved in the cleanup effort by using~~ use either or both of the two pre-approval processes developed by ~~the Indemnity Fund~~ PSTD. These two procedures are: Purchase ~~orders~~ Orders and Pay-For-Performance (PFP). Simply put, these procedures document the agreement that all parties have reached and must comply with. ~~These procedures are voluntary until December 31, 1998. After that date, use of one of these~~ These two procedures will be required for reimbursement. ~~for scopes of work more than $2,500.00, unless:~~

~~(1) Emergency abatement activities are required and immediate response is mandated as declared by the Commission or determined by the Indemnity Fund. If emergency action extends beyond 48 hours, the Indemnity Fund must be notified of the actions taken, the approximate time frame for the continuing action and the associated costs required to abate the situation; or~~

(c~~2~~) The tank owner elects, in writing and after consultation with the Administrator of the Indemnity Fund, not to participate in the pre-approval program and acknowledges in writing that the tank owner understands that all requests for reimbursement submitted without pre-approval will be subject to non-reimbursement of costs incurred which do not meet the statutory standards for reimbursement set forth in 17 O.S. § 350 et seq.

165:27-7-9.1. Pre-Approval for Emergency Responses - Exceptions

(a) Emergency abatements must report according to PSTD rules and requirements. All costs are subject to Fund discretion and a determination of necessary, reasonable and integral action.

(b) If an emergency response has been declared by the PSTD, immediate action is required.

165:27-7-10. Pay-For-Performance procedures

(a) Pay-For-Performance (PFP) Remediation Proposals are designed for ~~**PRE-APPROVAL**~~ pre-approval of work that is to be performed. Pay-For-Performances ~~**WILL NOT**~~ will not be issued on work that has already been completed.

(b) Before a Pay-For-Performance (PFP) Remediation Proposal can be approved, a Remedial Action Plan ~~remediation plan~~ which satisfies the criteria of ~~OAC 165:25-3-77~~ OAC 165:29-3-80 must be approved by the ~~Fuel Storage Department of the Fuel Division of the Commission~~ PSTD.

(c) A Performance-based ~~Work~~ Remedial Action Plan must be submitted for review to the ~~Indemnity Fund Division of the Commission~~ PSTD.

(d) The Performance-based ~~Work~~ Remedial Action Plan Proposal shall include the following information:

(1) Chronologic summary of site work with type, amount, and location of the release.

(2) General description of the site geology and hydrology with stratigraphic cross-section.

(3) Tier 1/1A and 2 (if needed) report summary with proposed contaminant clean-up levels.

(4) Description of the proposed remediation technology to be used.

(5) Schematics showing remediation system layout and remediation equipment.

(6) Description of performance monitoring methods and list of key monitoring wells.

(7) Total site remediation cost, contract terms, payment schedule, contract time frame, and warranty period.

(8) Base map with all well and soil boring locations.

(9) Detailed facility map with current benzene and TPH groundwater and soil plume maps.

(10) Detailed facility map with free product thickness, if present.

(11) Concentration maps of all other chemicals of concern that exceed Oklahoma Risk Based Corrective Action ("ORBCA") Site Specific Target Levels.

(12) The number of months that will be required to complete the remediation.

(13) The number of months that remediation will be warranted through continued operation in the event clean up levels have not been reached during the required clean up period.

(14) Other relevant information to explain the extent and type of the contamination, how the proposed performance based work plan will accomplish the clean up, types of monitoring to be used, and any risks that may be associated with the clean-up that should be addressed.

~~(e) The Indemnity Fund will review and respond to Pay-For-Performance Proposals within 30 days of approval date of the Oklahoma Risk Based Corrective Action ("ORBCA") Report or within 30 days of receipt, whichever comes later.~~

(~~f~~e) All costs associated with the Performance-based Proposal must be included in the Performance-based ~~Work~~ Remedial Action Plan submitted to the ~~Indemnity Fund Division.~~ PSTD.

(~~g~~f) Any change order or re-design costs will be ~~re-negotiated and will not be considered to be~~ part of the original Performance-based Work Plan, unless otherwise stipulated in the PFP contract.

(~~h~~g) Performance-based Work Plans and all supporting documents will be held confidential until the ~~"Written Mutual Agreement for Performance Based Corrective Action and for Reimbursement of Claims~~ PFP ~~to be~~ is submitted on behalf of Applicant by ~~Certified Underground Storage Tank Consultant~~" the Licensed Remediation Consultant and ("Pay-For-Performance Agreement") is signed by all parties, including the ~~tank owner~~ Tank Owner, the ~~Certified Underground Storage~~

~~Tank Consultant~~ Licensed Remediation Consultant and the Administrator of the ~~Indemnity~~ Fund.

(~~i~~h) After the ~~"Written Mutual Agreement for Performance-Based Corrective Action and for Reimbursement of Claims to be~~ PFP is submitted on behalf of Applicant by ~~Certified Underground Storage Tank~~ the Licensed Remediation Consultant ~~("Pay For Performance Agreement") has been~~ and executed by all parties, the ~~"Written Mutual Agreement for Performance-Based Corrective Action and for Reimbursement of Claims~~ PFP and all it's supporting documents are ~~to be submitted on behalf of Applicant by Certified Underground Storage Tank Consultant" ("Pay For Performance Agreement") and all of its supporting documents will become~~ open records.

(~~j~~i) ~~"Written Mutual Agreement for Performance Based Corrective Action and for Reimbursement of Claims to be submitted on behalf of by Certified Underground Storage Tank Consultant ("Pay For Performance Agreement"),~~ Costs associated with the closing of the site may or may not be included in the PFP but will be discussed prior to the execution of the ~~"Written Mutual Agreement for Performance Based Corrective Action and for Reimbursement of Claims~~ PFP. ~~to be submitted on behalf of Applicant by Certified Underground Storage Tank Consultant" ("Pay For Performance Agreement").~~

165:27-7-11. Purchase order procedures

(a) Purchase order proposals are designed for pre-approval of work that is to be performed. Purchase orders will not be issued on work that has ~~already~~ been completed without pre-approval.

(1) All purchase orders must ~~have a cover page, IF Form PO-100 (Appendix A), and~~ use the appropriate standardized form for a particular scope of work.

(2) All purchase order proposals must be signed by the Licensed Remediation ~~consultant~~ Consultant or tank owner and submitted as original documents using ~~Indemnity Fund~~ the PSTD designated forms and format.

(3) All purchase orders proposals ~~will be~~ submitted to and ~~received~~ receipted ~~and date-stamped~~ by ~~the Indemnity Fund Administrative personnel at the reception area~~ PSTD will be reviewed and responded to within 30 days.

~~(4) The Indemnity Fund will review and respond to purchase order proposals within 30 days of receipt.~~

(~~5~~4) If the purchase order proposal is approved as submitted, the ~~Indemnity Fund Technical Project Auditor and Comptroller~~ technical and accounting staff will sign the proposal and send an approved copy to the Licensed Remediation ~~consultant~~ Consultant or tank owner with the assigned purchase order number and a list of the required documents that will support the completed scope of work as described in the purchase order proposal at the agreed upon price.

(~~6~~5) If the purchase order proposal is ~~NOT~~ not ~~deemed ready for approval~~ approved as submitted, the ~~Technical Project Auditor~~ PSTD Technical staff will contact the ~~consultant~~ Licensed Remediation Consultant or tank owner concerning the necessary changes required or will schedule a meeting if needed.

(A) The Licensed Remediation Consultant or tank owner will then make the agreed revisions and submit the final signed and dated purchase order to the PSTD.

(~~A~~B) ~~If the Indemnity Fund Technical Project Auditor~~ When PSTD Technical staff recommends revisions to the purchase order proposal, the ~~consultant~~ Licensed Remediation Consultant or tank owner will have 30 days from notification of revisions to respond and submit a final purchase order proposal. If the consultant or tank owner does not respond within 30 days, the purchase proposal as originally submitted is void.

~~(B) The consultant or tank owner will then make the agreed revisions and submit the final signed and dated purchase order to the Indemnity Fund.~~

~~(C) The Technical Project Auditor and Comptroller will sign the final purchase order and send an approved copy to the consultant or tank owner with the assigned purchase order number and a list of required documents that will support the scope of work described in the purchase order.~~

(C) Unless agreed upon by both PSTD and the Licensed Remediation Consultant, in writing, any purchase orders that have not been completed and submitted for payment within 120 days after the scope of work completion date are null and void.

(~~7~~6) In the event the Licensed Remediation ~~consultant~~ Consultant or tank owner and ~~Indemnity Fund~~ PSTD cannot agree upon reasonable terms, the purchase order proposal shall be void and the following shall apply:

(A) Work will then proceed on a Work Plan basis with documentation, as provided for in 17 O.S. § 356(D), required for reimbursement; and

(B) Multiple submissions of purchase orders for the same or similar scopes of work will only be considered at the discretion of the ~~Indemnity Fund~~ PSTD.

(~~8~~7) The ~~Indemnity Fund~~ PSTD will review only one revision of a purchase order proposal.

(b) Change orders must be submitted~~:~~

~~(1) Prior~~ prior to performing work not included in the scope of work set forth in the approved purchase order, which will require pre-notification to and pre-approval by the ~~Indemnity Fund~~ Technical ~~Project Auditor~~ staff, unless the total additional costs are less than 5% of the approved purchase order. Documentation will be required to explain additional work completed and to justify additional costs. All requests for reimbursement of costs not incurred in the approved purchase order will be reviewed at the discretion of the ~~Indemnity~~ Fund.

~~(2) On Indemnity Fund Form CO-100 (Appendix B).~~

(c) Reimbursement format and requirements for purchase orders include the following:

(1) All scope(s) of work described in the approved purchase order must be completed in full before reimbursement is requested, unless other payment terms are pre-approved by the ~~Indemnity Fund~~ PSTD and set forth with specificity in the purchase order.

(2) All purchase orders being submitted for reimbursement will ~~follow a specific format~~ contain:

~~(A) Standard claim Form IF102 (with purchase order checked).~~

~~(B) Standard claim Form IF104-2.~~

(~~C~~A) A copy of the approved purchase order.

(~~D~~B) Required documentation.

(d) Reimbursement claims on purchase orders ~~Purchase orders~~ will be paid within 30 days of receipt by the PSTD, provided a verification that the scope of work is complete and in accordance with standards, rules and requirements, and subject to applicable eligibility criteria. ~~Indemnity Fund as follows:~~

~~(1) Approved claims over $2,500.00 as submitted.~~

~~(2) Several purchase orders on the same case which aggregate or exceed $2,500.00.~~

~~(3) End of a quarter, regardless of the dollar amount.~~

(e) The Licensed Remediation Consultant, tank owner-operator, or both may make application for judicial determination of terms and conditions for purchase order approval.

SUBCHAPTER 9. ADMINISTRATIVE PROVISIONS

165:27-9-2. Changes to rules

The adoption of this Chapter shall not preclude the ~~Indemnity Fund Program~~ PSTD from subsequently altering, amending, or changing the rules in whole or in part after proper notice and hearing pursuant to the OAC 165:5. The ~~Indemnity Fund Program~~ PSTD may alter, amend, or change this Chapter upon application of any person or upon its own application.

165:27-9-3. Notices

Any notices and documents required to be submitted to the ~~Indemnity~~ Fund ~~Program~~ or PSTD shall be delivered or mailed to:

(1) Mailing address: Administrator, Petroleum Storage Tank ~~Release~~ Indemnity ~~Program~~ Fund, P.O. Box 52000~~-2000~~, Oklahoma City, Oklahoma 73152-2000.

(2) Mailing address: Director, Petroleum Storage Tank Division, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000.

(~~2~~3) Delivery address: Petroleum Storage Tank ~~Release~~ Indemnity ~~Program~~ Fund, Jim Thorpe Building~~, Room 237 W~~, 2101 N. Lincoln Blvd., Room 238, Oklahoma City, OK 73105, (405) 521-4683.

(4) Delivery address: Petroleum Storage Tank Division, Jim Thorpe Building, 2101 N. Lincoln Blvd., Room 238, Oklahoma City, OK 73105 (405) 521-7683.

[OAR Docket #05-1034; filed 5-26-05]

TITLE 165. CORPORATION COMMISSION CHAPTER 29. REMEDIATION OF PETROLEUM STORAGE TANK RELEASES

[OAR Docket #05-1035]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter1. General Provisions
Part 3. Definitions
165:29-1-11. Definitions [AMENDED]
Subchapter 3. Release Prevention, Detection and Correction
Part 1. Release Prohibition, Reporting, and Investigation
165:29-3-1. Release prohibition [AMENDED]
165:29-3-2. Release reporting [AMENDED]
165:29-3-3. Release investigation; confirmed release; suspected release; emergency suspected release and release ~~reporting of release~~release reporting [AMENDED]
Part 3. Removal and Closure of Petroleum Storage Tank Systems
165:29-3-65. Assessing the site at closure or change in service [AMENDED]
Part 5. Corrective Action Requirements
165:29-3-71. General applicability; exception [AMENDED]
165:29-3-72. Prescribed forms [AMENDED]
165:29-3-73. Initial response [AMENDED]
165:29-3-74. Initial abatement measures and site check [AMENDED]
165:29-3-75. Initial Site Characterization and Corrective Action Plan [AMENDED]
165:29-3-76. Tier 1A ORBCA [AMENDED]
165:29-3-78. Free product removal [AMENDED]
165:29-3-79. Tier 2 and Tier 3 ORBCA [AMENDED]
165:29-3-80. Remedial Action Plan [AMENDED]
165:29-3-81. Property owners affected by releases; notice [AMENDED]
165:29-3-82. Closure of a case [AMENDED]
165:29-3-83. Laboratory analysis [AMENDED]
Part 7. Licensing for Remediation Consultants
165:29-3-90. Licensing for Remediation Consultants involved with closures, investigations, removals and the remediation of releases from underground or aboveground storage tanks [AMENDED]
Subchapter 5. Administrative Provisions
165:29-5-3. Notices [AMENDED]

AUTHORITY:
Oklahoma Corporation Commission; Article IX, Section 18, 19 Oklahoma Constitution; and17 O.S., § 301 *et seq.* 27 A O.S. §§1-1-201, 1-3-101

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None

INCORPORATIONS BY REFERENCE:
None

ANALYSIS:

OAC 165:29-1-11 concerning the definitions section is amended to include the following terms "Agent" "Backfill", "Fund", "Licensed Remediation Consultant", "PSTD", "Residual Product", "Smear Zone", "Soil Zone", "TCLP". The definition of "Abandoned system" is amended for a date. "Aboveground storage tank" is amended to expand the definition of substances regulated. The definition of "Contaminants" is amended to strike the reference to action level. The definition of "Corrective action" is amended to delete the word maintain. "Environmental" is amended to include air and atmosphere as part of the environment. The definition of "In service" is amended to include substances available to be considered keeping a tank system in service. "Owner" is amended to broaden the substances regulated. "Pay for Performance" is amended to add PFP to the title. "Petroleum" is amended to include used oil. The definition of "Regulated substances" is amended to incorporate the generic term "petroleum". "Regulatory contact" is amended to include the acronym PSTD. The definition of "Release" is amended to include regulated substances concentrations that pose a threat to human health, safety, and the environment. "Release detection" is amended to add the methodology used. "Repair" is amended to refine standards and substances regulated. The definition of "Source of release" is amended to include regulated substances. "Suspected release" is amended to define the type of system regulated, and strikes obsolete language. The definition of "Transporter" is amended to strike references to haul for hire transportation. The definition of "Storage Tank Advisory Council" is revoked.

OAC 165:29-3-1 Release prohibition is amended for grammatical purposes only.

OAC 165:29-3-2 Release reporting is amended to include off-site contamination and provides for alternative measurement when vapor thresholds of leak detection are exceeded in vapor monitoring wells.

OAC 165:29-3-3 Release investigation is amended to strike language that limits releases that go beyond the tank vault and into the native environmental. In addition, any release of regulated substance considered to be above action levels may confirm a release.

OAC 165:29-3-65 Assessing the site at closure or change in service is amended to strike redundant language and prohibits removal of contaminated material without prior approval.

OAC 165:29-3-71 General applicability; exception is amended to strike references to guidance documents and requires pre-approval of work proposed.

OAC 165:29-3-72 Prescribed forms is amended for grammatical purposes only.

OAC 165:29-3-73 Initial Response is amended to allow facsimile reporting of releases and requires documentation of action taken.

OAC 165:29-3-74 Initial Abatement measures and site check is amended to make certain clarifying changes.

OAC 165:29-3-75 Initial Site Characterization and Corrective Action Plan is amended to add basements, storm cellars and subsurface crawl spaces as receptors and establishes the Prioritization Guidance Document as the methodology to be used in performing ORBCA Tier IA, Tier 2 and Tier 3 analysis.

OAC 165:29-3-76 Tier 1A ORBCA is amended to include other risk analysis methods, strikes reference to prioritization schedule and further defines the type and placement of monitoring wells.

OAC 165:29-3-78 Free produce removal is amended to substitute PSTD for the Commission and provide for a free product disposal report.

OAC 165:29-3-79 Tier 2 and Tier 3 ORBCA is amended to strike recurring references to case prioritization and other grammatical changes.

OAC 165:29-3-80 Remedial Action plan is amended to provide for assurances from the licensed remediation consultant the plan is protective of human health and safety, and allows verbal pre-approval of clean-up when confirmed by fax or e-mail.

OAC 165:29-3-81 Property owners affected by releases, notice is amended to notify early in the investigation process all parties impacted by the release and upon request, the furnishing of past and future reports submitted to the Commission.

OAC 165:29-3-82 Closure of a case is amended to provide submittal of a case closure document by both the owner and licensed remediation consultant.

OAC 165:29-3-83 Laboratory Analysis is amended to provide for written pre-approval by PSTD of proposed air sampling methods.

OAC 165:29-3-90 Licensing for Remediation consultants involved with closures, investigations, removals and the remediation of releases from Underground or Aboveground storage tanks is amended to strike all references to UST and substitute petroleum storage tanks, insert Licensed for Remediation consultants, include Chapter 15, 25, 26, 27, 29 violations, submitting false statements, fraudulent acts, and criminal acts or reasons for License suspension or revocation.

OAC 165:29-5-4 Notices is amended to correct zip code.

CONTACT PERSON:

Jeff Southwick (405) 522-4457

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 3. DEFINITIONS

165:29-1-11. Definitions

In addition to the terms defined in 17 O.S. § 303, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"ANSI" means the American National Standards Institute.

"API" means the American Petroleum Institute.

"ASTM" means the American Society for Testing and Materials.

"Abandoned system" means a storage tank system that has not been removed but has been taken out of service and is not intended to be returned to service, or that has been rendered permanently unfit for use as determined by the Commission, including all tanks closed prior to April 21, ~~1988~~ 1989.

"Aboveground storage tank" or **"AST"** means any stationary tank that is not included within the definition of an underground storage tank in OAC 165:25-1-11, which is designed to contain, without structural support of earthen material, ~~antifreeze, motor oil, gasoline, diesel, aviation fuel and/or volatile blending materials used in motor fuels, like kerosene and ethanol~~ PSTD-regulated substances.

"Aboveground storage tank system" means an aboveground storage tank and any connected aboveground or underground piping, dispensers and associated equipment and fixtures.

"Aboveground release" means any release to the surface of the land or to surface water. It includes, but is not limited to, releases from the aboveground portion of an underground storage tank system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank system.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Aquifer" means a formation that contains sufficient saturated, permeable material to yield significant quantities of water to wells and springs. This implies an ability to store and transmit water for beneficial uses.

"Ancillary equipment" means any device including, but not limited to, devices such as piping, fittings, flanges, valves,

and pumps that are used to distribute, meter, or control the flow of regulated substances to or from a petroleum storage tank.

"Backfill" refers to only the material placed in the excavation zone to support the petroleum storage tank system.

"Belowground release" means any release to the subsurface of the land or to groundwater. It includes, but is not limited to, releases from belowground portions of petroleum storage tank systems and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from underground storage tank systems. "Belowground release" does not include releases to a secondary containment system.

"Beneath the surface of the ground" means beneath the ground's surface or otherwise covered with materials so that physical inspection is precluded or impaired.

"Beneficial uses" means a classification of the waters of the State, according to their best uses in the interest of the public.

"CASRN" means Chemical Abstracts Service Registry Number.

"CERCLA," also known as **"Superfund,"** means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. § 9601 et seq., and any amendments thereto.

"COC" means Chemical of Concern.

"Commission" means the Oklahoma Corporation Commission and includes its designated agents or representatives.

"Compatible" means the ability of two or more substances to maintain their respective physical properties upon contact with one another for the design life of the petroleum storage tank system under conditions likely to be encountered in the system.

"Contaminants" or **"contamination"** means concentrations of chemicals at levels that may cause adverse human health or environmental effects and/or nuisance conditions. ~~The associated concept of "action level" means that the concentrations of chemicals have reached contaminate level~~.

"Corrective action" means action taken to monitor, ~~maintain,~~ minimize, eliminate or clean up a release from a storage tank system.

"Corrective Action Plan" means any plan submitted to the Division detailing the method and manner of corrective action to be taken for a release.

"DAF" means Dilution Attenuation Factor.

"DEQ" means the Oklahoma Department of Environmental Quality.

"DWS" means Drinking Water Standards.

"de minimis" means, for the purposes of this Chapter, very small, as in very small amounts or concentrations of regulated substances.

"Dielectric material" means a material that does not conduct direct electric current. Dielectric coatings are used to electrically isolate underground storage tank systems from the surrounding area. Dielectric bushings are used to electrically isolate portions of the underground storage tank system (e.g., tank from piping).

"Dilution Attenuation Factor" or **"DAF"** means a unitless number greater than or equal to unity and represents the ratio of dissolved phase concentration at a downgradient location to the concentration at an upgradient location. It represents the reduction in concentration due to the combined influence of several factors (diffusion, dispersion, adsorption, decay, volatilization). It is applicable for all media, but is most commonly used for the unsaturated and saturated zones. DAF is generally estimated using a fate and transport model or based on site-specific data.

"Director" means the Director of the Petroleum Storage Tank Division of the Corporation Commission.

"Division" means the Petroleum Storage Tank Division of the Corporation Commission.

"EPA" means the United States Environmental Protection Agency.

"Electrical equipment" means underground equipment that contains dielectric fluid necessary for the operation of equipment such as transformers and buried electric cable.

"Environment" means any water, water vapor, any land including land surface or subsurface, fish, wildlife, air and atmosphere, and all other natural resources.

"Environmental experience" means work-related experience in any type of activities associated with soil, water or atmosphere impacted or potentially impacted by a hazardous substance.

"Excavation zone" means the volume containing the underground storage tank system and backfill materials, bounded by the ground surface, walls, and floor of the pit and trenches into which the underground storage tank system is placed at the time of installation.

"Facility" means any location or part thereof containing one or more petroleum storage tanks or systems.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

"FOC" means fraction organic carbon content.

"Fraction organic carbon content" or **"FOC"** means the fraction of organic carbon in soil that influences the adsorption of organic chemicals. It can be estimated in soils using high temperature combustion and oxidation techniques such as ASTM method D2974.

"Free product" means a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water).

"Fresh groundwater" means groundwater with total dissolved solids (TDS) less than five thousand (5,000) parts per million.

"Fund" means the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund.

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during its production or gathering operations.

"Groundwater" means that part of water that is below the water table.

"Half-life" means the time required for the decay or transformation of one half of the amount of a chemical.

"Hazard Index" means the sum of the Hazard Quotients.

"Hazard Quotient" means the estimated dose, or intake, for a specific chemical and a specific pathway, divided by the Reference Dose (RfD).

"Hazardous substance" means ethylene glycol-based antifreeze, motor oil, motor fuel, gasoline, diesel, aviation fuel and blending material used in motor fuels.

"Impervious barrier" means a barrier of sufficient thickness, density, and composition that is impenetrable to the regulated substance, has a permeability of at least 1×10^{-6} cm/sec., and will prevent the discharge to the environment of any regulated substance for a period of at least as long as the maximum anticipated time during which the regulated substance will be in contact with the impervious material.

"In service" means a petroleum storage tank that is not abandoned, or could contain~~s~~ regulated substances, and/or has regulated substances regularly added to or withdrawn from it.

"Inventory controls" means techniques used to identify a loss of regulated substances that are based on volumetric measurements in the tank and reconciliation of those measurements with product delivery and withdrawal records.

"Licensed Remediation Consultant" means an individual who has a current license issued by the Petroleum Storage Tank Division.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil or gas production, gathering, and extraction operations (including gas production plants) to collect oil, water, and other liquids. Liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"MCL" means Maximum Contaminant Level.

"MtBE" means methyl tertiary butyl ether.

"Maintenance" means the normal operational upkeep necessary to prevent a petroleum storage tank system from releasing product.

"Motor fuel" means any petroleum or petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

"Monitor well" means a piezometer or other cased and screened excavation, boring or drilled hole installed in any way that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors.

"NACE" means the National Association of Corrosion Engineers.

"NFPA" means the National Fire Protection Association, Inc.

"NPDES" means the National Pollutant Discharge Elimination System.

"Nuisance conditions" means unpleasant odors, unpleasant visual impacts or other observable aesthetic impacts as determined by the Commission.

"ORBCA" or **"Oklahoma Risk-Based Corrective Action"** means a scientific risk-based analysis that governs petroleum storage tank site assessment and remediation. It determines acceptable concentration levels of petroleum constituents in order to protect the public health, safety or welfare or the environment.

"OSDA" means the Oklahoma State Department of Agriculture.

"OWRB" means the Oklahoma Water Resources Board.

"Observation tube" means a leak detection device placed within the tank field that reaches two (2) feet below the tank bottom and can be inspected periodically to determine whether contamination by a regulated substance has occurred.

"Operational life" means the period beginning from the time installation of the tank or system is commenced until it is properly closed or removed as provided for in this Chapter.

"Operator" means any person in control of or having responsibility for the daily operation of the petroleum storage tank system, whether by lease, contract, or other form of agreement. The term also includes a past operator at the time of a release or violation of state statutes or Commission rules.

"Out of service" means a petroleum storage tank or system that:

(A) Is not in use (i.e., does not have regulated substances added to or withdrawn from the tank system); and

(B) Is intended to be placed back in service.

"Overfill" means a release that occurs when a petroleum storage tank is filled beyond its capacity, resulting in a discharge of regulated substance to the environment.

"Owner" means any person who holds title to, controls, or possesses an interest in a storage tank system or a piece of property that has a storage tank system for the storage, use, or dispensing of ~~antifreeze~~ PSTD-regulated substances, ~~motor oil, gasoline, diesel, aviation fuel, or blending materials used in motor fuels~~. In the case of a petroleum storage tank system no longer in ~~use~~ place, the term "owner" also means any person who held title to, controlled, or possessed an interest in a storage tank system immediately before ~~the discontinuation of its use~~ it's decommissioning. The term "owner" does not include a person who holds an interest in a tank system solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the system.

"PEI" means the Petroleum Equipment Institute.

"POC" means Point of Compliance.

"POE" means Point of Exposure.

"PSI" means pounds per square inch.

"PSTD" means Petroleum Storage Tank Division, or Division.

"Pay-for-Performance (PFP)" - A process where an environmental consulting company (Consultant) guarantees by signing a mutual agreement (the contract) that a release of a regulated substance will be remediated to COC levels agreed to by the PSTD and the Consultant that are protective of human health, safety and the environment. This performance-based process encompasses several steps, but is not limited to the contract signed by an officer/owner of the environmental consulting company, the applicant and the Administrator of the Indemnity Fund and an agreed to reasonable price. Scheduled

payments are distributed only as performance-based goals are attained.

"Person" means any individual, trust, firm, joint stock company or corporation, limited liability company, partnership, association, any representative appointed by order of a court, the state, any municipality, county, school district or other political subdivision or agency of the state, or any interstate body. The term also includes a consortium, joint venture, commercial entity, the United States Government, a federal agency, including a government corporation, or any other legal entity.

"Person in charge" means the owner or person designated by the owner, the operator, or permittee as the one with direct supervisory responsibility for an activity or operation at a petroleum storage tank system or facility, such as the transfer of regulated substances to or from any points at a facility.

"Petroleum" means antifreeze, motor oil, gasoline, diesel, aviation fuel, and/or volatile blending materials used in motor fuels, like kerosene and ethanol and used oil.

"Pipe" or **"Piping"** means a hollow cylinder or tubular conduit constructed of non-earthen materials.

"Pipeline facilities" means new and existing pipe rights-of-way and any equipment, facilities, or buildings regulated under:

(A) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671, et seq.).

(B) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001, et seq.).

(C) The State Hazardous Liquid Transportation System Safety Act, § 47.1 et seq. of Title 52 of the Oklahoma Statutes.

(D) Intrastate pipeline facilities regulated under state laws.

"Point of Compliance" means a select location where the concentration of a chemical released must be at or below back-calculated levels. The back-calculated levels are such that estimated concentrations at the Point of Exposure are below health-based levels.

"Point of Exposure" means a location at which an individual or population may be exposed to site-specific Chemicals of Concern through ingestion, inhalation and/or dermal contact.

"Pollution" means contamination or other alteration of the physical, chemical or biological properties of any natural waters of the state, or contamination or alteration of the physical, chemical or biological properties of the land surface or subsurface, when such contamination or alteration will or is likely to create a nuisance or render the waters or land harmful to the public health, safety or welfare, or the environment.

"Polyvinyl chloride" means a thermoplastic resin.

"Positive sampling, testing, or monitoring results" means the results of sampling, testing, or monitoring using any of the release detection methods described in this Chapter that indicate a release from a petroleum storage tank system may have occurred.

"Potency Factor" means the plausible upper-bound estimate of the probability of a response (cancer) per unit intake of chemical over a lifetime. Also referred to as Slope Factor.

"RBCA" means Risk-Based Corrective Action.

"RCRA" means the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6912, 6991(a) through (f), and 6991(h), and any amendments thereto.

"RfD" means Reference Dose.

"Reasonable Maximum Exposure" or **"RME"** means the highest rate of exposure that has a small probability (5 percent) of being exceeded.

"Reference Dose" or **"RfD"** means the estimate of the daily intake of a chemical over a lifetime that is not likely to result in any significant adverse health effects (including in sensitive subpopulations).

"Regulated substances" or **"product"** means ~~antifreeze, motor oil, gasoline, aviation fuel, diesel, and/or volatile blending materials used in motor fuel. It does not include compressed natural gas~~ hazardous substances or petroleum regulated by PSTD.

"Regulatory contact" means the person or company with whom the ~~Petroleum Storage Tank Division~~ PSTD is working in its regulatory capacity to correct a problem. It could be the current owner, past owner, operator or volunteer. The term denotes a functional role instead of one with legal significance. It is the person or company with whom the Division is working to get something done, and not necessarily the person a court would consider legally responsible for the problem.

"Release" means any spilling, overfilling, or leaking from a storage tank system that goes beyond the excavation zone, tankpit, or secondary containment facility into the native environment or any concentrations of a regulated substance that as determined by the PSTD poses a threat to human health or the environment.

"Release detection" means the methodology used in determining whether a release of regulated substances has occurred from a petroleum storage tank or system into the environment or into the interstitial area between the petroleum storage tank system and its secondary barrier.

"Remediation" - Process or technique used to reduce concentration levels of regulated substances in the soil and groundwater, and, or to reduce the presence of free product in the environment to levels that are protective of human health, safety and the environment. Generally remediation activities are scheduled after the site assessment is complete and the Remedial Action Plan (RAP) has been approved.

"Repair" means to restore a tank or petroleum storage tank system component to PSTD standards that has caused a release of ~~product~~ regulated substances from the petroleum storage tank system.

"Reportable Quantity" or **"RQ"** means the amount of a hazardous substance release required to be reported to appropriate federal, state, and/or local officials.

"Residual Product" Petroleum hydrocarbons (product) that are absorbed or otherwise bound to geological materials (sand, silt, or clay) in any soil zone (vadose, capillary, or saturated zone), in such a manner that ground water in contact with the residual product or beneath the residual product is not contaminated with any petroleum constituent regulated by the OCC.

"Risk-Based Corrective Action" means all of the activities necessary to manage a site such that concentrations of chemicals from a release are at levels that are not detrimental to public health and the environment. It includes, but is not limited to, collection of site-specific data, analysis of the data to quantify the risk, comparison of the risk with acceptable levels, and implementation of engineering and non-engineering measures to ensure that concentrations of remaining Chemicals of Concern are not detrimental to human health.

"SARA" means the Superfund Amendments and Reauthorization Act of 1986.

"SCL" means Soil Cleanup Level.

"STI" means the Steel Tank Institute.

"Sacrificial anode" means a device used to reduce or prevent corrosion of a metal in an electrolyte by galvanic coupling to a more anodic metal.

"Saturated zone" means a subsurface zone below which all pore space is filled with water.

"Slope Factor" means the plausible upper-bound estimate of the probability of a response (cancer) per unit intake of chemical over a lifetime. Also referred to as Potency Factor.

"Smear Zone" Any soil zone containing petroleum hydrocarbons that can contaminate ground water in contact with the petroleum hydrocarbons or ground water beneath the petroleum hydrocarbons with petroleum constituents regulated by the PSTD.

"Soil zone" means and includes, but is not limited to, vadose zone, capillary fringe, or saturated soil zone.

"Source of contamination" means the location of the highest concentration of chemical contaminants in soil and groundwater.

"Source of release" means the location where ~~chemical constituent(s)~~ regulated substances from a regulated tank system entered the environment.

"Spill" means a release that occurs during transfer operations of regulated substances to or from a petroleum storage tank system, resulting in a discharge of such substances into the environment.

~~**"Storage Tank Advisory Council"** means an appointed committee pursuant to 17 O.S. Section 340 et seq., which has the authority to recommend rules and make written comments and recommendations to the Commission, and provides a public forum for the discussion of issues it considers relevant to its area of jurisdiction.~~

"Storage Tank System" means one or a combination of tanks, including piping, hoses, dispensers and other system equipment used to contain regulated substances.

"Stormwater collection system" or **"wastewater collection system"** means piping, pumps, conduits, and any other equipment necessary to collect and transport surface water runoff resulting from precipitation or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of stormwater and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" means a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Suspected release (SOR)" means an event has occurred that establishes a reasonable basis to believe a release from a petroleum storage tank system may have occurred~~. Such an event does not authorize the owner or operator of a storage tank to initiate an investigation for which subsequent payment from the Indemnity Fund may be sought until the investigation has been authorized by the Petroleum Storage Tank Division of the Commission~~.

"TCLP" means toxicity characteristic leaching procedure, a test procedure for determining if a solid waste is hazardous because it exhibits toxicity characteristics as enforced under Resource Conservation and Recovery Act.

"TDS" means Total Dissolved Solids.

"TPH" means Total Petroleum Hydrocarbon(s).

"Target Risk Level" means the level set by the Oklahoma Corporation Commission that must be achieved at each site prior to a risk-based closure of the site. For example, for current receptors this level has been set at 1E-06 (one-in-a-million) and a Hazard Quotient of less than 1.0 (one).

"Transporter" means any person who transports, delivers, or distributes any quantity of regulated substance from one point to another. ~~for wholesale or retail gain~~.

"UL" means Underwriter's Laboratory.

"USGS" means the United States Geological Survey.

"Usable groundwater" means fresh groundwater that may be produced from an aquifer for beneficial uses.

"Underground area" means an underground room such as a basement, cellar, shaft, or vault that provides enough space for physical inspection of the exterior of a tank situated on or above the surface of the floor.

"Underground storage tank" or **"UST"** means a regulated storage tank that has 10 percent or more of its volume beneath the surface of the ground.

"Underground storage tank system" means an underground storage tank and any connected aboveground or underground piping, dispensers, and ancillary equipment.

"Unsaturated zone" or **"vadose zone"** means the subsurface zone containing water under pressure less than that of the atmosphere, including water held by capillary forces within the soil, and containing air or gases generally under atmospheric pressure. This zone is limited by the ground surface and the upper surfaces of the water table.

"Vault" means an underground compartment used to house a storage tank system. It must be large enough for a person to visually inspect all areas around the storage tank.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

"Waters of the State" means all bodies or accumulations of water, surface and/or underground, natural or artificial, and public or private, which are contained within, flow through, or border upon any part of the State of Oklahoma or any portion thereof.

SUBCHAPTER 3. RELEASE PREVENTION, DETECTION AND CORRECTION

PART 1. RELEASE PROHIBITION, REPORTING, AND INVESTIGATION

165:29-3-1. Release prohibition

The intentional release of regulated substances from a petroleum storage tank or system is ~~strictly~~ absolutely prohibited. No person shall knowingly allow a confirmed or suspected release of regulated substances from a petroleum storage tank or system to continue without investigation as required by this Chapter. Owners and operators of all petroleum storage tank systems must ensure that releases due to spills and overfills do not occur. The requirements of this Subchapter apply to all confirmed and suspected releases.

165:29-3-2. Release reporting

(a) These reporting requirements do not relieve the owner or operator of the responsibility to take corrective action as required by this Subchapter to protect human health and the environment, including the containment and cleanup of spills and overfills that are not required to be reported.

(b) All petroleum storage tank system owners, operators, their agents and ~~or their~~ employees ~~at the facility~~ must report any of the following events to the ~~Commission~~ PSTD by telephone at (405) 521-6575 or 1-888-621-5878 (and if after hours or on weekends or holidays, they must leave a message on the answering machine) within 24 hours of discovering the substances, conditions or monitoring results. Owners or operators must send written confirmation within 20 days in accordance with the release investigation and confirmation requirements of this Subchapter.

(1) The discovery of released regulated substances at the petroleum storage tank system facility or in the surrounding area including but not limited to ~~(such as~~ the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water~~)~~ whether on-site or off-site.

(2) Any unusual operating conditions observed by the owner or operator, like the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the petroleum storage tank system, or an unexplained presence of water in the tank, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced.

(3) An unusual level of vapor on the site that is of unknown origin. A vapor monitor well reading in excess of 4,000 units/ppm, or 1,500 units/ppm for diesel storage tanks, must be reported to the ~~Commission~~ PSTD within 24 hours of receiving the report by the owner or operator or any of his or her employees at the facility. If diesel and gasoline tanks share the same tankpit, the reporting level is 1,500 units/ppm. Within 10 days, the owner or operator must submit to the ~~Commission~~ PSTD all vapor monitoring well data, including background data, for the last 12 months. Upon examination of the submitted data, the ~~Commission~~ PSTD will advise the owner or operator what action, if any, he or she needs to take. ~~When a 1,500 ppm reading is reported, the Petroleum Storage Tank Division will perform a preliminary investigation at its own expense prior to opening a case; if it finds no reason to open a case, the owner or operator is not liable for any expenses.~~ Whenever these vapor thresholds are exceeded the tank owner must provide alternative test results that confirm the petroleum storage tank system is currently not leaking.

(c) Monitoring results must be reported within 24 hours of the owner or operator's receipt of them; and the ~~Commission~~ PSTD will advise what action should be taken to determine whether or not a release has occurred, unless the monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.

(d) All owners and/or operators of petroleum storage tank systems shall maintain records of all reportable and nonreportable events listed in 165:29-3-2 sufficient to permit adequate inspection and review by the ~~Commission~~ PSTD. These records shall be kept in permanent form for 3 years following the date of the event. If any of the possible, probable, or definite release conditions in this Section are not reported within 24 hours, the owner or operator must be prepared to provide documentation or evidence that would reasonably indicate an owner or operator's knowledge of release conditions or monitoring results was delayed.

(e) The owner or operator of a petroleum storage tank system must maintain records of all reportable and nonreportable events so that adequate inspection and review can be made by the ~~Commission~~ PSTD. These records must be kept for 3 years following the date of the event.

(f) While aboveground petroleum releases of less than 25 gallons need not be reported, they must be recorded by the owner or operator and cleaned up immediately.

(g) Any releases requiring emergency corrective action must be reported immediately to the ~~Commission~~ PSTD, and when offices are closed they must be reported to the ~~Commission's~~ PSTD's pager at 405-791-4512 or the Oklahoma Department of Environmental Quality (DEQ) at 1-800-522-0206 (in state) or 405-271-4468 (out of state).

165:29-3-3. Release investigation; confirmed release; suspected release; emergency suspected release and release reporting ~~of release~~

(a) **Duty to inspect for release.** Owners and operators of storage tanks must routinely inspect and conduct necessary testing of their storage tanks to prevent spilling, overfilling, or leaking from a storage tank system ~~that goes beyond the excavation zone, tankpit, or secondary containment facility~~ into the native environment. The owner or operator of a petroleum storage tank system must take the following steps or use other procedures approved by the ~~Commission~~ PSTD:

(1) **System test.** Owners or operators must conduct petroleum storage tank system tests that determine whether a leak exists in the portion of the tank that routinely contains ~~product~~ regulated substances and the attached delivery

piping. If the test results for the system, tank, or delivery piping indicate that a leak exists, the owner or operator must repair, replace, or upgrade the petroleum storage tank system and begin a site check. Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if indicator chemical concentrations detected in soil or water are not the basis for suspecting a release. However, the owner or operator must conduct a site check as described in (B) below if the test results for the system, tank and delivery piping do not indicate that a leak exists, but indicator chemical concentrations detected in soil or water are above action levels cited in (b) of this Section.

(2) **Site check.** The owner or operator must measure for the presence of a release where released ~~chemicals~~ regulated substances are most likely to be present at the petroleum storage tank system site. In selecting sample types, locations, depths and measurement methods, owners or operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Sample locations should be approximately 5 feet from the outside of the ~~UST~~ petroleum storage tank system in native soil or another location approved by the ~~Commission~~ PSTD. Analyses for both BTEX constituents and the appropriate TPH must be obtained in all cases. For sites where used oil may be involved, as determined through a TPH analysis, TCLP analysis for metals, semi-volatiles, and volatiles may be required. The TCLP results will be used on a case-by-case basis to establish cleanup levels or to refer the case to the ~~Oklahoma Department of Environmental Quality~~ DEQ for regulation. The selected method must be able to detect the most stringent cleanup levels required in this Chapter. The Total Petroleum Hydrocarbon (TPH) Laboratory Methodology 418.1 will not be accepted for this Chapter.

(A) If the test results for soil and/or groundwater taken outside the excavation zone or the petroleum storage tank system site confirm that a release has occurred, the owner or operator must begin the required corrective action in accordance with this Subchapter.

(B) If the test results for the native soil and/or groundwater or the petroleum storage tank system site do not indicate that a release has occurred, further investigation is not required.

(b) **Confirmed release.** When a release is confirmed a case may be activated.

(1) When one or more of the following is present from a petroleum storage tank system, a release may be considered confirmed.

(A) Free product is found anywhere. ~~(below ground) outside the secondary containment structure, tankpit or excavation zone~~.

(B) Contaminated groundwater is found outside the excavation zone ~~tankpit, or secondary containment structure and in the native environment~~.

(C) Contaminated "~~native~~ soil zone" is found outside the excavation zone.

(2) ~~Unless otherwise directed by the Commission, contaminated fill alone does not require corrective action or confirm a release. However, reporting and a site check are required when such contamination is found~~ Any contamination from a regulated substance having concentrations determined by the PSTD to be harmful to human health or the environment.

(3) Levels of chemical constituent concentrations determined by laboratory analysis that may confirm a release are:

(A) Benzene
- (i) Native Soils - 0.5 mg/kg
- (ii) Groundwater - 0.005 mg/l

(B) Toluene
- (i) Native Soils - 40.0 mg/kg
- (ii) Groundwater - 1.0 mg/l

(C) Ethyl Benzene
- (i) Native Soils - 15.0 mg/kg
- (ii) Groundwater - 0.7 mg/l

(D) Xylene
- (i) Native Soils - 200.0 mg/kg
- (ii) Groundwater - 10.0 mg/l

(E) TPH
- (i) Native Soils - 50.0 mg/kg
- (ii) Groundwater - 2.0 mg/l
- (iii) If BTEX concentrations are below action levels, a TPH concentration of 500 ~~ppm~~ or mg/kg may be required to confirm a case.

(c) **Suspected release.** When an owner, ~~or~~ operator, or their agent has reason to believe that a release from a storage tank may have occurred, he or she must notify the ~~Petroleum Storage Tank Division~~ PSTD within 24 hours and receive authorization from the Division prior to initiating any investigation for which subsequent payment from the Indemnity Fund may be sought.

(d) **Emergency suspected release.** Owners, ~~or~~ operators, their agent may begin investigation of suspected releases when the suspected release may cause immediate harm to the public health, safety, or welfare or the environment. The Petroleum Storage Tank Division will approve and reimburse expenses for an investigation after it has been performed and prior to the issuance of a Suspicion of Release by the Petroleum Storage Tank Division when the owner or operator has reasonably acted upon the belief that the suspected release gave rise to the need for immediate emergency action. The determination of whether or not action was reasonable is within the discretion of the ~~Commission~~ PSTD.

(e) **Release reporting.** Within 20 days after the reporting of a release, the owner or operator must submit a report to the ~~Commission~~ PSTD summarizing the steps taken under this Section and any resulting information. If a release is confirmed through performance of the steps taken under this Section, then the report must be submitted on ~~Commission~~ PSTD-specified forms and no other abatement measures or site checks are required.

PART 3. REMOVAL AND CLOSURE OF PETROLEUM STORAGE TANK SYSTEMS

165:29-3-65. Assessing the site at closure or change in service

~~(a) Before permanent closure or a change in service is completed, the owner or operator must measure for the presence of a release where contamination is most likely to be present at the petroleum storage tank system site, unless a release has already been confirmed from that tankpit storage tank system. The Commission, at its discretion, may have a witness present to verify that sampling is completed appropriately. Failure of the owner, operator, or the owner's representative to schedule the sampling in advance with the Commission and to advise the Commission at least 48 hours in advance of schedule changes may subject the responsible person to penalties as established in OAC 165:25 and 165:26, the Commission's Underground and Aboveground Storage Tank Rules, respectively.~~

~~(b) In selecting sample types, sample locations, and measurement methods, the owner or operator must consider the method of closure, the nature of the stored substance, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence of a release. Sample locations should be approximately 5 feet from the outer edge of the UST system in native soil or another location approved by the Commission. All samples collected and analyzed pursuant to this Section must be analyzed by an Oklahoma Department of Environmental Quality-certified laboratory.~~

~~(1) For tank systems containing petroleum product, analyses for both TPH and BTEX must be obtained.~~

~~(2) Levels of contamination in native soils and groundwater that may require further action are:~~

~~(A) Benzene~~

~~(i) Native Soils - 0.5 mg/kg~~

~~(ii) Groundwater - 0.005 mg/l~~

~~(B) Toluene~~

~~(i) Native Soils - 40.0 mg/kg~~

~~(ii) Groundwater - 1.0 mg/l~~

~~(C) Ethyl Benzene~~

~~(i) Native Soils - 15.0 mg/kg~~

~~(ii) Groundwater - 0.7 mg/l~~

~~(D) Xylene~~

~~(i) Native Soils - 200.0 mg/kg~~

~~(ii) Groundwater - 10.0 mg/l~~

~~(E) TPH~~

~~(i) Native Soils - 50.0 mg/kg~~

~~(ii) Groundwater - 2.0 mg/l~~

~~(iii) If BTEX concentrations are below action levels, a TPH concentration of 500 mg/kg may be required to confirm a case.~~

~~(c) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered through actions taken in accordance with this Subchapter, or by any other manner, the owner or operator may be required to begin corrective action.~~

~~(d) If contaminated soils are discovered through actions taken in accordance with this Section or by any other manner, the owner or operator must begin an investigation.~~

~~(e) Sampling done at closures must be done under the supervision of a licensed Remediation Consultant.~~

(~~f~~a) ~~Unless otherwise~~ As directed by the ~~Commission~~ PSTD, backfill material that is removed when an underground storage tank or associated piping is pulled from the subsurface ~~must~~ may be tested for BTEX, TPH (GRO and/or DRO, whichever is appropriate) and total lead, if appropriate.

(~~g~~b) As directed by the PSTD excavated backfill material ~~must~~ may be sampled at a rate of one composite sample (composed of 10 grab samples) per 50 cubic yards of material, which must be analyzed by a ~~state-certified~~ laboratory certified by DEQ. ~~If the excavated backfill is obviously impacted, the owner or operator need only sample at a rate that is adequate for disposal at a state-regulated landfill.~~

(~~h~~c) The consultant ~~and~~ or tank owner ~~have the right to~~ may put excavated backfill back into the tankpit while waiting for sampling results, but if the backfill needs to be re-excavated and replaced with clean backfill, the re-excavation is not a reimbursable expense.

(~~i~~d) After reviewing the analytical results, the ~~Division~~ PSTD, consultant and tankowner will determine if the concentrations of the Chemicals of Concern are at levels that pose a threat to human health and/or the ~~native~~ environment and should be removed. This decision will be based upon the analytical levels and specific site conditions such as,
but not limited to the lithology of the tankpit and surrounding native soil, gradient, and receptors.

(~~j~~e) ~~Impacted~~ Contaminated backfill and tankpit water that poses a threat to human health and/or the ~~native~~ environment as determined by the PSTD must be removed from the site to a ~~state-regulated landfill~~proper disposal site and replaced by clean backfill or remediated above grade to below action levels or ORBCA-related cleanup levels.

(~~k~~f) Expenses incurred in the removal (but not re-excavation, see (~~h~~ c) above) of ~~impacted~~ contaminated backfill and tankpit water are reimbursable by the ~~Indemnity~~ Fund only with written or documented verbal pre-approval (~~i.e.~~ confirmed by fax or email) from the ~~Commission-assigned Project Environmental Analyst~~ PSTD Technical staff.

(~~l~~g) This Section does not apply to new tank installations. If existing tanks are removed and replaced with new tanks, in order to ensure the efficacy of the cathodic protection, old backfill must be removed and new backfill must be put in the tankpit. If the backfill is ~~impacted~~ contaminated to the degree that it must be taken to a landfill, its removal and disposal are reimbursable expenses with written or documented verbal pre-approval (i.e. fax or email) from a ~~manager~~ member of the PSTD Technical Staff. ~~in the Division's Technical Department.~~

(h) No soil, backfill material, or groundwater is to be removed from the site without prior PSTD approval and proper laboratory characterization unless otherwise directed by the PSTD.

PART 5. CORRECTIVE ACTION REQUIREMENTS

165:29-3-71. General applicability; exception

(a) Every owner or operator of a petroleum storage tank system must, in response to a confirmed release from a petroleum storage tank system, comply with the requirements of this Part, with the exception of those systems excluded from regulation in OAC 165:25 and OAC 165:26, the Commission's Underground and Aboveground Storage Tank Rules.

~~(b) Unless otherwise directed by the Commission, any work performed under this Part must be done in accordance with:~~

~~(1) API publication 1628, (1996), "A Guide to the Assessment and Remediation of Underground Petroleum Releases" or the EPA:NWWA Technical Enforcement Guidance Document.~~

~~(2) The American Society for Testing and Materials, ASTM Designation: E 1739-95, "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites".~~

~~(3) Oklahoma Water Resources Board, OAC 785:35 "Well Driller and Pump Installer Licensing".~~

~~(4) Other guidance given by the Commission~~

(b) All work done associated with the assessment, characterization, investigation, clean up, remedial action, and closure from a release or suspected release of a regulated substance should be pre-approved by the PSTD.

(c) Upon confirmation of a release, or after a release from the petroleum storage tank system is identified, the owner or operator must perform the following initial response actions:

(1) Report the release to the ~~Commission~~ PSTD either by telephone, ~~or~~ electronic mail or fax. If after hours, contact the PSTD pager at (405) 575-5255.

(2) Take immediate action to prevent any further release of the regulated substance into the environment, and prove that any system still containing fuel is tight by having a system tightness test performed.

(3) Identify and mitigate any fire, explosion, and vapor hazards.

(4) Remove free product to the extent practicable as determined by the ~~Commission~~ PSTD while continuing, as necessary, any actions required by this Subchapter.

(d) Any work performed in the abatement, mitigation or remediation of a release must have prior documented verbal or written approval by a member ~~the Project Environmental Analyst~~ of the ~~Commission~~ PSTD Technical Staff to be considered reimbursable by the Indemnity Fund. This requirement for pre-approval excludes required emergency spill mitigation measures.

165:29-3-72. Prescribed forms

All reporting for investigating and corrective action requirements must be on forms specified by the ~~Commission~~ PSTD.

165:29-3-73. Initial response

Upon confirmation of a release or after a release from ~~the~~ a petroleum storage tank system is identified in any other manner, the owner or operator must perform the following initial response actions within 24 hours of a release:

(1) Report the release to the ~~Commission~~ PSTD either by telephone, ~~or~~ electronic mail, or facsimile.

(2) Take and document immediate action to prevent any further release of the regulated substance into the environment.

(3) Identify any fire, explosion, and vapor hazards and mitigate them immediately.

165:29-3-74. Initial abatement measures and site check

(a) Unless directed to do otherwise by the ~~Commission~~ PSTD, the owner or operator must perform the following abatement measures:

(1) Remove as much of the regulated substance from the leaking petroleum storage tank system as is necessary to prevent further release to the environment.

(2) Visually inspect the petroleum storage tank system for any aboveground releases or exposed below-ground releases and prevent further migration of the released substance into surrounding soils and the waters of the state.

(3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the petroleum storage tank system excavation zone and entered into subsurface structures such as sewers or basements.

(4) Remedy hazards posed by impacted soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. ~~If these~~ All remedies, ~~include~~ including but not limited to treatment or disposal of soils, must comply with applicable state and local requirements ~~must be met~~ where applicable.

(5) Measure for the presence of a release where the released chemicals are most likely to be present at the petroleum storage tank site, unless the presence and source of the release have been confirmed in accordance with the site check or the closure site assessment. In selecting sample types, sample locations and measurement methods, the owner and/or or operator must consider the nature of the stored substance, the type of backfill, the depth to groundwater and other factors appropriate for identifying the presence and source of the release. Unless directed to do otherwise by the ~~Commission~~ PSTD, the owner or operator must analyze for the Chemicals of Concern (COCs) using approved analytical methods. For sites where used oil is involved, as determined through TPH analysis, TCLP analysis for metals, semi-volatiles and volatiles may be required. The selected analytical method must be able to detect concentrations of Chemicals of Concern below action levels. In addition, if a release occurs from any regulated petroleum storage tank system containing a hazardous substance, the cleanup requirements for that particular constituent will be determined on a site-by-site basis in conjunction with ~~the Department of Environmental Quality~~ DEQ pursuant to Title 27A § 1-3-101 et seq.

(6) Investigate to determine the presence and amount of free product.

(b) Within 20 days after release confirmation, the owner or operator must submit a report to the ~~Commission~~ PSTD on

the specified form that summarizes the initial abatement steps taken and any resulting information or data, unless this report was required to be submitted under 165:29-3-3.

165:29-3-75. Initial Site Characterization and Corrective Action Plan

(a) Unless otherwise directed by the ~~Commission~~ PSTD, the owner or operator must assemble information about the site and the nature of the release, including information ~~gained~~ obtained while confirming the release or completing the abatement measures. The report must include, but is not necessarily limited to, the following:

(1) Data on the nature and estimated quantity of the release.

(2) Data from available sources and/or site investigations concerning the following factors:

(A) Surrounding populations.

(B) Water quality (regional).

(C) Use and approximate locations of water wells, basements, storm cellars, and all subsurface crawl spaces potentially affected by the release within 330 feet from the source, and any wellhead protection delineations.

(D) Subsurface soil conditions.

(E) Locations and depths of subsurface utilities and petroleum storage tank systems.

(F) Climatological conditions.

(G) Land use.

(H) Depth to and quality of groundwater (site-specific).

(I) Latitude and longitude of the center of the tankpit to the nearest second.

(3) Results of the site check and/or the closure site assessment required by 165:29-3-65.

(4) Results of the free product investigations.

(b) Within 20 days of release confirmation or according to a schedule set by the ~~Commission~~ PSTD, the owner or operator must submit the information collected in compliance with this Section to the ~~Commission~~ PSTD, in a manner that demonstrates its applicability and technical adequacy.

(c) The owner or operator must submit a Corrective Action Plan (CAP) to the ~~Commission~~ PSTD as a separate part of the report required in this Section, identifying a plan of action to:

(1) Perform an ORBCA Tier 1A analysis to determine the need, if any, for remediation and/or additional ORBCA analyses.

(2) Monitor air, water, and soil.

(3) Remediate the release to such an extent that it no longer poses a threat to human health or safety or the environment.

(d) On Tier 1A, Tier 2 and Tier 3 ORBCA, case prioritization will be established by the PSTD using the Storage Tank Prioritization Guidance Document.

165:29-3-76. Tier 1A ORBCA

(a) Unless otherwise directed by the ~~Commission~~ PSTD, the owner or operator must compile information in order to assess the site using the Risk-Based Corrective Action (RBCA) process described in the ORBCA Guidance Document. (The ORBCA Guidance Document is available at the offices of the Petroleum Storage Tank Division of the Oklahoma Corporation Commission.) The RBCA process must be implemented with a three-tiered approach that must involve an increase in the level of data collection and analysis from one tier to the next. Some conservative default parameters under the Initial Site Characterization Tier 1A process must be replaced with more site-specific parameters under the Tier 2 and Tier 3 process. ~~The Commission~~ PSTD will review the results and recommendations at the completion of the Tier 1A analysis and decide if a more site-specific tiered analysis is required by initiating a Tier 2 or Tier 3 process, or whether remedial action should be performed as provided for in this Subchapter.

(b) The ~~Commission~~ PSTD will only accept and review reports, worksheets, checklists, closure reports or other relevant documents which incorporate the RBCA process, or any other acceptable risk analysis, from a Licensed Remediation Consultant.

(c) The RBCA Tier 1A process is as follows:

(1) Tier 1A: Non-site-specific risk-based screening ~~level~~ method used to determine corrective action goals ~~developed~~ using limited site-specific data.

~~(A) Case prioritization will be established by the Division using the Storage Tank Advisory Council-approved Prioritization Guidance Document.~~

(~~B~~A) Tier 1A establishes conservative cleanup goals called modified Risk-Based Screening Levels (RBSLs). Only the Fate and Transport Parameters cited in ~~Table 5-3 of~~ the ORBCA Guidance Document may be replaced by site-specific information obtained through site investigation and assessment. Justification must be provided when changes in any of the default Fate and Transport Parameters are indicated. The default Exposure Factors cannot be modified, nor can degradation rates be used under a Tier 1A evaluation. This evaluation must be performed using the models cited in Appendix C of the ORBCA Guidance Document. The modified RBSLs take into consideration regional characteristics, aesthetic criteria, and other appropriate standards such as Maximum Contaminant Levels (MCLs) for water. Tier 1A modified RBSLs are derived from standard exposure scenarios using current Reasonable Maximum Exposure (RME) toxicological parameters and conservative contaminant migration models. RBSL values are determined by the ~~Commission~~ PSTD using 1 in 1,000,000 as a Target Risk Limit for carcinogens and a Hazard Quotient (HQ) not greater than 1.0 as a Target Risk Limit for non-carcinogens. 1 in 10,000 is the acceptable Target Risk Limit for carcinogens for future potential receptors.

(~~C~~B) The most likely Point of Exposure (POE) for current and potential future beneficial use of fresh groundwater should be determined. The concentration at this Point of Exposure for each Chemical

of Concern (COC) must not exceed the Target Risk Limits cited in this Section.

(~~D~~C) Unless otherwise directed by the ~~Commission~~ PSTD under Tier 1A the owner or operator must drill and install a minimum of four (4) four-inch (4") diameter monitoring wells outside of the UST pit or AST containment or product piping trench excavation zones. These wells must be located as follows:

(i) One well must be installed in an apparent upgradient location to any known potential source at the site on or as close to the release as possible.

(ii) One well must be installed in a location most likely to be contaminated.

(iii) One well must be installed in a location that will allow the determination of an accurate groundwater gradient.

(iv) One well must be installed in the direction of the nearest probable Point of Exposure either at the nearest property line or fifty (50) feet from the source of contamination, whichever is closer, or at another location as determined by the ~~Commission~~ PSTD. This well will be the Point of Compliance (POC) well for the Tier 1A evaluation unless there is a Point of Exposure nearer to the source of contamination, in which case the Point of Exposure will also become the Point of Compliance. The concentration for each Chemical of Concern in the Point of Compliance well should not exceed the Tier 1A standards as calculated using the ORBCA Guidance Document. If a drinking water supply well has been identified within 330 feet of the site, groundwater MtBE must be tested at the Point of Compliance. 0.020 mg/L will be considered the level of concern for MtBE and may require further assessment and corrective action.

(2) Tier 1A: Risk-Based Screening Level corrective action goals developed using limited site-specific data.

(A) This evaluation must be performed using the same models as those which are cited in Appendix C of the Guidance Document.

(B) Only the Fate and Transport Parameters cited in ~~Table 5-3 of~~ the ORBCA Guidance Document may be replaced by site-specific information obtained through site investigation and assessment. Justification must be provided when changes in any of the Tier 1A default Fate and Transport Parameters are indicated. The Tier 1A default Exposure Factors cannot be modified, nor can degradation rates be used under a Tier 1A evaluation.

(3) Within 45 days of release confirmation, or according to a schedule established by the ~~Commission~~ PSTD, the owner or operator must submit the information required in the Tier 1A evaluation as a report. This report must be submitted in a style and format as set forth in the ORBCA Guidance Document.

(d) The ~~Commission~~ PSTD may re-evaluate a Tier 1A analysis of a site, for the purpose of closure, on a case-by-case basis.

165:29-3-78. Free product removal

At sites where an investigation indicates the presence of free product, the owner or operator must notify the ~~Commission~~ PSTD within ~~48~~ 24 hours that free product is located on site. The owner or operator must, as required by the ~~Commission~~ PSTD as a result of the ORBCA tiered process, remove free product to the extent required by the ~~Commission~~ PSTD while continuing, as necessary, any other actions required by this Subchapter. To meet the requirements of this Section, the owner or operator must, unless otherwise directed by the ~~Commission~~ PSTD:

(1) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges, or disposes of recovery byproducts in compliance with applicable state and federal regulations;

(2) Use abatement of free product migration as a minimum objective for the design of the free product removal system;

(3) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and

(4) In the event free product is encountered in a utility trench, the owner or operator must advise the appropriate utility company and the ~~Commission~~ PSTD of the presence of free product within 24 hours of discovery.

(5) Using the form specified by the ~~Commission~~ PSTD, prepare and submit to the ~~Commission~~ PSTD within 45 days after discovering free product, continuing thereafter at intervals specified by the ~~Commission~~ PSTD, a Free Product Removal Report that provides at least the following information:

(A) The name of the person(s) responsible for implementing the free product removal measures.

(B) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations.

(C) The depth to free product and to groundwater in each monitor well.

(D) The type of free product recovery system used.

(E) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located.

(F) The type of treatment applied to and the effluent quality expected from any discharge.

(G) The steps that have been or are being taken to obtain necessary permits for any discharge.

(H) The disposition of the recovered free product and PSTD Disposal/Recycler Report.

(I) Any permits required by federal, state, or local agencies.

(J) The screened interval for each monitor well.

165:29-3-79. Tier 2 and Tier 3 ORBCA

(a) Tier 2: Site-Specific Corrective Action Goals

~~(1) Case prioritization will be established by the Division by using the Storage Tank Advisory Council approved Prioritization Guidance Document.~~

(~~2~~1) Under Tier 2, the owner or operator may be required to perform additional site investigation as determined by ~~the Commission~~ PSTD. The Tier 2 analysis is conducted in order to determine Site-Specific Target Levels (SSTLs) and appropriate Points of Compliance (POCs). Tier 2 analysis differs from the Tier 1A analysis in that some of the conservative default parameter assumptions of Tier 1A are replaced with ~~more realistic~~ site-specific data and the plume is redefined accordingly.

(~~3~~2) Target Risk Limits remain the same.

(~~4~~3) A report in compliance with the ORBCA Guidance Document must be submitted to the ~~Commission~~ PSTD in accordance with a schedule established by the ~~Commission~~ PSTD and in a style and format as set forth in the ORBCA Guidance Document.

(b) Tier 3: Enhanced Site-Specific Corrective Action Goals

~~(1) Case prioritization will be established by the Division by using the Storage Tank Advisory Council approved Prioritization Guidance Document.~~

(~~2~~1) Where, in the determination of ~~the Commission~~, PSTD, site or near-site conditions dictate more detailed site assessment, the owner or operator may be required to perform a risk analysis using probabilistic evaluations and sophisticated chemical fate and transport models. The extent of this additional site assessment and risk analysis model must be acceptable to the ~~Commission~~ PSTD and must follow the ORBCA Guidance Document.

(~~3~~2) Target Risk Limits remain the same.

(~~4~~3) A report in compliance with the ORBCA Guidance Document must be submitted to ~~the Commission~~ PSTD in accordance with a schedule established by ~~the Commission~~ PSTD and in a style and format as set forth in the ORBCA Guidance Document.

165:29-3-80. Remedial Action Plan

(a) At any point after reviewing the information submitted, ~~the Commission~~ PSTD may require additional information or a Remedial Action Plan for contaminated soils and groundwater. If a plan is required, it must be submitted on forms or in the format specified by the ~~Commission~~ PSTD.

(b) ~~The Commission~~ PSTD will approve a Remedial Action Plan only after the Licensed Remediation Consultant ~~ensuring~~ ensures that implementation of the plan will adequately protect human health, safety, and the environment as determined by using the process outlined in the ORBCA Guidance Document.

(c) As directed by ~~the Commission~~ PSTD, the owner or operator must implement the Remedial Action Plan, including any modifications to the plan made by ~~Commission~~ PSTD. Implementation for the purposes of this Chapter means that the Remedial Action Plan approved by ~~the Commission~~ PSTD is fully operational and is performing the task for which it was designed.

(d) The owner or operator will be required to perform remediation and compliance monitoring as directed by ~~the Commission~~ PSTD.

(e) The owner or operator may, with ~~documented~~ verbal pre-approval documented by fax or email ~~(i.e. fax or email)~~ of the ~~Commission assigned Project Environmental Analyst~~ PSTD Technical staff, ~~in the interest of minimizing environmental contamination and promoting more effective cleanup~~ begin cleanup of soil and groundwater before the Remedial Action Plan is approved, provided that the owner or operator:

(1) Notify ~~the Commission~~ PSTD of the intention to begin cleanup at least seven days prior to initiating any cleanup action, unless it is an emergency.

(2) Comply with any conditions imposed by ~~the Commission~~ PSTD, including halting cleanup or mitigating adverse consequences from cleanup activities.

(3) Incorporate these self-initiated cleanup measures in the Remedial Action Plan or closure by risk assessment that is submitted to the ~~Commission~~ PSTD for approval.

165:29-3-81. Property owners affected by releases; notice

(a) Upon confirmation that soil and/or groundwater contamination is above action levels, owners or operators must notify property owners directly impacted by the release. This notice should be made just after delineation of the release to Tier 2 clean-up levels or prior to a case closure based on Tier 1A modified RBSL's. The notice, unless otherwise directed by ~~the Commission~~ PSTD, must include at a minimum:

(1) The origin and extent of the release and that an impacted party, upon written request to owner/operator may receive reports;

(2) The nature of the substance(s) released;

(3) The name, address and telephone number of the owner or operator or his or her designee who may be contacted for more information about the release; and

(4) The phone number and name of the Project Environmental Analyst at the ~~Commission~~ PSTD whom the property owner can contact for additional information.

(5) If an impacted party requests, in writing, copies of all reports, it is the responsibility of the owner/operator to assure past and future reports are delivered to any requesting impacted party.

(b) For each confirmed release that requires remediation or closure by a risk assessment or Risk-Based Corrective Action, the owner or operator must ~~subsequently~~ notify property owners directly impacted by the release and provide:

(1) The origin and extent of the release,

(2) The nature of the substance(s) released;

(3) A description of any planned remedial action or closure based upon a risk assessment of the release;

(4) The name, address and telephone number of the owner or operator or his or her designee and of ~~the Commission~~ PSTD Project Environmental Analyst working on the case who may be contacted for more information about the release, including any planned response action; and

(5) A statement that additional information about the release, including any planned response action, is on file with ~~the Commission~~ PSTD and available for public review.

(c) The notices required by this Section must be given by certified mail/return receipt requested. Copies of the return receipts must be included in the Public Participation Report submitted to the ~~Commission~~ PSTD.

(d) ~~The Commission~~ PSTD must ensure that any and all information concerning the release is made available to the public for review upon request.

(e) Before approving a remediation plan or closure based upon risk assessment, ~~the Commission~~ PSTD may hold a public meeting to consider comments on the proposed remediation plan or closure if there is sufficient public interest, or for any other reasons.

(f) The notice required by this Section must also be given:

(1) after implementation of an approved Remedial Action Plan does not achieve the cleanup levels established in the plan, and

(2) termination of the plan is subsequently approved by ~~the Commission~~ PSTD.

165:29-3-82. Closure of a case

(a) Closure occurs when the ~~Commission~~ PSTD has determined that the appropriate cleanup levels have been achieved for both BTEX and TPH and monitored as remaining below the cleanup level for a period of time as directed by ~~the Commission~~ PSTD, or when ~~the Commission~~ PSTD has determined the case is eligible for closure under Risk-Based Corrective Action.

(b) Upon approval of the request for case closure or as directed by ~~the Commission~~ PSTD, the owner or operator must submit a final closure report on a form specified by ~~the Commission~~ PSTD and certified by the Licensed Remediation Consultant which provides evidence of proper decommissioning of equipment and corrective action materials.

165:29-3-83. Laboratory analysis

(a) All samples required to be collected and analyzed pursuant to this Chapter must be analyzed by ~~an Oklahoma Department of Environmental Quality~~ a DEQ certified laboratory.

(b) The Total Petroleum Hydrocarbon (TPH) Lab Methodology EPA 418.1 will not be accepted for Part 5 of this Subchapter.

(c) When air sampling is required inside any structure or vapor monitoring well, the sampling and the method(s) used must be pre-approved in writing by ~~the Commission~~ PSTD.

PART 7. LICENSING FOR REMEDIATION CONSULTANTS

165:29-3-90. Licensing for Remediation Consultants involved with closures, investigations, removals and the remediation of releases from underground or aboveground storage tanks

(a) Any individual seeking a license as a remediation consultant involved with closures, investigations, removals and the remediation of releases from either underground or aboveground storage tank sites must complete an application form prepared by ~~the Commission~~ PSTD. The application form requires information regarding education, experience, knowledge of applicable state and federal regulations, industry standards and practices and references.

(b) All applicants must qualify in the following manner:

(1) Satisfy requirements of the Occupational Safety and Health Administration (OSHA) 29 CFR 1910.120 (HAZWOPER) 40 hour course with eight- (8-) hour annual updates and the eight- (8-) hour supervisor course; and

(2) Have seven (7) years' environmental experience with at least two (2) years' experience at regulated ~~UST~~ petroleum storage tank facilities and pass an examination, which must be taken no more frequently than once every six (6) months, authorized by the State of Oklahoma, which demonstrates knowledge of reference materials published by EPA:NWWA (Technical Enforcement Guidance Document-TEGD) and all applicable federal, state, and local regulations; or

(3) Have a four- (4-) year degree from an accredited college or university recognized by the state in Geology, Hydrology, Environmental Science, Environmental Engineering, Petroleum Engineering, Civil Engineering, Geologic Engineering or an equivalent engineering degree and at least four (4) or more years of environmental experience with at least two (2) years' experience at regulated ~~UST~~ petroleum storage tank facilities, and pass an examination administered by ~~the Commission~~ PSTD. The examination will test an applicant's knowledge of industry standards, reference materials, laws and regulations, and may be taken no more frequently than once every six (6) months. ~~with a maximum of three (3) attempts.~~

(c) Any Licensed Remediation Consultant submitting reports, worksheets, checklists, closure reports or other relevant documents that incorporate the ORBCA process or any other risk analysis provided in OAC 165:25 and 165:26, the Commission's Underground and Aboveground Storage Tank Rules, respectively, must provide evidence of attendance at a ~~Commission~~ PSTD-approved Risk-Based Corrective Action course, seminar or school. At a minimum this Course must include sixteen (16) hours of risk assessment/risk analysis and fate and transport of chemicals in the environment and eight (8) hours of hands-on computer training with appropriate software.

(d) Licensed Remediation Consultants are required to pay fees for applications, examinations, and certifications according to the schedule provided in OAC 165:5-3-2, the Commission's Rules of Practice.

(e) Licensed Remediation Consultants must provide proof of sixteen (16) hours of ~~Commission~~ PSTD-approved continuing professional education to ~~the Commission~~ PSTD every two (2) years.

(f) Sampling, sampling at tank closures, investigations, and remediation or any other activities directed by ~~the Commission~~ PSTD must be under the supervision of a Licensed Remediation Consultant. All work requiring supervision by Licensed

Remediation Consultants must contain a verification statement signed by the consultant in supervisory control.

(g) Licensed Remediation Consultants must supervise and/or perform work only in the areas in which they are educated and/or experienced.

(h) ~~The Commission~~ PSTD has the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any remediation consultant who is found guilty of:

(1) The practice of any fraud or deceit in obtaining a license or performing work pursuant to this Chapter, OAC 165:25 or 165:26, the Commission's Underground and Aboveground Storage Tank Rules, respectively, ~~or~~ OAC 165:27, the Commission's Indemnity Fund Rules, or Chapter 15, Fuel Inspection.

(2) Any gross negligence, incompetence or misconduct in consultant work performed pursuant to ~~this~~ Chapter 15, 25, 26, 27, 29.

(3) Knowingly making false statements or signing false statements, certificates or affidavits and submitting them to the ~~Commission~~ PSTD or to clients with the intention to induce payment, or to further the fraudulent act for whatever purpose.

(4) Aiding or assisting another person in violating any provision of this Chapter, OAC 165:25, ~~or~~ 165:26, ~~the Commission's Underground and Aboveground Storage Tank Rules, respectively, or~~ OAC 165:27, and OAC 165:15. ~~the Commission's Indemnity Fund Rules.~~

(5) Signing a verification statement for work performed pursuant to this Chapter that the remediation consultant did not supervise, or work that was not performed.

(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public.

(7) Criminal indictments or convictions.

(i) Prior to any license suspension, revocation, or refusal to renew, the Director ~~of the Petroleum Storage Tank Division~~ will have the matter investigated and a report prepared for his or her consideration. If the Director elects to pursue suspension, revocation, or refusal to renew, the licensee will be officially notified by the Director by ~~a~~ Notice ~~of Intent~~ sent to the licensee by certified mail/return receipt requested. The Notice ~~of Intent~~ will state the date and time of the hearing scheduled before a Commission Administrative Law Judge. The burden of ~~clear and convincing~~ proof of violations of this Chapter, as well as adherence to applicable State law, rests upon ~~the Petroleum Storage Tank Division~~ PSTD.

(j) This Section in no way exempts the remediation consultant from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.

SUBCHAPTER 5. ADMINISTRATIVE PROVISIONS

165:29-5-3. Notices

Any notices and reports required to be submitted to the Commission must be given or sent to: the Oklahoma Corporation Commission, Room 238, Attn: Petroleum Storage Tank Division, P. O. Box 52000, Oklahoma City, Oklahoma 73152-2000, (405) 521-4683.

[OAR Docket #05-1035; filed 5-26-05]

TITLE 165. CORPORATION COMMISSION CHAPTER 35. ELECTRIC UTILITY RULES

[OAR Docket #05-867]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 13. Disposition of Electric Energy
165:35-13-1. Resale of electricity [AMENDED]
Subchapter 15. Meter Requirements
Part 1. Installation, Reading, and Records
165:35-15-2. Meter reading, meter reading records, cards, and charts [AMENDED]
Part 3. Meter Location, Testing, and Operation
165:35-15-21. Referee meter tests by Commission [REVOKED]
Subchapter 19. Consumer Data, Deposits, and Billing
Part 1. Consumer Records, Information, and Interruptions of Service
165:35-19-2. Consumer information [AMENDED]
165:35-19-4. Restoration of service [AMENDED]
Part 3. Deposits
165:35-19-10. Deposits and interest [AMENDED]
Part 7. Application for Service and Tampering of Equipment
165:35-19-41. Tampering with measuring equipment or other property [AMENDED]
Subchapter 21. Disconnection of Service
Part 1. Disconnection of Service
165:35-21-2. Disconnection of service by a utility [AMENDED]
Part 3. Special Provisions Regarding Residential Disconnection
165:35-21-10. Delays to disconnection of residential service [AMENDED]
165:35-21-11. Commission notification procedure for the elderly and/or consumers with disabilities [AMENDED]
Part 9. Mediation and Commission Review
165:35-21-40. Mediation [AMENDED]
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Oklahoma Corporation Commission
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None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:

OAC 165:35-13-1 is amended to require the utility to notify the Commission when any consumer is reselling electricity and to allow the utility to continue to provide electric service pending review by the Public Utility Division.

OAC 165:35-15-2, concerning meter reading requirements, is amended to require the utility to read a consumer's electric meter at least ten times per year, weather permitting, and to not estimate a consumer's electric usage more than twice a year, unless doing so is necessary because of the consumer restricting meter access. The rule is also amended to address safe and unobstructed access to the utility's meter and other equipment for inspection and discontinuance of service.

OAC 165:35-15-21, concerning referee meter tests by the Commission, is revoked as being obsolete since the Commission does not perform tests of a utility's equipment.

OAC 165:35-19-2 is amended to delete the specific months when a utility must provide certain consumer information to its customers, allowing the utilities to provide this information during any month of the year.

OAC 165:35-19-4 is amended regarding the notice given to the Commission when service is restored after having been disconnected so that notice is to be by phone or e-mail during business hours, or by cellular phone after business hours, instead of providing notice by fax.

OAC 165:35-19-10 is amended to address the return of deposits to non-residential customers. The utility is to automatically return non-residential customer deposits of $20,000 or less if the customer has had five years of continued service, has made timely payment for 24 months, and has not been disconnected in the past 24 months. Additional provision is included to require the utility to review non-residential deposits every two years. The rule is also amended to provide that the change in interest rate on deposits will be based on fifty basis points, rather than two hundred basis points.

OAC 165:35-19-41 is amended to provide that the utility may, if the customer tampers with the utility's equipment or receives the benefit of the tampered service, disconnect service and charge tampering and reconnect fees and a deposit.

OAC 165:35-21-2 is amended to add a provision allowing a disconnection of service if the consumer has failed to fully pay a previous account of a similar character with the utility.

OAC 165:35-21-10, concerning the delay of a disconnection of residential services if a life threatening situation exists, is amended to provide that a life threatening situation exists if life sustaining equipment without a battery back-up has been prescribed by a physician and to add a provision allowing a life threatening situation to be claimed more than once by a consumer, provided the consumer's account is current and a medical form has been provided to the utility.

OAC 165:35-21-11 is amended to change the time required for a utility to notify the Consumer Services Division of a disconnect to elderly or disabled consumers, from five days prior to disconnection, to ten days. The notice is also to be made in writing.

OAC 165:35-21-40 is amended to remove the requirement for a consumer complaint to be in writing in order for the utility to hold disconnection in abeyance.

CONTACT PERSON:
Kathy Nelson (405) 522-1638

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 13. DISPOSITION OF ELECTRIC ENERGY

165:35-13-1. Resale of electricity

(a) ~~No~~ Except as set forth in subsection b below, no utility shall knowingly furnish electricity under a retail tariff for purposes of resale, except pursuant to a tariff or special contract approved by and on file with the Commission.

(b) If it comes to the attention of the utility that any consumer is reselling electricity, it shall notify the Commission's Director of the Public Utility Division of the name and address of any consumer reselling electricity. Unless otherwise directed, the utility may continue to provide electric service pending review by the Commission's Director of the Public Utility Division.

SUBCHAPTER 15. METER REQUIREMENTS

PART 1. INSTALLATION, READING, AND RECORDS

165:35-15-2. Meter reading, meter reading records, cards, and charts

(a) **Meter reading records.** The meter reading records shall show:

(1) Consumer's name, address, and rate schedule symbol.
(2) Identifying number or description of the meter.
(3) Meter readings and dates thereof.
(4) If the reading has been estimated.
(5) Any applicable multiplier or constant.

(b) **Meter charts.** All charts taken from recording meters shall be marked with the date of record, the meter number, consumer's name and location, and the chart multiplier.

(c) **Meter constants or multipliers.** Each service meter shall clearly indicate the reading from which the charge is made to the consumer. In any case where the dial reading of a meter must be multiplied by a constant to obtain the units consumed, the proper constant to be applied shall be clearly marked on the face or dial of the meter.

(d) **Meter reading information.** Each service meter shall be read by the utility, or a utility may by its rules prescribe a procedure for reading of meters by consumers.

(1) **Meters read by the utility.** For each utility that regularly reads its own meters, each service meter shall be read at monthly intervals at least ten (10) times a year, weather permitting, on approximately the same day of each meter reading period. The utility may, if specified and approved in its tariffs, delegate the reading of the meter to the consumer; however, the reading must be verified by the utility every six (6) months. Whenever it is not possible, with reasonable diligence, to read a meter for a billing period, the utility may submit an estimated bill based upon previous usage and other available information, the amount of such estimated bill to be adjusted as necessary when the next actual meter reading is obtained. No more than two (2) consecutive estimated bills shall be rendered without the utility reading the meter. If it is necessary for the utility to estimate more than two (2)

bills per year due to the actions of the consumer regarding meter accessibility, and where the inaccessibility is beyond the control of the utility, it will be permissible for the utility to submit an estimated bill based on customer reading or past service records. The amount of such estimated bill will be adjusted as necessary when the next actual reading is obtained.

(2) **Meters read by the consumer.** For each utility whose normal procedure is to have its consumers regularly read their own meters, the procedure for meter reading by the consumer shall provide for meter reading at approximately monthly intervals or annually, if an annual rate applies. ~~The Commission may, after notice, order, and hearing, require a utility to implement a meter reading program whenever the evidence would indicate that it would be in the best interest of the utility to read meters on either an annual or semiannual basis.~~ The utility shall verify such readings not less than once every six (6) months. When the consumer fails to furnish meter readings, the utility may submit an estimated bill based on the consumer's previous usage and other available information, the amount of such estimated bill to be adjusted, as necessary, when the next actual reading is obtained. No more than two (2) consecutive estimated bills shall be rendered without the utility reading the meter. When by reason of a consumer's failure to furnish meter reading, the utility reads the meter, it may charge the service fee for reading the meter prescribed in its approved tariffs.

(3) **Access to meters and other property.** The utility shall at all reasonable times have access to meters, service connections, and other property owned by it on a consumer's premises. Refusal on the part of the consumer to provide reasonable access for the above purposes shall be deemed to be sufficient cause for discontinuance of service on the part of the utility, after ~~the notice provided in this Chapter for discontinuance of service for nonpayment of bills~~ at least ten (10) days written notice. In the event the customer is a tenant, the utility should attempt to notify the property owner of the access violation and pending disconnection of service. Service will be reconnected after a method of permanent access on the meter reading date is agreed upon by the customer and utility. If the consumer and/or property owner does not correct unsafe conditions or obstructions, including dangerous animals, the utility may relocate the meter to a safe and accessible location at the expense of the consumer and/or property owner. The utility shall provide its employees with a means of identification in order to claim the right of access.

(4) **Special meter reading request.** Whenever a special meter reading is required following a request by a consumer, the utility shall not make a charge for the special meter reading, whether or not its applicable tariff authorizes a charge for a special meter reading, unless the consumer has requested and received special meter reading within the previous twelve (12) month period.

(e) **Consumer submeter record information.** Consumer submeter records shall contain the information set forth in (a) and (c) of this Section and such meters shall be read within three (3) days of the applicable utility meter being read by the electric utility.

PART 3. METER LOCATION, TESTING, AND OPERATION

165:35-15-21. Referee meter tests by Commission [REVOKED]

~~(a) Upon written request to the Commission by a consumer, a test may be made of the consumer's meter by a representative of the Commission. The test shall be made as soon as reasonably possible after receipt of the request.~~

~~(b) The consumer may make written request to be present or have a representative present to witness the testing of the meter by the representative of the Commission. Upon receipt of such request, the Commission shall notify the utility to remove and seal the meter in the presence of the consumer and to keep the meter in the same condition, with the seal unbroken, until the test can be made in the presence of the consumer and/or his/her representative. The utility may also have a representative present at the Commission's test. Where, upon testing, the meter is found to be within limits of accuracy specified in this Chapter and has been tested within the last sixteen (16) years, the utility may charge the consumer its costs as filed in its tariffs in connection with the test.~~

SUBCHAPTER 19. CONSUMER DATA, DEPOSITS, AND BILLING

PART 1. CONSUMER RECORDS, INFORMATION, AND INTERRUPTIONS OF SERVICE

165:35-19-2. Consumer information

(a) Each utility shall:

(1) Maintain maps, plans, or records of its transmission and distribution systems, with such other information as may be necessary to enable the utility to advise prospective consumers and others entitled to the information as to the facilities available for serving in any locality.

(2) Transmit to each of its electric consumers not less frequently than once each year:

(A) A clear and concise summary of the existing rate schedules applicable to each of the major classes of its electric consumers for which there is a separate rate.

(B) An identification of any classes whose rates are not summarized.

(3) On request of an electric consumer, but not more frequently than once each calendar year, provide such consumer a clear and concise statement of the actual consumption of electric energy by such consumer for each billing period during the prior year.

(4) Assist the consumer or prospective consumer in selecting the most economical rate schedule.

(5) Provide information to each new consumer at the time of application or by enclosure with the first month's bill or by separate mailing prior to the first month's bill as to the correct method of reading watt hour meters.

(b) Where economically feasible, each electric utility shall provide an office or agent in or convenient to each municipality serviced by it where the consumer may pay bills, which office or agency shall be open for business during reasonable business hours at least five days per week, holidays excepted. Whenever service prescribed in this subsection is not furnished for economic reasons, the Commission may, upon application and after notice and hearing, prescribe the service to be furnished and conditions thereof.

(c) The utility shall provide in each telephone directory covering any area it serves a telephone listing of the number by which the utility can be notified at any time during a twenty-four (24) hour day of any utility service deficiency or emergency, or the information may be published in a regular newsletter or publication furnished to its subscribers.

(d) The utility shall advise its residential consumers through its consumer mailing, no less than once a year, of the Commission rules regarding the following:

(1) Disconnection information which states the rights listed in the "Disconnect Notice," as outlined in OAC 165:35-21-20 *et seq*.

(2) Commission-approved deferred payment plans;

(3) Twenty (20) day government and/or private financial aid assistance deferral;

(4) Life Threatening Certificate and consumer responsibilities;

(5) Elderly/Consumers with Disabilities Notification;

(6) Average Monthly payment plans;

(7) The address and telephone number of the Commission's Consumer Services Division;

(8) The limitations for disconnection, including days or periods of time when service shall not be disconnected as outlined in OAC 165:35-21-10(c); and

(9) The availability of a list of agencies providing assistance to consumers for their utility bills as outlined by OAC 165:35-21-3.

~~(e) The mailing required by paragraph (d) of this Section, shall occur during the months of April and/or May of each year.~~

(~~f~~e) The utility shall provide the location of pay agents upon the consumer's request.

(~~g~~f) The utilities are strongly encouraged to have bilingual customer service personnel available to assist non-English speaking consumers regarding disconnection and related matters.

165:35-19-4. Restoration of service

This Section establishes general parameters to ensure timely communication to the Commission, of the utility's implementation of its restoration of service plan, following an unplanned service interruption. Each electric utility shall have a written restoration of service policy/plan, which shall include a telecommunication plan to be followed during unplanned or emergency interruptions, with a current copy filed by September 30 of each year with the Director of the Commission's Consumer Services Division. This policy shall be reviewed by the utility at least annually, and updated as deemed necessary and appropriate. A statement detailing all changes from the previous edition shall be filed with the Commission and included at the front of the policy on file. The following items are guidelines to be addressed in the policy:

(1) Assessment of the extent of the service interruption and what resources (equipment, materials, and labor) will be required to restore service. The utility should also attempt to determine the number of customers affected and the geographic extent of the service interruption.

(2) Determination as to whether or not the service restoration can be accomplished by use of in-house personnel only, or if contractors (personnel obtained from other utilities or third-party entities) will be required. The objective is to have service restored as soon as possible.

(3) Identification of priorities for service restoration, based upon emergency needs and upon ease of restoration for the greatest number of consumers for the least expenditure of money, time, and effort. Priority shall be given to any life-threatening situations known or discovered during restoration of service.

(4) Once electricity to installations affected with the interest of public health and safety has been restored (such as hospitals, fire departments and police), service shall be restored to schools as quickly as feasible, during such time of the year that school is in session.

(5) Attempted notification of high-priority customers or major electric consuming facilities who are affected by the service outage, when possible. Radio and/or television should be utilized to notify larger numbers of customers as to the type of service outage, extent of the service outage, and the expected time to restore service. Other means of notification may also be utilized, so long as the result is mass notification on an efficient, effective, and timely basis.

(6) Commission notification through the Director of the Consumer Services Division to implement the process outlined in paragraphs A through C below. The Commission notification process to the designated Consumer Services Division individual(s) may be accomplished by one or more of the following methods: ~~facsimile, 24 hours a day, 7 days a week, or by phone,~~ business telephone and/or e-mail address during the business hours of 8:00 a.m. through 4:30 p.m. Monday through Friday, or emergency cellular telephone number after normal business hours, weekends and holidays. ~~and~~ The notification should consist of the following:

(A) An initial contact to notify Staff of outages which involve a major utility substation or facility; or which, in the judgment of the utility, may cause a high degree of public interest or concern; or which have a duration of 4 hours or more and involve 1% or fifty (50) customers or more, whichever is greater, of the utility's meter count.

(B) Intermediate contact to provide status reports, as deemed necessary by the utility, or as may be requested by Commission Staff.

(C) A conclusory contact detailing the results and completion of the restoration of service plan implementation.

PART 3. DEPOSITS

165:35-19-10. Deposits and interest

(a) Each utility shall prepare and submit a plan containing criteria for deposits to the Commission for approval. The plan shall include criteria for residential and nonresidential consumers with residential being defined in each utility's tariff.

(1) The residential plan shall conform to all subsections of this Section.

(2) The nonresidential plan shall conform to all subsections of this Section except (b), (c), ~~(d)~~ (e), and ~~(j)~~ (l).

(b) No utility shall require a deposit of a residential consumer who has received the same or similar type and classification of service for twelve (12) consecutive months and service was not terminated for nonpayment nor was payment late more than twice nor was a check for payment dishonored. The twelve (12) month service period shall have been within eighteen (18) months prior to the application of new service. The utility plan may establish other relevant criteria which will qualify the consumer for nonpayment of a deposit.

(c) No utility shall require a deposit of more than one-sixth (1/6) the estimated annual bill. The utility may allow smaller deposits to be made, in conformance with relevant, objective criteria written in the utility's plan. The utility plan may allow consumers to pay deposits in installments.

(d) A utility may require an advance deposit as a condition of service for residential consumers other than those addressed in (b) and non-residential consumers.

(e) A ~~present~~ residential consumer may be required to post a deposit as a condition of continued service if undisputed charges have become delinquent, with delinquent meaning a payment not received on or before the due date as posted on the bill, in two (2) out of the last twelve (12) billing periods or if the consumer has had service disconnected during the last twelve (12) months pursuant to 165:35-21-2 or has presented a check subsequently dishonored.

(f) A non-residential consumer may be required to post a deposit as a condition of continued service if undisputed charges have become delinquent, with delinquent meaning a payment not received on or before the due date as posted on the bill, in two (2) out of the last twenty-four (24) billing periods or if the consumer has had service disconnected during the last twenty-four (24) months pursuant to OAC 165:35-11-11 or has presented a check subsequently dishonored.

(~~f~~g) Interest on cash deposits shall be paid by the utility at no less than the rate calculated as follows:

(1) For all consumer deposits returned within one (1) year or less, the interest rate shall be established the 1st day of January of each year to equal the average of the weekly percent annual yields of one (1) year U.S. Treasury Securities for September, October, and November of the preceding year. The interest rate shall be rounded to the nearest basis point.

(2) For all consumer deposits held by the utility for more than one (1) year, the interest rate shall be established the 1st day of January of each year to equal the average of the weekly percent annual yields of 10 year U.S. Treasury Securities for September, October, and November of the preceding year. The interest rate shall be rounded to the nearest basis point. The utility may pay the average of the one (1) year Treasury Security, as referenced in (e) (1) of this Section, for the first year the deposit is held.

(3) Provided, however that after the interest rates are initially established pursuant to this subsection, the interest rate shall not change unless the application of the formula in (e) (1) and/or (2) results in a change in interest rate(s) that is/are greater than ~~two hundred (200)~~ fifty (50) basis points.

(4) The Director of the Public Utility Division shall calculate the interest rate(s) as pursuant to (e)(1) and (2) of this Section, and shall mail notice to the electric utility companies by December 15th of each year, only if a change in the rate(s) is/are necessary pursuant to subsection (e), otherwise the current interest rate(s) will remain in effect.

(~~g~~h) If refund of deposit is made within thirty (30) days of receipt of deposit, no interest payment is required. If the utility retains the deposit more than thirty (30) days, payment of interest shall be made retroactive to the date of deposit. No interest shall accrue on a deposit after discontinuance of service.

(~~h~~i) The deposit shall cease to draw interest on the date it is returned or credited to the consumer's account.

(~~i~~j) The utility plan shall provide the date of payment of interest and whether the interest shall be paid by negotiable instrument or by credit against current billing.

(~~j~~k) Each consumer posting a cash deposit shall receive a nonassignable receipt in writing at the time of making the deposit or within ten (10) days thereafter. When a consumer pays a deposit as a portion of an electric service bill, payment of the bill shall serve as a receipt of the deposit. If the deposit is not paid by the due date, the amount of the deposit will become a part of the past due amount owed and monies paid shall be applied to the oldest past due amount. The utility plan shall provide reasonable means whereby a depositor who applies for the return of his/her deposit, or any deposit to which he/she is entitled, but who is unable to produce the original receipt may not be deprived of his/her deposit or balance.

(~~k~~l) The utility shall automatically refund the deposit for residential service, with accrued interest, after twelve (12) months' satisfactory payment of undisputed charges and where payment was not late more than twice; provided, however, that service has not been disconnected within the twelve (12) month period. Payment of a charge shall be deemed satisfactory if received on or prior to the date the bill is due. Payment of a charge shall be deemed not satisfactory if made by a check subsequently dishonored. ~~The utility plan shall provide for the review of all deposits at least annually and shall provide~~

~~whether refunds will be paid by negotiable instrument, upon request of the consumer, provided the consumer's bill is not delinquent, or by credit against current billing.~~

(m) The utility shall automatically refund non-residential service deposits of less than $20,000, with accrued interest, after twenty-four (24) months' satisfactory payment of undisputed charges and where payment was not late more than twice; provided, however, that service has not been disconnected within the twenty-four (24) month period. Non-residential consumers, who meet the above-referenced eligibility criteria, must have a minimum of five (5) years continuous service at the service location with the utility before a deposit will be refunded.

(n) The utility plan shall provide for the review of all deposits for residential service at least annually and deposits for non-residential service at least once every twenty-four (24) months and shall provide whether refunds will be paid by negotiable instrument, upon request of the consumer, provided the consumer's bill is not delinquent, or by credit against current billing.

(~~l~~o) The amount of the deposit, with accrued interest, shall be applied to any unpaid charges at the time of a discontinuance of service. The balance, if any, shall be returned to the consumer within thirty (30) days following the settlement of the consumer's account, either in person or by mailing it to the consumer's last known address.

(~~m~~p) The utility shall provide payment of accrued interest for all consumers annually by negotiable instrument or by credit against current billing.

(~~n~~q) The utility may withhold refund or return of the deposit, pending the resolution of a dispute with respect to charges secured by the deposit.

(~~o~~r) The utility company shall keep records to show:

(1) The name, account number, and address of each depositor.

(2) The amount of the deposit and date received.

(3) Each transaction concerning the deposit.

(~~p~~s) Such records shall be retained for two (2) years after the deposit and/or interest is refunded or applied.

(~~q~~t) Upon the sale or transfer of any public utility or operating units thereof, the seller shall file, with the application of transfer, a verified list of all consumers from whom a deposit is being held, the date such deposit was made, the amount thereof, and the unpaid interest thereon. The information provided shall be treated as confidential and shall not be available for public inspection unless ordered by the Commission after notice and hearing.

(~~r~~u) Deposits shall not include membership fees in cooperatives.

(~~s~~v) The deposit made by the consumer with the utility at the time of application for electricity shall not constitute an advance payment to cover service bills, but for all purposes it is to be considered as security for the payment of monthly bills or other proper charges.

PART 7. APPLICATION FOR SERVICE AND TAMPERING OF EQUIPMENT

165:35-19-41. Tampering with measuring equipment or other property

(a) No regulating or measuring equipment, or other property or equipment owned by a utility, wherever situated, whether upon consumer's premises or elsewhere, shall be tampered with or interfered with, either for the purpose of adjustment or otherwise, except by representatives of the utility owning it; and official responsibility under authority of a municipal government shall not constitute an exception to this Section.

(b) If the customer tampers with the utility's equipment or receives the benefit of the tampered service, the utility may;

(1) Disconnect service.

(2) Charge a tampering fee in accordance with the utility's tariff.

(3) Charge a reconnect fee in accordance with the utility's tariff.

(4) Charge a deposit in accordance with the OAC 165:35-19-10.

SUBCHAPTER 21. DISCONNECTION OF SERVICE

PART 1. DISCONNECTION OF SERVICE

165:35-21-2. Disconnection of service by a utility

(a) **Sufficient reasons for disconnection of service.** A utility may disconnect service to a consumer for any of the following reasons:

(1) Nonpayment of all or any portion of undisputed utility bills or a utility bill which is no longer disputed or for which the Commission's dispute process has been completed.

(2) Nonpayment of an account for service of a similar character previously supplied to such applicant or consumer by the utility.

(~~2~~3) Failure to comply with the terms and conditions of a settlement agreement or any type of deferred payment agreement or with a Commission order.

(~~3~~4) Failure to post a deposit as prescribed in OAC 165:35-19-10.

(~~4~~5) Failure to make application for service.

(~~5~~6) Misrepresentation of identity or facts for the purpose of obtaining service or use of an alias, trade name, business name, relative's name or another person's name as a device to escape payment of an unpaid obligation for utility service provided to the consumer.

(~~6~~7) Violation of any rule or regulation of the Commission or Commission-approved rule of the utility.

(~~7~~8) Unauthorized use of electricity accomplished through bypassing of the utility's measuring equipment or tampering with wires, pipes, meters, or other utility equipment.

(~~8~~9) Whenever the utility has reason to believe that continued service will create a condition on the consumer's premises that is dangerous to persons or property.

(~~9~~10) Refusal to grant access at reasonable times for the purpose of installation, inspection, maintenance, replacement, or reading of utility equipment installed upon the premises of the consumer, or maintaining any obstruction that would deny access for these purposes.

(~~10~~11) Potential adverse effect of the service required by the consumer on the service of other consumers of the utility, provided the consumer has been notified and given a reasonable opportunity to correct the adverse effect.

(~~11~~12) Abandonment of the premises served.

(~~12~~13) Upon request of the consumer pursuant to OAC 165:35-21-1.

(~~13~~14) Causing injury or threatening to cause injury to an employee of the utility or the family of an employee of the utility or the property of the utility for the purpose of preventing a utility employee from engaging in activities authorized by law or in retaliation for such activities.

(~~14~~15) Violation of the utility's rules regarding the operation of nonstandard equipment or unauthorized attachments, if the consumer was notified first and given a reasonable opportunity to comply with the rules.

(~~15~~16) Violation of federal, state, or local laws or regulations through use of the service.

(~~16~~17) Causing damage to utility property.

(~~17~~18) A condition exists which poses a health or safety hazard.

(b) **Insufficient reasons for disconnection of service.** A utility shall not disconnect service to a consumer for any of the following reasons:

(1) Failure to pay for a different kind or classification of service from that requested.

(2) Failure to pay a bill correcting a previous underbilling, due to misapplication of rates, unless the utility offers the consumer a deferred payment agreement as provided elsewhere in this Chapter.

(3) Failure of a previous owner or occupant at the premises or user of the service to pay an unpaid or delinquent account, except where the previous occupant remains an occupant or user of the utility service.

(4) Failure of a consumer to pay any portion of an estimated billing which the consumer disputes, except where the consumer fails to allow a utility representative access to the meter, or if the consumer regularly reads the consumer's own meter and fails to supply a current meter reading.

(5) If a current consumer in good standing who accepts an additional household member owing a previous bill to the utility unless that additional household member is listed on the lease arrangements or another utility service as a responsible party, or unless the household member shared service with the subscriber at a different or same location.

(6) If a consumer or potential consumer for a previously unpaid account from a different utility beyond the boundaries of the utility's service territory.

(7) Pending verification, service cannot be withheld or disconnected from a consumer whose name was used to obtain service at another location without the consumer's permission or knowledge.

(8) Nonpayment of an amount past due for more than three (3) years if the utility cannot substantiate the charges with a copy of the consumer's complete billing history reflecting usage, consumption and relevant charges.

(9) Failure to pay a past due amount to another utility.

(c) **Effective period of notice.** A utility may disconnect service on the date specified in the notice or within thirty (30) days thereafter, during regular business hours, so long as the disconnection does not occur within the last two (2) hours of the business day, nor shall service be disconnected on a holiday, nor after noon (12:00 p.m.) on Fridays until Monday morning.

(d) **Documentation of reason(s).** The utility shall provide documentation to the consumer indicating the reason(s) that service is being withheld or disconnected.

PART 3. SPECIAL PROVISIONS REGARDING RESIDENTIAL DISCONNECTION

165:35-21-10. Delays to disconnection of residential service

(a) **Limitations on disconnections.** After notice and hearing, the Commission may issue an order that may include limitations on disconnection of residential utility service used or needed for the primary heating or cooling source.

(b) **Temporary ban on disconnections.** The Commission shall have the authority to order a temporary ban on any or all disconnections during periods of extremely severe weather or when circumstances exist such that disconnection could create a situation dangerous to the life or health of consumers or to property.

(c) **Severe weather.**

(1) If the high temperature is actually, or predicted to be, 32 degrees Fahrenheit or below on the day of disconnection or the nighttime low is predicted to be 20 degrees Fahrenheit or less, the utility shall suspend its disconnection of service if the electric service is used for heating purposes.

(2) If the service is utilized for cooling and the temperature is actually, or predicted to be, 101 degrees heat index or higher on the day of disconnection, the utility shall suspend its disconnection of service activity.

(3) Nothing in this Section shall prohibit a utility from establishing a higher temperature threshold for residential heating purposes below which it will not discontinue utility service or from establishing a lower temperature threshold for residential cooling purposes above which it will not discontinue utility service. The utility may continue to disconnect utility service for unauthorized use of the utility's measuring equipment or tampering with wires, pipes, meters, or any other utility equipment or obtaining service without contract.

(d) **Financial assistance delay.** When a residential consumer has applied for and is awaiting financial assistance, including social security income, from a federal, state, or local social service agency, and the utility has initiated written notice

of disconnection, it shall delay disconnection of service for a period of at least twenty (20) days from the date when such notice was either delivered or mailed to the premises where service is rendered, provided:

(1) The reason for disconnection is for nonpayment of the utility bill.

(2) The consumer has notified the utility that the consumer has applied for and is awaiting financial assistance.

(3) Verification from the involved agency must be provided in a form as prescribed by the utility upon its request.

(4) If the expected financial assistance is less than the amount owed for services, the utility may require the consumer to enter into a deferred payment agreement as prescribed pursuant to (e) of this Section.

(5) Under no condition is the utility required to furnish service to the consumer unless there is a reasonable expectation of payment for such service except where other rules of this Commission apply.

(e) **Deferred payment agreement.** The utility shall be required to offer a deferred payment agreement before disconnecting service when a residential consumer is unable to pay an account in full. The utility shall not disconnect service for nonpayment of a bill if the consumer enters into a deferred payment agreement with the utility. The utility may mail a confirmation of the terms of the deferred payment agreement if it is made orally. A deferred payment agreement may be entered into by the consumer up to, but not including, the day of disconnection. Except where payment assistance for the total amount of the bill is pending, the utility may require a reasonable partial payment in accordance with paragraph one (1) of this subsection, at the time the deferred payment agreement is made.

(1) Deferred payment agreement means a just and reasonable agreement offered by the utility and agreed to by the consumer which provides for the payment of all future bills during the period of agreement by the due date and the payment of the balance of any outstanding bills in reasonable installments based upon:

(A) Consideration of the consumer's verified gross income less employer deductions.

(B) Size of the delinquent account.

(C) Consumer's ability to pay.

(D) Consumer's payment history with the utility.

(E) Length of time and reasons why the debt has not been paid.

(F) Other extraordinary expenses of the consumer.

(G) Loss of income through unemployment or illness.

(H) Any other relevant factors concerning the circumstances of the consumer.

(2) The payments under such an agreement need not be equal in amount.

(3) The consumer shall initiate renegotiation prior to breach of the deferred payment agreement. The deferred payment agreement shall be renegotiated if financial circumstances, such as loss of income through unemployment or illness or any other relevant factors concerning the circumstances of the consumer, change during the payment period.

(4) If a consumer fails to comply with the terms of the deferred payment agreement, the consumer will be subject to disconnection without further notice, so long as the disconnection date on the first and second notice has not been passed. If the disconnection date has passed, the utility shall provide at least twenty-four (24) hours notice of disconnection to the consumer.

(5) Under no condition is the utility required to furnish service to the consumer unless there is a reasonable expectation of payment for such service except where other rules of the Commission apply.

(f) **Life-threatening situation.**

(1) For purposes of this Section, a life-threatening situation is defined as one where the consumer or other permanent resident of the household is dependent upon equipment that is prescribed by a physician, operates on electricity, and is needed to sustain the person's life. Examples of life-sustaining equipment would be: kidney dialysis machine, iron lung, oxygen concentrators and certain other oxygen machines, cardiac monitory, heating and air conditioning equipment, or any other equipment that is prescribed by a licensed medical doctor. ~~If battery back-up is normally available for the life-sustaining equipment, then it is not considered a life-threatening medical condition.~~ If the life-sustaining equipment without a battery backup is prescribed by a licensed medical doctor, then it shall be considered life-sustaining equipment. The following are not considered to be life-sustaining equipment: hot water heater, refrigerator, range/stove, nebulizers that are battery-driven or hand-driven or self-contained, battery-driven sleep apnea monitors, battery-driven cardiac monitors.

(2) When a consumer to whom service is provided is unable to pay the account in full, the utility shall suspend discontinuance of service, or reconnect if disconnected, if the consumer notifies the utility that disconnection of service will give rise to a life-threatening condition for the consumer or other permanent resident of the household should electric service be terminated, and within thirty (30) calendar days of the initial notification, the consumer shall return the Medical Certificate described in (3) of this subsection.

(3) The consumer shall use a Medical Certificate Form which verifies the existence of a life-threatening situation. The form shall be provided by the utility at no cost to the consumer. The form shall provide certification by a licensed medical doctor or osteopath. The consumer may choose the appropriate medical personnel. At a minimum, the Medical Certificate Form provided by the utility shall contain, substantially, the information in the form as set forth in Appendix A to this Chapter. The service account name holder shall sign the Medical Certificate Form at the appropriate space, indicating knowledge that a permanent resident of the household is applying for the life-threatening situation certificate and further acknowledging the

responsibility for payment of bills rendered for electric service.

(4) Completion of (2) and (3) of this subsection will suspend disconnection of electrical service to the specified residence for a period of thirty (30) days from the initial notification. This 30-day period allows the consumer, if eligible, to pay the account in full or enter into a deferred payment agreement with the utility and/or make alternative arrangements for the person(s) named on the certified form as having the life-threatening condition. After thirty (30) days, normal collection action will resume. The 30-day period may be extended by the utility at the request of the service account name holder for one (1) additional contiguous 30-day period, but only if necessitated by the life-threatening condition (as indicated on the Medical Certificate Form). The request for the additional 30-day extension must be made before the end of the initial 30-day period. The utility is not required to furnish service to the consumer beyond a total of sixty (60) days for the life-threatening condition without full payment of the account or acceptable payment arrangements on any unpaid balance.

(5) Verification of the medical condition of the consumer or other permanent resident in the household by the utility may include the following:

(A) Utility personnel may visit the consumer's residence with the consumer's permission to verify that life-sustaining equipment is being used.

(B) Utility personnel may verify the doctor's signature and clarify the medical terms of the diagnosis which is the reason for the life-threatening certificate.

(6) This collection abeyance in no way absolves the consumer from full responsibility for the payment in full of the utility services rendered, and is intended for the purpose of providing the consumer an opportunity to maintain service during the life-threatening situation within the prescribed time frames.

(7) Failure of the service account name holder to fully comply with this subsection may result in denial of life-threatening status and renewed collection activities of the utility, to include termination of service to said residence.

(8) Any consumer who uses this subsection to avoid disconnection or for reconnection of service and does not complete the required documentation will be subject to disconnection.

(9) A consumer is not prohibited from claiming life-threatening situation once full payment of the account balance from a previous life-threatening claim is made and a Medical Certificate Form signed by a licensed medical doctor has been received by the utility.

(g) **False information.** If a consumer provides false or misleading information to the utility in order to avail the consumer of the provisions applicable to the financial assistance delay, deferred payment agreement, life-threatening situation, or Commission notification procedure for elderly and/or consumers with disabilities, the false information shall be grounds for disconnection of service by the utility.

(h) **Consumer liability.** Reconnection or continuance of service under this Section shall not in any way relieve the consumer of the consumer's liability incurred for utility service.

165:35-21-11. Commission notification procedure for the elderly and/or consumers with disabilities

(a) At any time prior to disconnection of service, the Commission notification procedure shall be available to those elderly and/or consumers with disabilities who have notified the utility in writing that they wish to be included in the following Commission notification procedure:

(1) A utility shall notify the Commission's Consumer Services Division ~~by telephone~~ in writing at least ~~five (5)~~ ten (10) business days prior to disconnection.

(2) ~~Such notification shall be confirmed in writing by the utility and mailed or faxed to the Commission's Consumer Services Division the same day as the telephone notification.~~ Written confirmation shall contain at a minimum:

(A) The name, address, telephone number, and account number of the involved parties.

(B) The words "NOTICE", "SERVICE SUBJECT TO CUTOFF", and "ELDERLY and/or CONSUMER WITH DISABILITIES" should be conspicuously placed on the notice in bold, capitalized letters.

(C) The scheduled date for disconnection.

(D) The unpaid balance amount.

(E) The name and telephone number of a contact person at the utility.

(3) The utility shall delay disconnection of service to the elderly and/or consumers with disabilities for five (5) additional days upon request of the Commission's Consumer Services Division.

(4) Elderly and/or consumers with disabilities are those consumers who have notified the utility in writing that they wish to be included in the Commission notification procedure available to them and who:

(A) Have a permanent impairment which substantially limits the disabled consumer's ability to pay for utility service; or

(B) Are sixty-five (65) years of age or older.

(b) The utility shall notify the consumer or other person responsible for the bill, during the initial application for service, annually thereafter, and at anytime disconnection is imminent, of this additional notification procedure.

(c) The utility may require verification of the consumer's qualifications.

(d) The Commission notification procedure is in addition to the other requirements set forth in this Subchapter which the utility shall meet prior to disconnection of service.

PART 9. MEDIATION AND COMMISSION REVIEW

165:35-21-40. Mediation

(a) Whenever there is a dispute between the utility and the consumer as to the following, the matter may be brought by either party to the Commission's Consumer Services Division:

(1) The existence of or seriousness of a life-threatening situation.

(2) The existence of elderly or handicapped status.

(3) The question of financial assistance or guarantee of payment by a federal, state, or local social service agency.

(4) The provisions of a deferred payment agreement.

(5) The terms and conditions of payment of any part of a bill as rendered.

(6) The proper interpretation of this Section.

(b) The Commission's Consumer Services Division shall review the matter and issue an informal review decision in writing, setting forth the terms and conditions for continued service, disconnection of service, or deferred payment agreement (DPA). If it is the desire of the consumer, they may be represented by a third party, if the consumer is available for verification. If the dispute can be resolved by telephone with the party seeking review, the review decision need not be in writing unless requested by either party. During any period of time when a disconnection dispute is before the Commission or in mediation, the utility shall suspend disconnection procedures.

(c) If the Commission's Consumer Services Division is unable to resolve the dispute to the mutual satisfaction of the parties, either party may file a Complaint with the Commission for final determination.

(d) Whenever the consumer informs the utility that the consumer disputes a charge for service, the utility shall investigate the dispute promptly and thoroughly, and make a diligent effort to reach a mutually satisfactory settlement. If the consumer is dissatisfied with the decision of the utility, the consumer may report the dispute to the Commission's Consumer Services Division. Upon ~~written~~ complaint by the consumer to the Commission, disconnection of service shall be held in abeyance provided the consumer pays the portion of the bill which is not in dispute.

[OAR Docket #05-867; filed 5-13-05]

TITLE 165. CORPORATION COMMISSION CHAPTER 45. GAS SERVICE UTILITIES

[OAR Docket #05-868]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Plant, Equipment, and Facilities
165:45-3-2. Extent of system in which utility shall maintain service [AMENDED]
165:45-3-6. Tampering with measuring or regulating equipment [AMENDED]
Subchapter 5. Meters and Regulators
Part 1. General Provisions
165:45-5-3. Information as to reading of meters [AMENDED]
Part 3. Testing
165:45-5-15. Meter tests monitored by the Commission [AMENDED]
Subchapter 9. Records And Reports
165:45-9-2.1. Restoration of service [AMENDED]
Subchapter 11. Customer Service
Part 1. Initiation of Service
165:45-11-1. Deposits and interest [AMENDED]
Part 3. Disconnection of Service
165:45-11-11. Physical disconnection of service by a utility [AMENDED]
165:45-11-13. Commission notification procedures for the elderly and/or consumers with disabilities [AMENDED]
165:45-11-14. Delays to disconnection of residential service [AMENDED]
165:45-11-16. Notice of disconnection of service [AMENDED]
165:45-11-17. Manner of disconnection of service [AMENDED]
165:45-11-18. Disconnection of service without notice [AMENDED]
165:45-11-19. Reconnection of service [AMENDED]
Subchapter 15. Miscellaneous Provisions
165:45-15-1. Resale of gas prohibited [AMENDED]

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Oklahoma Corporation Commission
Article IX, Section 18, Oklahoma Constitution

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SUPERSEDED EMERGENCY ACTIONS:

None

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

OAC 165:45-3-2 is amended to delete language now considered obsolete concerning the size of a consumer's service line and to update compliance standards. An addition was also made requiring a shut-off valve on the outside of homes that consumers may use to cut off gas service.

OAC 165:45-3-6 is amended to add a provision allowing a utility to take specific action against a customer who has tampered with equipment belonging to the utility or who has somehow benefited from tampered service, including disconnecting service or charging a fee.

OAC 165:45-5-3 is amended to grant safe and unobstructed access to gas meters for inspection and disconnects and to require the utility to notify the property owner in the event an access violation is made by a tenant of the property. If any unsafe obstacles to meter access should continue, the utility is given the ability to discontinue service after ten days' written notice and to relocate the meter at the consumer's or property owner's expense.

OAC 165:45-5-15 is modified to remove the requirement that a consumer make a written request to the Commission for the witnessing of a meter test, allowing an oral request to be accepted.

OAC 165:45-9-2.1 is amended to provide notice to the Commission, by phone or e-mail during business hours or by cellular phone after business hours, when service is restored after having been disconnected.

OAC 165:45-11-1 is amended to address the return of deposits to non-residential customers. The utility is to automatically return non-residential customer deposits of $20,000 or less if the customer has had five years of continued service, has made timely payment for 24 months, and has not been disconnected in the past 24 months. Additional provision is included to require the utility to review non-residential deposits every two years. The rule is also amended to provide that the change in interest rate

on deposits will be based on fifty basis points, rather than two hundred basis points.

OAC 165:45-11-11 is amended to add a new provision allowing a disconnection of service if the consumer has failed to pay in full, a previous account with the utility.

OAC 165:45-11-13 is amended the change the time required for a utility to notify the Consumer Services Division of a disconnect to elderly or disabled consumers, from five days prior to disconnection, to ten days. It also requires that this notice be made in writing.

OAC 165:45-11-14 is modified to delete a provision that states there is no life threatening situation if a battery back-up is normally available for the life sustaining equipment used by a consumer and to add a provision which allows a life threatening situation to be claimed more than once by a consumer, provided the account is current and a medical form has been provided to the utility.

OAC 165:45-11-16 is amended to provide that the utility is to notify consumers annually of the availability of and the method of accessing authorized payment agencies, rather then sending an annual notification to all consumers listing the payment agencies.

OAC 165:45-11-17 is amended to allow a utility to leave a statement at the property where service has been disconnected, giving the consumer either a phone number or an address where arrangements may be made for a reconnection.

OAC 165:45-11-18 is amended requiring a consumer to pay for any unauthorized use of gas, as well as the cost of disconnecting any equipment damaged by the consumer.

OAC 165:45-11-19 is amended to clarify the time periods allowed a utility to reconnect service after the reason for disconnection has been eliminated and language is also added so that during the time period from November 15th to April 15th of each year, service shall be reconnected no later than forty-eight hours after the reason for disconnecting has been eliminated. An amendment is also made to require the consumer to be present when service is restored.

OAC 165:45-15-1 is amended to clarify the prohibition against the resale of gas by a utility or a consumer.

CONTACT PERSON:

Kathy Nelson (405) 522-1638

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 3. PLANT, EQUIPMENT, AND FACILITIES

165:45-3-2. Extent of system in which utility shall maintain service

(a) Each utility shall operate and maintain in safe, efficient, and proper condition all of its facilities and instrumentalities used in connection with the transmission, distribution, storage, regulation, measurement, and delivery of gas to each consumer up to and including the point of delivery into the piping owned by the consumer. Unless otherwise agreed by the utility and the consumer, the point of delivery shall be at the outflow side of the meter.

(b) ~~No gas service shall be furnished to a new residential installation made after the effective date of this Chapter unless the consumer's service line between the curb or property line and the first house connection is one and one quarter inches ($1\frac{1}{4}$") inside diameter or greater or one inch (1") inside diameter or greater for a mobile home and is equipped with a suitable gas shut-off cock. Installations being served on the effective date of this Chapter through lines not conforming to the above requirements shall continue to be served. The Commission will not entertain a consumer complaint arising out of insufficient volume received through lines smaller than prescribed by this subsection.~~

~~(c)~~ House piping shall conform to requirements of the applicable city or town ordinances. In towns, villages, and suburban territory where there are no applicable regulations as to gas service, house piping, and venting shall comply with the ~~Standards for the Installation of Gas Appliances and Gas Piping as set forth in the National Fire Protection Associations No. 54, dated 1969~~ International Gas Code, dated 2003, and future amendments or supplements thereto.

(c) House piping shall include a shut-off valve on the outside of the structure for the consumer's use. The consumer shall cause to have one installed on all new construction or when the house piping is altered outside the structure.

(d) All gas lines, pipes, and equipment owned by the consumer shall be maintained in safe, efficient, and proper condition by and at the expense of the consumer. The utility shall have the right to inspect a new installation prior to furnishing service, the right to inspect an existing installation under reasonable conditions, and may refuse or discontinue service until the provisions of this Chapter are complied with. Service may be refused or discontinued wherever a test reveals excessive loss of gas through leakage on consumer's premises.

165:45-3-6. Tampering with measuring or regulating equipment

(a) No regulator, regulator station, meter, meter house, or other property or equipment owned by a utility wherever situated, whether upon the consumer's premises or elsewhere, shall be tampered with or interfered with, either for the purpose of adjustment or otherwise, except by representatives of the utility owning the same. Official responsibility under authority of a municipal government shall not constitute an exception to this Section.

(b) If the customer tampers with the utility's equipment or receives the benefit of the tampered service, the utility may:

(1) Disconnect service.

(2) Charge a tampering fee in accordance with the utility's tariff.

(3) Charge a reconnect fee in accordance with the utility's tariff.

(4) Charge a deposit in accordance with OAC 165:45-11-1.

SUBCHAPTER 5. METERS AND REGULATORS

PART 1. GENERAL PROVISIONS

165:45-5-3. Information as to reading of meters

(a) **Means of informing consumers concerning the method of reading meters.** Each utility supplying metered service shall adopt a means of informing its consumers as to the method of reading meters, either by printing on its bills a description of the method of reading meters, by distributing

booklets or folders describing the method, or by notice to the effect that the method will be explained at the office of the utility upon application for service.

(b) **Clarification of method by which quantity is determined.** Each service meter shall indicate clearly the number of cubic feet of gas registered by the meter. Where gas is measured under high pressure or where the quantity is determined by calculation from recording devices, the utility, upon request, shall supply the consumer with sufficient information to make clear the method by which the quantity is determined.

(c) **Meter reading information.** Each service meter shall be read by the utility or their designated representative at approximate monthly intervals at least ten (10) times a year, on approximately the same day of each meter reading period. If it is necessary for the utility to estimate more than two (2) bills per year due to actions of the consumer regarding meter accessibility, and where the inaccessibility is beyond the control of the utility, it will be permissible for the utility to submit an estimated bill based upon consumer reading or past service records, the amount of such estimated bill to be adjusted as necessary when the next actual reading is obtained.

(d) **Meters read by consumers.** For each utility which permits its consumers to regularly read their own meters, the procedure for meter reading by the consumer shall provide for meter reading at monthly intervals. The utility shall verify such readings not less than once every six (6) months; however, a utility which has a residential rate schedule which does not have seasonal variations shall verify such readings not less than once a year. The utility shall file its proposed plan for implementing this subsection for approval by the Commission. Upon approval, said plan will become part of the utility's terms and conditions of service. When the consumer fails to furnish meter readings, the utility may submit an estimated bill based on the consumer's previous two (2) months average usage and other available information or based on previous usage adjusted for weather or other comparative data. The amount of such estimated bill will be adjusted as necessary when the next actual reading is obtained.

(e) **Authorization of meter reading.** Upon application of the utility and after notice and hearing, the Commission may authorize the reading of meters less frequently than required by this Section and prescribe conditions and procedures therefor. However, a utility is not prohibited from reading meters more frequently than required by this Section.

(f) **Utility records.** The utility records shall show the following:

(1) Consumer's name, address and rate schedule symbol;
(2) Identifying number and type of the meter;
(3) Meter reading and dates thereof;
(4) Whether the reading has been estimated; and,
(5) Any applicable multiplier or constant.

(g) **Meter charts.** All charts taken from recording meters shall be marked with the date of recording and sufficient information to identify the location.

(h) **Meter constants or multipliers.** Each service meter shall clearly indicate the reading from which the charge is made to the consumer. In any case where the dial reading of a meter must be multiplied by a factor due to gas being delivered at a pressure not consistent with the meter index pursuant to OAC 165:45-7-12(a), the gas bill will be calculated with the correction factor.

(i) **Access ~~of~~ to meters and other property.** The utility shall, at all reasonable times, have access to meters, service connections, and other property owned by it on a consumer's premises for the purpose of meter reading, ~~and~~ maintenance, inspection and discontinuance of service. Refusal on the part of the consumer and/or property owner to provide reasonable, safe and unobstructed access for the above purposes shall be deemed to be sufficient cause for discontinuance of service on the part of the utility, after 10 days written notice. In the event the customer is a tenant, the utility shall attempt to notify the property owner of the access violation and the pending disconnection. If the consumer and/or property owner does not correct unsafe conditions or obstructions, including dangerous animals, the utility may relocate the meter to a safe and accessible location at the expense of the consumer and/or property owner. The utility shall provide its employees with a means of identification in order to claim the right of access.

PART 3. TESTING

165:45-5-15. Meter tests monitored by the Commission

(a) Upon ~~written~~ request to the Commission by a consumer, a test may be made of the meter through which the consumer is being served by the utility in the presence of a representative of the Commission. The test shall be made within twenty (20) calendar days after receipt of the request, during regular working hours of the utility and the Commission. The consumer shall be notified of the scheduled test and be invited to attend or have a representative present to witness the testing of the meter.

(b) Upon receipt of such request, the Commission shall either notify the utility to remove and seal the meter in the presence of the consumer for the purpose of testing the meter at a meter testing facility, or shall notify the utility to perform the meter test at the consumer's premises if feasible. If directed to seal the meter, the utility shall keep the meter in the same condition with the seal unbroken until the test can be made in the presence of the consumer and/or his representative and the representative of the Commission.

SUBCHAPTER 9. RECORDS AND REPORTS

165:45-9-2.1. Restoration of service

This Section establishes general parameters to ensure timely communication to the Commission, of the utility's implementation of its restoration of service plan, following an unplanned service interruption. Each gas utility shall have a written restoration of service policy/plan, which shall include a communication plan to be followed during unplanned or emergency interruptions, with a current copy filed by September 30 of each year with the Director of the Commission's Consumer Services Division. This policy shall be reviewed by the utility

at least annually, and updated as deemed necessary and appropriate. A statement detailing all changes from the previous edition shall be filed with the Commission and included at the front of the policy on file. The following items are guidelines to be addressed in the policy:

(1) Assessment of the extent of the service interruption and what resources (equipment, materials, and labor) will be required to restore service. The utility should also attempt to determine the number of customers affected and the geographic extent of the service interruption.

(2) Determination as to whether or not the service restoration can be accomplished by use of in-house personnel only, or if contractors (personnel obtained from other utilities or third-party entities) will be required. The objective is to have service restored as soon as possible.

(3) Identification of priorities for service restoration, based upon emergency needs and upon ease of restoration for the greatest number of consumers for the least expenditure of money, time, and effort. Priority shall be given to any life-threatening situations known or discovered during restoration of service.

(4) Once gas service to installations affected with the interest of public health and safety has been restored (such as hospitals, fire departments and police), service shall be restored to schools as quickly as feasible, during such time of the year that school is in session.

(5) Attempted notification of high-priority customers or major gas consuming facilities who are affected by the service outage, when possible. Radio and/or television should be utilized to notify larger numbers of customers as to the type of service outage, extent of the service outage, and the expected time to restore service. Other means of notification may also be utilized, so long as the result is mass notification on an efficient, effective, and timely basis.

(6) Commission notification through the Director of the Consumer Services Division to implement the process outlined in paragraphs A through C of this subsection. The Commission notification process to the designated Consumer Services Division individual(s) may be accomplished by one or more of the following methods: ~~facsimile, 24 hours a day, 7 days a week, or by phone,~~ business telephone and/or e-mail address during the business hours of 8:00 a.m. through 4:30 p.m. Monday through Friday, or emergency cellular telephone number after normal business hours, weekends and holidays. ~~and~~ The notification should consist of the following:

(A) An initial contact to notify Staff of outages which involve a major utility substation or facility; or which, in the judgment of the utility, may cause a high degree of public interest or concern; or which have a duration of 4 hours or more and involve 1% or fifty (50) customers or more, whichever is greater, of the utility's meter count.

(B) Intermediate contact to provide status reports, as deemed necessary by the utility, or as may be requested by Commission Staff.

(C) A conclusory contact detailing the results and completion of the restoration of service plan implementation.

SUBCHAPTER 11. CUSTOMER SERVICE

PART 1. INITIATION OF SERVICE

165:45-11-1. Deposits and interest

(a) Each utility shall prepare and submit a plan containing criteria for deposits to the Commission for approval. The plans shall include criteria for residential and nonresidential consumers with residential being defined in each utility's tariff.

(1) The residential plan shall conform to all subsections of this Section.

(2) The nonresidential plan shall conform to all subsections of this Section except (b), (c), (d) and ~~(j)~~ (k).

(b) No utility shall require a deposit of a residential consumer who has received the same or similar type and classification of service for twelve (12) consecutive months and service was not terminated for nonpayment nor was payment late more than twice nor was a check for payment dishonored. The twelve (12) month service period shall have been within eighteen (18) months prior to the application for new service. The utility plan may establish other relevant criteria which will qualify the consumer for nonpayment of a deposit.

(c) No utility shall require a deposit of more than one-sixth (1/6) the estimated annual bill. The utility may allow smaller deposits to be made in conformance with relevant objective criteria written in the utility's plan. The utility plan may allow consumers to pay deposits in installments. The utility may also require consumers to pay the entire deposit prior to initiating service.

(d) A ~~present~~ residential consumer may be required to post a deposit as a condition of continued service if undisputed charges have become delinquent, with delinquent meaning a payment not received on or before the due date as posted on the bill, in two (2) out of the last twelve (12) billing periods or if the consumer has had service disconnected during the last twelve (12) months pursuant to OAC 165:45-11-11 or has presented a check subsequently dishonored.

(e) A non-residential consumer may be required to post a deposit as a condition of continued service if undisputed charges have become delinquent, with delinquent meaning a payment not received on or before the due date as posted on the bill, in two (2) out of the last twenty-four (24) billing periods or if the consumer has had service disconnected during the last twenty-four (24) months pursuant to OAC 165:45-11-11 or has presented a check subsequently dishonored.

(~~e~~f) Interest shall be paid on cash deposits by the utility at no less than the rate calculated as follows:

(1) For all consumer deposits returned within one (1) year or less, the interest rate shall be established the 1st day of January of each year to equal the average of the weekly percent annual yields of one (1) year U.S. Treasury Securities for September, October, and November of the

preceding year. The interest rate shall be rounded to the nearest basis point.

(2) For all consumer deposits held by the utility for more than one (1) year, the interest rate shall be established the 1st day of January of each year to equal the average of the weekly percent annual yields of 10-year U.S. Treasury Securities for September, October, and November of the preceding year. The interest rate shall be rounded to the nearest basis point. The utility may pay the average of the one (1) year Treasury Security, as referenced in subsection (e)(1) of this Section, for the first year the deposit is held.

(3) Provided, however, that after the interest rate is initially established pursuant to this subsection, the interest rate(s) shall not change unless the application of the formula in paragraph (1) and/or (2) of this subsection results in a change in interest rate(s) that is/are greater than ~~two hundred (200)~~ fifty (50) basis points.

(4) The Director of the Public Utility Division shall calculate the interest rates as pursuant to (e)(1) and (2) of this Section, and shall mail notice to the gas utilities by December 15th of each year, only if a change in the rate(s) is/are necessary pursuant to subsection (e) of this Section, otherwise the current interest rate(s) will remain in effect.

(~~f~~g) If refund of deposit is made within thirty (30) days of receipt of deposit, no interest payment is required. If the utility retains the deposit more than thirty (30) days, payment of interest shall be made retroactive to the date of deposit. No interest shall accrue on a deposit after final discontinuance of service.

(~~g~~h) The deposit shall cease to draw interest on the date it is returned or credited to the consumer's account.

(~~h~~i) The utility plan shall provide the date of payment of interest and whether the interest shall be paid by negotiable instrument or by credit against current billing.

(~~i~~j) Each consumer posting a cash deposit shall receive a nonassignable receipt in writing at the time the deposit is made or within ten (10) days thereafter. When a consumer pays a deposit as a portion of a gas service bill, payment of the bill shall serve as a receipt for payment of the deposit. If the deposit is not paid by the due date, the amount of the deposit will become a part of the past due amount owed and monies paid shall be applied to the oldest past due amount. The utility plan shall provide reasonable means whereby a depositor who applies for the return of his/her deposit, or any balance to which he/she is entitled, but who is unable to produce the original receipt may not be deprived of this deposit or balance.

(~~j~~k) The utility shall automatically refund the deposit for residential service, with accrued interest, after twelve (12) months satisfactory payment of undisputed charges and where payment was not late more than twice; provided, however, that service has not been disconnected within the twelve (12) month period. Payment of a charge shall be deemed satisfactory if received on or prior to the date the bill is due. Payment of a charge shall be deemed not satisfactory if made by a check subsequently dishonored. ~~The utility plan shall provide for the review of all deposits at least annually and shall provide that refunds will be paid by negotiable instrument, upon request of the consumer provided the consumer's bill is not delinquent, or by credit against current billing.~~

(l) The utility shall automatically refund non-residential service deposits of less than $20,000, with accrued interest, after twenty-four (24) months' satisfactory payment of undisputed charges and where payment was not late more than twice; provided, however, that service has not been disconnected within the twenty-four (24) month period. Non-residential consumers, who meet the above-referenced eligibility criteria, must have a minimum of five (5) years continuous service at the service location with the utility before a deposit will be refunded.

(m) The utility plan shall provide for the review of all residential deposits at least annually and deposits for non-residential service at least every twenty-four (24) months and shall provide that refunds will be paid by negotiable instrument, upon request of the consumer provided the consumer's bill is not delinquent, or by credit against current billing.

(~~k~~n) The amount of the deposit, with accrued interest, shall be applied to any unpaid charges at the time of a discontinuance of service. The balance, if any, shall be returned to the consumer within thirty (30) days either in person or by mailing it to the consumer's last known address.

(~~l~~o) The utility shall provide payment of accrued interest for all consumers annually by negotiable instrument or by credit against current billing.

(~~m~~p) The utility may withhold refund or return of the deposit pending the resolution of a dispute with respect to charges secured by such deposit.

(~~n~~q) The utility company shall keep records to show:

(1) The name, account number, and address of each depositor;

(2) The amount of the deposit and date received; and,

(3) Each transaction concerning the deposit.

(~~o~~r) Such records shall be retained for two (2) years after the deposit and/or interest is refunded or applied.

(~~p~~s) Upon the sale or transfer of any public utility or operating units thereof, the seller shall file with the application of transfer a verified list of all consumers for whom a deposit is being held, the date such deposit was made, the amount thereof, and the unpaid interest thereon. The information provided shall be treated as confidential and shall not be available for public inspection unless ordered by the Commission after notice and hearing.

(~~q~~t) The deposit made by the consumer with the utility at the time of application for gas service shall not constitute an advance payment to cover service bills, but for all purposes it is to be considered as security for the payment of monthly bills or other proper charges.

PART 3. DISCONNECTION OF SERVICE

165:45-11-11. Physical disconnection of service by a utility

(a) **Sufficient reasons for physical disconnection of service.** A utility may physically disconnect service to a consumer for any of the following reasons:

(1) Nonpayment of all or any portion of undisputed utility bills.

(2) Nonpayment of an account for service of a similar character previously supplied to such applicant or consumer by the utility.

(~~2~~3) Failure to comply with the terms and conditions of a settlement agreement or any type of deferred payment agreement or with a Commission order.

(~~3~~4) Failure to post a deposit as prescribed in OAC 165:45-11-1.

(~~4~~5) Failure to make application for service.

(~~5~~6) Misrepresentation of identity or facts for the purpose of obtaining service or use of an alias, trade name, business name, relative's name or another person's name as a device to escape payment of an unpaid obligation for utility service provided to the consumer.

(~~6~~7) Violation of any rule or regulation of the Commission or Commission-approved rule of the utility.

(~~7~~8) Unauthorized use of gas accomplished through bypassing of the utility's measuring equipment or tampering with pipes, meters, or other utility equipment.

(~~8~~9) Whenever the utility has reason to believe that continued service will create a condition on the consumer's premises that is dangerous to persons or property.

(~~9~~10) Refusal to grant access at reasonable times for the purpose of installation, inspection, maintenance, replacement, or reading of utility equipment installed upon the premises of the consumer, or maintaining any obstruction that would deny access for these purposes.

(~~10~~11) Potential adverse effect of the service required by the consumer on the service to other consumers of the utility, provided the consumer has been notified and given a reasonable opportunity to correct the adverse effect.

(~~11~~12) Abandonment of the premises served.

(~~12~~13) Upon request of the consumer pursuant to OAC 165:45-11-10.

(~~13~~14) Causing injury or threatening to cause injury to an employee of the utility or the family of an employee of the utility or the property of the utility for the purpose of preventing a utility employee from engaging in activities authorized by law or in retaliation for such activities.

(~~14~~15) Violation of the utility's terms and conditions regarding the operation of nonstandard equipment or unauthorized attachments, if the consumer was notified first and given a reasonable opportunity to comply with the terms and conditions.

(~~15~~16) Violation of federal, state, or local laws or regulations through use the service.

(~~16~~17) Causing damage to utility property.

(~~17~~18) A condition exists which poses a health or safety hazard.

(b) **Insufficient reasons for disconnection of service.** A utility shall not disconnect service to a consumer for any of the following reasons:

(1) Failure to pay for a different kind or classification of service.

(2) Failure to pay a bill correcting a previous underbilling, due to misapplication of rates, unless the utility offers the customer a deferred payment agreement as provided elsewhere in this Chapter.

(3) Failure of a previous owner or occupant of the premises, or user of the service to pay an unpaid or delinquent account, except where the previous occupant remains an occupant or user of the utility service.

(4) Failure of a consumer to pay any portion of an estimated billing which the consumer disputes, except where the consumer fails to allow a utility representative access to the meter or the consumer regularly reads the consumer's own meter and fails to supply a current meter reading.

(5) If a current consumer is good standing who accepts an additional household member owing a previous bill to the utility unless that additional household member is listed on the lease arrangements or another utility service as a responsible party, or unless the household member shared service with the subscriber at a different or same location.

(6) If a consumer or potential consumer has a previously unpaid account from a different utility beyond the boundaries of the utility's service territory.

(7) Pending verification, service cannot be withheld nor disconnected from a consumer whose name was used to obtain service at another location without the consumer's permission or knowledge.

(8) Nonpayment of an amount past due for more than three (3) years if the utility cannot substantiate the charges with a copy of the consumer's complete billing history reflecting usage, consumption and relevant charges.

(9) Failure to pay a past due amount to another utility.

(c) **Effective period of notice.** A utility may disconnect service on the date specified in the notice or within thirty (30) days thereafter, during regular business hours, so long as the disconnection does not occur within the last two (2) hours of the business day, nor shall service be disconnected on a holiday, nor noon (12:00p.m.) on Fridays until Monday morning.

(d) **Documentation of reason(s).** The utility shall provide documentation to the consumer indicating the reason(s) that service is being withheld or disconnected.

165:45-11-13. Commission notification procedures for the elderly and/or consumers with disabilities

(a) At any time prior to disconnection of service, the Commission notification procedure shall be available to those elderly and/or consumers with disabilities who have notified the utility in writing that they wish to be included in the following Commission notification procedure:

(1) A utility shall notify the Commission's Consumer Services Division in writing ~~by telephone~~ at least ~~five (5)~~ ten (10) business days prior to disconnection.

(2) ~~Such notification shall be confirmed in writing by the utility and mailed or faxed to the Commission's Consumer Services Division the same day as the telephone notification.~~ Written confirmaton shall contain at a minimum:

(A) The name, address, telephone number, and account number of the involved parties.

(B) The words "NOTICE", "SERVICE SUBJECT TO CUTOFF", AND "ELDERLY and/or CONSUMER WITH DISABILITIES" should be conspicuously placed on the notice in bold, capitalized letters.

(C) Scheduled date for disconnection.

(D) The unpaid balance amount.

(E) The name and telephone number of a contact person at the utility.

(3) The utility shall delay disconnection of service to the elderly and/or consumers with disabilities for five (5) additional business days upon request of the Commission's Consumer Services Division.

(4) Elderly and/or consumers with disabilities are those consumers who have notified the utility in writing that they wish to be included in the Commission's notification procedure available to them and who:

(A) Have a permanent impairment which substantially limits the disabled consumer's ability to pay for utility service; or

(B) Are sixty-five (65) years of age or older.

(b) The utility shall notify the consumer or other person responsible for the bill, during the initial application for service, annually thereafter, and at any time disconnection is imminent, of this additional notification procedure.

(c) The utility may require verification of the consumer's qualifications.

(d) The Commission's notification procedure is in addition to the other requirements set forth in this Part which the utility shall meet prior to disconnection of service.

165:45-11-14. Delays to disconnection of residential service

(a) **Limitations on disconnection.** After notice and hearing, the Commission may issue an order that may include limitations on disconnection of residential utility service used or needed for the primary heating or cooling source.

(b) **Temporary ban on disconnections.** The Commission shall have the authority to order a temporary ban on any or all disconnections during periods of extremely severe weather or when circumstances exist such that disconnection could creat a situation dangerous to the life or health of consumers or to property.

(c) **Severe weather.**

(1) If the high temperature is actually, or predicted to be, 32 degrees Fahrenheit or below on the day of disconnection or the nighttime low is predicted to be 20 degrees Fahrenheit or less, the utility shall suspend its disconnection of service if the gas service is used for heating purposes.

(2) If the service is utilized for cooling and the temperature is actually, or predicted to be, 101 degrees heat index or higher on the day of disconnection, the utility shall suspend its disconnection of service activity.

(3) Nothing in this Section shall prohibit a utility from establishing a higher temperature threshold for residential heating purposes below which it will not discontinue utility service or from establishing a lower temperature threshold for residential cooling purposes above which it will not discontinue utility service.

(d) **Financial assistance delay.** When a residential consumer has applied for and is awaiting financial assistance, including social security income, from a federal, state, or local social service agency, and the utility has initiated written notice of disconnection, it shall delay disconnection of service for a period of at least twenty (20) days from the date when such notice was either delivered or mailed to the premises where service is rendered, provided:

(1) The reason for disconnection is for nonpayment of the utility bill.

(2) The consumer has notified the utility that the consumer has applied for and is awaiting financial assistance.

(3) Verification from the involved agency is provided in a form as prescribed by the utility upon its request.

(4) If the expected financial assistance is less than the amount owed for services, the utility may require the consumer to enter into a deferred payment agreement as prescribed pursuant to (e) of this Section.

(5) Under no conditions is the utility required to furnish service to the consumer unless there is reasonable expectation of payment for such service except where other rules of this Commission apply.

(e) **Deferred payment agreement.** The utility shall be required to offer a deferred payment agreement before disconnecting service when a residential consumer is unable to pay an account in full. The utility shall not disconnect service for nonpayment of a bill if the consumer enters into a deferred payment agreement with the utility. The utility may mail a confirmation of the terms of the deferred payment agreement if it is made orally. A deferred payment agreement may be entered into by the consumer up to, but not including, the day of disconnection. Except where payment assistance for the total amount of the bill is pending, the utility may require a reasonable partial payment in accordance with paragraph (1) of this subsection, at the time the deferred payment agreement is made.

(1) Deferred payment agreement means a just and reasonable agreement offered by the utility and agreed to by the consumer which provides for the payment of all future bills during the period of agreement by the due date and the payment of the balance of any outstanding bills in reasonable installments based upon:

(A) Consideration of the consumer's verified gross income less employer deductions.

(B) Size of the delinquent account.

(C) Consumer's ability to pay.

(D) Consumer's payment history with the utility.

(E) Length of time and reasons why the debt has not been paid.

(F) Other extraordinary expenses of the consumer.

(G) Loss of income through unemployment or illness.

(H) Any other relevant factors concerning the circumstances of the consumer.

(2) The payments under such an agreement need not be equal in size.

(3) The consumer shall initiate renegotiation prior to breach of the deferred payment agreement if the consumer's financial conditions change, such as loss of income through unemployment or illness, or any other relevant factors concerning the circumstances of the consumer change during the payment period.

(4) If a consumer fails to comply with the terms of the deferred payment agreement, the consumer will be subject to disconnection without further notice, so long as the disconnection period as provided in OAC 165:45-11-11(c) on the first and second notice has not been passed. If the disconnection period has passed, the utility shall provide at least twenty-four (24) hours notice of disconnection to the consumer.

(5) Under no condition is the utility required to furnish service to the consumer unless there is a reasonable expectation of payment for such service except where other rules of the Commission apply.

(f) **Life-threatening situation.**

(1) For purposes of this Section, a life-threatening situation is defined as one where the consumer or other permanent resident of the household is dependent upon equipment that is prescribed by a physician, operates on gas, and is needed to sustain the person's life. Examples of life-sustaining equipment would be: kidney dialysis machine, iron lung, oxygen concentrators and certain other oxygen machines, cardiac monitory, heating and air conditioning equipment, or any other equipment that is prescribed by a licensed medical doctor. ~~If battery back-up is normally available for the life-sustaining equipment, then it is not considered a life-threatening medical condition.~~ The following are not considered to be life-sustaining equipment: hot water heater, refrigerator, and range/stove~~, nebulizers that are battery driven or hand-driven or self-contained, battery-driven sleep apnea monitors, battery-driven cardiac monitors~~.

(2) When a consumer to whom service is provided is unable to pay the account in full, the utility shall suspend disconnection of service, or reconnect if disconnected, if the consumer notifies the utility that disconnection of service will give rise to a life-threatening condition for the consumer or other permanent resident of the household should gas service be terminated, and within thirty (30) calendar days of the initial notification, the consumer shall return the Medical Certificate described in (3) of this subsection

(3) The consumer shall use a Medical Certificate Form which verifies the existence of a life-threatening condition. This form is provided by the utility at no cost to the consumer. The form shall provide certification by a licensed medical doctor or osteopath. The consumer may choose the appropriate medical personnel. At a minimum the Medical Certificate Form provided by the utility shall contain, substantially, the information in the form as set forth in Appendix A to this Chapter. The service account name holder shall sign the Medical Certificate Form at the appropriate space, indicating knowledge that a permanent resident of the household is applying for the life-threatening situation certificate and further acknowledging the responsibility for payment of bills rendered for gas service.

(4) Completion of (2) and (3) of this subsection will suspend disconnection of gas service to the specified residence for a period of thirty (30) days from the initial notification. This 30-day period allows the consumer to pay the account in full or enter into a deferred payment agreement with the utility and/or make alternative arrangements for the person(s) named on the certified form as having the life-threatening condition. After thirty (30) days, normal collection action will resume. The 30-day period may be extended by the utility at the request of the service account name holder for one (1) additional contiguous 30-day period, but only if necessitated by the life-threatening condition (as indicated on the Medical Certificate Form). The request for the additional 30-day extension must be made before the end of the initial 30-day period. The utility is not required to furnish service to the customer beyond a total of sixty (60) days for the life-threatening condition without full payment of the account or acceptable payment arrangements on any unpaid balance.

(5) Verification of the medical condition of the consumer by the utility may include the following:

(A) Utility personnel may visit the consumer's residence with the consumer's permission to verify that life-sustaining equipment is being used.

(B) Utility personnel may verify the doctor's signature and clarify the medical terms of the diagnosis which is the reason for the life-threatening certificate.

(6) This collection abeyance in no way absolves the consumer from full responsibility for the payment in full of the utility services rendered, and is intended for the purpose of providing the consumer an opportunity to maintain utility service during the life-threatening situation within the prescribed time frames.

(7) Failure of the service account name holder to fully comply with this subsection may result in denial of life-threatening status and renewed collection activities of the utility, to include termination of service to said residence.

(8) Any consumer who uses this subsection to avoid disconnection or for reconnection of service and does not fulfill the required documentation will be subject to disconnection.

(9) A consumer is not prohibited from claiming a life-threatening situation once full payment of the account balance from a previous life-threatening claim is made and a valid Medical Certificate Form signed by a licensed medical doctor has been received by the utility.

(g) **False information.** If a consumer provides false or misleading information to the utility in order to avail the consumer of the provisions applicable to the financial assistance delay, deferred payment agreement, life-threatening situation

or Commission notification procedure for elderly and/or consumers with disabilities, the false information shall be grounds for disconnection of service by the utility.

(h) **Consumer liability.** Reconnection or continuance of service under this Section shall not in any way relieve the consumer of the consumer's liability incurred for utility service.

165:45-11-16. Notice of disconnection of service

(a) **Twenty-four hour notice.** Except as provided in subsections (b), (c) and (f) of this Section, OAC 165:45-11-14(e) and OAC 165:45-11-18, service shall be disconnected only after at least twenty-four (24) hours written notice has been given to the consumer by leaving a copy of such notice with the consumer or by leaving a copy of such notice in a conspicuous place at the premises where service is provided. This notice shall be in writing and state the reason for the action, the amount due, if applicable, the company to contact in bold print, the contact telephone number, in bold print, and the telephone number of the Consumer Services Division.

(b) **First residential notice.** When service to a residential consumer is to be disconnected for nonpayment of a bill for utility service or failure to make a security deposit after a reasonable time, the utility company shall give at least ten (10) days written notice from the date of mailing to the consumer. Said written notice shall be sent by first-class mail, address correction requested, by the utility company to the consumer's billing address, unless the mail is returned from that address as undeliverable, in which case the notice may be delivered to the premises at which the service was rendered.

(1) Notice will be deemed delivered to the consumer three (3) business days after mailing by the utility company, which shall not extend the ten (10) days written notice from the date of mailing to the consumer requirement above.

(2) A notice of disconnection shall contain the following information:

(A) The words "DISCONNECTION NOTICE" or "CUT OFF NOTICE" in bold print no smaller than one-half inch ($\frac{1}{2}$") tall.

(B) The name and address of the consumer.

(C) A statement of the reason for the proposed disconnection of service.

(D) The date on or after which service will be disconnected unless appropriate action is taken.

(E) The telephone number in bold print of the utility company where the consumer may make an inquiry.

(F) The approved charges for reconnection.

(G) A statement that the consumer must contact the utility company regarding the disconnection, prior to contacting the Commission's Consumer Services Division.

(H) The address and telephone number of the Commission's Consumer Services Division, in print size which is smaller than the print size used for the utility company's telephone number.

(I) A statement that advises the consumer of the availability of a deferred payment agreement.

(J) A statement that advises the consumer of the elderly/consumer with disabilities notification.

(K) A statement that advises the consumer of the life-threatening certificate.

(L) A statement that advises the consumer of the availability of the 20-day financial aid assistance delay.

(M) A statement that advises the consumer of the availability of a list of agencies providing assistance to consumers for their utility bills as identified by OAC 165:45-11-12.

(N) A statement that advises the consumer, that a list of pay agents is available upon request.

(3) The utility company shall notify the consumers in writing, at least annually, of the availability of and the method of accessing the name and address of the authorized payment agencies, other than the utility company's offices, where consumers may make payments.

(c) **Second residential notice.** During the time period of November 15 through April 15, the utility shall give a minimum of forty-eight (48) hours notice (at least two (2) business days) prior to disconnection of residential service that service will be disconnected unless the consumer enters into a deferred payment agreement as prescribed in OAC 165:45-11-14(e) or unless disconnection of service would create a life-threatening situation for the consumer or other permanent resident of the premises where the utility service is rendered. If the utility elects to give oral notice, it shall only be after it has complied with (b) of this Section. The second notice may be in writing, in person or by telephone.

(1) If the second residential notice is in writing, it shall be entitled "CUT OFF NOTICE" in bold letters of not less than one-half inch ($\frac{1}{2}$") in height and shall contain, in nontechnical language, the following information:

(A) The reason for service disconnection and the amount of the unpaid bills, if any.

(B) The date on or after which service will be disconnected unless the consumer takes appropriate action.

(C) The telephone number of the utility office, in bold print, where a consumer may call for assistance, make inquiries, enter into a deferred payment agreement, obtain information on utility assistance programs, pay the bill or notify the utility of a life-threatening situation.

(D) The telephone number of the Commission's Consumer Services Division.

(2) The utility company shall keep a written log of all oral communication with at least the following information when contact has been made:

(A) Date and time of call or personal visit and identity of utility company representative.

(B) Name of the individual and relationship to the account. If the contact is made with a designated representative for the consumer, then a statement of authority to represent the account should be included.

(C) Nature of the call and telephone number called.

(D) A narrative of the communication between the utility and the consumer.

(E) A statement that the consumer must notify the utility company on the day of payment, as to the place and method of such payment, when the bill is paid at a place other than the office of the utility company.

(F) A statement that the consumer was advised of the telephone number of the Commission's Consumer Services Division.

(3) The oral communications log shall be maintained and retained in accordance with the record keeping requirements contained in this Chapter.

(4) A copy of the oral communications log shall be provided to the Commission or to the consumer and/or their designated representative upon oral or written request.

(5) Oral communications with the consumer shall not begin before 8:00 a.m. or continue beyond 9:00 p.m. during normal business days.

(6) Oral communications shall be deemed as not to have occurred, including but not limited to the following circumstances:

(A) When there is no answer, the telephone line is busy or no one is home.

(B) When a message is left on an answering device or made on a recording device.

(C) When the message or attempted message is left with an individual having a physical and/or mental impairment that impedes communication or mutual understanding.

(D) When the communication is with a minor under the age of eighteen (18), unless the minor is the consumer or the spouse of the consumer.

(E) When the communication is with an individual who is not either the consumer or the designated representative of the consumer.

(F) When the communication is with a consumer or consumer's designated representative whose primary language is other than English and the consumer or consumer's designated representative has a language barrier, unless the communication is made in the primary language of the consumer or consumer's designated representative.

(7) Unless otherwise directed by the Consumer Services Division, the utility company shall not contact the consumer regarding the consumer's account after the Commission has notified the utility company of a complaint or inquiry from the consumer. The Commission shall be the intermediary between the utility and the consumer until the resolution of the problem has been completed.

(8) Notice will be deemed delivered to the consumer three (3) business days after mailing by the utility company, which shall not extend the two (2) days written notice from the date of mailing to the consumer requirement above.

(d) **Third party notice.** A utility shall permit residential consumers to designate a consenting individual or agency to receive the applicable notice of disconnection.

(e) **Tenant notice.** Where a master metered apartment complex, building, or trailer court is subject to disconnection, the written notice to the consumer shall also be posted in a common area of the premises at least ten (10) days prior to disconnection of service. The utility may contract with tenants for residential service.

(f) **Commercial or business notice.** Nonresidential service shall be disconnected for nonpayment of all or any portion of an undisputed utility bill only after at least five (5) business days written notice has been mailed to the consumer by the utility or after the notice is left in a conspicuous place at the premises where service is provided.

165:45-11-17. Manner of disconnection of service

When service is disconnected at the premises of the consumer:

(1) The utility employee may receive payment of past due bills or accept a copy of the consumer's payment assistance application, or accept a copy of the cancelled check or a utility company receipt showing payment; and upon the receipt thereof, cancel the disconnection order. If payment is offered in a form other than cash or negotiable instrument, the utility employee may verify the payment with the appropriate entity involved. If payment is offered by negotiable instrument, the utility employee may contact the financial institution involved for verification of sufficient funds in the account to cover the negotiable instrument. If the account does not contain sufficient funds for payment, then the utility employee may reject the offered negotiable instrument for payment for past due bills.

(2) Receipt of a subsequently dishonored negotiable instrument in response to a notice of disconnection shall not constitute payment of the consumer's account, and after the consumer is notified of such, the utility shall allow one (1) business day for the consumer to make payment at the utility company or its authorized agent(s) in cash, cashiers check, money order, or a check from a social service agency.

(3) The utility employee shall leave a written statement at the premises that service has been disconnected, the reason for the disconnection, and the telephone number and/or address where the consumer may arrange to have the service reconnected.

165:45-11-18. Exceptions to Section regarding discontinuance of service

Notwithstanding any other Section regarding disconnection of service, a utility may at any time disconnect service without notice and without delaying disconnection of service as prescribed in other Sections of this Part, if:

(1) It reasonably believes that such action is necessary to correct a condition that poses a health or safety hazard to the consumer, the general public, or the equipment of the utility. Prior to or immediately upon disconnection of service, the utility shall make a good faith effort to notify the consumer of the reason for disconnection either by

telephone, by personal contact, or by notice left at the premises.

(2) For the purpose of essential repair, maintenance, or testing of utility equipment, the utility shall make such efforts as are reasonable under the circumstances to minimize the adverse effects of disconnection of service and to inform affected consumers prior to disconnection of service.

(3) The utility may disconnect for unauthorized use of gas accomplished through bypassing of the utility's measuring equipment or tampering with pipes, meters, or any other utility equipment or obtaining service without a contract. Prior to or immediately upon disconnection of service, the utility shall make a good faith effort to notify the consumer of the reason for disconnection either by telephone, by personal contact, or by notice left at the premises. If service is disconnected under this paragraph, the utility may require the consumer to pay the following applicable charges before service is restored:

(A) The applicable charges for reconnecting service prescribed in the utility's approved tariffs.

(B) The amount due for unmetered or unpaid usage, ~~if~~ when such usage can be determined exactly. If the exact usage can not be determined, the utility may compute the charge for the ~~previous six (6) months as~~ estimated usage based on historical usage from the ~~previous two (2) years billing period~~ date the consumer became an occupant or user or began unauthorized use.

(C) The cost associated with the disconnection, testing, repair, or replacement of any damaged equipment.

165:45-11-19. Reconnection of service

(a) ~~A utility shall reconnect service upon the consumer's request as soon as the reason for disconnection of service has been eliminated.~~ The utility shall give priority to reconnection of service when disconnection was the fault of the utility~~;~~.

(b) When disconnection of service was the fault of the consumer, the utility shall reconnect service in the normal course of its reconnection workload, as soon as possible, but no later than ~~forty-eight (48) hours~~ two business days, not to exceed three calendar days after the consumer eliminates the reason for disconnection and requests reconnection, ~~when disconnection of service was the fault of the consumer~~ except as provided for in subsection c of this Section. If the reason for disconnection is unauthorized use of gas accomplished through bypassing the utility's measuring equipment or tampering with the pipes, meters, or other utility equipment, the utility may, prior to reconnecting service, require a reasonable payment for estimated service rendered or may refuse to reconnect service until ordered by the Commission. A utility may require payment of a reconnection charge when disconnection of service was the fault of the consumer, if such a charge is provided in the utility's tariffs. ~~The consumer or their representative must be present in order for service to be restored.~~

~~(b) When the disconnection of service was for nonpayment of service and disconnection took place on a Friday morning, service shall be restored as soon as possible, but no later than twenty-four (24) hours from when the consumer eliminates the reason for disconnection and requests reconnection, subject to an intervening Act of God.~~

(c) ~~When a~~ During the time period of November 15 through April 15, the utility shall reconnect service in the normal course of reconnection workload, as soon as possible, but no later than forty-eight hours; however, if disconnection for nonpayment of service has occurred immediately preceding periods of severe weather pursuant to OAC 165:45-11-14(c), the utility shall reconnect service as soon as possible but no later than twenty-four (24) hours, while the consumer or the consumer's representative is present, subject to an intervening Act of God, upon receipt of one of the following:

(1) Payment of the past due bill for which service was disconnected; or

(2) Submission of a Life-threatening Certificate from the consumer as described in OAC 165:45-11-14.

(3) Guarantee by a federal, state, or local social service agency that payment will be made directly to the utility.

(d) Reconnection or continuance of service under this Section shall not in any way relieve the consumer of ~~his~~ their liability incurred for utility service.

(e) The consumer of record or their representative must be present in order for service to be restored. If the consumer or their representative fails to be present for service to be restored through no fault of the utility, the return trip may be scheduled in accordance with subsections b and c of this Section.

SUBCHAPTER 15. MISCELLANEOUS PROVISIONS

165:45-15-1. Resale of gas prohibited

(a) Gas and/or service furnished by a utility shall not be resold or caused to be resold by any consumer except pursuant to a tariff or special contract on file with and approved by the Commission which authorizes resale. Except as set forth in subsection b below, no utility shall knowingly furnish gas and/or service under a retail tariff for purposes of resale, except pursuant to a tariff or special contract approved by and on file with the Commission.

(b) If it comes to the attention of the utility that any consumer is reselling gas, it shall notify the Commission's Pipeline Safety Department and the Director of the Public Utility Division of the name and address of any consumer reselling gas and/or service. Unless otherwise directed, the utility may continue to provide gas and/or service to the consumer pending review and action by the Commission's Pipeline Safety Department or the Director of Public Utility Division. This Section shall not apply to the sales of natural gas to or by a distributor for use as a vehicular fuel.

[OAR Docket #05-868; filed 5-13-05]

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

[OAR Docket #05-869]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
165:59-1-4. Definitions [AMENDED]
Subchapter 7. Special Universal Services
165:59-7-6. Telemedicine access for ~~not-for-profit hospitals~~eligible healthcare entities [AMENDED]
165:59-7-13. ~~Resold~~Reselling of Special Universal Services Prohibited [AMENDED]
AUTHORITY:
Oklahoma Corporation Commission
Article IX, Section 18, Oklahoma Constitution
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None
ANALYSIS:
On November 1, 2004, the Oklahoma Legislature amended 17 O.S. §139.109(C)(2). Prior to the amendment, only not-for-profit hospitals were eligible to receive telemedicine benefits. After the amendment, not-for-profit hospitals, county health departments, city-county health departments, and federally qualified health centers (collectively referred to as "eligible healthcare entities") are eligible to receive telemedicine benefits. The adopted rules are needed so that the Commission rules are consistent with 17O.S. §139.109.

The adopted rules add a definition for "eligible healthcare entity" and expand the benefits of telemedicine access to "eligible healthcare entities". The adopted rules also add a requirement that telemedicine reimbursement be reasonable and clarifies what circumstances will be eligible for telemedicine reimbursement.
CONTACT PERSON:
Bennett Abbott (405) 521-3570

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

165:59-1-4. Definitions

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

"Access line" means the facility provided and maintained by a telecommunications service provider which permits access to or from the public switched network.

"Administrator" means the person(s) or entity(ies) responsible for administering the Oklahoma Universal Service Fund and/or the Oklahoma Lifeline Fund.

"Bona fide request" means a written request delivered to a telecommunications carrier requesting services provided for in this Chapter.

"Carrier of Last Resort" means a telecommunications service provider as designated by the Commission pursuant to OAC 165:55-17-29.

"Commercial mobile radio service provider" means a carrier who provides wireless telecommunications services.

"Commission" means the Oklahoma Corporation Commission.

"Competitive local exchange carrier" ("Competitive LEC" or "CLEC") means, with respect to an area or exchange, a telecommunications service provider that is certificated by the Commission to provide local exchange services in that area or exchange within the State of Oklahoma after July 1, 1995.

"Competitively neutral" means not advantaging or favoring one person over another.

"Customer" or **"Subscriber"** means any person, firm, partnership, cooperative corporation, corporation or lawful entity that receives telecommunications services.

"Eligible healthcare entity" means a not-for-profit hospital; county health department; city-county health department; and federally qualified health center in Oklahoma.

"Eligible local exchange telecommunications service provider" means any incumbent LEC that was designated as an eligible local exchange telecommunications service provider pursuant to OAC 165:55-17-29 and any telecommunications service provider that has been determined to be an eligible local exchange telecommunications service provider pursuant to OAC 165:59-3-14.

"End-User Common Line Charge" means the flat rate monthly interstate access charge required by the Federal Communications Commission that contributes to the cost of local service.

"Enhanced service" means a service that is delivered over communications transmission facilities and that uses computer processing applications to:

(A) Change the content, format, code, or protocol of transmitted information;

(B) Provide the customer new or restructured information; or,

(C) Involve end-user interaction with information stored in a computer.

"Enhanced service provider" means a provider of enhanced service.

"Exchange" means a geographic area established by an incumbent local exchange telecommunications provider as filed with or approved by the Commission for the administration of local telecommunications service in a specified area which usually embraces a city, town, or village and its environs and which may consist of one or more central offices together with associated plant used in furnishing telecommunications service in that area.

"Facilities" means all the plant and equipment of a telecommunications service provider, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the regulated business of any telecommunications service provider.

"FCC" means the Federal Communications Commission.

"High cost area" means an area where actual costs exceed Commission- or Legislatively-authorized rates for Primary Universal Services.

"Incumbent local exchange telecommunications service provider" or "Incumbent local exchange carrier" or "ILEC" means, with respect to an area or exchanges, any telecommunications service provider furnishing local exchange service in such area or exchanges within this state on July 1, 1995, pursuant to a certificate of convenience and necessity or grandfathered authority.

"Internet" means the international research-oriented network comprised of business, government, academic and other networks.

"Lifeline Service Program" means the federal and state program designed to keep low-income subscribers on the telecommunications network.

"Local exchange telecommunications service" means a regulated switched or dedicated telecommunications service which originates and terminates within an exchange or an exchange service territory. Local exchange telecommunications service may be terminated by a telecommunications service provider other than the telecommunications service provider on whose network the call originated. The local exchange service territory defined in the originating provider's tariff shall determine whether the call is local exchange service.

"Local exchange telecommunications service provider" or "telecommunications service provider" or "TSP" means a company holding a certificate of convenience and necessity from the Commission to provide local exchange telecommunications service.

"Network" includes a telecommunications service provider's or telecommunication carrier's facilities used to originate and terminate traffic.

"Not-for-profit hospital" means:

(A) A hospital established as exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C. Section 501(c)(3); or

(B) A not-for-profit hospital owned by a municipality, county, or the state, that is primarily funded by county, state or federal support, located in this state, and is devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care of patients admitted overnight or longer in order to obtain medical care, surgical care or obstetrical care.

"Oklahoma High Cost Fund" or "HCF" means the fund established by the Commission in Cause Nos. PUD 950000117 and 950000119.

"Oklahoma Lifeline Fund" or "OLF" means the fund established and required to be implemented by the Commission pursuant to 17 O.S. Supp. 1997 § 139.105.

"Oklahoma Universal Services" means Primary Universal Service and Special Universal Services as defined herein.

"Oklahoma Universal Service Fund" or "OUSF" or "Fund" means the fund established and required to be implemented by the Commission pursuant to 17 O.S. Supp. 1997 § 139.106.

"OneNet" means the telecommunications network which is operated by the Oklahoma Office of State Finance for the purpose of providing, within this State, telecommunications services to governmental and educational entities and to medical entities of the kind previously served by the Oklahoma Telemedicine Network.

"Person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character, or any other entity.

"Primary Universal Service" means an access line and dial tone provided to the premises of residential or business customers which provides access to other lines for the transmission of two-way switched or dedicated communication in the local calling area without additional, usage-sensitive charges, including:

(A) A primary directory listing;

(B) Dual-tone multifrequency signaling;

(C) Access to operator services;

(D) Access to directory assistance services;

(E) Access to telecommunications relay services for the hearing impaired;

(F) Access to nine-one-one service where provided by a local governmental authority or multijurisdictional authority; and,

(G) Access to interexchange long distance services.

"Public library" means a library or library system that is freely open to all persons under identical conditions, and which is supported in whole or in part by public funds. Public Libraries shall not include libraries operated as part of any university, college, school museum, the Oklahoma Historical Society or county law libraries.

"Public school" means all free schools supported by public taxation, and shall include grades kindergarten through twelve.

"Regulated telecommunications service" means the offering of telecommunications for a fee directly to the public where the rates for such service are regulated by the Commission. Regulated telecommunications service does not include the provision of nontelecommunications services, including, but not limited to, the printing, distribution, or sale of advertising in telephone directories, maintenance of inside wire, customer premises equipment, and billing and collection service, nor does it include the provision of wireless telephone

service, enhanced service, and other unregulated services, including services not under the jurisdiction of the Commission, and services determined by the Commission to be competitive.

"Reimbursement" means remuneration from the OUSF pursuant to OAC 165:59-3-60 for Primary Universal Services and OAC 165:59-7 for Special Universal Services. Reimbursement also means remuneration from the Oklahoma Lifeline Fund pursuant to OAC 165:59-9, for the Lifeline Service Program.

"Service territory" means a geographic area served by a telecommunications service provider.

"Special Universal Services" means:

(A) One incoming, toll-free phone number and up to a total of five access lines, provided free of charge to a not-for-profit hospital, public school building wherein classrooms are contained, public library, or county seat, in order to allow incoming, toll-free calls from any location within the geographic area of Oklahoma served by said entity.

(B) One access line, with the ability, to connect to an Internet service provider at 56 kbps, provided free of charge to a public school building wherein classrooms are contained or a public library within the State, or the equivalent credit of a 56 kbps access line, as set forth in 17 O.S. § 139.109 and Subchapter 7 herein.

(C) One telecommunications line or wireless connection, provided free of charge to ~~a not for profit hospital~~ an eligible healthcare entity within the State, sufficient for providing such telemedicine services as the hospital is equipped to provide.

"State" means the State of Oklahoma.

"Tariff" means all or any part of the body of rates, tolls, charges, classifications, and terms and conditions of service relating to regulated services offered, the conditions under which such services are offered and the charges therefore, which have been filed with the Commission and have become effective.

"Telecommunications" means the transmission, between or among points specified by the user, of voice or data information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications Act of 1996" means the Federal legislation cited as 47 U.S.C. Section 151 *et. seq*.

"Telecommunications carrier" means a person that provides telecommunications service in this state.

"Telecommunications service" means the offering of telecommunications for a fee.

"Telemedicine" means the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, or exchange of medical education information by means of audio, video, or data communications. Telemedicine is not a consultation provided by telephone or facsimile machine.

"U.S.C." means United States Code.

"Universal service area" or "service area" means a geographic area established by the Commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the FCC and the Commission, after taking into account recommendations of a Federal-State Joint Board instituted under 47 U.S.C. Section 410(c), establish a different definition of service area for such company.

"Unregulated services" means telecommunications services not regulated by the Commission.

"Wire center" means a geographic area normally served by a central office.

SUBCHAPTER 7. SPECIAL UNIVERSAL SERVICES

165:59-7-6. Telemedicine access for ~~not-for-profit hospitals~~ eligible healthcare entities

(a) It is the intention of the Commission that this Chapter be interpreted to assist in the development of telemedicine programs which in turn have the following effects on ~~not-for-profit hospitals~~ eligible healthcare entities:

(1) Empowering ~~not-for-profit hospitals~~ eligible healthcare entities, especially those in rural areas, to provide a higher level of medical service;

(2) Expanding the range of medical services available, especially those in rural areas;

(3) Providing greater access to more choices in medical care by patients in rural areas;

(4) Reducing the number of rural patient transfers to urban areas;

(5) Enhancing rural economic development; and

(6) Reducing the costs of medical care at ~~not-for-profit hospitals~~ eligible healthcare entities.

(b) Upon receipt of a written request by an authorized representative of ~~a not-for-profit hospital~~ an eligible healthcare entity, as defined by this Chapter, the telecommunications carrier or OneNet shall, by itself or in conjunction with another provider of telecommunications services, provide one telecommunications line or wireless connection, free of charge, sufficient for providing such telemedicine, clinical, and health consultation services as the ~~hospital~~ entity is equipped to provide.

(c) The telecommunications carrier shall be entitled to reimbursement from the OUSF for the recurring amount of the ~~tariffed~~ tariff rate or charge directly attributable to the telecommunications line or wireless connection.

(d) In no case, however, shall reimbursement from the OUSF be made for an Internet subscriber fee or charges incurred as a result of services accessed via the Internet.

(e) The telecommunications carrier shall be entitled to reimbursement from the OUSF for a one-time reasonable charge~~(s)~~ for the establishment of service of a new telecommunications line or wireless connection. Reimbursement under this subsection (e) is intended to allow for reasonable changes in 1) the telecommunications services and technologies purchased by an eligible healthcare entity, 2) the physical location of an eligible healthcare entity by permitting establishment of new service at a new location, and 3) the telecommunications carrier providing service to an eligible healthcare entity.

(f) The written request by an authorized representative of ~~a not-for-profit hospital~~ an eligible healthcare entity to a telecommunications carrier or OneNet shall be in the form and content approved by the Director of the Public Utility Division.
(g) If available, the ~~not-for-profit hospital~~ eligible healthcare entity shall select an Internet provider that is accessible via a non-toll call, in order to minimize the toll charges that may be recoverable from the OUSF. If no non-toll provider is available, the ~~not-for-profit hospital~~ eligible healthcare entity may seek a waiver letter from the Director of the Public Utility Division in order to select an Internet provider that is accessible via a toll call.

165:59-7-13. ~~Resold~~ Reselling of Special Universal Services Prohibited

Special Universal Services purchased from a provider of Special Universal Services are for the exclusive use of the not-for-profit hospital, public school, ~~and~~ public library, or county government which has submitted a written request for Special Universal Services. Under no circumstances shall the not-for-profit hospital, public school, public library, or county government sell, repackage or share Special Universal Services with any other entity.

[OAR Docket #05-869; filed 5-13-05]

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

[OAR Docket #05-979]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Priority Academic Student Skills
Part 5. Language Arts
210:15-3-11.1. [AMENDED]
210:15-3-20. [AMENDED]
210:15-3-21. [AMENDED]
210:15-3-22. [AMENDED]
210:15-3-23. [AMENDED]
Part 7. Mathematics
210:15-3-41. [AMENDED]
210:15-3-42. [AMENDED]
210:15-3-43. [AMENDED]
210:15-3-44. [AMENDED]
Part 9. Science
210:15-3-76. [AMENDED]
210:15-3-77. [AMENDED]
210:15-3-78. [AMENDED]
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ANALYSIS:
The amendments to the rulesrevise the core curriculum to comply with the requirements set froth in 70 O. S. § 11-103.6(a). The amendments provide additional clarity and detail to the Priority Academic Student Skills and will benefit educators by providing clear academic content standards for curriculum planning and implementation purposes.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 3. PRIORITY ACADEMIC STUDENT SKILLS

PART 5. LANGUAGE ARTS

210:15-3-11.1. Reading/literature

(a) **Reading standards.** The revised reading standards in the Priority Academic Student Skills (PASS) reflect ~~current research-based information on effective, balanced reading practices~~scientifically-based reading research and are organized in the following related strands: Print Awareness, Phonological/Phonemic Awareness, Phonics/Decoding, Vocabulary, Fluency, and Comprehension/Critical Literacy. The National Reading Panel has revealed that the most reliably effective approach is systematic and explicit instruction. Skills are taught in a logical sequence and teachers clearly state what is being taught. These reading skills are interrelated and ~~must not be taught independently of one another; rather, skills~~ need to be developed in the context of a core curriculum that applies effective reading strategies to achieve success in all academic areas.

(1) **Print awareness** - is the ability to understand how print works. This includes knowing that the print on the page represents the words that can be read aloud and distinguishing between various forms and purposes of print, from personal letters and signs to storybooks and essays.

(2) **Phonological/phonemic awareness** - is an oral prerequisite to phonics and one of the best predictors of later reading success. It is the understanding that words

and syllables can be broken down into smaller units or phonemes. Research indicates that poor phonemic awareness is a major underlying cause of reading difficulty. A student's progress should be monitored throughout the kindergarten year by administering informal phonemic awareness assessments.

(3) **Phonics/decoding** - instruction provides students with a consistent strategy to apply sound-symbol relationships to assist in the identification of unfamiliar words. The goal of teaching children phonics is to teach children to decode unfamiliar words easily and automatically as they read. Children must be encouraged to use this strategy on their own.

(4) **Vocabulary** - knowledge is essential to reading because a reader's understanding comes chiefly from his or her vocabulary base. Vocabulary development can be achieved through reading, direct instruction, and student-centered activities. A balanced vocabulary program contains all three of these strategies.

(5) **Reading fluency** - research refers to two stages of reading development. The first is the "decoding stage" where the student learns how to change printed symbols into sounds. During the next stage called the "fluency stage," the student continues to work on decoding skills to the point where the child becomes "unglued" from the print. Word recognition becomes easy, and fluent reading is characterized by a lack of trouble with word identification. Easy word recognition frees a student's attention to comprehend the text. Achieving speed and accuracy in recognizing words is reading fluency.

(6) **Comprehension/critical literacy** - is understanding the meaning or point of the text; it is the essence of reading. Comprehension is a complex process. As readers mature they become more strategic in their process to construct meaning from text. Comprehension involves understanding what is read, what is meant, and what is implied. Student's read for a variety of purposes, to locate information, to be informed, entertained, persuaded, and so on. Student's use a wide range of strategies to help them meet their purpose. These strategies include making predictions, activating prior knowledge, skimming text for literal information, drawing inferences and conclusions, interpreting meaning, summarizing information, analyzing and evaluating text, monitoring reading, and using correction strategies.

(A) Reading requires the coordination of cues as sources of information: sound/symbol relationships, syntax, semantics, and context. When reading, readers use three cueing systems. They derive semantic cues from the text's meaning, syntactic cues from the text's grammatical structure, and graphophonic cues from sound-letter relationships and patterns. Cueing systems are important and are constantly in motion to enable readers to construct meaning. They help readers answer questions such as: Does this make sense? Does this sound right? Does this look right?

(B) Readers use a variety of strategies to ensure comprehension. They predict what they think the text is about to convey and confirm their prediction by checking to see if meaning is maintained. Readers monitor understanding and take action when meaning breaks down by choosing to self-correct or continue to read ahead only to return later to reconstruct meaning from previously read text.

(C) As a result of the work of State Superintendent Sandy Garrett's Reader Leader initiative and the work of the Phonics Task force, Oklahoma's core curriculum in reading has been revised to add more detail to reading instruction requirements for Grades 1-3. Local districts will select assessments, materials, and instructional strategies and activities to meet each student's individual reading needs. Districts should also provide current, research-based reading training for all Grade 1-3 teachers.

(D) Research supports ensuring that all student's have a minimum of ninety minutes of uninterrupted language arts instruction. In addition, students should have other opportunities to self-select reading material and read independently every day.

(b) **Literature.**

(1) Literature is the heart of the English language arts and the touchstone for all language learning. It represents the unique human gift of composing and communicating ideas through language. All students should read a rich variety of fiction, poetry, drama, and nonfiction from different time periods and cultures, relating them to human aspirations and life experiences. Particularly, all students should engage in study of the British, American and world literary traditions that define our common culture.

(2) An effective English language arts program teaches students to respond to a rich variety of literature with increasing sophistication and to communicate their interpretation of what they have read, heard, and seen through various means of expression. Literature should reflect the diversity of our nation and the world, as well as the interest and abilities within each classroom. It is important to remember that no single author or piece of literature can represent an entire culture; no one situation represents all situations of a given culture. Therefore, relying solely on textbooks is limiting to both teachers and students. Many types of literature and instructional materials should be used to enable individual students to meet high standards and expectations.

(3) In a comprehensive literature curriculum, students learn that there are many approaches to the interpretation of literature and that no one approach is "privileged." Throughout their academic experiences, students should have opportunities to test out different theories of literary criticism and learn that a text and its influence can be viewed from more than one perspective.

(c) **Research and information.** Research and information skills are important to be able to gather, organize, and interpret information. Students should be able to locate appropriate print and nonprint information using text and technical information.

(d) **Writing.**

(1) Writing, as defined by the National Council of Teachers of English (NCTE), is "the process of selecting, combining, arranging, and developing ideas in effective sentences, paragraphs, and often, longer units of discourse." Writing requires coping with a number of variables: mode, tone, form, purpose, and audience. Mode (method of development) includes narrative, descriptive, argumentative, and expository writing. Tone (the voice of the writer) may range from very personal to quite formal. Form (the shape of the work) may include essays, poetry, letters, and research papers. Purpose (the reason for writing) indicates the writer's intention to discover and express personal feelings and values, to conduct the business of everyday life, to acquire, retain, and communicate information, and to describe, entertain, and persuade. Audience (the intended public) consists of oneself, peers, colleagues, teachers, relatives, and others. During the process, writers must select from and combine these variables as appropriate to the writing tasks.

(2) Writing is also a means of learning. This process is "a valuable tool for learning for all students in all subject areas at all ages." While writing to learn, students discover connections, describe processes, express emerging understandings, raise questions, and find answers. For example, students learn content in science or social studies through keeping a response or process journal, or a learning log.

(e) **The writing process.**

(1) Writing should be taught as a natural and integral part of the curriculum. Instruction should encourage whole pieces of writing for real purposes and real audiences (and should include all stages of the writing process). Because writing is recursive, the stages may not occur in a linear sequence, but the writer may revert to an activity characteristic of an earlier stage. The stages of the writing process include prewriting, drafting, revising, editing, and publishing.

(2) Prewriting is the process that helps the writer get ready to write. Students gather ideas and organize them. During this stage, the topic is generated and purpose, audience, and form are clarified. It is conceivable that the prewriting stage will take more time than any other stage in the process. Activities may include class discussion, reading, predicting, remembering, word banks, observing, thinking, student notebooks, drawing, free writing, modeling, clustering/webbing, cubing, and brainstorming.

(3) Drafting is putting ideas down on paper with a focus on content, and begins with notes or ideas generated during prewriting. The first draft may be kept in a journal, writer's notebook, writing center, or on a computer disk. Students are also encouraged to explore a topic without grammatical inhibitions or over concern about spelling or punctuation. The teacher's role is to encourage students to "get it down."

(4) Revising is refining of content, not mechanics. Revision ("to see again") begins during the prewriting activity and continues through the final draft. It is best achieved in an interactive setting with the teacher or a group of peers. Writers should think again about the choices made for content and add, delete, or rearrange the material. Thus, writing becomes thinking made visible. Writers critically read their own writing and become their own reader. Since revising can be internal and unobservable, revising skills can be taught by modeling the questions asked by critical readers.

(5) Editing is the stage in which the writing is made suitable for publication. Positive reinforcement is more effective than corrective comments to improve the quality of writing. Peer editing in writing groups helps teach and reinforce proofreading skills. Students are to locate and correct errors in punctuation, capitalization, spelling, usage, and sentence structure so that errors in conventions do not interfere with a reader's ability to understand the message.

(6) Publishing the student's work is essential to the composing process. Publication provides an opportunity for the writer's product to be shared with and/or evaluated by the intended audience or reader in general. An authentic audience, one with whom the students want to communicate, is necessary for effective writing. Without some type of publication, students may forget or never realize that their writing is meaningful communication. It is important to note that not every piece that a writer begins will be carried through the entire writing process and polished for publication. However, each student should be encouraged to develop some pieces of writing thoroughly enough to be published. Publishing is an important motivator in working through the stages of the composing process. The purpose of publishing is to reinforce the idea that writing is an act of communication.

(f) **Spelling.**

(1) Spelling, writing, and reading are interrelated and coherent. Writing leads to mastery in reading; reading leads to mastery in writing. Combined instruction leads to improvement in both reading and writing.

(2) Research indicates that as children use temporary or phonetic spelling, it develops and reinforces knowledge of phonics. It is important to understand that temporary spelling is not in conflict with correct spelling. When children use temporary spelling, they are practicing their growing knowledge of phonemes. First grade children should be expected to correctly spell previously studied words and spelling patterns. Temporary spelling of common spelling patterns should progress toward more conventional spelling by the end of second grade with the students mastering the conventional spelling of increasing numbers of words.

(3) Spelling instruction should help students understand how words are put together (word patterns). Therefore, extensive reading and writing help students become good spellers.

(g) **Handwriting/penmanship.** Handwriting/penmanship, is that method for forming letters that comprise a writing system, as well as, how to express thoughts in the written word. Through writing, children form a muscular and visual memory of the letters and words; and, therefore, can recognize them.

Students must be aware of the importance of legibility to facilitate communication of the intended message. Elements of legible handwriting include letter formation, size and proportion of letters, spacing, slant, alignment of letters on the baseline, and uniform steadiness and thickness of line. Writing should reinforce the fact that language has meaning. It gives students an opportunity to develop personal voice and style upon which they can reflect.

(h) **Oral language/listening/speaking.**

(1) There is clearly a need for schools to spend more time teaching speaking and listening. More than 75 percent of all communication is devoted to the oral communication process. People in the workplace devote one-third of all working time carrying on face-to-face talk, and corporate managers spend about 60 percent of their time in communicating orally in meetings or on the telephone. Moreover, even with sophisticated electronic communication devices, oral language is still the main way of passing culture from one generation to another. Even with this demonstrated need for effective oral communication, almost two-thirds of young people have difficulty explaining how to get to a local grocery store in directions that can be understood.

(2) Although the "school" emphasis on reading and writing may create the impression that oral language skills are not as important, this is not the case. Oral language is now, and is even more likely to be in the future, the primary means of acquiring and transmitting information.

(3) Fortunately, students begin to learn oral language skills naturally. They listen to the sounds of adults and other children and internalize language patterns quite early in order to communicate orally themselves. However, not all children come to school with equal opportunities to develop language skills. Children who have experienced positive feedback to their efforts to use language, and have had opportunities to hear language used in a variety of social contexts, are better prepared to use oral language as a foundation for their reading and writing development.

(4) Since some children have limited opportunities for oral language in their home environments and since oral language development continues through at least age twelve, all children can improve their oral language ability with instruction and guidance. It is essential that oral language instruction begin in kindergarten and continue throughout school.

(i) **Visual literacy.**

(1) Visual literacy (both viewing and representing) refers to the ability to comprehend, evaluate, and compose visual messages. Visually literate persons are able to read visual messages, compose visual language statements, and translate from visual to verbal and vice versa. Students learn attitudes, behaviors, and questions to ask which enable them to think abstractly and analytically.

(2) Viewing is an ongoing lifetime activity that extends knowledge and experiences and provides enjoyment and pleasure. Therefore, learners will need to become engaged in a variety of viewing experiences, both in comprehending and composing. The media for visual communication may include: field trips, graphic displays, models, photographs, pictures, transparencies, picture books, newspapers, filmstrips, videotapes, labels, posters, advertisements, cartoons, carvings, paintings, memos, plays, dances, television, charts, maps, diagrams, graphic aids in oral presentations, signs, logos, creative movement, and computers.

(3) It is an important goal of education for learners to be able to critique and use the dominant media of today. Visual literacy is essential for survival as consumers and citizens in our technologically intensive world.

215:15-3-20. Language arts for grade 9

(a) **Reading/literature.** The student will apply a wide range of strategies to comprehend, interpret, evaluate, appreciate, and respond to a variety of texts. Apply knowledge of word origins (words from other languages, history, or literature) to determine the meaning of new words encountered in reading and use of those words accurately.

(1) **Standard - vocabulary.** The student will expand vocabulary through word study, literature, and class discussion.

(A) Apply a knowledge of Greek (e.g., tele/phone. micro/phone), Latin (e.g., flex/ible), and Anglo-Saxon (e.g., un/friend/ly) roots, prefixes, and suffixes to determine word meanings.

(B) Use word meanings within the appropriate context and verify those meanings by definition, restatement, example, and analogy.

(C) Expand vocabulary through wide reading, listening, and discussing.

(D) Use reference material such as glossary, dictionary, thesaurus, and available technology to determine precise meaning and usage.

(E) Identify the relation of word meanings in analogies, homonyms, synonyms/antonyms, and connotative and denotative.

(2) **Standard - comprehension.** The student will interact with the words to construct an appropriate meaning. Read and understand grade-level-appropriate material. Analyze the organizational patterns and evaluate author's argument and positions. At Grade 9, in addition to regular classroom reading, read a wide variety of classic and contemporary literature, poetry, magazines, newspapers, reference materials, and online information.

(A) **Literal understanding.**

(i) Examine the structures and format of functional workplace documents, including graphics and headers, and explain how authors use the features to achieve their purpose.

(ii) Draw upon own background to provide connections to text.

(iii) Monitor reading strategies and modify them when understanding breaks down such as rereading, using resources, and questioning.

(iv) Recognize text structures such as compare and contrast, cause and effect, and chronological ordering.

(v) Use study strategies such as skimming and scanning, note taking, outlining, and using study-guide questions to better understand texts.

(B) **Inferences and interpretation.**

(i) Analyze characteristics of text, including its structure, word choice, and intended audience.

(ii) Draw inferences such as conclusions, generalizations, and predictions, and support them with text evidence and personal experience.

(iii) Recognize influences on a reader's response to a text (e.g., personal experience and values; perspective shapes by age, gender, class, or nationality).

(C) **Summary and generalization.**

(i) Identify the main idea and supporting details by producing summaries of text.

(ii) Use text features and elements to support inferences and generalizations about information.

(iii) Summarize and paraphrase complex, implicit hierarchic structures in informational texts, including relationships among concepts and details in those structures.

(D) **Analysis and evaluation.**

(i) Discriminate between fact and opinion and fiction and nonfiction.

(ii) Recognize deceptive, and/or faulty arguments in persuasive texts.

(iii) Analyze the structure and format of informational and literary documents and explain how authors use the features to achieve their purposes.

(iv) Identify techniques (e.g., language, organization, tone, context) used to convey point of view or impressions (e.g., sarcasm, criticism, praise, affection).

(3) **Standard - literature.** The student will read, construct meaning, and respond to a wide variety of literary forms. Read and respond to grade-level-appropriate historically or culturally significant works of ~~literature that enhance a study of history and social science.~~British, American, and world literature. Conduct in-depth analysis of ~~the themes of these works.~~themes, styles, and trends of these works across historical periods.

(A) **Literary genres.** Demonstrate a knowledge of and an appreciation for various forms of literature.

(i) Analyze the characteristics of genres including short story, novel, drama, poetry, and essay.

(ii) Analyze the characteristics of subgenres including tragedy, sonnet, and epic, lyric, and narrative poetry.

(B) **Literary elements.** Demonstrate knowledge of literary elements and techniques and show how they affect the development of a literary work.

(i) Recognize the theme (general observation about life or human nature) within a text.

(ii) Explain how author's voice and/or choice of a narrator affect the characterization and the point of view, tone, plot, mood and credibility of a text.

(iii) Recognize and understand the significance of various literary devices, including figurative language, imagery, allegory (the use of fictional figures and actions to express truths about human experiences), and symbolism (the use of a symbol to represent an idea or theme), and explain their appeal.

(iv) Analyze interactions between characters in a literary text and explain the way those interactions affect the plot in narrative text.

(v) Analyze characters and identify author's point of view.

(vi) Identify literary forms and terms such as author, drama, biography, autobiography, myth, tall tale, dialogue, tragedy and comedy, structure in poetry, epic, ballad, protagonist, antagonist, paradox, analogy, dialect, and comic relief as appropriate to the selections being read.

(C) **Figurative language and sound devices.** Identify figurative language and sound devices and analyze how they affect the development of a literary work.

(i) Identify and explain figurative language including metaphor, personification, and simile.

(ii) Identify and explain sound devices including alliteration, onomatopoeia, and rhyme.

(iii) Identify the melodies of literary language, including its use of evocative words, rhythms and rhymes.

(iv) Recognize and interpret poetic elements such as metaphor, simile, personification, and the effect of sound on meaning.

(D) **Literary works.** The student will read and respond to historically and culturally significant works of literature.

(i) Analyze and evaluate works of literature and the historical context in which they were written.

(ii) Analyze and evaluate literature from various cultures to broaden cultural awareness.

(E) Compare works that express the recurrence of archetypal (universal modes or patterns) characters, settings, and themes in literature and provide evidence to support the ideas expressed in each work.

(4) **Standard - research and information.** The student will conduct research and organize information.

(A) **Accessing information.** Select the best source for a given purpose.

(i) Access information from a variety of primary and secondary sources.

(ii) Skim text for an overall impression and scan text for particular information.

(iii) Use organizational strategies as an aid to comprehend increasingly difficult content material (e.g., compare/contrast, cause/effect, problem/solution, sequential order).

(B) **Interpreting information.** The student will analyze and evaluate information from a variety of sources.

(i) Summarize, paraphrase, and/or quote relevant information.

(ii) Determine the author's viewpoint to evaluate source credibility and reliability.

(iii) Organize and convert information into different forms such as charts, graphs and drawings to create multiple formats to interpret information for multiple audiences and purposes, and cite sources completely.

(iv) Identify complexities and inconsistencies in the information and the different perspectives found in each medium, including almanacs, microfiche news sources, in-depth field studies, speeches, journals, technical documents, or internet sources.

(v) Draw conclusions from information gathered.

(b) **Writing/grammar/usage and mechanics.** The student will express ideas effectively in written modes for a variety of purposes and audiences. Discuss ideas for writing with other writers. Write coherent and focused essays that show a well-defined point of view and tightly reasoned argument. Use the stages of the writing process (prewriting, writing, editing, and revising).

(1) **Standard - writing process.** The student will use the writing process to write coherently.

(A) Use a writing process to develop and refine composition skills. Students are expected to:

(i) use prewriting strategies to generate ideas such as brainstorming, using graphic organizers and keeping notes and logs.

(ii) develop multiple drafts both alone and collaboratively to categorize ideas organizing them into paragraphs, and blending paragraphs into larger text.

(iii) organize and reorganize drafts and refine style to suit occasion, audience, and purpose.

(iv) proofread writing for appropriateness of organization, content and style.

(v) edit for specific purposes such to insure standard usage, varied sentence structure, appropriate word choice, mechanics and spelling.

(vi) refine selected pieces frequently to publish for general and specific audiences.

(B) Use extension and elaboration to develop an idea.

(C) Demonstrate organization, unity, and coherence by using transitions and sequencing.

(D) Use precise word choices, including figurative language, that convey specific meaning and tone.

(E) Use a variety of sentence structures, types, and lengths to contribute to fluency and interest.

(F) Evaluate own writing and others' writing (e.g., determine the best features of a piece of writing, determine how own writing achieves its purpose, ask for feedback, respond to classmates' writing).

(2) **Standard - modes and forms of writing.** The student will write for a variety of purposes and audiences using narrative, descriptive, expository, persuasive, and reflective modes. At Grade 9, combine the rhetorical strategies of narration, exposition, persuasion, reflection, and description to produce text of at least 500 to 750 words. Begin writing documents related to career development. Demonstrates a command of Standard English and the research, organization, and drafting strategies outlined in the writing process. Writing demonstrates an awareness of the audience (intended reader) and purpose for writing.

(A) Write biographical or autobiographical narratives or short stories that:

(i) identifies a real person, living or not, who has had a special influence on other people.

(ii) provides a sequence of factual events and communicate the significance of the events to the person.

(iii) isolates specific scenes and incidents in time and places significant to defining the persons' influence.

(iv) uses anecdotes or describe with specific details the sight, sounds, and smells of a scene and the specific actions, movements, gestures, and feelings of the person; use interior monologue (what characters say silently to self) to show the person's qualities and beliefs.

(v) presents action segments to accommodate changes in time and mood. Example: Write an autobiographical account of a time when an important decision had to be made. Write a humorous story for elementary children and give the story a local setting.

(B) Write expository compositions, including analytical essays and research reports that:

(i) includes evidence in support of a thesis (position on the topic) including information on all relevant perspectives.

(ii) communicates information and ideas from primary and secondary sources accurately and coherently.

(iii) shows distinctions between the relative value and significance of specific date, facts, and ideas.

(iv) includes a variety of reference sources, including word, pictorial, audio, and internet sources, to locate information in support of topic.

(v) includes visual aids by using technology to organize and record information on charts, data tables, maps, and graphs.

(vi) identifies and addresses reader's potential misunderstanding, biases, and expectations.

(vii) uses technical terms and notations accurately. Example: Write a research report about inventions that were first mentioned in science fiction novels or movies and later became a scientific reality.

(C) Write persuasive compositions that:

(i) organize ideas and appeal in a sustained and effective fashion with the strongest emotional first and the least powerful one last.

(ii) use specific rhetorical (communication) devices to support assertions, such as appealing to logic through reasoning; appealing to emotion or ethical beliefs; or relating to a personal anecdote, case study, or analogy.

(iii) clarify and defend positions with precise and relevant evidence, including facts, expert opinions, quotations, expressions of commonly accepted beliefs, and logical reasoning.

(iv) address reader's concerns, counterclaims, biases, and expectations. Example: Write a letter to the principal or the president of the school board to persuade that person to support your views on some educational policy that has been adopted by the local district, such as a dress code, a change to or from block scheduling, or a decision about grade requirements to participate in extracurricular activities.

(D) Write documents related to career development, including simple business letters and job applications that:

(i) present information purposefully and in brief to meet the need of the intended audience.

(ii) follow a conventional business letter or memorandum format. Example: Write a letter requesting an informational interview with a person in a career area that interests you. Complete a job application form for a part-time job and attach a memorandum outlining the particular skill you have that fit the needs of the position.

(E) Write reflective papers that may address one of the following purposes:

(i) express the individual's insight into conditions or situations.

(ii) compare a scene from a work of fiction with a lesson learned from experience.

(iii) complete a self-evaluation on a class performance. Example: Write a reflective paper that discusses reasons for selections used in a portfolio of works that demonstrate appropriate skills in different subjects.

(F) Use appropriate essay test-taking and time-writing strategies that:

(i) address and analyze the question (prompt).

(ii) use organizational methods required by the prompt.

(G) Write responses to literature that:

(i) demonstrate a comprehensive grasp of the significant ideas of literary works.

(ii) support important ideas and viewpoints through accurate and detailed reference to the text or to other works.

(iii) demonstrate awareness of author's style and an appreciation of the effects created.

(iv) identify and assess the impact of ambiguities, nuances, and complexities within the text. Example: Write a description of a character in a novel from the viewpoint of another character. Write a comparison of different characters in the book, explaining how they are alike and different and how each serves to move the plot of the novel forward.

(H) Write for different purposes and to a specific audience or person, adjusting tone and style as necessary to make writing interesting. Example: Write stories and reports showing a variety of word choices, or review a favorite book or film.

(I) Write friendly letters and business letters, and continue to produce other writing forms introduced in earlier grades.

(J) Write documented papers incorporating the techniques of Modern Language Association (MLA) or similar parenthetical styles.

(3) **Standard - grammar/usage and mechanics.** The student will demonstrate appropriate practices in writing by applying grammatical knowledge to the revising and editing stages of writing.

(A) **Standard English usage.** Demonstrate correct use of Standard English in speaking and writing.

(i) Distinguish commonly confused words (e.g., there, their, they're; two, too, to; accept, except; affect, effect).

(ii) Use correct verb forms and tenses.

(iii) Use correct subject-verb agreement.

(iv) Use active and passive voice.

(v) Correct pronoun/antecedent agreement and clear pronoun reference.

(vi) Use correct forms of comparative and superlative adjectives.

(B) **Mechanics and spelling.** Demonstrate appropriate language mechanics in writing.

(i) Demonstrate correct use of capitals.

(ii) Use correct formation of plurals.

(iii) Demonstrate correct use of punctuation and recognize its effect on sentence structure.

(iv) Distinguish correct spelling of commonly misspelled words and homonyms.

(C) **Sentence structure.** Demonstrate appropriate sentence structure in writing.

(i) Use parallel structure.

(ii) Correct dangling and misplaced modifiers.

(iii) Correct run-on sentences.

(iv) Correct fragments.

(c) **Oral language/listening and speaking.** The student will demonstrate thinking skills in listening and speaking. Formulate thoughtful judgment about oral communication. Deliver focused and coherent presentations that convey clear

and distinct perspectives and solid reasoning. Deliver polished formal and extemporaneous presentations that combine the traditional speech strategies of narration, exposition, persuasion, and description. Use gestures, tone, and vocabulary appropriate to the audience and purpose. Use the same Standard English conventions for oral speech that are used in writing.

(1) **Standard - listening.** The student will listen for information and for pleasure.

(A) Focus attention on the speaker's message.

(B) Use knowledge of language and develop vocabulary to accurately interpret the speaker's message.

(C) Listen and respond appropriately to presentations and performances of peers or published works such as original essays or narratives, interpretations of poetry, and individual or group performances.

(D) Monitor speaker's message and clarity and understanding to formulate and provide effective verbal and nonverbal feedback.

(E) Use feedback to evaluate own effectiveness and set goals for future presentations.

(2) **Standard - speaking.** The student will express ideas and opinions in group or individual situations.

(A) Use formal, informal, standard, and technical language effectively to meet the needs of purpose, audience, occasion, and task.

(B) Prepare, organize, and present a variety of informative messages effectively.

(C) Analyze purpose, audience, and occasion to choose effective verbal and nonverbal strategies such as pitch and tone of voice, posture, and eye contact.

(d) **Visual literacy.** The student will interpret, evaluate, and compose visual messages.

(1) **Standard - interpret meaning.** The student will interpret and evaluate the various ways visual image-makers including graphic artists, illustrators, and news photographers represent meaning.

(A) Document the use of stereotypes and biases in visual media (e.g., distorted representations of society; imagery and stereotyping in advertising; elements of stereotypes such as physical characteristics, manner of speech, beliefs and attitudes).

(B) Indicate how symbols, images, sound, and other conventions are used in visual media (e.g., time lapse in films; set elements that identify a particular time period or culture).

(2) **Standard - evaluate media.** The student will evaluate visual and electronic media, such as film, as they compare with print messages.

(A) Selects people with special interests and expectations who are the target audience for particular messages or products in visual media.

(B) Define and design language and content that reflect the target audience for particular messages and products (e.g., in advertising and sales techniques aimed specifically towards teenagers; in products aimed toward different classes, races, ages, genders; in the appeal of popular television shows and films for particular audience).

(3) **Standard - compose visual messages.** The student will create a visual message that effectively communicates an idea.

(A) Create media products to include a billboard, cereal box, short editorials, and a three minute documentary or print ad to engage specific audiences.

(B) Create, present, test, and revise a project and analyze a response, using data-gathering techniques such as questionnaires, group discussions, and feedback forms.

210:15-3-21. Language arts for grade 10

(a) **Reading/literature.** The student will apply a wide range of strategies to comprehend, interpret, evaluate, appreciate, and respond to a wide variety of texts.

(1) **Standard - vocabulary.** The student will expand vocabulary through word study, literature, and class discussion. Apply a knowledge of word origins (words from other languages, history, or literature) to determine the meaning of new words encountered in reading and use of those words accurately.

(A) Apply a knowledge of Greek (e.g., tele/phone. micro/phone), Latin (e.g., flex/ible), and Anglo-Saxon (e.g., un/friend/ly) roots, prefixes, and suffixes to determine word meanings.

(B) Research word origins as an aid to understanding meaning, derivations, and spelling as well as influences on the English language.

(C) Use reference material such as glossary, dictionary, thesaurus, and available technology to determine precise meaning and usage.

(D) Discriminate between connotative and denotative meanings and interpret the connotative power of words.

(E) Use word meanings within the appropriate context and verify those meanings by definition, restatement, example, and anology.

(2) **Standard - comprehension.** The student will interact with the words and concepts on the page to understand what the writer has said. Read and understand grade-level-appropriate material. Analyze the organization patterns and evaluate authors' argument and position. At Grade 10, in addition to regular classroom reading, read a wide variety of classic and contemporary literature, poetry, magazines, newspapers, reference materials, and online information.

(A) **Literal understanding.**

(i) Identify the structures and format of various informational documents and explain how authors use the features to achieve their purpose.

(ii) Understand specific devices an author uses to accomplish purpose (persuasive techniques, style, literary forms or genre, portrayal of themes, language).

(iii) Use a range of automatic monitoring and self-correcting methods (e.g., rereading, slowing down, subvocalizing, consulting resources, questioning).

(iv) Recognize signal/transitional words and phrases and their contributions to the meaning of the text (e.g., however, in spite of, for example, consequently).

(B) **Inferences and interpretation.**

(i) Use elements of the text to defend responses and interpretations.

(ii) Draw inferences such as conclusions, generalizations, and predictions, and support them with text evidence and personal experience.

(iii) Investigatte influences on a reader's response to a text (e.g., personal experience and values; perspective shapes by age, gender, class, nationality).

(C) **Summary and generalization.**

(i) Determine the main idea, locate and interpret minor subtly stated details in complex passages.

(ii) Use text features and elements to support inferences and generalizations about information.

(iii) Summarize and paraphrase complex, implicit hierarchic structures in informational texts, including relationships among concepts and details in those structures.

(D) **Analysis and evaluation.**

(i) Discriminate between fact and opinion and fiction and nonfiction.

(ii) Evaluate deceptive, and/or faulty arguments in persuasive texts.

(iii) Analyze the structure and format of informational and literary documents and explain how authors use the features to achieve their purposes.

(iv) Analyze techniques (e.g., language, organization, tone, context) used to convey opinions or impressions (e.g., sarcasm, criticism, praise, affection).

(3) **Standard - literature.** The student will read, construct meaning, and respond to a wide variety of literary forms. Read and respond to grade-level-appropriate historically or culturally significant works of ~~literature that enhance a study of history and social science.~~British, American, and world literature. Conduct in-depth analysis of ~~the themes of these works.~~themes, styles, and trends of these works across historical periods.

(A) **Literary genres.** Demonstrate a knowledge of and an appreciation for various forms of literature.

(i) Analyze the characteristics of genres including short story, novel, drama, narrative and lyric poetry, and essay.

(ii) Analyze the characteristics of subgenres such as satire, parody, allegory, and pastorals.

(B) **Literary elements.** Demonstrate knowledge of literary elements and techniques and show how they affect the development of a literary work.

(i) Describe and analyze elements of fiction including plot, conflict, character, setting, theme, mood, point of view and how they are addressed and resolved.

(ii) Explain how author's voice, point of view, or choice of a narrator affect the characterization and the tone, plot, mood and credibility of a text.

(iii) Analyze characters' traits by what the characters say about themselves in narration, dialogue, and soliloquy (when they speak out loud to themselves).

(iv) Evaluate the significance of various literary devices and techniques, including imagery, irony, tone, allegory (the use of fictional figures and actions to express truths about human experiences), and symbolism (the use of symbols to represent an idea or theme), and explain their appeal.

(v) Evaluate the author's purpose and the development of time and sequence, including the use of complex literary devices, such as foreshadowing (providing clues to future events) or flashbacks (interrupting the sequence of events to include information about an event that happened in the past).

(C) **Figurative language and sound devices.** Identify and use figurative language and sound devices in writing and recognize how they affect the development of a literary work.

(i) Identify and use figurative language such as analogy, hyperbole, metaphor, personification, and simile.

(ii) Identify and use sound devices such as rhyme, alliteration, and onomatopoeia.

(iii) Analyze the melodies of literary language, including its use of evocative words, rhythms and rhymes.

(D) **Literary works.** The student will read and respond to historically and culturally significant works of literature.

(i) Analyze and evaluate works of literature and the historical context in which they were written.

(ii) Analyze and evaluate literature from various cultures to broaden cultural awareness.

(iii) Compare works that express the recurrence of archetypal (universal modes or patterns) characters, settings, and themes in literature and provide evidence to support the ideas expressed in each work.

(4) **Standard - research and information.** The student will conduct research and organize information.

(A) **Accessing information.** Select the best source for a given purpose.

(i) Access information from a variety of primary and secondary sources.

(ii) Skim text for an overall impression and scan text for particular information.

(iii) Use organizational strategies as an aid to comprehend increasingly difficult content material (e.g., compare/contrast, cause/effect, problem/solution, sequential order).

(B) **Interpreting information.** Analyze and evaluate information from a variety of sources.

(i) Summarize, paraphrase, and/or quote relevant information.

(ii) Determine the author's viewpoint to evaluate source credibility and reliability.

(iii) Synthesize information from multiple sources to draw conclusions that go beyond those found in any of the individual studies.

(iv) Identify complexities and inconsistencies in the information and the different perspectives found in each medium, including almanacs, microfiche, news sources, in-depth field studies, speeches, journals, technical documents, or internet sources.

(b) **Writing/grammar/usage and mechanics.** Discuss ideas for writing with other writers. Write coherent and focused essays that show a well defined point of view and tightly reasoned argument. Use the stages of the writing process (prewriting, writing, editing, and revising).

(1) **Standard - writing process.** The student will use the writing process to write coherently.

(A) Use a writing process to develop and refine composition skills. Students are expected to:

(i) use prewriting strategies to generate ideas such as brainstorming, using graphic organizers and keeping notes and logs.

(ii) develop multiple drafts both alone and collaboratively to categorize ideas organizing them into paragraphs, and blending paragraphs into larger text.

(iii) organize and reorganize drafts and refine style to suit occasion, audience, and purpose.

(iv) proofread writing for appropriateness of organization, content and style.

(v) edit for specific purposes such as to insure standard usage, varied sentence structure, appropriate word choice, mechanics and spelling.

(vi) refine selected pieces frequently to publish for general and specific audiences.

(B) Use extension and elaboration to develop an idea.

(C) Demonstrate organization, unity, and coherence by using transitions and sequencing.

(D) Use precise word choices, including figurative language, that convey specific meaning.

(E) Use a variety of sentence structures, types, and lengths to contribute to fluency and interest.

(F) Evaluate own writing and others' writing (e.g., determine the best features of a piece of writing, determine how own writing achieves its purpose, ask for feedback, respond to classmates' writing).

(2) **Standard - modes and forms of writing.** The student will write for a variety of purposes and audiences using narrative, descriptive, expository, persuasive, and reflective modes. At Grade 10, combine the rhetorical strategies of narration, exposition, persuasion, reflection, and description to produce text of at least 750 to 1,000 words. Compose business letters. Demonstrate a command of Standard English and the research, organization, and drafting strategies outlined in the writing process. Writing demonstrates an awareness of the audience (intended reader) and purpose for writing.

(A) Write biographical or autobiographical narratives or short stories that:

(i) identifies a real person, living or not, who has had a special influence on other people.

(ii) provides a sequence of factual events and communicate the significance of the events to the person.

(iii) isolates specific scenes and incidents in times and places significant to defining the person's influence.

(iv) use anecdotes or describe with specific details the sight, sounds, and smells of a scene and the specific actions, movements, gestures, and feelings of the person; use interior monologue (what person says silently to self) to show the persons qualities and beliefs.

(v) presents action segments to accommodate changes in time and mood. Example: After reading an example of an autobiography, use the structure to compose an autobiography of your own.

(B) Write expository compositions, including analytical essays and research reports that:

(i) include evidence in support of a thesis (position on the topic) including information on all relevant perspectives.

(ii) communicate information and ideas from primary and secondary sources accurately and coherently.

(iii) show distinctions between the relative value and significance of specific date, facts, and ideas.

(iv) include a variety of reference sources, such as word, pictorial, audio, and internet sources.

(v) include visual aids by using technology to organize and record information on charts, data tables, maps, and graphs.

(vi) identify and address reader's potential misunderstanding, biases, and expectations.

(vii) use technical terms and notations accurately. Example: Write a report on the Globe Theatre, gathering information from books, such as Shakespeare's Theatre by Jacqueline Morley, videos such as "Shakespeare's Globe Theatre Restored," and Web sites by using a key word search for "Shakespeare" and "Globe Theatre." Explain why the theatre was significant in the development of Shakespeare's works.

(C) Write persuasive compositions that:

(i) presents ideas and appeals in a sustained and effective fashion with the strongest emotional first and the least powerful one last.

(ii) use specific rhetorical (communication) devices to support assertions, such as appealing to logic through reasoning; appealing to emotion or ethical beliefs; or relating to a personal anecdote, case study, or analogy.

(iii) clarify and defend positions with precise and relevant evidence, including facts. expert opinions, quotations, expressions of commonly accepted beliefs, and logical reasoning.

(iv) address reader's concerns, counterclaims, biases, and expectations. Example: Write a letter to a television network to persuade the network to keep a program on the air despite low ratings.

(D) Write business letters that:

(i) provide clear and purposeful information and address the intended audience appropriately.

(ii) use appropriate vocabulary, tone, and style to take into account the nature of the relationship with, and the knowledge and interests of, the intended audience.

(iii) emphasize main ideas or images

(iv) follow conventional style with page formats, fonts (typeface), and spacing that contribute to the document's readability and impact. Example: Write a letter of support or complaint in response to service that you received at a store or restaurant. Address the letter to the manager include a clear account of the incident and requesting that he or she take appropriate action in response.

(E) Write reflective papers that may address one of the following purposes:

(i) express the individual's insight into conditions or situations.

(ii) compare a scene from a work of fiction with a lesson learned from experience.

(iii) complete a self-evaluation on a class performance. Example: Write a reflective paper that gives reasons for selections used in a portfolio of works that demonstrate appropriate skills in different subjects.

(F) Use appropriate essay test-taking and time-writing strategies that:

(i) address and analyze the question (prompt).

(ii) use organizational methods required by the prompt.

(G) Write responses to literature that:

(i) demonstrate a comprehensive grasp of the significant ideas of literary works.

(ii) support important ideas and viewpoints through accurate and detailed reference to the text or other works.

(iii) demonstrate awareness of author's style and an appreciation of the effects created.

(iv) identify and assess the impact of ambiguities, nuances, and complexities within the text.

(v) extend writing by changing mood, plot, characterization, or voice. Example: After reading a short story, such as "The No-Guitar Blues" by Gary Soto or "The Lottery" by Shirley Jackson, write a different ending to the story.

(H) Write for different purposes and audiences, adjusting tone, sytle, and voice as appropriate and continue to produce other writing forms introduced in earlier grades. Example: Write stories, reports and letter showing a variety of word choices, or review a favorite book or film.

(I) Write documented papers incorporating the techniques of Modern Language Association (MLA) or similar parenthetical styles.

(J) Write documented papers incorporating the techniques of Modern Language Association (MLA) or similar parenthetical styles.

(3) **Standard - grammar/usage and mechanics.** The student will demonstrate appropriate practices in writing by applying Standard English conventions of the revising and editing stages of writing.

(A) **Standard English usage.** The student will demonstrate correct use of Standard English in speaking and writing.

(i) Distinguish commonly confused words (e.g., there, their, they're; two, too, to; accept, except; affect, effect).

(ii) Use correct verb forms and tenses.

(iii) Use correct subject-verb agreement.

(iv) Distinguish active and passive voice.

(v) Use correct pronoun/antecedent agreement and clear pronoun reference.

(vi) Use correct forms of comparative and superlative adjectives.

(B) **Mechanics and spelling.** The student will demonstrate appropriate language mechanics in writing.

(i) Demonstrate correct use of capitals.

(ii) Use correct formation of plurals.

(iii) Demonstrate correct use of punctuation and recognize its effect on sentence structure.

(iv) Distinguish correct spelling of commonly misspelled words and homonyms.

(C) **Sentence structure.** The student will demonstrate appropriate sentence structure in writing.

(i) Use parallel structure.

(ii) Correct dangling and misplaced modifiers.

(iii) Correct run-on sentences.

(iv) Correct fragments.

(c) **Oral language/listening and speaking.** The student will demonstrate thinking skills in listening and speaking. Formulate thoughtful judgments about oral communication. Deliver focused and coherent presentations that convey clear and distinct perspectives and solid reasoning. Deliver polished formal and extemporaneous presentations that combine the traditional speech strategies of narration, exposition, persuasion, and description. Use gestures, tone, and vocabulary appropriate to the audience and purpose. Use the same Standard English conventions for oral speech that are used in writing.

(1) **Standard - listening.** The student will listen for information and for pleasure.

(A) Engage in critical, empathetic, appreciative, and reflective listening to interpret, respond and evaluate speaker's messages.

(B) Listen and respond appropriately to presentations and performances of peers or published works such as original essays or narratives, interpretations of poetry, and individual or group performances.

(C) Evaluate informative and persuasive presentations of peers, public figures, and media presentations.

(D) Use feedback to evaluate own effectiveness and set goals for future presentations.

(2) **Standard - speaking.** The student will express ideas and opinions in group or individual situations.

(A) Use formal, informal, standard, and technical language effectively to meet the needs of purpose, audience, occasion, and task.

(B) Prepare, organize, and present a variety of informative and persuasive messages effectively.

(C) Use a variety of verbal and nonverbal techniques in presenting oral messages and demonstrate poise and control while presenting.

(d) **Visual literacy.** The student will interpret, evaluate, and compose visual messages.

(1) **Standard - interpret meaning.** The student will interpret and evaluate the various ways visual image-makers such as graphic artists, illustrators, and news photographers represent meaning.

(A) Identifies the use of stereotypes and biases in visual media (e.g., distorted representations of society; imagery and stereotyping in advertising; elements of stereotypes such as physical characteristics, manner of speech, beliefs, attitudes).

(B) Investigates how symbols, images, sound, and other conventions are used in visual media (e.g., time lapse in films; set elements that identify a particular time period or culture).

(2) **Standard - evaluate media.** The student will evaluate visual and electronic media, such as film, as they compare with print messages.

(A) Recall that people with special interests and expectations are the target audience for particular messages or products in visual media.

(B) Select and design language and content that reflect this appeal (e.g., in advertising and sales techniques aimed specifically towards teenagers; in products aimed toward different classes, races, ages, genders; in the appeal of popular television shows and films for particular audience).

(3) **Standard - compose visual messages.** The student will create a visual message that effectively communicates an idea.

(A) Investigate and present the sources of a media presentation or production such as who made it and why it was made.

(B) Analyze a media presentation to get the main idea of the message's content and compose one using a similar format.

215:15-3-22. Language arts for grade 11

(a) **Reading/literature.** The student will apply a wide range of strategies to comprehend, interpret, evaluate, appreciate, and respond to a wide variety of texts.

(1) **Standard - vocabulary.** The student will expand vocabulary through word study, literature, and class discussion. Apply a knowledge of word origins (words from other languages, history, or literature) to determine the meaning of new words encountered in reading and use of those words accurately.

(A) Apply knowledge of Greek, Latin, and Anglo-Saxon roots and word parts to draw inferences about the meaning of scientific and mathematical terminology.

(B) Use reference material such as glossary, dictionary, thesaurus, and available technology to determine precise meaning and usage.

(C) Analyze the meaning of analogies encountered, analyzing specific comparisons as well as relationships and inferences.

(D) Rely on context to determine meanings of words and phrases such as figurative language, connotations and denotations of words, analogies, idioms, and technical vocabulary.

(E) Use word meanings within the appropriate context and verify those meanings by definition, restatement, example, and anology.

(2) **Standard - comprehension.** The student will interact with the words and concepts on the page to understand what the writer has said. Read and understand grade-level-appropriate material. Analyze the organization patterns and evaluate authors' argument and positions. At Grade 11, in addition to regular classroom reading, read a wide variety of classic and contemporary literature, poetry, magazines, newspapers, reference materials, and online information.

(A) **Literal understanding.**

(i) Identify the structures and format of various informational documents and explain how authors use the features to achieve their purpose.

(ii) Select and explain specific devices an author uses to accomplish purpose (persuasive techniques, style, literary forms or genre, portrayal of themes, language).

(iii) Use study strategies such as note taking, outlining, and using study-guide questions to better understand texts.

(iv) Constructs images such as graphic organizers based on text descriptions and text structures.

(B) **Inferences and interpretation.**

(i) Interpret the possible inferences of the historical context on literary works.

(ii) Describe the development of plot and identify conflict and how they are addressed and resolved.

(iii) Investigate influences on a reader's response to a text (e.g., personal experience and

values; perspective shapes by age, gender, class, or nationality).

(iv) Make reasonable assertions about author's arguments by using elements of the text to defend and clarify interpretations.

(C) **Summary and generalization.**

(i) Determine the main idea and supporting details by producing summaries of text.

(ii) Use text features and elements to support inferences and generalizations about information.

(iii) Summarize and paraphrase complex, implicit hierarchic structures in informational texts, including relationships among concepts and details in those structures.

(D) **Analysis and evaluation.**

(i) Compare and contrast aspects of texts such as themes, conflicts, and allusions both within and across texts.

(ii) Analyze the structure and format of informational and literary documents and explain how authors use the features to achieve their purposes.

(iii) Examine the way in which clarity of meaning is affected by the patterns of organization, repetition of the main ideas, organization of language, and word choice in the text.

(iv) Analyze the way in which authors have used archetypes (universal modes or patterns) drawn from myth and tradition in literature, film, political speeches, and religious writings.

(3) **Standard - literature.** The student will read, construct meaning, and respond to a wide variety of literary forms. Read and respond to grade-level-appropriate historically or culturally significant works of ~~literature that enhance a study of history and social science.~~British, American, and world literature. Conduct in-depth analysis of ~~the themes of these works.~~themes, styles, and trends of these works across historical periods.

(A) **Literary genres.** Demonstrate a knowledge of and an appreciation for various forms of literature.

(i) Analyze the characteristics of genres including short story, novel, drama, poetry, and essay.

(ii) Analyze the characteristics of subgenres including allegory and ballad.

(B) **Literary elements.** Demonstrate knowledge of literary elements and techniques and show how they affect the development of a literary work.

(i) Analyze the way in which the theme or meaning of a selection represents a view or comment on life, using textual evidence to support the claim.

(ii) Analyze the way in which irony, tone, mood, the author's style, and the "sound" of language achieve specific rhetorical (communication) or aesthetic (artistic) purposes or both.

(iii) Analyze characters' traits by what the characters say about themselves in narration, dialogue, and soliloquy (when they speak out loud to themselves).

(iv) Evaluate the significance of various literary devices and techniques, including imagery, irony, tone, allegory (the use of fictional figures and actions to express truths about human experiences), and symbolism (the use of symbols to represent an idea or theme), and explain their appeal.

(v) Evaluate the author's purpose and the development of time and sequence, including the use of complex literary devices, such as foreshadowing (providing clues to future events) or flashbacks (interrupting the sequence of events to include information about an event that happened in the past).

(C) **Figurative language and sound devices.** Identify figurative language and sound devices and analyze how they affect the development of a literary work.

(i) Identify and explain figurative language including analogy, hyperbole, metaphor, personification, and simile.

(ii) Identify and explain sound devices including alliteration and rhyme.

(iii) Analyze the melodies of literary language, including its use of evocative words, rhythms and rhymes.

(D) **Literary works.** Read and respond to historically and culturally significant works of literature.

(i) Analyze and evaluate works of literature and the historical context in which they were written.

(ii) Analyze and evaluate literature from various cultures to broaden cultural awareness.

(iii) Compare works that express the recurrence of archetypal (universal) characters, settings, and themes in literature and provide evidence to support the ideas expressed in each work.

(iv) Analyze the clarity and consistency of political assumptions in a selection of literary works or essays on a topic.

(4) **Standard - research and information.** The student will conduct research and organize information.

(A) **Accessing information.** Select the best source for a given purpose.

(i) Access information from a variety of primary and secondary sources.

(ii) Skim text for an overall impression and scan text for particular information.

(iii) Use organizational strategies as an aid to comprehend increasingly difficult content material (e.g., compare/contrast, cause/effect, problem/solution, sequential order).

(B) **Interpreting information.** Analyze and evaluate information from a variety of sources.

(i) Summarize, paraphrase, and/or quote relevant information.

(ii) Determine the author's viewpoint to evaluate source credibility and reliability.

(iii) Synthesize information from multiple sources to draw conclusions that go beyond those found in any of the individual studies.

(iv) Identify complexities and inconsistencies in the information and the different perspectives found in each medium, including almanacs, microfiche, news sources, in-depth field studies, speeches, journals, technical documents, or internet sources.

(v) Develop presentations by using clear research questions and creative and critical research strategies, such as field studies, oral histories, interviews, experiments, and Internet sources.

(b) **Writing/grammar/mechanics and usage.** The student will express ideas effectively in written modes for a variety of purposes and audiences. Write coherent and focused texts that show a well defined point of view and tightly reasoned argument. The writing demonstrates progression through the stages of the writing process (prewriting, writing, editing, and revising).

(1) **Standard - writing process.** The student will use the writing process to write coherently.

(A) Use a writing process to develop and refine composition skills. Students are expected to:

(i) use prewriting strategies to generate ideas such as brainstorming, using graphic organizers, keeping notes and logs, to develop voice and plan

(ii) develop multiple drafts both alone and collaboratively to categorize ideas, organizing them into paragraphs, and blending paragraphs into larger text.

(iii) organize and reorganize drafts and refine style to suit occasion, audience, and purpose.

(iv) proofread writing for appropriateness of organization, content and style.

(v) edit for specific purposes such as to insure standard usage, varied sentence structure, appropriate word choice, mechanics and spelling.

(vi) refine selected pieces frequently to publish for general and specific audiences.

(B) Demonstrate an understanding of the elements of discourse, such as purpose, speaker, audience, and form when completing narrative expository, persuasive, or descriptive writing assignments.

(C) Use language in creative and vivid ways to establish a specific tone.

(D) Use point of view, characterization, style, and related elements for specific rhetorical (communication) and aesthetic (artistic) purposes.

(E) Structure ideas and arguments in a sustained and persuasive way and support them with precise and relevent examples.

(F) Evaluate own writing and others' writing to highlight the individual voice, improve sentence variety and style, and enhance subtlety of meaning and tone in ways that are consistent with the purpose, audience, and form of writing.

(2) **Standard - modes and forms of writing.** The student will write for a variety of purposes and audiences using narrative, descriptive, expository, persuasive, and reflective modes. At Grade 11, continue to combine the rhetorical strategies of narration, exposition, persuasion, reflection, and description to produce text of at least 1,500 words. Refine reflective compositions and historical investigation reports and become familiar with forms of job applications and resumes. Deliver multimedia presentations on varied topics. Demonstrate a command of Standard English and the research, organization, and drafting strategies outlined in the writing process. (Writing demonstrates an awareness of the audience [intended reader] and purpose for writing.)

(A) Write fictional, biographical or autobiographical narratives that:

(i) narrate a sequence or events and communicate their significance to the audience.

(ii) identify scenes and incidents in specific places.

(iii) describe with specific details the sight, sounds, and smells of a scene and the specific actions, movements, gestures, and feelings of the character; use interior monologue (what character says silently to self) to show the character's feelings.

(iv) present action segments to accommodate changes in time and mood. Example: Read several short essays by writers on the practice of writing such as an excerpt from Anne Lamott's *Bird by Bird* or essays by Wallace Stegner or other authors on writing. Write an essay on how reading and/or writing have been significant in your life.

(B) Job applications and resumes that:

(i) provide clear and purposeful information and address the intended audience appropriately.

(ii) indicate varied levels, patterns, and types of language to achieve intended effects and aid comprehension.

(iii) modify the tone to fit the purpose and audience.

(iv) follow the conventional style for that type of document (resume, cover letter of application) and use page format, fonts (typeface), and spacing that contribute to the readability and impact of the document. Example: Write a resume outlining job experience, extra curricular activities and other skills. Format the document so that the information is clearly represented for the intended audience.

(C) Write historical investigations that:

(i) use expository, narration, description, argumentation, or some combination of rhetorical strategies to support the main argument.

(ii) analyze several historical records of a single event, examining critical relationships between elements of the topic.

(iii) explain the perceived reason or reasons for the similarities and differences in historical records with information derived from primary and secondary sources to support or enhance the presentation.

(iv) include information from all relevant perspectives and take into consideration the validity and reliability of sources.

(v) include a formal bibliography. Example: Compose an essay on Alexis de Tocqueville's 1830's observations on American political and social life. Examine other historical documents to determine how accurate and perspective de Tocqueville's analysis was, and how his views of society reflect the United States today.

(D) Write reflective compositions that may address one of the following purposes:

(i) explore the significance of personal experiences, events, conditions, or concerns by using rhetorical strategies, including narration, description, exposition, and persuasion.

(ii) draw comparisons between specific incidents and broader themes that illustrate the writer's important beliefs or generalizations about life.

(iii) maintain a balance in describing individual incidents and relate those incidents to more general and abstract ideas. Example: Select a quotation that is particularly meaningful. Explain the significance of the quotation.

(E) Write responses to literature that:

(i) demonstrate a comprehensive understanding of the significant ideas in works or passages.

(ii) analyze the use of imagery language, universal themes, and unique aspects of the text.

(iii) support important ideas and viewpoints through accurate and detailed reference to the text or to other works.

(iv) demonstrate an understanding of author's style and an appreciation of the effects created.

(v) identify and assess the impact of ambiguities, nuances, and complexities within the text. Example: After reading. "*The Fall of the House of Ushers*" by Edgar Allan Poe (an example of observer narration), *"The Prison*" by Bernard Malamud (an example of single character point of view), and *"The Boarding House*" by James Joyce (an example of the multiple character point of view), analyze in an essay how the authors' choices of literary narrator made a difference in the response of the reader. Reference examples from throughout the works in support of a position.

(F) Write for different purposes and to a specific audience or person, adjusting tone and style as necessary to make writing interesting. Continue to produce other writing forms introduced in earlier grades. Example: Write stories, reports, and letters showing a variety of word choices, or review a favorite book or film.

(G) Write documented papers incorporating the techniques of Modern Language Association (MLA) or similar parenthetical styles.

(3) **Standard - grammar/usage and mechanics.** The student will demonstrate appropriate practices in writing by applying Standard English conventions to the revising and editing stages of writing.

(A) **Standard English usage.** Demonstrate correct use of Standard English in speaking and writing.

(i) Distinguish commonly confused words (e.g., there, their, they're; two, too, to; accept, except; affect, effect).

(ii) Use correct verb forms and tenses.

(iii) Use correct subject-verb agreement.

(iv) Use active and passive voice.

(v) Use correct pronoun/antecedent agreement and clear pronoun reference.

(vi) Use correct forms of comparative and superlative adjectives.

(B) **Mechanics and spelling.** Demonstrate appropriate language mechanics in writing.

(i) Demonstrate correct use of capitals.

(ii) Use correct formation of plurals.

(iii) Demonstrate correct use of punctuation and recognize its effect on sentence structure.

(iv) Use correct spelling of commonly misspelled words and homonyms.

(C) **Sentence structure.** Demonstrate appropriate sentence structure in writing.

(i) Use parallel structure.

(ii) Correct dangling and misplaced modifiers.

(iii) Correct run-on sentences.

(iv) Correct fragments.

(D) Apply appropriate manuscript conventions in writing including title page presentation, pagination, spacing and margins, and integration of sources and support material, by citing sources within the text, using direct quotations, and paraphrasing.

(c) **Oral language/listening and speaking.** The student will demonstrate thinking skills in listening and speaking. Formulate thoughtful judgments about oral communication. Deliver focused and coherent presentations that convey clear and distinct perspectives and solid reasoning. Deliver polished formal and extemporaneous presentations that combine the traditional speech strategies of narration, exposition, persuasion, and description. Use gestures, tone, and vocabulary appropriate to the audience and purpose. Use the same Standard English conventions for oral speech that are used in writing.

(1) **Standard - listening.** The student will listen for information and for pleasure.

(A) Demonstrate proficiency in critical empathetic, appreciative, and reflective listening to interpret, respond and evaluate speaker's messages.

(B) Use effective strategies for listening such as prepares for listening, identifies the types of listening, and adopts appropriate strategies.

(C) Listen and respond appropriately to presentations and performances of peers or published works such as original essays or narratives, interpretations of poetry, and individual or group performances.

(D) Use effective strategies to evaluate own listening such as asking questions for clarification, comparing and contrasting interpretations with others, and researching points of interest or contention.

(E) Use effective listening to provide appropriate feedback in a variety of situations such as conversations and discussions and informative, persuasive, or artistic presentations.

(2) **Standard speaking.** The student will express ideas and opinions in group or individual situations.

(A) Use a variety of verbal and nonverbal techniques in presenting oral messages such as pitch and tone of voice, posture, and eye contact, and demonstrate poise and control while presenting.

(B) Use logical, ethical, and emotional appeals that enhance a specific tone and purpose.

(C) Evaluate when to use different kinds of effects (including visuals, music, sound, and graphics) to create effective presentations.

(D) Ask clear questions for a variety of purposes and respond appropriately to the questions of others.

(d) **Visual literacy.** The student will interpret, evaluate, and compose visual messages.

(1) **Standard - interpret meaning.** The student will interpret and evaluate the various ways visual image-makers including graphic artists, illustrators, and news photographers represent meaning.

(A) Use a range of strategies to interpret visual media (e.g., draw conclusions, make generalizations, synthesizes material viewed, refer to images or information in visual media to support point of view).

(B) Describes how editing shapes meaning in visual media (e.g., omission of alternative perspectives; filtered or implied viewpoints; emphasis of specific ideas, images, or information in order to serve particular interests).

(2) **Standard - evaluate media.** The student will evaluate visual and electronic media, such as film, as they compare with print messages.

(A) Uses a variety of criteria (e.g., clarity, accuracy, effectiveness, bias, relevance of facts) to evaluate informational media (e.g., Web sites, documentaries, news programs.

(B) Identifies the rules and expectations about genre that can be manipulated for particular effects or purposes (e.g., combining or altering conventions of different genres, such as presenting news as entertainment; blurring of genres, such as drama-documentaries).

(3) **Standard - compose visual messages.** The student will create a visual message that effectively communicates an idea.

(A) Design and develop genres such as nightly news, news magazines, and documentaries and identify the unique properties of each.

(B) Compare, contrast, and critique various media coverage of the same events such as in newspapers, television, and on the Internet and compose a study of the results.

210:15-3-23. Language arts for grade 12

(a) **Reading/literature.** The student will apply a wide range of strategies to comprehend, interpret, evaluate, appreciate, and respond to a wide variety of texts.

(1) **Standard - vocabulary.** The student will expand vocabulary through word study, literature, and class discussion. Apply a knowledge of word origins (words from other languages, history, or literature) to determine the meaning of new words encountered in reading and use those words accurately.

(A) Apply knowledge of Greek, Latin, and Anglo-Saxon roots and word parts to draw inferences about new words that have been created in the fields of science and mathematics (gene splicing, genetic engineering).

(B) Research unfamiliar words based on characters or themes or historical events.

(C) Analyze the meaning of analogies encountered, analysing specific comparisons as well as relationships and inferences.

(D) Rely on context to determine meanings of words and phrases such as figurative language, connotations and denotations of words, analogies, idioms, and technical vocabulary.

(2) **Standard - comprehension.** The student will interact with the words and concepts on the page to understand what the writer has said. Read and understand grade-level-appropriate material. Analyze the organization patterns and evaluate authors' argument and positions. At Grade 12, in addition to regular classroom reading, read a wide variety of classic and contemporary literature, poetry, magazines, newspapers, reference materials, and online information.

(A) **Literal understanding.**

(i) Identify the structures and format of various informational documents and explain how authors use the features to achieve their purpose.

(ii) Explain specific devices an author uses to accomplish purpose (persuasive techniques, style, literary forms or genre, portrayal of themes, language).

(iii) Use study strategies such as note taking, outlining, and using study-guide questions to better understand texts.

(iv) Construct images such as graphic organizers based on text descriptions and text structures.

(v) Read silently with comprehension for a sustained period of time.

(B) **Inferences and interpretation.**

(i) Interpret the possible inferences of the historical context on literary works.

(ii) Describe the development of plot and identify conflict and how they are addressed and resolved.

(iii) Identify influences on a reader's response to a text (e.g., personal experience and values; perspective shapes by age, gender, class, or nationality).

(iv) Make reasonable assertions about authors' arguments by using elements of the text to defend and clarify interpretations.

(C) **Summary and generalization.**

(i) Determine the main idea and supporting details by producing summaries of text.

(ii) Use text features and elements to support inferences and generalizations about information.

(iii) Summarize and paraphrase complex, implicit hierarchic structures in informational texts, including relationships among concepts and details in those structures.

(iv) Compare and contrast elements of text such as themes, conflicts, and allusions both within and across text.

(D) **Analysis and evaluation.**

(i) Investigate both the features and the rhetorical (communication) devices of different types of public documents, such as policy statements, speeches, or debates, and the ways in which authors use those features and devices.

(ii) Examine the structure and format of informational and literary documents and explain how authors use the features to achieve their purposes.

(iii) Analyze the way in which clarity of meaning is affected by the patterns of organization, repetition of the main ideas, organization of language, and word choice in the text.

(iv) Analyze the way in which authors have used archetypes (universal modes or patterns) drawn from myth and tradition in literature, film, political speeches, and religious writings.

(v) Evaluate the credibility of information sources, including how the writer's motivation may affect that credibility.

(3) **Standard - literature.** The student will read, construct meaning, and respond to a wide variety of literary forms. Read and respond to grade-level-appropriate historically or culturally significant works of ~~literature that enhance a study of history and social science.~~British, American, and world literature. Conduct in-depth analysis of ~~the themes of these works.~~themes, styles, and trends of these works across historical periods.

(A) **Literary genres.** Demonstrate a knowledge of and an appreciation for various forms of literature.

(i) Analyze the characteristics of genres including short story, novel, drama, poetry, and essay.

(ii) Analyze the characteristics of subgenres including allegory, ballad, elegy, ode, parody, pastoral, satire and tragedy.

(B) **Literary elements.** Demonstrate knowledge of literary elements and techniques and show how they affect the development of a literary work.

(i) Evaluate the way in which the theme or meaning of a selection represents a view or comment on life, using textual evidence to support the claim.

(ii) Analyze the way in which irony, tone, mood, the author's style, and the "sound" of language achieve specific rhetorical (communication) or aesthetic (artistic) purposes or both.

(iii) Analyze characters' traits by what the characters say about themselves in narration, dialogue, and soliloquy (when they speak out loud to themselves).

(iv) Evaluate the significance of various literary devices and techniques, including imagery, allegory (the use of fictional figures and actions to express truths about human experiences), and symbolism (the use of symbols to represent an idea or theme), and explain their appeal.

(v) Evaluate the author's purpose and the development of time and sequence, including the use of complex literary devices, such as foreshadowing (providing clues to future events) or flashbacks (interrupting the sequence of events to include information about an event that happened in the past).

(C) **Figurative language and sound devices.** Identify figurative language and sound devices and analyze how they affect the development of a literary work.

(i) Identify and explain figurative language including analogy, hyperbole, metaphor, personification, and simile.

(ii) Identify and explain sound devices including alliteration and rhyme.

(iii) Analyze the melodies of literary language, including its use of evocative words, rhythms and rhymes.

(D) **Literary works.** Read and respond to historically and culturally significant works of literature.

(i) Analyze and evaluate works of literature and the historical context in which they were written.

(ii) Analyze and evaluate literature from various cultures to broaden cultural awareness.

(iii) Compare works that express the recurrence of archetypal (universal modes or patterns) characters, settings, and themes in literature and provide evidence to support the ideas expressed in each work.

(iv) Analyze the clarity and consistency of political assumptions in a selection of literary works or essays on a topic.

(4) **Standard - research and information.** The student will conduct research and organize information.

(A) **Accessing information.** Select the best source for a given purpose.

(i) Access information from a variety of primary and secondary sources.

(ii) Skim text for an overall impression and scan text for particular information.

(iii) Use organizational strategies as an aid to comprehend increasingly difficult content material (e.g., compare/contrast, cause/effect, problem/solution, sequential order).

(B) **Interpreting information** - Analyze and evaluate information from a variety of sources.

(i) Summarize, paraphrase, and or quote relevant information.

(ii) Determine the author's viewpoint to evaluate source credibility and reliability.

(iii) Synthesize information from multiple sources to draw conclusions that go beyond those found in any of the individual studies.

(iv) Identify complexities and inconsistencies in the information and the different perspectives found in each medium, including almanacs, microfiche, news sources, in-depth field studies, speeches, journals, technical documents, or internet sources.

(v) Develop presentations by using clear research questions and creative and critical research strategies, such as field studies, oral histories, interviews, experiments, and Internet sources.

(vi) Compiles written ideas and information into reports, summaries, or other formats and draw conclusions.

(b) **Writing/grammar/ mechanics and usage.** The student will express ideas effectively in written modes for a variety of purposes and audiences. Write coherent and focused texts that show a well defined point of view and tightly reasoned argument. The writing demonstrates a progression through the stages of the writing process (prewriting, writing, editing, and revising).

(1) **Standard - writing process.** The student will use the writing process to write coherently.

(A) Use a writing process to develop and refine composition skills. Students are expected to:

(i) use prewriting strategies to generate ideas such as brainstorming, using graphic organizers, notes and logs, to develop voice, and plan.

(ii) develop multiple drafts both alone and collaboratively to categorize ideas organizing them into paragraphs, and blending paragraphs into larger text.

(iii) organize and reorganize drafts and by refining style to suit occasion, audience, and purpose.

(iv) proofread writing for appropriateness of organization, content and style.

(v) edit for specific purposes such as to insure standard usage, varied sentence structure, appropriate word choice, mechanics and spelling.

(vi) refine selected pieces frequently to publish for general and specific audiences.

(B) Demonstrate an understanding of the elements of discourse, such as purpose, speaker, audience, and form when completing narrative expository, persuasive, or descriptive writing assignments.

(i) Enhance meaning by using rhetorical devices, including the extended use of parallelism, repetition, and analogy and the issuance of a call for action.

(ii) Use point of view, characterization, style, and related elements for specific rhetorical (communication) and aesthetic (artistic) purposes.

(iii) Structure ideas and arguments in a sustained and persuasive way and support them with precise and relent examples.

(iv) Evaluate own writing and others' writing to highlight the individual voice, improve sentence variety and style, and enhance subtlety of meaning and tone in ways that are consistent with the purpose, audience, and form of writing.

(v) Further develop unique writing style and voice, improve sentence variety, and enhance subtlety of meaning and toner in ways that are consistent with the purpose, audience, and of writing.

(2) **Standard - modes and forms of writing.** The student will write for a variety of purposes and audiences using narrative, descriptive, expository, persuasive, and reflective modes. At Grade 12, continue to combine the rhetorical strategies of narration, exposition, persuasion, and description: to produce reflective compositions, historical investigation reports, and deliver multimedia presentations. The writing demonstrates a command of Standard English and the research, organization, and drafting strategies outlined in the writing process. Writing demonstrates an awareness of the audience (intended reader) and purpose for writing.

(A) Write fictional, biographical or autobiographical narratives that:

(i) narrate a sequence or events and communicate their significance to the audience.

(ii) locate scenes and incidents in specific places.

(iii) describe with specific details the sight, sounds, and smells of a scene and the specific actions, movements, gestures, and feelings of the character; use interior monologue (what character says silently to self) to show the character's feelings.

(iv) present action segments to accommodate changes in time and mood. Example: After reading from Geoffrey Chaucer's The Canterbury Tales, write your own version of a traveler's tale.

(B) Write historical investigations that:

(i) use expository, narration, description, argumentation, or some combination of rhetorical strategies to support the main argument.

(ii) analyze several historical records of a single event, examining critical relationships between elements of the topic.

(iii) explain the perceived reason or reasons for the similarities and differences in historical records with information derived from primary and secondary sources to support or enhance the presentation.

(iv) include information from all relevant perspectives and take into consideration the validity and reliability of sources.

(v) include a formal bibliography. Example: Write a historical investigation report on the death of Diana, Princess of Wales. Include perspectives from newspapers or accounts of witnesses. Place the event into the larger societal context of the time, and indicate how or if the event has impacted the British and people from around the world.

(C) Write reflective compositions that may address one of the following purposes:

(i) explore the significance of personal experiences, events, conditions, or concerns by using rhetorical strategies, including narration, description, exposition, and persuasion.

(ii) draw comparisons between specific incidents and broader themes that illustrate the writer's important beliefs or generalizations about life.

(iii) maintain a balance in describing individual incidents and relate those incidents to more general and abstract ideas. Example: Write a reflective essay for fellow students on the significance of family in one's life or on growing up at the turn of the 21st century. Make personal observations, but connect them to a larger theme of interest to your audience.

(D) Write responses to literature that:

(i) demonstrate a comprehensive understanding of the significant ideas in works or passages.

(ii) analyze the use of imagery, language universal themes, and unique aspects of the text.

(iii) support important ideas and viewpoints through accurate and detailed reference to the text or to other works.

(iv) demonstrate an understanding of author's style and an appreciation of the effects created.

(v) identify and assess the impact of ambiguities, nuances, and complexities within the text. Example: Analyze the events, point of view, and characterization in Virginia Woolf's novel Mrs. Dalloway. Write an essay arguing whether or not criticism of her work is valid.

(E) Write for different purposes and to a specific audience or person, adjusting tone and style as necessary to make writing interesting. Continue to produce other forms of writing introduced in earlier grades. Example: Write stories, reports, and letters showing a variety of word choices, or review a favorite book or film.

(F) Write documented papers incorporating the techniques of Modern Language Association (MLA) or similar parenthetical styles.

(3) **Standard - grammar/usage and mechanics.** The student will demonstrate appropriate practices in writing by applying Standard English conventions to the revising and editing stages of writing.

(A) **Standard English usage.** Demonstrate correct use of Standard English in speaking and writing.

(i) Distinguish commonly confused words (e.g., there, their, they're; two, too, to; accept, except; affect, effect).

(ii) Use correct verb forms and tenses.

(iii) Use correct subject-verb agreement.

(iv) Distinguish active and passive voice.

(v) Use pronouns effectively, correct pronoun/antecedent agreement, and clear pronoun reference.

(vi) Use correct forms of comparative and superlative adjectives.

(B) **Mechanics and spelling.** Demonstrate appropriate language mechanics in writing.

(i) Demonstrate correct use of capitals.

(ii) Use correct formation of plurals.

(iii) Demonstrate correct use of punctuation and recognize its effect on sentence structure.

(iv) Use correct spelling of commonly misspelled words and homonyms.

(C) **Sentence structure** - The student will demonstrate appropriate sentence structure in writing.

(i) Use parallel structure.

(ii) Correct dangling and misplaced modifiers.

(iii) Correct run-on sentences.

(iv) Correct fragments.

(D) Apply appropriate manuscript conventions in writing including title page presentation, pagination, spacing and margins, and integration of sources and support material, by citing sources within the text, using direct quotations, and paraphrasing.

(c) **Oral language/listening and speaking.** The student will demonstrate thinking skills in listening and speaking. Formulate thoughtful judgments about oral communication. Deliver focused and coherent presentations that convey clear and distinct perspectives and solid reasoning. Deliver polished formal and extemporaneous presentations that combine the traditional speech strategies of narration, exposition, persuasion, and description. Use gestures, tone, and vocabulary appropriate to the audience and purpose. Use the same Standard English conventions for oral speech that are used in writing.

(1) **Standard - listening.** The student will listen for information and for pleasure.

(A) Demonstrate proficiency in critical empathetic, appreciative, and reflective listening to interpret, respond and evaluate speaker's messages.

(B) Use effective strategies for listening such as prepares for listening, identifies the types of listening, and adopts appropriate strategies.

(C) Listen and respond appropriately to presentations and performances of peers or published works such as original essays or narratives, interpretations of poetry, and individual or group performances.

(D) Use effective strategies to evaluate own listening such as asking questions for clarification, comparing and contrasting interpretations with others, and researching points of interest or contention.

(E) Use effective listening to provide appropriate feedback in a variety of situations such as conversations and discussions and informative, persuasive, or artistic presentations.

(2) **Standard - speaking.** The student will express ideas and opinions in group or individual situations.

(A) Use a variety of verbal and nonverbal techniques in presenting oral messages such as pitch and tone of voice, posture, and eye contact, and demonstrate poise and control while presenting.

(B) Use language and rhetorical strategies skillfully in informative and persuasive messages.

(C) Use logical, ethical, and emotional appeals that enhance a specific tone and purpose.

(D) Use effective and interesting language, including informal expressions for effect, Standard English for clarity, and technical language for specificity.

(E) Evaluate when to use different kinds of effects (including visuals, music, sound, and graphics) to create a presentation.

(F) clear questions for a variety of purposes and respond appropriately to the questions of others.

(d) **Visual literacy.** The student will interpret, evaluate, and compose visual messages.

(1) **Standard - interpret meaning.** The student will interpret and evaluate the various ways visual image-makers including graphic artists, illustrators, and news photographers represent meaning.

(A) Use a range of strategies to interpret visual media (e.g., draw conclusions, make generalizations, synthesizes material viewed, refer to images or information in visual media to support point of view).

(B) Demonstrate how editing shapes meaning in visual media (e.g., omission of alternative perspectives; filtered or implied viewpoints; emphasis of specific ideas, images, or information in order to serve particular interests).

(2) **Standard - evaluate media.** The student will evaluate visual and electronic media, such as film, as they compare with print messages.

(A) Uses a variety of criteria (e.g., clarity, accuracy, effectiveness, bias, relevance of facts) to evaluate informational media (e.g., Web sites, documentaries, news programs).

(B) Identifies the rules and expectations about genre that can be manipulated for particular effects or purposes (e.g., combining or altering conventions of different genres, such as presenting news as entertainment; blurring of genres, such as drama-documentaries).

(3) **Standard - compose visual messages.** The student will create a visual message that effectively communicates an idea.

(A) Use the effects of media on constructing his/her own perception of reality.

(B) Use a variety of forms and technologies such as videos, photographs, and Web pages to communicate specific messages.

PART 7. MATHEMATICS

210:15-3-41. Mathematics content standards grade 1

(a) **Standard - patterns.** The student will use a variety of problem solving approaches to model, describe and extend patterns.

(1) Describe, extend and create a variety of patterns using concrete objects (e.g., sort a bag of objects by attributes and orally communicate the pattern for each grouping).

(2) Describe and extend number patterns in a variety of situations (e.g., addition charts, skip counting, calendars).

(b) **Standard - number sense.** The student will read, write and model numbers and number relationships to 100.

(1) Use concrete models of tens and ones to develop the concept of place value.

(2) Compare and Order Objects

(A) Compare objects by size and quantity (e.g., more than, less than, equal to).

(B) Use ordinal numbers first through tenth to order objects.

(3) Read and write numerals to 100.

(4) Count as many as 100 objects by ones, twos, fives, and tens.

(5) Investigate concepts of fractional parts (e.g., halves, thirds, fourths).

(c) **Standard - number operations and computation.** The student will use models to construct addition and subtraction facts with whole numbers through 10.

(1) Develop and apply the concepts of addition and subtraction

(A) Use models to construct addition and subtraction facts through 10 (e.g., counters, cubes).

(B) Perform addition by joining sets of objects and subtraction by separating and by comparing sets of objects.

(C) Demonstrate fluency with basic addition and subtraction facts (i.e., memorize and apply addition and subtraction facts) through 10. Compute efficiently and accurately with single-digit numbers.

(D) Recognize and apply the commutative and identity properties of addition using models and manipulatives to develop computational skills (e.g., 2 + 4 = 4 + 2, 3 + 0 = 3).

(2) Write addition and subtraction number sentences for problem-solving situations.

(3) Acquire strategies for making computations (e.g., use estimation, number sense to judge reasonableness, counting on).

(d) **Standard - geometry and measurement.** The student will use geometric properties and relationships to recognize and describe shapes and use measurement skills to tell time, identify money and develop calendar concepts.

(1) Geometric Properties and Relationships

(A) Sort and identify congruent shapes.

(B) Identify two-dimensional geometric shapes and objects in everyday situations (e.g., the face of a round clock is a circle, a desktop is a rectangle).

(C) Use language to describe relationships of objects in space (e.g., above, below, behind, between).

(2) Measurement

(A) Tell time on digital and analog clocks to the hour and half-hour.

(B) Identify and name the value of pennies, dimes, nickels, and quarters.

(C) Use the calendar to develop the concepts of days, weeks, and months.

(e) **Standard - data analysis.** The student will demonstrate an understanding of data collection and display.

(1) Organize, describe, and display data using concrete objects, pictures, grids, and numbers.

(2) Formulate and solve problems that involve collecting and analyzing data common to children's lives (e.g., color of shoes, numbers of pets, favorite foods).

210:15-3-42. Mathematics content standards grade 2

(a) **Standard - patterns.** The student will use a variety of problem-solving approaches to extend and create patterns.

(1) Describe, extend, and create patterns using symbols, shapes or designs (e.g., repeating and growing patterns made up of sets of shapes or designs, create patterns by combining different shapes and taking them apart).

(2) Formulate and record generalizations about number patterns in a variety of situations (e.g., addition and subtraction patterns, build a table showing the cost of one pencil at 10 cents, 2 pencils at 20 cents).

(b) **Standard - number sense.** The student will use numbers and number relationships to acquire basic facts.

(1) Place Value

(A) Use concrete models of hundreds, tens, and ones to develop the concepts of place value.

(B) Demonstrate (using concrete objects, pictures, and numerical symbols) fractional parts including halves, thirds, and fourths.

(2) Reading and Writing Numbers

(A) Link place value concepts to the reading and writing of numbers (e.g., base-10 blocks).

(B) Represent a number in a variety of ways (e.g., write the calendar day in different ways, write 15 as 8 + 7, write 25 as 2 tens + 5 ones or as 1 ten + 15 ones).

(C) Write a number sentence to compare numbers less than 100 (e.g., 5 is more than 2, 3 is less than 7, page 51 comes after 50, and 51 is between 50 and 60).

(3) Develop and use strategies of estimation (e.g., compose, decompose and regroup numbers, use knowledge of 10 to estimate quantities and sums [two numbers less than 10 can not add up to more than 20], use body parts to estimate measurements).

(4) Determine whether a number is odd or even.

(c) **Standard - number operations and computation.** The student will compute with whole numbers less than 100.

(1) Develop and apply the concepts of addition and subtraction

(A) Demonstrate fluency with basic addition and subtraction facts (i.e., memorize and apply addition and subtraction facts) and fact families to 18.

(B) Solve two-digit addition and subtraction problems with and without regrouping using a variety of techniques (e.g., concrete, paper and pencil, mental math).

(C) Develop operation sense by applying the associative property of addition (e.g., 3 +(2 +1) = (3 + 2) + 1).

(D) Describe the relationship between addition and subtraction (e.g., addition and subtraction are inverse operations).

(2) Use mental strategies (or decomposition strategies) for addition and subtraction (e.g., make a group of 10 objects and 2 objects from a group of 7 objects and 5 objects).

(3) Complete addition number sentences with a missing addend and use to solve everyday problems.

(d) **Standard - geometry and measurement.** The student will use geometric properties and relationships to recognize and describe shapes and use appropriate units of measure in a variety of situations.

(1) Geometric Properties and Relationships

(A) Sort and classify symmetric and congruent figures.

(B) Identify two-dimensional geometric shapes in everyday situations (e.g., a stop sign is an octagon).

(2) Measurement

(A) Measure objects with nonstandard and standard units (e.g., use a human foot [nonstandard] then a ruler [standard] to measure length to the nearest inch).

(B) Select and use appropriate units of measurement in problem solving and everyday situations.

(3) Time and Money

(A) Tell time on digital and analog clocks to the quarter-hour.

(B) Identify and count money; connect coins and bills with place value.

(e) **Standard - data analysis.** The student will demonstrate an understanding of data collection, display and interpretation.

(1) Collect, sort, organize, and display data in charts, bar graphs, and tables (e.g., collect data on teeth lost and display results in a chart).

(2) Summarize and interpret data in charts, bar graphs, and tables.

(3) Make predictions and estimates to describe data (e.g., predict what data on teeth lost might look like for younger children and/or older children).

210:15-3-43. Mathematics content standards grade 3

(a) Standard - Patterns and Algebraic Reasoning. The student will use a variety of problem-solving approaches to extend and create patterns.

(1) Describe (orally or in written form), create, extend and predict patterns using numbers (e.g., 3, 6, 9, 12 . . . , use a function machine to generate input and output values for a table, show multiplication patterns on a hundreds chart).

(2) Analyze tables to formulate generalizations about patterns in a variety of situations (e.g., list the multiples of 5 in a table to show that multiples of 5 have a 0 or 5 in the ones place; given pairs of numbers with a common relationship, determine the rule and generate additional pairs with the same relationship).

(b) **Standard - number sense.** The student will use numbers and number relationships to acquire basic facts.

(1) Place Value

(A) Model the concept of place value through 4 digits (e.g., base-10 blocks, bundles of 10s, place value mats).

(B) Read, model and write whole numbers up to 4 digits (e.g., base-10 blocks, expanded form).

(2) Whole Numbers and Fractions

(A) Compare and order whole numbers up to 4 digits.

(B) Compare and order fractions including halves, thirds and fourths using a model (e.g., fraction circles, pictures, egg cartons, fraction strips).

(c) **Standard - number operations and computation.** The student will estimate and compute with whole numbers.

(1) Estimate, find the sum and difference, with and without regrouping, of 3- and 4-digit numbers to solve application problems.

(2) Multiplication Concepts

(A) Demonstrate fluency with basic multiplication facts and fact families~~.~~ (i.e., memorize and apply multiplication facts).

(B) Develop multiplication algorithms (e.g., use physical materials to show 4 groups of 3 objects, show multiplication as repeated addition).

(C) Estimate the product of 2-digit numbers by rounding to the nearest multiple of 10 to solve application problems.

(D) Recognize and apply the commutative and identity properties of multiplication using models and manipulatives to develop computational skills (e.g., 3 • 5 = 5 • 3, 7 • 1 = 7).

(C) Solve problems involving money that require addition and subtraction.

(d) **Standard - geometry and measurement.** The student will use geometric properties and relationships to recognize and describe shapes and use customary and metric measurements to solve problems.

(1) Spatial Reasoning and Coordinate Locations

(A) Describe and compare two- and three-dimensional shapes (e.g., count the edges and faces of a cube, combine or divide basic shapes to form new shapes, identify and draw congruent shapes).

(B) Identify locations on a grid with ordered pairs (e.g., give the location of a ship on a grid by selecting D, 1).

(2) Measurement

(A) Solve problems with customary units involving length using half-inch and quarter-inch measurements and weight using pound and ounce.

(B) Solve problems with metric units involving length using meter and centimeter and mass using gram and kilogram.

(C) Use manipulatives to develop the concept of perimeter and area (e.g., cover a shape with pattern blocks to find area).

(3) Develop and use strategies to estimate measurements (e.g., use parts of the body as benchmarks for measuring length).

(4) Tell time on digital and analog clocks to 5 minutes and use information to solve problems involving time and temperature (e.g., read a thermometer).

(e) **Standard - data analysis and probability.** The student will demonstrate an understanding of data collection, display and interpretation.

(1) Data Analysis

(A) Pose questions, collect, record, and interpret data to help answer questions (e.g., Which was the most popular booth at our carnival?).

(B) Read graphs and charts; identify the main idea, draw conclusions, make predictions based on the data (e.g., predict how many children will bring their lunch based on a menu).

(C) Construct a bar graph or pictograph with labels and a title from a set of data.

(2) Probability

(A) Describe the probability (more, less, or equally likely) of chance events.

(B) List arrangements (permutations) and combinations of up to three items (e.g., possible ways to arrange scoops of chocolate, strawberry and vanilla ice cream on a cone).

210:15-3-44. Mathematics content standards grade 4

(a) **Standard - patterns and algebraic reasoning.** The student will use a variety of problem solving approaches to analyze, extend and create patterns.

(1) Discover, describe, extend, and create a wide variety of patterns using tables, graphs, rules, and models (e.g., use 1-inch tiles to demonstrate that doubling the length of the side of a square more than doubles the area, explore the characteristics of odd and even numbers, extend patterns of geometric shapes).

(2) Elementary Function Concepts

(A) Use a variety of techniques to generalize number patterns (e.g., use function machines and "t-tables" to demonstrate "What is the rule?").

(B) Solve simple open sentences involving operations on whole numbers (with a variable, e.g., a + 17 = 23).

(b) **Standard - number sense.** The student will use numbers and number relationships to acquire basic number facts.

(1) Place Value

(A) Apply the concept of place value through 6 digits (e.g., write numbers in expanded form, play a trading game involving place value).

(B) Read, write and rename whole numbers through 6 digits and decimal numbers to the hundredths (e.g., money, numerals to words).

(2) Compare and order whole numbers and decimals to the hundredths (e.g., pictures of shaded regions of two-dimensional figures, use >, < , = symbols).

(3) Fractions

(A) Use 0, 1/2, and 1 or 0, 0.5, and 1, as benchmarks and place additional fractions and decimals on a number line (e.g., 1/3, 3/4, 0.7, 0.4).

(B) Create physical and pictorial models of equivalent and non-equivalent fractional parts to be compared, added or subtracted (e.g., egg cartons, fraction strips, circles, and squares).

(c) **Standard - number operations and computation.** The student will estimate and compute with whole numbers.

(1) Estimate and find the product of 2- and 3-digit numbers to solve application problems.

(2) Division Concepts

(A) Demonstrate fluency with basic division facts and fact families~~.~~ (i.e., memorize and apply division facts).

(B) Develop division algorithms (e.g., use physical materials to show 12 objects arranged in 3 groups, show division as repeated subtraction and as the inverse of multiplication).

(C) Estimate and find the quotient (with and without remainders) with a 1-digit divisor and a 2- or 3-digit dividend to solve application problems.

(3) Apply a variety of estimation and mental math techniques to simplify computations (e.g., use rounding to estimate 82-58 is about 80-60 or 20, use 30 • 5 to find the product of 300 • 5).

(4) Develop operation sense by applying the associative property of multiplication (e.g., 6 • (2 • 3) = (6 • 2) • 3).

(d) **Standard - geometry and measurement.** The student will use geometric properties and relationships to analyze shapes and use standard units of customary and metric measurements to solve problems.

(1) Basic Characteristics of Lines and Angles

(A) Identify, draw, and construct models of intersecting, parallel, and perpendicular lines (e.g., use spaghetti, straws, toothpicks).

(B) Identify and compare angles equal to, less than, or greater than 90 degrees (e.g., use right angles to determine the approximate size of other angles; make a variety of angles using flexible straws and compare).

(2) Identifies basic characteristics of the rectangular coordinate system and find the distance between horizontal and vertical lines of a rectangular coordinate system (e.g., the x-axis is the horizontal axis).

(3) Spatial Reasoning

(A) Describe the effects on two- and three-dimensional objects when they slide (translate), flip (reflect), and turn (rotate) (e.g. tessellations).

(B) Predicts and verifies the effects of combining, subdividing, and changing two- and three-dimensional figures (e.g., folding paper, tiling, and rearranging pieces of solids).

(4) Measurement

(A) Establish benchmarks for customary and metric units and estimate the measures of a variety of objects and compare units (e.g., mass: the mass of a raisin is about 1 gram, length: the width of a finger is about 1 centimeter).

(B) Select appropriate customary and metric units of measure to solve application problems involving length, weight, mass, and volume.

(C) Solve application problems involving money, time and temperature (e.g., elapsed time).

(e) **Standard - data analysis and probability.** The student will demonstrate an understanding of data collection, display and interpretation.

(1) Data Analysis

(A) Examine data displays such as tallies, tables, charts and graphs and use the observations to pose and answer questions (e.g., choose a table in social studies of population data and write problems).

(B) Collect, organize and record data in tables and graphs (e.g., bar, pictograph, line plots).

(2) Investigate and record probabilities by experimenting with devices that generate random outcomes (e.g., coins, number cubes, spinners).

PART 9. SCIENCE

210:15-3-76. Standards for inquiry, physical, life, and earth/space science for grade 6

(a) **Process standard - observe and measure.** Observing is the first action taken by the learner to acquire new information about an object, organism, or event. Opportunities for observation are developed through the use of a variety of scientific tools. Measurement allows observations to be quantified. The student will accomplish these objectives to meet this process standard.

(1) Identify qualitative and/or quantitative changes given conditions (e.g., temperature, mass, volume, time, position, length, etc.) before, during, and after an event.

(2) Use appropriate tools (e.g., metric ruler, graduated cylinder, thermometer, balances, spring scales,

stopwatches, etc.) to measure objects, organisms, and/or events.

(3) Use appropriate System International (SI) units (i.e., grams, meters, liters, degrees Celsius, and seconds); and SI prefixes (i.e. micro-, milli-, centi-, and kilo-) when measuring objects, organisms and/or events.

(b) **Process standard - classify.** Classifying establishes order. Objects, organisms, and events are classified based on similarities, differences, and interrelationships. The student will accomplish these objectives to meet this process standard.

(1) Using observable properties, place an object, organism, and/or event into a classification system (e.g., dichotomous keys).

(2) Identify properties by which a set of objects, organisms, or events could be ordered.

(c) **Process standard - experiment.** Experimenting is a method of discovering information. It requires making observations and measurements to test ideas. The student will accomplish these objectives to meet this process standard.

(1) Ask questions about the world and design investigations that lead to scientific inquiry.

(2) Evaluate the design of a scientific investigation.

(3) Identify variables and/or controls in an experimental setup ~~(i.e., tested, experimental, and measured variables).~~: independent (tested/experimental) variable and dependent (measured) variable.

(4) Identify a testable hypothesis for an experiment.

(5) Design and conduct experiments.

(6) Recognize potential hazards and practice safety procedures in all science activities.

(d) **Process standard - interpret and communicate.** Interpreting is the process of recognizing patterns in collected data by making inferences, predictions, or conclusions. Communicating is the process of describing, recording, and reporting experimental procedures and results to others. Communication may be oral, written, or mathematical and includes: organizing ideas, using appropriate vocabulary, graphs, other visual representations, and mathematical equations. The student will accomplish these objectives to meet this process standard.

(1) Report data in an appropriate method when given an experimental procedure or data.

(2) Interpret data tables, line, bar, trend, and/or circle graphs.

(3) Evaluate data to develop reasonable explanation, and/or predictions.

(4) Accept or reject hypotheses when given results of an investigation.

(5) Communicate scientific procedures and explanations.

(e) **Process standard - inquiry.** Inquiry can be defined as the skills necessary to carry out the process of scientific or systemic thinking. In order for inquiry to occur, students must have the opportunity to ask a question, formulate a procedure, and observe phenomena. The student will accomplish these objectives to meet this process standard.

(1) Use systematic observations, make accurate measurements, and identify and control variables.

(2) Use technology to gather data and analyze results of investigations.

(3) Review data, summarize data, and form logical conclusions.

(4) Formulate and evaluate explanations proposed by examining and comparing evidence, pointing out statements that go beyond evidence, and suggesting alternative explanations.

(f) **Standard - physical properties in matter.** Physical characteristics of objects can be described using shape, size, and mass whereas the materials from which objects are made can be described using color and texture. The student will engage in investigations that integrate the process standards and lead to the discovery of the following objectives:

(1) Matter has physical properties that can be measured (i.e., mass, volume, temperature, color, and texture). Changes in physical properties of objects can be observed, described, and measured using tools such as simple microscopes, gram spring scales, metric rulers, metric balances, and Celsius thermometers.

(2) The mass of an object is not altered due to changes in shape.

(g) **Standard - transfer of energy.** Change from one form of energy to another (i.e., electrical energy to light energy). The student will engage in investigations that integrate the process standards and lead to the discovery of the following objectives:

(1) Energy exists in many forms such as, heat, light, electricity, mechanical motion, and sound. Energy can be transferred in various ways.

(2) Electrical circuits provide a means of transferring electrical energy when heat, light, and sound are produced (e.g., open and closed circuits).

(3) Electric currents and magnets can exert a force on each other.

(h) **Standard 3 - structure and function in living systems.** Living systems at all levels of organization demonstrate the complementary nature of structure and function. The student will engage in investigations that integrate the process standards and lead to the discovery of the following objectives:

(1) Cells are the building blocks of all organisms (both plants and animals).

(2) Living systems are organized by levels of complexity (i.e., cells, organisms, and ecosystems).

(i) **Standard - populations and ecosystems.** Populations consist of individuals of a species that occur together at a given place and time. All populations living together and the physical factor with which they interact compose an ecosystem. The student will engage in investigations that integrate the process standards and lead to the discovery of the following objectives:

(1) Organisms within an ecosystem are dependent on one another and on nonliving components of the environment. Some source of energy is needed for all organisms to stay alive and grow. Energy transfer can be followed in food chains and webs.

(2) In all environments, organisms with similar needs may compete with one another for resources, including

food, space, water, air, and shelter. Other relationships may be beneficial.

(j) **Standard - structures of the Earth and the solar system.** The earth is mostly rock, three-fourths of its surface is covered by a relatively thin layer of water, and the entire planet is surrounded by a relatively thin blanket of air, and is able to support life. The student will engage in investigations that integrate the process standards and lead to the discovery of the following objectives:

(1) Earth has four main systems that interact: the atmosphere, the hydrosphere, the biosphere, and the geosphere.

(2) Water, which covers the majority of the Earth's surface, circulates through the crust, oceans, and atmosphere in what is known as the water cycle.

(3) The sun provides the light and heat necessary to maintain life on Earth and is the ultimate source of energy (i.e., producers receive their energy from the sun).

210:15-3-77. Standards for inquiry, physical, life, and earth/space science for grade 7

(a) **Process standard - observe and measure.** Observing is the first action taken by the learner to acquire new information about an object, organism, or event. Opportunities for observation are developed through the use of a variety of scientific tools. Measurement allows observations to be quantified. The student will accomplish these objectives to meet this process standard.

(1) Identify qualitative and/or quantitative changes given conditions (e.g., temperature, mass, volume, time, position, length, etc.) before, during, and after an event.

(2) Use appropriate tools (e.g., metric ruler, graduated cylinder, thermometer, balances, spring scales, stopwatches, etc.) when measuring objects, organisms, and/or events.

(3) Use appropriate System International (SI) units (i.e., grams, meters, liters, degrees Celsius, and seconds); and SI prefixes (i.e., micro-, milli-, centi-, and kilo-) when measuring objects, organisms, and/or events.

(b) **Process standard - classify.** Classifying establishes order. Objects, organisms, and events are classified based on similarities, differences, and interrelationships. The student will accomplish these objectives to meet this process standard.

(1) Use observable properties to place an object, organism, and/or event into a classification system (e.g., dichotomous keys).

(2) Identify properties by which a set of objects, organisms, and/or events could be ordered.

(c) **Process standard - experiment.** Experimenting is a method of discovering information. It requires making observations and measurements to test ideas. The student will accomplish these objectives to meet this process standard.

(1) Ask questions about the world and design investigations that lead to scientific inquiry.

(2) Evaluate the design of a scientific investigation.

(3) Identify variables and/or controls in an experimental setup ~~(i.e., tested, experimental, and measured variables).~~: independent (tested/experimental) variable and dependent (measured) variable.

(4) Identify a testable hypothesis for an experiment.

(5) Design and conduct experiments.

(6) Recognize potential hazards and practice safety procedures in all science activities.

(d) **Process standard - interpret and communicate.** Interpreting is the process of recognizing patterns in collected data by making inferences, predictions, or conclusions. Communicating is the process of describing, recording, and reporting experimental procedures and results to others. Communication may be oral, written, or mathematical and includes: organizing ideas, using appropriate vocabulary, graphs, other visual representations, and mathematical equations. The student will accomplish these objectives to meet this process standard.

(1) Report data in an appropriate method when given an experimental procedure or data.

(2) Interpret data tables, line, bar, trend, and/or circle graphs.

(3) Evaluate data to develop reasonable explanations, and/or predictions.

(4) Accept or reject hypotheses when given results of an investigation.

(5) Communicate scientific procedures and explanations.

(e) **Process standard - inquiry.** Inquiry can be defined as the skills necessary to carry out the process of scientific or systemic thinking. In order for inquiry to occur, students must have the opportunity to ask a question, formulate a procedure, and observe phenomena. The student will accomplish these objectives to meet this process standard.

(1) Use systematic observations, make accurate measurements, and identify and control variables.

(2) Use technology to gather data and analyze results of investigations.

(3) Review data, summarize data, and form logical conclusions.

(4) Formulate and evaluate explanations proposed by examining and comparing evidence, pointing out statements that go beyond evidence, and suggesting alternative explanations.

(f) **Standard - properties and physical changes in matter.** Physical characteristics of objects can be described using shape, size, and mass whereas the materials from which objects are made can be described using color and texture. The student will engage in investigations that integrate the process standards and lead to the discovery of the following objectives:

(1) Matter has physical properties that can be measured (i.e., mass, volume, temperature, color, texture, and density). Physical changes of a substance do not alter the chemical nature of a substance (e.g., phase changes of water and/or sanding wood).

(2) A mixture of substances often can be separated into the original substance using one or more of the physical properties.

(g) Standard 2 - structure and function in living systems. Living systems at all levels of organization demonstrate the

complementary nature of structure and function. The student will engage in investigations that integrate the process standards and lead to the discovery of the following objectives:

(1) Living systems are organized by levels of complexity (i.e., cells, tissues, organs, and/or systems).

(2) Specialized structures perform specific functions at all levels of complexity (e.g., leaves on trees and wings on birds).

(h) **Standard - reproduction and heredity.** Reproduction is the process by which organisms give rise to offspring. Heredity is the passing of traits to offspring. All organisms must be able to grow, reproduce, and maintain stable internal conditions while living in a constantly changing external environment. The student will engage in investigations that integrate the process standards and lead to the discovery of the following objectives:

(1) Characteristics of an organism result from inheritance and from interactions with the environment.

(2) Reproduction is essential for species survival. Individual organisms with certain traits are more likely to survive and produce offspring.

(i) **Standard - behavior and regulations.** All organisms must be able to grow, reproduce, and maintain stable internal conditions while living in a constantly changing external environment. Behavioral response is a set of actions determined in part by heredity and in part by experience. The student will engage in investigations that integrate the process standards and lead to the discovery of the following objectives:

(1) Living organisms strive to maintain a constant internal environment (i.e., temperature regulation).

(2) Living organisms have physical and/or behavioral responses to external stimuli (e.g., hibernation, migration, plant growth, etc.).

(j) **Standard - structures of the earth system.** The earth is mostly rock, three-fourths of its surface is covered by a relatively thin layer of water, and the entire planet is surrounded by a relatively thin blanket of air, and is able to support life. The student will engage in investigations that integrate the process standards and lead to the discovery of the following objectives:

(1) Global patterns of atmospheric movement influence local weather such as oceans effect on climate.

(2) Clouds, formed by the condensation of water vapor, affect local weather and climate.

(k) **Standard - earth and the solar system.** The earth is the third planet from the sun in a system that includes the moon, the sun, eight other planets and their moons, and smaller objects, such as, asteroids and comets. The student will engage in investigations that integrate the process standards and lead to the discovery of the following objectives:

(1) Most objects in the solar system are in regular and predictable motion. Those motions explain such phenomena as the day, the year, phases of the moon, and eclipses.

(2) Seasons result from variations in the amount of the sun's energy hitting the surface, due to the tilt of the earth's rotation on its axis and the length of the day.

210:15-3-78. Standards for inquiry, physical, life, and earth/space science for grade 8

(a) **Process standard - observe and measure.** Observing is the first action taken by the learner to acquire new information about an object, organism, or event. Opportunities for observation are developed through the use of a variety of scientific tools. Measurement allows observations to be quantified. The student will accomplish these objectives to meet this process standard.

(1) Identify qualitative and/or quantitative changes given conditions (e.g., temperature, mass, volume, time, position, length, etc.) before, during, and after an event.

(2) Use appropriate tools (e.g., metric ruler, graduated cylinder, thermometer, balances, spring scales, stopwatches, etc.) when measuring objects, organisms, and/or events.

(3) Use appropriate System International (SI) units (i.e., grams, meters, liters, degrees Celsius, and seconds); and SI prefixes (i.e. micro- milli-, centi-, and kilo-) when measuring objects, organisms and/or events.

(b) **Process standard - classify.** Classifying establishes order. Objects, organisms, and events are classified based on similarities, differences, and interrelationships. The student will accomplish these objectives to meet this process standard.

(1) Using observable properties, place an object, organism, and/or event into a classification system (e.g., dichotomous keys).

(2) Identify properties by which a set of objects, organisms, and/or events could be ordered.

(c) **Process standard - experiment.** Experimenting is a method of discovering information. It requires making observations and measurements to test ideas. The student will accomplish these objectives to meet this process standard.

(1) Ask questions about the world and design investigations that lead to scientific inquiry.

(2) Evaluate the design of a scientific investigation.

(3) Identify variables and/or controls in an experimental setup~~ (i.e., tested, experimental, and measured variables).~~: independent (tested/experimental) variable and dependent (measured) variable.

(4) Identify a testable hypothesis for an experiment.

(5) Design and conduct experiments.

(6) Recognize potential hazards and practice safety procedures in all science activities.

(d) **Process standard - interpret and communicate.** Interpreting is the process of recognizing patterns in collected data by making inferences, predictions, or conclusions. Communicating is the process of describing, recording, and reporting experimental procedures and results to others. Communication may be oral, written, or mathematical and includes: organizing ideas, using appropriate vocabulary, graphs, other visual representations, and mathematical equations. The student will accomplish these objectives to meet this process standard.

(1) Report data in an appropriate method when given an experimental procedure or data.

(2) Interpret data tables, line, bar, trend and/or circle graphs.

(3) Evaluate data to develop reasonable explanations, and/or predictions.

(4) Accept or reject hypotheses when given results of an investigation.

(5) Communicate scientific procedures and explanations.

(e) **Process standard - inquiry.** Inquiry can be defined as the skills necessary to carry out the process of scientific or systemic thinking. In order for inquiry to occur, students must have the opportunity to ask a question, formulate a procedure, and observe phenomena. The student will accomplish these objectives to meet this process standard.

(1) Use systematic observations, make accurate measurements, and identify and control variables.

(2) Use technology to gather data and analyze results of investigations.

(3) Review data, summarize data, and form logical conclusions.

(4) Formulate and evaluate explanations proposed by examining and comparing evidence, pointing out statements that go beyond evidence, and suggesting alternative explanations.

(f) **Standard - properties and chemical changes in matter.** Physical characteristics of objects can be described using shape, size, and mass. The materials from which objects are made can be described using color, texture, and hardness. These properties can be used to distinguish and separate one substance from another. The student will engage in investigations that integrate the process standards and lead to the discovery of the following objectives:

(1) Substances react chemically with other substances to form new substances with different characteristics (e.g., rusting, burning, reaction between baking soda and vinegar, etc.).

(2) Matter has physical properties that can be measured (i.e., mass, volume, temperature, color, texture, density, and hardness). In chemical reactions and physical changes, matter is conserved (e.g., compare and contrast physical and chemical changes).

(g) **Standard - motions and forces.** The motion of an object can be described by its position, direction of motion, and speed. The student will engage in investigations that integrate the process standards and lead to the discovery of the following objectives:

(1) The motion of an object can be measured. The position of an object, its speed and direction can be represented on a graph.

(2) An object that is not being subjected to a net force will continue to move at a constant velocity (in a straight line and a constant speed).

(h) **Standard 3 - diversity and adaptations of organisms.** Millions of species of animals, plants, and microorganisms are alive today. Although different species might look dissimilar, the unity among organisms becomes apparent from an analysis of internal and external structures. Adaptation involves the selection of naturally occurring variations in populations. The student will engage in investigations that integrate the process standards and lead to the discovery of the following objectives:

(1) By classifying organisms, biologists consider details of internal and external structure.

(2) Organisms have a great variety of internal and external structures that enable them to survive in a specific habitat such as echolocation of bats, seed dispersal methods, etc.

(i) **Standard - structures and forces of the earth and solar system.** The earth is mostly rock, three-fourths of its surface is covered by a relatively thin layer of water, and the entire planet is surrounded by a relatively thin blanket of air, and is able to support life. The student will engage in investigations that integrate the process standards and lead to the discovery of the following objectives:

(1) Landforms result from constructive forces such as crustal deformation, volcanic eruption, and deposition of sediment and destructive forces such as weathering and erosion.

(2) The formation, weathering, sedimentation, and reformation of rock constitute a continuing "rock cycle" in which the total amount of material stays the same as its form changes.

(3) Gravity is the force that governs the motion of the solar system and holds us to the earth's surface.

(j) **Standard - earth's history.** The Earth's history involves periodic changes in the structures of the earth over time. The student will engage in investigations that integrate the process standards and lead to the discovery of the following objectives:

(1) Earth's history has been punctuated by occasional catastrophic events, such as the impact of asteroids or comets, enormous volcanic eruptions, periods of continental glaciation, and the rise and fall of sea level.

(2) Fossils provide important evidence of how life and environmental conditions have changed.

[OAR Docket #05-979; filed 5-23-05]

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

[OAR Docket #05-980]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 11. Early Childhood Education Programs
210:15-11-2. [AMENDED]
AUTHORITY:
70 O. S. § 3-104, State Board of Education
DATES:
Comment period:
February 15, 2005 through March 17, 2005
Public hearing:
March 17, 2005
Adoption:
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Submitted to Governor:
March 23, 2005
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March 23, 2005

Submitted to Senate:
March 23, 2005
Gubernatorial approval:
May 4, 2005
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 19, 2005
Final adoption:
May 19, 2005
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June 25, 2005
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 11. Early Childhood Education Programs
210:15-11-2. [AMENDED]
Gubernatorial approval:
February 8, 2005
Register Publication:
22 Ok Reg 554
Docket Number:
05-265
INCORPORATION BY REFERENCE:
N/A
ANALYSIS:
The rule change would require school districts to provide screening and referral for vision and hearing in early childhood programs for four-year-olds. The proposed change is supportive to the health and well-being of children and would be conducive to learning and reading.
CONTACT PERSON:
Connie Holland, 405-521-3308

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 11. EARLY CHILDHOOD EDUCATION PROGRAMS

210:15-11-2. Rules and regulations for early childhood education programs

(a) The number of children in a group shall not exceed twenty (20). The adult child ratio shall not exceed 1:10. Any enrollment that exceeds ten (10) shall require the employment of a teacher assistant.
(b) The school district shall ensure the teacher assistant is provided professional development in early childhood education.
(c) A child may attend less than the two and one-half (2 1/2) hours a day the first five (5) days of the semester.
(d) The program shall encourage family involvement to support the child's education experience.
(e) The learning environment shall:
(1) be arranged to provide for individual and group learning experiences
(2) be equipped with movable furniture of the correct size
(3) have adequate materials and supplies available in sufficient quantities to meet the needs of the children in the class
(4) have restroom facilities that will accommodate four-year-olds
(5) provide for a playground area that is accessible and safe
(f) It is recommended that space requirements be based on thirty-five (35) square feet per child, and that the classroom have a sink with running water.
(g) The curriculum shall be appropriate for the age and developmental level of the students. A process to provide continuity between the early childhood program and the kindergarten program shall be established.
(h) The school district shall provide for individual student screening and referral for vision and hearing.

[OAR Docket #05-980; filed 5-23-05]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 25. FINANCE

[OAR Docket #05-981]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Funding Criteria
210:25-3-7. [AMENDED]
Subchapter 5. Budgeting and Business Management
Part 1. Implementation
210:25-5-4. [AMENDED]
210:25-5-5. [AMENDED]
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June 25, 2005
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATION BY REFERENCE:
N/A
ANALYSIS:
The rule amendments change the final submission date for financial data from July 31 to September 1, as authorized by new legislation, the final date for federal program claims submission from the first Monday in September to September 1, and changes financial reporting terminology. The amended rules also change wording to coincide with revisions in the National Center for Education Statistics (NCES) Handbook *Financial Accounting for Local and State School Systems*.
CONTACT PERSON:
Connie Holland, 405-521-3308

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 3. FUNDING CRITERIA

210:25-3-7. Financial information processing

These regulations apply to data processing service centers planning to provide services to schools, as well as to schools providing their own computer services (hereafter both referred to as Center), implementing Oklahoma Cost Accounting System (OCAS).

(1) The Center shall have available adequate data equipment to process the information.

(2) Personnel of the Center shall have an adequate understanding of the school finance laws and regulations implementing OCAS in the State of Oklahoma.

(3) No warrant/check shall be issued in excess of the properly approved appropriations or cash on hand for non appropriated funds.

(4) The Center will provide forms and/or means of transmitting proper information to and from the Center.

(5) The Center shall provide a complete audit trail of transactions in the form of a fiscal year-to-date (or monthly) detailed Budget Analysis, listing all encumbrances and payments by date.

(6) All financial transactions must be computer program generated for transfer of information to State Department of Education, coding to the bold or ability to roll to the bold codes if detailed coding is desired at district level, as printed in the OCAS manual.

(7) The Center must have the ability to transfer financial information, for all funds, ~~on one magnetic tape or diskette~~ for expenditures and ~~one for~~ revenue to the State Department of Education, when requested~~.~~ via the Web-based OCAS system.

(8) The Center must have ability to provide adequate audit trail for all entries.

(9) The Center is required to provide a computer generated program from the warrant registry with detail and summary expenditure reports on 8 1/2" X 11", unlined paper, in SDE approved format for claiming of federal fund reimbursements based on warrants issued. No expenditures will be processed on any report that has any manual changes on it.

(10) The Center must have ability to roll to the third digit of Function, first digit of Object in OCAS for federal programs report summary page.

(11) The Center must have ability to meet minimum criteria for software implementing OCAS as developed by the State Department of Education.

~~(12) Facsimile signatures on any warrants processed may not be processed by a computer.~~

(~~13~~12) Computer generated Record and Report of School District Expenditure forms requesting reimbursement against any federal program section of the State Department of Education must be received or postmarked on or before ~~the first (1st) Monday in~~ September 1, effective July 1, 2004. Unclaimed funds in the federal program areas will become carry-over funds into the new school year and be spent and claimed for reimbursement.

(~~14~~13) The Center will provide all necessary pertinent information requested by the school district and promptly make all required monthly, quarterly, and annual reports.

(~~15~~14) The Center shall process budgetary changes provided that said budgetary changes conform with Statutes pertaining to School Finance.

(~~16~~15) The Center shall not process a supplemental allocation unless said allocation is accompanied by a Supplemental Estimate (Form 150), or a Request for Approval of State Aid and/or Federal Aid (Form 307) or Cash Fund Estimate of Needs and Request for Appropriation of Funds for Schools (Form 308), properly signed, authorizing the allocation of an additional appropriation of funds.

(~~17~~16) The Center is required to continuously report the condition of all prior fiscal year funds with active balances.

(~~18~~17) The Center shall furnish all necessary instructions to the school personnel necessary to initiate and maintain the program.

(~~19~~18) The Center, and software vendor providing services for a school district during a fiscal year shall be required to process and incorporate all pertinent information of each of the affected current year's funds from the beginning of the fiscal year. They shall also be required to process all payroll information for the calendar year of initiation.

(~~20~~19) The Center and software vendor may be required to continue services to a school district until all transactions for the current fiscal year are completed even though the school district does not contract for the ensuing fiscal year.

(~~21~~20) The Center is subject to review by the State Board of Education.

SUBCHAPTER 5. BUDGETING AND BUSINESS MANAGEMENT

PART 1. IMPLEMENTATION

210:25-5-4. Accounting

(a) The financial structure of an Oklahoma public school district consists of various classifications as referenced in Oklahoma Administrative Code (OAC) 210:25-7-1, (Oklahoma Cost Accounting System [OCAS]). School District accounting systems shall be organized and operated on a basis that assures legal compliance by the recording and summarizing of financial transactions within funds, each of which is completely independent of any other. Each fund shall account for and continually maintain the identity of its revenues and

expenditures. Financial transactions for purposes of this regulation and as referenced in 70 O.S. 2001, § 5-135.2 shall be defined as a detailed reporting of revenue within the Source of Revenue dimension. Revenue shall be reported to the bold codes within each of the following broad categories: District Source of Revenue, Intermediate Source of Revenue, State Source of Revenue, and Federal Source of Revenue. Expenditures shall be reported by the bold codes within the Function dimension as follows: Instruction, Support Services-Students, Support Services-Instructional Staff, Support Services-General Administration, Support Services-School Administration, Support Services-Central, Operation and Maintenance of Plant Services, Student Transportation Services, Child Nutrition Programs Operations, Community Services Operations and Facilities Acquisition and Construction Services. Additional dimensions for Revenue and Expenditures are coded to provide classification by Fiscal Year, Fund, Project Reporting, Object, Program, Subject, Job Classification, and Operational Unit, where applicable.

(b) ~~The finalized, signed, year-end financial report recording and summarizing all revenue and expenditure financial transactions prepared by the State Department of Education as provided via Web-based reporting by each individual district, shall be returned to the State Department of Education, postmarked or delivered, no later than July 31 of each year.~~The year-end financial report recording and summarizing all revenue and expenditure financial transactions will be completed and certified on the due date.

(c) The school district must inform the Financial Accounting Section of the State Department of Education of any changes made at the district level to any of the financial transactions already submitted to the State Department of Education. Further, none of the data submitted by ~~July 31 deadline~~Law can be changed or altered by either the school district or the Financial Accounting Section after November 15 of each year.

(d) As referenced in 70 O.S. 2001, § 5-135.2 (B), the State Department of Education shall reduce the monthly payment of a district's State Aid funds if the district is not operating pursuant to said system. Not operating pursuant to said system shall be defined as a district not:

(1) accurately recording and reporting all revenue and expenditures by applicable OCAS bold code dimensions;

(2) submitting OCAS financial records via the Web-based system of all recorded and reported revenue and expenditures by applicable OCAS bold code dimensions to the State Department of Education;

(3) ascertaining that current and accurate applicable OCAS codes are being utilized as updated and maintained by the State Department of Education;

(4) complying with regulations as outlined in OAC 210:25-3-7 (Financial information processing), OAC 210:25-5-10 (The encumbrance clerk), OAC 210:25-5-11 (The school district treasurer), OAC 210:25-5-12 (Purchase order procedures for schools), or OAC 210:25-5-13 (School activity fund);

(5) reconciling all recorded and reported revenue and expenditures by applicable OCAS bold code dimensions by balancing data with bank receipts and statements, purchase orders, warrant registers, investment ledgers, and all balance sheet accounts; and

~~(6) submitting finalized, signed, year-end revenue and expenditures reports by July 31 of each year.~~

(e) For appropriated funds, all indebtedness should be encumbered (have a purchase order issued and be recorded) on the day the obligation is incurred, rather than when it becomes due, and supporting documentation should be provided for all indebtedness.

(f) Upon the approval of the State Board of Education, school districts may make capital expenditures up to a maximum amount of $50,000 (fifty thousand dollars) during the current fiscal year within the General Fund pursuant to 70 O.S. 2001, § 1-117, if the school district meets the established criteria as outlined in the Statutes. School districts shall be voting the maximum five (5) building fund mills. General Fund monies authorized by the State Board of Education for expenditures must be expended within the current fiscal year. Any such funds encumbered as of June 30th of the current fiscal year, but not expended by November 15th of the subsequent fiscal year, shall lapse and return to the original purpose of such funds.

(g) A school district shall be authorized to utilize general fund monies for capital expenditures, in addition to the amount specified in subsection (c), pursuant to the provisions of 70 O.S. 2001, § 1-117.

~~(h) Expenditures from all appropriated funds shall be made by properly issued warrants/checks. Expenditures from the School Activity Fund shall be made by countersigned checks.~~

(~~i~~h) Inventory cards or data processing records shall be kept on all equipment and removable fixtures, showing purchase order number when known, date of purchase (when known, if not known an estimated date shall be used), amount of purchase (if known, if not known present value must be estimated) a description of the item, the serial number (when applicable) and the location of the item. New purchases shall be included in the records on the same day in which they are physically received by the district. Disposed equipment must be removed from the records on the disposal date and a detailed description of the circumstances which results in the disposal recorded. Disposed equipment should not be included in the records of future years.

210:25-5-5. Auditing

(a) The statutes of the State of Oklahoma require the board of education of each school district to cause an annual audit of the district's financial activity. The audit must be made in accordance with State Statutes, State Board of Education Regulations and Federal Office of Management and Budget (OMB) Circular A-133. Audits may be performed only by those auditors possessing basic legal qualifications and admitted to the list of auditors approved by the State Board of Education. The State Board of Education has the option to deny the following year's application of any auditor or audit firm for noncompliance with the "School Audit Law." The auditor or audit firm may make application to be included on the approved list of auditors after one year's suspension. The State

Board of Education shall examine each audit report and demand corrections of any existing deficiencies. It is mandatory that State Aid payments be withheld during noncompliance with the "School Audit Law."

(b) Auditing is process of examining documents, reports, systems of internal control, accounting and financial procedures, and other evidence to ascertain:

(1) That the statements prepared from the accounts present fairly the financial position and results of financial operations of each of the school's funds;

(2) That the school administration has properly complied with statutory requirements and the rules and regulations of the State Board of Education in the conduct of its financial transactions;

(3) That the school's financial transactions have been conducted with mathematical accuracy and have been properly recorded;

(4) That the school has complied with the terms of grants and special agreements;

(5) That adequate stewardship has been exercised by the school board, its officers and employees in the conduct of their duties in the administration of school assets.

(c) The audit must encompass all of the school district's funds. The requirements in (b) of this Section form the basis for the reporting of the school's general, special revenue, capital projects and debt service funds. School activity funds, including school lunch funds, and other trust or fiduciary funds must also be included in the audit report.

(d) The accounting principles by which all audits will be performed are as follows:

(1) The school district's accounting system must conform with the laws of the State of Oklahoma and the rules and regulations of the State Board of Education.

(2) The school district's accounting system shall make it possible to demonstrate compliance with legal provisions.

(3) The school district's accounting system shall clearly reflect the financial operations of the school district.

(4) If accounting principles, procedures, or standards conflict with legal or regulatory provisions, the legal or regulatory provisions shall take precedence.

(5) The accounting system shall be kept in the manner prescribed by the State Board of Education or in the manner of an accounting system approved by the State Board of Education.

(6) The school district shall establish the funds prescribed or authorized by law and necessitated by sound financial judgment. The classification of funds shall be faithfully followed in the Estimate of Needs, Accounting System and Financial Reports.

(7) A complete self-balancing group of accounts shall be established for each fund. Each such group will include all the accounts necessary to set forth the financial operations of the fund and to reflect compliance with legal and regulatory provisions.

(8) If a fixed asset fund is maintained, the accounts shall be kept on the basis of original cost, or the estimated cost if the original cost is not available, or in the case of gifts, the appraised value at the time received.

(9) The accounting system shall provide for budgetary control for both revenues and expenditures, and the financial statements will reflect, among other things, budgetary information.

(10) The accounts, except activity funds, shall be maintained on a modified cash basis in accordance with the laws of the State of Oklahoma or a school district may elect to file an application with the State Board of Education to convert to Generally Accepted Accounting Principles (GAAP) accounting. The State Board of Education will approve or reject the application based on the district's ability to implement the practice.

(11) Revenue and expenditures shall be classified in accordance with State Board of Education regulations in order to provide uniform accounting and consistent statistics.

(12) A cost accounting system is required. Cost accounting is in addition to a required financial accounting system, however, and must not be allowed to interfere with its uniform application. Although depreciation is not included in a required accounting system, it should be considered in determining unit cost when a cost accounting system is used.

(13) A common terminology and classification based upon that prescribed by State Board of Education rules and regulations, shall be used consistently throughout the estimate of needs, accounts, and financial reports.

(e) Primary audit procedures will consist of the following:

(1) Each Local Education Agency (LEA) will engage an independent auditor, approved by the Oklahoma State Board of Education, to examine its financial statements. Each LEA superintendent shall notify the State Board of Education, prior to the end of the fiscal year to be audited, of the independent auditor who has been engaged to conduct the audit.

(2) Where there are differences in state and federal standards due to the statutory and regulatory requirements in both levels of government, the LEA and the auditor will examine and adhere to both in order to be in total compliance.

(3) The Oklahoma State Department of Education will establish and maintain a monitoring system to assure that federal and state audit requirements are met. The Oklahoma State Department of Education will review each audit report and notify the appropriate federal program administrator of any deficiencies reported by the independent auditor regarding federal programs. The administrator will implement the procedures deemed necessary to resolve the exceptions noted by the auditor. The final result of the action taken will be filed with the audit report no later than 90 days after the program administrator has been advised of the auditor's findings.

(f) Audit report requirements are as follows:

~~(1) The auditor's letter shall cover the following:~~

~~(A) Scope of audit~~

~~(B) Compliance with auditing standards~~

~~(C) Opinion of auditor~~
~~(i) Financial statements~~
~~(ii) Accounting principles~~
~~(iii) Legality and operations~~
~~(D) Reason for not rendering opinion~~
~~(i) Accounting principles~~
~~(ii) Legality of operations~~
~~(iii) Other~~
~~(2) The commentary will address:~~
~~(A) Minor qualifications to opinion not materially affecting statements~~
~~(B) Reservations not affecting statements~~
~~(C) Exceptions not affecting statements~~
~~(i) Statutory violations~~
~~(ii) Regulatory violations~~
~~(iii) Bookkeeping errors~~
~~(iv) Other~~
~~(D) Informative comments~~
~~(E) Applicable recommendations~~
~~(3) Financial statements in the report shall include:~~
~~(A) Appropriated funds (general fund, building fund, co-op fund, child nutrition fund)~~
~~(i) Balance sheet~~
~~(ii) Analysis of surplus~~
~~(iii) Revenue and Expenditures~~
~~(iv) Appropriations~~
~~(v) Classification of expenditures~~
~~(vi) Investments~~
~~(vii) Ad valorem tax accounts~~
~~(viii) Desirable supporting schedules~~
~~(B) Sinking fund~~
~~(i) Balance sheet~~
~~(ii) Analysis of surplus~~
~~(iii) Revenue and expenditures~~
~~(iv) Investments~~
~~(v) Ad valorem tax accounts~~
~~(vi) Desirable supporting schedules~~
~~(C) Activity fund~~
~~(i) Balance sheet~~
~~(ii) Revenue and expenditures~~
~~(iii) Investments~~
~~(iv) Desirable supporting schedules~~
~~(D) Miscellaneous~~
~~(i) Treasurer's activity~~
~~(ii) Warrants~~
~~(iii) Bonded debt~~
~~(iv) Per capita schedules~~
~~(v) Depository collateral~~
~~(vi) Other desirable schedules~~
(1) Audit reports may be presented in the following formats:
(A) Schools which have obtained prior approval from the State Board of Education to use generally accepted accounting principles (GAAP), must use a straight GAAP Governmental Accounting Standards Board (GASB) No. 34 compliant presentation.
(B) Schools using the regulatory basis of accounting as defined by Oklahoma Statutes may use GASB 34 compliant audit report presentations.
(C) Schools using the regulatory basis of accounting as defined by Oklahoma Statutes may use another comprehensive basis of accounting as prescribed by the Oklahoma State Department of Education. An example of a school district single audit report presented in conformity with another comprehensive basis of accounting as prescribed by the Oklahoma State Department of Education is available in the Financial Accounting Section, State Department of Education. Schools need only present the funds and note disclosures that apply to the specific district. The example is not intended to take precedence over professional reporting standards and requirements.
(~~4~~2) Informational statements will specify
(A) Board members and officers
(B) Statutory bonds
(C) Other fidelity or honesty bonds
(D) Insurance coverage
(E) Other desirable statements
(~~5~~3) Size of audit report will conform to the specified dimensions:
(A) Length = Maximum, 11"
(B) Width = Maximum, 8 1/2"
(~~6~~4) Each audit report shall be presented to and reviewed with the local board of education in a public meeting as required by law. Each audit report must contain a signed Acknowledgement Page on a form supplied by the State Department of Education. The Acknowledgement Page will verify the date the audit was reviewed with the local school board as well as the school board's acknowledgement that as the governing body of the district responsible for the district's financial and compliance operations the audit findings and exceptions have been presented to them.
(g) Requirements specific to Federal programs must be included in each audit.
(1) Federal regulations (OMB Circular A-133, and Compliance Supplement) require a financial and compliance audit of programs receiving federal funds. These regulations (in accordance with P.L. 98-502) ensure that audits be made on an organization-wide basis rather than a grant-by-grant basis and according to the standards and procedures expressed therein. The Oklahoma State Department of Education shall serve as the recipient agency for A-133 purposes for the local education agencies. Overclaim assessments may be levied where necessary when there has been a lack of compliance and treated as a current expenditure.
(2) This rule and the adoption of the standards and regulations for audits of local boards of education does not limit the authority of federal or state agencies to make audits of programs in the local education agencies, and is in keeping with OMB Circular A-133. Some state and local governmental units in Oklahoma prepare their financial statements in conformity with a comprehensive

basis of accounting other than generally accepted accounting principles. A-133 does not prohibit such practice; nonetheless, it requires, as do generally accepted auditing standards, that auditors state in their report the departures from generally accepted accounting principles. However, any additional audit work must build on the work already done.

~~(3) Generally applicable requirements are national policies prescribed by statutes, Executive order, or other authoritative source and which apply to the assistance programs of two or more agencies. Noncompliance with these requirements could materially affect the grantee's financial statements. Accordingly, they should be included as part of every audit of state and local governments that encompasses Federal financial assistance. Included is the requirement for periodic Federal financial reports, as specified in Treasury Circular 1075, or elsewhere. The auditor's tests of compliance with this requirement, for those grant programs where such requirements exist, provides the Federal Government with the necessary assurances as to the completeness and reliability of such reports. These categories include:~~

~~(A) Federal funds cannot be used for partisan political activity of any kind by any person or organization involved in the administration of federally assisted programs.~~

~~(B) Davis-Bacon Act. All laborers and mechanics employed by contractors or subcontractors to work on projects financed by Federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor. (40 STAT 1494, Mar. 3, 1921, Chap. 411, 40 U.S.C. 276A-276A-5).~~

~~(C) No person shall, on the grounds of race, color, national origin, sex, age, or handicap be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or in part, by Federal funds. (Age - 42 U.S.C. 65-01 et seq; Race-42 U.S.C. 2000d; Handicap-29 U.S.C. 794; Sex-20 U.S.C. 1681-1683)~~

~~(D) Grantee financial management systems shall include procedures to minimize the time elapsed between the transfer of funds from the U.S. Treasury and the disbursement of funds by the grantee. Advances made by primary recipients to secondary recipients shall conform substantially to the same standards of timing and amount as apply to advances by Federal agencies to primary recipient organizations. Intergovernmental Cooperation Act of 1968, P.L. 90-577 (Sec. 203), as amended, by P.L. 96-470, Title I, Sec. 101 (b).~~

~~(4) There are program specific requirements for programs that provide Federal aid to local school districts. While there may be other requirements for these programs, the auditor is not required to perform tests for compliance with those requirements. Other means are used to obtain assurance of compliance with those requirements and/or noncompliance with these requirements would not materially affect the grantees' financial statements. An auditor can use any procedure, as long as they support his or her opinion regarding compliance and noncompliance with the specified requirements. The auditor should be able to determine the applicable procedures in each instance where programs entail pass-through funds. The requirements cover five categories:~~

~~(A) Types of service allowed or unallowed~~

~~(B) Eligibility~~

~~(C) Matching, level of effort, and/or earmarking requirements~~

~~(D) Reporting requirements~~

~~(E) Special tests and provisions.~~

~~(5) The audit programs should be developed in accordance with procedures in the "General Accounting Office Publication - Guidelines for Financial and Compliance Audits of Federally Assisted Programs, February 1980," which supplement generally accepted auditing standards.~~

~~(6) The audit instructions, audit programs, and audit work papers should be available upon reasonable notice for review by appropriate state officials and by representatives of the U.S. Government.~~

(~~7~~3) The auditor should clearly understand that A-133 audits require the expression of opinions and inclusion of comments in audit reports which go beyond the standard opinions and comments usually presented. Specifically, the audit report shall include:

(A) Financial statements, including footnotes, of the recipient organization.

(B) The auditors' comments on the financial statements which should:

(i) Identify the statements examined, and the period covered.

(ii) Identify the various programs under which the organization received Federal funds, and the amount of the awards received.

(iii) Identify by a schedule showing receipts and disbursements for each grant program.

(iv) State that the audit was done in accordance with the "General Accounting Office Standards for Audit of Governmental Organizations, Programs, Activities, and Functions," the "Guidelines for Financial and Compliance Audits of Federally Assisted Programs," any compliance supplements approved by OMB, and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

(v) Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification.

(C) The auditors' comments on compliance and internal control should:

(i) Include comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses.

(ii) Identify the nature and impact of any noted instances of noncompliance with the terms of agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements and reports.

(iii) Contain an expression of positive assurance with respect to compliance with requirements for tested items, and negative assurance for untested items.

(D) Comments on the accuracy and completeness of financial reports and claims submitted to state or federal agencies for federal fund advances or reimbursements.

(E) Comments on corrective action taken or planned by the recipient.

(F) Comments as to whether the indirect cost rates are appropriately calculated and applied.

(~~8~~4) These requirements are common to nearly all state and local funds and federal programs:

(A) Funds disbursed by other governments were received and properly identified.

(B) Interest earned on idle funds was credited to the proper funds.

(C) Unexpended funds or unearned federal funds advanced or overpaid were correctly accounted for.

(D) A system of encumbrance accounting was maintained which reported the amount obligated, disbursed, remaining unobligated balance, and outstanding unliquidated obligations for each fund and program.

(E) Obligations reported were actually incurred during the fiscal year or approved program period, and, upon liquidation, were properly adjusted.

(F) Payments reported: Were actually made to the vendors, contractors and employees; were supported by adequate evidence of delivery of goods or performance of services; and conformed to applicable laws and regulations, including procurement requirements.

(G) Refunds, discount, etc., were properly applied as reductions of the gross expenditures of the specific funds or programs.

(H) Costs, direct and indirect, were correctly prorated to the proper funds or programs.

(I) The same expenditure was not claimed under more than one program or reported as an expenditure for two fiscal or program years.

(J) Inventory requirements for materials and equipment purchased with federal funds were maintained.

[OAR Docket #05-981; filed 5-23-05]

TITLE 230. STATE ELECTION BOARD CHAPTER 10. THE COUNTY ELECTION BOARD

[OAR Docket #05-1005]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Election Personnel
Part 1. The County Election Board
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Part 13. Precincts and Subprecincts
230:10-7-103. Subprecincts [AMENDED]
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230:10-3-16.1. Compensation for temporary personnel must be funded [NEW]
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These new and amended rules implement portions of two bills passed in 2003 (SB175 and SB358) and two passed in 2004 (SB1104 and SB1346) that created or amended the following sections in Title 26 of the Oklahoma Statutes: 2-118; 2-107; 2-117; 2-128.2; 7-116.1; and 3-119. No new forms are necessary.

Some amended rules in this Chapter concern compensation of the County Election Board Secretary, Assistant Secretary, and Chief Clerk. Language in the statutes concerning compensation for these officials has changed. Specifically, language that creates a minimum and maximum salary for the Assistant Secretary was added in 2003. Language that redefines the minimum salary of the Chief Clerk was added in 2004. New rules in this chapter concern the authority of the State Election Board Secretary to employ and supervise County Election Board personnel in the event of a vacancy in the office of County Election Board Secretary. Other new rules require the county to fund compensation for appropriate temporary personnel in the County Election Board office when the Secretary, Assistant Secretary, or Chief Clerk are absent for an extended period due to illness or emergency.

A section concerning retention of certain election materials is amended to include references to voted absentee and provisional ballots. Sections that concern lists of registered voters that are available to the general public from the County Election Board or the State Election Board are amended to reflect new capabilities and new technology.

A Section concerning the establishment of subprecincts is amended to increase the number of registered voters that may be affected by a subprecinct from 100 to 200. Another change would permit up to 300 registered voters to be in a subprecinct in "metropolitan statistical areas." Metropolitan statistical areas are defined by an agency of the federal government. Currently four such areas affect counties in Oklahoma: Oklahoma City, Tulsa, Lawton, and Fort Smith, Arkansas.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 3. ELECTION PERSONNEL

PART 1. THE COUNTY ELECTION BOARD

230:10-3-8. Salary of the Secretary

(a) The Secretary is paid on a monthly basis from county funds. Each month the State Election Board shall reimburse the county for the salary and fringe benefits paid to the Secretary, not to exceed 135 percent of the salaries specified. [26:2-118] The Secretary's salary is set by law and is based on the number of active registered voters in the county on January 1 of each odd-numbered year. [26:2-118]

(b) The Secretary of the State Election Board shall determine the appropriate salary level for each County Election Board Secretary, and shall notify the County Clerk in each county in January of each odd-numbered year. Any salary change shall take effect at the beginning of the County Election Board Secretary's term on May 1 of each odd-numbered year and shall remain in effect throughout the two-year term.

(c) In the event that a County Election Board is under administrative supervision of the State Election Board, as outlined in 230:10-3-9.1, at the time a salary increase becomes effective, the Secretary of that County Election Board shall not receive the salary increase. [26:2-118] The Secretary shall be entitled to receive the salary increase at the time that the administrative supervision ends. The salary increase shall not be retroactive to the time the salary increase generally became effective.

(d) The salary of a County Election Board Secretary shall not fall below the level of the salary paid in the county on ~~May 1, 2002,~~ April 30, 2003, regardless of the number of active registered voters in the county . [26:2-118] The salary of a County Election Board Secretary who is reappointed to a new two-year term as Secretary shall not fall below the salary received in the immediately preceding term. [26:2-118]

230:10-3-9.2. Employment and supervision of County Election Board personnel when office of Secretary is vacant

In the event of a vacancy in the office of Secretary of the County Election Board, the Secretary of the State Election Board is authorized by law to stand in the place of the County Election Board Secretary to employ and to supervise the personnel necessary to perform the duties of the County Election Board until a new Secretary is appointed. [26:2-107 and 26:2-117]

230:10-3-12. Compensation of the Assistant Secretary

(a) *The minimum salary of the Assistant Secretary* ~~is~~ *shall be equal to ninety percent (90%) of the scheduled salary of the* ~~*highest salaried first or chief deputy or assistant to any County Officer*~~ *secretary in the same county*~~*, or equal to 90 percent of the salary of the Secretary in the same county, whichever is lower,*~~ *but shall not exceed the salary of the highest salaried first or chief deputy or assistant to any county officer, excluding the under sheriff, in the same county*. [26:2-117] ~~There is no maximum salary for the Assistant Secretary.~~

(b) The Assistant Secretary's salary is paid totally by the county on a monthly basis. [26:2-117]

(c) The Assistant Secretary shall be compensated at the appropriate rate for all hours worked in excess of his or her regular work hours in compliance with the requirements of the federal Fair Labor Standards Act. Compensation and any related benefits for such overtime hours shall be paid by the county. See 230:10-7-125 through 230:10-7-133.

230:10-3-14. Compensation of the Chief Clerk

(a) ~~*The minimum salary of the Chief Clerk* is *equal to one half of the salary of the highest salaried first or chief deputy or assistant to any County Officer in the same county or equal to 90 percent of the salary of the Secretary in the same county, whichever is lower.*~~ The minimum salary of the Chief Clerk of the County Election Board shall be either equal to the hourly rate of the salary paid to the highest salaried first or chief deputy or assistant to any elected county officer in the same county, excluding the undersheriff, or equal to 90% of the salary of the County Election Board Secretary in the same county, whichever is lower. [26:2-117] There is no maximum salary for the Chief Clerk.

(b) The Chief Clerk's salary is paid totally by the county on a monthly basis. [26:2-117]

(c) The Chief Clerk shall be compensated at the appropriate rate for all hours worked in excess of his or her regular work hours in compliance with the requirements of the federal Fair Labor Standards Act. Compensation and any related benefits for such overtime hours shall be paid by the county. See 230:10-7-125 through 230:10-7-133.

(d) The salary of the highest paid first or chief deputy in the county, excluding the undersheriff, shall be converted to an hourly rate for the purpose of determining the salary of the Chief Clerk. The following formula shall be used to determine the hourly rate.

(1) **Determining hourly rate paid to the highest salaried first deputy.**

(A) Multiply the number of hours in the highest paid deputy's regular work week by 52 to determine the maximum number of work hours per year.

(B) Divide the maximum number of work hours per year by 12 to determine the maximum regular work hours per month.

(C) Divide the gross monthly salary paid to the deputy by the number of hours per month determined in step B. This is the deputy's hourly rate.

(2) **Determining the Chief Clerk's minimum salary.**

(A) Multiply the number of hours in the Chief Clerk's regular work week by 52 to determine the maximum number of work hours per year.

(B) Divide the number of work hours per year by 12 to determine the maximum regular work hours per month.

(C) Multiply the maximum regular work hours per month by the hourly rate determined in (1)(C) of this subsection to determine the monthly salary for the Chief Clerk based on the hourly rate paid to the highest salaried first deputy.

(D) Multiply the scheduled salary for the Secretary of the County Election Board by 0.9. (90%).

(E) Divide the amount determined in (D) by 12. This is the amount of the monthly salary for the Chief Clerk based on 90% of the Secretary's salary.

(F) The minimum salary of the County Election Board Chief Clerk is the lower amount of (C) or (E).

230:10-3-16.1. Compensation for temporary personnel must be funded

In the event that the secretary, assistant secretary, chief clerk, or any other essential county election board employee must be away from work for a period of time due to personal illness, family illness, or family emergency, the county shall be required to fund compensation of appropriate temporary personnel during the employee's absence. [26:2-117]

PART 3. THE PRECINCT ELECTION BOARD

230:10-3-28.1. Special-purpose precinct workers

(a) The County Election Board Secretary may employ special-purpose precinct workers for any election upon approval by the Secretary of the State Election Board. [26:2-128.2] The County Election Board Secretary may employ special-purpose precinct workers to assist the Inspector, Judge, and Clerk with specific tasks, but they are not members of the Precinct Election Board and shall not perform any other duties assigned to the Inspector, Judge, or Clerk. Employment of special-purpose precinct workers usually shall be reserved for elections at which a large turnout is anticipated or at which an unusually large number of voters may need to update their voter registrations or vote provisionally. Only one special-purpose precinct worker may be assigned to a precinct, but that person may serve as both a Registration Official and as a Provisional Voting Officer. Special-purpose precinct workers may be employed for the following purposes only.

(1) **Registration Officials.** A Registration Official is a special-purpose precinct worker employed to help voters fill out new Oklahoma Voter Registration Application forms needed to correct certain deficiencies in their voter registration records. The specific duties of a Registration Official are outlined in 230:35-5-60. When a Registration Official is not employed, the duties are performed by the Judge as part of the regular election duties without additional compensation.

(2) **Provisional Voting Officers.** A Provisional Voting Officer is a special-purpose precinct worker employed to help voters cast provisional ballots in federal elections only. The specific duties of the Provisional Voting Officer are outlined in 230:35-5-177. When a Provisional Voting Officer is not employed, the duties are performed by the Inspector as part of the regular election duties without additional compensation.

(b) Special-purpose precinct workers shall be compensated at the same rate as the Judge and Clerk. [26:2-128.2] Compensation for special-purpose precinct workers shall be included on the Pre-Election Expense Claim for the election. The State Election Board shall pay for the compensation of special-purpose precinct workers only when such payment is authorized by the Secretary of the State Election Board in advance of the election. The Secretary of the State Election Board may establish a maximum number of special-purpose precinct workers in each county for which the State Election Board shall pay. The maximum number of state-funded special-purpose precinct workers per county shall be based on a percentage

of the number of precincts in each county. The percentage used may change from election to election depending upon the availability of state funds for this purpose. The Secretary of the State Election Board shall notify the County Election Board Secretary of the maximum number of state-funded special-purpose precinct workers authorized for the county prior to the election. The County Election Board Secretary may employ other special-purpose precinct workers in addition to those funded by the State Election Board if sufficient funds are available to cover the expense.

SUBCHAPTER 7. GENERAL ADMINISTRATION OF THE COUNTY ELECTION BOARD

PART 5. MAINTAINING THE OFFICE

230:10-7-44. Retention of ballots

All ballots shall be retained in sealed ballot transfer boxes for at least 30 days after an election. [26:7-134] Voted precinct ballots used in an election involving federal candidates, as outlined in 230:10-7-41, shall be retained for 24 months after the election. Unused precinct ballots from elections involving federal candidates may be destroyed 30 days after the election, provided that the unused ballots were retained separately from the used ballots. Voted absentee ballots and all related materials shall be retained for 24 months after the election. [26:14-132] Voted provisional ballots and all related materials shall be retained for 24 months after the election. [26:7-116.1]

PART 7. PUBLIC RECORDS

230:10-7-66. Lists of registered voters

(a) ~~The Secretary of the County Election Board shall make available a printed list of the registered voters in the county. This printed list shall be available to any person according to one of the following options.~~

~~(1) Photocopies of the list of registered voters may be provided to a person who requests a copy. The County Election Board may charge a fee only for recovery of the direct cost of making the copy. The cost for copying the list of registered voters shall not exceed 25 cents per page measuring 8 1/2 by 14 inches or smaller. See 230:10-7-62.~~

~~(2) A copy of the list of registered voters may be loaned to a person who requests a copy. The Secretary shall require any person who borrows the list to provide his name, address and telephone number. The period of the loan shall be sufficient to allow the borrower to make his own copy of it, but should not exceed five working days. If the Secretary makes the list available on loan, more than one current copy of the list shall be maintained in the County Election Board office at all times.~~

~~(b)~~ The Secretary of the County Election Board is authorized to format and print certain reports, such as lists of registered voters, from OEMS for the benefit of candidates or the public. The Secretary is authorized to collect a fee of 25 cents per page for such specially-printed reports. The header and trailer pages of the report shall not be included in the page count of a report.

~~(c) If the Secretary provides lists for duplication or loan as outlined in (a) of this Section, the Secretary shall not be required to print reports upon request.~~

(b) Requests for reports shall be filled in as timely a manner as possible, but the Secretary shall not be required to print any such reports requested during the week preceding an election, nor during the last two weeks prior to a statewide General Election.

230:10-7-66.1. Voter registration records available on electronic media from State Election Board

(a) **Records available.** Certain voter registration records are available on electronic media from the State Election Board. The following records are available.

(1) **Voter registration records.** Voter registration records include the following information: the voter's precinct number, the voter's name, the voter's ID number, political affiliation, status, registration address, date of birth, date of registration and mailing address if it differs from the registration address.

(2) **Voter history records.** Voter history records include the following information: the voter's ID number, the date of the election and the voting method (in person at polling place or absentee ballot).

(3) **Precinct/District information.** Precinct/District information includes the precinct number, Congressional District number, State Senate District number, State House District number, County Commissioner District number and the name of the polling place.

(b) **Format and media type.** All records described in (a) of this Section are written in ASCII format~~. The following types of media are available.~~

~~(1) **Diskettes.** Diskettes are available for orders of up to 50,000 records. Diskette sizes are 5.25" (1.2 mb) and 3.5" (1.44 mb).~~

~~(2) **Magnetic tape.** Magnetic tapes are available. The tapes are 0.5", 9 track, 10 $\frac{1}{2}$" open reels, written at 6250 bpi.~~ on compact disks (cds).

(c) **Fees for records.** Fees for all three types of records are charged according to the following schedule.

(1) **Statewide.** All voter registration records in the state shall be available at a cost of $150.

(2) **United States Congressional District.** All voter registration records in a United States Congressional District shall be available at a cost of $50.

(3) **State Senate District.** All voter registration records in a State Senate District shall be available at a cost of $35.

(4) **State Representative District.** All voter registration records in a State Representative District shall be available at a cost of $20.

(5) **County.** All voter registration records in a county shall be available at the cost indicated in the following schedule.

(A) Voter registration records for the following counties shall be available at a cost of $75: Oklahoma and Tulsa.

(B) Voter registration records for the following counties shall be available at a cost of $50: Cleveland, Comanche, Payne.

(C) Voter registration records for the following counties shall be available at a cost of $35: Bryan, Caddo, Canadian, Carter, Cherokee, Creek, Custer, Delaware, Garfield, Garvin, Grady, Kay, LeFlore, Lincoln, Logan, McCurtain, Mayes, Muskogee, Okmulgee, Osage, Pittsburg, Pontotoc, Pottawatomie, Rogers, Sequoyah, Stephens, Wagoner, Washington.

(D) Voter registration records for the following counties shall be available at a cost of $20: Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Choctaw, Cimarron, Coal, Cotton, Craig, Dewey, Ellis, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kingfisher, Kiowa, Latimer, Love, McClain, McIntosh, Major, Marshall, Murray, Noble, Nowata, Okfuskee, Ottawa, Pawnee, Pushmataha, Roger Mills, Seminole, Texas, Tillman, Washita, Woods, Woodward.

(6) **Precinct.** Voter registration records for a single precinct shall be available at a cost of $10.

(7) **School District.** Voter registration records for a single school district shall be available at a cost of $35.

(d) **Method of payment.** Cashier's checks and certified checks will be accepted. Personal checks will be accepted but must clear before data will be released.

(e) **Time for filling orders.** Orders for voter registration data will be filled as soon as possible. However, orders received within 20 days of a statewide election may not be filled until after the election.

(f) **Limitations of data.** Information contained in individual voter records may include a registration address and/or a mailing address or no address. Some addresses may not be sufficient for mailing. Some information may be incomplete or missing. The data provided on electronic media must be manipulated by user's software before it can be sorted by ZIP Code, name or household. Lists and/or labels cannot be produced directly from these media.

(g) **Printouts.** Computer printouts are available only from County Election Boards as outlined in 230:10-7-66.

PART 13. PRECINCTS AND SUBPRECINCTS

230:10-7-103. Subprecincts

(a) Where fewer than ~~100~~ 200 registered voters are affected, an area which otherwise would be a precinct may be designated as a subprecinct provided that it includes the *maximum area possible without crossing boundaries of any District Court judicial district electoral division or any Congressional, Legislative or Commissioner district*. [26:3-119] Registration records for a subprecinct must be maintained in the same manner as for a precinct. [26:3-119] Subprecincts shall not have a separate polling place or Precinct Election Board. Instead, the Secretary of the County Election Board shall authorize registered voters of a subprecinct to vote at a specific adjacent precinct. [26:3-119] Separate voting devices and election materials must be provided for the subprecinct in order that a separate certification can be made of the subprecinct's election results. [26:3-119] Appropriate ballots must be printed and issued to the voters of the subprecinct. [26:3-119]

(b) *In metropolitan statistical areas, if fewer than 300 registered voters are affected, an area constituting the maximum area possible without crossing boundaries of any district court judicial district electoral division or any congressional, legislative or county commissioner district may be designated as a subprecinct.* [26:3-119(B)] Metropolitan statistical areas are defined by the federal Office of Management and Budget according to standards developed by the interagency Federal Executive Committee on Metropolitan Areas. The following metropolitan statistical areas have been defined in Oklahoma. In counties included in each of these defined metropolitan statistical areas, the Secretary of the County Election Board may designate appropriate areas as subprecincts as provided in this subsection.

(1) **Lawton.** The Lawton metropolitan statistical area includes all of Comanche County.

(2) **Oklahoma City.** The Oklahoma City metropolitan statistical area includes all of Canadian, Cleveland, Grady, Lincoln, Logan, McClain, and Oklahoma Counties.

(3) **Tulsa.** The Tulsa metropolitan statistical area includes all of Creek, Okmulgee, Osage, Pawnee, Rogers, Tulsa, and Wagoner Counties.

(4) **Fort Smith, Arkansas.** The Fort Smith, Arkansas, metropolitan statistical area includes all of LeFlore and Sequoyah Counties in Oklahoma.

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TITLE 230. STATE ELECTION BOARD
CHAPTER 15. VOTER REGISTRATION

[OAR Docket #05-1006]

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Subchapter 5. Application for Voter Registration
Part 7. Time for Registration
230:15-5-30. Change of political affiliation [AMENDED]
Part 21. Voter Registration Application by Mail
230:15-5-83. Applying for voter registration by mail [AMENDED]
230:15-5-83.1. Voter registration for Address Confidentiality Program participants [AMENDED]
230:15-5-84. Information required on voter registration application [AMENDED]
230:15-5-85. Other information requested on applications for voter registration [AMENDED]
Subchapter 9. Receiving and Processing Voter Registration Applications
Part 5. Processing Voter Registration Applications
230:15-9-18. Entering applications for voter registration in OEMS [AMENDED]
230:15-9-18.1. Assigning voter registration addresses in the Street Guide [AMENDED]
230:15-9-22. Processing applications for change of political affiliation [AMENDED]

230:15-9-22.1. Processing application for change of political affiliation during prohibited period [AMENDED]
Subchapter 11. Voter Registration List Maintenance
Part 1. Cancellation of Voter Registration
230:15-11-4. Processing cancellations of registration [AMENDED]
230:15-11-6.1. Cancellation of registration of deceased voter upon notice of nursing home administrator [NEW]
230:15-11-8. Cancellation for felony conviction [AMENDED]

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These new and amended rules implement portions a bill passed in 2003 (SB358) and of two bills passed in 2004 (SB1104 and SB1346). These bills either created or amended the following sections in Title 26 of the Oklahoma Statutes: 4-112; 4-119; 4-120.3; 4-120.4; and 7-115.2. One new form is required by 230:15-11-6.1. The new form is used by a nursing home administrator to notify the County Election Board Secretary of the death of a resident of the nursing home. The Secretary may use information on the form to cancel the resident's voter registration.

Several amended rules in this Chapter concern the deadline for changing political affiliation in even-numbered years. Due to the changes in the dates of the Primary and Runoff Primary Elections, which were implemented last year, the deadline was moved from July 1 to June 1. The political affiliation change prohibition now runs from June 1 through August 31 in even-numbered years.

Some changes have been made to the Oklahoma Voter Registration Application form as a result of a new federal law known as HAVA (Help America Vote Act). HAVA requires that a voter provide his or her driver license or state identification card number on a voter registration application. If a voter registration applicant does not have a driver license or state identification card, the last four digits of the applicant's Social Security number are required instead. HAVA also requires that any person who applies for voter registration by mail be asked to show identification when voting for the first time in a federal election. A voter may submit identification with a voter registration application in order to avoid this requirement. Identification cannot be required for voter registration, however, according to another federal law (National Voter Registration Act of 1993). Several Sections are amended to reflect these federal requirements.

A Section concerning the assignment of addresses in the OEMS Street Guide is amended to reflect recent upgrades to the Street Guide software. The Street Guide is a computer program that identifies the correct precinct for each voter registration address entered in the system. The Street Guide has included information about school districts for several years. It now also contains information about municipalities. Now when a voter registration application is entered in OEMS, the software determines not only the correct precinct, but also the correct school district and correct municipality based on the address entered.

A Section is amended and a new Section is created to accommodate a new law that permits the County Election Board Secretary to cancel a voter registration when notified by a nursing home administrator of the death of a nursing home resident.

A Section is amended to revise the procedure used to receive information about felony convictions. The law was amended in 2002 and became effective in 2003 to permit the county court clerk to notify the County Election Board Secretary of felony convictions in the county. If information provided by the court clerk could be used to positively identify a voter registration record, the voter registration could be cancelled. County Election Board personnel enter all the information provided by the court clerk, even if it appears the person is a resident of another county. The information is transmitted electronically to the State Election Board. The State Election Board in turn transmits the information to the appropriate County Election Board where the voter registration is cancelled.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 5. APPLICATION FOR VOTER REGISTRATION

PART 7. TIME FOR REGISTRATION

230:15-5-30. Change of political affiliation

A registered voter may apply to change his or her political affiliation at any time during an odd-numbered year. A registered voter may apply to change his or her political affiliation at any time during an even-numbered year, except during the period ~~beginning at 5:00 p.m. on July 1 and ending at 5:00 p.m. on September 30~~ from June 1 through August 31, inclusive. Applications to change political affiliation received during this period shall be held by the County Election Board and activated on ~~October~~ September 1 as outlined in 230:15-9-22.1. However, if such an application for political affiliation change also

includes change of address or of name, the change of address or of name shall be approved and activated if the application is otherwise valid.

PART 21. VOTER REGISTRATION APPLICATION BY MAIL

230:15-5-83. Applying for voter registration by mail

(a) A person eligible to become a registered voter in Oklahoma may apply by mail for voter registration. Application for voter registration may be made by completing one of the official voter registration application forms described in (c) of this Section and by mailing it to the State Election Board.

(b) A registered voter may apply by mail to change his or her name, political affiliation or residence address for voting purposes. Application for a change of address, political affiliation or name may be made by completing one of the official voter registration application forms described in (c) of this Section.

(c) Persons eligible to become registered voters may apply for new voter registration and registered voters may apply to change their voter registrations in Oklahoma by using either of the following official voter registration application forms.

(1) **Oklahoma Voter Registration Application.** The Oklahoma Voter Registration Application form may be used to apply for voter registration or for change of voter registration. The Oklahoma Voter Registration Application form shall be made available at the offices of the State Election Board and of each County Election Board, in all motor license agencies, and in the offices of all voter registration agencies identified in 230:15-5-122 and 230:15-5-123. The Oklahoma Voter Registration Application form also shall be made available in public libraries and in United States Post Offices throughout Oklahoma. The Oklahoma Voter Registration Application also may be downloaded and printed from the State Election Board's website: **www.elections.state.ok.us.**

(2) **Federal Voter Registration Application.** The federal Voter Registration Application form may be used to apply for voter registration or for change of voter registration in Oklahoma. The federal Voter Registration Application shall be available from the State Election Board, from all County Election Boards, and in other locations designated by the Secretary of the State Election Board. The federal Voter Registration Application also may be downloaded and printed from the United States Election Assistance Commission website: **www.eac.gov.**

(d) Only applications submitted on the voter registration application forms named in (c) of this Section shall be accepted in Oklahoma. A letter or other written application for voter registration shall not be accepted. Voter registration application forms prescribed for use in other states shall not be accepted in Oklahoma. Voter registration applications shall not be accepted by electronic facsimile transmission ("fax") or by electronic mail transmission ("e-mail").

(e) Persons who submit their voter registration application forms by mail after January 1, 2003, may be asked to show identification when they vote for the first time in a federal election. Applicants may choose to submit a copy of one of the following forms of identification with their voter registration application but they are not required to do so.

(1) A current driver license or other photo identification.

(2) A utility bill, bank statement, government check, paycheck, or other government document that shows the applicant's name and address.

230:15-5-83.1. Voter registration for Address Confidentiality Program participants

(a) A person certified by the Secretary of State as a participant in the Address Confidentiality Program may request an ACP Voter Registration Packet from the State Election Board. A form to use for this request is provided by the State Election Board to the Secretary of State for distribution with other ACP materials. An ACP participant who is a registered voter when entering the program must cancel the existing voter registration and apply for new registration as an ACP voter. An ACP voter will receive absentee ballots by mail for all local, state, and national elections in which she is eligible to vote for up to four years. Upon receipt of the ACP Voter Registration Packet, the participant follows these steps to become a registered voter.

(1) If the ACP participant is currently registered to vote in Oklahoma, fill out the Request to Cancel Voter Registration form in the presence of a Notary Public.

(2) Fill out the enclosed ACP Oklahoma Voter Registration Application form.

(A) Enter the actual residence address in Box 6 on this form. Election officials must know the actual residence address in order to assign the voter to the correct precinct and issue the correct ballots. Only one member of the State Election Board staff will have access to this form.

(B) Enter the ACP address as the mailing address in Box 7.

(C) Be certain to sign the ACP Oklahoma Voter Registration Application form.

(3) Read and sign the Statement of Understanding form.

(4) Obtain a photocopy of one of the following forms of identification that shows both the participant's name and ACP address. Federal law requires persons who register to vote by mail to provide identification prior to voting for the first time in a federal election.

(A) a valid and current photo identification.

(B) a current utility bill.

(C) a current bank statement.

(D) a government check

(E) any other government document that shows both the name and the ACP address.

(5) Use the self-addressed envelope included in the ACP Voter Registration Packet to mail the following items to the Oklahoma State Election Board.

(A) signed and notarized Request to Cancel Voter Registration form, if applicable.

(B) filled out and signed ACP Oklahoma Voter Registration Application form.
(C) signed Statement of Understanding form.
(D) copy of identification.

(b) In order to protect the confidentiality of the ACP voter's address, the following rules must be observed.

(1) An ACP voter may not vote in person at the polling place for the precinct in which ~~she~~ the voter resides.
(2) An ACP voter may not vote by in-person absentee ballot at the County Election Board office.
(3) An ACP voter may not sign an initiative petition or any other petition that is verified against voter registration records.
(4) An ACP voter must not apply for voter registration when obtaining or changing address on an Oklahoma driver's license or state identification card or when applying for certain forms of public assistance.

230:15-5-84. Information required on voter registration application

(a) A person who is eligible to register to vote and who applies for voter registration shall be required to provide the information listed in (b) of this Section on a voter registration application form. Voter registration applications that contain all the required information shall be valid applications and shall be approved by the Secretary of the County Election Board and the applicant shall become a registered voter in the county. An application that does not contain the required information, except as provided in (c) and (d) of this Section, shall not be a valid application and shall be rejected.

(b) A valid voter registration application shall contain the following information.

(1) Applicant's full name.
(2) Applicant's date of birth.
(3) Applicant's county of residence. (See exception provided in (d) of this Section.)
(4) Applicant's residence address. (See (e) of this Section.)
(5) Applicant's mailing address. (See (f) of this Section.)
(6) Applicant's political affiliation. (See exception provided in (c) of this Section.)
(7) ~~Last~~ Applicant's Oklahoma driver license number or state identification card number. If the applicant does not have a driver license or a state identification card, the last four digits of applicant's social security number are required.
(8) Applicant's original signature or applicant's original mark.
(9) Name and address of person who helped applicant complete application if applicant is unable to complete it unassisted.

(c) An application for voter registration that is valid in all other respects shall not be rejected because the applicant has made one of the errors listed below when indicating a political affiliation. County Election Board personnel shall be authorized to designate an applicant as an Independent if one of the errors listed below appears on an otherwise valid voter registration application form. A voter designated Independent by County Election Board personnel for one of the following reasons shall be entitled to declare a political affiliation at any time, even during the period beginning ~~at 5 p.m. July~~ June 1 and ending ~~at 5 p.m. September 30~~ August 31, inclusive, in even-numbered years when changes of political affiliation otherwise are prohibited. Such declarations of political affiliation shall be subject to the voter registration application ~~deadlines~~ deadline preceding an election. See 230:15-5-86.

(1) The applicant left the space on the application form for political affiliation blank.
(2) The applicant indicated more than one political affiliation and the applicant's intention cannot be determined.
(3) The applicant wrote the name of a political party or political organization not currently recognized in Oklahoma. See 230:15-5-77 and 230:15-5-79.

(d) An applicant for voter registration shall indicate the name of the county in which he or she resides on the application form. However, if an applicant fails to indicate his or her county of residence, the Secretary of the County Election Board shall not reject the application solely for this purpose if the residence address provided by the applicant ~~is~~ in fact is located within the county.

(e) An applicant for voter registration must provide his or her address of residence. If the applicant has a street address (a street name and number, an apartment or suite number, if applicable, and zip code), that is the applicant's address of residence. [26:4-112] If the applicant does not have a street address, a physical description of the location of the residence that can be used to pinpoint the residence on a map must be provided. The applicant may provide a 911 address or may provide the legal description (a Section-Township-Range description, including the appropriate quarter section or quarter-quarter section designation). Neither a rural route address nor a post office box address is acceptable as an address of residence for voter registration purposes. A voter registration application that does not include an address of residence sufficient to locate the residence on a map shall be rejected by the Secretary of the County Election Board.

(f) A mailing address must include the city and zip code. An emergency notification address, or 911 address, a rural route and box number, a post office box, or a street address all constitute valid mailing addresses for voter registration purposes. [26:4-112] If an applicant's mailing address is the same as the applicant's residence address, the space for mailing address may be left blank.

230:15-5-85. Other information requested on applications for voter registration

(a) In addition to the information required on an application for voter registration as outlined in 230:15-5-84, other information is requested. This other information is optional and a voter's failure to provide the additional information shall not result in the rejection of the application if the application is determined to be valid in all other respects. The other, optional information shall include:

(1) ~~Applicant's Oklahoma driver's license number~~. Last four digits of applicant's Social Security number. (However, if the applicant does not have a driver license or a state identification card, the last four digits of the applicant's Social Security number are required.)

(2) Applicant's former voter registration information, including former residence address, former name, and/or former political affiliation.

(b) Applicants who submit their voter registration application forms by mail may be asked to show identification at the polling place when they vote for the first time in a federal election. Applicants may choose to submit a copy of one of the following forms of identification with their voter registration application form, but they are not required to do so.

(1) A current driver license or other photo identification.

(2) A utility bill, bank statement, government check, paycheck, or other government document that shows the applicant's name and address.

SUBCHAPTER 9. RECEIVING AND PROCESSING VOTER REGISTRATION APPLICATIONS

PART 5. PROCESSING VOTER REGISTRATION APPLICATIONS

230:15-9-18. Entering applications for voter registration in OEMS

(a) **Entering voter registration application information in OEMS.** All information provided by the applicant on the voter registration application form shall be entered into OEMS. Follow the appropriate OEMS software instructions to enter the voter registration data. Refer to the following rules to resolve questions about individual applications.

(1) **Received date.** The received date is the date stamped or written on a voter registration application form by the agency that first receives it from the applicant.

(A) The received date for an application submitted by mail is the date the State Election Board received and stamped it.

(B) The received date for an application submitted at a motor license agency or at any voter registration agency identified in 230:15-5-122 and 230:15-5-123 is the date stamped or written by agency personnel in the space provided for this purpose on the form.

(C) The received date for a voter registration application bearing no stamped or written date is the application date entered by the applicant beside his or her signature.

(2) **Postmark.** The postmark date from a voter registration application submitted by mail shall be entered in OEMS. If there is no postmark or if the date is missing or illegible, leave the postmark field blank.

(3) **Name.** Enter the voter's name exactly as provided on the application form, even if it appears to be incomplete.

(4) **Political affiliation.** An application for voter registration that is valid in all other respects shall not be rejected because the applicant fails to indicate his or her political affiliation. The political affiliation field on the OEMS screen shall be left blank in the following circumstances with the result that OEMS automatically will record the applicant's affiliation as Independent. See also 230:15-5-84 and 230:15-9-22.

(A) The applicant left the space for political affiliation blank.

(B) The applicant marked more than one political affiliation and his or her intent cannot be determined.

(C) The applicant wrote the name of a political party or a political organization not currently recognized in Oklahoma.

(5) **Date of birth.** An applicant for new voter registration must provide his or her date of birth on the application form. See 230:15-5-84. An application for new registration that does not include the date of birth shall be rejected. See 230:15-9-31. In the event that a registered voter submits an application for change of registration and does not provide his or her date of birth, the application shall be rejected unless both of the following circumstances exist.

(A) The application is valid in all other respects and County Election Board personnel are able to make positive identification of the voter from other information on the application form and from information already recorded in OEMS.

(B) The voter's date of birth already is recorded in OEMS.

(6) **Last four digits of social security number.** An applicant for voter registration is requested, but not required, to provide the last four digits of his or her social security number on the application form. ~~An application that does not include this information shall be rejected.~~ However, if an applicant does not have a driver license or a state identification card, the last four digits of the applicant's Social Security number are required.

(7) **Oklahoma driver's license number.** An applicant for voter registration is ~~requested, but not~~ required~~,~~ to provide his or her Oklahoma driver's license number or state identification card number on the application form. If the applicant ~~provides the number, enter it in OEMS~~ does not have a driver license or state identification card, the last four digits of the applicant's Social Security number are required.

(8) **Duplicates.** When voter registration application information is entered in OEMS, the system automatically searches for and identifies duplicate or potential duplicate records in the county. The search criteria are first name, last name, and date of birth and/or last four digits of the social security number and/or driver's license number. If an application appears to duplicate either an existing voter registration or another pending application, follow the procedures outlined in 230:15-9-23 and the appropriate

software instructions to investigate and resolve the potential duplication.

(9) **Residence address.** An applicant for voter registration is required to provide his or her residence address on the application form. Enter the applicant's residence address in the appropriate fields on the OEMS screen. If the ~~OEMS Street Guide cannot assign the~~ address ~~to a precinct and school district~~ cannot be assigned in the OEMS Street Guide based on the information entered, see 230:15-9-18.1.

(10) **Mailing address.** If the applicant provided a mailing address different from his or her residence address, enter the mailing address. If the applicant's mailing address is the same as the residence address or if the space for mailing address is blank, leave the mailing address field on the screen blank.

(11) **Rejection codes.** An application for new voter registration that does not contain all the required information listed in 230:15-5-84 shall be rejected. OEMS automatically applies a rejection code for an insufficient name, insufficient address, insufficient date of birth, if the last four digits of the applicant's social security number are missing, if the application duplicates an existing registration or pending application, and if the applicant is under 18 years of age. (If an applicant who is under 18 will become eligible on or before election day, as described in 230:15-5-2, follow the software instructions to override the rejection code.) If the application is unsigned or if the application must be rejected for any other reason, County Election Board personnel flag the appropriate rejection code on the screen. See 230:15-9-31.

(12) **Source codes.** A code to identify the source of an application for statistical purposes shall be entered in OEMS. If the source of an application is a motor license agency, an agency code also shall be entered. After the source code is entered, the instruction section of the application form bearing the source identification shall be detached and destroyed.

(13) **Previous registration information.** If the applicant provided information about previous voter registration in another state or in another county in Oklahoma, enter the previous registration information in the appropriate fields on the screen. Do not enter information about former registration in the same county in these fields.

(14) **Identification provided.** If an applicant who submitted a voter registration application by mail included identification material with the application, enter the appropriate information in OEMS. (Applicants for voter registration are not required to provide identification.) After entering information in OEMS about the voter's identification, destroy the identification by shredding it.

(b) **Filing voter registration applications.** If a voter registration application is determined to be valid and approved, place the application form in the appropriate valid application file until voter identification cards are printed. After the voter identification card is mailed to the voter, file the application form in the Central File. If a voter registration application must be rejected, file the application in the appropriate rejected application file.

230:15-9-18.1. Assigning voter registration addresses in the Street Guide

(a) An applicant for voter registration is required to provide election officials with a residence address for voting purposes. In situations where there is no street address consisting of a street name and house number for the residence, the applicant is required to provide a physical description of the residence address that is sufficient to locate said residence on a map for the purpose of determining the applicant's correct precinct ~~and~~ , correct school district, and, where necessary, correct municipality. Applications for voter registration shall not be approved and activated unless the residence address can be assigned to a record in the OEMS Street Guide ~~to a precinct and school district~~. This shall apply to applications for new registration and to applications for change of registration. For more information about residence addresses, see 230:15-5-84.

(b) When ~~the OEMS Street Guide cannot assign~~ an applicant's residence address ~~to a precinct and/or school district~~ cannot be assigned to a record in the Street Guide, County Election Board personnel shall take the following actions before rejecting the voter registration application for insufficient residence address.

(1) If the street address provided by the ~~voter registration~~ applicant does not match a Street Guide record, County Election Board personnel shall take the following actions before rejecting the application.

(A) Determine whether the given street address may represent a new street or a new extension of an existing street. Create a new Street Guide entry if necessary.

(B) Determine whether the voter has used a variation of the correct street name. For example, if the voter has given the street name "Elm Street" but the correct name of the street is "Elm Tree Street," enter the applicant's residence address using the correct street name. Do not create a new Street Guide entry for the incorrect variation of the street name.

(2) If the ~~voter registration~~ applicant has provided a physical description of the location of the residence that is ~~sufficient to determine the voter's precinct and school district, assign the voter according to OEMS~~ sufficiently detailed, assign the address in the Street Guide ~~software instructions~~. If the applicant used the map grid printed on the Oklahoma Voter Registration Application form, follow these steps as needed.

(A) If the applicant used the map but also ~~provided~~ wrote enough information in the address section of the application to ~~place~~ assign the applicant in the correct precinct, the map may be discarded.

(B) If information on the map is used to place the applicant in the correct precinct, cut out the map and tape it to the back of the application form. Do not retain any portion of the instruction section that indicates the source of the application.

(C) If the applicant left the address section of the application blank and only provided address information on the map, write "see map" in the address section in such a way that it can be clearly distinguished as an administrative notation. If the applicant wrote anything in the address section, do not write on the application form.

(3) If the applicant has provided a physical description of the location of the residence that is not sufficient to ~~determine the voter's precinct and school district~~ assign the address in the Street Guide, County Election Board personnel are authorized to attempt to obtain information from the County Assessor's office to identify the correct section-township-range description of the voter's residence and to use that information to assign the voter to a section-township-range geographical location in the Street Guide as outlined below.

(A) An exact match between the applicant's full name and full route and box number, as provided on the voter registration application form, is found in the County Assessor's records. By comparing the physical description given by the applicant with the legal description obtained from the Assessor's records, the applicant's residence address can be assigned to a section-township-range geographical location in the Street Guide.

(B) An exact match between the applicant's name and route and box number and a record in the County Assessor's office is not found, but there is sufficient information to indicate that the voter registration applicant may be a family member of a property owner who has a route and box number. The applicant may be assigned in the Street Guide and the voter registration application may be approved and activated. Prepare an STR Confirmation Notice to inform the voter of the section-township-range geographical location to which he or she has been assigned. This notice offers the voter the opportunity to provide additional information if the assignment is not correct. Mail the STR Confirmation Notice to the voter with the voter identification card.

(c) If the residence address provided on a voter registration application cannot be assigned in the Street Guide even after taking the actions listed in (b) of this Section, the application must be rejected. Enter a rejection code in OEMS to generate the appropriate rejection notice for the voter. Follow the OEMS software instructions to enter an explanation to the voter of the specific information needed in order to assign the residence address in the Street Guide and to approve the application.

230:15-9-22. Processing applications for change of political affiliation

(a) A registered voter in the county may apply to change his or her political affiliation by completing and submitting a voter registration application form. An applicant for change of political affiliation is instructed to indicate his or her former political affiliation in the appropriate space in Section 9 of the Oklahoma Voter Registration Application form. Applications for change of political affiliation shall be processed according to the following procedure.

(1) Enter the applicant's name, former political affiliation, date of birth, the last four digits of the social security number and, if provided, driver's license number to bring the applicant's current voter registration information to the screen.

(2) Change the applicant's political affiliation as indicated on the application form. Carefully examine the information displayed on screen with the information provided on the application form for any other information that may be changed. Enter into OEMS any other changes that are indicated on the application form.

(3) Follow the procedure contained in steps (3) through (11) of 230:15-9-18 to complete the remaining application information in OEMS.

(4) After the voter identification card has been printed, remove the voter's old registration form from the Central File and retain as outlined in 230:10-7-43.

(5) File the voter's new voter registration application form in alphabetical order in the Central File.

(b) Voters are prohibited by law from changing political affiliation during the period ~~beginning at 5 p.m. on July 1 and ending at 5 p.m. on September 30~~ from June 1 through August 31, inclusive, in even-numbered years. See 230:15-5-30. Applications for change of political affiliation received during this period shall be held and activated on or after ~~October~~ September 1. See 230:15-9-22.1.

(c) Voters who were designated Independent by County Election Board personnel as provided in 230:15-5-84 may declare a political affiliation at any time, including the period described in (b) of this Section. Such voters may submit a new voter registration application form or they may write a letter stating their preferred political affiliation. These declarations shall be subject to the deadline for voter registration applications prior to an election. These declarations of political affiliation shall be processed according to the following procedure.

(1) Locate the voter's voter registration information in OEMS.

(2) Enter the political affiliation provided by the voter.

(3) If the voter wrote a letter to declare his or her political affiliation, retain it permanently in the Additional Information Correspondence file.

(d) The political affiliations of voters who are registered as members of a political party that loses recognition under Oklahoma law and becomes a political organization as described in 230:15-5-79 shall be changed to Independent in OEMS by the State Election Board. [26:1-110] Such voters subsequently shall be entitled to apply to change their political affiliation to that of the political organization. Such applications shall be processed as outlined in (a) of this Section and shall be subject to the deadline for voter registration applications prior to an election and to the political affiliation change prohibition period in even-numbered years. See (b) of this Section and 230:15-5-86.

230:15-9-22.1. Processing application for change of political affiliation during prohibited period

(a) Registered voters are prohibited by law from changing political affiliations ~~during a period that begins at 5 p.m. July 1 and ends at 5 p.m. on September 30~~ from June 1 through August 31, inclusive, in even-numbered years. The County Election Board Secretary is required by law to hold voter registration applications for change of political affiliation received during this period and to activate the changes on ~~October~~ September 1.

(b) Voter registration applications for change of political affiliation received during the prohibited period that include no other voter registration changes shall be processed as follows.

(1) Follow steps 1 through 3 in 230:15-9-22(a). Enter in OEMS all the information the voter provided on the application. When the new political affiliation is entered, OEMS warns that the political affiliation change is invalid and flags the application to hold for activation on ~~October 1~~ September 1.

(2) ~~Between July~~ From June 1 ~~and September 30~~ through August 31, request and print Held Change of Affiliation Notices each time voter identification cards and rejection notices are requested and printed. Held Change of Affiliation Notices are letters to voters explaining that their change of political affiliation will be held and activated on ~~October~~ September 1.

(3) ~~Between July~~ From June 1 ~~and September 30~~ through August 31, request and print the Held Change of Affiliation List each time voter identification cards are requested. The Held Change of Affiliation List contains the names of all voters whose political affiliation changes have been held since the last time this report was requested. Retain the Held Change of Affiliation List as needed.

(4) Mail the Held Change of Affiliation Notice to the applicant.

(5) File the voter registration application in a special file for Pending Affiliation Change Applications. This file may be in a separate section of the regular Pending Applications file.

(6) ~~After October~~ On September 1, follow these steps.

(A) Request and print voter identification cards.

(B) When voter identification cards are requested, an Affiliation Change Notice letter also is generated to each voter whose political affiliation change has been held. Use of these letters is optional.

(C) Mail voter identification cards and Affiliation Change Notice letter, if used, to voter.

(D) Request and print the Change of Affiliation List and retain it for 24 months.

(E) Move the voter registration application form from the Pending Affiliation Change Applications file to the Central File.

(F) Remove the voter's old voter registration form from the Central File and retain it in the Cancellation File as outlined in 230:10-7-43.

(c) Voter registration applications for change of political affiliation received during the prohibited period that also include other valid voter registration changes shall be processed as follows.

(1) Follow steps 1 through 3 outlined in subsection (a) of 230:15-9-22. Enter in OEMS all the information the voter provided on the application. When the new political affiliation is entered, OEMS warns that the political affiliation change is invalid and flags the application to hold this change until ~~October~~ September 1. Other valid changes, such as changes of name or address, are accepted.

(2) Request and print voter identification cards, rejection notices, and Held Change of Affiliation Notices.

(3) Match the voter's new voter identification card with the Held Change of Affiliation Notice and mail them together to the voter.

(4) Request and print the Held Change of Affiliation List and retain it for 24 months.

(5) Indicate on the new voter registration application form that the political affiliation becomes effective on ~~October~~ September 1.

(6) Remove the voter's old voter registration form from the Central File and file it in the Cancellation File unless other information on the old form requires that it remain in the Additional Information Correspondence File.

(7) File the voter's new registration form in the Central File.

(8) ~~After October~~ On September 1, follow these steps.

(A) Request and print voter identification cards.

(B) When voter identification cards are requested, an Affiliation Change Notice letter also is generated for each voter whose political affiliation change has been held. Use of these letters is optional.

(C) Mail voter identification cards and Affiliation Change Notice letters, if used, to voters.

(D) Print Change of Affiliation List and retain it for 24 months.

(d) Request and print a copy of the Pending Affiliation Change List before the Primary Election and again before the Runoff Primary Election to use to help answer questions from voters about their political affiliation on election day. Print a final copy of this report on ~~October~~ September 1 and retain it for 24 months.

SUBCHAPTER 11. VOTER REGISTRATION LIST MAINTENANCE

PART 1. CANCELLATION OF VOTER REGISTRATION

230:15-11-4. Processing cancellations of registration

(a) Upon receipt of proper notice, and upon positive identification of the voter, the Secretary of the County Election Board shall cancel a voter's registration. Cancellations shall be processed as soon as possible after the receipt of proper notice. Proper notice shall include the following:

(1) Potential Deletion Report. See 230:15-11-5.

(2) Cancellation of Registration of Deceased Voter by Next of Kin form ~~or~~ See 230:15-11-6(a).

(3) Request to Cancel Registration of Deceased Voter form. See ~~230:15-11-6~~ See 230:15-11-6(b).

(4) Notification of Nursing Facility Resident's Death. See 230:15-11-6(c).

(~~3~~ 5) Judgment of Incapacitation Report form. See 230:15-11-7.

(~~4~~ 6) Potential Duplicate Registration Report. See 230:15-11-9.

(~~5~~ 7) Notice of registration in another state.

(~~6~~ 8) Notice of state or federal felony conviction. See 230:15-11-8.

(~~7~~ 9) Written, notarized request from voter for cancellation of registration. See 230:15-11-3.

(~~8~~ 10) True Duplicates Deleted Report. See 230:15-11-10.

(~~9~~ 11) Address confirmation return card indicating voter has moved out of the county. See 230:15-11-24.

(b) Cancellations of registration shall be processed according to the following procedure:

(1) Delete the voter's registration information from OEMS.

(2) Remove the voter's registration form from the Central File and place the registration form in the Cancellation File. Retain as outlined in 230:10-7-40.

(4) Retain the notice document used to cancel a registration for 24 months after the cancellation.

230:15-11-6.1. Cancellation of registration of deceased voter upon notice of nursing home administrator

An administrator of a nursing home may execute a Notification of Nursing Facility Resident's Death form to notify the Secretary of the County Election Board of the death of a resident of the nursing home who was a registered voter. [26:4-120.3] The administrator's signature on the form may be notarized or it may be witnessed by a member of the nursing home Absentee Voting Board when the Board delivers absentee ballots to residents prior to an election. Upon receipt of such a notification, the Secretary is authorized to cancel the voter registration of the deceased voter. The Secretary shall provide copies of the form to the administrator of each nursing facility in the county along with instructions for its use. [26:4-120.3]

230:15-11-8. Cancellation for felony conviction

(a) ~~It shall be the responsibility of the County Court Clerk to forward to the County Election Board Secretary a copy of the journal entry of judgment and sentence for each person convicted in the county of a felony. [26:4-120.4(b)] The Court Clerk shall forward the copy of the journal entry within 45 days after the journal entry is filed. [26:4-120.4(b)]~~ *The court clerk in each county shall prepare a list monthly of all persons convicted in the county of a felony and shall transmit the list to the secretary of the County Election Board.* [26:4-120.4(B)] *The list shall include information necessary to identify a person on the list as a registered voter prescribed by the Secretary of the State Election Board.* [26:4-120.4(B)] The list prepared by the Court Clerk shall include the name, date of birth, and, if known, the last four digits of the Social Security number, driver license number, and residence address of each person convicted of a felony in the county. The Secretary of the County Election Board shall be authorized to cancel a voter's registration as outlined in (c) of this section upon receipt of a list of felony convictions from the Court Clerk.

(b) ~~The Secretary of the County Election Board shall examine the voter registration records to determine whether the convicted person named in the journal entry is registered to vote in the county. If the convicted person is positively identified as a registered voter, the Secretary shall be authorized to cancel the person's voter registration. [26:4-120.4(B)] See 230:15-11-4. The journal entry copy shall be retained for 24 months.~~

~~(c)~~ The Secretary of the County Election Board shall be authorized to cancel a voter's registration as outlined in ~~(b)~~ (c) of this Section upon receiving a notice of felony conviction from a federal court. [26:4-120.4(A)]

(c) Upon receipt of the monthly felony conviction list from the county Court Clerk, County Election Board personnel shall follow appropriate software instructions to enter information from the list into OEMS. All information on the list shall be entered in OEMS, even if it appears the convicted person may be a resident of another county. Immediately upon entering felony conviction information, OEMS searches the county's voter registration information for potential matches. Any potential matches are brought to the screen and the information in the voter registration record of each potential match can be compared with other information provided by the Court Clerk on the list. If County Election Board personnel are able to make a positive match between a voter registration record and a name on the felony conviction list, the voter registration shall be cancelled. After all the information has been entered, the information is automatically transferred to the State Election Board. OEMS then searches voter registration records statewide for potential matches, and if found, reports them to the appropriate County Election Board. Potential felony conviction matches appear on the Potential Deletion Report in the county where the voter registration record is maintained. County Election Board personnel in that county must examine the information on the Potential Deletion Report and compare it to the identified voter registration record or records to make a positive match. If a positive match is found, the voter registration shall be cancelled. Following cancellation of a voter registration for felony conviction in OEMS, County Election Board personnel shall remove the original voter registration form from the Central File and any documentation in the Additional Information file, note the date the registration was cancelled and the reason for the cancellation. The original registration form shall be retained in the Cancellation File for 24 months.

(d) *The Secretary of the State Election Board, secretaries of county election boards, and their agents and employees shall not be held civilly liable for any action taken based upon information concerning felony convictions received from a United*

States Attorney or a county court clerk pursuant to subsections A and B of this section if a reasonable effort was made to make an accurate match of the information provided with voter registration records before cancelling any voter's registration. [26:4-120.4]

[OAR Docket #05-1006; filed 5-26-05]

TITLE 230. STATE ELECTION BOARD CHAPTER 20. CANDIDATE FILING

[OAR Docket #05-1007]

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RULES:
Subchapter 3. Filing for State and County Office
Part 1. When and Where to File
230:20-3-1. Filing period [AMENDED]
Part 3. Qualifications for County Office
230:20-3-18. Resignation required [REVOKED]
Part 9. Withdrawals of Candidates
230:20-3-47. Withdrawal after filing period [AMENDED]
230:20-3-50. Withdrawals from Runoff Primary [AMENDED]
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These amended and revoked rules implement portions of two bills passed in 2003 (SB260 and HB1001) and of two passed in 2004 (HB 2677 and SB1104). These bills amended the following sections in Title 26 of the Oklahoma Statutes: 5-110; 5-115; 5-116. One of these bills also amended Title 19, Section 131.

One section in this Chapter is amended to reflect the new dates of the statewide candidate filing period in even-numbered years. The filing period now begins on the first Monday in June of even-numbered years.

Two sections are amended to include new statutory language that permits the name of a candidate who dies after filing a Declaration of Candidacy but before 5 p.m. on Friday to be withdrawn.

One section is revoked. The law that required a county officer to resign before filing a Declaration of Candidacy for another office has changed. Such a resignation is no longer required.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 3. FILING FOR STATE AND COUNTY OFFICE

PART 1. WHEN AND WHERE TO FILE

230:20-3-1. Filing period

The filing period for state and county offices will begin at 8 a.m. on the first Monday ~~after Independence Day~~ in June of an even-numbered year. [26:5-110] The filing period will close at 5 p.m. on the next succeeding Wednesday. [26:5-110]

PART 3. QUALIFICATIONS FOR COUNTY OFFICE

230:20-3-18. Resignation required [REVOKED]

~~A County Officer shall not, unless he resigns from the office he holds, be eligible to become a candidate for another county office or state office. [19:131]~~

PART 9. WITHDRAWALS OF CANDIDATES

230:20-3-47. Withdrawal after filing period

(a) **Time for withdrawal.** Any candidate may withdraw his candidacy only by filing a written notice of withdrawal with the Secretary of the County Election Board no later than 5 p.m. on Friday following the close of the filing period. [26:5-115]

(b) **Form of withdrawal.** The written notice shall state, "I (Name), hereby withdraw as a candidate for (Office)." The notice shall be signed, dated and notarized by a Notary Public. [26:5-115]

(c) **Withdrawal of deceased candidate.** In the event a candidate dies after filing a Declaration of Candidacy, but prior to 5 p.m. on Friday following the filing period, a lawfully appointed special administrator may withdraw the deceased candidate's candidacy by filing a written notice as described in subsections (a) and (b) of this Section.

230:20-3-50. Withdrawals from Runoff Primary

(a) A candidate in the Runoff Primary Election may withdraw his candidacy upon filing a written notice of withdrawal with the Secretary of the County Election Board no later than ~~5 p.m. on the Friday following the date of the Primary Election~~ 5 p.m. on Friday following the Primary. [26:5-116] The notice shall be in the same form as outlined in 230:20-3-47(b).

(b) In the event a candidate in the Runoff Primary Election dies, the deceased candidate's candidacy may be withdrawn by a lawfully appointed personal representative or special administrator for the deceased candidate. The withdrawal of the deceased candidate's candidacy must be filed in the same manner outlined in (a) of this Section.

[OAR Docket #05-1007; filed 5-26-05]

TITLE 230. STATE ELECTION BOARD CHAPTER 30. ABSENTEE VOTING

[OAR Docket #05-1008]

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230:30-1-2. Definitions [AMENDED]
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230:30-3-3. Voters eligible for absentee ballots [AMENDED]
Subchapter 5. Applications for Absentee Ballots
230:30-5-1.1. Applications for absentee ballots [AMENDED]
230:30-5-8.1. Time for absentee ballot applications [AMENDED]
230:30-5-8.2. Validity of applications for absentee ballots for all elections [AMENDED]
Subchapter 7. Absentee Voting Boards
230:30-7-2. Parties submit lists of names by ~~August~~ July 1 [AMENDED]
230:30-7-5. Compensation for Absentee Voting Board members [AMENDED]
230:30-7-6. Scheduling Absentee Voting Boards for an election [AMENDED]
230:30-7-9. Procedure for the nursing home Absentee Voting Board [AMENDED]
230:30-7-11. Procedure for in-person Absentee Voting Board to receive applications and issue ballots [AMENDED]
230:30-7-13. In-person absentee voting procedure for ~~military discharge or military leave~~ uniformed services voter or overseas voter [AMENDED]
230:30-7-14. Verifying voter registration information and status of in-person absentee voters [AMENDED]
230:30-7-15. Procedure for provisional voting during in-person absentee voting [NEW]
Subchapter 9. Processing Applications
230:30-9-2. Forms needed for processing [AMENDED]
230:30-9-3. Processing applications for absentee ballots [AMENDED]
230:30-9-5. Processing applications from ~~military~~ uniformed services voters and overseas voters [AMENDED]
230:30-9-5.1. Faxing absentee ballots to uniformed services and overseas voters [NEW]
Subchapter 11. Receiving and Processing Absentee Ballots
230:30-11-2. Opening outer envelopes and examining affidavits [AMENDED]
230:30-11-6. Transmitting absentee ballots [AMENDED]
230:30-11-6.1. Receiving voted absentee ballots by fax from uniformed services and overseas voters [NEW]
230:30-11-7. Undeliverable absentee ballots returned by postal service to County Election Board [AMENDED]
Subchapter 13. Federal Write-in Absentee Ballot
230:30-13-1. Voters permitted to use federal write-in absentee ballots [AMENDED]
230:30-13-3. Rules for counting federal write-in absentee ballots [AMENDED]
Subchapter 15. State Write-in Absentee Ballots
230:30-15-1. Voters eligible to use state write-in absentee ballot [AMENDED]
230:30-15-2. Applications for state write-in absentee ballot [AMENDED]
230:30-15-3. Time for state write-in absentee ballot applications [AMENDED]
230:30-15-5. Processing applications for state write-in absentee ballots [AMENDED]
230:30-15-7. Voters who request both regular and state write-in absentee ballots [AMENDED]
230:30-15-8. Time for return of state write-in absentee ballots [AMENDED]
230:30-15-9. Rules for counting state write-in absentee ballots [AMENDED]
Subchapter 19. Counting the Ballots
Part 1. Counting Absentee Ballots on Election Day [NEW]
230:30-19-4. Procedure for counting absentee ballots on election day [AMENDED]
230:30-19-6. Marking substitute ballot to count write-in or faxed ballots [NEW]
Part 3. Receiving and Counting Overseas Absentee Ballots for Runoff Primary Election After Election Day [NEW]
230:30-19-15. Absentee ballots from overseas voters shall be received and counted after election day for Runoff Primary Elections for federal offices [NEW]
230:30-19-16. Determining outstanding overseas absentee ballots on Runoff Primary Election night [NEW]
230:30-19-17. Receiving, processing, and counting overseas absentee ballots for Runoff Primary Election after election [NEW]
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Subchapter 5. Applications for Absentee Ballots
230:30-5-1.1. Applications for absentee ballots [AMENDED]
230:30-5-8.1. Time for absentee ballot applications [AMENDED]
230:30-5-8.2. Validity of applications for absentee ballots for all elections [AMENDED]
Subchapter 7. Absentee Voting Boards
230:30-7-6. Scheduling Absentee Voting Boards for an election [AMENDED]
230:30-7-13. In-person absentee voting procedure for ~~military discharge or military leave~~ uniformed services voter or overseas voter [AMENDED]
Subchapter 9. Processing Applications
230:30-9-2. Forms needed for processing [AMENDED]
230:30-9-3. Processing applications for absentee ballots [AMENDED]

230:30-9-5. Processing applications from ~~military~~ uniformed services voters and overseas voters [AMENDED]

230:30-9-5.1. Faxing absentee ballots to uniformed services and overseas voters [NEW]

Subchapter 11. Receiving and Processing Absentee Ballots

230:30-11-2. Opening outer envelopes and examining affidavits [AMENDED]

230:30-11-6. Transmitting absentee ballots [AMENDED]

230:30-11-6.1. Receiving voted ballots by fax from uniformed services and overseas voters [NEW]

230:30-11-7. Undeliverable absentee ballots returned by postal service to County Election Board [AMENDED]

Subchapter 13. Federal Write-In Absentee Ballot

230:30-13-1. Voters permitted to use federal write-in absentee ballots [AMENDED]

Subchapter 15. State Write-In Absentee Ballots

230:30-15-1. Voters eligible to use state write-in absentee ballot [AMENDED]

230:30-15-2. Applications for state write-in absentee ballot [AMENDED]

230:30-15-3. Time for state write-in absentee ballot applications [AMENDED]

230:30-15-5. Processing applications for state write-in absentee ballot [AMENDED]

230:30-15-7. Voters who request both regular and state write-in absentee ballots [AMENDED]

230:30-15-8. Time for return of state write-in absentee ballots [AMENDED]

230:30-15-9. Rules for counting state write-in absentee ballots [AMENDED]

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Subchapter 7. Absentee Voting Boards

230:30-7-5. Compensation for Absentee Voting Board members [AMENDED]

Subchapter 11. Receiving and Processing Absentee Ballots

230:30-11-6.1. Receiving voted absentee ballots by fax from uniformed services and overseas voters [NEW]

Subchapter 19. Counting the Ballots

Part 1. Counting Absentee Ballots on Election Day [NEW]

230:30-19-4. Procedure for counting absentee ballots on election day [AMENDED]

Part 3. Receiving and Counting Overseas Absentee Ballots for Runoff Primary Election After Election Day [NEW]

230:30-19-15. Absentee ballots from overseas voters shall be received and counted after election day for Runoff Primary Elections for federal offices [NEW]

230:30-19-16. Determining outstanding overseas absentee ballots for Runoff Primary Election night [NEW]

230:30-19-17. Receiving, processing and counting overseas absentee ballots for Runoff Primary Election after election [NEW]

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ANALYSIS:

These new and amended rules implement portions of a bill passed in 2003 (SB358) and of two bills passed in 2004 (SB1104 and SB1346). These rules implement or interpret the following sections in Title 26 of the Oklahoma Statutes as amended by the previously cited bills: 4-120.3; 7-115.2; 7-116.1; 14-104.1; 14-108; 14-113.2; 14-115; 14-115.4; 14-115.5; 14-116; 14-117; 14-118.1. Some of these rules also implement a 2003 amendment to 42 USC 1973ff-3 which was part of the Help America Vote Act (HAVA).

In this Chapter, all references to "military voters" have been changed to "uniformed services voters." Language concerning the time for in-person absentee voting has been clarified. The period of time that a uniformed services or overseas voter's application for absentee ballots must be honored has been changed to comply with a change in the federal Uniformed and Overseas Citizens Absentee Voting Act. This federal law now requires an application from these voters to be honored as valid through the next two regular federal General Elections.

Due to the changes in the dates of the filing period and of the Primary and Runoff Primary elections, the date by which county central committees must submit nominees for Absentee Voting Board members has changed from August 1 to July 1. Also, compensation of Absentee Voting Board members has been changed to match that of the precinct Judge and Clerk.

Nursing home Absentee Voting Board members now are authorized to witness the signature of a nursing home administrator on a new form. This new form is used to notify the County Election Board Secretary of the death of a resident of the nursing home. Upon receipt of such notice the County Election Board Secretary may cancel the deceased resident's voter registration.

The procedures for the in-person Absentee Voting Board has changed to reflect the reality that all Absentee Voting Boards now use the OEMS terminal to verify the voter registration of all in-person absentee ballot applicants. They still may use the Central File as a secondary resource for verifying registration. This procedure now includes instructions for asking certain voters for identification, as is required by the federal Help America Vote Act. The procedure also now includes references to using the information in the municipal field on the OEMS screen when processing voters.

A new section details the procedure for an in-person absentee voter to cast a provisional ballot. These voters may need to cast provisional ballots if they are asked for identification and do not have identification with them or if their voter registration information cannot be verified.

A new section details the procedure for faxing absentee ballots for federal offices only to uniformed services and overseas voters. This service is limited to voters who apply for regular absentee ballots 30 days or less before a federal election, who ask for a faxed ballot, and who provide a fax number.

Another new section describes the procedure for receiving voted absentee ballots by fax from uniformed services and overseas voters. Any uniformed service or overseas voter who receives the regular absentee ballot 30 days or less before an election is entitled to fax a copy of the voted ballot to the County Election Board or to the State Election Board. Such voters also should mail their voted regular ballot. In the event that the regular ballot is received on time, it will be counted instead of the faxed ballot.

A section is amended to reflect statutory changes in who may notarize or witness certain absentee ballot affidavits.

Sections concerning the federal and state write-in absentee ballots which may be used by uniformed services and overseas voters are amended to clarify which voters may use these ballots and to change the process for counting these ballots.

A new section provides a procedure for marking a substitute ballot for each write-in or faxed ballot received so that they can be counted in the voting device. These ballots previously were counted by hand. However, the number of these ballots has increased and is expected to continue to increase in future elections, making a hand count both more time-consuming and error-prone.

Several new sections describe the procedures required by the law that permits ballots from overseas uniformed services and overseas civilian voters to be received and counted for 14 days following the Runoff Primary Election.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

230:30-1-2. Definitions

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

"Convalescent hospital" means a nursing facility as defined in Title 62 O.S. 2001, Section 1-1902.

"Member of the merchant marine" means a person employed as an officer or crew member of a vessel as identified in 42 U.S.C. 1973ff-6.

"Nursing home" means a nursing facility as defined in Title 62 O.S. 2001, Section 1-1902.

"Uniformed services" means the United States Army, Navy, Air Force, Marine Corps, and Coast Guard, the merchant marine, the commissioned corps of the Public Health Service, the commissioned corps of the National Oceanic and Atmospheric Administration, and the Oklahoma National Guard.

SUBCHAPTER 3. AUTHORIZATION FOR ABSENTEE VOTING

230:30-3-3. Voters eligible for absentee ballots

(a) A registered voter may request absentee ballots for any election in which the voter is eligible to vote. An absentee voter shall not be required to state any reason for the request. [26:14-105]

(b) Registered voters may apply for absentee ballots by stating one of the following reasons.

(1) **Nursing home voters.** Nursing home voters are registered voters who swear or affirm that they are physically incapacitated and confined to a nursing home or convalescent hospital within the county in which they are registered to vote. [26:14-115] They may vote by absentee ballot.

(2) **Physically incapacitated voters.** Physically incapacitated voters are registered voters who swear or affirm that they are physically unable to vote in person at their precinct polling places on the day of an election because they are physically incapacitated but are not confined to a nursing home or convalescent hospital within the county in which they are registered to vote. [26:14-110.1(1)] They may vote by absentee ballot.

(3) **Voters charged with the care of physically incapacitated persons.** Voters charged with the care of physically incapacitated persons are registered voters who swear or affirm that they are physically unable to vote in person at their precincts on the day of the election because they are charged with the care of a physically incapacitated person who cannot be left unattended. [26:14-110.1] They may vote by absentee ballot.

(4) **Emergency incapacitated voters.** Emergency incapacitated voters are registered voters who become incapacitated after 5 p.m. on Tuesday preceding an election and are unable to vote at their precinct polling places on election day. [26:14-115.1] They may vote by absentee ballot.

(5) **~~Military~~ Uniformed services voters.** ~~Military~~ Uniformed services voters are residents of Oklahoma who are members of one of the ~~Armed Forces or Merchant Marine,~~ uniformed services of the United States or of the merchant marine and their spouses and dependents~~,~~ who are 18 years of age or older. They may vote by absentee ballot. These persons need not be registered to vote, but they must be qualified to be registered. [26:14-116]

(6) **Overseas voters.** Overseas voters are residents of Oklahoma who are ~~citizens of the United States residing~~ living outside the territorial limits of the United States, and their spouses and dependents, who are 18 years of age or older, and uniformed services voters and their spouses and dependents who, by reason of active duty, are absent from the United States on election day. They may vote by absentee ballot. These persons need not be registered to vote, but they must be qualified to be registered. [26:14-116]

(c) Any registered voter may apply for an in-person absentee ballot at the in-person absentee polling place on Friday~~,~~ ~~Saturday~~ or Monday preceding ~~an election~~ all elections, and also on Saturday preceding state and federal elections. [26:14-115.4(A)] An in-person absentee voter shall not be required to state a reason for the request but shall be required to swear or affirm that he has not voted a regular absentee ballot and that he will not vote at the polling place on election day. [26:14-115.4(A)]

SUBCHAPTER 5. APPLICATION FOR ABSENTEE BALLOTS

230:30-5-1.1. Applications for absentee ballots

(a) **Application forms.** Applications for absentee ballots may be made by using the following forms.

(1) **Yellow Application for Absentee Ballots form.** Voters may apply for absentee ballots by completing a yellow Application for Absentee Ballots form and mailing or faxing it to the County Election Board office. Voters also may appear personally at the County Election Board office to complete the form. [26:14-105]

(2) **Pink Application for Absentee Ballots form.** Nursing home voters, physically incapacitated voters and voters charged with the care of physically incapacitated persons who cannot be left unattended may apply for absentee ballots by completing the pink Application for Absentee Ballots form and mailing or faxing it to the County Election Board office. [26:14-110.1, 14-114]

(3) **Federal Post Card Application.** ~~Military~~ Uniformed services voters and overseas voters may apply for absentee ballots by completing a Federal Post Card Application, also known as a Department of Defense Form 76, and mailing or faxing it to the County Election Board office. [26:14-117] Federal Post Card Applications may be obtained from the voting service officer in a military unit and from United States Embassies and Consulates. All completed Federal Post Card Applications must be transmitted to the County Election Board by mail or by fax. [26:14-117]

(4) **Green Application for In-Person Absentee Ballot.** Voters may apply for an in-person absentee ballot by completing a green Application for In-Person Absentee Ballots form at the in-person absentee polling place. [26:14-115.4(A)]

(5) **Application from emergency incapacitated voter.** Emergency incapacitated voters may apply for absentee ballots by making a written request. [26:14-115.1] The written request must be signed by the voter or, if the voter is unable to sign, by a witness. [26:14-115.1] The request must be accompanied by a sworn statement from a duly licensed physician. [26:14-115.1] The request must be transmitted to the County Election Board office by an agent designated by the voter. [26:14-115.1] The white Request for Emergency Incapacitated Absentee Ballot and Sworn Statement by Physician form may be used but is not required.

(b) **Letter suffices.** In all cases, with the exception of the in-person absentee voter, a letter from a voter requesting absentee ballots shall be considered a sufficient application if it contains the information needed to determine the voter's eligibility to vote in the election and to determine where to send the ballots. [26:14-105, 14-110.1, 14-117]

(c) **Telegram suffices in some cases.** In the case of absentee voters, nursing home voters, physically incapacitated voters and voters charged with the care of physically incapacitated persons, a telegram shall be considered a sufficient application if it contains the information needed to determine the voter's eligibility to vote in the election and to determine where to send the ballots. [26:14-105, 14-110.1]

(d) **Facsimile applications accepted.** Absentee voters, nursing home voters, physically incapacitated voters, voters charged with the care of physically incapacitated persons, ~~military voters~~ uniformed services and overseas voters may submit applications for absentee ballots to the County Election Board by electronic facsimile device (a "fax" machine). Voters may transmit one of the absentee ballot application forms described in (a) of this Section or they may transmit a letter as described in (b) of this Section.

230:30-5-8.1. Time for absentee ballot applications

(a) All absentee voters, except in-person absentee voters and emergency incapacitated voters, may apply any time prior to 5 p.m. on the Wednesday preceding the election. [26:14-103] The application must be in the hands of County Election Board personnel by that time. An application received after 5 p.m. on Wednesday preceding the election - even if postmarked prior to that time - must be rejected.

(b) Applications for in-person absentee ballots may ~~only~~ be made only at the in-person absentee polling place from 8 a.m. to 6 p.m. on Friday and Monday preceding all elections ~~or~~ and also from 8 a.m. to 1 p.m on Saturday immediately preceding ~~an election at the in-person absentee polling place~~ state and federal elections . [26:14-115.4]

(c) Applications for emergency incapacitated absentee ballots may be made any time after 5 p.m. on Tuesday preceding an election through 7 p.m. on election day. [26:14-115.1]

(d) The County Election Board office shall remain open until 5 p.m. on Wednesday preceding an election so that applications may be made in person until that time.

230:30-5-8.2. Validity of applications for absentee ballots for all elections

(a) Absent voters, nursing home voters, physically incapacitated voters, and voters charged with the care of physically incapacitated persons may apply for absentee ballots for all elections in which they are eligible to vote. Such applications for all elections shall be considered valid through December 31 of the calendar year in which they are received. Absentee voters who apply for all elections shall be required to submit a new application for absentee ballots for each calendar year.

(b) Applications for absentee ballots received from ~~military~~ uniformed services voters and overseas voters shall be considered applications for all elections in which the voter is eligible to vote. Applications for absentee ballots received from ~~military~~ uniformed services voters and overseas voters shall be considered valid through ~~December 31 of the calendar year subsequent to the year in which the application is received~~ the next two regularly scheduled federal General Elections. For example, an application for absentee ballots from a ~~military~~ uniformed services or overseas voter ~~that is~~ received in February, ~~1996,~~ 2004, shall be considered valid through ~~December 31, 1997~~ the federal General Election in November, 2006. An application received in December, 2004, shall be considered valid through the federal General Election in November, 2008.

(c) If absentee ballots mailed to the address provided by the voter on an application for absentee ballots that requests ballots for all elections are returned undelivered to the County Election Board by the postal service, the Secretary of the County Election Board shall be authorized to cancel the application. The application information may be deleted from OEMS. The Secretary shall indicate on the outside of the returned absentee ballot mailing envelope that the application is cancelled as a result of the returned, undelivered ballots. The returned envelope shall be retained for 24 months.

SUBCHAPTER 7. ABSENTEE VOTING BOARDS

230:30-7-2. Parties submit lists of names by ~~August~~ July 1

No later than ~~August~~ July 1 of each even-numbered year, the Chairmen of the county central committees of the two recognized political parties with the largest number of registered voters in the state are required to submit a list of ten names to the Secretary of the County Election Board. [26:14-115] The list must contain the names of registered voters in the county and can include members of the County Election Board and the Precinct Election Boards. [26:14-115.5] The list cannot contain the name of the Secretary of the County Election Board. [26:14-115.5]

230:30-7-5. Compensation for Absentee Voting Board members

Members of the Absentee Voting Boards ~~*shall be reimbursed for their expenses at the rate of $40 per day*~~ shall be compensated at the same rate as the Precinct Judge or Clerk. See 230:35-3-30. [26:14-115.5] One member of each

nursing home Absentee Voting Board also may be allowed mileage reimbursement for the round trip between the nursing home and the County Election Board office at the rate currently allowed by the Internal Revenue Service for a business expense deduction. [26:14-115.5] Each Absentee Voting Board member shall sign the Absentee Voting Board Claim form for the election before receiving his or her compensation. Absentee Voting Board members shall not be entitled to compensation for attending training for their duties.

230:30-7-6. Scheduling Absentee Voting Boards for an election

(a) **Notification of Absentee Voting Board members.** At least ten days before the election, the Secretary of the County Election Board shall notify the members of one or more Absentee Voting Boards of the day or days the services of the Absentee Voting Board will be required. The Secretary also shall request the members of the Absentee Voting Board to meet on ~~Wednesday~~ Tuesday before the election to make plans for their work.

(b) **Scheduling the nursing home Absentee Voting Board.** On ~~Wednesday~~ Tuesday before the election, the Secretary shall work with the Absentee Voting Board to schedule visits to each affected nursing home or convalescent hospital. Visits must be scheduled on Thursday, Friday, Saturday or Monday immediately preceding the election. [26:14-115(1)] Visits shall be planned to all nursing homes in as few days as possible, preferably in a single day~~, and preferably on Friday~~. The Secretary shall consult the administrator of each affected nursing home to schedule a time that will be convenient for the Absentee Voting Board to visit.

(c) **Scheduling the in-person Absentee Voting Board.** An Absentee Voting Board is required to be on duty at the in-person absentee polling place from 8 a.m. to 6 p.m. on Friday and Monday immediately preceding all elections and also from 8 a.m. to 1 p.m. on Saturday immediately preceding ~~an election~~ state and federal elections. [26:14-115.4]

(d) **Notifying Sheriff of in-person absentee voting.** The Secretary shall notify the County Sheriff of the dates for in-person absentee voting for an election and shall arrange for the Sheriff to provide security for the memory pack and the voted ballots as outlined in 230:30-7-11.3.

230:30-7-9. Procedure for the nursing home Absentee Voting Board

(a) On the day scheduled for the Absentee Voting Board to visit nursing homes, the Board shall meet with the Secretary of the County Election Board at the County Election Board office. The members shall sign the Absentee Voting Board Record. The ballot box shall be prepared as outlined in 230:30-7-8 and issued to the nursing home Absentee Voting Board members. Adequate supplies and ballots shall be provided to anticipate voter assistance requirements and spoiled ballots. Precautions shall be taken to insure accounting for each ballot. The Secretary shall instruct the Absentee Voting Board as to the type of ballots each voter shall receive in case a voter spoils a ballot and a new ballot must be issued.

(b) The Absentee Voting Board shall observe the following procedure:

(1) The two members of the Absentee Voting Board shall travel together in one automobile, taking all necessary forms and supplies.

(2) Upon arrival at a nursing home, the Absentee Voting Board shall make arrangements for those incapacitated voters listed on the Absentee Voting Board Record to vote. Only those persons whose names are on the Absentee Voting Board Record shall be permitted to vote. If the message "Confirm Address" or "Insufficient Address" appears on the Absentee Voting Board Record, the Absentee Voting Board members shall give the voter a copy of the Address Information Requested handout and shall ask the voter to complete an Oklahoma Voter Registration Application form.

(3) The voter must mark his ballots with a ballot marking pen in the presence of the Absentee Voting Board, but in such a manner as to make it impossible for anyone but the voter to tell how the ballots are marked. [26:14-115(3)]

(4) *Insofar as is possible, the voting procedure shall be the same as if the voter were casting his ballot in person at a precinct*. [26:14-115(3)] This includes providing assistance, as provided by law, to persons who are unable to mark their ballots due to physical or visual disabilities or illiteracy. The procedures outlined in the PRECINCT PROBLEM SOLVER shall be followed. However, the Voter Assistance Form shall not be used. The person who marks the voter's ballot shall complete and sign the "Assistant's Oath" on the affidavit envelope. [26:14-113.2]

(5) While a voter may receive assistance, only the voter himself may determine how the ballots are to be marked. If the voter is unable to instruct the person providing assistance, the voter shall not be permitted to vote. If necessary, the voter also may receive assistance to complete the Oklahoma Voter Registration Application.

(6) The procedure outlined in the PRECINCT PROBLEM SOLVER shall be followed if a voter spoils a ballot. The Spoiled Ballot Affidavit shall be used as required.

(7) When the voter has marked his ballots, he shall fold them and seal them in the white ballots envelope. [26:14-115(4)] He then shall seal the white ballots envelope inside the pink affidavit envelope. [26:14-115(4)]

(8) The voter then shall complete and sign the affidavit. [26:14-115(4)] The voter's signature must be witnessed by both members of the Absentee Voting Board. [26:14-115(4)] The members shall sign the affidavit in the space for witnesses but shall not be required to provide their addresses.

(9) The affidavit envelope then shall be placed in the outer envelope and sealed. [26:14-115(5)]

(10) Each outer envelope containing absentee ballots immediately shall be placed in the absentee ballot box.

(11) A member of the Absentee Voting Board shall check either the "Did Vote" column or the "Did Not Vote" column, as appropriate.

(12) All Oklahoma Voter Registration Application forms completed by voters to update their voter registration information shall be placed with other voting supplies for return to the County Election Board office.

(13) When the Absentee Voting Board has completed its visits to each nursing home or convalescent hospital scheduled for that particular day, the members shall return to the County Election Board office and leave the ballot box in the custody of the Secretary. [26:14-115(5)] The Absentee Voting Board shall account for all supplies and unused ballots. The ballot box shall be removed from the County Election Board office only when the Absentee Voting Board is performing its duties. The ballot box, once locked, shall not be unlocked again until it is time for the County Election Board members to remove the outer envelopes. See 230:30-11-2.

(c) In the event that members of the nursing home Absentee Voting Board learn that a voter listed on the Absentee Voting Board Record has died, the Absentee Voting Board members shall ask the nursing home administrator to fill out and sign a Notification of Nursing Facility Resident's Death form. One member of the Absentee Voting Board shall witness the administrator's signature. The Absentee Voting Board shall return the signed form to the County Election Board Secretary along with the ballot box and supplies when their duties are concluded.

230:30-7-11. Procedure for in-person Absentee Voting Board to receive applications and issue ballots

The Absentee Voting Board members shall observe the following procedure when a voter appears and requests an in-person absentee ballot.

(1) Ask the voter to fill out and sign a green Application for In-Person Absentee Ballots form.

(2) Check the voter's registration information and registration status using either the OEMS terminal or the Central File as instructed by the County Election Board Secretary. See 230:30-7-14.

~~(A) If the applicant is not registered to vote or is not eligible to vote in this election, reject the application for in-person absentee ballots. Write the reason for the rejection in the space provided on the form. Both Absentee Voting Board members must sign the rejected application form.~~

~~(i) If the rejected applicant says that he or she recently applied for voter registration, refer the applicant to County Election Board personnel. If instructed to do so by County Election Board personnel, follow the procedure described in 230:35-5-111.1 to use the Valid Application Affidavit and allow the applicant to vote.~~

~~(ii) If an applicant tells you that he or she is on leave from the United States Armed Forces, or has recently been discharged from the Armed Forces, or has recently terminated his or her overseas service or employment, the applicant may be eligible to vote without being registered. See 230:30-7-13.~~ If the applicant's voter registration information cannot be located in OEMS, check the Central File, or ask a County Election Board staff member to do so. If the applicant's voter registration cannot be verified in either OEMS or the Central File, issue a provisional ballot to the applicant. See 230:30-7-15.

~~(B)~~

(3) If the voter tells you that his or her residence address has changed, give the voter an Oklahoma Voter Registration Application and ask the voter to fill it out and sign it.

~~(C)~~

(4) If the "Voter Status" field indicates the voter is inactive, if the number in the section field is greater than "36," or if the "SD" (school district) or "MU" (municipality) field on the OEMS screen is blank, give the voter a copy of the "Address Information Requested" handout and an Oklahoma Voter Registration Application form. Ask the voter to use the form to update his or her voter registration information. The voter may either return the voter registration application form to you or mail it at a later time.

(5) Check the "ID Required" field on the Voter Registration Information screen. If the field contains a "Y," ask the voter for identification. Any one of the following forms of identification are acceptable. If the voter shows identification, proceed to step (6). If the voter does not have identification, the voter still may vote by provisional ballot. See 230:30-7-15.

(A) a currently valid driver license or other photo identification

(B) a voter identification card issued by the County Election Board in this county

(C) a copy of a current utility bill, bank statement, pay check, government check, or any other government document that shows the voter's name and address

(~~3~~ 6) Record the date received, the voter's precinct number, and political affiliation in the spaces provided on the application for in-person absentee ballots form.

(A) If this is a school election, also write the voter's school district on the application form. If the school district field on the OEMS screen is blank, see ~~(2)(C)~~ (4) of this Section and follow the steps ~~outlines~~ outlined in ~~230:35-5-113.2(b)~~ 230:35-5-113.2(c) to help the voter determine the correct school district. If the voter tells you that the school district listed on the OEMS screen is not correct, follow the steps outlined in 230:35-5-113.2(c).

(B) If this is a municipal election, ~~the voter determines his or her own eligibility to vote in it. Refer the voter to the precinct map showing the municipality's boundary if necessary~~ also write the voter's municipality on the application form. If the municipality field is blank, see (4) of this Section and follow the steps outlined in 230:35-5-113.2(c) to help the voter determine the correct municipality. If the voter tells you that the municipality listed on the OEMS screen

is incorrect, follow the steps outlined in 230:35-5-113.2(c).

(~~4~~ 7) Record the voter's precinct number and political affiliation on the Absentee Voting Board Record for In-Person Absentee Ballots and ask the voter to sign it.

(~~5~~ 8) Issue the ballots indicated by the voter's registration information in OEMS or in the Central File and give the voter a ballot marker.[26:14-115.4]

(~~6~~ 9) Offer the voter a secrecy folder. Use a sample ballot to demonstrate a valid marking and use of the secrecy folder, if necessary.

(~~7~~ 10) Direct the voter to a voting booth to mark the ballots.

(~~8~~ 11) Provide assistance as outlined in the PRECINCT PROBLEM SOLVER to voters who need help reading and/or marking their ballots. Disregard references to the Precinct Registry. Use the Voter Assistance Form.

(~~9~~ 12) Follow the procedure outlined in the PRECINCT PROBLEM SOLVER if a voter spoils a ballot. Use the Spoiled Ballot Affidavit.

(~~10~~ 13) Tell the voter to insert the voted ballot in the voting device. [26:14-115.4(4)] If more than one voting device is in use, tell the voter which device to use.

(~~11~~ 14) Take the ballot marker and the secrecy folder, if used, back from the voter.

(~~12~~ 15) If the voting device returns the voter's ballot, ask the voter to wait until the voting device message prints. Follow the appropriate instructions in the VOTING DEVICE HANDBOOK FOR PRECINCT OFFICIALS. Ask County Election Board personnel for help if necessary.

230:30-7-13. In-person absentee voting procedure for ~~military discharge or military leave~~ uniformed services voter or overseas voter

If voter registration information for an in-person absentee ballot applicant cannot be found in the Central File or in OEMS and that applicant informs the Absentee Voting Board members that he or she is on leave or has recently been honorably discharged from the ~~United States Armed Forces~~ uniformed services of the United States or has recently been terminated in service or employment overseas, the applicant may be entitled to vote without being registered. [26:14-121] The spouse or dependent of such a person also is entitled to vote without being registered. [26:14-121] Refer to the "Military Discharge or Military Leave" section of the 2002 PRECINCT PROBLEM SOLVER (230:35-5-114) and follow those instructions to assist this applicant and to use the Military/Overseas Affidavit, if necessary. Ask a County Election Board employee for help to determine the correct absentee ballot to issue to the voter.

230:30-7-14. Verifying voter registration information and status of in-person absentee voters

(a) The Absentee Voting Board members are required to verify the registration information of each voter who applies for an in-person absentee ballot. The County Election Board Secretary shall instruct the Absentee Voting Board members to use ~~one of the following methods~~ an OEMS terminal to verify voter registration information and status. ~~However, the in-person Absentee Voting Board is required to use the OEMS terminal when a school district or vocational-technical school district election is held.~~

~~(1)~~ ~~**OEMS terminal.**~~ (b) ~~The Absentee Voting Board members may use an OEMS terminal set up in public access mode to verify voter registration.~~ County Election Board personnel shall place an OEMS terminal at the in-person absentee polling place location and shall prepare the terminal for use. County Election Board personnel shall teach the Absentee Voting Board members to use the terminal to find voter registration information about each applicant for in-person absentee ballots. ~~While viewing the applicant's voter registration information in OEMS, the Absentee Voting Board member also shall determine whether the voter is active or inactive. If the "Voter Status" field indicates the voter is inactive, if the number in the section field is greater than "36," or if the "SD" field on the screen is blank, the Absentee Voting Board member shall give the voter a copy of the "Information Requested" handout and an Oklahoma Voter Registration Application form and shall ask the voter to use the form to update his or her voter registration information. In the event that a voter's residence address, mailing address, and precinct information does not appear on the screen, ask a County Election Board employee for help to process the voter.~~

~~(2)~~ ~~**Central File.**~~ ~~The~~ In the event that a voter's registration information cannot be found in OEMS, the Absentee Voting Board members may ~~use~~ refer to the Central File to verify voter registration~~, except in school or vocational-technical district elections~~. The Absentee Voting Board member shall locate the voter's original registration form in the Central File. ~~If the Absentee Voting Board uses the Central File to verify registration information, the County Election Board Secretary may provide them with a copy of the Registered Voter Mailing List report that lists only inactive voters. After locating an applicant's original registration form in the Central File and recording the precinct number, the Absentee Voting Board member looks for the voter's name on the Registered Voter Mailing List report for that precinct. If the voter's name is on the report, the Absentee Voting Board member gives the voter a copy of the "Address Information Requested" handout and an Oklahoma Voter Registration Application form and asks the voter to update his or her voter registration information. In the event that a voter's residence address, mailing address, and precinct information does not appear on the registration form in the Central File, ask a County Election Board employee for help to process the voter.~~ If an applicant's eligibility is confirmed in the Central File or by any other means than in OEMS, ask a County Election Board staff member for assistance to determine the correct ballot style to issue. If the applicant's voter registration cannot be verified either in OEMS, the Central File, or any other means,

issue a provisional ballot as outlined in 230:30-7-15 and 230:35-5-177.

230:30-7-15. Procedure for provisional voting during in-person absentee voting

(a) An in-person absentee voter may cast a provisional ballot under the same circumstances as a voter at a precinct polling place on election day. The Absentee Voting Board members shall follow the steps in (b) of this section and the procedure outlined in 230:35-5-177 to issue a provisional ballot to an in-person absentee voter.

(b) When a provisional ballot must be issued to an in-person absentee voter, follow these steps in addition to the procedure in 230:35-5-177.

(1) Indicate on the Application for In-Person Absentee Ballots form that the voter will cast a provisional ballot. Do not allow the voter to sign the Absentee Voting Board Record.

(2) If necessary, ask a County Election Board staff member to help determine the correct ballot style for this voter. Prepare a Provisional Ballot Voucher listing the correct ballots for this voter.

(3) Follow the steps outlined in 230:35-5-177.

(c) At the end of each day of in-person absentee voting, the Absentee Voting Board members seal the orange bag with a blue plastic seal and give it to the Sheriff along with the in-person absentee memory pack. On the morning of the next day of in-person absentee voting, the Sheriff returns the orange bag to the Absentee Voting Board members along with the memory pack. If another voter casts a provisional ballot, the Absentee Voting Board members cut the blue plastic seal on the bag in order to place the new provisional ballot affidavit envelope in the bag and reseal the bag at the end of the day. It is not necessary to remove the seal from the orange bag unless another provisional ballot must be placed inside it.

(d) On election day, the Sheriff returns the sealed orange bag and the memory pack to the Secretary when it is time to begin counting absentee ballots. The Secretary secures the orange bag in the County Election Board office along with the orange bags from each precinct polling place until verification of provisional ballots begins the following day.

SUBCHAPTER 9. PROCESSING APPLICATIONS

230:30-9-2. Forms needed for processing

The following materials are necessary for processing absentee ballot applications and shall be maintained in packets:

(1) Absentee voter packet
- (A) Mailing envelope
- (B) Outer envelope
- (C) Yellow affidavit envelope
- (D) White ballots envelope
- (E) Yellow Instructions for Voting by Absentee Ballot (Absentee Voter)

(2) Incapacitated voter packet
- (A) Mailing envelope
- (B) Outer envelope
- (C) Pink affidavit envelope
- (D) White ballots envelope
- (E) Pink Instructions for Voting by Absentee Ballot (Incapacitated Voter)

(3) ~~Military~~ Uniformed services/overseas voter packet
- (A) Red and white mailing envelope
- (B) Red and white outer envelope
- (C) Red and white affidavit envelope
- (D) White ballots envelope
- (E) Red and white Instructions for Voting by Absentee Ballot (~~Military~~ Uniformed Services or Overseas)

(4) Uniformed services/overseas voter packet for fax ballots
- (A) Fax cover sheet and letter to voter
- (B) Instructions for Voting by Write-In Absentee Ballot
- (C) Instructions for Faxing Voted Ballot to State Election Board
- (D) Return fax cover sheet

230:30-9-3. Processing applications for absentee ballots

Applications from all absentee voters, except ~~military~~ uniformed services voters and overseas voters, shall be processed according to the following procedures:

(1) Indicate on the application form the date on which the application is received at the County Election Board office.

(2) Enter the application information into OEMS. When applications from absentee voters, nursing home voters, physically incapacitated voters, voters charged with the care of physically incapacitated persons and emergency incapacitated voters are entered into OEMS, the system automatically verifies the applicant's registration. If an applicant is not registered, see 230:30-9-4.

(3) If a voter requests absentee ballots for a school district other than the one to which he or she is assigned, mark the appropriate field on the OEMS screen. OEMS will generate a notice that tells the voter that he or she is assigned to a different school district than the one for which ballots were requested and that ballots for the assigned district will be issued. If a voter is not assigned to a school district, the school district field will be empty. Enter the appropriate code for the school district indicated by the voter on the absentee ballot application in the school district field.

(4) If the application must be rejected for any reason, enter the reason for the rejection in the appropriate place on the screen. OEMS will produce a Notice of Rejection of Absentee Ballot Application letter for the voter. However, in the event that an Application for In-Person Absentee Ballot has been rejected, it shall not be entered into OEMS.

(5) Designate the election or elections for which the voter is requesting ballots in the appropriate place on the screen.

(6) Write the applicant's voter identification number and registration status (active or inactive) on the application form. Fill in the information required in the shaded "For Election Board Use Only" box in the lower right corner of the form.

(7) File the application form in the appropriate absentee voting materials file. If the applicant is a restricted records status voter, file the application in the restricted records status file.

(8) If the application is from an in-person absentee voter and ballots were issued by the Absentee Voting Board, enter the date the application was processed by the Absentee Voting Board in the appropriate space on the screen to give the voter credit for voting. See 230:30-7-12. If the application was rejected, no entry shall be made in OEMS. A rejected Application for In-Person Absentee Ballot shall be retained with other rejected applications.

(9) If ballots are available, immediately prepare the appropriate absentee voter packet with the correct ballots for the voter and mail it. See 230:30-9-1 and 230:30-9-2. If the letter "I" appears in the upper-right corner of the absentee mailing label, the voter is either an inactive voter or a voter unassigned to a school district due to insufficient address information. Enclose an Oklahoma Voter Registration Application form and an Instructions for Updating Voter Registration Information sheet with the absentee voter packet and ballots.

230:30-9-5. Processing applications from ~~military~~ uniformed services voters and overseas voters

(a) Applications for absentee ballots received from ~~military~~ uniformed services voters and overseas voters are processed differently than applications from other absentee voters. ~~Military~~ Uniformed services voters and overseas voters are not required to be registered to vote in the county in order to vote by absentee ballot. Applications received from ~~military~~ uniformed services voters and overseas voters are considered to be applications for all elections in which the voter is eligible to vote. Applications from these voters shall be processed according to the following procedures:

(1) Indicate on the application the date on which it was received at the County Election Board office.

(2) Enter the application information into OEMS using the special option for uniformed services (military) and overseas applications.

(3) Designate the elections for which the voter will receive ballots.

(4) Write the voter identification number assigned by OEMS to the application on the form.

(5) If ballots are available, immediately prepare a ~~military~~ uniformed services/overseas voter packet with the correct ballots for the voter and mail it.

(6) After processing of the application is completed, file the application form in the appropriate absentee voting materials file.

(b) Applications for absentee ballots from ~~military~~ uniformed services voters and overseas voters shall be considered valid ~~for two years as~~ through the next two federal General Elections as outlined in 230:30-5-8.2. However, if ballots mailed to a ~~military~~ uniformed services or overseas voter's address are returned undelivered to the County Election Board, the County Election Board Secretary shall be authorized to consider the application invalid and shall be authorized to delete the application from OEMS. The Secretary shall indicate on the outside of the returned absentee ballot mailing envelope that the voter's absentee ballot application has been cancelled as a result of the returned, undelivered ballots. The returned envelope shall be retained for 24 months.

230:30-9-5.1. Faxing absentee ballots to uniformed services and overseas voters

(a) The Secretary of the County Election Board is authorized to fax an absentee ballot for federal offices to a uniformed services voter or an overseas voter only under the following circumstances.

(1) The voter submits an application for absentee ballots less than 30 days before a federal election and specifically requests that the Secretary fax a ballot for federal offices to the voter.

(2) The application is received by the County Election Board Secretary in the county of the voter's residence no later than 5 p.m. Wednesday preceding the election.

(3) The voter provides a fax number for receiving the ballot and related materials.

(b) The Secretary shall process the application for absentee ballots according to the procedure outlined in 230:30-9-5 and shall prepare and mail regular absentee ballots to the voter. The Secretary then shall prepare the following materials and immediately shall fax them to the voter.

(1) Fax cover sheet and letter to voter.

(2) Instructions for Voting by Write-in Absentee Ballot.

(3) A state write-in absentee ballot for the election.

(A) Determine the appropriate state write-in absentee ballot for the voter.

(B) Verify that the county name is stamped on both the stub and the ballot and that the stub is correctly numbered.

(C) Detach the ballot. Leave the numbered stub in the book of ballots.

(D) Enter the appropriate Congressional District number in the space provided on the ballot.

(4) A list of the candidates for federal offices in the election.

(5) Instructions for Faxing Voted Ballot to State Election Board

(6) A return fax cover sheet

(c) After faxing the materials described in (b) of this Section, the Secretary shall attach the original cover sheet to the application form, and then shall file the application in the appropriate absentee voting materials file. Ballots for any future elections for which the voter is eligible shall be mailed to the voter at the appropriate time according to the procedure outlined in 230:30-9-5(a).

SUBCHAPTER 11. RECEIVING AND PROCESSING ABSENTEE BALLOTS

230:30-11-2. Opening outer envelopes and examining affidavits

The County Election Board may meet any time after 10 a.m. on the ~~Saturday~~ Thursday preceding the election to remove outer envelopes. [26:14-123] Unless the number of absentee ballots is extremely high, this meeting shall be scheduled on the day of the election. Upon meeting, the Board shall unlock each ballot box containing absentee ballots. Each envelope shall be removed from the ballot box. The outer envelopes shall be opened and removed and the affidavit envelopes examined. If an inactive voter has enclosed the Oklahoma Voter Registration Application form inside the outer envelope, set the application aside to be processed later. The examination shall determine whether or not the affidavit is properly executed. The following requirements shall be observed:

(1) The signature on a pink affidavit submitted by a physically incapacitated voter, a voter charged with the care of a physically incapacitated person or an emergency incapacitated voter must be witnessed by two other persons. [26:14-113.2]

(A) No one may witness signatures on more than five of these pink affidavits per election. [26:14-113.2(B)]

(B) If someone witnesses signatures on more than five of these pink affidavits, the absentee ballots shall be counted but the witness shall be reported to the District Attorney. See 230:30-23-1.

(C) No one who is a candidate for an office on the ballot may witness a pink absentee ballot affidavit. [26:14-113.2]

(D) No one who is related within the third degree by consanguinity or affinity to a candidate for an office on the ballot may witness a pink absentee ballot affidavit. [26:14-113.2]

(2) The signature on a yellow affidavit submitted by an absentee voter must be witnessed by a Notary Public. [26:14-108] Affidavits from states other than Oklahoma may be notarized by a person other than a Notary Public who is authorized to administer oaths.

(A) The Notary Public must sign and impress the notarial seal on the affidavit for the attestation to be valid.

(B) The number and expiration date of a Notary Public in Oklahoma should be included in the attestation. However, the attestation shall be considered valid even if this information is missing.

(C) No one who is a candidate for an office on the ballot may notarize a yellow absentee ballot affidavit. [26:14-108]

(D) No one who is the chairman or treasurer of the campaign of a candidate for an office on the ballot may notarize a yellow absentee ballot affidavit. [26:14-108]

(E) No one who is related to a candidate within the third degree of consanguinity or affinity may notarize a yellow absentee ballot affidavit. [26:14-108]

(3) The signature on a pink affidavit submitted by a nursing home voter must be witnessed by two members of the nursing home Absentee Voting Board, who shall not be required to show their addresses. [26:14-115]

(4) Voters using the red and white affidavit need not have their signatures witnessed.

(5) The outer (mailing) envelope of a federal write-in absentee ballot shall not be opened at this time. The voter's declaration/affirmation on the mailing envelope shall be examined. The voter's signature need not be witnessed.

(6) The cover sheet used by uniformed services and overseas voters to return voted ballots by fax must include the voter's signature on the affidavit and waiver of right to secret ballot statement. The voter's signature need not be witnessed.

230:30-11-6. Transmitting absentee ballots

(a) **Transmitting absentee ballots to voter.** The County Election Board shall transmit absentee ballots to all absentee voters --- except nursing home absentee voters, in-person absentee voters, and emergency incapacitated absentee voters --- by United States mail. [26:14-106; 26:14-111.1; 26:14-118] Absentee ballots for nursing home absentee voters shall be delivered to the voters in person by the nursing home Absentee Voting Board as outlined in 230:30-7-9. [26:14-115] Absentee ballots for in-person absentee voters shall be issued to the voter by the in-person Absentee Voting Board at the in-person absentee polling place as outlined in 230:30-7-11. [26:14-115] Absentee ballots for emergency incapacitated absentee voters shall be delivered to the voter by the voter's agent as outlined in 230:30-9-6. [26:15-115.1]

(b) **Transmitting voted absentee ballots from voter to the County Election Board.** All absentee voters --- except nursing home absentee voters, in-person absentee voters, and emergency incapacitated absentee voters --- shall transmit their voted absentee ballots back to the County Election Board by United States mail. [26:14-108; 26:14-113.2; 26:14-120] Express delivery service provided by the United States Postal Service (Express Mail?) is considered United States mail. Voted absentee ballots from nursing home absentee voters shall be delivered to the County Election Board office by the nursing home Absentee Voting Board as outlined in 230:30-7-9. [26:14-115] Voted absentee ballots from in-person absentee voters shall be deposited by the voter directly into the appropriate voting device as outlined in 230:30-7-11. [26:14-115.4] Voted absentee ballots from emergency incapacitated absentee voters are delivered to the County Election Board by the voter's agent as outlined in 230:30-9-6. [26:14-115.1]

(c) Absentee ballots may be returned by a private mail service (such as Federal Express?) that provides delivery documentation. The decision to use such a private mail service to return voted absentee ballots, as well as the expense of such service, shall be the voter's.

(d) Absentee ballots for federal offices only may be faxed to uniformed services and overseas voters only as outlined in

230:30-11-5.1. Uniformed services voters and overseas voters may return voted absentee ballots by fax only as outlined in 230:30-11-6.1.

230:30-11-6.1. Receiving voted absentee ballots by fax from uniformed services and overseas voters

(a) All uniformed services and overseas voters are entitled to fax their voted absentee ballot to the State Election Board or to the County Election Board that issued the ballot if they receive their regular mail absentee ballot 30 days or less before the date of the election. Uniformed services and overseas voters who request a faxed ballot for federal offices as described in 230:30-11-6.1 must return said ballot by fax.

(b) A uniformed services or overseas voter described in (a) of this section may fax a copy of the voted ballot either to the State Election Board or to the County Election Board that issued the ballot in addition to mailing the original ballot to the issuing County Election Board. A fax cover sheet for this purpose may be downloaded and printed from the Federal Voting Assistance Program (FVAP) website: **www.fvap.gov.** Uniformed services voters may obtain copies of the fax cover sheet from the Voting Service Officers in their units. Overseas voters may obtain the cover sheet at United States embassies, consulates, and military installations. A voter who chooses to fax a voted ballot must sign a Secret Ballot Waiver and transmit it with the ballot. All faxed ballots must be received by the State Election Board or by the County Election Board no later than 7 p.m. (Oklahoma time) on the date of the election in order for the ballot to be counted. In the event that a voter's regular ballot is received by mail at the County Election Board prior to 7 p.m on election day, only the voter's regular ballot shall be counted. The voter shall follow these instructions to fax a voted ballot to the State Election Board or to the County Election Board.

(1) After marking the ballot, make a photocopy of the ballot, reduced as necessary to fit an 8 1/2" by 11" page. Do not alter the original ballot.

(2) Fill out and sign the affidavit envelope included with the mail absentee ballot.

(3) Fill out the fax cover sheet.

(4) Fax the cover sheet, affidavit, and voted ballot to one of the secure numbers provided by the FVAP for ballot transmission.

(5) Immediately mail the voted original ballot to the County Election Board. Follow the instructions included with the ballot.

(c) The Secretary of the State Election Board shall assign one or more employees to receive and process voted ballots faxed by uniformed services and overseas voters. Upon receipt by fax of a voted ballot, the assigned employees shall take the following steps to transmit the ballot and related information to the appropriate County Election Board Secretary.

(1) Verify that each voted ballot is accompanied by a fax cover sheet that includes the following information:

(A) the voter's name

(B) the voter's county of residence in Oklahoma

(C) the voter's signature on the Secret Ballot Waiver

(D) the voter's signed Affidavit if the faxed ballot is a copy of the voter's regular mail absentee ballot

(2) Stamp the fax cover sheet with the date and time it was received and immediately transmit both the cover sheet and the ballot to the appropriate County Election Board Secretary. If the Secretary does not have a fax machine in the office, notify the Secretary that a voted absentee ballot is being transmitted.

(3) In the event that a voted ballot is received without an appropriate identifying cover sheet and/or without the voter's signature on the Waiver of Right to Secret Ballot, the ballot shall be set aside in a secure place. If possible, immediately send a notice that the transmission was incomplete and that the ballot cannot be counted. Instruct the voter to send both the cover sheet and the ballot again. Document the receipt of the unidentified ballot and then destroy it.

(4) In the event that an identifying cover sheet is received without the voted ballot, set the cover sheet aside in a secure place. If possible, immediately send notice that the transmission was incomplete and the ballot was not received. Instruct the voter to send both the cover sheet and the ballot again. If the voter does not send the cover sheet and ballot again by 7 p.m. in the United States' Central time zone on election day, document the receipt of the cover sheet without the ballot, and notify the County Election Board Secretary that the voter attempted to return the ballot but the ballot was not received.

(5) Ballots received by fax after 7 p.m. on election day in Oklahoma shall not be counted.

(d) Upon receipt by fax of a voted ballot from the State Election Board, the Secretary of the County Election Board shall take the following steps.

(1) Attach the fax cover sheet to the ballot with a paper clip, fold the sheets in half and place in the locked absentee ballot box. If the ballot is received from the State Election Board on election day after the absentee ballot box has been opened, place the faxed ballot in a secure place until the County Election Board members are ready to count the ballot.

(2) Enter the date received in the voter's absentee application information in OEMS.

(3) After 7 p.m. on election day, the members of the County Election Board shall count by hand any voted ballots returned by fax.

(4) The results of the hand count shall be recorded in the minutes of the County Election Board meeting and entered manually in OEMS according to the appropriate software instructions.

(e) Upon receipt by fax of a voted ballot from a uniformed services voter or an overseas voter, the Secretary of the County Election Board shall follow the same steps outlined in (c) of this section.

(f) A voter who faxes a voted ballot to the State Election Board as described in this section must sign a Secret Ballot Waiver. The Secret Ballot Waiver is part of the fax cover sheet

provided by the FVAP, and also is part of the fax cover sheet provided by the County Election Board to voters who ask for a federal office ballot to be faxed as outlined in 230:30-9-5.1. However, if neither of these cover sheets is available, the voter must include the following signed statement among the materials faxed with the voted ballot. "I understand that by faxing my voted ballot I am voluntarily waiving my right to a secret ballot." This statement must be signed and dated by the voter.

230:30-11-7. Undeliverable absentee ballots returned by postal service to County Election Board

(a) In the event that absentee ballots mailed to a voter are returned to the County Election Board by the postal service because they are undeliverable as addressed, County Election Board personnel shall note on the envelope the date the undeliverable ballots were received and shall set them aside in a secure place. Such returned undeliverable absentee ballots shall be retained for 24 months with other absentee voting materials for the election. No entry concerning the undelivered ballots shall be made in the voter's absentee application in OEMS. Do not mail the ballots to another address unless it is provided in writing by the voter in the form of a new application for absentee ballots. If the voter's application includes additional upcoming elections, the application shall be considered cancelled and shall be deleted from OEMS. See 230:30-5-8.2.

(b) When the postal service returns undeliverable absentee ballots to the County Election Board, the Secretary is not required to try to contact the voter to obtain a new or a corrected mailing address. The Secretary may choose to do so, however, if there is sufficient time for such communication before the election, or if the voter has applied for absentee ballots for additional upcoming elections. If the Secretary chooses to contact the voter, the following guidelines should be observed. See (c) of this Section for the suggested contents of a letter to the voter.

(1) If the postal service has provided a forwarding address on the returned mailing envelope, mail a letter to the voter at that address.

(2) If the ballots were not mailed to the voter's residence address, mail a letter to the voter at the residence address or to the mailing address provided on the voter's voter registration application.

(3) If the ballots were mailed to a ~~military~~ uniformed services voter or an overseas voter and were returned with a forwarding address, mail a letter to the voter at that address.

(c) Prepare a letter to the voter explaining that the absentee ballots could not be delivered to the voter by the postal service at the address provided on the absentee ballot application form and that ballots cannot be mailed again to that address. Enclose a new application form and ask the voter to fill it out with a new or a corrected mailing address and to return it. Include the deadline for absentee ballot applications for the affected election, or for the next election covered by the original application.

(d) If a voter whose absentee ballots were returned undelivered by the postal service contacts the County Election Board to inquire about the ballots, follow the procedures outlined in 230:30-17-1 through 230:30-17-4 to replace the ballots.

SUBCHAPTER 13. FEDERAL WRITE-IN ABSENTEE BALLOT

230:30-13-1. Voters permitted to use federal write-in absentee ballots

~~Residents of Oklahoma who are members of the Armed Forces or Merchant Marine and who are stationed outside the territorial limits of the United States, their spouses and dependents and residents of Oklahoma who are living outside the territorial limits of the United States and their spouses and dependents~~ Uniformed services voters who are stationed outside the territorial limits of the United States and overseas voters, those who are living outside the territorial limits of the United States, shall be permitted to use the federal write-in absentee ballot in Primary, Runoff Primary, Presidential Preferential Primary, and General Elections for federal offices. ~~Military~~ These uniformed services voters and overseas voters may use the federal write-in absentee ballot whether or not they have applied for regular absentee ballots.

230:30-13-3. Rules for counting federal write-in absentee ballots

Federal write-in absentee ballots shall be counted ~~by hand by the County Election Board Chairman and Vice Chairman~~ as outlined in 230:30-19-6. The following rules also shall apply:

(1) Before a federal write-in absentee ballot is counted, the Secretary of the County Election Board shall verify that regular absentee ballots have not been received from the voter. See 230:30-13-2(5).

(2) A federal write-in absentee ballot may be counted only for federal offices in Primary, Runoff Primary, Presidential Preferential Primary, and General Elections. The following are federal offices: President, Vice President, United States Senator and United States Representatives.

(3) The voter may designate a candidate by writing the name of a candidate or by writing the name of a political party. If the voter has written the name of a political party the ballot shall be counted for the candidate of that party in a General Election.

(4) In the case of the offices of President and Vice President, a vote for a named candidate or a vote by writing the name of a political party shall be counted as a vote for the electors supporting the candidate involved.

(5) Any abbreviation, misspelling or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of the ballot, so long as the intention of the voter can be ascertained.

(6) In the event that the voter's intent cannot be determined, the federal write-in absentee ballot shall not be counted.

SUBCHAPTER 15. STATE WRITE-IN ABSENTEE BALLOTS

230:30-15-1. Voters eligible to use state write-in absentee ballot

~~Military~~ Uniformed services voters and overseas voters who cannot vote by regular mail absentee ballot because of the time required for ballot transit may request the state write-in absentee ballot. The state write-in absentee ballot may be used to vote only for federal candidates in the Primary, Runoff Primary and General Elections. It also may be used in the Presidential Preferential Primary Election.

230:30-15-2. Applications for state write-in absentee ballot

~~Military~~ Uniformed services voters and overseas voters may apply for the state write-in absentee ballot with the Department of Defense Form 76 Federal Post Card Application (FPCA) or by writing a letter setting forth substantially the same facts as included on the FPCA. The FPCA or letter may either be mailed or be submitted by electronic facsimile device (a "fax" machine). The voter must specifically request the state write-in absentee ballot. The voter must state that due to military contingencies or due to living in an isolated or extremely remote area of the world, the regular absentee ballot application procedure cannot be followed. The remarks section (Section 5) on the FPCA may be used by the voter to request the state write-in absentee ballot. The voter also may request regular absentee ballots. See 230:30-5-5.

230:30-15-3. Time for state write-in absentee ballot applications

~~Military~~ Uniformed services voters and overseas voters eligible to use the state write-in absentee ballot may apply for it within 90 days before an election that involves federal candidates.

230:30-15-5. Processing applications for state write-in absentee ballots

When an application for a state write-in absentee ballot is received from a ~~military~~ uniformed services voter or an overseas voter, the following procedure shall be observed:

(1) If the application is for a Primary or Runoff Primary Election, determine the voter's political affiliation. See item 7 on the FPCA. If the voter does not indicate a political affiliation in the application for a Primary or Runoff Primary Election, contact the State Election Board for additional instructions.

(2) Determine the appropriate state write-in absentee ballot for the voter.

(3) Detach the state write-in absentee ballot. Leave the numbered stub in the book of ballots.

(4) Enter the appropriate Congressional district number in the blank space on the ballot.

(5) Assemble the following materials and mail them to the voter:

(A) the appropriate ballot.

(B) a copy of the letter to the voter.

(C) a copy of Instructions for Voting by Write-In Absentee Ballot.

(D) a ~~military~~ uniformed services/overseas absentee voter packet. Use the outer envelopes with "Special Write-in Ballot" written or stamped on the front.

(E) a list of candidates for the offices, if available. See 230:30-15-6.

230:30-15-7. Voters who request both regular and state write-in absentee ballots

~~Military~~ Uniformed services voters and overseas voters are entitled to apply for both the state write-in absentee ballots and regular absentee ballots for the same election. The two requests may be made in the same application or may be made separately. If a ~~military~~ uniformed services voter or an overseas voter requests both regular and state write-in absentee ballots, the state write-in absentee ballot shall be mailed in one set of absentee envelopes as outlined in 230:30-15-5, and the regular absentee ballots shall be mailed in a separate set of absentee envelopes as outlined in 230:30-9-2. The request for regular ballots shall be processed as outlined in 230:30-9-5.

230:30-15-8. Time for return of state write-in absentee ballots

Voted state write-in absentee ballots must be received by the County Election Board no later than 7 p.m. election day in order to be counted, except in the Runoff Primary Election. State write-in absentee ballots cast by uniformed services and overseas voters in the Runoff Primary Election may be accepted and counted through the fourteenth day following the election. See 230:30-19-15.

230:30-15-9. Rules for counting state write-in absentee ballots

A state write-in absentee ballot shall be opened and counted only if regular absentee ballots from the voter are not received prior to 7 p.m. election day, except for the Runoff Primary Election. See 230:30-19-15. If regular absentee ballots are received from the voter prior to 7 p.m. election day, those regular absentee ballots shall be counted and the state write-in absentee ballots shall be rejected without being opened. If only the state write-in absentee ballot is received by the County Election Board prior to 7 p.m. election day, it shall be opened and shall be counted, provided that the affidavit is properly executed. When counting state write-in absentee ballots, the following provisions shall be observed:

(1) The requirements for the affidavit are the same as those for a regular absentee ballot from a military uniformed services voter or an overseas voter. See 230:30-9-5.

(2) The voter may write in the names of specific candidates or the names of persons whom the voter prefers.

(3) In the General Election, the voter may write in a party preference for each office.

(4) State write-in absentee ballots shall be counted by hand by the County Election Board Chairman and Vice Chairman as outlined in 230:30-19-6.

SUBCHAPTER 19. COUNTING THE BALLOTS

PART 1. COUNTING ABSENTEE BALLOTS ON ELECTION DAY

230:30-19-4. Procedure for counting absentee ballots on election day

(a) On the day of the election at such time as the Secretary of the County Election Board may prescribe, the County Election Board shall meet to count absentee ballots. The following procedure shall be observed~~:~~ to count ballots received by mail or private delivery service.

(1) Outer envelopes first shall be removed and the affidavits examined as outlined in 230:30-11-2.

(2) The properly executed affidavit envelopes shall be opened by the County Election Board, and the ballot envelopes shall be removed as outlined in 230:30-11-3. [26:14-125(A)(1)]

(3) The unopened ballot envelopes shall be placed inside a ballot box. [26:14-125(A)(2)] The ballot box shall be shaken to mix the ballot envelopes. [26:14-125(A)(3)]

(4) The ballot envelopes shall be removed from the box. [26:14-125(A)(3)] The ballot envelopes shall be opened, and the ballot cards removed. [26:14-125(A)(3)] If an Oklahoma Voter Registration Application form has been enclosed by an inactive voter inside the ~~ballots~~ ballot envelope, remove it and set it aside to be processed later. Proceed to the next step.

(5) If more than one absentee precinct has been created for the election, the ballots shall be sorted by ballot style into the appropriate absentee precinct before counting begins.

(6) The Secretary shall assign an employee of the County Election Board to each voting device used for in-person absentee voting to count the absentee ballots. The voting device tape generated during the in-person absentee voting period shall remain attached to the voting device. [26:14-125(A)(3)] The memory pack used for in-person absentee voting shall be received from the Sheriff and shall be installed in the voting device. [26:14-115.4(B)(6)] Seals shall be installed on the ballot box as described in 230:35-5-32(7). The County Election Board Chairman and Vice Chairman shall be present and shall observe the counting process. Counties that use the Optech IV-C, a high-speed ballot-counting device, shall not be required to use the same voting device and memory pack used for in-person absentee voting to count regular absentee ballots.

(7) The person assigned to operate the voting device shall insert the absentee ballot cards one at a time into the voting device until all absentee ballots received to that point have been counted. This procedure shall be repeated as necessary as additional absentee ballots are received until 7 p.m. The following factors shall be considered.

(A) In no event shall fewer than 12 absentee ballot cards be counted at any one time, unless fewer than 12 ballot cards are received in total or after the first count is completed. [26:14-125(B)]

(B) If the voting device returns a ballot because of an overvote or other error, use the override key to accept the ballot. See 230:35-5-162. [26:14-125(B)]

(C) In the event that a ballot card is so badly damaged or mutilated, as outlined in 230:30-19-5(a), that it cannot be read and counted by the voting device, the procedure described in 230:30-19-5(b) shall be observed.

(D) If the first count of absentee ballots is completed prior to 7 p.m., the memory pack shall be removed from the voting device, placed inside the padded bag, and sealed inside a black-lettered envelope. The person operating the voting device, the Chairman and the Vice Chairman each shall sign the envelope flap. The person operating the voting device shall indicate on the envelope flap the time the count was completed as follows: "Absentee ballot count ended at 5:20 p.m. 11/5/96." The envelope shall be placed in the Sheriff's custody until it is needed to count additional absentee ballots received before 7 p.m.

(E) In no event shall the Totals Printout for absentee ballots be obtained until after 7 p.m. on election day.

(8) In the event that the voting device or memory pack used during in-person absentee voting malfunctions in such a way that a Totals Printout cannot be obtained, an election night recount shall be conducted as outlined in 230:35-3-85.1. If an election night recount of absentee ballots is required, the Secretary shall obtain the sealed ballot transfer cases containing voted in-person absentee ballots from the Sheriff before beginning the recount procedure. [26:14-115.4(B)(7)]

(9) As soon as possible after 7 p.m. and after all absentee ballot cards received prior to 7 p.m. have been processed through the voting device, the Totals Printout for absentee ballots shall be obtained. See 230:35-5-75.1. At least three copies of the Totals Printout shall be generated.

(10) The Totals Printouts shall be signed by the person assigned to operate the voting device and by the County Election Board members.

(11) The person assigned to operate the voting device shall break the seals on the ballot box, remove the ballots, and shall place them inside a ballot transfer case. If the election required more than one absentee precinct, a separate ballot transfer case shall be used for ballots from each absentee precinct. One copy of the Totals Printout shall be placed inside the ballot transfer case with the ballot cards. The ballot transfer case shall be sealed with a long white State Election Board seal and the seal shall be signed

by the person who operated the voting device and by the County Election Board members.

(12) One copy of the Totals Printout for each absentee precinct shall be posted on the door of the County Election Board office.

(b) State or federal write-in absentee ballots and ballots received by fax from uniformed services or overseas voters shall be counted by following the procedure described in 230:30-19-6.

230:30-19-6. Marking substitute ballot to count write-in or faxed ballots

In the event that the County Election Board must count a federal write-in absentee ballot, a state write-in absentee ballot, or a regular ballot received by fax, the following procedure shall be observed.

(1) The Secretary shall verify that regular mail absentee ballots from the voter or voters were not received by 7 p.m.

(2) A federal or state write-in ballot may be counted for federal offices only.

(A) The Secretary shall provide a blank Optech absentee ballot of the appropriate style.

(B) The Chairman of the County Election Board shall read the voter's write-in ballot and the Vice Chairman shall mark the blank Optech ballot for the voter's choice for federal offices only.

(C) The Chairman, Vice Chairman, and Secretary shall review the substitute ballot and shall agree that it has been marked exactly as the voter's write-in ballot was marked.

(D) The Secretary shall write identical numbers on the back of each original write-in ballot and on the back of the substitute Optech ballot, being careful to avoid the area of the voting tracks. For example, the first such ballot and its substitute shall be marked "1," the second, "2," etc.

(E) The Secretary shall insert the marked Optech ballot in the appropriate absentee voting device.

(2) A regular ballot returned by fax shall be counted for all offices and questions for which the voter's intent can be determined.

(A) The Secretary shall provide a blank Optech absentee ballot identical to the style originally mailed to the voter.

(B) The Chairman of the County Election Board shall read the voter's choice for each office and question on the ballot and the Vice Chairman shall mark the Optech ballot.

(C) The Chairman, Vice Chairman, and Secretary shall review the substitute ballot and shall agree that it is marked exactly as the faxed copy of the voter's ballot is marked.

(D) The Secretary shall write identical numbers on the back of each faxed ballot and on the back of the substitute Optech ballot, being careful to avoid the area of the voting tracks. For example, the first such ballot and its substitute shall be marked "1," the second, "2," etc.

(E) The Secretary shall insert the substitute ballot in the appropriate absentee voting device.

(4) In the event that a federal or state write-in ballot is marked for a candidate or a political party not on the ballot in Oklahoma, no substitute ballot shall be marked. The minutes of the County Election Board meeting shall indicate both that the ballot could not be counted and the reason.

(5) In the event that a ballot received by fax is illegible, no attempt shall be made to mark a substitute ballot. The minutes of the County Election Board meeting shall indicate both that the ballot could not be counted and the reason.

(3) The Secretary shall document in the minutes of the County Election Board meeting the number of substitute ballots marked and inserted in the absentee voting device.

PART 3. RECEIVING AND COUNTING OVERSEAS ABSENTEE BALLOTS FOR RUNOFF PRIMARY ELECTION AFTER ELECTION DAY

230:30-19-15. Absentee ballots from overseas voters shall be received and counted after election day for Runoff Primary Elections for federal offices

(a) Absentee ballots cast by overseas voters, including uniformed services voters who are absent from the United States on election day by reason of active duty, and received by the County Election Board Secretary no later than 5 p.m. on the fourteenth day following the Runoff Primary Election shall be accepted, counted, and included in the final election results for federal offices only. Only ballots from such voters received by mail or by private delivery service shall be counted. In the event a ballot from an overseas voter is received by fax prior to 7 p.m. on election day, it shall be counted. See 230:30-11-6.1. A ballot received by mail from the same voter after election day through the fourteenth day following the Runoff Primary Election shall not be counted.

(b) If there is no Runoff Primary Election for a federal office in the county, no absentee ballots received after election day shall be counted. The County Election Board shall certify the results of all offices on the ballot to the State Election Board at 5 p.m. on Friday following the election as outlined in 230:35-3-91.

230:30-19-16. Determining outstanding overseas absentee ballots on Runoff Primary Election night

(a) After 7 p.m. on the night of the Runoff Primary Election, the Secretary of the County Election Board shall take the following steps.

(1) Determine the number of absentee ballots mailed to overseas voters, including overseas uniformed services voters, that have not been returned.

(2) Determine whether any ballots from overseas voters were received by fax prior to 7 p.m.

(3) Subtract the number of ballots received by fax from overseas voters from the total number of overseas ballots to determine the total number of outstanding overseas absentee ballots.

(4) Complete the report form provided by the State Election Board and fax to State Election Board.

(b) If there are no outstanding overseas absentee ballots for the Runoff Primary Election, the County Election Board shall certify the results of the Runoff Primary Election for all offices, including federal offices, at 5 p.m. on Friday as outlined in 230:35-3-91.

230:30-19-17. Receiving, processing, and counting overseas absentee ballots for Runoff Primary Election after election

(a) If the Secretary determines that there are outstanding absentee ballots from overseas voters for the Runoff Primary Election, as outlined in 230:30-19-16, the Secretary shall prepare and lock a ballot box as instructed in 230:30-11-1. When absentee ballots for the Runoff Primary Election are received from overseas voters after election day, enter the received date in OEMS. The computer will indicate rejection of the ballot because of the late date, but the ballot must be counted. However, if a ballot received by fax from the voter was counted on election night, the late mail ballot shall not be counted.

(b) At 5 p.m. on the fourteenth day following the Runoff Primary Election, the County Election Board shall meet to count any late absentee ballots and to certify the county's final Runoff Primary Election results for federal offices. Follow the procedures in 230:30-19-4 and in 230:30-11-2 to open outer envelopes, to examine the affidavits, and to open affidavit and secrecy envelopes.

(1) Late absentee ballots shall be counted and tallied manually. Only validly cast votes for federal offices shall be counted. See 230:45-5-19 and 230:45-5-20 for instruction for counting ballots manually.

(2) After the ballots have been counted, results shall be entered manually in OEMS. Follow the appropriate software instructions to add the results of late overseas absentee ballots for federal offices only.

(3) Follow the appropriate software instructions to prepare and print two copies of the Official Certification Report for federal offices. Certify the results as outlined in 230:35-3-91.

(4) Immediately fax the Official Certification Report to the State Election Board. Also, mail one of the signed and sealed copies to the State Election Board. Retain the second copy for the County Election Board records.

(5) Follow the appropriate software instructions to complete the election in OEMS.

(6) Complete the report form provided by the State Election Board and mail or fax it to the State Election Board as instructed.

[OAR Docket #05-1008; filed 5-26-05]

TITLE 230. STATE ELECTION BOARD
CHAPTER 35. ELECTION CONDUCT

[OAR Docket #05-1009]

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RULES:
Subchapter 3. County Election Board Responsibilities
Part 1. Before the Filing Period
230:35-3-2. Orders for election supplies required by ~~June~~ May 1 [AMENDED]
230:35-3-3. Assembling precinct supplies [AMENDED]
Part 5. Precinct Official Payroll
230:35-3-30. Pre-Election Expense Claim [AMENDED]
230:35-3-31. Secretary shall verify names [AMENDED]
230:35-3-31.1. Secretary shall determine mileage for Precinct Officials [AMENDED]
230:35-3-32. Verify supply of vouchers [AMENDED]
230:35-3-33. Funds for Precinct Official compensation [AMENDED]
230:35-3-34. Funds for statewide elections [AMENDED]
230:35-3-35. Prepare and register vouchers for Precinct Officials and Absentee Voting Board members [AMENDED]
230:35-3-36. Inspector receives vouchers [AMENDED]
230:35-3-37. Inspector distributes vouchers [AMENDED]
230:35-3-38. Inspector receives compensation [AMENDED]
230:35-3-39. Alternative procedure for distribution of vouchers [AMENDED]
230:35-3-40. Substitute vouchers [AMENDED]
230:35-3-41. Itemized claim for election expenses [AMENDED]
230:35-3-47. Reconciliation of Precinct Official and Absentee Voting Board compensation [AMENDED]
230:35-3-48. Reconciliation for the county's share of Precinct Official compensation [AMENDED]
Part 7. Final Preparations
230:35-3-57. Requesting and printing Precinct Registries [AMENDED]
230:35-3-58. ~~Thursday~~ Wednesday preparations [AMENDED]
Part 9. Distributing Supplies and Ballots
230:35-3-65. Notifying Inspectors [AMENDED]
230:35-3-66. Issuing supplies and ballots [AMENDED]
230:35-3-69. Appointment of Watchers [AMENDED]
230:35-3-70. Pollsters [AMENDED]
Part 11. Election Day
230:35-3-79. Election day confirmation of timely, valid voter registration application [REVOKED]
Part 13. After the Polls Close
230:35-3-84. Assembly line required for receiving returns and materials from Inspectors [AMENDED]
230:35-3-84.1. Determining number of signatures on Provisional Ballot Rosters [NEW]
230:35-3-85.1. Election night recounts [AMENDED]
230:35-3-86. Sheriff to provide security for voted ballots [AMENDED]
230:35-3-87. Accumulating and producing election results [AMENDED]
Part 15. Certification of Results
230:35-3-91. Certifying county election results [AMENDED]
230:35-3-92. Tie votes [AMENDED]
230:35-3-93. Credit for voting [AMENDED]
Part 17. Disposition of Materials
230:35-3-101. Processing FORMS FOR USE BY PRECINCT OFFICIALS booklets [AMENDED]
230:35-3-101.1. Processing transfers of address on election day [AMENDED]
Part 19. Verifying and Counting Provisional Ballots [NEW]
230:35-3-125. Handling provisional ballot affidavit envelopes [NEW]
230:35-3-126. Criteria for verification of provisional ballot affidavit information [NEW]
230:35-3-127. Provisional ballot verification procedure for voter not in Precinct Registry [NEW]
230:35-3-128. Provisional ballot verification procedure for voter without required identification [NEW]
230:35-3-129. Provisional ballot verification procedure for voter who disputes political affiliation [NEW]

230:35-3-130. Provisional ballot verification procedure for voter who disagrees with school district or municipal assignment [NEW]
230:35-3-131. Opening provisional ballot affidavit envelopes and counting provisional ballots [NEW]
230:35-3-132. Obtaining provisional ballot results [NEW]
230:35-3-133. Voter may learn of disposition of own provisional ballot [NEW]
230:35-3-134. Retention of provisional ballot materials [NEW]
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Part 5. Preparations on Election Day
230:35-5-29. Location and materials for Judge [AMENDED]
230:35-5-31.1. Location and materials for provisional voting [NEW]
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230:35-5-113.2. Determining voter's school district or municipality [AMENDED]
230:35-5-113.3. Identification Required voter [NEW]
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Part 27. Watchers and Pollsters
230:35-5-134. Watchers [AMENDED]
230:35-5-136. Pollsters [AMENDED]
Part 29. Violations of the Law
230:35-5-145. Persons authorized inside election enclosure [AMENDED]
Part 34. Provisional Voting Procedures [NEW]
230:35-5-171. Voter's name not found in Precinct Registry [NEW]
230:35-5-172. Identification required voter with no identification [NEW]
230:35-5-173. Voter disputes political affiliation indicated in Precinct Registry [NEW]
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230:35-5-177. Provisional voting procedure [NEW]
Subchapter 9. HAVA Requirements [NEW]
Part 1. General Provisions [NEW]
230:35-9-1. Purpose [NEW]
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230:35-9-6. Provisional voting for all elections [NEW]
230:35-9-7. Voters who may cast a provisional ballot [NEW]
230:35-9-8. Provisional Voting Officer authorized [NEW]
230:35-9-9. Extension of provisional ballot verification period [NEW]
Part 5. Voter Identification [NEW]
230:35-9-16. Some voters required to present identification when voting for first time in election for federal office [NEW]
Part 7. Voter Information [NEW]
230:35-9-17. Public posting of voting information on election day [NEW]
Part 9. Complaints [NEW]
230:35-9-21. Purpose [NEW]
230:35-9-22. Complaints [NEW]
230:35-9-23. Receiving complaints [NEW]
230:35-9-24. Investigation of complaint [NEW]
230:35-9-25. Hearing [NEW]
230:35-9-26. Resolution of complaint [NEW]
230:35-9-27. Alternative dispute resolution for complaint [NEW]

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These new, amended, and revoked rules implement portions of a bill passed in 2003 (SB358) and to bills passed in 2004 (SB1104 and SB1346). These rules interpret and implement the following sections in Title 26 of the Oklahoma Statutes as amended by the previously cited bills: 2-128.2; 3-113; 7-108.3; 7-112; 7-115.2; 7-116.1; 7-130; 7-136; 8-105; 14-104.1; 14-121; 16-113; the repeal of 7-116; and the federal Help America Vote Act of 2002 (42 USC 15301 et seq), which includes amendments to the Uniformed Services and Overseas Citizens Absentee Voting Act (42 USC 1973ff et seq).

The Help America Vote Act (HAVA) requires the states to provide provisional voting in federal elections and to require identification of some voters in federal elections. It also requires that certain voter information be posted at polling places on election day and that an administrative complaint procedure be created to receive and resolve complaints of violations of the requirements of Title III of HAVA. These provisions of HAVA were in effect for federal elections in 2003 and were implemented in Oklahoma by emergency rules. Senate Bill 1346, which becomes effective July 1, 2005, extends provisions of HAVA to all elections in Oklahoma. Most of the new, amended, and revoked rules in this Chapter concern the requirements of HAVA and implement the provisions of SB1346.

When authorized by the State Election Board Secretary, the County Election Board Secretary is permitted to employ additional precinct workers to assist the Precinct Election Board members with certain specified tasks. Designated as either Registration Officials or Provisional Voting Officers, they are paid at the same rate as the Judge or Clerk, and their compensation is included in the Pre-Election Expense Claim. Many Sections are amended to include the term "special purpose precinct worker."

Absentee Voting Board members now are paid at the same rate as the Judge and Clerk. Several Sections are amended to reflect this change.

County Election Board personnel now are permitted to begin printing Precinct Registries after 5 p.m. on Wednesday preceding the election, providing that all absentee ballot applications have first been entered in OEMS. Several other election preparation tasks have been moved to Wednesday from Thursday to provide County Election Board personnel with more time. County Election Board personnel may begin distributing supplies to Inspectors on Thursday preceding the election, a day earlier than in the past.

Watchers and Pollsters who violate the laws prescribed for their positions are deemed guilty of a misdemeanor. Information about the penalties for violations of the law have been included in several Sections that concern Watchers and Pollsters.

Sections that detailed procedures to follow when a voter's name could not be found in the Precinct Registry on election day have been revoked. Such voters now cast provisional ballots.

Many Sections have been amended to include appropriate references to provisional voting, provisional ballots, and related materials. Many new Sections are added to provide information and instructions for conducting provisional voting at the precinct and for verifying and counting provisional ballots after election day.

Provisional voting is a procedure required by federal law in federal elections and now extended by state law to all elections conducted by the County Election Board. In the event that a voter's name is not in the Precinct Registry but the voter believes himself to be registered and eligible to vote in the precinct, the voter is entitled to cast a provisional ballot. The provisional ballot is sealed inside an affidavit envelope instead of being inserted in the voting device. After election day, County Election Board personnel use the information provided by the voter on the affidavit to investigate the voter's claim of eligibility. If the voter's eligibility is verified, the provisional ballot is counted. A provisional ballot must be cast in the voter's correct precinct in order for it to be counted. Evidence of the voter's valid and timely registration must be found.

Uniformed services and overseas voters who return home too late to register to vote in an election may vote by casting a provisional ballot. These voters are not required to be registered, but they must be eligible to be registered. State law requires that provisional ballots cast by these voters must be counted.

County Election Board personnel are prohibited from releasing any information about the identity of a provisional voter or about the disposition of a provisional ballot prior to 1 p.m. on Friday following the election. Only the number of provisional ballots cast in the election may be released prior to 1 p.m. on Friday. The County Election Board Secretary is required to notify the State Election Board of the number of provisional ballots cast in a state election on election night. A voter who casts a provisional ballot may contact the County Election Board after 5 p.m. on the Friday following the election to learn whether the ballot was counted, and if it was not, the reason.

In the event that a County Election Board Secretary is unable to complete the process of verifying provisional ballots by 5 p.m. on Friday following the election, the Secretary of the State Election Board is authorized by law to extend the verification period beyond 5 p.m. as necessary to complete the verification. In the event that the verification period must be extended for any county for a state election, it shall be extended for all counties, and the contest of election period also shall be extended the same number of hours or days as the verification period.

These rules establish criteria for verification of provisional ballots cast under a variety of circumstances. The rules also establish procedures for investigating the information provided by a provisional voter on the affidavit. The rules establish procedures for opening and counting provisional ballots that are verified.

As a result of a recent upgrade to the Street Guide software in OEMS, the Precinct Registry now includes a municipal code for many voters. This code indicates either that the voter resides within the boundaries of a particular municipality or that the voter's residence is not located in a municipality. Not all voters have a municipal code. Several sections have been amended to include references to municipal codes in the Precinct Registry and to provide instructions for helping a voter without a code to determine whether the residence is located inside municipal boundaries.

Voters who apply for voter registration after January 1, 2003, are required by HAVA to show identification when voting for the first time in a federal election. Acceptable forms of identification include the following: a driver license or state identification card, a voter identification card issued by the County Election Board, a copy of a bank statement, a utility bill, a paycheck, a government check, or any other government document that shows the voter's name and address.

HAVA also requires certain information to be posted at polling places on election day. Several signs have been created or revised to accommodate this requirement. The rules refer to the signs in several places.

HAVA requires a complaint procedure for the chief state election official to receive complaints of violations of the provisions of Title III of HAVA. Several new rules establish that procedure.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 3. COUNTY ELECTION BOARD RESPONSIBILITIES

PART 1. BEFORE THE FILING PERIOD

230:35-3-2. Orders for election supplies required by ~~June~~ May 1

The Secretary of the County Election Board shall conduct a thorough inventory of all election supplies and shall order additional supplies, if needed, from the State Election Board no later than ~~June~~ May 1 in even-numbered years.

230:35-3-3. Assembling precinct supplies

(a) Well in advance of any election, the Secretary shall assemble supplies for every precinct and shall pack them in an envelope, a box, a bag, a binder, or another container. The

Secretary may use the the Supply Envelope and the Supply Box provided by the State Election Board or any other adequate container. Each election supply container shall be labeled for the appropriate precinct. (Some materials cannot be included in the supplies until after ballots are printed.) The Secretary shall prepare and use a Precinct Checklist for each precinct to verify that all necessary supplies are included.

(b) The following items shall be included in the election supplies for each precinct. The quantities listed are recommended minimum quantities.

(1) **Publications.** ~~The~~ One each of the following publications shall be included in the election supplies for each precinct.

(A) MANUAL FOR PRECINCT ELECTION OFFICIALS

(B) PRECINCT PROBLEM SOLVER

(C) VOTING DEVICE HANDBOOK FOR PRECINCT OFFICIALS

(2) **Forms and handouts.** The following forms and handouts shall be included in the election supplies for each precinct.

(A) Address Information Requested handouts~~.~~

(B) Ballot Accounting Form~~.~~

(C) FORMS FOR USE BY PRECINCT OFFICIALS booklet~~.~~

(D) Oklahoma Voter Registration Application forms~~.~~

(E) Procedure for Watchers~~.~~

(F) School District Research Request form (for precincts with two or more school districts in school elections only)

(G) Municipal Boundary Assignment Research Request form (for precincts partially within a municipality's boundary)

(H) Secrecy folders~~.~~

(~~H~~ I) Voting Device Report~~.~~

(3) **Envelopes.** One of each of the following envelopes shall be included in the election supplies for each precinct.

(A) Envelope for Totals Printout~~.~~

(B) Green envelope for mailing Totals Prinout to State Election Board (statewide elections only)~~.~~

(C) Precinct Expense Claim Envelope~~.~~

(D) Voting Device Key Envelope (and key chain with keys)~~.~~

(4) **Signs and Maps.** The following envelopes shall be included in the election supplies for each precinct.

(A) One Attention Voter poster for each voting booth in the precinct~~.~~

(B) One Oklahoma Election Procedures --- Important Voter Information sign (English)~~.~~

(C) One Oklahoma Election Procedures --- Important Voter Information sign (Spanish)

(D) One Election Law Violations sign

(E) One Vote Here sign~~.~~

(~~D~~ F) One Voter Eligibility - Municipal Elections~~.~~

(~~E~~ G) One Voter Eligibility - School Elections~~.~~

(~~F~~ H) Precinct Map - municipality~~.~~

(~~G~~ I) Precinct Map - school districts~~.~~

(~~H~~ J) Precinct Map - other entity~~.~~

(5) **Other Supplies.** The following additional supplies shall be included in the election supplies for each precinct.

(A) American flag~~.~~

(B) Twenty ballot marking pens~~.~~

(C) Twenty ink pens~~.~~

(D) One long white State Election Board seal for each ballot transfer box required for the precinct~~.~~

(E) Official Exit Poll stickers, as needed~~.~~

(F) Two plastic seals for ballot box sides~~.~~

(G) Paper clips~~.~~

(H) Magnifier~~.~~

(I) Memory pack bag~~.~~

(J) Rubber bands~~.~~

(K) Scissors~~.~~

(L) Tape~~.~~

(M) Thumbtacks~~.~~

(6) **Provisional voting supplies.** The following provisional voting supplies shall be included in the election supplies for each precinct.

(A) Provisional Voting Forms booklet

(i) Absentee Voter Affidavit

(ii) Voter Assistance Form

(B) Provisional Voting Information handouts

(C) Identification Required sign

(D) Provisional Ballot Voucher forms

(E) Provisional Ballot Affidavit Envelopes

(F) Provisional Ballot Rosters

(G) Orange provisional ballot bag

(H) Blue plastic seal for provisional ballot bag

(~~6~~ 7) **Precinct Registry, Voting Device, and ballots.** The Precinct Registry, voting device, and ballots are issued to the Inspector along with the election supplies for each precinct. See 230:35-3-6, 230:35-3-7, 230:35-3-57, and 230:35-3-68.1.

PART 5. PRECINCT OFFICIAL PAYROLL

230:35-3-30. Pre-Election Expense Claim

(a) When the state, the county, a school district, a municipality, or any other governmental entity calls an election to be conducted by the County Election Board, the Secretary of the County Election Board shall prepare an estimate of the number of Precinct Officials ~~and~~, Absentee Voting Board members, and any authorized special-purpose precinct workers required for the election, and the amount of compensation for all Precinct Officials and Absentee Voting Board members. [26:3-105.1(A)] The estimate also shall include mileage reimbursement for Inspectors to pick up and return election supplies and materials, for Precinct Officials and special-purpose precinct workers assigned to polling places located ten miles or more from their homes, and for one member of each nursing home Absentee Voting Board. The Secretary shall prepare the estimate, which shall be known as a Pre-Election Expense Claim, in OEMS using the appropriate Pre-Election Expense Claim report. The Pre-Election Expense Claim shall

be submitted to the entity not less than 35 days prior to the election. [26:3-105.1(A)]

(b) The compensation for Precinct Officials ~~and~~, Absentee Voting Board members, and any authorized special-purpose precinct workers shall be billed as follows.

(1) **Inspector.** The Inspector shall receive a total of $77 for an election. The Inspector also shall be reimbursed for mileage for two round trips from his home to the County Election Board office at the rate currently allowed by the Internal Revenue Service for a business expense deduction. An Inspector assigned to a polling place located ten miles or more from his or her home also may be reimbursed for one-way mileage from home to the assigned polling place. See 230:35-3-31.1.

(A) **Statewide elections.** For a statewide election, the State Election Board shall be billed $75 per Inspector. The State Election Board also shall be billed for the total amount of mileage reimbursement for the Inspectors. The county shall be billed $2 per Inspector for a statewide election.

(B) **Other elections.** For a county election, a school district election, a municipal election or any other election, the entity authorizing the election shall be billed $77 per Inspector, plus the total amount of mileage reimbursement for the Inspectors.

(2) **Judge and Clerk.** The Judge and Clerk each shall receive a total of $67 for an election. In addition, a Judge or Clerk assigned to a polling place located ten miles or more from his or her home may be reimbursed for round-trip mileage from home to the assigned polling place. See 230:35-3-31.1.

(A) **Statewide elections.** For a statewide election, the State Election Board shall be billed $65 per Judge and $65 per Clerk. The county shall be billed $2 per Judge and $2 per Clerk. The State Election Board also shall be billed for any mileage paid to Judges and Clerks.

(B) **Other elections.** For a county election, a school district election, a municipal election or any other election, the entity authorizing the election shall be billed $67 per Judge and $67 per Clerk. The entity also shall be billed for any mileage paid to Judges and Clerks.

(3) **Absentee Voting Board members.** Absentee Voting Board members each shall receive ~~$40~~ $67 for each day they serve for an election. In addition, one member of each nursing home Absentee Voting Board shall receive mileage reimbursement for the round trip from the County Election Board office to the nursing home or homes.

(A) **Statewide elections.** For a statewide election, the State Election Board shall be billed for the total amount of ~~$40~~ $67 per Absentee Voting Board member plus mileage for one member of each nursing home Absentee Voting Board.

(B) **Other elections.** For a county election, a school election, a municipal election, or any other election, the entity authorizing the election shall be billed ~~$40~~ $67 for each Absentee Voting Board member for each day served plus mileage for one member of each nursing home Absentee Voting Board.

(4) **Special-purpose precinct workers.** Special-purpose precinct workers, such as Provisional Voting Officers or Registration Officials, shall receive $67 for an election. In addition, a special-purpose precinct worker assigned to a polling place ten miles or more from his or her home may be reimbursed for round-trip mileage from home to the assigned polling place. (Special-purpose precinct workers may only be employed when authorized by the Secretary of the State Election Board. See 230:10-3-28.1.)

(A) **Statewide elections.** For a statewide election, the State Election Board shall be billed $65 per special-purpose precinct worker. The county shall be billed $2 per special-purpose precinct worker. The State Election Board also shall be billed for any mileage paid to special-purpose precinct workers.

(B) **Other elections.** For a county election, a school district election, a municipal election or any other election, the entity authorizing the election shall be billed $67 per special-purpose precinct worker. The entity also shall be billed for any mileage paid to special-purpose precinct workers.

(5) **Mileage.** Mileage is reimbursed at the rate currently allowed by the Internal Revenue Service for a business expense deduction.

(c) When two or more entities hold elections on the same date and two or more of the entities are involved in the same precinct, the cost of Precinct Official and special-purpose precinct worker compensation and mileage reimbursement shall be divided equally among the entities involved in each precinct and the cost of Absentee Voting Board compensation and mileage reimbursement shall be divided equally among all the entities involved in the election. However, if a school district election is held on the same date as a county election, the county shall assume the school district's share of Precinct Official, special-purpose precinct worker, and Absentee Voting Board compensation and mileage.

230:35-3-31. Secretary shall verify names

The Secretary must verify the names of all Precinct Officials, special-purpose precinct workers, and Absentee Voting Board members who will work in the election by talking personally with each worker. The Secretary may ask the Inspector of each precinct to talk personally with each Judge and Clerk who will work in the election. If this task is assigned to the Inspector, the Inspector shall be required to report to the Secretary the names of the Precinct Officials who will work at an election.

230:35-3-31.1. Secretary shall determine mileage for Precinct Officials

(a) The Inspector shall be reimbursed for mileage for two round trips from home to the County Election Board office to receive and return election supplies and materials. Mileage is reimbursed at the rate currently allowed by the Internal

Revenue Service for a business expense deduction. The Secretary shall determine the total number of miles traveled by all Inspectors and shall include the appropriate amount in the Pre-Election Expense Claim for the election.

(b) A Precinct Official or special-purpose precinct worker assigned to a polling place located ten miles or more from his or her home may be reimbursed for mileage on election day. The Secretary shall determine whether the polling place to which the Precinct Official is assigned is located ten miles or more from the Precinct Official's home. The Secretary may consider not only the straight-line distance between the assigned polling place and the Precinct Official's home but also the distance along the most reasonable route likely to be traveled by the Precinct Official to reach the assigned polling place.

(c) If the Secretary determines that a Precinct Official or special-purpose precinct worker is entitled to receive mileage as outlined in (b), the mileage shall be reimbursed at the rate currently allowed by the Internal Revenue Service for a business expense deduction. The amount of such mileage reimbursement shall be included on the Pre-Election Expense Claim if a reasonable estimate of the amount can be made when the claim is prepared. Otherwise, it shall be included as an item on the Record of Expense following the election.

(1) The Inspector shall receive mileage reimbursement for a one-way trip from home to the polling place on election day. This shall be in addition to the mileage reimbursement specified in (a) of this Section.

(2) The Judge ~~or~~ , Clerk, or special-purpose precinct worker shall receive mileage reimbursement for a round trip from home to the polling place.

230:35-3-32. Verify supply of vouchers

Upon receipt of a resolution calling for an election, the Secretary shall verify that an ample supply of vouchers for the Special Depository Account is in stock to issue one voucher to each Precinct Official, to each special-purpose precinct worker, and to each Absentee Voting Board member needed for the election. If additional vouchers are needed, the Secretary immediately shall take the necessary action to acquire them.

230:35-3-33. Funds for Precinct Official compensation

(a) **Funds to be submitted to County Election Board.** Not less than 15 days before the election, the entity ~~*authorizing the election shall submit to the Secretary of the County Election Board an amount of funds equal to the estimate of compensation for*~~ authorizing an election shall submit funds equal to the estimated amount of compensation for Precinct Officials, special-purpose precinct workers, and Absentee Voting Board members to the County Election Board Secretary. [26:3-105.1(B)] If the entity fails to submit the funds, the Secretary shall notify the State Election Board by telephone. The telephone call shall be followed by a letter to the State Election Board verifying that the funds have not been received. No further action shall be taken until directed by the State Election Board.

(b) **Deposit funds in Special Depository Account.** Upon receipt of the funds, the Secretary shall deposit them in the County Election Board Special Depository Account. [26:3-105.1(B)]

230:35-3-34. Funds for statewide elections

In the event of a statewide election, the Secretary shall submit a Pre-Election Expense Claim form together with a requisition to the County Clerk and shall follow the procedure established in the county to transfer the county's share of Precinct Official, special-purpose precinct worker, and Absentee Voting Board member compensation into the County Election Board Special Depository Account. [26:3-105.1(E)] A separate Pre-Election Expense Claim shall be submitted to the State Election Board for the state's share of Precinct Official, special-purpose precinct worker, and Absentee Voting Board member compensation. [26:3-105.1(E)]

230:35-3-35. Prepare and register vouchers for Precinct Officials and Absentee Voting Board members

(a) **Vouchers for Precinct Officials.** The Secretary shall prepare and register one voucher from the Special Depository Account for compensation and mileage for each Inspector and one voucher for compensation for each Judge ~~and~~ , Clerk, and special-purpose precinct worker who will work in the election. The vouchers shall be dated with the date of the election. The vouchers shall be registered with the County Treasurer with sufficient time allowed for the completion of this process before the Inspector picks up the election supplies.

(b) **Vouchers for Absentee Voting Board members.** The Secretary shall prepare and register one voucher from the Special Depository Account for compensation for each Absentee Voting Board member who will work in the election. The vouchers shall be dated with the date of the election. The vouchers shall be registered with the County Treasurer at the same time vouchers for Precinct Officials are registered.

230:35-3-36. Inspector receives vouchers

On the day the Inspectors are scheduled to pick up election supplies, the Secretary shall place the appropriate vouchers for Judges ~~and~~, Clerks, and any special-purpose precinct workers inside the Precinct Expense Claim Envelope for each precinct. The envelope shall be sealed. The sealed envelope shall be placed inside the election supply container for each precinct.

230:35-3-37. Inspector distributes vouchers

After the polls have closed on election day, the Judge ~~and~~, the Clerk, and any special-purpose precinct workers shall sign the Precinct Expense Claim Envelope and receive their vouchers from the Inspector. In no case shall compensation be made until after services have been rendered. [26:3-105.1(C)]

230:35-3-38. Inspector receives compensation

The Inspector shall return the signed Precinct Expense Claim Envelope and any unclaimed vouchers, together with the election returns and supplies, to the County Election Board

office. [26:3-105.1(C)] If all vouchers are accounted for, the Inspector shall sign the Precinct Expense Claim Envelope and receive his voucher for compensation and mileage from the Secretary. [26:3-105.1(C)] If any vouchers are unaccounted for, the Inspector shall be responsible for obtaining all necessary signatures of Precinct Officials or special-purpose precinct workers on the Precinct Expense Claim Envelope or for returning all unclaimed vouchers before receiving his own voucher.

230:35-3-39. Alternative procedure for distribution of vouchers

The Secretary may distribute vouchers to Precinct Officials and special-purpose precinct workers by United States Mail instead of by the procedure set forth in 230:35-3-36 through 230:35-3-38. [26:3-105.2] When distributing vouchers to Precinct Officials and special-purpose precinct workers by mail, the voucher shall be mailed no earlier than the day of the election and no later than the Tuesday following the election. [26:3-105.2]

230:35-3-40. Substitute vouchers

Within seven days following the election, the Secretary shall prepare substitute vouchers for compensation of substitute Precinct Officials, special-purpose precinct workers, or Absentee Voting Board members who were not paid on election night, cancel the unclaimed vouchers and register the new vouchers with the County Treasurer. The Secretary immediately shall distribute the vouchers to the substitute Precinct Officials, special-purpose precinct workers, or Absentee Voting Board members. No substitute voucher shall be distributed to a Precinct Official or Absentee Voting Board member until the person's signature has been obtained on a Precinct Expense Claim or an Absentee Voting Board Member Claim form.

230:35-3-41. Itemized claim for election expenses

As soon as possible following the election, the Secretary shall submit an itemized claim for all election expenses to the entity for which the election was conducted. The itemized claim shall be prepared in OEMS and shall show the amount prepaid by the entity for Precinct Official, special-purpose precinct worker, and Absentee Voting Board member compensation deducted from the total amount of election expenses. [26:3-105.1(D)] The appropriate Record of Expense report in OEMS shall be used for all authorizing entities.

230:35-3-47. Reconciliation of Precinct Official and Absentee Voting Board compensation

Upon receipt of the Record of Expense, the State Election Board shall determine whether there was an overpayment or an underpayment in the amount pre-paid by the State Election Board for Precinct Official, special-purpose precinct worker, and Absentee Voting Board compensation and mileage. If there was either an overpayment or an underpayment, an adjustment or other provisions will be made. [26:3-105.1(E)]

230:35-3-48. Reconciliation for the county's share of Precinct Official compensation

If there was either an overpayment or an underpayment of the county's share of Precinct Official and special-purpose precinct worker compensation in a statewide election, the Secretary shall make an adjustment at the time that the balance of the county expenses for the election are paid by the County Clerk. The amount paid before the election by the county for Precinct Official and special-purpose precinct worker compensation must balance with the amount actually paid to Precinct Officials and special-purpose precinct workers after each election. Follow the procedure prescribed by the County Clerk for making the necessary adjustments following the election.

PART 7. FINAL PREPARATIONS

230:35-3-57. Requesting and printing Precinct Registries

As soon as all registration transactions and applications for absentee ballots have been entered into OEMS, the Secretary shall cause Precinct Registries for the election to be printed. All Precinct Registries needed for an election shall be printed no earlier than 5 p.m. on Wednesday preceding the election and no later than the day before materials are issued to Inspectors.

230:35-3-58. ~~Thursday~~ Wednesday preparations

On ~~Thursday~~ Wednesday preceding the election, the Secretary shall place at least three of each type of sample ballot inside the election supply container. The Secretary also shall place the Precinct Expense Claim Envelope inside the election supply container. The Secretary shall make appropriate entries on the Precinct Check List.

PART 9. DISTRIBUTING SUPPLIES AND BALLOTS

230:35-3-65. Notifying Inspectors

At least ten days prior to an election, the Secretary shall notify each Inspector of the time and place that supplies and ballots will be issued to that Inspector. The time shall be either on Friday, Saturday or Monday preceding the election. The Secretary also may schedule Inspectors to pick up supplies on Thursday preceding the election if Precinct Registries are printed by that time.

230:35-3-66. Issuing supplies and ballots

On Thursday, Friday, Saturday or Monday preceding the election, the Secretary shall issue supplies and ballots for the election to each Inspector.

230:35-3-69. Appointment of Watchers

(a) *Any candidate or any recognized political party is entitled to have a Watcher present at any place where an official*

count is being conducted. [26:7-130] The Watcher must be commissioned in writing by the candidate or by the county chairman of the political party. [26:7-130] The commission must be filed with the Secretary of the County Election Board no later than 5 p.m. on Wednesday preceding the election. [26:7-130] When a Watcher is commissioned for a precinct, the Secretary shall provide the Inspector with a Procedure for Watchers sheet at the time the Inspector receives his supplies for the election.

(b) A Watcher may be commissioned to observe voting device testing prior to an election. A Watcher may be commissioned to accompany County Election Board personnel assigned to repair or to maintain voting devices during the hours of voting on election day. Watchers commissioned to observe voting device testing or repair shall be commissioned as outlined in (a) of this Section. Watchers commissioned to observe voting device testing or repair shall be limited to observing the testing or repair procedures and to making a written record of the procedures they have observed. Watchers commissioned to observe voting device testing or repairs shall be placed under oath by the County Election Board Secretary. The Secretary shall recite the following oath: "Do you solemnly swear or affirm that you will abide by all laws and rules prescribed for Watchers and that you will limit yourself to observing the voting device during testing or during the repair procedure?"

(c) A Watcher shall be confined on election day to observing the voting device before the polls are opened and after the polls are closed, or to observing the voting device during repair procedures, and shall not be present at the polling place at other times during election day.

(d) Any Watcher who violates the law prescribed for Watchers shall be deemed guilty of a misdemeanor. [26:7-130] Any person deemed guilty of a misdemeanor under the provisions of state election law shall, upon conviction, be confined to the county jail for not more than one year or fined not more than $1,000.00 or both. [26:16-110]

230:35-3-70. Pollsters

(a) *Any person desiring to conduct an exit poll within 300 feet of any ballot box shall notify the Secretary of the County Election Board of his intention to do so no later than 5 p.m. on the Wednesday preceding the election*. [26:7-108.1] A Pollster conducting an exit poll ~~*shall display identification prescribed by the Secretary of the State Election Board at all times he is conducting the poll.* [26:7-108.2] *The identification shall be provided to the Pollster by the Secretary of the County Election Board*~~ shall display identification provided by the Secretary of the County Election Board at all times while conducting the poll. [26:7-108.2] When a Pollster is authorized for a precinct, the Secretary shall inform the Inspector of the precinct at the time the Inspector receives his supplies for the election.

(b) A Pollster who violates the law prescribed for Pollsters shall be deemed guilty of a misdemeanor. [26:7-108.3] Any person deemed guilty of a misdemeanor under provisions of state election law shall, upon conviction, be confined to the county jail for not more than one year or fined not more than $1,000.00 or both. [26:16-110]

PART 11. ELECTION DAY

230:35-3-79. Election day confirmation of timely, valid voter registration application [REVOKED]

~~(a) A person who applied for voter registration 25 days or more prior to the election may be entitled to cast a ballot on a day of in-person absentee voting or on election day. Before allowing such a person to vote, the Secretary of the County Election Board shall confirm that a valid voter registration application is on file in the County Election Board office and that the valid application was received by an appropriate official 25 days or more prior to the election.~~

~~(b) The Secretary shall attempt to confirm the person's eligibility by taking the following steps.~~

~~(1) The Secretary shall look for the person's voter registration in OEMS.~~

~~(2) The Secretary shall look for the person's voter registration application on the Pending Applications Report.~~

~~(3) The Secretary shall look for the person's voter registration application among the rejected applications.~~

~~(4) The Secretary shall look for the person's voter registration application among applications that have not yet been processed.~~

~~(c) If the Secretary finds evidence that the person's valid voter registration application was appropriately received 25 days or more prior to the election, but that the application was not processed by the County Election Board in time for the person's name to appear in the Precinct Registry, the Secretary shall authorize the Inspector or an Absentee Voting Board member to require the person to sign the Valid Application Affidavit and then to allow the person to vote.~~

~~(d) If the Secretary cannot confirm that a valid application is on file in the County Election Board office, as described in (b) of this Section, the person shall not be permitted to vote.~~

PART 13. AFTER THE POLLS CLOSE

230:35-3-84. Assembly line required for receiving returns and materials from Inspectors

Before the first Inspector arrives, an assembly line shall be established for receiving the returns. The Chairman and Vice Chairman of the County Election Board, the Secretary or clerical employees of the Board may be involved in reception. When receiving returns, the following procedure shall be observed:

(1) Representatives of the news media shall be assigned to a separate office or area. If the County Election Board has more than one OEMS terminal, one terminal may be placed in a public area to display precinct results as they are accumulated.

(2) Appropriate receptacles shall be prepared and arranged for receiving items from Inspectors.

(3) Inspectors shall form a line as they arrive, and shall be processed one at a time.

(4) The Envelope for Totals Printout shall be received first. The envelope shall be opened and its contents examined in the following order.

(A) The Totals Printout shall be examined. If it appears to be in order, it shall be set aside in a secure place. If, however, the Totals Printout appears to be incorrect in any way, the Secretary and the County Election Board members shall confer to determine whether an election night recount of the ballots cast in the precinct, as outlined in 230:35-3-85.1, is warranted.

(B) The Ballot Accounting Form shall be examined.

(C) The memory pack shall be given to the person responsible for reading it into the computer.

(D) The voting device key envelope shall be examined to be certain that the precinct number is written on it. The key envelope shall be set aside in a secure place.

(5) The voting device, if returned by the Inspector, shall be received and immediately transferred to secure storage.

(6) The sealed ballot transfer boxes shall be received and immediately transferred to secure storage.

(7) The sealed orange provisional ballot bag shall be received.

(A) Remove the Provisional Ballot Roster from the clear plastic pocket on the bag. Make certain that the precinct number is indicated on the Provisional Ballot Roster before separating it from the bag.

(B) Place the provisional ballot bag in a secure receptacle. Access to the provisional ballot bags shall be restricted to authorized County Election Board personnel.

(C) Paperclip or staple the Provisional Ballot Roster pages together and set aside in a secure location. Access to these forms shall be restricted to authorized County Election Board personnel.

(D) Set the Provisional Voting Forms booklet aside in a secure location. Make certain that the precinct number is indicated on the booklet.

(8) The Precinct Registries shall be received and examined.

(~~8~~ 9) The Precinct Expense Claim Envelope and any unclaimed vouchers shall be received and examined.

(~~9~~ 10) The Inspector shall sign the Precinct Expense Claim Envelope and receive his voucher for compensation and mileage if all other vouchers are accounted for.

(~~10~~ 11) The election supply container shall be received and placed in an appropriate receptacle.

(~~11~~ 12) The American flag shall be received and stored.

230:35-3-84.1. Determining number of signatures on Provisional Ballot Rosters

The number of signatures on the Provisional Ballot Rosters from each precinct in the county shall be determined by the Secretary of the County Election Board on election night. The total number of signatures on Provisional Ballot Rosters may be made public, but no additional information concerning provisional ballots shall be released prior to 1 p.m. on Friday following the election.

(1) Count the signatures on each page of the Provisional Ballot Roster for a precinct and record the total number of signatures for the precinct on the Provisional Ballot Precinct Log.

(2) When all precinct returns have been received, determine the total number of provisional ballots cast in the county by adding the precinct totals together. Enter the total in the space provided on the Provisional Ballot Precinct Log.

(3) Fax or e-mail a copy of the Provisional Ballot Precinct Log to the State Election Board.

(4) Make a copy of the Provisional Ballot Precinct Log available for public inspection in the County Election Board office. Copies may be distributed to any interested party.

230:35-3-85.1. Election night recounts

(a) **Precinct ballots.** The ballots from a precinct may be recounted at the County Election Board office on election night if Precinct Officials are unable to obtain a Totals Printout at the polling place or if an examination of the Totals Printout from the precinct reveals an abnormality that may indicate that the voting device has malfunctioned. Election night recounts are allowed only under the following circumstances.

(1) The Ballot Statistics information on the Totals Printout indicates that the number of ballots not counted exceeds 2% of the total ballots cast. [26:7-134.1]

(2) The voting device has malfunctioned in such a way that there are no totals on the Totals Printout or the Totals Printout is illegible. [26:7-134.1]

(3) Uncounted ballots from the emergency compartment were mixed with counted ballots before the uncounted ballots could be processed through the voting device.

(4) Precinct Officials failed to remove and count ballots from the emergency compartment before obtaining the Totals Printout.

(5) An insufficient amount of voting device tape remains on the paper roll to print the first Totals Printout.

(6) The State Election Board staff instructs the County Election Board to conduct an election night recount to resolve a problem not anticipated in this Section.

(b) **Absentee ballots.** Absentee ballots may be recounted on election night only under the circumstances described in (a) of this section.

(c) **Procedure for election night recount.** An election night recount shall be conducted on a voting device especially designated for election night recounts. The recount shall be conducted in public view and in the presence of the County Election Board members and a representative of the County Sheriff. [26:7-134.1] If possible, members of the news media also shall be present. The recount shall be conducted according to the following procedure.

(1) The memory pack from the precinct in question shall be inserted into the designated voting device.

(2) The memory pack shall be initialized and a new Zero Printout shall be printed. Do not tear off the Zero Printout tape.
(3) The ballot transfer case from the precinct shall be opened and the ballots removed.
(4) The Secretary shall designate one person to feed the ballots, one at a time, into the voting device.
(5) After all the ballots have been inserted into the device, a new Totals Printout shall be generated.
(6) When the Totals Printout has finished printing, it shall be torn off and signed by the County Election Board members and also by the person who fed the ballots into the voting device. At least three more copies of the Totals Printout shall be printed.
(7) After the required number of Totals Printouts has been printed, memory pack shall be removed from the voting device.
(8) The ballots shall be replaced in the ballot transfer case. One copy of the new Totals Printout shall be placed inside the ballot transfer case. The Totals Printout from the polling place also shall be placed in the case.
(9) The ballot transfer case shall be resealed with a new long white seal. [26:7-134.1] The new seal shall be positioned so that it can be distinguished from the broken precinct seal. The members of the County Election Board and the person who fed the ballots into the voting device all shall sign the new long white seal. The Secretary shall note the date and time that the transfer case was resealed.

230:35-3-86. Sheriff to provide security for voted ballots

(a) It is the duty of the County Sheriff to provide security for the ballot transfer boxes for elections involving candidates from election night until ~~5 p.m. on the Friday following the election~~ the county's final election results are certified or until the ballot transfer boxes are delivered to the District Courtroom for a recount, whichever is later. [26:8-110] The Secretary shall inform the Sheriff when there will be an election involving candidates.
(b) In the event that a recount is possible in a question election, the County Sheriff shall provide security for the ballot transfer boxes from election night until ~~5 p.m. on the Friday following the election~~ the county's final election results are certified or until the ballot transfer boxes are delivered to the District Courtroom for a recount, whichever is later.

230:35-3-87. Accumulating and producing election results

(a) **Election night.** The Secretary shall assign a County Election Board employee to be responsible for reading the voting device memory packs into the computer to accumulate results on election night. This person also shall be responsible for manual entry of results from affected counties, if applicable. The following procedure shall be observed.
(1) As the memory packs are received from Inspectors as described in 230:35-3-84, the person assigned to accumulate results shall insert the memory packs into the memory pack reader and shall cause them to be read by the computer.
(2) Affected counties involved in the election will report results by telephone or by fax on election night. The results from precincts in affected counties shall be entered manually into the computer.
(3) When the memory pack from every precinct has been read and the results from all affected county precincts have been entered manually, if applicable, the Precinct Report shall be printed. The Precinct Report shall be proofread against the Totals Printout tapes from every precinct and against the handwritten results recorded from the affected county's telephone call to verify the Precinct Report's accuracy. When written results are received from the affected county, the Precinct Report also shall be proofread against the written results.
(4) When proofreading of the Precinct Report is completed, the appropriate unofficial Certification Report shall be printed as outlined in 230:35-3-91. The unofficial Certification Report also shall be proofread.
(5) The Corrections Log report and the System Log report also shall be printed on election night after all other tasks have been completed.
(b) **Friday following election.** After all the verified provisional ballots have been counted and the required number of Totals Printouts have been obtained, County Election Board personnel shall follow the steps in (a) of this section to enter the provisional ballot results in OEMS. Under no circumstances shall the results of the provisional ballot count be made public prior to 1 p.m. on Friday following the election. Print and proofread the appropriate Certification Report.

PART 15. CERTIFICATION OF RESULTS

230:35-3-91. Certifying county election results

(a) **Election night activities.** On election night, the County Election Board ~~may certify~~ shall canvass the precinct and absentee results ~~of~~ for all candidate elections ~~that do not involve candidates~~, ~~the results of~~ for all questions ~~for which no recount is possible~~, and ~~the results of~~ for all elections for which the county is an affected county. ~~On election night, the County Election Board also is required to sign the printed results for races and questions that are certified by the State Election Board.~~ When all election results have been accumulated as outlined in 230:35-3-87, ~~at least two copies print~~ a copy of the ~~official~~ unofficial Certification Report shall be printed. The unofficial Certification Report shall be proofread ~~before the County Election Board members sign it. Each copy of the Certification Report shall be signed by the County Election Board members and the Secretary in the spaces provided following the certification message. The County Election Board seal shall be affixed to the Certification Report in the area of the signatures. For races and questions that cannot be certified on election night, one copy of the unofficial certification report shall be printed~~. The County Election Board shall not certify any election results on election night.

The Secretary of the County Election Board shall cause the following tasks to be completed on election night.

(1) Determine the number of signatures on the Provisional Ballot Roster using the Provisional Ballot Precinct Log. Post a copy of the completed Provisional Ballot Precinct Log on the office door and, if state or federal offices are on the ballot, fax or e-mail a copy of the Log to the State Election Board. If any provisional ballots are cast in an election for which this is an affected county, also fax the Log to the parent county

(2) If the county is an affected county for a multi-county school district or municipal election, report the unofficial precinct and absentee results and the number of provisional ballots which may have been cast in the election.

(3) On the night of the Runoff Primary Election only, follow the specific instructions received from the State Election Board to determine the number of outstanding absentee ballots from overseas uniformed services voters and overseas voters. Report that number to the State Election Board. See 230:30-19-16.

(b) **Friday ~~at 5 p. m.~~following election.** The County Election Board shall meet ~~at 5 p.m.~~ on Friday following each election ~~involving candidates, a question for which a recount is possible or a multi-county election for which the county is the parent county, provided that no contests of election have been filed as outlined in Chapter 45, Subchapter 3, of this Title. The County Election Board must have in its possession written results from each affected county before results of a multi-county election for which the county is the parent county can be certified. At least two copies of the official Certification Report shall be printed. Each copy of the Certification Report shall be signed by the County Election Board members and Secretary in the spaces provided following the certification message. The County Election Board seal shall be affixed to the report in the area of the signatures.~~ at the time set by the Secretary to open and count verified provisional ballots. If the Board meets prior to 5 p.m. to count provisional ballots and finishes the count before 5 p.m., the meeting shall be recessed until after 5 p.m. The Board then shall reconvene after the close of the contest period at 5 p.m. to certify the final election results for all candidate races and questions, providing no contests have been filed. The Secretary shall prepare the following materials to certify the election.

(1) After all verified provisional ballots have been counted and results updated in OEMS, and after final election results from affected counties of multi-county school districts and municipalities have been entered manually into OEMS, print at least two copies of the Official Certification Report. Proofread the Certification Report. Each copy of the Certification Report shall be signed by the members of the County Election Board and by the Secretary. The County Election Board seal shall be affixed to each signed copy of the Certification Report in the area of the signatures. For races and questions that cannot be certified due to a contest, print one copy of the unofficial Certification Report.

(2) The Secretary of an affected County Election Board in a multi-county school district or municipal election shall fax a copy of the final election results to the parent County Election Board as soon as possible after 5 p.m. on Friday.

(3) If this is an election involving state or federal candidates or state questions, request the State Election Results process in OEMS, print the system log and corrections log, and run an election backup.

(c) **5 p. m. Tuesday next following election.** The State Election Board meets at 5 p.m. on Tuesday next following an election involving state or federal candidates or state questions to certify the final election results. The County Election Board, however, shall not be required to meet again on Tuesday next following the election, unless final election results were not certified on Friday evening for a reason other than a contest of election being filed.

(d) **Disposition of Certification Reports.** One copy of each signed, official Certification Report shall be maintained permanently by the County Election Board. Other copies shall be distributed as follows.

(1) In statewide elections, one copy of the signed Certification Report for all races and questions that must be certified by the State Election Board shall be mailed to the State Election Board on the day following the election.

(2) In multi-county elections for which the county is an affected county, one signed copy of the Certification Report shall be mailed to the parent county on the day following the election.

(3) In all other elections, one copy of the signed Certification Report shall be provided to the entity for which the election was conducted. In some instances, an entity may request more than one copy of the Certification Report. The Secretary shall provide the number of copies requested by the entity.

(~~d~~e) **List of nominees.** Following Primary and Runoff Primary Elections, the Board shall authorize the Secretary to certify the nominees of each party by preparing an official list of nominees. The original copy of the list of nominees shall be signed by the Secretary and maintained in the minutes of the County Election Board meeting at which the election results were certified. A copy of the list of nominees shall be posted on the door of the County Election Board office.

(~~e~~f) **List of successful candidates and Certificates of Election.** Following General Elections, the Secretary shall compile a list of successful candidates and shall issue a Certificate of Election to each successful candidate.

(g) **Runoff Primary Election.** Absentee ballots from overseas absentee voters, including both overseas uniformed services voters and overseas civilian voters, who made timely applications for ballots for the Runoff Primary Election that are received by the Secretary of the County Election Board by 5 p.m. on the fourteenth day following the Runoff Primary Election shall be accepted, counted, and included in the final election results for federal offices only. [26:14-104.1] If no absentee ballots from overseas uniformed services or civilian voters remain outstanding at 5 p.m. on Friday following the Runoff Primary Election, the County Election Board may certify the

final results for federal offices to the State Election Board as outlined in (b) of this Section. However, if any overseas uniformed services or civilian absentee ballots remain outstanding at 5 p.m. on Friday following the Runoff Primary Election, the County Election Board shall only canvass the county's precinct, absentee, and provisional ballot totals for federal offices and shall follow the specific instructions received from the State Election Board to report the results of the provisional ballot count. The County Election Board shall certify the final results for federal offices after 5 p.m. on the fourteenth day following the Runoff Primary Election.

230:35-3-92. Tie votes

(a) *When a tie vote is certified in the nomination or election of any candidate for county office in any* Primary, Runoff Primary or *General Election, the County Election Board shall, at a public meeting of the Board and in the presence of the* tied candidates or the tied candidates' designees, if they desire to be present, select the nominee or electee by lot. [26:8-105(A)] When *there are three or more candidates in a Primary Election for which a Runoff Primary will be held and a tie occurs for first place, the names of the tied candidates shall be placed on the Runoff Primary ballot.* [26:8-105(C)]

(b) In the event that a nominee or electee is to be selected by lot, the following procedure shall be observed.

(1) ~~*On or before the seventh day following the election,*~~ Not later than the tenth day following the election at which a tie vote occurs, the Secretary of the County Election Board shall notify, in writing, each of the candidates for which the vote was tied of the date, time and location of the County Election Board meeting at which the nominee or electee shall be selected by lot. [26:8-105(B)(1)] The notice shall be transmitted to each candidate by certified mail, and must *be postmarked not fewer than five days prior to the meeting*.

(2) The meeting to select a nominee or electee by lot shall be held on a weekday, excepting holidays, between the hours of 7 a.m. and 7 p.m. [26:8-105(B)(5)]

(3) Each candidate may designate, in writing, one person as a witness to attend the meeting on his behalf. The designation of the witness shall be presented to the Secretary of the County Election Board. [26:8-105(B)(2)]

(4) *In full view of all persons present at the meeting*, the Secretary shall *write or print the name of each candidate* involved in the tied vote *on separate pieces of paper*. [26:8-105(B)(3)] The pieces of paper used must be the same color and type and must be of approximately equal size. *The papers shall be folded in half one time so that the names are not visible.* [26:8-105(B)(3)] The papers shall be placed inside a container that has been selected by the Secretary. [26:8-105(B) (3)]

(5) *The Secretary shall draw, or may designate a person other than the candidates, witnesses or other person directly interested in the election to draw,* one piece of paper from the container. [26:8-105(B)(4)] The candidate whose name is written on the paper shall be declared the winner of the election. After announcing the name of the winner, the Secretary shall expose the other pieces of paper to all persons present at the meeting.

(c) In the event that a recount involving candidates results in a tie, the nominee or electee shall be determined by lot at the same meeting called to conduct the recount. [26:8-115] The procedure outlined in (b)(4) and (5) of this Section shall be observed.

230:35-3-93. Credit for voting

Credit for voting shall be given to every registered voter who casts a ballot in an election. Credit for voting in an election shall be recorded in OEMS.

PART 17. DISPOSITION OF MATERIALS

230:35-3-101. Processing FORMS FOR USE BY PRECINCT OFFICIALS booklets

(a) The Secretary shall remove the FORMS FOR USE BY PRECINCT OFFICIALS booklet and all used Oklahoma Voter Registration Applications from the election supply container from each precinct. Examine the FORMS booklet, tear out all used forms and process them according to the following procedure.

(1) ~~The Secretary shall examine the Challenged Voter Affidavit and shall verify that a completed Oklahoma Voter Registration Application form with an old voter identification card attached has been returned by every voter who signed the affidavit. These voter registration applications shall be processed as new applications or as transfers on election day as appropriate. See 230:15-9-18 and 230:15-9-24. The surrendered voter identification card shall be retained for 24 months in the Cancellation File. See 230:10-7-40.~~

~~(2)~~ The Secretary shall cancel the registrations of deceased voters indicated by used Cancellation of Registration of Deceased Voter forms as outlined in 230:15-5-63 and 230:15-5-65.

(~~3~~ 2) The Secretary shall read the Inspector's Notes to Secretary sheets and shall take any necessary action.

(~~4~~ 3) The Secretary shall examine the Absentee Voter Affidavit. If OEMS identifies voters who voted both by mail or in-person absentee ballot and ~~in person~~ at a precinct polling place, the Secretary shall notify both the District Attorney and the State Election Board. The Secretary shall follow any instructions concerning the Absentee Voter Affidavit given by either the District Attorney or the State Election Board.

~~(5) The Secretary shall examine the Military/Overseas Affidavit and shall verify that persons who signed it also completed a voter registration application form. These applications shall be processed as new applications. See 230:15-9-18. If a voter signed the Military/Overseas Affidavit and voted but did not return a completed voter registration application form to Precinct Officials, the Secretary shall mail an application form to the voter.~~

~~(6) The Secretary shall examine the Valid Application Affidavit and shall verify that the processing of voter registration applications from persons who signed the affidavit is completed as outlined in 230:15-9-12, 230:15-9-18 and 230:15-9-19.~~

(b) All remaining voter registration application forms shall be processed as transfers on election day. See 230:35-3-101.1 and 230:15-9-24.

(c) After the used forms have been processed as outlined in (a) of this Section they shall be retained for 24 months following the date of the election. The booklet covers and any unused forms remaining inside the covers shall be retained for 30 days following the election and then shall be destroyed.

230:35-3-101.1. Processing transfers of address on election day

All voter registration applications received at the in-person absentee polling place or at the precinct polling place on election day~~, except those applications received from persons who sign the Challenged Voter Affidavit and persons who sign the Military Discharge Affidavit~~, shall be processed as transfers on election day. See 230:15-9-24. Verification of provisional ballots cast in the election must be completed before any transfers are entered in OEMS. All transfers must be entered in OEMS before credit for voting can be given to voters as required in 230:35-3-93. Voter identification cards and rejection notices for the applications processed as transfers shall be printed and mailed as soon as possible after all such applications have been processed. See 230:15-9-29 and 230:15-9-33.

PART 19. VERIFYING AND COUNTING PROVISIONAL BALLOTS

230:35-3-125. Handling provisional ballot affidavit envelopes

Beginning on the day after the election, the County Election Board Secretary shall cause the provisional ballot affidavits to be examined and verified. County Election Board personnel shall open the provisional ballot bag or bags from only one precinct at a time. The affidavit envelopes from a single precinct shall be divided among the County Election Board staff available to work on verification. Access to the provisional ballot affidavit envelopes shall be restricted to authorized County Election Board personnel. No information concerning the identity of provisional voters or the disposition of any provisional ballot shall be disclosed prior to 1 p.m. on Friday following the election.

230:35-3-126. Criteria for verification of provisional ballot affidavit information

(a) **Voter not in Precinct Registry.** A provisional ballot cast by a voter whose name is not in the Precinct Registry shall be considered verified and approved for counting if evidence of the voter's valid and timely voter registration is found and if:

(1) the provisional ballot was cast in the precinct of the voter's residence as indicated in the voter registration record or other evidence found; and

(2) in the case of a partisan primary election, the voter cast a provisional ballot for the same party as that of the voter's political affiliation in the voter registration record or other evidence found.

(b) **Identification Required Voter.** A provisional ballot cast by a first-time voter in a federal election who is unable to provide one of the forms of identification listed in 230:35-9-16 shall be considered verified and approved for counting if the last name, date of birth, Oklahoma driver license number, if known, and the last four digits of the Social Security number, if available, match the information in OEMS.

(c) **Political affiliation dispute.** In the event a voter in the Primary or Runoff Primary Election casts a provisional ballot after disputing the political affiliation indicated in the Precinct Registry, the provisional ballot shall be counted only if evidence of a timely and valid change of political affiliation is found.

(d) **Uniformed services voters.** Uniformed services voters are those identified in 230:30-3-3 and in 230:35-3-116. Provisional ballots cast by these voters shall be counted. [26:7-116.1; 26:14-121]

(e) **Overseas voters.** Overseas voters are those voters identified in 230:30-3-3 and 230:35-3-116. Provisional ballots cast by these voters shall be counted. [26:7-116.1; 26:14-121]

(f) **School district or municipal assignment dispute.** Voters listed in the Precinct Registry who disagree with their assignment to a particular school district or municipality may cast a provisional ballot for their preferred school district or municipality. Provisional ballots cast by these voters shall be counted only if evidence is found that the assignment indicated in the Precinct Registry is incorrect.

230:35-3-127. Provisional ballot verification procedure for voter not in Precinct Registry

The following steps shall be taken to verify the eligibility of a provisional voter whose name is not listed in the Precinct Registry.

(1) Verify that the voter's residence address as indicated on the provisional ballot affidavit is located within the current geographical boundaries of the precinct in which the provisional ballot was cast. If the address provided by the voter is not in the precinct, the ballot shall not be counted.

(2) Look for the voter's registration information in OEMS.

(A) If the voter's registration information is found in OEMS, determine whether the voter's residence address shown in OEMS is located in the precinct where the provisional ballot was cast. If the voter registration address in OEMS is located in the precinct where the provisional ballot was cast, write the voter identification number in the space provided on the affidavit envelope. Try to determine why the voter's name was not found in the Precinct Registry.

(B) If the voter's registration information is not in OEMS, the voter is not registered and the ballot shall not be counted.

(3) If the voter provided any additional information on the affidavit that might be used to establish eligibility, investigate it to the extent possible.

(4) Indicate the disposition of each provisional ballot issued to the voter in the "For CEB Office Use Only" space on the affidavit envelope by placing a checkmark beside "Count" or "Reject" as appropriate. If a ballot is rejected, indicate the reason for the rejection in the space provided.

(5) If a provisional ballot is verified and approved for counting, place the affidavit envelope, unopened, in a locked ballot box or other locked container until the County Election Board meets to open the affidavit envelopes. Place all rejected provisional ballot affidavits aside in a secure location completely separate from affidavits not yet verified and from those that are verified and approved for counting.

230:35-3-128. Provisional ballot verification procedure for voter without required identification

The following steps shall be observed to verify the eligibility of a provisional voter who was unable to provide required identification at the polls.

(1) Look for the voter's registration information in OEMS and verify that the name, date of birth, Oklahoma driver license number, if provided, and last four digits of the Social Security number, if available, are the same.

(2) Indicate the disposition of the provisional ballot in the "For CEB Office Use Only" space on the affidavit envelope by placing a checkmark beside "Count" or "Reject" as appropriate. If the ballot is rejected, indicate the reason for the rejection in the space provided.

(3) If a provisional ballot is verified and approved for counting, place the affidavit envelope, unopened, in a locked ballot box or other locked container until the County Election Board meets to open the affidavit envelopes. Place all rejected provisional ballot affidavits aside in a secure location completely separate from affidavits not yet verified and from those that are verified and approved for counting.

230:35-3-129. Provisional ballot verification procedure for voter who disputes political affiliation

The following steps shall be observed to verify the eligibility of a provisional voter who disputes the political affiliation indicated in the Precinct Registry.

(1) Look at the original registration form in the Central File to determine whether the voter's choice of political affiliation was entered incorrectly in OEMS.

(2) Look for the voter's name on the Pending Political Affiliation Changes report. If a change of political affiliation to the party for which the voter cast a provisional ballot is pending but not yet activated, the voter's provisional ballot must be rejected.

(3) Check the rejected applications being held in the Additional Information Requested file and the Rejection Registry file to determine if a voter registration application for change of political affiliation to the party for which the voter cast a provisional ballot was rejected.

(4) Investigate to the extent possible any information provided by the voter on the provisional ballot affidavit that may prove that the voter submitted a valid and timely application for change of political affiliation to the party for which the voter cast a provisional ballot.

(5) Indicate the disposition of the provisional ballot in the "For CEB Office Use Only" space on the affidavit envelope by placing a checkmark beside "Count" or "Reject" as appropriate. If the ballot is rejected, indicate the reason for the rejection in the space provided.

(6) If a provisional ballot is verified and approved for counting, place the affidavit envelope, unopened, in a locked ballot box or other locked container until the County Election Board meets to open the affidavit envelopes. Place all rejected provisional ballot affidavits aside in a secure location completely separate from affidavits not yet verified and from those that are verified and approved for counting.

230:35-3-130. Provisional ballot verification procedure for voter who disagrees with school district or municipal assignment

When an application for voter registration is entered in OEMS, the Street Guide automatically assigns the residence address to the appropriate precinct, and within the precinct, the appropriate school district and municipality. See 230:15-9-18.1. In the event that a voter disagrees with the school district or municipal assignment indicated in the Precinct Registry, the voter is entitled to cast a provisional ballot in the school district or municipal election. Such a provisional ballot may be counted only if evidence is found that confirms that the voter's residence address is in fact located within the appropriate school district or municipal boundary.

The following steps shall be observed to investigate a provisional ballot cast as outlined in this section.

(1) Compare the voter's original registration form from the Central File with the voter registration information in OEMS to be certain that the address was entered correctly.

(2) If the voter submitted a new voter registration application form at the polling place, compare the address information on that new application with the information already in OEMS. If the address on the new application contains additional details, such as the quarter-quarter section designation, a 911 address, or a more specific physical description, check the Street Guide to determine if the address is assigned to the voter's preferred school district or municipality. If it is, the ballot shall be counted. Update the voter's registration address information in OEMS with the new address.

(3) Contact school district or municipal officials for any additional information which may be available.

230:35-3-131. Opening provisional ballot affidavit envelopes and counting provisional ballots

(a) The County Election Board members shall meet on Friday next following the election at such time as the Secretary may prescribe to open the verified provisional ballot affidavit envelopes and to count the provisional ballots. The Board members shall follow these steps to remove the provisional ballots from the envelopes.

(1) The Board members shall receive the verified provisional ballot affidavit envelopes, sorted by precinct, from the Secretary or a designated County Election Board employee.

(2) The Board members shall open the affidavit envelopes and remove the ballot secrecy envelope.

(A) Set the affidavit envelope aside.

(B) Place the ballot secrecy envelope in an appropriate container.

(3) When all the affidavit envelopes from a single provisional ballot precinct have been opened, the secrecy envelopes shall be mixed together.

(4) The Board members shall open the ballot secrecy envelopes and remove the ballots.

(A) Set the secrecy envelope aside.

(B) Unfold the ballot and place it in the designated container for the precinct.

(b) When all the verified provisional ballot envelopes for a precinct have been opened, the ballots shall be counted. The following procedure shall be observed.

(1) The Secretary shall assign a County Election Board employee to count the provisional ballots. The members of the County Election Board shall observe the counting process.

(2) The employee assigned to count the ballots shall take the following steps.

(A) The memory pack for the precinct shall be inserted in the voting device.

(B) The polls shall be reopened so that the memory pack can read additional ballots.

(C) Insert the ballots, one at a time, into the device. If the device returns a ballot, do not remove the ballot. Use the override key to accept the ballot, then continue inserting ballots.

(D) After all the ballots have been counted but under no circumstance prior to 5 p.m., generate at least 3 Totals Printouts.

(3) The employee who counted the ballots and the members of the County Election Board each shall sign all the copies of the Totals Printout.

(4) The employee shall remove the counted provisional ballots and place them in a ballot transfer case. One signed copy of the Totals Printout shall also be placed in the ballot transfer case. The ballot transfer case shall be sealed with a long white State Election Board seal signed by the County Election Board members and the employee who counted the ballots. The seal shall be clearly marked to indicate the box contains counted provisional ballots.

(5) The sealed ballot transfer case shall be given to the Sheriff, who shall provide security for the counted ballots until 5 p.m. on Friday following the election or until the ballots are delivered to the district courtroom for a recount. Except, however, for a state or federal election, the Sheriff shall retain custody of the sealed ballot transfer case until 5 p.m. on Tuesday next following the election or until they are delivered to the courtroom.

(6) One copy of the provisional ballots Totals Printout shall be made available for inspection in the County Election Board office after 5 p.m.

230:35-3-132. Obtaining provisional ballot results

After all the provisional ballots have been counted and the required number of Totals Printouts obtained for each precinct, County Election Board personnel shall follow the appropriate software instructions to enter the provisional ballot results in OEMS. Under no circumstances shall the results of the provisional ballot count be made public prior to 5 p.m. on Friday following the election.

230:35-3-133. Voter may learn of disposition of own provisional ballot

(a) An individual voter who casts a provisional ballot shall be able to learn whether or not the provisional ballot was counted, and if it was not counted, the reason it was not counted by contacting the County Election Board office during regular business hours after 5 p.m. on Friday following the election.

(b) In the event that a voter's provisional ballot is rejected because no information is found in OEMS, following are some steps that may be taken to provide the voter with information concerning the cancellation of a former voter registration or the rejection of an application for voter registration.

(1) Check the Central File for the voter's original voter registration form.

(2) Check both the Cancellation File and the most recent Voter List Maintenance Purge Report for the voter's name. If any information is found concerning the voter's cancelled voter registration, indicate the date of and the reason for the cancellation in the appropriate space on the affidavit.

(3) Check the pending and rejected applications received after the registration deadline for the election. If the voter's application is located in either of these files, the voter is not registered.

230:35-3-134. Retention of provisional ballot materials

All materials used in connection with provisional voting shall be retained for 24 months after the election.

SUBCHAPTER 5. INSTRUCTIONS FOR PRECINCT ELECTION OFFICIALS

PART 5. PREPARATIONS ON ELECTION DAY

230:35-5-29. Location and materials for Judge

The Judge is the first Precinct Official the voter sees. Position the Judge closest to the entrance. Put these items at the Judge's position.

(1) Precinct Registry or Registries.
(2) Ink pens.
(3) Oklahoma Voter Registration Application forms.
(4) Address Information Requested handouts.
(5) Provisional Ballot Voucher forms

230:35-5-31.1. Location and materials for provisional voting

Place the provisional voting supplies and materials on a table separate from the table for the Judge, Clerk, and Inspector. Put these items on the provisional voting table.

(1) Provisional Voting Forms booklet
(2) Instructions for Provisional Voting Officer
(3) Provisional Voting Information handouts
(4) Provisional Ballot Affidavit Envelopes and secrecy envelopes
(5) Provisional Ballot Rosters
(6) Oklahoma Voter Registration Application forms
(7) Orange Provisional Ballots bag

PART 7. GENERAL GUIDELINES

230:35-5-39. Violations of the law

If members of the Precinct Election Board observe an election law being violated, it would be proper for the Inspector to inform the violator that his action is against the law. However, under no circumstances shall the Precinct Election Board be involved in enforcement of the violations. If violators persist in their actions, the Inspector immediately shall notify the Secretary of the County Election Board. Specifically, the following actions are prohibited by law:

(1) **Electioneering.** The law prohibits any person from electioneering *within 300 feet of any ballot box while an election is in progress*. [26:7-108] The law also prohibits any person, except election officials and persons who are voting or waiting to vote, from being allowed *within 50 feet of any ballot box while an election is in progress*. [26:7-108] The law further prohibits the posting or exposing of any printed material, other than that material provided by the County Election Board *within 300 feet of any ballot box while an election is in progress*. [26:7-108]

(2) **Disclosure of vote.** It is unlawful for a voter to disclose to any other person how he voted or to expose his ballot to any person within the election enclosure. [26:7-109]

(3) **Intoxicating liquors.** It is unlawful to take *intoxicating liquors of any kind or quantity to within one-half mile of any polling place on election day*. [26:7-110] The law prohibits any person from being *within 300 feet of a polling place in an intoxicated condition on election day*. [26:7-110]

(4) **Voting ballots issued.** *No person shall vote any ballot except such ballot issued to him by the Precinct Election Board, and each ballot cast must be voted without removing same from the polling place*. [26:7-111]

(5) **Persons authorized inside election enclosure.** *At no time during the hours of voting shall any person, other than the election officials and other persons authorized by law, be allowed inside the election enclosure except for one registered voter in each voting booth and one other registered voter for each voting booth*. [26:7-112] However, a news reporter or photographer may enter the election enclosure for no more than five minutes. [26:7-112]

PART 9. OPENING THE POLLS

230:35-5-47. Before processing first voter

The Inspector, Judge and Clerk sign the Precinct Registry and cast their ballots before processing the first voter. If a Provisional Voting Officer or a Registration Official has been assigned to the precinct, that person also votes before the first voter is processed. If a Precinct Official is not a registered voter in the precinct, that Precinct Official cannot vote.

PART 11. PROCESSING THE VOTER

230:35-5-52. Persons entitled to vote

Only persons who are registered voters are entitled to vote in elections in Oklahoma. [26:4-102] A person whose name is listed in the Precinct Registry is entitled to vote in the precinct. A person whose name is not listed in the Precinct Registry, ~~but who presents a Voter Identification Card showing him to be a registered voter of the precinct is entitled to vote in the precinct after signing the red Challenged Voter Affidavit. See 230:35-5-111. [26:7-116] State law also preserves the right of some other persons whose names are not in the Precinct Registry to vote under certain limited circumstances. See 230:35-5-111.1 and 230:35-5-114.~~ but who claims to reside within the geographical boundaries of the precinct and who claims to be registered and eligible to vote in the election is entitled to a provisional ballot. See 230:35-5-171.

230:35-5-52.1. Voters eligible to vote when two or more entities hold elections on same date

Two or more entities may hold elections on the same date. School districts, municipalities, and some other entities have boundaries that do not follow precinct lines, with the result that a precinct may contain more than one school district or municipality. Any combination of these entities may hold elections on the same day. A voter must be registered to vote at an address within the boundaries of a school district or a municipality to vote in a school district or municipal election. The Precinct Registry lists a code for the school district or municipality in which a voter is eligible to vote. (If no school district or muncipal code is listed for a voter or if the voter says the school district or municipal code listed is incorrect, see 230:35-5-113.2.) It is, however, the voter's responsibility

to determine his or her own eligibility to vote in ~~a municipal election or in~~ elections held by certain other entities. If a voter is uncertain of his or her eligibility to vote in an election, the Judge shall show the voter a map of the precinct that shows the entity's boundary line.

230:35-5-55. Routine for Judge

(a) The Judge follows these routine steps to process voters. Refer to the PRECINCT PROBLEM SOLVER for instructions in non-routine situations.

(1) Greet the voter and ask the voter's name. If this is a Primary or Runoff Primary, also ask the voter's political party.

(2) Find the voter's name in the Precinct Registry.

(3) ~~Tell the voter to sign the Precinct Registry. [26:7-114; 26:7-117]~~

~~(4)~~ If there is a message printed in the "Signature of Voter" column, follow the instructions in 230:35-5-113 or 230:35-5-113.1.

(4) Tell the voter to sign the Precinct Registry. [26:7-114; 26:7-117]

(5) If this is a school district election , look in the "School Dist" column in the Precinct Registry for the voter's school district assignment code. An asterisk beside the school district code indicates that the voter also is entitled to a ballot for a vocational-technical school district. Refer to the legend on the precinct school district map to determine the correct vocational-technical school district for this voter. If the "School Dist" column is blank, see 230:35-5-113.2(a). If the voter believes that the wrong school district is indicated, see 230:35-5-113.2(b).

(6) If this is a municipal election ~~and part of the precinct is not included within the municipal boundaries,, ask the voter if he or she is eligible to vote in the municipal election. A voter must be registered and reside at an address located within the municipality's boundaries to be eligible to vote in the municipal election. [26:13-108] Show the voter a map of the municipality's boundaries in the precinct if necessary~~, look in the "Muni" column in the Precinct Registry for the voter's municipal assignment code. If the "Muni" column contains the word "None," this voter's residence address is not located within the boundaries of a municipality in this precinct and the voter is not eligible to vote in a municipal election. If the "Muni" column is blank or if the voter disagrees with the municipal assignment, see 230:35-5-113.2.

(7) Write the code for each ballot the voter will receive in the "Ballots Issued" column of the Precinct Registry.

(8) Tell the Clerk the voter's political affiliation, as it appears in the Precinct Registry, and the elections in which the voter is voting.

(b) If the voter's name is not in the Precinct Registry, the voter is entitled to cast a provisional ballot. Refer the voter to the Inspector or to the Provisional Voting Officer. See 230:35-5-171.

230:35-5-60. Registration Officials

A Registration Official may be assigned to a precinct on election day to help voters fill out voter registration application forms correctly. Voters for whom the "Confirm Address" or "Insufficient Address" message appears in the Precinct Registry and some provisional voters are asked to complete voter registration application forms at the precinct. If a Registration Official is assigned to the precinct, the Judge may refer such voters to the Registration Official to complete the application form. Registration Officials use the Voter Registration Application Checklist to review each voter's completed form to make certain it is complete and legible. If a voter does not have a street address, the Registration Official may need to use the precinct map to help a voter write adequate directions to the residence or to determine the legal description (section-township-range) of the residence. The Registration Official also must be certain that the voter has signed and dated the voter registration application form. A Registration Official may also serve simultaneously as a Provisional Voting Officer as outlined in 230:55-3-15. A Registration Official is not a member of the Precinct Election Board and is not authorized to perform any other duty ordinarily assigned to the Judge, Clerk, or Inspector.

PART 15. AFTER THE POLLS CLOSE

230:35-5-75.3. Completing election night tasks

(a) **Distribution of Totals Printout.** Distribute the Totals Printouts as follows.

(1) Put the original Totals Printout, which includes the Zero Printout, all messages, and the first Totals Printout, inside the Envelope for Totals Printout.

(2) Put one copy on the polling place door.

(3) Put one copy inside a ballot transfer case.

(4) If this is a statewide election, put one copy in the green envelope to mail to the State Election Board.

(b) **Voting Device Report.** The Inspector fills out the Voting Device Report and signs it. The Judge and Clerk also sign it. Put the finished Voting Device Report in the Envelope for Totals Printout.

(c) **Ballot Accounting Form.** The Clerk fills out the Ballot Accounting Form and signs it. The Inspector and Judge also sign it. Put the finished Ballot Accounting Form in the Envelope for Totals Printout.

(d) **Packing unused ballots and sealing ballot transfer cases.** Pack all used and unused ballots in ballot transfer cases. If possible, pack unused ballots in a ballot transfer case separate from the voted ballots. Seal each ballot transfer case with a long white State Election Board seal. Indicate on the seal if the case contains voted ballots, unused ballots, or a combination of voted and unused ballots. The Inspector, Judge, and Clerk all sign the long white State Election Board seal on each ballot transfer case.

(e) **Sealing the Envelope for Totals Printout.** The Inspector verifies that the following items are inside the Envelope for Totals Printout and then seals the envelope. The Inspector, Judge, and Clerk all sign the envelope flap.

(1) Original Totals Printout, which includes the Zero Printout, all messages printed during the election, the first Totals Printout, and the signatures of the Inspector, Judge, and Clerk.
(2) Memory pack in the padded bag.
(3) Voting device key envelope.
(4) Ballot Accounting Form.
(5) Voting Device Report.

(f) **Precinct Expense Claim Envelope.** The Judge and Clerk sign the Precinct Expense Claim Envelope and receive their vouchers from the Inspector. Vouchers may not be distributed under any circumstance until after the polls close. [26:3-105.1(c)]

(g) **Provisional Ballot bag.** The Inspector or the Provisional Voting Officer shall complete the following steps.
(1) Put the Provisional Ballot Roster and the Provisional Voting Forms booklet in the large, clear plastic pocket on the orange Provisional Ballot Bag.
(2) Make certain that all completed Provisional Ballot Affidavit Envelopes are inside the Provisional Ballot Bag.
(3) Zip the bag and seal it with the blue plastic seal.
(4) Pack any unused provisional ballot materials and supplies as instructed by the County Election Board Secretary.
(5) Place the sealed Provisional Ballot Bag, the packed supplies, and any Oklahoma Voter Registration Application forms completed by provisional voters with the other materials that the Inspector returns to the County Election Board office.

230:35-5-76. Repacking supplies

The Inspector, Judge, and Clerk repack all election supplies into the same container in which they were received. Use the following list while repacking to verify that all supplies and materials are accounted for.
(1) Used signs (Vote Here, Important Voter Information, and Attention Voter, if applicable) and sample ballots.
(2) FORMS FOR USE BY PRECINCT OFFICIALS booklet.
(3) THE MANUAL FOR PRECINCT ELECTION OFFICIALS.
(4) PRECINCT PROBLEM SOLVER.
(5) VOTING DEVICE HANDBOOK FOR PRECINCT OFFICIALS.
(6) Used and unused Oklahoma Voter Registration Application forms.
(7) Secrecy folders.
(8) Ink pens.
(9) Remaining paper clips, rubber bands, thumbtacks, and tape.
(10) Scissors.
(11) Broken seals from memory pack door and ballot box sides.
(12) Unused Provisional Ballot Affidavit Envelopes, secrecy envelopes, handouts and other materials and supplies.
(13) All other remaining reusable supplies.

230:35-5-79. Inspector returns to the County Election Board office

(a) **Inspector's items.** After all the work is completed, the Inspector returns to the County Election Board office with the following items.
(1) Voting device (only if instructed by Secretary).
(2) Envelope for Totals Printout.
(3) Election supplies.
(4) American flag.
(5) Precinct Registry or Registries.
(6) Precinct Expense Claim Envelope and any unclaimed vouchers.
(7) Sealed ballot transfer cases.
(8) Sealed orange Provisional Ballot Bag.
(9) Green Envelope with Totals Printouts (statewide elections only).

(b) **Green Envelope.** If this is a statewide election, the Inspector mails the green envelope to the State Election Board on the way to the County Election Board office.

(c) **At the County Election Board office.** At the County Election Board office, the Inspector turns over all the election supplies and materials to County Election Board personnel. [26:7-133]

PART 21. VOTERS LISTED IN PRECINCT REGISTRY WHO HAVE PROBLEMS WITH ELIGIBILITY

230:35-5-111. Voter whose name is not in Precinct Registry --- Challenged Voter Procedure [REVOKED]

~~(a) A person not listed in the Precinct Registry may vote if he or she has a voter identification card for an address located within the current boundaries of the precinct. When a person's name is not in the Precinct Registry, the Judge follows this procedure.~~
~~(1) Ask to see the person's voter identification card.~~
~~(2) Show the voter the precinct map and tell the voter to locate the residence address printed on the voter identification card on the map.~~
~~(A) If the residence address on the voter identification card is not located within the current geographical boundaries of this precinct, the person may not vote. If information provided by the County Election Board indicates the voter's correct polling place, refer the voter to that location. If not, tell the voter to contact the County Election Board office for more information.~~
~~(B) If the residence address on the voter identification card is located within the current geographical boundaries of this precinct, the person may vote after the actions outlined in paragraphs 3 through 7 of this subsection are completed.~~
~~(C) If the person does not have a voter identification card because the voter recently applied for voter registration and has not received a card, see 230:35-5-111.1.~~

~~(3) Give the voter an Oklahoma Voter Registration Application form.~~

~~(4) Ask the voter to fill out and sign the application.~~

~~(5) Print the voter's name, address, telephone number, political affiliation and the ballots to be issued on the Challenged Voter Affidavit and sign it in the space for the Judge's signature.~~

~~(6) Tell the voter to read the oath printed on the Challenged Voter Affidavit and to sign the affidavit.~~

~~(7) Attach the voter's old voter identification card to the Oklahoma Voter Registration Application form with a paper clip and return to the routine procedure.~~

~~(b) If a person not listed in the Precinct Registry has a voter identification card with an address located within the current boundaries of this precinct but refuses to fill out an Oklahoma Voter Registration Application form, refuses to surrender the voter identification card, and/or refuses to sign the Challenged Voter Affidavit form, the person may not vote. If the person has a voter identification card but the address on the card is not located within the current boundaries of this precinct, the person may not vote. Refer such persons to the Secretary of the County Election Board if they have questions.~~

230:35-5-111.1. Person who applied for voter registration but has not received voter identification card [REVOKED]

~~A person who applied for voter registration 25 days or more before today's election but who did not receive a voter identification card may be entitled to vote. However, this person may vote only if a County Election Board employee tells the Inspector to use the yellow Valid Application Affidavit. The Judge and Inspector follow these steps.~~

~~(1) The Judge looks for the person's name in the Precinct Registry.~~

~~(A) If the person's name is in the Precinct Registry, return to the routine procedure.~~

~~(B) If the person's name is not in the Precinct Registry, and the person does not have a voter identification card but says that he or she applied for voter registration and did not receive a voter identification card, call the Inspector.~~

~~(2) The Inspector tells the person to call the County Election Board for information about the voter registration application.~~

~~(3) If a County Election Board employee later tells the Inspector that this person is entitled to vote, use the Valid Application Affidavit. (The Valid Application Affidavit may be used only when the County Election Board tells the Inspector to use it.)~~

~~(A) Print the person's name, address, telephone number, political affiliation, and ballots to be issued on the form.~~

~~(B) Print the name of the County Election Board employee who told the Inspector to use this form. Indicate the time this message is received.~~

~~(C) Tell the person to read the oath printed on the Valid Application Affidavit and to sign it.~~

~~(4) The Inspector signs the Valid Application Affidavit.~~

~~(5) The Inspector tells the Clerk the voter's political affiliation and the elections in which the voter is voting. Return to the routine procedure.~~

230:35-5-113.2. Determining voter's school district or municipality

(a) The school district in which a voter is eligible to vote is listed in the column labeled "School Dist" in the Precinct Registry. An asterisk beside the school district indicates that the voter also is entitled to a ballot for the corresponding vocational-technical school district. A list of school districts and corresponding vocational-technical school districts in the precinct is included in the legend on the precinct school district map. The Judge writes the school district and vocational-technical school district ballot codes in the "Ballots Issued" column in the Precinct Registry and tells the Clerk the elections in which the voter is voting.

(b) The municipality in which a voter is eligible to vote is listed in the column labeled "Muni" in the Precinct Registry. If the word "None" appears in the "Muni" column, the voter does not reside within the boundaries of a municipality and is not eligible to receive a municipal ballot. If the municipality nominates and elects its officers by ward, the municipal code in the "Muni" column will include a numeral to indicate the ward number to which the voter's residence is assigned. The Judge writes the municipal code and the appropriate municipal ballot codes in the "Ballots Issued" column in the Precinct Registry and tells the Clerk the elections in which the voter is voting.

(c) The "School Dist" and/or the "Muni" column in the Precinct Registry is blank for some voters. The Judge follows these steps when the voter's school district or municipal code is not indicated.

(1) Show the voter the precinct school district or municipal map.

(2) Ask the voter to find his residence on the map and to determine from the map the school district and/or municipality in which he or she lives.

(3) If a vocational-technical school district also is holding an election in the precinct, determine the corresponding vocational-technical district from the information in the legend on the map.

(4) If the municipality is holding an election in one or more wards, ask the voter also to determine from the municipal map the ward in which he or she lives.

(5) Tell the voter to sign the Precinct Registry over the message in the signature space.

(~~5~~ 6) Write the school district and vocational-technical district ballot codes in the "Ballots Issued" column.

(~~6~~ 7) Tell the Clerk the elections in which the voter is voting.

(~~7~~ 8) Return to the routine procedure.

(~~c~~ d) If a voter tells you that the school district indicated in the Precinct Registry is incorrect, the Judge follows these steps.

(1) Show the voter the precinct school district map.

(2) Ask the voter to find his residence on the map and to determine from the map the school district in which he or she lives.

(3) If the voter says that the map is incorrect, ~~call the Inspector.~~

~~(4) The Inspector fills out the School District Research Request form.~~

~~(A) Print the voter's name and the school district in which the voter believes himself to be eligible to vote in the spaces provided on the form.~~

~~(B) Ask the voter to sign the form.~~

~~(C) Give the voter a copy of the "Address Information Requested" handout and an Oklahoma Voter Registration Application. Ask the voter to fill out and sign the form. The voter may return the form to a Precinct Official before leaving the polling place or may mail the form at a later time.~~

~~(D) Tell the Judge the name of the school district in which the voter claims to be eligible to vote.~~

~~(5) The Judge writes the ballot code for the school district the voter is claiming in the "Ballots Issued" column and tells the Clerk to issue that ballot to the voter.~~ the voter is entitled to cast a provisional ballot. Fill out a provisional ballot voucher indicating the school district or municipality in which the voter claims to reside and tell the voter to take it to the Inspector or the Provisional Voting Officer.

230:35-5-113.3. Identification Required voter

Voters who applied for voter registration by mail on or after January 1, 2003, are required by federal law to present identification the first time they vote in a federal election. If a voter is required to present identification, the words "ID Required" appear in the Precinct Registry in the signature space beside the voter's name. The Judge shall follow these steps.

(1) Tell the voter:

(A) You are required by federal law to present identification the first time you vote in a federal election because you applied by mail for voter registration in this county on or after January 1, 2003. However, you may be asked for identification in more than one federal election this year.

(B) The form of identification you present must show your name and address.

(C) You may present any one of the following items as identification:

(i) a current and valid photo identification;

(ii) the voter identification card that you received by mail from the County Election Board when your application for voter registration was approved; or

(iii) a copy of a current utility bill, bank statement, government check, paycheck, or any other government document that shows your name and address.

(D) If you do not have identification with you, you may vote a provisional ballot.

(2) Ask to see the voter's identification.

(3) Tell the voter to sign the Precinct Registry, and continue processing the voter routinely.

(4) If the voter does not have identification, fill out a provisional ballot voucher and tell the voter to take it to the Inspector or Provisional Voting Officer. If the voter requested an absentee ballot, mark the box labeled "Absentee Ballot Requested" on the voucher.

230:35-5-114. Military or Overseas Voter [AMENDED AND RENUMBERED TO 230:35-5-173]

~~(a) Some persons may be entitled to vote without being registered if they are eligible to become registered voters, if they are residents of the precinct, and if they also meet one of the following requirements.~~

~~(1) The person was honorably discharged from the Armed Forces of the United States and has returned home 24 days or less before the election.~~

~~(2) The person is on officially authorized leave from the Armed Forces of the United States and has returned home 24 days or less before the election.~~

~~(3) The person was terminated in his or her service or employment overseas and returned home 24 days or less before the election.~~

~~(4) The person is the spouse or dependent of a person described in (1), (2) or (3) of this subsection.~~

~~(b) The Inspector follows this procedure.~~

~~(1) Ask the voter to fill out and sign the Oklahoma Voter Registration Application form.~~

~~(2) Print the voter's name, address, political affiliation and the ballots to be issued to the voter in the appropriate spaces on the Military/Overseas Affidavit.~~

~~(3) Tell the person to read the oath printed on the Military/Overseas Affidavit.~~

~~(4) Tell the voter to sign the Military/Overseas Affidavit.~~

~~(5) Tell the Clerk the voter's political affiliation.~~

~~(6) Return to the routine procedure.~~

~~(c) Voters who sign the Military/Overseas Affidavit swear this oath. "Do you swear or affirm that you have been honorably discharged, or that you are on leave from the Armed Forces of the United States, or that you have been terminated in your service or employment overseas and returned home 24 days or less before the election being conducted today, or that you are the spouse or dependent of such a person? [25:14-121] Do you swear or affirm that you are eligible to vote in this precinct? [26:14-121] Do you swear or affirm that you have filled out and signed an Oklahoma Voter Registration Application form? [26:14-121] Do you swear or affirm that you have not voted by absentee ballot in the election being conducted today?"~~

PART 27. WATCHERS AND POLLSTERS

230:35-5-134. Watchers

(a) Watchers sometimes are commissioned by a candidate or a political party to watch the voting device used in the precinct. [26:7-130] The Secretary of the County Election Board tells the Inspector that a Watcher will be in the precinct when the Inspector picks up the ballots and supplies for the election. If the Secretary does not tell the Inspector about a Watcher, then no one can be a Watcher in the precinct.

(b) The Watcher follows these rules.

(1) The Watcher must arrive at the polling place no later than 6:30 a.m. to watch the voting device before the polls open.

(2) The Watcher must take an oath.

(3) The Watcher only watches the voting device before the polls are opened and after the polls are closed.

(A) Before the polls open, the Watcher may watch the Precinct Officials prepare the voting device and watch while the zero tape prints.

(B) After the polls close, the Watcher may watch the Totals Tapes print and may watch while the Precinct Officials secure the voting device, memory pack and ballots.

(4) The Watcher cannot stay at the polling place all day.

(5) The Watcher must return to the polling place by 7 p.m. to watch the voting device after the polls close.

(6) The Watcher cannot give any information about the voting device count to anyone before the Inspector posts a copy of the Totals Printout on the polling place door.

(c) The Inspector places the Watcher under this oath. "Do you swear or affirm that you will abide by all the laws and rules prescribed for Watchers? Do you swear or affirm that you will limit yourself to watching the voting device before the polls are opened and after the polls are closed? Do you swear or affirm that you will not stay at the polling place at other times?"

(d) A Watcher may come to the polling place with County Election Board personnel to watch any voting device repairs made during the election day. A Watcher who comes to the polling place to watch voting device repairs already has been placed under oath by the County Election Board Secretary.

(e) Any Watcher who violates the law prescribed for Watchers shall be deemed guilty of a misdemeanor. [26:7-130] Any person deemed guilty of a misdemeanor under the provisions of state election law shall, upon conviction, be confined to the county jail for not more than one year or fined not more than $1,000.00 or both. [26:16-110]

230:35-5-136. Pollsters

(a) A Pollster is someone authorized to conduct an exit poll on election day within 300 feet of a ballot box. [26:7-108.1] The Secretary of the County Election Board tells the Inspector when the Inspector picks up ballots and supplies for the election that a Pollster will be at the polling place. If the Secretary does not tell the Inspector about a Pollster, no one can conduct an exit poll within 300 feet of the ballot box. The Inspector should have no contact with a Pollster unless it seems the Pollster violates one of the following rules.

(b) A Pollster follows these rules.

(1) The Pollster wears the orange Pollster identification badge provided by the Secretary of the County Election Board at all times while conducting the exit poll. [26:7-108.2]

(2) The Pollster obeys Oklahoma laws against electioneering. [26:7-108.3] See 230:35-5-141 through 230:35-5-146.

(3) The Pollster stays more than 50 feet away from the ballot box at all times. [26:7-108.3]

(4) The Pollster uses only written polling materials within 150 feet of the ballot box. [26:7-108.4]

(5) The Pollster conducts oral interviews with voters and/or electronically records comments of voters more than 150 feet from the ballot box.

(6) The Pollster approaches only voters who have finished voting about participating in the exit poll.

(c) Participation in an exit poll by a voter is voluntary. [26:7-108.5]

(d) A Pollster who violates the law prescribed for Pollsters shall be deemed guilty of a misdemeanor. [26:7-108.3] Any person deemed guilty of a misdemeanor under provisions of state election law shall, upon conviction, be confined to the county jail for not more than one year or fined not more than $1,000.00 or both. [26:16-110]

PART 29. VIOLATIONS OF THE LAW

230:35-5-145. Persons authorized inside election enclosure

(a) *At no time during the hours of voting shall any person, other than the election officials and other persons authorized by law, be allowed inside the election enclosure except for one registered voter in each voting booth and one other registered voter for each voting booth.* [26:7-112]

(b) A news reporter or photographer may enter the election enclosure for no more than five minutes. [26:7-112] While inside the election enclosure, the reporter or photographer shall not interfere with Precinct Officials performing their duties or with voters waiting in the line or voting. [26:7-112] The reporter or photographer may neither observe nor photograph a voter while the voter marks the ballot. [26:7-112] A reporter may not see a voter's marked ballot and a marked ballot may not be photographed in such a way that the voter's choices can be determined. See 230:35-5-142. [26:7-109]

PART 34. PROVISIONAL VOTING PROCEDURES

230:35-5-171. Voter's name not found in Precinct Registry

A voter whose name is not in the Precinct Registry is entitled by law to vote a provisional ballot. Before issuing a provisional ballot, Precinct Officials shall follow these steps to try to determine whether the voter is in the correct precinct, and if not, to direct the voter to the correct polling place. However, no voter shall be turned away without having the opportunity to cast a provisional ballot. Ask to see the voter's voter identification card.

(1) **Voter with voter identification card.** If the voter shows you a voter identification card, check the Precinct Registry again for the name exactly as it appears on the card. If the voter's name still cannot be found, use the precinct map to determine whether the residence address on the voter identification card is located within the current geographical boundaries of this precinct.

(A) If the address is located in this precinct, issue a provisional ballot. See 230:35-5-176 and 230:35-5-177.

(B) If the address is not located in this precinct, using the map and any other reference material provided by the Secretary of the County Election Board, try to determine the voter's correct precinct and polling place location. If possible, call the County Election Board office for help to determine the voter's correct precinct.

(C) If you cannot determine the voter's correct precinct and/or you cannot reach the County Election Board office, offer a provisional ballot.

(2) **Voter without voter identification card.** If the voter does not have a voter identification card, show the voter the precinct map and ask the voter to locate his residence.

(A) If the residence is located in this precinct, issue a provisional ballot.

(B) If the residence is not located in this precinct, using the precinct map and any other reference material provided by the Secretary of the County Election Board, try to determine the voter's correct precinct and polling place location. If possible, call the County Election Board office for help to determine the voter's correct precinct.

(C) If you cannot determine the voter's correct precinct and/or you cannot reach the County Election Board office, offer a provisional ballot.

230:35-5-172. Identification required voter with no identification

A voter required to show identification as outlined in 230:35-5-113.3 who does not have one of the acceptable forms of identification is entitled to cast a provisional ballot. Follow the provisional voting procedure in 230:35-5-177.

230:35-5-173. Voter disputes political affiliation indicated in Precinct Registry

At a partisan primary election, a voter who disputes the political affiliation indicated in the Precinct Registry is entitled to cast a provisional ballot for the preferred political party. Follow the provisional voting procedure in 230:35-5-177.

230:35-5-174. Voter disputes school district or municipal assignment in Precinct Registry

A voter who disputes the school district or municipal assignment indicated in the Precinct Registry is entitled to cast a provisional ballot for the school or municipality in which the voter claims to reside. Follow the provisional voting procedure in 230:35-5-177.

230:35-5-175. Uniformed Services or Overseas Voter

(a) Some persons may be entitled to vote a provisional ballot and to have that ballot counted without being registered if they are eligible to become registered voters, if they are residents of the precinct, and if they also meet one of the following requirements.

(1) The person was honorably discharged from the Uniformed Services of the United States and has returned home 24 days or less before the election.

(2) The person is on officially authorized leave from the Uniformed Services of the United States and has returned home 24 days or less before the election.

(3) The person was terminated or is on leave from his or her service or employment overseas and returned home 24 days or less before the election.

(4) The person is the spouse or dependent of a person described in (1), (2) or (3) of this subsection.

(b) The Inspector/Provisional Voting Officer follows this procedure.

(1) Ask the voter to fill out and sign the Oklahoma Voter Registration Application form. (2) Print the voter's name, address, political affiliation and the ballots to be issued to the voter in the appropriate spaces on the Provisional Ballot Affidavit Envelope.

(3) Tell the person to read the oath printed on the Provisional Ballot Affidavit Envelope.

(4) Tell the voter to sign the Provisional Ballot Affidavit Envelope.

(5) Tell the Clerk the voter's political affiliation, school district, and municipality, as applicable, and obtain the appropriate ballots.

(6) Fold each ballot in half before giving it to the voter. Give the voter the affidavit envelope, a secrecy envelope, and the ballots.

(7) Tell the voter to go to the provisional ballot voting booth to mark the ballot. Tell the voter to follow these steps to secure the ballot after marking it.

(A) Fold the ballot in half.

(B) Put the folded ballot in the secrecy envelope and seal the envelope.

(C) Put the sealed secrecy envelope containing the marked ballot inside the affidavit envelope and seal the affidavit envelope.

(D) Return to the Inspector or the Provisional Voting Officer with the sealed affidavit envelope.

(8) If necessary, follow the appropriate procedures for a spoiled ballot or for voter assistance using the Precinct Problem Solver.

(9) When the voter returns the sealed affidavit envelope, put it in the orange provisional ballot bag immediately.

(10) Make sure the voter takes a copy of the Provisional Voting Information handout.

(c) Uniformed services and overseas voters who cast a provisional ballot as outlined in (b) of this section are required to swear this oath by signing in the appropriate place on the Provisional Ballot Affidavit Envelope. "Do you swear or affirm that you have been honorably discharged, or that you are on leave from the uniformed services of the United States, or that you have been terminated or are on leave from your overseas service or employment and returned home 24 days or less

before the election being conducted today, or that you are the spouse or dependent of such a person? [25:14-121] Do you swear or affirm that you are eligible to vote in this precinct? [26:14-121] Do you swear or affirm that you have not voted by absentee ballot in the election being conducted today?"

230:35-5-176. Filling out a Provisional Ballot Voucher

The Judge shall fill out a Provisional Ballot Voucher for every voter who will cast a provisional ballot. Do not send a voter to the Inspector or Provisional Voting Officer without a voucher. Write the following information on the voucher in the spaces provided: the voter's name; the appropriate ballot codes; the school district code, if the voter is eligible to receive a school district ballot; the municipal code, if the voter is eligible to receive a municipal election ballot; and any other necessary information. If the Precinct Registry indicates that the voter has requested absentee ballots, mark the "Absentee Ballot Requested" box. If the voter disputes the political affiliation as indicated in the Precinct Registry, write the voter's preferred political affiliation on the voucher.

230:35-5-177. Provisional voting procedure

The Inspector or the Provisional Voting Officer greets the voter and follows these steps to help the voter cast a provisional ballot.

(1) Take the provisional ballot voucher from the voter. If the voter did not receive a provisional ballot voucher from the Judge, make sure the voter has seen the Judge.

(2) Give the voter a copy of the Provisional Voting Information handout.

(3) Tell the voter that if County Election Board personnel cannot verify the voter's registration in this precinct, the provisional ballot will not be counted.

(4) Give the voter an Oklahoma Voter Registration Application form and ask the voter to fill it out and sign it. A voter is not required to complete the registration application to receive a provisional ballot but should be encouraged to do so. If the voter completes the application, set it aside in a secure place.

(5) Fill out a Provisional Ballot Affidavit Envelope for the voter.

(A) Write the election date, county name, and precinct number in the spaces provided at the top of the affidavit.

(B) Ask the voter for the following information and write it on the affidavit in the appropriate spaces.

(i) name

(ii) residence address

(iii) date of birth

(iv) Oklahoma driver license number, if available

(v) last four digits of Social Security number

(vi) political affiliation

(C) Place a checkmark beside the appropriate statement of the reason the voter is casting a provisional ballot.

(i) **Voter Not in Precinct Registry.** If the voter offers any information about where and when he/she may have registered, last voted, or another name under which he/she may be registered, record the information in the spaces provided. If the voter has a voter identification card, put it inside the affidavit envelope.

(ii) **Voter without acceptable form of identification.** Ask the voter to read and sign the Affidavit of Identity statement on the affidavit envelope.

(iii) **Voter disputes political affiliation indicated in Precinct Registry.** Write the political affiliation claimed by the voter in the space provided.

(iv) **Voter disputes school district or municipal assignment in Precinct Registry.** Write the name of the school district or municipality in which the voter claims to reside.

(v) **Uniformed Services or Overseas Voter.** Ask the voter to read and sign the Uniformed Services and Overseas Voter Oath on the affidavit envelope.

(vi) **Other.** Record any explanation the voter offers concerning the reason he/she may be eligible to vote.

(D) Record the ballot style or styles indicated on the voter's Provisional Ballot Voucher in the spaces provided on the Affidavit.

(6) Ask the voter to review the information on the affidavit. Tell the voter to read the oath and to sign it. Also ask the voter to write his/her daytime telephone number in the space provided.

(7) Sign the affidavit in the space provided for the Provisional Voting Officer.

(8) Print the voter's name on the Provisional Ballot Roster and record the codes for the ballots issued to the voter in the space provided. Tell the voter to sign the roster.

(9) If the voter's provisional ballot voucher indicates that the voter has requested absentee ballots, have the voter sign the Absentee Voter Affidavit.

(10) Issue the appropriate state ballot and any other ballots indicated on the voucher. Fold each ballot in half before giving it to the voter. Put the voucher inside the affidavit envelope. Give the voter the affidavit envelope, a secrecy envelope, and the ballot.

(11) Tell the voter to go to the provisional ballot voting booth to mark the ballot. Tell the voter to follow these steps to secure the ballot.

(A) Fold the ballot in half.

(B) Put the folded ballot inside the secrecy envelope and seal the envelope.

(C) Put the sealed secrecy envelope inside the affidavit envelope and seal the affidavit envelope.

(D) Return to the table with the sealed affidavit envelope.

(12) If necessary, follow the procedures for spoiled ballots (230:35-5-127) or voter assistance (230:35-5-120.1), using the Precinct Problem Solver.
(13) When the voter returns the sealed affidavit envelope, put it in the orange provisional ballot bag immediately.
(14) Tell the voter that information concerning disposition of the provisional ballot may be obtained from the County Election Board after 5 p.m. on Friday. Make sure the voter takes a copy of the Provisional Voting Information handout.

SUBCHAPTER 9. HAVA REQUIREMENTS

PART 1. GENERAL PROVISIONS

230:35-9-1. Purpose

The purpose of the rules in this subchapter is to implement the requirements of the federal Help America Vote Act of 2002 [42 USC 153301 et seq]. These rules concern the requirements for provisional voting, voter identification, voter information, and a procedure for complaints alleging violations of the requirements of Title III of said Act.

PART 3. PROVISIONAL VOTING

230:35-9-6. Provisional voting for all elections

Provisional voting is a procedure which permits a voter whose eligibility cannot be determined to cast a ballot at the precinct polling place on election day or at the County Election Board office on an in-person absentee voting day. Such a provisional ballot shall be kept separate from regular ballots and counted and included in the final election results only if the voter's eligibility is confirmed after the election. Provisional voting shall be available for all elections conducted by the County Election Board. [26:7-116.1] Provisional voting shall be available for all offices and questions appearing on all ballots. [26:7-116.1] The ballots used for provisional voting shall be identical to regular ballots for the precinct.

230:35-9-7. Voters who may cast a provisional ballot

Voters in the circumstances described as follows may cast provisional ballots.
(1) **Persons not listed in the Precinct Registry.** Persons who are not listed in the Precinct Registry for the precinct of their residence but who believe themselves to be registered voters eligible to vote in the election shall be entitled to cast a provisional ballot. [26:7-116.1]
(2) **Voters required to show identification.** Registered voters who are required to show identification when voting for the first time in a federal election and who do not have one of the acceptable forms of identification are entitled to cast a provisional ballot. [26:7-116.1]
(3) **Voters who dispute political affiliation indicated in Precinct Registry.** Registered voters who dispute the political affiliation indicated in the Precinct Registry for a primary election are entitled to cast a provisional ballot for their preferred political party. [26:7-116.1]
(4) **Uniformed services voters.** Uniformed services voters who have been honorably discharged or who are on authorized leave, and the spouses and eligible dependents of such voters, and who returned home too late to register to vote shall be entitled to cast a provisional ballot in the precinct of their residence and to have that ballot counted. [26:7-116.1; 26:14-121]
(5) **Overseas voters.** Overseas voters who have been terminated in their overseas service or employment or who are on leave from their overseas service or employment, and the spouses and eligible dependents of such voters, and who returned home too late to register to vote are entitled to cast a provisional ballot in the precinct of their residence and to have that ballot counted. [26:7-116.1; 26:14-121]

230:35-9-8. Provisional Voting Officer authorized

(a) A Provisional Voting Officer is a special-purpose precinct worker assigned to help voters cast provisional ballots. The Secretary of the County Election Board shall be authorized to employ Provisional Voting Officers upon approval by the Secretary of the State Election Board. The Inspector shall perform the duties of the Provisional Voting Officer as a part of the Inspector's regular election duties without additional compensation in the event a Provisional Voting Officer is not employed. A Provisional Voting Officer also may perform the duties assigned to a Registration Official as outlined in 230:35-5-60.
(b) A Provisional Voting Officer shall be compensated at the same rate as the Judge and Clerk in the precinct. Compensation for Provisional Voting Officers shall be included in the Pre-Election Expense Claim as outlined in 230:35-3-30.
(1) The compensation of Provisional Voting Officers shall be paid by the State Election Board only when such payment is authorized by the Secretary of the State Election Board prior to an election.
(2) The compensation of Provisional Voting Officers may be paid by the county when such payment is not authorized by the Secretary of the State Election Board.
(3) The Inspector shall not be entitled to additional compensation when performing the duties of the Provisional Voting Officer.

230:35-9-9. Extension of provisional ballot verification period

The Secretary of the State Election Board shall be authorized to extend the provisional ballot verification period beyond 5 p.m. on Friday in the event that any County Election Board Secretary is unable to complete the verification of all provisional ballots by that time. In the event that the Secretary of the State Election Board extends the verification period beyond 5 p.m. on Friday, the period shall be extended statewide

and no County Election Board shall release any information concerning provisional ballots until authorized to do so by the Secretary of the State Election Board. The time for contests of election and the time to certify the results of the election also shall be extended by the same number of hours or days, excluding Saturday and Sunday, as the verification period. For example, if the verification period is extended until 5 p.m. on Monday next following the election, the deadline for filing a contest of election shall be extended until 5 p.m. on Monday next following the election. In this example, the final election results would be certified no earlier than 5 p.m. on Monday next following the election.

PART 5. VOTER IDENTIFICATION

230:35-9-16. Some voters required to present identification when voting for first time in election for federal office

(a) Voters who applied by mail for new voter registration in the county on or after January 1, 2003, are required by law to present identification when they vote for the first time in person, either at a precinct polling place or an in-person absentee polling place, in a federal election. A voter who does not present one of the forms of identification described in (b) of this Section shall be required to cast a provisional ballot. A provisional ballot cast by such a voter shall be verified and approved for counting by 5 p.m. on Friday following the election.

(b) A registered voter required to present identification as outlined in (a) of this section may present any one of the following forms of identification.

(1) a currently valid photo identification

(2) a voter identification card issued by the County Election Board in this county

(3) a copy of a current utility bill, bank statement, paycheck, government check or any other government document that shows the voter's name and address

(c) A person who applies by mail for new voter registration in the county may avoid the requirement for presenting identification when voting for the first time in a federal election by submitting a copy of a currently valid photo identification or a copy of a current utility bill, bank statement, paycheck, government check, or any other government document that shows the voter's name and address along with the voter registration application. A person who applies for voter registration is not required to present identification in order to become a registered voter.

(d) A person who applies by mail for new voter registration in the county who votes for the first time in a federal election by regular mail absentee ballot is deemed to have provided adequate identification for the purposes of this Section by having signed the absentee ballot affidavit in the presence of a Notary Public or other person authorized by law to administer oaths or in the presence of two witnesses if the voter is incapacitated.

PART 7. VOTER INFORMATION

230:35-9-17. Public posting of voting information on election day

(a) As required by Section 302 of the Help America Vote Act of 2002 [42 USC 15482], the County Election Board Secretary shall cause the following voting information to be posted publicly at each polling place on the day of a federal election:

(1) a sample version of the ballot being used in the election;

(2) the election date and the hours during which polling places are open;

(3) instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;

(4) instructions for mail-in registrants and first-time voters under 303(b) of the Help America Vote Act [42 USC 15483(b)] concerning voter identification requirements;

(5) general information on voting rights under applicable federal and state law, including information on an individual's right to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and

(6) general information on federal and state laws regarding prohibitions on acts of fraud and misrepresentation.

(b) The County Election Board shall meet the requirements of (a) of this section by requiring Precinct Officials to post the following signs provided by the State Election Board as outlined in 230:35-5-28.

(1) Oklahoma Election Procedures

(2) Election Law Violations

(3) Attention Voter poster

(4) Sample ballots

PART 9. COMPLAINTS

230:35-9-21. Purpose

The purpose of the rules in this subchapter is to establish a procedure to receive, investigate and resolve complaints of alleged violations of the provisions and requirements of Title III of the Help America Vote Act of 2002 (HAVA). This procedure is required by Title IV of HAVA.

230:35-9-22. Complaints

(a) Any person who believes that a violation of Title III of HAVA has occurred, is occurring, or is about to occur, may file a complaint with the Secretary of the State Election Board. Any such complaint shall be in writing, shall be notarized, and shall be signed and sworn by the complainant. A complaint shall include at least the following information.

(1) Complainant's name and mailing address

(2) The nature of the complaint

(3) The nature of the solution sought.

(4) A request for a hearing on the record, if desired. (A hearing shall be required only if requested in the complaint.)

(5) Any additional information pertinent to the complaint.

(b) The Secretary of the State Election Board shall provide, upon request, a form to be used to make a written complaint. Use of the form is not required. Any written complaint containing the information outlined in (a) of this Section shall be accepted.

230:35-9-23. Receiving complaints

Upon receipt of a written complaint alleging a violation of Title III of HAVA, the Secretary of the State Election Board shall cause the following steps to be performed.

(1) The original complaint shall be marked with a "received" stamp that includes the date.

(2) A State Election Board staff member shall assign a unique case number to the complaint.

(3) If the complaint includes a request for a hearing on the record, the Secretary shall set a date and time for the hearing and shall issue an Order for Hearing.

230:35-9-24. Investigation of complaint

The Secretary of the State Election Board shall review the complaint and shall assign one or more members of the State Election Board staff to investigate the allegations contained in the complaint. Specific investigatory procedures shall be determined in consultation with the office of the Attorney General.

230:35-9-25. Hearing

In the event that the complainant requests a hearing on the record, the Secretary of the State Election Board shall serve as the hearing officer. In the absence of the Secretary the Assistant Secretary of the State Election Board shall serve as hearing officer. The Secretary shall hear any testimony and shall review any evidence offered by the complainant.

230:35-9-26. Resolution of complaint

Not more than 90 days following the receipt of a complaint, the Secretary of the State Election Board shall make a final determination with respect to the complaint. If the Secretary finds that there has been no violation of Title III of HAVA, the Secretary shall dismiss the complaint. In the event the Secretary finds that a violation of title III of HAVA has occurred, the Secretary shall provide a remedy. The Secretary shall publish the results of the investigation and the final determination.

230:35-9-27. Alternative dispute resolution for complaint

If the Secretary of the State Election Board fails to meet the deadline for making a final determination as provided in 230:35-9-26, the complaint shall be resolved within 60 days under the following procedure.

(1) The Secretary of the State Election Board shall be represented by the office of the Attorney General.

(2) The complainant may be represented by his or her own chosen legal counsel or by a certified arbitrator.

(3) The parties shall negotiate to reach a satisfactory resolution of the complaint.

[OAR Docket #05-1009; filed 5-26-05]

TITLE 230. STATE ELECTION BOARD
CHAPTER 40. TYPES OF ELECTIONS

[OAR Docket #05-1010]

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PERMANENT final adoption

RULES:
Subchapter 3. Special Elections
Part 1. Calling Special Elections
230:40-3-1.1. Times for special elections [AMENDED]
Part 3. Vacancies
230:40-3-8. Vacancies in the Legislature [AMENDED]
230:40-3-9. Vacancies for County Commissioner [AMENDED]
Subchapter 5. Municipal Elections
Part 1. Cities with Home Rule Charters
230:40-5-2. Copy of charter required [AMENDED]
230:40-5-4. Absentee voting required in home rule charter cities [AMENDED]
230:40-5-4.1. Provisional voting required in home rule charter cities [NEW]
230:40-5-5. Statutory election dates required for home rules charter cities [NEW]
Part 3. Nonpartisan Municipal Elections
230:40-5-9. Municipal elections shall be nonpartisan [AMENDED]
230:40-5-10. Partisan elections authorized by ordinance [AMENDED]
230:40-5-11. Ordinance must be attached to resolution [AMENDED]
Part 5. Statutory Municipalities
230:40-5-16. Statutory municipalities [AMENDED]
230:40-5-18. Notice of elections [AMENDED]
Part 7. Town Meetings
230:40-5-25. Town meetings required [AMENDED]
230:40-5-26. Ordinance required to hold elections [AMENDED]
230:40-5-27. Election laws apply [AMENDED]
230:40-5-28. Ordinance requiring election repealed [AMENDED]
230:40-5-29. Town meetings not required in municipalities with home rule charters [AMENDED]
Part 9. Procedures
230:40-5-34. Conduct of municipal elections [AMENDED]
230:40-5-35. Filing period for regular elections [AMENDED]
230:40-5-36. No filing fees [AMENDED]
230:40-5-38. Persons eligible to be candidates in nonpartisan elections [AMENDED]
230:40-5-41. Date for nonpartisan municipal election [AMENDED]
230:40-5-42. Dates of partisan municipal Primary and General Elections [AMENDED]
230:40-5-43. No Runoff Primary [AMENDED]
230:40-5-44. Certification [AMENDED]
230:40-5-46. Maps required [AMENDED]
230:40-5-47. Dates cannot conflict [AMENDED]
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230:40-5-52. Materials and ballots [AMENDED]
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Part 13. Expenses
230:40-5-59. Pre-Election Expense Claim [AMENDED]
230:40-5-60. Claim for balance of election expenses [AMENDED]
Part 15. Municipalities in More Than One County
230:40-5-65. Municipalities in more than one county [AMENDED]
Part 17. Special Elections
230:40-5-77. Special elections for municipal offices [AMENDED]
230:40-5-78. Special election for municipal questions [AMENDED]
Part 19. Statistical Reports
230:40-5-84. ~~Report on analysis~~ Analysis of Municipal ~~Elections~~ Election reports [AMENDED]
Subchapter 7. School Elections
Part 1. Dates for Annual School Elections

230:40-7-1. Annual School Elections [AMENDED]
Part 9. Procedures
230:40-7-39.1. Provisional voting [NEW]
230:40-7-42. Certification [AMENDED]
Part 23. Multi-County School Districts
230:40-7-104.1. Provisional voting [NEW]
230:40-7-109. Certification by parent County Election Board [AMENDED]

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ANALYSIS:
These new and amended rules implement portions of bills passed in 2003 (SB358) and in 2004 (SB1104, SB1346, and HB2677). The rules interpret and implement the following sections in Title 26 of the Oklahoma Statutes as amended by the previously cited bills: 3-101; 12-108; 12-113; 7-116.1; 7-136; 13-101.1; 13-103; 13A-103 . The rules also interpret and implement the following sections in Title 11 of the Oklahoma Statutes as amended by the previously cited bills: 16-103; 16-107; 16-109; 16-110; 16-114.

The rules in this chapter concern special elections, municipal elections, and school elections.

The dates on which special elections may be held have been revised to reflect the new dates of the statewide Primary and Runoff Primary Elections in even-numbered years. The changes in the dates of the Primary Election and Runoff Primary Election, as well as of the candidate filing period, also required changes in the period in even-numbered years when vacancies in certain offices are placed on the ballot with the regular primaries and General Election instead of calling special elections on separate dates.

Provisional voting is now required in all elections conducted by the County Election Board.

Home rule charter cities now are required by law to schedule their elections on dates identified in the statutes for elections. Those dates are identified in Title 26, Section 3-101.

Several sections in Subchapter 5 are amended to remove italicized language that was used incorrectly when the rules were originally codified. In addition, some sections are amended to clarify or to include language that has been added to the statutes since these rules were codified.

The date for statutory municipalities to conduct partisan primary elections has changed from the first Tuesday in March to the second Tuesday in February. As a result of this change, the filing period for municipalities that hold partisan elections will open the first Monday in December, the same time as the filing period for Annual School Elections. In municipalities that hold nonpartisan elections, the filing period opens the first Monday in February.

Recent upgrades in the OEMS Street Guide software have added municipal boundary information to the Street Guide. In order to keep the municipal information up-to-date, the State Election Board is working in concert with the Oklahoma Tax Commission and the Geo Information Systems at the University of Oklahoma. Amended rules in this chapter require municipalities to notify the Secretary of the County Election Board of boundary changes 60 days before such changes become effective. The County Election Board must receive notice of municipal boundary changes 60 days before they can be in effect for an election. Effective January 1, 2007, the County Election Board Secretary will use maps drawn from data in the official taxing jurisdiction database maintained by the Oklahoma Tax Commission to conduct municipal elections and to resolve questions of voter eligibility.

A section concerning special municipal elections is amended to address the scheduling of special partisan and nonpartisan elections.

Amended rules permit the parent counties of multi-county municipalities and school districts to certify final election results after 5 p.m. on Friday following an election based on faxed results from affected counties. The affected counties still must mail the original signed and sealed certification to the parent county.

A section concerning the date of the Annual School Election is amended to include new statutory language requiring the Annual School Election to be held on the same date as the Presidential Preferential Primary Election in even-numbered years when that election is held in February.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 3. SPECIAL ELECTIONS

PART 1. CALLING SPECIAL ELECTIONS

230:40-3-1.1. Times for special elections

(a) Special elections may be held by a county, school district, vocational-technical school district, municipality or other entity authorized to call elections only on the following days unless otherwise provided by law. [26: 3-101(B)]

(1) **Odd-numbered years.** In odd-numbered years, special elections may be held on the second Tuesday in January, February, May, June, July, August, September, October, November and December; and on the first Tuesday in March and April. [26:3-101(B)]

(2) **Even-numbered years.** In even-numbered years, special elections may be held on the second Tuesday in January, February, March, May, ~~June,~~ and December; on the first Tuesday in April; on the last Tuesday in July; on the fourth Tuesday in August; ~~on the third Tuesday in September;~~ and on the first Tuesday after the first Monday in November. [26:3-101(B)]

(b) *In the event that a regular or special election date occurs on an official state holiday, the election shall be scheduled for the next following Tuesday.* [26:3-101(C)]

PART 3. VACANCIES

230:40-3-8. Vacancies in the Legislature

(a) **Special election called within 30 days.** Within 30 days after a vacancy occurs in the office of a member of the State Senate or the State House of Representatives, the Governor shall call a Special Election to fill the vacancy.

(b) **Proclamation to State Election Board.** *In calling such an election, the Governor shall issue a proclamation, a copy of which* shall *be filed with the Secretary of the State Election Board*. [26:12-107]

(c) **Dates for filing period, elections.** In the proclamation, the following facts must be contained:

(1) *A filing period of three days, on a Monday, Tuesday and Wednesday, not less than ten days from the date of* the *proclamation*. [26:12-108(1)]

(2) *The date of the Special Primary Election, not less than 20 days* from the last day of the filing period. [26:12-108(2)]

(3) *The date of the Special General Election, not less than 20 days after the date of the Primary Election*. [26:12-108(3)]

(d) **Vacancies between March 1 and ~~July~~ June 1.** Should such a vacancy occur between March 1 and ~~July~~ June 1 of an even-numbered year, the proclamation shall contain dates as outlined in (c) that are required by law for the regular filing period, Primary Election, Runoff Primary Election and General Election, unless the term of the office expires the same year, in which case no Special Elections shall be held. [26:12-108]

(e) **No Runoff Primary.** There shall be no Runoff Primary Election in filling vacancies, unless the vacancy occurs as outlined in (d). [26:12-109]

(f) **General laws apply.** The Special Elections shall be conducted under the laws applicable to the regular Primary and General Elections. [26:12-104]

(g) **County Election Board responsibilities.** The County Election Board shall be charged with the same responsibilities as it would be if the Special Elections were regular Primary and General Elections for the State Senate or State House of Representatives.

230:40-3-9. Vacancies for County Commissioner

(a) **Special election called within 30 days.** Within 30 days after a vacancy occurs for the office of County Commissioner, the Governor shall call a Special Election to fill the vacancy. [26:12-111]

(b) **Proclamation to State, County Election Board.** In calling such an election, the Governor shall issue a proclamation, a copy of which shall be filed with the Secretary of the State Election Board and the Secretary of the County Election Board in whose county the vacancy occurs. [26:12-112]

(c) **Dates for filing period, elections.** In the proclamation, the following facts must be contained:

(1) *A filing period of three days, on a Monday, Tuesday and Wednesday, not less than ten days from the date of* the *proclamation*. [26:12-113(1)]

(2) *The date of the Special Primary Election, not less than 20 days* from the last day of the filing period. [26:12-113(2)]

(3) *The date of the Special General Election, not less than 20 days after the date of the Primary Election*. [26:12-113(3)]

(d) **Vacancies between March 1 and ~~July~~ June 1.** Should such a vacancy occur between March 1 and ~~July~~ June 1 of any even-numbered year, the proclamation shall contain dates as outlined in (c) that are required by law for the regular filing period, Primary Election, Runoff Primary Election and General Election, unless the term of the office expires the following year, in which case no Special Election shall be held, and the candidate elected to the office at the regular General Election shall be appointed by the Governor to fill the unexpired term. [26:12-113]

(e) **No Runoff Primary.** There shall be no Runoff Primary Election in filling vacancies, unless the vacancy occurs as outlined in (d).

(f) **General laws apply.** The Special Elections shall be conducted under the laws applicable to the regular Primary and General Elections. [26:12-114]

(g) **County Election Board responsibilities.** The County Election Board shall be charged with the same responsibilities as it would be if the Special Elections were regular Primary and General Elections for County Commissioner.

(h) **Unopposed nominees.** *If the nominee of a political party is unopposed in the Special General Election, he shall be issued a Certificate of Election after the expiration of the contest period following the Primary or Runoff Primary Election, if no contest is filed, and he immediately shall assume the duties of the office*. [26:12-114]

SUBCHAPTER 5. MUNICIPAL ELECTIONS

PART 1. CITIES WITH HOME RULE CHARTERS

230:40-5-2. Copy of charter required

Cities that have home rule charters are required by law to furnish a copy of the charter, as it applies to conduct of elections, to the Secretary of the County Election Board in the county wherein the municipality's central offices are located. [26:13-109] Any changes in a charter, as it applies to the conduct of elections, must be provided immediately to the appropriate County Election Board.

230:40-5-4. Absentee voting required in home rule charter cities

(a) Absentee voting is required in all municipal elections --- including elections for home rule charter cities --- conducted by the County Election Board. [26:14-101]

(b) A home rule charter city may adjust the dates of its filing period and elections to allow sufficient time for the County Election Board to print and mail absentee ballots to voters and for voters to return their voted absentee ballots. [26:14-101(A)]

(c) When a home rule charter city schedules an election on the same date as an election for any other entity that shares territory with the municipality, the home rule charter city shall be required to provide no less time for the mailing and return of absentee ballots than the least time provided by the other entity. [26:14-101(B)]

230:40-5-4.1. Provisional voting required in home rule charter cities

Provisional voting is required by state law in all municipal elections --- including elections for home rule charter cities --- conducted by the County Election Board. Provisional voting in a municipal election shall be conducted under the same procedures as for a state or county election.

230:40-5-5. Statutory election dates required for home rule charter cities

Effective July 1, 2005, no County Election Board shall be required to conduct elections for any municipality, including home rule charter municipalities, on any date other than an election date specified in state election law. [26:13-101.1] In addition to scheduling elections on statutory election dates, all municipalities that hold both primary and general elections shall provide no fewer than 45 days between the elections. [26:13-101.1]

PART 3. NONPARTISAN MUNICIPAL ELECTIONS

230:40-5-9. Municipal elections shall be nonpartisan

Municipal elections held by statutory municipalities shall be nonpartisan and all candidates shall file ~~as Independents~~ without any indication of political party affiliation. [11:16-105.1] *No primary election shall be held in a nonpartisan election.* [11:16-105.1]

230:40-5-10. Partisan elections authorized by ordinance

A statutory municipality may hold partisan elections if, prior to the date for submitting to the County Election Board the resolution calling for the election, ~~*the municipality has in effect an ordinance providing for partisan elections*~~ an ordinance providing for partisan elections is in effect. [11:16-105.1]

230:40-5-11. Ordinance must be attached to resolution

A copy of an ordinance providing for partisan elections must be attached to the resolution submitted to the County Election Board. [11:16-105.1] If a copy of the ordinance is not attached, the election shall be held in a nonpartisan manner and the candidates shall appear on the ballot ~~as independent candidates~~ without any indication of political party affiliation ~~or other designation~~. [11:16-105.1]

PART 5. STATUTORY MUNICIPALITIES

230:40-5-16. Statutory municipalities

Municipalities that do not have home rule charters are statutory municipalities. The general election laws for municipalities are applicable. [11:16-104] A statutory municipality has one of the following forms of government described in state law.

(1) Town.
(2) Aldermanic City.
(3) Strong-Mayor-Council City.
(4) Council-Manager City.

230:40-5-18. Notice of elections

~~*Not fewer than 15 days before the filing period for any municipal election, the governing board of*~~ ~~a~~ A statutory municipality shall submit a resolution to the Secretary of the County Election Board conducting the election not fewer than 15 days before the filing period. [26:13-102] In the event of a special election, such a resolution shall be submitted ~~*not fewer than 60 days*~~ ~~prior to~~ no fewer than 60 days before the election. [26:13-102] The resolution shall contain the following information:

(1) ~~The~~ *The dates of the election or elections*~~.~~; [26:13-102(1)]

(2) *The offices to be filled or the questions to be voted upon at the election or elections*~~.~~; [26:13-102(2)]

(3) *Qualifications for* ~~*said*~~ *such offices*~~.~~; [26:13-102(3)]

(4) *Designation of which offices shall be filled by voting by ward and which offices shall be filled by voting at large*~~.~~; [26:13-102(4)]

(5) *Indication of whether the election will be partisan or nonpartisan*~~.~~; [26:13-102(5)]

(6) *For charter cities where the charter is silent, indication of any portion of state law which will apply*~~.~~; *and* [26:13-102(6)]

(7) ~~*Other*~~ *Any other information necessary for conducting* ~~*the*~~ *said election or elections.* [26:13-102(7)]

PART 7. TOWN MEETINGS

230:40-5-25. Town meetings required

~~*All municipalities with fewer than 1,000 residents according to the last Federal Decennial Census*, [11:16-302] except municipalities governed by home rule charters,~~ Statutory municipalities with populations of fewer than 1,000 residents

according to the most recent federal census are required to elect officers and consider questions at biennial town meetings or special town meetings of the registered voters of the municipality. [11:16-302] ~~In addition to the election proceedings, other town business that would be in order and of interest to those citizens in attendance may be conducted at such town meeting, provided that the requirements of the Open Meeting Act are observed.~~ Town meetings shall be conducted under the provisions of the Oklahoma Town Meeting Act and the County Election Board shall have no responsibility for town meetings. [11:16-302]

230:40-5-26. Ordinance required to hold elections

Any ~~*municipality with fewer than 1,000 residents according to the last Federal Decennial Census* [11:16-302]~~ statutory municipality required to hold town meetings may adopt an ordinance requiring that its officers shall be elected and that questions shall be decided only at elections conducted by the County Election Board in the county in which the municipality is located. [11:16-302] A municipality that passes such an ordinance must provide a copy of the ordinance to the Secretary of the County Election Board. [11:16-302]

230:40-5-27. Election laws apply

In the event that ~~*a municipality with fewer than 1,000 residents according to the last Federal Decennial Census* [11:16-302]~~ a statutory municipality required to hold town meetings passes an ordinance requiring elections instead of town meetings, the same laws and procedures that apply to all other municipal elections shall apply to elections for the municipality. [11:16-302]

230:40-5-28. Ordinance requiring election repealed

A ~~*municipality with fewer than 1,000 residents according to the last Federal Decennial Census* [11:16-302]~~ statutory municipality may repeal the ordinance requiring that officers be elected and questions be decided at elections conducted by the County Election Board. [11:16-302] *If the ordinance is repealed, elections of the municipality shall be at a town meeting*. [11:16-302] ~~*The municipality shall provide a copy of the repealer to the* Secretary of *the County Election Board of the county in which the municipality is located*~~The governing body of the municipality shall provide a copy of the repealer to the Secretary of the County Election Board. [11:16-302]

230:40-5-29. Town meetings not required in municipalities with home rule charters

~~*Municipalities with fewer than 1,000 residents according to the last Federal Decennial Census* that are governed by home rule charters~~ Home rule charter cities with populations of fewer than 1,000 residents are not required to conduct town meetings. [11:16-302]

PART 9. PROCEDURES

230:40-5-34. Conduct of municipal elections

All municipal elections shall be held at the same place and in the same manner prescribed for conduct of state and county elections unless otherwise provided by law. [26:13-103(A)] ~~*All precincts totally or partially contained within the limits of a municipality shall be open for all elections held by* the *municipality* [26:13-103(C)];~~All precincts located either totally or partially within the boundaries of a municipality shall be open for all elections held by the municipality. ~~however,~~ However, if a precinct lies partly within the limits of a municipality, and that municipality certifies to the County Election Board in the resolution calling the election that no one resides within that portion of the precinct located in the municipality, then the precinct does not have to be open for the ~~affected~~ municipality's election. [26:13-103(C)] *Polling places shall be open from 7 a.m. until 7 p.m.* [26:13-103(C)] Each Precinct Election Board shall be the same as for state and county elections; however, if substitutions are necessary, such substitutions shall be made by the County Election Board. [26:13-103(C)] All municipal elections conducted by the County Election Board shall be held only on dates identified as election dates in state law. [26:13-101.1]

230:40-5-35. Filing period for regular elections

(a) **Nonpartisan elections.** The filing period for Regular Municipal Elections in municipalities that conduct nonpartisan elections shall begin at 8 a.m. on the first Monday in February in each odd-numbered year and end at 5 p.m. on the following Wednesday. [11:16-109; 16-110]

(b) **Partisan elections.** The filing period for Regular Municipal Elections in municipalities that hold partisan elections shall begin at 8 a.m. on the first Monday in December of even-numbered years and end at 5 p.m. on the following Wednesday.

230:40-5-36. No filing fees

~~Persons~~ No filing fee shall be required for persons filing as candidates for statutory municipal offices ~~*shall not be required to post a filing fee nor shall they be required to file petitions supporting their candidacies*.~~ nor shall such candidates be required to file petitions supporting their candidacies. [26:13-104]

230:40-5-38. Persons eligible to be candidates in nonpartisan elections

To be eligible to become a candidate in a nonpartisan municipal election, a person must be registered to vote ~~*for at least six months prior to filing a Declaration of Candidacy* [11:16-110]~~ for at least six months prior to the filing period at an address within the municipality or in the ward if the office is from a ward. [11:16-110] Filing as a nonpartisan candidate in a nonpartisan municipal election shall not affect the candidate's political affiliation. [11:16-110]

230:40-5-41. Date for nonpartisan municipal election

Nonpartisan statutory municipal elections shall be held ~~*on the first Tuesday of April in each odd-numbered year*~~ on the first Tuesday in April of each odd-numbered year. [11:16-103]

230:40-5-42. Dates of partisan municipal Primary and General Elections

If a statutory municipality requires by ordinance that its elections be partisan, the Primary Election shall be held ~~*on the first Tuesday in March in each odd-numbered year*~~ on the second Tuesday in February in each odd-numbered year. [11:16-107] The General Election shall be held ~~*on the first Tuesday in April*~~ on the first Tuesday in April in each odd-numbered year. [11:16-103]

230:40-5-43. No Runoff Primary

There are no Runoff Primary Elections for statutory municipalities.

230:40-5-44. Certification

~~*The County Election Board shall certify results of any municipal election to the governing board of the municipality for which the election was held. Certificates of Election shall be issued to the successful candidates by the County Election Board in the same manner as is prescribed for County Officers.* [26:13-106]~~ The County Election Board shall certify the results of municipal elections to the governing board of the municipality for which the election is held. [26:13-106] Certificates of election shall be issued to the successful candidates by the County Election Board in the same manner as prescribed for county officers in 230:35-3-91. [26:13-106; 26:8-103]

230:40-5-46. Maps required

~~The governing board of each municipality shall provide *to the County Election Board or Boards of the county or counties wherein the municipality is located, a current map of the municipality*. [26:13-107] The *map must define clearly the municipal limits and ward boundaries of the municipality*. [26:13-107] Should any changes be made in the municipal limits or ward boundaries of the municipality, the governing board immediately shall provide a complete revised map. [26:13-107]~~

(a) The governing board of each municipality shall provide information defining the corporate boundaries of the municipality to the Oklahoma Tax Commission as required by state law. The governing board also shall provide notice to the Tax Commission of any changes to said boundaries as required by law and by OAC 710:65-18-10. The governing board of a municipality also shall notify the Secretary of the County Election Board of the boundary change not less than 60 days before a municipal boundary change is to become effective for sales and use tax collection purposes as described in OAC 710:65-18-10.

(b) A municipal boundary change shall not be in effect for the purpose of conducting an election unless the Secretary of the County Election Board has been notified as outlined in (a) of this section and unless said notice has occurred 60 days or more before the date of the election.

(c) For the purpose of conducting an election or for resolving any question of the eligibility of an elector to vote in a municipal election, the Secretary of the County Election Board shall use a map showing the municipal boundaries, ward boundaries within the municipality, and precinct boundaries. The map shall be either a map drawn from data in the official taxing jurisdiction boundary database provided and maintained by the Oklahoma Tax Commission, as required by Title 68 OS, Section 1354.32, or a map that has been certified as accurate by the governing board of the municipality. Effective January 1, 2007, only maps drawn from data in the official taxing jurisdiction database provided and maintained by the Oklahoma Tax Commission shall be used for all municipal elections conducted by the County Election Board and to resolve all questions of voter eligibility.

230:40-5-47. Dates cannot conflict

No municipality shall schedule an election on any date during the 20 days immediately preceding a statewide Primary, Runoff Primary or General Election, or the Presidential Preferential Primary Election. [~~26:1-101, 1-102, 1-103~~26:1-101; 26:1-102; 26:1-103; 26:20-101]

PART 11. BALLOT PRINTING

230:40-5-52. Materials and ballots

~~*All materials and ballots necessary to conduct any municipal election shall be provided by the County Election Board* [26:13-105]~~ The County Election Board shall provide all materials and ballots necessary to conduct a municipal election and such materials and ballots shall be the same, as nearly as possible, as those used for state and county elections. [26:13-105]

230:40-5-53. Order of names

The order of names of candidates on all municipal ballots shall be determined by lot. [26:6-109]

PART 13. EXPENSES

230:40-5-59. Pre-Election Expense Claim

~~Not less than 35 days prior to a municipal election, the~~ The Secretary of the County Election Board shall follow the procedures outlined in 230:35-3-29 through 230:35-3-49 to submit a Pre-Election Expense Claim to the governing board of the municipality ~~authorizing the~~ holding an election ~~an estimate of the amount of compensation for Precinct Officials and Absentee Voting Board members for the upcoming election~~. [26:3-105.1(A)] The Pre-Election Expense Claim is an estimate of the amount of compensation and mileage ~~shall be accompanied by an estimate of the amount of the Inspector's mileage, the amount of mileage~~ for Precinct Officials ~~who are assigned to polling places outside the precinct in which they reside if their mileage is known at the time the Pre-Election Expense Claim is prepared, and the amount of mileage for one member~~

~~of each nursing home Absentee Voting Board. The Pre-Election Expense Claim shall be used to submit these estimates to the entity authorizing the election. See Sections 230:35-3-29 through 230:35-3-49~~, Absentee Voting Board members, and special purpose precinct workers.

230:40-5-60. Claim for balance of election expenses

As soon as possible following a municipal election, the Secretary shall submit ~~an itemized claim for~~ a Record of Expense itemizing all election expenses to the governing board of the municipality. [26:3-105.1(D)] The ~~itemized claim~~ Record of Expense shall show the amount prepaid by the municipality for Precinct Official and Absentee Voting Board member compensation deducted from the total amount of election expenses. The remaining balance shall be due 30 days after the Record of Expense is submitted to the municipality's governing board.

PART 15. MUNICIPALITIES IN MORE THAN ONE COUNTY

230:40-5-65. Municipalities in more than one county

(a) **Supervision.** For a municipality that is located in more than one county, the election shall be conducted by the County Election Board wherein the municipality's central offices are located. [26:13-110] This County Election Board hereafter is called the "parent County Election Board." The Election Boards of the other counties in which part of the municipality is located hereafter are called the "affected County Election Boards."

(b) **Filing.** Candidates for municipal office shall file their Declarations of Candidacy with the Secretary of the parent County Election Board.

(c) **Notification required.** The Secretary of the parent County Election Board shall notify the affected County Election Boards of the dates of the election, the names of the candidates filing for office and any propositions or questions that shall appear on the ballot. Such notification shall be in writing and shall be supplemented by oral communication, if possible.

(d) **Ballot printing.** The Secretary of the affected County Election Board shall be responsible for printing ballots for the election for use in the affected county.

(e) **Receiving supplies, making returns.** Inspectors shall receive their supplies from and return them to the County Election Board of the county wherein their polling places are located. See 230:35-3-68 and 230:35-3-68.1.

(f) **Affected County Results.** Affected County Election Boards shall meet on election night to canvass ~~and certify~~ results ~~to the parent County Election Board in writing~~. The Secretary of an affected County Election Board shall report the results and the number of signatures on the Provisional Ballot Roster to the parent county on election night either by telephone or by fax. The County Election Board in an affected county shall meet after 5 p.m. on Friday following the election to certify the final election results. The Secretary of the affected County Election Board shall fax a signed copy of the Official Certification Report to the parent County Election Board as soon as possible after the final results are certified on Friday evening. ~~The results shall be in the form of an~~ One copy of the official certification report signed by a quorum of the affected County Election Board shall be mailed to the parent County Election Board. See 230:35-3-91. ~~The election results shall be reported to the parent County Election Board on election night by telephone or by fax. The certification report shall be mailed to the parent County Election Board on election night.~~

(g) **Certification.** The parent County Election Board shall meet on election night to canvass returns from all precincts in the county and results reported by telephone or fax from each affected county. The results ~~from~~ for precincts in affected counties shall be entered manually into OEMS based on the results received by telephone or fax on election night. ~~The election shall not be certified before the official certification report is received from each affected county.~~

(h) **Expenses handled through parent board.** The parent County Election Board shall receive claims from all affected counties and shall make all claims to the municipality. The parent County Election Board shall receive payment for election expenses from the municipality and shall pay all expenses incurred in the election, including lump sum payments to affected County Election Boards for expenses incurred in those counties.

(i) **Reimbursement to affected county.** Upon receipt of the payment from the parent County Election Board, the Secretary of the affected County Election Board shall deposit the payment in the Special Depository Account and shall pay expenses incurred in the county.

(j) **Absentee voting.** Voters who vote by absentee ballot in a multi-county municipal election must make application to and receive absentee ballots from the County Election Board of the county in which they are registered.

(k) **Provisional voting.** Voters who may vote by provisional ballot in a multi-county municipal election must cast the provisional ballot in the correct precinct in the county in which they reside.

PART 17. SPECIAL ELECTIONS

230:40-5-77. Special elections for municipal offices

~~*When the office of a municipal elected official is to be filled at a special election, the resolution or order of the governing body calling the election* [11:16-114] must be filed with the Secretary of the County Election Board not less than 60 days before the election. [11:16-114; 26:12-116] The resolution must contain the following facts:~~

~~(1) *A filing period of three days* beginning on a Monday and ending on the following Wednesday *not less than 15 days from the date of the resolution.* [11:16-114(1)]~~

~~(2) *The date of the Special Primary Election, if any, not less than 30 days after the close of the filing period.* [11:16-114(2)]~~

~~(3) *The date of the Special General Election, not less than 30 days after the date of the Primary Election, if any,*~~

~~*but if no Primary Election is called, not less than 30 days after the close of the filing period.* [11:16-114(5)]~~

(a) **Special partisan elections.** When a special partisan election must be held to fill a vacancy in an elected municipal office, the resolution of the municipality's governing body shall contain the following information. [11:16-114]

(1) The dates for a three-day filing period which shall begin on a Monday and end the following Wednesday. [11:16-114] The filing period shall begin not less than 15 days from the date of the resolution. [11:16-114]

(2) The date of the special primary election, which shall be not less than 45 days after the close of the filing period. [11:16-114]

(3) The date of the special general election, which shall be not less than 45 days after the date of the special primary. [11:16-114]

(b) **Special nonpartisan elections.** When a special nonpartisan election must be held to fill a vacancy in an elected municipal office, the resolution of the municipality's governing body shall contain the following information. [11:16-114]

(1) The dates of a three-day filing period beginning on a Monday and ending on the following Wednesday. [11:16-114] The filing period shall begin not less than 15 days from the date of the resolution. [11:16-114]

(2) The date of the special general election, which shall be not less than 45 days after the close of the filing period. [11:16-114]

(c) **Time for special election resolution.** A copy of the resolution or order shall be filed with the Secretary of the County Election Board not less than 60 days preceding the date of the special general election. [11:16-114; 26:13-102]

(d) **Dates for special elections.** Special municipal elections may be called only on election dates established by state law. [26:13-101.1]

230:40-5-78. Special election for municipal questions

A special election on any municipal question shall be held not less than 60 days from the date the election is called by the governing board of the municipality. [26:12-116] A special election on a municipal question may be called only on an election date established by state law. [26:13-101.1]

PART 19. STATISTICAL REPORTS

230:40-5-84. ~~Report on analysis~~ Analysis of Municipal ~~Elections~~ Election reports

Within ten days after a Regular Municipal Election or any special municipal election, the Secretary shall submit ~~a~~ an analysis report of said election to the State Election Board. The State Election Board shall furnish the analysis report forms at the appropriate time.

SUBCHAPTER 7. SCHOOL ELECTIONS

PART 1. DATES FOR ANNUAL SCHOOL ELECTIONS

230:40-7-1. Annual School Elections

Annual School District and Technology Center School District Elections shall be held *on the second Tuesday in February of each year*. [26:13A-103(A)] However, in any even-numbered year in which a Presidential Preferential Primary Election is held in February, the Annual School Election shall be held on the same date as the Presidential Preferential Primary Election. [26:13A-103]

PART 9. PROCEDURES

230:40-7-39.1. Provisional voting

Provisional voting is required by state law in all school district and technology center school district elections. Provisional voting in a school or technology center election shall be conducted under the same procedures as for a state or county election.

230:40-7-42. Certification

The County Election Board shall certify the results of the election to the Board of Education of the school district. For all school elections, the County Election Board shall certify only the number of votes for and against a question and shall not indicate whether or not the candidate or question received a lawful majority. ~~Mill levy results shall be certified on election night, unless the results are for a multi-county district or the possibility of a recount exists. See 230:40-7-109 and 230:45-3-33. The results of the elections for Board of Education members and for multi-county elections shall be certified at 5 p.m. on Friday at the close of the contest period.~~ The County Election Board shall canvass the results of all school and technology center district elections on election night and shall determine the number of signatures on provisional ballot rosters. The final election results for both candidate races and questions shall be certified after 5 p.m. on Friday following the election. See 230:35-3-91. The parent County Election Board of a multi-county school district may certify the results of the multi-county election after 5 p.m. upon receipt of a faxed copy of the signed Official Certification Report from each affected county.

PART 23. MULTI-COUNTY SCHOOL DISTRICTS

230:40-7-104.1. Provisional voting

Voters who cast provisional ballots in a multi-county school district must cast the ballot in the correct precinct in the county in which they reside.

230:40-7-109. Certification by parent County Election Board

The parent County Election Board shall meet on election night to canvass returns from precincts within the parent county and results reported by telephone or fax from affected counties. ~~However, the~~ The Board shall meet again after 5 p.m. on Friday following the election to certify the final results of the election. ~~shall not be certified until the printed official certification reports from each affected county have been received by the parent County Election Board. The parent County Election Board shall certify the results of the election to the Board of Education.~~ See 230:40-7-42.

[OAR Docket #05-1010; filed 5-26-05]

TITLE 235. OKLAHOMA FUNERAL BOARD CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #05-1024]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
235:1-1-1. [AMENDED]
235:1-1-2. [AMENDED]
AUTHORITY:
Oklahoma Funeral Board, 59 O.S. § 396.2a(1)
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The Adopted Rules update staff titles and responsibilities as provided for by statute. For example, the "Executive Secretary-Treasurer" is now called the "Executive Director." The Adopted Rules also remove duplicative provisions already set forth by statute.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

235:1-1-1. Purpose

The rules of this Chapter have been adopted to comply with the provisions of the Administrative Procedures Act~~, 75 O.S., Sections 302, 305, and 307~~. They concern and control the organization, powers, duties, operations, and procedures of the Board with respect to its administration, rule-making, individual proceedings, and other activities.

235:1-1-2. Executive ~~secretary-treasurer~~ Director of the Board

(a) **Administrative officer.** The ~~executive secretary-treasurer~~ Executive Director is the administrative officer for the Board. The Executive Director shall perform all delegated statutory duties as well as other duties as the Board may assign.

~~(1)~~ ~~**Employees.**~~ The ~~executive secretary-treasurer~~ Executive Director shall supervise all employees of the Board~~, and provides the day-to-day guidance to all personnel~~. The ~~executive secretary~~ Executive Director may~~, with the consent of a majority of the Board members,~~ employ, discipline, or discharge any Board Employee. The ~~executive secretary-treasurer~~ Executive Director may delegate, subject to the Executive Director's ~~his/her continued~~ supervision and responsibility, such administrative duties, as the Director ~~he/she~~ deems appropriate, to subordinate employees.

~~(2)~~ ~~**Records.** The executive secretary-treasurer shall be responsible to the Board for maintaining Board records.~~ The Executive Director shall be responsible to the Board for maintaining Board records.

(b~~3~~) **Administrative decisions.** The ~~executive secretary-treasurer~~ Executive Director shall render necessary administrative decisions for the Board during such time the Board is not in session.

(1~~A~~) The administrative decisions must be consistent with Oklahoma Statutes and Board Rules.

(2~~B~~) Parties affected by the administrative decision may appeal to the Board by requesting placement on the agenda for the next regular or special meeting except that an administrative decision denying permission to write the State Board examination for lack of documented proof of required educational credits shall not be appealable to the Board.

(3~~C~~) Such administrative decisions shall have the full force and authority of a Board decision until reversed or modified by the Board in open meeting.

~~(4)~~ ~~**Planning and coordination.** The executive secretary plans, directs, coordinates, develops the budget of Board revenues and expenses, authorizes expenditures, and supervises the performance of all administrative activities of the Board.~~

~~(5) **Duties.** The executive secretary-treasurer performs the delegated statutory duties. Likewise the executive secretary-treasurer receives guidance and delegated authority from the Board.~~

~~(b) **Responsibility for Board funds.** The executive secretary-treasurer shall be responsible for the receipt, expenditures, and the accounting of all Board funds.~~

~~(1) **Funds.** All funds received by the Board office shall be documented in a bound and numbered receipt book.~~

~~(2) **Deposits.** All funds so received shall be deposited in a clearing account in a bank approved by the Treasurer of the State of Oklahoma for the receipt of such funds, and the Treasurer notified of each deposit.~~

~~(3) **Transfers.** At the close of each month, the executive secretary-treasurer shall transfer ten percent (10%) of clearing account funds to the general revenue account of the Oklahoma State Treasury, and ninety percent (90%) of clearing account funds to the revolving fund for Board use.~~

~~(4) **Expenditures.** All expenditures from the Board's revolving fund shall be made by an appropriate claim form to the Office of State Finance, and paid by warrants issued by the Treasurer of the State of Oklahoma.~~

~~(5) **Fiscal records.** All fiscal records of the Board shall be maintained in the Board office and open to inspection by Board members, Board employees, Board licensees, or to any citizen of the State of Oklahoma.~~

~~(6) **Receipts.** The executive secretary-treasurer shall be responsible for handling all receipts, and administering the fiscal affairs of the Board in full compliance with the requirements of the Statutes of the State of Oklahoma, and the directives of the Office of State Finance and the Treasurer's Office of the State of Oklahoma.~~

~~(c) **Records.** The executive secretary-treasurer shall be responsible for handling all receipts, and administering the fiscal affairs of the Board in full compliance with the requirements of the Statutes of the State of Oklahoma, and the directives of the Office of State Finance and the Treasurer's Office of the State of Oklahoma.~~

~~(1) **Apprentice.** Apprentice files shall be maintained in such a way that progress of each individual toward completion of licensing requirements are up-to-date at all times.~~

~~(2) **Eligibility documents.** Documents proving eligibility of each applicant to take the State Board examination and a record of each eligible applicant taking the State Board examination and the grades attained, shall be kept in the Board office.~~

~~(A) All such records and documents shall become the property of the Board.~~

~~(B) Examination grades shall be released to the individual applicant only, and shall not be a matter of public record.~~

~~(3) **Licenses issued.** Records of licenses issued, the number of the license issued, and the date of issue shall be maintained for each licensee of the Board, as well as the last address of record.~~

~~(4) **Public inspection.** Applications for each licensed establishment shall be maintained in the Board office and open to public inspection.~~

~~(d) **Preparation of examination.** The executive secretary-treasurer shall prepare State Board examinations to be given to eligible applicants for licensing.~~

(c) **Schedule of meetings.** The ~~executive secretary-treasurer,~~ Executive Director ~~in coordination with the Board president,~~ shall schedule all Board meetings, file notices of Board meeting as required by the Oklahoma Open Meeting Law., and prepare an agenda for each Board meeting to be posted at the Board office in advance of the meeting, and provided to each Board member. ~~in advance, when possible.~~

~~(f) **Information officer.** The executive secretary-treasurer shall be designated as the information officer for the Board, and shall cooperate with all media representatives, licensees, or public citizens in providing information requested, as long as the information is a matter of public record.~~

~~(g) **Other duties.** The executive secretary-treasurer shall perform other duties the Board may assign.~~

[OAR Docket #05-1024; filed 5-26-05]

TITLE 235. OKLAHOMA FUNERAL BOARD CHAPTER 10. FUNERAL SERVICES LICENSING

[OAR Docket #05-1025]

RULEMAKING ACTION:
PERMANENT Final Adoption

RULES:
Subchapter 1. General Provisions
235:10-1-1. [AMENDED]
235:10-1-2. [AMENDED]
Subchapter 3. Qualifications and Requirements for Licensure
235:10-3-1. [AMENDED]
235:10-3-2. [AMENDED]
235:10-3-3. [AMENDED]
235:10-3-5. [AMENDED]
235:10-3-6. [REVOKED]
Subchapter 5. Licensing Fees
235:10-5-1. [AMENDED]
Subchapter 7. Licensing Renewal, Revocation, and Suspension
235:10-7-1. [AMENDED]
235:10-7-2. [AMENDED]
Subchapter 9. Procedures for the Disposition of Complaints
235:10-9-1. [AMENDED]
235:10-9-2. [AMENDED]
235:10-9-5. [AMENDED]
235:10-9-9. [AMENDED]
235:10-9-11. [AMENDED]
Subchapter 13. Continuing Education
235:10-13-10. [NEW]
235:10-13-11. [NEW]
235:10-13-12. [NEW]
235:10-13-13. [NEW]
235:10-13-14. [NEW]
Subchapter 15. Advertising
235:10-15-3. [AMENDED]
235:10-15-4. [REVOKED]

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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The Adopted Rules require funeral establishments to maintain an embalmer's log. 235-10-3-2. The Adopted Rules also increase fees for services such as examinations, licenses, and renewals. See 235:10-5-1. The Adopted Rules remove the provisions relating to reciprocity since these provisions are already set forth in the statutes. See 235:10-3-6. The Adopted Rules re-introduce continuing education requirements as mandated by the Oklahoma Legislature. See 235:10-13-1 to 10-13-9. The Adopted Rules enhance the agency's power to discipline individuals who violate the licensure law. See 235:10-9-11.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

235:10-1-1. Purpose

The mission of the ~~State Board of Embalmers and Funeral Directors~~ Oklahoma Funeral Board is to act in the public interest, for the public protection and advancement of the funeral profession within the ~~police~~ powers vested in the Board by the ~~Legislature of the~~ State of Oklahoma.~~, entirely without appropriated funds. The Board shall serve as an information resource on funeral service to the general public and members of the funeral profession.~~

235:10-1-2. Definitions

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

"Apprentice" means an individual who has registered as an apprentice with the board, and is an employee of a funeral service establishment, or a commercial embalming establishment.

"At-need" means after the individual died.

~~**"Available embalmer"** means a licensed embalmer who is not employed full-time at a licensed funeral service establishment who has filed an Available Embalmer Affidavit with the board attesting to his availability to perform embalming for the funeral service establishment as needed.~~

"Board" means the ~~Oklahoma State Board of Embalmers and Funeral Directors.~~ Oklahoma Funeral Board.

"Casket" means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

~~**"Certificate"** means a document issued to a registered apprentice indicating that he is qualified to enter training in preparation for licensing as a funeral director or embalmer or both.~~

"Commercial Embalming Establishment" means a fixed place of business with a preparation room and other facilities and equipment required to embalm, transport, or ship dead human remains, but limited to serving licensed funeral establishments, both in and outside the State of Oklahoma.

"Cremation" means the technical process, using heat, that reduces dead human remains to bone fragments. The reduction takes place through heat and evaporation.

~~**"Desecration"** means the failure of a funeral director or embalmer, without lawful authority or consent of those persons authorized to make funeral arrangements, to return to the family of a deceased person the entire and complete body of the deceased or so much thereof that the funeral director and embalmer may have had care, custody or control during the period of time that such funeral director and embalmer has had charge of such deceased family member. "Desecration" shall not include the removal of blood, body fluids, body tissue or other body parts by a funeral director or embalmer in the normal course of embalming, body preparation, body restoration or cosmetology requested by the family and performed as part of normal professional services. The family of a deceased person has the absolute right to entomb the remains of a deceased family member's remains in its entirety.~~

"Direct disposition" means the disposal of dead human remains without ritual, ceremony, ~~embalming~~, or other procedures normally included in a funeral service. Direct disposition may or may not be followed by a memorial service.

"Embalmer" means any individual licensed to engage in the practice of embalming. Any person who performs the duties of an embalmer as outlined in these rules, or who holds himself out to the public in any manner whatsoever as an embalmer must be licensed by the Board.

"Full-time employee" means a full-time employee at a funeral service establishment, or the commercial embalming

establishment which is his principal place of employment as evidenced by payroll and employment records.

"Funeral director" means any individual licensed to engage in the practice of funeral directing as outlined in these rules.

(A) Any individual who holds himself out to the public in any manner whatsoever that he is a funeral director shall be licensed by this Board.

(B) Any individual who uses in conjunction with his name or business any of the words "undertaker", "mortician", "funeral home", "funeral parlor", "funeral chapel", "funeral consultant", or other title implying that he is in the business of funeral directing herein shall be licensed by this Board.

"Funeral Director in Charge - FDIC" an individual licensed as a funeral director designated by a funeral service establishment, ~~or~~ commercial embalming establishment, or crematory who is responsible for the legal and ethical operation of the establishment and is accountable to the Board.

"Funeral service" means a ritual or ceremony conducted with a body or bodies present with said ritual or ceremony conducted prior to final disposition. A funeral service shall be conducted by a licensed funeral director under the supervision of a licensed funeral service establishment.

"Funeral service establishment" means a fixed place of business used and equipped for funeral services, or for the retail sale or display of funeral service merchandise, or used to embalm, transport, or ship dead human remains, and to provide for the care and disposal of dead human remains. Any fixed place of business held out to the public as a funeral service establishment shall be inspected and licensed by the Board.

"Funeral service merchandise" means those products and services normally provided by funeral establishments, including but not limited to burial supplies and equipment.

(A) Funeral service merchandise includes any items of service or merchandise offered by the funeral service establishment as required to be listed on the General Price List mandated by the Federal Trade Commission with the exception of outer burial containers.

(B) Funeral service merchandise excludes the sale by an organization of cemetery land or interests therein, services incidental thereto, markers, memorials, monuments, equipment, crypts, niches or outer burial containers.

"Human remains" means the body of a dead human being, deprived of life, but not yet entirely disintegrated.

"License" means a document issued by the Board certifying qualifications under the laws of the State of Oklahoma to practice as an embalmer or funeral director, or to operate a funeral service establishment or a commercial embalming establishment, or to operate a crematory. ~~in providing funeral service merchandise for funeral services, or to sell funeral service merchandise, or funeral services to the public in the State of Oklahoma.~~

"Licensees" means individuals who have met all of the requirements to be licensed by the State of Oklahoma to practice as funeral directors, or embalmers and are properly registered with the ~~State~~ Board ~~of Embalmers and Funeral Directors~~.

"Memorial service" means a ritual or ceremony conducted without the presence of a body or bodies which may be conducted before or after final disposal.

"Personal supervision" means the physical presence of a licensed funeral director or embalmer at the specified time and place of the providing of acts of funeral service, practice of embalming, or practice of funeral directing.

"Practice of embalming" means the work of disinfecting or preserving dead human remains, entire or in part, by arterial embalming, or otherwise, for the preparation and the disposition, or for the care of dead human remains for funeral services, transportation, burial or cremation, or the holding of oneself out as being engaged in such work.

"Practice of funeral directing" means the work of preparing for the burial or disposal of dead human remains, otherwise than by embalming, or for the care of dead human remains for funeral services, transportation, burial or cremation, or the holding of oneself out as being engaged in such work or being in the general control, supervision or management of the operations of a funeral service establishment.

"Practicum Student" means a student currently enrolled in an accredited Funeral Service Program located in Oklahoma working in a funeral establishment to satisfy educational requirements.

"Pre-need arrangements" means arrangements made for final disposition prior to the occurrence of a death.

SUBCHAPTER 3. QUALIFICATIONS AND REQUIREMENTS FOR LICENSURE

235:10-3-1. Qualifications for licensing individuals

To be licensed in Oklahoma as a funeral director, embalmer, or both, an individual must meet the following minimum requirements:

(1) The individual must be twenty (20) years of age.

(2) The individual must be of good moral character.

(3) The individual must not have any felony convictions.

(4) The individual must not have had any misdemeanor convictions related to funeral service or pertaining to the custody, care or disposal of dead human remains, or unfair trade practices, or fraud.

(5) The individual must be a legal resident of Oklahoma, and a citizen of the United States, or a permanent resident of the United States.

(6) The individual shall have completed the following educational requirements:

(A) The individual is a graduate of a program of mortuary science accredited by the American Board of Funeral Service Education.

(B) The individual shall have completed a total of sixty (60) college semester hours of credit at an accredited institution of higher education.

(i) Such institution must be accredited by a regional accrediting agency and recognized by the

U.S. Department of Education as a valid and legal accrediting agency.

(ii) When the institution so accredited extends credit in quarter hours, each quarter hour shall equal 2/3rds of one semester hour.

(iii) Courses applied to completing the accredited mortuary science program in excess of the minimum requirements for an accredited program by the American Board of Funeral Service Education may be applied to the (60) total semester hours of college, provided such credits are earned at a regionally accredited institution.

(7) Individuals who have earned a bachelor degree in funeral service from a regionally accredited institution and American Board of Funeral Service Education accredited mortuary program shall been deemed to have met the educational requirements set for in sections (A) and (B).

(~~7~~8) The individual shall have successfully passed the National Board Examination of the International Conference of Funeral Service Examining Boards or State Board Examination with an average grade of seventy five percent (75%) or better on the Arts section for applicants for a funeral director license, and applicants for a embalmers license shall have earned an average of seventy five percent (75%) or better on the Science section~~, and applicants seeking both a funeral director and embalmers license shall have earned an overall average of seventy five percent (75%) or better on the Arts and Science section of the National Board examination or a written State Board examination with a grade of seventy five percent (75%) or better~~.

(~~8~~9) The individual shall have successfully passed ~~a~~ the ~~written~~ Oklahoma Law examination with a grade of seventy five percent (75%) or better. The Oklahoma Law examination shall cover the Oklahoma Funeral Services Licensing Act and the Prepaid Funeral Benefits Act, and the Rules of the ~~State~~ Board ~~of Embalmers and Funeral Directors~~. The Oklahoma law written examination shall not be administered until the applicant has completed all educational requirements and other examination requirements with proof of such completion on file in the Board office. Rejection of an application to take the written examination for failure to complete educational requirements, or failure to file proper proof of completion of educational requirements is not appealable to the Board.

(~~9~~10) The applicant must have paid any and all fees due and payable prior to licensing.

(~~10~~11) The individual must have served and completed an embalmer and/or funeral director apprenticeship(s) ~~in the State of Oklahoma~~ in the State of Oklahoma or has completed an apprenticeship the Board determines to be substantially equivalent to that required by Oklahoma.

(~~11~~12) Once all requirements set forth above have been met, the individual may apply for a license as a funeral director, embalmer, or both.

235:10-3-2. Requirements for licensing funeral service establishments

To be licensed by the Board a funeral service establishment or a commercial embalming establishment must meet the following minimum requirements:

(1) **Ownership.** The establishment shall be operated by a sole owner, a partnership, or by a corporation chartered in the State of Oklahoma.

(2) **Fixed place.** The establishment shall have a fixed place of business with a specific street address or physical location and shall conform to local zoning ordinances as evidenced by a occupancy permit issued by the proper local governmental entity authorizing the occupancy of a funeral service establishment at that location. Only one establishment license shall be issued to a specific address. If the establishment will contain a preparation room which does not discharge into a municipal sanitary sewer it must also secure permission from the appropriate county and/or state agency for any such discharge from the embalming room prior to being eligible to receive a funeral establishment or commercial embalming establishment license from this Board.

(3) **Inspected.** The establishment shall be inspected by a representative of the Board prior to being initially licensed and periodically as determined by the Board.

(4) **Statute and Rules.** Each establishment shall have available a current copy of the Oklahoma Statutes and Rules related to the practice of funeral directing and embalming available for public inspection.

(5) **Preparation room.**

(A) The establishment shall have a preparation room. Such preparation room shall meet the following minimum requirements:

(i) **Construction.** The walls, floor, and ceiling must be constructed, and of such materials and finished in a way that they may be cleaned and disinfected. The room must be of sufficient size and dimension to accommodate an embalming table, a sink that drains freely with hot and cold running water connections, and an instrument table, cabinet, and shelves. The embalming table must have a rust proof metal, porcelain, or fiberglass top, with edges raised at least 3/4 inches around the entire table and drain opening at the lower end.

(ii) **Ventilation.** The preparation room shall be heated and air-conditioned. The preparation room must be properly ventilated with an exhaust fan that provides at least five room air exchanges per hour. All fumes must be ventilated to the outside atmosphere. The construction must be such that odors from the preparation room cannot enter the rest of the establishment.

(iii) **No public use.** The room shall not have a passageway available for public use.

(iv) **Equipment.** The room shall contain sufficient supplies and equipment for normal operation. Nothing in this subsection shall require embalming chemicals to be stored in the preparation room.

The room shall have no excess equipment stored, other than equipment necessary for preparing dead human remains, and performing necessary restorative art work. There shall be storage shelves or cabinets for all supplies, instruments, and equipment

(v) **Openings covered.** All outside openings shall be covered with screens.

(vi) **Interior view.** Measures must be taken to prevent a view of the interior of the room through any open door or window.

(vii) **Embalmer's log.** Each funeral establishment or commercial embalming service shall maintain in the preparation room of that establishment, or within a reasonable proximity of the preparation room, a log book. The log book shall list the name of each human remains received at this location including the date and time the remains were received, the care or preparation of the remains (i.e., bathe, disinfect, refrigerate, or embalm), the date and time that the embalming occurred, the disposition of the remains, and the name, signature, and license number of the embalmer(s) and apprentice(s). If the remains were prepared at another location, that location shall be listed in lieu of the name and signature of the embalmer(s) and apprentice(s). The log book must be available at all times for inspection by the Board.

(B) **Exceptions.** A funeral establishment operated in conjunction with another licensed funeral establishment, with ~~common~~ same ownership, shall be exempt from maintaining a preparation room provided it is located within 60 miles of the main establishment and can be practically served by the main establishment.

(6) **Selection room.** The establishment shall have a selection room. Such room shall be devoted solely to the purpose of providing the public to make a reasonable selection of funeral service merchandise. Such room shall be of adequate size and furnishings. Such selection room shall meet the following minimum requirements:

(A) **Casket and outer burial container price lists.** The funeral provider must offer a printed or typewritten price list to people who inquire in person about the offering or prices of funeral merchandise including caskets, alternative containers and outer burial containers. The price list must be offered upon the beginning of discussion of, but in any event before showing the funeral merchandise. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner.

(B) **Caskets.** Each funeral establishment shall maintain an inventory of not less than five adult caskets at the location.

(C) **Equipment.** The selection room shall have no excess equipment stored, other than equipment necessary for the proper display of funeral service merchandise.

(D) **Condition.** The room shall be maintained in a clean, neat, and orderly fashion at all times.

(7) **Other rooms.** The establishment shall have adequate areas for public viewing of dead human remains and necessary offices for conducting the business affairs of the establishment. The establishment may have other rooms, offices, and other facilities, including restrooms for the staff and public lounge areas. All other rooms and facilities shall be maintained in a clean, neat, and orderly fashion at all times.

(8) **Vehicles.** The establishment shall have the necessary automotive vehicles to provide adequate service to the public. This shall not prohibit the establishment from arranging to lease, borrow, or otherwise arrange for extra vehicles when needed.

(9) **Licensed funeral director.**

(A) Each funeral service establishment shall have at least one full-time licensed funeral director employed to be designated as the Funeral Director-in-Charge of the operation of the establishment and a sufficient number of other licensed individuals to adequately serve the public.

(B) If an individual owner, partners, or corporation officers are not licensed funeral directors, then the owner, partners, or the corporation must employ a full-time licensed funeral director to serve as Funeral Director in Charge of the establishment.

(C) No licensed funeral director may serve as the Funeral Director in Charge of more than one (1) funeral service establishment without the express written authorization of the Board. With the written order of the Board a licensed funeral director, upon good cause shown that such is in the public interest, may serve as a Funeral Director in Charge of more than one (1) funeral service establishment but in no event may any such licensed funeral director be the Funeral Director in Charge of more than three (3) such funeral service establishments. Provided all of the establishments are under the same ownership, and no establishment included in the application is more than a 60 miles radius from the most centrally located establishment contained in the application.

(10) **Licensed embalmer.** Each establishment must either employ a licensed embalmer full-time or have an ~~available~~ embalmer available to embalm dead human remains within six (6) hours after the establishment has assumed custody of the body. The embalmer shall be listed on the establishment application, renewal form, and in the Embalmer's Log Book.

(11) **Transferability.**

~~(A)~~ No establishment license is transferable from one person to another, or from one location to another. In case of the sale, lease, or relocation to a new location, or a change of name of the establishment, the

establishment license may remain in force by mutual consent of the buyer and seller for a period of (30) thirty days or until the next regularly scheduled Board meeting, and at such time the license shall expire. The Funeral Director in Charge must notify the Board office in writing and within ten days of change of ownership, change of Funeral Director in Charge, change of address, or change of name. The purchaser, lessee, or owner must notify the Board office to request an inspection, and issuance of a new license. Upon purchase, lease or change of address, change of name, change of funeral director in charge a new establishment license application must be submitted with fee.

~~(B) Upon a change of Funeral Director in Charge of any funeral service establishment, then the Board office shall be promptly notified thereof in writing. Such written notice shall be accompanied by a new application for an establishment license listing the new Funeral Director in Charge, all without any additional fee.~~

~~(C) The failure to submit a new establishment application to the Board within ten (10) days of the purchase, lease, or relocation or change of name or change of Funeral Director in Charge, may result in a penalty.~~

(12) **Requirement to practice.**

(A) The issuance of a funeral service establishment license to an individual not licensed as a funeral director does not entitle the individual to practice funeral directing.

(B) In the event the Funeral Director in Charge becomes no longer in charge of said funeral establishment then such Funeral Director in Charge has the responsibility of notifying the Board of such change within ten (10) business days. Upon such notice a new establishment license application must be submitted to the Board for approval.

(13) **License expiration.** All establishment licenses issued expire on the thirty-first of December ~~in~~ for the year issued.

~~(A) An establishment license may be renewed until the thirtieth of April in the year following expiration.~~

~~(B) A penalty of One Hundred Fifty Dollars ($150.00) shall be assessed to all establishment renewals submitted after the thirty-first of January in the year following expiration.~~

(14) **Inspection.** Every funeral service establishment, ~~and~~ commercial embalming establishment, or crematory, shall be at all times subject to inspection by the Board. Inspections are to be reasonable in regard to time and manner.

(15) **Grandfather.** Any establishment which has been issued an establishment license under a rule of the Board having different requirements, then such Establishment is permitted to continue to be licensed under the rules pursuant to which the establishment was initially licensed. The Establishment license of such grandfathered establishment is not transferable. At such time as a change of ownership, purchase, lease, or change of address of such grandfathered funeral establishment is made then such establishment must meet the current requirements of this subchapter.

235:10-3-3. Licensing commercial embalming establishments

Commercial embalming establishments shall meet all requirements for a full service establishment, except that:

(1) ~~**Minimum requirements**~~ **Requirements.** A commercial embalming establishment shall have a preparation room or embalming room meeting the ~~minimum~~ requirements as set forth in this section.

(2) **Prohibition.** A commercial embalming establishment is prohibited from maintaining a selection room intended in any way for sales to the public, and are prohibited from utilizing any selection room for such sales.

~~(3) **Disposal container.** Disposal containers maintained in stock must be limited to minimum cost units necessary for transportation by common carrier.~~

(~~4~~3) **Services limited to licensed funeral establishments.** A commercial embalming establishment may provide its ~~merchandise and/or~~ services only to licensed funeral establishments anywhere in the United States, or in any foreign country which licenses funeral service establishments.

~~(5) **Services in foreign countries.** In case a foreign country does not license funeral service establishments, then the commercial embalming establishment may provide its goods and services only to the governmental division or sub-division responsible for the disposal of dead human remains.~~

~~(6) **Providing service to the public.** In no instance may a commercial embalming establishment provide goods or services directly to the public.~~

235:10-3-5. Apprentice qualifications and registration

(a) **Qualifications.** In order to register with the Board as an apprentice, each individual must meet all of the following conditions:

(1) **Age.** The applicant must be seventeen (17) years of age.

(2) **Education.** The applicant must be a high school graduate, or possess a Graduate Equivalent Diploma (G.E.D.).

(3) **Sound moral character.** The applicant must be of sound moral character.

(A) **No felony conviction.** The applicant must not have a felony conviction of any kind.

(B) **No misdemeanor convictions.** The applicant must not have a misdemeanor conviction related to funeral service, or pertaining to the custody, care or disposal of dead human remains, or unfair trade practices, or fraud.

(C) **Cancellation.** Failure to reveal such conviction [(A) and (B) of this paragraph] at the time of application will result in termination of registration of the apprenticeship by operation of law.

(b) **Registration.** Each registration must be accomplished by completing an application form supplied by the Board office, accompanied by:

(1) **Documented proof.** A diploma, transcript, G.E.D. Certificate, or other documented proof, acceptable to the Board, proving completion of high school requirements.

(2) **Affidavit.** An employment affidavit form provided for the Board completed by the apprentice and the establishment at which he will be employed.

(3) **Fee.** The required registration fee at the beginning of each year of apprenticeship.

(c) **Apprenticeship.** After qualifying and being registered by the Board, the serving of the apprenticeship for purposes of being licensed shall require the following:

(1) **Employment.** Employment at a~~n Oklahoma~~ licensed funeral establishment for a period of 12 months.

(A) **No part-time supervision.** No apprentice may be supervised or trained by a part-time licensed funeral director or embalmer.

(B) **Place of service.** The apprenticeship for licensing as a funeral director and embalmer may be served at the same time at a funeral service establishment, nothing shall prohibit an apprenticeship in embalming from being served at a commercial embalming establishment.

(2) **Reports.** ~~Apprentice~~ Apprentices must properly file twelve (12) monthly reports in the format prescribed by the Board documenting their employment and completion of embalming and funeral directing experiences.

(A) **Due date.** Each report is due the 1st and must be filed no later than the 10th day of the month it is due.

(B) **Postmark.** The postmark or electronic date stamp shall determine the date of filing for the monthly reports and case reports.

(C) **Late reports.** Reports received late shall not count toward the total number required for licensing.

(3) **Cancellation.** An apprenticeship shall automatically be cancelled by the failure to file two monthly reports ~~consecutively~~, unless an exception has been granted in writing by the Board ~~office~~.

(4) **Renewal.** Subject to other provisions of this Subsection, an apprentice registration is valid only for 12 months. Apprenticeship registration may be renewed ~~once~~ up to four times if such application is accompanied with an official transcript ~~adequate support documentation, satisfactory to the Executive Secretary Treasurer of the Board,~~ showing that such applicant is a graduate from or then an active student enrolled in an accredited school of mortuary science, and payment of the required fee. ~~Any additional renewal or other application for an apprentice registration must be by application to the Board for approval.~~

(5) **Supervision.** No apprentice shall perform the practice of embalming or the practice of funeral directing unless ~~he~~ the apprentice is doing so under the ~~direction and~~ personal supervision of a licensed embalmer or funeral director.

(6) **Assistance.** An apprentice shall, under personal supervision, assist in the embalming of at least twenty-five (25) human remains and~~/or under supervision~~ assist in the direction of at least twenty-five (25) funerals.

~~(A)~~[1]

~~(B)~~[1]

(d) **Practicum student requirements.** Practicum students must be participating in a scheduled, supervised and accredited program for practicum students established by the accredited school ~~of higher education or the school~~ of mortuary science. Practicum students must have a letter of agreement with the participating funeral service establishment where the practicum is to be conducted. No registration of practicum students is required by this Board.

AGENCY NOTE: *Subparagraphs (A) and (B) of (c)(6) were disapproved by the Legislatiure, effective 4-10-03, pursuant to House Joint Resolution 1015.*

235:10-3-6. Reciprocal license [REVOKED]

(a) ~~**Qualifications** Any individual licensed in another state may be granted a reciprocal license if he/she meets the following qualifications:~~

~~(1) **Citizenship.** The individual must be a citizen or permanent resident of the United States.~~

~~(2) **Reason.** The individual must have a valid reason to practice embalming, funeral directing, or both, within the State of Oklahoma.~~

~~(3) **Age.** The individual must be twenty (20) years of age.~~

~~(4) **Sound moral character.** The individual must be of good moral character and facing no disciplinary action against his license in the state from which reciprocating.~~

~~(5) **Out-of-state fees.** The out-of-state license must be paid up and currently in force.~~

~~(6) **All requirements.** The individual must have met all the requirements for licensing that a resident of Oklahoma must meet as set forth in 235:10-3-1 through 235:10-3-4.~~

~~(7) **Examination.** Each individual must successfully pass the Oklahoma Law examination.~~

~~(8) **Documentation met.** Application forms, supporting documents and required fees must be in the Board office prior to the issuance of any reciprocal license.~~

~~(b) **Out of state more than five (5) years.** If the applicant has been licensed out-of-state for more than five (5) years:~~

~~(1) **Citizenship.** The applicant must be a citizen of the United States.~~

~~(2) **Reason.** The applicant must have a valid reason to practice embalming, funeral directing, or both in the State of Oklahoma.~~

~~(3) **Sound moral character.** The applicant must be of good moral character, and facing no disciplinary action in the state from which reciprocating.~~

~~(4) **Education.** Educational and pre-licensing training of the state in which licensed shall be accepted in Oklahoma only if the applicant has been licensed and actively practicing for a period of five (5) years.~~

~~(5) **Documentation met.** Application forms, supporting documents, and required fees must be submitted to the Board office prior to the issuance of any reciprocal license.~~

~~(6) **Education evidence.** No reciprocal license shall be issued to an individual who has not completed an accredited mortuary science school curriculum, and furnished the Board office documented proof of the completion.~~

~~(7) **Examination.** Each individual must successfully pass the Oklahoma Law examination~~.

SUBCHAPTER 5. LICENSING FEES

235:10-5-1. License and other Board fees

(a) The following shall be the fees charged for the licenses, registrations and examinations required by the Funeral Services Licensing Act:

(1) Funeral Director License or Renewal - ~~$ 50.00~~ $75.00

(2) Embalmer License or Renewal - ~~$ 50.00~~ $75.00

(3) ~~Funeral Director and/or Embalmer Apprentice Registration or Reinstatement - $25.00~~ Registration or Extension of Funeral Director/Embalmer Apprentice - $150.00

(4) Oklahoma Law Examination - ~~$80.00~~ $100.00

(5) State Board Arts Examination - $100.00

(6) State Board Science Examination - $100.00

(~~5~~7) Funeral Establishment License or Renewal - ~~$150.00~~ $250.00

(~~6~~8) Commercial Embalming Establishment License or Renewal - ~~$150.00~~ $250.00

(~~7~~9) Reciprocal License for Funeral Director or Embalmer - $150.00

(b) **Administrative service fees.** Fees for service exceeding normal maintenance of Board records shall be as determined by the Board in open meeting. No such service fee may exceed the amount of $200.00.

~~(1) Copy of Rules of the State Board - $ 5.00~~

(~~2~~1) Mailing list of establishments - $15.00

(~~3~~2) Mailing list of individual licensees - $15.00

(~~4~~3) Duplicate licenses - $15.00 per license

(~~5~~4) Photocopies - per page - $ .25

(~~6~~5) Postage/shipping - net cost

~~(7) Fees for service exceeding normal maintenance of Board records shall be as determined by the Board in open meeting. No such service fee may exceed the amount of $200.00.~~

(c) **Renewal fees.** All renewal license fees shall be due and payable on December 31 for the following calendar year ~~January 1 of each calendar year~~.

(d) **Double fee.** All renewal license fees, if not paid by December 31 for the following calendar year ~~January 31 of each calendar year~~, shall be doubled ~~and, if not paid by April 30, shall terminate by operation of law.~~

(e) **Non-refundable.** No fees paid to the Board shall be refundable.

(f) **Initial fee.** The initial funeral director and/or embalmer license fee shall become due and payable with the application for licensure. If the initial license is issued to the licensee after July 1 of each calendar year, the applicant shall be required to pay one-half (50%) of the current initial license fee.

(g) **Examination fee.** Examination fees are due and must be paid prior to the examination.

(h) **Returned check.** Any fee paid by a check which is returned to the Board from the bank shall then be paid by money order, Cashier's check, or cash within ten (10) days after the check has been returned from the bank, plus a "returned check processing fee" of $20.00.

SUBCHAPTER 7. LICENSURE RENEWAL, REVOCATION, AND SUSPENSION

235:10-7-1. ~~Renewal of delinquent or canceled licenses~~ Reinstatement of licenses cancelled for non-payment

(a) **Fee payment.** A ~~delinquent license, or a~~ license that has been canceled for failure to pay renewal fees~~,~~ may be ~~renewed~~ reinstated by payment of all past dues and penalties without further examination for a period of less than three (3) years from the date of ~~delinquency~~ cancellation.

(b) **Canceled license.** If a funeral director or embalmer license has been canceled ~~and not renewed within three (3) years~~ for three or more years, the holder of such canceled license shall apply for and successfully pass the State Law Examination and pay a fee of $500.00.

(c) **Required grade.** Any applicant taking the State Law Examination must make a grade of 75% or better for the license to be reinstated.

235:10-7-2. ~~Determination of gross malpractice~~ Prohibited acts

~~Gross malpractice on the part of any licensee, or the representative of any licensed funeral service establishment, or any commercial embalming establishment shall constitute grounds for the suspension or revocation of any license issued by the Board. The following actions may be interpreted by the Board as gross malpractice.~~ The following prohibited acts shall constitute grounds for the suspension or revocation of any license or registration issued by the Board.

(1) **Material misrepresentation.** Material misrepresentation to the public of facts, requirements of Oklahoma Statutes, State Board Rules, or any rule or regulation pertaining directly to the custody, care, or disposal of dead human remains. Material misrepresentations is also construed to include a person knowingly and willfully signing a certificate as having embalmed, cremated, or prepared a dead human body for disposition when, in fact, the services were not performed as indicated. A

material misrepresentation also includes misrepresentation to the Board of completion of continuing education requirements when the requirements were not met.

(2) **Conviction of a crime.** A felony conviction or plea of guilty or nolo contendere in a felony matter, or any misdemeanor pertaining to the custody, care or disposal of dead human remains, or involving funeral service, or unfair trade practices, or fraud.~~or conviction of any felony~~. A copy of the record of conviction, judgment and sentence certified by the clerk of court entering the conviction shall be conclusive evidence of conviction.

~~(3) **Changing funeral service establishment.** Any written, verbal, or telephone contact by representatives of a funeral service establishment with any member of a family which had selected another funeral service establishment to handle a pending funeral service for the purpose of requesting, persuading, or coercing the family to change to the funeral service establishment making written, verbal or telephone contact.~~

(~~4~~3) **Price lists.**

(A) Failure to give a printed or typewritten General Price List (GPL) for retention to persons who inquire in person about the funeral goods, funeral services offered by the funeral establishment. The GPL must be presented upon beginning discussion of any of the following: the prices of funeral goods or funeral services; the overall type of funeral service or disposition; or specific funeral goods or funeral services offered by the funeral establishment.

(B) Failure to offer a printed or typewritten price list to persons who inquire in person about the offerings or prices of caskets or alternative containers, or outer burial containers before showing the caskets. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list , and display it in a clear and conspicuous manner.

(~~5~~4) **Statement of goods and services selected.** Failure to give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:

(A) the funeral goods and funeral services selected by that person and the prices to be paid for each of them;

(B) specifically itemized cash advance items. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a statement of the actual charges shall be provided before the final bill is paid; and

(C) the total cost of the goods and services.

(~~6~~5) **Pre-need Requirements.** Failure to comply with the requirements of Oklahoma Statutes and Rules of the State Insurance Commission pertaining to pre-need funeral service arrangements.

(~~7~~6) **Non-licensed director.** The practice of funeral directing by an individual not licensed as funeral director ~~where the funeral service establishment, funeral director in charge, or funeral director employed by the establishment has knowledge of, permits, orders, or condones such action~~.

(~~8~~7) **Non-licensed embalming.** Embalming of any dead human remains by an individual not licensed ~~where the funeral service establishment or commercial embalming establishment, funeral director in charge, funeral director, or embalmer has knowledge of, permits, orders, or condones such action~~ as an embalmer.

(~~9~~8) **Non-registered apprentice.** The holding out by any person that such person is an active registered apprentice when such person ~~has knowledge of the fact he/she is not an active registered apprentice or has knowledge that his/her active registration has previously expired~~ is not an active registered apprentice.

(~~10~~9) **Failure to release dead human remains.** Failure to immediately release dead human remains to an individual legally entitled to take custody of such a dead human remains or to an agent for such individual.

(~~11~~10) **Desecration.** Damage, abuse, ~~or~~ desecration~~,~~ or the unauthorized removal of tissue, bones, or organs of any human remains in the custody of a licensed funeral service establishment, commercial embalming establishment, crematory, funeral director, embalmer, or apprentice . Desecration shall not include the removal of, blood, body fluids, body tissue, or other body parts in the normal course of embalming or restoration requested by authorizing agent. Desecration also includes the simultaneous cremation of more than one human dead body without express written approval of the authorizing agent, or cremating human remains without the permit requires by 63 O.S. §1-329.

(~~12~~11) **Solicitation.** ~~Payment by an individual or licensee of any moneys or anything of value to a individual, hospital, hospice, clinic, nursing home, funeral establishment or ambulance service or their agent or employees for the purpose of soliciting business.~~ Solicitation of business, either personally or by an agent, from a dying individual or the relatives of a dead or individual with a terminal condition as defined by the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act, other than through general advertising.

(~~13~~12) **Used casket.** Using any casket or part thereof which has previously been used as a receptacle for, or in connection with, the burial, cremation, or other disposition of dead human remains, without making the required disclosure to the individual making the selection ~~that such casket is a rental casket as defined in this chapter.~~

(~~14~~13) **Charging** for service or merchandise not contracted for or failing to provide the services or merchandise contracted for or making substitution for services or merchandise contracted for without the authorization of the customer.

(~~15~~14) **Failure to file.** Failure to file a death certificate, cremation permit, disinterment permit or any other necessary permit as required by law in a timely manner.

(~~16~~15) **Failure to submit application for establishment license.** Failure to notify the Board of a change of

ownership, sale, purchase, lease, change of name, change of address, or change of funeral director in charge within ten (10) business days.

(~~17~~16) **Suspension or revocation.** The suspension or revocation by another state of a licensee to practice funeral directing and or embalming. A certified copy of the record of suspension or revocation of the state making such a suspension or revocation shall be conclusive evidence thereof.

(~~18~~17) **False or misleading advertising.** The use of false or misleading advertising or advertising a name other than the name the individual or establishment is licensed as.

(~~19~~18) **Failure to comply with Licensing Act.** Failure to comply with any applicable provisions of the Funeral Services Licensing act at the time of issuance or renewal or improper issuance or renewal of a license or registration.

(19) **Child Support Statute.** Failure to comply with the child support statute provisions of 43 O.S. §139.1 et al.

SUBCHAPTER 9. PROCEDURES FOR THE DISPOSITION OF CASES

235:10-9-1. Filing complaints

(a) **Written complaints.** All complaints must be written, signed by the complainant, and submitted to the Executive ~~Secretary-Treasurer~~ Director of the Board.

(b) **Records.** Upon receipt, each complaint submitted to the Executive ~~Secretary-Treasurer~~ Director shall be logged in a book maintained for that purpose. The logbook shall contain, in consecutive order, a record of each complainant's name and address, the name and address of the subject(s) of the complaint, and the date each complaint is received by the Board.

(c) **Complainant.** Any person, including a Board member or a Board employee may file a complaint on matters of which he or she has direct personal knowledge.

235:10-9-2. Investigations

(a) **~~Executive~~ Probable Cause Committee.** After a complaint has been filed, the ~~Executive~~ Probable Cause Committee (consisting of the Executive ~~Secretary-Treasurer~~ Director and one Board member designated by the Executive Director ~~Board~~) shall determine whether the complaint falls within the Board's jurisdiction, whether an investigation is warranted, and if warranted, shall direct the investigation to be made and a summary of the complaint sent to Board members.

(b) **Acknowledgement.** Each complaint received shall be acknowledged in writing. This acknowledgment shall state that the complaint is being reviewed and the respondent is being given an opportunity to respond to the allegations made by the complainant.

(c) **After response.** Upon receipt of a response by the respondent and, if after further investigation, it is necessary, the ~~executive~~ probable cause committee shall submit the information to the Board who will determine if there are reasonable grounds for belief that violation has occurred and make a determination if a hearing is warranted and, if warranted, shall schedule a hearing before the Board. The ~~Executive~~ Probable Cause Committee may recommend to the Board informal disposition be made. ~~of any complaint by stipulation, agreed settlement, consent order, or default.~~ The Executive Director shall properly notify the complainant and the respondent of such hearing. The Board member serving on the probable cause committee shall be recused from such hearing. If the Board determines that a hearing is not necessary, then both the respondent and the complainant shall be notified in writing that the complaint will be dismissed.

(d) **Jurisdiction.** No investigation shall be made on any complaint concerning matters outside the jurisdiction of the Board.

235:10-9-5. Discussion

After a complaint has been filed, all interested persons are prohibited from discussing the complaint with any member of the Board other than the Board member serving on the Probable Cause Committee or the hearing officer, if one has been designated.

235:10-9-9. Conduct of hearing

(a) **When hearing required.** Any penalty imposed by the Board must be preceded by a hearing before the Board unless the complaint is disposed of by Agreement, Consent Order, or Statement of Default.

(b) **Administrative Procedures Act.** All hearings shall be conducted in accordance with the Administrative Procedures Act.

(c) **Hearing officer.** The Board may designate a hearing officer to conduct a hearing.

(1) **Hearing officer authority.** The hearing officer shall have the power and authority to conduct the hearing and shall conduct the hearing in the name of the Board.

(2) **Transcript.** ~~Upon completion of the hearing, the hearing officer shall transmit the record of the hearing and recommendations of findings of fact and conclusions of law to the Board~~. Hearing may be transcribed upon the request of any party. All costs of such transcription shall be paid by the requesting party.

(d) **Quorum.** A hearing conducted by the Board shall be heard by no less than three voting members. All Board members are voting members unless recused.

(e) **Subpoena.** The Board may issue, or direct the Executive ~~secretary-treasurer~~ Director to subpoena witnesses and evidence deemed necessary to conduct the hearing.

(f) **Transcript.** A respondent desiring a transcript of the hearing shall notify the Board in writing and bear the full cost of the transcription and copies.

(g) **Recuse.** If a member of the Board is a party to the complaint or would have a possible financial interest in the outcome of the hearing, the member shall be recused ~~him or herself~~ from the proceedings. The Board member serving on the Probable Cause Committee shall be recused from the hearing.

(h) **Continuance.** Requests for continuance of a scheduled hearing must be filed in writing with the Executive ~~secretary-treasurer~~ Director of the Board at least forty-eight (48) hours, holidays and weekends excepted, prior to the time of the scheduled hearing, and the Executive ~~secretary-treasurer~~ Director may grant the continuance only for good and valid reasons.

(i) **Findings; order.** The Board shall make Findings of Fact and Conclusions of Law based on clear and convincing evidence at the close of a hearing, and shall enter an order thereon.

(1) The order shall be based upon the evidence presented at the hearing.

(2) A written notice of the order shall be given to the respondent.

(3) The notice of order shall be given upon written request to any person appearing at the hearing.

(j) **Record.** When the hearing is held before a hearing officer, the Board may issue its order based upon the record, including the findings of fact and conclusions of law recommended by the hearing officer. After the close of a hearing conducted by a hearing officer, the Board may require additional hearings or further evidence be presented prior to the issuance of the order.

235:10-9-11. Penalties available to the Board

(a) **Board authority.** ~~After holding hearings, the Board may suspend any or all licenses, registrations, or certificates involved issued by the Board for a period of time to be determined by the Board.~~ The Board shall be authorized, at its discretion, to take such action as the nature of the violation requires. ~~The~~ In addition to any penalty listed below, the Board shall have the authority to impose on ~~the licensee, or certificate holder, as a condition of any adverse disciplinary action,~~ any person who violates any statutory or rule provision of the Oklahoma Funeral Board the payment of costs expended by the Board in investigating and prosecuting said cause. The costs may include but are not limited to staff time, salary and travel expenses, witness fees and attorney fees, and the same shall be considered part of the order of the Board.

(b) **Revoke licenses.** After holding a hearing, the Board may revoke any or all licenses, registrations, or certificates issued by the Board.

(c) **Lesser penalty.** After holding a hearing, the Board may impose any lesser penalty than those in (a) and (b) of this Section so long as it is reasonable.

(d) **Fines.** After holding a hearing, in addition to, or in lieu of, the penalties set forth in (a), (b), and (c) of this Section, the Board may imposed an administrative fine not to exceed $10,000 for any related series of violations.

SUBCHAPTER 13. CONTINUING EDUCATION

235:10-13-10. Continuing education requirements

(a) Beginning July 1, 2006, and each year thereafter, each applicant for renewal of a funeral director or embalmer license in Oklahoma, shall submit the renewal fee and documentation as prescribed by the Board of each continuing education course the licensee attended during the year. Every licensed funeral director, and or licensed embalmer, shall attend a minimum of six (6) professional development units (P.D.U.) during each calendar year before their annual license renewal. For purposes of implementing the Board's continuing education requirements, one (1) P.D.U. shall be construed as 50 minutes of learning activity. Individuals licensed as both a funeral director and embalmer shall be required to complete a minimum of six (6) hours of P.D.U. each calendar year.

(b) Each continuing education provider and course shall be approved by the Board based on criteria similar to those established by the Academy of Professional Funeral Service Practice (the Academy). In order to assist the Board in its review, the Board may contract with an individual or institution with extensive experience in accrediting continuing education providers and courses. Providers and courses approved by the Academy shall be presumptively approved by the Board. The Board may also approve providers and courses that have been approved by another state's funeral director and embalmer regulatory agency, provided, the state agency's criteria for reviewing continuing education providers and courses are substantially equivalent to the Board's criteria. The Board shall not charge duplicate fees to review provider applications or courses approved by the Academy or another state's regulatory agency.

(c) A licensee may not receive credit for repeating the same course during the same calendar year.

(d) Individuals issued original or reciprocal licenses shall complete the continuing education requirements in the first full calendar year following the issuance of an original or reciprocal license.

(e) Every licensee, unless exempt, shall submit satisfactory proof of completion the Board's continuing education requirements with the license renewal application on the form prescribed by the Board.

235:10-13-11. Continuing education program approval

(a) The continuing education program provider must possess professional credentials appropriate to the subjects covered in the program, and the program must contain demonstrable educational content related to the practice of funeral directing and/or the practice of embalming as determined by the Board.

(b) The continuing education provider shall annually pay a $250 fee with its initial application and $50 per course submitted for Board approval. The provider shall submit its application, required documentation, and payment of fee(s) to and in the time and manner prescribed by the Board. Providers shall submit courses for Board approval at least sixty (60) days prior to administering the course.

(c) Professional development units (P.D.U.) are not allowed for activities such as social occasions, meals, receptions, sporting events, business meetings, sales meetings, or exhibits displayed at such activities. If a provider wishes to offer a continuing education course at such an activity, then the provider shall be required to seek Board approval for that particular course.

Continuing education received for renewal of an insurance license shall not qualify as P.D.U. for purposes of funeral director or embalmer license renewal.

(d) Approved P.D.U.'s may include programs in various formats such as: lecture, workshops, seminars, conferences, independent home study, and internet based programs. A continuing education program must fall within one or more of the following for categories of funeral service related content areas for approval:

(1) Public Health and Technical including: embalming, restorative art, etc.

(2) Business Management including computer applications, marketing, personnel management, accounting, or comparable subjects.

(3) Social Science including communications skills, both written and oral, sociological factors, counseling, grief psychology or comparable subjects.

(4) Legal, Ethical, Regulatory including: OSHA, FTC, ethical issues, legal interpretations or comparable subjects.

(e) Each Approved Provider shall provide the Board with a list of programs approved by the Board or the Academy, containing both course number and approved hours, for posting on the Board's website.

235:10-13-12. Exemptions

(a) Licenses exempt from payment of renewal fees under 235:10-5-2 shall be exempt from all continuing education requirements for the first full calendar year after which they have completed their period of military service.

(b) A licensee of Oklahoma residing outside the state of Oklahoma and not engaged in the practice of funeral directing or the practice of embalming within the state of Oklahoma shall be exempt from the Board's continuing education requirements. If the licensee becomes engaged in the practice of funeral directing or the practice of embalming within the State of Oklahoma, the licensee shall within the first full year of meet the continuing education requirements.

(c) Any licensee with a serious illness or disability shall notify the Board and request a exemption not less than thirty (30) days prior to the expiration of the license. The letter of request with documentation from the licensee's physician verify the illness and disability. The Board shall have the power to review the request for exemption of all or a portion of the Board's continuing education requirements on a case by case basis.

235:10-13-13. Verification of Continuing Education

(a) Each licensee shall obtain from the continuing education provider proof of attendance at the approved continuing education program. The licensee shall maintain such documentation for a period of not less than two (2) years.

(b) The licensee is responsible for ensuring that the continuing education program has been approved, and for providing proof of attendance to the Board, in such form as the Board shall prescribe, concerning the completion of continuing education requirements.

(c) The Board or its authorized representatives may monitor, inspect, or review any approved continuing education activity, and upon evidence of significant variations in the program presented from the program approved, may disapprove any or all portion of the approved hours granted to the activity.

235:10-13-14. Non-compliance and sanctions

The Board shall not renew a licensee's funeral director or embalmer license if the licensee has not complied with the continuing education requirements, unless exempt, until the required fees, late fees, and past continuing education requirements are met.

SUBCHAPTER 15. ADVERTISING

235:10-15-3. False or misleading advertising

~~(a)~~ No licensee shall publish or disseminate false, misleading, or deceptive advertising. An advertisement may not contain statements;

(1) containing a misrepresentation of facts;

(2) likely to mislead or deceive because in context the statements make only a partial disclosure of relevant facts;

(3) relating to fees without reasonable disclosure of all relevant variables so that the statement would not be misunderstood or be deceptive to laypersons;

~~(4) contain representations or implications that in reasonable probability can be expected to cause an ordinarily prudent individual to misunderstand or be deceived.~~

(4) any name other than the name the establishment or individual is licensed as;

(5) using the name "crematory" in conjunction with a funeral establishment or commercial embalming service when the establishment or embalming service does not hold a crematory license and the crematory is not located on-site.

~~(b) False, misleading or deceptive advertising includes, but is not limited to:~~

~~(1) identifying by using the names or pictures of, persons who are not licensed to practice funeral directing or embalming in a way that lead the public to believe that those persons will provide funeral directing or embalming services;~~

~~(2) using any name other than the names under which the funeral establishment is known or licensed;~~

~~(3) using a surname not directly, actively, or presently associated with a licensed funeral establishment, unless the surname had been previously and continuously used by the licensed funeral establishment; and~~

~~(4) using a founding or establishing date or total years of service not directly or continuously related to a name under which a funeral establishment is currently or was previously licensed.~~

235:10-15-4. Authorized advertising [REVOKED]

~~Authorized advertising includes any notice given in a manner intended to communicate to the public that a licensed funeral director is in charge and is responsible for the legal and ethical management and operation of a funeral service establishment. Any advertising or other printed material that contains the names or pictures of persons affiliated with a funeral establishment shall state the individual's affiliation with the establishment and shall identify each person who is licensed or unlicensed under this chapter.~~

[OAR Docket #05-1025; filed 5-26-05]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #05-952]

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265:1-1-2. [AMENDED]
265:1-1-3. [AMENDED]
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265:1-1-2 and 265:1-1-3 amend the number of State Fire Marshal Commission member positions from five to seven, redefine the organizations represented by the members and amend the number of members to constitute a quorum. [74 O.S. §§ 324.1 and 324.2]
CONTACT PERSON:
Jerry Pruner, Assistant State Fire Marshal, 2401 NW 23rd Street, Suite 4, Oklahoma City, OK 73107, 405-522-5005

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

265:1-1-2. State Fire Marshal commission, membership, tenure

There is hereby created the State Fire Marshal Commission, which shall consist of ~~five~~ seven members appointed by the governor. The governor shall appoint initially one member who shall serve for a term of five years; one member from ~~the Oklahoma State Firemen's Association~~ a statewide association of career and volunteer firefighters who shall serve for a term of four years; one member from ~~the Oklahoma Municipal League~~ a statewide association of municipalities who shall serve for a term of three years; one member from ~~the Oklahoma Fire Chiefs Association~~ a statewide association of Fire Chiefs, both career and volunteer, who shall serve for a term of two years; ~~and~~ one member, who shall be a safety engineer, who shall serve for a term of one year; one member from a statewide association of electrical workers who shall serve for a term of one year; and one member from a statewide association of exclusively professional fire fighters who shall serve for a term of two years. The members of said commission shall thereafter be appointed for a term of five years and said appointments shall be subject to senate confirmation, provided the associations named shall be represented by at least one member. [74 O.S., Section 324.1]

265:1-1-3. Commission chairman, meetings

The commission shall select a chairman and is hereby authorized to adopt rules for conducting its proceedings. Any ~~three~~ four members shall constitute a quorum. The commission shall meet monthly on such date as it may designate and may meet at such other times as it may deem necessary, or when called by the chairman or by any ~~three~~ four members. Complete minutes of each meeting shall be kept and filed in the office of the State Fire Marshal and shall be available for public inspection during reasonable office hours. The commission shall report annually to the governor and to the State Legislative Council of the affairs of the commission and the office of the State Fire Marshal. [74 O.S., Section 324.2]

[OAR Docket #05-952; filed 5-20-05]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 3. INDIVIDUAL PROCEEDINGS

[OAR Docket #05-953]

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ANALYSIS:
265:3-3-4 inserts language for the evacuation of the occupants of building(s) whenever an officer of the State Fire Marshal Office's determines a threat to life is eminent. [74 O.S. § 317]
CONTACT PERSON:
Jerry Pruner, Assistant State Fire Marshal, 2401 NW 23rd Street, Suite 4, Oklahoma City, OK 73107, 405-522-5005

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

265:3-3-4. Order

The State Fire Marshal, according to the provisions set forth at 74 O.S. 1981, §317, upon a finding that a certain building or buildings is so situated as to endanger other buildings or property, or so occupied that a fire would endanger persons and property therein the State Fire Marshal can order such building or buildings to be repaired, torn down, demolished, materials removed and all dangerous conditions remedied. Whenever the officers determine that a threat to life is eminent, the officers are permitted to order the evacuation of the occupants of the building or buildings. If the State Fire Marshal finds in a building or upon any premises any combustible or explosive material, rubbish, rags, waste, oils, gasoline or inflammable conditions of any kind, dangerous to the safety of buildings or property, he shall order such materials removed or conditions remedied. Such Order shall be made against the owner, lessee, agent or occupant of such buildings or premises and, thereupon, such Order shall be complied with by the owner, lessee, agent or occupant, and within the time fixed in said Order.

[OAR Docket #05-953; filed 5-20-05]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 10. SMOKE DETECTORS

[OAR Docket #05-954]

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265:10-3-2. [AMENDED]
265:10-3-3. [AMENDED]
265:10-3-4. [AMENDED]
Subchapter 5. Compliance
265:10-5-1. [AMENDED]
265:10-5-2. [AMENDED]
265:10-5-4. [AMENDED]
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265:10-3-1, 265:10-3-2, 265:10-3-3, 265:10-3-4, 265:10-5-1, 265:10-5-2, 265:10-5-4 and 265:10-5-5 amend the language to reference updates of state adopted codes. [74 O.S. § 324.11a]
CONTACT PERSON:
Jerry Pruner, Assistant State Fire Marshal, 2401 NW 23rd Street, Suite 4, Oklahoma City, OK 73107, 405-522-5005

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 3. RATIONALIZATION

265:10-3-1. Institutional

(a) **Definitions.**

(1) **"Hospital"** means a building or part thereof used for the medical, psychiatric, obstetrical or surgical care

on a 24-hour basis of three or more inpatients. Hospital wherever used in these rules and regulations shall include General Hospitals, Mental Hospitals, Tuberculosis Hospitals, Children's Hospitals, Specialized Hospitals and any such facilities providing inpatient care.

(2) **"Nursing home"** means a building or part thereof used for the lodging, boarding and nursing care on a 24-hour basis of three or more persons who because of mental or physical incapacity may be unable to provide for their own needs and safety without the assistance of another person. Nursing Home wherever used in these rules and regulations shall include Nursing Homes, Convalescent Homes, Skilled Nursing Facilities and Infirmaries in Homes for the Aged.

(3) **"Rest home"** means a facility that contains a group housing arrangement for three or more persons that provides at least two meals per day and such social and personal care services needed by the residents because of age or physical incapacity may be unable to provide for their own needs, but that do not provide intermediate or skilled nursing care.

(b) All hospitals, nursing homes, rest homes and convalescent homes, as defined in (a) of this section shall install smoke detectors as follows:

(1) New facilities: smoke detectors/detection systems must be installed as per the requirements set out in ~~section 409 and 918.4.2 of~~ the ~~1993~~ 2003 edition of the ~~BOCA~~ International Building Code.

(2) Existing facilities: approved single station or multiple station detectors must be installed in all sleeping rooms, Except in facilities which have an approved corridor smoke detection system and are protected by an approved automatic sprinkler system.

(3) In addition to the requirements set out for new facilities in the ~~BOCA~~ International Building Code, all I-2 facilities listed in (a) of this section shall install an approved automatics smoke detection system in all corridors at no greater than 30 feet on center spacing nor more than 15 feet from a wall measured perpendicular to the wall. Exception. Where each patient sleeping room is protected by an approved smoke detection system and a smoke detector connected to the system is provided at the smoke barriers and horizonal exit doors, such corridor system will not be required.

265:10-3-2. Churches, theaters and auditoriums

All churches, theaters and auditoriums over 300 capacity, both new and existing, shall be protected by an approved smoke detector in all hazard areas that are not normally occupied as approved by the authority having jurisdiction. Hazard areas shall be defined as those identified ~~by table 302.1.1 of~~ in the ~~1993~~ 2003 edition of the ~~BOCA~~ International Building Code. Exception: Where the hazard is protected by an automatic sprinkler ~~head~~ system.

265:10-3-3. Day nurseries (day care centers) and child care institutions

(a) **Definitions.**

(1) **"Day nursery (day care center)"** means a facility which provides care for six or more children for six or more hours of the 24-hour day.

(2) **"Child care institution"** means a 24-hour residential group care facility with a large number of unrelated children living together with adults other than parents. A specialized service to be selectively and appropriately used for certain children whose needs at the present time can not be adequately met within the family.

(b) **Installation.**

(1) Existing and new day nurseries, whether called day care, family day care, or group day care, must follow the provisions for smoke detection as outlined in sections ~~10-7, 10-8, 11-7, 11-8 or 11-9 of the 1994 edition of the Life Safety Code, NFPA 101~~ 16.3.4.5 and 17.3.4.5 of the 2003 edition of the Life Safety Code, NFPA 101.

(2) Child Care Institutions shall be provided with smoke detection as follows:

(A) New facilities must meet the provisions of the ~~1993 BOCA~~ 2003 International Building Code.

(B) Existing facilities must meet the appropriate provisions of the ~~1994~~ 2003 edition of the Life Safety Code based on the size of the facility.

(C) Existing child care institutions and day nurseries may use battery operated single station detectors to meet the requirements of the code provisions.

265:10-3-4. Residential

(a) **Definitions.**

(1) **"Hotels/motels"** means buildings or groups of buildings under the same management in which there are sleeping accommodations for hire, primarily used by transients who are lodged with or without meals, whether designated as a hotel, inn, club or motel, or by any other name. So-called apartment hotels, because they are potentially subject to transient occupancy like that of hotels, shall be classified as hotels.

(2) **"Dormitories"** means buildings or spaces in buildings where group sleeping accommodations are provided for persons not members of the same family group, in one room or in a series of closely associated rooms under joint occupancy and single- management, as in college dormitories, fraternity houses, sorority houses, with or without meals, but without individual cooking facilities.

(3) **"Apartment houses"** means buildings containing three or more living units with independent cooking and bathroom facilities, whether designated as Apartment House, Apartments for the Elderly, Tenement, Garden Apartments, or by any other name. Apartments for the elderly are specifically designed for housing older individuals who are capable of self-preservation.

(4) **"Rooming houses"** Includes buildings in which separate sleeping rooms are rented, providing sleeping

accommodations for persons on either a transient or permanent basis, with or without meals, but without separate cooking facilities for individual occupants.

(5) **One and two-family rental property** means all detached one or two-family dwellings not more than three stories in height, and the accessory structures as indicated in the ~~CABO one and two family dwelling code~~ 2003 International Residential Code.

(b) **Approved installation.** All residential occupancies as defined in (a) of this section shall have smoke detection as ~~follows:~~ prescribed by either the 2003 International Building Code or the International Residential Code.

~~(1) New facilities shall meet the provisions for smoke detection as outlined in the 1993 BOCA Building Code for R-1, R-2, R-3, or R-4 occupancies as appropriate.~~

~~(2) Exiting facilities shall meet the provisions for smoke detection as outlined in the 1994 edition of the Life Safety Code for the specific type of occupancy defined in (a) of this section.~~

~~(3) Existing hotels, dormitories, apartments houses, and rooming houses, and one and two family rental property may use battery operated single station smoke detectors to meet the requirements of the code provisions set in the NFPA 101 1994 Life Safety Code.~~

SUBCHAPTER 5. COMPLIANCE

265:10-5-1. Period allowed for compliance

(a) All new construction shall conform to the applicable requirements of this Chapter on certification by the authority having jurisdiction, as described in (b) and (c) of this Section, upon completion of the construction.

(b) All Hospitals, Nursing Homes, Rest Homes, Convalescent Homes, Hotels, Motels, Dormitories, Apartment Houses, including Apartments for the Elderly, and Rooming Houses of less than 10 units, which can not conform with the requirements of this Chapter on the effective Date of November 1,1986, shall be in compliance with this Subchapter ~~by May 1, 1987~~.

(c) All Hospitals, Nursing Homes, Rest Homes, Convalescent Homes, Hotels, Motels, Dormitories, Apartment Houses, Including Apartments for the Elderly, and Rooming Houses of 10 units or more, which can not conform with the requirements of this Chapter on the effective date of November 1,1986, shall be in compliance with this Subchapter ~~by November 1,1987~~.

(d) All existing One and Two-Family Rental Property shall be in compliance with this Subchapter. ~~which cannot conform with the requirements of this Subchapter on the effective date of September 1,1993, shall be in compliance with this Subchapter by September 1, 1994~~.

265:10-5-2. Approval of sellers and installers

Every individual, firm or corporation commercially selling, installing, designing or repairing Smoke Detection Systems shall be licensed by the Alarm Division of the Oklahoma State Department of Health.

265:10-5-4. Equipment

(a) All devices, combination of devices and equipment to be installed in conformity with current edition of National Fire Protection Association (N.F.P.A) Standard #72 ~~E and N.F.P.A Standard #74~~ shall be approved or listed and installed for the purpose for which they are intended.

(b) A device or system of devices having materials or forms different from those detailed in N.F.P.A. Standard #72 ~~E and N.F.P.A. Standard #74~~ may be examined and tested according to the intent of these standards and, if found equivalent, may be approved.

(1) N.F.P.A. #72 ~~E~~ Standard on Automatic Fire Detectors covers minimum performance, location, mounting, testing and maintenance requirements of automatic fire detectors for protection of the occupant, building, space, structure, area or object to be protected in accordance with the stated purpose.

(2) N.F.P.A. ~~#74~~ 72 Standard for the Installation, Maintenance, and Use of Household Fire Warning Equipment contains minimum requirements for the selection, installation, operation and maintenance of fire warning equipment for use within family living units.

265:10-5-5. Enforcement

(a) No person, partnership, corporation, organization, the State, city, town, county or other sub-division of this State owning a building or structure used as a Hospital, Church, Theater, Hotel, Motel, Apartment House, rooming House, Dormitory, Rest Home, Nursing Home, Day Nursery, Convalescent Home, Auditorium or Child Care Institution, existing or constructed, shall commence the installation of Smoke Detection equipment without obtaining a permit.

(b) Said permit for which a charge may be made in conformity with the local ordinances, except as limited in this Chapter as to governmental agencies, shall be obtained from the city, town or county in whose jurisdiction the installation is planned.

(c) Application for such installation permit shall be made to and such installation permit shall be issued by a city, town or county in whose jurisdiction the installation is planned. The city, town or county may require the submission of plans and specifications, covering the proposed installation and may refuse to issue a permit, unless the work so planned is in accordance with the applicable provisions of the current National Fire Protection Association Standard. In all geographical areas wherein no permit is required by local authorities, such permit must be obtained from the State Fire Marshal, who may require the submission of plans and specifications covering the proposed installation, and he shall refuse to issue such permit unless the work planned is in accordance with the applicable provisions of current N.F.P.A. Standard #72 ~~E and N.F.P.A. Standard #74~~.

(d) Nothing in this Chapter shall be construed as repealing any ordinance of any city, town or county requiring the submission to the local authorities of plans and specifications and the obtaining of permits, but the power of authority of any such city, town or county to levy or assess any charge for such permit or to make and enforce requirements prerequisite to the issuance of such permit, other than requiring compliance with

this Chapter, shall, as to governmental agencies, be limited as set forth in (a) through (h) of this Section.

(e) No city, town, county, State or other subdivision of government shall charge, assess or collect any fee or other charge for such permit, except the regular and customary inspection fees fixed by ordinances for inspection of the work to be done under such permit, and no other charge, fee or other conditions of any kind under the authority of this Act shall be made a condition of or prerequisite to the obtaining of such permit by any such governmental agency.

(f) Nothing in this Chapter shall prevent or take away from any city, town or county the authority to enact and enforce rules and regulations containing higher standards and requirements than those provided in this Chapter.

(g) No certificate of occupancy shall be issued for any facility for which an installation permit has been issued by any city, town or county in whose jurisdiction the installation was made, unless the authority having jurisdiction has certified that said building is equipped with Smoke Detection equipment complying with this Chapter.

(h) In all geographical areas where no permit is issued by local authorities, the State Fire Marshal shall certify that said building is equipped with Smoke Detection equipment, complying with this Chapter.

[OAR Docket #05-954; filed 5-20-05]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 15. PROTECTIVE CLOTHING AND BREATHING APPARATUS

[OAR Docket #05-955]

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Subchapter 5. Protective Clothing [REVOKED]
265:15-5-1. [REVOKED]
265:15-5-2. [REVOKED]
265:15-5-3. [REVOKED]
265:15-5-4. [REVOKED]
265:15-5-5. [REVOKED]
265:15-5-6. [REVOKED]
Subchapter 7. Self-Contained Breathing Apparatus (SCBA) [REVOKED]
265:15-7-1. [REVOKED]
265:15-7-2. [REVOKED]
265:15-7-3. [REVOKED]
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Chapter 15 is deleted in its entirety.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTEDAS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

265:15-1-1. Purpose [REVOKED]

~~(a) The purpose and intent of this Chapter is to provide guidance and assistance, especially to smaller fire departments when they are preparing specifications and purchase orders for items of protective clothing and/or breathing apparatus. It is further intended to indicate the importance of firefighters having proper protective clothing and approved breathing apparatus, in the interest of health, safety and efficiency.~~

~~(b) This Chapter is not intended to mandate what or when local authorities shall purchase in the way of protective clothing and/or breathing apparatus.~~

~~(c) It is not intended to imply that the state, by promulgating this Chapter, is directing local fire departments to purchase equipment specified in this Chapter.~~

265:15-1-2. Liberal construction [REVOKED]

~~The rules of this Chapter shall be construed liberally to effectuate the purpose and provisions of the rules.~~

SUBCHAPTER 3. [REVOKED]

SUBCHAPTER 5. PROTECTIVE CLOTHING [REVOKED]

265:15-5-1. NFPA standards [REVOKED]

~~The major part of the standards of this Chapter are taken directly from the National Fire Protection Association Standard #1971 "PROTECTIVE CLOTHING FOR STRUCTURAL FIRE FIGHTING," Revised 1981, and the National Fire Protection Association Standard #1972 "STRUCTURAL FIRE FIGHTER HELMETS," Revised 1979.~~

265:15-5-2. Body protection [REVOKED]

~~(a) Body protection should be coordinated with foot and leg protection to ensure full body protection for the wearer. This should be achieved by one of the following methods.~~

~~(1) Wearing a fire resistive coat in combination with fully extended boots as specified by this Section.~~

~~(2) Wearing a fire resistive coat in combination with protective trousers both of which meet the requirements of this Section.~~

~~(b) The performance, construction and testing of fire resistive coats and protective trousers should be at least equivalent to the requirements of the National Fire Protection Association (NFPA) Standard NFPA #1971 "PROTECTIVE CLOTHING FOR STRUCTURAL FIRE FIGHTING," 1981 Revision, with the following permissible variations in those requirements.~~

~~(1) The liner may be detachable, but the shell should not be worn without the liner while performing fire fighting. The liner should not be removed except for cleaning and repair.~~

~~(2) To achieve increased ventilation of trapped body heat, the outer shell and vapor barrier may be penetrated by ventilation openings protected by non- metallic flame resistant material equal to this Chapter.~~

~~(3) Tearing strength of the outer shell should be a minimum of eight pounds in any direction.~~

~~(4) The criteria for flame resistance of the outer shell, including that of trim, after the removal of the test flame, should be: maximum after flame 2.0 seconds, maximum after glow 4.0 seconds, and average char length 6.0 inches.~~

~~(5) The outer shell and lining may char or discolor, but must retain heat resistance and should not separate or melt when placed in a forced air laboratory oven at a temperature of 482° F for a period of three minutes.~~

~~(6) Where fully extended boots are worn, the fire coat should extend to at least two inches above the knee.~~

265:15-5-3. Head protection [REVOKED]

~~(a) The committee recommends the NFPA Standard No. 1972 "Structural Fire Fighters Helmets," 1979 Revision, with the following permissible variations in those requirements.~~

~~(1) Paragraph 4-1.2 Radiant and convective Heat. Sample helmets shall be conditioned by exposing the area to be impacted/penetrated to a radiant heat source. The top, side, front, and back area to be impacted/penetrated is specified in Figure 5-2. The area to be impacted penetrated shall be exposed to an irradiance of .6 + -0.1 W/cm super2 for a length of time determined by exposure of a radiant heat transducer. Remove the heat source and test the helmet. The helmet shall be impacted/penetrated in 15 + -5 seconds after removal from the conditioning environment or the helmet shall be cooled to room temperature, reconditioned and tested as above.~~

~~(2) Paragraph 4-1.2.1.5. The radiant panel shall be introduced in front of the radiometer with its effective radiating surface parallel to the plane tangent to the helmet surface at the center of the impact/penetration site on the helmet surface. The radiant panel shall be adjusted to obtain a stable, uniform irradiance of .6 + -0.1 W/cm super2 over at least a 75-mm (3-in.) diameter circle located on the above plane and centered at the center of impact or penetration. Stability shall be achieved when the irradiance changed by less than 10 percent during a 2-minute period.~~

~~(3) Paragraph 4-1.2.1.6. The test exposure time shall be 2-minutes + -30 seconds.~~

~~(b) Protective eye and face pieces should be provided as accessories. Fire fighters wearing full face pieces of breathing apparatus shall be acceptable as meeting the eye and face protection requirements.~~

265:15-5-4. Ear and neck protection [REVOKED]

~~The committee recommends that protection against burns or injury to the ears and neck should be provided by one or more of the following means, or an equivalent method:~~

~~(1) Helmet configuration.~~

~~(2) Ear flap attachment to helmet.~~

~~(3) Flexible neck protector cape or winter liner worn with helmet.~~

~~(4) Flared neck shield attached to brim of helmet.~~

~~(5) Hood, shroud or snood.~~

265:15-5-5. Foot and leg protection [REVOKED]

~~The committee recommends the following:~~

~~(1) Protective footwear should meet the requirements and specifications of the American National Standard Institute publication, "Men's Safety Toe Footwear," Z41.1-1967 for class 75 footwear. In addition, protective footwear should be water resistant for at least five inches (12.7 cm) above the bottom of the heel and should be equipped with slip-resistant outer soles.~~

~~(2) Foot and leg protection should be achieved by one of the following methods:~~

~~(A) Fully extended boots (3/4 length boots) which meet the requirements of this Section and which provide protection for the legs; or~~

~~(B) Protective shoes or boots which meet the requirements of this Section and which are worn in combination with protective trousers that meet the requirements.~~

~~(3) This minimum standard should be implemented when replacement footwear is ordered.~~

265:15-5-6. Hand protection [REVOKED]

~~The committee recommends the following:~~

~~(1) Hand protection should be achieved by meeting the following requirements:~~

~~(A) Hand protection should consist of protective gloves or a glove system which allows dexterity of hand movement and sense of feel for objects.~~

~~(B) Exterior material of protective gloves should provide resistance against abrasion and puncture.~~

~~(C) Exterior material of gloves should be fire resistant. Materials shall be tested by Federal Test Method 191, method 5903 (1971); the maximum after-flame shall be 2.0 seconds, the maximum after-glow 2.0 seconds, and the maximum char-length 4.0 inches (10.2 cm).~~

~~(D) Protection gloves or glove system should provide thermal insulation. When tested in accordance with National Institute for Occupational Safety and Health (NIOSH) publication, "The Development and Test Methods" (1976), "such thermal insulation shall be sufficient to provide protection when the glove system is exposed to 932° F (500° C) for five seconds at 4 psi (28 KPa) pressure."~~

~~(E) When design of the fire-resistive coat does not otherwise provide protection for the wrist, wristlets of at least 4.0 inches (10.2 cm) in length should be required to protect the wrist area when the arms are extended upward and outward from the body.~~

~~(2) The term "gloves" includes mittens.~~

SUBCHAPTER 7. SELF-CONTAINED BREATHING APPRARTUS (SCBA) [REVOKED]

265:15-7-1. Minimum requirements; testing [REVOKED]

~~(a) Every self-contained breathing apparatus purchased by a state, county or municipal agency should comply with the minimum approval and certification requirements of the National Institute for Occupational Safety and Health (or its successor) with respect to self-contained breathing apparatus for use by fire-fighters.~~

~~(b) Each municipal agency should provide for complete tests of all self-contained breathing apparatus utilized in such agency in conformance with testing procedures recommended by the National Institute for Occupational Safety and Health of American National Standards Institute, Inc. The tests required under this section be performed on each self-contained breathing apparatus at least once each 30 days.~~

265:15-7-2. ANSI standard [REVOKED]

~~The recommended procedures in this Subchapter are taken from the American National Standards Institute, Inc., "Practices for Respiratory Protection for the Fire Service," ANSI Z88.5, New York: ANSI 1981.~~

265:15-7-3. Use [REVOKED]

~~(a) **When and where to use SCBA.** Atmospheres to which a firefighter is exposed, unless free of harmful agents such as excessive heat, dust, vapors or gases and, unless there is sufficient oxygen, may be harmful upon inhalation of such contaminants. Only through an analysis of the emergency environment (fire, chemical spills, overhaul, etc.) could an individual demonstrate that entry into the environment required no respiratory protection. While technology has not provided the fire service with a quick and portable method of analysis for harmful contaminants, technology has developed positive pressure type SCBA that will provide maximum respiratory protection for firefighters. Therefore, SCBA meeting the requirements for this Standard should be used for entry into fire environments, confined spaces, post fire overhaul (salvage) operations, chemical and other hazardous material operations, or for entry into any other environment having an atmosphere containing harmful contaminants or deficient in oxygen.~~

~~(b) **Operating procedures.** Written standard procedures should be developed. These shall include all information and guidance necessary for the proper selection, use, training, and maintenance of SCBA. The procedures should be made available to every firefighter. These procedures should specify that at least two firefighters, each wearing SCBA, should work together and maintain visual or voice communication at all times. The wearer shall not remove his SCBA at any time in the dangerous atmosphere.~~

265:15-7-4. Maintenance [REVOKED]

~~(a) **General procedures.**~~

~~(1) A program for maintenance and care of SCBA used by firefighters shall include the following services:~~

~~(A) Inspection for defects~~

~~(B) Cleaning and sanitizing~~

~~(C) Repair and re-conditioning~~

~~(D) Storage~~

~~(E) Written procedures and record keeping~~

~~(2) Devices shall be promptly and properly maintained to retain their effectiveness and reliability. Defective, or nonfunctioning devices shall not be used until repaired. Defective or nonfunctioning devices shall be tagged "out of service" and removed from fire apparatus until repaired.~~

~~(b) **Written procedures and record keeping.** Written procedures shall be provided to all firefighters and other personnel designated to maintain SCBA used by firefighters. Records shall be kept of inspection dates, findings, test data, repairs made, and spare parts usage for each SCBA.~~

265:15-7-5. Inspection procedures [REVOKED]

~~(a) **Incoming inspection.** Upon receipt, all new SCBA shall be inspected for defects and prepared for use following manufacturer's instruction. Breathing apparatus shall be donned and checked by eye and ear for normal operation.~~

~~(b) **Routine inspections.** SCBA stowed for use shall be inspected at the beginning of the shift for paid department and at least once a week for volunteer departments. This inspection shall include checks of at least the following:~~

~~(1) Breathing gas cylinder gauges shall indicate breathing gas content not less than 80% of the rated pressure stamped on the cylinder. Cylinders containing less than~~

~~80% of the rated pressure shall be either replaced by cylinders having the specified pressure or recharged in accordance with the manufacturer's specifications.~~

~~(2) Any used chemical canister shall be disposed of and replaced in oxygen generating breathing apparatus. Any used disposable CO sub2 absorbers shall be replaced or refilled in closed-circuit apparatus.~~

~~(3) Hose connectors, hoses, facepieces, head bands, harness components, and gauges shall be inspected for defects, paying particular attention to signs of corrosion from decomposition products, water or chemical exposure.~~

~~(4) Alarms shall be checked in accordance with the manufacturer's testing procedures and taken out of service if they do not function properly.~~

~~(5) All SCBA shall be placed on the fire apparatus or returned to storage racks or containers and placed in the ready position if they have passed the inspection. Defective equipment shall be tagged "out of service" until repaired.~~

~~(c) **Inspection after each use.** Each device shall be examined after each use by firefighters. Facepieces and breathing tubes shall be inspected for defective parts. Special examination should be made for torn, worn, or wrinkled exhalation valves, exhalation valve seats, speaking diaphragms, and high pressure hose. Rubber and elastomer parts shall be inspected for pliability and signs of deterioration by stretching the material. Other parts shall be examined for defects. Defective equipment shall be tagged "out of service."~~

~~(d) **Monthly inspection.** In addition to inspections after each use, a more thorough examination and testing procedure shall be performed monthly.~~

~~(e) **SCBA components.**~~

~~(1) Breathing gas cylinders, facepieces and breathing tubes shall be examined as described in (b) and (c) of this Section. Rubber and elastomer parts shall be stretched and manipulated with a massaging action to keep them pliable and prevent them from taking a set during storage.~~

~~(2) Breathing apparatus cylinders and cylinder valves shall be tested for air tightness. For example, if a leak is suspected, apply soapy water to the threaded connection between the valve body and the cylinder, to the pressure gauge and its connection to the valve body, to the safety plug, and to the regulator. Open the cylinder valve and apply soapy water to the valve stem and packing gland nut. Expanding bubbles indicate leaks. Test for leaks between the cylinder and the outlet of the regulator by opening the cylinder and regulator shut off valves. Note whether the air cylinder pressure gauge pressure and the regulator pressure gauge pressures are within 100 pounds of each other. If not, attach a second air cylinder to the regulator to determine whether the first air cylinder pressure gauge or the regulator gauge is in error and send the appropriate one in for maintenance. (For open circuit positive pressure type apparatus, the regulator outlet must first be sealed off.) Close the cylinder valve and observe the regulator pressure gauge. The pressure should not decrease. If the pointer moves toward zero, leaks are present. Locate leaks by applying soapy water to all connections between the cylinder and regulator, to the stem and packing gland nut of the main line and bypass valves, and to the outlet of the regulator.~~

~~(3) The operation of the reducing valve and bypass valve of the regulator shall be tested by donning the device and operating it in a normal manner. If a pressure relief valve vents, if air continues to flow through a demand regulator when the wearer is not inhaling, or if air does not flow freely through the regulator upon inhalation, the regulator needs to be repaired. Any unusual sounds in the regulator, such as whistling, squealing, chattering, slicking or rattling, indicate a possible defect. The facepiece exhalation valve shall also be checked for proper operation. For additional testing procedures, see the manufacturer's instructions.~~

~~(4) After repairs are accomplished as specified in 265:15-7-4 and the device is cleaned as specified in 265:15-7-6, it shall be returned to service.~~

~~(f) **Additional maintenance.** Closed-circuit apparatus may require special additional maintenance in addition to inspections listed in this Section. See the manufacturer's instructions for proper maintenance of these devices.~~

265:15-7-6. Cleaning and sanitizing requirements [REVOKED]

~~(a) **Procedures.**~~

~~(1) Each fire department shall adopt a cleaning and sanitizing procedure. Each firefighter should be trained in the cleaning and sanitizing procedure. Firefighters, or other designated and trained persons shall clean and sanitize each SCBA after its use and upon return to the fire station. In addition to cleaning the entire device, the facepiece and breathing tube shall be sanitized. Manufacturer's instructions as to procedures and which cleaner/sanitizer to use shall be followed. When no manufacturer's instructions are given, the following procedure is recommended:~~

~~(A) Separate facepiece and breathing tube from remainder of device.~~

~~(B) Wash facepiece and breathing tube in cleaner/sanitizer solution. Use a hand brush (not wire), lint free cloth, or sponge to facilitate removal of dirt.~~

~~(C) Rinse completely in clean, warm water.~~

~~(D) Thoroughly air dry in a clean area. Stretch breathing hose sufficiently to drain water trapped in corrugations.~~

~~(E) Clean other parts as recommended by manufacturer.~~

~~(F) Inspect all parts as prescribed.~~

~~(G) Re-assemble device, test and stow on fire apparatus storage rack or container in ready position.~~

~~(2) Cleaner/sanitizer solutions are available that clean effectively and also contain an antibacterial agent. Alternatively, rubber parts may be washed in a liquid detergent solution, then immersed in either: (1) a hypochlorite solution (50 ppm of chlorine) for two minutes; (2) an aqueous iodine solution (50 ppm of iodine) for two minutes, or (3)~~

~~a quaternary ammonium solution (300 ppm of quaternary ammonium compounds in water less than 500 ppm total hardness). To prevent dermatitis and damage to parts, immersion times shall be adhered to, and sanitizers shall be thoroughly rinsed from all parts.~~

~~(3) Strong cleaning and sanitizing agents can damage parts. Vigorous mechanical agitation shall not be used. Alcohol should not be used as a germicide on the rubber parts of an SCBA.~~

~~(4) To avoid damaging rubber and plastic parts, the cleaner, sanitizer and rinsing solution temperatures shall not exceed manufacturer's specifications. When no temperature specifications are given, these temperatures shall be at least 120° F, but shall not exceed 140° F.~~

~~(5) Spare facepieces and breathing rubes shall be available for use in the event a second alarm sounds while the original facepieces and tubes are being cleaned and are drying.~~

~~(b) **Cleaning deposits of toxic chemicals or radioactive materials.** Cleaning of SCBA used by firefighters which have been exposed to toxic chemicals or radioactive materials requires additional special decontamination steps. In these cases contaminated SCBA shall be segregated from all other equipment. Special instructions for proper handling and decontamination from knowledgeable personnel shall be obtained and followed.~~

~~(c) **Inspection and maintenance after cleaning.** After cleaning, each SCBA shall be inspected to determine if it is in proper working condition. If it needs replacement of parts or repairs, it shall be tagged "out of service" and removed from service, or it shall be discarded. Facepieces and corrugated breathing air tubes shall be stretched while inspecting for cracks and defects in the material.~~

~~(d) **Replacement of used items.** Breathing gas cylinders, whose pressure after use (at about 70° F) is below 80% of the pressure stamped on the cylinder, shall be refilled or replaced by cylinders having adequate specified pressure. Used chemical canisters and CO sub2 absorbers shall be refilled or replaced with new ones. Used oxygen generating canisters and CO sub2 absorbers shall be disposed of in accordance with procedures prescribed by their manufacturers.~~

~~(e) **Reassembly.** After cleaning and sanitizing, devices shall be completely reassembled. Breathing apparatus shall be checked for tightness of all connections.~~

~~(f) **Anti-fogging.** After cleaning, anti-fogging agents should be applied, if necessary. (NOTE: Some lenses may be damaged by certain anti-fogging agents — follow manufacturer's instructions.)~~

~~(g) **Storage.** Devices shall be returned to storage racks or containers in the ready position.~~

[OAR Docket #05-955; filed 5-20-05]

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

[OAR Docket #05-956]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
265:25-1-3. [AMENDED]
265:25-1-4. [NEW]
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74 O.S. § 324.11, 75 O.S. § 250 et seq.; State Fire Marshal Commission
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04-1259
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
265:25-1-3 and 265:25-1-4 amend the language to reference updates of state adopted codes and define occupancy groups.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

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 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).~~ Total permit fee is due at the time of submittal.

(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; per square foot over 50,000 - $.05

b. commercial occupancy: per square foot up to 50,000 - $.08; 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

d. sprinkler plan review only: per square foot - ~~$.008~~ $.01

e. fire alarm plan review only: per square foot - ~~$.008~~ $.01

(v) Emergency Plan Review: Emergency request for short notice or emergency plan reviews will be billed at the actual cost of the employees 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 waived or reduced due to plan review charges by local authority.

(x) Marinas:

(I) On site plan review of facility ~~$35.00~~ will be billed at $27.00 per hour. Building Permit - $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

b. Two (2) hour minimum on all reviews.

(II) Check shall be made payable to: Office of the Oklahoma State Fire Marshal

(xii) Electrical Generation Facility Plan Review:

(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 o $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 provisions of this code, shall be subject to an administrative fine as per State Statute 72 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 has been served shall be deemed a separate offense.

(C) Add new paragraph ~~119.7~~ 112.4 "Procedures for Appeal of Condemnation," Procedures to be followed when appealing condemnation shall be those outlines in 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 the NFPA, the provisions of this code shall apply.

~~(E) Section 305.2: Day Care Facilities: Day Care facilities shall be construed and protected in accordance 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 Breakfast 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 modifications:

(A) Add 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 citation per State Statute 72 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 has 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 engineer or architect or a building or fire official with at least two (2) years experience. Not more than two members shall be from the same profession or occupation.~~ 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 Penalities.~~

(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 other flaming or glowing object or substance from any vehicle on a public right-of-way shall be subject to administrative citations assessed as shown in the National Fire Prevention Code, Section F112.3.~~ Add following to 102.7 NFPA 101 2003 Edition is allowed to use 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 following NFPA 101 Life Safety Code 2000 Edition, Section 15.7.1.2.~~

~~(F) Change Section F703.3 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 line of 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 experiences. The Board shall be appointed by the Fire Marshal.~~

(~~C~~ B) Add new wording into 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~~ C) ~~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) Supplement to the International Codes, 2004 Edition.

(~~4~~5) NFPA #10 Portable Fire Extinguishers, ~~1998~~ 2002 Edition.

(~~5~~6) NFPA #13 Installation of Sprinkler Systems, ~~1999~~ 2002 Edition.

(~~6~~7) NFPA #13D Installation of Sprinklers in One and Two-Family Dwellings, ~~1999~~ 2002 Edition.

(~~7~~8) NFPA #13R Sprinkler Systems in Residential Occupancies up to and including Four Stories in Height, ~~1999~~ 2002 Edition.

(~~8~~9) ~~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 of NFPA #13.~~ NFPA #25 Water-Based Fire Protection Systems, 2002 Edition.

(~~9~~10) NFPA #30 Flammable and Combustible Liquids Code, ~~2000~~ 2003 Edition.

(~~10~~11) NFPA #30A Automotive and Marine Service Station Code, ~~2000~~ 2003 Edition.

(~~11~~12) NFPA #54 Natural Fuel Gas Code, ~~1999~~ 2002 Edition.

(~~12~~13) NFPA #72 National Fire Alarm Code, ~~1999~~ 2002 Edition.

(~~13~~14) ~~NFPA #90A Air Conditioning and Ventilating Systems, 1999 Edition.~~ NFPA #90A Air Conditioning and Ventilating Systems, 2002 Edition.

(~~14~~15) NFPA #96 Installation of Equipment for the Removal of Smoke & Grease-Laden Vapors from Commercial Cooking Equipment, ~~1998~~ 2001 Edition.

(~~15~~16) NFPA #101 Life Safety Code, ~~2000~~ 2003 Edition.

(~~16~~17) 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 has 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.

(~~17~~18) NFPA #850 Electric Generating Plants and High Voltage Direct Converter Stations, 2000 Edition.

(~~18~~19) NFPA #1123 Outdoor Display of Fireworks, 2000 Edition.

(~~19~~20) NFPA #1124 Manufacturing, Transportation and Storage of Fireworks, ~~1998~~ 2003 Edition.

(~~20~~21) NFPA #1126 Use of Pyrotechnics before a Proximate Audience, 2001 Edition.

265:25-1-4. Building permits - application - plans and specifications - construction or repair of correctional facilities

The following use groups and occupancies are incorporated by reference:

(1) Educational buildings:
- (A) Schools.
- (B) Academics.
- (C) Nursery schools.
- (D) Kindergartens.
- (E) Child day-care facilities.
- (F) Colleges and universities.

(2) Hospitals:
- (A) Health care facilities:
  - (i) Hospitals.
  - (ii) Nursing homes.
- (B) Residential custodial care facilities:
  - (i) Nurseries.
  - (ii) Homes for the infirm aged.
  - (iii) Mentally retarded care institutions.
  - (iv) Supervisory care facilities.
  - (v) Ambulatory care facilities.

(3) Assembly Halls:
- (A) Armory.
- (B) Assembly hall for 50 or more persons:
  - (i) Theaters.
  - (ii) Motion picture theaters.
  - (iii) Assembly halls.
  - (iv) Auditoriums.
  - (v) Exhibition halls.
  - (vi) Museums.
  - (vii) Libraries.
  - (viii) Dance halls.
  - (ix) Club rooms.
  - (x) Passenger stations and terminals for train depots.

(xi) Recreation piers.
(C) Auditorium.
(D) Bonded warehouse.
(E) Convent.
(F) Convention hall.
(G) Church.
(4) Dormitory for sleeping accommodations:
(A) Motels.
(B) Dormitories.
(C) Rooming houses.
(D) Residential restrained care institutions.
(E) Penal institutions.
(F) Jails.
(G) Correction centers.
(H) Orphanages for age 6 years and older.
(I) Reformitories.
(J) Detention centers.
(5) Factories.
(6) Stadiums.
(A) Coliseums.
(B) Bleachers.
(C) Grandstands.
(7) Warehouses.
(8) Government buildings:
(A) Municipal.
(B) County.
(C) State.
(9) Gymnasium.
(10) Power house

[OAR Docket #05-956; filed 5-20-05]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 30. INSPECTION OF RACE TRACKS

[OAR Docket #05-957]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
265:30-1-1. [AMENDED]
AUTHORITY:
74 O.S. § 324.7 and 3A O.S. § 205.5; State Fire Marshal Commission
DATES:
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Failure of the Legislature to disapprove resulted in approval on May 17, 2005
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May 17, 2005
Effective:
June 25, 2005
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
265:30-1-1 amends the term race tracks to horse race tracks.
CONTACT PERSON:
Jerry Pruner, Assistant State Fire Marshal, 2401 NW 23rd Street, Suite 4, Oklahoma City, OK 73107, 405-522-5005

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

265:30-1-1. Race tracks

The State Fire Marshal Commission shall adopt rules and regulations for conducting fire safety inspections on a regular basis at operating tracks as follows: all operating State licensed horse race tracks shall be inspected annually in compliance with adopted codes/standards.

[OAR Docket #05-957; filed 5-20-05]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 35. FIELD CITATIONS

[OAR Docket #05-958]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
265:35-1-1. [AMENDED]
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74 O.S. § 324.9; State Fire Marshal Commission
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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
265:35-1-1 amends the language to reference updates of state adopted codes.
CONTACT PERSON:
Jerry Pruner, Assistant State Fire Marshal, 2401 NW 23rd Street, Suite 4, Oklahoma City, OK 73107, 405-522-5005

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

265:35-1-1. Field citations

(a) Only the Office of the State Fire Marshal designated employees will be authorized to issue a field citation for violations of the Adopted Codes. The field citation will describe the nature of the violation at the time the citation is issued.

(b) If the alleged violator disagrees with the citation, he/she has the right to request a hearing before the Administrative Hearing Officer. The hearing will be set within ten (10) days of receipt by the Office of the State Fire Marshal of the request for a hearing. If a hearing is held and the person is found to be responsible for the violation, administrative costs of $100.00 shall be assessed, in addition to the fine listed in the ~~BOCA~~ International Building Code, Section 116.4; ~~National~~ International Fire ~~Prevention~~ Code, Section ~~F 112.3~~ 109.3; International Property Maintenance Code, Section PM 106.4~~; and NFPA Life Safety Code 101, Section 1-8~~.

(c) If the alleged violator does not contest the field citation, then the alleged violator will have thirty (30) days from the date the citation is issued in which to remit to the Office of the State Fire Marshal the amount identified on the citation. The checks should be made payable to the Office of the State Fire Marshal.

(d) Failure to pay the amount noted on the citation, or failure to appear and contest the field citation, will result in other enforcement actions and requests for assessment of additional penalties, or administrative assessments as set forth in (B) above.

(e) Fines for field citations shall be assessed as shown in the ~~BOCA~~ International Building Code, Section 116.4; ~~National~~ International Fire ~~Prevention~~ Code, Section ~~F 112.3~~ 109.3; International Property Maintenance Code, Section PM 106.4~~; and NFPA Life Safety Code 101, Section 1-8~~.

(f) Issuance or payment of field citations shall in no way preclude other enforcement proceedings, administrative penalties, fines or order of the Office of the State Fire Marshal if the alleged violator fails to correct a violation in a reasonable manner, as determined by the Office of the State Fire Marshal.

(g) Proceeds from payment of field citations shall be deposited into the Office of the State Fire Marshal revolving fund.

[OAR Docket #05-958; filed 5-20-05]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #05-938]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 11. Finance
Part 8. General Provisions
340:2-11-91. [AMENDED]
Part 13. Electronic Benefit Disbursement [NEW]
340:2-11-150. [NEW]
(Reference APA WF 05-02)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Sections 250 et. seq. of Title 75 of the Oklahoma Statutes; Section 2-718 of Title 12 A of the Oklahoma Statues; and Section 213 of Title 15 of the Oklahoma Statues.
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July 1, 2005
SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Finance Division rules are revised to: (1) move rules regarding child care payments and liquidated damages to a new Section; (2) amend rules regarding child care payments and increase liquidated damages; and (3) reflect current organizational titles.
CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, DHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 11. FINANCE

PART 8. GENERAL PROVISIONS

340:2-11-91. Claims Audit ~~Unit~~

~~The~~ Oklahoma Department of Human Services (OKDHS), ~~Office of~~ Finance Division ~~Claims Audit Unit~~ pre-audits and prepares for payment all claims paid from ~~Agency~~ ~~OKDHS~~ administrative funds. These claims are also pre-audited by the Office of State Finance (OSF). Payment warrants are generated by the Office of State Treasurer. ~~The Claims Audit Unit~~ Finance Division also pre-audits and processes several claim types where the payment warrants are generated within ~~the Agency~~ OKDHS with the approval of ~~the Office of State Finance~~ OSF.

(1) **Major claim classifications.**

(A) **Encumbered.** Encumbered claims are submitted for the purchase of goods, wares, and merchandise, or contractual services, and must be charged against an encumbrance document.

(B) **Unencumbered.** Unencumbered claims are submitted for travel reimbursement, refunds, indemnity payments, loans, interest and principal, and other like payments, the nature of which is not payment for the purchase of goods, wares, merchandise, or services.

(2) **Types of claims processed.**

(A) **Administrative.** Administrative claims processed include those for the acquisition of various goods and services, such as food purchases, rental contracts, repairs and janitorial services, workers' compensation, unemployment compensation, and other miscellaneous goods and services that are encumbered on authorization for purchase (AFP) orders. Many administrative acquisitions are encumbered on contracts.

(B) **Telephone and utilities.** Payment claims are processed for telephone and utility services at ~~Agency~~ OKDHS facilities. These acquisitions are encumbered on authority orders.

(C) **Gasoline.** Claims are processed for purchases of automobile gasoline in state-owned vehicles operated by ~~Agency~~ OKDHS employees.

(D) **Allowances.** Claims are processed that provide spending allowances to ~~custody~~ clients in OKDHS custody.

(E) **Travel reimbursement.** Upon proper approval, travel reimbursement claims are processed pursuant to the Oklahoma Travel Reimbursement Act. Payments are made to employees, non-employees, and clients.

(F) **Bus transportation.** Payments are made for public transportation of clients on ~~Agency approved~~ trips approved by OKDHS. Public transportation is typically used to enable clients to obtain medical services~~,~~ and to enable ~~custody~~ clients in OKDHS custody to visit relatives.

~~(G) **Child care.** Payments are made on behalf of Agency clients to providers of child care services. The services and payments are supported by provider contracts on file with the Family Support Services Division (FSSD). These contracts are not on file with the Office of State Finance. However, encumbrance documents are on file with the Office of State Finance. Warrants are written within the Agency. Payment information is reported daily to the Office of State Finance in accordance with Section 41.21 of Title 62 of the Oklahoma Statutes. In addition to overpayments and contract cancellations, there are also liquidated damages OKDHS can impose if certain rules in the contract are violated. The child care provider never: is in possession of client's Access Oklahoma electronic benefit transfer (EBT) card; swipes the card through the point of service (POS) device; or knows the client's personal identification number. Actions such as these are serious violations of the provider agreement with DHS and may lead to provider contract cancellation.~~

~~(i) **Overpayments in amounts of $500.00 or less - child not in care.** When the Office of Inspector General (OIG) determines an EBT card has been swiped through the POS device by a child care provider and a claim(s) submitted totals $500.00 or less when a child(ren) is **not** in care, the provider violation results in an overpayment.~~

~~(ii) **Overpayments in amounts over $500.00 - child not in care.** When OIG determines an EBT card has been swiped through the POS device by a child care provider and a claim(s) submitted totals OVER $500.00 when a child(ren) is **not** in care, the provider violation results in an overpayment and the possibility of felony fraud charges against the provider.~~

~~(iii) **Liquidated damages.** It is prohibited for a child care provider to swipe an EBT card through the POS device, even with the parent's permission whether a child(ren) is or is not actually in the care of the provider during the claim time period. The DHS Office of Finance assesses liquidated damages on the current month's payment(s) when a violation occurs. The amount of the liquidated damages percentage increases with each violation that is assessed in light of the anticipated or actual harm caused by the breach of contract and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. [12A O.S. § 2-718] When OIG determines an EBT card has been swiped through the POS device by a child care provider and a claim(s) submitted the provider's:~~

~~(I) first violation results in liquidated damages of $2\frac{1}{2}$% of the total current month's claim;~~

~~(II) second violation results in liquidated damages of 5% of the total current month's claim;~~

~~(III) third violation results in liquidated damages of $7\frac{1}{2}$% of the total current month's claim; and~~

~~(IV) fourth violation results in liquidated damages of 10% of the total current month's~~

~~claim and recommendation to FSSD for cancellation of the provider's contract.~~

(~~H~~G) **Foster care.** Payments are made to foster parents for services provided to ~~Agency~~ OKDHS clients.

(i) The services and payments are supported by contracts with the providers and the provider contracts are on file with the Children and Family Services Division (CFSD) and ~~the DHS~~ OKDHS Office Support Services Division (OSSD) Contracts and Purchasing Unit. The Contracts and Purchasing Unit approves the contract via issuance of a unique contract number assigned by the Finance Division automated system upon review of the contract.

(ii) Warrants are issued within ~~the Agency~~ OKDHS. Payment information is reported daily to ~~the Office of State Finance~~ OSF in accordance with Section 41.21 of Title 62 of the Oklahoma Statutes.

(~~I~~H) **Adoption subsidies.** Financial subsidies are paid to parents of certain adopted children.

(i) The services and payments are supported by contracts with the providers and the provider contracts are on file with the Children and Family Services Division (CFSD). The OSSD Contracts and Purchasing Unit approves the contract via issuance of a unique contract number assigned by the Finance Division automated system upon review.

(ii) Warrants are written within ~~the Agency~~ OKDHS. Payment information is reported daily to ~~the Office of State Finance~~ OSF in accordance with Section 41.21 of Title 62 of the Oklahoma Statutes.

(~~J~~I) **Food stamp job search.** Payments are made to eligible food stamp recipients to assist them in finding gainful employment. These recipients are not eligible for Temporary Assistance for Needy Families. Client recipient expectations and ~~Agency~~ OKDHS payment obligations are specified in client participation agreements on file in county offices. Warrants are issued within ~~the Agency~~ OKDHS. Payment information is reported daily to ~~the Office of State Finance~~ OSF.

(~~K~~J) **Litigation related.** Payments are made to individual third parties as a result of actual or threatened litigation.

(i) **Court ordered payments.** Payments are made to individual claimants in accordance with the direct orders of courts of competent jurisdiction.

(ii) **Settlement agreements.** The resolution of a dispute between ~~DHS~~ OKDHS and a vendor, typically regarding the delivery of goods or services to ~~DHS~~ OKDHS, may result in an individual agreement whereby ~~DHS~~ OKDHS compensates the vendor. Each agreement is documented and approved by the ~~General Counsel~~ Legal Division.

(3) **Encumbrances.** State statutes require that all agreements entered into by an agency for the purchase of goods, wares, merchandise, or contractual services are evidenced by written contracts or purchase orders and transmitted to ~~the Office of State Finance~~ OSF. In the case of Department of Central Services (DCS), Central Purchasing Division issued contracts or purchase orders, requisitions for the written contracts or purchase orders are submitted to the Central Purchasing Division; the contract or purchase order information is subsequently electronically transmitted to ~~the Office of State Finance~~ OSF.

(A) **Payment authorization.** The Director of State Finance never authorizes payment of claims for such purchases unless the claim is supported by one of the encumbrance documents. Supporting encumbrance documents are:

(i) contracts or purchase orders issued by DCS.

(ii) institutional or departmental purchase orders or contracts, sometimes called agency-issued orders.

(iii) authorizations for purchases, sometimes called AFPs, or authority orders.

(iv) agreements on file in ~~DHS~~ OKDHS Contracts and Purchasing Unit, valid for contractual services of a professional nature provided by a governmental agency.

(B) **Special encumbrances provisions for ~~DHS~~ OKDHS.** Section 41.21(D) of Title 62 of the Oklahoma Statutes authorizes ~~DHS~~ OKDHS to maintain an encumbrance and pre-audit system for settlement of claims relating to public assistance, social service benefits, and medical benefits to or for persons eligible under applicable federal laws and regulations, Oklahoma statutes, and policies established by the Oklahoma Commission for Human Services. Each type of payment made under this procedure is approved by the Director of State Finance. The Director of State Finance is provided a daily report of the dollar amount of claims settled and checks or warrants written, the dollar amount of checks or warrants canceled, and the dollar amount of checks or warrants canceled by statute. Encumbrance and pre-audit provisions do not exempt ~~the Agency~~ OKDHS from the Central Purchasing Act mandates for a current contract between the two parties.

(C) **Encumbrance documents.**

(i) **Purchase orders.** All contractual services, supplies, equipment, or materials that are acquired through requisitions submitted to DCS, Central Purchasing Division, are encumbered by purchase orders prepared by DCS. These purchase orders are also delivered to ~~the Agency~~ OKDHS.

(ii) **~~Agency~~ OKDHS issued purchase orders.** ~~Agency~~ OKDHS issued purchase orders are submitted directly to ~~the Office of State Finance~~

OSF on OSF Form 3C. Acquisitions on these orders are exempt from the Central Purchasing Act, or the type of acquisition is exempt from the Act, or written authorization is obtained from DCS, Central Purchasing Division for these orders to be directly submitted to ~~the Office of State Finance~~ OSF. Payments arising from litigation are encumbered through this mechanism. Professional services provided by other governmental agencies are supported by signed, inter-agency contractual agreements on file in ~~DHS~~ OKDHS Contracts and Purchasing Unit.

(iii) **Authorization for purchase.** An authorization for purchase document is also known as an AFP or an authority order. Acquisitions are encumbered on OSF Form 3C. When approved and encumbered by the Director of State Finance, these encumbrance documents permit an agency to make types of purchases which are:

(I) exempt from the Central Purchasing Act;

(II) not subject to the Competitive Bid Act;

(III) permitted under grant of authority from DCS; and

(IV) not subject to competitive bid requirements.

(iv) **DCS orders.** Contracts are entered into by DCS with business and nonprofit entities through the various approved contract methods. If appropriate, encumbrances are established at ~~the Office of State Finance~~ OSF upon award by DCS. Other methods are fixed rate, sole source, statutory authority, and similar methods. Also, non-budget awards are not encumbered individually at ~~the Office of State Finance~~ OSF upon award.

(v) **Non-encumbered contracts.** An agreement between ~~the Agency~~ OKDHS and a vendor, whereby the vendor agrees to sell to ~~the Agency~~ OKDHS during a fixed period of time an undetermined quantity of goods or services at a fixed unit price is known as a non-encumbered contract. These contracts do not guarantee the vendor a certain dollar volume of business from ~~the Agency~~ OKDHS. They are established by ~~DHS~~ OKDHS, Contracts and Purchasing Unit. Encumbrances are established using CP Form 2 requisitioning purchases through the DCS, Central Purchasing Division, or by submitting OSF Form 3C to ~~the Office of State Finance~~ OSF for exempt purchases at the direction of ~~DHS~~ OKDHS, Contracts and Purchasing Unit.

(vi) **Non-binding encumbered contracts.** Non-binding term contracts are also known as~~,~~ term contracts. They are encumbered based on estimates of the quantity of goods, or volume of services, to be purchased during the contract period. Requests for increases require justification documentation. Encumbrances are submitted directly to ~~the Office of State Finance~~ OSF using OSF Form 3C.

(4) **Requirements.**

(A) **Data entry responsibility.** All pertinent data for each claim that meets payment requirements is input to the Finance Information Systems Unit computer either by Data Entry Unit personnel, or the claims processor or reviewer that pre-audited the claim.

(B) **Requirements for ~~the Office of State Finance~~ OSF submissions.** For each claim submitted to ~~the Office of State Finance~~ OSF for additional pre-audit, a facsimile of OSF Form 15A, Claim Jacket Form, ~~or OSF Form 15B, Inter-or Intra-Agency Payment,~~ is computer-generated. Submitted documentation includes supporting invoices and approvals. Submitted documentation may also include OSF Form 3, Notarized Claim Form, OSF Form 9, Imprest Cash Form, or OSF Form 19, Travel Voucher, when appropriate.

(C) **Approvals.** All claims or invoices processed by ~~DHS~~ OKDHS, ~~Office of~~ Finance Division ~~Claims Audit Unit,~~ must bear the approval signature of ~~an individual~~ a person authorized to approve the corresponding payments. Family Support Services Division child care payments and invoices for utility and telephone services at locations administered by ~~DHS~~ OKDHS are approved within the ~~Office of~~ Finance Division.

(D) **Items purchased.** Each claim or invoice submitted to ~~the Office of Finance, Claims Audit Unit~~ Finance Division for payment must clearly identify the goods or services purchased, the prices and extended prices of the items, the total amount to be paid, and the delivery date of the items. The authorizing contract number is also referenced, if appropriate. Prices charged must conform to contracted prices. Acquisitions must conform to all terms of the corresponding contract or agreement. Missing information may cause non-payment or payment delays.

(E) **Vendor information.** Each claim or invoice submitted to ~~the Office of Finance, Claims Audit Unit~~ Finance Division for payment must bear the applicable vendor name, address, and the address to which payment is mailed. ~~The Claims Audit Unit~~ Finance Division must have the applicable vendor name, address, and the address to which payment is to be mailed. ~~The Claims Audit Unit~~ Finance Division must have the applicable vendor federal identification number (FIN) on file before a claim is processed for payment. The FIN is disclosed with the submitted vendor invoice or claim, or alternately, it is obtained from the claim-referenced authorization contract if the claim is made pursuant to a written contract.

(F) **Employee reimbursement.** ~~Department of Human Services~~ OKDHS employees and officials are reimbursed for miscellaneous emergency purchases as defined in OAC 340:2-13-53.

(i) Each reimbursement request is submitted to ~~the Office of~~ Finance Division on a completed Form ADM-12, ~~(~~Claim Form~~)~~, signed by the employee, approving official, and notarized. In all cases the employee first attempts to have the vendor invoice ~~DHS~~ OKDHS. If this proves to be impossible and the employee must make payment, the declaration statement must appear on the Form ADM-12: "I certify that an emergency existed and that the vendor was unable to invoice the ~~Department~~ Oklahoma Department of Human Services." Payments for client birth certificates need not have the declaration. Employees are not reimbursed for items purchased during non-emergency situations unless prior authorization is issued by ~~the Office of~~ Finance Division.

(ii) Proof of payment is attached to the reimbursement Form ADM-12. Proof of payment is evidenced by:

(I) cash payment on the sales receipt;

(II) the employee's canceled check;

(III) amount charged to the employee's or official's credit card, charge card impressed receipt; or

(IV) an annotation from the vendor indicating that the acquisition has been paid for in full.

(iii) Each request for reimbursement exceeding $100~~.00~~ is accompanied by a justification memorandum signed by the appropriate ~~associate director~~ division administrator.

(5) **Warrant generation.** Applicable data elements for each claim are input to the Finance Information Systems Unit computer. The Finance Information Systems Unit generates numbered claims jackets for each claim destined to be processed through ~~the Office of State Finance~~ OSF. The claims and supporting documentation are microfilmed, bundled, and delivered to ~~the Office of State Finance~~ OSF with a magnetic tape containing the applicable data entry information. Payment warrants are delivered to ~~DHS~~ OKDHS, ~~Office of~~ Finance Division, Electronic Benefits and Disbursements Unit from the Office of State Treasurer~~'s office~~. Warrants generated within ~~the Department~~ OKDHS are delivered to the Electronic Benefits and Disbursements Unit.

(6) **Lapsed funds.** Legislative mandates typically require that the ~~Department's~~ OKDHS annual appropriation lapses 30 months from the effective date of the appropriation. Therefore, all claims against appropriated funds, including vendor claims for goods or services, must be submitted and processed within 30 months of the effective appropriation date of the fiscal appropriation to which the goods or services are to be charged.

PART 13. ELECTRONIC BENEFIT DISBURSEMENT

340:2-11-150. Child care payments

(a) **Payments.** Payments are made on behalf of Oklahoma Department of Human Services (OKDHS) clients to providers of child care services per OAC 340:40-13-5. The services and payments are supported by provider contracts on file with the Family Support Services Division (FSSD).

(b) **Overpayments.** Provider overpayments that occur as a result of agency or provider error are described in OAC 340:40-15-1. Any overpayment over $500 when the child was not in care may result in felony fraud charges against the provider.

(c) **Collection of overpayments.** Finance Division recoups all funds associated with overpayments in equal installments, not less than 10% of the overpayment, per month until the overpayment is satisfied, except when the viability of the child care facility is in question.

(1) Child care facilities whose continued viability is at risk due to collection of the overpayment is reviewed by the Finance Division for other repayment plans.

(2) Repayment plans do not exceed 12 months.

(3) A child care provider whose contract is subsequently cancelled due to an Office of Inspector General (OIG) investigation has all available funds withheld to satisfy any remaining overpayments.

(d) **Liquidated damages.**

(1) OKDHS can impose liquidated damages if certain rules in the contract are violated. Specifically, the child care provider:

(A) is in possession of a client's Access Oklahoma electronic benefit transfer (EBT) card;

(B) swipes the EBT card through the point of service (POS) device; or

(C) knows the client's EBT personal identification number (PIN).

(2) The percentage of liquidated damages increases with each violation that is assessed per Section 2-718 of Title 12A of the Oklahoma Statutes.

(3) When OIG determines an EBT card was in the possession of or swiped through the POS device by a child care provider, the:

(A) first violation results in liquidated damages of 10% of the total payment(s) during the month the violation occurred;

(B) second violation results in liquidated damages of 20% of the total payment(s) during the month the violation occurred;

(C) third violation results in liquidated damages of 30% of the total payment(s) during the month the violation occurred; and recommendation to FSSD for cancellation of the provider's contract.

(e) **Collection of liquidated damages.** Finance Division recoups all funds associated with liquidated damages as described in (1) and (2) of this subsection.

(1) The full amount of liquidated damages is applied against the first available payment and any sequent payments until the amount is collected.

(2) If the contract is subsequently cancelled due to an OIG investigation, all available funds are withheld to satisfy any remaining overpayments.

[OAR Docket #05-938; filed 5-20-05]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 40. CHILD CARE SERVICES

[OAR Docket #05-939]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 13. Child Care Rates and Provider Issues
340:40-13-5. [AMENDED]
Subchapter 15. Overpayments
340:40-15-1. [AMENDED]
(Reference APA WF 04-09 and 05-01)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law (P.L.) 104-193; the Balanced Budget Act of 1997, P.L. 105-33; and 45 Code of Federal Regulations (CFR) Parts 98 and 99.
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Subchapter 13. Child Care Rates and Provider Issues
340:40-13-5. [AMENDED]
(Reference APA WF 04-09)
Gubernatorial approval:
July 22, 2004
Register publication:
21 Ok Reg 3159
Docket number:
04-1212
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Proposed Child Care Services rules are revised to: (1) change rules regarding when child care contracts are required, the criteria that must be met before a contract can be signed and the notification procedure when a contract is being cancelled; (2) no longer contract with out-of-state child care providers; (3) include current procedures for completing overpayment referrals for clients and providers; and (4) clarify who is responsible for establishing these overpayments, and when overpayments are established against clients and providers.

CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, DHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 13. CHILD CARE RATES AND PROVIDER ISSUES

340:40-13-5. Child care provider contracts

(a) **Criteria.** In order for the Oklahoma Department of Human Services (OKDHS) to purchase out-of-home child care services, a provider must have a current Form CCDF-1-E, Child Care Provider Contract, signed by both the owner of the facility and the OKDHS Director or designee on file with the Family Support Services Division (FSSD) Child Care Section. OKDHS assures all persons that OKDHS or any provider of contractual services, does not take into account a person's race, color, religion, sex, national origin, or disability in the selection or eligibility of individuals to receive services and in the manner of providing them. Age may be a factor only to the extent that certain services are designed for a particular age group.

(1) Written complaints of noncompliance with the assurance in (a) of this Section may be made to the Director of OKDHS or to the Secretary of Health and Human Services, Washington, D.C. 20201.

(2) County Division of Child Care (DCC) licensing staff provide initial information about contracts for child care facilities. The provider contacts the county child care liaison to ~~obtain an initial~~ request a contract ~~form~~.

(3) Child care contracts are valid for a maximum of one year. They are automatically renewed for successive one year terms, under the same terms and conditions, unless either the child care provider or OKDHS gives written notice of its intent not to renew to the other party at least 30 calendar days prior to the expiration of the ~~previous~~ current term.

(b) **Procedure for obtaining child care contracts.** OKDHS ~~enters into~~ contracts only with licensed~~,~~ or permitted out-of-home providers. A child care center provider requesting an initial contract must be licensed or permitted and have a one star plus, two star, or three star status before ~~a contract is submitted~~ signing Form CCDF-1-E. A one star child care home provider requesting an initial contract must be licensed; not on permit, before signing Form CCDF-1-E. A child care home provider at one star plus, two star, or three star status requesting an initial contract must be licensed or permitted before signing Form CCDF-1-E. The procedures in (1) through (~~6~~8) of this subsection are used to obtain child care contracts.

(1) DCC licensing staff give the child care provider a promotional flyer containing information about contracting with OKDHS. The provider is instructed to contact

the county child care liaison for training and review of the contracting requirements.

(2) When contacted by the ~~child care provider~~ owner or director of a child care facility, the county child care liaison arranges an appointment at which time the ~~provider~~ owner or director is required to review the "Contracting with DHS for Child Care Subsidy Payments Handbook" and watch a training video. The ~~provider~~ owner or director must fulfill this training requirement before an initial contract ~~may be~~ is submitted.

(3) If the provider wishes to contract with OKDHS following this training, the county child care liaison provides Form CCDF-1-E ~~and the Statement of Understanding~~ to the child care provider after typing all identifying information on the contract. The child care liaison explains that the earliest date a contract is valid is the date of approval by the OKDHS Director or designee.

(4) ~~The provider completes all identifying information on Form CCDF-1-E according to the instructions on the form. In the presence of a notary, the provider signs one copy of~~ The owner and director sign the contract, ~~has~~ have it notarized, and ~~returns~~ return the contract to the county child care liaison ~~along with the Statement of Understanding~~. Proof of ownership of the child care business is attached.

(5) The child care liaison attaches Form CCDF-1-E and proof of ownership to the Contract Checklist and sends them to the FSSD Child Care Section for approval or denial. If the DCC licensing staff provide the county child care liaison with a copy of the provider's Oklahoma State Bureau of Investigation background investigation report, he or she attaches that document ~~is also attached~~ to the contract.

(6) If the child care provider signs Form CCDF-1-E but fails to complete other contracting requirements within 30 calendar days, the child care liaison attaches Form CCDF-1-E to the Contract Checklist and sends it to the FSSD Child Care Section for denial.

(~~5~~7) If approved, the FSSD Child Care Section ~~assigns~~ staff assign a contract number and send a copy of the signed contract back to the provider. ~~Information from the contract is entered on the Day Care Contract File which is updated and maintained by the FSSD Child Care Section.~~

(~~6~~8) If denied, the FSSD Child Care Section returns the original contract to the provider with a letter advising the provider OKDHS has decided it is in the best interest of OKDHS not to contract with the provider.

(c) **Out-of-state providers.** ~~In some situations it is necessary to contract with a child care facility in another state because a client resides in Oklahoma near the border of another state and elects to use an out-of-state facility. When this occurs, the county child care liaison contacts DCC licensing staff and requests verification of the licensed status of the facility. DCC licensing staff contacts the out-of-state agency responsible for licensing. Prior to an out-of-state child care home provider signing Form CCDF-1-E, DCC licensing staff must determine whether the home is under a license or permit. If the home provider is under permit, a contract cannot be signed until DCC licensing staff determine the home meets OKDHS criteria for a one star plus, two star, or three star status. If the child care home is licensed, the provider may sign Form CCDF-1-E. Prior to an out-of-state child care center owner signing Form CCDF-1-E, DCC licensing staff must determine the facility meets OKDHS criteria for a one star plus, two star, or three star status. The same procedures apply as in contracting with in-state facilities except that a contract is renewed with an out-of-state facility only if services are being provided to an OKDHS client when the contract expires.~~ OKDHS does not contract with out-of-state child care providers.

(d) **Changes ~~in child care contract status~~ that must be reported.** ~~A new contract is required when the facility changes ownership or has been closed and subsequently reapplies for a child care license. This includes those instances when a child care facility changes status, such as changing from a home to a center or from a center to a home.~~ Form CCDF-1-E advises child care providers to report to the FSSD Child Care Section the anticipated sale of the business, change of legal business entity, change of location, or plan to stop caring for children no less than 30 calendar days prior to the change occurring. The training video does not need to be viewed as long as the person who signs as owner on the new contract remains the same and he or she already viewed the most recent training video. When the provider fails to report the anticipated change timely and a new contract is needed, a gap may occur in the child care subsidy payment to the provider. A new contract is required in the situations included in (1) through (4).

(1) **Change in facility status.** A change in facility status occurs when a facility changes from a home to a center or a center to a home. A change from a family child care home to a large family child care home does not require a new contract as long as the same license number is used.

(~~1~~A) When the status of a child care home changes to ~~that of~~ a child care center, ~~it must meet~~ a new license application is required. Prior to signing a new contract, the provider must be issued a license or permit at one star plus, two star, or three star status ~~before a new contract is submitted~~.

~~(2) A change from a family child care home to a large family child care home does not require a new contract, even though a new application is completed, as long as the same license number is used.~~

(B) When the status of a child care center changes to a child care home, a new license application is required. Prior to signing a new contract, the provider must be issued a license or permit at one star plus, two star, or three star status, or be licensed; not permitted, at one star status.

(~~3~~2) **Change in ownership for a child care center.** ~~If a child care center is sold or ownership changes, the~~ The new owner must meet or be anticipated by DCC licensing staff to meet one star plus, two star, or three star status within 30 calendar days before a new contract is signed and submitted to the FSSD Child Care Section.

(~~e~~3) **Change of ~~address~~ location.** ~~When the ownership remains the same and the business moves to a new building, the provider must complete a new contract if the facility is required to obtain a new license. If a new contract is required for a one star child care center, it can be approved if a child(ren) already receiving a child care subsidy at the old location wishes to move to the new location.~~

(A) A child care center provider must sign a new license application when the facility changes location. They must wait to sign a new contract until a license or permit is approved at the new location. Center providers approved at one star status at their new location may only sign a new contract if a child(ren) already receiving a child care subsidy at the old location wishes to move to the new location.

(B) A child care home provider is not required to sign a new license application when the home location changes. A new contract is signed agreeing to care for children receiving a child care subsidy only at the new location. The provider maintains the same contract number.

(4) **Change of legal business entity.** The child care provider must complete a new license application and contract when he or she changes his or her legal business entity. Examples of changing legal business entity include changing from a sole proprietor to a corporation, partnership, or limited liability company. The provider must provide proof of ownership.

(A) A child care center provider who was at one star plus, two star, or three star status under their previous legal business entity can sign and submit Form CCDF-1-E to the FSSD Child Care Section while the new license application is pending. A child care center provider who was at one star status under the previous legal business entity cannot sign a new contract until attaining one star plus, two star, or three star status even if a child(ren) already receiving a child care subsidy is currently in care under their previous legal business entity.

(B) Child care home providers who were at one star plus, two star, or three star status under their previous legal business entity can sign and submit Form CCDF-1-E to the FSSD Child Care Section while the new license application is pending. Child care home providers who were at one star status may only sign a new contract once they are licensed; they cannot be on permit.

(e) **Providing care at a different site than is authorized.** When the child care provider signs the child care contract, he or she agrees to provide care only at the physical address designated in the contract. In certain circumstances, a child care center provider who owns more than one child care center may move children eligible for a child care subsidy to an alternate center after he or she receives prior approval in writing from the FSSD Child Care Section authorizing him or her to move the children and the point-of-service (POS) machine to the alternate site for a designated period of time. FSSD Child Care Section staff give approval when:

(1) the alternate site is owned by the same owner or legal business entity;

(2) the alternate site is licensed and contracted at the same star level;

(3) there is a legitimate business reason for providing care in another location; and

(4) the provider advises FSSD Child Care Section staff how he or she is ensuring that parents are aware their children are being cared for at a difference location.

(f) **Renewal of child care contracts.** Child care provider contracts are effective July 1 through June 30 of each year. They are automatically renewed for successive one year terms, under the same terms and conditions, unless either the provider or OKDHS gives written notice of its intent not to renew to the other party at least 30 calendar days prior to the expiration of the previous term. A contract is not renewed when a provider fails to attend required contract training or to provide any other information or documents requested during the contract renewal period.

(g) **Contract violations.** The worker or the county child care liaison investigates all reports of contract violations by providers. The worker or the county child care liaison discusses and participates in planning with the provider to eliminate any apparent violation. The provider is informed that, under the terms of the agreement with OKDHS, all terms of the contract must be met and ~~that~~ ten calendar days are given to correct any violation. If at the end of the ten-day period the provider fails to correct the violation, the worker documents and reports the continued violation to his or her supervisor, who is then responsible for submitting the information by memorandum to FSSD Child Care Section for a determination of further action. Examples of contract violations include, but are not limited to:

(1) discriminating against persons seeking services either by charging a discriminatory rate or violating a person's rights as listed in the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973 as amended, ~~and~~ or the Americans with Disabilities Act of 1990;

(2) failing to post all of the facility's rates and fees;

(3) failing to inform OKDHS of a change in ~~address~~ facility status, location, legal business entity, or ownership of the business at least 30 calendar days in advance of the change;

(4) charging a client receiving subsidized child care more than the OKDHS rate for days and hours within the client's plan of service;

(5) moving the child(ren) from the agreed upon location ~~listed~~ shown in the contract for reasons other than field trips and claiming for services at this other location without prior written approval from the FSSD Child Care Section;

(6) subcontracting services to another provider without written prior approval from OKDHS;

(7) refusing unlimited access by a parent or caretaker to the facility during the hours of operation;

~~(8) submitting fraudulent claims and documentation of care to OKDHS;~~

(~~9~~8) failing to maintain a drug-free workplace; ~~and~~

(~~10~~9) refusing to make available to OKDHS within an hour of request by any OKDHS representative all business records ~~which~~ that document proper fiscal and program management by the provider ~~within an hour of request by any OKDHS representative.~~;

(10) failing to advise and provide OKDHS a completed copy of any agreement the provider enters into within 30 calendar days of entering into such collaboration or agreement; and

(11) claiming and/or receiving payment from OKDHS for the same hours of care the provider receives payment from another state or federal funding source.

(h) **Additional electronic benefit transfer (EBT) contract violations.** Examples of EBT contract violations by a provider include:

(1) filing manual claims when they could be filed through the EBT system;

(2) possessing or swiping a client's EBT card;

(3) knowing a client's personal information number (PIN);

(4) failing to ensure accurate time and attendance information was recorded by the parent or caretaker on the ~~point of service (~~POS~~)~~ machine. The attendance, not time, of a child(ren) approved for the part-time or blended authorization must be recorded during the school year by the parent or caretaker; ~~and~~

(5) moving the POS machine and allowing parents to record time and attendance at a different location than agreed upon in the contract without receiving prior written approval from the FSSD Child Care Section;

(6) breaching the contract signed by the provider with the OKDHS EBT contractor; and

(~~5~~7) not maintaining written records for any manual claims filed ~~for at least~~ during the last three years.

(i) **Cancellation of child care provider contracts.** ~~The~~ FSSD Child Care Section staff initiates the cancellation ~~is initiated by the FSSD Child Care Section~~ by issuing a notice to the provider by certified mail and regular mail at the same time. ~~If a provider refuses to accept the certified letter, the notice is remailed by regular mail allowing three calendar days for receipt.~~

(1) Contracts may be canceled:

(A) with cause. The effective date of cancellation is ~~ten~~ 13 calendar days after ~~the facility's receipt of~~ FSSD staff mail the notice. ~~Generally, three calendar days are sufficient mailing time.~~ This allows three calendar days for mailing time. The notice must contain a reference to the grounds for cancellation including the specific contract provision(s) that was violated; or

(B) without cause. The effective date of cancellation is ~~30~~ 33 calendar days after ~~the facility's receipt of~~ FSSD staff mail the notice. This allows three calendar days for mailing time.

(2) The FSSD Child Care Section communicates with the county child care liaison ~~whenever~~ when a contract is being canceled to ensure that county staff have sufficient time to plan with clients to find another facility, if necessary. When it is necessary to cancel authorizations with a child care provider, the provider is notified by use of a computer-generated notice. FSSD Child Care Section staff closes all authorizations with the provider whose contract is canceled.

(3) Copies of all correspondence regarding contract cancellation proceedings ~~which~~ that are not initiated by the provider are routed by the FSSD Child Care Section to ~~the~~:

(A) DCC, licensing coordinator;

(B) Legal Division;

(C) Finance Division;

(D) Office of ~~the~~ Inspector General;

(E) FSSD Overpayment Section;

(F) Commodity Distribution Unit;

(G) the Child Care Resource and Referral Agency serving the area where the provider is located;

(H) Department of Education, Child Care Food Program;

(I) Cherokee Nation, if serving the area where the provider is located;

(J) Creek Nation, if serving the area where the provider is located;

(K) Choctaw Nation, if serving the area where the provider is located;

(L) ~~the~~ Field Operations Division area office where the provider is located; and

(M) the local county director, county child care liaison, DCC licensing supervisor, and DCC licensing staff where the provider is located.

(4) Copies of all correspondence regarding contract cancellation proceedings ~~which~~ that are initiated by the provider are routed by the FSSD Child Care Section to ~~the~~:

(A) Finance Division; and

(B) local county director, county child care liaison, DCC licensing supervisor, and DCC licensing staff where the provider is located.

SUBCHAPTER 15. OVERPAYMENTS

340:40-15-1. Overpayments

(a) **Determinations.** Overpayments occur as a result of agency, client, or provider error. An overpayment ~~can be~~ is established against either a client or child care provider when ~~it is determined~~ Oklahoma Department of Human Services (OKDHS) staff ~~determines that either services were~~ determine a child care benefit was received or paid ~~for~~ in error. County ~~social services specialists~~ workers, Office of Inspector General (OIG) auditors or investigators, Quality Control reviewers, staff from the ~~Office of~~ Finance Division, or other ~~Department~~ OKDHS staff may ~~find~~ identify a ~~potential~~ possible overpayment. The Family Support Services Division (FSSD)~~,~~ Overpayment Section establishes all client overpayments ~~and all vendor overpayments which are based on manual claims until~~ and provider overpayments that occurred prior to the implementation of the electronic benefits transfer (EBT) system

~~starts in a county~~. ~~Once the EBT system is in place the Office of~~ The Finance Division establishes all ~~vendor~~ EBT provider overpayments.

(1) **Agency error overpayment.** An agency error overpayment is established against either the client or the child care provider depending on the circumstances. An agency error overpayment occurs when due diligence was not exercised by OKDHS.

(A) When the worker incorrectly calculates the family share co-payment or the amount of care approved, FSSD Overpayment Section staff establish the agency error overpayment against the client.

(B) Finance Division staff establish agency error overpayments against the provider for plan of service errors when Oklahoma Department of Human Services (OKDHS) pays an incorrect rate.

(2) **Client error overpayment.** A client error overpayment is established against the client when the client:

(A) provides incorrect information at the time of application or review;

(B) fails to report within ten days any change that affects eligibility; or

(C) uses child care for days and hours the client is not eligible for child care.

(3) **Provider error overpayment.** A provider error overpayment is established against the provider when the provider:

(A) submits incorrect claims;

(B) fails to timely void inaccurate attendance entered in the point-of-service (POS) machine by the client;

(C) receives payment for care the provider did not provide and is not entitled to receive. This can occur when the provider has possession of the client's EBT card and swipes attendance for a day a child did not attend or facility staff request that a parent do so;

(D) receives payment for care from OKDHS that was provided after the date his or her child care license has been revoked or contract canceled;

(E) moves POS machine to a different location prior to obtaining written approval from FSSD Child Care Section and payment was made for care during that period; or

(F) fails to accurately maintain records as required by OKDHS for three years or until the resolution of pending legal issues whichever is later.

(4) **Liquidated damages.** Per OAC 340:2-11-150, Finance Division staff may assess liquidated damages in addition to an overpayment when the provider:

(A) is in possession of the client's EBT card;

(B) swipes the card through the POS machine; or

(C) knows the client's personal identification number (PIN).

~~(b) **Classification of debts.** Overpayments occur as a result of Agency, client, or provider error. An overpayment is determined to be caused by:~~

~~(1) the Agency when due diligence was not exercised;~~

~~(2) a client when he or she provides incorrect information at the time of application or fails to report any change which affects his or her eligibility in a timely manner. Client responsibilities include:~~

~~(A) reporting any change which affects his or her eligibility within ten days of the change;~~

~~(B) agreeing to and following the child care plan established by the social services specialist; and~~

~~(C) signing and dating Form CCDF 3, Service Attendance/Record, each month either on the last day of the month or the last day child care was received verifying the care was provided as listed. When a client knowingly signs a false Form CCDF 3, that client is equally liable for any overpayment which occurs along with the provider. Once EBT is implemented in a county, the client certifies his or her child's attendance by swiping his or her Access Oklahoma card through the provider's point of service (POS) machine on a daily basis. When a manual claim is necessary, the client signs and dates Form ADM 12-S, Day Care Claims to verify the child's attendance.~~

~~(3) a provider when he or she fails to accurately maintain records as required by Department policy, submits incorrect claims, or receives payment for services after his or her license has been revoked or contract canceled. Provider responsibilities include:~~

~~(A) maintaining accurate records. This record must be Form CCDF 3 or the provider's computer generated document containing the exact information shown on Form CCDF 3 for every individual for whom care was claimed. An OIG auditor or investigator can write a total overpayment on site for all individuals for whom the provider does not have or cannot present a Form CCDF 3 or the provider's substitute form. Once EBT is implemented in a county, the provider is responsible for ensuring that attendance entered in the POS machine by a parent is recorded accurately and that any errors are corrected. The provider must keep copies of any manual claims submitted for payment;~~

~~(B) ensuring that Form CCDF 3 is signed and dated by the parent or caretaker for each child before submission of a claim for that child. Once EBT is implemented in a county, the provider only obtains the client's signature on any anual claim submitted for payment;~~

~~(C) claiming a correct rate of payment based on each child's age, attendance, and authorized plan of care; and~~

~~(D) accurately completing claim forms and only claiming for the days and hours the child(ren) attended care. Once EBT is implemented in a county, the provider only submits manual claims for times that cannot be paid electronically. The provider is still responsible to ensure that attendance recorded by a parent is accurately reported.~~

(~~c~~b) **Notice of overpayment.** ~~Notices are sent on each incident of overpayment when they are originally established~~

FSSD Overpayment Section or Finance Division staff send an overpayment notice to the client and/or provider at the time they establish the overpayment. ~~These notices are sent to both providers and clients. Monthly account statements are sent out~~ FSSD Overpayment Section staff send clients monthly account statements that reflect all payment and account information beginning the month following the initial notice month ~~and reflect all payment and account information~~.

(~~d~~c) **Appeal ~~or review~~ rights.** ~~A client has~~ Only a client has the right to appeal all or part of any overpayment established against his or her case. ~~A provider has the right to request a review of an established overpayment.~~

(~~e~~d) **Repayment of an overpayment.** ~~Repayment is required on~~ OKDHS requires repayment of all established overpayments.

(1) ~~Clients are issued~~ FSSD Overpayment Section staff issue to clients Form ADM-8-B, Repayment Agreement, with ~~their~~ the original overpayment notice.

(2) ~~Providers are sent a separate~~ Finance Division staff send a letter ~~from the Office of Finance which~~ to the provider that explains the recoupment process ~~of~~ for vendor ~~claims~~ overpayments.

(A) ~~Providers who are no longer receiving claims are required to~~ Child care providers must contact the FSSD~~,~~ Overpayment Section to establish a mutually agreed upon repayment plan for overpayments that occur prior to EBT implementation.

(B) Providers must contact the ~~Office of~~ Finance Division ~~to establish mutually agreed upon~~ if they have questions concerning the repayment plans for overpayments ~~which~~ that occur after the EBT system ~~is~~ was implemented ~~in a county~~.

[OAR Docket #05-939; filed 5-20-05]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #05-988]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Description of Forms and Instructions
365:1-9-15.1. License renewals and reinstatements [AMENDED]
AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1 and 1435.19
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February 1, 2005, to March 4, 2005
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March 8, 2005
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March 28, 2005
Gubernatorial approval:
May 9, 2005
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Failure of the Legislature to disapprove the rules resulted in approval on May 20, 2005
Final adoption:
May 20, 2005
Effective:
July 14, 2005
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed amendments to Rule 365:1-9-15.1 provide that licensees must submit certificates of course completion only when requested by the Insurance Commissioner. The proposed amendments also include the deletion of the requirement that licensees provide a photo when applying for reinstatement of a license.
CONTACT PERSON:
Karl F. Kramer, Assistant General Counsel, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2005:

SUBCHAPTER 9. DESCRIPTION OF FORMS AND INSTRUCTIONS

365:1-9-15.1. License renewals and reinstatements

(a) **Proof of courses.** As a prerequisite for submission of a renewal or reinstatement application, when requested by the Insurance Commissioner, each licensee must submit Certificate(s) of Course Completion with said application to equal the total number of hours required.

(b) **Renewal period and required submissions.** Renewals will be accepted up to ninety days after the expiration date with a properly completed renewal form, proof of course completion and double the license fee.

(c) **Required submissions after ninety days.** After the ninety-day period and before two years after the license expiration date, a licensee shall be eligible for reinstatement by submitting a new application, ~~photo,~~ company appointment(s), and applicable fees. A licensee shall not be eligible for reinstatement if previously the license was revoked, suspended or continuance was denied.

(d) **Insurance adjusters.** This section shall also apply to insurance adjusters as defined by the Insurance Code.

[OAR Docket #05-988; filed 5-25-05]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 10. LIFE, ACCIDENT AND HEALTH

[OAR Docket #05-987]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Minimum Standards; Contract Guidelines
Part 1. Minimum Standards And Benefits For Accident And Health Insurance
365:10-5-4. Prohibited policy provisions [AMENDED]
Part 5. Long-Term Care Insurance
365:10-5-43. Policy practices and provisions [AMENDED]
Part 13. Medicare Supplement Insurance Minimum Standards [AMENDED]
365:10-5-123. Definitions [AMENDED]
365:10-5-124. Policy definitions and terms [AMENDED]
365:10-5-125. Policy provisions [AMENDED]
365:10-5-126. Minimum benefit standards for policies or certificates issued for delivery prior to July 1, 1992 [AMENDED]
365:10-5-127. Benefit standards for policies or certificates issued or delivered on or after July 1, 1992 [AMENDED]
365:10-5-128. Standard Medicare Supplement benefit plans [AMENDED]
365:10-5-128.1. Medicare Select Policies and Certificates [AMENDED]
365:10-5-129.1. Guaranteed issue for eligible persons [AMENDED]
365:10-5-131. Loss ratio standards and refund or credit of premium [AMENDED]
365:10-5-132. Filing and approval of policies and certificates and premium rates [AMENDED]
365:10-5-134. Required disclosure provisions [AMENDED]
365:10-5-135. Requirements for application forms and replacement coverage [AMENDED]
365:10-5-138. Appropriateness of recommended purchase and excessive insurance [AMENDED]
Appendix Q. Medicare Supplement [REVOKED]
Appendix Q. Medicare Supplement [NEW]
Appendix S. Outline of Coverage Tables [REVOKED]
Appendix S. Outline of Coverage Tables [NEW]
Appendix T. Notice To Applicant Regarding Replacement Of Medicare Supplement Insurance [REVOKED]
Appendix T. Notice To Applicant Regarding Replacement Of Medicare Supplement Insurance [NEW]
Appendix V. Disclosure Statements [REVOKED]
Appendix V. Disclosure Statements [NEW]
Appendix FF. Medicare Supplement Insurance Questions [NEW]
AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1, 3610, 3611.1, 4426 and 4427
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Submitted to Senate:
March 28, 2005
Gubernatorial approval:
May 9, 2005
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 20, 2005
Final adoption:
May 20, 2005
Effective:
July 14, 2005
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed amendments to Rule 365:10-5-4 and 43 are intended to prevent an insurer from refusing to pay health insurance claims based on an act of war exclusion when an insured is not serving in the military or an auxiliary unit attached to the military. The proposed amendments to Rules 365:10-5-123 through 128.1, 129.1, 131, 132, 135, 138 and Appendices Q, S, T, V and FF are mandated by the Federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003 effective January 1, 2004.
CONTACT PERSON:
Karl F. Kramer, Assistant General Counsel, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2005:

SUBCHAPTER 5. MINIMUM STANDARDS; CONTRACT GUIDELINES

PART 1. MINIMUM STANDARDS AND BENEFITS FOR ACCIDENT AND HEALTH INSURANCE

365:10-5-4. Prohibited policy provisions

(a) **Probationary or waiting period.** Except as provided in 365:10-5-3(6), no policy shall contain provisions establishing a probationary or waiting period during which no coverage is provided under the policy, subject to the further exception that a policy may specify a probationary or waiting period not to exceed six (6) months for specified diseases or conditions and losses resulting therefrom, for hernia, disorder of reproduction organs, varicose veins, exception shall not be applicable where such specified diseases or conditions are treated on an emergency basis. Accident policies shall not contain probationary or waiting periods.

(b) **Policy or rider for dividend.** No policy or rider for additional coverage may be issued as a dividend unless an equivalent cash payment is offered to the policyholder as an alternative to such dividend policy or rider. No such dividend policy or rider shall be issued for an initial term of less than 6 months. The initial renewal subsequent to the issuance of any policy or rider as a dividend shall clearly disclose that the policyholder is renewing the coverage that was provided as a dividend for the previous term and that such renewal is optional with the policyholder.

(c) **Pre-existing conditions.** No policy shall exclude coverage for a loss due to a pre-existing condition or a period greater than 12 months following policy issue where the application for such insurance does not seek disclosure of prior illness, disease or physical condition or prior medical care and treatment and such pre-existing condition is not specifically excluded by the terms of the policy.

(d) **Hospital confinement indemnity coverage.** Policies providing hospital confinement indemnity coverage shall not

contain provisions excluding coverage because of confinement in a hospital operated by the federal government.

(e) **Policy limits or exclusions, Exceptions.** No policy shall limit or exclude coverage by type of illness, accident, treatment or medical condition, except as follows:

(1) Pre-existing conditions or diseases, except for congenital anomalies of a covered dependent child;

(2) Mental or emotional disorders, alcoholism and drug addiction;

(3) Pregnancy, except for complications of pregnancy, other than for policies defined in 365:10-5-5(g);

(4) Illness, treatment or medical condition arising out of:

(A) war or act of war (whether declared or undeclared) while serving in the military or an auxiliary unit attached to the military or working in an area of war whether voluntarily or as required by an employer; participation in a felony, riot or insurrections, service in the armed forces or units auxiliary thereto;

(B) suicide (sane or insane), attempted suicide or intentionally self-inflicted injury;

(C) aviation;

(D) with respect to short-term non-renewable policies, interscholastic sports;

(5) cosmetic surgery, except that "cosmetic surgery" shall not include reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part, and reconstructive surgery because of congenital disease or anomaly of a covered dependent child which has resulted, if a functional defect;

(6) foot care in connection with corns, calluses, flat feet, fallen arches, weak fee, chronic foot strain, or symptomatic complaint of the feet;

(7) treatment provided in a government hospital; benefits provided under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation,

employers liability or occupational disease law, or any motor vehicle no-fault law; services rendered by employees of hospitals, laboratories or other institutions; services performed by

a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance;

(8) dental care or treatment;

(9) eye glasses, hearing aids and examination for the prescription or fitting thereof;

(10) rest cures, custodial care, transportation and routine physical examinations;

(11) territorial limitations;

(12) cost containment:

(A) pre-admission certification;

(B) second surgical opinion and third surgical opinion if the first two conflict;

(C) one-hundred percent coverage for generic drugs while hospital confined, or on a physician's prescription;

(D) insured self audit of hospital bills.

(f) **Use of waiver.** Except with respect to Medicare Supplement Coverages as defined in 365:10-5-5(b), other provisions of this section shall not impair or limit the use of waivers to exclude, limit or reduce coverage or benefits for specifically named or described pre-existing diseases, physical condition or extra hazardous activity, where waivers are required as a condition or issuance, renewal or reinstatement, signed acceptance by the insured is required unless on initial issuance the full text of the waiver is contained either on the first page or specification page. Waivers to exclude, limit or reduce coverage or benefits for specifically named or described pre-existing diseases or physical conditions shall not be used in Medicare Supplement Coverages.

(g) **Use of the terms "Medicare Supplement" and "Medigap".** Except as otherwise provided in 365:10-5-6(a)(11) the terms "Medicare Supplement", "Medigap" and words of similar import shall not be used unless the policy is issued in compliance with 365:10-5-5(b).

(h) **Policy provisions.** Policy provisions precluded in this section shall not be constructed as a limitation on the authority of the Commissioner to disapprove other policy provisions which, in the opinion of the Commissioner, are unjust, unfair, or unfairly discriminatory to the policyholder, beneficiary, or any person insured under the policy, pursuant to the Oklahoma Insurance Code.

(i) **Policy limitations.** A policy issued as a "Medicare Supplement Coverage" pursuant to 365:10-5-5(b) shall not include, when issued, limitations or exclusions of the type enumerated in 365:10-5-4(e)(6), (7), (11) and (12) if such limitations or exclusions are more restrictive than those of medicare for any type of care covered under such policy.

PART 5. LONG-TERM CARE INSURANCE

365:10-5-43. Policy practices and provisions

(a) **Renewability.** The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of OAC 365:10-5-44.

(1) No such policy issued to an individual shall contain renewal provisions other than "guaranteed renewable" or "noncancellable".

(2) The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(3) The term "noncancellable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(b) **Limitations and exclusions.**

(1) No policy may be delivered or issued for delivery in this state as long-term care insurance if such policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:

(A) Pre-existing conditions or diseases;

(B) Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's Disease;

(C) Alcoholism and drug addiction;

(D) Illness, treatment or medical condition arising out of:

(i) war or act of war (whether declared or undeclared) while serving in the military or an auxiliary unit attached to a military unit, or working in an area of war whether voluntarily or as required by an employer;

(ii) participation in a felony, riot or insurrection;

(iii) service in the armed forces or units auxiliary thereto;

(iv) suicide (sane or insane), attempted suicide or intentionally self-inflected injury; or

(v) aviation (this exclusion applies only to non-fare-paying passengers);

(E) Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental programs (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance.

(2) Subsection (b) of this section is not intended to prohibit exclusions and limitations by type of provider or territorial limitations.

(c) **Extension of benefits.** Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if such institutionalization began while the long-term care insurance was in force and continues without interruption after termination. Such extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

(d) **Continuation or conversion.**

(1) Group long-term care insurance issued in this state on or after the effective date of this subsection shall provide covered individuals with a basis for continuation or conversion of coverage.

(2) For the purposes of this section, "a basis for continuation of coverage" means a policy provision which maintains coverage under the existing group policy when such coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. Group policies which restrict provision of benefits and services to, or contain incentives to use certain providers and/or facilities may provide continuation benefits which are substantially equivalent to the benefits of the existing group policy. The Commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(3) For the purposes of this section, "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced), for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

(4) For the purposes of this section, "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the Commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers and/or facilities, the Commissioner, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(5) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than thirty-one (31) days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

(6) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(7) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

(A) Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(B) The terminating coverage is replaced not later than thirty-one (31) days after termination, by group coverage effective on the day following the termination of coverage:

(i) Providing benefits identical to or benefits determined by the Commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

(ii) The premium for which is calculated in a manner consistent with the requirements of paragraph (6) of this subsection.

(8) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses. Such provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(9) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(10) Notwithstanding any other provision of this section, any insured individual whose eligibility for group long-term care coverage is based upon his or her relationship to another person, shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

(11) For the purposes of this section a "Managed-Care Plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.

(e) **Discontinuance and replacement.** If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

(1) Shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

(2) Shall not vary or otherwise depend on the individual's health or disability status, claim experience or use of long-term care services.

(f) **Premium increase prohibitions.**

(1) The premiums charged to an insured for long-term care insurance shall not increase due to either:

(A) The increasing age of the insured at ages beyond sixty-five (65); or

(B) The duration the insured has been covered under the policy.

(2) The purchase of additional coverage shall not be considered a premium rate increase, but for purposes of the calculation required under OAC 365:10-5-48.6, the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium.

(3) A reduction in benefits shall not be considered a premium change, but for purpose of the calculation required under OAC 365:10-5-48.6, the initial annual premium shall be based on the reduced benefits.

PART 13. MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS

365:10-5-123. Definitions

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

"Applicant" means:

(A) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits, and

(B) In the case of a group Medicare supplement policy, the proposed certificateholder.

"Bankruptcy" means when a Medicare Advantage ~~Medicare+Choice~~ organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

"Certificate" means any certificate delivered or issued for delivery in this state under a group Medicare supplement policy.

"Certificate Form" means the form on which the certificate is delivered or issued for delivery by the issuer.

"Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three (63) days.

"Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

(A) A group health plan;

(B) Health insurance coverage;

(C) Part A or Part B of title XVIII of the Social Security Act (Medicare);

(D) Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under Section 1928;

(E) Chapter 55 of Title 10 United States Code (CHAMPUS);

(F) A medical care program of the Indian Health Service or of a tribal organization; A state health benefits risk pool;

(G) A state health benefits program;

(H) A health plan offered under Chapter 89 of Title 5 United States Code (Federal Employees Health Benefits Program);

(~~H~~I) A public health plan as defined in federal regulation; and

(~~I~~J) A health benefit plan under section 5(e) of the Peace Corps Act (22 United States Code 2504(e)).

"Creditable coverage" shall not include one or more, or any combination of the following:

(A) Coverage only for accident or disability income insurance, or any combination thereof;

(B) Coverage issued as a supplement to liability insurance;

(C) Liability insurance, including general liability insurance and automobile liability insurance;

(D) Workers' compensation or similar insurance;

(E) Automobile medical payment insurance;

(F) Credit-only insurance;

(G) Coverage for on-site medical clinics; and

(H) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits;

"Creditable coverage" shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

(A) Limited scope dental or vision benefits;

(B) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and

(C) Such other similar, limited benefits as are specified in federal regulations.

"Creditable coverage" shall not include the following benefits if offered as independent, noncoordinated benefits:

(A) Coverage only for a specified disease or illness; and

(B) Hospital indemnity or other fixed indemnity insurance.

"Creditable coverage" shall not include the following if it is offered as a separate policy, certificate or contract of insurance:

(A) Medicare supplemental health insurance as defined under Section 1822(g)(1) of the Social Security Act;

(B) Coverage supplemental to the coverage provided under Chapter 55 of the Title 10, United States Code; and

(C) Similar supplemental coverage provided to coverage under a group health plan.

"Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in 29 U.S.C. Section 1002 (Employee Retirement Income Security Act).

"Insolvency" means an issuer is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

"Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

"Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

"Medicare Advantage ~~Medicare+Choice plan~~" means a plan of coverage for health benefits under Medicare Part C as defined in 42 U.S.C. 1395w-28(b)(1)~~Section 159 found in Title IV, Subtitle A, Chapter 1 of P.L. 105-33~~, and includes:

(A) Coordinated care plans which provide health care services, including but not limited to health maintenance organization plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organization plans;

(B) Medicare medical savings account plans coupled with a contribution into a Medicare Advantage ~~Medicare+Choice~~ medical savings account; and

(C) Medicare Advantage ~~Medicare+Choice~~ private fee-for-service plans.

"Medicare Supplement Policy" means a group or individual policy of accident and health insurance or a subscriber contract of a non-profit hospital service and medical indemnity corporation or health maintenance organization, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Section 1395 et seq.) or an issued policy under a demonstration project specified in 42 U.S.C. Section 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare. "Medicare Supplement Policy" does not include Medicare Advantage plans established under Medicare Part C, Outpatient Prescription Drug plans established under Medicare Part D, or any Health Care Prepayment Plan (HCPP) that provides benefits pursuant to an agreement under §1833(a)(1)(A) of the Social Security Act.

"Policy Form" means the form on which the policy is delivered or issued for delivery by the issuer.

"Secretary" means the Secretary of the United States Department of Health and Human Services.

365:10-5-124. Policy definitions and terms

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless such policy or certificate contains definitions or terms which conform to the requirements of this section.

(1) **"Accident," "Accidental Injury,"** or **"Accidental Means"** shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(A) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained

by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(B) Such definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law.

(2) **"Benefit Period"** or **"Medicare Benefit Period"** shall not be defined more restrictively than as defined in the Medicare program.

(3) **"Convalescent Nursing Home," "Extended Care Facility,"** or **"Skilled Nursing Facility"** shall not be defined more restrictively than as defined in the Medicare program.

(4) **"Health Care Expenses"** means, for purposes of Section 365:10-5-131, expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers. ~~Such expenses shall not include:~~

~~(A) Home office and overhead costs;~~

~~(B) Advertising costs;~~

~~(C) Commissions and other acquisition costs;~~

~~(D) Taxes;~~

~~(E) Capital costs;~~

~~(F) Administrative costs; and~~

~~(G) Claims processing costs.~~

(5) **"Hospital"** may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined in the Medicare program.

(6) **"Medicare"** shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

(7) **"Medicare Eligible Expenses"** shall mean expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and medically necessary by Medicare.

(8) **"Physician"** shall not be defined more restrictively than as defined in the Medicare program.

(9) **"Sickness"** shall not be defined to be more restrictive than the following: "Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force." The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

365:10-5-125. Policy provisions

(a) **Limitations and exclusions.** Except for permitted preexisting condition clauses as described in 365:10-5-126(b)(1) and 365:10-5-127(b)(1), no policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if such policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

(b) **Waivers.** No Medicare supplement policy or certificate may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(c) **Duplication of benefits.** No Medicare supplement policy or certificate in force in the state shall contain benefits which duplicate benefits provided by Medicare.

(d) **Outpatient prescription drugs.**

(1) Subject to sections 365:10-5-126(b)(4),(5), and (7) and 365:10-5-127 (b) (4) and (5), a Medicare supplement policy with benefits for outpatient prescription drugs in existence prior to January 1, 2006 shall be renewed for current policyholders who do not enroll in Part D at the option of the policyholder.

(2) A Medicare Supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005.

(3) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless:

(A) The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan and;

(B) Premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at the time of Medicare Part D enrollment, accounting for any claims paid, if applicable.

365:10-5-126. Minimum benefit standards for policies or certificates issued for delivery prior to July 1, 1992

(a) **Minimum standards.** No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(b) **General standards.** The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this Part.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received

from a physician within six (6) months before the effective date of coverage.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

(4) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

(A) Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(B) Be cancelled or nonrenewed by the issuer solely on the grounds of deterioration of health.

(5) Except as authorized by the Commissioner of this state, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

(A) If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in (b)(5)(C) of this section, the issuer shall offer certificateholders an individual Medicare supplement policy. The issuer shall offer the certificateholder at least the following choices:

(i) An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; or

(ii) An individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in 365:10-5-127(c).

(B) If membership in a group is terminated, the issuer shall:

(i) Offer the certificateholder such conversion opportunities as are described in (b)(5)(A) of this section; or

(ii) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(C) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(7) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this subsection.

(c) **Minimum benefit standards.**

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(3) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(4) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety percent (90%) of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(5) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B;

(6) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible;

(7) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

365:10-5-127. Benefit standards for policies or certificates issued or delivered on or afterJuly 1, 1992

(a) **Benefit standards.** The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after July 1, 1992. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare

supplement policy or certificate unless it complies with these benefit standards.

(b) **General standards.** The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this Part.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

(4) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(5) Each Medicare supplement policy shall be guaranteed renewable and

(A) The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual; and

(B) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(C) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under (b)(5)(E) of this section, the issuer shall offer certificateholders an individual Medicare supplement policy which at the option of the certificateholder:

(i) provides for continuation of the benefits contained in the group policy, or

(ii) provides for such benefits as otherwise meets the requirements of this subsection.

(D) If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(i) offer the certificateholder the conversion opportunity described in (b)(5)(C) of this section, or

(ii) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(E) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(F) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this paragraph.

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(7) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period, not to exceed twenty-four (24) months, in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of such policy or certificate within ninety (90) days after the date the individual becomes entitled to such assistance.

(A) If such suspension occurs and if the policyholder or certificateholder loses entitlement to such medical assistance, such policy or certificate shall be automatically reinstituted ~~(~~effective as of the date of termination of such entitlement~~) as of the termination of such entitlement~~ if the policyholder or certificateholder provides notice of loss of such entitlement within ninety (90) days after the date of such loss and pays the premium attributable to the period~~, effective as of the date of termination of such entitlement~~.

(B) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226 (b) of the Social security Act and is covered under a group health plan (as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within ninety (90) days after the date of the loss.

(C) Reinstitution of such coverages:

(i) Shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Shall provide for resumption of coverage that~~which~~ is substantially equivalent to coverage in effect before the date of such suspension. If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstitution of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

(iii) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

(c) **Standards for basic ("Core") benefits common to ~~all benefit~~Benefit ~~plans~~Plans A-J.** Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic "core" package, but not in lieu thereof.

(1) Coverage of Part A Medicare Eligible Expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Coverage of Part A Medicare Eligible Expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(3) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the ~~Diagnostic Related Group (DRG) day outlier per diem or~~ applicable prospective payment system (PPS) rate, other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balances;

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

(5) Coverage for the coinsurance amount (or in the case of hospital outpatient department services under a prospective payment system, the copayment amount) of Medicare Eligible Expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(d) **Standards for additional benefits.** The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by 365:10-5-128.

(1) Medicare Part A Deductible. Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Skilled Nursing Facility Care. Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.

(3) Medicare Part B Deductible. Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(4) Eighty Percent (80%) of the Medicare Part B Excess Charges. Coverage for eighty percent (80%) of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(5) One Hundred Percent (100%) of the Medicare Part B Excess Charges. Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(6) Basic Outpatient Prescription Drug Benefit. Coverage for fifty percent (50%) of outpatient prescription drug charges, after a two hundred fifty dollar ($250) calendar year deductible, to a maximum of one thousand two hundred fifty dollars ($1,250) in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(7) Extended Outpatient Prescription Drug Benefit. Coverage for fifty percent (50%) of outpatient prescription drug charges, after a two hundred fifty dollar ($250) calendar year deductible to a maximum of three thousand dollars ($3,000) in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(8) Medically Necessary Emergency Care in a Foreign Country. Coverage to the extent not covered by Medicare for eighty percent (80%) of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty dollars ($250), and a lifetime maximum benefit of fifty thousand dollars ($50,000). For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(9) Preventive Medical Care Benefit. Coverage for the following preventive health services not covered by Medicare:

(A) An annual clinical preventive medical history and physical examination that may include tests and services from subparagraph (B) of this paragraph and patient education to address preventive health care measures.

(B) ~~Any one or a combination of the following p~~Preventive screening tests or preventive services, the selection and frequency of which is determined to be ~~considered~~ medically appropriate by the attending physician.~~:~~

~~(i) Digital rectal examination;~~

~~(ii) Dipstick urinalysis for hematuria, bacteriuria and proteinuria;~~

~~(iii) Pure tone (air only) hearing screening test, administered or ordered by a physician;~~

~~(iv) Serum cholesterol screening, every five (5) years;~~

~~(v) Thyroid function test;~~

~~(vi) Diabetes screening.~~

~~(C) Tetanus and Diphtheria booster every ten (10) years.~~

~~(D) Any other tests or preventive measures determined appropriate by the attending physician.~~ Reimbursement shall be for the actual charges up to one hundred percent (100%) of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of one hundred twenty dollars ($120) annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(10) At-Home Recovery Benefit. Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

(A) For purposes of this benefit, the following definitions shall apply:

(i) "Activities of daily living" include, but are not limited to, bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(ii) "Care provider" means a duly qualified or licensed home health aide/homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(iii) "Home" shall mean any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(iv) "At-home recovery visit" means the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive 4 hours in a 24-hour period of services provided by a care provider is one visit.

(B) Coverage requirements and limitations are as follows:

(i) At-home recovery services provided must be primarily services which assist in activities of daily living.

(ii) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

(iii) Coverage is limited to:

(I) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment;

(II) The actual charges for each visit up to a maximum reimbursement of forty dollars ($40) per visit;

(III) One thousand six hundred dollars ($1,600) per calendar year;

(IV) Seven (7) visits in any one week;

(V) Care furnished on a visiting basis in the insured's home;

(VI) Services provided by a care provider as defined in this section;

(VII) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded;

(VIII) At-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight (8) weeks after the service date of the last Medicare approved home health care visit.

(C) Coverage is excluded for:

(i) Home care visits paid for by Medicare or other government programs; and

(ii) Care provided by family members, unpaid volunteers or providers who are not care providers.

~~(11) New or Innovative Benefits. An issuer may, with the prior approval of the Commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. Such new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies.~~

(e) **Standards for Plans K and L**

(1) Standardized Medicare supplement benefit plan "K" shall consist of the following:

(A) Coverage of One Hundred percent (100%) of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

(B) Coverage of One Hundred percent (100%) of the Part a Hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period:

(C) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expense for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit an an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(D) Medicare Part A Deductible: Coverage for Fifty percent (50%) of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in subparagraph (J);

(E) Skilled Nursing Facility Care: Coverage for Fifty percent (50%) of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare part A until the out-of-pocket limitation is met as described in Subparagraph (J);

(F) Hospice Care: Coverage for Fifty percent (50%) of the cost sharing for all part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in Subparagraph (J);

(G) Coverage for Fifty percent (50%), under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in Subparagraph (J);

(H) Except for coverage provided in Subparagraph (I) below, coverage for Fifty percent (50%) of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in subparagraph (J) below;

(I) Coverage of One Hundred percent (100%) of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

(J) Coverage of One Hundred percent (100%) of all cost sharing under Medicare Parts A and B for the balance fo the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of Four Thousand dollars ($4,000.00) in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(2) Standardized Medicare supplement benefit plan "L" shall consist of the following:

(A) The benefits described in Paragraphs (1) (A), (B), (C) and (I);

(B) The benefits described in Paragraphs (1) (D), (E), (F), (G) and (H), but substituting Seventy Five percent (75%) for Fifty percent (50%); and

(C) The benefit described in Paragraph (1) (J), but substituting Two Thousand dollars ($2,000.00) for Four Thousand dollars ($4,000.00).

365:10-5-128. Standard Medicare Supplement benefit plans

(a) An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic "core" benefits, as defined in 365:10-5-127(c).

(b) No groups, packages or combinations of Medicare supplement benefits other than those listed in this section shall be offered for sale in this state, except as may be permitted in ~~365:10-5-127(d)(11)~~ Sections 365:10-5-128(g) and 365:10-5-128.1.

(c) Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans "A" through "~~J~~L" listed in this subsection ~~(e)(1) through (e)(12) of this Section~~ and conform to the definitions in 365:10-5-123. Each benefit shall be structured in accordance with the format provided in 365:10-5-127(c) and (d) or Section 365:10-5-127(e) and list the benefits in the order shown in this subsection. For purposes of this section, "structure, language, and format" means style, arrangement and overall content of a benefit.

(d) An issuer may use, in addition to the benefit plan designations required in (c) of this section, other designations to the extent permitted by law.

(e) Make-up of benefit plans are as follows:

(1) Standardized Medicare supplement benefit plan "A" shall be limited to the Basic ("Core") Benefits Common to All Benefit Plans, as defined in 365:10-5-127(c).

(2) Standardized Medicare supplement benefit plan "B" shall include only the following: The Core Benefit as defined in 365:10-5-127(c), plus the Medicare Part A Deductible as defined in 365:10-5-127(d)(1).

(3) Standardized Medicare supplement benefit plan "C" shall include only the following: The Core Benefit as defined in 365:10-5-127(c), plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible and Medically Necessary Emergency Care in a Foreign Country as defined in 365:10-5-127(d)(1), (2), (3) & (8) respectively.

(4) Standardized Medicare supplement benefit plan "D" shall include only the following: The Core Benefit as defined in 365:10-5-127(c), plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medically Necessary Emergency Care in an Foreign Country and the

At-Home Recovery Benefit as defined in 365:10-5-127(d) (1), (2), (8) & (10) respectively.

(5) Standardized Medicare supplement benefit plan "E" shall include only the following: The Core Benefit as defined in 365:10-5-127(c), plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medically Necessary Emergency Care in a Foreign Country and Preventive Medical Care as defined in 365:10-5-127(d) (1), (2), (8) & (9) respectively.

(6) Standardized Medicare supplement benefit plan "F" shall include only the following: The Core Benefit as defined in 365:10-5-127(c), plus the Medicare Part A Deductible, the Skilled Nursing Facility Care, the Part B Deductible, One Hundred Percent (100%) of the Medicare Part B Excess Charges, and Medically Necessary Emergency Care in a Foreign Country as defined in 365:10-5-127(d) (1), (2), (3), (5) & (8) respectively.

(7) Standardized Medicare supplement benefit high deductible plan "F" shall include only the following: 100% of covered expenses following the payment of the annual high deductible plan "F" deductible. The covered expenses include the core benefit as defined in Section 365:10-5-127(c) of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Section 365:10-5-127(d)(1), (2), (3), (5) and (8) respectively. The annual high deductible plan "F" deductible shall consist of out-or-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "F" policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan "F" deductible shall be $1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.

(8) Standardized Medicare supplement benefit plan "G" shall include only the following: The Core Benefit as defined in 365:10-5-127(c), plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Eighty Percent (80%) of the Medicare Part B Excess Charges, Medically Necessary Emergency Care in a Foreign Country, and the At-Home Recovery Benefit as defined in 365:10-5-127(d) (1), (2), (4), (8) & (10) respectively.

(9) Standardized Medicare supplement benefit plan "H" shall consist of only the following: The Core Benefit as defined in 365:10-5-127(c), plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Basic Prescription Drug Benefit and Medically Necessary Emergency Care in a Foreign Country as defined in 365:10-5-127(d) (1), (2), (6) & (8) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(10) Standardized Medicare supplement benefit plan "I" shall consist of only the following: The Core Benefit as defined in 365:10-5-127(c), plus the Medicare Part A Deductible, Skilled Nursing Facility Care, One Hundred Percent (100%) of the Medicare Part B Excess Charges, Basic Prescription Drug Benefit, Medically Necessary Emergency Care in a Foreign Country and At-Home Recovery Benefit as defined in 365:10-5-127(d) (1), (2), (5), (6), (8) & (10) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(11) Standardized Medicare supplement benefit plan "J" shall consist of only the following: The Core Benefit as defined in 365:10-5-127(c), plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible, One Hundred Percent (100%) of the Medicare Part B Excess Charges, Extended Prescription Drug Benefit, Medically Necessary Emergency Care in a Foreign Country, Preventive Medical Care and At-Home Recovery Benefit as defined in 365:10-5-127(d) (1), (2), (3), (5), (7), (8), (9) & (10) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(12) Standardized Medicare supplement benefit high deductible plan "J" shall consist of only the following: 100% of covered expenses following the payment of the annual high deductible plan "J" deductible. The covered expenses include the core benefit as defined in Section 365:10-5-127(c) of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign county, preventive medical care benefit and at-home recovery benefit as defined in Sections 365:10-5-127(d)(1), (2), (3), (5), (7), (8), (9) and (10) respectively. The annual high deductible plan "J" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "J" policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be $1500 for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of $10. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(e) Make up of two Medicare supplement plans mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA);

(1) Standardized Medicare supplement benefit plan "K" shall consist of only those benefits described in Section 365:10-5-127(e)(1).

(2) Standardized Medicare supplement benefit plan "L" shall consist of only those benefits described in Section 365:10-5-127(e)(2).

(g) New or Innovative Benefits: An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies. After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefits.

365:10-5-128.1. Medicare Select Policies and Certificates

(a) **Application.** This section shall apply to Medicare Select policies and certificates, as defined in this section. No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

(b) **Definitions.** For the purposes of this section:

(1) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.

(2) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.

(3) "Medicare Select issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.

(4) "Medicare Select policy" or "Medicare Select certificate" mean respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(5) "Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

(6) "Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(7) "Service area" means the geographic area approved by the Commissioner within which an issuer is authorized to offer a Medicare Select policy.

(c) **Authorization.** The Commissioner may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 if the Commissioner finds that the issuer has satisfied all of the requirements of this regulation.

(d) **Plan of operation approval.** A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the Commissioner.

(e) **Plan of operation requirements.** A Medicare Select issuer shall file a proposed plan of operation with the Commissioner in a format prescribed by the Commissioner. The plan of operation shall contain at least the following information:

(1) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

(A) Services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

(B) The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

(i) To deliver adequately all services that are subject to a restricted network provision; or

(ii) To make appropriate referrals.

(C) There are written agreements with network providers describing specific responsibilities.

(D) Emergency care is available twenty-four (24) hours per day and seven (7) days per week.

(E) In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This paragraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(2) A statement or map providing a clear description of the service area.

(3) A description of the grievance procedure to be utilized.

(4) A description of the quality assurance program, including:

(A) The formal organizational structure;

(B) The written criteria for selection, retention and removal of network providers; and

(C) The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.

(5) A list and description, by specialty, of the network providers.

(6) Copies of the written information proposed to be used by the issuer to comply with Subsection (i).

(7) Any other information requested by the Commissioner.

(f) **Plan of operation amendments.** A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the Commissioner prior to implementing the changes. Changes shall be considered approved by the Commissioner after thirty (30) days unless specifically disapproved. An updated list of network providers shall be filed with the Commissioner at least quarterly.

(g) **Non-network providers.** A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if:

(1) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and

(2) It is not reasonable to obtain services through a network provider.

(h) **Unavailable services.** A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

(i) **Full disclosure.** A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(1) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

(A) Other Medicare supplement policies or certificates offered by the issuer; and

(B) Other Medicare Select policies or certificates.

(2) A description (including address, phone number and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals and other providers.

(3) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers do not count toward the out-of-pocket annual limit contained in plans K and L.

(4) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(5) A description of limitations on referrals to restricted network providers and to other providers.

(6) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

(7) A description of the Medicare Select issuer's quality assurance program and grievance procedure.

(j) **Proof of full disclosure.** Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Subsection (i) of Section 365:10-5- 128.1 and that the applicant understands the restrictions of the Medicare Select policy or certificate.

(k) **Grievance procedures.** A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement.

(1) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(2) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(3) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(4) If a grievance is found to be valid, corrective action shall be taken promptly.

(5) All concerned parties shall be notified about the results of a grievance.

(6) The issuer shall report no later than each March 31st to the Commissioner regarding its grievance procedure. The report shall be in a format prescribed by the Commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

(l) **Opportunity to purchase Medicare supplement.**

(1) At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

(2) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six (6) months.

(~~2~~3) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, ~~coverage for prescription drugs,~~ coverage for at-home recovery services or coverage for Part B excess charges.

(m) **Coverage upon termination of program.** Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(1) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies and certificates available without requiring evidence of insurability.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or

more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, ~~coverage for prescription drugs,~~ coverage for at-home recovery services or coverage for Part B excess charges.

(n) **Cooperation with state and federal agencies.** A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

365:10-5-129.1. Guaranteed Issue for Eligible Persons

(a) **Guaranteed Issue.**

(1) Eligible persons are those individuals described in subsection (b) who apply to enroll under the policy not later than sixty-three (63) days after the date of the termination of enrollment described in subsection (b), and who submit evidence of the date of termination, ~~or~~ disenrollment or Medicare Part D enrollment with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection (c) that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

(b) **Eligible Persons.** An eligible person is an individual described in any of the following paragraphs:

(1) **Employee welfare benefit plan.** The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all or substantially all supplemental health benefits to the individual.

(2) **~~Medicare+Choice~~Medicare Advantage.** The individual is enrolled with a ~~Medicare+Choice~~Medicare Advantage organization under a ~~Medicare+Choice~~Medicare Advantage plan under part C of Medicare, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the Social Security Act, and there are circumstances similar to those described below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a ~~Medicare+Choice~~Medicare Advantage plan:

(A) The organization's or plan's certification [under this part] has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(B) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856), or the plan is terminated for all individuals within a residence area;

(C) The individual demonstrates, in accordance with guidelines established by the Secretary, that:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(D) The individual meets such other exceptional conditions as the Secretary may provide.

(3) **Organizations.**

(A) The individual is enrolled with:

(i) An eligible organization under a contract under Section 1876 (Medicare risk or cost);

(ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(iii) An organization under an agreement under Section 1833(a)(1)(A) (health care prepayment plan); or

(iv) An organization under a Medicare Select Policy; and

(B) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under Section 365:10-5-129.1(b)(2).

(4) **Medicare supplement.** The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(A) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or because of other involuntary termination of coverage or enrollment under the policy;

(B) The issuer of the policy substantially violated a material provision of the policy; or

(C) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

(5) **Termination of enrollment and subsequent enrollment.** The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any ~~Medicare+Choice~~Medicare Advantage organization under a

~~Medicare+Choice~~Medicare Advantage plan under part C of Medicare, any eligible organization under a contract under ~~s~~Section 1876 of the Social Security Act (Medicare risk or cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act or a Medicare Select Policy; and an organization under an agreement under section 1833(a)(1)(A) (health care prepayment plan), or a Medicare Select policy; and the subsequent enrollment under this subparagraph is terminated by the enrollee during any period within the first twelve (12) months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1851(e) of the federal Social Security Act); or

(6) **~~Medicare+Choice~~Medicare Advantage disenrollment.**

(A) The individual, upon first becoming both enrolled in Medicare Part A of Medicare and at 65 years of age or older, enrolls in a ~~Medicare+Choice~~Medicare Advantage plan under part C of Medicare, or with a PACE provider under Section 1894 of the Social Security Act, and disenrolls from the plan by not later than twelve (12) months after the effective date of enrollment.

(B) The individual enrolls in a Medicare Part D plan during the initial enrollment period and, at the time of enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in Subsection 365:10-5-129.1(e)(4).

(~~B~~C) An individual, under age 65, who first becomes eligible for Medicare Part B and enrolls in a ~~Medicare+Choice~~Medicare Advantage plan under part C of Medicare, and disenrolls from the plan by not later than twelve (12) months after the effective date of enrollment.

(c) **Guaranteed issue time periods.**

(1) In the case of an individual described in Section 365:10-5-129.1(b)(1), the guaranteed issue period begins on the later of the date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of such a termination or cessation); or the date that the applicable coverage terminates or ceases; and ends sixty-three (63) days thereafter ~~the date of the applicable notice~~;

(2) In the case of an individual described in Section 365:10-5-129.1(b)(2), (b)(3), (b)(5) or b)(6) whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends sixty-three (63) days after the date the applicable coverage is terminated;

(3) In the case of an individual described in Section 365:10-5-129.1(b)(4)(~~a~~A), the guaranteed issue period begins on the earlier of the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any, and the date that the applicable coverage is terminated, and ends on the date that is sixty-three (63) days after the date the coverage is terminated.

(4) In the case of an individual described in Section 365:10-5-129.1(b)(2), (b)(4)(B), (b)(4)(C), (b)(5) or (b)(6) who disenrolls voluntarily, the guaranteed issue period begins on the date that is sixty (60) days before the effective date of the disenrollment and ends on the date that is sixty-three (63) days after the effective date; ~~and~~

(5) In the case of an individual described in Subsection 365:10-5-129.1(b)(6), the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the sixty-day (60) period immediately preceding the initial Part D enrollment period and ends on the date that is sixty-three (63) days after the effective date of the individual's coverage under Medicare Part D; and

(6) In the case of an individual described in Section 365:10-5-129.1(b) but not described in the preceding provisions of this Subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is sixty-three (63) days after the effective date.

(d) **Extended Medigap access for interrupted trial periods.**

(1) In the case of an individual described in Section 365:10-5-129.1(b)(5) (or deemed to be so described, pursuant to this paragraph) whose enrollment with an organization or provider described in Section 365:10-5-129.1(b)(5)(A) is involuntarily terminated within the first twelve (12) months or enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in Section 365:10-5-129.1(b)(5);

(2) In the case of an individual described in Section 365:10-5-129.1(b)(6) (o deemed to be so described, pursuant to this paragraph) whose enrollment with a plan or in a program described in Section 365:10-5-129.1(b)(6) is involuntarily terminated with the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in Section 365:10-5-129.1(b)(6); and

(3) For purposes of Sections 365:10-5-129.1(b)(5) and (b)(6), no enrollment of an individual with an organization or provider described in Section 365:10-5-129.1(b)(5)(a), or with a plan or in a program described in Section 365:10-5-129.1(b)(6), may be deemed to be an initial enrollment under this paragraph after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan or program.

(e) **Products to which eligible persons are entitled.** The Medicare supplement policy to which eligible persons are entitled under:

(1) **Section 365:10-5-129. 1(B)(1), (2), (3) and (4).** Section 365:10-5-129.1(b)(1), (2), (3) and (4) is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, ~~or~~ F (including F with a high deductible), K or L offered by any issuer.

(2) **Section 365:10-5-129. 1(b)(5).**

(A) Subject to subparagraph (B), Section 365:10-5-129.1(b)(5) is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Section 365:10-5-129.1(c)(1).

(B) After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy described in this subparagraph is: The policy available from the same issuer but modified to remove outpatient prescription drug coverage; or at the election of the policyholder, an A, B, C, F (including F with a high deductible, K or L policy that is offered by any issuer;

(3) **Section 365:10-5-129. 1(b)(6)(A).** Section 365:10-5-129.1(b)(6)(A) shall include any Medicare supplement policy offered by any issuer.

(4) **Section 365:10-5-129. 1(b)(6)(B).** Section 365:10-5-129.1(b)(6)(B) is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including F with a high deductible, K or L, and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage ~~Section 365:10-5-129.1(b)(6)(B) shall include at least one plan offered by any Medicare Supplement issuer as required by Section 365:10-5-129(c)~~.

(f) **Notification provisions.**

(1) At the time of an event described in Section 365:10-5-129.1(b) because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement polices under Section 365:10-5-129.1(a). Such notice shall be communicated contemporaneously with the notification of termination.

(2) At the time of an event described in Section 365:10-5-129.1(b) because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Section 365:10-5-129.1(a). Such notice shall be communicated within ten working days of the issuer receiving notification of disenrollment.

365:10-5-131. Loss ratio standards and refund or credit of premium

(a) **Loss ratio standards.**

(1) A Medicare Supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form~~, calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for such period and in accordance with accepted actuarial principles and practices~~:

(A) At least seventy-five percent (75%) of the aggregate amount of premiums earned in the case of group policies, or

(B) At least sixty-five percent (65%) of the aggregate amount of premiums earned in the case of individual policies.

(2) Calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for such period and in accordance with accepted actuarial principles and practices. Incurred health care expenses where coverage is provided by a helath maintenance organization shall not include:

(A) Home office and overhead costs;

(B) Advertising costs;

(C) Commissions and other acquisition costs;

(D) Taxes;

(E) Capital costs;

(F) Administrative costs; and

(G) Claims processing costs.

(3) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(~~3~~4) For purposes of applying (a)(1) of this section and (c)(3) of 365:10-5-132 only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.

(~~4~~5) for policies issued prior to July 1, 1992, expected claims in relation to premiums shall meet:

(A) The originally filed anticipated loss ratio when combined with the actual experience since inception;

(B) The appropriate loss ratio requirement from 365:10-5-131(a)(1)(A) and (B) when combined with actual experience beginning with July 1, 1996, to date; and

(C) The appropriate loss ratio requirement from 365:10-5-131(a)(1)(A) and (B) over the entire future period for which the rates are computed to provide coverage.

(b) **Refund or credit calculation.**

(1) An issuer shall collect and file with the Commissioner by May 31 of each year the data contained in the reporting form contained in Appendix Q of this Chapter for each type in a standard Medicare supplement benefit plan.

(2) If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(3) For the purposes of this section, policies or certificates issued prior to July 1, 1992, the issuer shall make the refund or credit calculation separately for all individual policies (including all group policies subject to an individual loss ratio standard when issues) combined and all other group policies combined for experience after the 1st of July, 1998. The first report shall be due by May 31, 1998.

(4) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. Such refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

(c) **Annual filing of premium rates.**

(1) An issuer of Medicare supplement policies and certificates issued before or after the effective date of Part 13, 365:10-5-120 et seq. in this state shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by policy duration for approval by the Commissioner in accordance with the filing requirements and procedures prescribed by the Commissioner. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. Such demonstration shall exclude active life reserves. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years.

(2) As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the Commissioner, in accordance with the applicable filing procedures of this state:

(A) Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. Such supporting documents as necessary to justify the adjustment shall accompany the filing.

(B) An issuer shall make such premium adjustments as are necessary to produce an expected loss ratio under such policy or certificate as will conform with minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for such Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(C) If an issuer fails to make premium adjustments acceptable to the Commissioner, the Commissioner may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this section.

(D) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. Such riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

(d) **Public hearings.** The Commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after the effective date of Part 13, 365:10-5-120 et seq., if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for such reporting period. Public notice of such hearing shall be furnished in a manner deemed appropriate by the Commissioner.

365:10-5-132. Filing and approval of policies and certificates and premium rates

(a) **Policy forms and certificates filing and approval requirements.** An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the Commissioner in accordance with filing requirements and procedures prescribed by the Commissioner.

(b) **Removal of Prescription Drug benefit.** An issuer shall file any rider or amendments to policy and certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, improvement, and Modernization Act of 2003 only with the commissioner in the state in which the policy or certificate was issued.

(c) **Premium rates and rating schedule filing and approval requirements.** An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the Commissioner in accordance with the filing requirements and procedures prescribed by the Commissioner.

(~~e~~d) **Additional policy or certificate forms.**

(1) Except as provided in paragraph (2) of this subsection, an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(2) An issuer may offer, with the approval of the Commissioner, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

(A) The inclusion of new or innovative benefits;

(B) The addition of either direct response or agent marketing methods;

(C) The addition of either guaranteed issue or underwritten coverage;

(D) The offering of coverage to individuals eligible for Medicare by reason of disability.

(3) For the purposes of this section, a "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.

(~~d~~e) **Policy forms and certificate forms availability for purchase after Commissioner's approval.**

(1) Except as provided in (A) of this paragraph, an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this Part that has been approved by the Commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.

(A) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the Commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the Commissioner, the issuer shall no longer offer for sale the policy form or certificate form in this state.

(B) An issuer that discontinues the availability of a policy form or certificate form pursuant to (A) of this paragraph shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the Commissioner of the discontinuance. The period of discontinuance may be reduced if the Commissioner determines that a shorter period is appropriate.

(2) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(3) A change in the rating structure or methodology shall be considered a discontinuance under (d)(1) of this section unless the issuer complies with the following requirements:

(A) The issuer provides an actuarial memorandum, in a form and manner prescribed by the Commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.

(B) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The Commissioner may approve a change to the differential which is in the public interest.

(~~e~~f) **Combination of policy forms or certificate forms experience for purposes of refund or credit calculation.**

(1) Except as provided in (2) of this subsection, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in 365:10-5-131.

(2) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

365:10-5-134. Required disclosure provisions

(a) **General rules.**

(1) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of such provision shall be consistent with the type of contract issued. Such provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.

(2) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.

(3) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import.

(4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(6) If the issuer does not return any premiums or moneys paid therefor within thirty (30) days from the date of cancellation, the issuer shall pay interest on the proceeds which shall be the same rate of interest as the average United States Treasury Bill rate of the preceding calendar year as certified to the State Insurance Commissioner by the State Treasurer on the first regular business day in January of each year, plus two percentage points which shall accrue from the date of cancellation until the premiums or moneys are returned. In such event, the policy shall be deemed to have been cancelled on the date the policy was placed in the United States mails in a properly addressed, postage paid envelope; or, if not so posted, on the date of delivery of such policy to the issuer.

(7~~A~~) Issuers of accident and health policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis, to a person(s) eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the form developed jointly by the National Association of Insurance Commissioners and the CMS~~ Health Care Financing Administration~~ and in a type size no smaller than 12 point type. Delivery of the Guide shall be made whether or not such policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this Part. Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application and acknowledgement of receipt of the Guide shall be obtained by the issuer. Direct response issuers shall deliver the Guide to the applicant upon request but not later than at the time the policy is delivered. For purposes of this section, "form" means the language, format, type size, type proportional spacing, bold character, and line spacing.

~~(B) For purposes of this section, "form" means the language, format, type size, type proportional spacing, bold character, and line spacing.~~

(b) **Notice requirements.**

(1) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificateholders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the Commissioner. Such notice shall:

(A) Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate, and

(B) Inform each policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) Such notices shall not contain or be accompanied by any solicitation.

(c) **MMA notice requirements.** Issuers shall comply with any notice requirements of the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

(d) **Outline of coverage requirements for Medicare supplement policies.**

(1) Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of such outline from the applicant.

(2) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany such policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(3) The outline of coverage provided to applicants pursuant to this section consists of four parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed in Appendix S of this Chapter in no less than twelve (12) point type. All plans A-~~J~~L shall be shown on the cover page, and the plan(s) that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(4) The outline of coverage shall include the items described in Appendix S of this Chapter, in the order prescribed by Appendix S.

(~~d~~e) **Notice regarding policies or certificates which are not Medicare supplement policies.**

(1) Any accident and health insurance policy or certificate, other than a Medicare supplement policy, a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act (42 U.S.C. § 1395 et seq.), disability income policy, or other policy identified in 365:10-5-122(b), issued for delivery in this State to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds. The notice shall be in no less than twelve (12) point type and shall contain the following language:

"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CONTRACT]. If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

(2) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in Subsection (d)(1) of this Section shall disclose, using the applicable statement in Appendix V, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

365:10-5-135. Requirements for application forms and replacement coverage

(a) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant currently has ~~another~~ Medicare supplement, Medicare Advantage, Medicaid coverage, or another health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and health policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing such questions and statements may be used.

(1) **Statements.**

(A) You do not need more than one Medicare supplement policy.

(B) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

(C) You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

(D) If after purchasing this policy, you become eligible for Medicaid, ~~T~~the benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your suspended Medicare supplement policy will be reinstituted if requested within 90 days of losing Medicaid eligibility. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

(E) If you are eligible for, and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare supplement policy (or, if that is not longer available, a substantially equivalent policy) will be reinstituted if requested within ninety (90) days of losing your employer or union-based group health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your polcy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

(F) Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB).

(2) **Questions.** See Appendix FF of this Chapter for questions.~~To the best of your knowledge:~~

~~(A) Do you have another Medicare supplement policy or certificate in force?~~

~~(i) If so, with which company?~~

~~(ii) If so, do you intend to replace your current Medicare supplement policy with this policy [certificate]?~~

~~(B) Do you have any other health insurance coverage that provides benefits similar to this Medicare supplement policy?~~

~~(i) If so, with which company?~~

~~(ii) What kind of policy?~~

~~(C) Are you covered for medical assistance through the state Medicaid program:~~

~~(i) As a Specified Low-Income Medicare Beneficiary (SLMB)?~~

~~(ii) As a Qualified Medicare Beneficiary (QMB)?~~

~~(iii) For other Medicaid medical benefits?~~

(b) Agents shall list any other health insurance policies they have sold to the applicant.

(1) List policies sold which are still in force.

(2) List policies sold in the past five (5) years which are no longer in force.

(c) In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the issuer, shall be returned to the applicant by the issuer upon delivery of the policy.

(d) Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of the notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

(e) The notice required by (d) of this section for an issuer shall be provided in substantially the following form in Appendix T in no less than twelve (12) point type.

(f) Paragraphs 1 and 2 of the replacement notice (applicable to preexisting conditions) may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.

365:10-5-138. Appropriateness of recommended purchase and excessive insurance

(a) In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(b) Any sale of Medicare supplement coverage that will provide an individual more than one Medicare supplement policy or certificate is prohibited.

(c) An issuer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination of the individual's Part C coverage.

APPENDIX Q. MEDICARE SUPPLEMENT [REVOKED]

APPENDIX Q. MEDICARE SUPPLEMENT [NEW]

TABLE 1. REFUND CALCULATION FORM

FOR CALENDAR YEAR _____

TYPE (v) _____ SMSBP (w) _____
For the State of _____
Company Name _____
NAIC Group Code _____ NAIC Company Code _____
Address _____
Person Completing This Exhibit _____
Title _____ Telephone Number _____

Line		(a) Earned Premium (x)	(b) Incurred Claims (y)
1	Current Year's Experience a. Total (all policy years) b. Current year's issues (z) c. Net (for reporting purposes = 1a - 1b)	_____	_____
2	Past Years' Experience (All Policy Years)	_____	_____
3	Total Experience (Net Current Year + Past Years' Experience)	_____	_____
4	Refunds last year (Excluding Interest)		
5	Previous Since Inception (Excluding Interest)		
6	Refunds Since Inception (Excluding Interest		
7	Benchmark Ratio Since Inception (SEE WORKSHEET FOR RATIO 1)		

TABLE 1. REFUND CALCULATION FORM

FOR CALENDAR YEAR _____

TYPE (v) _____ SMSBP (w) _____
For the State of _____
Company Name _____
NAIC Group Code _____ NAIC Company Code _____
Address _____
Person Completing This Exhibit _____
Title _____ Telephone Number _____

	(a) Earned Premium (x)	(b) Incurred Claims (y)
Line 8 Experience Ratio Since Inception		
Total Actual Incurred Claims (line 3, col b) = Ratio 2		
Total Earned Premium (line 3, col a) - Refunds Since Inception (line 6)		
9 Life Years Exposed Since Inception		

If the Experienced Ratio is less than the Benchmark Ratio, and there are more than 500 life years exposure, then proceed to calculation of refund.

10 Tolerance Permitted (obtained from credibility table) _____

11 Adjustment to Incurred Claims for Credibility

Ratio 3 = Ratio 2 + Tolerance

If Ratio 3 is more than benchmark ratio (ratio 1), a refund or credit to premium is not required.

TABLE 1. REFUND CALCULATION FORM

FOR CALENDAR YEAR _____

TYPE (v) _____ SMSBP (w) _____
For the State of _____
Company Name _____
NAIC Group Code _____ NAIC Company Code _____
Address _____
Person Completing This Exhibit _____
Title _____ Telephone Number _____

Line		(a) Earned Premium (x)	(b) Incurred Claims (y)
If Ratio 3 is less than the benchmark ratio, then proceed.			
12	Adjusted Incurred Claims = [Total Earned Premiums (line 3, col a) - Refunds Since Inception (line 6)] x Ratio 3 (line 11)		
13	Refund = Total Earned Premiums (line 3, col a) - Refunds Since Inception (line 6) - Adjusted Incurred Claims (line 12) / Benchmark Ratio (Ratio 1)		

If the amount on line 13 is less than .005 times the annualized premium in force as of December 31 of the reporting year, then no refund is made. Otherwise, the amount on line 13 is to be refunded or credited, and a description of the refund and/or credit against premiums to be used must be attached to this form.

TABLE 1. REFUND CALCULATION FORM

FOR CALENDAR YEAR _____

TYPE (v) _____ SMSBP (w) _____
For the State of _____
Company Name _____
NAIC Group Code _____ NAIC Company Code _____
Address _____
Person Completing This Exhibit _____
Title _____ Telephone Number _____

Medicare Supplement Credibility Table

Life Years Exposed Since Inception	Tolerance
10,000 +	0.0%
5,000 - 9,999	5.0%
2,500 - 4,999	7.5%
1,000 - 2,499	10.0%
500 - 999	15.0%

If less than 500, no credibility.

(v) Individual, Group, Individual Medicare Select or Group Medicare Select Only
(w) "SMSBP" = Standardized Medicare Supplement Benefit Plan
(x) Includes modal loadings and fees charged.
(y) Excludes Active Life Reserves.
(z) This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios"

I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

_____
Signature

_____
Name - Please Type

_____
Title

_____
Date

TABLE 2. REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR GROUP POLICIES

FOR CALENDAR YEAR _____

TYPE (v) _____ SMSBP (P) _____
For the State of _____
Company Name _____
NAIC Group Code _____ NAIC Company Code _____
Address _____
Person Completing This Exhibit _____
Title _____ Telephone Number _____

(a)[a] Year	(b)[b] Earned Premium	(c) Factor	(d) (b)x(c)	(e) Cumulative Loss Ratio	(f) (d)x(e)	(g) Factor	(h) (b)x(g)	(i) Cumulative Loss Ratio	(j) (h)x(i)	(o)[o] Policy Year Loss Ratio
1		2.770		0.507		0.000		0.000		0.46
2		4.175		0.567		0.000		0.000		0.63
3		4.175		0.567		1.194		0.759		0.75
4		4.175		0.567		2.245		0.771		0.77
5		4.175		0.567		3.170		0.782		0.80
6		4.175		0.567		3.998		0.792		0.82
7		4.175		0.567		4.754		0.802		0.84
8		4.175		0.567		5.445		0.811		0.87
9		4.175		0.567		6.075		0.818		0.88
10		4.175		0.567		6.650		0.824		0.88
11		4.175		0.567		7.176		0.828		0.88
12		4.175		0.567		7.655		0.831		0.88
13		4.175		0.567		8.093		0.834		0.89
14		4.175		0.567		8.493		0.837		0.89
15+[u]		4.175		0.567		8.684		0.838		0.89
Total:		(k):		(l):		(m):		(n):		

Benchmark Ratio Since Inception: (l+n)/(k+m):

(a): Year 1 is the current calendar year - 1
Year 2 is the current calendar year - 2 (etc.)
Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989; etc.)

(b): For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

(o): These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

(p): "SMSBP" = Standardized Medicare Supplement Benefit Plan

(u): To include the earned premium for all years prior to as well as the 15th year prior to the current year.

(v): Individual, Group, Individual Medicare Select, or Group Medicare Select Only.

TABLE 3. REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR INDIVIDUAL POLICIES

FOR CALENDAR YEAR _____

TYPE (v) _____ SMSBP (P) _____
For the State of _____
Company Name _____
NAIC Group Code _____ NAIC Company Code _____
Address _____
Person Completing This Exhibit _____
Title _____ Telephone Number _____

(a)[a] Year	(b)[b] Earned Premium	(c) Factor	(d) (b)x(c)	(e) Cumulative Loss Ratio	(f) (d)x(e)	(g) Factor	(h) (b)x(g)	(i) Cumulative Loss Ratio	(j) (h)x(i)	(o)[o] Policy Year Loss Ratio
1		2.770		0.442		0.000		0.000		0.40
2		4.175		0.493		0.000		0.000		0.55
3		4.175		0.493		1.294		0.659		0.65
4		4.175		0.493		2.245		0.669		0.67
5		4.175		0.493		3.170		0.678		0.69
6		4.175		0.493		3.998		0.686		0.71
7		4.175		0.493		4.754		0.695		0.73
8		4.175		0.493		5.445		0.702		0.75
9		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76
11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77
13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
15+[u]		4.175		0.493		8.684		0.725		0.77
Total:		(k):		(l):		(m):		(n):		

Benchmark Ratio Since Inception: (l+n)/(k+m):

(a): Year 1 is the current calendar year - 1
Year 2 is the current calendar year - 2 (etc.)
Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989; etc.)

(b): For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

(o): These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

(p): "SMSBP" = Standardized Medicare Supplement Benefit Plan

(u): To include the earned premium for all years prior to as well as the 15th year prior to the current year.

(v): Individual, Group, Individual Medicare Select, or Group Medicare Select Only.

APPENDIX S. OUTLINE OF COVERAGE TABLES [REVOKED]

APPENDIX S. OUTLINE OF COVERAGE TABLES [NEW]

TABLE 1. OUTLINE OF COVERAGE - COVER PAGE

[COMPANY NAME]
Outline of Medicare Supplement Coverage-Cover Page: 1 of 2
Benefit Plan(s) _____ [insert letter(s) of plan(s) being offered]

These charts show the benefits included in each of the standard Medicare supplement plans. Every company must make available Plan "A". Some plans may not be available in your state.

BASIC BENEFITS for plans A – J:
Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.
Medical Expenses: Part B coinsurance (generally 20% of Medicare-approved expenses), or copayments for hospital outpatient services.
Blood: First three pints of blood each year.

A	B	C	D	E	F	F*	G	H	I	J	J*
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits		Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	
		Skilled Nursing Facility Co-Insurance	Skilled Nursing Facility Co-Insurance	Skilled Nursing Facility Co-Insurance	Skilled Nursing Facility Co-Insurance		Skilled Nursing Facility Co-Insurance	Skilled Nursing Facility Co-Insurance	Skilled Nursing Facility Co-Insurance	Skilled Nursing Facility Co-Insurance	
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible		Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	
		Part B Deductible			Part B Deductible					Part B Deductible	
					Part B Excess (100%)		Part B Excess (80%)		Part B Excess (100%)	Part B Excess (100%)	
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	
			At-Home Recovery				At-Home Recovery		At-Home Recovery	At-Home Recovery	
				Preventive Care NOT covered by Medicare						Preventive Care NOT covered by Medicare	

***Plans F and J also have an option called a high deductible plan F and a high deductible plan J. These high deductible plans pay the same benefits as Plans F and J after one has paid a calendar year [$1700] deductible. Benefits from high deductible plans F and J will not begin until out-of-pocket expenses are [$1700]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare Deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.**

[COMPANY NAME]
Outline of Medicare Supplement Coverage-Cover Page 2

Basic Benefits for Plans K and L include similar services as plans A-J, but cost-sharing for the basic benefits is at different levels.

J	K**	L**
Basic Benefits	100% of Part A Hospitalization Coinsurance plus coverage for 365 Days after Medicare Benefits End 50% Hospice cost-sharing 50% of Medicare-eligible expenses for the first three pints of blood 50% Part B Coinsurance, except 100% Coinsurance for Part B Preventive Services	100% of Part A Hospitalization Coinsurance plus coverage for 365 Days after Medicare Benefits End 75% Hospice cost-sharing 75% of Medicare-eligible expenses for the first three pints of blood 75% Part B Coinsurance, except 100% Coinsurance for Part B Preventive Services
Skilled Nursing Coinsurance	50% Skilled Nursing Facility Coinsurance	75% Skilled Nursing Facility Coinsurance
Part A Deductible	50% Part A Deductible	75% Part A Deductible
Part B Deductible		
Part B Excess (100%)		
Foreign Travel Emergency		
At-Home Recovery		
Preventive Care NOT covered by Medicare		
	$[4000] Out of Pocket Annual Limit***	$[2000] Out of Pocket Annual Limit***

**** Plans K and L provide for different cost-sharing for items and services than Plans A – J.**
Once you reach the annual limit, the plan pays 100% of the Medicare copayments, coinsurance, and deductibles for the rest of the calendar year. The out-of-pocket annual limit does NOT include charges from your provider that exceed Medicare-approved amounts, called "Excess Charges". You will be responsible for paying excess charges.

****The out-of-pocket annual limit will increase each year for inflation.**

See Outlines of Coverage for details and exception.

OUTLINE OF COVERAGE
TABLE 2. REQUIRED ITEMS

PREMIUM INFORMATION [Boldface Type]

We [insert issuer's name] can only raise your premium if we raise the premium for all policies like yours in this State. [If the premium is based on the increasing age of the insured, include information specifying when premiums will change.]

DISCLOSURES [Boldface Type]

Use this outline to compare benefits and premiums among policies.

READ YOUR POLICY VERY CAREFULLY [Boldface Type]

This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

RIGHT TO RETURN POLICY [Boldface Type]

If you find that you are not satisfied with your policy, you may return it to [insert issuer's address]. If you send the policy back to us within 30 days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.

POLICY REPLACEMENT [Boldface Type]

If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.

NOTICE [Boldface Type]

This policy may not fully cover all of your medical costs.

[for agents:]
Neither [insert company's name] nor its agents are connected with Medicare.

[for direct response:]
[insert company's name] is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security Office or consult "Medicare and You" for more details.

COMPLETE ANSWERS ARE VERY IMPORTANT [Boldface Type]

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Review the application carefully before you sign it. Be certain that all information has been properly recorded.

[Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. No more than four plans may be shown on one chart. For purposes of illustration, charts for each plan are included in this regulation. An issuer may use additional benefit plan designations on these charts pursuant to 365:10-5-128(d).]

[Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the Commissioner.]

PLAN A
MEDICARE (PART B)--MEDICAL SERVICES--PER CALENDAR YEAR

***Once you have been billed $100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES -- IN OUR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80% (Generally)	20% (Generally)	$0
Part B Excess Charges (Above Medicare Approved Amounts)	$0	$0	All Costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES-- BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PLAN A
MEDICARE (PART B)--MEDICAL SERVICES--PER CALENDAR YEAR

***Once you have been billed $[110] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES -- IN OUR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment.			
First $[110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80% (Generally)	20% (Generally)	$[0]
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	$[0]	All Costs
BLOOD			
First 3 pints	$[0]	All costs	$[0]
Next $[110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]
CLINICAL LABORATORY SERVICES-- TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
--Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
--Durable medical equipment			
First $[110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]

OUTLINE OF COVERAGE
TABLE 4. PLAN B
MEDICARE (PART A)--HOSPITAL SERVICES--PER BENEFIT PERIOD

***A benefit period begins on the first day you receive services as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	S[912] (Part A Deductible)	S[0]
61st thru 90th days	All but $[228] a day	S[228] a day	S[0]
91st day and after: --While using 60 lifetime reserve days	All but $[456] a day	S[456] a day	S[0]
--Once lifetime reserve dates are used --Additional 365 days	S[0]	100% of Medicare Eligible Expenses	S[0]**
--Beyond the Additional 365 days	S[0]	S[0]	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-Approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	S[0]
21st thru 100th days	All but $[110] a day	$[0]	Up to $ [110] a day
101st day and after	$[0]	$[0]	All costs
BLOOD			
First 3 pints	$[0]	3 pints	$[0]
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited co-insurance for outpatient drugs and inpatient respite care	$[0]	Balance

****NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.**

PLAN B
MEDICARE (PART B)--MEDICAL SERVICES--PER CALENDAR YEAR

***Once you have been billed $[110] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES -- IN OUR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80% (Generally)	20% (Generally)	$[0]
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	$[0]	All Costs
BLOOD			
First 3 pints	$[0]	All costs	$[0]
Next $[110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]
CLINICAL LABORATORY SERVICES-- TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
--Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
--Durable medical equipment			
First $[110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]

OUTLINE OF COVERAGE
TABLE 5. PLAN C
MEDICARE (PART A)--HOSPITAL SERVICES--PER BENEFIT PERIOD

***A benefit period begins on the first day you receive services as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[912] (Part A Deductible)	$[0]
61st thru 90th days	All but $[228] a day	$[228] a day	$[0]
91st day and after:			
--While using 60 lifetime reserve days	All but $[456] a day	$[456] a day	$[0]
--Once lifetime reserve dates are used	$[0]		
--Additional 365 days		100% of Medicare Eligible Expenses	$[0]**
--Beyond the Additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-Approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th days	All but $[110] a day	$[0]	Up to $ [110] a day
101st day and after	$[0]	$[0]	All costs
BLOOD			
First 3 pints	$[0]	3 pints	$[0]
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited co-insurance for outpatient drugs and inpatient respite care	$[0]	Balance

****NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.**

PLAN C
MEDICARE (PART B)--MEDICAL SERVICES--PER CALENDAR YEAR

***Once you have been billed $[110] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES -- IN OUR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80% (Generally)	20% (Generally)	$[0]
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	$[0]	All Costs
BLOOD			
First 3 pints	$[0]	All costs	$[0]
Next $[110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]
CLINICAL LABORATORY SERVICES-- TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
--Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
--Durable medical equipment			
First $[110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]

(continued)

Plan C
(continued)

OTHER BENEFITS--NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-- NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$[0]	$[0]	$[250]
Remainder of Charges	$[0]	80% to a lifetime maximum of $50,000	20% of amounts over the $50,000 lifetime maximum

OUTLINE OF COVERAGE
TABLE 6. PLAN D
MEDICARE (PART A)--HOSPITAL SERVICES--PER BENEFIT PERIOD

***A benefit period begins on the first day you receive services as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[912] (Part A Deductible)	$[0]
61st thru 90th days	All but $[228] a day	$[228] a day	$[0]
91st day and after: --While using 60 lifetime reserve days	All but $[456] a day	$[456] a day	$[0]
--Once lifetime reserve dates are used --Additional 365 days	$[0]	100% of Medicare Eligible Expenses	$[0]**
--Beyond the Additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-Approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th days	All but $[110] a day	$[0]	Up to $ [110] a day
101st day and after	$[0]	$[0]	All costs
BLOOD			
First 3 pints	$[0]	3 pints	$[0]
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited co-insurance for outpatient drugs and inpatient respite care	$[0]	Balance

****NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.**

PLAN D
MEDICARE (PART B)--MEDICAL SERVICES--PER CALENDAR YEAR

***Once you have been billed $[110] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES -- IN OUR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80% (Generally)	20% (Generally)	$[0]
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	$[0]	All Costs
BLOOD			
First 3 pints	$[0]	All costs	$[0]
Next $[110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]
CLINICAL LABORATORY SERVICES-- TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

(continued)

Plan D
(continued)
PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES --Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
--Durable medical equipment First $[110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]
AT-HOME RECOVERY SERVICES--NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved Home Care Treatment Plan --Benefit for each visit	$[0]	Actual Charges to $40 a visit	Balance
--Number of visits covered (must be received within 8 weeks of last Medicare Approved visits)	$[0]	Up to the number of Medicare Approved visits, not to exceed 7 each week	
--Calendar year maximum	$[0]	$1,600	

OTHER BENEFITS--NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-- NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First $250 each calendar year	$[0]	$[0]	$[250]
Remainder of Charges	$[0]	80% to a lifetime maximum of $50,000	20% of amounts over the $50,000 lifetime maximum

OUTLINE OF COVERAGE
TABLE 7. PLAN E
MEDICARE (PART A)--HOSPITAL SERVICES--PER BENEFIT PERIOD

***A benefit period begins on the first day you receive services as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[912] (Part A Deductible)	$[0]
61st thru 90th days	All but $[228] a day	$[228] a day	$[0]
91st day and after: --While using 60 lifetime reserve days	All but $[456] a day	$[456] a day	$[0]
--Once lifetime reserve dates are used --Additional 365 days	$[0]	100% of Medicare Eligible Expenses	$[0]**
--Beyond the Additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-Approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th days	All but $[110] a day	$[0]	Up to $ [110] a day
101st day and after	$[0]	$[0]	All costs
BLOOD			
First 3 pints	$[0]	3 pints	$[0]
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited co-insurance for outpatient drugs and inpatient respite care	$[0]	Balance

****NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.**

PLAN E
MEDICARE (PART B)--MEDICAL SERVICES--PER CALENDAR YEAR

***Once you have been billed $[110] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES -- IN OUR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80% (Generally)	20% (Generally)	$[0]
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	$[0]	All Costs
BLOOD			
First 3 pints	$[0]	All costs	$[0]
Next $[110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]
CLINICAL LABORATORY SERVICES-- TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
--Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
--Durable medical equipment			
First $[110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]

(continued)

Plan E
(continued)

OTHER BENEFITS--NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-- NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$[0]	$[0]	$[250]
Remainder of Charges	$[0]	80% to a lifetime maximum of $50,000	20% and amounts over the $50,000 lifetime maximum
*PREVENTIVE MEDICAL CARE BENEFIT --NOT COVERED BY MEDICARE Some annual physical and preventive tests and services administered or ordered by your doctor when not covered by Medicare			
First $[120] each calendar year	$[0]	$[120]	$[0]
Additional charges	$[0]	$[0]	All costs

***Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare*.**

OUTLINE OF COVERAGE
TABLE 8. PLAN F or HIGH DEDUCTIBLE PLAN F
MEDICARE (PART A)--HOSPITAL SERVICES--PER BENEFIT PERIOD

***A benefit period begins on the first day you receive services as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.**
[This high deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year [$1730] deductible. Benefits from the high deductible Plan F will not begin until out-of-pocket expenses are [$1730]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.]**

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1730] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO $[1730] DEDUCTIBLE,**] YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[912] (Part A Deductible)	$[0]
61st thru 90th days	All but $[228] a day	$[228] a day	$[0]
91st day and after:			
--While using 60 lifetime reserve days	All but $[456] a day	$ [456] a day	$[0]
--Once lifetime reserve dates are used			
--Additional 365 days	$[0]	100% of Medicare Eligible Expenses	$[0]***
--Beyond the Additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th days	All but $[110]a day	Up to [110]a day	$[0]
101st day and after	$[0]	$[0]	All costs
BLOOD			
First 3 pints	$[0]	3 pints	$[0]
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited co-insurance for outpatient drugs and inpatient respite care	$[0]	Balance

*****NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.**

PLAN F or HIGH DEDUCTIBLE PLAN F
MEDICARE (PART B)--MEDICAL SERVICES--PER CALENDAR YEAR

***Once you have been billed $[110] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.**
[This high deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year [$1730] deductible. Benefits from the high deductible Plan F will not begin until out-of-pocket expenses are [$1730]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.]**

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1730] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO $[1730] DEDUCTIBLE,**] YOU PAY
MEDICAL EXPENSES -- IN OUR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[110] of Medicare Approved Amounts*	$[0]	$[110] (Part B Deductible)	$[0]
Remainder of Medicare Approved Amounts	80% (Generally)	20% (Generally)	$[0]
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	100%	$[0]
BLOOD			
First 3 pints	$[0]	All costs	$[0]
Next $[110] of Medicare Approved Amounts*	$[0]	$[110] (Part B Deductible)	$[0]
Remainder of Medicare Approved Amounts	80%	20%	$[0]
CLINICAL LABORATORY SERVICES-- TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

(continued)

PLAN F or HIGH DEDUCTIBLE PLAN F

PARTS A & B

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1730] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO $[1730] DEDUCTIBLE,**] YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES --Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
--Durable medical equipment First $[110] of Medicare Approved Amounts*	$[0]	$[110] (Part B Deductible)	$[0]
Remainder of Medicare Approved Amounts	80%	20%	$[0]

OTHER BENEFITS--NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1730] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO $[1730] DEDUCTIBLE,**] YOU PAY
FOREIGN TRAVEL-- NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First $250 each calendar year	$[0]	$[0]	$[250]
Remainder of Charges	$[0]	80% to a lifetime maximum of $50,000	20% and amounts over the $50,000 life-time maximum

OUTLINE OF COVERAGE
TABLE 9. PLAN G
MEDICARE (PART A)--HOSPITAL SERVICES--PER BENEFIT PERIOD

*A benefit period begins on the first day you receive services as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[912] (Part A Deductible)	$[0]
61st thru 90th days	All but $[228] a day	$[228] a day	$[0]
91st day and after: --While using 60 lifetime reserve days	All but $[456] a day	$ [456] a day	$[0]
--Once lifetime reserve dates are used --Additional 365 days	$[0]	100% of Medicare Eligible Expenses	$[0]**
--Beyond the Additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th days	All but $[110]a day	Up to [110]a day	$[0]
101st day and after	$[0]	$[0]	All costs
BLOOD First 3 pints	$[0]	3 pints	$[0]
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited co-insurance for outpatient drugs and inpatient respite care	$[0]	Balance

****NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.**

PLAN G
MEDICARE (PART B)--MEDICAL SERVICES--PER CALENDAR YEAR

*Once you have been billed $[110] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES -- IN OUR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[110] of Medicare Approved Amounts*	$[0]	$[110] (Part B Deductible)	$[0]
Remainder of Medicare Approved Amounts	80% (Generally)	20% (Generally)	$[0]
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	80%	20%
BLOOD			
First 3 pints	$[0]	All costs	$[0]
Next $[110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]
CLINICAL LABORATORY SERVICES-- TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

(continued)

Plan G
(continued)
PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES --Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
--Durable medical equipment First $[110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]
AT-HOME RECOVERY SERVICES-- NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved Home Care Treatment Plan --Benefit for each visit	$[0]	Actual charges up to $40 a visit	Balance
--Number of visits covered (must be received within 8 weeks of last Medicare Approved visit)	$[0]	Up to the number of Medicare Approved visits, not to exceed 7 each week	
--Calendar year maximum	$[0]	$1,600	

OTHER BENEFITS--NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-- NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First $250 each calendar year	$[0]	$[0]	$[250]
Remainder of Charges	$[0]	80% to a lifetime maximum of $50,000	20% and amounts over the $50,000 lifetime maximum

OUTLINE OF COVERAGE
TABLE 10. PLAN H
MEDICARE (PART A)--HOSPITAL SERVICES--PER BENEFIT PERIOD

*A benefit period begins on the first day you receive services as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[912] (Part A Deductible)	$[0]
61st thru 90th days	All but $[228] a day	$[228] a day	$[0]
91st day and after: --While using 60 lifetime reserve days	All but $[456] a day	$ [456] a day	$[0]
--Once lifetime reserve dates are used --Additional 365 days	$[0]	100% of Medicare Eligible Expenses	$[0]**
--Beyond the Additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th days	All but $[110]a day	Up to [110]a day	$[0]
101st day and after	$[0]	$[0]	All costs
BLOOD First 3 pints	$[0]	3 pints	$[0]
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited co-insurance for outpatient drugs and inpatient respite care	$[0]	Balance

****NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.**

PLAN H
MEDICARE (PART B)--MEDICAL SERVICES--PER CALENDAR YEAR

*Once you have been billed $[110] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES -- IN OUR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[110] of Medicare Approved Amounts*	$[0]	$[110] (Part B Deductible)	$[0]
Remainder of Medicare Approved Amounts	80% (Generally)	20% (Generally)	$[0]
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	$[0]	All Costs
BLOOD			
First 3 pints	$[0]	All costs	$[0]
Next $[110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]
CLINICAL LABORATORY SERVICES-- TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES --Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
--Durable medical equipment			
First $110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]

(continued)

Plan H
(continued)

OTHER BENEFITS--NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-- NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$[0]	$[0]	$[250]
Remainder of Charges	S[0]	80% to a lifetime maximum of $50,000	20% and amounts over the $50,000 lifetime maximum

OUTLINE OF COVERAGE
TABLE 11. PLAN I
MEDICARE (PART A)--HOSPITAL SERVICES--PER BENEFIT PERIOD

*A benefit period begins on the first day you receive services as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[912] (Part A Deductible)	$[0]
61st thru 90th days	All but $[228] a day	$[228] a day	$[0]
91st day and after: --While using 60 lifetime reserve days	All but $[456] a day	$ [456] a day	$[0]
--Once lifetime reserve dates are used --Additional 365 days	$[0]	100% of Medicare Eligible Expenses	$[0]**
--Beyond the Additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th days	All but $[110]a day	Up to [110]a day	$[0]
101st day and after	$[0]	$[0]	All costs
BLOOD First 3 pints	$[0]	3 pints	$[0]
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited co-insurance for outpatient drugs and inpatient respite care	$[0]	Balance

****NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.**

PLAN I
MEDICARE (PART B)--MEDICAL SERVICES--PER CALENDAR YEAR

*Once you have been billed $[110] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES -- IN OUR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[110] of Medicare Approved Amounts*	$[0]	$[110] (Part B Deductible)	$[0]
Remainder of Medicare Approved Amounts	80% (Generally)	20% (Generally)	$[0]
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	100%	$[0]
BLOOD			
First 3 pints	$[0]	All costs	$[0]
Next $[110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]
CLINICAL LABORATORY SERVICES-- TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

(continued)

Plan I
(continued)

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE			
MEDICARE APPROVED SERVICES			
--Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
--Durable medical equipment			
First $[110] of Medicare Approved Amounts*	S[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]
AT-HOME RECOVERY SERVICES--NOT COVERED BY MEDICARE			
Home care certified by your doctor. for personal care during recovery from an injury or sickness for which Medicare approved Home Care Treatment Plan			
--Benefit for each visit	S[0]	Actual Charges to $40 a visit	Balance
--Number of visits covered (must be received within 8 weeks of last Medicare Approved visit)	S[0]	Up to the number of Medicare Approved visits, not to exceed 7 each week	
--Calendar year maximum	S[0]	$1.600	

(continued)

Plan I
(continued)

OTHER BENEFITS--NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-- NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$[0]	$[0]	$[250]
Remainder of Charges	$[0]	80% to a lifetime maximum of $50,000	20% and amounts over the $50,000 lifetime maximum

OUTLINE OF COVERAGE
TABLE 12. PLAN J or HIGH DEDUCTIBLE PLAN J
MEDICARE (PART A)--HOSPITAL SERVICES--PER BENEFIT PERIOD

*A benefit period begins on the first day you receive services as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.
[**This high deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year [$1730] deductible. Benefits from the high deductible Plan J will not begin until out-of-pocket expenses are [$1730]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate outpatient prescription drug deductible or the plan's separate foreign travel emergency deductible.]

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1730] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO $[1730] DEDUCTIBLE,**] YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[912] (Part A Deductible)	$[0]
61st thru 90th days	All but $[228] a day	$[228] a day	$[0]
91st day and after:			
--While using 60 lifetime reserve days	All but $[456] a day	$ [456] a day	$[0]
--Once lifetime reserve dates are used			
--Additional 365 days	$[0]	100% of Medicare Eligible Expenses	$[0]***
--Beyond the Additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th days	All but $[110]a day	Up to [110]a day	$[0]
101st day and after	$[0]	$[0]	All costs
BLOOD			
First 3 pints	$[0]	3 pints	$[0]
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited co-insurance for outpatient drugs and inpatient respite care	$0	Balance

*****NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.**

PLAN J or HIGH DEDUCTIBLE PLAN J
MEDICARE (PART B)--MEDICAL SERVICES--PER CALENDAR YEAR

*Once you have been billed $[110]of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.
[**This high deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year [$1730] deductible. Benefits from the high deductible Plan J will not begin until out-of-pocket expenses are [$1730]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's foreign travel emergency deductible.]

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1730] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO $[1730] DEDUCTIBLE,**] YOU PAY
MEDICAL EXPENSES -- IN OUR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[110] of Medicare Approved Amounts*	$[0]	$[110] (Part B Deductible)	$[0]
Remainder of Medicare Approved Amounts	80% (Generally)	20% (Generally)	$[0]
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	100%	$[0]
BLOOD			
First 3 pints	$[0]	All costs	$[0]
Next $[110] of Medicare Approved Amounts*	$[0]	$[110] (Part B Deductible)	$[0]
Remainder of Medicare Approved Amounts	80%	20%	$[0]
CLINICAL LABORATORY SERVICES-- TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

(continued)

Plan J or HIGH DEDUCTIBLE PLAN J
(continued)

PARTS A & B

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1730] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO $[1730] DEDUCTIBLE,** YOU PAY]
HOME HEALTH CARE MEDICARE APPROVED SERVICES --Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
--Durable medical equipment First $[110] of Medicare Approved Amounts*	$[0]	$[110] (Part B Deductible)	$[0]
Remainder of Medicare Approved Amounts	80%	20%	$[0]
AT-HOME RECOVERY SERVICES--NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved Home Care Treatment Plan			
--Benefit for each visit	$[0]	Actual Charges to $40 a visit	Balance
--Number of visits covered (must be received within 8 weeks of last Medicare Approved visit)	$[0]	Up to the number of Medicare Approved visits, not to exceed 7 each week	
--Calendar year maximum	$[0]	$1,600	

(continued)

Plan J or HIGH DEDUCTIBLE PLAN J
(continued)

PARTS A & B (continued)

OTHER BENEFITS--NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1730] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO $[1730] DEDUCTIBLE,**] YOU PAY
FOREIGN TRAVEL-- NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$[0]	$[0]	$[250]
Remainder of Charges	$[0]	80% to a lifetime maximum of $50,000	20% and amounts over the $50,000 lifetime maximum
*****PREVENTIVE MEDICAL CARE BENEFIT--NOT COVERED BY MEDICARE** Some annual physical and preventive tests and services administered or ordered by your doctor when not covered by Medicare			
First $120 each calendar year	$[0]	$120	$[0]
Additional charges	$[0]	$[0]	All Costs

***Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare.*

OUTLINE OF COVERAGE
TABLE 13. PLAN K

* You will pay half the cost-sharing of some covered services until you reach the annual out-of-pocket limit of $[4000] each calendar year. The amounts that count toward your annual limit are noted with diamonds (♦) in the chart below. Once you reach the annual limit, the plan pays 100% of your Medicare copayment and coinsurance for the rest of the calendar year. **However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

**** A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
HOSPITALIZATION** Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[456](50% of Part A deductible)	$[456](50% of Part A deductible)♦
61st thru 90th day	All but $[228] a day	$[228] a day	$[0]
91st day and after:			
—While using 60 lifetime reserve days	All but $[456] a day	$[456] a day	$[0]
—Once lifetime reserve days are used:			
—Additional 365 days	$[0]	100% of Medicare eligible expenses	$[0]***
—Beyond the additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE** You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility Within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th day	All but $[110] a day	Up to $[54.75] a day	Up to $[54.75] a day ♦
101st day and after	$[0]	$[0]	All costs
BLOOD			
First 3 pints	$[0]	50%	50%♦
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	Generally, most Medicare eligible expenses for out-patient drugs and inpatient respite care	50% of coinsurance or copayments	50% of coinsurance or copayments♦

(continued)

*** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN K

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

**** Once you have been billed $[110] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
MEDICAL EXPENSES— IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[110] of Medicare Approved Amounts****	$[0]	$[0]	$[110] (Part B deductible)**** ♦
Preventive Benefits for Medicare covered services	Generally 75% or more of Medicare approved amounts	Remainder of Medicare approved amounts	All costs above Medicare approved amounts
Remainder of Medicare Approved Amounts	Generally 80%	Generally 10%	Generally 10% ♦
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	$[0]	All costs (and they do not count toward annual out-of-pocket limit of [$4000])*
BLOOD			
First 3 pints	$[0]	50%	50%♦
Next $[110] of Medicare Approved Amounts****	$[0]	$[0]	$[110] (Part B deductible)**** ♦
Remainder of Medicare Approved Amounts	Generally 80%	Generally 10%	Generally 10% ♦
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

(continued)

* This plan limits your annual out-of-pocket payments for Medicare-approved amounts to $[4000] per year. **However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

PLAN K

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
—Durable medical equipment First $[110] of Medicare Approved Amounts*****	$[0]	$[0]	$[110] (Part B deductible) ♦
Remainder of Medicare Approved Amounts	80%	10%	10%♦

*****Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare*.

OUTLINE OF COVERAGE
TABLE 14. PLAN L

* You will pay one-fourth of the cost-sharing of some covered services until you reach the annual out-of-pocket limit of $[2000] each calendar year. The amounts that count toward your annual limit are noted with diamonds (♦) in the chart below. Once you reach the annual limit, the plan pays 100% of your Medicare copayment and coinsurance for the rest of the calendar year. **However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

** A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
HOSPITALIZATION** Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[657] (75% of Part A deductible)	$[228] (25% of Part A deductible)♦
61st thru 90th day	All but $[228] a day	$[228] a day	$[0]
91st day and after:			
—While using 60 lifetime reserve days	All but $[456] a day	$[456] a day	$[0]
—Once lifetime reserve days are used			
—Additional 365 days	$[0]	100% of Medicare eligible expenses	$[0]***
—Beyond the additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE** You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility Within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th day	All but $[110] a day	Up to $[82.13] a day	Up to $[27.37] a day♦
101st day and after	$[0]	$[0]	All costs
BLOOD			
First 3 pints	$[0]	75%	25%♦
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	Generally, most Medicare eligible expenses for out-patient drugs and inpatient respite care	75% of coinsurance or copayments	25% of coinsurance or copayments ♦

(continued)

*** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN L

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

**** Once you have been billed $[110] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
MEDICAL EXPENSES— IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment.			
First $[110] of Medicare Approved Amounts****	$[0]	$[0]	$[110] (Part B deductible)**** ♦
Preventive Benefits for Medicare covered services	Generally 75% or more of Medicare approved amounts	Remainder of Medicare approved amounts	All costs above Medicare approved amounts
Remainder of Medicare Approved Amounts	Generally 80%	Generally 15%	Generally 5% ♦
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	$[0]	All costs (and they do not count toward annual out-of-pocket limit of [$2000])*
BLOOD			
First 3 pints	$[0]	75%	25%♦
Next $[110] of Medicare Approved Amounts****	$[0]	$[0]	$[110] (Part B deductible)♦
Remainder of Medicare Approved Amounts	Generally 80%	Generally 15%	Generally 5%♦
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

(continued)

* This plan limits your annual out-of-pocket payments for Medicare-approved amounts to $[2000] per year. **However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

PLAN L

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
—Durable medical equipment First $[110] of Medicare Approved Amounts*****	$[0]	$[0]	$[110] (Part B deductible)♦
Remainder of Medicare Approved Amounts	80%	15%	5% ♦

*****Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare.*

APPENDIX T. NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE OR MEDICARE ADVANTAGE [REVOKED]

APPENDIX T. NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE OR MEDICARE ADVANTAGE [NEW]

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to terminate existing Medicare supplement or Medicare Advantage insurance and replace it with a policy to be issued by [Company Name] Insurance Company. Your new policy will provide thirty (30) days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and health coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement or Medicare Advantage coverage is a wise decision, you should terminate your present Medicare supplement coverage. You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER, AGENT [BROKER OR OTHER REPRESENTATIVE]:

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement, or, if applicable, Medicare Advantage coverage because you intend to terminate your existing Medicare supplement coverage or leave your Medicare Advantage plan. The replacement policy is being purchased for the following reason(s) (check one):

____ Additional benefits.
____ No change in benefits, but lower premiums.
____ Fewer benefits and lower premiums.
____ My plan has outpatient prescription drug coverage and I am enrolling in Part D.
____ Disenrollment from a Medicare Advantage plan. Please explain reason for disenrollment. [optional only for Direct Mailers.]
____ Other. (please specify)

_____
_____
_____
_____

1. Note: If the issuer of the Medicare supplement policy applied for does not, or is otherwise prohibited from imposing pre-existing condition limitations, please skip to

statement 2 below._Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) to the extent such time was spent (depleted) under the original policy.

3. If, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

_____
(Signature of Agent, Broker or Other Representative)*

_____
[Typed Name and Address of Issuer, Agent or Broker]

_____
(Applicant's Signature)

_____
(Date)

*Signature not required for direct response sales.

APPENDIX V. DISCLOSURE STATEMENTS [REVOKED]

APPENDIX V. DISCLOSURE STATEMENTS [NEW]

Instructions for Use of the Disclosure Statements for Health Insurance Policies Sold to Medicare Beneficiaries that Duplicate Medicare

1. Section 1882(d) of the Federal Social Security Act, 42 U.S.C. 1395ss, prohibits the sale of a health insurance policy (the term policy or policies includes certificates) to Medicare beneficiaries that duplicate Medicare benefits unless it will pay benefits without regard to other beneficiary's health coverage and it includes the prescribed disclosure statement on or together with the application for the policy.

2. All types of health insurance policies that duplicate Medicare shall include one of the attached disclosure statements, according to the particular policy type involved, on the application or together with the application. The disclosure statement may not vary from the attached statements in terms of language or format (type size, type proportional spacing, bold character, line spacing, and usage of boxes around text).

3. State and federal law prohibits insurers from selling a Medicare supplement policy to a person that already has a Medicare supplement policy except as a replacement.

4. Property/casualty and life insurance policies are not considered health insurance.

5. Disability income policies are not considered to provide benefits that duplicate Medicare.

6. Long-term care insurance polices that coordinate with Medicare and other health insurance are not considered to provide benefits that duplicate Medicare.

7. The federal law does not preempt state laws that are more stringent than the federal requirements.

8. The federal law does not preempt existing state form filing requirements.

9. Section 1882 of the federal Social Security Act was amended in subsection (d)(3)(A) to allow for alternative disclosure statements. The original disclosure statements already in Appendix V remain. Carriers may use either disclosure statement with the requisite insurance product. However, carriers should use either the original disclosure statements or the alternative disclosure statements and not use both simultaneously.

[Original Disclosure Statement. For policies that provide benefits for expenses incurred for an accidental injury only]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior health insurance counseling program SHICP.

[Original Disclosure Statement. For policies that provide benefits for specified limited services]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any of the services covered by the policy are also covered by Medicare

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior health insurance counseling program SHICP.

[Original Disclosure Statement. For policies that reimburse expenses incurred for specified disease(s) or other specified impairment(s). This includes expense incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior health insurance counseling program SHICP.

[Original Disclosure Statement. For policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits because Medicare generally pays for most of the expenses for the diagnosis and treatment of the specific conditions or diagnoses named in the policy.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior health insurance counseling program SHICP.

[Original Disclosure Statement. For indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any expenses or services covered by the policy are also covered by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior health insurance counseling program SHICP.

[Original Disclosure Statement. For policies that provide benefits for both expenses incurred and fixed indemnity basis]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any expenses or services covered by the policy are also covered by Medicare; or
- it pays the fixed dollar amount stated in the policy and Medicare covers the same event

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice care
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior health insurance counseling program SHICP.

[Original Disclosure Statement. For other health insurance policies not specifically identified in the previous statements]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- the benefits stated in the policy and coverage for the same event is provided by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior health insurance counseling program SHICP.

[Alternative Disclosure Statement. For policies that provide benefits for expenses incurred for an accidental injury only]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior health insurance counseling program SHICP.

[Alternative Disclosure Statement. For policies that provide benefits for specified limited services]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid by Medicare may also trigger the payment of benefits under this policy.

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior health insurance counseling program SHICP.

[Alternative Disclosure Statement. For policies that reimburse expenses incurred for specified disease(s) or other specified impairment(s). This includes expense incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits under this policy.

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior health insurance counseling program SHICP.

[Alternative Disclosure Statement. For policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior health insurance counseling program SHICP.

[Alternative Disclosure Statement. For indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits for this policy.

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior health insurance counseling program SHICP.

[Alternative Disclosure Statement. For policies that provide benefits for both expenses incurred and fixed indemnity basis]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice care
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior health insurance counseling program SHICP.

[Alternative Disclosure Statement. For other health insurance policies not specifically identified in the previous statements]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.
Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.
√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
√ For help in understanding your health insurance, contact your state insurance department or state senior health insurance counseling program SHICP.

APPENDIX FF. MEDICARE SUPPLEMENT INSURANCE QUESTIONS [NEW]

[Questions]

If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare supplement insurance policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or more of our Medicare supplement plans. Please include a copy of the notice from your prior insurer with your application. PLEASE ANSWER ALL QUESTIONS.

[Please mark Yes or No below with an "X"]

To the best of your knowledge:

(1) (a) Did you turn age 65 in the last 6 months?

Yes_____ No_____

(b) Did you enroll in Medicare Part B in the last 6 months?

Yes_____ No_____

(c) If yes, what is the effective date?_____

(2) Are you covered for medical assistance through the state Medicaid program?

[NOTE TO APPLICANT: If you are participating in a "Spend-Down Program" and have not met your "Share of cost," please answer NO to this question.]

Yes_____ No_____

If yes,

(a) Will Medicaid pay your premiums for this Medicare supplement policy?

Yes_____ No_____

(b) Do you receive any benefits from Medicaid OTHER THAN payments toward your Medicare Part B premium?

Yes_____ No_____

(3) (a) If you had coverage from any Medicare plan other than original Medicare within the past 63 days (for example, a Medicare Advantage

plan, or a Medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.

START _/_/_ END _/_/_ .

(b) If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare supplement policy?

Yes_____ No_____

(c) Was this your first time in this type of Medicare plan?

Yes_____ No_____

(d) Did you drop a Medicare supplement policy to enroll in the Medicare plan?

Yes_____ No_____

(4) (a) Do you have another Medicare supplement policy in force?

Yes_____ No_____

(b) If so, with what company, and what plan do you have [optional ofr Direct Mailers]?

_____

(c) If so, do you intend to replace your current Medicare supplement policy with this policy?

Yes_____ No_____

(5) Have you had coverage under any other health insurance within the past 63 days? (For example, an employer, union, or individual plan)

Yes_____ No_____

(a) If so, with what company and what kind of policy?

_____

(b) What are your dates of coverage under the other policy?

START _/_/_ END _/_/_ .

(If you are still covered under the other policy, leave "END" blank.)

[OAR Docket #05-987; filed 5-25-05]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 15. PROPERTY AND CASUALTY

[OAR Docket #05-989]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
365:15-1-3. Property and casualty form filings [AMENDED]
Subchapter 7. Commercial Property And Casualty Competitive Loss Cost Rating Regulation
365:15-7-6. Excess consent rate filings [AMENDED]
365:15-7-16. Statistical plans [AMENDED]
365:15-7-17. Suspension or modification of filing requirements [AMENDED]
365:15-7-18. Technicians [AMENDED]
365:15-7-26. Weather related claims [NEW]
365:15-7-27. Credit related policies [NEW]
365:15-7-28. Use of lack of prior insurance in underwriting or rating [NEW]
Subchapter 9. Medical Professional Liability Rate Setting
365:15-9-3. Notice to Policyholders [AMENDED]
365:15-9-6.1. Umbrella medical professional liability coverage [NEW]
365:15-9-8. Miscellaneous [AMENDED]
365:15-9-9. Rate change application is a public record [NEW]
AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1 and 6821
DATES:
Comment period:
February 1, 2005, to March 4, 2005
Public hearing:
March 25, 2005
Adoption:
March 8, 2005
Submitted to Governor:
March 25, 2005
Submitted to House:
March 28, 2005
Submitted to Senate:
March 28, 2005
Gubernatorial approval:
May 9, 2005
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 20, 2005
Final adoption:
May 20, 2005
Effective:
July 14, 2005
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed amendments to Rule 365:15-1-3 are to provide consistency between this rule and Rules 365:15-1-3(b)(2)(D) and 365:15-7-3(b)(2)(D). The proposed amendments to Rules 365:15-7-6, 16 and 17 and 365:15-9-8 remove the word "commercial" as a result of the amendments to 36 O.S. § 981, et seq., in House Bill 2470. The proposed amendments to Rule 365:15-7-18 allow actuarial review consistent with the amendments to 36 O.S. § 981, et seq. in House Bill 2470. The proposed amendments to Rules 365:15-7-26 through 28 address issues previously under the jurisdiction of the State Board for Property and Casualty Rates (see Rules 570:10-7-32, 34, and 36), but due to the passage of House Bill 2470 are now part of 36 O.S. § 981, et seq. The proposed amendments to Rule 365:15-9-3 permit a policyholder, policyholder representative or medical professional liability insurer to submit a letter waiving the right to hearing as authorized by 36 O.S. § 6821(C)(1) thereby expediting the process as set out in Section 6821. Certain commercial policies available to physicians and other medical professionals provide umbrella coverage for medical professional liability claims, in addition to other liability claims, therefore the proposed new Rule 365:15-9-6.1 limits 36 O.S. §§ 6810-6821 to primary medical professional liability coverage. The proposed new Rule 365:15-9-9 provides that medical liability insurance rate change applications filed pursuant to 36 O.S. § 6821 are public records.
CONTACT PERSON:
Karl F. Kramer, Assistant General Counsel, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

365:15-1-3. Property and casualty form filings

(a) **Purpose.** The purpose of this section is to specify the procedures for submitting form filings to the Insurance Commissioner as required by Article 36 of the Insurance Code.

(b) **Procedures.** Policy forms, endorsements and revisions thereto, by insurance companies and rating organizations licensed in Oklahoma, shall be submitted in compliance with this section, or shall be rejected for filing, and the entity which made such submission shall be so notified.

(1) **Filing requirements.** The Insurance Code, Article 36, requires that each insurer shall make its form filings by line of business directly with the Insurance Commissioner. Companies may satisfy their obligation to make such filings, where authorized by law, by becoming a member or subscriber to an Oklahoma licensed rating organization which makes such filings.

(2) **Filing fees.**

(A) Form filings shall be accompanied by the proper fees as specified in the Insurance Code.

(B) Filings for groups of insurers shall be accompanied by the specified fee for each transaction, regardless of the number of members or subscribers.

(C) Filings by rating organizations shall be accompanied by the specified fee for each transaction regardless of the number of members or subscribers.

(D) Filing fees are not required for transactions that involve only the following:

(i) Error corrections.

(ii) Informational filings (not required to be filed).

(iii) Change in effective date for approved filing.

(iv) Final printing of approved forms.

(v) Additional information or amendments to pending filings.

(vi) Withdrawal of obsolete forms having no impact on Oklahoma policyholders.

(vii) Change in officer or signature for approved filing.

(viii) Change in company logo for approved filing.

(ix) Changing the effective date for advisory organization filings by members or subscribers.

(x) Nonadoption of advisory organization filings that would be a duplication of a filing in effect for the filer.

(3) **Address requirements.** All filings shall be addressed as follows: Oklahoma Insurance Commissioner, P.O. Box 53408, Oklahoma City, OK 73152-3408.

(4) **Number of copies.** All filings including the cover letter, all exhibits, forms and additional information submitted to the Insurance Commissioner shall be submitted with two (2) legible copies of all material. Such filings and exhibits shall be typewritten or printed. Companies that file as a group listing all companies on the transmittal letter may accomplish this requirement by submitting two copies plus one additional copy of the completed transmittal forms only for each additional insurer.

(5) **Effective date of filings.** The effective date of form filings and the dates of required action by the Insurance Commissioner are governed by the applicable provisions of the Insurance Code.

(6) **Notice of Insurance Commissioner action.** The Insurance Commissioner shall indicate action taken in writing, one (1) copy of which shall be attached to the official file copy and one (1) copy transmitted to the filing entity, or action may be indicated by stamp, with the individual stamping same, placing his initial or signature thereunder. Responses to questions shall be submitted in writing with two legible copies of all material. Nothing in this section shall preclude the Insurance Commissioner from the use of other forms of communication to secure information from the filing entity.

(7) **Life, accident and health insurance.** This section does not apply to Life, Accident and Health. Life, Accident and Health filings shall be made in accordance with the applicable provisions of the Insurance Code and Rules of the Insurance Commissioner.

(8) **Postage requirements.** No submissions shall be accepted which arrive at the offices with postage due. No submissions will be returned unless the necessary postage accompanies the same.

(9) **Filing form and content.** All filings shall contain the following:

(A) The name of the filing entity and complete mailing address to which correspondence shall be sent.

(B) A "RE" or "caption" briefly describing the content and context of the filing.

(C) A list or index of the forms filed in the filing letter or attached thereto including the form numbers and edition date, if applicable.

(D) A complete description and full explanation of the changes made by the filing including, reasoning therefor, illustrative examples, including "John Doe" specimen form, and a comparison of currently approved and proposed materials (side by side comparison).

(E) A concise statement to identify the form to be replaced by the filing including the approval date in this jurisdiction and the identifying filing number of the filing containing the form to be replaced as assigned by the Insurance Department.

(F) If a form is being withdrawn or amended due to court decisions in any jurisdiction, the filing entity shall furnish the legal citation, and if from another jurisdiction, a copy of such decision or opinion with its filing.

(G) If a form filing is due to a federal law or regulation of a federal agency, the filing entity shall furnish the legal citation and a copy of the pertinent provisions.

(H) Completed transmittal forms and exhibits.

(10) **Withdrawal of pending filings.** Pending filings may be withdrawn by the filing entity upon notice to the Insurance Commissioner prior to the approval or disapproval thereof.

(11) **Duration of filings.** All filings are in effect until withdrawn by the insurer or rating organization, with approval of the Insurance Commissioner or until abrogated by the Insurance Commissioner.

(12) **Bureau deviations.** Every member of, or subscriber to, a licensed rating organization may adhere to any filings made on its behalf by its Rating Organization, except that any such member or subscriber may deviate from such filings as authorized by this section if it has filed with the Rating Organization and with the Insurance Commissioner, the deviation to be applied and information necessary to justify the deviation. If such deviation is approved, it shall remain in force until such approval is withdrawn by the insurer with approval of the Insurance Commissioner.

(13) **Group filings.** Where filings are made on behalf of more than one insurer, a designation shall list the insurer or insurers by individual name and not by Company group.

(14) **Members of or subscribers to a licensed rating organization.**

(A) **Filings.** A licensed rating organization may make filings on behalf of its members and subscribers except deviation filings.

(B) **Adherence to filings.** Every member of or subscriber to a licensed rating organization may adhere to any filings made on its behalf by such organization except that any such member or subscriber may deviate from such filings upon compliance with this section and approval of the Insurance Commissioner

(C) **Individual company filings.** Members and subscribers shall not file individual forms that have been filed on their behalf by the appropriate rating organization. Declaration pages, policy "jackets" and other forms not normally filed by the rating organization should be filed by the insurer directly with the Insurance Commissioner.

(D) **Filing requirements; bureau form deviation.** If form deviations are proposed, file form including supporting data with the Insurance Commissioner and furnish copies to the appropriate rating organization.

(E) **Agency filings.** "Agency Filings" by a Rating Organization on behalf of its members or subscribers shall be accepted by the Insurance Commissioner in instances where the rating organization does not have a filing in effect for the coverage involved.

(15) **Independent filings.** If the insurer is not a member or subscriber of a bureau for the kind and line of insurance involved, filing shall comply with the following:

(A) File Policy Forms, Endorsements, and other materials, with the Insurance Commissioner and designate them as "Independent Filings".

(B) File support of each filing in accordance with this section.

(C) For revisions, file form with the Insurance Commissioner.

(16) **Reference filings; rating organization filings.**

(A) **Filings permitted without reference filing agreement.** Rating Organization forms used in whole or in part may be adopted by "Reference Filings" subject to the approval of the Insurance Commissioner. When making such type filing submit a filing memorandum identifying the forms used. Departures and exceptions, if any, shall be accompanied by the necessary supporting data. Such adoption shall apply only to current filings and shall have no automatic effect as to future filings. Each rating organization filing shall be separately and specifically adopted.

(B) **Filings permitted with reference filing agreement.** Approved Rating Organization material may be adopted by filing a REFERENCE FILING AGREEMENT with the Insurance Commissioner identifying the forms and material to be used. Such adoption shall apply from the date it is approved by the Insurance Commissioner to filings in effect on that date and to all applicable future filings. It shall remain in effect until such time as the agreement is withdrawn with the approval of the Commissioner.

(C) **Reference filing.** If filing by "Reference Filing" DO NOT file forms.

(17) **Resubmittal of filings.** All resubmissions of disapproved or rejected filings shall be presented to the Insurance Commissioner in the same manner as required by this section for an original filing. In addition the cover letter or completed transmittal forms addressed to the Insurance Commissioner shall state the full and complete history of the filing, the reason for disapproval or rejection, and the factors which distinguish the resubmittal so it warrants reconsideration.

(18) **Retroactive filings.** The Insurance Commissioner has no authority to and shall not approve filings proposing a retroactive effective date except in cases of a filing correcting an error in a previously approved filing and in cases where required or necessitated by Statute.

(19) **Delivery of policy to insured.** In any instance whereby a policy of insurance is effected the insurance shall be furnished with either:

(A) The original policy;

(B) A copy of the original policy or a duplicate policy printed with ten point or larger type; or

(C) A certificate including provisions and conditions of the original policy printed with ten point or larger type.

(20) **Coverage elimination after policy issuance.** Any endorsement which eliminates or restricts coverage and which is issued during the policy term shall be identified as accepted by the insured, by the signature of the insured thereon, and a signed copy (original, computer generated or microfilm) of such endorsement shall be retained in the files of the insurer for one year after the expiration of the policy.

(21) **Uniform standard mortgage clause.** The mortgage clause to be used by Insurance Companies in Oklahoma shall be uniform Standard Form Number 127B September 1934 Edition or subsequent editions, except upon written application by an insurer or rating organization, a cause providing broader coverage may be approved by the Insurance Commissioner.

(22) **Claims-made policies.**

(A) The policy application and the Declarations page of each claims-made policy shall include a conspicuous notice indicating that the contract is a claims-made policy and advising the policyholder to read its provisions.

(B) The policy shall provide for extended reporting period options based on rules, rates or rating plans approved by the State Board for Property and Casualty Rates or the Insurance Commissioner.

(23) **New forms, reductions in coverage.**

(A) Form filings that may result in the elimination of claims (losses) shall be considered as a relevant factor to be given due consideration by the State Board for Property and Casualty Rates or the Insurance Commissioner as respects rates in effect or proposed for the coverage involved.

(B) The filer shall fully disclose the rate consideration so that the Board or Commissioner can be notified of the form filing. The form filing may be disapproved if the rate effect has not been considered in rules, rates or rating plans approved by the Board.

SUBCHAPTER 7. ~~COMMERCIAL~~ PROPERTY AND CASUALTY COMPETITIVE LOSS COST RATING REGULATION

365:15-7-6. Excess consent rate filings

(a) In order to be filed, excess consent rate applications shall be submitted prior to or within a reasonable time after the effective date of the policy and contain the information necessary to establish compliance with the ~~Commercial~~ Property and Casualty Competitive Loss Cost Rating Act.

(b) The requirements may be satisfied by submitting in duplicate the form furnished by the Insurance Commissioner or its equivalent. (See Appendix C).

365:15-7-16. Statistical plans

(a) The Insurance Commissioner may approve a statistical plan or any modification thereto submitted by an insurer or advisory organization adapted to the applicable rating system, which shall be used thereafter for the recording of loss and expense experience.

(b) The Insurance Commissioner may approve an advisory organization as his statistical agent to gather, record, compile and report experience in such manner, form and detail as determined by the Insurance Commissioner to be necessary to determine whether rating systems comply with the standards of the ~~Commercial~~ Property and Casualty Competitive Loss Cost Rating Act.

365:15-7-17. Suspension or modification of filing requirements

(a) **Review of rates prior to use.** The Insurance Commissioner in his review of a filing may accept for the filer the use of rates without being filed for the kind of insurance or classes of risks for which he determines that rates cannot be practically filed before the rates are used.

(b) **Rates submitted on individual risk basis.** The filer shall submit such rates on an individual risk basis or maintain records for future examination as the Insurance Commissioner deems advisable.

(c) **Loss and expense experience report.** The filer shall maintain loss and expense experience for annual reporting to the Insurance Commissioner or to his designated statistical agent in such form and detail necessary to determine compliance with the standards set forth in the ~~Commercial~~ Property and Casualty Competitive Loss Cost Rating Act.

365:15-7-18. Technicians

(a) **List of technicians.** The Insurance Commissioner shall maintain a list of technicians, including actuaries, statisticians, accountants, attorneys, auditors, investigators or any other person, as the Insurance Commissioner may deem necessary or beneficial to aid in review or examination of any filings for rate revision made by insurers or rating organizations. The list shall be compiled on a yearly basis and shall be comprised for the current calendar year of those that submit a written request to the Insurance Commissioner by December 15 of the preceding year. Any technician on the list may be removed for cause. The Insurance Commissioner may deviate from the list when employing technicians for loss cost filings pursuant to Section 901.5 of Title 36. The Insurance Commissioner may retain technicians not on the list when needed.

(b) **Technicians shall be accredited and/or licensed.** Technicians as defined in subsection (a) of this section shall be fully accredited and/or licensed, as appropriate, in their field of expertise. Technicians may be employees of corporations, partnerships or individuals duly qualified to provide required services.

(c) **Hiring technicians.** The Insurance Commissioner shall have the authority to hire technicians defined in subsection (a) of this section as the Insurance Commissioner may deem necessary or beneficial to examine any filings for rate or loss cost revision made by insurers or advisory organizations.

(d) **Actuary.** The Insurance Commissioner may retain an actuary to review a filing when deemed necessary or beneficial by the Insurance Commissioner based on one or more of the following criteria:

(1) Significant premium and/or percentage effect;

(2) Significant market share as determined from market share report;

(3) Staff unfamiliar with actuarial methodology;

(4) Filing establishes a bench mark; ~~and/or~~

(5) Actuarial review necessitated by filer's inability to comply with filing requirements;

(6) review of the adequacy of the proposed filing; and

(7) Review of whether the proposed filing uses discrimination prohibited by 36 O.S. § 985(A)(3).

(e) **Consultant.** When a filing is referred to a consultant for review, an engagement letter shall be presented to the consultant specifying the scope of the review and the filer shall be accordingly notified of the review.

(f) **Expenses paid by insurer.** All reasonable expenses incurred in such filing review shall be paid by the insurer or advisory organization making the filing.

(g) **Actuary's opinion.** The Insurance Commissioner shall consider the opinion of the consulting actuary and weigh it in light of any other evidence submitted in support of the filing and shall accept or reject the consulting actuary's opinion in whole or in part based on such other evidence.

365:15-7-26. Weather related claims

Homeowners policies shall not reflect a surcharge for weather related claims unless an exception is approved by the Commissioner.

365:15-7-27. Credit related policies

The return of unearned premium on any credit related policy shall not be calculated using the "sum of the digits" formula, commonly known as the "Rule of 78," unless an exception is approved by the Commissioner.

365:15-7-28. Use of lack of prior insurance in underwriting or rating

Insurers shall not refuse to insure, surcharge or place an applicant for insurance in a higher priced program or plan if the applicant is not required to have insurance pursuant to Chapter 7 of Title 47 of the Oklahoma statutes. An insurer shall not be prohibited from applying a rating plan approved by the Commissioner.

SUBCHAPTER 9. MEDICAL PROFESSIONAL LIABILITY RATE SETTING

365:15-9-3. Notice to Policyholders

(a) The Commissioner may direct in writing that the medical professional liability insurer filing a rate change application

provide the notification to policyholders required pursuant to Section 6821(C) of Title 36. Upon notification to the policyholders as directed by the Commissioner, the Commissioner may direct that the medical professional liability insurer deliver to the Insurance Department an affidavit executed by an officer of the insurer attesting that said notification has been provided to its policyholders.

(b) Notification to policyholders required pursuant to Section 6821(C) of Title 36 shall be in the form as set out in Appendix D of this Chapter.

(c) Policyholders who are notified of any application for a rate change and the medical malpractice liability insurer making the application for a rate change may submit to the Insurance Commissioner a letter signed by the policyholder waiving the right to request a rate change application hearing pursuant to 36 O.S. § 6821(C)(1).

365:15-9-6.1. Umbrella medical professional liability coverage

An umbrella policy which includes medical professional liability losses is not required to comply with the requirements of Sections 6810 through 6821 of Title 36.

365:15-9-8. Miscellaneous

Supplementary rating information as defined by Section 982 and filed by insurers with the Property and Casualty Division shall remain under the authority of the ~~Commercial~~ Property and Casualty Competitive Loss Cost Rating Act, 36 O.S. §§ 981-998.

365:15-9-9. Rate change application is a public record

All parts of a rate change application submitted by an insurer pursuant to 36 O.S. § 6821 shall be a public record upon receipt by the Insurance Department. An insurer may not make an assertion of confidentiality for any part of a rate change application.

[OAR Docket #05-989; filed 5-25-05]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 25. LICENSURE OF AGENTS, ADJUSTERS, BAIL BONDSMEN, COMPANIES, PREPAID FUNERAL BENEFITS, AND VIATICAL AND LIFE SETTLEMENTS PROVIDERS AND BROKERS

[OAR Docket #05-990]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Agents, Brokers, Adjusters and Limited Representatives
365:25-3-1. Insurance agents continuing education [AMENDED]
365:25-3-13. Surplus line insurance with non-admitted insurer; approval prior to issuance; collection and remittance of taxes; claims for tax adjustments; procedures; forms [AMENDED]
365:25-3-14. Insurance adjusters continuing education [AMENDED]
Subchapter 11. Viatical Settlements Regulations
365:25-11-3. License requirements for viatical settlement brokers [AMENDED]
Subchapter 13. Life Settlements Regulation
365:25-13-3. License requirements for life settlement brokers [AMENDED]
Subchapter 15. Captive Insurance Companies Regulation [NEW]
365:25-15-1. Purpose and authority [NEW]
365:25-15-2. Annual reporting requirements [NEW]
365:25-15-3. Annual Audit [NEW]
365:25-15-4. Independent certified public accountant [NEW]
365:25-15-5. Deposit requirement [NEW]
365:25-15-6. Organizational examination [NEW]
365:25-15-7. Reinsurance [NEW]
365:25-15-8. Insurance managers and intermediaries [NEW]
365:25-15-9. Executive officers and directors [NEW]
365:25-15-10. Conflict of interest [NEW]
365:25-15-11. Rescission of captive license [NEW]
365:25-15-12. Acquisition of control of or merger with domestic company [NEW]
365:25-15-13. Change of business [NEW]
365:25-15-14. Prior approval [NEW]
Appendix C. Application For Original Permit [REVOKED]
Appendix C. Application For Original Permit [NEW]
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365:25-13-3. License requirements for life settlement brokers [AMENDED]
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ANALYSIS:
The proposed amendments to subsection (d) of Rule 365:25-3-1 provide that agents provide certificates of continuing education course completion only if requested by the Insurance Commissioner; proposed amendments to subsection (f) of Rule 365:25-3-1 provide that providers of continuing

education provide within ten business days a list of agents completing the course, that the list shall contain course number and date of completion, and provides for a late report fee of $50.00; and the proposed amendments to subsection (e) of Rule 365:25-3-1 add a late renewal fee of double the amount of the annual renewal. Proposed amendments to Rule 365:25-3-13 provide that the brokers affidavit required pursuant to 36 O.S. § 1107 is to be submitted to the Insurance Commissioner after procuring any surplus lines insurance thereby providing consistency with 36 O.S. § 1107. Proposed amendments to subsection (d) of Rule 365:25-3-14 clarify that the twenty-four month period for continuing education requirement begins the first day of the month following the month in which an insurance adjuster license is granted; proposed amendments provide that the adjuster continuing course completion certificate shall be attached to the license renewal form only if requested by the Insurance Commissioner; and corrects a reference to twelve months changing it to twenty-four months. Proposed amendments to subsection (f) of Rule 365:25-3-14 provide that adjuster continuing education providers submit a list of all insurance adjusters completing the course within ten business days after completion of the course, that the list shall contain course number and date of completion, and provide for a late report fee of $50.00. The proposed amendments to Rules 365:25-11-3 and 365:25-13-3 set out changes to the requirements for licensure of viatical and life settlement brokers that permit persons licensed as a resident or nonresident insurance producer with a life insurance line of authority for one year to qualify for a license to conduct the business of a viatical and life settlement broker. Rules 365:25-11-3 and 365:25-13-3 are currently effective as emergency rules. Proposed Rules 365:25-15-1 through 14 create the new Captive Insurance Companies Regulation to provide for administering the Oklahoma Captive Insurance Company Act, 36 O.S. § 6470.1, et seq. Proposed amendments to Appendix C of Chapter 25, Application For Original Permit to sell prepaid funeral benefits contracts, correct an error in the form by providing that the Applicant is the name of the funeral establishment. The proposed amendments to Appendix C of Chapter 25 also provide that a trust agreement must be in a form prescribed by the Insurance Commissioner and clarify that the form must include each financial institution where trust monies will be deposited.

CONTACT PERSON:

Karl F. Kramer, Assistant General Counsel, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2005:

SUBCHAPTER 3. AGENTS, BROKERS AND LIMITED REPRESENTATIVES

365:25-3-1. Insurance agents continuing education

(a) **Purpose.** The purpose of this section is to set forth the requirements for continuing education which an insurance agent must meet and to set forth the requirements for approval by the Insurance Commissioner 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 document acceptable to the Commissioner which signifies satisfactory completion of the course and reflects hours of credit earned.

(3) **"Continuing Education Advisory Committee"** means the committee established by the Commissioner for the purpose of reviewing and recommending approval or disapproval of continuing education courses.

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

(5) **"Instructor"** means a person who presents course materials approved for continuing education credit hours, and who has experience, training, and/or education in the course subject matter and has been approved by the Commissioner.

(6) **"Instructor Qualification Form"** means a form acceptable to the Commissioner and completed by the instructor which documents qualifications of the instructor.

(7) **"Licensee"** means a natural person who is licensed by the Commissioner as an insurance agent.

(8) **"Provider"** means a person, corporation, professional association or its local affiliates, an insurance company or any other entity which is approved by the Commissioner and provides approved continuing education to insurance agents.

(9) **"Provider Continuing Education Reporting Form"** means a form acceptable to the Commissioner and completed by the provider which documents completion of an approved course by an agent or agents.

(c) **Exceptions.** The requirements for continuing education in this section shall not apply to:

(1) limited insurance representatives.

(2) a non-resident agent who resides and is licensed in a state or district having continuing education requirements and the agent meets all the requirements of that state or district to practice therein. The non-resident agent shall be responsible for completing any reporting requirements necessary to verify completion.

(3) a non-resident agent of a state that does not require continuing education hours may fulfill the requirements of any other state's continuing education requirements and shall be deemed to have complied with this rule upon proof of completion of said hours

(d) **Continuing education requirements.**

(1) **CEC during twenty-four month period.** All licensees shall complete the required hours of continuing education as set forth in 36 O.S. § 1435.29 during each twenty-four month period. The twenty-four month period begins the first day of the month following the month in which the license is granted. The credit hours completed must be in those lines in which the agent is licensed.

(2) **Certificates of course completion required for license renewal.** If requested by the Insurance Department, ~~Each~~each agent shall submit upon each licensing renewal certificate(s) of course completion as approved by the Insurance Department, which verify courses completed during the previous twenty-four month period.

(3) **Credits carried over.** Credit hours in excess of the minimum twenty-four month period requirement will not carry forward. However, excess hours may be applied to bring a lapsed license into compliance.

(4) **Ethics credits.** During each twenty-four (24) month period, the agent shall complete two (2) credit hours but no more than four (4) credit hours of instruction in ethics out of the total credit hours required. The

remainder of the hours required must be in lines applicable to the license. Courses in excess of four (4) ethics credits shall not carry forward nor will they apply to the total hours required. However, excess ethic credits may be applied retroactively in order to bring a lapsed license into compliance. Ethics shall include, but not be limited to, the study of fiduciary responsibility, commingling of funds, payment and acceptance of commissions, unfair claims practices, policy replacement consideration, and conflicts of interest.

(5) **Small employer group, high risk pool, and recent health care legislation.** At least one of the continuing education credit hours of instruction completed by licensees in Health Insurance during each twenty-four month period must address the Oklahoma Small Employer Health Insurance Reform Act, the Oklahoma Health Insurance High Risk Pool Act, and any recent state or federal health care legislation. At least one additional hour of said continuing education credit hours of instruction must address long-term care.

(6) **Credits for instructors.** An instructor who is a licensee shall receive the same continuing education credit for presenting approved course materials as a licensee who attends an approved classroom instructional session.

(7) **Prerequisite for renewal or reinstatement.** Effective January 1, 1992 as a prerequisite for licensure renewal or upon reinstatement following a lapse of license, an agent must submit, on his or her renewal/reinstatement date, the appropriate forms as specified in this section which establish that the education requirements have been met for the previous year(s).

(e) **Approval of continuing education providers.**

(1) **Information required, fee.** Each provider shall apply for approval from the Commissioner. Each provider, with the exception of public funded educational institutions, shall submit after its approval a fee of Two Hundred Dollars ($200.00), and all providers, including public funded educational institutions shall provide:

(A) Name and address of the provider;

(B) Contact person and his or her address and telephone number;

(C) The location of the courses or programs, if known, unless it is an individual study or correspondence course;

(D) The number of CEC hours requested for each course;

(E) Topic outlines which list the summarized topics covered in each course and a copy of any course materials. If a prior approved course has substantially changed, a summarization of those changes;

(F) The names and qualification of instructors. An instructor shall have one 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) **Renewal fee.** An annual renewal fee of Two Hundred Dollars ($200.00) shall be payable on or before the approval anniversary date of each year by each provider to renew the approval of the provider. A fee of double the annual renewal fee shall be paid if the application for renewal is late, or incomplete on the approval anniversary date.

(3) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval of any provider for violation of or non-compliance with any provision of this section.

(f) **Courses; approval; records.**

(1) **Apply for approval 30 days prior to course.** At least thirty (30) days prior to the use of any course and not less than ten (10) days prior to the Continuing Education Advisory Committee meeting immediately preceding the course date, the provider shall apply to the Commissioner for course approval. The Commissioner shall grant or deny approval based upon information submitted in this section regarding each course or additional information regarding the course, if necessary. The Commissioner will assign the number of CEC hours awarded for an approved course and the line or lines of insurance for which the course qualifies.

(2) **Written approval required.** All courses shall require written approval.

(3) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval for any course approval. This withdrawal will not affect any CEC hours attained under the course previous to the withdrawal.

(4) **Minimum of one credit hour.** Courses submitted for approval must consist of a minimum of one credit hour of course instruction.

(5) **Continuing education course must be separate from meetings.** Courses conducted in conjunction with other meetings must have a separate continuing education course component.

(6) **Content of courses.** Courses must be of a meaningful nature and shall not include items such as prospecting, motivation, sales techniques, psychology, recruiting, and subjects not relating to the insurance license. However, agency management courses designed to assist agents in becoming more efficient, profitable, and assuring their perpetuation, will be deemed to be in the best interest of the insuring public and thereby subject to approval. Each such agency management course must include the description, the effects the course is designed to accomplish toward the purposes of efficiency, profitability, and/or perpetuation and each course will be reviewed for approval on its own merits.

(7) **Certificate of Course Completion.** At the completion of each course, the provider shall provide the insurance agent a "Certificate of Course Completion" Form.

(8) **List of agents completing course to Commissioner; Agent license numbers.** Within ten (10) business days after ~~At the~~ completion of each course, the provider shall provide the Commissioner a list of all insurance agents who completed the course on the Provider Continuing Education Reporting Form. ~~The~~This list shall contain the course number, date of completion and license numbers of all insurance agents completing the course~~ listed~~. If the list is not reported within ten (10) business days, a late report fee of $50.00 shall be paid to the Insurance Department. Failure to pay the late report fee may result in revocation of provider approval. Continued late filing may also result in loss of approval.

(9) **Course records maintained four years.** Providers shall maintain course records for at least four (4) years. The Commissioner may order an examination of a provider, at the provider's expense, for good cause shown.

(10) **Repeated approved course.** At least fourteen (14) days prior to repetition of an approved course, the Commissioner shall be notified in writing of the repetition, providing course number, name, date and instructor's name.

(g) **Correspondence and video courses.**

(1) **Correspondence courses.** An insurance agent who satisfactorily completes an approved course by correspondence and provides proof of satisfactory completion as specified by the Commissioner will receive credit for the number of hours assigned by the Commissioner for completion of the course.

(2) **Video courses.** In order for an insurance agent to receive credit for viewing an approved course presented by video cassette, the insurance agent must view the video cassette under the supervision of an approved instructor and swear by affidavit that (s)he has viewed the video cassette in its entirety. The affidavit must be submitted to the provider.

(h) **Repeating courses.** An insurance agent may repeat a course within the twenty-four month period if the maximum credits designated for the course were not attained in the first attempt. By repeating the course, the agent may not during the twenty-four month period earn more than the maximum credits designated for the course. An agent may repeat a course after two years have elapsed and receive the maximum credits designated for the course. This section shall not apply to ethics courses.

(i) **Extension of time.** For good cause shown, the Commissioner may grant an extension of time during which the requirements imposed by the act may be completed. The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding twenty-four-month period. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the licensee and shall include details and any documentation to support the request. Each request must be received by the Commissioner no less than thirty (30) days before the expiration of the twenty-four month period.

(j) **Continuing education advisory committee.**

(1) There shall hereby be established the Continuing Education Advisory Committee. This committee shall consist of one (1) representative of a licensed life insurance company, one (1) representative of a licensed property and casualty insurance company, one (1) representative of the Professional Independent Insurance Agents of Oklahoma, one (1) representative of the Life Underwriter Training Council, one (1) representative of the Health Underwriters, one (1) licensed non-affiliated life agent, one (1) licensed non-affiliated property and casualty agent and two (2) individuals designated by the Insurance Commissioner. These committee members shall be appointed by the Commissioner and the term of each member shall be three (3) years; except that of the members first appointed, three shall serve for one (1) year, three shall serve for two (2) years, and two shall serve for three (3) years. Any member may be reappointed for successive terms. The committee shall meet monthly. The members of the committee shall serve without pay and shall not be reimbursed for any expenses.

(2) Prior to the Commissioner's approval or disapproval of a course in 365:25-3-1(f), the Continuing Education Advisory Committee will review the course submitted and make its nonbinding recommendation to the Commissioner on granting or denying approval based upon information submitted in 365:25-3-1(e) regarding the course or additional information regarding the course, if necessary, the number of CEC hours awarded for an approved course and the line or lines of insurance for which the course qualifies. Each course approval shall be valid for a period of five (5) years, unless the course has a material change. Material changes to courses require course resubmission for overall course review and approval. Course approval following the review of material changes shall reset the five year validity period. At the expiration of the five year period, providers shall submit the course for approval by the Board if the provider wants to continue to offer the course for continuing education credit. This subsection shall apply to all existing approved continuing education courses at the time this rule becomes effective, with previously approved courses having an expiration date of five years from the date of prior approval, unless the course has a material change, as previously detailed.

(k) **Severability provision.** If any provision of this section, or application of such provision to any person or circumstances, shall be held invalid, the remainder of the section, and the application of such provision to person or circumstances other than those as to which it is held invalid, shall not be affected thereby.

365:25-3-13. Surplus line insurance with non-admitted insurer; approval prior to issuance; collection and remittance of taxes; claims for tax adjustments; procedures; forms

(a) **Purpose.** The purpose of this section is to set forth the requirements regarding the procurement of policies from non-admitted carriers.

(b) **Placement with licensed broker.** No resident, licensed insurance agent, solicitor, broker or general agent shall place, or cause to be placed with any nonadmitted insurer any policy of insurance upon property and/or any other risks, or any insurable interest therein, having a situs in the State of Oklahoma, except through a duly licensed surplus line broker; and, then, any such policy shall only be procured by strict compliance with the applicable statutes of this State and the Rules~~, Regulations and Bulletins~~ issued under the authority of the Insurance Department of the State of Oklahoma.

(c) **Application for placement.**

(1) After procuring any surplus lines insurance, ~~No licensed~~ surplus line brokers shall execute and file affidavits and reports with the Insurance Commissioner as required pursuant to Section 1107 of Title 36 on Form SL-3 ~~apply for a policy of insurance from, cause an application for insurance to be submitted to, or request any binder from a non-admitted insurer, unless and until an Application and Affidavit for Placement of Surplus Line Insurance (Form SL-2) has been submitted to, and approved by, the Insurance Commissioner. Approval of all such Applications shall be evidenced by completion of the Endorsement contained upon such Applications and the affixing thereon of the official seal of the Insurance Commissioner~~. All Forms SL-3 ~~approved Applications~~ shall be retained in the files of the brokers, to support the policy issued thereunder, for a period of not less than three years.

(2) All applications (Form SL-3~~2~~) shall be submitted in duplicate, completely filled out and verified under oath by the broker submitted for each policy for which approval for issuance is sought; provided, that in the event any group insurance is determined to constitute a surplus line of insurance, a specific method of reporting additional individual certificates issued or cancelled under such group policy shall be agreed upon between the Insurance Commissioner and the broker concerned.

(d) **Tax collection and remittance.**

(1) All taxes due on any insurance policy issued as a surplus line policy, by any non-admitted insurer, shall be collected by the surplus line broker who procures such policy's issuance. Such taxes shall, in each instance be collected in full on or before the issuance of the policy to the insured, except as hereinafter expressly provided for by (b) of this section. All such taxes shall be duly remitted to the State of Oklahoma, through the Insurance Commissioner, within thirty (30) days next succeeding the date of policy issuance. By letter of transmittal accompanying such tax remittance, the surplus line broker shall advise the Insurance Commissioner of the date policy was issued, and policy number, and the effective date thereof.

(2) All premium taxes shall be computed on the total agreed premium due on the policy, applying the rate of tax existing as of the date the premiums in question become payable, which date shall in every instance be deemed to be the date of policy issuance, except in respect to the following specific situations:

(A) A policy issued for a term in excess of one year, with a fixed premium being payable annually, shall be taxed on the first year's premium at the rate effective as of the date of policy issuance. The tax on premiums payable for subsequent years shall be computed at the rate in effect as of the date such subsequent premiums become due and payable, which date shall be deemed for taxation purposes to be the policy anniversary date.

(B) Premium deposits made on policies providing for retrospective premium adjustments shall be deemed to be premiums paid for such policy as of the date of issuance and taxed accordingly, applying the tax rate in effect at date of policy issuance.

(C) Retrospective premium adjustments, made pursuant to the terms of any surplus line policy and requiring the payment of additional premiums by the insured, shall be taxed at the rate effective as of the date such additional premiums become payable, which date shall be deemed to be the date last included in the policy period considered in computing such retrospective premiums. All taxes due to the State of Oklahoma as the result of retrospective premium adjustments shall be collected by the broker concerned and remitted to the Insurance Commissioner within sixty (60) days next succeeding the last date included in the policy period considered in computing such retrospective premium adjustment.

(e) **Tax refunds; warrants.**

(1) Claims for tax refunds on surplus line policies shall be separately submitted on Form SL-3, which shall be prepared in duplicate under oath, and executed by the broker concerned. Every such verified claim shall set forth with particularity the circumstances upon which it is predicated. All claims for tax refunds shall be computed at the rate of tax existing at the time the tax in question was paid. Only one claim for tax refund shall be submitted on each Form SL-3. Applications for adjustment of erroneously paid taxes shall be deemed to be a claim for tax refund and shall be submitted in the manner prescribed for such claims. Any claim for tax refund must be filed within thirty (30) days next succeeding the event or events giving rise to such claim. Any claim not filed within the period of such thirty (30) days shall be barred from ex parte administrative consideration or action by the Insurance Commissioner. Any claim for tax refund which is no timely filed, or any claim for tax refund which is denied by ex parte action of the Insurance Commissioner, may be set down for public hearing upon timely application therefor by the party or parties aggrieved by such claims denial. All applications for hearings involving claims for tax refunds shall be made within the times and in the manner prescribed by statute for other hearings before the Insurance Commissioner.

(2) All claims for tax refunds shall be promptly acted upon by the Insurance Commissioner. Notice of the allowance or denial of such claims, as are duly submitted in proper form, shall be forwarded to the broker concerned within thirty days next succeeding the receipt of such claims by the Insurance Commissioner.

(3) All warrants issued in refund of premium taxes upon surplus line policies will be issued in the name of the insured to whom such policy was issued and who originally paid the tax in question. It shall be the duty of the broker making application for such tax refund to cause such warrant to be delivered to the insured entitled thereto within thirty (30) days next succeeding the receipt of such warrant by the broker. In the event delivery of any warrant has not been made at the expiration of the said thirty (30) day period, the broker shall immediately return such warrant to the Insurance Commissioner, advising the reasons precluding such warrant's delivery to the insured entitled thereto and including the last known address of such insured.

(f) **Forms**

(1) Surplus line brokers shall reproduce Forms SL-2 and SL-3 in quantities sufficient for their respective requirements.

(2) The applications, et cetera, required by this section shall be supplementary and in addition to the Annual Statements and Annual Tax Returns required to be filed by each licensed surplus line broker. The Annual Statements and Annual Tax Returns of all surplus line brokers shall be duly filed, according to 36 O.S. §1114 (1981) upon the forms prescribed for such purposes.

365:25-3-14. Insurance adjusters continuing education

(a) **Purpose.** The purpose of this section is to set forth the requirements for continuing education which an insurance adjuster must meet, and to set forth the requirements for approval by the Insurance Commissioner 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 document acceptable to the Commissioner which signifies satisfactory completion of the course and reflects hours of credit earned.

(3) **"Continuing Education Advisory Committee"** means the committee established by the Commissioner for the purpose of reviewing and recommending approval or disapproval of continuing education courses.

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

(5) **"Instructor"** means a person who presents course materials approved for continuing education credit hours, and who has experience, training, and/or education in the course subject matter and has been approved by the Commissioner.

(6) **"Instructor Qualification Form"** means a form acceptable to the Commissioner and completed by the instructor which documents qualifications of the instructor.

(7) **"Licensee"** means a natural person who is licensed by the Commissioner as an insurance adjuster.

(8) **"Provider"** means a person, corporation, professional association or its local affiliates, an insurance company or any other entity which is approved by the Commissioner and provides approved continuing education to insurance adjusters.

(9) **"Provider Continuing Education Reporting Form"** means a form acceptable to the Commissioner and completed by the provider which documents completion of an approved course by an adjuster or adjusters.

(c) **Exceptions.** The requirements for continuing education in this section shall not apply to:

(1) a non-resident adjuster who resides and is licensed in a state or district having continuing education requirements and the adjuster meets all the requirements of that state or district to practice therein. The non-resident adjuster shall be responsible for completing any reporting requirements necessary to verify completion.

(2) a non-resident adjuster of a state that does not require continuing education hours may fulfill the continuing education requirements of any other state in which the individual is licensed and shall be deemed to have complied with this rule upon proof of completion of said hours.

(d) **Continuing education requirements.**

(1) **Twelve hours of CEC during twenty-four month period.** All licensees shall complete twelve (12) credit hours of continuing education during each twenty-four month period. The twenty-four month period begins the first day of the month following the month in which the license is granted. The credit hours completed must be in those lines in which the adjuster is licensed. Courses taken in excess of twelve (12) hours will not carry forward. However, courses taken in excess of twelve (12) hours may be applied retroactively in order to bring a lapsed license into compliance.

(2) **Certificates of course completion required for license renewal.** If course completion is not reflected on the license renewal form issued by the Insurance Department, each adjuster shall attach, if requested by the Commissioner, an approved course completion certificate to the license renewal form returned to the Department for verification of course completion. The Commissioner shall maintain a cumulative total of continuing education credit hours to insure compliance within the ~~twelve~~ twenty-four (24) month period.

(3) **Credits for instructors.** An instructor who is a licensee shall receive the same continuing education credit for presenting approved course materials as a licensee who attends an approved classroom instructional session by including his/her name and license number on roster.

(4) **Prerequisite for renewal or reinstatement.** Effective January 1, 1996, as a prerequisite for license renewal or prior to reinstatement following a lapse of license, an adjuster must submit the appropriate forms as specified in this section that establish the educational requirements have been met if not currently recorded by the Oklahoma Insurance Department.

(e) **Approval of continuing education providers.**

(1) **Information required.** Each provider shall apply for Commissioner approval. 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 courses or programs, if known, unless it is an individual study or correspondence course.

(D) The number of CEC hours requested for each course.

(E) Topic outlines which list the summarized topics 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;

(iii) if a prior approved course has substantially changed, a summarization of those changes.

(F) The names and qualification of instructors. An instructor shall have one 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) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval of any provider for violation of or non-compliance with any provision of this section.

(f) **Courses; approval; records.**

(1) **Application deadline for course approval.** At least thirty (30) days prior to the course date and not less than ten (10) days prior to the Continuing Education Advisory Committee meeting immediately preceding the course date, the provider shall apply to the Commissioner for course approval. The Commissioner shall grant or deny approval based upon information submitted in this section regarding each course or additional information regarding the course, if necessary. The Commissioner will assign the number of CEC hours awarded for an approved course and the line or lines of insurance for which the course qualifies.

(2) **Repeated approved course.** At least fourteen (14) days prior to the repetition of an approved course, the Commissioner shall be notified in writing of the repetition, providing course number, name, date, location and instructor's name.

(3) **Written approval required.** All courses shall require written approval.

(4) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval for any course. This withdrawal will not affect any CEC hours attained under the course previous to the withdrawal.

(5) **Minimum of one credit hour.** Courses submitted for approval must consist of a minimum of one credit hour of course instruction.

(6) **Continuing education course must be separate from meetings.** 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 Commissioner.

(7) **Content of courses.** Courses must be of a meaningful nature and shall not include items such as prospecting, motivation, sales techniques, psychology, recruiting, time management, phone etiquette, basic pre-licensing principles of adjusting, and subjects not relating to the adjuster's license.

(8) **Certificate of Course Completion.** At the completion of each course, the provider shall provide the insurance adjuster a "Certificate of Course Completion" Form.

(9) **List of adjusters completing course to Commissioner.** Within ten (10) business days after ~~At the~~ completion of each course, the provider shall provide the Commissioner a list of all insurance adjusters who completed the course on the Provider Continuing Education Reporting Form. This list shall ~~reflect~~ contain the ~~adjuster's name~~ course number, date of completion and license numbers of all insurance adjusters completing the course~~, and may include his/her address and telephone number(s)~~. If the list is not reported within ten (10) business days, a late report fee of $50.00 shall be paid to the Insurance Department. Failure to pay the late report fee may result in revocation of provider approval. Continued late filing may also result in loss of approval.

(10) **Course records maintained four (4) years.** Providers shall maintain course records for at least four (4) years. The Commissioner may order an examination of a provider, at the provider's expense, for good cause shown.

(g) **Correspondence and video courses.**

(1) **Correspondence courses.** An insurance adjuster who satisfactorily completes an approved course by correspondence and provides proof of satisfactory completion as specified by the Commissioner will receive credit for the number of hours assigned by the Commissioner for completion of the course.

(2) **Video courses.** In order for an insurance adjuster to receive credit for viewing an approved course presented by video cassette, the insurance adjuster must view the video cassette under the supervision of an approved instructor and swear by affidavit that (s)he has viewed the video cassette in its entirety. The affidavit must be submitted to the provider.

(h) **Repeating courses.** An insurance adjuster may repeat a course within the twelve month period if the maximum credits designated for the course were not attained in the first attempt. By repeating the course, the adjuster may not during the twelve month period earn more than the maximum credits designated for the course. An adjuster may repeat a course after two (2)

license renewal dates have elapsed and receive the maximum credits designated for the course.

(i) **Extension of time.** For good cause shown, the Commissioner may grant an extension of time during which the requirements imposed by the act may be completed. The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding twelve-month period. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the licensee and shall include details and any documentation to support the request. Each request must be received by the Commissioner no less than thirty (30) days before the expiration of the twelve month period.

(j) **Continuing education advisory committee.**

(1) There shall hereby be established the Continuing Education Advisory Committee. This committee shall consist of representatives from the Agents Licensing Division, and representatives from the industry (not to exceed three (3) individuals) as designated by the Commissioner. Members of the Advisory Board established by 36 O.S. § 6221 may also serve on the Continuing Education Advisory Committee. The committee shall meet at least quarterly and additionally as required. Members of the committee shall serve without pay and shall not be reimbursed for any expenses associated therewith.

(2) Prior to the Commissioner's approval or disapproval of a course in 365:25-3-14(e), the Continuing Education Advisory Committee will review the course submitted and make its nonbinding recommendation to the Commissioner on granting or denying approval based upon information submitted pursuant to 365:25-3-14(e) and additional information regarding the course, if necessary. Each course approval shall be valid for a period of twelve (12) months. Course materials may be resubmitted as requested for review at the time of expiration. This subsection shall apply to all existing approved continuing education courses at the time this rule becomes effective. Such courses must be resubmitted for approval within twelve (12) months of the effective date of this rule.

(k) **Severability provision.** If any provision of this section, or application of such provision to any person or circumstances, shall be held invalid, the remainder of the section, and the application of such provision to person or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SUBCHAPTER 11. VIATICAL SETTLEMENTS REGULATION

365:25-11-3. License requirements for viatical settlement brokers

A viatical settlement broker shall not solicit a viatical settlement contract without first obtaining a license from the Commissioner.

(1) A viatical settlement broker shall make application on a form required by the Commissioner.

(2) The application shall be accompanied by a fee of $500.00. The license may be renewed yearly by payment of a fee of $500.00. Failure to pay the renewal fee within the time prescribed shall result in automatic revocation of the license.

(3) The Commissioner shall have the right to suspend, revoke or refuse to renew the license of any viatical settlement broker if the Commissioner finds that:

(A) There was any misrepresentation in the application for a license;

(B) The broker has been found guilty of fraudulent or dishonest practices, has been found guilty of a felony or any misdemeanor of which criminal fraud is an element, or is otherwise shown to be untrustworthy or incompetent;

(C) The licensee has placed or attempted to place a viatical settlement with a viatical settlement provider not licensed in this state; or

(D) The licensee has violated any of the provisions of the Viatical Settlement Act, 36 O.S. § 4041, et seq., or this regulation.

(4) A person shall be deemed to meet the licensing requirements of this section and of the Viatical Settlement Act, 36 O.S. § 4041, et seq., and shall be permitted to operate as a viatical settlement broker, as defined in Section 4042(2) of the Viatical Settlement Act, if that person is licensed as a resident or nonresident insurance producer with a life insurance line of authority pursuant to the Oklahoma Producer Licensing Act, 36 O.S. § 1435.1, et seq., for at least one year. Not later than thirty (30) days from the first day of operating as a viatical settlement broker, the producer shall notify the Insurance Department that he or she is acting as a viatical settlement broker on a form or in a manner that may be prescribed by the Insurance Department, and shall pay the fee as set out in this section. The notification shall include an acknowledgment by the producer that he or she will operate as a viatical settlement broker in accordance with the Viatical Settlement Act and this regulation.

SUBCHAPTER 13. LIFE SETTLEMENTS REGULATION

365:25-13-3. License requirements for life settlement brokers

A life settlement broker shall not solicit a life settlement contract without first obtaining a license from the Commissioner.

(1) A life settlement broker shall make application on a form required by the Commissioner.

(2) The application shall be accompanied by a fee of $500.00. The license may be renewed yearly by payment of a fee of $500.00. Failure to pay the renewal fee within the time prescribed shall result in automatic revocation of the license.

(3) The Commissioner shall have the right to suspend, revoke or refuse to renew the license of any life settlement broker if the Commissioner finds that:

(A) There was any misrepresentation in the application for a license;

(B) The broker has been found guilty of fraudulent or dishonest practices, has been found guilty of a felony or any misdemeanor of which criminal fraud is an element, or is otherwise shown to be untrustworthy or incompetent;

(C) The licensee has placed or attempted to place a life settlement with a life settlement provider not licensed in this state; or

(D) The licensee has violated any of the provisions of the Life Settlement Act, 36 O.S. § 4085, et seq., or this regulation.

(4) A person shall be deemed to meet the licensing requirements of this section and of the Life Settlement Act, 36 O.S. § 4085, et seq., and shall be permitted to operate as a life settlement broker, as defined in Section 4086(3) of the Life Settlement Act, if that person is licensed as a resident or nonresident insurance producer with a life insurance line of authority pursuant to the Oklahoma Producer Licensing Act, 36 O.S. § 1435.1, et seq., for at least one year. Not later than thirty (30) days from the first day of operating as a life settlement broker, the producer shall notify the Insurance Department that he or she is acting as a life settlement broker on a form or in a manner that may be prescribed by the Insurance Department, and shall pay the fee as set out in this section. The notification shall include an acknowledgment by the producer that he or she will operate as a life settlement broker in accordance with the Life Settlement Act and this regulation.

SUBCHAPTER 15. CAPTIVE INSURANCE COMPANIES REGULATION

365:25-15-1. Purpose and authority

This regulation provides rules for administering the Oklahoma Captive Insurance Company Act, 36 O.S. §§ 6470.1, et seq., and applicable provisions of the Oklahoma Insurance Code. This regulation sets forth the financial and reporting requirements which the Insurance Commissioner deems necessary for the regulation of captive insurance companies, as authorized by the Oklahoma Insurance Code and the Oklahoma Captive Insurance Company Act. References to "company" in this regulation shall mean captive insurance company or companies, unless otherwise specified.

365:25-15-2. Annual reporting requirements

(a) An association captive insurance company doing business in this State shall annually submit to the Insurance Commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that required by Section 311 of Title 36 of the Oklahoma Statutes.

(b) A pure or industrial insured captive insurance company doing business in this State shall annually submit to the Insurance Commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that prescribed by the Insurance Commissioner as "Captive Annual Statement: Pure or Industrial Insured." The reports shall be those required by Section 311 of Title 36 of the Oklahoma Statutes.

365:25-15-3. Annual Audit

(a) All companies shall have an annual audit by an independent certified public accountant, authorized by the Insurance Commissioner, and shall file such annual audited financial report with the Insurance Commissioner on or before June 30 for the year ending December 31 immediately preceding.

(b) The annual audited financial report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the Insurance Commissioner.

(c) The annual audited financial report shall consist of the following:

(1) **Opinion of Independent Certified Public Accountant**

(A) Financial statements furnished pursuant to this section shall be examined by independent certified public accountants in accordance with statutory accounting principles as set out in the Oklahoma Insurance Code and the National Association of Insurance Commissioners.

(B) The opinion of the independent certified public accountant shall cover all years presented.

(C) The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures and shall be dated.

(2) **Report of Evaluation of Internal Controls**

(A) This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to, such controls as the system of authorization and approval and the separation of duties.

(B) The review shall be conducted in accordance with statutory accounting principles and the report shall be filed with the Insurance Commissioner.

(3) **Accountant's Letter.** The accountant shall furnish the company, for inclusion on the filing of the annual audited financial report, a letter stating:

(A) That (s)he is independent with respect to the company and conforms to the standards of his/her profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board.

(B) The general background and experience of the staff engaged in audit including the experience in auditing captives or other insurance companies.

(C) That the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this regulation with the Department.

(D) That the accountant consents to the requirements of 365:25-15-4(c) of this regulation and that the accountant consents and agrees to make available for review by the Insurance Commissioner, or his appointed agent, the work papers as defined in 365:25-15-4(c).

(E) That the accountant is properly licensed by an appropriate state licensing authority and that (s)he is a member in good standing in the American Institute of Certified Public Accountants.

(4) **Financial Statements.** Statements required shall be as follows:

(A) Balance sheet,

(B) Statement of gain or loss from operations,

(C) Statement of changes in financial position,

(D) Statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus), and

(E) Notes to financial statements. The notes to financial statements shall be those required by statutory accounting principles, and shall include:

(i) A reconciliation of differences, if any, between the audited financial report and the statement or form filed with the Insurance Commissioner.

(ii) A summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive.

(iii) A narrative explanation of all material transactions and balances with the company.

(5) **Certification of Loss Reserves and Loss Expense Reserves**

(A) The annual audit shall include an opinion as to the adequacy of the company's loss reserves and loss expense reserves.

(B) The individual who certifies as to the adequacy of reserves shall be approved by the Insurance Commissioner and shall be a Fellow of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries, or an individual who has demonstrated his competence in loss reserve evaluation to the satisfaction of the Insurance Commissioner.

(C) Certification shall be in such form as the Insurance Commissioner deems appropriate.

365:25-15-4. Independent Certified Public Accountant

(a) **Designation of Independent Certified Public Accountant.** Companies, after becoming subject to this regulation, shall within ninety days report to the Insurance Commissioner in writing, the name and address of the independent certified public accountant retained to conduct the annual audit set forth in this regulation.

(b) **Notification of Adverse Financial Condition.** A company shall require the independent certified public accountant to immediately notify in writing an officer and all members of the Board of Directors of the company of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the Insurance Commissioner as required in Sections 311 and 6470.11 of Title 36 of the Oklahoma Statutes. The company shall furnish such notification to the Insurance Commissioner within five working days of receipt thereof.

(c) **Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.**

(1) Each company shall require the independent certified public accountant to make available for review by the Insurance Commissioner, or his appointed agent or examiner, the work papers prepared in the conduct of the audit of the company. The company shall require that the accountant retain the audit work papers for a period of not less than seven (7) years after the period reported upon.

(2) The aforementioned review by the Insurance Commissioner shall be considered investigations and/or examination and all working papers obtained during the course of such investigations and/or examination shall be confidential. The company shall require that the independent certified public accountant provide photocopies of any of the working papers which the Insurance Commissioner considers relevant. Such working papers may be retained by the Insurance Commissioner.

(3) "Work Papers" as referred to in this section include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and his employees in the conduct of their examination of the company.

365:25-15-5. Deposit Requirement

Whenever the Insurance Commissioner deems that the financial condition of the company warrants additional security, he may require a company to deposit with the Department cash or securities which satisfy the requirements of Section 613 and Article 17 of Title 36 of the Oklahoma Statutes. The company may receive interest or dividends from said deposit or exchange the deposits for others of equal value with the approval of the Insurance Commissioner. If such company discontinues business, the Insurance Commissioner shall return such deposit only after being satisfied that all obligations of the company have been discharged.

365:25-15-6. Organizational examination

In addition to the processing of the application, an organizational investigation or examination may be performed before an applicant is licensed. Such investigation or examination shall consist of a general survey of the company's corporate records, including charter, bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; biographical affidavits with background checks made by an independent

third party; and a review of such other factors as the Insurance Commissioner deems necessary.

365:25-15-7. Reinsurance

(a) Any captive insurance company authorized to do business in this State may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:

(1) No credit shall be allowed for reinsurance where the reinsurance contract does not result in the complete transfer of the risk or liability to the reinsurer.

(2) No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer.

(b) Reinsurance under this section shall be effectuated through a written agreement of reinsurance setting forth the terms, provisions and conditions governing such reinsurance.

(c) The Insurance Commissioner in his discretion may require that complete copies of all reinsurance treaties and contracts be filed and/or approved by the Insurance Commissioner.

365:25-15-8. Insurance managers and intermediaries

No person shall, in or from within this State, act as an insurance manager, broker, producer, salesman, or reinsurance intermediary for captive business without the authorization of the Insurance Commissioner. Application for such authorization must be on a form prescribed by the Insurance Commissioner.

365:25-15-9. Executive officers and directors

(a) Every company shall report to the Insurance Commissioner within thirty days after any change in its executive officers or directors, including in its report a statement of the business and professional affiliations of any new executive officer or director. Every executive officer or director shall provide a biographical affidavit and a background checked conducted by an independent third party to the Insurance Commissioner within forty-five (45) days of his/her appointment as an executive officer or to the board of directors of the company.

(b) No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company, but such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity.

(c) Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the company.

365:25-15-10. Conflict of interest

(a) Each company chartered in this State is required to adopt a conflict of interest statement for officers, directors and key employees. Such statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert the individual from the individual's duty to further the interests of the company he represents but this shall not preclude such person from being a director or officer in more than one insurance company.

(b) Each officer, director, and key employee shall file such disclosure with the Board of Directors yearly.

365:25-15-11. Rescission of captive license

(a) The Insurance Commissioner may, subject to the provisions of this section, by order rescind the license of the company:

(1) if the company has not commenced business according to its plan of operation within two years of being licensed; or

(2) if the company ceases to carry on insurance business in or from within Oklahoma; or

(3) at the request of the company; or

(4) for any reason provided in Section 6470.14 of Title 36 of the Oklahoma Statutes.

(b) Before the Insurance Commissioner rescinds the license of a company under paragraphs (a)(1) or (2) of this section, the Insurance Commissioner shall give the company notice in writing of the grounds on which he proposes to cancel the license, and shall afford the company an opportunity to make objection in writing within the period of thirty days after receipt of notice. The Insurance Commissioner shall take into consideration any objection received by him within that period and, if he decides to cancel the license, cause the order of cancellation to be served on the company.

365:25-15-12. Acquisition of control of or merger with domestic company

(a) Companies shall comply with Section 1653 of Title 36 when seeking to acquire control of or merge with a domestic company.

(b) Definitions of terms found in Section 1651 of Title 36 shall apply when a captive insurance company seeks to acquire control of or merge with a domestic company. For purposes of this section, the definition of the term insurer as set out in Section 1651 of Title 36 shall include captive insurance companies.

365:25-15-13. Change of business

Any change in the nature of the captive business from that stated in the company's plan of operation filed with the Insurance Commissioner upon application requires prior approval from the Insurance Commissioner.

365:25-15-14. Prior approval

(a) Requests for the prior approval of the Insurance Commissioner of mergers, consolidations, conversions, mutualizations, redomestications or any other matter for which prior approval is required shall be made on the appropriate forms as

set out in this Chapter for use by insurers or on forms as determined by the Insurance Commissioner.

(b) Requests for prior approval of the Insurance Commissioner other than as set out in Subsection (a) of this Section shall be made on Form D as set forth in Appendix D of this Chapter.

APPENDIX C. APPLICATION FOR ORIGINAL PERMIT [REVOKED]

APPENDIX C. APPLICATION FOR ORIGINAL PERMIT [NEW]

_____
APPLICANT (NAME OF FUNERAL ESTABLISHMENT)

_____
NAME TRUST FUND IS TO BE HELD UNDER

_____
OWNER OF TRUST (PLEASE INCLUDE MIDDLE NAME, BIRTHDATE, SSN)

_____
PERMANENT MAILING ADDRESS OF TRUST

_____
NAME OF PERSON MANAGING TRUST, IF DIFFERENT FROM ABOVE
(PLEASE INCLUDE MIDDLE NAME, BIRTHDATE, SSN)

_____
TELEPHONE NUMBER

GENERAL INTERROGATORIES
(all questions must be answered)

1. Financial Institutions where trust monies will be deposited. A Trust Agreement in a form prescribed by the Insurance Commissioner must be completed for each financial institution where trust monies will be deposited.

Name	Address	City	Zip
Name	Address	City	Zip

2. Designated agents who will be responsible for deposit of funds collected under contracts for prepaid funeral benefits. (Attach an additional sheet if necessary.)

Name	Address	City	Zip	SSN
Name	Address	City	Zip	SSN

3. Has the owner or any principal employee of the organization been admonished, censored, suspended or fined within the last year by the State Embalmers and Funeral Directors Board for violations involving funeral home activities?

Yes______ No______

If yes, explain.

4. Have you or your organization ever applied for a permit from this Department?

Yes______ No______

Were you approved or denied?

Approved______ Denied______

If denied, what was the reason(s)?

If approved, did your permit lapse, was it sold, or other? Please explain.

5. Have any of the principals (owner, manager, etc.) ever been convicted of a felony or misdemeanor involving moral turpitude?

Yes______ No______

If yes, explain.

* *

I, ________________________, being first duly sworn, state that I have read the within and foregoing application and that the answers supplied by me therein are true and correct to the best of my knowledge and belief and further that I will comply with the Prepaid Funeral Benefit laws of Oklahoma and the Rules of the State Insurance Commissioner in all my conduct under the permit.

STATE OF ________________________)
) ss.
COUNTY OF ______________________)

____________________________________ ____________________

Signature of Applicant Date

____________________________________ ____________________

Notary Public My Commission Expires

[OAR Docket #05-990; filed 5-25-05]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 35. PRIVACY

[OAR Docket #05-991]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Standards For Safeguarding Customer Information Regulation [NEW]
365:35-3-1. Preamble [NEW]
365:35-3-2. Definitions [NEW]
365:35-3-3. Information security program [NEW]
365:35-3-4. Objectives of information security program [NEW]
365:35-3-5. Examples of methods of development and implementation [NEW]
365:35-3-6. Assess risk [NEW]
365:35-3-7. Manage and control risk [NEW]
365:35-3-8. Oversee service provider arrangements [NEW]
365:35-3-9. Adjust the program [NEW]
365:35-3-10. Violation [NEW]
365:35-3-11. Effective date [NEW]
AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1 and 307.2
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ANALYSIS:
This proposed regulation establishes standards for developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of customer information, pursuant to Sections 501, 505(b), and 507 of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, 6805(b) and 6807.
CONTACT PERSON:
Karl F. Kramer, Assistant General Counsel, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2005.

SUBCHAPTER 3. STANDARDS FOR SAFEGUARDING CUSTOMER INFORMATION REGULATION

365:35-3-1. Preamble

(a) This regulation establishes standards for developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of customer information, pursuant to Sections 501, 505(b), and 507 of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, 6805(b) and 6807.

(b) Section 501(a) provides that it is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information. Section 501(b) requires the state insurance regulatory authorities to establish appropriate standards relating to administrative, technical and physical safeguards: (1) to ensure the security and confidentiality of customer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access to or use of records or information that could result in substantial harm or inconvenience to a customer.

(c) Section 505(b)(2) calls on state insurance regulatory authorities to implement the standards prescribed under Section 501(b) by regulation with respect to persons engaged in providing insurance.

(d) Section 507 provides, among other things, that a state regulation may afford persons greater privacy protections than those provided by subtitle A of Title V of the Gramm-Leach-Bliley Act. This regulation requires that the safeguards established pursuant to this regulation shall apply to nonpublic personal information, including nonpublic personal financial information and nonpublic personal health information.

365:35-3-2. Definitions

For purposes of this regulation, the following definitions apply:

(a) **"Customer"** means a customer of the licensee as the term customer is defined in Section 365:35-1-4(9).

(b) **"Customer information"** means nonpublic personal information as defined in Section 365:35-1-4(19) about a customer, whether in paper, electronic or other form, that is maintained by or on behalf of the licensee.

(c) **"Customer information systems"** means the electronic or physical methods used to access, collect, store, use, transmit, protect or dispose of customer information.

(d) **"Licensee"** means a licensee as that term is defined in O.A.C. 365:35-1-4(17), except that "licensee" shall not include: a purchasing group; an unauthorized insurer in regard to the excess line business conducted pursuant to Article 11 of Title 36; or licensees involved in providing workers compensation insurance.

(e) **"Service provider"** means a person that maintains, processes or otherwise is permitted access to customer information through its provision of services directly to the licensee.

365:35-3-3. Information security program

Each licensee shall implement a comprehensive written information security program that includes administrative,

technical and physical safeguards for the protection of customer information. The administrative, technical and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

365:35-3-4. Objectives of information security program

A licensee's information security program shall be designed to:

(1) Ensure the security and confidentiality of customer information;

(2) Protect against any anticipated threats or hazards to the security or integrity of the information; and

(3) Protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any customer.

365:35-3-5. Examples of methods of development and implementation

The actions and procedures described in Sections 365:35-3-6 through 9 of this regulation are examples of methods of implementation of the requirements of Sections 365:35-3-3 and 4 of this regulation. These examples are non-exclusive illustrations of actions and procedures that licensees may follow to implement Sections 365:35-3-3 and 4 of this regulation.

365:35-3-6. Assess risk

The licensee:

(1) Identifies reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration or destruction of customer information or customer information systems;

(2) Assesses the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information; and

(3) Assesses the sufficiency of policies, procedures, customer information systems and other safeguards in place to control risks.

365:35-3-7. Manage and control risk

The licensee:

(1) Designs its information security program to control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities;

(2) Trains staff, as appropriate, to implement the licensee's information security program; and

(3) Regularly tests or otherwise regularly monitors the key controls, systems and procedures of the information security program. The frequency and nature of these tests or other monitoring practices are determined by the licensee's risk assessment.

365:35-3-8. Oversee service provider arrangements

The licensee:

(1) Exercises appropriate due diligence in selecting its service providers; and

(2) Requires its service providers to implement appropriate measures designed to meet the objectives of this regulation, and, where indicated by the licensee's risk assessment, takes appropriate steps to confirm that its service providers have satisfied these obligations.

365:35-3-9. Adjust the program

The licensee monitors, evaluates and adjusts, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements and changes to customer information systems.

365:35-3-10. Violation

Violation of this regulation is a violation of Article 12 of Title 36 of this state's statutes.

365:35-3-11. Effective Date

Each licensee shall establish and implement an information security program, including appropriate policies and systems pursuant to this regulation by December 31, 2005.

[OAR Docket #05-991; filed 5-25-05]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 3. ADMINISTRATIVE SERVICES

[OAR Docket #05-845]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Office of the Executive Director
Part 3. Office of the Advocate General
377:3-1-25. Abuse, neglect, and caretaker misconduct.
377:3-1-28. General grievance procedures
AUTHORITY:
Board of Juvenile Affairs, pursuant to 10 O.S., Section 7302-1.1(H) and 7302-1.1 (I) and 75 O.S., Section 302 (A)(1).
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ANALYSIS:
377:3-1-25. Abuse, neglect, and caretaker misconduct. The rule is being amended to add the ability for OJA staff to report suspected incidents of abuse via an email transmittal.
377:3-1-28. General Grievance Procedures. The rule is being amended to move the parole appeals process into one section of the Administrative Rules. The rule is also being amended to add language about the informal grievance process.
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. OFFICE OF THE EXECUTIVE DIRECTOR

PART 3. OFFICE OF THE ADVOCATE GENERAL

377:3-1-25. Abuse, neglect, and caretaker misconduct

(a) **Requirements for reporting incidents of abuse, neglect, or caretaker misconduct.** State law requires every person with reason to believe that a child or juvenile is or has been abused or neglected to report the condition or incident to the appropriate office for investigation. Title 10 §7004-3.4(B)(2) confers on OCA the responsibility of investigating allegations of caretaker abuse and neglect of juveniles, regardless of custody, residing outside their own homes, other than the foster care level. Incidents which occur in a residence, including a foster home, shall be reported to the local child welfare office or the child abuse hotline. An employee shall make an immediate, verbal <u>or email transmittal</u> report directly to OCA [10 O.S., §7103(B)] and to the supervisor who shall ensure a report is made to OCA, law enforcement, and the OJA Office of Advocate General when:

(1) the employee has reason to believe a juvenile in OJA custody has been the victim of abuse, neglect, or caretaker misconduct<u>;</u>

(2) a juvenile, parent, guardian, or other person makes an allegation of abuse, neglect, or caretaker misconduct;

(3) death of an OJA juvenile occurs;

(4) a serious or demonstrable injury to a custody juvenile occurs:

(A) as a result or in the course of the use of physical force by an employee;

(B) as a result of an assault by any person; or

(C) under unexplained, suspicious, or unusual circumstances including where the presence of alcohol or a controlled dangerous substance is detected on either the juvenile or staff; or

(5) a custody juvenile is the apparent victim of, or participates in, sexual activity prohibited by State Law.

(b) **Acts which are not considered to be abuse, neglect, or caretaker misconduct.** Abuse, neglect, or caretaker misconduct does not include the use of restraints or physical force as authorized by law, allowed by regulation or policy, and which is performed in such a manner as to be deemed acceptable by approved systems of restraint including, but not limited to, MANDT, CPI, CAPE, or CCMS. Medical attention shall be provided immediately upon the juvenile's release from restraint as a result of physical force even if there is no visible evidence or complaint of injury. Medical attention shall be provided in an institution by a licensed physician, licensed practical nurse, registered nurse, physician's assistant, or emergency medical technician; or in a group-home or private facility, staff certified in first aid and CPR may provide medical attention and are responsible for referring the juvenile to licensed medical personnel, if warranted.

(c) **Preliminary assessment procedures.** The advocate defender or grievance coordinator shall refer a report of alleged abuse, neglect, or caretaker misconduct to OCA for investigation. The advocate defender or grievance coordinator is responsible for obtaining the alleged victim's, the accused's and any witnesses' written statement regarding the incident which shall then be provided to the facility or group home administrator or designee and the Advocate General. After reporting to OCA and upon their advice, the advocate defender may assist in facilitating the preliminary assessment.

(1) When a reportable situation arises and within 24-hours, each staff member, resident, or other person present during the incident shall prepare and submit to the~~,~~ facility administrator~~,~~ or designee a written incident report describing what the person saw or heard. The facility administrator, shall ensure a preliminary assessment is conducted to:

(A) assure the safety of any juvenile named in the referral and of other juveniles in the same placement;

(B) protect the integrity of any evidence which may be relevant to the allegation, including taking photos of potentially relevant injuries; and

(C) coordinate activities with OCA and any law enforcement authority involved in investigating the allegation.

(2) The facility administrator shall collect medical records, other documents and reports which pertain to the alleged incident, written statements and any other documentary evidence and place them in a holding file for investigative use by OCA and any other investigative authority. Employees of the facility shall not conduct an investigation of an alleged incident pending OCA's decision to accept the referral for investigation or during a pending OCA investigation. This prohibition does not extend to interviews and investigations conducted by law enforcement when responding to a report of criminal

wrongdoing. OCA shall coordinate activities with local, state, and federal law enforcement entities.

(3) If the allegation involves caretaker misconduct and the juvenile has not incurred a demonstrable injury, and is an incident which is required to be reported under 377:3-1-25 OCA may instruct the advocate defender or grievance coordinator to treat the allegation or incident as a formal caretaker misconduct review, and the review will be processed as follows:

(A) The facility administrator shall be responsible for having an investigation conducted within ten working days and preparing a report of his/her findings and resolution in writing. A facility employee designated to conduct a caretaker misconduct review shall:

(i) review documentation, records, and evidence collected;

(ii) view any injuries and photos of injuries;

(iii) obtain written statements and conduct interviews with:

(I) each alleged victim;

(II) each eyewitness;

(III) other persons with knowledge relevant to the allegation; and

(IV) each accused caretaker;

(iv) review any policies, directives, standards, rules, or statutes relevant to the allegation; and

(v) provide an analysis of employee actions in relation to policy, directives, standards, and rules by:

(I) reviewing written and verbal accounts from those involved;

(II) examining other documentation collected; and

(III) providing a finding.

(B) Findings. Findings are made based on a preponderance of the evidence. The finding options are:

(i) **Confirmed.** A finding of "confirmed" means that the available evidence establishes that it is more likely than not that the alleged caretaker misconduct occurred;

(ii) **Not confirmed.** A finding of "not confirmed" means there was insufficient evidence to find that it is more likely than not that the alleged caretaker misconduct occurred;

(iii) **Not confirmed/ruled out.** A finding of "not confirmed/ruled out" means the available evidence established that it is unlikely that the alleged caretaker misconduct occurred.

(C) A copy of the report shall be forwarded to OCA and the OJA Advocate General upon completion.

(D) If at any time during the caretaker misconduct review process it is determined that abuse, neglect, or caretaker misconduct involving a demonstrable injury to a juvenile may have occurred, the caretaker misconduct review process will be terminated by the facility and the matter referred to OCA for investigation. The Advocate General or facility administrator may, at his/her discretion, request OCA to conduct a formal investigation of any caretaker misconduct review.

(~~3~~4) When OCA initiates an investigation, the assigned OCA investigator shall conduct a prompt investigation of the allegation. The investigator shall contact the facility administrator to arrange for document production, site visits, and interviews. The facility administrator who employed any accused caretaker at the time of the alleged incident shall inform that employee of:

(A) the name and telephone number of the OCA investigator;

(B) the administrative investigative process;

(C) the employee's rights and responsibilities relating to the investigation described in subsection (d) of OCA's Rules, 340:2-3-36; and

(D) the nature of any allegation against the caretaker.

(~~4~~5) The administrator shall not provide the accused caretaker with the details of the referral or the substance of the evidence. The facility administrator shall arrange for the OCA investigator to have immediate and direct access to any alleged victim in the referral who is still a resident of the facility.

(~~5~~6) Educational employees. If the alleged abuse, neglect, or caretaker misconduct involves an employee of a school district which provides contract educational services to OJA, either as a witness or as an accused caretaker, the facility administrator shall notify the principal of the school of the nature of the allegation, ~~the~~ and name of the assigned investigator~~, and the nature of the allegation~~. The principal shall then be responsible for advising the employee accordingly and coordinating with OCA.

(~~6~~7) Supervisory staff who have been informed of alleged or possible abuse, neglect, or caretaker misconduct shall report such allegations as required by this subsection.

(d) **Protection or medical treatment.** In the event of alleged abuse, neglect, or caretaker misconduct in a facility, the facility administrator or designee shall assure protection of the juvenile and obtain medical attention for the juvenile.

(e) **Referral to law enforcement agency.** If the reportable situation could result in criminal charges, the superintendent, facility director, JSU district supervisor, or an OJA employee having direct knowledge shall also immediately report the matter to the appropriate law enforcement agency. If there is a question as to whether the reportable situation could result in possible criminal charges, the superintendent, facility director, or JSU district supervisor shall immediately consult with the Advocate General or a representative of the OJA Office of General Counsel. The advocate defender or Advocate General shall ensure that the referral was made.

(f) **Failure to report.** Any employee who fails to report abuse, neglect, or caretaker misconduct as required by this Section, is subject to disciplinary action under OJA's personnel rules. If it is determined the employee failed to report as required, the Advocate General of OJA shall make a referral to the appropriate law enforcement agency ~~for criminal prosecution~~.

(g) **Interference prohibition.** Any employee who interferes with an abuse, neglect, or caretaker misconduct investigation, or attempts to intimidate or harass a witness, victim, or employee accused of alleged abuse, neglect, or caretaker misconduct through force or fear, or by threatening physical or mental harm to a witness, victim or others, is subject to disciplinary action under OJA's personnel policy and could be subject to criminal prosecution.

(h) **Contract termination.** A contractor's contract shall be subject to immediate termination ~~of the contractor's contract with OJA~~ for failure to adhere to this subchapter or a contractor knowingly allowing an employee to:

(1) interfere with an abuse, neglect, or caretaker misconduct investigation;

(2) ~~to~~ interfere or retaliate against any employee for reporting or cooperating in such investigation; or

(3) deny the assigned investigator immediate and direct access to the contractor's employees, facilities, clients, places or records of any type ~~with OJA~~.

377:3-1-28. General grievance procedure

(a) **Informal grievances.**

(1) Informal grievances are issues relating to daily life at the juvenile's placement which can be resolved at the facility or local level. Informal grievances include, but are not limited to:

(A) grooming and hygiene;

(B) clothing;

(C) cottage cleanliness;

(D) food;

(E) disrespect not involving threats of harm;

(F) restrictions; or

(G) routine problems with the JSU; i.e., complaints against a JSU worker.

(2) A juvenile shall try to informally resolve his or her grievance by writing a brief description of the problem and the name of the person or group with whom the juvenile wants to discuss the problem. The juvenile may put the written information in a designated grievance box or give the grievance to any staff member.

(3) The grievance must be numbered and logged in a grievance log on the day the grievance is received and distributed to the appropriate staff for processing and possible resolution.

(4) The assigned staff shall review each grievance and attempt to resolve the grievance with the juvenile.

(5) If the grievance is not resolved within three working days, the juvenile may appeal to the supervisor.

(6) The supervisor shall have five days from receipt of the grievance to resolve the grievance.

(7) The grievance log must also indicate the disposition of the grievance and the date of the resolution or appeal. OJA Form OJA-AG-2 may be used to facilitate the grievance resolution process.

(b) **Formal Grievances.**

(1) Formal grievances are those grievances which are appeals of informal grievances or those which cannot otherwise be resolved at the facility or local level. Issues which cannot be resolved at the facility or local level include but are not limited to:

(A) placement;

(B) treatment;

(C) psychological services;

(D) social services;

(E) educational services;

(F) recreation;

~~(G) denial of parole;~~ or

(~~H~~G) abuse, neglect, or caretaker misconduct.

(2) Grievances which contain allegations of abuse, neglect, or caretaker misconduct shall be processed in accordance with 377:3-1-25 and 377:3-1-26.

(3) Formal grievances may be filed with any staff member but shall be routed to the Advocate General for appropriate distribution and resolution by OJA State Office as set forth in paragraph (c) of this section. Form OJA-AG-3 may be used to facilitate the formal grievance process.

(c) **Grievances received by Advocate General.** Upon receipt of an appeal of an informal grievance or formal grievance, the Advocate General's Office shall post the date of receipt. The Advocate General shall review the grievance and the accompanying documentation to determine what additional information is necessary for disposition of the grievance within five working days and set deadlines for receipt of required information. If the Advocate General finds that an appeal or formal grievance was prematurely filed, the Advocate General shall send a reply containing suggestions regarding the proper procedure to the person that sent the grievance. The Advocate General shall review the applicable OJA rules, policy, and/or Oklahoma law to determine if the appeal or formal grievance is appropriate and provide an opinion regarding possible resolution. The Advocate General shall prepare a cover worksheet or memorandum for the appeal or formal grievance and forward a copy to the ~~appropriate~~ Deputy Director for response. The response shall be completed within seven working days (extension may be granted by the Advocate General where a formal, legal opinion or policy decision is necessary). Upon receipt of the proposed resolution, the Advocate General shall forward a copy to the juvenile and/or to other appropriate person named in the grievance and to the appropriate advocate defender or grievance coordinator.

(d) **Appeal to the Executive Director/final decision.** If the juvenile affected by the appeal does not accept the proposed resolution as submitted by the Deputy Director, the juvenile may appeal through the Advocate General to the Executive Director of OJA. The appeal to the Executive Director must be filed within ten (10) days of the date the proposed resolution is received by the juvenile. The Advocate General shall prepare the appeal and route it to the Executive Director who shall render a final, written decision within ten (10) days of receipt of the appeal, unless otherwise agreed to by both parties. The decision shall be delivered to the Advocate General's Office who shall distribute it as established by procedure. A copy of the resolution shall be inserted in the juvenile's master file. Resolutions which will change or create OJA rules are submitted to the appropriate division responsible for drafting new or

revised rules. The Advocate General shall ensure that resolutions containing directives for specific action are completed.

(e) **Board notification.** All matters referred to the Executive Director for final decision shall be placed on the agenda for the next, regularly scheduled meeting of the Board of Juvenile Affairs. The Executive Director shall review any such grievance with the Board during Executive Session. At that time, the Advocate General will be allowed to voice concerns, the wishes of the juvenile, or such other matters as are relevant to the Board's understanding of the issues presented in the appeal.

(f) **Review by juvenile.** The grievance coordinator, advocate defender, or Advocate General (whoever filed the last grievance), shall review the Executive Director's resolution with the juvenile and notify the juvenile that his or her administrative remedies have been exhausted. If the juvenile does not accept the resolution, a copy of the grievance, appeals, and proposed resolutions shall be forwarded to the Office of Juvenile Systems Oversight.

(g) **Grievances originated by the Advocate General.** The Advocate General may, on behalf of all or part of the juveniles committed to OJA, originate a grievance at the State Office level concerning:

(1) the substance or application of any written or unwritten policy, rule, or regulation of:
- (A) OJA;
- (B) an agent of OJA; or
- (C) an OJA contractor; or

(2) any decision, behavior, or action of
- (A) an OJA employee;
- (B) an agent of OJA;
- (C) an OJA-contractor; or
- (D) any other person committed to OJA.

(h) The Advocate General may write the grievance by way of a detailed memorandum.

[OAR Docket #05-845; filed 5-11-05]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 3. ADMINISTRATIVE SERVICES

[OAR Docket #05-845B]

RULEMAKING ACTION:
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RULES:
Subchapter 13. Office of Public Integrity
Part 3. Requirements for Secure Juvenile Detention Centers
377:3-13-36. Requirements [AMENDED]
377:3-13-43. Staff requirements [AMENDED]
377:3-13-44. Security and control [AMENDED]
377:3-13-47. Food service, sanitation and hygiene [AMENDED]
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Office of Juvenile Affairs (OJA) rules are being revised to: correct Administrative Rule cite changes (377:3-13-36); define that detention must have at least one staff meeting per month (377:3-13-43); establish a timeline for submitting reports regarding use of force (377:3-13-44); establish that juvenile requiring confinement shall be reviewed by a Detention Administrator every three (3) hours. (377:3-13-44); establish criteria for food service in the Detention Center on weekend and holidays as outlined by DHS Licensing Requirements (377:3-13-47).
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 13. OFFICE OF PUBLIC INTEGRITY

PART 3. REQUIREMENTS FOR SECURE JUVENILE DETENTION CENTERS

377:3-13-36. Requirements

A certificate to operate a secure juvenile detention facility that provides full-time group care for juveniles is granted on the basis that the facility meets the Requirements for Secure Juvenile Detention Facilities as set forth in OAC 377:3-13-6 and ~~377:13-3-37~~ 377:3-13-37 through ~~377:13-3-48~~ 377:3-13-49.

377:3-13-43. Staff requirements

(a) **General provisions.** The requirements for facility staff are set forth in this Section.

(1) **Personnel policy.** Every facility shall have written personnel policy which includes the maintenance of personnel records. The facility director shall make available to employees personnel policy and written job descriptions. The policy and job descriptions specify the person to whom the employee is responsible and the duties the employee is expected to perform.

(2) **Juveniles' tasks.** A juvenile in detention shall not be used as an employee. A juvenile in detention is

permitted to perform tasks, if the tasks teach the juvenile responsibility and the juvenile is supervised. A juvenile shall not be allowed to perform tasks in areas of the facility where juveniles are not usually permitted.

(3) **Supervision.** Sufficient staff shall be available to provide continuous day and night supervision of the residents and protection of the facility as well as to allow staff relief from duty.

(4) **Auxiliary staff.** There shall be sufficient auxiliary staff to maintain adequate support services. Auxiliary staff are all staff that are not direct-care staff.

(5) **Health requirements.** Staff health requirements are given in (A)-(C) of this paragraph.

(A) Each person employed shall have a pre-employment physical examination by a licensed physician. The physical examination is performed not more than 90 days prior to employment. The physician shall verify in a written statement that the individual is physically able to perform his or her job-related functions.

(B) Upon employment each employee who has not had a documented skin test within the past 12 months shall have a Mantoux tuberculin skin test unless he/she has had a previous positive skin test.

(C) An employee with a positive skin test reaction must have or provide documentation of a chest x-ray.

(i) Additional tests or x-rays are not required unless symptoms develop that are suggestive of tuberculosis.

(ii) Employees with a positive skin test reaction must submit annual documentation by medical personnel that signs or symptoms of tuberculosis are not present.

(6) **Criminal history investigation.** The facility shall comply with statutory requirements mandating a criminal history investigation for each applicant for employment [10 O.S. Section 404.1]. The facility shall not employ or retain any person for whom there is documented evidence that the employee would endanger the health, safety, and/or well-being of juveniles.

(A) A facility shall not employ or retain an individual who has been:

(i) convicted of or entered a plea of guilty or nolo contendere to any felony involving:

(I) violence against a person;

(II) child abuse or neglect;

(III) possession, trafficking, manufacturing, sale or distribution of illegal drugs, or conspiracy to traffic, manufacture, sale, or distribute illegal drugs;

(IV) sexual misconduct; or

(V) gross irresponsibility or disregard for the safety of others;

(VI) any crime against a child; or

(ii) in the case of child abuse and neglect, identified as a perpetrator in a juvenile court proceeding and/or has made an admission of guilt to a person authorized by state or federal laws or regulations to investigate child abuse and neglect.

(B) As to a simple drug possession offender, the facility may, at its own discretion, make exceptions to the prohibition of employment if five years have passed from completion of the applicant's criminal sentence and the facility can document that the health, safety, and well-being of juveniles would not be endangered.

(i) The facility shall consider, document, and submit to the Office of Public Integrity within 10 days of the employees first day of work the:

(I) type of crime or offense for which the individual was convicted or a finding was made; and

(II) reference letters concerning the individual in question.

(ii) The Office of Public Integrity shall make a recommendation to the Executive Director as to whether the applicant shall be approved or disapproved.

(C) If there is an allegation that a staff member has committed an act as described in OAC 377:3-13-43(a)(6)(A), the facility shall determine and document whether the staff member shall be removed from contact with juveniles until the allegation is resolved.

(D) If any person is formally charged with any of the offenses described in OAC 377:3-13-43(a)(6)(A), he or she must be removed from contact with juveniles until the charges are resolved.

(E) No employee of the facility shall use or be under the influence of alcohol or illegal drugs during hours of work.

(7) **Personnel records.** The ~~agency~~ facility shall keep on file a written personnel record available for review for every staff person employed by the ~~agency~~ facility.

(A) The personnel record includes:

(i) an application, resume or staff information sheet that documents qualifications for the position;

(ii) health records as required by the ~~agency~~ facility;

(iii) three written references and/or documentation of telephone interviews;

(iv) any reports and notes relating to the individual's employment with the ~~agency~~ facility and an annual job performance evaluations;

(v) dates of employment; and

(vi) date and reason for leaving employment.

(B) When employment is involuntarily terminated, a statement regarding the reason for termination is to be included in the personnel file.

(C) Personnel records are maintained for at least three years following a staff member's separation.

(D) All employees' records are kept confidential subject to existing state and federal statutes.

(E) Staff members shall have access to their personnel files for reviewing purposes if a request is made to the facility administrator.

(8) **Staff training.** All staff shall be trained on facility policy and procedure.

(A) Each direct-care staff member shall be provided orientation before being allowed to work independently.

(B) Auxiliary staff shall receive orientation to the facility's policy and procedure and to their assigned duties.

(C) During orientation the trainer shall acquaint staff with the philosophy, organization, program practice, and goals of the secure juvenile detention facility.

(D) "Requirements for Secure Juvenile Detention Facilities" is reviewed as a part of the orientation process and is available to staff at all times.

(E) Within 90 days after employment, all direct-care staff shall have successfully completed first aid training from an instructor certified by the American Red Cross or its equivalent. First aid training is updated every three years and may be counted toward the hours of training required.

(F) All direct-care staff shall be certified in cardiopulmonary resuscitation (CPR) within 90 days after employment and recertified annually. CPR certification shall be counted toward the training requirements.

(G) Full-time direct-care staff and administrators shall obtain at least 24 clock hours of training per employment year. Hours are prorated at two hours per month for staff who have not been employed for a full year.

(H) Part-time direct-care staff shall have training hours prorated based on the average number of hours of work per month.

(I) On-call staff shall have a minimum of six clock hours of training per year.

(J) Support staff shall obtain a minimum of 12 clock hours of training per employment year.

(K) The content of staff development courses for direct-care staff is relative to their roles and responsibilities. Content may include:

(i) crisis intervention;

(ii) child development;

(iii) behavior management;

(iv) discipline;

(v) stress management;

(vi) therapeutic relationship and intervention;

(vii) child abuse detection, reporting and prevention;

(viii) suicide prevention;

(ix) human sexuality

(x) client grievance procedures;

(xi) communicable diseases, including sexually transmitted diseases; and

(xii) any other training deemed necessary to meet individual or group training needs.

(L) Attendance at professional conferences, workshops, seminars, formal education classes, or in-service training is counted toward the training requirements provided the training is documented and meets the content requirements.

(b) **Facility Administrator.** The duties and qualifications of the facility administrator are described in (1) - (2) of this subsection.

(1) **Responsibilities.** The facility administrator is responsible for implementing the policies adopted by the governing body, the ongoing operation of the facility, and compliance with the Requirements for Secure Juvenile Detention Facilities.

(A) In the facility administrator's absence a person shall be designated to act as administrator and shall be available to detention staff in person or by telephone.

(B) A designated person of responsibility shall be at the secure juvenile detention facility at all times. The designated person is directly responsible to the administrator who is to be notified of any irregularities in the general affairs of detention and follow through with directives given.

(C) The duties of the facility administrator include, but are not limited to:

(i) preparing and presenting the budget for the appropriate authority to review and approve;

(ii) administering the budget and maintaining accurate financial records;

(iii) employing and discharging staff according to the established personnel rules;

(iv) supervising the program overall;

(v) holding staff meetings ~~at regular intervals~~ on a monthly basis to discuss plans and interpret policies to the staff;

(vi) o rganizing a program for the continued training and development of staff;

(vii) establishing and maintaining working relationships with other social services agencies within the community; and

(viii) interpreting the program to professional and lay groups.

(2) **Qualifications.**

(A) The education, experience, and qualifications of the administrator of the facility are specified in writing by the governing body and include, at a minimum:

(i) a bachelor's degree in an appropriate discipline;

(ii) t wo years of experience working with juveniles; and

(iii) three years in staff supervision and administration.

(B) A facility administrator hired prior to January 1, 2000 shall be exempt from the rules set forth in (A) of this paragraph.

(3) **Location.** All facilities administrators must maintain their primary office at the detention facility.

(c) **Direct care staff.** The qualifications and hiring requirements for direct care staff are described in (1) - (2) of this subsection.

(1) **Qualifications.** All direct-care staff shall be at least 21 years of age and possess a high school diploma or its equivalent.

(2) **Hiring requirements.** A direct-care staff person can be hired when the person:

(A) has his or her character and fitness attested to by three satisfactory written references and a criminal history investigation completed;

(B) is qualified and capable of satisfactorily performing assigned job responsibilities; and

(C) does not pose a known risk to juveniles.

(d) **Support staff.**

(1) support staff shall:

(A) be able to read and write;

(B) demonstrate knowledge and skills necessary to the job assignments; and

(C) meet the requirements for direct-care staff if responsible for direct care of juveniles for any part of the day.

(2) Any support staff who provide direct-care services shall be considered direct-care staff and must meet all requirements for direct-care.

377:3-13-44. Security and control

(a) The facility shall have policy and procedure for security and control.

(b) A list of in-house rules, outlining acts prohibited in the facility and the range of disciplinary procedures, is given to all juveniles. The list is posted in a conspicuous and accessible area.

(1) Staff members shall explain in-house rules to each juvenile admitted to the facility.

(2) When a literacy or language problem prevents a juvenile from understanding the list of rules, a staff member or translator shall assist the juvenile in understanding the rules.

(c) Required security control procedures are described in (1) - (15) of this subsection.

(1) **Resident count.** The facility shall have a system to physically count detained juveniles.

(A) The facility director shall designate one staff member per shift to conduct at least one uninterrupted population count during the shift.

(B) The staff member conducting the count shall be a trained employee in each living unit who shall see the juveniles being counted.

(C) Juveniles shall not be permitted to move about the facility during the count.

(D) Documentation of resident counts is available at the facility at all times.

(2) **Mail security.** Written policy and procedure provide that a juvenile may send or receive mail without limitation, censorship, or prior reading by staff. Staff may open a juvenile's mail in the presence of the juvenile to inspect for contraband. However, staff shall not read the opened mail.

(3) **Searches and control of contraband.** The facility shall have written policy and procedure governing searches and control of contraband.

(A) Policy and procedure include, but are not limited to:

(i) control of contraband;

(ii) searches for contraband;

(iii) body searches;

(iv) property searches;

(v) searches of the facility; and

(vi) visitor searches;

(B) Residents and visitors shall be notified that they are subject to search.

(C) No resident shall be searched beyond what is necessary to maintain proper security.

(D) Searches are conducted by a staff member of the same sex as the resident or visitor.

(E) A body cavity search may be conducted only when there is a strong reason to believe that the juvenile is concealing contraband in a body cavity.

(i) The facility administrator must give authorization to medical personnel for any body cavity search.

(ii) Medical personnel are the only persons authorized to perform body cavity searches.

(iii) T he body cavity search must be conducted in a private area of the facility, without windows, which ensures the privacy and dignity of the juvenile.

(iv) A supervisory witness of the same sex as the juvenile shall be present during the body cavity search.

(v) The detention facility shall contact the OJA Advocate General within 24 hours of conducting a body cavity search.

(4) **Staff ratios and staffing patterns.** There is a minimum ratio of 1:7 direct-care staff to residents during waking hours and 1:16 during residents' sleeping hours.

(A) When a female is placed in detention, there must be a female staff member on duty and when a male is placed in detention, there must be a male staff member on duty;

(B) A minimum of two direct-care staff are on duty at all times in the facility.

(C) Juveniles in detention shall be supervised at all times. The facility shall have enough staff available for staff to remain close to and in visual contact with the juveniles.

(5) **Surveillance plan.** The facility shall have a plan for surveillance of all areas of the perimeter of the facility. Outside lighting must be sufficient to provide visibility under all conditions with no blind spots.

(6) **Door security.** All doors that are security perimeter entrances, exterior doors, and doors which the facility administrator determines should be locked are kept locked. These doors are unlocked only for admission or

exit of juveniles, employees, or visitors or in case of an emergency.

(A) Doors to vacant units, unoccupied areas, and storage rooms are kept locked when not in use.

(B) Staff members shall know what doors must be locked and under what circumstances they are opened.

(C) Once a door is locked, it is checked to see that it is secured.

(7) **Key control.** The facility's key-control system provides for the following:

(A) a log to record the number of keys given out, the location of the lock, the number of keys to that lock, and the names of employees possessing keys;

(B) a central administrative area from where the keys can be issued;

(C) a manner of storage that permits easy determination of either the presence or absence of keys;

(D) labeling of all keys and maintenance of at least one duplicate key for each lock; and

(E) readily available fire and emergency keys.

(8) **Physical force.** Rules relating to the use of physical force are set forth in this paragraph.

(A) Written policy and procedure limit the use of physical force:

(i) for self protection;

(ii) to separate juveniles from fighting;

(iii) to restrain juveniles in danger of inflicting harm to themselves or others; and

(iv) to restrain juveniles who have escaped or who are in the process of escaping;

(B) The least amount of force is used.

(C) Physical force may not be used as punishment or retaliation.

(D) Facility personnel shall not encourage or knowingly permit any person to use physical force which is contrary to policy.

(E) Staff members shall not provoke physical confrontation by taunting, harassing, or cursing a resident or otherwise manipulating a resident into activities which would justify physical force.

(F) A written report is prepared following all uses of force and submitted to the facility administrator by the end of the shift.

(G) Staff members shall receive written guidelines on the use of physical force and shall be informed that loss of employment may result if unauthorized use of physical force is proven.

(H) Medical attention shall be provided immediately upon the juvenile's release from restraint as a result of physical force even if there is not visible evidence or complaint of injury. Staff certified in first aid and CPR may provide medical attention and are responsible for referring the juvenile to licensed medical personnel, if warranted.

(9) **Use of mechanical restraints.** Any instrument of restraint must be approved by the facility administrator or designee.

(A) Restraints are used only:

(i) for self protection;

(ii) to separate juveniles from fighting;

(iii) to restrain juveniles in danger of inflicting harm to themselves or others;

(iv) to restrain juveniles who have escaped or who are in the process of escaping; and

(v) prevent destruction of property if reasonably related to (i) through (iv).

(B) Restraints are used only with the approval of the facility administrator or designee.

(C) Restraints may not be used as a form of punishment.

(D) Restraints are used only as long as necessary and are removed as soon as the juvenile regains control of his/her behavior.

(E) When restraints are placed on a juvenile, such placement must be made by a trained and authorized staff member in a humane manner that does not restrict the juvenile's blood circulation.

(F) Juveniles shall not be restrained to an immovable object.

(G) A juvenile's hands and feet may be restrained, however restraining of the juvenile's hands to his or her feet is prohibited.

(H) The use of hog-tying is prohibited.

(I) A juvenile placed in restraints shall not be left unattended.

(J) A full written report is submitted by the end of the shift to the administrator following every use of an instrument of restraint.

(10) **Chemical agents.** Facility staff shall not use chemical agents for security. Staff may not use tear gas, mace, pepper spray, and related chemical agents to control juveniles.

(11) **Weapons.** Weapons are not permitted except when authorized by state law.

(12) **Procedures for separation from general population and/or general activities for disciplinary reasons.** The following procedure shall be utilized as an intermediary level of intervention, which requires the continual line of sight and sound observation of the juvenile. If a juvenile is separated from the general population, the reasons for the separation and length of time shall be documented in the written daily observation of the juvenile. The separation should not be in excess of 60 minutes. Additional intervals shall be approved by a supervisor/administrator who was not involved in the original incident. Facilities which do not have another supervisor/administrator on site shall receive re-authorization from the on-call administrator. The reasons for the continued separation must be documented. The juvenile shall be released when staff determines that he or she can safely be returned to the group.

(~~12~~13) **Room restriction.** Room restriction is one means of informally resolving minor juvenile misbehavior. It serves a "cooling off" purpose and has a short time period (up to 60 minutes) that is specified at the time of the assignment.

(~~13~~14) **Room confinement.** Room confinement means locking a juvenile in his/her room when the juvenile has been charged with a major rule violation requiring confinement for his/her safety or the safety of others or to ensure the security of the facility.

(A) Room confinement is used with detained juveniles:

(i) for self protection;

(ii) to separate juveniles from fighting;

(iii) to restrain juveniles in danger of inflicting harm to themselves or others;

(iv) to restrain juveniles who have escaped or who are in the process of escaping;

(v) to prevent destruction of property if reasonably related to (i) through (iv); and

(vi) stop behavior that incites other juveniles which jeopardizes the safety of staff and residents of the facility and is reasonably related to (i) through (iv).

(B) Room confinement of juveniles shall be re-authorized every 3 hours, except during normal sleeping hours, by a supervisor/administrator who was not involved in the original incident. Facilities which do not have another supervisor/administrator on site shall receive re-authorization every 3 hours from the on-call administrator. Reasons for continued room confinement shall be documented.

(~~B~~C) A juvenile shall not be in room confinement in excess of 24 hours without the opportunity of an administrative review by the administrator or designee who was not involved in the incident.

(~~14~~15) **Procedure for room confinement or room restriction.** When room restriction or confinement is used, the procedure given in (A) - (E) of this paragraph is followed.

(A) Prior to room restriction or confinement, facility staff shall explain the reasons for the restriction or confinement to the juvenile and shall give the juvenile an opportunity to explain his or her behavior.

(B) Any juvenile shall be visibly observed by a staff member every 15 minutes, and this must be documented.

(C) Juveniles placed in room confinement shall be afforded living conditions and essential services approximating those available to the general juvenile population. Exceptions ~~are~~ shall be justified in writing by clear and substantial evidence.

(D) The juvenile shall be released when staff determines that he or she can safely be returned to the group.

(E) A written record ~~is~~ shall be maintained on any juvenile placed in room restriction or confinement. It includes a log stating who authorized the action, names of persons observing the juvenile and times of observation, the person authorizing release, and the time of release.

(~~15~~16) **Escape and absence without leave.** The facility shall develop written policy and procedure for juveniles who escape from the facility or are absent without leave which shall include the notification of law enforcement agencies.

377:3-13-47. Food service, sanitation and hygiene

(a) **General.** General requirements related to food service, sanitation, and hygiene are set forth in this subsection.

(1) Minimum health requirements for secure juvenile detention facilities are determined by the Health Department and enforced by the Office of Juvenile Affairs.

(2) The facility shall be maintained in compliance with State Health Department Food Service Code. An annual inspection of the facility is conducted to determine compliance with health codes. Documentation is kept on file at the facility.

(3) The facility shall have a written plan for housekeeping that is posted and followed at all times.

(4) The facility shall be weather tight and kept in sound condition and good repair.

(5) The facility's written policy and procedure specify that its food services comply with the Board of Health Food Service rules and regulations.

(b) **Plumbing and water.** Plumbing is sized, installed, and maintained in a safe manner and according to the Oklahoma Plumbing License Act. Plumbing constructed after the effective date of these rules will be installed in compliance with the Building Officials and Code Administrators Plumbing Codes or applicable local ordinances.

(1) There may not be cross-connection between the potable water supply and any non-potable or questionable water supply or any source of pollution through which the potable water supply might be contaminated.

(2) The facility's potable water source and supply, whether owned and operated by the public water department or the facility, must be approved by an independent, outside source to be in compliance with jurisdictional laws and regulations.

(c) **Electrical.** The electrical distribution system must be sized, installed, and maintained in a safe manner according to the Oklahoma Electrical Licensing Act. Portions of the electrical system constructed, repaired, or replaced after the effective date of these rules will be installed in compliance with the National Electrical Code.

(d) **Waste disposal.** Solid waste disposal must comply with the appropriate local ordinance where in effect and otherwise with the Oklahoma Public Health Code and adopted rules and regulations. Sewage disposal must comply with the Oklahoma Health Code and adopted rules and regulations.

(e) **Lighting.** Requirements regarding lighting in the facility are set forth in this subsection.

(1) The facility shall have sufficient air and lighting to ensure the health of the detained juveniles.

(A) Any room designated as a sleeping room shall have natural lighting by a room window to the exterior or from a source within 20 feet of the room. This rule does not prohibit OJA from issuing a provisional certificate if a sleeping room does not meet this criteria.

(B) All window panes must be of shatter-resistant material.

(C) Thirty foot-candles of artificial light are provided in all areas and additional light of at least 50 foot-candles is provided in study areas.

(2) Every hallway and stairway in each secure juvenile detention facility is lighted by natural or electric light at all times to provide at least ten foot-candles of light at floor level. Every hall and stairway in structures containing not more than two sleeping areas may be supplied with conveniently located light switches controlling an adequate lighting system which may be turned on when needed instead of full-time lighting.

(f) **Ventilation and temperature.** Non-habitable areas, such as bathrooms and food preparation areas, provide other approved ventilation systems in lieu of windows or skylights. Adequately designed, maintained, and operated central heating and cooling systems must meet the ventilation requirements. Window area requirements may be reduced but must be adequate to meet requirements of the State Fire Marshal.

(1) Every window, exterior door, and hatchway, or similar devices, must be rodent proof and weather tight and kept in working condition and good repair.

(A) During the portion of the year when there is a need for protection against mosquitoes, flies and other flying insects, every door and window must have a properly fitting stainless steel mesh detention screen.

(B) A ir conditioned habitable areas are deemed adequate to meet this requirement when properly operated unless vectors are able to enter to such extent that a nuisance or hazard is created.

(2) Every habitable area must have heating facilities which are properly installed and maintained in working condition. The heating system must be capable of safely and adequately heating all habitable rooms, bathrooms, and water closets at a temperature of at least 68 degrees Fahrenheit at a distance of 18 inches above floor level under ordinary winter conditions.

(3) An acceptable temperature zone for maintaining year round comfort is 66 degrees to 80 degrees Fahrenheit in the summer, optimally 71 degrees, and 61 degrees to 73 degrees Fahrenheit in the winter, optimally 70 degrees.

(g) **Food Service.** Written policy, procedure, and practice require that at least three meals, two of which are hot, be provided at scheduled times during each 24-hour time period on regular business weekdays, with no more than 14 hours between the evening meal and breakfast meal. Only on weekends and state recognized holidays may a hot brunch and a hot evening meal, both of which meet basic nutritional goals, be provided at scheduled times during each 24 hour time period.

(1) The facility provides or arranges for the meals and at least one snack per 24 hour day from food that is selected, stored, prepared, and served in a sanitary and palatable manner. Each meal contains a sufficient amount of food for every juvenile and additional servings are permitted.

(2) Facilities recognize the social and emotional needs of juveniles during mealtime. Juveniles and the staff who eat with them are served the same food, except for tea and coffee, unless differences in age or special dietary needs are factors.

(h) **Hygiene.** Juveniles shall have the opportunity for daily showers.

[OAR Docket #05-845B; filed 5-11-05]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 3. ADMINISTRATIVE SERVICES

[OAR Docket #05-845A]

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RULES:
Subchapter 15. Management Information System
377:3-15-15. Purpose [REVOKED]
377:3-15-16. Annual reporting responsibilities [REVOKED]
377:3-15-17. Other services [REVOKED]
Subchapter 16. Office of Planning and Research [NEW]
77:3-16-1. Purpose [NEW]
377:3-16-2. Legal basis [NEW]
377:3-16-3. Planning and reporting requirements [NEW]
377:3-16-4. Other services [NEW]
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Research rules are being revoked out of the existing subchapter under Management Information System and move to a new subchapter for Research.
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 15. MANAGEMENT INFORMATION SYSTEM

PART 3. PLANNING, RESEARCH, AND EVALUATION SERVICES

377:3-15-15. Purpose [REVOKED]

~~Staff shall conduct and participate in studies and plans which are either directly related to the OJA mission or aimed at improving services to children, youth, and families. Studies may be internally initiated or made at the request of a party or entity outside of OJA.~~

377:3-15-16. Annual reporting responsibilities [REVOKED]

~~Staff shall prepare the OJA Annual Report for the Governor, legislature, the Board of Juvenile Affairs, and the public. Title 10 O.S., § 7302-3.11 defines the basic content of the report.~~

377:3-15-17. Other services [REVOKED]

~~Staff shall provide analysis and interpretation of research and statistical data for use by OJA staff, the Legislature, and the public.~~

SUBCHAPTER 16. OFFICE OF PLANNING AND RESEARCH

377:3-16-1. Purpose

The Office of Planning and Research is the unit designated by the Executive Director to support the Office of Juvenile Affairs (OJA) to strategically plan for agency growth as well as to provide agency staff with the necessary information to be informed on the performance of agency service programs and trends within the juvenile justice system.

377:3-16-2. Legal basis

The functions of the Office of Planning and Research are authorized by 10 O.S. Supp. 1995 §7302-3.1 (A), § 7302-3.8 (B) (4) (5), §7302-3.9, § 7302-3.10, §7302-3.11, § 7302-7.3 (A) (1), §7302-7.3 (B) (1), § 7302-7.4 (D), §7302-9.6 (A) (4), § 7304-1.3 (D), §7307-1.3 (A) (2) (c), § 7307-1.5 (A) (13).

377:3-16-3. Planning and reporting requirements

The Office of Planning and Research shall provide administrative support for an agency planning process for the development of agency and departmental goals and priorities for services to children and youth. The planning responsibilities of the Office of Planning and Research shall include:

(1) administrative support for the development of agency program and service performance measures.

(2) evaluating agency programs and services including annual production and dissemination to the public of the following reports:

(A) The OJA Annual Report;
(B) The OJA Annual Client Outcomes Report;
(C) The OJA Annual Youthful Offender Report;
(D) The OJA Annual Literacy Assessment Report;
(E) The OJA Detention Facility Plan;
(F) The OJA Strategic Plan; and,
(G) The OJA Vision/Goals Plan.

377:3-16-4. Other Services

The Office of Planning and Research shall provide technical assistance to providers of juvenile justice prevention or intervention services with regards to evaluation, performance measurement and statistical information. The Office of Planning and Research shall provide analysis and interpretation of research and statistical data for use by agency staff, elected officials, and the public.

[OAR Docket #05-845A; filed 5-11-05]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 5. DIVISION OF THE PAROLE BOARD

[OAR Docket #05-846]

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Subchapter 1. General Provisions [NEW]
377:5-1-1. Purpose [NEW]
377:5-1-2. Mission [NEW]
377:5-1-3. Legal Basis [NEW]
Subchapter 3. Pre-release Planning [NEW]
377:5-3-1. Pre-release planning [NEW]
377:5-3-2. Scheduling of the tentative release date [NEW]
377:5-3-3. Parole [NEW]
377:5-3-4. Review of the tentative release date [NEW]
377:5-3-5. Parole Rules [NEW]
Subchapter 5. Hearings [NEW]
377:5-5-1. Definitions [NEW]
377:5-5-2. Parole Review Hearing [NEW]
377:5-5-3. Parole Revocation Hearing [NEW]
377:5-5-4. Administrative Transfer Hearing (community) [NEW]
377:5-5-5. Conduct of Parole Revocation and Administrative Transfer Hearing [NEW]
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ANALYSIS:
New Office of Juvenile Affairs (OJA) rules are being created to move the parole process and hearing process under one section of the OJA Administrative Rules.
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

377:5-1-1. Purpose

The purpose of this Subchapter is to provide rules for administrative parole hearings, administrative parole, and to establish due process for parole revocation and Administrative Transfer Hearings for juveniles.

377:5-1-2. Mission

The Parole Board shall provide administrative and/or parole hearings when there is:

(1) an application to revoke parole;
(2) an application for an Administrative Transfer Hearing; or
(3) a recommendation to deny parole.

377:5-1-3. Legal basis

Granting parole, revoking parole and administratively transferring juveniles from a community placement (nonsecure) to an institution (secure) are administrative functions authorized by Title 10 of the Oklahoma Statutes §§ 7302-3.1(B)(2), 7302-6.1(A)(3), 7302-6.1(B), 7306-2.10 and 7306-2.11. The Parole Board is a division of the Department of Juvenile Justice (DJJ) and is composed of persons designated by the Deputy Director. The Deputy Director or Parole Board shall assign staff to conduct hearings.

SUBCHAPTER 3. PRE-RELEASE PLANNING

377:5-3-1. Pre-release planning

Title 10 O.S., Section 7302-6.1(A)(3) and 7306-2.11 gives DJJ authority to place a juvenile on parole whenever DJJ determines that such release shall not be detrimental to society and that the juvenile is probably ready to be returned to the community or has reasonably completed a plan of rehabilitation.

377:5-3-2. Scheduling of the tentative release date

(a) **Institutional Treatment Plan.** Within 30 days of institutional admission, an Institutional Treatment Plan shall be prepared and signed by the Institutional Supervisor, Youth and Juvenile Justice Specialist (JJS) Worker.
(b) **Scheduling.** Within 45 days of institutional admission a tentative release date shall be set for the juvenile. A meeting shall be held with the juvenile for the purpose of scheduling the tentative release date. At the meeting the criteria for release shall be explained to the juvenile.
(c) **Persons Present.** The juvenile, the Advocate Defender, and the Institutional JJS shall be present at the meeting.
(d) **Guidelines for tentative release date.** The tentative release date is determined by the juvenile's delinquent classification and date of placement in the institution. The dates are given in (1) - (3) of this paragraph:

(1) Class I's and Class II's-twelve months
(2) Class III's-nine months
(3) Class IV's-six months

(e) **Accelerated tentative release date.** During the course of the juvenile's stay at the institution, the juvenile's institutional worker and/or local JSU worker can recommend the juvenile's tentative release date be rescheduled to an earlier date than the date previously scheduled.
(f) **Criteria for release.** Release from an institution is not guaranteed by the fact that a tentative release date has been scheduled. The juvenile must comply with the clearly established treatment goals of the individual treatment plan. Release will be subject to terms and conditions established by DJJ whenever DJJ determines that such release will not be detrimental to society and that the juvenile is ready to be returned to the community.

377:5-3-3. Parole

(a) **Parole.** The granting of parole is an administrative function, which is authorized by 10 O.S., § 7302-6.1(A)(3)-(4) and 7306-2.11. This function is carried out through a parole hearing or through an administrative parole.
(b) **The Parole Board process.** When a juvenile placed in an institution has made sufficient progress towards meeting the goals of his/her treatment plan and, where applicable, has successfully completed the passes as prescribed by the Office of Juvenile Affairs (OJA), the institution and JSU worker shall submit a parole recommendation to the Parole Board for release consideration.
(c) **Administrative parole.** An administrative parole is the method by which parole may be granted without a parole hearing.

(1) The Executive Director of OJA or his/her designee may grant an administrative parole for a juvenile exiting a program with a projected length of stay.

(2) When JSU and institutional staff recommend that the juvenile should be paroled, the Parole Board may accept the recommendation and grant an administrative parole.

377:5-3-4. Review of the tentative release date

(a) **General Provisions.** Review shall be held in the month of the scheduled tentative release date. The purpose of the review is to assess the juvenile's progress toward the successful completion of his or her individual treatment plan. The review shall provide the juvenile with the opportunity to verbally express any treatment concerns that he or she might have.

(b) **Persons Present.** The juvenile, the Advocate Defender, the JJS, and the JSU worker shall participate in the review.

(c) **Notice.** The juvenile shall receive notice of the review at least 48 hours in advance.

(d) **Recommendations.**

(1) At the conclusion of the review, the institutional staff and JSU worker may recommend to the Parole Board that the juvenile be paroled. If parole is recommended, the recommendation shall be submitted to the Parole Board for release consideration. If the Parole Board rejects the recommendation, the matter shall be scheduled for a parole hearing in accordance with 377:5-5-2 (a).

(2) The institutional staff and/or the JSU worker may or may not recommend parole. If parole is not recommended by either or both, the matter shall be scheduled for a parole hearing in accordance with 377:5-5-2 (b).

(3) The juvenile shall be advised of the recommendation and the reasons for the recommendation at the conclusion of the review.

(e) **Waiver.** A juvenile may waive his/her Parole Hearing. The Advocate Defender and JJS shall be present and sign the waiver. The waiver shall be sent to the Parole Board and copies placed in the juvenile's file.

377:5-3-5. Parole rules

(a) A uniform set of parole rules is set forth in the Statement of Parole Rules form. Prior to being released on parole from an institution, the juvenile shall be required to sign parole rules. The JSU worker, based on the juvenile's individual needs, may add more specific rules to assist the juvenile with community adjustment. Additional conditions are written in the Additional Parole Rules form and carry the same force and effect as the uniform rules.

(b) Parole rules include:

(1) an acknowledgment by the juvenile that the juvenile is on parole and agrees that he/she:

(A) will not violate any federal, state, or local laws;

(B) will not leave the approved placement without approval from the JSU worker;

(C) will obey reasonable and lawful commands of parent, guardian, or other custodian, including school officials;

(D) will attend school, unless legally excused; and

(E) will be involved in an appropriate alternative program, if legally excused from school.

(2) a statement that the juvenile understands that the JSU worker may add additional, more specific conditions to assist with the juvenile's individual supervision/treatment needs; and

(3) an agreement by the parent, guardian, or legal custodian that he/she shall enforce the rules and cooperate with the JSU worker during the supervision period. In special circumstances, if a juvenile has reached his/her 18th birthday, or is legally emancipated, at the time of parole, no parent or guardian will be required to sign the rules.

(c) Copies of the signed rules shall be provided to the juvenile and parent, guardian, or legal custodian.

(d) JSU workers shall use compliance with parole rules as a basis for recommending discharge from custody and non-compliance as a basis for a parole revocation hearing.

SUBCHAPTER 5. HEARINGS

377:5-5-1. Definitions

"Administrative Transfer Hearing (community)" A hearing by which the supervised community placement (SCP) status of a delinquent juvenile may be terminated.

"Hearing Examiner" A Hearing Officer or Panel of Parole Board members who preside over parole hearings.

"Hearing Officer" Hearing Officers shall be appointed by the OJA Deputy Director.

"Parole Board Member" Parole Board Members shall be appointed by the OJA Deputy Director.

"Parole Hearing" A formal evidentiary hearing provided to a juvenile when OJA staff do not recommend parole during the month of tentative release or when a staff recommendation for parole is rejected by the Parole Board.

"Tentative Release Date" An actual fixed month and year for tentative release.

"Parole Revocation Hearing" An administrative hearing by which the parole status of a juvenile may be revoked. A juvenile's parole may be revoked for violation of the terms and conditions of parole.

377:5-5-2. Parole Hearing

(a) If the Parole Board has rejected a staff recommendation for parole, a 3-member panel of the Parole Board shall preside over the parole hearing, as the Hearing Examiner.

(b) If parole has not been recommended by the JSU and/or institutional staff, a Hearing Officer shall preside over the parole hearing, as the Hearing Examiner.

(c) **Notice.** The juvenile, parent, guardian, or legal custodian and Advocate Defender shall have at least 14 calendar days notice of the hearing.

(d) **Conduct of Parole Hearings.** The parole hearing shall be conducted in an orderly manner and with a concern for privacy with ample opportunity for the juvenile to express his/her

views. The Hearing Examiner shall explain the purpose of the parole hearing and the issues to be addressed to the juvenile.

(1) OJA staff shall provide written documentation and other information which supports their recommendation at least seven (7) days (excluding weekends and holidays) prior to a Parole Hearing. The information shall include but is not limited to:

(A) the number and severity of committing offense(s) and any previous offense(s);

(B) the institutional adjustment of the juvenile including any serious negative behavior; i.e., major rule violations;

(C) the existence of a workable parole placement and an adequate program in the community;

(D) the juvenile's adjustment on any weekend passes or other community release;

(E) the review of the juvenile's progress;

(F) the existence of any pending charges and the possibility of any recommitment on these charges;

(G) the juvenile's willingness to cooperate with parole supervision; and

(H) relevant conditions in the community.

(2) The juvenile may have access to information which is submitted to the Hearing Examiner unless the Examiner considers the information harmful to the juvenile.

(3) The juvenile shall be given an opportunity to verbalize and present documentation why he/she should be granted parole and be allowed to question the Hearing Examiner and staff present about any of the documents used in the hearing.

(4) The Hearing Examiner shall consider any documentation submitted and may ask the juvenile, OJA staff, and other parties involved in the care of the juvenile questions relevant to granting or denying parole. If in the opinion of the Hearing Examiner, a case requires an examination and opinion by Psychiatrists or Psychologist, Certified members of the appropriate profession are available for such examination and opinions. The Hearing Examiner may access the juvenile's master file as a reference source during the hearing.

(5) When the Hearing Examiner has considered all written and oral evidence, the Hearing Examiner shall prepare a written statement of the specific factors and reasons which support the granting or denying parole. The Hearing Examiner shall address the parole release criteria as well as any specific concerns.

(6) A Hearing Officer or Panel may defer its decision on any case for just cause for a period not to exceed 30 days (excluding weekends and holidays). In these cases, the juvenile shall receive written notice of the reasons for the deferral with the date and time when the Parole Hearing shall resume. The hearing shall resume prior to the expiration of 30 days (excluding weekends and holidays).

(7) **Presiding official is Hearing Officer.**

(A) At the close of the hearing, if a Hearing Officer has presided over the Parole Hearing as provided in Rule 377:5-5-2(b), he/she shall advise the juvenile of his or her recommendation to be submitted to the Parole Board and the reasons supporting the recommendation.

(B) The Hearing Officer shall issue a written recommendation to grant or deny parole to the Parole Board within 3 days (excluding weekends and holidays).

(C) The Parole Board shall review all records and make decision to grant or deny parole within 10 days (excluding weekends and holidays) of receiving the recommendation.

(D) The decision and the reasons for the decision of the Parole Board shall be made available in writing to the appropriate staff and to the juveniles within 14 calendar days (excluding weekends and holidays) of the Hearing.

(8) **Presiding official is a Panel.**

(A) At the close of the hearing, if a Panel has presided over the Parole Hearing as provided in Rule 377:5-5-2(a), the panel shall advise the juvenile of the outcome of its decision to grant or deny parole and the reasons therefor.

(B) The Panel shall prepare a written decision granting or denying parole within 10 days (excluding weekends and holidays) of the hearing.

(C) The Panel's decision shall be made available in writing to the appropriate staff and to the juvenile within 3 calendar days (excluding weekends and holidays) of the issuance of the decision.

(9) The parole hearing shall be recorded. A summary of the proceedings and the Hearing Examiner's recommendation or decision shall be kept in the juvenile's case record.

(10) The Parole Board or the Panel shall inform a juvenile of his or her rights to appeal decisions granting or denying parole.

(e) **Persons present.** Persons attending the hearing are limited to those persons necessary for the orderly and fair conduct of the hearing.

(1) A representative of the Office of Advocate General or designee shall be present at all parole hearings.

(2) The parent, guardian or legal custodian shall be provided prior notice of all Parole hearings.

(3) The JSU and Institutional workers shall be present when requested by the Hearing Examiner.

(4) The Hearing Examiner shall decide whether additional persons may be present at the parole hearing.

(f) **Appeals of parole decisions.** A juvenile, his or her parent, guardian, legal custodian, attorney or a representative of the Advocate General's Office, or a designee may appeal a decision of the Parole Board or that of a Panel as provided in 377:5-5-2(a) in the following manner:

(1) A written notice of appeal, stating the reasons therefor shall be submitted to the Office of Juvenile Affairs, Office of the Deputy Director, within seven (7) days (excluding weekends and holidays) of the receipt of the decision granting or denying parole.

(2) The Deputy Director shall consider all appeals and render a decision to sustain or deny an appeal within 7

days (excluding weekends and holidays). The Deputy Director shall notify the juvenile, Advocate General's Office and any individual who filed on behalf of the juvenile, of his/her decision to sustain or deny the appeal.

(g) **Effective date of parole.** The decision of the Parole Board or the Panel's decision, if not appealed, is final within seven (7) days (excluding weekends and holidays) of the hearing.

(h) **Subsequent hearings.** If parole is denied, a parole hearing must be conducted every six (6) months in accordance with rules set forth in this section.

377:5-5-3. Parole Revocation Hearing

(a) **Parole violations.** When alleged violations of parole occur, the JSU worker and supervisor shall consider specific factors when deciding whether to request a revocation of a juvenile's parole. Factors include the:

(1) seriousness of the juvenile's offense;

(2) overall adjustment of the juvenile; and

(3) demonstrated lack of amenability to treatment.

(b) **Pre-revocation conference.** The first step toward revocation is the pre-revocation conference. The District Supervisor or designee shall meet with the juvenile, the parent, guardian, legal custodian, placement provider (if applicable), and the JSU worker to:

(1) advise the juvenile and the parent(s), guardian(s) or legal custodian(s) of their constitutional and legal rights as documented;

(2) discuss the alleged parole violations;

(3) document the violations on the Application to Revoke Parole form; and

(4) distribute copies to the juvenile, the parent(s), guardian(s), legal custodian(s) or placement provider.

(c) **Result of pre-revocation hearing.** The juvenile may choose to have a hearing before a Hearing Officer or waive the hearing by signing a Waiver of Parole Revocation form.

(d) **Revocation hearing.** If the decision is to have a hearing, the JSU worker shall file the Application to Revoke Parole with the Parole Supervisor and request that the hearing date be scheduled. The hearing shall be held in the county where the alleged violation occurred [10 O.S., §7302-6.1 (B)2].

(e) **Due process.** Parole revocation hearings are held in accordance with 10 O.S., §7302-6.1(B) and OJA rules set forth in this section.

(f) Waiver of a revocation hearing. The juvenile may waive a revocation hearing anytime prior to the presentation of evidence by completing and presenting a waiver to the Hearing Officer or other representative of OJA.

(g) **Conducting Interstate Compact Revocation.** For juveniles on parole placed in the State of Oklahoma through the Interstate Compact on Juveniles (ICJ), a Hearing Officer shall perform a fact-finding hearing and determine if the juvenile has violated the terms of his/her parole conditions while residing in the State of Oklahoma.

(h) General provisions.

(1) The Parole Supervisor shall designate a Hearing Officer to preside over the parole revocation hearing.

(2) As provided in 10 O.S. §7302-6.1, if legal counsel for the juvenile has not otherwise been obtained, the JSU worker shall file an application for an Order Appointing Counsel with the District Court wherein the alleged violations occurred.

(3) Upon the JSU worker's filing an application, the Hearing Officer shall schedule a revocation hearing within a reasonable period of time.

(4) Notice of the hearing, including the date, time, and place of the hearing, and a copy of the Application to Revoke Parole shall be mailed by the Hearing Officer to the juvenile, the parent, guardian or legal custodian, the judge in the county wherein the alleged violations occurred, and the juvenile's legal counsel, if one has been retained or appointed.

(5) Hearings shall be conducted in accordance with 377:5-5-5.

377:5-5-4. Administrative Transfer Hearing (community)

(a) An Administrative Transfer Hearing is an administrative process by which the Parole Board may terminate the Supervised Community Placement (SCP) status of a juvenile. The juvenile may be placed in an institutional setting. The Parole Board shall base a decision to revoke SCP on the seriousness of the offense and the overall adjustment of the juvenile.

(b) **General provisions.** (Pre-administrative Conference)

(1) Supervised Community Placement. When alleged SCP violations occur, the JSU worker and supervisor shall consider specific factors when deciding whether to request an Administrative Transfer Hearing. Factors include the:

(A) seriousness of the juvenile's offense;

(B) overall adjustment of the juvenile; and

(C) demonstrated lack of amenability to treatment.

(2) **Pre-Administrative Transfer Hearing conference.** The first step toward a transfer hearing is the pre-administrative transfer hearing conference. The District Supervisor or designee shall meet with the juvenile, the parent, guardian, legal custodian, placement provider (if applicable), and the JSU worker to:

(A) advise the juvenile and the parent, guardian or legal custodian of their constitutional and legal rights as documented;

(B) discuss the alleged violations of the SCP rules;

(C) document the alleged SCP violations on the Application for Administrative Transfer; and,

(D) distribute copies to the juvenile, the parent, guardian, legal custodian and/or placement provider.

(c) **Result of Pre-Administrative Transfer Hearing Conference.** The juvenile may choose to have a hearing before a Hearing Officer or waive the hearing by signing a Waiver of Administrative Transfer Hearing.

(d) **Administrative Transfer Hearing.** If the decision is to have a hearing, the JSU worker shall file the application for Administrative Transfer Hearing with the Parole Supervisor and request that a hearing date be scheduled. The hearing shall be held in the county where the alleged violation occurred [10 O.S., §7302-6.1 (B)2].

(e) **Due process.** Administrative Transfer hearings are held in accordance with 10 O.S., §7302-6.1(B) and OJA rules set forth in this section.

(f) Waiver of an Administrative Transfer Hearing. The juvenile may waive an Administrative Transfer hearing anytime prior to the presentation of evidence by completing and presenting a waiver to the Hearing Officer or other representative of OJA.

(g) **Conduct of the hearing**

(1) After receiving an application for an administrative transfer hearing, the Parole Supervisor shall designate a Hearing Officer to preside over an administrative transfer hearing.

(2) As provided in 10 O.S. §7302-6.1, if legal counsel for the juvenile has not otherwise been obtained, the JSU worker shall file an application for an Order Appointing Counsel with the District Court wherein the alleged violations occurred.

(3) Upon the JSU worker's filing an application, the Hearing Officer shall schedule an Administrative Transfer Hearing within a reasonable period of time.

(4) Notice of the hearing, including the date, time, and place of the hearing, and a copy of the Application for Administrative Transfer Hearing shall be mailed to the juvenile, the parent, guardian or legal custodian, the judge in the county wherein the alleged violations occurred, and the juvenile's legal counsel, if one has been retained or appointed.

(5) The hearing shall be conducted in accordance with 377:5-5-5.

377:5-5-5. Conduct of Parole Revocation and Administrative Transfer Hearings

(a) Conduct of the hearings. The Hearing Officer shall conduct the hearing to obtain accurate information upon which an informed decision can be reached.

(1) At the beginning of the hearing, the Hearing Officer shall ascertain that:

(A) notice of the hearing, including the time, date and location of the hearing, and a copy of the Application to Revoke Parole or for Administrative Transfer Hearing (ATH), were given to the juvenile, the parent, guardian or legal custodian, and legal counsel at least 24 hours before the hearing; and

(B) legal counsel is present to represent the juvenile and has been given an opportunity to prepare a defense.

(2) Only an attorney who is licensed to practice law in the State of Oklahoma shall be permitted to represent a juvenile.

(3) Persons attending the hearing are limited to those persons necessary for the orderly and fair conduct of the hearing. Hearings are conducted with a concern for privacy.

(4) Requests for continuances from any of the parties may be granted only at the discretion of the Hearing Officer. Due consideration shall be given to:

(A) the timeliness of the request;

(B) the justification;

(C) convenience to the interested parties;

(D) problems with continued detention; and

(E) the Hearing Officer's schedule.

(5) The Hearing Officer may exclude any participant from the hearing for good cause. The Hearing Officer shall state the reasons for exclusion on the record at the time it is made. However, the attorney for the juvenile and the representative of the agency shall be present continuously while the hearing is in progress.

(6) The Hearing Officer may recess the hearing at the request of either party or at his/her own initiative for a brief period of time as necessary to facilitate the hearing process. The Hearing Officer shall state for the record:

(A) the reasons for the recess;

(B) the time the recess began; and

(C) the time the recess ended.

(7) The first presenter shall be a representative of OJA. The presenter shall carry the burden of proof that the juvenile violated conditions of parole or supervised community placement.

(8) The juvenile and legal counsel shall be present while evidence is being presented. The juvenile's parent, guardian or legal custodian may be present at all times the juvenile is present, unless they are the adverse parties by the nature of the violations alleged.

(9) Either party or the Hearing Officer may invoke the "Rule of Sequestration". When the "Rule" is invoked, the Hearing Officer shall instruct all witnesses that they are to be sequestered from the hearing room, called in the order in which they are expected to testify, and are not to discuss their testimony with other witnesses.

(10) Harassment or intimidation of witnesses is not permitted.

(11) The application may be dismissed at the request of the OJA representative prior to the Hearing Officer's recommendation to sustain or deny the application.

(12) Prior to commencement of the hearing, no one shall be permitted to discuss with the Hearing Officer any facts related to issues of the hearing.

(b) Evidence. The Hearing Officer shall screen all evidence for its material value to the issues of the hearing.

(1) Hearsay evidence is considered only in light of its reliability, relevancy, necessity, and probative value. Generally, the more the information is removed from its source, the less weight it should be given. The Hearing Officer may not base a decision substantially upon hearsay evidence.

(2) Relevant evidence is admissible. Evidence is relevant if it has a tendency to prove or disprove any disputed fact issue before the Hearing Officer.

(3) The Hearing Officer shall take official notice of any fact that the courts may judicially notice and of those matters within the Hearing Officer's particular field of expertise, including policies and procedures of the agency.

(4) Written material may be introduced during the course of the hearing by either the juvenile's legal counsel or the representative of the OJA.

(c) Fact-finding standards and hearing sequence.

(1) A Hearing Officer must find by a preponderance of the evidence that:

(A) the allegations are true; and

(B) revocation or transfer is warranted under the circumstances.

(2) A preponderance of the evidence means that the evidence indicates that the facts to be proved are:

(A) credible; and

(B) more probable than not.

(3) Upon the conclusion of the hearing, the Hearing Officer may recommend that the Application to Revoke Parole or for Administrative Transfer be sustained based upon a preponderance of the evidence. The Hearing Officer shall advise the juvenile and legal counsel of the recommendation and the appeal process.

(4) The Hearing Officer shall prepare a written recommendation within three (3) working days (excluding weekends and holidays) of the hearing as to whether the juvenile's parole should be revoked or placement should be administratively transferred. The report must include the allegation(s), the finding(s) of fact, and mitigating circumstances, if any. The Hearing Officer shall submit the report to the juvenile, the juvenile's legal counsel, parent, guardian or legal custodian, and Parole Board.

(d) **Parole Board review.** The Parole Board shall review the recommendation of the Hearing Officer and the entire record of the hearing and affirm or deny in writing.

(e) **Distribution.** The Parole Board shall send written copies of the final decision to the juvenile, the juvenile's parent, guardian or legal custodian, legal counsel, the JSU, and the court in the county wherein the violations occurred within ten (10) working days (excluding weekends and holidays) following the hearing.

(f) **Appeal.** A juvenile may appeal the decision of the Parole Board to the Deputy Director who has final review authority. The appeal must be filed by the juvenile within ten (10) days (excluding weekends and holidays) after receipt of the Parole Board's decision. The Deputy Director shall inform all involved parties of the appeal decision within ten (10) days (excluding weekends and holidays).

(g) **Recordings.** Recordings of revocation hearings shall be preserved for six (6) months from the date of the hearing or as otherwise required by law.

(h) **Expungement.** If the Application for Revocation of Parole or Administrative Transfer is denied by the Parole Board or the Deputy Director, OJA shall expunge all materials related to the alleged offense from the juvenile's case record.

[OAR Docket #05-846; filed 5-11-05]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 10. DEPARTMENT OF JUVENILE JUSTICE

[OAR Docket #05-847]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 9. Services to Juveniles in Out-of-home Placements
Part 3. Grand Staffing
377:10-9-10. Grand Staffing [AMENDED]
377:10-9-11. Placements subject to grand staffing process [REVOKED]
377:10-9-12. Length of stay criteria [REVOKED]

AUTHORITY:
Board of Juvenile Affairs, pursuant to 10 O.S., Section 7302-1.1(H) and 7302-1.1 (I) and 75 O.S., Section 302 (A)(1).

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ANALYSIS:
A grand staffing process allows all individuals involved in a juvenile's case to develop plans for progress within the facility's treatment programs. The following rule revisions are due to need to remove programs that are no longer available for OJA juveniles and to remove procedural information from the rules.

CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 9. SERVICES TO JUVENILES IN OUT-OF-HOME PLACEMENTS

PART 3. GRAND STAFFING

377:10-9-10. Grand Staffing

(a) Grand staffing is a process designed to provide assessment, review, and evaluation of an OJA-custody juvenile's

individual treatment service plan. ~~OJA may initiate the~~ The grand staffing ~~process~~ is held for a juvenile placed in ~~one of the placements set forth in OAC 377:10-9-11~~ an out-of-home placement. The grand staffing process allows staffing participants to develop plans for progress within the facility's treatment program, reintegration or future placement plans based on the needs and services identified during the ~~grand~~ staffing.

(b) In addition to OJA staff, contracted facility staff, and the juvenile's parent, guardian, or custodian, the JSU worker shall notify and invite involved judges, district attorneys, and attorneys of record of the date of the grand staffing.

~~(c) Grand staffings may be conducted when:~~

~~(1) a juvenile is not on target to be released as scheduled;~~

~~(2) a juvenile's discharge plan is to a lower level of care, excluding:~~

~~(A) foster care;~~

~~(B) relative's home; or~~

~~(C) own home; or~~

~~(3) the district supervisor or facility determines that a grand staffing is necessary to resolve treatment plan issues or concerns or issues.~~

~~(d) A grand staffing shall be held at the facility where the juvenile resides.~~

~~(e) Goals~~ (c) The purpose of the grand staffing ~~are~~ is to:

~~(1) review the grand staffing plan~~;

~~(2) review the juvenile's progress;~~

(~~3~~ 1) ensure that progress toward the completion of the individual treatment and service plan (ITSP) is being made;

(~~4~~2) revise the ITSP if necessary and secure signatures from all participants;

~~(5) review plans to place the juvenile in a less restrictive setting to ensure that:~~

~~(A) the juvenile has opportunity for success in the placement; and~~

~~(B) the public is protected~~;

(~~6~~3) review the reintegration plan to ensure the juvenile is provided with adequate and appropriate support in the next placement;

(~~7~~4) ensure that the ~~agreed upon~~ rehabilitation plan is ~~are~~ executed and progress toward completion is being made; and

(~~8~~5) identify systems issues which require action.

377:10-9-11. Placements subject to grand staffing process [REVOKED]

~~(a) The grand staffing process may be used for any juvenile placed in an OJA operated or contract facility, including, but not limited to:~~

~~(1) the Rader, Intensive Treatment Program (ITP);~~

~~(2) a medium-secure institution, including:~~

~~(A) Rader Treatment Center;~~

~~(B) Central Oklahoma Juvenile Center;~~

~~(C) Southwest Oklahoma Juvenile Center; and~~

~~(D) Union City;~~

~~(3) the Rader Substance Abuse Treatment Program;~~

~~(A) a regimented juvenile training program;~~

~~(B) Stroud Intervention and Remediation;~~

~~(C) VisionQuest; and~~

~~(D) Thunderbird; and~~

~~(4) an OJA operated group home;~~

~~(5) a Levels D, D+, and E contracted group home; or~~

~~(6) a wilderness program.~~

377:10-9-12. Length of stay criteria [REVOKED]

~~The grand staffing coordinator shall schedule the grand staffing to occur approximately at the mid-point of a juvenile's estimated length of stay~~

[OAR Docket #05-847; filed 5-11-05]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 25. JUVENILE SERVICES UNIT

[OAR Docket #05-848]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Custody
Part 5. Rules of Supervised Community Placement
377:25-7-30. Administrative Transfer Hearing [REVOKED]
Part 7. Parole [REVOKED]
377:25-7-40. Parole [REVOKED]
377:25-7-41. Parole rules [REVOKED]
377:25-7-42. Parole revocation [REVOKED]
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ANALYSIS:
The rules are being revoked in order for OJA to move all parole & hearing process under one new chapter in the Administrative Rules.
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 7. CUSTODY

PART 5. RULES OF SUPERVICED COMMUNITY PLACEMENT

377:25-7-30. Administrative transfer hearing [REVOKED]

~~An Administrative Transfer Hearing is an administrative process by which the Parole Board may terminate the SCP status of a juvenile and place the juvenile in an institution. The Parole Board shall base a decision to revoke SCP on the seriousness of the offense and the overall adjustment of the juvenile. Administrative transfer hearings are subject to the same procedures as the parole revocation hearings. Procedures for initiating and conducting hearings are set forth in 377:25-7-42 and 377:30-5-6.~~

PART 7. PAROLE [REVOKED]

377:25-7-40. Parole [REVOKED]

~~(a) **Parole.** The granting of parole is an administrative function which is authorized by 10 O.S., § 7302-6.1(A)(3)-(4). This function is carried out through a parole hearing or through an administrative parole.~~

~~(b) **The Parole Board process.** When a juvenile placed in an institution has made sufficient progress towards meeting the goals of his or her treatment plan and, where applicable, has successfully completed the passes as prescribed by the Office of Juvenile Affairs, the institution and JSU worker shall submit a parole recommendation to the Parole Board for release consideration. The Parole Board responsibilities are set forth in OJA rule 377:30-5-5.~~

~~(c) **Administrative parole.** An administrative parole is the method by which parole can be granted without a parole hearing.~~

~~(1) A juvenile exiting a program which has a projected length of stay may be granted an administrative parole by the Executive Director of OJA.~~

~~(2) The Parole Board may grant an administrative parole in exceptional cases or when JSU and institutional staff agree that the juvenile should be paroled.~~

377:25-7-41. Parole rules [REVOKED]

~~(a) A uniform set of parole rules are set forth in the Statement of Parole Rules, (JSU-12). Any juvenile leaving an institution shall be required to sign parole rules. The JSU worker, based on the juvenile's individual needs, may add more specific rules to assist the juvenile with community adjustment. The additional rules are written on JSU-13, Additional Parole Rules, and carry the same weight as the uniform rules.~~

~~(b) Parole rules include:~~

~~(1) an acknowledgment by the juvenile that the juvenile is on parole and agrees that he or she:~~

~~(A) will not violate any federal, state, or local laws;~~

~~(B) will not leave the approved placement without approval from the JSU worker;~~

~~(C) will obey reasonable and lawful commands of parent, guardian, or other custodian, including school officials;~~

~~(D) will attend school, unless legally excused; and~~

~~(E) will be involved in an appropriate alternative program, if legally excused from school.~~

~~(2) a statement that the juvenile understands that the JSU worker may add additional, more specific rules to assist with the juvenile's individual supervision/treatment needs; and~~

~~(3) an agreement by the parent, guardian, or custodian that they shall enforce the rules and cooperate with the JSU worker during the supervision period.~~

~~(c) The JSU worker shall give a copy of the signed rules to the juvenile and family.~~

~~(d) JSU workers may use compliance with parole rules as a basis for recommending discharge from custody and non-compliance as a basis for a parole revocation hearing.~~

377:25-7-42. Parole revocation [REVOKED]

~~(a) **Parole violations.** When alleged violations of parole occur, the JSU worker and supervisor shall consider the specific factors when deciding whether to request a revocation of a juvenile's parole. Factors include the:~~

~~(1) seriousness of the juvenile's offense;~~

~~(2) overall adjustment of the juvenile; and~~

~~(3) demonstrated lack of amenability to treatment.~~

~~(b) **Pre-revocation conference.** The first step toward revocation is the pre-revocation conference. The district supervisor or designee shall meet with the juvenile, parent, guardian, or placement provider, and the JSU worker to:~~

~~(1) advise the juvenile and family of their constitutional and legal rights as documented by the JSU-1;~~

~~(2) discuss the alleged parole violations;~~

~~(3) document the violations on the Application to Revoke Parole, Form JSU-14; and~~

~~(4) distribute copies to the juvenile, family or step-down placement provider.~~

~~(c) **Result of pre-revocation hearing.** The juvenile may choose to have a hearing before a hearing officer or waive the hearing by signing a Waiver of Parole Revocation or Administrative Transfer Hearing (JSU-8).~~

~~(d) **Revocation hearing.** If the decision is to have a hearing, the JSU worker shall file the application to revoke with the Parole Board and request that the hearing date be scheduled. The hearing shall be held in the county where the alleged violation occurred [10 O.S., §7302-6.1 (B)2].~~

~~(e) **Due process.** Parole revocation hearings are held in accordance with 10 O.S., §7302-6.1(B) and OJA rules set forth in 377:30-5~~

[OAR Docket #05-848; filed 5-11-05]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 30. RESIDENTIAL SERVICES

[OAR Docket #05-849]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Division of the Parole Board [REVOKED]
377:30-5-1. Purpose [REVOKED]
377:30-5-2. Mission [REVOKED]
377:30-5-3. Legal base [REVOKED]
377:30-5-4. Setting of the tentative release date [REVOKED]
377:30-5-5. Parole hearing [REVOKED]
377:30-5-6. Parole revocation hearings [REVOKED]
377:30-5-7. Administrative transfer hearings [REVOKED]
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The rules are being revoked in order for OJA to move all parole & hearing process under one new chapter in the Administrative Rules.
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 5. DIVISION OF THE PAROLE BOARD [REVOKED]

377:30-5-1. Purpose [REVOKED]

~~The purpose of this Subchapter is to provide rules for administrative hearings and to establish due process for parole revocation and administrative transfer hearings for juveniles.~~

377:30-5-2. Mission [REVOKED]

~~The Parole Board shall provide administrative hearings when there is:~~

~~(1) a recommendation to deny parole;~~
~~(2) an application to revoke parole; or~~
~~(3) a recommendation for an administrative transfer hearing.~~

377:30-5-3. Legal base [REVOKED]

~~Granting parole, revoking parole and administratively transferring juveniles from a community placement (nonsecure) to an institution (secure) are administrative functions authorized by Title 10 of the Oklahoma Statutes §§ 7302-3.1(B)(2), 7302-6.1(A)(3)and 7302-6.1(B). The Parole Board is a division of the Department of Juvenile Justice and is composed of staff designated by the Deputy Director. The Deputy Director or Parole Board shall assign staff to conduct hearings. The Deputy Director of the Department of Juvenile Justice shall have final review authority.~~

377:30-5-4. Setting of the tentative release date [REVOKED]

~~(a) **Scheduling.** The Parole Board or designee shall meet with the juvenile within 30 to 45 days of the juvenile's placement in any training school program. The purpose of this meeting is to schedule a tentative release hearing date for the juvenile.~~

~~(b) **Guidelines for tentative release date.** The tentative release date is determined by the juvenile's delinquent classification and date of placement in the training school. The dates are given in (1) - (3) of this paragraph:~~

~~(1) Class I's and Class II's twelve months~~
~~(2) Class III's nine months~~
~~(3) Class IV's six months~~

~~(c) **Accelerated tentative release date.** During the course of the juvenile's stay at the training school, the juvenile's institutional worker and/or local JSU worker can recommend the juvenile's tentative release date be rescheduled to an earlier date than the date previously scheduled.~~

~~(d) **Criteria for release.** Release from an institution is not guaranteed by the fact that a tentative release date has been established. The juvenile must comply with clearly established treatment goals and no longer be considered a threat to society before release is considered.~~

377:30-5-5. Parole hearing [REVOKED]

~~(a) **General provisions.** A parole hearing is an administrative hearing which is held when there is concern by either the JSU or institutional staff that a juvenile has not met the criteria for parole and a recommendation to deny parole is made. The~~

~~Parole Board shall appoint a hearing officer to conduct parole hearings.~~

~~(1) If parole is not recommended, the hearing officer shall conduct a parole hearing for a juvenile during the month of the tentative release date. If, during that month, the juvenile is on a parole pass and demonstrates that he or she does not meet the criteria for release, the hearing will be deferred to the month following the juvenile's return to the institution.~~

~~(2) The juvenile shall be notified at least 14 calendar days before the parole hearing of the date, time, and place of the hearing and shall specifically be advised of the purpose of the hearing. The juvenile may waive the parole hearing.~~

~~(3) When all parties agree that a juvenile should be paroled from an institution, the juvenile may be administratively paroled as provided in 377:25-7-40.~~

~~(b) **Conduct of parole hearings.** The parole hearing shall be conducted in an orderly manner. The hearing officer shall explain the purpose of the parole hearing to the juvenile.~~

~~(1) OJA staff shall provide to the hearing officer written documentation and other information which supports their recommendation to deny parole at least seven days prior to a parole hearing. The information shall include:~~

~~(A) the juvenile's history;~~

~~(B) the juvenile's future plans;~~

~~(C) events in the case since any previous hearing; and~~

~~(D) relevant conditions in the community.~~

~~(2) The juvenile may have access to information which is submitted to the hearing officer unless the hearing officer considers the information harmful to the juvenile.~~

~~(3) The juvenile shall be given an opportunity to verbalize and present documentation why he or she should be granted parole and be allowed to question the hearing officer and staff present about any of the documents used in the hearing.~~

~~(4) The hearing officer shall consider any documentation submitted and may ask the juvenile, OJA staff, and other parties involved in the care of the juvenile questions relevant to making a recommendation to grant or deny parole.~~

~~(5) When the hearing officer has considered all written and oral evidence, he or she shall prepare a written statement of the specific factors and reasons which support his or her recommendation to grant or deny parole.~~

~~(6) At the close of the hearing the hearing officer shall advise the juvenile of the recommendation and the reason for the recommendation.~~

~~(7) After the hearing is completed, a juvenile who has been recommended for parole will be made aware of the conditions of the parole.~~

~~(8) The hearing officer shall submit a written recommendation on each juvenile considered for parole to the Parole Board to approve or disapprove. The Parole Board may modify the recommendation of the hearing examiner.~~

~~(9) The parole hearing shall be recorded. A summary of the proceedings, the hearing officer's recommendation, and the Board's decision shall be kept in the juvenile's case record.~~

~~(c) **Persons present.** Persons attending the hearing are limited to those persons necessary for the orderly and fair conduct of the hearing.~~

~~(1) A representative of the Office of Advocate General or designee shall be present at all parole hearings to represent the juvenile.~~

~~(2) The hearing officer shall decide whether additional persons may be present at the parole hearing.~~

~~(d) **Types of recommendations.** The hearing officer may:~~

~~(1) recommend the granting or denying of parole; or~~

~~(2) defer a recommendation pending the receipt of additional information.~~

~~(e) **Resumption of deferred hearing.** If the hearing officer defers a parole hearing, he or she must resume the hearing within the next 30 days.~~

~~(f) **Appeal of parole decision.** If the parole is denied by the Parole Board, the juvenile may appeal the decision through the OJA grievance procedures authorized in OAC 377:3-1-28 subject to the Deputy Director's having final review authority in Parole Board decisions.~~

~~(g) **Effective date of parole.** The parole decision, if not appealed, is final within seven calendar days (excluding holidays) of the hearing.~~

~~(h) **Subsequent hearings.** If parole is denied, a hearing must be conducted every six months in accordance with rules set forth in this section.~~

377:30-5-6. Parole revocation hearings [REVOKED]

~~(a) **General provisions.**~~

~~(1) A parole revocation hearing is an administrative hearing by which the parole status of a juvenile may be revoked. A juvenile's parole may be revoked for violation of the terms and conditions of his or her parole.~~

~~(2) The Parole Board shall designate a hearing officer to preside over parole revocation hearings.~~

~~(3) In order to initiate a revocation hearing the JSU worker must file an application to revoke parole in accordance with 377:25-7-43.~~

~~(4) As provided in 10 O.S. §7302-6.1, if legal counsel for the juvenile has not otherwise been obtained, the JSU worker shall file an application for an Order Appointing Counsel with the District Court wherein the alleged violations occurred.~~

~~(5) Upon the JSU worker's filing an application, the hearing officer shall schedule a revocation hearing within a reasonable period of time.~~

~~(6) Notice of the hearing, including the date, time, and place of the hearing, and a copy of the application to revoke shall be mailed by the hearing officer to the juvenile, the juvenile's parent, guardian, or custodian, the judge in the county wherein the alleged violations occurred, and the juvenile's legal counsel, if one has been retained or appointed.~~

~~(b) **Conduct of the hearings.** The hearing officer shall conduct the hearing to obtain accurate information upon which an informed decision can be reached.~~

~~(1) At the beginning of the hearing, the hearing officer shall ascertain that:~~

~~(A) notice of the hearing, including the time, date and location of the hearing, and a copy of the application to revoke, were given to the juvenile, the juvenile's parent, guardian, or custodian, and counsel at least 24 hours before the hearing; and~~

~~(B) counsel is present to represent the juvenile and has been given an opportunity to prepare a defense.~~

~~(2) Only an attorney who is licensed to practice law in the State of Oklahoma shall be permitted to represent a juvenile.~~

~~(3) Observers may attend the hearing at the discretion of the hearing officer. Observers must have a direct, legitimate interest in the proceedings.~~

~~(4) The hearing begins as closely as possible to the scheduled time.~~

~~(5) Requests for continuances from any of the parties may be granted only at the discretion of the hearing officer. Due consideration shall be given to:~~

~~(A) the timeliness of the request;~~

~~(B) the justification;~~

~~(C) convenience to the interested parties;~~

~~(D) problems with continued detention; and~~

~~(E) the hearing officer's schedule.~~

~~(6) The hearing officer may exclude any participant from the hearing for good cause. The hearing officer shall state the reasons for exclusion on the record at the time it is made. However, the attorney for the juvenile and the representative of the agency shall be present continuously while the hearing is in progress.~~

~~(7) The hearing officer may recess the hearing at the request of either party or at his or her own initiative for a brief period of time as necessary to facilitate the hearing process. The hearing examiner shall state for the record:~~

~~(A) the reasons for the recess;~~

~~(B) the time the recess began; and~~

~~(C) the time the recess ended.~~

~~(8) The first presenter shall be a representative of OJA. The presenter shall carry the burden of proof that the juvenile violated conditions of his or her parole.~~

~~(9) The juvenile and his or her attorney have a right to be present while evidence is being presented. The juvenile's parents, guardians, or custodians may be present at all times the juvenile is present, unless they are the adverse parties by the nature of the violations alleged.~~

~~(10) Either party or the hearing officer may invoke the "Rule of Sequestration" at the beginning of the hearing. When the "Rule" is invoked, the hearing officer shall instruct all witnesses that they are to be sequestered from the hearing room, called in the order in which they are expected to testify, and are not to discuss their testimony with other witnesses.~~

~~(11) Harassment or intimidation of witnesses is not be permitted.~~

~~(12) The proceedings may be dismissed at the request of the OJA representative prior to the hearing officer's recommendation to sustain or deny the application without prejudice to the refiling of OJA's application to revoke.~~

~~(13) No one shall be permitted to discuss with the hearing officer any facts bearing upon the issues of the hearing prior to its commencement.~~

~~(c) **Introduction of written materials.**~~

~~(1) The juvenile, through his or her attorney, may introduce letters and other written documents to help present his or her case.~~

~~(2) The representative of the Office of Juvenile Affairs may present written documents relevant to the alleged violations.~~

~~(d) **Evidence.** The hearing officer shall screen all evidence for its material value to the issues of the hearing.~~

~~(1) Hearsay evidence is considered only in light of its reliability, relevancy, necessity, and probative value. Generally, the more the information is removed from its source, the less weight it should be given. The hearing examiner may not base a decision substantially upon hearsay evidence.~~

~~(2) Relevant evidence is admissible. Evidence is relevant if it has a tendency to prove or disprove any disputed fact issue before the hearing officer.~~

~~(3) The hearing officer shall take official notice of any fact that the courts may judicially notice and of those matters within the hearing officer's particular field of expertise, including policies and procedures of the agency.~~

~~(e) **Fact-finding standards and hearing sequence.**~~

~~(1) A hearing officer must find by a preponderance of the evidence that:.~~

~~(A) the allegations are true; and~~

~~(B) revocation is warranted under the circumstances.~~

~~(2) A preponderance of the evidence means that the evidence indicates that the facts to be proved are:~~

~~(A) credible and convincing to the mind; and~~

~~(B) more probable than not.~~

~~(3) If the hearing officer recommends that the application to revoke be sustained based upon a preponderance of the evidence, at the conclusion of the hearing, he or she shall inform the juvenile and counsel of his or her recommendation and advise them of the appeal process.~~

~~(3) If the hearing officer's recommendation is to sustain the application, OJA shall proceed with the option of placement of the juvenile.~~

~~(4) The hearing officer shall prepare a a written recommendation within three working days of the hearing, as to whether the juvenile's parole should be revoked. The report must include the allegation(s), the finding(s) of fact, and mitigating circumstances if any. The hearing officer shall submit the report to the juvenile, the juvenile's counsel, parent, guardian, or custodian, and Parole Board.~~

~~(f) **Parole Board review.** The Parole Board or designee shall review the entire record of each hearing and approve or deny the recommendation in writing.~~

~~(g) **Distribution.** The Parole Board shall send written copies of the final decision to the juvenile, the juvenile's parent, guardian, or custodian,, counsel, the Juvenile Services Unit, and the court in the county wherein the violations occurred within 10 working days following the hearing.~~

~~(h) **Appeal.** A juvenile may appeal the decision of the Parole Board to the Deputy Director who has final review authority. The appeal must be filed by the juvenile within ten days after receipt of the Parole Board's decision. The Deputy Director shall inform all involved parties of his decision within ten days of his decision.~~

~~(i) **Tape recordings.** Tape recordings of revocation hearings shall be preserved for six months from the date of the hearing or as otherwise required by law.~~

~~(j) **Expungement.** If the application for revocation is denied by the Parole Board or the Deputy Director, the agency shall expunge all materials related to the alleged offense from the juvenile's case record.~~

~~(k) **Waiver of a revocation hearing.** The juvenile may waive a revocation hearing anytime prior to the presentation of evidence by completing and presenting a waiver to the hearing examiner or other representative of OJA.~~

377:30-5-7. Administrative transfer hearings [REVOKED]

~~There are two types of administrative transfer hearings conducted by the Parole Board.~~

~~(1) **Administrative transfer (community).** An Administrative Transfer Hearing is an administrative hearing by which the supervised community placement (SCP) status of a delinquent juvenile may be terminated. Procedures for this hearing are outlined in 377:30-5-6.~~

~~(2) **Administrative Transfer Hearing (institutions).** The Administrative Transfer Hearing is an administrative hearing to establish a finding(s) of fact on rule violations and/or to determine whether the juvenile is dangerous and poses a threat in the current institution. The juvenile may be transferred to a more secure institutional setting as a result of this administrative process. The procedures for this hearing are outlined in OAC 377:30-5-6 with the exceptions that the resident is assisted in presenting his case by the student defender or designee in place of legal counsel and that notice to the juvenile's parents, guardians or custodians is not required prior to the transfer.~~

[OAR Docket #05-849; filed 5-11-05]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 35. INSTITUTIONAL SERVICES

[OAR Docket #05-850]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [AMENDED]
Subchapter 3. Security and Control [AMENDED]
Subchapter 5. Food Services, Sanitation, Safety and Hygiene [AMENDED]
Subchapter 7. Medical and Health Care [AMENDED]
Subchapter 9. Juvenile Rights [AMENDED]
Subchapter 11. Juvenile Rules/Discipline [AMENDED]
Subchapter 19. Release and Revocations (Delinquent Programs) [REVOKED]
AUTHORITY:
Board of Juvenile Affairs, pursuant to 10 O.S., Section 7302-1.1(H) and 7302-1.1 (I) and 75 O.S., Section 302 (A)(1).
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ANALYSIS:
Office of Juvenile Affairs (OJA) rules are being revised: to remove use of the term "resident" and change to a consistent term of "juvenile" throughout all subsections of this chapter; to remove all references to "zone" throughout the chapter; to update current terms such as "Unit Treatment Team" and remove references to "cottages committee"; to update the requirements for building standards to include new building codes (377:35-5-4); to prohibit use of tobacco products on institutional grounds (377:35-9-8); to update the postal process regarding the requirement of providing postage for five (5) letters rather than five (5) stamps (377:35-11-5); and to allow more than one 5-minute phone call per week by the juvenile (377:35-11-7).
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

377:35-1-1. Legal ~~Base~~ Basis

The Office of Juvenile Affairs through its Department of Juvenile Justice operates its institutions under the authority of Title 10, O.S., § 7305.3(B)(1).

377:35-1-2. Definitions

The following words or terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

"Contraband" means any object or substance, including clothing or other articles depicting sex, drug, alcohol, violence, or gang affiliation the possession of which is:

(A) illegal; or

(B) dangerous to the physical well-being of the resident, the institution, or other residents of the institution.

"Escape" means to break free or run away from an institution or other authorized location.

"Intensive Treatment Program Transfer Hearing (institutions)" The process by which a juvenile may be transferred from a medium secure facility to the Intensive Treatment Program (ITP). An ITP hearing is an administrative hearing to establish a finding(s) of fact on rule violations and/or to determine whether the juvenile is dangerous and poses a threat in the current institutional placement.

~~**"JJS"** means juvenile justice specialist.~~

377:35-1-3. Purpose

(a) The purpose of the OJA ~~training schools~~ institution is to:

(1) provide temporary residential care;

(2) offer effective intervention into the ~~resident's~~ juvenile's delinquent behaviors;

(3) provide for the safety of the public; and

(4) hold juveniles accountable for their behaviors.

(b) The ~~training schools~~ institution shall be responsible for the juvenile's:

(1) care;

(2) treatment;

(3) training;

(4) education;

(5) rehabilitation; and

(6) control.

(c) Consistent with the necessary limitations imposed by an institutional setting, juveniles in institutions shall have access to all required services which would be available to them in the community. The institution shall provide or procure programs and services necessary to implement the juvenile's individual treatment and service plan (ITSP).

(d) The services and facilities operated by the Department shall be accredited by the American Correctional Association.

377:35-1-4. Sexual activity

No staff member shall engage in any sexual activity with a ~~resident~~ juvenile. Violation of this rule may result in termination and/or criminal prosecution.

SUBCHAPTER 3. SECURITY AND CONTROL

377:35-3-2. Transportation of ~~residents~~ juveniles

The Superintendent or designee shall assign responsibility for transportation of ~~residents~~ juveniles to a specific staff member. At least one employee of the same sex shall accompany any transported resident.

377:35-3-3. Injuries, fires, and assaults

(a) **Injuries, medical examination, and treatment.** The provisions in this section are in addition to the rules and regulations listed in 377:3-1-25. All persons, including ~~residents~~ juveniles and staff, injured in an accident or incident must receive an immediate medical examination and treatment.

(b) **Report of injuries, fires, assaults.** In the event of serious injury to or assault against a juvenile or staff member, or damage or destruction to property, a written report of the incident shall be submitted to the ~~Deputy Director~~ Division Administrator of Residential Services, by the end of the shift. If a juvenile is injured in a serious incident or accident, an accident report shall be completed. The designated institutional staff shall notify the parent or guardian of the accident and provide them with complete details and a report of the juvenile's condition at the time. The Division Administrator of Residential Services shall notify the Deputy Director within 4 hours of any serious incident or accident.

(c) **Assault by juveniles upon staff (institutions).** Title 21 O.S. §§ 650.2 and 650.8 provides that certain assaults upon staff shall result in a felony upon conviction.

377:35-3-7. Contraband

(a) Upon discovery of any contraband, the institutional staff member shall make a log notation including the name of:

(1) the item or substance;

(2) the person who provided the substance, if known; and

(3) the juvenile's name.

(b) When a staff member finds contraband, the staff member shall notify the intended recipient in writing.

(1) If the contraband is a statutorily defined controlled or dangerous item, the superintendent shall confiscate and store the item pending disposition by appropriate authorities. The superintendent shall provide written notification of the violation of federal and state statutes to the:

(A) ~~Deputy Director~~ Division Administrator of Institutional Services; and

(B) appropriate authorities.

(2) Staff shall enter other contraband confiscated from the ~~resident~~ juvenile on the ~~resident's~~ juvenile's personal property inventory. If possession does not violate the law, staff shall return the confiscated item to the ~~resident~~ juvenile upon release.

(3) When a contraband item is illegal or the owner is unidentifiable, the staff member shall immediately inventory and store the item. Staff shall destroy the contraband after six months.

(4) A ~~resident~~ juvenile may challenge the confiscation of contraband through the established grievance procedure.

377:35-3-9. Closure of ~~cottage/campus~~ Unit/Facility

(a) ~~Cottage~~ Unit closure shall be a programmed response to significant ~~cottage/campus~~ unit/facility disorder or emergency.

(b) The Superintendent or the AOD shall authorize ~~cottage~~ unit closure when necessary. The superintendent or AOD shall re-authorize the closure every four hours while in effect.

(c) The superintendent shall authorize ~~campus~~ facility closure when necessary. The ~~Deputy Director~~ Division Administrator of Institutional Services shall re-authorize ~~campus~~ facility closure every 24 hours while in effect.

377:35-3-10. Escape policies and procedures

(a) **Institution responsibility.**

(1) After determining that a juvenile has escaped, the superintendent or AOD shall place the juvenile on escape status and immediately notify:

(A) local law enforcement;

(B) the parents or guardian (if possible);

(C) the JSU worker;

(D) the ~~Deputy Director~~ Division Administrator of Institutional Services; and

(E) the Director of Media and Community Relations.

(2) No later than the next regular work day after a juvenile has escaped, the institutional staff shall provide written notification to the:

(A) ~~Deputy Director~~ Division Administrator of Institutional Services;

(B) parents or guardian;

(C) JSU worker; and

(D) committing court.

(3) The superintendent or the AOD shall request local law enforcement officials to assist in the immediate apprehension of the juvenile.

(4) Institutional staff shall notify the parties listed in (1) and (2) of this subsection when the juvenile is not apprehended in his/her local community but is returned to the institution.

(b) **Return of escapees.** When a juvenile who has escaped is apprehended within 30 days of the escape, the institutional staff member shall return the juvenile to the institution. If the juvenile is apprehended after 30 days, the JSU worker shall initiate the placement process through the Placement Unit.

(1) Official notification of the return of a juvenile from escape status shall be reported to all persons listed in (a)(1) of this section.

(2) The assigned medical personnel shall complete a physical examination of each juvenile returning from escape status.

(3) The superintendent or AOD shall authorize use of a crisis management center for a juvenile returning from escape status on an individual basis.

SUBCHAPTER 5. FOOD SERVICES, SANITATION, SAFETY AND HYGIENE

377:35-5-2. Sanitation and hygiene

The institution's sanitation and hygiene program shall include compliance with standards of good practice to protect the health and safety of juveniles and staff. All areas of the facility must meet standards of cleanliness and sanitation as provided by the standards, rules, and regulations of the Oklahoma State Department of Health.

377:35-5-3. Cleanliness, linen supply and exchange [REVOKED]

~~All areas of the facility must meet standards of cleanliness and sanitation as provided by the standards, rules, and regulations of the Oklahoma State Department of Health.~~

377:35-5-4. Building, fire, and safety codes

(a) All institutions shall fully comply with:

(1) the 1981 or later applicable Life Safety Codes of the National Fire Protection Association;

(2) the applicable accreditation standards pertaining to fire safety; and

(3) any successor codes or standards.

(b) Each institution shall establish policy and procedure to provide:

(1) an adequate fire protection service;

(2) a system of fire inspections and testing of equipment at least quarterly;

(3) an annual inspection by local or state fire officials or other qualified person(s); and

(4) fire protection equipment throughout the institution at locations designated by the State Fire Marshal.

377:35-5-5. Clothing

(a) ~~Residents~~ Juveniles and staff shall be required by policy to wear uniforms. The policy must be approved by the ~~Deputy Director~~ Division Administrator of Institutional Services and included in the ~~resident~~ Juvenile Handbook.

(b) The institutional staff shall ensure that a ~~resident~~ juvenile has sufficient clean clothing.

(c) The superintendent or designee shall, when appropriate, permit a ~~resident~~ juvenile to wear the ~~resident's~~ juvenile's own clothes if the clothes are practical and reasonable in style and price.

(d) ~~Residents~~ Juveniles may not wear clothing which depicts alcohol, drugs, or gang affiliation or is otherwise inappropriate, as determined by the superintendent or his designee. Juveniles shall be prohibited from wearing gang "colors". ~~Residents~~ Juveniles shall not wear articles of clothing in a manner that indicates gang affiliation.

377:35-5-6. Toiletries

(a) Staff shall ensure that ~~residents~~ juveniles have access to toiletries and supplies.

(b) ~~The resident shall be responsible for providing lotions, perfumes, colognes, or other cosmetic items. To the extent possible, dependent on the type of facility, programmatic and health needs of the population, and the responsible use of the~~

~~products, residents shall be allowed to keep toiletries in their possession.~~ Staff shall ensure that articles necessary to maintain proper hygiene are provided to all juveniles.

(c) ~~However, items~~ Items in metal, glass, or aerosol containers or products containing alcohol or other toxic agents which can be inhaled or ingested shall be kept in a central locked location and used only under supervision of ~~cottage~~ unit staff at times specified for daily grooming.

377:35-5-7. Grooming standards

A ~~resident~~ juvenile shall not be conspicuous in contrast to any juvenile outside of the institution. Barber and beautician facilities shall be provided so that a ~~resident~~ juvenile can obtain hair care services when needed. Institutional staff shall allow a ~~resident~~ juvenile to keep facial hair and determine the length and style of his or her hair as long as the ~~resident's~~ juvenile's appearance does not conflict with the institution's health or safety policy or standards. Each ~~resident~~ juvenile shall have access to individualized clean clothing and daily access to showers.

SUBCHAPTER 7. MEDICAL AND HEALTH CARE

377:35-7-1. Medical and health care

(a) Each institution shall provide comprehensive health care services by qualified personnel to protect the health and well-being of juveniles.

(1) A qualified nurse shall conduct a medical, dental, and mental health assessment on each ~~resident~~ juvenile immediately upon the juvenile's arrival and discharge from a state institution. Access to medical and dental records shall be restricted to authorized personnel.

(2) The institutional physician shall review medical and dental records prior to the ~~resident's~~ juvenile's discharge or transfer. When a ~~resident~~ juvenile is transferred to another facility, the institutional worker shall ensure that the juvenile's medical records or a summary of his or her medical records is forwarded to the receiving facility prior to or upon arrival.

(3) Each institution shall have procedures for serious or common problems, including:

(A) drug toxicity and withdrawal;

(B) pregnancy;

(C) ~~venereal disease~~ sexually transmitted disease (STD);

(D) suicide threats; and

(E) emotional problems.

(4) If neurological problems are suspected in a case of learning disabilities, the medical services worker shall refer the ~~resident~~ juvenile for testing.

(5) The ~~medical services~~ staff shall refer a ~~resident~~ juvenile with speech and hearing defects to the contracted speech pathologist.

(6) Institutional staff shall ensure that a ~~resident's~~ juvenile's dental and visual needs are met. If services provided by institutional staff do not meet a juvenile's needs, the institution shall purchase these services. The superintendent shall either:

(A) retain specialists with a set monthly fee to perform all services; or

(B) buy the service on a per-visit basis.

377:35-7-2. Surgery

~~(a) When a resident requires surgery, the physician shall determine whether the need is an emergency.~~

~~(1) If the surgery is not considered an emergency, the institutional worker shall contact the resident's parents (or guardian) to ask permission for the hospital and the doctor to perform the resident's surgery.~~

~~(2) The superintendent shall authorize surgery if:~~

~~(A) the doctor deems the surgery to be an emergency; and~~

~~(B) the doctor advises the superintendent that because of the emergent nature that the surgery should be done before the parents can be contacted.~~

~~(b) When the superintendent authorizes emergency surgery, the institutional worker shall make every effort to contact the resident's parents (or guardian) to:~~

~~(1) notify them of the action taken; and~~

~~(2) provide details concerning the surgery.~~

(a) **Non-Emergency.** When an institutional physician determines a juvenile requires non-emergency surgery, the physician shall refer the juvenile to a specialist for a second opinion. The institutional physician shall provide all information regarding the juvenile's treatment to the superintendent and any further information provided by the specialist. If the specialist agrees that the juvenile requires surgery, the institutional superintendent shall request a documented medical consult. The institutional superintendent shall ensure that the Division Administrator and Deputy Director have notification of all non-emergency surgery procedures prior to treatment. Prior to the surgery the institutional worker shall contact the juvenile's parent, guardian or legal custodian to request written authorization for hospitalization and for the doctor to perform the juvenile's surgery.

(b) **Emergency.** The superintendent shall authorize surgery if the attending physician deems the surgery to be an emergency and the attending physician advises the superintendent that because of the emergency nature that the surgery should be done before the parent can be contacted. The superintendent shall notify the Division Administrator within 24 hours after any emergency surgery. When the superintendent authorizes emergency surgery, the institutional worker shall make every effort to contact the juvenile's parent, guardian or legal custodian to:

(1) notify them of the action taken; and

(2) provide details concerning the surgery.

377:35-7-3. Records

(a) Complete medical records shall be maintained at the clinic. Information contained in the records shall include:

(1) all treatment and medication administered;

(2) the ~~resident's~~ juvenile's medical history; and

(3) periodic reports made by the physician as requested by the superintendent or the State Office.

(b) When a death occurs within the institution, the superintendent shall:

(1) hold a formal review;

(2) sign a written summary of facts; ~~and~~

(3) submit all information to the ~~Deputy Director.~~ Division Administrator of Institutional Services; and

(~~c~~4) ~~The superintendent shall also~~ request an autopsy by the State Medical Examiner's Office. ~~A Supervising Consultant on Medical Care and Services shall available in the State Office for consultation with the physician or superintendent.~~

377:35-7-7. Emergency medical services

Each juvenile facility shall have a written arrangement for the use of one or more designated hospital emergency rooms to provide 24-hour emergency medical, dental, and mental health care. The institution shall have a written agreement with the hospital for evacuation of the ~~resident~~ juvenile from the facility by use of an emergency medical vehicle. Following the same procedures outlined in 377:35-7-2 for emergency surgery, the superintendent shall sign a consent for treatment of conditions requiring emergency treatment.

377:35-7-9. Administration of medications

Medications shall be administered only by the physician, registered nurse, or other staff who have received approved training in administration of medications. When a ~~resident~~ juvenile is confined to medical isolation or the ~~cottage~~ unit for medical reasons, the designated staff shall bring medications to be administered to the ~~resident~~ juvenile at that location.

(1) When a ~~resident~~ juvenile is placed in another setting, including community placement, another institution, or a contract facility, the designated staff member shall send a three-day supply of the ~~resident's~~ juvenile's prescribed medications with the ~~resident~~ juvenile.

(2) Medications (mind altering drugs) such as stimulants, tranquilizers, or psychotropics shall be administered only as a part of a program of medically approved therapy. The administration of such drugs shall be periodically monitored by a licensed psychiatrist according to accepted medical standards. The use of medication for punishment, control, or program management shall be prohibited. Telephone orders between a psychiatrist and a requesting nurse shall only occur when the nurse has had prior involvement in the case and the administration of any drugs and when the nurse has personal knowledge of the patient's medical needs. Telephone orders and the patient will be reviewed by a physician or psychiatrist within 48 hours of administration.

(3) Rules regarding administration of drugs shall not preclude the use, with informed consent (or if involuntary, with the same information provided as would be provided to consenting patients), of drugs which are capable of relieving specifically identified psychiatric symptoms. If used, the individual plan of treatment must state the specific benefits expected for specific symptoms or complaints and must document observed benefits or other effects no less than monthly.

377:35-7-10. Second medical opinions

(a) In institutions, every ~~resident~~ juvenile shall be first evaluated by the institutional physician. Routine medical procedures or illnesses of a minor nature, as determined by a physician, require no second medical opinion.

(b) Any problem requiring a surgical procedure shall be referred to a specialist. In addition, any problem which is not within the realm of the institutional physician's expertise or responding to his/her treatment in an expected manner shall be referred to a specialist. When the ~~resident~~ juvenile is referred to a specialist by the institutional physician and both the institutional physician and specialist agree with a treatment protocol, an additional opinion shall not be warranted.

(c) A ~~resident~~ juvenile may request a second medical opinion when he/she believes the problem is not responding to the treatment which is afforded by the ~~attending~~ institutional physician. The institutional physician shall review the ~~decision~~ request to obtain a second medical opinion. If the institutional physician denies the request the juvenile may appeal the decision to the superintendent. If the institutional superintendent thinks a second medical opinion request is frivolous or should be denied for other reasons, he/she shall make a recommendation to the ~~Deputy Director~~ Institutional Services Division Administrator, who will obtain assistance from ~~the~~ a contracted licensed physician in resolving the matter.

(d) Issues regarding the delivery and procurement of medical services shall be addressed at a first level by institution administration and the involved physician. As a second level response, unresolved issues shall be forwarded to the ~~Deputy Director~~ Institutional Services Division Administrator, who may draft necessary policy or request a review by the contracted licensed physician.

SUBCHAPTER 9. JUVENILE RIGHTS

377:35-9-3. Child (~~Resident~~ Juvenile) abuse

Rules regarding child (~~Resident~~ Juvenile) abuse are found in OAC 377:3-1-25.

377:35-9-4. Access to courts/counsel

(a) ~~Residents~~ Juveniles shall have the right to access the courts, counsel, and counsel substitutes. ~~Residents~~ Juveniles have the right to:

(1) present any issue, including the legality of their adjudications and commitments or placements;

(2) seek redress for illegal conditions or treatment;

(3) pursue legal remedies; and

(4) assert a claim against OJA or other governmental authority for any rights protected by constitutional or statutory provision or by common law.

(b) Institutional staff shall ensure and facilitate the right of ~~residents~~ juveniles to access attorneys and their authorized representatives. Institutional staff, when requested, shall assist the ~~resident~~ juvenile to contact the attorneys of record, court-appointed attorneys, local bar associations, or other legal representative. A ~~resident~~ juvenile may communicate with counsel or the court by mail, in person, or by telephone. Institutional staff may impose reasonable restrictions on the time or place of these communications; however, communications shall be confidential.

(c) Written correspondence between ~~residents,~~ juveniles and his/her courts, or legal representatives shall be unopened and uncensored~~, provided that incoming~~. Incoming mail from courts or legal representatives ~~may~~ shall be opened by the juvenile to check for contraband, in the presence of a staff member.

(d) Phone calls between ~~residents~~ juveniles and their legal representatives shall be limited to one phone call per day unless otherwise requested by the legal representative. All telephone communications with legal representatives shall be unmonitored. Staff may not require that the subject of the communication be disclosed by the ~~resident~~ juvenile or counsel.

(e) Personal visits by legal representatives shall be confidential and undisturbed. Legal representatives may visit during regular visiting hours or, with approval of the superintendent, at other times.

(f) A ~~resident~~ juvenile who wants to call a court, attorney, or other legal representative shall request assistance from his/her juvenile justice specialist. The juvenile justice specialist shall:

(1) assist the ~~resident~~ juvenile in placing the call;

(2) verify the identity of the legal representative (for both outgoing and incoming calls); and

(3) verify whether the legal representative accepted a call. If a call has been accepted, the juvenile justice specialist shall determine whether consultation is complete or whether future contacts will be made. The juvenile justice specialist shall document information required by this Section, including any restrictions or other specific requests concerning future contacts made by the ~~resident's~~ juvenile's legal representative.

(A) **Department-provided legal services.** In the event a ~~resident~~ juvenile is unable to receive consultation/ assistance as given in subsections (b)-(f) of this section, the ~~resident~~ juvenile may contact the student defender to discuss whether he may be entitled to legal assistance through the Department. If the juvenile has not pursued administrative remedies, he/she will be encouraged to do so before the Department will purchase legal services for him/her. If the concern is not subject to administrative remedy or administrative remedies have been exhausted and the resolution is not to the juvenile's satisfaction, then the student defender shall request the juvenile justice specialist to assist the juvenile in contacting the appropriate resource. All rules regarding phone usage, written correspondence, and visitation shall be the same for Department-provided legal services as for private attorneys. The Department has a contract for legal services, which are available to the ~~residents~~ juveniles of the institutions.

(B) **~~Resident~~ Juvenile orientation.** As part of the ~~resident's~~ juvenile's orientation, the facility staff shall advise the ~~resident~~ juvenile of the procedures, rights, and responsibilities in regard to access to courts and attorneys. The Training Section shall assist in the development of this orientation.

377:35-9-5. ~~Resident~~ Juvenile personal property

~~Resident~~ Juveniles shall be allowed to have a limited number of personal possessions as outlined in the Juvenile Handbook. ~~No item, except coats, shall be retained by a resident if the value exceeds $50.00. Coats may be valued up to $60.00. Personal possessions shall be kept in areas where not prohibited for programmatic or other reasons (e.g., radios shall not be permitted in classrooms, chapel, etc.).~~

(1) **~~Residents~~ Juveniles** may keep personal items ~~such as~~: as outlined in the approved Juvenile Handbook.

~~(A) personal clothing;~~

~~(B) appropriate jewelry;~~

~~(C) cosmetic and toilet articles;~~

~~(D) stationery;~~

~~(E) appropriate pictures and posters; and~~

~~(F) small personal radios.~~

(2) **~~Residents~~ Juveniles shall not keep:**

(A) items which by their design or construction are a safety hazard;

(B) items made of glass;

(C) items whose designs make them easily useable as weapons; or

(D) items which depict drugs, alcohol, or gang association.

~~(3) Cottage staff shall lock up any permitted items which contain alcohol or other toxic agents. Cottage staff shall dispense these items to residents and supervise residents using the items. Any other items which are diverted from their intended use so as to constitute a nuisance to others may be regulated in their use or, if necessary, upon approval of the Cottage Committee, restricted from use.~~

~~(4) In cases where staffs are unsure whether something is allowed by policy, the Institution Treatment Team shall conduct a review to determine if the property should be taken from the resident and placed in safe keeping. When this occurs, institutional staff shall address the problem in the resident's treatment plan.~~

~~(5) Residents on the appropriate level may take personal property out of the cottages for social activities, family visitation, etc. The superintendent may prohibit particular items being taken off cottage premises or to particular activities. The superintendent shall sign the written prohibition and apply it uniformly throughout the institution. The superintendent shall not issue a rule which conflicts with other sections of this rule.~~

377:35-9-6. Liability

(a) The Office of Juvenile Affairs shall be responsible for reimbursing a ~~resident~~ juvenile whose personal property is lost after being accepted by the institution for storage and safekeeping. Reimbursement shall be in an amount equal to the item's fair market value.

(1) For any item accepted for safekeeping, the ~~resident~~ juvenile shall:

(A) estimate the property's value;

(B) request that the institutional worker enter the value on the ~~resident's~~ juvenile's inventory list; and

(C) initial the inventory.

(2) In instances where there is an obvious discrepancy between the ~~resident's~~ juvenile's statement of the value of an item and that of the observation of the institution, the institution may refuse permission to keep the item at the institution.

(3) If an employee is identified as clearly negligent in the loss of items accepted for storage, the employee shall be responsible for reimbursing the loss to the Office of Juvenile Affairs.

(b) The Office of Juvenile Affairs shall not be responsible for reimbursing a ~~resident~~ juvenile whose personal property was kept by the ~~resident~~ juvenile.

(c) At the time of admission, staff shall screen personal items. Items not falling within policy should be ~~returned with the transporting person~~ sent to the parent, guardian or legal custodian by the end of the next working day. ~~Otherwise, staff shall immediately inventory the items and mail them to the resident's parent or guardian by the next working day~~.

(d) The admission letter, signed by the superintendent, shall be mailed to the parents/guardian to explain policies related to personal property.

377:35-9-7. ~~Resident~~ Juvenile work

(a) ~~Residents~~ Juveniles shall not be required to participate in uncompensated work assignments unless the work is related to:

(1) the ~~resident's~~ juvenile's treatment plan;

(2) housekeeping;

(3) maintenance of the facility or grounds;

(4) personal hygienic needs;

(5) a vocational or training program; or

(6) an approved community service.

(b) Work assignments shall be meaningful and essential and may not consist of purposeless or degrading tasks. Staff shall make an effort to provide each ~~resident~~ juvenile with a work assignment which the ~~resident~~ juvenile is capable of completing. When conflicts in scheduling arise, precedence shall be given to:

(1) programmed services;

(2) prescribed treatment activities; and

(3) vocational training.

(c) ~~Residents~~ Juveniles assigned to special work areas or tasks shall have clothing and protective gear in accordance with the requirements of the work assignment.

(d) In coed facilities there is no discrimination in work assignments based on sex.

(e) Staff shall use advice and assistance of labor, business, and industrial organizations regarding ~~resident~~ juvenile training and work programs.

(f) When ~~residents~~ juveniles are employed in the community by public or private organizations in positions normally occupied by private citizens, ~~residents~~ juveniles shall be compensated at the prevailing rate.

377:35-9-8. Use of tobacco products

Juveniles shall be prohibited from possessing or using any tobacco products. Such products shall be considered contraband and are subject to rules set forth in 377:35-3-7. The Office of Juvenile Affairs' institutions are "tobacco-free environments." As such, use of tobacco products on institutional grounds (except in personal vehicles) is prohibited.

~~(1) Institution staff and all visitors shall be prohibited from smoking or using tobacco products in the presence of juveniles. Smoking shall be permitted outside the presence of juveniles in designated areas only. Smoking areas on the institution grounds shall be identified and clearly marked. Employees shall be prohibited from smoking inside any institutional building.~~

~~(2) Institution staff shall notify parents and visitors of the facility's no tobacco policy. Staff shall advise parents that tobacco products shall not be sent or given to juveniles. The no tobacco policy shall be posted on signs and notices in public visitation areas of the facility. The tobacco policy shall be incorporated in facility guidelines, resident handbooks, and juvenile orientation.~~

377:35-9-9. Property control and inventory

The institution shall establish inventory and storage practices to assure accounting and safeguarding of ~~resident~~ juvenile property.

SUBCHAPTER 11. JUVENILE RULES/DISCIPLINE

377:35-11-1. ~~Resident~~ Juvenile rules and discipline

Institutional staff members shall protect the safety and constitutional rights of juveniles and seek a balance between expression of individual rights and preservation of facility order. Juvenile rights shall be consistent with 10 O.S., Sections 7302-6.3 and 7303-5.4, as well as with OAC ~~377:1-1-2~~ 377:10-1-3.

377:35-11-2. Waiver of ~~hearing for transfer to a more secure facility~~ Intensive Treatment Program Transfer Hearing

A ~~resident~~ juvenile may waive an ~~Administrative Transfer Hearing~~ Intensive Treatment Program Transfer Hearing. However, a waiver of the ~~Administrative Transfer Hearing~~ Intensive Treatment Program Transfer Hearing shall not be effective without the ~~resident~~ juvenile first having consulted with counsel or counsel substitute (student defender). A waiver of

the ~~Administrative Transfer Hearing~~ Intensive Treatment Program Transfer Hearing will not relieve the Department from conducting the institutional screening processes ~~embodied in its rule~~. ~~A waiver of Administrative Transfer Hearing shall be used only under extreme circumstances and only with the approval of the Deputy Director~~.

377:35-11-3. ~~Hearing for transfer to a more secure facility (ITP)~~ Intensive Treatment Program Transfer Hearing

~~Prior to admitting a juvenile to a more secure facility and, when possible, prior to referral for ITP screening, a hearing shall be conducted by a hearing officer.~~

~~(1) **Standards and criteria.** The hearing shall be held in accordance with OAC 377:30-5-7. The hearing officer shall establish a finding of fact on rule violations and or determine whether the juvenile is dangerous and poses a threat in an institutional setting. The hearing officer shall consider:~~

~~(A) any offense committed by the juvenile during his/her current institutional placement;~~

~~(B) acts of violence, aggression, assault, and destruction, as well as surrounding circumstances, during the current institutional placement; and~~

~~(C) the juvenile's response or lack of response to the current treatment plan and attitude.~~

~~(2) **Conduct of hearings. Written notice.** The juvenile shall have at least 24 hours written notice that the hearing will be held. The notice of a hearing for rule violations or a hearing for administrative transfer to a more secure facility shall specify the alleged rule violations and/or reasons for transfer.~~

~~(A) **Impartial hearing.** An impartial hearing shall be held to review the reasons for the restriction or transfer and make a decision on the facts presented. No person shall serve on the review board who has made an allegation or will testify in the matter.~~

~~(B) **Juvenile present.** The juvenile shall be present and have an opportunity to make a statement, confront and cross examine adverse witnesses, and present witnesses in his/her own behalf.~~

~~(C) **Assistance of advocate defender.** Upon request, the advocate defender shall assist the juvenile with presenting his/her position.~~

~~(D) **Prompt hearing.** Notice of an Administrative Transfer Hearing shall be given within seven days of a documented rule violation. The hearing shall be held within seven days of the notice.~~

~~(E) **Written findings.** The hearing officer shall make a written record of the findings, including the evidence relied on and the reasons for the decision. The hearing officer shall provide a copy to the juvenile and to the superintendent.~~

~~(F) **Appeal.** The juvenile shall have the right to appeal the decision of the hearing examiner in accordance with OJA grievance policy 377:3-1-27 and 377:3-1-28.~~

~~(G) **Expungement.** If the juvenile is found "not guilty" of rule violation(s) by the hearing officer or as a result of appeal, all materials related to the alleged offense shall be expunged from the juvenile's record.~~ The Intensive Treatment Program (ITP) Transfer Hearing is an administrative hearing to establish a finding(s) of fact on rule violations and/or to determine whether the juvenile is dangerous and poses a threat in the current institution. The juvenile may be transferred to a more secure and intensive treatment setting. Prior to admitting a juvenile to a more secure setting and, when possible, prior to referral for ITP screening, a hearing shall be held, except in an emergency. In emergency transfers, such safeguards are instituted immediately following the transfer.

377:35-11-4. Solitary confinement

(a) Solitary confinement is the involuntary removal of a juvenile from contact with other persons by confinement in a locked room, including the ~~resident's~~ juvenile's own room, except during normal sleeping hours. Solitary confinement is a serious and extreme measure to be imposed only in emergency situations. Staff shall impose solitary confinement only when a juvenile in an OJA institution:

(1) is out of control;

(2) is a serious and immediate physical danger to himself or others; and

(3) has failed to respond to less restrictive methods of control.

(b) Solitary confinement shall not be used for punishment at any OJA institution. No juvenile shall remain in solitary confinement in excess of three hours. As soon as the juvenile is sufficiently under control so as to no longer pose a serious and immediate danger to himself or others, the juvenile shall be released from solitary confinement. The use of consecutive periods of solitary confinement to evade the spirit and purpose of this Section shall be prohibited. All rooms used for solitary confinement shall have at least 80 square feet of floor space, and shall have adequate lighting, heating/cooling, and ventilation for the comfort of the juvenile. Juveniles in solitary confinement shall have access to appropriate medical and psychological services.

377:35-11-5. ~~Resident~~ Juvenile correspondence

(a) Correspondence shall not be denied except:

(1) for security reasons where a clearly documented reason exists, e.g., the correspondent has aided the ~~resident~~ juvenile in planning an escape or has used the mail to send the ~~resident~~ juvenile contraband items;

(2) where it is clearly documented that the correspondence is from a person whose continued relationship poses a threat to the ~~resident's~~ juvenile's treatment or rehabilitation; or

(3) when the correspondence is from correctional facility inmates whose continued relationship poses a threat to the ~~resident's~~ juvenile's treatment or rehabilitation. In this

case staff shall return the unopened mail to its point of origin unless it is clearly documented that the correspondence is from a relative.

(b) In the case of (a)(1) of this Section, where the primary focus is one of documentable obscenity, the Superintendent or designee shall send the material and an assessment of its impact on the ~~resident~~ juvenile to the Deputy Director. The Deputy Director shall seek legal consultation regarding any action to be taken. Staff shall deal with lesser issues of this nature by:

(1) counseling the ~~resident~~ juvenile; or

(2) the ~~resident's~~ juvenile's refusing to accept mail.

(c) Delivery of incoming mail and posting of outgoing mail occurs within 24 hours excluding weekends and holidays. Staff may not read or censor correspondence. However, staff may inspect incoming packages for contraband. ~~If~~ All mail ~~is~~ shall be opened for inspection, the ~~resident~~ juvenile shall open his or her mail in the presence of the juvenile justice specialist or designated staff member. The staff member shall document the incident.

(d) Staff shall not limit correspondence to or from the ~~resident's~~ juvenile's attorney and committing court officials. Staff shall not open or inspect correspondence to Office of Juvenile Affairs officials, including the:

(1) advocate defender and staff; and

(2) members of the Parole Board.

(e) The institution shall not be obligated to purchase or subscribe to publications for individual ~~residents~~ juveniles. Staff shall give the ~~resident~~ juvenile any publications which:

(1) are received through the mail; and

(2) do not interfere with rehabilitative efforts.

(f) There shall not be a limit on the volume of mail a ~~resident~~ juvenile may send or receive. The institution shall provide unlimited writing materials. ~~and~~ The institution shall also provide the current or equivalent postage for five, one ounce ~~postage for five~~ letters a week for each ~~resident~~ juvenile, and, as necessary, for all legal correspondence. ~~Residents~~ Juveniles may purchase additional postage or receive it from other sources. After a ~~resident~~ juvenile is transferred or released, all packages and first class letters shall be forwarded to him or her.

377:35-11-7. Access to telephone

Each ~~resident~~ juvenile shall have access to the telephone subject to (1)-(5) of this subsection.

(1) Unless the phone use clearly threatens security, staff may not deny phone calls.

(2) ~~Outgoing phone calls shall be limited to five minute~~ Juveniles shall be permitted at least one outgoing, five-minute phone call per week, at times selected by the institution to minimize disruption of institutional programs.

(3) Phone calls to or from the ~~resident's~~ juvenile's attorney or officials of the committing court shall not be restricted, except that those calls are placed or returned at a reasonable time of the day to minimize disruptions of institutional programs.

(4) Institutional staff shall place all phone calls to assure acceptance of any collect or third-party billed call. Staff shall not monitor phone calls and shall allow ~~residents~~ juveniles to have a reasonable degree of privacy while on the phone.

(5) Permission to place or receive calls at times other than those specified may be given by the superintendent or designee as required by special or emergency family circumstances.

SUBCHAPTER 19. RELEASE AND REVOCATION (DELINQUENT PROGRAMS) [REVOKED]

377:35-19-1. Parole release planning [REVOKED]

~~Title 10 O.S., Section 7302-6.1(3) gives DJJ authority to place a delinquent on parole whenever DJJ determines that such release shall not be detrimental to society and that the delinquent is probably ready to be returned to the community.~~

[OAR Docket #05-850; filed 5-11-05]

TITLE 385. DEPARTMENT OF THE COMMISSIONERS OF THE LAND OFFICE CHAPTER 1. ADMINISTRATIVE ORGANIZATION AND OPERATIONS

[OAR Docket #05-858]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
385:1-1-2. Commissioners [AMENDED]
385:1-1-3. Office of the Secretary [AMENDED]
385:1-1-4. Authorization to adopt rules and regulations [AMENDED]
385:1-1-5. ~~Office~~Meeting location; quorom [AMENDED]
385:1-1-6. Land Office divisions [AMENDED]
385:1-1-7. Responsibilities of division directors [AMENDED]
385:1-1-8. Requests for information [AMENDED]
385:1-1-9. Hearings [AMENDED]
385:1-1-10. Minutes of Meetings [AMENDED]
385:1-1-11. Rules and regulations [AMENDED]

AUTHORITY:
64 O.S. §§1, 2, 3, 6; Constitution Art. 6, §32; Department of the Commissioners of the Land Office

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N/A
ANALYSIS:
The amended rules reflect current procedures of the Commissioners of the Land Office. The rules have been changed to eliminate any conflict between the rules and the Oklahoma Statutes and Constitution.
CONTACT PERSON:
Clifton H. Scott, Secretary, 405.604.8110, at the Commissioners of the Land Office, 5801 North Broadway, Suite 200, Oklahoma City, OK 73118.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

385:1-1-2. Commissioners

The Commissioners of the Land Office of the State of Oklahoma hereinafter designated as Commissioners~~,~~ or Commission, as a body constitute an executive, administrative department of the State, which as such has charge of the sale, rental, disposal, and management of the school lands, and other lands of the public domain of the State, and of the funds and proceeds derived therefrom~~, under rules and regulations prescribed by the Legislature~~. Under the Constitution and statutes of the State, five high officers constitute the Commissioners, namely: The Governor, the ~~Secretary of State~~ Lieutenant Governor~~;~~ the State Auditor and Inspector~~;~~ the Superintendent of Public Instruction~~;~~ and the President of the Board of Agriculture. They are charged with duties as Commissioners in addition to the usual functions of the offices to which they are elected or appointed. See Title 64 Section 1 and Section 52 (1). As Commissioners of the Land Office of the State they function as a body and not as individuals. The Governor is ex-officio chairman of the body and a vice-chairman is selected from the other members to perform duties prescribed by statute~~,~~ and by parliamentary rules.

385:1-1-3. Office of the Secretary

The Land Office is administered by a Secretary, who is appointed by the Governor with the advice and consent of the Commissioners. It is the duty of the Secretary, under the supervision of the Commissioners, to execute the laws pertaining to the Land Office and the rules and regulations promulgated by the Commissioners. He exercises direct supervision over the several divisions of the Department. ~~The Assistant Secretary, appointed by the Commissioners, has assigned duties, and acts for the Secretary in the latter's absence.~~

385:1-1-4. Authorization to adopt rules and regulations

As such constituted body, the Commissioners are an agency within the definition of Section 301 of Title 75, Okla. St. 1961~~;~~ . ~~therefore, they~~ They are authorized to make rules and regulations and to formulate orders for the proper protection and preservation of the lands and funds under their control and the accomplishment of the purposes for which the Department known as the Commissioners of the Land Office has been established. ~~Such rules, regulations and orders are supplementary and auxiliary to and not in conflict with the rules and regulations prescribed by the Legislature; and they are to be published as provided by said Section and Title.~~

385:1-1-5. ~~Office~~ Meeting location; quorum

~~The office of the Commissioners of the Land Office and of the Secretary shall be within the State Capitol Complex~~. All meetings of the Commissioners shall be held ~~at such office~~ at the State Capitol or as announced. Any three Commissioners at a meeting are a quorum and thereby constitute a lawful meeting; however a concurrence of three members in a proposed action is necessary to make such action legal; provided, further, that no legal action taken at a previous meeting can be rescinded, annulled or substantially amended, except by the unanimous vote of the full membership of the Commissioners [Title 64. Sec. 154 O.S. 1971]. The Commissioners as a body are often called "The Board" or "The Commission", and, when so designated, are so considered in their official actions as a body.

385:1-1-6. Land Office divisions

For the effective operation of its integrated activities, the Land Office has been divided ~~into sub-departments or~~ into divisions ~~of work~~ under the following classifications: Administrative, Legal, ~~Farm Loans, Oil and Gas, Records~~ Real Estate Management, Minerals Management, Audit and~~,~~ Accounting~~, and Surface Leases~~, each of which operates under the general rules of the Legislature and the Land Office, but also under rules particularly relating to its own function. By statute, the positions in the Department are made interchangeable among and between several divisions at the will and discretion of the Secretary. ~~Field representatives and appraisers, who work in the field, are at the service of the Secretary and the various divisions as the occasion may require.~~

385:1-1-7. Responsibilities of division directors

Each division is under the supervision of a division ~~Supervisor~~ Director. It is his or her duty to see that the work of his or her division is carried forward, and that the orders and action taken by the Commissioners concerning his or her division are enforced, to make reports to the Commission of the status of his or her division, and to present any matters ~~pertaining thereto~~ which require the official action of the Commissioners. He or she has no independent authority to bind the Commissioners.

385:1-1-8. Requests for information

Information as to Departmental matters in which any person is interested may be obtained by either oral or written request made to the Secretary. All written communications should be addressed to "The Commissioners of the Land Office of Oklahoma~~, State Capitol, Oklahoma City, Oklahoma~~." Any

matter upon which a person is interested ~~therein is desirous of~~ in obtaining a formal ruling should be presented by a petition headed by the designation: "Before the Commissioners of the Land Office of the State of Oklahoma. In the Matter of _____": ~~Here~~ It should be stated briefly the matter upon which a decision is requested, and whether the request is opposed by someone who should be notified of the time and place for hearing. Upon receipt of such petition, a date ~~upon which~~ the matter can be heard by the Commissioners will be fixed and a hearing had under the rules prescribed by Title 75, 0. S., 1971, Section 309 and following. The rights given by such Sections shall be preserved, including the right of review by a District ~~or Superior~~ Court ~~as therein provided~~.

385:1-1-9. Hearings

All hearings before the Commissioners shall be in accordance with the following:

(1) **Place and members.** Unless otherwise ordered, all hearings shall be:

(A) held at ~~the meeting room of~~ a designated time and place as announced by the Commissioners of the Land Office ~~in the State Capitol, Oklahoma City, Oklahoma~~;

(B) conducted by the Commissioners assembled as an official body, presided over by the chairman or by vice chairman; and

(C) shall be open to the public.

(2) **Subpoenas.** The Commissioners may direct the Secretary to issue subpoenas for the attendance of a party or any witness at a hearing. Subpoenas so issued may be in the form in general use for civil proceedings in the courts of the State, and on similar terms.

(3) **Record of proceedings.** Upon request of an interested party or by request of the Commissioners, proceedings in a contested case shall be taken down by a ~~stenographic~~ court reporter and a transcript ~~thereof,~~ including exhibits, shall be an official record of the proceedings. A party desiring a copy may obtain a copy by paying the cost ~~thereof~~.

(4) **Procedures for individual proceedings.** The procedure applicable to individual proceedings shall be that provided in Title 75 Sections 309 to 323, ~~both inclusive, of Title 75 0. S. 1961 Sections 9-23, both inclusive, Chapter 371, S. L. 1963), which govern in such cases~~.

385:1-1-10. Minutes of meetings

Minutes are kept of the official meetings of the Commissioners. ~~transcripts~~ Transcripts ~~thereof~~ are bound in chronological order and are open for public inspection at the office ~~in the Capitol~~ of the Commissioners of the Land Office. The minutes contain the record of statements of policy, interpretations formulated, adopted or used by the agency, as well as opinions, decisions and orders.

385:1-1-11. Rules and regulations

The Rules and Regulations which designate the manner in which the action of the Commissioners may be invoked in relation to the sale of oil and gas leases, the lending of State school funds on mortgages on lands, the leasing or sale of school lands~~,~~ are set forth under the Rules and Regulations pertaining to the respective divisions in charge of such activities. Copies of such rules will be furnished on request.

[OAR Docket #05-858; filed 5-12-05]

TITLE 385. DEPARTMENT OF THE COMMISSIONERS OF THE LAND OFFICE CHAPTER 15. SALE AND OPERATION OF OIL AND GAS LEASES

[OAR Docket #05-859]

RULEMAKING ACTION:
PERMANENT final adoption
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385:15-1-18. Forms available on request [AMENDED]
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N/A
ANALYSIS:
The amended rules reflect the changes made to the Division Order form of the Commissioners of the Land Office. This changes provides continuity in the form number and updates the rule to reflect the current operations and procedures of the Commissioners of the Land Office
CONTACT PERSON:
Pary Shofner, Director of Minerals Management Division, 405.604.8160, at the Commissioners of the Land Office, 5801 North Broadway, Suite 200, Oklahoma City, OK 73118.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

385:15-1-18. Forms available on request

The following Commission Reports and other forms will be furnished on request:

(1) CLO FORM-7-1 Oil and Gas Lease
(2) CLO FORM-102 Assignment of Oil and Gas Lease
(3) CLO FORM-7-4 Blanket Performance Bond
(4) CLO FORM-~~7-3~~ 106C Division Order
(5) CLO FORM-107 Bid Form
(6) CLO FORM-108 Lessee's Monthly Report of Oil Produced and Sold
(7) CLO FORM-109 Lessee's Monthly Report of Gas and Casinghead Gas Produced and Sold
(8) CLO FORM-112 Uranium and Rare Earth Prospecting Permit
(9) CLO FORM-113 Salt Water Disposal Lease
(10) CLO FORM-114 Common Tank Battery Agreement
(11) CLO FORM-115 Seismograph Exploration Permit
(12) CLO FORM-116 Subordination of Mortgage
(13) CLO FORM-117 Assignment of Rentals and Royalties (Certificate of Purchase)

[OAR Docket #05-859; filed 5-12-05]

TITLE 385. DEPARTMENT OF THE COMMISSIONERS OF THE LAND OFFICE CHAPTER 25. SURFACE LEASING FOR AGRICULTURAL AND COMMERCIAL PURPOSES

[OAR Docket #05-860]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
385:25-1-12. Reservations in surface lease; easements [AMENDED]
385:25-1-41. Procedure for Exchanging land [NEW]
385:25-1-42. Irrigation Permits [NEW]
385:25-1-43. Right of Entry Permits; Treasure Trove [NEW]
385:25-1-44. Real Estate Broker Commissions [NEW]
AUTHORITY:
64 O.S. §§1.1, 1.3, 101, 459; Department of the Commissioners of the Land Office
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The amended rules reflect current procedures of the Commissioners of the Land Office. The rules have been changed to the procedures for exchanging Trust Lands to promote commercial development, better land management, and the payment of commissions to real estate brokers. Procedures to grant easements to railways, irrigation permits and treasure trove permits are also included.
CONTACT PERSON:
Keith Kuhlman, Director of Real Estate Management, 405.604.8140, at the Commissioners of the Land Office, 5801 North Broadway, Suite 200, Oklahoma City, OK 73118.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

385:25-1-12. Reservations in surface lease; easements

(a) **Easements.** The State shall reserve for itself, its lessees, permittees or grantees, and their assigns, easements for ingress and egress for the purpose of exploring for, drilling, producing, storing and marketing of oil, gas, coal, and any other minerals which may be produced from said premises, or from other premises communitized with Trust land.

(b) **Permanent and term easements.** Permanent easements may be granted to governmental entities and to railroad companies for expansion of railway lines. All other easements may be granted for a term not to exceed twenty (20) years. Both permanent and term easement(s) must be compensated for at fair market value and shall be approved by the Commissioners but do not have to be offered at public bid. Grantee shall be liable to surface lessee for surface damages to crops or lessee owned improvements.

(c) **Conversion of easement upon sale of land.** If a tract of trust land with a term easement (granted for 20 years or less) is sold; prior to such sale, the grantee of the term easement may request the Commissioners to convert the easement to a permanent easement. If the easement is converted to a permanent easement, the Trust shall be compensated for fair market value of the difference in value between the term easement and the permanent easement.

(d) **Rights of way.** Right of way easements will be granted pursuant to law and public policy at not less than fair market value.

(e) **Recreational use.** Agricultural leases include the right of lessee to use the lease for hunting, fishing or other recreational purposes. Lessee may post the property or may allow hunting and fishing. Lessee may retain any fees charged for hunting and fishing rights. This does not violate the subleasing provision of the contract.

385:25-1-41. Procedure for Exchanging Land

(a) **Authorization.** The Commissioners may authorize exchange of lands held in Trust for other lands held by other entities on an equal value basis.

(b) **Criteria.** It is the intent of the CLO to exchange lands held in Trust that are landlocked, too small in size to be an economic unit, low productivity, or transitional properties where it is determined the use of the land is for residential housing purposes only.
(c) **Appraisal.** An appraisal for market value of the properties to be exchanged will be completed by three duly authorized appraisers. The CLO will choose an appraiser, the other entity will choose an appraiser and then the two appraisers will select a third appraiser. The appraisers will determine the market value of the respective properties and make a consensus appraisal report.
(d) **Valuation of Improvements.** The intent of the exchange is for the Trust to receive equal value of land in exchange for equal value of land. Since agricultural improvements are a depreciating asset and may be removed by the owner of record and the CLO typically does not own improvements, the appraisal should only consider the value of the lands to be exchanged. Improvements such as waterwells, ponds, terraces, etc. are considered a part of the land and will not be considered within the exchange as a separate item.
(e) **Exchanges for Commercial Properties.** If the entity which is exchanging land with the CLO is exchanging commercial properties the improvements will be included as an essential element of the appraisal.
(f) **Title.** The entity which is exchanging land with the CLO shall provide an abstract of title for examination by the CLO or good and sufficient title insurance for the land being offered in the exchange. The CLO shall provide the entity an official certificate of record for the land owned by the CLO but does not warrant title.
(g) **Deeds.** The entity exchanging land with the CLO will provide a warranty deed for its lands and the CLO shall provide a patent to the entity for the CLO lands.

385:25-1-42. Irrigation permits

Irrigation permits may be issued to agricultural lessees for the purpose of irrigating CLO Trust Lands. The permit fee shall be determined by the market value rental amount for irrigated acres for comparable deeded land. The permit shall have a delinquency interest rate of 16%. Term of the permit will be for one year.

385:25-1-43. Right of Entry permits; Treasure Trove

The Commissioners may authorize issuing right of entry permits for the purpose of individuals searching for Treasure Trove on CLO Trust lands. The fee and term for the permit shall be determined by the appropriate land management personnel but in no case shall be less than $500.00. All exploration for Treasure Trove shall be done in a manner to protect the potential archaeological finds within the area to be searched. Machine excavation shall be limited and only done when appropriate precautions have been taken to protect the land and relics from damage.

385:25-1-44. Real Estate Broker Commissions

(a) **Commission.** A real estate broker commission may be paid to a Broker who represents a commercial business that acquires a long-term commercial lease from the CLO. The broker's fee shall only be paid when the commercial business has opened the business for operation.
(b) **Fee.** The brokerage fee shall be no more than 6% of the market value appraisal of the land that is leased. The fee will be paid only on those tracts where CLO has agreed that brokerage fees will be paid.

[OAR Docket #05-860; filed 5-12-05]

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 5. DISCIPLINARY ACTIONS

[OAR Docket #05-968]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
435:5-1-4.1. Administrative fines [NEW]
AUTHORITY:
Title 59 O.S., Section 489, Board of Medical Licensure and Supervision
DATES:
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
This rule establishes administrative fines the Board may assess after a formal hearing and determination of guilt for practicing after revocation, suspension, surrender or failure to renew a license and for violations of unprofessional conduct.
CONTACT PERSON:
Jan Ewing, Deputy Director, 405-848-6841, #104

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

435:5-1-4.1. Administrative fines

The following administrative fines shall only be assessed after formal hearing and a determination of guilt:

(1) $5,000 per day for practicing after revocation, suspension, surrender or failure to renew a license, pursuant to 59 O.S. §491B.

(2) Up to $5,000 per violation of unprofessional conduct, pursuant to 59 O.S. §509.1A(9).

[OAR Docket #05-968; filed 5-23-05]

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

[OAR Docket #05-969]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 7. Regulation of Physician and Surgeon Practice
435:10-7-11. ~~Intractable pain~~Use of controlled substances for the management of chronic pain [AMENDED]
AUTHORITY:
Title 59 O.S., Section 489, Board of Medical Licensure and Supervision
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INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
This section provides guidelines and requirements for allopathic physicians who treat and prescribe for patients with chronic, intractable pain. The rule is being updated based on recommendations from the Federation of State Medical Boards.
CONTACT PERSON:
Jan Ewing, Deputy Director, 405-848-6841, #104

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 7. REGULATION OF PHYSICIAN AND SURGEON PRACTICE

435:10-7-11. ~~Intractable pain~~ Use of controlled substances for the management of chronic pain

~~(a) The purpose of this section is to provide guidelines and requirements for allopathic physicians who treat and prescribe for patients with chronic, intractable pain.~~

~~(b) This rule requires that diagnosis be documented, it requires that certain records must be maintained, it requires that the physician must discuss the risks and benefits with the patient or the patient's guardian and it requires reasonable monitoring of the patient's progress.~~

~~(c) To treat a patient's intractable pain, as long as the benefit of the expected relief outweighs the risk, the physician may prescribe or administer Schedule II, III, IV or V controlled dangerous substances or other pain relieving drugs in higher than FDA recommended dosages when, in that physician's judgment, the higher dosages are necessary to produce the desired therapeutic effect.~~

~~(d) The determination of intractable pain must include a complete medical history and physical examination which includes an assessment of the patient's pain, physical and psychological function, substance abuse history, underlying or co-existing diseases or conditions and the presence of a recognized medical indication for the use of an analgesic or any controlled substances.~~

~~(e) The treatment plan must state objectives by which treatment success can be evaluated, such as pain relief and or improved physical and psychological function, and must indicate what further diagnostic evaluations or other treatments are planned. The drug therapy must be tailored to the individual needs of each patient.~~

~~(f) The course of treatment and any new information about the etiology of the intractable pain must be reviewed periodically, at least annually, with consideration given to referral for a current second opinion. The continuation or modification of treatment will depend on the results of this review and the evaluation of the patient's progress toward the treatment objectives. If the patient has not improved, the physician must assess the appropriateness of continuing the current therapy and the trial of other modalities.~~

~~(g) Referrals should be made as necessary for additional evaluation and treatment in order to achieve treatment objectives.~~

~~(h) Special attention must be given to pain patients who are at risk for misusing medication, including those whose living arrangements pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse requires extra care, monitoring, documentation and consultation with addiction medicine specialists, and may include the use of agreements between the physician and patient specifying rules for medication use and consequences for its misuse.~~

~~(i) In the case of intractable pain, the physician must discuss the risks and benefits of the use of controlled substances with the patient or the patient's guardian and obtain informed consent prior to proceeding.~~

~~(j) Accurate and complete records to document compliance with this section must be kept.~~

~~(k) To prescribe controlled substances, the physician must be appropriately licensed in Oklahoma, have a valid controlled substances registration and comply with federal and state regulations for issuing controlled substances prescriptions, including the Physicians Manual of the U.S. Drug Enforcement Administration for specific rules governing issuance of controlled substances prescriptions.~~

~~(l) Expert clinical testimony may be used to prove a violation of this section. As used herein, a "clinical expert" is a physician who, by reason of specialized education or substantial relevant experience in pain management, has knowledge regarding current standards, practices and guidelines.~~

~~(m) Nothing in this section shall limit a physician's authority to prescribe or administer prescription drug products beyond the customary indications as noted in the manufacturer's package insert for use in treating intractable pain, provided the drug is recognized for treatment of intractable pain in standard reference compendia or medical literature.~~

~~(n) The violation of any provision of this section shall constitute unprofessional conduct, for which an application for licensure or reinstatement may be denied and for which appropriate sanctions may be imposed.~~

The Board has recognized that principles of quality medical practice dictate that the people of the State of Oklahoma have access to appropriate and effective pain relief and has adopted the following criteria when evaluating the physician's treatment of pain, including the use of controlled substances:

(1) **Evaluation of the patient.** A medical history and physical examination must be obtained, evaluated and documented in the medical record. The medical record should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function and history of substance abuse. The medical record also should document the presence of one or more recognized medical indications for the use of a controlled substance.

(2) **Treatment plan.** The written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the physician should adjust drug therapy to the individual medical needs of each patient. Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

(3) **Informed consent and agreement for treatment.** The physician should discuss the risks and benefits of the use of controlled substances with the patient, persons designated by the patient or with the patient's surrogate or guardian if the patient is without medical decision-making capacity. The patient should receive prescriptions from one physician and one pharmacy whenever possible. If the patient is at high risk for medication abuse or has a history of substance abuse, the physician should consider the use of a written agreement between physician and patient outlining patient responsibilities, including:

(A) urine/serum medication levels screening when requested;

(B) number and frequency of all prescription refills; and

(C) reasons for which drug therapy may be discontinued (e.g. violation of agreement)

(4) **Periodic review.** The physician should periodically review the course of pain treatment and any new information about the etiology of the pain or the patient's state of health. Continuation or modification of controlled substances for pain management therapy depends on the physician's evaluation of progress toward treatment objectives. Satisfactory response to treatment may be indicated by the patient's decreased pain, increased level of function or improved quality of life. Objective evidence of improved or diminished function should be monitored and information from family members or other caregivers should be considered in determining the patient's response to treatment. If the patient's progress is unsatisfactory, the physician should assess the appropriateness of continued use of the current treatment plan and consider the use of other therapeutic modalities.

(5) **Consultation.** The physician should be willing to refer the patient, as necessary, for additional evaluation and treatment in order to achieve treatment objectives. Special attention should be given to those patients with pain who are at risk for medication misuse, abuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care, monitoring, documentation and consultation with or referral to an expert in the management of such patients.

(6) **Medical records.** Records should remain current and be maintained in an accessible manner, readily available for review. The physician should keep accurate and complete records to include:

(A) the medical history and physical examination (including vital signs),

(B) diagnostic, therapeutic and laboratory results,

(C) evaluations, consultations and follow-up evaluations,

(D) treatment objectives,

(E) discussion of risks and benefits,

(F) informed consent,

(G) treatments,

(H) medications (including date, type, dosage and quantity prescribed),

(I) instructions and agreements and

(J) periodic reviews.

(7) **Compliance with controlled substances laws and regulations.** To prescribe, dispense or administer controlled substances, the physician must be licensed in Oklahoma and comply with applicable federal and state regulations. Physicians are referred to the Physicians Manual of the U.S. Drug Enforcement Administration for

specific rules governing controlled substances as well as applicable state regulations.

[OAR Docket #05-969; filed 5-23-05]

TITLE 445. BOARD OF MEDICOLEGAL INVESTIGATIONS
CHAPTER 10. MEDICAL EXAMINER CASES

[OAR Docket #05-895]

RULEMAKING ACTION:
PERMANENT final adoption
RULE:
445:10-1-11. Fees for Forensic Science and Laboratory Services [AMENDED]
AUTHORITY:
63 O.S. § 948 and 948.1; Board of Medicolegal Investigations
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INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The purpose of the proposed amendments is to modify the existing fees charged for forensic science services, drug screen services and cremation permits. These amendments were required to implement and administer the applicable provisions of 63 OS 948 and 948.1.
CONTACT PERSON:
Annette Ledgerwood, Executive Secretary, OCME, 901 N. Stonewall, Oklahoma City, OK 73117, 405-239-7141

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

445:10-1-11. Fees for Forensic Science and Laboratory Services

As provided in Title 63 OS, ~~Section 949~~ Section 948 and 948.1 ~~the reasonable charge to the public for a permit for cremation is $60.00. A reasonable charge to the public for a copy of the Report of Investigations by the Medical Examiner (CME 1), the Report of Autopsy (CME 2) and the Report of Laboratory Analysis (CME 8) is $1.00 per page for each photocopy of a certified copy and $0.25 per page for each non-certified copy.~~, the following fees are set for forensic and laboratory services.

(1) Any of the listed fees may be waived by the Chief Medical Examiner.

(2) Schedule of fees for forensic science services are as follows:

(A) Civil Cases
- (i) Digital photos on CD: $25.00
- (ii) Microscopic slides - H & E slides: $10.00 each
- (iii) X-rays: $15.00 each

(B) M.D., D.O., Ph.D.
- (i) Case Review/Literature Review: $250 per hour to include the first hour or any part thereof
- (ii) Conference: $250 per hour to include the first hour or any part thereof. Thereafter, $50.00 per quarter of hour.
- (iii) Interrogatories: $325 per hour/minimum one hour.
- (iv) Deposition: $500 per hour to include the first hour or any part thereof. Thereafter, $200 per hour or any part thereof.
- (v) Court Appearance: $2000 per day to include expenses/minimum one day.

(C) Investigators
- (i) Conference: $150 per hour to include the first hour or any part thereof. Thereafter, $25 per quarter of hour.
- (ii) Interrogatories: $275 per hour/minimum one hour.
- (iii) Deposition: $300 per hour to include the first hour or any part thereof. Thereafter, $150 per hour or any part thereof.
- (iv) Court Appearance: $1000 per day to include expenses/minimum one day.

(D) All Requesting Parties
- (i) Cremation permits: $150.00
- (ii) Cremation late fee (over 30 days): $25.00
- (iii) Transport out of state investigations: $100.00
- (iv) Body storage fee: $5.00 per day after 3 days
- (v) Specimen storage fee: $100.00 per year
- (vi) Morgue usage fee: $150.00 per event
- (vii) Conference room usage fee: $50 per hour or $150 per $\frac{1}{2}$ day
- (viii) Copy of CME-1 and Toxicology report: $10.00
- (ix) Copy of CME-1, Autopsy and Toxicology report: $20.00
- (x) Copy of entire case file - certified: $25.00 per report
- (xi) Copy of entire toxicology file - certified: $1.00 per page
- (xii) Re-issuance of death certificate: $5.00

(3) Schedule of fees of toxicology laboratory services.
(A) Alcohols: $60.00
(B) Alkaline drug screen (GC, GC/MS): $150.00
(C) Acid/Neutral drug screen (GC, GC/MS): $125.00
(D) Immunoassay (7 drug classes): $90.00
(E) Drug Screen by HPLC, LC/MS: $125.00
(F) Drug confirmation/quantitation (GC, GC/MS, LC/MS): $150.00
(G) Carbon monoxide (CO-Oximeter, $PdCl_2$): $50.00
(H) Carbon monoxide (GC quantitation): $140.00
(I) Cyanide screen (color test): $45.00
(J) Cyanide quantitation (UV/Vis): $90.00
(K) Heavy Metals (qualitative): $90.00
(L) Color tests (acetaminophen, salicylate, etc.): $47.00
(M) Acetaminophen, Salicylate quantitation (FPIA): $45.00
(N) Ethylene glycol: $125.00
(O) Gamma-hydroxybutyrate (GC/MS): $150.00
(P) Flunitrazepam (urine only): $150.00
(Q) Volatiles (GC): $100.00
(R) Administrative (packaging/shipping specimens): $50.00

[OAR Docket #05-895; filed 5-17-05]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 1. ADMINISTRATION

[OAR Docket #05-1016]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Information
450:1-1-1.1. [AMENDED]
450:1-1-5. [AMENDED]
450:1-1-7. [AMENDED]
Subchapter 5. Procedure in Individual Administrative Proceedings
450:1-5-4. [AMENDED]
Subchapter 7. Charges and Eligibility for ODMHSAS Services
450:1-7-4. [REVOKED]
Subchapter 9. Certification and Designation of Facilities and Services
450:1-9-4. [AMENDED]
450:1-9-6. [AMENDED]
450:1-9-7. [AMENDED]
450:1-9-8. [AMENDED]
450:1-9-9. [AMENDED]
AUTHORITY:
Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 3-306, 3-306.1, 3-314.1, 3-315, 3-317, 3-318, 3-319 and 3-415.
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N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 1 are part of the Department's review of Title 450. These proposed amendments are intended to comply with statutory changes, enhance service provision and supervision, delete redundant or superfluous language, and correct scrivener's errors.
CONTACT PERSON:
Linda Winton, Policy Analyst and Agency Liaison Officer, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-6765.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. GENERAL INFORMATION

450:1-1-1.1. Definitions

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

"Administrative Hearing Officer" means an individual who is an attorney licensed to practice law in the State of Oklahoma and is appointed by the Commissioner of ODMHSAS to preside over and issue a proposed order in individual proceedings.

"AOA" means American Osteopathic Association.

"Board" means the Oklahoma State Board of Mental Health and Substance Abuse Services.

"CARF" means Commission on Accreditation of Rehabilitation Facilities (CARF).

"Certification" means a status which is granted to a person or an entity by the Oklahoma State Board of Mental Health and Substance Abuse Services or the ODMHSAS, and indicates approval to provide a particular service. In accordance with the Administrative Procedures Act, 75 O.S. § 250.3(8), certification is defined as a "license."

"Certified facility" means any facility which has received a certification status by the Oklahoma State Board of Mental Health and Substance Abuse Services or the ODMHSAS.

"Certification report" means a written notice of the deficiencies developed by ODMHSAS Provider Certification.

"COA" means Council on Accreditation of Services for Families and Children, Inc.

"Contractor" or **"contractors"** means any person or entity under contract with ODMHSAS for the provision of goods, products or services.

"DSM" means the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Entities" or **"entity"** means sole proprietorships, partnerships and corporations.

"Facilities" or **"facility"** means entities as described in 43A O.S. § 1-103(7), community mental health centers, residential mental health facilities, community-based structured crisis centers, certified services for the alcohol and drug dependent, domestic violence shelters and programs, sexual assault programs, treatment programs ~~for~~ of batterers and programs for assertive community treatment.

"Individual proceeding" means the formal process employed by an agency having jurisdiction by law to resolve issues of law or fact between parties and which results in the exercise of discretion of a judicial nature.

"JCAHO" means Joint Commission on Accreditation of Healthcare Organizations.

"Levels of performance" or **"level of performance"** means units of service by types of service.

"ODMHSAS" or **"Department"** means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"Probationary certification" means a certification status granted for a period less than three (3) years.

"Reimbursement rates" means the rates at which all contractors are reimbursed (paid) for services they provide under their ODMHSAS contract, and which are reported to ODMHSAS on the Integrated Client Information System ("ICIS").

"Respondent" means the person(s) or entity(ies) named in a petition for an individual proceeding against whom relief is sought.

"Service area" means a geographic area established by the Department of Mental Health and Substance Abuse Services for support of mental health and substance abuse services [43A O.S. § 3-302(1)].

"Site Review Protocol" means an ODMHSAS internal document used by ODMHSAS staff as a work document in the certification site visit(s) that is based primarily upon the rules (standards/criteria) being reviewed. The Site Review Protocol is used in preparing the Certification Report, which is provided to the facility, and in preparing recommendations regarding certification to the Board for its consideration and action.

"Units" or **"unit"** means an hour, or part of an hour, or group of hours, or a 24 hour day during which a specific service is rendered.

450:1-1-7. Requests for agency public information

Any person making a request pursuant to 450:1-1-6 shall comply with the following:

(1) The request must be in writing and ~~and~~ may be mailed to Oklahoma Department of Mental Health and Substance Abuse Services, P.O. Box 53277, Oklahoma City, Oklahoma 73152-3277, or sent via facsimile to (405) 522-3650, or made in person during regular office hours between 8:00 a.m. and 5:00 p.m.

(2) The request must describe the record(s) requested, be signed by the party making the request, and have the party's mailing address and telephone number.

(3) Whenever possible, requests shall be made to the division or area of the Department that maintains the records. Requests by attorneys in formal litigation must go through the Legal Division. Requests for personnel records that are not confidential must go through the Human Resources Management Division. Requests for records regarding facilities or programs certified by the Board must be directed to the Provider Certification Division. Requests for records regarding persons or entities contracting with the Department must be directed to the Contracts Division. Requests from the media for records must go through the Communications Division. Requests for records regarding Board meetings must go through the Office of the Commissioner. If the division or area that maintains the records is unknown to the party making the request, the request should be directed to the Legal Division.

(4) The requesting party shall pay a fee for copies. Said fee shall be twenty-five cents (25¢) per page, twelve dollars ($12.00) per $3\frac{1}{2}$-inch diskette, and $1.00 per page for certified documents. For commercial requests or those that would cause excessive disruption of office function, such as documents that are archived, either internally or with the Oklahoma Archives and Records Commission, a search fee will be charged based upon the hourly rate of the individual(s) searching for, and locating, the requested records.

(5) Mental health and substance abuse treatment records and client records of a domestic violence or sexual assault program are confidential and not subject to release by statutes and federal regulations including, but not limited to, 43A O.S. §§ 1-109, 3-313, 3-422 and 3-423; 63 O.S. § 1-1502; and 42 CFR, Part 2.

(6) Certain ODMHSAS employee personnel records are confidential and not subject to the Oklahoma Open Records Act, including employee evaluations, payroll deductions, applications submitted by persons not hired by ODMHSAS; internal personnel investigations including examination and selection material, employees' home addresses, telephone numbers, and social security numbers, medical and employee assistance records, and other personnel records where disclosure would constitute a clear invasion of privacy. Personnel records information that are subject to release are the application of a person who becomes an employee of the Department, gross receipt of public funds, dates of employment, title or position

and any final disciplinary action resulting in loss of pay, suspension, demotion or termination.

(7) Any other document protected, as confidential, by any Oklahoma or federal law, or Oklahoma or federal administrative rule, or by order of a court of competent jurisdiction, is not subject to the Oklahoma Open Records Act.

SUBCHAPTER 5. PROCEDURE IN INDIVIDUAL ADMINISTRATIVE PROCEEDINGS

450:1-5-4. Types of sanctions

The following administrative sanctions may be taken against a respondent:

(1) ~~Non-renewal of certification~~

~~(2)~~ Revocation of certification

(~~3~~2) Reduction in certification

(~~4~~3) Suspension of certification

(~~5~~4) Reprimand

SUBCHAPTER 7. CHARGES AND ELIGIBILITY FOR ODMHSAS SERVICES

450:1-7-4. Charges, ODMHSAS operated facilities [REVOKED]

~~(a) At least annually ODMHSAS shall review all charges for services provided at its facilities, and, if warranted, shall propose a change in the rate of charges for any service(s), based upon the cost of providing said services, or changes in the method/form of reimbursement under the U.S. Social Security Act Titles for Medicare and Medicaid.~~

~~(b) Charges for inpatient and outpatient mental health and substance abuse services offered by ODMHSAS facilities are as follows:~~

~~(1) Intermediate inpatient treatment $400.00 per day;~~

~~(2) Acute inpatient $400.00 per day;~~

~~(3) Medically supervised detoxification services $173.00 per day;~~

~~(4) Non-medical detoxification services $153.00 per day;~~

~~(5) Residential substance abuse treatment $85.00 per day;~~

~~(6) Intensive residential substance abuse treatment $187.00 per day;~~

~~(7) Residential treatment for dually diagnosed $85.00 per day;~~

~~(8) Halfway house $46.00 per day;~~

~~(9) Enhanced residential mental health treatment $225.00 per day;~~

~~(10) Residential treatment of mentally retarded/mentally ill $350.00 per day;~~

~~(11) Residential treatment for children and adolescents $285.00 per day;~~

~~(12) Acute treatment of children and adolescents $500.00 per day;~~

~~(13) Competency evaluation $81.74 per hour;~~

~~(14) Evaluation and assessment $81.74 per hour;~~

~~(15) Clinical testing $83.01 per hour;~~

~~(16) Mobile crisis service $122.60 per hour;~~

~~(17) Crisis intervention $122.60 per hour;~~

~~(18) Individual counseling $81.74 per hour;~~

~~(19) Group counseling $56.28 per hour;~~

~~(20) Family & marital counseling $53.22 per hour;~~

~~(21) Home based services to children & family $36.46 per hour;~~

~~(22) Individual rehabilitative treatment $63.77 per hour;~~

~~(23) Group rehabilitative treatment $16.88 per hour;~~

~~(24) Case management services $83.53 per hour;~~

~~(25) Intensive case management services $83.53 per hour;~~

~~(26) Treatment plan review $100.09 per visit;~~

~~(27) Pharmacological management $33.57 per visit;~~

~~(28) Medical review $23.64 per visit;~~

~~(29) Treatment planning $135.08 per visit;~~

~~(30) Day treatment - mental health $18.28 per hour;~~

~~(31) Psychosocial rehabilitation services $18.28 per hour;~~

~~(32) Community based structured emergency care $19.70 per hour.~~

SUBCHAPTER 9. CERTIFICATION AND DESIGNATION OF ~~FACILITIES~~ FACILITY SERVICES

450:1-9-4. Reviewing authority

(a) The Board ~~shall~~ may certify community mental health centers, community residential mental health facilities, domestic violence shelters and programs, sexual assault programs, batterers treatment programs, community-based structured crisis centers, alcohol and drug treatment programs and programs of assertive community treatment as cited in Section 450:1-9-1, and directs that such shall be carried out as stated in this subchapter.

(b) The Commissioner of ODMHSAS may grant Temporary Certification to respond to unplanned changes that create an emergency need for service provision in the ODMHSAS delivery system for services operated by or funded by ODMHSAS.

(1) Provider Certification shall conduct a site review at the designated facility which must meet the minimal compliance requirements as cited in 450:1-9-7.

(2) The application procedure for completion of the certification process shall be accomplished in accordance with 450:1-9-6 and 450:1-9-7.

(3) The Temporary Certification status granted to the facility must be presented at the next ODMHSAS Board meeting for Board review and confirmation. The Board has the authority to revoke the Temporary Certification.

450:1-9-6. Procedures for application for certification

(a) Applications for certification as a community mental health center, community residential mental health facility, domestic violence shelter or program, sexual assault program or batterers' treatment program, community-based structured crisis center, alcohol and drug treatment programs, and programs of assertive community treatment must be made to ODMHSAS in writing on a form and in a manner prescribed by the Commissioner of ODMHSAS and include the following:

(1) A fully completed ODMHSAS application for certification form signed by authorized officials;

(2) The necessary written documentation or supporting evidence required on the application for certification form; and

(3) The required certification fee in the form of a check or money order, payable to the Oklahoma Department of Mental Health and Substance Abuse Services.

(b) The following fees are required:

(1) Applicants for certification as a community mental health center must submit $150.00 with an initial application and $150.00 with each renewal application;

(2) Applicants for certification as an alcohol and drug treatment program shall submit $100.00 with an initial application and $100.00 with each renewal application; and

(3) Applicants for domestic violence shelters or programs, sexual assault programs and batterers' treatment programs shall submit $100.00 with an initial application and $100.00 with each renewal application. Fees paid by applicants are not refundable.

(c) The application for certification form, required written documentation and fee must be submitted to Oklahoma Department of Mental Health and Substance Abuse Services, Provider Certification Division, P.O. Box 53277, Oklahoma City, Oklahoma 73152-3277.

(d) The application may require a listing of all services provided by the applicant, as well as specifics about the applicant including but not limited to governing authority, administrative, fiscal, all locations or sites where applicant will provide services and types of services to be provided.

(e) If, after being certified, a facility desires to add a service location ~~or offer a new type of service, the facility must submit an application for certification form, the required documentation and fee to Oklahoma Department of Mental Health and Substance Abuse Services, Provider Certification Division, P.O. Box 53277, Oklahoma City, Oklahoma 73152-3277.~~ within the facility's currently certified service area or to extend certification to a separate service area, approval may be granted by the Commissioner upon submission of the required documentation to the Provider Certification Division.

(1) The facility must notify ODMHSAS in writing of the plan to expand service locations on a form and in a manner prescribed by the Commissioner of ODMHSAS.

(2) The required written documentation or supporting evidence includes, but is not limited to:

(A) a completed review form;

(B) fire & safety inspection;

(C) facility policies and procedures;

(D) zoning compliance; and

(E) compliance with Title 43A O.S. §3-417.1, if applicable.

(f) At the time of the next triennial review of the facility's main office certification, those locations which extend certification to separate service areas will require a separate certification application and will be reviewed on a schedule separate and apart from the certification schedule of the main office.

(g) If after being certified, a facility desires to offer a new type of service or new level of care, the facility must submit an application for certification, the required documentation and fee to the ODMHSAS Provider Certification Division, P.O. Box 53277, Oklahoma City, Oklahoma 73152-3277.

450:1-9-7. Procedures for completion of certification process

(a) **Certification process.** Completion of the certification process will be done in cooperation between the applicant and ODMHSAS staff, and consists of:

(1) a review by ODMHSAS of all application materials;

(2) an on-site review of the facility and completion of the applicable site visit protocol by ODMHSAS;

(3) a review of all records deemed applicable by the ODMHSAS ;

(4) development and dissemination of report materials by ODMHSAS;

(5) development and review of any needed plans of correction;

(6) applicable follow-up on-site reviews; and

(7) presentation by ODMHSAS staff of the review results and associated recommendations to the Board or Commissioner.

(b) **Initial applications.** All initial applications for certification shall be reviewed for completeness by ODMHSAS staff. If the application is deemed complete, a site review of the facility or program will be scheduled. If the applicant is cited for deficiencies on fifty percent (50%) or more of the applicable standards and rules, based on the initial on-site review findings, a plan of correction will not be requested and a notice of denial of the certification application shall be sent to the applicant by the Commissioner. In such case, re-application will be accepted after three (3) months have passed since issuance of the notification of denial.

(c) **Length of certification process.** If an applicant for initial certification fails to achieve full certification within six (6) months of being granted temporary certification, the applicant shall not receive full certification and a recommendation of ~~non-renewal or~~ revocation of the existing certification will be made to the Board. In such case, re-application for certification shall be made in accordance with the requirements of 450:1-9-7 and 450:1-9-12. If the applicant requests withdrawal of the certification status because of the circumstances cited above, the applicant may reapply three months after receipt of the written request by the Provider Certification Division ~~the applicant may reapply by filing a new application~~

~~for certification form, and submitting the required documentation and fee to ODMHSAS~~.

(d) **Renewal applications.**

(1) ODMHSAS will, prior to the renewal date, notify facilities the application for renewal of certification is due.

(2) The facility shall submit its application for renewal before the expiration of its certification.

(3) Renewal applications for certification shall be reviewed for completeness by ODMHSAS staff. If the facility is cited for deficiencies on 50% or more of the applicable standards and rules based on the site review findings, a plan of correction will not be requested and ~~non-renewal~~ revocation of the certification status will be recommended to the Board.

(4) If, after being granted conditional certification, an applicant for renewal fails to achieve full certification within four (4) months, the applicant shall not receive full certification and a recommendation of ~~non-renewal~~ revocation of the ~~conditional~~ certification status will be made to the Board.

(e) **Site reviews.**

(1) Initial, renewal or follow-up site reviews, based on the current certification status of the applicant, will be scheduled and conducted by designated representatives of the ODMHSAS at each location or site of the applicant.

(2) Only one follow-up site review will be conducted on facilities receiving ~~Conditional~~ Temporary or ~~Temporary~~ Conditional Certification for the purpose of determining compliance with standards and the plan of correction.

(3) For a facility granted Temporary Certification, the follow-up site review will be conducted on standards not applicable during the initial certification visit, and a minimum of five (5) records shall be made available for review.

(4) The follow-up site review to Conditional Certification will be conducted to review implementation of the plan of correction. Failure to come into compliance with applicable rules and implement the plan of corrections shall result in a recommendation that the Conditional Certification status be revoked.

(~~3~~5) A Site Review Protocol shall be completed during each site visit. Protocols shall contain the current ODMHSAS Standards and Criteria applicable to the facility.

(A) A facility must be prepared to provide evidence of compliance with each applicable standard.

(B) In the event the reviewer(s) identifies some aspect of facility operation that adversely affects client safety or health, the reviewer(s) shall notify the facility director and appropriate ODMHSAS staff. An immediate suspension of certification may be made by the Commissioner of ODMHSAS.

(f) **Accreditation status.** The ODMHSAS may accept accreditation granted by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Commission on Accreditation of Rehabilitation Facilities (CARF), the Council on Accreditation of Services for Families and Children, Inc. (COA), or the American Osteopathic Association (AOA) as compliance with certain specific ODMHSAS standards as identified in the site review protocol. For such to be considered, the facility shall make application and submit evidence to the ODMHSAS of current accreditation status. This evidence shall include documentation of the program or programs included in the most recent accreditation survey, including survey reports of ~~unannounced~~ all visits by the accrediting organization, ~~or~~ any reports of subsequent actions initiated by the accrediting organization ~~that may affect the accreditation status of the facility, the report of the survey and~~ any ~~corresponding~~ plans of correction, and the dates for which the accreditation has been granted.

(g) **Deficiencies.** ~~For~~ A deficiency shall be cited for each ~~standard and~~ rule not met by the facility ~~a deficiency shall be cited~~.

(h) **Report to applicant and plan of correction.**

(1) During the course of the certification process, and prior to determination of certification status, ODMHSAS staff shall report the results of the on-site review to the facility. The facility shall receive written notice of the deficiencies in a Certification Report.

(2) The facility must submit a written plan of correction for each deficiency for approval within two (2) weeks of the receipt of the Certification Report. Approval of the plan of correction shall be required before the completed application for certification will be presented to the Board. However, if the facility is cited for deficiencies on fifty percent (50%) or more of the applicable standards and rules based on the initial site review findings, a plan of correction will not be requested.

(i) **Notification of Departmental recommendation for certification.**

(1) After completion of the on-site review and report on the Application for Certification, ODMHSAS staff shall prepare a recommendation on the certification status or application for the Board.

(2) Prior to the ODMHSAS staff's presentation of its recommendation of an applicant's certification to the Board, the ODMHSAS staff shall notify the applicant of:

(A) the recommendation, and

(B) the date and time of the Board meeting at which the facility's application, and the recommended certification will be presented; and

(C) the requirement of a facility receiving a recommendation of denial, ~~non-renewal~~ revocation, conditional or temporary to have a representative present.

(3) Achievement of certain scores is a prerequisite for consideration of a specific certification status but may not be the sole determinant. Individual deficiencies that meet the criteria in 450:1-9-9 may be grounds for suspending or revoking certification or denying applications for certification.

(4) Consideration of certification may be deferred while additional information regarding a facility's compliance status is reviewed.

(5) The minimum compliance scores for recommendation of a certification status to the Board are:

(A) **Certification with Commendation.** Facility is in compliance with 100% of the applicable rules.

(B) **Certification.** Facility achieves compliance with 100% of the applicable rules after on-site correction(s).

(C) **Conditional Certification.** Facility is in compliance with 51% of the applicable rules.

(D) **Temporary Certification.** Facility is in compliance with 51% of the applicable standards and rules.

(j) **Actions on Non-Certified Providers.** If at the initial site review it is found the facility is providing services:

(1) The review will be continued including the review of clinical records.

(2) The facility must comply with the requirements cited in 450:1-9-7 to continue the certification process.

(3) If the applicant achieves less than 100% compliance, full certification must be achieved with four (4) months.

(4) Upon successful completion of the process, Probationary Certification status will be recommended for no more than one (1) year.

(5) The desire for continued certification after the Probationary Certification period will require the submission of a new application for each of the next two (2) years. The requirements in 450:1-9-7 shall apply. A recommendation for Certification for one (1) year will be made to the Board.

(6) If during this three-year period the facility is found non-compliant with Title 43A O.S. § 3-301, Unified Community Mental Health Services Act, or 43A O.S. §3-401 Oklahoma Alcohol and Drug Abuse Services Act, the non-compliance will result in revocation of certification. Re-application for certification will be accepted one year after revocation.

(~~j~~k) **Actions on certification applications.** ODMHSAS staff shall make one of the following recommendations to the Board:

(1) Certification with commendation;

(2) Certification;

(3) Conditional certification;

(4) Temporary certification;

(5) ~~Denial of initial certification~~ Probationary Certification; or

(6) ~~Non-renewal of certification~~ Revocation.

(~~k~~ l) ~~If the Board approves a recommendation to deny an initial certification application, ODMHSAS shall send the applicant a notice of denial~~. If the Board approves a recommendation to ~~not renew~~ revoke certification, an individual proceeding shall be initiated pursuant to Subchapter 5 ~~to deny the renewal~~.

450:1-9-8. Duration of certification status

(a) Certification status of either "Certification with Commendation" or "Certification" shall be for the period of:

(1) Three (3) years for ~~Certified~~ Community Mental Health Centers, ~~Certified~~ Alcohol and Drug Treatment Programs, Community-based Structured Crisis Centers, ~~Certified~~ Domestic Violence Shelters or Programs, ~~Certified~~ Sexual Assault Programs, ~~Certified~~ Treatment Programs for Batterers, and ~~Certified~~ Programs ~~for~~ of Assertive Community Treatment.

(2) One (1) year for Community Residential Mental Health Facilities.

(b) Conditional certification granted to applicants for renewal shall be for a period not to exceed four (4) months. During that period, a follow-up site review will be conducted ~~within no less than thirty (30) days and no more than sixty (60) days following of the granting of conditional certification~~ to ensure cited deficiencies have been corrected as provided in the plan of correction or to demonstrate continued correction and compliance with the previously cited deficiencies.

(c) Certification or conditional certification granted to an applicant shall become effective the first day of the month following the date of the action by the Board, provided however, that the Board may waive this requirement and make the certification or conditional certification effective immediately.

(d) Temporary certification granted to applicants for initial certification of a facility, location or level of service shall be for a period of six (6) months and shall become effective immediately following Board action. During that period, a follow-up site review will be conducted ~~within no less than sixty (60) days and no more than ninety (90) days of granting temporary certification~~ to ensure ~~the~~ any deficiencies cited during the initial site visit have been sufficiently corrected and to assess the facility's compliance ~~achieved~~ with remaining applicable standards necessary to meet the requirements for certification.

(e) Certification is not transferable. A change of the ownership of a facility automatically terminates any certification status, requiring application for certification by the new ownership. If the certified facility is owned by a corporation the following applies:

(1) If the corporation is not-for-profit, a change in membership of the Board of Directors of more than fifty percent (50%) of the Directors in three (3) or less calendar months, unless such change was caused by the normal expiration of terms in accordance with the By-Laws of the Board of Directors, shall require the facility to be recertified.

(2) If the corporation is other than not-for-profit, a change in the ownership of more than forty per cent (40%) of the stock in the corporation from the owners at the beginning of the period of certification shall require the facility to be recertified.

(3) It is the responsibility of the facility to notify the ODMHSAS of the occurrence of either of the conditions requiring recertification as set forth in (1) and (2) of this subsection; and to request the application materials for recertification.

(f) Certification may be suspended, revoked or not renewed with the bases for such action being delineated in Section 450:1-9-9 of this Subchapter.

450:1-9-9. Bases for a decision to issue administrative sanction of ~~nonrenewal,~~ suspension, or revocation

(a) A determination that the certification ~~shall not be renewed, or that certification be suspended or revoked~~ status shall be reduced, suspended, or revoked or that a reprimand be issued, may be made upon the following bases:

(1) failure to comply with certification standards;

(2) failure to comply with appropriate statutory licensing provisions;

(3) violation of client rights or client confidentiality;

(4) endangerment of the safety, health, and/or the physical or mental well-being of a client served by the program;

(5) failure to comply with accreditation, inspection, safety, or building code regulations required by local, state, or federal authorities and laws;

(6) defrauding a client, potential client, or third party payer;

(7) inappropriate conduct by program staff or its governing authority;

(8) utilization of treatment techniques which endanger the safety, health, and mental health or physical well-being of program clients; or

(9) any other just cause.

(b) Determinations to initiate proceedings for suspension or revocations are made by the Board of ODMHSAS.

(c) The facility's certification status continues unless the facility fails to timely file a written request for a hearing as cited in OAC450:1-5-5 or an order sustaining the allegations made by ODMHSAS is issued by the appointed Hearing Officer.

[OAR Docket #05-1016; filed 5-26-05]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 15. CONSUMER RIGHTS

[OAR Docket #05-1017]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Consumer Rights
Part 1. Mental Health and Drug or Alcohol Abuse Services Consumer Bill of Rights
450:15-3-1. [AMENDED]
450:15-3-3. [AMENDED]
450:15-3-27. [AMENDED]
Subchapter 7. Office of Consumer Advocacy
Part 2. Investigations
450:15-7-9. [AMENDED]
450:15-7-14. [AMENDED]
450:15-7-15. [AMENDED]
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In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 15 are part of the Department's review of Title 450. These proposed amendments are intended to comply with statutory changes, enhance advocacy services for individuals receiving services by organizations operated or certified by or under contract with ODMHSAS, delete redundant or superfluous language, and correct scrivener's errors.
CONTACT PERSON:
Linda Winton, Policy Analyst and Agency Liaison Officer, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-6765.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 3. CONSUMER RIGHTS

PART 1. MENTAL HEALTH AND DRUG OR ALCOHOL ABUSE SERVICES CONSUMER BILL OF RIGHTS

450:15-3-1. Applicability

This Part is applicable to all facilities and programs providing mental health and drug or alcohol abuse services either operated by, certified by, or under contract with, ODMHSAS or subcontracting through a facility which is under contract with ODMHSAS.

450:15-3-3. Notification of the Bill of Rights

(a) Each consumer, upon admission to a facility or program, shall be notified of rights guaranteed by this Part.

(1) If the consumer is a minor, his parent or legal guardian shall also be informed.

(2) If the consumer has a court ordered guardian, the guardian shall be informed.

(b) Notification shall be accomplished by:

(1) Providing the consumer with a synopsis, as set forth in OAC 450:15-3-27 and, if requested, the full Mental

Health and Drug or Alcohol Abuse Services Bill of Rights, OAC ~~450:15-3-4~~ 450:15-3-6 through 450:15-3-25. If the consumer cannot understand the language in the synopsis, an oral explanation of the synopsis shall be given in a language the person can understand; and the provision of the Mental Health and Drug or Alcohol Abuse Services Bill of Rights shall be documented in the consumer's record and signed by the person giving the synopsis or explanation; and

(2) Posting the synopsis of, or the full Mental Health and Drug or Alcohol Abuse Services Bill of Rights, in a conspicuous place in each consumer living area, and in area(s) of the facility receiving consumers, visitors and the public.

(c) Facilities shall not have internal operating procedures more restrictive than the Mental Health and Drug or Alcohol Abuse Services Bill of Rights. Every consumer shall be notified of facility and unit procedures with which he or she is expected to comply, and consequences for non-compliance.

(d) Employees and volunteers shall be oriented regarding consumers' rights and the constraints of this Part.

450:15-3-27. Synopsis of the bill of rights

(a) The synopsis in (b) of this Section shall be used when an abbreviated format of ~~450:15-3-4~~ OAC 450:15-3-6 through 450:15-3-25 is used to supply a consumer or others with an overview of the bill of rights. A copy of the synopsis shall be prominently posted in each consumer treatment unit and in consumer admissions, visiting and public areas.

(b) Facilities with physical custody of a consumer shall support and protect the fundamental human, civil, and constitutional rights of the individual consumer. Each consumer has the right to be treated with respect and dignity and will be provided the synopsis of the Bill of Rights as listed below.

(1) Each consumer shall retain all rights, benefits, and privileges guaranteed by law except those lost through due process of law.

(2) Each consumer has the right to receive services suited to his or her condition in a safe, sanitary and humane treatment environment regardless of race, religion, ~~sex~~ gender, ethnicity, age, degree of disability, handicapping condition, or sexual orientation.

(3) Each consumer, on admission, shall have the absolute right to private uncensored communication with a relative, friend, clergy, or attorney by phone or mail, at the facility's expense if the consumer is indigent.

(4) Each consumer retains the right of confidential communication with their attorney, personal physician, or clergy.

(5) Each consumer is entitled to uncensored private communication (letter, telephone, personal visits); such letters or copies of letters shall not be kept in consumer treatment records.

(6) No consumer shall be neglected or sexually, physically, verbally, or otherwise abused.

(7) Each consumer shall receive treatment in the least restrictive environment and have the maximum freedom of movement consistent with his or her clinical condition and legal status.

(8) Each consumer shall have easy access to his or her personal funds deposited with the finance office, and shall be entitled to an accounting. A limitation on access to funds may be made when it is determined by the facility's director to be necessary and essential to prevent the consumer from unreasonably and significantly dissipating his or her assets.

(9) Each consumer may have his or her own clothing and other personal possessions. This right can be forfeited if the property is potentially dangerous to the consumer, others, or if the property is functionally unsafe.

(10) Each consumer shall have the right to practice his or her religious belief and be accorded the opportunity for religious worship. No consumer shall be coerced into engaging in or refraining from any religious activity, practice, or belief.

(11) Each consumer legally entitled to vote shall be assisted to register and vote when they so request.

(12) Each consumer shall be provided with prompt, competent, and appropriate treatment; and an individualized treatment plan. A consumer shall participate in his or her treatment programs and may consent or refuse to consent to the proposed treatment. The right to consent or refuse to consent may be abridged for those consumers adjudged incompetent by a court of competent jurisdiction and in emergency situations as defined by law. If the consumer permits, family shall be involved.

(13) Every consumer's record shall be treated in a confidential manner.

(14) No consumer shall be required to participate in any research project or medical experiment without his or her informed consent as defined by law. Refusal to participate shall not affect the services available to the consumer.

(15) A consumer may voluntarily participate in work therapy and must be paid fair compensation. However, each consumer is responsible for personal housekeeping tasks without compensation.

(16) A consumer shall have the right to assert grievances with respect to an alleged infringement on his or her rights.

(17) Consumer shall be permitted to establish and participate in a consumer committee or consumer government by unit or facility wide.

(18) A consumer being discharged shall have plans for outpatient treatment, sufficient medication, suitable clothing for the season, housing information and referral, and if consumer permits, family involvement in the plan.

(19) Each consumer has the right to request the opinion of an outside medical or psychiatric consultant at his or her own expense or a right to an internal consultation upon request at no expense.

(20) No consumer shall be retaliated against or subjected to any adverse change of conditions or treatment ~~solely or partially~~ because ~~of his or her having~~ the consumer asserted his or her rights.

(c) Programs providing treatment or services without the physical custody or detention of consumers shall support and

protect the fundamental human, civil, and constitutional rights of the individual consumer. Each consumer has the right to be treated with respect and dignity and will be provided the synopsis of the Bill of Rights as listed below.

(1) Each consumer shall retain all rights, benefits, and privileges guaranteed by law except those lost through due process of law.

(2) Each consumer has the right to receive services suited to his or her condition in a safe, sanitary and humane treatment environment regardless of race, religion, gender, ethnicity, age, degree of disability, handicapping condition or sexual orientation.

(3) No consumer shall be neglected or sexually, physically, verbally, or otherwise abused.

(4) Each consumer shall be provided with prompt, competent, and appropriate treatment; and an individualized treatment plan. A consumer shall participate in his or her treatment programs and may consent or refuse to consent to the proposed treatment. The right to consent or refuse to consent may be abridged for those consumers adjudged incompetent by a court of competent jurisdiction and in emergency situations as defined by law. If the consumer permits, family shall be involved.

(5) Every consumer's record shall be treated in a confidential manner.

(6) No consumer shall be required to participate in any research project or medical experiment without his or her informed consent as defined by law. Refusal to participate shall not affect the services available to the consumer.

(7) A consumer shall have the right to assert grievances with respect to an alleged infringement on his or her rights.

(8) Each consumer has the right to request the opinion of an outside medical or psychiatric consultant at his or her own expense or a right to an internal consultation upon request at no expense.

(9) No consumer shall be retaliated against or subjected to any adverse change of conditions or treatment because the consumer asserted his or her rights.

(d) Each affected facility and program shall have written policy and implementing procedures, and shall provide documented staff training to insure the implementation of each and every ~~resident~~ consumer right stated in this section.

(~~d~~e) Each affected facility and program shall have written policy and implementing procedures to insure each consumer enjoys, and has explained to him or her, these rights, and these rights are visibly posted in both consumer and public areas of the facility.

(~~e~~f) The ODMHSAS Office of Consumer Advocacy, in any investigation or monitoring shall have access to consumer, facility or program records and ~~facility~~ staff as set forth in OAC 450:15-7-3.

SUBCHAPTER 7. OFFICE OF CONSUMER ADVOCACY

PART 2. INVESTIGATIONS

450:15-7-9. Investigation procedures

(a) The Office of Consumer Advocacy shall conduct a prompt investigation of the allegation. The Advocate shall contact the applicable facility executive director to arrange for document production, site visits and interviews.

(b) The applicable facility executive director shall arrange for the Advocate to have immediate and direct access to the alleged victim(s) in the report who is still a consumer of the facility. During an investigation, the facility shall provide the Advocate access to all employees, consumers or clients, facilities, files and records of any nature that may pertain to the investigation. Denial of access may be grounds for termination of a contract between ODMHSAS and a contractor or revocation, non-renewal or suspension of certification or both.

(c) Interference includes, but is not limited to:

(1) Intimidating, harassing or threatening a party to the investigation;

(2) Retaliation against a consumer or employee for reporting an allegations; or

(3) Denial of Advocate access to clients, employees, facilities, witnesses, records or ~~evidence~~ other relevant information.

450:15-7-14. Investigative interviews

The Advocate shall interview or attempt to interview persons known or identified to have information about the allegation. If an injury is alleged, the Advocate or other appropriate person shall observe and note apparent injuries, and obtain pertinent medical documentation, including ~~photographic evidence~~ photographs. An attorney or other representative of the person being interviewed may attend an interview only as a silent observer with prior permission of the Advocate General.

(1) The Office of Consumer Advocacy Advocate shall conduct a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, and persons who allegedly were directly or indirectly involved in the allegation, persons with knowledge of relevant information, and each individual accused of the maltreatment. When possible, all other witnesses shall be interviewed prior to interviewing the accused individual(s).

(2) The Office of Consumer Advocacy tape record interviews. Tape recordings of interviews remain with the Office of Consumer Advocacy investigative file. Office of Consumer Advocacy files and tape recordings are not public documents due to the confidential and privileged information contained in the interviews.

(3) The Advocate shall inform persons interviewed of the investigative process.

(4) The Advocate shall verbally inform each accused individual of the allegation(s). The name of the person making the report of the allegation shall not be disclosed.

(5) During the interview with an individual accused of maltreatment of a consumer, the Advocate shall provide the individual an opportunity to respond to the allegation(s). Following the initial interview, if the Advocate obtains information to which the accused individual did not have an opportunity to respond, the Advocate shall

conduct another interview with the individual. The Advocate shall advise the accused individual of the substance of the new information and provide an opportunity to present a response.

(6) If the Advocate needs to interview a person who is deaf, hard of hearing, or is non-English speaking, the Office of Consumer Advocacy shall arrange oral or sign language interpreter services by an independent and qualified interpreter.

(7) To schedule an interview with an accused individual, the Advocate shall contact by phone or regular mail the executive director of the facility or provider that employs the accused individual. If a reasonable time has passed without being able to schedule an interview, the Advocate shall contact the executive director of the facility or provider to request the employee be required to participate. If the accused individual refuses to participate in the investigation, the report shall be completed without the accused individual's statement and a finding shall be made based on available information. For other persons needing to be interviewed, the Advocate shall follow the same.

(8) If a person fails to appear for a scheduled interview without good cause, the Advocate shall complete the investigative report without interviewing that person. The investigative report shall include an explanation of why the interview was not conducted, including documentation of efforts to interview the person.

(9) The Advocate shall conduct an exit conference, either in person or by telephone, with the executive director when the information-gathering portion of the investigative process is completed. The Advocate shall complete the written investigative report within 30 days of the date of the exit conference and a summary letter shall be sent to the executive director of a contract or certified facility.

450:15-7-15. Investigative report and findings

(a) After completing the information-gathering portion of the investigative process, the Advocate shall prepare a written investigative report minimally containing:

(1) The allegation(s) made to the Office of Consumer Advocacy, the location of the alleged incident(s), and the assigned Office of Consumer Advocacy case number;

(2) A statement of any injuries sustained by the alleged victim(s);

(3) The applicable definition(s) of the type of maltreatment at issue such as abuse, neglect, exploitation, or mistreatment;

(4) The finding(s) in accordance with subsection (b) of this Section;

(5) A list of the involved parties, their titles and role in the matter, if they were interviewed and, if so, when and if interviewed face to face or by telephone;

(6) The name, address, and telephone numbers of any interpreter used during the investigation;

(7) An explanation of the basis for the finding(s);

(8) Any areas of concern relating to the referral identified during the investigation regarding that facility, that provider, or practices or procedures which have implications for the safety, health, or welfare of clients;

(9) A list of relevant documents and records reviewed during the investigation; and

(10) A list of attachments to the report.

(b) The investigative finding options are:

(1) **"~~Substantiated~~ Supported"** which means the available ~~evidence~~ information establishes that it is more likely than not that the alleged maltreatment occurred;

(2) **"~~Unsubstantiated~~ Unsupported"** which means the available ~~evidence~~ information established that it is unlikely that the alleged maltreatment occurred; or

(3) **"Unable to ~~substantiate~~ support"** which means the available ~~evidence~~ information was not sufficient to establish whether or not the alleged maltreatment occurred.

(c) Except as otherwise specifically provided in this section and as otherwise provided by state or federal laws, the information, records, materials and reports related to investigations by the Office of Consumer Advocacy are confidential and contain privileged information. Accordingly, such records, materials and reports shall not be open to public inspection nor their contents disclosed nor shall a subpoena or subpoena duces tecum purporting to compel disclosure of such information be valid pursuant to 43 A O.S. § 1-109(C).

(d) An order of the court authorizing the inspection, release or disclosure of information, records, material and reports related to investigations by the Office of Consumer Advocacy shall be entered by a court only after a review of the records and a determination, with due regard for confidentiality of the information and records and the privilege of the persons identified in the records that a compelling reason exists, any applicable privilege has been waived and such inspection, release or disclosure is necessary for the protection of a legitimate public or private interest.

(e) The Office of Consumer Advocacy shall provide results of investigations as follows:

(1) A copy of the final Office of Consumer Advocacy investigation report shall be sent to the executive director of a ODMHSAS operated facility.

(2) A summary of the allegation and finding shall be sent to the executive director of a state certified or contract facility.

(3) When an executive director is named as an individual accused of maltreatment of a consumer in the allegation, the Office of Consumer Advocacy shall forward a summary of the investigative report to the chair of the board of directors of the facility.

(4) A copy of all Office of Consumer Advocacy reports shall be sent to the Provider Certification Division of the ODMHSAS.

(5) A summary of the allegations and finding shall be provided to the Board and a copy of the report shall be provided upon request of the Board.

(6) The Department or the Office of Consumer Advocacy may summarize the outcome of an investigation, stating the allegation and the finding. The summary may be provided to the person suspected of the abuse, neglect or improper treatment, the person subject to alleged abuse,

neglect or improper treatment, the person who reported an allegation, and the executive director of a facility certified by or under contract with the Department at which the alleged abuse, neglect, or improper treatment occurred.

(f) The Office of Consumer Advocacy shall maintain the original report, supporting documents, and pertinent recorded tapes in locked file cabinets in accordance with the applicable ODMHSAS records management and disposition plan.

[OAR Docket #05-1017; filed 5-26-05]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 18. STANDARDS AND CRITERIA FOR ALCOHOL AND DRUG TREATMENT PROGRAMS

[OAR Docket #05-1018]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
450:18-1-1 [AMENDED]
450:18-1-2 [AMENDED]
450:18-1-4 [AMENDED]
Subchapter 3. Substance Abuse Treatment Services
Part 1. Levels of Care
450:18-3-1 [AMENDED]
450:18-3-2 [AMENDED]
450:18-3-3 [NEW]
Part 3. Outpatient Services
450:18-3-21 [AMENDED]
Part 5. Intensive Outpatient Services
450:18-3-41 [AMENDED]
450:18-3-42 [AMENDED]
Part 7. Medically Supervised Detoxification
450:18-3-61 [AMENDED]
PART 9. Non-Medical Detoxification
450:18-3-81 [AMENDED]
Part 11. Residential Treatment
450:18-3-101 [AMENDED]
Part 13. Residential Treatment for Persons with Dependent Children
450:18-3-121 [AMENDED]
Part 15. Adult Residential Treatment For The Dually Diagnosed
450:18-3-141 [AMENDED]
Part 17. Residential Treatment For Adolescents
450:18-3-161 [AMENDED]
Part 19. Halfway House Services
450:18-3-181 [AMENDED]
Part 20. Adolescent Halfway House Services
450:18-3-190 [AMENDED]
Part 21. Halfway House Services for Persons With Dependent Children
450:18-3-201 [AMENDED]
Part 25. ~~Opioid Substitution Treatment Programs and Opiate Antagonists and Opiate Agonists~~ Medication Assisted Treatment
450:18-3-241 [AMENDED]
450:18-3-242 [AMENDED]
Subchapter 5. Ancillary Services and Activities
450:18-5-3.1 [NEW]
450:18-5-3.2 [NEW]
450:18-5-4 [AMENDED]
450:18-5-5 [AMENDED]
450:18-5-6 [AMENDED]
450:18-5-8 [AMENDED]
450:18-5-9 [REVOKED]
Subchapter 7. Facility Record System
Part 1. Record System
450:18-7-1 [AMENDED]
450:18-7-2 [AMENDED]
450:18-7-3.1 [AMENDED]
450:18-7-4 [AMENDED]
Part 3. Intake And Admission Assessment
450:18-7-21 [AMENDED]
Part 5. Biopsychosocial Assessment
450:18-7-41 [AMENDED]
Part 9. Treatment Planning
450:18-7-81 [AMENDED]
Part 11. Progress Notes
450:18-7-101 [AMENDED]
Subchapter 9. Services Support and Enhancement
Part 1. Staff Support
450:18-9-2 [AMENDED]
450:18-9-3 [AMENDED]
Part 2. Organizational and Facility Managment
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Subchapter 11. Consumer Rights
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In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 18 are part of the Department's review of Title 450. These proposed amendments are intended to comply with statutory changes, enhance services for consumers of substance abuse treatment by organizations operated or certified by or under contract with ODMHSAS, delete redundant or superfluous language, and correct scrivener's errors.
CONTACT PERSON:
Linda Winton, Policy Analyst and Agency Liaison Officer, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-6765.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

450:18-1-1. Purpose

This chapter sets forth the standards and criteria used in the certification of facilities and organizations providing substance abuse treatment services for alcohol or drug dependent persons and implements (43A O.S. §§ 3-403~~(1)~~, ~~3-404,~~ 3-415, ~~and~~ 3-416~~)~~, 3-417, 3-417.1, 3-601, 3-602 and 3-603. The rules regarding the certification processes, including, but not necessarily limited to, the application process, fees, and administrative sanctions are found in OAC 450:1, Subchapters 5 and 9.

450:18-1-2. Definitions

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

"Acute intoxication or withdrawal potential" means one category to be considered in consumer placement, continued stay, and discharge and is an evaluation of the consumer's withdrawal patterns and current level of intoxication and potential for withdrawal complications as it impacts on level of care decision making.

"Admission criteria" means those criteria which shall be met for admission of a consumer to ~~program.~~ substance abuse treatment.

"Admission" means the acceptance of a consumer by a treatment program.

"Adolescent" means any individual between thirteen and up to eighteen years of age.

"Adolescent halfway house treatment" means low intensity ~~addiction~~ substance abuse treatment, at least six (6) hours of structured ~~addiction~~ substance abuse treatment or rehabilitation services weekly, to adolescents in a supportive environment usually following completion of primary treatment to facilitate the individual's reintegration into the home or community. Corresponding Adolescent ASAM PPC is not available at this time for this level of care, and shall be applicable upon its availability. Until the Adolescent ASAM PPC is available, ASAM PPC treatment Level: Level 111.1, Clinically Managed Low Intensity Residential Services shall be utilized.

"Adolescent inpatient or residential treatment" means a live-in facility which provides twenty-four (24) hour therapeutic regime for the treatment of adolescents with substance abuse problems. Corresponding ASAM Patient Placement Criteria treatment level: Level III.5 or III.7.

"ASAM" means the American Society of Addiction Medicine.

"ASAM patient placement criteria" or "ASAM PPC" means the most current edition of the American Society of Addiction Medicine's published criteria for admission to treatment, continued services and discharge.

"Assessment" means evaluating the disease course, stage, prognosis, the individual's strengths, weaknesses, problems and needs from which a treatment plan may be developed in order to determine the level of care needed and to identify or rule out other diagnoses.

"Biomedical condition or complications" means one category to be considered in consumer placement, continued stay and discharge and is an evaluation of the consumer's current physical condition and history of medical and physical functioning, as it impacts on level of care decision making.

"Bylaws" means the written rules, regulations, policies, or procedures through which the operations of the organization are legally conducted.

"Biopsychosocial assessment" means face-to-face interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior and experiences of a consumer and are designed to provide sufficient information for problem formulation, intervention planning, case management needs and formulation of appropriate alcohol and other drug ~~substance~~ abuse related treatment and service planning.

~~**"CAC"** means Certified Alcoholism Counselor as defined in this section.~~

~~**"CADC"** means Certified Alcoholism and Drug Counselor as defined in this section.~~

"CMHC" means community mental health center.

"Case management" means actions such as planned linkage, advocacy and referral assistance provided in partnership with a consumer to support that consumer in self sufficiency and community tenure and may occur in the consumer's home, in the community, or in the facility.

~~**"Certified Alcoholism Counselor"** means a person who, in accordance with the mandates of the Oklahoma Drug and Alcohol Professional Counselor Certification Board, has met specific training and experiential requirements in counseling with those people who experience problems from the disease of Alcoholism.~~

~~**"Certified Alcoholism and Drug Counselor"** means a person who, in accordance with the mandates of the Oklahoma Drug and Alcohol Professional Counselor Certification Board, has met specific education, internships and experiential requirements in counseling with those people who experience problems from the disease of Chemical Dependency and Alcoholism and persons who experience problems from drug and persons who experience problems from both..~~

"Child" or "Children" means any ~~child~~ person between three and twelve years of age.

"Client" See "Consumer."

"Clinical supervision" means an organized process by which knowledgeable and skilled supervisors systematically and routinely provide ongoing and in-depth review of direct service providers' performance which leads to professional growth, clinical skills development and increased self-awareness.

"Community education, consultation and outreach" means services designed to reach the facility's target population, to promote available services, and to give information on mental health, alcohol and other drugs, domestic violence, sexual assault and other related issues to the general public, the target population or to other agencies serving the target population. These services include presentations to human services agencies, community organizations and individuals, other than individuals in treatment, and staff. These services may take the form of lecture presentations, films or other visual displays, and discussions in which factual information is

disseminated. These presentations may be made by staff or trained volunteers.

"Community mental health center" or "CMHC" as defined in 43A O.S. § 3-302(3), means a comprehensive community mental health center offering services including, but not limited to, the following basic services: inpatient, outpatient, partial hospitalization, emergency care, and consultation and education; and offering the following services at the option of the center: prescreening services, rehabilitation services, precare and aftercare services, training programs, and research and evaluation programs, an outpatient facility offering diagnostic and treatment services, a day care facility offering a treatment program for children or adults suffering from mental or emotional problems, or community residential mental health programs and facilities which provide supervised residential care, counseling, case management or other similar services to children or adults suffering from mental or emotional problems.

"Consultant" means one who provides professional advice or services.

"Consultation" means the act of providing information or technical assistance to a particular group or individual seeking resolution of a specific problem(s). A documented process of interaction between staff member(s) or between facility staff and unrelated individuals, groups or agencies for the purpose of problem solving or enhancing their capacity to manage consumers or facilities.

"Consumer" means an individual, adult or child, who is receiving evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 Chapters 16, 17, 18, 19 and 23 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer-based planning" means an organized and systematic method of basing treatment and services on the needs of current and prospective consumers.

"Consumer record" or "medical record" means the collection of written information about a consumer's evaluation or treatment that includes the intake data, evaluation, treatment or service plan, description of treatment or services provided, continuing care plan, and discharge information on an individual consumer.

"Continuing care" means providing a specific period of structured therapeutic involvement designed to enhance, facilitate and promote transition from primary care to ongoing recovery.

"Contract" means a formal document adopted by the governing authority of ~~the~~ an approved treatment facility and any other organization, facility, or individual, which specifies services, personnel, or space to be provided by the program as well as the monies to be expended in exchange.

"Correctional institution" means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house or residential community program operated by, or under contract to, the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense, or other persons held in lawful custody. Other persons held in lawful custody includes juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses or others awaiting charges or trial.

"Counseling" means ~~the professional guidance of the consumer by utilizing psychological methods, especially in collecting case history data, using various techniques of the personal interviews and planned interventions.~~a method of using various commonly accepted clinical approaches provided face-to-face by a treatment professional with consumers in individual, group or family settings to promote positive emotional or behavioral change provided by a treatment professional.

"Creating A Positive Environment" or **"CAPE"** means a specific curriculum designed by ODMHSAS to train staff in verbal and non-verbal communication techniques in the management of selected and potentially problematic behaviors and to foster attitudes that promote the consumer's dignity and self-esteem in facility treatment settings.

"Court-related evaluation" See "Evaluation-court related."

"Crisis intervention" means an immediately available service to meet the psychological, physiological and safety aspects of mental health, alcohol and drug, and domestic violence or sexual assault related crises. These unscheduled face-to-face interventions are in response to emergencies~~,~~ to resolve acute emotional and physical dysfunction, ~~and~~ secure appropriate placement in the least restrictive setting, ~~and~~ provide crisis resolution, and stabilize functioning.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of ~~the~~ an approved treatment facility, or the routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumer, staff and visitors; medication errors; consumer that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to a consumer or ~~the~~ an approved treatment facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Day school" means the provision of therapeutic and accredited academic services on a regularly scheduled basis.

"Department" or "ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Detoxification" means the process of eliminating the toxic effects of drugs and alcohol from the body. Supervised detoxification methods include social detoxification and medical monitoring or medical management and are intended to avoid withdrawal complications.

"DHS" or "OKDHS" means the Oklahoma Department of Human Services.

"Diagnosis" means the determination of drug or alcohol abuse or dependence or psychoactive substance use disorder as defined by current DSM criteria or by other standardized and widely accepted criteria. In instances where consumer self-report information is inadequate or suspect, collateral

reports, e.g., from family members, legal sources, etc., may be considered.

"Dietitian" means a person who has received a baccalaureate degree with major studies in food and nutrition and has completed a dietetic internship in an institution approved by the American Dietetic Association, or who has the equivalent of such training in supervised experience.

"Discharge criteria" means those criteria specified in the current ASAM Patient Placement Criteria which shall be met in order for the consumer to be appropriately discharged from ~~a~~ an approved treatment facility or program.

"Discharge planning" means the process, begun at admission, of determining a consumer's continued need for treatment services and of developing a plan to address ongoing consumer post-treatment and recovery needs. Discharge planning may or may not include a document identified as a discharge plan.

"Discharge summary or final assessment" means the documentation in the treatment record summarizing the consumer's progress during treatment, with goals reached, continuing needs, and other pertinent information including documentation of linkage to aftercare.

"Documentation" means the provision of written, dated, and authenticated evidence to substantiate compliance with standards, e.g., minutes of meetings, memoranda, schedules, notices, logs, records, policies, procedures, and announcements.

"Drug abuse" means the use of a drug in a manner inconsistent with or unrelated to acceptable medical practice.

"DSM" means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

~~**"DSM-IV"** means the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, published by the American Psychiatric Association in 1994.~~

~~**"DSM-IV-TR"** means the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition Text Revision, published by the American Psychiatric Association in 2000.~~

"Dual diagnosis" means a consumer who meets the following criteria:

(A) Meets the criteria for a ~~Subtance Abuse Client~~substance abuse consumer having one or more of the following DSM~~-IV~~ Axis I primary, secondary or tertiary diagnoses:

(i) Psychoactive Substance Induced Disorders 291.0 through291.8, 292.0, 292.11, 292.12, 292.81, 292.82, 292.83, 292.89, 292.9, 303.00, 305.20 through 305.90;

(ii) Psychoactive Substance Use Disorders 303.90, 304.00 through 304.90, 305.00, 305.20 through 305.90;

(iii) One or more of ICIS presenting problem codes 710 through 731 and 741 through 743; **AND**

(B) Has one or more of the following DSM~~-IV~~ Axis I primary, secondary, or tertiary diagnoses:

(i) Schizophrenia -- 295.10, 295.20, 295.30, 295.60, 295.90;

(ii) Delusional (Paranoid) Disorder -- 297.1;

(iii) Other psychotic Disorders -- 295.40, 295.70, 297.3, 298.8, 298.9, 297.1, 297.3;

(iv) Mood Disorders -- 296.20 through 296.7; **OR**

(C) In addition to the requirements of (A), above, has a DSM~~-IV~~ Axis primary or secondary diagnosis of Borderline Personality Disorder -- 301.83.

"Education" means the dissemination of relevant information specifically focused on increasing the awareness of the community and the receptivity and sensitivity of the community concerning mental health, substance abuse or domestic violence-related problems and services. A systematic presentation of selected information to impart knowledge or instructions, to increase understanding of specific issues or programs, and to examine attitude or behaviors which may stimulate social action or community support of the program and its consumers.

"Efficiency" means a program's measure of cost-benefit or cost effectiveness through a comparison to some alternative method.

"Emergency services" means a twenty-four (24) hour capability for assessment, intervention and resolution of a client crisis or emergency provided in response to unanticipated, unscheduled emergencies requiring prompt intervention to resolve immediate, overwhelming problems that severely impair the individual's ability to function or remain in the community and may include placement of the individual in a protective environment, chemotherapy, detoxification, individual and group consultation and medical assessment.

"Emotional or behavioral conditions or complications" means one category to be considered in consumer placement, continued stay and discharge and is an evaluation of the consumer's current emotional and behavioral status level of anxiety, depression, impulsivity, guilt and behavior that accompanies or follows these emotional states and historical information, as it impacts on level of care decision making.

"Evaluation" See "Assessment."

"Evidenced based practice" means programs or practices that are proven to be successful through research methodology and have produced consistently positive patterns of results.

"Executive director" means the person hired by the governing authority to direct all the activities of the organization; may be used synonymously with administrative director, administrator, and director.

"Facility" as defined in the Mental Health Law at 43A O.S. § 1-103(7), means any hospital, school, building, house or retreat, authorized by law to have the care, treatment or custody of the mentally ill or drug- or alcohol-dependent persons including, but not limited to, public or private hospitals, community mental health centers, clinics, satellites, or institutions provided that the facility shall not mean a child guidance center operated by the State Department of Health.

"Family" means the parents, brothers, sisters, other relatives, foster parents, guardians, and others who perform the roles and functions of family members in the lives of consumers.

"Follow-up" means the organized method of systematically determining the status of consumers after they have been discharged to determine post-treatment outcomes and utilization of post-treatment referrals.

"Goals" means broad general statements of purpose or intent that indicate the general effect the facility or service is intended to have.

"Governing authority" means the individual or group of people who serve as the ~~an~~ approved treatment facility's board and who are ~~the ultimate~~ ultimately responsible ~~parties~~ for the approved treatment facility's activities and finances.

"Group counseling" means a method of ~~treatment~~ using ~~the interaction between the professional and two (2) or more consumers to promote positive emotional or functional change.~~various commonly accepted treatment approaches provided face-to-face by a treatment professional with two (2) or more consumers to promote positive emotional or behavioral change.

"Guardian" means an individual who has been given the legal authority for managing the affairs of another individual.

"Halfway house" means low intensity ~~addiction~~ substance abuse treatment in a supportive living environment to facilitate the individual's reintegration into the community, most often following completion of primary treatment. Corresponding ASAM Patient Placement Criteria Treatment Level: Level III.1, Clinically managed Low Intensity Residential Services.

"Halfway house for persons with children" means a halfway house that includes services for the recovering person's children who will reside with him or her in the house. Corresponding ASAM Patient Placement Criteria Treatment Level: Level III.1, Clinically managed Low Intensity Residential Services.

~~**"ICIS"** See "Integrated Client Information System."~~

"Infant" means any child from birth up to three years of age.

"Individual counseling" means a method of ~~treating disorders or problems using the one-to-one interaction between a professional and a consumer to promote positive emotional, psychological, or behavioral change.~~using various commonly accepted treatment approaches provided face-to-face by a treatment professional with one consumer to promote positive emotional or behavioral change.

"Initial contact" means a person's first contact with the facility, e.g., a request for information or service by telephone or in person.

"Initial treatment plan" means a short-term plan designed at intake describing services that will be provided immediately upon admission.

"Inpatient ~~care~~ services" means the process of providing care to persons who require twenty-four (24) hour supervision in a hospital or other suitably equipped medical setting as a result of acute or chronic medical or psychiatric illnesses~~. Includes~~ and professional staff providing medical care according to a treatment plan based on documentation of need.

"Intake" means the overall process by which information is collected to determine the nature and extent of the drug and alcohol ~~use~~ abuse problem and the level of care appropriate to address identified issues.

"Integrated Client Information System" or **"ICIS"** is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide ~~DMHSAS~~ ODMHSAS network. ICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by ~~DMHSAS~~ ODMHSAS.

"Intensive outpatient services" means an organized, non-residential outpatient treatment service with scheduled sessions that provide a range of nine (9) ~~or more~~ to twelve (12) treatment hours per week. Intensive outpatient services may offer evening outpatient services several nights per week or be incorporated into an inpatient or residential treatment program in which the consumer participates in daytime treatment services but goes home at night. Corresponding ASAM Patient Placement Criteria Treatment Level: Level II.1, Intensive outpatient.

"Intervention" means a process or technique intended to facilitate behavior change. It also refers to the specific and structured process of presenting information on destructive behavior to ~~a~~ an ~~chemically~~ alcohol and/or drug dependent individual who is abusing or dependent upon substances by family members and others in order to motivate that individual to seek assistance for recovery.

"Length of stay" means the number of days or number of sessions attended by consumers in the course of primary treatment.

"Levels of care" means the different options for treatment that vary according to the intensity of the services offered. Each treatment option is a level of care.

"Licensed physician" means an individual with an M.D. or D.O. degree who is licensed in the state of Oklahoma to practice medicine.

"Licensure" means the process by which an agency of government grants permission, to persons or health facilities meeting qualifications, to engage in a given occupation or business or use a particular title.

"Life skills" means abilities and techniques necessary to function independently in society.

"Medical care" means those diagnostic and treatment services which, under the laws of the jurisdiction in which the ~~program~~ facility is located, can only be provided or supervised by a licensed physician.

"Medical detoxification" means diagnostic and treatment services performed by licensed facilities for acute alcohol or drug intoxication, delirium tremens and physical and neurological complications resulting from acute intoxication. Medical detoxification includes the services of a physician

and attendant medical personnel including nurses, interns and emergency room personnel, the administration of a medical examination and a medical history, the use of an emergency room and emergency medical equipment if warranted, a general diet of three meals each day, the administration of appropriate laboratory tests, and supervision by properly trained personnel until the person is no longer medically incapacitated by the effects of alcohol or drugs. [43 A O.S. § 3-403(8)] Corresponding ASAM Patient Placement Criteria Treatment Level: Level IV-D, Medically managed Intensive Inpatient Detoxification.

"Medical record" See "Consumer record."

"Medical services " means the administration of medical procedures, by a physician or dentist and in accordance with a documented treatment plan and medical supervision available, to provide the consumer with the service necessitated by the prevalent problem identified and includes physical examinations, detoxification from alcohol or drugs, methadone maintenance, dental services, or pharmacy services, etc.

"Medical treatment plan" means the plan for administering methadone to consumers in methadone detoxification programs. (43A O.S. §§ 3-601 through 3-603)

"Medically supervised detoxification" means detoxification outside of a medical setting, directed ~~supervised~~ by a physician and has attendant medical personnel including nurses ~~licensed nursing supervisor,~~ for intoxicated consumers, and consumers withdrawing from alcohol and other drugs, presenting with no apparent medical or neurological symptoms as a result of their use of substances that would require hospitalization as determined by an examining physician. Corresponding ASAM Patient Placement Criteria Treatment Level: Level III, 7-D, Medically Monitored Inpatient Detoxification.

"Medication" means any prescription or over-the-counter drug that is taken orally, injected, inserted, applied topically or otherwise administered to a consumer.

"Medication protocol" means the medical treatment plan required by state statute for dispensing methadone. (43A O.S. §§ 3-601 through 3-603)

"Medication - self administration" means the consumer administers their own medication to themselves with staff observation.

"Mental health services" means a wide range of diagnostic, therapeutic, and rehabilitative services used in the treatment of mental illness and substance abuse disorders.

"Minutes" means a record of business introduced, transactions and reports made, conclusions reached, and recommendations made during a meeting.

"Narcotic treatment program" See "Opioid treatment program."

"Neglect" means a failure to provide adequate personal care or maintenance, or access to medical care that results or may result in physical or mental injury to a consumer.

"Non-medical or **social detoxification"** means detoxification services for intoxicated ~~clients~~ consumers and ~~clients~~ consumers withdrawing from alcohol or other drugs presenting with no apparent medical or neurological symptoms as a result of their use of substances. Corresponding ASAM PPC Treatment Level: Level III, 2-D, Clinically managed Residential Detoxification.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Objectives" means a specific statement of planned accomplishments or results that are quantitative, qualitative, time limited, and realistic.

"Opioid treatment program" means a person, private physician, or organization that administers or dispenses an opioid drug to an opioid ~~addict~~ dependent person for the purposes of detoxification or maintenance treatment or provides, when necessary and appropriate, comprehensive medical and rehabilitation services. [43A O.S. § 3-601(C)] Corresponding ASAM Patient Placement Criteria Treatment Level: Opioid Maintenance Therapy.

"OSDH" means the Oklahoma State Department of Health.

"Outpatient services" means an organized, nonresidential treatment service in regularly scheduled sessions intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimens. Corresponding ASAM Patient Placement Criteria Treatment Level: Level I, Outpatient Treatment.

"Outreach" means the process of reaching into a community systematically for the purposes of identifying persons in need of services, alerting persons and their families to the availability of services, locating needed services, and enabling persons to enter into and accept the service delivery system.

"Paraprofessional" means a person who does not have an academic degree, a professional license or certification in the discipline, but performs prescribed functions under the general supervision of that discipline.

"Performance improvement" means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous quality improvement, continuous improvement, organization-wide quality improvement, quality initiative and total quality management.

"Personnel record" means a chart or file containing the employment history and actions relevant to individual employee activities within an organization and may contain application, evaluation, salary data, job description, citations, credentials, etc.

"Personnel record of volunteer" means a record or file with documentation of volunteers', interns' or practicum students' orientation and training.

"Physician" means an individual ~~with an M.D. or D.O. degree~~ who is a fully licensed Doctor of Medicine or Doctor of

Osteopathy in the State of Oklahoma to practice medicine in all its phases.

"Play therapy means a form of action therapy that uses, but is not limited to, sand play, fairy tales, art and puppetry to encourage communication in children who have inadequate or immature verbalization skills or who verbalize excessively due to defensiveness.

"Policy" means statements of facility intent, strategy, principle, or rules in the provision of services; a course of action leading to the effective and ethical provision of services.

"Prevention" means the assessment, development and implementation of strategies designed to prevent the abuse of alcohol and other drugs.

"Procedures" means the written methods by which policies are implemented.

"Process" means information about what a program is ~~doing,~~ implementing and the extent to which the program is being implemented as planned.

"Program effectiveness -- outcome" means a written plan and operational methods of determining the effectiveness of services provided that objectively measures facility resources, activities and consumer outcomes.

~~**"Professional treatment staff"** means those individuals specifically qualified by education or special training to perform the duties of their positions~~.

"Progress notes" means a complete chronological written description of services provided to a consumer and includes the consumer's response and is written by the individual delivering the services.

"Program" means a structured set of treatment activities designed to achieve specific objectives relative to the needs of consumers served by the facility.

"Program or service component" means the category or level of care into which a specific group of interrelated services can be classified, e.g., outpatient services.

"Psychiatrist" means a licensed physician who specialized in the assessment and treatment of individuals having psychiatric disorders and who is fully licensed to practice medicine in the state in which he or she practices and is certified in psychiatry by the American Board of Psychiatry and Neurology, or has equivalent training or experience.

"Recovery environment" means one category to be considered in consumer placement, continued stay and discharge and is an evaluation of the consumer's current recovery environment, current relationships and degree of support for recovery, current housing, employment situation, availability of alternatives and historical information, as it impacts on level of care decision making.

"Registered nurse" means an individual who is a graduate of an approved school of nursing and is licensed in the state of Oklahoma to practice as a registered nurse.

"Rehabilitative services" means a broad range of physical, mental, and social activities designed to restore a consumer to the highest possible functional capacity after an episode of illness or injury and may include physical therapy, speech therapy, family consultation, and substance abuse counseling.

"Relapse" means progressively irresponsible or inappropriate or dysfunctional behavior patterns that could lead to resumption of alcohol or drug use. Also refers to the resumption of alcohol or drug use.

"Relapse potential" means one category to be considered in consumer placement, continued stay and discharge and is an evaluation of the consumer's current relapse potential, current statements by the consumer about relapse potential, reports from others on potential for consumer relapse, assessment by ~~professional treatment staff~~ treatment professionals and historical information, as it impacts on level of care decision making.

"Residential treatment" means ~~addiction and~~ substance abuse treatment in a live-in setting which provides a twenty-four (24) hour therapeutic regimen. Corresponding ASAM Patient Placement Criteria Treatment Level: Level III.~~S~~5, Clinically managed High-Intensity Residential Services.

"Residential treatment for persons with children" means a residential treatment facility that includes services for the recovering person's children who will reside with him or her in the residential facility. Corresponding ASAM Patient Placement Criteria Treatment Level (Parent Only): Level III.5 Clinically Managed High-Intensity Residential Services.

"Screening" means the process by which a consumer is determined appropriate and eligible for admission to a particular program or level of care. The focus is on the minimum criteria necessary for appropriateness and eligibility.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms or violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Service agreement" means a written agreement between two (2) or more service agencies, or service agencies and individual service providers, defining the roles and responsibilities of each party for the purpose of promoting coordination and integration of service programs, ~~and curbing~~ diminishing fragmentation and unnecessary service duplication.

"Service area" means a defined geographic area and specified population base that identifies regions for mental health, substance abuse, and domestic violence and sexual assault services [43A O.S. § 3-302(1)].

"Significant others" means those individuals who are, or have been, significantly involved in the life of the consumer.

"Social detoxification" See "Non-medical detoxification."

"Staff privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers

within well-defined limits, based on the evaluation of the individual's license, education, certification, training, experience, competence, judgment, and other credentials.

"Substance abuse treatment services" means the coordination of treatment activities by ~~a substance abuse~~ a treatment professional that include, but not limited to, the following:

(A) Intake including screening, diagnostic impression, and assessment.

(B) Treatment planning and revision, as necessary.

(C) Utilization review to assure admission, continuing stay, and discharge criteria are met.

(D) Referral to community resources of those consumers with needs that ~~can't~~ cannot be met by the ~~substance abuse professional~~ treatment professional.

(E) Reports and record keeping of consumer related data.

(F) Consultation that facilitates necessary communication in regard to consumers.

(G) Discharge planning that assists consumers in developing continuing care plans and facilitates transition into post-treatment recovery.

(H) Group and individual counseling.

(I) Education, as necessary.

"Substance-use disorders" means alcohol or drug dependence or psychoactive substance use disorder as defined by current DSM criteria or by other standardized and widely accepted criteria.

"Treatment" means the broad range of emergency, inpatient, intermediate and outpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological and social service care, vocational rehabilitation and career counseling. [43A O.S. § 3-403(14)]

"Treatment acceptance or resistance" means one category to be considered in consumer placement, continued stay and discharge and is an evaluation of the consumer's current treatment acceptance or resistance, current statements by consumer and others about the consumer's treatment acceptance or resistance, and ~~professional treatment staff~~ a treatment professional's assessment of consumer motivation, as it impacts on level of care decision making.

"Treatment follow-up" means the gathering of information to measure the effectiveness of treatment services.

"Treatment hour - outpatient" means one (1) clock hour of face-to-face contact with a consumer in a therapeutic setting, individually or in a group.

"Treatment planning" means the process by which a ~~counselor~~ treatment professional and the consumer together and jointly identify and rank problems; establish agreed-upon immediate short-term and long-term goals; and decide on the treatment process and resources to be utilized.

"Treatment professional" means any person allowed to provide alcohol and drug counseling pursuant to the Licensed Alcohol and Drug Counselors Act.

"Treatment session - outpatient" means each face-to-face contact with a consumer in a therapeutic setting whether individually or in a group.

"Triage" means the prompt evaluation of all incoming consumers to determine the nature of the problems, the level of urgency, identification of the kind of service needed, and assignment for attention.

"Universal precautions for transmission of infectious diseases" means those guidelines promulgated by the U.S. Occupational Health and Safety Administration which are designed to prevent the transmission of Human Immunodeficiency Virus, hepatitis, and other infectious diseases.

"Update" means a dated and signed review of a report, plan or program with or without revision.

"Utilization review" means the process of using predefined criteria to evaluate the necessity and appropriateness of consumer care.

"Volunteer" means any person providing direct consumer rehabilitative services and who is not on the facility payroll, but fulfills a defined role within the approved treatment facility. This includes, but is not limited to, court ordered community services, practicum students, interns, and ministers; it excludes professionals and entities with ~~whom~~ which the facility has a written affiliation.

450:18-1-4. Applicability

This chapter is applicable to all substance abuse treatment facilities and organizations providing treatment, counseling, rehabilitation services and substance abuse treatment services which are statutorily required to be certified by the ODMHSAS ~~(43A O.S. § 3-415)~~.

SUBCHAPTER 3. SUBSTANCE ABUSE TREATMENT SERVICES

PART 1. LEVELS OF CARE

450:18-3-1. ~~Services~~ Levels of care

~~(a)~~ Facilities shall ~~provide~~ document the provision of one (1) or more of the following levels of care in policy and procedure ~~services~~:

(1) Outpatient services;

(2) Intensive outpatient services;

(3) Medically supervised detoxification;

(4) Non-medical detoxification;

(5) Residential treatment for adults;

(6) Residential treatment for persons with dependent children;

(7) Adult residential treatment for the dually diagnosed;

(8) Residential treatment for adolescents;

(9) Halfway house services;

(10) Halfway house services for persons with dependent children;

(11) Halfway house services for adolescents;

(12) Opioid treatment programs.

450:18-3-2. HIV education, testing and counseling services

All facilities shall provide and document the provision of HIV education, testing, and counseling services for drug dependent persons (43A O.S. § 3-425.1). Every facility shall:

(1) Provide educational sessions regarding HIV to such persons, and also make the sessions available to spouses or other sexual partners of the drug dependent person;

(2) Refer all drug dependent persons for HIV infection testing and counseling;

(3) Provide HIV testing and counseling by the facility staff, or with an organization for the testing or counseling services and maintain all test results in the confidential manner prescribed by applicable state or federal statutes or regulations; and

(4) Provide services described in items (1) through (3) at least once during each episode of treatment.

450:18-3-3. Treatment professional

Only a treatment professional shall provide substance abuse treatment services in any level of care.

PART 3. OUTPATIENT SERVICES

450:18-3-21. Outpatient services

(a) Outpatient services shall be organized non-residential services with scheduled treatment sessions that accommodate employed and parenting consumers' schedules, and offer treatment services during the day, evening, and weekends. Services shall be designed to provide a variety of professional diagnostic and primary alcohol and other drug abuse treatment services for consumers, and their families and significant others, whose emotional and physical status allows them to function in their usual environment. These services shall be designed either for consumers who do not require more restrictive levels of care or those consumers who require continuing services following more intensive treatment regimens.

(b) The program shall maintain written programmatic descriptions and operational methods that address the following:

(1) Environment:

(A) The facility shall be publicly accessible ~~that accommodates~~ and accommodate office space, individual and group counseling space, secure records storage, and protects consumer confidentiality.

(B) Hours of operation shall be during regularly scheduled times that make services accessible to consumers and the general public, including those employed between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

(C) For facilities that do not provide twenty-four (24) hour services, the facility's hours of operation shall be conspicuously displayed on the outside of the building. For facilities in multi-office buildings, the hours shall be posted either on the building directory or the facility's office door.

(2) Support system:

(A) The facility shall maintain written policy and procedures for handling medical emergencies; and an emergency medical number shall be posted for use by staff;

(B) The facility shall maintain ~~annual~~ annually renewed service agreements, approved by current facility director~~,~~ with substance abuse treatment programs providing more and less intensive levels of care and other community resources to provide a continuum of treatment services; and

(C) The facility shall have available specialized professional consultation.

(3) Staff:

(A) The facility shall maintain documentation that treatment ~~professional~~ professionals ~~treatment staff~~ are knowledgeable regarding biopsychosocial dimensions of substance abuse, evidenced based practices, and counseling theory and techniques.~~, and possess one of the following;~~

~~(i) a current license as a physician in the State of Oklahoma; or~~

~~(ii) a doctoral degree in psychology; or~~

~~(B) Staff not meeting one the above requirements shall have a current certification as a CADC or be working toward CADC certification; and shall have,~~

~~(i) a masters degree in counseling, psychology, social work, or an addiction related field; or~~

~~(ii) a minimum of one year of supervised experience in an addiction treatment setting and a bachelor's degree in counseling, psychology, social work, or a bachelor's degree in a related field and at least 12 hours in counseling coursework; or~~

~~(iv) a current license as a registered nurse in the State of Oklahoma, plus a minimum of two years of supervised experience in an addiction treatment setting; or~~

~~(v) current certification as a certified alcohol counselor.~~

(~~C~~B) The facility shall maintain documentation that treatment professionals ~~professional treatment staff shall~~ have received training in cultural-specific, age-specific, and gender-specific issues and counseling techniques.

(~~D~~C) Staff shall be, at least, twenty-one (21) years old~~; and~~

(~~E~~D) The facility shall document in personnel records all education, training and experience stated ~~in~~ above prior to providing direct care services.

(4) Treatment services:

(A) ~~Addiction~~ Substance abuse treatment services shall be provided to assess and address the individual needs of each consumer. These services shall include, but not limited to, individual, group and family services, relapse prevention, advocacy, referral, life-skills training, and case management services;

(B) Crisis intervention and counseling services shall be available; and

(C) Frequency of services shall be determined by mutual agreement between the facility professional and the consumer.

(D) When appropriate, and with consumer consent, the treatment program coordinates with other treatment providers that the consumer is currently utilizing.

(5) Assessment and treatment plan review:

(A) Individual biopsychosocial assessments or addenda shall be completed on all consumers;

(B) Individualized treatment plans shall be completed on all consumers and shall include problem formulations, treatment, goals, and measurable and behavioral treatment objectives; and

(C) Treatment plan reviews shall be conducted at specified times as noted in the treatment plan, or as required by ~~accrediting or licensing bodies~~ the consumer's condition, at a minimum of once per month.

(6) Documentation: Compliance of the written documentation will be determined based on the criterion listed in 450:18-7-101.

~~(A) Progress notes shall clearly reflect implementation of the treatment plan, the consumer's response to treatment, and the outcome of services;~~

~~(B) Consumer records shall document each service provided and all missed appointments; and~~

~~(C) Consumer records shall document the start and stop time or the amount of time spent providing each treatment service.~~

(c) Compliance with 450:18-3-21 may be determined by a review of the following:

(1) Policy and procedures;

(2) Licenses;

(3) Treatment protocols;

(4) Personnel records, official certified college transcripts, professional certificate(s), documentation of professional work experience, ongoing in-service training(s);

(5) Treatment records;

(6) Interviews with staff and consumers; and

(7) Other supporting facility records.

PART 5. INTENSIVE OUTPATIENT SERVICES

450:18-3-41. Intensive outpatient services

Intensive outpatient services shall be an organized, non-residential outpatient substance abuse treatment service with scheduled sessions providing a range of nine (9) ~~or more~~ to twelve (12) treatment hours per week. Treatment schedules shall be arranged to accommodate the time availability of employed or parenting consumers and treatment hours may be during the day, evenings, or weekends. ~~Outpatient~~ Intensive outpatient services shall be designed to provide a variety of professional diagnostic and primary alcohol and drug abuse treatment services for consumers and their families whose physical and emotional status allows them to function in their usual environment. Intensive outpatient services are a separate treatment program from other programs offered by the treatment facility.

450:18-3-42. Service requirements

(a) An intensive outpatient service shall maintain written programmatic descriptions and operational methods addressing the following:

(1) Environment:

(A) The facility shall be publicly accessible and ~~that accommodates~~ accommodate office space, individual and group counseling space, secure records storage, and protects consumer confidentiality; and

(B) Hours of operation shall be during regularly scheduled times that make services accessible to consumers and the general public, including those employed between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday; and

(C) For facilities that do not provide twenty-four (24) hour services, the facility's hours of operation shall be conspicuously displayed on the outside of the building. For facilities in multi-office buildings, the hours shall be posted on the building directory or their office door.

(2) Support system:

(A) The facility shall maintain written policy and procedures for handling medical emergencies; and an emergency medical number shall be conspicuously posted for staff use; and

(B) The facility shall maintain ~~annual~~ annually renewed service agreements, approved by current facility director, with substance abuse treatment programs providing facilities with both more and less intensive levels of care and other community resources to provide a continuum of treatment services; and

(C) Specialized professional consultation shall be available.

(3) Staff:

(A) ~~The professional treatment staff~~ Treatment professionals shall be knowledgeable regarding biopsychosocial dimensions of substance abuse, evidenced based practices and counseling theory and techniques. ~~and possess one of the following;~~

~~(i) a current license as a physician in the State of Oklahoma; or~~

~~(ii) a doctoral degree in psychology; or~~

~~(B) Staff not meeting one the above requirements shall have a current certification as a CADC or be working toward CADC certification; and shall have,~~

~~(i) a masters degree in counseling, psychology, social work, or an addiction related field; or~~

~~(ii) a minimum of one year of supervised experience in an addiction treatment setting and a bachelor's degree in counseling, psychology, social work, or a bachelor's degree in a related field and at least 12 hours in counseling coursework; or~~

~~(iv) a current license as a registered nurse in the State of Oklahoma, plus a minimum of two years~~

~~of supervised experience in an addiction treatment setting; or~~

~~(v) current certification as a certified alcohol counselor.~~

(~~C~~B) The facility shall maintain documentation that treatment professionals ~~professional treatment staff~~ have received training in cultural-specific, age-specific and gender-specific issues and counseling techniques.~~;~~

(~~D~~C) ~~Treatment staff~~ Staff shall be, at least, twenty-one (21) years of age or older.~~; and~~

(~~E~~D) The facility shall document in personnel records all education, training and experience stated above prior to providing direct care services.

(4) Treatment services:

(A) The facility shall insure scheduled treatment services to continually assess and address the individual needs of each consumer. Such treatment modalities include, but are not limited to, family counseling, individual and group counseling, vocational counseling, educational groups, relapse prevention, and recreational activities~~; and~~.

(B) Crisis intervention and counseling services shall be available~~; and~~.

(5) Assessment and treatment plan review:

(A) Individual biopsychosocial assessments or addenda shall be made on all consumers; and

(B) An individualized treatment plan shall be completed on each consumer and shall include problem formulation, treatment goals, and measurable and behavioral treatment objectives; and

(C) Treatment plan reviews shall be conducted at ~~as prescribed~~ specified times as noted in the treatment plan, or as required by the consumer's condition, at a minimum of one time per month.

(6) Documentation: Compliance of the written documentation will be determined based on the criterion listed in 450:18-7-101.

~~(A) Progress notes shall clearly reflect implementation of the treatment plan and the consumer's response to, and outcomes of, treatment;~~

~~(B) Records shall contain documentation of each service provided and all missed appointments; and~~

~~(C) Records shall document the start and stop time or and the amount of time spent providing each treatment service.~~

(b) Compliance with 450:18-3-42 may be determined by a review of the following:

(1) Staff licenses and certifications;

(2) Policy and procedures;

(3) Personnel records, official certified college transcripts, professional certificate(s), documentation of professional work experience, ongoing in-service training(s);

(4) Treatment records;

(5) Interviews with staff and consumers; and

(6) Other facility documentation.

PART 7. MEDICALLY SUPERVISED DETOXIFICATION

450:18-3-61. Medically supervised detoxification

(a) Medically supervised detoxification shall be provided outside a medical facility, but under the direction of a licensed physician, who is on call, and a licensed registered nurse supervisor, for intoxicated consumers who are withdrawing from alcohol or other drugs. Presenting consumers shall be assessed as currently experiencing no apparent medical or neurological symptoms as a result of their substance use that would require hospitalization.

(b) The facility shall maintain written programmatic descriptions and operational methods addressing the following:

(1) Environment: ~~The facility shall be a freestanding properly licensed health care facility, or a specialty unit in a licensed health care facility.~~ The facility shall provide for beds, food service, monitoring vital signs, ~~and~~ food, and liquids intake.

(2) Support system:

(A) A licensed physician providing supervision of detoxification shall be available twenty-four hours per day, seven days per week;

(B) The facility shall maintain ~~annual~~ annually renewed service agreements, approved by current facility director, with substance abuse treatment programs providing more and less intensive levels of care ~~as clinically indicated;~~ and other community resources to provide a continuum of treatment services;

(C) The facility shall maintain a written plan for emergency procedures, which shall be approved by a licensed physician; and

(D) The facility shall have supplies, as designated in the written emergency procedures, which shall be accessible to the staff.

(3) Staff:

(A) Staff members assigned to a medically supervised detoxification component shall be knowledgeable about the physical signs of withdrawal, the taking of vital signs, ~~and~~ the implication of those vital signs, and emergency procedures.

(B) Oklahoma licensed nurses shall provide a planned regimen of twenty-four (24) hour monitoring, and statutorily approved personnel ~~to~~ shall administer medications in accordance with physician's orders;

(C) Staff shall be knowledgeable regarding facility-required education, evidenced based practices, training and policies; and

(D) The facility shall document in personnel records~~, no later than the hire date,~~ all education, training and experience stated in (A), (B) and (C) above prior to providing direct care services.

(4) Treatment services: Daily substance abuse detoxification treatment services shall be provided which shall include, but not limited to, oral intake of fluids, three (3) meals a day, taking of vital signs (temperature, pulse, respiration rate, blood pressure), documentation of fluid and

food intake a minimum of one (1) time every six (6) hours, or more often as indicated by the consumer's condition, all for a minimum of seventy-two (72) hours.

(5) Assessment and treatment plan review:

(A) Individualized initial treatment plan addressing problem formulations~~, treatment goals, and measurable treatment objectives~~ and immediate treatment interventions shall be developed for each consumer;

(B) Physician-approved medical assessment for appropriateness of placement in medically-supervised detoxification shall be completed and documented within three (3) hours ~~of presentation~~ after admission to the program;

(C) An individualized needs assessment, which shall include, treatment recommendations and referral recommendations prior to discharge shall be completed; and

(D) Treatment plan reviews shall be conducted at specific times as ~~prescribed~~ noted in the treatment plan, or as required by the consumer's condition at a minimum of once per month.

(6) Documentation: Compliance of the written documentation will be determined based on the criterion listed in 450:18-7-101.

~~(A) Progress notes shall clearly reflect implementation of the treatment plan and services provided, in addition to the consumer's response to treatment; and~~

~~(B) The consumer's case record shall contain documentation verifying each vital sign, and fluid and food taken during the consumer's stay in this component.~~

(c) Compliance with 450:18-3-61 may be determined by a review of the following:

(1) Licenses;

(2) Policy and procedures;

(3) Treatment protocols;

(4) Personnel records, official certified college transcripts, professional certificate(s), documentation of professional work experience, ongoing in-service training(s);

(5) Treatment records; and

(6) Interviews with staff.

PART 9. NON-MEDICAL DETOXIFICATION

450:18-3-81. Non-medical detoxification

(a) Non-medical detoxification shall be provided in a social or non-medical setting, with trained paraprofessionals, for intoxicated consumers and consumers withdrawing from alcohol and other drugs, who present with no apparent medical or neurological symptoms as a result of their substance abuse.

(b) The facility shall maintain written programmatic descriptions and operational methods addressing the following:

(1) Environment: ~~The facility shall be a freestanding properly licensed health care facility or specialty unit in a licensed health care facility.~~ The facility shall provide for beds, food service, and ~~the availability of monitoring~~ monitor vital signs, ~~and~~ food and liquids intake for a minimum of 72 hours after admission.

(2) Support system:

(A) A licensed physician shall be on call twenty-four hours per day, seven days per week;

(B) The facility shall maintain annual service agreements, approved by current facility director, and renewed at least annually, with substance abuse treatment programs providing more and less intensive levels of care ~~as clinically indicated~~ and other community resources to provide a continuum of treatment services;

(C) The facility shall have a written plan for emergency procedures approved by a licensed physician; and

(D) Supplies, as designated by the written emergency procedures, shall be available and accessible to the staff.

(3) Staff:

(A) The staff members assigned shall be knowledgeable about the physical signs of withdrawal, the taking of vital signs, ~~and~~ the implication of those vital signs, and emergency procedures;

(B) The staff shall be knowledgeable regarding facility-required education, evidenced based practices, training, and policies ; and

(C) The facility shall document in personnel records all education, training and experience stated in (A) and (B) above prior to staff providing direct care services.

(4) Treatment services: Daily (twenty-four [24] hours a day, seven [7] days a week) substance abuse detoxification treatment services shall be provided, to include oral intake of fluids, three (3) meals a day, and the taking of vital signs (temperature, pulse, respiration rate, blood pressure), fluid and food intake a minimum of one (1) time every six (6) hours~~,~~ or more often as indicated by the consumer's condition~~,~~ for a minimum of seventy-two (72) hours.

(5) Assessment and treatment plan review:

(A) The facility shall have a medical assessment protocol, approved by a licensed physician, for appropriateness of placement in this level of care, and initial treatment plan documented within one (1) hour ~~of~~ after admission;

(B) An individualized needs assessment, treatment recommendations, and referral recommendations shall be developed prior to discharge;

(C) Individualized treatment plan shall be completed for each consumer and shall minimally include problem formulations, ~~treatment goals, and measurable treatment objectives~~ and immediate treatment interventions; and

(D) Treatment plan reviews shall be conducted ~~as prescribed~~ at specified times as noted in the treatment plan, or as required by the consumer's condition at a minimum of once per month.

(6) Documentation:

(A) Compliance of the written documentation will be determined based on the criterion listed in 450:18-7-101, as well as:

(B) The consumer's case record shall contain documentation verifying each vital sign, and fluid and food taken during the consumer's stay in this component.

~~(A) Progress notes in the consumer's record shall clearly reflect implementation of the treatment plan and services provided, in addition to the consumer's response to treatment; and~~

~~(B) There shall be documentation in the consumer's case record verifying each vital sign, and fluid and food taken during the consumer's stay in this component.~~

(c) Compliance with 450:18-3-81 may be determined by a review of the following:

(1) Licenses;

(2) Policy and procedures;

(3) Treatment protocols;

(4) Physician-approved detoxification procedures;

(5) Personnel records official certified college transcripts, professional certificate(s), documentation of professional work experience, ongoing inservice training(s);

(6) Treatment records; and

(7) Interviews with staff.

PART 11. RESIDENTIAL TREATMENT

450:18-3-101. Residential treatment for adults

(a) ~~Addiction and chemical dependency~~ Substance abuse treatment in a residential setting shall provide a planned regimen of twenty-four (24) hour professionally directed evaluation, care and treatment in permanent program services. Treatment offers intensive primary treatment and consumers shall participate in at least twenty-four (24) therapeutic hours of substance abuse treatment services per week, in addition to life skills, recreational and self-help supportive meetings, and other therapies.

(b) The facility shall maintain written programmatic descriptions and operational methods addressing the following:

~~(1) Environment: The facility shall be a freestanding properly licensed health care facility, or specialty unit in a licensed health care facility;~~

(~~2~~1) Support system:

(A) A licensed physician shall be available, at least by telephone, twenty-four (24) hours per day, seven (7) days per week; and

(B) The facility shall maintain ~~Annual~~ service agreements, approved by current facility director, with more and less intensive levels of care, and other community resources to provide a continuum of treatment services ~~shall be maintained~~.

(~~3~~2) Staff:

(A) The facility shall maintain documentation that treatment ~~Professionals~~ professionals ~~treatment staff shall be~~ are knowledgeable regarding the biopsychosocial dimensions of substance abuse, counseling theory and techniques. ~~and possess one of the following;~~

~~(i) a current license as a physician in the State of Oklahoma; or~~

~~(ii) a doctoral degree in psychology; or~~

~~(B) Staff not meeting one the above requirements shall have a current certification as a CADC or be working toward CADC certification; and shall have,~~

~~(i) a masters degree in counseling, psychology, social work, or an addiction related field; or~~

~~(ii) a minimum of one year of supervised experience in an addiction treatment setting and a bachelor's degree in counseling, psychology, social work, or a bachelor's degree in a related field and at least 12 hours in counseling coursework; or~~

~~(iv) a current license as a registered nurse in the State of Oklahoma, plus a minimum of two years of supervised experience in an addiction treatment setting; or~~

~~(v) current certification as a certified alcohol counselor.~~

(~~C~~B) ~~The professional treatment staff~~ Treatment professionals shall have training in cultural-specific, age-specific, ~~and~~ gender-specific issues and counseling techniques, and all staff shall be knowledgeable regarding facility-required education, evidenced based practices, training, and policies. ~~;~~

(~~D~~C) The treatment staff shall be at least twenty-one (21) years of age ~~or older.; and~~

(~~E~~D) The facility shall document in personnel records all education, training and experience stated in (A) through (C) above prior to the provision of direct care services.

(~~4~~3) Treatment services: Daily (twenty-four [24] hours a day, seven [7] days a week) ~~addiction~~ substance abuse treatment services shall be provided to assess and address individual needs of each consumer. Services shall include, but are not limited to, family counseling, individual and group counseling, educational groups, and relapse prevention.

(~~5~~4) Assessment and treatment plan review processes include, but are not limited to:

(A) Individual biopsychosocial assessments on all consumers, and there may also be consultation, screenings and referral for additional services or evaluation; and

(B) Individualized treatment plan, including problem formulations, treatment goals, ~~and~~ measurable and behavioral treatment objectives; and ~~treatment~~

(C) Treatment plan~~s reviewed at specific times as noted in plan~~ reviews shall be conducted at specified times as noted in the treatment plan, or as required by the consumer's condition at a minimum of once per month.

(~~6~~5) Documentation:

(A) Compliance of the written documentation will be determined based on the criterion listed in 450:18-7-101.

(B) Documentation shall reflect each consumer has received a minimum of twenty four (24) hours of therapeutic services each week, in addition to life skills, recreational and self-help supportive meetings.

~~(A)Progress notes in the consumer's record shall clearly reflect the implementation of the treatment plan and services provided, in addition to the consumer's response to treatment ;~~

~~(B) Documentation shall reflect each consumer has received a minimum of twenty four (24) hours of therapeutic services each week, in addition to life skills, recreational and self-help supportive meetings; and~~

~~(C) Records shall document the start and stop time or and the amount of time spent providing each treatment service.~~

(6) The program provides documentation of the following community living components:

(A) A written daily schedule of activities.

(B) Quarterly meetings between consumers and the program personnel.

(C) Recreational activities to be utilized on personal time.

(D) Personal space for privacy.

(E) Security of consumer's property.

(F) A clean, inviting and comfortable setting.

(G) Evidence of individual possessions and decorations.

(H) Daily access to nutritious meals and snacks.

(I) Policy addressing separate sleeping areas for the consumers based on:

(i) Gender;

(ii) Age; and

(iii) Needs.

(c) Compliance with 450:18-3-101 may be determined by a review of the following:

(1) Licenses;

(2) Policy and procedures;

(3) Treatment protocols;

(4) Personnel record, official certified college transcripts, professional certificate(s), documentation of professional work experience, ongoing inservice training(s);

(5) Treatment records; and

(6) Interviews with staff and consumers.

PART 13. RESIDENTIAL TREATMENT FOR PERSONS WITH DEPENDENT CHILDREN

450:18-3-121. Residential treatment for persons with dependent children

(a) ~~Addiction and chemical dependency~~ Substance abuse treatment shall be provided in a residential setting offering a planned regimen of twenty-four (24) hour professionally directed evaluation, care and treatment in a permanent setting and under a defined set of policy and procedures. Treatment shall offer intensive primary treatment and consumers shall participate in at least twenty-four (24) therapeutic hours of substance abuse, parenting, and child development services per week for adults, and twelve (12) therapeutic hours for children, in addition to life skills, recreational, and self-help supportive meetings and other therapies. If not clinically indicated, therapeutic services to children may be reduced to as few as six (6) hours per week for children attending school. Exception: ~~Adults who are TANF recipients shall participate in at least fifteen (15) therapeutic hours of substance abuse, parenting and child development services to permit them to meet the terms required by their DHS Employability Plan.~~ Those adults who are current TANF recipients are permitted to meet the terms required by their Oklahoma Department of Human Services Employability Plan, which requires them to participate in job readiness programs. These individuals shall participate in at least 18 therapeutic hours of substance abuse, parenting and child development, to be added to the hours required from their Employability Plan. Proper documentation of involvement in a job readiness program is required and a copy of the Employability Plan should be in the chart. If individuals are not working on their Employability Plan and not enrolled in a job readiness program, then they are not an exception and must be involved in the full treatment hours.

(b) Each facility shall maintain written programmatic descriptions and operational methods addressing the following:

(1) Environment: The facility shall ~~be a freestanding properly licensed health care facility or specialty unit in a licensed health care facility providing~~ provide family-style living arrangements, indoor recreational space for children and families, and safe, protected outdoor recreational and leisure space. The facility shall provide for materials and space appropriate for ages and development of children receiving services. (43A O.S. § 3-417)

(2) Support system:

(A) A licensed physician shall be available, at least by telephone, twenty-four (24) hours per day, seven (7) days per week.

(B) The facility shall maintain annually renewed service agreements, approved by current facility director, with substance abuse treatment programs providing more and less intensive levels of care, and other community resources to provide a continuum of treatment services.

(C) The facility shall maintain current service agreements or contracts to provide both prenatal and postnatal care for pregnant women and pediatric care for children.

(D) The facility shall promote and facilitate children's access to the fullest possible range of medical services available such as health screening, well-child health care, screening in speech, language, hearing, and vision, and verify immunization records.

(E) Access to emergency health care shall be provided as necessary.

(F) The facility shall ~~have~~ document a liaison with the local DHS offices to:

(i) Promote preservation of families,

(ii) In cases of investigation of abuse, provide instruction in positive parenting behavior,

(iii) Facilitate, with parental consent, daily DHS observations of parent-child interaction,

(iv) Expedite investigations in a timely manner, and

(v) Ensure prompt response to situations which require immediate intervention.

(3) Staff:

(A) ~~Professional treatment staff shall be~~ The facility shall maintain documentation that treatment professionals are knowledgeable regarding ~~substance abuse, counseling theory and techniques,~~ biopsychosocial dimensions of substance abuse, evidenced based practices, ~~have training in~~ cultural-specific, age-specific and gender-specific issues and counseling techniques, and treatment of infants, toddlers, preschool children, and school-age children.~~, and possess one of the following:~~

~~(i) a current license as a physician in the State of Oklahoma; or~~

~~(ii) a doctoral degree in psychology; or~~

~~(B) Staff not meeting one the above requirements shall have a current certification as a CADC or be working toward CADC certification; and shall have,~~

~~(i) a masters degree in counseling, psychology, social work, or an addiction related field; or~~

~~(ii) a minimum of one year of supervised experience in an addiction treatment setting and a bachelor's degree in counseling, psychology, social work, or a bachelor's degree in a related field and at least 12 hours in counseling coursework; or~~

~~(iv) a current license as a registered nurse in the State of Oklahoma, plus a minimum of two years of supervised experience in an addiction treatment setting; or~~

~~(v) current certification as a certified alcohol counselor.~~

(~~C~~B) ~~Professional treatment staff~~ The facility shall document that treatment professionals shall have training in the following:

(i) identification of domestic violence, spousal or partner abuse, and child abuse and neglect, with special emphasis on failure to thrive and sexual abuse of children;

(ii) child development and age appropriate behaviors;

(iii) parenting skills appropriate to infants, toddlers, preschool and school age children; and

(iv) the impact of substances and substance abuse on parenting and family units.

(~~D~~C) ~~Staff~~ The facility shall document that staff working with children shall have ongoing training in the following and demonstrate job appropriate functional comprehension of:

(i) the impact of prenatal drug and alcohol exposure on child development;

(ii) the effect of substance abuse on parenting children and families;

(iii) parenting skills appropriate to infants, toddlers, preschool and school age children;

(iv) common children's behavioral and developmental problems;

(v) appropriate play activities according to developmental stage;

(vi) recognition of sexual acting-out behavior; and

(vii) the substance abuse recovery process, especially as related to family units, and

(viii) lethality assessment

(~~E~~D) ~~Staff shall be~~ The facility shall document that staff are knowledgeable regarding facility-required education, and training requirements and policies;

(~~F~~E) The facility shall have staff awake and on duty twenty-four (24) hours a day;

(~~G~~F) Staff shall be, at least, twenty-one (21) years of age or older; and

(~~H~~G) The facility shall document in personnel records, all education, training and experience stated above prior to the provision of services.

(4) Treatment services:

(A) The facility shall provide (twenty-four [24] hours a day, seven [7] days a week) ~~addiction~~ substance abuse treatment services to assess and address individual needs of each consumer; treatment services, which shall include, but not limited to, ~~,~~ family counseling, individual and group counseling, parenting, child development, educational groups, relapse prevention; and

(B) The facility shall provide therapeutic services for children ages three to twelve years, including a minimum of twelve (12) therapeutic hours per week for each child, including, but not limited to, assessment and age appropriate individual, family and group counseling (via art and play therapy, etc., but excluding time spent watching TV and videos) according to the development of the child. Special attention shall be given to the high risk of sexual abuse, sexual acting-out by children, suicide risk, and the treatment of toddlers and preschool children; and

(C) Children's services shall address the significant issues and needs documented in the child's and or parent's assessment utilizing both structured and unstructured therapeutic activity. Services shall create and enhance positive self image and feelings of self-worth, promote family unity, teach personal body safety, and positive school interactions, and to prevent alcohol, tobacco and other drug use; and

(D) Services for infants (ages birth to two [0-2] years of age) shall include, at a minimum, developmentally appropriate parent-child interactive bonding activities and play therapy; and

(E) Case management services for each adult and each child shall include assessment of, and planning and arranging for, recovery needs.

(5) Assessment and treatment plan review:

(A) Individual biopsychosocial assessments shall be completed on all consumers.

(i) Assessments of children accompanying their parent into treatment (residential or halfway house levels of care) shall include, but are not limited to assessment of:

(I) mental health issues;

(II) parent-child relationships;

(III) developmental stage;

(IV) educational needs;

(V) parent related issues; and

(VI) family issues related to the child.

(ii) In addition to the biopsychosocial assessment requirements, assessments of the parent bringing his or her child(ren) into treatment, residential or halfway house levels of care, shall include, but not be limited to, assessment of:

(I) parenting skills (especially in consideration of the child's issues);

(II) knowledge of age appropriate behaviors;

(III) parental coping skills;

(IV) personal issues related to parenting; and

(V) family issues as related to the child.

(B) There shall also be documentation of consultations, screening and referral regarding consumers, as needed.

(C) Individualized treatment plans for both the parent and child(ren) shall be developed, which include parent-child issues, problem formulations, treatment goals, measurable ~~treatment goals~~ and behavioral objectives~~;~~ , and plans to meet recovery needs; and

(D) Treatment plan review shall be conducted at ~~specific times as noted in the treatment plan~~ specified times as noted in the treatment plan, or as required by the consumer's condition at a minimum of once per month.

(6) Documentation: Compliance of the written documentation will be determined based on the criterion listed in 450:18-7-101 as well as:

(A) Progress notes in the consumer's and children's records shall clearly reflect case management assessments, recovery plans, post-treatment arrangements and implementation of plans, and implementation of the treatment plan and services provided, in addition to the consumer's, parent and child, response to treatment.

(B) Documentation shall reflect that each adult consumer has received a minimum of twenty-four (24) hours of therapeutic services each week, unless the woman is pregnant and the consumer record contains physician-approved permission for less than twenty-four (24) of service. Should the consumer be unable to participate in twenty-four (24) therapeutic hours for two (2) or more weeks, a review of appropriate placement shall be conducted weekly and documented by the executive director of the facility; and shall include observations of parent and child interactions, especially those indicative of therapeutic need or progress.

(C) Documentation shall reflect each child has received a minimum of twelve (12) therapeutic hours of service each week addressing needs and issues documented in either, or both, the child's or parent's assessments; the child's response to those services; and an assessment, and planning of recovery needs. Exception: As few as six (6) hours each week as permitted by 450:18-3-121 ~~(2)~~ (a).

~~(D) Records shall document the start and stop time or the amount of time spent providing each service.~~

(7) The program provides documentation of the following community living components:

(A) A written daily schedule of activities.

(B) Quarterly meetings between consumer and the program personnel.

(C) Recreational activities to be utilized on personal time.

(D) Personal space for privacy.

(E)Security of consumer's property.

(F) A clean, inviting and comfortable setting.

(G) Evidence of individual possessions and decorations.

(H) Daily access to nutritious meals and snacks.

(I) Policy addressing separate sleeping areas for the consumers based on:

(i) Gender;

(ii) Age; and

(iii) Needs.

(c) Compliance with 450:18-3-121 may be determined by a review of the following:

(1) Licenses;

(2) Policy and procedures;

(3) Treatment protocols;

(4) Personnel records, official certified college transcripts, professional certificate(s), documentation of professional work experience, ongoing inservice training(s);

(5) Records;

(6) Interviews with staff; and

(7) Other facility documentation.

PART 15. ADULT RESIDENTIAL TREATMENT FOR THE DUALLY DIAGNOSED

450:18-3-141. Adult residential treatment for the dually diagnosed

(a) ~~Addiction or chemical dependency~~ Substance abuse and mental health treatment shall be provided in a residential setting offering a planned regimen of twenty-four (24) hour clinically-directed evaluation, care, and treatment, under a defined set of policy and procedures, and shall have a permanent setting. The facility shall provide intensive primary treatment, and consumers shall participate in at least twenty-four (24)

therapeutic hours of substance abuse services per week, in addition to medication therapy, life skills, recreational, and self-help supportive meetings and other therapies.

(b) The facility shall maintain written programmatic descriptions and operational methods addressing the following:

(1) ~~Environment: The facility shall be a free standing properly licensed health care facility or specialty unit in a licensed health care facility.~~

~~(2)~~ Support system:

(A) The facility shall maintain availability of a licensed physician(s), who is (are) knowledgeable in mental illness and substance abuse issues to provide evaluation, treatment and follow-up; and be available by telephone twenty-four (24) hours per day, seven (7) days per week;

(B) ~~annual~~ annually renewed service agreements, approved by current facility director, with more/or less intensive levels of care, and other community resources to provide a continuum of treatment services;

(C) The facility shall make available medication administration or monitoring; and

(D) The facility shall provide case management services.

(~~3~~2) Staff:

(A) ~~The professional treatment staff~~ Treatment professionals shall be knowledgeable regarding substance abuse, mental health, evidenced based practices, and dual diagnosis issues as well as in counseling theory and techniques. ~~and possess one of the following;~~

~~(i) a current license as a physician in the State of Oklahoma; or~~

~~(ii) a doctoral degree in psychology; or~~

~~(B) Staff not meeting one the above requirements shall have a current certification as a CADC or be working toward CADC certification; and shall have,~~

~~(i) a masters degree in counseling, psychology, social work, or an addiction related field; or~~

~~(ii) a minimum of one year of supervised experience in an addiction treatment setting and a bachelor's degree in counseling, psychology, social work, or a bachelor's degree in a related field and at least 12 hours in counseling coursework; or~~

~~(iv) a current license as a registered nurse in the State of Oklahoma, plus a minimum of two years of supervised experience in an addiction treatment setting; or~~

~~(v) current certification as a certified alcohol counselor.~~

~~(vi) meets one of the requirements specified above in (i) through (v) and is delivering treatment services under the supervision of a staff member meeting professional treatment staff qualifications and is on the premises and available during the time(s) treatment services are delivered;~~

(~~C~~B) All staff shall be knowledgeable regarding facility-required education, training, and policies;

(~~D~~C) Staff shall be, at least, twenty-one (21) years of age or older; and

(~~E~~D) The facility shall document in personnel records, prior to the provision of treatment services, all education, training and experience stated above.

(~~4~~3) Treatment services:

(A) Daily treatment service shall be provided to assess and address individual needs of each consumer;

(B) Psychoeducational and behavioral approaches shall be used to educate consumers about their disorders and symptoms; and

(C) Other services shall include, but are not limited to, family counseling, individual and group counseling, relapse prevention, medication management, life skills, and recreational activities .

(~~5~~4) Assessment and treatment plan review:

(A) Psychiatric evaluations shall be completed on all consumers;

(B) Individual biopsychosocial assessments shall be completed on all consumers. In addition, there may also be consultation, screenings, and referral, if needed;

(C) Individualized treatment plan, to include problem formulations, treatment goals, and measurable treatment objective shall be developed for each consumer; and

(D) Treatment plan reviews shall be conducted at specific times as noted in the treatment plan or at a minimum of once per month.

(~~6~~5) Documentation: Compliance of the written documentation will be determined based on the criterion listed in 450:18-7-101 as well as:

(A) Consumer's medication and response to medication therapy, if used, shall be documented;

(B) Documentation shall reflect each consumer has received a minimum of twenty-four (24) therapeutic hours of service each week.

~~(A) Progress notes in the consumer's record shall clearly reflect implementation of the treatment plan and services provided, in addition to the consumer's response to treatment;~~

~~(B) Consumer's medication and response to medication therapy, if used, shall be documented;~~

~~(C) Documentation shall reflect each consumer has received a minimum of twenty-four (24) therapeutic hours of service each week; and~~

~~(D) Records shall document the start and stop time or and the amount of time spent in providing each treatment service.~~

(6) The program provides documentation of the following community living components:

(A) A written daily schedule of activities.

(B) Quarterly meetings between consumers and the program personnel.

(C) Recreational activities to be utilized on personal time.

(D) Personal space for privacy.

(E) Security of consumer's property.

(F) A clean, inviting and comfortable setting.
(G) Evidence of individual possessions and decorations.
(H) Daily access to nutritious meals and snacks.
(I) Policy addressing separate sleeping areas for the consumers based on:
(i) Gender;
(ii) Age; and
(iii) Needs.

(c) Compliance with 450:18-3-141 may be determined by a review of the following:
(1) Licenses;
(2) Policy and procedures;
(3) Treatment protocols;
(4) Personnel record, official certified college transcripts, professional certificate(s), documentation of professional work experience, ongoing inservice training(s);
(5) Treatment records;
(6) Interviews with staff; and
(7) Other facility documentation.

PART 17. RESIDENTIAL TREATMENT FOR ADOLESCENTS

450:18-3-161. Residential treatment for adolescents

(a) Residential treatment for adolescents shall provide ~~addiction and chemical dependency~~ substance abuse treatment in a residential setting and shall provide seven (7) days a week, including holidays, a planned regimen of twenty-four (24) hour professionally directed evaluation, care, and treatment for chemically dependent adolescents, under written policy and procedures, and a permanent facility. Adolescents shall participate in at least twenty-one (21) therapeutic hours of substance abuse-related services per week, including but not limited to group, individual and family counseling and life skills training, which shall be in addition to recreational activities, self-help supportive meetings, and other activities. Consumers attending academic training shall participate in fifteen (15) or more hours of therapeutic substance abuse treatment related services per week, which shall be in addition to recreational activities, self-help supportive meetings and other activities.

(b) The residential treatment program shall maintain written programmatic descriptions and operational methods addressing the following:
(1) Environment:
~~(A) The facility shall be a freestanding properly licensed facility, including by the Department of Human Services as a "Residential Child Care Facility";~~
(~~B~~A) The facility shall maintain an environment which is supportive of physical and emotional growth and development~~, and~~ which is appropriate to the needs of adolescents;
(~~C~~B) The facility shall provide space, both indoor and outdoor, for the recreational and social needs of adolescents;
(~~D~~C) The facility shall group consumers appropriately by age, developmental level, gender, and treatment needs;
(~~E~~D) The program may provide transportation to activities in the community, as appropriate. Vehicles used for transportation should not be labeled in any way that calls attention to the facility or the vehicle's occupants; and
(~~F~~E) The program shall provide study areas within the facility, and shall provide ancillary study materials such as encyclopedias, dictionaries, and educational resource texts and materials.
(2) Support systems:
(A) The facility shall make available a licensed physician by telephone twenty-four (24) hours per day, seven (7) days per week;
(B) The facility shall maintain ~~annual~~ annually renewed service agreements, approved by current facility director, with substance abuse treatment programs providing more and less intensive levels of care, and other community resources to provide a continuum of treatment services;
(C) The facility shall have specialized professional consultation or supervision available;
(D) The facility shall have service agreements to provide for medical, dental, special health needs, and other therapeutic needs of adolescents;
(E) The facility shall provide clinically appropriate public educational services in compliance with applicable Oklahoma laws;
(F) The facility shall provide emergency services and crisis interventions; and
(G) The facility ~~shall have~~ document service agreements, to foster cooperative service efforts, with the local DHS office, Youth Services, youth shelters, local public school system, and other services appropriate for youth.
(3) Staff:
(A) The facility shall document that treatment professionals ~~professional treatment staff shall be~~ are knowledgeable regarding the biopsychosocial aspects of substance abuse, have received training in cultural, gender and age specific counseling techniques, child and adolescent development and issues, evidenced based practices, and individual and family counseling theory and techniques.~~ and possess one of the following:~~
~~(i) a current license as a physician in the State of Oklahoma; or~~
~~(ii) a doctoral degree in psychology; or~~
~~(B) Staff not meeting one the above requirements shall have a current certification as a CADC or be working toward CADC certification; and shall have,~~
~~(i) a masters degree in counseling, psychology, social work, or an addiction related field; or~~
~~(ii) a minimum of one year of supervised experience in an addiction treatment setting and a~~

~~bachelor's degree in counseling, psychology, social work, or a bachelor's degree in a related field and at least 12 hours in counseling coursework; or~~

~~(iv) a current license as a registered nurse in the State of Oklahoma, plus a minimum of two years of supervised experience in an addiction treatment setting; or~~

~~(v) current certification as a certified alcohol counselor.~~

(~~C~~B) Maintain documentation ~~the professional treatment staff is~~ that treatment professionals are knowledgeable regarding the identification of violence and domestic violence, spousal or partner abuse, child abuse and neglect, parent and sibling abuse, normal and abnormal adolescent development, and family dynamics;

(~~D~~C) Insure at least two (2) staff members are awake and on duty twenty-four (24) hours a day, seven (7) days a week;

(~~E~~D) Maintain documentation all staff have been trained in either the Creating a Positive Environment (CAPE) offered by ODMHSAS, or Managing Aggressive Behavior (MAB), or another generally accepted method of managing aggressive behaviors;

(~~F~~E) If educational services are provided, the facility shall maintain documentation to verify that providing staff meets all state requirements for education or special education;

(~~G~~F) Staff shall be knowledgeable regarding the facility required education, and training requirements and policies;

(~~H~~G) Staff shall be, at least, twenty-one (21) years of age or older; and

(~~I~~H) The facility shall document in personnel records all education training and experience stated in above prior to the provision of direct care service.

(4) Treatment services:

(A) A multidisciplinary team approach shall be utilized in providing daily substance abuse treatment services to assess and address the individual needs of each adolescent;

(B) Services shall include, but not be limited to, family counseling, individual and group counseling, educational groups, occupational and recreational activities, life skills training, habilitative and rehabilitative services, relapse prevention, and socialization;

(C) Services shall be provided in appropriate groups according to age, gender, developmental level, treatment status, and individual needs;

(D) The facility shall provide clinically appropriate public educational services in compliance with applicable Oklahoma law;

(E) Consumers shall participate in educational programs within the community, when clinically indicated, including extracurricular activities; and

(F) ~~Professional treatment staff~~ Treatment professionals shall confer on a regular basis with school personnel, including the provision of necessary information, when appropriate, on the educational progress of the consumer, and shall assess and respond to the needs for changes in the educational plans.

(5) Assessments, treatments plans and review:

(A) Biopsychosocial assessments shall be made on all adolescents;

(B) A physical examination shall be conducted by a licensed physician, to include physical assessment, health history, immunization status, and evaluation of motor development and function, speech, hearing, visual and language functioning;

(C) The facility shall facilitate and document the involvement and participation of family members or significant others in the assessment, treatment, rehabilitation, and continuing treatment needs of each consumer;

(D) Treatment planning shall include the participation of the adolescent, including treatment and service plans, decision making, and implementation of the treatment and service plan to the extent possible;

(E) Each consumer shall have an individualized treatment plan, to include problem formulation, treatment goals, and measurable and behavioral treatment objectives; and

(F) Treatment plan reviews shall be conducted ~~as prescribed~~ as noted in the treatment plan, or as required by the consumer's condition at a minimum of once per month.

(6) Documentation: Compliance of the written documentation will be determined based on the criterion listed in 450:18-7-101.

(A) Progress notes in the consumer's record shall clearly reflect the implementation of treatment and case management plans and services provided~~,and consumer's response to treatment;~~.

(B) Documentation shall reflect that each consumer receives a minimum of twenty-one (21) hours of therapeutic services each week or fifteen (15) or more if participating in academic training~~; and~~.

~~(C) Records shall document the start and stop time or and the amount of time spent in providing each treatment service.~~

(7) The program provides documentation of the following community living components:

(A) A written daily schedule of activities.

(B) Quarterly meetings between consumers and the program personnel.

(C) Recreational activities to be utilized on personal time.

(D) Personal space for privacy.

(E)Security of consumer's property.

(F) A clean, inviting and comfortable setting.

(G) Evidence of individual possessions and decorations.

(H) Daily access to nutritious meals and snacks.

(I) Policy addressing separate sleeping areas for the consumers based on:

(i) Gender;

(ii) Age; and

(iii) Needs.

(c) Compliance with 450:18-3-161 may be determined by a review of the following:

(1) Licenses;

(2) Policy and procedures;

(3) Treatment and service protocols;

(4) Personnel records, official certified college transcripts, professional certificate(s), documentation of professional work experience, ongoing inservice training(s);

(5) Treatment records;

(6) Interviews with staff and consumers; and

(7) Other facility documentation.

PART 19. HALFWAY HOUSE SERVICES

450:18-3-181. Halfway house services

(a) Halfway house services shall provide low intensity treatment in a supportive living environment to facilitate reintegration into the community. Major emphasis shall be on continuing substance abuse care and follow-up, and community ancillary services in an environment supporting continued abstinence. Consumers shall participate in a minimum of six (6) hours of structured ~~addiction~~ substance abuse treatment and rehabilitation services weekly, in addition to recreational activities, self-help supportive meetings, and other activities.

(b) Each facility shall maintain written programmatic descriptions and operational methods addressing the following:

(1) Environment: The facility shall be a freestanding facility or portion of a related healthcare facility having at least one (1) each of toilet, lavatory, and bathing facilities for each eight (8) residents.

(2) Support system:

(A) A licensed physician shall be available, by telephone twenty-four (24) hours a day, seven (7) days a week;

(B) The facility shall have an annual ~~qualified~~ service agreement with a licensed hospital or a licensed physician with admitting privileges to a hospital;

(C) The facility shall have a written plan for emergency procedures, approved by a licensed physician;

(D) The facility shall have supplies, as designated by the written Emergency Procedures Plan, which shall be accessible to staff at all times;

(E) The facility shall maintain ~~annual~~ annually renewed service agreements, approved by current facility director, with substance abuse treatment programs providing more intensive and less intensive levels of care and other community resources to provide a continuum of treatment services, including, but not limited to, employment offices and the Oklahoma Department of Rehabilitation Services; and

(F) Specialized professional consultation or professional supervision shall be available.

(3) Staff:

(A) ~~Professional treatment staff~~ Treatment professionals shall be knowledgeable regarding biopsychosocial dimensions of substance abuse, evidenced based practices, counseling theory and technique, and trained in gender, cultural and age-specific issues. ~~and possess one of the following;~~

~~(i) a current license as a physician in the State of Oklahoma; or~~

~~(ii) a doctoral degree in psychology; or~~

~~(B) Staff not meeting one the above requirements shall have a current certification as a CADC or be working toward CADC certification; and shall have,~~

~~(i) a masters degree in counseling, psychology, social work, or an addiction related field; or~~

~~(ii) a minimum of one year of supervised experience in an addiction treatment setting and a bachelor's degree in counseling, psychology, social work, or a bachelor's degree in a related field and at least 12 hours in counseling coursework; or~~

~~(iii) a current license as a registered nurse in the State of Oklahoma, plus a minimum of two years of supervised experience in an addiction treatment setting; or~~

~~(iv) current certification as a certified alcohol counselor.~~

(~~C~~B) Staff shall be knowledgeable regarding facility-required education, training, and policies;

(~~D~~C) Staff shall be knowledgeable about emergency procedures as specified in the Emergency Procedures Plan;

(~~E~~D) The facility shall have staff members on site twenty-four (24) hours per day, seven (7) days per week;

(~~F~~E) Staff shall be, at least, twenty-one (21) years of age or older; and

(~~G~~F) The facility shall document in personnel records all education, training and experience stated above prior to the provision of direct care services.

(4) Treatment services:

(A) The facility shall have scheduled rehabilitative services to assess and address the individual needs of each consumer. Such services shall include, but not limited to, family counseling, individual and group counseling, vocational counseling, educational groups, relapse prevention, life skills, and recreational activities.

(5) Assessments, treatments plans, and review:

(A) Individual biopsychosocial assessments or updates shall be completed for all consumers;

(B) Individualized treatment plans shall be developed for each consumer and shall include, but not be limited to, problem formulations, treatment goals, and measurable and behavioral treatment objectives.

(6) Documentation: Compliance of the written documentation will be determined based on the criterion listed in 450:18-7-101.

(A) Documentation shall reflect each consumer has received a minimum of six (6) hours of service each week; and

(B) Documentation shall reflect the consumer to work or attempt to find work while receiving halfway house services.

~~(A) The consumer's record shall reflect implementation of the treatment plan and the consumer's response to treatment designed to address identified alcohol or other drug and related problems;~~

~~(B) Documentation shall reflect each consumer has received a minimum of six (6) hours of service each week; and~~

~~(C) Records shall document the start and stop time or and the amount of time spent in providing each service.~~

(c) Compliance with 450:18-3-181 may be determined by a review of the following:

(1) Licenses;

(2) Policy and procedures;

(3) Treatment protocols;

(4) Personnel records, official certified college transcripts, professional certificate(s), documentation of professional work experience, ongoing inservice training(s);

(5) Treatment records;

(6) Interviews with staff and consumers; and

(7) Other facility records.

PART 20. ADOLESCENT HALFWAY HOUSE SERVICES

450:18-3-190. Adolescent halfway house services

(a) Adolescent halfway house treatment shall provide low intensity ~~addiction~~ substance abuse treatment in a supportive living environment to facilitate reintegration into the home or community. Emphasis shall be on applying recovery skills, relapse prevention, independent living skills, educational and vocational skills. Consumers shall participate in at least six (6) hours of structured ~~addiction~~ substance abuse treatment and rehabilitation services weekly. Self-help meetings are not included in the required hours.

(b) Each facility shall maintain written programmatic descriptions and operational methods addressing the following:

(1) Environment:

(A) The facility shall be a freestanding facility or portion of a related healthcare facility having at least one (1) each of toilet, lavatory, and bathing facilities for each eight (8) residents;

(B) The facility shall maintain an environment which is supportive of physical and emotional growth and development, and which is appropriate to the needs of adolescents;

(C) The facility shall provide space, both indoor and outdoor. In co-ed treatment, the facility shall maintain separate sleeping quarters for males and females;

(~~E~~D) The program may provide transportation to activities in the community as appropriate. Vehicles used for transportation should not be labeled in any way that calls attention to the facility or the vehicle's occupants; ~~and~~

(~~F~~E) The program shall provide study areas within the facility, and shall provide ancillary study materials such as encyclopedias, dictionaries and educational resource texts and materials~~.~~ ;and

(~~G~~F) The facility shall be licensed by the Oklahoma State Department of Human Services as a "Residential Child Care Facility."

(2) Support systems:

(A) A licensed physician shall be available by telephone twenty-four (24) hours per day, seven (7) days a week;

(B) The facility shall maintain ~~annual~~ annually renewed service agreements, approved by current facility director, with substance abuse treatment programs providing both more and/ or less intensive ~~and less intensive~~ levels of care to provide a continuum of treatment services;

(C) Specialized professional consultation or supervision, emergency services, and crisis intervention shall be available;

(D) The facility shall maintain service agreements to provide for medical, dental, special health needs, and other therapeutic needs of adolescents;

(E) The facility shall provide clinically appropriate public educational services in compliance with applicable Oklahoma laws;

(F) The facility shall have a written plan for emergency procedures and staff shall have access to supplies as designated in this plan;

(G) The facility shall have ~~a qualified~~ an annual service agreement with a licensed hospital or a licensed physician with admitting privileges to a hospital.

(3) Staff:

(A) ~~The professional treatment staff~~ Treatment professionals shall be knowledgeable regarding the biopsychosocial aspects of substance abuse, evidenced based practices, child and adolescent development and issues, have training in gender, cultural, and age-specific issues, individual and family counseling theory and techniques. ~~and possess one of the following:~~

~~(i) a current license as a physician in the State of Oklahoma; or~~

~~(ii) a doctoral degree in psychology; or~~

~~(B) Staff not meeting one the above requirements shall have a current certification as a CADC or be working toward CADC certification; and shall have,~~

~~(i) a masters degree in counseling, psychology, social work, or an addiction related field; or~~

~~(ii) a minimum of one year of supervised experience in an addiction treatment setting and a bachelor's degree in counseling, psychology, social work, or a bachelor's degree in a related field and at least 12 hours in counseling coursework; or~~

~~(iv) a current license as a registered nurse in the State of Oklahoma, plus a minimum of two years of supervised experience in an addiction treatment setting; or~~

~~(v) current certification as a certified alcohol counselor.~~

(~~C~~B) Document that treatment professionals ~~professional treatment staff is~~ are knowledgeable regarding the identification of violence and domestic violence, spousal or partner abuse, child abuse and neglect, parent and sibling abuse, normal and abnormal adolescent development, and family dynamics;

(~~D~~C) The facility shall have staff members on duty twenty-four (24) hours per day, seven (7) days a week;

(~~E~~D) Staff shall be knowledgeable about emergency procedures as specified in the Emergency Procedures Plan;

(~~F~~E) If educational services are provided, documentation shall be maintained to verify providing staff meet all state requirements for education or special education;

(~~G~~F) Staff shall be knowledgeable regarding the facility-required education, and training requirements and policies;

(~~H~~G) Staff shall be at least twenty-one (21) years of age or older; and

(~~I~~H) The facility shall document in personnel records all education, training and experience stated above prior to the provision of direct care services.

(4) Treatment services:

(A) The facility shall provide substance abuse services to assess and address the individual needs of each adolescent, to include, but not be limited to, individual, group and family counseling, educational groups, life skills training, habilitative and rehabilitative services, socialization, relapse prevention, and self-help groups.

(B) The facility shall provide services in appropriate groups according to age, gender, developmental level, and individual needs;

(C) The facility shall provide for clinically appropriate public educational services in compliance with applicable Oklahoma law;

(D) Consumers may participate in educational programs in the community, when clinically indicated, including extracurricular activities;

(E) ~~Professional treatment staff~~ Treatment professionals shall confer on a regular basis with school personnel, including the provision of necessary information, when appropriate, on the educational progress of the consumer and shall assess and respond to the needs for changes in the educational plans.

(5) Assessment, treatment plans and review;

(A) Biopsychosocial assessment shall be completed on all adolescents;

(B) A physical examination shall be conducted by a licensed physician, to include physical assessment, health history, immunization status, and evaluation of motor development and functioning, speech, hearing, visual and language functioning, if no records are available on admission reflecting such examination within the previous year;

(C) The facility shall facilitate involvement and participation of family members or significant others in the assessment, treatment, rehabilitation, and continuing treatment needs of each consumer;

(D) Treatment planning shall include the participation of the adolescent, including treatment and service plans, decision making, and implementation of the treatment and service plan to the extent possible;

(E) Each consumer shall have an individualized treatment plan, to include problem formulation, treatment goals, and measurable treatment objectives;

(F) Treatment plan reviews shall be conducted at specific times as noted in the treatment plan.

(6) Documentation: Compliance of the written documentation will be determined based on the criterion listed in 450:18-7-101. Documentation in each consumer record shall reflect that consumers receive a minimum of six (6) hours of therapeutic services each week.

~~(A) Progress notes in the consumer record shall clearly reflect the implementation of treatment and case management plans and services provided, and consumer response to treatment;~~

~~(B) Documentation in each consumer record shall reflect consumer receive a minimum of six (6)hours of therapeutic services each week; and~~

~~(C) Records shall document the start and stop time or and the amount of time spent in providing each treatment service.~~

(c) Compliance with above may be determined by a review of the following:

(1) Licenses;

(2) Policy and procedures;

(3) Treatment protocols;

(4) Personnel records, official ~~certified~~ college transcripts, professional certificate(s), documentation of professional work experience, ongoing inservice training(s);

(5) Treatment records;

(6) Interviews with staff and consumers; and

(7) Other facility records.

PART 21. HALFWAY HOUSE SERVICES FOR PERSONS WITH DEPENDENT CHILDREN

450:18-3-201. Halfway house services for persons with dependent children

(a) Halfway house services for persons with dependent children shall provide ~~addiction and chemical dependency~~

substance abuse treatment services in a residential setting and shall include a planned regimen of twenty-four (24) hour supervised living arrangements, to include professionally directed evaluation, care, and treatment, under a defined set of policy and procedures, in a permanent setting. Treatment shall offer individualized services and treatment, and consumers shall participate in at least six (6) hours of supportive services, parenting, and child development services per week for adults, and six (6) therapeutic hours of services for children, excluding infants.

(b) Each facility shall maintain written programmatic descriptions and operational methods addressing the following:

(1) Environment: The facility shall be a freestanding facility providing family-style living arrangements, indoor recreational space for children and families, and safe, protected outdoor recreational space. The facility shall provide for materials and design of space appropriate for ages and development of children receiving services.

(2) Support system:

(A) A licensed physician shall be available by telephone twenty-four (24) hours per day, seven (7) days a week;

(B) The facility shall maintain ~~annual~~ annually renewed service agreements, approved by current facility director, with substance abuse treatment programs providing more and less intensive levels of care, and other community resources to provide a continuum of treatment services;

(C) The facility shall maintain annual service agreements or contracts to provide both prenatal and postnatal care for pregnant women and pediatric care for children;

(D) The facility shall ensure children's access to the fullest possible range of medical services available, such as health screening, well-child health care, screening in speech, language, hearing, and vision, and verification of immunization records;

(E) The facility shall have access to emergency health care provided as necessary;

(F) The facility shall have access to public school for school age children, and facilitation of the child's receiving the benefits of Public Laws 99-142;

(G) The facility staff shall document a liaison with the local DHS offices to:

(i) Promote preservation of families;

(ii) In cases of investigation of abuse, provide instruction in positive parenting behavior, if requested by DHS, and only with parental consent, provide daily observations of parent-child interaction;

(iii) Expedite investigations in a timely manner; and

(iv) Ensure prompt facility response to situations which require immediate intervention.

(3) Staff:

(A) Treatment professionals ~~professional treatment staff~~ are knowledgeable regarding substance abuse, have received training in gender, cultural and age-specific issues and counseling techniques, evidenced based practices, services for infants, toddlers, preschool children and school-age. ~~and possess one of the following:~~

~~(i) a current license as a physician in the State of Oklahoma; or~~

~~(ii) a doctoral degree in psychology; or~~

(B) ~~Staff not meeting one the above requirements shall have a current certification as a CADC or be working toward CADC certification; and shall have,~~

~~(i) a masters degree in counseling, psychology, social work, or an addiction related field; or~~

~~(ii) a minimum of one year of supervised experience in an addiction treatment setting and a bachelor's degree in counseling, psychology, social work, or a bachelor's degree in a related field and at least 12 hours in counseling coursework; or~~

~~(iv) a current license as a registered nurse in the State of Oklahoma, plus a minimum of two years of supervised experience in an addiction treatment setting; or~~

~~(v) current certification as a certified alcohol counselor.~~

~~(C) Adult service~~ Treatment professionals ~~staff have been~~ are minimally trained in:

(i) The identification of domestic violence, spousal or partner abuse, and child abuse and neglect, with a special emphasis on failure to thrive and sexual abuse of children.

(ii) Child development and age appropriate behaviors.

(iii) Parenting skills appropriate to infants, toddlers, pre-school and school age children.

(iv) The impact of substances and substance abuse on parenting and family units.

(~~D~~C) Staff working with children shall be knowledgeable and demonstrate job appropriate functional comprehension of:

(i) The impact of prenatal drug and alcohol exposure on child development.

(ii) The effect of substance abuse on parenting, children and families.

(iii) Parenting skills appropriate to infants, toddlers, pre-school and school age children.

(iv) Common child behavioral and developmental problems.

(v) Appropriate play activities according to developmental stage.

(vi) Recognition of sexual acting out behavior.

(vii) The substance abuse recovery process, especially as related to family units.

(~~E~~D) The facility shall have staff members on site and awake twenty-four (24) hours per day, seven (7) days per week;

(~~F~~E) Staff shall be knowledgeable regarding facility-required education and training requirements and policies.

(~~G~~F) Staff shall be, at least, twenty-one (21) years of age or older; and

(~~H~~G) The facility shall document in personnel records all education, training and experience stated ~~in this rule~~ above prior to the provision of direct care services.

(4) Treatment services:

(A) Daily (twenty-four [24] hours a day, seven [7] days a week) ~~addiction~~ substance abuse services shall be provided to assess and address individual needs of each consumer. Services shall include, but are not limited to, family counseling, individual and group counseling, parenting, child development, educational groups, relapse prevention, life skills, and recreational activities;

(B) Services for children shall be provided and include a minimum of six (6) hours per week of therapeutic units for each child consisting of, but not limited to, assessment, individual, family and group counseling via art and recreational activities, etc. according to the development of the child. Special attention will be given to the high risk of sexual abuse, sexual acting out by children, suicide risk, and the treatment of toddlers and preschool children;

(C) Children's services, excluding infants, shall be provided which address the significant issues and needs documented in either or both the child's and the parent's assessment and shall utilize both structured and unstructured therapeutic activity. Services shall address the significant issues and needs documented in the parent's or child assessment and create and enhance positive self image and feelings of self-worth, promote family unity, teach personal body safety and positive school interactions, and to prevent alcohol, tobacco and other drug use;

(D) Infant services, ages birth to two (0-2) years old, shall be provided and shall consist, at a minimum, of developmentally appropriate parent-child bonding (interactive) activities and play therapy as determined by mother's treatment plan.

(E) Case management services for each adult and each child shall be provided, which includes the assessment of, and planning and arranging for~~,~~ recovery needs.

(5) Assessments, treatment plan and review:

(A) Individual biopsychosocial assessments shall be completed on all consumers. In addition, there may also be consultation, screenings, and referrals, if needed;

(i) Assessments of children accompanying their parent into treatment, residential or halfway house levels of care, shall include, but not be limited to, the assessment of:

(I) mental health issues,

(II) parent-child treatment,

(III) developmental stage,

(IV) educational needs,

(V) parent related issues, and

(VI) family issues related to the child.

(ii) Assessments of the parent bringing their child(ren) into treatment, residential or halfway house levels of care, shall include, but not be limited to, assessments of:

(I) parenting skills (especially in consideration of the child's issues,

(II) knowledge of age appropriate behaviors,

(III) parental coping skills,

(IV) personal issues related to parenting, and

(V) family issues as related to the child.

(B) Individualized treatment plans, for both the parent and their child, shall be completed and shall minimally include parent-child issues and problem formulation; measurable treatment goals and objectives; and plans to meet recovery needs.

(C) Treatment plan reviews shall be conducted as ~~prescribed~~ as noted in the treatment plan, or as required by consumers condition at a minimum of once per month.

(6) Documentation: Compliance of the written documentation will be determined based on the criterion listed in 450:18-7-101.

(A) Progress notes in consumer's and his or her children's records shall clearly reflect case management assessments, plans and implementation of plans, and implementation of the treatment plan and services provided, in addition to the consumer's, parent and child, response to treatment;

(B) Progress notes shall document observations of parent and child interactions especially those indicative of therapeutic need or progress;

(C) Documentation shall reflect each consumer, adult and child, has received a minimum of six (6) hours of service each week addressing issues and needs indicated in the assessments (parent or child~~); and~~ .

~~(D) Records shall document the start and stop time or and the amount of time spent in providing each treatment service.~~

(c) Compliance with 450:18-3-201 may be determined by a review of the following:

(1) Licenses;

(2) Policy and procedures;

(3) Treatment protocols;

(4) Personnel records, official ~~certified~~ college transcripts, professional certificate(s), documentation of professional work experience, ongoing inservice training(s);

(5) Treatment records;

(6) Interviews with staff and consumers; and

(7) Other facility documentation.

PART 25. ~~OPIOID SUBSTITUTION TREATMENT PROGRAMS AND OPIATE ANTAGONISTS AND OPIATE AGONISTS~~ MEDICATION ASSISTED TREATMENT

450:18-3-241. Opioid treatment program services

(a) The facility shall have written policy and procedure addressing operational methods and documentation for the following:

(~~a~~b) All certified substance abuse facilities having opioid substitution treatment programs shall be in compliance with Oklahoma Statute 43A, §§ 3-601, 3-602 and 3-603.

(~~b~~c) Opioid Substitution Treatment Programs shall be approved by the Alcohol and Drug Abuse Prevention, Training and Rehabilitation Authority (State Board of Mental Health and Substance Abuse services [43A O.S. § 3-404.

(~~c~~d) Any conviction for a violation of any rule in this Part which has been promulgated pursuant to the provisions of 43A O.S. § 3-601 shall be a felony [43A O.S. § 3-601(B)].

(~~d~~e) Any federally designated Class II controlled dangerous substance when used by a opioid substitution treatment program for persons with a history of ~~addiction~~ substance abuse, or physiologic dependence, shall only be used in treating persons with a history of ~~addiction~~ substance abuse of two (2) years or more, or persons with a one (1) year history, as defined by Chapter 1, Part 8 of Title 42 of the Code of Federal Regulations, and written documentation from the agency at which another type of treatment was unsuccessfully ~~of attempting~~attempted ~~and failing at another type of treatment~~.

(~~e~~f) If clinically appropriate, the program physician may waive the requirement of a one (1)-year history of opioid ~~addiction~~ substance abuse for; consumer within six (6) months of release from a penal institution, for consumer with a pregnancy verified by the program physician and for consumer having received treatment within two (2) years of discharge.

(~~f~~g) Opioid substitution treatment programs shall report all persons receiving opioid substitution treatment to the ODMHSAS. This report shall be made in a form requested by ODMHSAS and within twenty-four (24) hours of admission or discharge of any patient. Opioid substitution treatment programs shall also participate in the registries of adjoining states when the programs are within one hundred twenty-five (125) miles of the boundaries of the adjoining state.

(~~g~~h) Opioid substitution treatment programs shall notify the ODMHSAS of plans to either close, or relocate the program not less than thirty (30) days prior to said closure, or relocation. Relocation shall be contingent upon ODMHSAS certification of any treatment location.

(~~h~~i) An opioid substitution treatment program shall use opioid antagonists and agonists in conjunction with other treatment modalities such as, but not limited to, individual, family and group therapy; vocational training and placement; and other modalities enhancing positive life style changes in the consumer.

(j) An opioid substitution treatment program shall require each consumer to undergo a complete, fully documented physical examination by a program physician or a primary care physician before admission to the opioid substitution treatment program.

(k) Each consumer accepted for treatment at an opioid substitution treatment program shall be assessed no less than annually by a program physician to determine the most appropriate combination of services and treatment

(~~i~~l) Consumers accepted for opioid substitution treatment shall attend prescribed counseling as mandated in his or her individualized treatment plan.

(~~j~~m) Opioid substitution treatment programs shall be in compliance with the following:

(1) Currently licensed by the U. S. Drug Enforcement Agency; approved by the Substance Abuse and Mental Health Service Administration.

(2) The program shall operate a minimum of forty (40) hours per week in outpatient settings and twenty-four (24) hours per day in inpatient and residential program settings.

(3) Medication dispensing shall be available six (6) days per week in outpatient programs; and seven (7) days per week in inpatient and residential programs.

(4) Outpatient programs shall provide at least two (2) hours per day either prior to 9:00 a.m. or after 5:00 p.m. for dispensing medication and counseling services.

(5) Consumer's daily opioid dosage shall conform with guidelines as set for in 42 CFR (Code of Federal Regulations), Chapter 1, Part 8.

(6) The attending physician shall make all recommendations for medication dosages.

(7) All female consumers shall have a pregnancy test on admission and at least annually thereafter, unless otherwise indicated.

(8) Take-home medication doses may only be supplied in full compliance with those conditions specified in 42 CFR, Chapter 1, Part 8.

(9) Transient consumers shall be served, and provided for, in accordance with written policy and procedures which shall be in compliance with Federal Drug Administration Guidelines for opioid substitution treatment programs.

(10) A standard medication fee for consumers receiving 100 mg or less of methadone per week shall be no more than $55.00. The fee for consumers receiving more than 100 mg of methadone shall be no more than $65.00.

(11) The program shall develop specific program requirements for consumers. Noncompliance may result in termination, depending upon the nature of the violation. These rules shall encompass, but are not limited to, physical violence directed at staff or other consumers; possession, selling, distributing, using, or otherwise "dealing" in any illicit drug or chemical; abusive language or behavior; positive urine tests for non-prescribed medications and drugs; or failure to keep scheduled counseling sessions.

(12) Security shall be maintained over all stocks of medication, the manner in which it is received, stored and distributed according to the regulations of the Drug Enforcement Administration.

(13) During dispensing hours, at least two (2) staff members shall be present on the premises.

(14) Only medically licensed personnel shall be allowed access to, or responsibility for, opioid medications.

(15) Additional requirements, and exceptions, for each type of opioid substitution treatment services shall apply, as required by 42 CFR, Chapter 1, Part 8.

(~~k~~n) Admission requirements for opioid substitution treatment programs:

(1) Admissions to opioid substitution treatment programs shall be limited to persons meeting the current applicable ASAM Patient Placement Criteria admission criteria. These criteria shall be a part of the programs written policy and procedures.

(2) Opioid substitution treatment programs shall evaluate as part of the biopsychosocial assessment

(A) Social History,

(B) Physical Examination,

(C) Ordered Laboratory Reports, and

(D) Psychiatric Evaluation when indicated and ordered.

(3) All applicants shall sign a written consent for opioid treatment.

(4) The facility shall document the need for admission of the applicant to the opioid substitution treatment program.

(5) Upon completion of the admission evaluation an individualized treatment plan shall be developed, including, but not limited to:

(A) Projected length of treatment;

(B) Medication Protocol;

(C) Measurable long and short term treatment goals;

(D) Primary and supportive services to be utilized with the consumer;

(E) Type and frequency of therapeutic activities in which consumer will participate;

(F) Documentation of the consumer's participation in the development of the plan;

(G) Staff who will be responsible for the consumer's treatment.

(~~l~~o) Treatment and rehabilitation services shall be made available to all consumers and shall minimally include:

(1) A minimum of one (1) counseling session per week until the consumer is fully stabilized;

(2) Individual and group counseling for spouses, parents, or significant others as needed;

(3) Vocational or educational counseling and referral; and

(4) Referral for additional services as outlined by the individualized treatment plan.

(~~m~~p) Compliance with 450:18-3-241 may be determined by a review of the following:

(1) Facility policy and procedures;

(2) Consumer records;

(~~4~~3) Interviews with staff and consumers; and

(~~5~~4) Any other supporting documentation.

450:18-3-242. Programs using opiate antagonist or long acting opiate agonist

(a) A certified substance abuse facility providing a program using an experimental opiate blockade or a long acting opiate agonist in the treatment of opioid ~~addiction~~ substance abuse shall have documentation of approval by the Federal Drug Administration; and comply with all other federal and state statutes and regulations governing such programs.

(b) The program shall provide at least two (2) hours of services per day before 9:00 A.M. or after 5:00 P.M. for dispensing and counseling.

(c) Compliance with 450:18-3-242 may be determined by a review of facility policy and procedures, and documentation of FDA approval.

SUBCHAPTER 5. ANCILLARY SERVICES AND ACTIVITIES

450:18-5-3.1. Hygiene and sanitation

(a) Residential facilities shall provide the following services and applicable supporting documentation:

(1) Lavatories in a minimum ratio of one per each eight resident beds.

(2) Toilet facilities in a minimum ratio of one per eight resident beds. Each toilet room shall include a lavatory in the same room or immediately adjacent thereto.

(3) Bathing facilities in a minimum ratio of one tub or shower per each eight resident beds.

(4) Sewage discharge into a municipal sewerage system or collected, treated and disposed of in an independent sewerage system which is approved by the Oklahoma State Department of Health, Environmental Health Service.

(5) A facility free of insects and rodents through regular inspection and treatment by a licensed pest control operator.

(6) Solid waste disposal through public systems or in a manner approved by the local agency having jurisdiction and the Oklahoma State Department of Health, Environmental Health Service.

(7) Water obtained from an approved public water supply or tested at least quarterly and treated as necessary, thereby maintaining a determination as an approved water supply by the authority having jurisdiction and the Oklahoma State Department of Health, Environmental Health Service.

(8) Linen in quantities adequate to provide at least two changes of bedding each week.

(9) House-keeping services so that a hygienic environment is maintained in the facility.

(b) Outpatient treatment facilities shall provide:

(1) Lavatories and toilet facilities in a minimum ratio of one per twenty persons.

(2) Water and sewerage in the same manner as prescribed for residential facilities.

(3) House-keeping services so that a hygienic environment is maintained in the facility.

450:18-5-3.2. Standards for food service

The following shall be applicable to all residential facilities and to any outpatient facilities which provide an on-premise meal service.

(1) Storage, preparation and serving of food shall be in compliance with the requirements of the Oklahoma State Department of Health, Environmental Health Service regulations governing public feeding establishments.

(2) Dishwashing may be accomplished by either mechanical dishwashers or by approved manual methods. If mechanical dishwashers are used, the final rinse shall be in clear water of 180 degrees Fahrenheit, or in compliance with the Oklahoma State Department of Health regulations. Manual procedures, if used, shall follow a written procedure which outlines the steps followed, temperature of cleaning and rinsing solutions, detergents and chemicals used, etc., and shall be specifically approved by the local or Oklahoma State Department of Health.

(3) Equipment used in the preparation and handling of food shall bear the seal of the National Sanitation Foundation (NSF), or document compliance with the requirements of NSF.

(4) Ice used in contact with food or drink shall come from a source approved by the Oklahoma State Department of Health. Transportation, storage, handling, and dispensing shall be in a sanitary manner approved by the Oklahoma State Department of Health.

450:18-5-4. Dietetic services

(a) Any facility which provides twenty-four (24) hour per day care shall have a written plan describing the organization and delivery of dietetic services (either directly or through contract) to meet the dietary needs of consumers.

(b) Menus for meals provided by the facility shall be reviewed annually, and as needed for consumers with special dietary needs (diabetes, pregnancy, religious requirements, etc.). This review shall be made by an Oklahoma Registered Dietician. Approval of the review shall be documented by the dietician's signature, American Dietetic Association (AA) Registration Number (RD#) and Oklahoma License Number (LD#), and date of the review.

(c) Dietetic services, including health policy and procedures for food service staff, other staff and consumers performing food service duties as a part of their treatment plan, shall be in compliance with all applicable federal, state, and local statutes and regulations, and shall be so noted in facility policy and procedure. All programs preparing meals provided to consumers shall document, on an annual basis, compliance with Oklahoma Department of Health rules and regulations pertaining to kitchen facilities.

(d) Food shall be served in an appetizing and attractive manner, at realistically planned mealtimes, and in a congenial and relaxed atmosphere.

(e) Information pertinent to special dietetic needs of consumers shall be entered into the consumer's treatment records, and when medically indicated, forwarded to parties having permission to receive information regarding consumer's treatment.

(f) Compliance with 450:18-5-4 may be determined by a review of the following:

(1) Facility policy and procedures;
(2) Written plan for dietetic services;
(3) Menus;
(4) Menu approvals;
(5) OSHD reports; and
(6) Any other supporting facility documentation.

450:18-5-5. Pharmacy services and medications

(a) Facilities providing pharmacy services, either as a part of their regular business operation or through a sub-corporation or other related business entity, shall comply with all federal and state statutes and regulations regarding drugs and pharmacies, including, but not limited to, Oklahoma Administrative Code, Title 535. Facility policy and procedure shall indicate such compliance.

(b) For services neither provided in a licensed hospital nor as a part of a licensed hospital's services, the facility shall have written policy and procedure including, but not limited to, the following:

(1) Staff who are not licensed to dispense or administer medication shall not dispense or administer medication;

(2) Medication shall not be withheld from a consumer for whom the medication was prescribed for non-medical reasons~~;~~ and documentation provided for why the medication was to be withheld.

(3) Prescription medications shall be stored in a non-residential area under lock, with the exception of those medications which may be needed by a consumer on a medical emergency basis; and

(4) Consumers shall keep a log of all self-administered medications (prescribed or over-the-counter).

(c) Compliance with 450:18-5-5 may be determined by a review of policy and procedure; consumer records; interviews with staff and consumers; and any other supporting facility documentation.

450:18-5-6. Day school

(a) Facilities providing a day school (i.e., an academic formal educational program) either as a primary focus of their services, or as an ancillary service, shall be in compliance with all applicable rules and regulations of the Oklahoma Department of Education, and of the local school district in which the day school is located.

(b) In addition, the facility shall provide the following documentation:

(1) Academic services provided are accredited by the local school district or the Oklahoma Department of Education; ~~and~~

(2) All teachers shall have a valid license or certificate from the Oklahoma State Board of Education for the teaching position they are employed to fill; ~~and~~

(3) Therapeutic units are provided by staff trained in the issues of substance abuse; ~~and~~

(4) Each student shall have a home school; and

(5) Each student shall have a daily activity schedule and individualized treatment plan based on assessment of need, and formulated for both educational and counseling therapy needs.

(c) Compliance with 450:18-5-6 may be determined by a review of facility policy and procedures; relevant personnel records; other facility supporting documentation; and interviews with staff and consumers.

450:18-5-8. Critical incidents

(a) The facility shall have written policy and procedures for the reporting of every critical incident. Documentation of critical incidents shall minimally include:

(1) The facility, name and signature of the person(s) reporting the incident;

(2) The name(s) of the consumer(s), staff member(s) or property involved;

(3) The time, date and physical location of the incident;

(4) The time and date the incident was reported and the name of the staff person within the facility to whom it was reported;

(5) A description of the incident;

(6) Resolution or action taken, date action was taken, and signature of appropriate staff member(s); and

(7) Severity of each injury, if applicable. Severity shall be indicated as follows:

(A) No off-site medical care required or first aid care administered on-site;

(B) Medical care by a physician or nurse or follow-up attention required; or

(C) Hospitalization or immediate off-site medical attention was required.

(b) Critical incidents shall be reported to ODMHSAS as follows:

(1) Critical incidents requiring medical care by a physician or nurse or follow-up attention and incidents requiring hospitalization or immediate off-site medical attention shall be delivered via fax or mail to ODMHSAS Provider Certification within twenty-four (24) hours of the incident being documented.

(2) Critical incidents involving allegations constituting a sentinel event or consumer abuse shall be reported to ODMHSAS immediately via telephone or fax, but not more than twenty-four (24) hours of the incident. If reported by telephone, the report shall be followed with a written report within twenty-four (24) hours.

(c) Compliance with 450:18-5-8 may be determined by a review of policy and procedures; critical incident reports at the facility and those submitted to ODMHSAS; performance improvement program documents and reports; staff interviews; and any other relevant documentation of the facility or ODMHSAS.

450:18-5-9. Mechanical restraints [REVOKED]

~~(a) Mechanical restraints shall only be utilized in hospitals and inpatient services which are an integral part of a CMHC, and shall not be used unless it is determined by the facility's director or licensed physician, to be required by the immediate needs of a consumer for the safety and protection of the consumer or other persons.~~

~~(b) The facility shall have a written protocol for the use of mechanical restraints which include, but is not limited to:~~

~~(1) Criteria to be met prior to authorization of the use of mechanical restraints;~~

~~(2) Signature of the person authorizing use is required;~~

~~(3) Time limit of said authorizations;~~

~~(4) Circumstances which automatically terminate an authorization;~~

~~(5) Setting a time period, not to exceed every fifteen (15) minutes, an individual in mechanical restraints shall be observed and checked by a registered nurse;~~

~~(6) Requiring in every use of mechanical restraints the specific reason for such use, the actual start and stop times of use, authorizing signature, and record of times the consumer was observed and checked. All the items listed in 450:18-5-9(b)(6) are made a part of the consumer record; and~~

~~(7) The facility director shall ensure the maintenance of a chronological log which shall minimally include the name of every consumer placed in mechanical restraints, and the date upon which this event occurred.~~

~~(c) Compliance with 450:18-5-9 may be determined by a review of facility policy and procedures; the mechanical restraint log; and any other supporting facility documentation.~~

SUBCHAPTER 7. FACILITY RECORD SYSTEM

PART 1. RECORD SYSTEM

450:18-7-1. Facility record system

(a) Each facility shall maintain an organized system for the content, confidentiality, storage retention and disposition of consumer case records.

(b) The facility shall have written policy and procedures concerning consumer records which define required documentation within the case record.

(c) Consumer records shall be contained within equipment which shall be maintained under locked and secure measures.

(d) The facility shall maintain identification and filing systems which enable prompt record location and accessibility by ~~the professional treatment staff~~ treatment professionals.

(e) Consumer records shall be maintained in the facility where the individual is being treated or served. [In the case of temporary office space and in-home treatment services, records may be maintained in the main (permanent) office and transported in secured lock boxes or vehicle trunks to and from temporary offices and homes, when necessary.]

(f) The facility shall have policies which govern the storage, retention, and disposition of consumer case records. These policies shall be compatible with protection of consumer's rights against confidential information disclosure at a later date. ODMHSAS-operated facilities shall comply

with Records Disposition Schedule 82-17 as approved by the Oklahoma Archives and Records Commission.

(g) Compliance with 450:18-7-1 may be determined by a review of policy and procedures; treatment records; performance improvement guidelines; interviews with staff; and other facility documentation.

450:18-7-2. Case records, basic requirement

(a) All case records shall contain the following:

(1) Entries in consumer records shall be legible, signed with first name or initial, last name, and dated by the person making the entry.

(2) The consumer shall be identified by name and unique identifier on each sheet in the consumer record, on both sides of each page if both sides are used.

(3) A signed consent for treatment shall be obtained before any person can be admitted into treatment at a facility, unless the admission was on an involuntary basis.

(4) A signed consent for follow-up shall be obtained before any contact after discharge can be made.

(b) Compliance with 450:18-7-2 may be determined by a review of policy and procedures; treatment records; performance improvement guidelines; interviews with staff; and other facility documentation.

450:18-7-3.1. Confidentiality of mental health and drug or alcohol abuse treatment information

(a) All mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential. In addition, the identity of all consumers who have received or are receiving mental health or ~~drug or alcohol~~ substance abuse treatment services is both confidential and privileged. Such information shall only be available to persons or agencies actively engaged in the treatment of the consumer unless a state or federal law exception applies.

(b) All facilities shall have policy and procedures protecting the confidential and privileged nature of mental health and ~~drug or alcohol~~ substance abuse treatment information in compliance with state and federal law and which contain at a minimum:

(1) an acknowledgment that all mental health and ~~drug or alcohol~~ substance abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential and will not be released without the written consent of the consumer or the consumer's legally authorized representative;

(2) an acknowledgment that the identity of a consumer who has received or is receiving mental health or ~~drug or alcohol~~ substance abuse treatment services is both confidential and privileged and will not be released without the written consent of the consumer or the consumer's legally authorized representative;

(3) a procedure to limit access to mental health and ~~drug or alcohol~~ substance abuse treatment information to only those persons or agencies actively engaged in the treatment of the patient and to the minimum amount of information necessary to carry out the purpose for the release;

(4) a procedure by which a consumer, or the consumer's legally authorized representative, may access the consumer's mental health and ~~drug or alcohol~~ substance abuse treatment information;

(5) an acknowledgement that certain state and federal law exceptions to disclosure of mental health and drug or alcohol abuse treatment information without the written consent of the consumer or the consumer's legally authorized representative exist and the facility will release information as required by those laws and

(6) a procedure by which to notify a consumer of his or her right to confidentiality.

(c) A facility disclosing information pursuant to a written consent to release information shall ensure the written consent form complies with all applicable state and federal law and contains at a minimum the following:

(1) the name of the person or program permitted to make the disclosure;

(2) the name or title of the person or the name of the organization to which disclosure is to be made;

(3) the name of the consumer whose records are to be released;

(4) a description of the information to be disclosed;

(5) the specific reason for the disclosure;

(6) the signature of the consumer or the consumer's legally authorized representative;

(7) the date the consent to release was signed by the consumer or the consumer's legally authorized representative;

(8) an expiration date, event or condition which shall ensure the release will last no longer than reasonably necessary to serve the purpose for which it is given;

(9) a statement of the right of the consumer, or the consumer's legally authorized representative, to revoke the consent to release in writing and a description of how the patient may do so;

(10) a confidentiality notice which complies with state and federal law; and

(11) a statement in bold face writing that "The information authorized for release may include records which may indicate the presence of a communicable or venereal disease which may include, but is not limited to, diseases such as hepatitis, syphilis, gonorrhea, and the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome (AIDS)."

(d) A written consent from a consumer to release treatment information to persons within the criminal justice system which have mandated the consumer's participation in treatment as a condition of the disposition of any criminal proceeding against the consumer shall comply with all applicable state and federal laws and contain at a minimum the following:

(1) the name of the person or program permitted to make the disclosure;

(2) the name or title of the person or the name of the organization to which disclosure is to be made;
(3) the name of the consumer whose records are to be released;
(4) a description of the information to be disclosed;
(5) the specific reason for the disclosure;
(6) the signature of the consumer or the consumer's authorized representative;
(7) the date the consent to release was signed by the consumer or the consumer's authorized representative;
(8) a statement in bold face writing that "The information authorized for release may include records which may indicate the presence of a communicable or venereal disease which may include, but is not limited to, diseases such as hepatitis, syphilis, gonorrhea, and the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome (AIDS)";
(9) a specific time or specific event upon which the consent will expire and during which the consent shall be irrevocable, which in no event may be later than the final disposition of the criminal proceeding; and
(10) a statement that any disclosure made is bound by the federal law and regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records (42 U.S.C. § 290dd-2; 42 C.F.R., Part 2) and that recipients of the information may receive and redisclose it only in connection with their official duties with respect to the particular criminal proceeding and may not be used in other proceedings, for other purposes, or with respect to other individuals.

(e) Compliance with 450:18-7-3.1 shall be determined by a review of facility policy and procedures; facility forms; consumer record reviews; interviews with staff and consumers; and any other supporting facility documentation.

450:18-7-4. Consumer record storage, retention and disposition

(a) Each facility shall have written policy and procedure which:
(1) Limits access to consumer records to persons with a need to know.
(2) Requires consumer records be stored under lock and key.
(3) With regard to closed consumer records, requires:
(A) Confidential storage under lock and key;
(B) A stated period of retention; and
(C) Records disposition and destruction under confidential conditions.

(b) EXCEPTION: With regard to 450:18-7-4(a)(3)(B), facilities operated by ODMHSAS shall comply with the provisions of the Records Disposition Schedule for said facility as approved by the Oklahoma Archives and Records Commission [67 O.S. § 305 and OAC 60:1-1-2].

(c) Compliance with 450:18-7-4(a) and, if applicable, 450:18-7-4(b) may be determined by a review of facility policy and procedure, and any other supporting facility documentation.

PART 3. INTAKE AND ADMISSION ASSESSMENT

450:18-7-21. Intake assessment, record content and initial treatment plan

(a) All facilities shall assess each consumer for appropriateness of admission to each substance abuse service's level of care. Each presenting consumer is assessed, according to prescribed criteria, for admission to a specific level of care. This organized process involves professional determination of severity of symptoms and current situations to determine clinically appropriate placement in the least restrictive level of care. Initial treatment plans are based on presenting information for those services determined to be immediately necessary prior to the completion of a biopsychosocial and case management assessment.

(b) Any consumer seeking admission while under the influence, or undergoing withdrawal of alcohol or drugs, to inpatient or residential services, including medically-supervised detoxification and non-medical detoxification shall be assessed prior to admission for medical needs. The written criteria to be used for medical needs assessment shall be approved by the facility's consulting physician.

(c) The consumer intake information shall contain, but not be limited to, the following:
(1) Identification data:
(A) Consumer's name,
(B) Home address, and
(C) Telephone number;
(2) The referral source;
(3) Initial observable condition of the consumer;
(4) Mental status examination;
(5) Level of functioning (current DSM, Axis IV);
(6) Significant other to be notified in case of emergency; and
(7) If the facility reports on ICIS, the ICIS intake data core content.

(d) All substance abuse programs shall document and assess all consumer for appropriateness of admission to each level of care according to the specific criteria cited in Subchapter 3 of this Chapter, including assessment for:
(1) Acute intoxication and withdrawal potential;
(2) Biomedical conditions and complications;
(3) Emotional and behavioral conditions and complications;
(4) ~~Treatment acceptance or resistance~~ Readiness to change;
(5) Relapse potential; and
(6) Recovery environment.

(e) ~~Planned interventions and services~~ Initial treatment plan, consisting of the presenting problem and immediate services to be provided, shall be written upon completion of the intake, and within twenty-four (24) hours of admission.

(f) Compliance with 450:18-7-21 may be determined by a review of the following:
(1) Policy and procedures;
(2) Intake protocols;
(3) Intake assessment instruments;

(4) Treatment records;
(5) Interviews with staff and consumers; and
(6) Other facility documentation.

PART 5. BIOPSYCHOSOCIAL ASSESSMENT

450:18-7-41. Biopsychosocial assessment

(a) Biopsychosocial assessments are in-person interviews conducted by ~~professionally trained personnel~~ a treatment professional designed to elicit historical and current information regarding the behavior and experiences of a consumer, and are designed to provide sufficient information for problem formulation, intervention planning, case management needs, and formulation of appropriate substance abuse-related treatment and service planning.

(b) All programs shall do biopsychosocial assessments which shall contain, but not be limited to, the following:

(1) Presenting problem;
(2) History of presenting problem;
(3) Previous treatment history:
(A) Mental health,
(B) Substance abuse, and
(C) Domestic violence, to include batterer's treatment or victim services;
(4) Health history and current biomedical conditions and complications;
(5) Alcohol and drug use history;
(6) History of violent behavior~~,~~ as perpetrator or victim of domestic violence experiences~~,~~ and sexual assault;
(7) Family and social history, including family history of ~~AOD~~ alcohol and drug use;
(8) Educational attainment, difficulties, and history;
(9) Cultural and religious orientation;
(10) Vocational, occupational and military history;
(11) Sexual history, including HIV, AIDS and STD at-risk behaviors;
(12) Marital or significant other relationship history;
(13) Recreational and leisure history;
(14) Legal history;
(15) Present ~~life situation~~ living arrangement;
(16) Economic resources;
(17) Level of functioning;
(18) Current support system;
(19) Current medications, if applicable, to record a consumer's current medications, and shall include obtainable information regarding the name of prescribing physician, name of medication, strength and dosage, and length of time consumer was on the medication;
(20) An addiction severity estimate shall be made if indicated by the history of substance use;
(21) Strengths/assets and weakness/liabilities of the consumer;
(22) Consumer's expectations in terms of service; and
(23) Assessment summary or diagnosis, and signature of the assessor and date of the assessment.

(c) Programs treating family units (usually parent with children) in a residential or halfway house setting shall also assess, prior to admission, the programs' ability to meet the needs of both parent and child(ren).

(d) Compliance with 450:18-7-41 may be determined by a review of the following:

(1) Policy and procedures;
(2) Biopsychosocial assessment instruments;
(3) Consumer records;
(4) Case management assessments;
(5) Interviews with staff and consumers; and
(6) Other facility documentation.

PART 9. TREATMENT PLANNING

450:18-7-81. Treatment planning

(a) ~~Individualized treatment~~ Treatment planning is the ongoing process by which a clinician and the consumer identify and rank problems, establish agreed-upon goals, and decide on the treatment process and resources to be utilized.

(b) The treatment plan shall include, but not be limited to, the following information:

(1) Presenting problems or diagnosis;
(2) Strengths/assets and weaknesses/liabilities of the consumer;
(3) Goals for treatment and service and measurable, behavioral, time-framed objectives;
(4) Type and frequency of services to be provided;
(5) Primary person responsible for providing services;
(6) Description of consumer's involvement in, and responses to, the treatment plan, ~~and the consumer's responses to the treatment planning~~ and his or her signature and date;
(7) ~~Individualized discharge~~ Discharge criteria, other than the discharge criteria required by the level of care; and
(8) Specific date for ~~a~~ each planned treatment plan review and update.

(c) The treatment plan shall be based on the consumer's presenting problems or diagnosis, intake assessment, biopsychosocial assessment, and the consumer's expectations in terms of service.

(d) Treatment plans shall be dated and signed by all members of the treatment team who participate in the planning, and should be signed by all members who participate in providing services.

(e) Compliance with 450:18-7-81 may be determined by a review of the following:

(1) Policy and procedures;
(2) Treatment protocols;
(3) Clinical service manuals;
(4) Treatment plan forms;
(5) Consumer records;
(6) Interviews with staff and consumers; and
(7) Other facility documentation.

PART 11. PROGRESS NOTES

450:18-7-101. Progress notes

(a) ~~Consumer case records shall contain written progress notes documenting all treatment and services provided; outcomes of the treatment and services; and other pertinent information regarding the consumer's observed conditions.~~ All substance abuse treatment services and any issues related to treatment must be reflected by written documentation in the consumer's record must include the following:

(1) date;

(2) start and stop time and total time for each timed treatment session;

(3) signature of the staff person providing the service;

(4) credentials of the staff person providing the service;

(5) specific problems(s), goals and objectives addressed (problem must be identified on master treatment plan);

(6) methods used to address problem(s), goals and objectives;

(7) progress made toward goals and objectives, or lack of;

(8) consumer response to the session or intervention; and

(9) any new problem(s), goals and objectives identified during the session.

(b) ~~The case record shall contain chronologically recorded progress notes directly related to the substance abuse treatment issues, and emphasize progress made toward the treatment plan goals and objectives, and the following:~~

~~(1) Description of consumer's current symptoms and severity of condition;~~

~~(2) Service actually provided, and outcome;~~

~~(3) Changes in current plan for treatment services, including transfer to a different level of care, discharge assessment and plan, and family involvement, as appropriate; and~~

~~(4) Other information as judged appropriate.~~

~~(c)~~ Compliance with 450:18-7-101 may be determined by a review of the following:

(1) Policy and procedures;

(2) Consumer records;

(3) Progress notes;

(4) Interviews with staff; and

(5) Other facility documentation.

SUBCHAPTER 9. SERVICES SUPPORT AND ENHANCEMENT

PART 1. STAFF SUPPORT

450:18-9-2. Clinical supervision

(a) Clinical supervision is a vital component of the provision of quality substance abuse treatment. All facilities shall provide clinical supervision for all direct service provider staff.

(b) Clinical supervision is an organized process by which knowledgeable and skilled supervisors systematically and routinely provide ongoing and in-depth review of direct service providers' performance.

(c) All facilities shall have written policy and procedures, operational methods, and documentation of the provision of clinical supervision for all direct treatment and service staff. These policies shall include, but are not limited to:

(1) Credentials required for the clinical supervisor;

(2) Specific frequency for case reviews with treatment and service providers;

(3) Methods and time frames for supervision of individual, group, and educational treatment services; and

(4) Written policy and procedures defining the program's plan for appropriate counselor-to- consumer ratio, and a plan for how exceptions may be handled.

(d) Ongoing clinical supervision should address:

(1) The appropriateness of treatment selected of the consumer;

(2) Treatment effectiveness as reflected by the consumer meeting their individual goals; and

(3) the provision of feedback that enhances the clinical skills of direct service staff and treatment professionals.

(e) Compliance with 450:18-9-2 may be determined by a review of the following:

(1) Policy and procedures;

(2) Clinical services manuals;

(3) Clinical supervision manuals;

(4) Documentation of clinical supervision;

(5) Personnel records;

(6) Interviews with staff; and

(7) Other facility documentation.

450:18-9-3. Staff privileging

(a) Each facility shall have an organized and operational method for documenting and verifying the training, experience, ~~degrees~~ official college transcripts, and other credentials of treatment professionals ~~professional treatment staff~~ prior to their providing clinical or treatment services.

(b) Each facility shall have written policy and procedures and operational methods for evaluating the professional qualifications of treatment professionals ~~professional treatment staff~~ providing treatment services, including those who perform these evaluations and the verification process, and the granting of privileges.

(c) All treatment professionals ~~professional treatment staff~~ shall be documented as privileged prior to performing treatment services.

(d) The evaluation and verification of professional qualifications includes, but is not limited to, the review and verification of:

(1) Professional degree(s) via official college transcript(s);

(2) Professional licensure(s);

(3) Professional certification(s);

(4) Professional training;

(5) Professional experience; and

(6) Other qualifications as set forth in the position's job description.

(e) Each facility shall minimally perform an annual review of current licensure, certifications, and current qualifications for privileges to provide specific treatment services.

(f) Initial training and ongoing training updates for all personnel employed by the treatment facility covers at a minimum:

(1) Rights of the consumers served:

(2) Person and family centered services:

(3) The prevention of violence in the workplace;

(4) Confidentiality requirements;

(5) Cultural competency; and

(6) Expectations regarding professional conduct.

(g) Compliance with 450:18-9-3 may be determined by a review of the following:

(1) Policy and procedures;

(2) Clinical supervision manuals;

(3) Minutes of privileging meetings;

(4) Personnel records;

(5) Interviews with staff; and

(6) Other facility documentation.

PART 2. ORGANIZATIONAL AND FACILITY MANAGEMENT

450:18-9-20. Organizational and facility description

(a) The facility shall have a written organizational description, which is reviewed annually and minimally includes:

(1) The facility shall define the overall target population for whom services will be provided;

(2) The facility shall state in writing overall mission statement; and

(3) The facility shall state in writing the annual facility goals and objectives:

(b) There shall be documentation that these statements have been approved by the facility's governing authority.

(c) The facility shall have documentation demonstrating these documents are available and communicated to staff.

(d) The facility shall have documentation demonstrating these documents are available to the general public upon request.

(e) Each facility shall have in writing, by program component or service, the following:

(1) ~~Description of services and philosophy~~ A description of the program;

(2) ~~The identification of professional treatment staff to provide these services~~ The philosophy of the program;

(3) ~~Written admission and exclusionary criteria to identify the type of consumers for whom the services is primarily intended~~ Program goals and objectives; ~~and~~

(4) ~~Written goals and objectives.~~ Identification of treatment professionals to provide these services; and

(5) Admission and exclusionary criteria to identify the type of consumers for whom the services are primarily intended.

(f) The facility shall have a written statement of the procedures and plans for attaining the facility goals and objectives. These procedures and plans should define specific tasks, set target dates and designate staff responsible for carrying out the procedures and plans.

SUBCHAPTER 11. CONSUMER RIGHTS

450:18-11-1. Consumer rights~~, inpatient and residential type services~~

~~Each~~ All approved treatment ~~facility inpatient, residential,~~ facilities shall comply with applicable rules in Title 450, Chapter 15. Consumer Rights.

450:18-11-2. Consumer rights, outpatient services [REVOKED]

~~Approved treatment facilities providing outpatient services shall comply with applicable rules in Title 450, Chapter 15. Consumer Rights.~~

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TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 19. STANDARDS AND CRITERIA FOR DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS

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450:19-1-2. [AMENDED]
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Subchapter 3. ~~Services~~ Domestic Violence and Sexual Assault Programs
Part 1. Required DV/SA Shelter Program Components [REVOKED]
450:19-3-1. [AMENDED]
450:19-3-2. [AMENDED]
450:19-3-3. [REVOKED]
450:19-3-4. [REVOKED]
450:19-3-6. [REVOKED]
Part 2. Other Service Components [REVOKED]
450:19-3-7. [AMENDED]
450:19-3-8. [AMENDED]
450:19-3-9. [AMENDED]
450:19-3-10. [AMENDED]
Subchapter 5. Client Records and Confidentiality
450:19-5-3.1. [AMENDED]
Subchapter 7. DV/SA Shelter Program Physical Environments
450:19-7-1. [AMENDED]
450:19-7-3. [AMENDED]
450:19-7-6. [AMENDED]
450:19-7-7. [NEW]
Subchapter 9. Program Management and Performance Improvement
450:19-9-10. [AMENDED]
Subchapter 13. Personnel and Volunteers
Part 3. Training
450:19-13-20.1. [AMENDED]
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N/A
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 19 are part of the Department's review of Title 450. These proposed amendments are intended to comply with statutory changes, enhance programs for individuals receiving domestic violence or sexual assault services by organizations certified by or under contract with ODMHSAS, delete redundant or superfluous language, and correct scrivener's errors.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

450:19-1-2. Definitions

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

"Admission" means to accept a client for services or treatment.

"Advocacy" means the assistance provided which supports, supplements, intervenes and/or links the client with the appropriate service components. This can include medical, dental, financial, employment, legal and housing assistance.

"Batterer" means a person, male or female, who perpetrates domestic violence, stalking or other harassment against present or past intimate partners, another adult, emancipated minor or minor child, who are family or household members or who are or were in a dating relationship.

"Batterer's intervention" means services provided to batterers, or perpetrators or abusers which holds a batterer accountable for his or her abusive behavior, provides consequences for engaging in violent or abusive behavior, provides monitoring of batterer's behavior, and requires him or her to change his or her behavior and attitudes and is also protective of the victim(s). ~~Teaching~~ Anger control or management alone is not synonymous with batterer's intervention.

"Case consultation" means review of a client's case by the primary service provider and other program staff providers, consultants or both.

"Child" or **"Children"** means any individual from birth to eighteen years of age.

~~**"Children's services"** means curricula, children's groups and activities and referral for needed services in an effort to reduce stress, increase self-esteem and educate about domestic violence, sexual assault or both.~~

"Client" means an individual, adult or child, who has applied for, is receiving or has received assistance or services of a DV/SA or batterer's program.

"Client record" means written information including assessment information, description of services provided services plan, and other information on an individual client.

"Community" means the people, groups, agencies or other facilities within the locality served by the program.

"Consultation" means a formal and structured process of interaction between staff member(s) or unrelated individuals, groups or agencies for the purpose of problem solving or enhancing their capacity to serve clients, manage programs or both.

"Contract" means a formal document adopted by the governing authority of the program and any other organization, agency, or individual that specifies services, personnel or space to be provided to the program and the monies to be expended in exchange.

"Counseling" means a method of using various commonly acceptable treatment approaches provided face-to-face by qualified professional staff with clients in individual, group or family settings to promote positive emotional or behavioral change. Counseling is goal directed and utilizes techniques such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy psycho-educational interventions or another widely accepted theoretical framework for treatment.

"Court advocate" means a volunteer or staff member whose duties are to provide support, information, and advocacy in the court system for victims of domestic violence or sexual assault.

"Crisis intervention" means an immediately available service to meet the psychological, physiological or safety aspects of mental health, alcohol and drug or domestic violence or sexual assault related crises and are in response to emergencies, provide crisis resolution and stabilize conditions and may include triage, assessment, screening, planning, intervention, referral and documentation.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of the facility, or the routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse

drug events; self-destructive behavior; deaths and injuries to clients, staff and visitors; medication errors; neglect or abuse of a client; fire; unauthorized disclosure of information; damage to or theft of property belonging to a client or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Direct services" means services delivered by a staff member or volunteer, in direct contact with a client or client's child, including child care and telephone contact.

"Director" means the person hired by the governing authority to direct all the activities of the organization.

"DV/SA" means domestic violence and sexual assault.

"Documentation" means the provision of written, dated and authenticated evidence to substantiate compliance with standards, e.g., minutes of meetings, memoranda, schedules, notices, logs, records, policies, procedures, ~~and~~ announcements, correspondence, and photographs.

"Domestic violence" means assaultive or coercive behaviors, including physical, sexual and psychological attacks and economic coercion, against another adult, emancipated minor or minor child, who are family or household members or who are or were in a dating relationship.

"Education" means the dissemination of relevant information specifically focused on increasing the awareness of the community and the receptivity and sensitivity of the community concerning ~~mental health, substance abuse,~~ domestic violence, sexual assault or batterer's intervention and other related problems and services and may include a systematic presentation of selected information to impart knowledge or instructions, to increase understanding of specific issues or programs, to examine attitude or behaviors and stimulate social action or community support of the program and its consumers.

"Emergency services" or **"crisis services"** means a twenty-four (24) hour capability for assessment, intervention and resolution of a client crisis or emergency that is provided in response to unanticipated, unscheduled emergencies requiring prompt intervention to resolve immediate, overwhelming problems that severely impair the individual's ability to survive or maintain in the community.

"Emergency transportation" means transportation for a victim of DV/SA to a secured identified location at which emergency services or crisis services can be provided.

"Executive director" means the person in charge of a facility as defined in this section.

"Facility" means the physical location(s) of a certified program governed by this chapter of Title 450.

"Family" means the children, spouse, parents, brothers, sisters, other relatives, foster parents, guardians and others who perform the roles and functions of family members in the lives of clients.

"Governing authority" means a group of persons having the legal authority, and final responsibility for the operations and functions of the entire DV/SA program in and of all geographical locations and administrative divisions.

"Group counseling" means a method of using various commonly acceptable treatment approaches provided face-to-face by qualified staff with not more than ten (10) clients to promote positive emotional or behavioral change. Counseling is goal directed and utilizes techniques such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy psycho-educational interventions or another widely accepted theoretical framework for treatment.

"Guardian" means an individual who has been given the legal authority for managing the affairs of another individual.

"Host family" or **"Sponsor family"** means an individual or family providing safe home services through a formal agreement with a Certified DV/SA Program.

"Initial contact" means a person's first contact with the program or facility usually requests for information or service by telephone or in person.

"Intake" means the written information about a client as a basis for assessment or services, obtained by the program at time of admission.

"Integrated Client Information System" or **"ICIS"** is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide DMHSAS network. ICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, sexual assault service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by DMHSAS.

"Licensure" means the official or legal permission to persons or health facilities meeting qualifications to engage in a given occupation or use a particular title.

"Medical care" means those diagnostic and treatment services which, under the laws of the jurisdiction in which the program is located, can only be provided or supervised by a licensed physician.

"Medication" means any prescription or over-the-counter drug, that is taken as prescribed or directed.

"Mental health services" means a range of diagnostic, therapeutic, and rehabilitative services used in treating mental illness or emotional disorders, including substance abuse.

"Neglect" means failing to provide adequate personal care or maintenance, or access to medical care which results or may result in physical or mental injury or harm to a client.

"Objectives" means a specific statement of planned accomplishments or results which are quantitative, qualitative, time-limited and realistic.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"Operation" means that clients are receiving services provided by the program.

"Personnel record" means a ~~chart or~~ file containing the employment history and actions relevant to individual employee and volunteer activities within an organization such as application, evaluation, salary data, job description, citations, credentials, etc.

"Persons with special needs" means persons with a condition which is considered a disability or impairment under the "American with Disabilities Act of 1990" including, but not limited to the deaf/hearing impaired, visually impaired, physically disabled, developmentally disabled, persons with disabling illness, persons with mental illness. See "Americans with Disabilities Handbook," published by U.S. Equal Employment Opportunity Commission and U.S. Department of Justice.

"Policies" means statements of program intent, strategy, principle, or rules for providing effective and ethical services.

"Procedures" means the standard methods by which policies are implemented.

~~**"Professional staff"** means an individual who:~~

~~(A) Meets the requirements under Oklahoma statutes to be licensed as:~~

~~(i) a licensed physician;~~

~~(ii) a licensed registered nurse;~~

~~(iii) a licensed professional counselor~~

~~(iv) a licensed clinical social worker~~

~~(v) a licensed marriage and family therapist~~

~~(vi) a licensed behavioral practitioner; or~~

~~(viii) a licensed psychologist; or~~

~~(B) Meets the academic requirements for one of the above, has an approved application for licensure in Oklahoma and is actively engaged in the applicable licensure process including active and documented supervision by an approved supervisor or is a practicum student or intern in an accredited program.~~

"Program" means a ~~structured~~ set of activities designed and structured to achieve specific objectives relative to the needs of the clients.

"Program evaluation" means the documented assessment activities, performed internally or externally, of a program or a service and its staff, activities and planning process to determine whether program goals are met, staff and activities are effective, and what effect, if any a program or service has on the problem which it was created to address or on the population which it was created to serve.

"Program goals" means broad general statements of purpose or intent

~~**"Program component"** or **"service component"** means the category into which interrelated services can be classified as individual components.~~

"Rape crisis response services" means "sexual assault services" as defined in this section.

~~**"Research"** means organized program(s) directed toward the investigation and evaluation, whether basic or applied, of subjects related to the prevention, diagnosis, and treatment of psychiatric illness, substance abuse or DV/SA.~~

"Screening" means the process of determining, preliminarily the nature and extent of a person's problem in order to link the person with appropriate and available services to be provided.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms or violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Service agreement" means a written agreement between two or more service agencies or service agencies and individual service providers defining the roles and responsibilities of each party. The purpose of ~~cooperative~~ service agreements is to promote coordination and integration of service programs for the purpose of curbing fragmentation and unnecessary service duplication in order to assure a continuation of services.

"Service note" means the documentation of the time, date, location and description of services provided, and signature of staff providing the services.

"Service plan" means a plan of action developed and agreed upon by the client and service provider that contains service appropriate goals and objectives for the client.

"Sexual assault services" means personal advocacy and support services provided to victims of rape and sexual assault in settings such as law enforcement, medical settings or program offices.

"Shelter services" means a cooperative living arrangement in a secure residential setting with counseling provided by qualified staff, or support and client advocacy for victims of domestic violence and their dependents.

"Staff" mean employees that function with a defined role within the program.

"Support" or **"Supportive Services"** means services provided to victims of domestic violence/sexual assault and/or their families which augment or complement a defined service plan.

"Transitional living services" means housing maintained and operated by a certified domestic violence and sexual assault program.

"Universal precautions for transmission of infectious diseases" means those guidelines promulgated by the U.S. Occupational Health and Safety Administration which are designed to prevent the transmission of Human Immunodeficiency Virus, hepatitis and other infectious diseases.

"Update" means a dated and signed review of a report, plan or program with or without revision.

"Victim recovery services" mean a face-to-face service, provided one on one by qualified staff to groups or individuals to maintain or develop skills necessary to perform activities of daily living and successful integration into community life.

This service includes educational and supportive services regarding independent living, self care, social skills regarding development, lifestyle changes ~~and recovery principles and practices~~.

"Volunteer" means any person who is not on the program's payroll, but provides direct services and fulfills a defined role within the program and includes interns and practicum students.

450:19-1-6. Services Programs

(a) All certified DV/SA ~~shelter programs~~ service providers shall provide one (1) or more of the following ~~services for victims of domestic violence and their dependent children~~ service programs:

(1) Shelter services program; ~~which are confidential, long term (30 days or more) or short term emergency shelter services with transportation to longer term shelter as needed. Safe home services [450:19-3-8] may be used to supplement either long or short term shelter services.~~

(2) Crisis intervention services program; ~~Twenty-four (24) hour crisis intervention services, to include a crisis line with 24 hour immediate, direct access to crisis advocates. Pagers, answering machines or answering services shall not be sufficient to meet this requirement. Follow-up services shall be offered to all victims if victim safety is not compromised. If follow-up services are not provided the reason(s) shall be documented;~~

(3) Transitional living services program; ~~Counseling or support and advocacy services to victims and their dependent children, who are or are not, utilizing the program's shelter or other residential services;~~

(4) Safe home services program; ~~"Counseling", as used in this chapter, shall be provided only by persons meeting the requirements defined in 450:19-1-2 for "professional staff."~~

(5) Batterer's intervention services program; and ~~Sexual assault services (if another local agency provides these services, evaluation and referral shall be provided); and~~

(6) Sexual assault services program. ~~Public education services including professional consultation and training of volunteers when such is needed; and~~

(b) ~~The following domestic violence services may be provided as components of certified DV/SA shelter programs or independently:~~ All certified DV/SA service providers may provide public education services in which informational presentations are made, on request or by agreement, to community groups, including schools, social service clubs, faith based organizations, and other groups. School faculties, social services provider staff, medical personnel, local law enforcement personnel, and court system staffs are provided with education in the dynamics of abuse and needs of victims. Information and interviews are made available to the media. Advertising is provided through service area media and public activities.

~~(1) Transitional living services~~ These public education services may be provided to the community and area covered by the DV/SA service provider~~;~~.

~~(2) Safe home services~~ Support services shall be provided by trained staff or volunteers through a screening/referral system, and services shall be in place to respond to any resulting inquiries~~;~~.

~~(3) Batterer's intervention; and~~

~~(4) Sexual assault services.~~

(c) All certified DV/SA service providers shall provide counseling or support and advocacy services. Group and/or individual counseling or support services shall be made available before or after normal working hours (8 am to 5 pm), if needed by clients. These services shall minimally provide the following:

(1) A publicly accessible facility with offices, individual and group counseling space to provide services.

(2) Advocacy services, both in person and by telephone, either in the locations of other community services and systems, or in the program's offices. Other locations include but are not limited to those necessary to provide court advocacy services to clients.

(3) Current service agreement to be renewed every three (3) years with available community services to provide access to a continuum of needed services for the client. If unable to establish a current service agreement with all appropriate resources in the community, efforts to do so or reasons/opinions why this is not or cannot be done shall be documented.

(4) A resource document of local, area, or state resources to facilitate referrals for clients.

(5) Service approaches that focus on the empowerment of victims to access needed resources and make healthy and safe decisions for themselves and dependents.

(d) All DV/SA service providers that are certified as the following must serve victims and their dependents or family members of domestic violence and sexual assault:

(1) shelter services program

(2) crisis intervention services program

(3) transitional living services program

(4) safe home services program

(e) All DV/SA service providers that are certified as the following must also provide sexual assault services programs in order to serve victims of sexual assault:

(1) shelter services program

(2) crisis intervention services program

(3) transitional living services program

(f) All certified DV/SA service providers shall maintain an atmosphere and provide services that are free from all forms of unlawful discrimination based on race, sex, religion, color, age, national origin, and/or disability (including physical, mental illness, and substance abuse).

(~~e~~g) Compliance with 450:19-1-6 shall be determined by a review of the program's policy and procedures, and any other relevant documentation provided by the program.

SUBCHAPTER 3. ~~SERVICES~~ DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS

PART 1. REQUIRED DV/SA SHELTER PROGRAM COMPONENTS [REVOKED]

450:19-3-1. Shelter services program

(a) Each shelter program shall provide long-term (thirty [30] days or more) shelter services; and have written policy and procedures governing the maintenance of the facilities, staffing to provide services twenty-four (24) hours per day, seven (7) days per week, ~~staff~~ personnel training, record-keeping and operational methods to provide the following services:

(1) A ~~confidential,~~ group living program providing room, board, bathing and laundry facilities, necessary clothing and toiletries for victims and their children, advocacy, support or counseling, transportation, and a play area for children.

(2) Emergency transportation for victims which shall be available within 30 minutes of a client's request for transport in urban areas and no longer than two (2) hours in rural areas. This shall not require service providers to be placed in a situation that could result in injury.

(3) Shelters shall be staffed at all times when clients are in residence. When there are no clients in residence, each shelter program must assure availability for immediate contact for services.

(4) Shelter or program staff shall provide ~~children's~~ services to children accompanying the primary victims. These services shall minimally address the effects of violence in their lives and include the following:

(A) assessment for services and needs;

(B) a specific safe, protected play area for children;

(C) case management;

(D) advocacy with community systems;

(E) referral to community resources;

(F) parenting education for clients, if applicable; and

(G) age appropriate curricula, children's groups, and referrals for needed services.

(5) The shelter's policy shall have written procedures regarding the supervision of children.

(6) Shelter programs shall provide screening, referral and linkage to clients and callers to appropriate community resources, to include assistance in making ~~appointments~~ initial contact.

(7) Program staff shall provide advocacy, individual support or counseling, support groups, victim recovery services and 24-hour crisis intervention services for shelter residents.

(8) The shelter program shall provide transportation or access to transportation for necessary or emergency services.

(9) The shelter program shall maintain cooperation/liaison with the local school system.

(10) The shelter program shall maintain ~~affiliated~~ service agreements with a continuum of available community services and regional services which may be needed by the residents of the shelter.

(11) The shelter has a written plan to address "reasonable accommodation" for people with special needs.

(12) The shelter maintains written admission, exclusion, and involuntary discharge criteria.

(13) Each shelter program must ensure to the best of their ability the safety, security, and confidentiality of clients and the location of the shelter.

(b) Compliance with 450:19-3-1 shall be determined by a review of policy and procedures; ~~personnel training records~~ documentation of training; client records; service ~~referral~~ agreements; and other supporting documentation.

450:19-3-2. Crisis intervention services program

(a) Each certified DV/SA ~~shelter or~~ crisis intervention services program shall maintain facilities, staffing, personnel staff training, documentation, and operational methods to provide the following crisis intervention services, including, but not limited to:

(1) Twenty-four (24) hour crisis telephone services staffed by trained staff or volunteers, 24-hour immediate, direct access to crisis advocates. Pagers, answering machines or answering services shall not be sufficient to meet this requirement. Follow-up services shall be offered to all victims if victim safety is not compromised. If follow-up services are not provided the reason(s) shall be documented.

(2) Emergency transportation available for victims as follows:

(A) within 30 minutes of client request in urban areas; and

(B) within 2 hours of client request in rural areas.

(C) This shall not require service providers to be placed in a situation that could result in injury.

(3) Cooperation with law enforcement to provide assistance to the victim and accompanying ~~child(ren)~~ dependent(s).

(4) ~~Safe shelter available, as needed, for temporary housing of victims.~~ Emergency housing such as hotel or motel available for victims and their dependent(s).

(5) Services shall minimally include:

(A) crisis intervention to ensure the safety of the victims~~,~~;

(B) provision of transportation to a safe place~~,~~;

(C) provision of a trained staff person or volunteer to talk to the victim~~,~~;

(D) provision of advocacy and referral to assist the victims in obtaining needed services or resources~~,~~; and

(E) arrangement for safe shelter, food, clothing, and incidentals needed by victim/dependents~~,~~.

(b) All certified DV/SA crisis intervention services programs shall assess the needs of the children accompanying primary victims and provide services to address the effect of violence in their lives including but not limited to:

(1) a specific safe, protected play area for children;

(2) advocacy with community systems;

(3) referral to community resources;

(4) parenting education for clients, if applicable; and

(5) age appropriate curricula, children's groups, and referrals for needed services.

(~~b~~c) Compliance with 450:19-3-2 shall be determined by a review of program policy and procedures; client service records; contact logs; ~~personnel training records~~ documentation of training; contract or agreement for lodging; or other supporting documentation of the program.

450:19-3-3. Counseling, support, and advocacy services [REVOKED]

~~(a) A certified DV/SA shelter program shall provide face-to-face rehabilitation, counseling, support or advocacy services at least six (6) hours per day a minimum of five (5) days per week for clients who do not require shelter services and for clients who do require shelter services. Group or individual counseling or rehabilitation and support services shall be made available before or after normal working hours (8am to 5pm), if needed by clients.~~

~~(b) These services shall minimally provide the following:~~

~~(1) A publicly accessible facility with offices, individual and group counseling space to provide services.~~

~~(2) Advocacy services, both in person and by telephone, either in the locations of other community services and systems, or in the program's offices. Other locations include but are not limited to those necessary to provide court advocacy services to clients.~~

~~(3) Current service agreements to be renewed every three (3) years with available community services to provide access for the client to a continuum of needed services. If this is not done with all appropriate resources in the community, efforts to do so or reasons/opinions why this is not or cannot be done shall be documented.~~

~~(4) A resource document of local, area, or state resources to facilitate referrals for clients.~~

~~(5)Service approaches that focus on the empowerment of victims to access needed resources and make healthier and safer decisions for themselves and dependents.~~

~~(c) Compliance with 450:19-3-3 shall be determined by on-site observation; review of program policy and procedures; service referral agreements; referral manuals; personnel training documentation; client records; or other supporting documentation of the program.~~

450:19-3-4. Children's services [REVOKED]

~~(a) Each certified DV/SA shelter program shall assess the needs of the children accompanying primary victims and provide services to address the effects of violence in their lives including but not limited to:~~

~~(1) services offered either in the shelter setting or in another setting as needed;~~

~~(2) a specific safe, protected play area for children;~~

~~(3) admission criteria for children under the age of eighteen (18);~~

~~(4) advocacy with community systems;~~

~~(5) referral to community resources;~~

~~(6) parenting education for clients, if applicable; and~~

~~(7) age appropriate curricula, children's groups, and referrals for needed services.~~

~~(b) Compliance with 450:19-3-4 shall be determined by a review of program policy and procedures; staff and volunteer training manuals; staff training documentation; client records documentation; or other supporting documentation of the program.~~

450:19-3-6. Public education services [REVOKED]

~~(a) Informational presentations are made, on request or by agreement, to community groups, including schools, social services clubs, churches and other groups. School faculties, social services provider staffs, medical personnel, local law enforcement personnel, and court system staffs are provided with education in the dynamics of abuse and needs of victims. Information and interviews are made available to the media. Advertising is provided through service area media and public activities.~~

~~(1) These public education services shall be provided to the community and area which is covered by the DV/SA program.~~

~~(2) Support services shall be provided by trained staff or volunteers through a screening/referral system, and services shall be in place to respond to any resulting inquiries.~~

~~(b) Compliance with 450:19-3-6 shall be determined by a review of records of staff/volunteer training, and in public education documentation forms.~~

PART 2. OTHER SERVICE COMPONENTS [REVOKED]

450:19-3-7. Transitional living services program

(a) ~~Transitional living services are independent living facilities providing transitional or assisted housing for survivors of domestic violence or sexual assault.~~ The program shall:

~~(b) The program maintains the facilities, defines and maintains needed staffing, and shall maintain policy, procedures, documentation and operational methods to provide these transitional living services and shall meet the following criteria:~~

(1) maintain facilities,

(2) define and maintain needed staffing,

(3) establish and implement policies and procedures that include staffing, documentation and operational methods to provide these transitional living services, and shall meet the following criteria:

(~~1~~A) The program shall maintain homes, apartments, or other residential living environments suitable for survivors of domestic and sexual violence, and dependents, if applicable, and which provide the reasonable safety and privacy needed by this population. The program shall provide access to necessary furniture and equipment.

(~~2~~B) The program shall include heating and refrigerated cooling systems to maintain a reasonable comfort level.

(~~3~~C) Each transitional living site shall have an annual fire and safety inspection by the local or state fire department.

(~~4~~ D) Supportive services for residents are available through the twenty-four (24) hour program hotline by trained staff or volunteers.

(~~5~~ E) The program maintains ~~referral~~ service agreements, to be renewed at least every three years with available community services for the provision of a continuum of services for clients.

(~~6~~ F) The program shall maintain a resource manual of local, area, and state resources available for clients.

(~~7~~ G) The program shall assign staff as the advocate or liaison for the clients residing in the transitional living program(s). This person, or a crisis line staff person, shall be available for emergencies at all times.

(~~8~~ H) The program shall maintain written criteria for the following services:

(~~A~~ i) Admission to the transitional living program;

(~~B~~ ii) Continuation of transitional living residence; and

(~~C~~ iii) Discharge from the transitional living program.

(~~9~~ I) ~~Transitional living residents shall be required to attend at attend at least one (1) weekly support group.~~ The program shall provide weekly support groups for transitional living residents.

(~~10~~ J) ~~In addition to support group, there shall be at least one (1) weekly contact with program staff.~~ The program shall provide at least one 30 minute face to face service contact per week with each transitional living residents.

(~~11~~ K) Advocacy is provided for the residents as needed.

(b) All certified DV/SA transitional living services programs shall assess the needs of the children accompanying primary victims and provide services to address the effect of violence in their lives including but not limited to:

(1) services offered either in the residential setting or in another setting as needed;

(2) a specific safe, protected play area for children;

(4) advocacy with community systems;

(5) referral to community resources;

(6) parenting education for clients, if applicable; and

(7) age appropriate curricula, children's groups, and referrals for needed services.

(~~b~~ c) Compliance with 450:19-3-7shall be determined by a review of program policy and procedures; ~~documentation of staff training and experience;~~ program staffing patterns; client records; or other program documentation.

450:19-3-8. Safe home services program

(a) Safe homes are ~~optional services which include~~ private dwellings available for the temporary housing of victims of domestic violence or ~~rape~~ sexual assault. ~~Programs~~ Certified DV/SA providers which use safe homes shall maintain the operational methods, policy and procedures, staffing, and documentation to meet the following:

(1) Safe homes are private dwellings arranged for and regularly monitored by the ~~sponsoring or host~~ certified DV/SA ~~program~~ provider via on-site observation at least monthly when clients are in residence.

(2) The ~~sponsoring~~ certified DV/SA ~~program~~ provider shall maintain service ~~referral~~ agreements, to be renewed at least every three years, with local or area services to provide a continuum of services to the client, as needed.

(3) The ~~sponsoring~~ certified DV/SA ~~program~~ provider shall maintain a resource manual for the purpose of providing clients with needed referrals.

(4) The ~~sponsoring~~ certified DV/SA ~~program~~ provider shall have written admission and involuntary discharge criteria for clients using safe homes. And,

~~(5) DV/SA program staff shall provide, support and direct services to the client; and~~

(~~6~~ 5) The ~~sponsoring program~~ certified DV/SA provider shall ~~provides~~ provide general non-residential client services to the client, as needed.

(b) Compliance with 450:19-3-8 shall be determined by a review of program policy and procedures; documentation of staff training and experience; program staffing patterns; client records; or other program documentation, as applicable.

450:19-3-9. Batterer's intervention services program

(a) ~~Batterer's intervention is an optional service that shall provide group and individual counseling services for self or court referred batterers. Referral to domestic violence services is provided for the batterer's partner or victim. Group services shall be the primary modality.~~

~~(b) The focus shall be to eliminate violence within the home and assist the batterer in developing personal responsibility for her or his behaviors, understanding the fundamentals of anger and emotions, learning effective coping strategies and recognizing cyclic behavior. The service shall be based on non-victim blaming strategies.~~

~~(c) Whereas confidentiality is a fundamental underpinning of services for victims of domestic violence, limited confidentiality is critical in batterer intervention services. Victim safety shall supersede all consideration of batterer confidentiality.~~

~~(d) Appropriate releases shall be obtained to facilitate communication with the partner or victim; other needed community agencies; the law enforcement or judicial systems, to assure that sufficient information is obtained to increase partner or victim safety and to properly apprise all parties of services, including the victim, court personnel, law enforcement personnel, staff of other programs serving batterers and the staff of programs providing victims' services. The batterer's intervention program shall maintain contact with the victim at the victim's discretion, through a victim advocate/liaison from a DV/SA services program serving the victim.~~

(~~e~~) ~~A~~ Each certified batterer intervention services program ~~providing batterer's intervention services~~ shall have the policy, procedures, staffing, training, operational methods and facilities to meet the following requirements:

(1) Services shall be provided in a facility with offices available for private individual and group sessions.

(2) Services shall be provided to self or court-referred batterers. Group services shall be the primary modality.

Referral to domestic violence services is provided for the batterer's partner or victim, when possible.

(3) The focus shall be to eliminate violence within the home and assist the batterer in developing personal responsibility for his or her behaviors, understanding the fundamentals of anger and emotions, learning effective coping strategies and recognizing cyclic behavior. The service shall be based on non-victim blaming strategies.

(4) Anger control or management alone shall not be considered batterer's intervention.

(b) Education shall be provided to the batterer and shall minimally address:

(1) power and control issues;

(2) the sociocultural basis for violence;

(3) issues of sexism and gender role stereotyping;

(4) anger management;

(5) substance abuse and violence;

(6) communication;

(7) effective coping strategies;

(8) parenting; and

(9) effects of domestic violence on children.

(c ~~2~~) Services shall be provided during hours which make them available for clients whose work hours are between 8:00 A.M. and 6:00 P.M. Monday through Friday.

(d) The program shall maintain admission criteria for batterer intervention services.

(e) The program shall provide individual assessment sessions, crisis intervention and group sessions.

(f) Service policy shall not permit the substitution of individual counseling appointments for group participation.

(g) Group sizes shall be limited to not less than two (2) and not more than ten (10) clients.

(h) Discharge criteria shall be contingent on the satisfactory meeting of specific criteria by the participant, and NOT only upon the end of a specified period of time or a specified number of sessions.

(i) The assessment of risk of battering must be on-going and documented in the client record.

(j) Mandatory or joint participation shall not be required of the victim.

(k) Male and female batterers shall not be served, or counseled, in the same group or session, i.e., together.

(l) The program shall maintain annually renewed service agreements with appropriate referral sources such as, but not limited to:

(1) substance abuse;

(2) legal; and

(3) mental health services.

~~(3) The program shall maintain annually renewed service referral agreements with appropriate referral sources: substance abuse, legal and mental health services.~~

(~~4~~m) In the case of court referred clients, ~~The~~ the program shall liaison and coordinate with the judicial system, ~~or~~ judge, or district attorney. ~~in the case of court referred clients.~~ The program shall develop a process for coordinating with and reporting to the courts, judge, probation officer, and/or district attorney.

(n) Victim safety.

(1) Whereas confidentiality is a fundamental underpinning of services for victims of domestic violence, limited confidentiality is critical in batterer intervention services. Victim safety shall supersede all consideration of batterer confidentiality.

(2) Appropriate releases shall be obtained to facilitate communication with the partner or victim; other needed community agencies; the law enforcement or judicial systems, to assure that sufficient information is obtained to increase partner or victim safety and to properly apprise all parties of services, including the victim, court personnel, law enforcement personnel, staff of other programs serving batterers and the staff of programs providing victims' services. The batterer's intervention program shall maintain contact with the victim at the victim's discretion, through a victim advocate/liaison from a DV/SA services program serving the victim.

(3) There shall be a written, cooperative, accountable working relationship between the batterer's intervention program, and the DV/SA providers that serve victims so potential victims and others are warned of imminent danger.

(4) At a minimum, partner or victim notification is required when:

(A) The batterer begins attending the intervention program;

(B) At the time the batterer terminates the intervention program for noncompliance;

(C) There is an imminent threat or danger to the victim's safety.

(5) The efforts to find and notify the batterer's partner or victim shall be documented.

(~~5~~6) Collaboration shall be established with other ODMHSAS certified domestic violence/sexual assault programs, networks and coalitions which recognize and agree to the use of the expertise of these DV/SA program services for the partner or victim of batterer program participants. These ~~collaborative~~ service agreements shall be renewed annually.

~~(6) The program shall maintain admission criteria for batterer's intervention services.~~

~~(7) Exclusion criteria shall include, but not be limited to active mental health or substance abuse treatment needs , current threat of danger by batterer to self or others, and behaviors which include, but are not be limited to the sexual molestation of children.~~

~~(8) The program shall provide individual assessment sessions, crisis intervention and group sessions.~~

~~(9) Service policy shall not permit the substitution of individual counseling appointments for group participation.~~

~~(10) Group sizes shall be limited to not less than three two (32) and not more than ten (10) clients.~~

~~(11) Discharge criteria shall be contingent on the satisfactory meeting of specific criteria by the participant, and NOT only upon the end of a specified period of time or a specified number of sessions.~~

~~(12) The assessment of risk of battering must be on-going and documented in the client record.~~
~~(13) Mandatory or joint participation shall not be required of the victim.~~
~~(14) Male and female batterers shall not be served, or counseled, in the same group or session, i.e., together.~~
~~(15) There shall be a written, cooperative, accountable working relationship between the batterer's intervention program, and the DV/SA program so potential victims and others are warned of imminent danger.~~
~~(16) At a minimum, partner or victim notification is required when:~~
~~(A) The batterer begins attending the intervention program;~~
~~(B) At the time the batterer terminates the intervention program for noncompliance;~~
~~(C) The batterer has completed the intervention program; and~~
~~(D) There is an imminent threat/danger to the victim's safety.~~
~~(17) The efforts to find and notify the batterer's partner or victim shall be documented~~.
~~(18) Education shall be provided to the batterer and shall minimally address:~~
~~(A) power and control issues;~~
~~(B) the sociocultural basis for violence; and~~
~~(C) issues of sexism and gender role stereotyping~~

(~~f~~o) Batterer intervention programs shall not be less than 24 weeks in duration.

(~~g~~p) Compliance with 450:19-3-9 shall be determined by a review of program policy and procedures; documentation of staff training and experience; client records; service referral agreements, cooperative and resource; and other program documentation.

450:19-3-10. Sexual assault services program

(a) ~~Sexual assault services are a required component of certified domestic violence programs and may also be offered as a free-standing service and include personal advocacy and support for victims in law enforcement and hospital settings providing needed clothing, follow-up and support and advocacy in the legal system.~~ The program shall minimally provide the following:

(1) ~~Sexual assault services~~ Counseling or advocacy and support services shall be provided in the social service, legal, law enforcement or medical setting, in program offices or at any safe and appropriate site, as needed by the client.

(2) Twenty four (24) hours, seven (7) days per week access to these services through the program's crisis hotline.

(3) A twenty-four (24) hour hotline, crisis intervention, in-person advocacy as needed, active listening, or support by trained staff or volunteers with a knowledge of the issues and processes of sexual assault, rape trauma recovery, assessment, referral when indicated and family involvement where chosen by the victim.

(4) Needed clothing for the sexual assault victim.

(b) The program will also be part of a sexual assault response team in their service area, providing that there is a sexual assault response team in place.

(c) The program shall collaborate with other certified DV/SA providers in their service area.

(~~b~~d) Compliance with 450:19-3-10 shall be determined by a review of program policy and procedures; staff and volunteer training manuals; staff training documentation; client records documentation; service agreements, or other supporting documentation of the program.

SUBCHAPTER 5. CLIENT RECORDS AND CONFIDENTIALITY

450:19-5-3.1. Record content - service specific

(a) Client records for specific services shall conform to the following:

(1) Shelter Services:

(A) On a client's entry to the shelter staff shall record the client's name, emergency contact person(s) and any referral for medical services. This information may be a part of the full intake interview if such is done on entering the shelter.

(B) Shelter client residents shall have the full intake interview and screening completed within twenty-four (24) hours of admission.

(C) Service plans shall be completed within five (5) working days of the client resident's entry to the shelter.

(D) The service plan shall be reviewed and updated at least every two (2) weeks.

(E) The client's service plan shall include components which address the needs of children accompanying the client.

(F) The service plan shall include safety issues for client and children.

(2) Crisis Intervention Services:

(A) All contacts with admitted clients are documented and contacts with persons not receiving additional services shall be documented as prescribed in program policy.

(B) Contact information is kept by the crisis intervention program.

(C) Clients to be transported to shelter facilities shall be screened before the shelter referral is made. If the client is in immediate danger, or no safe housing is available, this screening may be initially waived. If the screening is waived, documentation shall reflect the reason(s) and the notification of such to the shelter.

(3) Counseling, Support and Advocacy Services:

(A) An assessment of the client's needs shall be completed by the third (3rd) counseling or advocacy session.

(B) A service plan shall be completed by the fifth (5th) advocacy, rehabilitation or counseling session.

(C) A service plan review and update shall be completed at least every six (6) months.

(4) Children's Services:

(A) Children under the age of six (6) years shall receive an intake ~~screening~~ with the resident custodial parent or legal guardian within five (5) working days of the parent's admission to services. However, the screening may be conducted without the presence of the parent, but shall be so documented.

(B) Intake ~~screening~~ for children six (6) years and older shall be completed within five (5) working days of the admission of the parent. ~~The screening~~ It may be conducted without the presence of the parent, but shall be so documented.

(C) Documentation of the services provided to a child shall be maintained in the resident custodial parent's record, or in a separate child's record, according to the program's policy and procedures.

(5) Sexual Assault Services:

(A) For victims who continue in support or counseling sessions, a service plan shall be developed by the fifth (5th) visit.

(B) Service plans shall be reviewed and updated at least every ninety (90) days.

(6) Public Education Services:

(A) A standardized program form shall be used to minimally document date, location, organization, attendance, subject, length of presentation and name of presenter.

(B) Public education services records are maintained in a clearly identifiable file.

(7) Transitional Living Services:

(A) A service plan shall be developed within five (5) days of the client moving in.

(B) The service plan shall be reviewed and updated at least every ninety (90) days.

(8) Safe home Services

(A) A service plan that includes goals agreed upon by the client and sponsoring family shall be developed within five (5) days of the client moving in.

(B) The service plan shall be reviewed and updated at least monthly.

(C) Goals that were set in the service planning process shall be provided to the sponsoring family.

(D) All records regarding the client shall be retained in the client's record at the sponsoring program.

(9) Batterer's Intervention Services:

(A) An assessment of the client's needs shall be completed prior to initiating the intervention processes and shall include, but not be limited to:

(i) Current and past history of violence;

(ii) Current lethality risk; and

(iii) Drug and alcohol use/abuse screening which shall include, but not be limited to a substance abuse history.

(B) An individualized written client-contract shall be completed by the second (2nd) session; signed by the batterer; and shall include, but not be limited to:

(i) Attendance policy, including the length of intervention, minimum number of sessions required and the maximum length of time for completion of the required sessions.

(ii) The criteria for suspension and termination.

(iii) The program's rules.

(iv) A written notice in bold type which specifies "Please be advised any reasonable knowledge or suspicion of illegal activities or bodily harm, or a threat of such, to the victim, her or his property, or to third persons, or any attempt, threat or gesture to commit suicide, or any belief that child abuse or neglect is present or has occurred, will be reported to the appropriate person(s) or authorities."

(v) A list of provider program expectations, such as participation, homework and that the batterer will be held accountable for all abusive and violent behavior.

(vi) The batterer's responsibilities for safety planning, including, but not limited to, an awareness of abusive and violent behavior and patterns, e.g., time out procedures, procedures which inform the partner or victim appropriately and are not used to control her or him, logging or writing a journal of efforts to control behavior and non-violence maintenance such as buddy telephone calls, additional support groups, relaxation and exercise, etc.

(vii) Providing releases of information for collateral treatment, i.e., substance abuse or mental health treatment.

(C) A service plan shall be completed by the client and counselor by the third (3rd) session.

(D) A service plan review and update shall be completed every sixty (60) days.

(E) Service notes shall document the ongoing provision of educational components addressing the risk of battering and other violence.

(F) Discharge reports shall be completed for all types of discharges. Types and reasons for discharge include:

(i) Rejection. Reasons for rejection shall be documented and include, but are not limited to: psychiatric history, including active or recent mental health related problems; criminal record of violent crimes; chemical dependency requiring completion of an inpatient or residential treatment program; or inability to function in a group due to limited mental cognitive abilities;

(ii) Involuntary termination. Reasons for involuntary termination shall be documented and include, but are not limited to: recurrence of violence; arrest; absences from program sessions and activities; failure to actively participate in sessions attended; attending a session when under the influence of alcohol or drugs; violation of any rules of

the treating program or violation of the client-contract; and

(iii) Completion.

(G) Without jeopardizing the safety of the victim and with the written consent of the batterer, unless otherwise ordered by the court, a written report to the referring agent, the victim and the victim's advocate shall be submitted within seven (7) working days of the batterer's discharge and shall include, but not be limited to:

(i) Summarize the services provided and the batterer's participation;

(ii) The reason(s) for discharge or rejection;

(iii) Recommendations;

(iv) Involuntary termination reports shall include recommendations, which may include, but are not limited to, weekend incarceration, community service hours, probation violation determination, or return to the intervention program; and

(v) Efforts to notify the referring agent, the victim or the victim's advocate

(H) Efforts to notify the referring agent, the victim or the victim's advocate shall be documented in the batterer's record; and

(I) Copies of all service documentation and reports shall be kept in the batterer's file.

(b) Where required information is not obtained, efforts to comply with the requirements of this subsection shall be documented in the client record.

(c) Compliance with this 450:19-5-3.1 shall be determined by a review of client records.

SUBCHAPTER 7. DV/SA SHELTER PROGRAM PHYSICAL ENVIRONMENTS

450:19-7-1. Physical plant, primary role

(a) ~~A~~ The primary role of DV/SA ~~shelters and other housing options~~ programs is to provide safety; and to protect the confidentiality and privacy of victims of domestic violence or sexual assault, and their dependent family members. The physical plants of DV/SA programs shall not be utilized in any manner which fails to guarantee the confidentiality, safety, and protection of the clients, their dependents and staff.

(b) Programs shall obtain written permission from the ODMHSAS Domestic Violence/Sexual Assault Division before using any shelter or housing option, for purposes other than housing for victims of dv/sa.

(c) Compliance with 450:19-7-1 shall be determined by a review of program policies and procedures, shelter rules, client records, and a tour of the facility.

450:19-7-3. Fire fighting and first aid equipment

(a) ~~Shelter~~ All facilities shall have a first aid supply kit and annually maintained fire extinguishers.

(b) Compliance with 450:19-7-3 shall be determined by on-site observation and by interviewing staff.

450:19-7-6. Program environment, ~~general~~ all DV/SA service programs

(a) The certified DV/SA ~~shelter~~ program environment shall meet the following conditions:

(1) The facility shall be accessible by an all-weather road.

(2) The facility shall have adequate space in which to carry out the program's goals and objectives, including outdoor areas and equipment when appropriate.

(3) The facility shall have heating and air conditioning equipment adequate to maintain the temperature in areas utilized by residents at between 65°F and 85°F.

(4) The facility shall have adequate ventilation and air circulation provided in the facility to assure an environment that will be comfortable for the residents.

(5) The facility shall have water from an approved tested potable source.

(6) The facility shall have, at minimum, a commode and, lavatory~~, and bathing~~ facility ~~at a ratio of one (1) to twelve (12) residents, including infants and children~~. The privacy of individuals ~~or families~~ shall be assured while using these facilities.

(7) ~~Closet, bedroom, and bathroom~~ All doors, including those for each closet, bedroom, bathroom, and office, shall be easily opened from both sides.

(8) Smoking shall not be allowed in ~~food preparation or sleeping areas and shall not be allowed in~~ any ~~other~~ indoor portion of any facility.

~~(9) Residents' rooms shall be so arranged that the client has direct access to a hallway or common area without having to pass through other resident's rooms or areas.~~

(~~10~~9) Telephones shall be provided for the convenience of the staff, and the necessary accommodation of the clients. Pay telephones only are not acceptable.

~~(11) Baby beds and high chairs shall be available for infants and small children~~.

~~(12) The facility shall have access to outdoor recreational space and playground equipment located, installed, and maintained as to ensure the safety of the clients and their children. The grounds and access thereto shall be maintained in a manner that shall ensure the area is free of any hazard to health or safety.~~

(~~13~~10) The facility shall be secured by double locks or locking devices such as chains, bolts, etc. on ground floor doors. However, documentation that the locking system meets state and local fire code inspection shall be accepted. When key-locked deadbolts are used, the location of the keys must be identified and readily accessible.

(~~14~~11) There shall be written policy and procedures addressing the use of any outdoor recreational space, including required supervision and the safety of pre-schoolers.

(~~15~~12) All outdoor openings such as doors and windows shall be screened and covered for privacy.

(~~16~~13) Toxic materials and dangerous substances, such as toxic cleaners, insecticides, and matches shall be stored in a non-resident area, locked space where they are not accessible to children.

(~~17~~14) Combustible materials shall be stored in locked non-flammable containers.

(~~18~~15) The Poison Control Center's toll-free telephone number shall be posted and visible to staff and resident clients at all times.

(~~19~~16) Facility sanitation shall be maintained to prevent offensive odors and insect infestation.

(~~20~~17) Provision shall be made for cleaning the facility minimally once per week. A written work schedule or other form of notification shall be posted, which clearly delineates each individual's responsibility for various tasks.

~~(21) Kitchens used for meal preparation in the residential facility shall be provided with the necessary equipment for the preparation, storage, serving, and clean-up of all meals. All equipment shall be maintained in working order.~~

~~(22) Provisions shall be made to assist or make food available for meal preparation that accommodates special diets.~~

~~(23) There shall be written policy and procedures for laundry and linens, addressing frequency of changing linens, and laundry arrangements within the facility.~~

~~(24) Laundry equipment shall be provided within the residential facility, and shall be kept clean, well maintained, and properly ventilated.~~

~~(25) Space shall be provided for storage of clients' personal belongings.~~

~~(26) Written policy and procedures shall address secure storage of client valuables~~.

(18) All facilities shall have emergency back up lighting. There shall be written policy and procedures for back up lighting in the event of a power outage.

(b) Compliance with 450:19-7-6 shall be determined by a review of program policy and procedures; shelter rules; review of fire and safety inspection report; staff and resident client interviews, and shelter policy and procedures.

450:19-7-7. Program environment, shelter services programs

All certified shelter services programs shall comply with section 450:19-7-6 and the following:

(1) Baby beds and high chairs that ensure children's safety and comfort shall be available for infants and small children.

(2) The facility shall have access to outdoor recreational space and playground equipment located, installed, and maintained as to ensure the safety of the clients and their children. The grounds and access thereto shall be maintained in a manner that shall ensure the area is free of any hazard to health or safety.

(3) Kitchens used for meal preparation in the residential facility shall be provided with the necessary equipment for the preparation, storage, serving, and clean-up of all meals. All equipment shall be maintained in working order.

(4) Provisions shall be made to assist or make food available for meal preparation that accommodates special diets.

(5) The facility shall have, at minimum, a commode, lavatory, and bathing facility at a ratio of one (1) to twelve (12) residents, including infants and children. The privacy of individuals or families shall be assured while using these facilities.

(6) Residents' rooms shall be so arranged that the client has direct access to a hallway or common area without having to pass through other resident's rooms or areas.

(7) There shall be written policy and procedures for laundry and linens, addressing frequency of changing linens, and laundry arrangements within the facility.

(8) Laundry equipment shall be provided within the residential facility, and shall be kept clean, well-maintained, and properly ventilated.

(9) Space shall be provided for storage of clients' personal belongings.

(10) Written policy and procedures shall address secure storage of client valuables

SUBCHAPTER 9. PROGRAM MANAGEMENT AND PERFORMANCE IMPROVEMENT

450:19-9-10. Performance improvement plan

(a) The program shall have a written performance improvement plan. This plan shall include, but not be limited to, the following:

(1) The purposes of the performance improvement plan, which shall include, but not be limited to, the improvement of services to clients.

(2) The job titles of persons responsible for the implementation and operations of the plan.

(3) The operational procedures of the plan.

(4) Protection of client confidentiality with no client name(s) or initial(s) being stated in any report or recommendation.

(5) Monitoring of services to clients to insure:

(A) Services offered are based on client need(s).

(B) Service delivery is based on client need(s).

(C) There is routine and regular use of case conferences, case consultation and staff supervision of client cases.

(D) Cultural competence and cultural sensitivity.

(6) Provisions for an annual report of the plan's operation, recommendations and disposition of those recommendations to be reported, annually, to the governing body.

(7) Annual review, recommendations, and approval of the plan by the governing body.

(8) A mechanism by which clients may voluntarily provide input regarding services.

(b) Compliance with 450:19-9-10 shall be determined by a review of the performance improvement plan, documentation of the plan's operations, recommendations, disposition of those recommendations, governing board and staff meeting

minutes, and any other supporting documentation provided by the program.

SUBCHAPTER 13. PERSONNEL AND VOLUNTEERS

PART 3. TRAINING

450:19-13-20.1. Orientation - general, employees and volunteers

(a) A certified program shall have a formal orientation program to familiarize new employees and volunteers which includes, but is not limited to:

(1) Program goals and services of each service component;

(2) Program policy and procedures;

(3) Confidentiality, to include verbal confidentiality whether inside or outside the facility and client records;

(4) Facility safety and disaster plans;

(5) First aid kits and fire extinguishers, their location, contents and use;

(6) Universal precautions;

(7) Client rights;

(8) Domestic violence and its effects on victims and children;

(9) The cycle of domestic violence;

(10) Power and control tactics of abuse;

(11) Crisis intervention techniques;

(12) Sexual assault;

(13) Victim advocacy;

(14) Parenting techniques;

(15) Active listening techniques;

(16) Accessing resources needed by victims and their families;

(17) The orientation training component shall be a minimum of ten (10) hours; and

(18) Orientation must take place within the first week of employment or prior to direct client contact and services.

(b) Compliance with 450:19-13-20.1 shall be determined by a review of the written policies and procedures, and employee and volunteer training manuals and records.

450:19-13-20.2. Inservice and ongoing training for employees and volunteers

(a) A certified program shall have policy and procedures mandating, ~~the~~ at the minimum, sixteen (16) hours of annual training of all staff, which shall include, but not be limited to:

(1) Confidentiality, to include verbal confidentiality whether inside or outside the facility and client records;

(2) Facility safety and disaster plans;

(3) First aid kits and fire extinguishers, their location, contents and use;

(4) Universal precautions

(5) Client rights;

(6) Program evaluation and goals;

(7) Domestic violence and its effects on victims and children;

(8) The cycle of domestic violence;

(9) Power and control tactics of abuse;

(10) Crisis intervention techniques;

(11) Sexual assault;

(12) Victim advocacy;

(13) Parenting techniques;

(14) Active listening techniques;

(15) Accessing resources needed by victims and their families;

(16) ~~The annual training component for staff shall be a minimum of sixteen (16) hours~~ First aid and CPR for adult, children, and infants within 30 days of employment (for employees only).

(b) A certified program shall have policy and procedures mandating the annual training of all volunteers, which shall include, but not be limited to:

(1) Confidentiality, to include verbal confidentiality whether inside or outside the facility and client records;

(2) Facility safety and disaster plans;

(3) First aid kits, their location, contents and use;

(4) Universal precautions

(5) Client rights;

(6) Program evaluation and goals;

(7) Volunteers who provide less than eight (8) hours of direct service per month shall receive a minimum of four (4) hours annual training;

(8) Individuals that volunteer services and do not meet the requirements for a volunteer as defined in OAC 450:19-1-2 shall annually review the certified program's policies and procedures addressing items (1) through (5) of this section, but do not have a minimum number of training hours required.

(c) Compliance with 450:19-13-20.2 shall be determined by a review of policy and procedures; volunteer or staff training materials; staff development and in-service training documentation; employee and volunteer development plan.

450:19-13-27. Staff training, safe home services

(a) Prior to providing any direct services, all safe home host families shall minimally receive sixteen (16) training hours provided by a staff member of a dv/sa program certified to provide safe home services, which shall minimally include:

(1) the nature and scope of domestic violence and sexual assault;

(2) societal attitudes toward domestic violence and sexual assault;

(3) orientation in the services, structure, philosophy and history of the sponsoring agency , and

(4) safety planning.

(b) Compliance with 450:19-13-27 shall be determined by:

(1) Review of program's policy and procedures.

(2) Review of program's training records and other provided documentation of staff training.

(3) Review of personnel records.

450:19-13-29. Staff training, Court Advocates

(a) Prior to providing services, Court Advocates shall receive the prescribed orientation ~~program~~ training, and training in the following:

(1) protective orders;

(2) full faith and credit;

(3) the court process; and,

(4) ~~have~~ at least three (3) hours of accompanied court time with a trained court advocate.

(b) Compliance with 450:19-13-29 shall be determined by:

(1) Review of program's policy and procedures.

(2) Review of program's training records and other provided documentation of staff training.

(3) Review of personnel records.

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

[OAR Docket #05-1020]

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. CERTIFICATION OF ALCOHOL AND DRUG SUBSTANCE ABUSE COURSES (ADSAC), ORGANIZATIONS AND FACILITATORS

450:21-1-3. Definitions

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

"ADSAC" means Alcohol and Drug Substance Abuse Course.

"10 Hour ADSAC Facilitator" means an individual certified to teach the ten (10) hour ADSAC.

"24 Hour ADSAC Facilitator" means an individual certified to teach the twenty-four (24) hour ADSAC.

"Administrator" means the person responsible for administering ADSAC within a certified organization or institution.

"Action Code" means a numerical designation applied to ADSAC by the Oklahoma Department of Public Safety, and which will be provided by ODMHSAS to organizations and institutions conducting ADSAC, for use in completing the written verification of an individual's completion of an ADSAC.

"Certification" means organization, institution or individual approved by ODMHSAS to conduct ADSAC.

"Commissioner" means the Commissioner of the Oklahoma Department of Mental Health and Substance Abuse Services.

"Conflict of interest" means a conflict between the private interests and public obligations of a certified organization, institution, or certified ADSAC Instructor and includes instructors being involved in a business relationship with more than one (1) ADSAC provider organization.

"Consumer" means an individual, adult or child, who is receiving services, evaluation or treatment, from an entity operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title

450 Chapters 16, 17, 18, 19 and 23 as client(s) or patient(s) or resident(s) or a combination thereof.

"Course" means multiple classes offering an approved ADSAC curriculum.

"Curricula" (plural of Curriculum) See Curriculum.

"Curriculum" means a course of study in alcohol and drug substance abuse.

"Denial" means a refusal to certify to conduct ADSAC.

"DPS" means Department of Public Safety.

"Equipment" means hardware, such as audio visual equipment, used as a tool to present material in an ADSAC.

"Facilitator candidate" means an individual who has applied to be certified to conduct ADSAC, as either a 10 hour or 24 hour ADSAC Facilitator.

"Facility" means building in which ADSAC is conducted.

"Guest instructor" means non-certified individual invited to discuss a specific portion of ADSAC curriculum.

"Instructional material" means written or printed data distributed to the student during the normal course of an ADSAC schedule, for informational or educational purposes.

"Intern facilitator" means a facilitator who has initial approval to conduct ADSAC, either 10 Hour or 24 Hour, but who has not completed internship or training requirements, and is not certified.

"Lapse" means the expiration of an otherwise valid ADSAC certification due to the failure to timely complete and submit the required application for recertification.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Offender" means a person convicted of driving under the influence of alcohol or other intoxicating substances or receiving an alcohol or drug related revocation or suspension of driving privileges.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"Professional setting" means a facility that is adequate and suitable for the purpose of providing adult education or assessment services, meeting all confidentiality requirements of 42 CFR, Part 2 and HIPAA, and without distraction or interruption from adjacent business or activities.

"Recertification" means the renewal of certification for an institution, or organization, or instructor to provide ADSAC.

"Revocation" means cancellation of an existing certification to conduct or instruct ADSAC.

"Student" means an individual who pays an enrollment fee to attend ADSAC.

"Suspend" means to temporarily cancel certified ADSAC services for a designated period.

"Transtheoretical Model of Change" or **"TMC"** means a model which identifies distinct stages of change existing for each individual involved in any educational or therapeutic process and enhances the ability to accurately assess the individual's readiness for clinical or educational engagement at the time of an assessment. This is also referred to as the "Stages of Change" model.

450:21-1-5. Compliance with laws, rules

(a) All organizations or institutions and facilitators certified by ODMHSAS to conduct ADSAC shall do so in accordance with all applicable laws of the State of Oklahoma and all applicable rules (OAC Title 450) of ODMHSAS.

(b) Each applicant shall declare in writing, in a format and manner prescribed by the Commissioner of ODMHSAS, that he or she has read and understands §§ 3-451 through 3-460 of Title 43A of the Oklahoma Statutes and this chapter and agrees to abide by the terms thereof, along with future amendments thereto, as a condition for obtaining and retaining such approval or certification.

(c) ODMHSAS shall process all applications, and enforce these standards and criteria (rules) in this chapter, and related laws.

(d) Approved organizations, institutions and facilitators shall not make reference to ODMHSAS or DPS in any advertisement. Advertising shall be truthful in all communication with prospective students. Implication of exclusive services by any one organization is prohibited.

(e) All organizations, institutions and facilitators certified to conduct ADSAC must promptly notify ODMHSAS of a change of mailing or physical address within fourteen (14) days of said change.

(f) The fees for those attending ten (10) hour ADSAC shall be one hundred and fifty dollars ($150.00) per student; and for persons attending the twenty-four (24) hour courses the fee shall be three hundred and sixty dollars ($360.00).

(g) The ADSAC organization or institution shall pay ODMHSAS ten percent (10%) of each ADSAC fee collected, which ODMHSAS shall remit to the Oklahoma State Treasurer to be credited to the ODMHSAS Revolving Fund.

(h) The payment from the ADSAC fee collected for each participant shall be made to ODMHSAS within thirty (30) days of completion of the course.

(i) A check for the appropriate fee shall accompany the completion roster, unless otherwise stipulated in writing by ODMHSAS.

450:21-1-8. Administrative responsibilities, institutions or organizations conducting ADSAC

(a) Each organization or institution certified to conduct ADSAC shall provide ODMHSAS, in a manner prescribed by the Commissioner of ODMHSAS, a monthly schedule of courses to be conducted. The scheduled courses shall be provided per the submitted course schedule and the course may only be canceled if zero (0) students show up for the course within fifteen (15) minutes after the scheduled course starting time. The course schedule shall be submitted no later than thirty (30) days in advance of any course start and shall include;

(1) The complete address, street, building name and suite where applicable, city and zip code, where each course will be conducted;

(2) The course facilitator;

(3) The beginning and ending times of each session of the course; and

(4) Enrollment in ten or twenty-four hour classes shall be limited to twenty-four (24) students.

(b) Each organization or institution certified to conduct ADSAC shall advise ODMHSAS seven (7) days in advance of:

(1) A 10 Hour or 24 Hour Course cancellation; or

(2) A scheduled facilitator change (unless change is due to illness or other instructor emergency); or

(3) Any change of the date or hour of the scheduled 10 Hour or 24 Hour Course.

(c) Failure to offer either a 10 Hour or 24 Hour Course at an approved site for three (3) consecutive months shall constitute a withdrawal from that site and require another application for certification.

(d) If no students attend the first session of a ten (10) or twenty-four (24) hour course, a second or subsequent session is not required.

(e) Failure to either provide a scheduled course to one (1) or more attending students, or staff a scheduled course site for up to fifteen (15) minutes after the scheduled course beginning time may result in administrative reprimand, suspension or revocation. Class may be cancelled when zero (0) students show up after fifteen (15) minutes of the scheduled course beginning time.

(f) ODMHSAS personnel shall be admitted to any course without charge, upon request and display of proper credentials for the purpose of audit and review.

450:21-1-9. Facilities, equipment and instructional material

(a) Each facility where an ADSAC course is held must meet local and state fire and safety standards. ODMHSAS may request state or local fire inspectors or other state safety officials to conduct an inspection of any facility suspected of being hazardous.

(b) Each facility must provide a safe, confidential and comfortable environment for students and instructors, with minimum distractions.

(c) All equipment must be in good working condition.

(d) Instructional material issued to students such as handouts, pamphlets, workbooks, etc., must have been submitted to ODMHSAS upon application by the organization or institution for certification.

(e) Each facility shall be a professional setting as appropriate for the ~~educational~~ purposes of conducting an ADSAC course.

(f) Facilities shall not be designed or used for the primary purpose of eating or sleeping (hotel/motel sleeping rooms, restaurant dining rooms, etc.).

450:21-1-10. Ten or 24 hour facilitator certification, qualification and disqualification

(a) Minimum qualifications for certification of 10 Hour ADSAC facilitators are as follows:

(1) Possess a bachelor's degree in behavioral or healthcare sciences education, psychology, social work or chemical dependency with at least two (2) years verifiable full-time equivalent experience in the addiction treatment field.

(2) A valid driver's license.

(3) Completion of the following in the order listed below:

(A) Observe one (1) complete ADSAC conducted by a certified facilitator. This observation must be completed and verified to ODMHSAS prior to attending facilitator training;

(B) ~~Instructor~~ Attend the instructor training and pass the ODMHSAS Certification Examination for 10 Hour ADSAC Facilitator; and

(i) a minimal score to pass the exam shall be eighty (80) percent;

(ii) the exam shall require the participant to correctly identify the major components of the transtheoretical model of change;

(iii) the exam shall require the participant to correctly identify the major components of the interactive journaling process; and

(iv) the exam shall require the participant to correctly identify rules from this chapter;

(C) Conduct a complete ADSAC under the supervision of a certified ADSAC facilitator or an ODMHSAS representative.

(4) The facilitator candidate shall be allowed one (1) year to complete all training requirements. Failure to meet all requirements within one (1) year will result in denial of certification. To be reconsidered, the candidate will be required to re-apply to ODMHSAS.

(5) Renewal of certification as a 10 Hour ADSAC Facilitator shall be dependent upon renewal application, remission of a twenty-five dollar ($25.00) renewal certification fee, and the accomplishment of minimum standards. These standards are:

(A) Each facilitator shall conduct at least two (2) complete courses during each twelve (12) month period beginning with the date of initial certification.

(B) Documentation of receiving ~~ten~~ twelve (~~10~~ 12) continuing education hours each twelve (12) month period beginning with the date of initial certification. These hours shall be from each of the following areas with six (6) hours coming from areas (i) and/or (ii) and six (6) hours coming from area (iii):

(i) adult education,

(ii) ~~social work, sociology or psychology~~ facilitation skills, and

(iii) alcohol and other drug training.

(b) An applicant for Certified Facilitator for the twenty-four (24) hour ADSAC shall meet the following qualifications:

(1) Be ~~a Qualified Practitioner as set forth in OAC 450:22-1-13 and~~ certified as a 10 Hour ADSAC Instructor (in good standing) for at least one (1) year;

(2) Observe at least six (6) hours of a 24 Hour ADSAC Course;

(3) Present at least six (6) hours of a 24 Hour ADSAC under the observation of a certified 24 Hour ADSAC Facilitator, and receive written recommendation for certification from said observer; and

(4) Attend six hours of ODMHSAS 24 Hour ADSAC Facilitator training~~.~~ and pass the ODMHSAS Certification Examination for twenty four (24) Hour ADSAC Facilitator;

(A) a minimal score to pass the exam shall be eighty (80) percent;

(B) the exam shall require the participant to correctly identify the major components of the transtheoretical model of change;

(C) the exam shall require the participant to correctly identify the major concepts of adult learning and basic facilitation skills;

(D) the exam shall require the participant to correctly identify rules from this chapter;

(c) Renewal for certification as a 24 hour ADSAC Facilitator shall be dependent upon application for recertification, remission of a twenty-five dollar ($25.00) renewal certification fee, and the accomplishment of the following:

(1) Each facilitator shall conduct at least two (2) complete courses during each twelve (12) month period beginning with the initial certification.

(2) Documentation of receiving ~~ten~~ twelve (~~10~~ 12) continuing education hours each twelve (12) month period beginning with the date of initial certification. These hours shall be from each of the following areas with six (6) hours coming from areas (A) or (B) and six (6) hours coming from area (C):

(A) adult education,

(B) ~~social work, sociology or psychology~~ facilitation skills, and

(C) alcohol/drug training.

(d) An applicant may not be certified nor certification as an ADSAC facilitator renewed under any of the following conditions:

(1) A non-pardoned felony conviction within the last five (5) years;

(2) Conviction of driving under the influence of alcohol or other intoxicating substances or receiving an alcohol or drug related revocation or suspension of driving privileges for five (5) years prior to the application for certification; or,

(3) Having involvement in any business or endeavor which is a conflict of interest. ODMHSAS may on its own initiative, or upon complaint, investigate potential or alleged conflict of interest, or any other alleged, or suspected violation of these standards.

SUBCHAPTER 5. COURSE ATTENDANCE AND COMPLETION

450:21-5-1. Student attendance and completion of ADSAC

(a) The ADSAC organization or institution shall require students to complete all portions of an approved curriculum schedule.

(b) The ADSAC shall allow a student unable to attend one (1) or more portions to make up portion or portions missed at another regularly scheduled course at the certified organization or institution at which the course was originally scheduled.

(c) All 10 Hour course work shall be completed within sixty (60) days of the first course. Failure to complete all course work within the sixty (60) days shall result in the loss of course credit and any funds remitted. Re-enrollment in either the same or a different ADSAC following failure to complete an ADSAC within the stated time limit shall require full course attendance prior to the issuance of a Certificate of Completion. All students enrolling in a 10 hour ADSAC shall be notified of this fact in writing.

(d) All 24 Hour course work shall be completed and paid within one hundred eighty (180) days of the first course. Failure to complete all course work within the one hundred eighty (180) days shall result in the loss of course credit and any funds remitted. Re-enrollment in either the same, or a different ADSAC following failure to complete and ADSAC within the state time limit shall require full course attendance prior to the issuance of a Certificate of Completion. All students enrolling in a 24 hour ADSAC shall be notified of this fact in writing.

(e) ADSACs shall make required course work available to enrolled students within the times frames set forth in this standard. ADSACs failing to make required course work available within the stipulated time frames, for any reason, shall refund to student any fees paid for said course.

(f) Each organization or institution shall issue a receipt from a pre-numbered duplicate receipt set to each student upon receipt of all or part of the required enrollment fee. Each organization or institution shall have receipts to be used specifically for ADSAC.

(g) Each organization or institution shall maintain the pre-numbered receipts and a file on both course and student for five (5) years after completion of said course. Such files shall also consist of:

(1) Course information:

(A) Completion roster; and

(B) Attendance records; and

(2) Student information:

(A) Enrollment form;

(B) Written referral documenting an assessment pursuant to OAC 450:22-1-11;

(C) Pre- and Post-Test;

(D) Evaluation Form completed by student; and

(E) Copy of the Completion Certificate.

450:21-5-2. ADSAC reporting of completions

(a) Each certified ADSAC organization or institution shall report successful course completions to ODMHSAS within ~~seven~~ thirty (~~7~~ 30) days from the date the course is completed, ~~on a form~~ in a format prescribed by ODMHSAS.

~~(1) A check for the appropriate fee as provided for in 450:21-1-5 shall accompany the completion roster unless otherwise stipulated, in writing, by ODMHSAS.~~

~~(2)~~ Certified organizations or institutions shall not report a completion until all course requirements have been met, to include the student's payment of the full required ADSAC fee.

(b) Each student who successfully completes the course, 10 Hour or 24 Hour, shall be issued an ODMHSAS certificate of completion by the ADSAC that shall include the appropriate Action Code as listed below:

(1) 224-10 for persons having completed a 10 Hour course.

(2) 224-24 for persons having completed a 24 Hour course.

[OAR Docket #05-1020; filed 5-26-05]

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

[OAR Docket #05-1021]

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PERMANENT final adoption
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450:22-1-9. [AMENDED]
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In compliance with the Administrative Procedures Act the proposed rule revisions to Chapter 22 are part of the Department's review of Title 450. These proposed amendments are intended to comply with statutory mandates, amend or revoke rules, clarify certification requirements, delete redundant or superfluous language, and correct scrivener's errors.
CONTACT PERSON:
Linda Winton, Policy Analyst and Agency Liaison Officer, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-6765.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

450:22-1-1.1. Certification duration

~~(a) ODMHSAS may certify Assessment Agencies for three (3) years.~~

~~(b)~~ ODMHSAS may certify assessors for one (1) year.

450:22-1-3. Definitions

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

"ADSAC" means Alcohol and Drug Substance Abuse Course.

"Addiction Severity Index" or **"ASI"** is a multidimensional clinical and research instrument that rates the severity of a substance use or abuse problems for diagnostic evaluation and assesses change(s) in treatment status and outcome.

"Assessor" means an individual certified to conduct ~~ADSAC~~ alcohol and other drug assessments related to driver's license revocations.

"Assessment" means a face-to-face clinical interview evaluating an individual's need and receptivity to substance abuse treatment and his or her prognosis.

"Certification" means ODMHSAS approval for an ~~agency or~~ individual to conduct alcohol and other drug assessments related to driver's license revocations.

"Certified Alcohol and Drug Counselor" or **"CADC"** means any person who is certified pursuant to the provisions of the Licensed Alcohol and Drug Counselors Act.

"Conflict of Interest" means a conflict between the private interests and public obligations of a certified organization or assessor.

"Consumer" means an individual, adult or child, who has applied for, is receiving, or has received services, evaluation or treatment, from an entity operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Defendant Questionnaire" or **"DQ"** is an automated assessment or screening instrument used in assessing an offender with alcohol or other drug involvement. This instrument contains scales to measure truthfulness, stress coping ability, and severity of alcohol or other drug abuse and classifies an individual as being either a substance abuser or substance dependent using the American Society of Addiction Medicine, patient placement criteria.

"DPS" means the Oklahoma Department of Public Safety.

"Driver Risk Inventory-II" or "DRI-II" is an assessment or screening instrument, which contains six scales measuring truthfulness, driver risk, stress coping ability, and severity of alcohol or other drug abuse and classifies an individual as being either a substance abuser or substance dependent.

"Licensed Alcohol and Drug Counselor" or **"LADC"** means any person who is licensed pursuant to the provisions of the Licensed Alcohol and Drug Counselors Act.

"Michigan Alcohol Screening Test" or "MAST" is a widely used tool for assessing alcohol abuse. The MAST is a twenty five (25) item questionnaire designed for use in a paper and pencil form or as an interview. The MAST provides a rapid and effective screen for alcohol related problems and alcoholism. The MAST has been shown to be effective in a variety of settings and with a variety of populations.

"Mortimer-Filkins Questionnaire" or "MFQ" is a fifty four (54) question tool that involves a combination questionnaire and interview used together to calculate a total score. The MFQ was designed to identity problem drinkers among DUI?DWI offenders.

"NEEDS" is a one hundred and thirty (130) item comprehensive adult assessment instrument addressing attitude, emotional stability, employment, health, education, substance abuse, relationships, support systems, criminal history and supervision needs. Needs is short for needs assessment.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Offender" means a person convicted of driving under the influence of alcohol or other intoxicating substances or who has received an alcohol or drug- related revocation or suspension of driving privileges.

"OSBI" means Oklahoma State Bureau of Investigation.

"Professional setting" means a facility that is adequate and suitable for the purpose of providing adult education or assessment services, meeting all confidentiality requirements of 42 CFR, Part 2 and 45 C.F.R. Parts 160 & 164 (HIPAA), and without distraction or interruption from adjacent business or activities.

"Psychosocial History" means an individual and family history of alcohol and drug abuse, an individual and family psychiatric history and a medical history of the individual and family psychiatric history, and a medical history of the individual.

"SALCE" or "Substance Abuse Life Circumstances Evaluation" is a ninety eight (98)-item survey addressing alcohol and/or drug use based on DSM-IV and ASAM guidelines. The SALCE also assesses attitude and life stressors. The SALCE is normed to the adult population.

"SASSI" or "Substance Abuse Subtle Screening Inventory" is a brief, easily administered psychological screening tool that assists in the identification of individuals with high probabilities of substance use disorder.

"SUDDS" or "Substance Use Disorders Diagnostic Schedule" is a structured interview consisting of ninety nine (99) items with nine (9) subscales designed to identify relative severity of substance abuse problem in an individual. This instrument exists in both paper and pencil and computer versions.

"TAAD" or "Triage Assessment for Addictive Disorders" is a very brief, structured interview covering current alcohol and drug problems related to DSM-IV criteria for substance abuse and dependency. The TAAD is intended to be presented as an interview and not as a paper and pencil instrument.

450:22-1-5. General statement

The following standards and criteria govern:

(1) Certification of ~~agencies and~~ individuals approved to provide assessment services;

(2) ~~Assessment responsibilities and activities of certified agencies;~~

~~(3)~~ Assessment standards;

(~~4~~3) Assessment responsibilities and activities of certified assessors ~~and qualified practitioners~~; and

(4~~5~~) Requirements for reporting completed assessments to ODMHSAS.

450:22-1-7. ODMHSAS responsibilities

ODMHSAS shall have the authority and duty to:

(1) Annually review this chapter and amend as needed;

(2) Establish, ~~and~~ monitor and enforce reporting requirements and report forms;

(3) Monitor ~~assessment agencies,~~ assessors ~~and qualified practitioners~~ for conflict of interest;

(4) Provide or approve assessor training, ~~re-training,~~ continuing education and ~~re-~~certification;

(5) Notify all appropriate ~~agencies,~~ assessor applicants ~~and qualified practitioner applicants~~ of ODMHSAS-approved training;

(6) Certify assessors~~, agencies and qualified practitioners~~;

(7) Approve sites for assessment services; and

(8) Upon receipt of a valid written consent for release of information, certify to DPS that a person has participated in and successfully completed an alcohol and substance abuse evaluation and assessment program.

450:22-1-8. Consumers with disabilities

Each ~~assessment agency or~~ site shall have a written policy addressing its awareness of, and intent to comply with, the U.S. Americans with Disabilities Act of 1990.

450:22-1-9. Certified approved sites

Alcohol and other drug assessment and evaluation shall be provided at sites approved by ODMHSAS. Sites shall meet the following standards for consideration of approval:

(1) Sites shall be in professional~~, business~~ settings appropriate for the assessment and for safeguarding the confidentiality of the consumer;

(2) Hours and days of operation shall be during regularly scheduled periods which make assessment services accessible to consumers, including those employed between 8:00 a.m. and 5:00 p.m., and to the general public;

(3) The site's days and hours of operation shall be conspicuously displayed on the outside of the building along with a business phone number used for scheduling of appointments;

(4) For sites in multi-office buildings, the days and hours of operation shall be posted in the building directory or on the door of the site office;

(5) Sites for the primary purpose of eating or sleeping, i.e., hotel/motel sleeping rooms, restaurant dining areas, etc., will not be considered for approval; and

(6) Sites shall be handicapped-accessible and meet all other requirements of the Americans with Disabilities Act of 1990.

450:22-1-10. Offender evaluation

The assessment and evaluation of the offender shall be as comprehensive as possible and shall include, but not be limited to:

(1) A formal face-to-face clinical interview consisting of, at a minimum:

(A) Socio-demographic and background information;

(B) Personal history; and

(C) A completed and scored Addiction Severity Index (ASI).

(2) The assessor shall obtain and document the offender's driving history information from public record(s), when possible. This information shall minimally include the following:

(A) Arrest date;

(B) All charges relating to alcohol and drug offenses; and

(C) Driving record;

(3) Alcohol and other drug information as supplied by the offender or referring party:

(A) Blood alcohol concentration at time of arrest;

(B) Prior alcohol/drug treatment;

(C) Polydrug use;

(D) Prior alcohol-related arrest(s); and

(E) Prior drug related arrest(s); and

(4) Pursuant to 450:22-1-11, the use of completed and scored standardized evaluation instruments.

(5) All information shall be in a format prescribed by the Commissioner of ODMHSAS.

450:22-1-11. Standardized evaluation instruments

(a) Standardized evaluation instruments shall be administered in the manner intended and be findings shall be a component of the overall assessment and recommendations.

(b) The standardized evaluation instruments shall include:

(1) A completed and scored ~~The~~ Driver Risk Inventory-II (DRI-II) in a face to face structured interview. However, for an offender convicted of a felony or misdemeanor non-driving, alcohol or other drug offense(s), a completed and scored ~~the~~ Defendant Questionnaire (DQ) shall be used instead of the DRI-II and;

(2) A completed and scored Addiction Severity Index (ASI);

(3) A completed and scored third clinical instrument to support initial findings, shall be chosen by the assessor from the menu of approved third instruments listed below;

(A) Substance Abuse Subtle Screening Inventory (SASSI); or

(B) Substance Abuse Life Circumstances Evaluation (SALCE); or

(C) NEEDS; or

(D) Mortimer-Filkins; or

(E) Triage Assessment for Addictive Disorders (TAAD); or

(F) Substance Use Disorders Diagnostic Schedule (SUDDS); or

(G) Michigan Alcoholism Screening Test (MAST); and

(4) A thorough face-to-face interview.

(5) All third assessment instruments shall be used only in a manner consistent with the instrument design and intent and matching with the level of severity of the offender. An instrument designed for establishing the probability of substance dependence will only be utilized with consumers in which there is an indication of substance dependence.

450:22-1-12. ~~Agency assessment~~ Assessment personnel

(a) ~~Applicants~~ An applicant for ~~agency~~ certification as an assessor shall:

(1) Possess a bachelor's degree or above in the behavioral or health sciences; and

(2) Have at least two (2) years documented full-time experience in drug/alcohol treatment counseling; and

(3) Currently ~~have, or currently working toward one of the following certifications:~~ be licensed as an LADC or certified as an alcohol and other drug counselor and supervised by an LADC pursuant to Oklahoma state statutes.

~~(A) CADC through ODAPCA; or~~

~~(B) NCAC, Level 1 through NAADAC; or~~

~~(C) MAC through NAADAC; and,~~

(4) Be trained or have proven experience in the identification and management of ~~alcohol/drug~~ alcohol and other drug abuse problems and clinical interviewing skills; and

(5) Complete the ODMHSAS Assessor Training; and

~~(6) Provide assessment services only at the agency for which they have been certified to assess offenders.~~

(b) Applications for certification as an ~~agency~~ assessor shall be made in writing to the Department on a form in a manner prescribed by the Commissioner, be accompanied by an official education transcript(s) and include the following:

(1) A copy of the applicant's resume documenting all education and employment for the previous ten (10) years;

(2) A copy of any applicable diploma or certificate; and

(3) Remission of the $100 fee for initial certification~~.~~;

(4) An official transcript; and

(5) An OSBI background check.

(c) Before being certified, the applicant shall:

(1) Complete the ODMHSAS-approved assessor training;

(2) ~~Take~~ Complete and pass the ODMHSAS assessment skills competency examination;

(i) a minimal score to pass the exam shall be eighty (80) percent;

(ii) the exam shall require the applicant to correctly identify the major aspects of the Drivers Risk Inventory-revised (DRI-II), the Defendant Questionnaire (DQ) and the Addiction Severity Index (ASI);

(iii) the exam shall require the applicant to correctly identify the major components of motivational interviewing;

(iv) the exam shall require the applicant to correctly identify rules from this chapter; and

(3) Observe one (1) assessment ~~conducted at an agency,~~ with written permission of the consumer; and

(4) Conduct two (2) assessments under the supervision of a ~~qualified practitioner or a~~ certified ~~Agency Assessor~~ assessor, with written permission of consumer.

(d) Upon completion of the above requirements, the ~~individual~~ certified assessor providing the supervision shall submit an evaluation of the applicant's skill level on a form and in a manner prescribed ~~provided~~ by the Commissioner of ODMHSAS and a copy of one (1) written court report done by the applicant.

(e) An ~~agency~~ assessor applying for renewal must:

(1) Complete ODMHSAS renewal application form;

(2) Submit documentation of receiving ~~eight~~ ten (~~8~~10) continuing education hours in each twelve (12) month period beginning with the date of original certification. Acceptable continuing education hours shall include subject areas in substance abuse, assessment instruments and interview techniques, ~~mental health, or a related health field~~; however, they shall not include DUI School Instruction; and

(3) Remit the $25 recertification fee.

(f) Failure to timely renew the certification shall result in expiration of certification and forfeiture of the rights and privileges granted by the certification. A person whose certification has expired must make application for an initial certification as set forth in 450:22-1-12.

450:22-1-13. Qualified practitioner [REVOKED]

~~(a) A Qualified Practitioner certified prior to July 1, 2004 shall:~~

~~(1) Possess a bachelor's degree in substance abuse treatment, mental health or a related health care field; and~~

~~(2) Have two (2) years documented experience in providing alcohol or drug abuse treatment; and~~

~~(3) Currently have, or currently working toward one of the following certifications:~~

~~(A) CADC through ODAPCA; or~~

~~(B) NCAC, Level 1 through NAADAC; or~~

~~(C) MAC through NAADAC.~~

~~(b) A Qualified Practitioner receiving initial certification July 1, 2004 or after shall:~~

~~(1) Possess a bachelor's degree in substance abuse treatment, mental health or a related health care field; and~~

~~(2) Have two (2) years documented experience in providing alcohol or drug abuse treatment; and~~

~~(3) Currently have, or currently working toward one of the following certifications:~~

~~(A) CADC through ODAPCA; or~~

~~(B) NCAC, Level 1 through NAADAC; or~~

~~(C) MAC through NAADAC; and,~~

~~(c) Applications for certification as a qualified practitioner shall be made in writing to the Department on a form and in a manner prescribed by the Commissioner, and shall include the following:~~

~~(1) An official certified educational transcript(s);~~

~~(2) A current copy of the applicant's resume documenting all education and employment for the past ten years, and~~

~~(3) A copy of any applicable diploma or certificate; and~~

~~(4) Remission of the $100 fee for the initial certification.~~

~~(d) Before being certified, Qualified Practitioners shall:~~

~~(1) Complete ODMHSAS approved assessor training; and~~

~~(2) Take and pass the ODMHSAS assessment skills competency examination.~~

~~(e) A Qualified Practitioner applying for renewal must:~~

~~(1) Complete ODMHSAS application for renewal; and~~

~~(2) Submit documentation of receiving eight (8) hours of continuing education each twelve (12) month period beginning with the date of original certification. Acceptable continuing education hours shall include subject areas in substance abuse, mental health, or a related health field; however, they shall not include DUI School Instruction; and~~

~~(3) Remit the $25 recertification fee.~~

~~(f) An applicant for Qualified Practitioner shall be considered an intern until he or she has:~~

~~(1) Observed one (1) assessment conducted by a certified Assessor or Qualified Practitioner, with written permission of the individual being assessed.~~

~~(2) Performed two (2) assessments under the supervision of a Qualified Practitioner or certified Agency Assessor, with the written permission of those persons being assessed.~~

~~(g) Failure to timely renew the certification shall result in expiration of certification and forfeiture of the rights and privileges granted by the certification. A person whose certification~~

~~has expired must make application for an initial certification as setforth in 450:22-1-13.~~

450:22-1-14. Qualified Practitioner responsibilities [REVOKED]

~~Qualified Practitioners certified by ODMHSAS to conduct alcohol and other drug assessments shall:~~

~~(1) Provide assessment services at only those sites approved by ODMHSAS;~~

~~(2) Assure timely and accurate information to the courts, offenders and ODMHSAS;~~

~~(3) Report assessment data to ODMHSAS;~~

~~(4) Provide liaison with ODMHSAS, the courts and other agencies; and~~

~~(5) Provide assessment services limited to the catchment area or service area where the practitioner's primary site is located.~~

450:22-1-15. Assessor responsibilities

Certified assessors shall:

(1) Conduct assessments and based on assessment findings, recommend education or treatment or both;

(2) Report to the court within seventy-two (72) hours of assessing an individual if the individual is referred by the court;

(3) Provide information in writing regarding state and local area education and treatment resources to each individual assessed appropriate to the referral recommendations in a format prescribed by the Commissioner of ODMHSAS;

(4) Manage and distribute all reports according to confidentiality laws under 42 CFR, Part 2, as well as all ~~and~~ 45 C.F.R. Parts 160 & 164 (HIPAA) regulations;

(5) Assure there is no conflict of interest by:

(A) referring individuals to those agencies in which the assessor has no vested interest; and

(B) providing three (3) outside referral options in writing for each recommended service, or as many options as available within a 70-mile radius; and

(C) maintain written assessment documentation to be available for consumers for a minimum of three (3) years after completion of all assessment requirements. Written documentation shall include, but not be limited to:

(i) completed assessment instrument(s) and associated raw data;

(ii) clinical interview notes; and

(iii) referrals and recommendations made as a result of the assessment.

(6) Provide liaison with court officials and related other agencies; and

(7) Remit 10% of each fee collected for assessment and evaluation to the State Treasurer to be credited to the Department of Mental Health and Substance Abuse Services Revolving Fund within thirty (30) days. The fee for those undergoing an assessment and evaluation is one hundred seventy-five dollars ($175.00). Any additional charges or fees attached to the assessment process will be set by the legislature.

(8) Explain possible liability and ability to pay for ODMHSAS-affiliated, private and other education and treatment facilities.

(9) Inform individuals receiving assessments that all contacts, evaluation results and reports are protected through federal regulations of confidentiality, 42 CFR Part 2.

(10) For those offenders receiving an alcohol and drug related license revocation on or before June 30, 2003~~, verify he or she has completed all tasks identified by the assessment and required for license reinstatement; and,~~ the assessor shall:

(A) provide the offender with a certificate of completion;

(B) affix the official assessor seal; and

(C) report completion to the Department of Public Safety.

(11) For those offenders receiving an alcohol and drug related license revocation on or after July 1, 2003, verify he or she has completed all tasks identified by the assessment and required for license reinstatement; and,

(A) provide the offender with a certificate of completion;

(B) affix the official assessor seal and stamp, with the stamp in red ink; and

(C) report completion to the Department of Public Safety.

(12) The fee for this verification of completion will be as set by the legislature.

(13) Provide ODMHSAS written notification of those offenders successfully completing required education and treatment, including the offender's name, address, date of birth and drivers license number.

(14) Provide each individual assessed with a form containing information regarding all assessor certifications and licensures to include; name, phone number and address of the certifying or licensing body. If certified rather than licensed, name of the licensed individual serving as supervisor with all licensures including; name, phone number and addresses of the licensing bodies pursuant to Oklahoma state statutes. Contact information for the DUI Programs personnel at ODMHSAS shall be included.

450:22-1-16. Denial or revocation of assessment certification

~~Rules governing denial or revocation of organizational or institutional certification and rules governing denial or revocation of qualified assessor or practitioner certification are as follows:~~

(a~~1~~) ~~ODMHSAS may impose administrative sanctions against any organization certified to conduct alcohol and other drug assessments which fails to comply with these standards and criteria.~~ ODMHSAS may reprimand, suspend, revoke or deny certification or renewal of the certification of any assessor who fails to qualify for or comply with the provisions of this Chapter.

~~(2) ODMHSAS may impose administrative sanctions against any assessor or qualified practitioner certified to conduct alcohol and other drug assessments who fails to comply with these standards and criteria.~~

(b~~3~~) In the event that ODMHSAS determines action should be taken against any person certified under this Chapter, the proceeding shall be initiated pursuant to the rules of ODMHSAS as set forth in Oklahoma Administrative Code, Title 450, Chapter 1, Subchapter 5 and the Administrative Procedures Act.

(c~~4~~) ~~Organizations or assessors~~ Assessors who have had certification renewal denied or certification revoked shall not be eligible for re-application for a period of five (5) years.

(d~~5~~) Assessors whose certification has expired may apply for certification in accordance with ~~450:22-1-13~~ 450:22-1-12.

(e) ODMHSAS may impose administrative sanctions against any certified assessor for any of the following reasons, including but not limited to:

(1) Erroneous or false information contained in the individual's application for certification;

(2) A conviction of driving under the influence of alcohol or other intoxicating substances or receiving an alcohol or drug related revocation or suspension of driving privileges while certified as an assessor;

(3) Any alcohol or other drug related misdemeanor or felony conviction while certified as an assessor;

(4) Unlawful conduct on duty or in the presence of a consumer;

(5) Conducting an assessment on more than one (1) consumer at a time.

(6) Tardiness or failure to make reports, or to transmit funds required by this chapter;

(7) Erroneous or falsified information relating to any documents submitted to ODMHSAS;

(8) Allowing a non-certified individual to conduct an assessment without a certified assessor present at all times;

(9) Failure to maintain all records required by ODMHSAS;

(10) Use of facilities not approved by ODMHSAS;

(11) Any activity which is a conflict of interest;

(12) Use of intoxicating beverages or illegal drugs while conducting an assessment;

(13) Conducting an assessment while the consumer is using or under the influence of mood-altering substances, including alcohol;

(14) Dismissal by an ODMHSAS certified organization or institution for violation of state statutes, or of the standards and criteria in this chapter;

(15) Knowingly permitting any assessor to violate any rule of this Chapter, or any other relevant Chapter of these Administrative Rules;

(16) Use of assessment instruments not pre-approved by ODMHSAS as one of the three standardized instruments;

(17) Willful failure, or refusal, to cooperate with an investigation by ODMHSAS, or employing agency, into a potential or alleged violation of applicable rules in this chapter;

(18) Refusal to allow assessor candidate to observe an assessment as required for training;

(19) Issuance of completion certificate(s) to consumer(s) who have not completed, or who fail to complete any ADSAC requirement;

(20) Violation of any applicable rule in this Chapter, or any other applicable Chapter;

(21) Falsification of any report, or document submitted, or prepared for submission, to ODMHSAS.

(22) Collecting fees for; or issuing receipts for; or issuing completion certificates for; or conducting an assessment during; or soliciting students for assessments at a later date during the ADSAC.

(23) Any verbal or physical sexual misconduct with or toward a consumer.

(24) Any other just and verifiable cause including but not limited to unethical or illegal activities.

(25) Failure to wait at least a full fifteen (15) minutes when a consumer is late for an assessment prior to canceling the session.

(26) Failure to provide ODMHSAS with the physical address for conducting assessments.

(27) Failure to complete ODMHSAS requirements for adding assessment sites;

(28) Failure to notify ODMHSAS of any assessor violations of this chapter, or of assessor terminations due to violations of this chapter;

(29) Establishing the legal business residence for the purpose of conducting assessments outside the state of Oklahoma;

(30) Violation of or failure to meet any applicable rule contained in this chapter;

(31) Knowingly allowing an assessor to conduct an assessment or solicit students for an assessment during an ADSAC; or

(32) Any other just and verifiable cause including but not limited to moral turpitude or illegal activities.

[OAR Docket #05-1021; filed 5-26-05]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 30. ~~CLINICAL CARE~~ STATE-OPERATED INPATIENT SERVICES

[OAR Docket #05-1022]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 15. Forensic Review Board [NEW]
450:30-15-1. [NEW]
450:30-15-2. [NEW]
450:30-15-3. [NEW]

AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-202(17).

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SUPERSEDED EMERGENCY ACTIONS:
N/A
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N/A
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 30 are part of the Department's review of Title 450. These proposed amendments implement statutory mandates recently legislated.
CONTACT PERSON:
Linda Winton, Policy Analyst and Agency Liaison Officer, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-6765.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 15. FORENSIC REVIEW BOARD

450:30-15-1. Applicability

(a) This Subchapter is applicable to the ODMHSAS-operated Oklahoma Forensic Center and other facilities within the Department housing individuals committed to the Department pursuant to Title 22 O.S. § 1161 and implements the provisions of 22 O.S. § 1161.F.2.a and 43A O.S. § 2-202.17.

(b) Each person ordered to the custody of the ODMHSAS through a "not guilty by reason of insanity" verdict shall receive an annual review of his or her case and clinical status by a Forensic Review Board comprised of licensed clinicians selected by the ODMHSAS Commissioner.

450:30-15-2. Definitions

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

"Forensic Review Board" or **"Review Board"** is the three-member board appointed by the ODMHSAS Commissioner to review the cases of persons ordered to the custody of the Department through a "not guilty by reason of insanity" verdict.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Therapeutic visits" mean any ODMHSAS unsupervised time to be spent off the campus of the Oklahoma Forensic Center or any other ODMHSAS operated facility to which the individual may be committed and includes the following types of off-campus time:

(A) **Partial day passes** or off-grounds passes for a defined period of time not to exceed 12 hours;

(B) **Day passes** or off-grounds visits to a specific location for a specific date(s) or occasion, e.g. from 8:00 a.m. on December 24, 2004 until 5:00 p.m. on December 25, 2004 to visit mother for Christmas;

(C) **Routine therapeutic visits** to a specific location, e.g. two weeks out of every month to be spent at Homeplace Residential Care Facility; and

(D) **Emergency therapeutic visits** upon recommendation by the Board and with court approval.

450:30-15-3. Composition, powers and duties

(a) **Membership.** The Forensic Review Board shall be composed of three (3) members selected by the ODMHSAS Commissioner.

(1) Members shall be a licensed mental health professional whose training and experience enable them to form expert opinions regarding mental illness and dangerousness. At least one member shall be a psychiatrist and one member shall be a licensed psychologist.

(2) Members shall be appointed to staggered terms not to exceed three (3) years. Members shall serve at the pleasure of the Commissioner.

(3) The Review Board shall select a chair who shall:

(A) Preside over each meeting; and

(B) Keep the members apprised of relevant information.

(b) **Meetings.** The Review Board shall meet at the Oklahoma Forensic Center at least quarterly.

(1) A quorum shall consist of two (2) members;

(2) In the event of a tie vote when only two members are conducting business, such results shall be forwarded to the Commissioner or designee for a determination;

(3) The agenda and materials for review shall be prepared and reviewed by the Board members in advance of the meeting. Review materials pertinent to each case may include, but are not limited to:

(A) Risk assessment;

(B) Recommendation and other relevant information from the consumer's treatment team;

(C) Progress Notes for the previous three months;

(D) Lab testing for medication compliance;

(E) Lab results for drug/alcohol screens upon return from previous visits, if any;

(F) Any critical incident forms involving the consumer during the previous twelve months;

(G) Input from family members or others involved in the plans for the Therapeutic Visit; and

(H) Other information the Review Board deems necessary.

(4) The person whose case is under review shall be given an opportunity to provide input via written documentation and in person. If the person chooses, he or she may have a representative accompany him or her to the Review Board meeting.

(c) **Reviews.** Following the review of the information submitted, the Review Board shall render a determination at the conclusion of each meeting. The determination for each case is limited to the following:

(1) Whether or not therapeutic visits will be recommended to the court by the Review Board;

(2) If such visits are to be recommended, what level of supervision is to be required;

(3) Therapeutic visits shall be recommended in a pattern designed to test and demonstrate progressive recovery of the consumer beginning with partial day passes, progressing to day passes, then for specified dates, followed by routine therapeutic visits; and

(4) Any other parameters to be recommended to the court reviewing the Therapeutic Visit.

(d) All Therapeutic Visit recommendations must specify the location where the time is to be spent and the individual responsible for supervising the person during the time off campus.

(e) Before being eligible for consideration for day pass therapeutic visits the individual must have been successful in managing unsupervised ground freedom on campus for at least five (5) months. Successful management of ground freedom is defined as being compliant with treatment, including being accountable for his or her whereabouts.

(f) In order to be considered for therapeutic visits beyond the day pass level, consumers must have acceptable scores as noted on the following risk assessment instruments:

(1) score 29 or less on the PCL-R;

(2) score in categories 1 through 6 on the VRAG; and

(3) score 25 or lower on the HCR20 for an outpatient setting.

(g) Before being considered for therapeutic visits for specific dates the individual must have successfully completed at least nine (9) successful day passes spread over at least six (6) months.

(h) Before being considered for routine therapeutic visits the individual must have successfully completed at least five (5) time-limited therapeutic visits spread over at least a six (6) month period.

(i) All individuals returning from any Therapeutic Visit may be subject to drug testing and searched for contraband.

(j) Any individual who is noncompliant with the parameters or conditions placed on a recommendation for a specific level of Therapeutic Visit will automatically revert to on-campus level and will progress through the steps beginning with partial day pass therapeutic visits.

(k) The Board shall develop a process for reviewing requests for therapeutic visits for unforeseen purposes such as death or serious illness of an immediate family member.

(l) The Review Board shall apprise the individual whose case was reviewed, the Oklahoma Forensic Center Executive Director, the ODMHSAS General Counsel and the Consumer Advocate General of each determination made.

(m) The ODMHSAS Office of Consumer Advocacy and the Director of Psychology of the Oklahoma Forensic Center shall provide support services to the Review Board and its Chair.

[OAR Docket #05-1022; filed 5-26-05]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #05-1011]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Individual Proceedings
535:1-7-5. Subpoenas [AMENDED]
Subchapter 11. Fees
535:1-11-1. Annual licenses, permits and renewals [AMENDED]
535:1-11-4. Public access, open records [AMENDED]
AUTHORITY:
Oklahoma State Board of Pharmacy; Title 59 O.S., Sec. 353.7, 353.9, 353.11, 353.16A, 353.18, 353.20, 353.22, and 353.24 - 353.26, 353.29 and 364. Open record fee authority under Title 51 O.S., Section 24A.5 and Title 59 O.S. Section 353.7 (15).
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ANALYSIS:
The rule revision in 535:1-11-1 (a) (3) establishes a lower pharmacy license fee for hospital drug rooms and charitable pharmacies. The fee enables the Board to allow a less expensive pharmacy license for hospital drug rooms because of their small rural locations as well as a lesser fee to the charitable pharmacies since both have less expensive/complicated inspections. This license will enable licensed hospital drug rooms to provide a wider range of services to their emergency room patients. Hospital drug room people participated in the rulemaking and participated in setting the fee.

Rule 535:1-11-1 (12) (A) and (B) adds duplicate and multiple location fees. Pharmacies want an alternative to requiring technicians and interns to carry their permit/certificate for posting. Posting is required to give the public notice individuals are registered and entitled to be in the pharmacy. This new multiple location duplicate lets the registrant purchase duplicate copies for posting at each work site rather than keeping the registration with them when

they move from one site to another. This registrant / pharmacy convenience still protects the public's right to know.

Duplicate fee enables those that lose or damage their renewal receipts, permit or practical experience certificate to obtain another.

The fee change in 535:1-11-4 from printed lists (which are no longer requested) to digital files also represents the lower cost of providing digital data.

Authority for the new fee in 535:1-11-1 (3) can be found in Title 59 Section 353.18(A) (3) (b) and shall be set not to exceed $150. The $40 fee for hospital drug room is below the statutory limit.

Authority for the new fee in 535:1-11-1 (12) can be found in Title 59 Section 353.7(15) and (16) and in Section 353.9 (B) and Section 353.18 (D) of the same Title.

Authority for the new amended fees in 535:1-11-4 can be found in Title 51 Section 24A.5 (3) the open record act and in Title 59 Section 353.7 (15). In recovering costs Oklahomans registrants (and ultimately those who get their prescriptions filled) do not pay the cost for those receiving commercial benefit from Oklahoma records.

The Board receives no appropriations and it entirely supported by fees, registrant representatives are involved in setting Board fees.

CONTACT PERSON:

Mr. Bryan H. Potter, Executive Director, Oklahoma State Board of Pharmacy, 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488, Telephone number (405) 521-3815

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 7. INDIVIDUAL PROCEEDINGS

535:1-7-5. Subpoenas

(a) **Issuance; serving.** Subpoenas for the attendance of witnesses, and/or for the furnishing of information required by the Board, and/or for the production of evidence or records of any kind shall be issued by the Director of the Board. Subpoenas shall be served, and a return made in any manner prescribed by ~~general civil law~~ the Oklahoma Administrative Procedures Act (APA), et seq.

(b) **Order to compel.** Upon the failure of any person to obey a subpoena, upon the refusal of any witness to be sworn or make an affirmation or to answer a question put to him in the course of the hearing, the Director of the Board may institute appropriate judicial proceedings under the laws of the State for an order to compel compliance with the subpoena or the giving of testimony, as the case may be. The hearing shall proceed, so far as it is possible, but the Board, in its discretion, at any time may continue the proceedings for such time as may be necessary to secure a final ruling in the compliance proceeding.

SUBCHAPTER 11. FEES

535:1-11-1. Annual licenses, permits and renewals

Annual license, permit and renewal fees, as set by the Board, shall be as follows:

(1) Pharmacist renewal (active or inactive) - $ 75

(2) Senior inactive pharmacist renewal (age 65 or over, retired) - $20

(3) Pharmacy license

(A) ~~(~~Retail, Hospital, and non-resident ~~and charitable clinics)~~ $150

(B) Charitable clinic - $ 75

(C) Hospital drug room - $ 40

(4) Parenteral permit - $ 75

(5) Drug supplier permit - $ 20

(6) Wholesaler permit - $200

(7) Packager permit - $200

(8) Manufacturer permit - $200

(9) Medical gas supplier permit- $100

(10) Medical gas distributor permit - $200

(11) Pharmacy technician permit - $40

(12) Duplicate renewal receipt, permit, or practical experience certificate:

(A) Duplicate for lost, destroyed or damaged original - $10

(B) Duplicate or multiple location copy - $10

535:1-11-4. Public access, open records

(a) Public access, open record fees shall be charged as specified in the open records act. Such public records fees, as set by the Board, shall be as follows:

(1) Registrant computer address disk or e-mailed file:

(A) Facility ~~computer address list - $75~~ (wholesaler, packager, manufacturer) - $50

(B~~2~~) Pharmacy ~~computer address list - $150~~ - $75

(C~~3~~) Technician ~~computer address list - $200~~ - $100

(D~~4~~) Intern ~~computer address list - $100~~ - $100

(E~~5~~) Pharmacist ~~computer address list - $300~~ - $100

(2~~6~~) Photostat copies, per page - $.25

(3~~7~~) Facsimile (Fax) fee, per page - $1

(4) Annual subscriptions (7/01 - 6/30 each year)

(A~~8~~) Notification of rulemaking intent - $18

(B~~9~~) OSBP/NABP Quarterly Voluntary Compliance Newsletter for other than Oklahoma registered Pharmacists - $25

(C~~10~~) Board meeting agenda notice - $18

(5) Research time, when available (per hour)

(A~~11~~) Staff research time - $20

(B~~12~~) Computer research time - $100

(6~~13~~) Reproduction of Board meeting recordings, if available;

(A) Audio tape copy (per tape), $15

(B~~14~~) ~~Reproduction of Board meeting~~ Video tape copy (per tape), $15

(7~~15~~) Certification of public record, not certification of grades, $1.00 per page.

(b) Open records, available and obtained from our web site www.pharmacy.state.ok.us - no charge.

[OAR Docket #05-1011; filed 5-26-05]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 10. PHARMACISTS; INTERNS, PRECEPTORS AND TRAINING AREAS

[OAR Docket #05-1012]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Pharmaceutical Care
535:10-9-3. Intern role in pharmaceutical care [AMENDED)
AUTHORITY:
Oklahoma State Board of Pharmacy; Title 59 O.S., Sec. 353.7, 353.9, 353.11, 353.16A, 353.18, 353.20, 353.22, and 353.24 - 353.26 and 364.
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n/a
ANALYSIS:
The rule change in 535:10-9-3 makes it clear for registrants and the public that interns are restricted in regards to technicians as referenced in 535:15-7-2(g) and 535:15-5-1.2.
CONTACT PERSON:
Mr. Bryan H. Potter, Executive Director, Oklahoma State Board of Pharmacy, 4545 N Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488, Telephone number (405) 521-3815

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 9. PHARMACEUTICAL CARE

535:10-9-3. Intern role in pharmaceutical care

Nothing shall restrict registered interns from performing any and all of the functions in this Subchapter under the supervision of a registered pharmacist unless otherwise stated in the laws and rules (e.g.: 535:15-5-7.2(g) and 535:10-5-1.2).

[OAR Docket #05-1012; filed 5-26-05]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 12. UNUSED PRESCRIPTION DRUG PROGRAM FOR OKLAHOMA'S MEDICALLY INDIGENT

[OAR Docket #05-1013]

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PERMANENT final adoption
RULES:
535:12-1-1. [NEW]
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535:12-1-3. [NEW]
535:12-1-4. [NEW]
535:12-1-5. [NEW]
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ANALYSIS:

These rules make permanent the emergency rules established January 1, 2005 as required by HB1866 to implement the Utilization of Unused Prescription Medications Act. They include the purpose of the rules, definitions, eligibility to donate, and consultant pharmacist requirements for eligible nursing homes or approved assisted living centers who donate unused prescription medications.

These rules describe the eligible prescriptions drugs (formulary), eligible recipients of donated unused prescription drugs, and protections for participants in the program. These rules describe eligibility / requirements for pharmacies accepting and dispensing such prescription medications. They describe the responsibilities of the pharmacist manager of eligible licensed pharmacies participating in this program.

These rules describe labeling of dispensed drugs under this program and they describe violations of this program.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

535:12-1-1. Purpose

(a) The rules of this Chapter describe a statewide program to take unused prescription drugs from nursing homes, assisted living centers; and donated drugs from pharmaceutical manufacturers and utilize them for dispensing to medically indigent Oklahoma residents as authorized under Title 59 O.S. Section 367.1 through 367.7, et seq., the Utilization of Unused Prescription Medication Act.

(b) The rules of this Chapter describe the eligibility to donate. They describe the eligible prescription drug formulary, the eligible recipients, and the protections for participants. They describe pharmacies eligible to accept and dispense such drugs, the requirements for eligible pharmacies, and the responsibilities for pharmacist managers.

(c) The rules of this Chapter describe safe handling of medications to protect drug integrity, tracking, sanitation, security and dispensing requirements for these unused prescription drugs. The rules of this Subchapter describe confidentiality requirements as well as violations.

535:12-1-2. Definitions

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

"Assisted living center" means assisted living center as defined in Title 59 O.S. Section 367.2.

"Cancer drugs" means cancer drugs as defined in Title 59 O.S. Section 367.2.

"Charitable Clinic" means charitable clinic as defined in Title 59 O.S. Section 367.2.

"Eligible Pharmacy" means a pharmacy eligible to participate in the unused prescription drug program and includes those pharmacies operated by the following:

(A) A County in Oklahoma;

(B) A City-County Health Department in Oklahoma;

(C) A firm under contract with a City County Health Department in Oklahoma;

(D) A Charitable Clinic; or

(E) The Oklahoma Department of Mental Health and Substance Abuse Services.

"Health care professional" means health care professional as defined in Title 59 O.S. Section 367.2.

"**Manifest**" means an invoice used to list drugs being transferred or destroyed.

"Medically indigent" means medically indigent as defined in Title 59 O.S. Section 367.2

"Prescription drug" means prescription drug as defined in Title 59 O.S. Section 367.2.

535:12-1-3. Eligibility to donate prescription drugs

(a) Oklahoma licensed Nursing homes, and approved Oklahoma licensed Assisted Living Centers (ALC) may donate eligible unused prescription drugs.

(1) Oklahoma Nursing Homes are eligible to participate if they are licensed and in good standing with the Oklahoma State Department of Health (OSDH) and are meeting OSDH drug handling standards:

(A) The OSDH will be consulted regarding rules for Nursing Homes' participation in this program;

(B) The OSDH sets requirements under which nursing homes shall maintain prescription drugs. Such rules establish security, sanitation and control;

(C) Licensed healthcare personnel shall have kept control of such unused prescription drugs in sanitary and secure conditions as required under OSDH rules for Nursing Homes; and

(D) Such unused prescription drugs kept to these standards shall be eligible for donation.

(2) Approved licensed ALC eligibility requirements for participating in donation of unused prescription drugs under the provisions of this Subchapter:

(A) An application for participation shall be completed by the consultant pharmacist of the ALC and submitted to the Board.

(B) Only those ALC's that maintain prescription drugs under the control of licensed healthcare professionals in sanitary and secure conditions in a manner similar to the OSDH rules for nursing home drug control may be approved.

(C) Such application must show adequate controls exist in ordering, storage, security, etc.

(D) Application must be reviewed and approved by OSBP with the advice of the Oklahoma State Health Department.

(b) A licensed prescription drug manufacturer may donate samples or eligible prescription drugs to eligible pharmacies in this program.

(1) Manufacturer's patient assistance program (PAP) prescriptions that are not claimed in a reasonable length of time or abandoned by the patient may be used for another medically indigent patient.

(2) A patient specific stock bottle sent by a drug manufacturer and not claimed in a reasonable length of time or abandoned by the patient may be used for another medically indigent patient.

(c) A prescription is the property of the patient for whom it is prescribed regardless of who paid for the prescription as described in 59 O.S. Section 354. The patient or agent of the patient must authorize the donation of the unused prescription drugs, unless the:

(1) Patient has died; or,

(2) Drug has been discontinued as described in OSDH nursing home rules.

(d) Prescription medications donated under this Subchapter shall only be transferred to eligible pharmacies.

(e) Prescription medications donated under this Subchapter shall not be sold, resold, offered for sale nor traded, except the transfer as allowed in 535:12-1-9 (d) between eligible pharmacies.

(f) Violations of the unused prescription drug program are described in 535:12-1-12.

535:12-1-4. Consultant pharmacist responsibilities in eligible nursing homes or approved assisted living centers (ALC) participating in the program

(a) All donating nursing homes or approved ALC's must have a consultant pharmacist.

(b) Consultant pharmacists for the nursing home or the ALC eligible to donate unused prescription drugs shall be responsible to:

(1) Determine quality and suitability of the unused prescription drugs for reuse by assuring;

(A) Drugs have been kept under control of a health care professional

(B) Drugs have been stored properly (e.g. heat, cold, moisture),

(C) Drugs can be identified, and

(D) Drugs are not adulterated, mutilated, etc.

(2) Determine that the expiration date exceeds 45 days to allow time for re-distribution;

(3) Determine if it is cost effective to transfer such drugs to an eligible pharmacy;

(4) Assure manifest is properly filled out with the following;

(A) Names of Consultant Pharmacist and Director of Nursing (D.O.N.) or designee, the nursing home and the name of the receiving pharmacy;

(B) Name and strength of the eligible prescription drug (EPD);

(C) Expiration date of the EPD;

(D) Number of tablets or capsules or volume if liquid or injectable; and

(5) A copy of this manifest shall be provided to the pharmacy and a copy shall be maintained by the nursing home or ALC for two years;

(6) Assure controlled dangerous substances (CDS), also known as Scheduled drugs, are not transferred but handled as required under state and federal law;

(7) Assure that the selected pharmacy is eligible to receive unused prescription medications under these rules; and,

(8) Notify the eligible pharmacy when the drugs are ready to be picked up. The transportation of the unused drugs shall be the responsibility of the eligible receiving pharmacy. Such eligible pharmacy shall pick up donated drugs in an expedient manner.

(c) The consultant pharmacist and Director of Nursing [D.O.N.] (or designee) of the Nursing Home will initiate a manifest of the unused prescription drugs to be sent to the eligible pharmacy as described in (b)(4) and (5) above. They will be responsible for determining that the patient has authorized the donation of the drugs.

(d) The consultant pharmacist and the D.O.N. shall assure the name of the patient, name of the pharmacy, and directions on the label will be redacted with black ink or removed before sending to the eligible receiving pharmacy to protect confidentiality.

535:12-1-5. Eligible prescription drugs, formulary

(a) All FDA approved prescription drugs excluding any controlled dangerous substances (e.g. Prescription drugs found in Schedule I, II, III, IV, or V) subject to the following:

(1) Only eligible prescription drugs in original sealed unit dose or unused injectables;

(2) Packaging must be unopened;

(3) No expired drugs;

(4) No lost identity or unknown drugs;

(5) No adulterated drugs; and,

(6) No drugs held outside of licensed healthcare person's control where sanitation and security can not be assured.

(b) Compounded drugs shall not be eligible for transfer.

(c) Cancer Drugs as approved by the Board and American Cancer Society representatives.

(1) Such cancer drugs shall be in manufacturer's unit dose packaging.

(2) Receiving pharmacy must have the capacity to safely handle cancer drugs.

(d) Licensed prescription drug manufacturers may donate eligible prescription drugs.

535:12-1-6. Eligible recipients of unused prescription drugs

(a) Oklahoma medically indigent residents are entitled to receive dispensed unused prescription drugs as described in this subchapter.

(b) This program is to provide medications to needy Oklahomans. OAC 535:12-1-12 discusses possible action for abuse and violations.

535:12-1-7. Protection for participants in the unused prescription drug program

Title 59 O.S. Section 367.6 describes protection for donors and participants in the unused prescription drug program under this act.

535:12-1-8. Pharmacies eligible to accept and dispense unused prescription medications

(a) The following Oklahoma licensed pharmacies may accept unused prescription drugs as described in 535:12-1-4 for dispensing under this act, when operated by:

(1) a County in Oklahoma;

(2) a City-County Health Department in Oklahoma;

(3) a firm under contract with a City County Health Department in Oklahoma;

(4) a Charitable Clinic; or

(5) The Oklahoma Department of Mental Health and Substance Abuse Services

(b) All eligible pharmacies prior to beginning or terminating participation shall send written notice to the Board. A list of these eligible pharmacies will be posted on the Board web-site.

(c) The Board will request input and consult with the Oklahoma State Health Department regarding rules for City-County Health Department pharmacies.

(d) The Board will request input and consult with the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) regarding rules for ODMHSAS pharmacies.

535:12-1-9. Requirements for Pharmacies dispensing unused prescription drugs

(a) The following are requirements for eligible Oklahoma licensed pharmacies dispensing unused prescription drugs;

(1) Maintain a current drug identification book, or may have a current computer program or online service for the same;

(2) Dispense unused prescription drugs only upon the valid prescription of an Oklahoma licensed health care practitioner;

(3) Properly label all dispensed unused prescription drugs;

(4) Comply with all federal and state law and rules regarding storage and distribution of prescription drugs;

(5) Inspect all prescription drugs prior to dispensing to determine that the donated drugs shall meet all federal and state requirements for product integrity;

(6) Unused prescription drugs, prescription drug manufacturer's drug samples and donated manufacturers drug stock obtained or donated under this Subchapter shall not be resold, except transfers as allowed in 535:12-1-9 (d) between licensed eligible pharmacies.

(b) If it is determined by the pharmacist's professional judgment that it would be best for the patient, the drugs can be removed from bingo cards (unit dose packaging [UDP]) and placed in a proper vial for dispensing. If the bingo card is relabeled and used the pharmacist must ensure that the patient is made aware that the medication is not in a child resistant container.

(1) See expiration dating requirements in labeling 535:12-1-11.

(2) The removal of the medication from the bingo card (UDP) may only be done by the dispensing pharmacy's licensed pharmacist or permitted pharmacy technician.

(3) Samples must remain in original package as required under federal law, and cannot be removed from original packaging for dispensing.

(c) Eligible Oklahoma licensed charitable pharmacies may establish the following policy and procedures for dispensing of unused prescription drugs to the medically indigent.

(1) May limit the number of prescriptions per patient per visit or per month, to allow a greater number of individuals access to such prescription drugs.

(2) When established, this should be a written policy that is enforced equally to prevent discrimination.

(d) Eligible Pharmacies (EP) may transfer unused prescription drugs to another pharmacy in the program when one EP has the need for a drug and another EP has it available.

(1) A manifest will be prepared by the transferring pharmacy and kept on file for two (2) years.

(2) A copy of the manifest will be sent with the transferred drugs and kept on file in the receiving pharmacy for two (2) years.

(e) The Board will request input from the Oklahoma Department of Mental Health and Substance Abuse Services regarding rules for their eligible pharmacies.

(f) The Board will request input from the Oklahoma Department of Health regarding rules for their eligible pharmacies.

535:12-1-10. Responsibilities of pharmacist manager of eligible licensed pharmacies

(a) The pharmacist manager of eligible licensed pharmacies shall be responsible for the following:

(1) Coordinate retrieval of donated unused prescription drugs from nursing homes and eligible ALC. Such retrieval shall be in an expedient manner;

(2) Check unused prescription drugs (UPD) against the manifest and resolve any discrepancy;

(3) Store and secure these UPD as required under state and federal law and rules;

(4) Check the unused prescription drugs for adulteration;

(5) Assure expired, adulterated, lost identity drugs are not dispensed;

(6) Assure such unacceptable drugs are not put in dispensing stock. Destroy such unacceptable drugs within 14 days as described in 535:12-1-10 (a) (8).

(7) Assure safety in drug recalls. If a drug is recalled and the eligible pharmacy does not have the lot number on the label to differentiate between the recall and non-recalled, all such donated recalled drug shall be destroyed.

(8) Assure destruction of expired, adulterated, and/or recalled unused prescription medications.

(A) A manifest shall be made of unused prescription drugs expired, adulterated and/or recalled to be destroyed.

(B) Following destruction such manifest shall be signed by the pharmacist manager and witness verifying such destruction.

(C) Drug destruction manifest shall be kept in the files of the pharmacy for two (2) years.

535:12-1-11. Labeling

(a) All previous patient or pharmacy labeling on an unused prescription drug will be redacted or removed by dispensing eligible pharmacy.

(b) Dispensed prescription for a medically indigent patient will clearly indicate the final dispensing pharmacy and the current patient information to assure clarity for receiving patient and shall be properly labeled.

(c) Expiration date is required on all unused prescription drugs dispensed.

(1) The expiration date is brought forward to the filled prescription if only one expiration date is used in the filling of the prescription.

(2) If multiple packages of unused prescription drugs are used to fill a single prescription with varied expiration dates, the shortest expiration date is used for the dispensed prescription.

535:12-1-12. Violations

(a) Theft or diversion of any of the unused prescription drugs is a violation of these rules. This includes any expired, lost identity drug, recalled drug, or other drug found to be unusable under the requirements of this Subchapter.

(1) Such violation by a licensed nursing home or licensed Assisted Living Center of these rules will be referred to the Oklahoma State Health Department and/or other proper authorities for possible action.

(2) Such violation by the Oklahoma Department of Mental Health and Substance Abuse Services facility of these rules will be reported to the Oklahoma Department of Mental Health and Substance Abuse Services and/or other proper authorities for possible action.

(3) Such violation by a registrant of the Board may result in action under Title 59 O.S. Section 353.26.

(b) Dispensing of expired unused prescription drugs is a violation of these rules.

(c) Sale, trade, offer for sale or trade (except transfer as allowed in 535:12-1-9 (d) between licensed eligible pharmacies) any of the drugs obtained pursuant to this Subchapter and shall include any expired, lost identity, recalled or other such drug unacceptable for dispensing that comes into the program shall be a violation of these rules.

(d) Violation of this section by a registrant may result in loss of the ability to participate in this program; and may include Board action against the registrant as described in Title 59 O.S. Section 353.26.

(e) Abuse of this program shall be reported to the legislature and may result in the loss of this program.

[OAR Docket #05-1013; filed 5-26-05]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 15. PHARMACIES

[OAR Docket #05-1014]

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Subchapter 3. Pharmacies
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535:15-3-7. [AMENDED]
535:15-3-13. [AMENDED]
535:15-3-15.1. [NEW]
535:15-3-16. [NEW]
Subchapter 5. Hospital Pharmacies
535:15-5-9. [AMENDED]
Subchapter 6. Hospital Drug Room Rules
535:15-6-6. [AMENDED]

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ANALYSIS:
The rule change in 535:15-3-6 (2) is to clarify that two versions of the same reference (computer and book) do not take the place of two separate references. The change in 535:15-3-6 (2) (J) - (L) add three new references to the library choices.

The change in 535:15-3-7 allows for condemnation of stolen drugs when the integrity of the drugs cannot be established.

The rule 535:15-3-13 regarding the pharmacies responsibility to assure a prescription is legitimate and there is a valid doctor patient relationship and the prescription is for a valid drug have always been implied responsibilities but these rule changes spell it out clearly.

The rule in 535:15-3-15 is clarification requested by our attorney general liaison regarding transmission of prescriptions if other than verbal. The rule in 535:15-3-16 addresses adequate staffing requirements for pharmacists and pharmacies. It establishes a system of communication between pharmacy personnel and management with Board oversight and whistle-blower protection.

The rule in 535:15-5-9 clarifies hospital pharmacies and 535:15-6-6 clarified hospital drug room library requirements regarding laws and rules of the Board and the Oklahoma Bureau of Narcotics.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 3. PHARMACIES

535:15-3-6. Required library reference books or computer sources

A pharmacy library shall contain the following current reference books or computer sources:

(1) **Oklahoma law books.** The latest copy of Oklahoma State Laws~~,~~ and Rules ~~and Regulations~~ Pertaining to the Practice of Pharmacy and a recent copy of Oklahoma State Bureau of Narcotics & Dangerous Drugs Control~~,~~ Rules ~~and Regulations~~.

(2) **Library menu.** A recent copy of any two, of the following:

(A) USP/NF (3 years or latest edition)

(B) Merck Manual (3 years or latest edition)

(C) Remington (~~3~~ 6 years or latest edition)

(D) A toxicology reference (3 years)

(E) Physicians Drug Reference [PDR] (2 years)

(F) Mosby's Drug Consult (2 years)

~~(G) A medical dictionary (5 years)~~

(G~~H~~) Facts and Comparisons (2 years)

(H~~I~~) ASHP, American Hospital Formulary Service (AHFS) Drug Information (2 years)

(I) PDR Pocket Guide (2 years)

(J) Monthly Prescribing Reference (MPR) (2 Years)

(K~~J~~) ~~A~~ One current computer professional pharmacy reference program, (not duplicating a hard copy reference) e.g. one of the following:

(i) Micro Medix

(ii) Clinical Pharmacology

(iii) Facts and Comparisons

(iv) Natural Medicines Comprehensive Database

(v) Trissel's 2 Clinical Pharmaceutical Database

535:15-3-7. Condemnation authority for ~~open~~ packages of drugs taken in thefts/burglaries

~~Be it resolved that the~~ The Board of Pharmacy or ~~any of~~ their authorized representatives shall be the authority to condemn any ~~opened packages of~~ drugs taken in a criminal action ~~burglar~~y and that these drugs be destroyed ~~by court order~~ and not returned to the owner as these drugs would be unfit for human consumption.

535:15-3-13. Pharmacist's responsibility in a pharmacy

(a) **Access to drugs.** Only a pharmacist shall be responsible for control and distribution of all drugs.

(1) Only the pharmacist shall be permitted to unlock the pharmacy area or any additional storage areas for dangerous drugs, except in extreme emergency.

(2) An extreme emergency shall be in case of fire, water leak, electrical failure, public disaster or other catastrophe whereby the public is better served by overlooking the safety/security restrictions on drugs.

(3) Prescription medications shall not be left outside the prescription area when the pharmacist is not in attendance.

(b) **Professional judgement.** A pharmacist is required to exercise sound professional judgement with respect to the legitimacy of a prescription. The law does not require a pharmacist to dispense a prescription if the pharmacist doubts its origin or if he believes that the prescription may not have been issued for a legitimate medical purpose.

(c) **Legitimate purpose.** The pharmacy or pharmacist shall ensure that the prescription drug or medication order, regardless of the means of transmission, has been issued for a legitimate medical purpose by an authorized practitioner acting in the usual course of the practitioner's professional practice.

(d) **Valid patient practitioner relationship.** The pharmacy or pharmacist shall not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued solely on the basis of an internet-based questionnaire, an internet-based consultation, or a telephonic consultation without a valid preexisting patient-practitioner relationship.

(e) **Valid prescription drugs.** Only those prescription drugs legal to sell in the United States shall be dispensed. (e.g. FDA approved prescription drugs, or legally compounded prescription drugs, or drugs in a drug-testing protocol, or other legal prescription drugs.)

535:15-3-15.1. Transmission of prescription orders other than verbal

(a) All transmitted prescription drug orders, other than verbal, shall be transmitted:

(1) to a pharmacy of the patient's choice with no intervening person or persons altering the prescription order or breeching patient confidentiality;

(2) by an authorized practitioner; or his designated agent when

(A) designated agents are allowed by the practitioner's practice act, and

(B) if transmitting designated agent's identity is included in the order.

(b) Transmitted prescription drug orders shall include the transmitter's phone number for verbal confirmation, the time and date of transmission and the identity of the pharmacy intended to receive the transmission;

(c) The pharmacist shall exercise professional judgment regarding the accuracy, validity and authenticity of a prescription drug order transmitted consistent with federal, state and local laws and rules.

(d) All equipment for receipt of prescription drug orders shall be maintained so as to ensure against unauthorized access.
(e) Prescriptions may be transferred if all requirements of federal, state and local laws and rules are met.
(f) No agreement between a prescribing practitioner and a pharmacy or device and medical equipment holder shall require that prescription orders be transmitted from the prescribing practitioner to only that pharmacy or device or medical equipment permit holder.

535:15-3-16. Adequate staffing rules for pharmacists and pharmacies

(a) Adequate staffing to safely fill prescriptions is the responsibility of the pharmacy, the pharmacy manager, and the pharmacist. If conditions exist that could cause prescriptions to be filled in an unsafe manner they shall take action to correct the problem.
(b) In order to ensure adequate staffing levels there shall be a staffing report form available in each pharmacy. A copy of this form, when executed, will be given to the immediate supervisor and a copy must remain in the pharmacy for Board inspection.
(1) Such form shall include, but not be limited to the following:
(A) Date and time the inadequate staffing occurred;
(B) Number of prescriptions filled during this time frame;
(C) Summary of events; and
(D) Any comments or suggestions.
(2) Such forms are not to be sent to the Board.
(c) A pharmacist shall complete the staffing report form when:
(1) A pharmacist is concerned regarding staffing:
(A) inadequate number of support persons (cashiers, technicians, auxiliary supportive personnel, etc.); or,
(B) excessive workload;
(2) Filling out the form may enable management to make a better decision concerning staffing.
(d) If the pharmacy manager feels the situation warrants earlier Board review the pharmacy manager should inform the Board.
(e) Each pharmacy shall review completed adequate staffing forms and address any issues described as well as documenting any corrective action taken or justification for inaction to assure continual self-improvement. If issue is not staffing related, describe what measures are being taken to address the issue.
(f) Each pharmacy shall retain completed adequate staffing forms until reviewed and released by the Board. Such forms requiring further review may be held by the Board and may become part of an investigation file.
(g) A registrant including pharmacy, a pharmacy manager, or a pharmacist shall not be subject to discipline by the employing pharmacy for completing a staffing report form in good faith.

SUBCHAPTER 5. HOSPITAL PHARMACIES

535:15-5-9. Hospital pharmacy physical requirements

A hospital pharmacy shall have sufficient facilities to insure that drugs are prepared in sanitary, well-lighted and enclosed places, and which meet the other requirements of this Chapter. The following are in addition to the equipment and library requirements listed in 535:15-3-4 and 535:15-3-6.
(1) **Equipment and materials.** Each hospital pharmacy shall have sufficient equipment and physical facilities for proper compounding, dispensing and storage of drugs.
(A) For parenteral preparations a hospital must comply with 535:15-9-6 and 535:15-9-10, 1 through 5.
(B) A library shall be maintained which includes four of the following current references (not more than 2 years old or most recent). Current electronic sources may be substituted for two hard copy information sources:
(i) Drug interactions;
(ii) Drug compatibility;
(iii) Poison and antidote information;
(iv) Toxicology;
(v) Pharmacology;
(vi) Bacteriology;
(vii) Patient counseling;
(viii) Rational therapy;
(ix) Dispensing information; and,
(x) U.S.P.
(C) The library shall include the latest copy of Oklahoma State Laws and Rules Pertaining to the Practice of Pharmacy and a recent copy of Oklahoma State Bureau of Narcotics & Dangerous Drugs Control Rules.
(2) **Storage.** All pharmaceuticals bearing a federal legend such as "RX Only" and medications administered in the hospital shall be stored in designated areas within the hospital which are sufficient to insure proper sanitation, temperature, light, ventilation, moisture control, segregation and security. The storage shall be as directed by the Director of Pharmacy and shall remain under the direct supervision of a pharmacist.
(3) **Alcohol and flammables.** Alcohol and flammables shall be stored in areas that shall, at a minimum, meet basic local building code requirements for the storage of volatiles and such other laws, ordinances or regulations as may apply.
(4) **Unattended areas.** In the absence of authorized personnel in a hospital medication area, such area shall be locked and inspected on a regular schedule of at least monthly as directed by the Director of Pharmacy.
(5) **Security.** All areas occupied by a hospital pharmacy shall be capable of being locked by key or combination to prevent access by unauthorized personnel.

SUBCHAPTER 6. HOSPITAL DRUG ROOM RULES

535:15-6-6. Physical and library requirements

A hospital drug room shall have sufficient facilities to insure that drugs are prepared in sanitary, well-lighted and enclosed places, and which meet the other requirements of this Chapter.

(1) **Equipment and materials.** Each hospital drug room shall have sufficient equipment and physical facilities for proper compounding, dispensing and storage of drugs.

(A) For parenteral preparations:

(i) If a laminar hood is used, a hospital drug room shall comply with 535:15-9-6 and 535:15-9-10, 1 through 5.

(ii) If a laminar hood is not used, a closed system for parenteral admixtures should be utilized. If parenteral compounding must be done, an area must be designated for that activity. This area must be at least a counter used for only this purpose and be away from patient care areas. Acceptable aseptic techniques shall be used.

(B) A library shall be maintained which includes four of the following current references (not more than 2 years old or most recent). Current electronic sources may be substituted for two hard copy information sources:

(i) Drug interactions;
(ii) Drug compatibility;
(iii) Poison and antidote information;
(iv) Toxicology;
(v) Pharmacology;
(vi) Microbiology;
(vii) Patient counseling;
(viii) Rational therapy;
(ix) Dispensing information; and,
(x) U.S.P.

(C) The library shall include the latest copy of Oklahoma State Laws and Rules Pertaining to the Practice of Pharmacy and a recent copy of Oklahoma State Bureau of Narcotics & Dangerous Drugs Control Rules.

(2) **Storage.** All drugs bearing a federal legend such as "RX Only" and medications administered in the hospital shall be stored in designated areas within the hospital which are sufficient to insure proper sanitation, temperature, light, ventilation, moisture control, segregation and security. The storage shall be as directed by the PIC and shall remain under the supervision of such pharmacist.

(3) **Alcohol and flammables.** Alcohol and flammables shall be stored in areas that shall, at a minimum, meet basic local building code requirements for the storage of volatiles and such other laws, ordinances or regulations as may apply.

(4) **Unattended areas.** In the absence of authorized personnel in a hospital medication area, such area shall be locked.

(5) **Security.** All areas occupied by a hospital drug room shall be capable of being locked by key or combination to prevent access by unauthorized personnel.

[OAR Docket #05-1014; filed 5-26-05]

TITLE 570. STATE BOARD FOR PROPERTY AND CASUALTY RATES
CHAPTER 10. FILING PROCEDURES, INTERPRETATIONS AND ADDITIONAL BOARD RULES

[OAR Docket #05-997]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
570:10-1-4. Certification [AMENDED]
570:10-1-5. Bureau deviations [AMENDED]
570:10-1-13. Homeowners filings [REVOKED]
570:10-1-32. Weather related claims [REVOKED]
570:10-1-34. Credit related polices [REVOKED]
570:10-1-35. Property and casualty policies [REVOKED]
570:10-1-36. Use of lack of prior insurance in underwriting or rating [REVOKED]
570:10-1-37. Use of auto accidents in underwriting or rating [REVOKED]
570:10-1-41. Worker's compensation excess insurance [NEW]
AUTHORITY:
State Board For Property & Casualty Rates, 36 O.S. §§ 901.1, 902.2 and 907
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Failure of the Legislature to disapprove the rules resulted in approval on May 20, 2005
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed amendments to Rules 570:10-1-4, 5 and 13 are proposed, because homeowners insurance is no longer under the jurisdiction of the State Board for Property and Casualty Rates pursuant to House Bill 2470. The proposed revocation of Rules 570:10-1-32, 34, 35, 36 and 37 are revoked and relocated from the rules of the State Board for Property and Casualty Rates to the Property and Casualty Competitive Loss Cost Rating regulations which are located in the rules of the Insurance Commissioner in Subchapter 7 of Chapter 15 of Title 365. Proposed new Rule 570:10-1-41 gives the Board the specific authority to review and approve excess workers' compensation coverage, because self-insured employers or associations must maintain excess workers' compensation coverage over and above the limits of the letter of credit or bond filed with the Workers' Compensation Court Administrator.

CONTACT PERSON:
Karl F. Kramer, Assistant General Counsel, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2005:

570:10-1-4. Certification

(a) **Certified complete.** A filing must be certified as complete by the Insurance Commissioner or the Board in order for it to be set for hearing or deemed approved pursuant to Section 903 of the Act.

(b) **Letter notifying of incomplete filing.** Notice that a filing is incomplete will be in letter form to the filer, specifying the materials necessary to complete the filing, and signed by the individual staff member reviewing the filing.

(c) **Certification form.** Certification that a filing is complete will be on a form signed by the individual staff member reviewing the filing. Notice will be given in compliance with law and these Rules and the filing will be scheduled on the next regularly scheduled meeting of the Board permitted by compliance with notice requirements and other applicable provisions of the law.

(d) **Disputes on agenda.** Certification disputes will be placed on the agenda of the Board for the next possible scheduled meeting of the Board for its review and decision.

(e) **When certification is not required.** Certification is not required for filings that do not require approval, are not rate filing requests or are by the rules of this Chapter or Board Order exempt, including but not limited to the following:

(1) ~~Homeowners~~ Excess Consent Rate Filings

~~(2) Excess Consent Rate Filings~~

(2 ~~3~~) Individual risk submissions

(3 ~~4~~) Change in effective date of filings

(4 ~~5~~) Filings made on a recognized information basis for unregulated kinds of insurance

(5 ~~6~~) Error corrections

(6 ~~7~~) Filings to withdraw currently approved filings

(7 ~~8~~) Installment payment plans

(8 ~~9~~) Filings adopting federal programs

(9 ~~10~~) Refilings of an approved program on a direct rather than an indirect basis

(10 ~~11~~) Automatic rate reductions and Automatic rate revisions or direct deviations

(11 ~~12~~) Reference filings pursuant to Rules of the Board

(12 ~~13~~) Rules filings, including miscellaneous filings that would affect underwriting procedures by rule or classification change for a group of insureds within a single line of insurance, but would not impact all classifications, rates, rating values, or rating plans within the specific line of insurance.

(13 ~~14~~) Nonadoption of Bureau filings that would be a duplication of a filing in effect for the filer.

570:10-1-5. Bureau deviations

~~Except with regard to rate filings for homeowner's insurance as defined in the Act, every~~Every member of, or subscriber, to a licensed rating organization may adhere to any filings made on its behalf by its Rating Organization, except that any such member or subscriber may deviate from such filings as authorized by the rules of this Chapter if it has filed with the Rating Organization and with the Board, the deviation to be applied and information necessary to justify the deviation. The Board shall approve any such deviation requiring Board action unless the deviation would not be uniform in its application or is inconsistent with the provisions of the Insurance Code.

570:10-1-13. Homeowners filings [REVOKED]

~~(a) Rate filings on homeowners insurance must contain the information required by the rules of this Chapter for all filings or they shall be rejected as not filed subject to a hearing thereon. The requirements of certification and the deemer provisions do not apply. The effective date and board action are governed by Section 903(E) and (M) of the Act.~~

~~(b) The filing must specify the effective date for new and renewal policies.~~

570:10-1-32. Weather related claims [REVOKED]

~~Homeowners policies shall not reflect a surcharge for weather related claims unless an exception is approved by the Board.~~

570:10-1-34. Credit related policies [REVOKED]

~~The return of unearned premium on any credit related policy shall not be calculated using the "sum of the digits" formula, commonly known as the "Rule of 78," unless an exception is approved by the Board.~~

570:10-1-35. Property and casualty policies [REVOKED]

~~(a) Separate mandatory deductibles without a buy back option applicable to wind/hail losses will not be allowed unless an exception is approved by the Board.~~

~~(b) Surcharges directly or indirectly related to an insured not having a telephone will not be allowed unless an exception is approved by the Board.~~

570:10-1-36. Use of lack of prior insurance in underwriting or rating [REVOKED]

~~Insurers shall not refuse to insure, surcharge or place an applicant for insurance in a higher priced program or plan if the applicant is not required to have insurance pursuant to Chapter 7 of Title 47 of the Oklahoma statutes. An insurer shall not be prohibited from applying a rating plan approved by the Board.~~

570:10-1-37. Use of auto accidents in underwriting or rating [REVOKED]

~~Insurers shall not use auto accidents of an insured for either underwriting or rating purposes when the insured is less~~

~~than fifty percent (50%) at fault. If a payment has previously been made, the burden of conclusively establishing the percentage of fault shall rest with the insured. An insurer's normal underwriting guidelines shall apply when the insured is unable to provide the required proof.~~

570:10-1-41. Workers' compensation excess insurance

Applicable to the rates, loss costs, loss cost multipliers or manual rules for any workers' compensation excess insurance product, as required for example for an individual self-insured or group self-insurance association, as described by 85 O.S. § 61(A)(4)(a)(2) and 85 O.S. § 61(A)(4)(b)(2), shall require approval of the Board prior to use. The review and approval process shall be the same as other lines of insurance under the jurisdiction and authority of the Board.

[OAR Docket #05-997; filed 5-26-05]

TITLE 605. OKLAHOMA REAL ESTATE COMMISSION
CHAPTER 10. REQUIREMENTS, STANDARDS AND PROCEDURES

[OAR Docket #05-914]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Instructor and Entity Requirements and Standards
605:10-5-1. Approval of prelicense course offerings [AMENDED]
605:10-5-1.1. Approval of postlicense course offerings [AMENDED]
605:10-5-2. Approval of continuing education offerings [AMENDED]
Subchapter 11. Associate's Licensing Procedures
605:10-11-3. Associate's corporation or association [AMENDED]
Subchapter 13. Trust Account Procedures
605:10-13-1. Duty to account; broker [AMENDED]
Subchapter 15. Disclosures
605:10-15-3. Guidelines for furnishing psychological factors [AMENDED]
Subchapter 17. Causes for Investigation; Hearing Process; Prohibited Acts; Discipline
605:10-17-5. Substantial misrepresentation [AMENDED]
605:10-17-6. Guidelines for suspended/revoked brokers and associates [AMENDED]
605:10-17-7. Cessation of licensed activities upon loss of license [AMENDED]
AUTHORITY:
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n/a
ANALYSIS:
605:10-5-1. Approval of prelicense course offerings - Need to notify prelicense instructors that they will have to obtain evidence of citizenship or qualified alien status and submit such to the Commission prior to being approved as a prelicense real estate instructor.
605:10-5-1.1 Approval of postlicense course offerings - Need to notify postlicense instructors that they will have to obtain evidence of citizenship or qualified alien status and submit such to the Commission prior to being approved as a postlicense real estate instructor.
605:10-5-2. Approval of continuing education offerings - Need to notify continuing education instructors that they will have to obtain evidence of citizenship or qualified alien status and submit such to the Commission prior to being approved as a continuing education real estate instructor.
605:10-11-3. Associate's corporation or association - Needed to clarify that items (1) through (8) are requirements.
605:10-13-1. Duty to account; broker - Updating obsolete language reference from bank to financial institution, and clarifying that the deposits that are placed in a financial institution must be insured by an agency of the federal government in order to protect the consumer. Allowing a real estate broker additional time to deposit escrow funds following acceptance of an offer by an offeree unless otherwise agreed to in writing by all interested parties. Amending language to allow brokers to deposit all escrow funds before the end of the third banking day following acceptance of an offer by an offeree unless otherwise agreed to in writing by all interested parties.
605:10-15-3. Guidelines for furnishing psychological factors - Amending section heading and to clarify that items (1) through (7) are requirements.
605:10-17-5. Substantial misrepresentation - Changing the word "contract" to "instrument", as the word "contract" was not broad enough.
605:10-17-6. Guidelines for suspended/revoked brokers and associates - Amending section heading and to clarify that items (1) through (14) are requirements.
605:10-17-7.Cessation of Licensed Activities Upon Loss of License - Deleting unnecessary language in (b) and (c)
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75, O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 5. INSTRUCTOR AND ENTITY REQUIREMENTS AND STANDARDS

605:10-5-1. Approval of prelicense course offerings

(a) **Course approval.** Any person or entity seeking to conduct an approved course of study shall make application and submit documents, statements and forms as may reasonably be required by the Commission. The request shall include the following:

(1) Completed course application.

(2) Application fee of One Hundred Twenty-five Dollars ($125.00) for each course.

(3) An approved course syllabus encompassing the contents enumerated in 605:10-3-1 and divided by instructional periods, the name, author and publisher of the primary textbook, or a statement stating the entity will use OREC syllabus and other items as may be required by the Commission.

(b) **Course offering requirements.**

(1) An entity not conducting an applicable approved course within any thirty-six (36) month period shall automatically be removed from approved status. In such event, the person and/or entity must re-apply as an original applicant.

(2) If a course of study is to be conducted in the name of a corporation, the application shall include the names and addresses of all directors and officers.

(3) An approved entity shall immediately report any changes in information in regards to the application previously filed with the Commission.

(c) **Denied applications.** No portion of the fees enumerated in this Section are refundable. If an instructor, entity or course application is not approved, the applicant may appeal the decision by filing a written request for a hearing before the Commission. The hearing procedure shall be that as outlined in 605:10-1-3 titled "Appeal of administrative decisions; procedures."

(d) **Advertising course offerings.** No person or entity sponsoring or conducting a course of study shall advertise that it is endorsed, recommended or accredited by the Commission. Such person or entity may indicate that a course of study has been approved by the Commission.

(e) **Instructor application and approval requirements.** An individual determined by the Commission to possess one or more of the following qualifications may, upon receipt of an application and evidence of education and/or experience, be considered for approval as an approved instructor. Each application for approval must be accompanied by a One Hundred Dollar ($100.00) application fee~~.~~, and documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In order to qualify, an individual must possess proof of one of the following:

(1) A bachelor's degree with a major in real estate from an accredited college or university.

(2) A bachelor's degree from an accredited college or university, and at least two (2) years active experience within the previous ten (10) years as a real estate broker.

(3) A real estate broker licensed in Oklahoma with a minimum of five (5) years active experience within the previous ten (10) years as a real estate broker and proof of high school education or its GED equivalent.

(4) An individual determined by the Commission to possess a combination of education and/or active broker experience in real estate or real estate related fields which constitute an equivalent to one or more of the qualifications in paragraphs (1), (2), or (3) of this subsection.

(f) **Course content examination.** Final approval will be considered after the instructor applicant has successfully completed an applicable Commission administered broker course content examination with a passing score of 80% or more. An instructor shall be allowed to successfully complete the applicable examination one time without charge; thereafter, the applicable examination fee shall be charged for each examination.

(g) **Instructor renewal requirements.**

(1) In order to maintain approved status, an instructor must comply with the following:

(A) Attend a Commission directed Instructor Renewal Course every twelve (12) months. Instructors approved solely for distance education offerings must complete three (3) hours every twelve (12) months of instructor training as accepted by the Commission and sign a statement that changes to current law and rules have been reviewed and that the instructor has made applicable amendments to the course material.

(B) Furnish evidence that the instructor has taught a Commission approved prelicense course, or any other real estate related course(s) the Commission determines to be equivalent, within a required thirty-six (36) month period.

(2) Any instructor not meeting the requirements of this subsection will be required to re-apply as an original instructor applicant.

(h) **Guest instructors.** Guest instructors may be utilized for in-class instruction provided an approved instructor is also present during presentations. Total guest instruction and lectures shall not consume more than thirty percent (30%) of the total course time.

(i) **Instructor and entity requirements.**

(1) **Instructor must be present.** An approved instructor must be present in the same room during all in-class course instruction for students to receive credit toward course completion.

(2) **Retention of records.** An instructor/entity shall maintain a record of enrollment records and roll sheets which include number of hours attempted by each student.

(3) **Course completion certificate.** Each individual successfully completing a course of study approved by the Commission shall be furnished a certificate prescribed or approved by the Commission certifying completion. The Commission shall accept from a college or university a certified transcript or a course completion certificate as prescribed by the Commission.

(4) **Commission authorized to audit and inspect records.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of the entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.

(5) **Clock hours and breaks.** Not more than one clock hour may be registered within any one sixty (60) minute period and no more than ten (10) minutes of each hour shall be utilized for breaks.

(6) **Class size limited.** Instructor ratio to students shall not exceed sixty (60).

(j) **Facility approval requirements.** Before an approved course offering can be presented at a location, the person or group presenting the course must seek approval of the facility to be used for presentation of the course. A Commission approved application must be completed and accompanied by a Seventy-five Dollar ($75.00) application fee.

(1) The application fee may be waived if the facility request for approval has been approved for use as a classroom by the State Department of Education, State Regents of Higher Education, or State Vocational and Technical Education.

(2) The application fee may be waived if an entity is requesting to utilize a facility that is currently approved by the Commission as an active facility site.

(3) The Commission shall act on a facility application within thirty (30) days of receipt of application.

(k) **Disciplinary action.** An approved course of study, director, instructor and/or facility may be withdrawn or disciplined as outlined in Title 59, O.S., Section 858-208, paragraph 6 either on a complaint filed by an interested person or the Commission's own motion, for the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:

(1) In the event the real estate license of a director is suspended or revoked, the course of study shall automatically be revoked.

(2) In the event the real estate license of an instructor is suspended or revoked.

(3) Failure to comply with any portion of the Code or the rules of this Chapter.

(4) Failure of an approved entity to maintain a 50% or better pass/fail ratio on the Commission examinations.

(5) Falsification of records and/or application(s) filed with the Commission.

(6) False and/or misleading advertisement.

(7) Any other improper conduct or activity of the director, instructor, or entity as may be determined by the Commission to be unacceptable.

605:10-5-1.1. Approval of postlicense course offerings

(a) **Course approval.** In accordance with Section 858-304 of the License Code, the Commission shall provide a syllabus outline for the Basic postlicense course of real estate to each person or entity conducting a postlicense course and requesting approval thereof. Any person or entity seeking to conduct an approved course of study shall make application and submit documents, statements and forms as may reasonably be required by the Commission. The request shall include the following:

(1) Completed course application.

(2) Application fee of One Hundred Twenty-five Dollars ($125.00) for each course.

(3) An approved course syllabus encompassing the contents enumerated in 605:10-3-7 and divided by instructional periods, and the name, author and publisher of the primary textbook, or a statement stating the entity will use OREC syllabus and other items as may be required by the Commission.

(b) **Course offering requirements.**

(1) An offering entity not conducting the approved course within any thirty-six (36) month period shall automatically be removed from approved status. In such event, the person and/or entity must re-apply as an original applicant.

(2) If a course of study is to be conducted in the name of a corporation, the application shall include the names and addresses of all directors and officers.

(3) An approved entity shall immediately report any changes in information in regards to the application previously filed with the Commission.

(c) **Denied applications.** No portion of the fees enumerated in this Section are refundable. If an instructor, entity or course application is not approved, the applicant may appeal the decision by filing a written request for a hearing before the Commission. The hearing procedure shall be that as outlined in 605:10-1-3 titled "Appeal of administrative decisions; procedures."

(d) **Advertising course offerings.** No person or entity sponsoring or conducting a course of study shall advertise that it is endorsed, recommended or accredited by the Commission. Such person or entity may indicate that a course of study has been approved by the Commission.

(e) **Instructor application and approval requirements.** An individual determined by the Commission to possess one or more of the following qualifications may, upon receipt of an application and evidence of education and/or experience, be considered for approval as an approved instructor. Each application for approval must be accompanied by a One Hundred Dollar ($100.00) application fee~~.~~, and documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In order to qualify, an individual must possess proof of one of the following:

(1) Possession of a bachelor's degree in a related field.

(2) Possession of a valid teaching credential or certificate from Oklahoma or another state authorizing the holder to teach in an applicable field of instruction at the entity.

(3) Five (5) years full-time experience out of the previous ten (10) years in a profession, trade, or technical occupation in the applicable field of instruction.

(4) An individual determined by the Commission to possess a combination of education and/or experience, in a related field to that in which the person is to teach, which constitutes an equivalent to one or more of the qualifications in (1), (2) or (3) of subsection (e) of this Section.

(f) **Guest instructors.** Guest instructors may be utilized provided an approved instructor is also present during presentations. Total guest instruction and lectures shall not consume more than thirty percent (30%) of the total course time.

(g) **Instructor and entity requirements.**

(1) **Instructor must be present.** An approved instructor must be present in the same room during all course instruction for students to receive credit toward course completion.

(2) **Retention of records.** An instructor/entity shall maintain a record of enrollment records and roll sheets which include number of hours attempted by each student.

(3) **Course completion certificate.** Each individual successfully completing a course of study approved by the Commission shall be furnished a certificate prescribed or approved by the Commission certifying completion. The Commission shall accept from a college or university a certified transcript or a course completion certificate as prescribed by the Commission.

(4) **Commission authorized to audit and inspect records.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of the entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.

(5) **Clock hours and breaks.** Not more than one clock hour may be registered within any one sixty (60) minute period and no more than ten (10) minutes of each hour shall be utilized for breaks.

(6) **Class size limited.** Instructor ratio to students shall not exceed sixty (60).

(h) **Facility approval requirements.** Before an approved course offering can be presented at a location, the person or group presenting the course must seek approval of the facility to be used for presentation of the course. A Commission approved application must be completed and accompanied by a Seventy-five Dollar ($75.00) application fee.

(1) The application fee may be waived if the facility request for approval has been approved for use as a classroom by the State Department of Education, State Regents of Higher Education, or State Vocational and Technical Education.

(2) The application fee may be waived if an entity is requesting to utilize a facility that is currently approved by the Commission as an active facility site.

(3) The Commission shall act on a facility application within thirty (30) days of receipt of application.

(i) **Disciplinary action.** An approved course of study, director, instructor and/or facility may be withdrawn or disciplined as outlined in Title 59, O.S., Section 858-208, paragraph 6 either on a complaint filed by an interested person or the Commission's own motion, for the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:

(1) In the event the real estate license of a director is suspended or revoked, the course of study shall automatically be revoked.

(2) In the event the real estate license of an instructor is suspended or revoked.

(3) Failure to comply with any portion of the Code or the rules of this Chapter.

(4) Falsification of records and/or application(s) filed with the Commission.

(5) False and/or misleading advertisement.

(6) Any other improper conduct or activity of the director, instructor, or entity the Commission determines to be unacceptable.

605:10-5-2. Approval of continuing education offerings

(a) **Approval and expiration of application.** An entity seeking to conduct an approved continuing education offering shall make application for the approval or renewal of each offering. Such approval or renewal shall expire at the end of the twelfth (12) month including the month of issuance.

(b) **Application form.** Each application by a sponsoring entity for approval of an offering or group of offerings not exceeding thirty-six (36) hours covered by the same application must be accompanied by a non-refundable Thirty-five Dollar ($35.00) application fee. Such application shall be made on a form prescribed by the Commission. The application shall include, but not limited to, the following information:

(1) The name(s), address(es), and telephone number(s) of the sponsoring entity, the owner(s), and the coordinator/director responsible for the quality of the offering.

(2) The title(s) of the course offering or offerings.

(3) A complete description of or copies of all materials to be distributed to the participants except that if materials provided by the Commission are to be used, a complete description shall not be required.

(4) The number of hours in each course offering.

(5) The tuition/registration fee and cancellation/refund policy.

(6) A copy of each offering's curriculum, or revised curriculum with revisions noted, including comprehensive course objectives, detailed outline of the course subject matter, instructor for each segment, and teaching technique used in each segment.

(7) The method of evaluation of the course offering which will be used by the entity.

(8) The procedure for monitoring attendance.

(9) A personal resume indicating name(s) and qualifications of the instructor(s).

(10) The number of years the entity has been offering real estate related education.

(11) Any other relevant information useful in determining that the entity is presenting an offering which will meet the definition, purposes, goals and objectives adopted by the Commission.

(12) A statement attesting to the fact that in accepting approval as a continuing education offering entity, the entity will protect and promote the purposes, goals and objectives of continuing education as stated in the License Code and Rules.

(c) **Commission course approval notice.** The Commission shall within sixty (60) days after receipt of an application inform the entity as to whether the offering has been approved, denied, or whether additional information is needed to determine the acceptability of the offering.

(d) **Course renewal requirements.** An application for renewal of any offering or group of offerings by an entity shall

also be accompanied by a non-refundable application fee of Thirty-five Dollars ($35.00). Renewal applications shall be subject to the same requirements as original applications, but may cross-reference an earlier application regarding previously approved course offerings to the extent that items have not changed since a previous application.

(e) **Change of information notice requirement.** Whenever there is any change in an offering, the entity shall notify the Commission prior to the effective date of the change. Such change shall not be considered approved until written notice is received from the Commission.

(f) **Advertising of course offering.** An entity advertising an offering as being approved for continuing education credit shall state in such advertisement, "Approved by the Commission for (correct number) hours of continuing education credit."

(g) **Course ~~guidelines~~ requirements and limitations.**

(1) An offering approved pursuant to this Section shall be open to all licensees, except as may otherwise be approved by the Commission upon request of the offering entity.

(2) An offering will not be approved by the Commission if its duration is less than two (2) consecutive clock hours or its equivalent as determined by the Commission.

(3) To meet the statutory requirement, a clock hour shall equal sixty (60) minutes, with no more than ten minutes of each hour utilized for breaks.

(4) An entity conducting an offering shall, within five (5) days of the completion thereof, submit to the Commission on a form prescribed by the Commission, a list of the names and license numbers of those licensees who successfully completed the said offering, along with other information which may reasonably be required.

(5) Each licensee successfully completing an offering shall be furnished a certificate, prescribed or approved by the Commission, certifying completion.

(6) Each offering shall be presented in such facilities and on such premises as shall be necessary to properly present the course as determined by the Commission.

(7) An approved instructor must be present in the same room during all course instruction for students to receive credit toward course completion. If an instructor is presenting a Commission approved course offering which is delivered to the licensees by way of television, the Commission may require that each delivering entity have a monitor in lieu of a Commission approved instructor.

(h) **Recruitment disallowed.**

(1) A coordinator/director or instructor shall not allow the premises or the facilities to be used by anyone to advertise and/or recruit new affiliates for any company. The coordinator/director shall cause the following statement to be posted at the premises or the facilities in such a manner as will be readable by all participants: "No recruiting for employment opportunities for any real estate brokerage firm is allowed in this class or on the premises. Any recruiting on behalf of, or permitted by, the Instructor should be promptly reported to the Oklahoma Real Estate Commission."

(2) An instructor shall not wear any identification relating to a specific name or identity of a real estate company, a group of companies or franchises while in the class or on the premises.

(i) **Instructor application and approval requirements.** An individual determined by the Commission to possess one or more of the following qualifications may, upon receipt of an application and evidence of education and/or experience, be considered for approval as an approved instructor. Each application for approval must be accompanied by a Ten Dollar ($10.00) application fee~~.~~, and documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In order to qualify, an individual must possess proof of one of the following:

(1) Possession of a bachelor's degree in a related field.

(2) Possession of a valid teaching credential or certificate from Oklahoma or another state authorizing the holder to teach in an applicable field of instruction.

(3) Five (5) years full-time experience out of the previous ten (10) years in a profession, trade, or technical occupation in the applicable field of instruction.

(4) An individual determined by the Commission to possess a combination of education and/or experience, in a related field to that in which the person is to teach, which constitute an equivalent to one or more of the qualifications in (1), (2) or (3) of this subsection.

(j) **Denied application; appeal.** If the Commission shall be of the opinion that a proposed continuing education offering does not qualify under the Code and/or Rules of the Commission, the Commission shall refuse to approve the offering and shall give notice of that fact to the party applying for approval within fifteen (15) days after such decision. Upon written request from such party, filed within thirty (30) days after receipt of such notice of denial, the Commission shall set the matter for hearing to be conducted within sixty (60) days after receipt of such request. The hearing procedure shall be that as outlined in 605:10-1-3, titled "Appeal of administrative decisions; procedures."

(k) **Disciplinary action.** The Commission may withdraw or discipline as outlined in Title 59, O.S., Section 858-208, paragraph 6 the approval of a coordinator/director, instructor, offering or entity either on a complaint filed by an interested person or on the Commission's own motion, for any of the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:

(1) In the event the real estate license of an instructor and/or coordinator/director is revoked or suspended.

(2) Failure to submit all documents, statements and forms as may be reasonably required by the Commission.

(3) Falsification of records and/or applications filed with the Commission.

(4) False and/or misleading advertising.

(5) Failure to revise an offering so as to reflect and present current real estate practices, knowledge, and laws.

(6) Failure to maintain proper classroom order and decorum.

(7) Any conduct which gives the coordinator/director, instructor or entity presenting the offering an unfair advantage over other brokers and/or real estate companies.

(8) Failure to comply with any portion of the Code or rules of this Chapter.

(l) **Retention of records.** An instructor/entity shall maintain a record of enrollment records and roll sheets which include number of hours attempted by each student.

(m) **Commission authorized to audit.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of the entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.

(n) **Licensee/Instructor course credit.**

(1) A licensee who shall instruct an approved offering for continuing education shall be credited with one (1) hour for each hour of actual instruction performed.

(2) An instructor may not receive continuing education credit for instructing an offering more than one time during a license term.

(3) Records of such instruction shall be reported and maintained in the same manner as prescribed for participants elsewhere in the rules of this Chapter.

SUBCHAPTER 11. ASSOCIATE'S LICENSING PROCEDURES

605:10-11-3. Associate's corporation or association

Within the meaning of subsection 14 of Section 858-312 of the "Code" payment of a commission by a broker to an associate's corporation or association does not constitute a payment of a fee (commission) to an unlicensed person provided the corporation or association, the associate and the broker, abide by the following ~~guidelines~~ requirements:

(1) The associate's corporation or association may not perform any act requiring a real estate license and may not hold itself out as engaged in such activity.

(2) The associate must have a current individual real estate license.

(3) The broker of the associate must approve of the associate's corporation or association.

(4) The associate must be the majority stockholder and president of the corporation or majority member of the association.

(5) Ownership of an associate's corporation or association is limited to spouses and blood relatives.

(6) The associate's corporation or association may not advertise nor receive referral fees or commissions except from the associate's broker.

(7) The associate must file a written statement with the Commission including the following:

(A) A statement that the associate is the majority stockholder and president of the corporation or majority member of the association.

(B) Names and relation of all officers/members and/or stockholders.

(C) Verification that the association or corporation is authorized to transact business in the State of Oklahoma and that the association or corporation is in good standing.

(8) The associate's broker must file with the Commission a written statement approving of the associate's corporation or association.

SUBCHAPTER 13. TRUST ACCOUNT PROCEDURES

605:10-13-1. Duty to account; broker

(a) **Deposit and account of trust/escrow funds.**

(1) The obligation of a broker to remit monies, valuable documents and other property coming into his or her possession within the meaning of subparagraph six (6), Section 858-312 of the "Code" shall be construed to include, but shall not be limited to, the following:

(A) Shall deposit all checks and monies of whatever kind and nature belonging to others in a separate ~~bank~~ account in a financial institution wherein the deposits are insured by an agency of the federal government. ~~and is required to be a signor on the account.~~

(B) The broker is required to be a signor on the account.

(~~B~~ C) ~~Such~~ The account must be in the name of the broker as it appears on the license or trade name as registered with the Commission and styled as a trust or escrow account and shall be maintained by the broker as a depository for deposits belonging to others.

(~~C~~ D) All escrow funds shall be deposited before the end of the ~~next~~ third banking day following acceptance of an offer by an offeree unless otherwise agreed to in writing by all interested parties.

(~~D~~ E) ~~Shall~~ The broker shall maintain such funds in said ~~bank~~ account until the transaction involved is consummated or terminated and proper accounting made.

(~~E~~ F) ~~Shall~~ The broker shall at all times, maintain an accurate and detailed record thereof.

(2) Funds referred to in this subsection shall include, but are not limited to earnest money deposits, money received upon final settlements, rents, security deposits, money advanced by buyer or seller for the payment of expenses in connection with closing of real estate transactions, and money advanced by his or her principal or others for expenditures on behalf of subject principal.

(b) **Commingling prohibited.** A broker may not keep any personal funds in the trust account except amounts sufficient to insure the integrity of the account and cover any charges made by the ~~bank~~ financial institution for servicing the trust or escrow account.

(c) **Interest bearing account.** A broker shall not be prohibited from placing escrow monies in an interest bearing account; however, he or she must disclose in writing to all parties that the account bears interest and identify the party receiving the

interest. The Commission does not prohibit the broker from receiving the earned interest. In the event the interest is credited to the broker, the broker should, upon final consummation of the transaction, immediately disburse the interest from the account or insure that the amount does not exceed a reasonable amount to cover normal ~~bank~~ financial institution charges. The broker is required to maintain complete and accurate records of the interest earned. The interest bearing account must be a demand type account; this prohibits the use of certificate of deposit or other types of time deposits as trust/escrow accounts.

(d) **Trust account not mandatory unless funds or items are held.** A broker shall not be required to maintain a trust or escrow account unless monies or other depositable items belonging to others are accepted by the broker and require the broker to place the monies or items in the broker's trust account.

(e) **Trust accounts must be registered with commission.** A broker shall be required to notify the Commission in writing of all trust or escrow accounts, security deposit accounts, rental management operating accounts, and interest bearing accounts in which trust funds are held. Further, if a broker is a signor on a principal's account, the broker shall register that account as a trust account. A broker shall inform the Commission in writing of any accounts which are closed and no longer in use.

(f) **Settlement statement to be furnished.** A broker shall insure that a signed settlement statement is furnished in each real estate transaction wherein he or she acts as broker, at the time such transaction is consummated.

(g) **Payment of funds.** A broker shall pay over all sums of money held by him or her promptly after the closing of any transaction, provided, that upon any hearing to suspend or revoke his or her license under this Section, the failure to pay over any sums of money held by him or her within three (3) days after a closing shall be prima facie evidence of a violation by such person under the provisions of this Section.

(h) **Return of earnest money or items.** In the event a transaction does not consummate, a broker shall promptly disburse the earnest money or items to the proper party in accordance with the terms of the contract. In the event a dispute arises prior to the disbursement, the broker shall follow rule 605:10-13-3 or may file an interpleader action with the appropriate court.

(i) **Documents furnished to all parties.** A broker shall insure the delivery of a copy of all instruments to any party or parties executing the same, where such instrument has been prepared by the broker or his or her associates and relates to the agreement with his or her principal or pertains to the real estate transaction in which he or she or one of the associates has participated.

(j) **Inform all parties pertaining to escrow being held.** A broker shall insure that all parties of each transaction are informed of the details relating to the escrow including, but not limited to, a statement as to the nature of a non-depositable item, the value of the item, and in whose custody the item is being placed.

(k) **Bookkeeping system required.** A broker shall maintain a bookkeeping system i.e., canceled checks, check book, deposit receipts, general accounts ledger, etc. which will accurately and clearly disclose full compliance with the Law relating to the maintaining of trust accounts.

(l) **Record retention.** A broker shall maintain all records and files for a minimum of five (5) years after consummation or termination of a transaction. In the case of trust account records the five years shall commence with the date of disbursal of funds.

(m) **Requirements for storage of records on alternative media.** The Real Estate Commission establishes the following requirements for storage of trust account and transaction records on alternative media, e.g. compact disk, optical disk, microfilm, etc.:

(1) Trust account records shall be maintained by the broker in their original format for a minimum of two (2) years. Trust account records may then be transferred to an alternative media for the remaining required record retention time.

(2) Records, with the exception of trust account records, may be transferred at any time to an alternative media for the remaining required retention time.

(3) After documents are converted to alternative media, a quality assurance check shall be done to ensure that every document was imaged and can be reproduced in a legible and readable condition on a display device.

(4) After the quality assurance check is completed, the original documents may be destroyed.

(5) A broker shall maintain the alternative media and a means of viewing and retrieving records, and shall provide a true, correct and legible paper copy to the Commission upon request.

(6) A broker shall store copies of the alternative media and the equipment used to read the media in an environment and at a level of quality conducive to maintain the ability to reproduce the media throughout the retention period. Reproduce means a process in which a document can be converted from the alternative media to a paper copy that is legible and able to be read.

(7) A broker shall maintain no less than two (2) copies of the alternative media.

(n) ~~**Guidelines for cessation**~~ **Cessation of real estate activities.** Upon a firm ceasing a portion of real estate activities or ceasing all real estate activities the broker shall:

(1) Notify the Commission in writing of the effective date of such action and advise as to the location where records will be stored and comply with the following:

(A) Return the broker's license certificate and pocket identification card and all license certificates of those associated with the broker to the Commission and advise the Commission as to the circumstances involving any not returned.

(B) Release forms must be filed for all licensees affiliated with the firm.

(C) The broker must either transfer to a new firm or place his or her license on inactive status.

(2) Notify in writing all listing and management clients, as well as parties and co-brokers to existing contracts advising them of the date of cessation of real estate activities.

(3) All advertising in the name of the firm must be terminated and offering signs removed within thirty (30) days of cessation of real estate activities.
(4) Funds in trust accounts and pending contracts must be maintained by the responsible broker until consummation of transaction and final proper disbursal of funds. Upon final disbursements of funds the broker is required to close the account and notify the Commission in writing that the account is closed.
(5) In the event the responsible broker is unable to continue to maintain the funds and/or pending contracts, funds and/or pending contracts may be transferred to another authorized broker, entity or legal representative until consummation and proper disbursal of funds. In this event, the broker must submit a request in writing to the Commission for approval to transfer the contracts and/or funds. Upon written approval by the Commission, the broker must secure approval and obtain new agreements from all parties for transfer of the contracts and/or funds.
(6) If funds, items and/or contracts are transferred to another authorized broker, entity or legal representative and approved by the Commission, the broker transferring such shall be required to compile a record of the following, retain a copy for his or her file and give a copy to the receiving authorized broker, entity or legal representative:
(A) A copy of the written approval from the Commission authorizing the transfer of the contracts and/or funds.
(B) The name and address of the authorized broker, entity or legal representative.
(C) A trust account reconciliation sheet indicating ledger balance and ~~bank~~ financial institution balance at time of transfer to include the name of each depositor, amount of deposit, date, and purpose of the deposit.
(D) A statement indicating that written agreements were obtained from all parties to each transaction agreeing to the transfer of the funds and/or contracts to another responsible broker, authorized entity or legal representative and that each depositor was notified of the effective date of transfer, and the name of the responsible person or entity.

SUBCHAPTER 15. DISCLOSURES

605:10-15-3. ~~Guidelines~~ Requirements for furnishing psychological factors

Psychologically impacted property is any property whereof the existence of certain circumstances, suspicions or facts may create emotional or psychological disturbance or concerns to a prospective purchaser/lessee, with the potential of influencing a buying/leasing decision. Therefore, the obligation of a real estate licensee to obtain information as stated in Title 59, O.S., Section 858-513A (1) and (2) shall be performed in the following manner:
(1) Purchaser/lessee must be in the process of making a bona fide offer.
(2) Licensee must receive request in writing from purchaser/lessee.
(3) Purchaser's/Lessee's written request must state that such factor is important to the decision of the purchaser/lessee.
(4) Licensee shall make inquiry of the owner by submitting the written request to the owner.
(5) Licensee shall report any findings to the purchaser/lessee with the consent of the owner.
(6) If the owner refuses to furnish information requested, the licensee shall so advise the purchaser/lessee.
(7) Further, if a purchaser/lessee is requesting information as to whether or not an occupant of the real estate is, or was at any time suspected to be infected, or has been infected with Acquired Immune Deficiency Syndrome, or any other disease which falls under the privacy laws, the information can only be obtained in accordance with the Public Health and Safety Statute, Title 63, O.S., 1988, Section 1-502.2A.

SUBCHAPTER 17. CAUSES FOR INVESTIGATION; HEARING PROCESS; PROHIBITED ACTS; DISCIPLINE

605:10-17-5. Substantial misrepresentation

Substantial misrepresentation within the meaning of Paragraph 2 of Section 858-312 of the "Code" includes, but is not limited to:
(1) The recommendation or use by a licensee of a fictitious or false ~~contract~~ instrument for the purpose of inducing any lender or Government Agency to loan or insure any sum of money.
(2) Failure to disclose to a buyer or other cooperative licensee or company a known material defect regarding the condition of a parcel of real estate of which a broker or associate has knowledge.
(3) The use by a real estate broker of the name or trade name of a licensee whose license has been revoked or currently on suspension.

605:10-17-6. ~~Guidelines~~ Requirements for suspended/revoked brokers and associates

(a) A suspended/revoked broker or associate must return his or her license certificate and pocket identification card to the Commission office on or before the date the suspension/revocation becomes effective.
(b) When the suspension/revocation period becomes effective, the broker or associate shall comply with the following ~~guidelines~~ requirements:
(1) A suspended/revoked broker or associate may not engage in any activity which requires a real estate license, as defined in Section 858-102. The individual would, in effect, be regarded the same as an unlicensed person.
(2) When a broker's license is suspended/revoked, associates under the suspended/revoked broker's supervision

will automatically be placed "inactive" for the duration of the suspension/revocation period unless the licensee requests to be transferred to another broker.

(3) If the suspended/revoked broker has a branch office, the license for the branch office is also suspended/revoked along with the individual's broker license; and all licensees associated with the branch office will automatically be placed "inactive" for the duration of the suspension/revocation period unless the licensee requests to be transferred to another broker.

(4) If a managing corporate broker of a corporation is suspended/revoked for an act which was in behalf of the corporation, the broker license of the corporation will, unless ordered otherwise, be suspended/revoked; and all licensees associated with the corporation will automatically be placed "inactive" for the duration of the suspension/revocation period unless the licensee requests to be transferred to another broker.

(5) If the managing partner(s) of a partnership is suspended/revoked for an act which was in behalf of the partnership, the broker license of the partnership will, unless ordered otherwise, be suspended/revoked; and all licensees associated with the partnership will automatically be placed on "inactive" for the duration of the suspension/revocation period and the other broker will be placed "inactive" unless he or she requests his or her license to be transferred out of the partnership.

(6) If a managing broker member of an association is suspended/revoked for an act which was in behalf of the association, the broker license of the association will, unless ordered otherwise, be suspended/revoked; and all licensees associated with the association will automatically be placed "inactive" for the duration of the suspension/revocation period unless the licensee requests to be transferred to another broker.

(7) A suspended/revoked broker or associate may only receive compensation during the suspension/revocation period for acts which were performed during the period in which he or she was properly licensed.

(8) Listings must be cancelled by a suspended/revoked broker between the time the Order of suspension/revocation is received and the effective date of suspension/revocation, as listings will be void on the date the suspension/revocation becomes effective. Broker has breached the listing contract since he or she is unable to fulfill his or her agreement. Seller is free to relist with another broker of his or her choice.

(9) A suspended/revoked broker may not assign listings to another broker without the written consent of the owner of the listed property.

(10) A suspended/revoked broker may not advertise real estate in any manner, and must remove and discontinue all advertising.

(11) The telephone in a suspended/revoked broker's office may not be answered in any manner to indicate the suspended/revoked broker is currently active in real estate.

(12) All pending contracts, items or monies placed with the suspended/revoked broker must be transferred to another responsible broker as approved by the Commission and in compliance with Section 605:10-13-1 (m.)

(13) A suspended/revoked licensee will be required to comply with Section 605:10-13-1 (m) and will provide the required information to the Commission prior to the effective date of suspension/revocation.

(14) A representative of the Commission will visit the office of any suspended/revoked broker prior to the effective date of the suspension/revocation to insure compliance with the requirements of (1) through (13) of this subsection.

605:10-17-7. Cessation of licensed activities upon loss of license

(a) A revoked, suspended, cancelled, surrendered or lapsed licensee is prohibited from performing licensed activities upon the effective date of loss of license.

(b) A revoked or suspended licensee shall comply with ~~the guidelines required in~~ Section 605:10-17-6.

(c) A broker whose license was cancelled, surrendered or lapsed shall ~~be required to~~ comply with Section 605:10-13-1 (m.)

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TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 1. ADMINISTRATIVE OPERATIONS

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Subchapter 5. Program Divisions within the Department
612:1-5-3 Division of Visual Services (DVS) [AMENDED]
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The changes to Chapter 1 include expanded determining factors for visual services and the addition of another Visual Services Field Coordinator.
CONTACT PERSON:
Larry Bishop, Policy Development Administrator, Department of Rehabilitation Services, 3535 N.W. 58th, Suite 500, Oklahoma City, OK 73112 (405) 951-3408

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 5. PROGRAM DIVISIONS WITHIN THE DEPARTMENT

612:1-5-3. Division of Visual Services (DVS)

The Division of Visual Services provides diagnostic, counseling and guidance, physical restoration, training, and other services to individuals whose major disability is blindness, severe visual impairments and/or diabetes. All ~~unit heads~~ departmental managers~~,~~ and ~~the~~ Visual Services Field ~~Coordinator~~ Coordinators report directly to the Division Administrator or designee. Rehabilitation teachers for the blind provide in-home training, counseling and instruction in daily-living skills to blind individuals. DRS has field staff assigned to meet the needs in every county of the state, although staff may not be officed in each county. Local office staff report to VS Program Managers, who report to the Field ~~Coordinator at the State Office~~ Coordinators. The Oklahoma Library for the Blind and Physically Handicapped provides books and magazines in special media to blind and print-limited Oklahomans. The Division of Visual Services administers the Randolph-Sheppard Business Enterprise Program in Oklahoma, securing suitable locations for vending facilities; designing and installing equipment; recruiting, training, placing and supervising operators for the facilities.

[OAR Docket #05-852; filed 5-12-05]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 10. VOCATIONAL REHABILITATION AND VISUAL SERVICES

[OAR Docket #05-853]

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ANALYSIS:
Changes are being made to clarify the Counselor's responsibility regarding re-evaluation of client's IPE and the client's responsibility concerning their willingness to abstain from abuse of drugs and/or alcohol. Priority groups are being reduced from 4 to 3. The agency is establishing the date an application is considered submitted. The Section 504 Plan is being defined and per Rehabilitation Services Administration direction, all Independent Living Services, with the exception of the Older Blind, are now referred to the Independent Living Centers. The agency is also transferring Interpreter Services from one division to another as well as general cleanup of language.
CONTACT PERSON:
Larry Bishop, Policy Development Administrator, Department of Rehabilitation Services, 3535 N.W. 58th, Suite 500, Oklahoma City, OK 73112 (405) 951-3408

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 1. GENERAL PROVISIONS

612:10-1-2. Definitions

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

"Act" means the Rehabilitation Act [29 USC 701 et seq.].

"ADL" Activities of Daily Living often refer to the routine activities carried out for personal hygiene and health (including bathing, dressing, feeding) and for operation of a household.

"Applicant" means an individual who has completed and signed an agency application form or has otherwise requested vocational rehabilitation services; who has provided information necessary to initiate an assessment to determine eligibility

and priority for services; and who is available to complete the assessment process.

"Authorized Representative" means a client's or applicant's parent, guardian, advocate (i.e. Client Assistance Program) or other person designated by the client or applicant as the individual authorized to deal with the Department on behalf of the client or applicant, consistent with provisions of the Act. Authorized representative does not include an employee of the Department of Rehabilitation Services, another state agency, or vendor of the Department unless the person is actually the parent, guardian, or is serving in the capacity of guardian (for example: court appointed).

"Blind" means persons who are blind within the meaning of the State Law relating to Vocational Rehabilitation. Legal blindness means a visual acuity of 20/200 or less in the better eye with best correction, or a visual field of 20 degrees or less.

"Client/Consumer" means an individual found eligible and receiving services under the Act.

~~"CISS" means Consumer Independence Support Services~~

"Clubhouse model" means a psychosocial and vocational approach to work adjustment for people with mental illness. The work-ordered day is a core element of the clubhouse, which focuses on strengths, talents and abilities. Work in the clubhouse helps members develop appropriate social skills and gain self worth, purpose, and confidence. The clubhouse enables members to return to paid work through Transitional Employment, Supported Employment and independent employment.

"Community rehabilitation program" (CRP) means a program that directly provides or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and provides singly or in combination, services for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement.

"Comparable benefits" means services and/or funding available through any other programs and/or resources which will meet in whole or in part the cost of rehabilitation services provided to an eligible individual. For the purposes of this definition, the term "resources" does not include client assets as determined under 612:10-3-1 through 612:10-3-7.

"Compensatory training" means training required before the client can enter a formal training program or employment, such as pre-vocational or personal adjustment training.

"Competitive employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and for which the individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who do not have disabilities.

"Consumer Independence Support Services" (CISS) are defined as providing independent living assessment, intensive counseling, community integration, and housing modifications to further assist consumers with severe disabilities in achieving independence.

"Continuity of Services" means once an individual is selected for services in accordance with policy, regardless of the priority category from which the individual was selected, the individual will receive the necessary purchased services, including post-employment services.

"Core Independent Living Rehabilitation (IL) services" is defined as information and referral services; independent living skills training; peer counseling; and individual and systems advocacy.

"Core Vocational Rehabilitation (VR) services" means services which substantially reduce the impact of functional limitations on employment outcomes. Physical and mental restoration services are examples of core VR services. Supportive services such as maintenance and transportation do not fall within the definition of core Vocational Rehabilitation services.

"Counselor" means the qualified rehabilitation professional, who is an employee of the designated state unit, and who has primary responsibility for the management of an individual's rehabilitation services case record, including determination of eligibility, service planning and management, and determination of successful or unsuccessful rehabilitation. Counselor is equivalent to such terms as VR/VS Specialist, VR/VS Coordinator, and Rehabilitation Teacher who manage Visual Services cases with Homemaker goals.

"Department" unless otherwise indicated in the text, means the Department of Rehabilitation Services as constituted in 74 O.S., Section 166.1 et seq.

"DRS" means the Department of Rehabilitation Services.

"Durable Training Supplies" means general training supplies which are not consumable, and are required for any student taking a particular course of study at an institution of learning, or required by a client as a reasonable accommodation for training. In general, any training supply which a client could not continue to use past successful rehabilitation, or which could not be used by other clients in future terms of training, would not meet the definition of "durable training supply".

"DVR" means the Division of Vocational Rehabilitation.

"DVS" means the Division of Visual Services.

"Eligibility" or "Eligible" means:

(A) when used in relation to an individual's qualification for Vocational Rehabilitation services, a determination that the individual has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; can benefit in terms of an employment outcome from rehabilitation services; and requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment;

(B) when used in relation to an individual's qualification for Supported Employment services, a determination that the individual is eligible for Vocational Rehabilitation services; is an individual with the most severe disabilities (priority group one); and

(i) for whom competitive employment has not traditionally occurred; or

(ii) for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(iii) who, because of the nature and severity of their disability, need intensive supported employment services, and extended services after the transition from intensive supported employment services, in order to perform such work;

(C) when used in relation to an individual's qualification for Rehabilitation Teaching services, certification that the individual is legally and/or functionally blind or has a rapidly progressive condition and may have secondary disabilities; the individual has identifiable deficiencies in independent living due to disabilities; and it is expected services will improve the individual's independence in the home and community;

(D) when used in relation to an individual's qualification for Independent Living Rehabilitation services, certification that the individual has a severe physical or mental disability; the disability results in a substantial limitation or inability to function independently in the family or community or to continue in employment; and a reasonable expectation that independent living services will significantly assist the individual improve his/her ability to function independently.

"Employment and Retention" (E&R) means short-term job coach support for individuals with severe disabilities who require assistance preparing for, obtaining, and maintaining employment.

"Employment outcome" means, with respect to an eligible individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market to the greatest extent practicable; supported employment; or any other type of employment (including self-employment, telecommuting, or business ownership) that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

"Extended employment" means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act and any needed support services to an individual with a disability to enable the individual to continue to train or otherwise prepare for competitive employment, unless the individual through informed choice chooses to remain in extended employment.

"Extended period of time" means when appropriate services are provided in a timely and orderly manner, completion of the Individualized Plan for Employment (IPE) will be expected to require a minimum of 6 months.

"Extended services" means ongoing support services provided to individuals with the most severe disabilities after the time-limited vocational rehabilitation services have been completed and job stabilization has been achieved. They consist of specific services, including natural supports, needed to maintain the supported employment placement. Extended services are paid from funding sources other than DRS and are specifically identified in the IPE.

"Extreme medical risk" means a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditiously.

"Functional capacities" means a client's assets, strengths, and resources which maintain or increase the individual's ability to work. Functional capacities include mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.

"Functional limitations" means physical or mental conditions, emergent from a disability, which impair, interfere with, or impede one or more of an individual's functional capacities.

"Higher education" means universities, colleges, community/ junior colleges, vocational schools, technical institutes, or hospital schools of nursing.

"Highly challenged" describes a client receiving supported employment services who, due to the nature of the disability, requires a greater level of support from the job coach to achieve and maintain employment.

"Homemaker" means a person whose primary work is performance of duties related to upkeep and maintenance of a home.

"IEP" means Individualized Education Program as required by the Individuals with Disabilities Education Act.

"Individual with a disability" means an individual having one or more physical or mental conditions which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

"Individual with severe disability" means an individual with a significant disability, as used in the Rehabilitation Act amendments of 1998, and an individual:

(A) who has a physical or mental impairment seriously limiting one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, mental retardation, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

"Individual with the most severe disability" means an individual with the most significant disability as used in the Rehabilitation Act amendments of 1998, and an individual with physical or mental disabilities:

(A) who has a severe physical or mental disability that seriously limits three or more major life activities in terms of an employment outcome;

(B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, mental retardation, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

"Integrated setting" means:

(A) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals.

(B) With respect to an employment outcome, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(C) A job site where the individual with severe disability works in a group of not more than eight workers with disability and interacts regularly in performance of job duties with non-disabled co-workers and/or members of the general public.

(D) Interaction with individuals who provide ongoing supported employment services at the job site does not satisfy the integration requirement.

"Intercurrent (acute) conditions" means an illness or injury occurring during the actual course of an individual's rehabilitation which, if not cared for, will complicate or delay achievement of the client's employment outcome as identified in the client's IPE.

"IPE" means the Individualized Plan for Employment.

"Job Club" is a structured learning experience for a client to build skills in self-assessment, resume development, job search and research strategies, and interview techniques to assist the person to enter a career of their choice.

"Job Coach/Employment Training Specialist" means a qualified individual providing support services to eligible individuals in supported employment and employment and retention programs. Services directly support the eligible individual's work activity including marketing and job development, applied behavioral analysis, job and work site assessment, training and worker assessment, job matching procedures, and teaching job skills.

"Long-term treatment" means medical or psychological treatment that is expected to last more than three months.

"Maintenance" means a supportive service provided to assist with the out-of-ordinary or extra expenses to the individual resulting from and needed to support the individual's participation in diagnostic, evaluative, or other substantial services in the IPE.

"Milestones" means a payment system that reimburses a vendor based on incentives and outcomes. The vendor is paid when the client completes pre-defined checkpoints on the way to a desired employment goal.

"Multiple services" means the counseling and guidance provided as a routine part of case management plus two or more core VR services. Comparable benefits and/or services can count toward meeting the definition of multiple services. Services routinely provided as a package do not count as multiple services for the purpose of determining the presence of a severe disability, even if two or more core services are included in the package. Core services include:

(A) **Restorative.** Services including surgery, hospitalization, medical treatment, anesthetic, psychiatric treatment, psychological counseling, nursing, medication;

(B) **Auxiliary.** Services including prosthetics, orthotics, hearing aids, wheelchairs, other durable medical equipment, physical therapy, speech therapy, optics;

(C) **Assistive technology.** Services including accommodations, sensory aids, telecommunication devices, low vision aids, assessment, training, modification, and specialized adaptive equipment;

(D) **Specialized.** Services for individuals who are blind, deaf or severely disabled may include rehabilitation teaching, orientation and mobility training, reader services, interpreter services, personal attendant services, and personal adjustment training;

(E) **Training.** Services including college and university training, occupational and vocational training, on-the-job training, remedial training, job readiness training, work adjustment training, work site learning, all other training;

(F) **Selective placement.** Services including job coaching, job duty and workstation analysis, job duty and workstation adaptation, supported employment, vocational technician services, and employment and retention services; and/or

(G) **Intensive counseling.** Services including therapeutic or adjustment guidance and counseling, such as counseling that is directed toward the acceptance of disability.

"Natural supports" means any assistance, relationships or interactions that allow a person to maintain employment in ways that correspond to the typical work routines and social interactions of other employees. Natural supports may be

developed through relationships with people or put into place by the adaptation of the work environment itself, depending on the support needs of the person and the environment.

"Occupational license" means any license, permit, or other written authority required by a state, city or other governmental unit to be obtained in order to enter an occupation.

"Ongoing support services" means services specified in the IPE according to individual need, which support and maintain an individual with the most severe disabilities in supported employment. Sponsored ongoing support services are provided from the time of placement until the individual is stabilized on the job. Ongoing support services are provided by one or more extended services providers, or by natural supports, following transition throughout the individual's term of employment. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

"Package of services" means several services which are usually provided together for the same purpose. The services in a package are usually, but not always, from the same category of core services (see definition of multiple services, this section). Examples include, but are not limited to: surgery, anesthesia, and hospitalization; or personal computer, software, and peripheral equipment.

"Personal assistance services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability.

"Physical and mental restoration services" means services which are necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive, within a reasonable period of time.

"Physical or mental disability" means a physical or mental condition which, if not corrected, materially limits, contributes to limiting or will result in limiting an individual's activities or functioning.

~~**"Place/Train Model of Supported Employment"** describes a type of contracted service that is structured to meet the needs of individuals with the most severe disabilities in priority group one. The model provides the individual substantial assistance in making a job choice, in getting a job matching the choice, a significant amount of job site support to learn job tasks and to stabilize in the job, and long-term supports to retain the job.~~

~~**"Preparation/Place/Train Model of Supported Employment"** describes a type of contracted service that is structured to meet the needs of individuals with the most severe disabilities in priority group one. The model is designed to build work adjustment skills and ego strength to assist the individual to prepare for work, teach methods for obtaining and maintaining employment, clarify strengths and interests, make career choices, adjust to the demands of the work environment and maintain long-term employment.~~

"Referral" means information provided to agency staff regarding an individual who may need vocational rehabilitation services; information or direction provided to an individual regarding services and resources available from other agencies or service providers; or information and direction provided to an individual regarding opportunities for employment. A referral may include arranging for appointments on behalf of the individual.

"Rehabilitation Act" means the Rehabilitation Act [29 USC 701 et seq.].

"Related factors" means those factors which are not directly attributable to the impediment to employment, but which have impact on the potential for successful rehabilitation. They frequently become evident only from an assessment of the person's social, vocational, educational, and environmental circumstances.

"Section 504 Plan" is a plan designed as a protection for students with disabilities who may not be considered eligible for special education under IDEA in compliance with Section 504 of the Rehabilitation Act of 1973 as amended.

"Small business enterprises" means a small business operated by blind or other individuals with severe disabilities under the management and supervision of the state DRS. Such businesses include only those selling, manufacturing, processing, servicing, agricultural, and other activities which are suitable and practical for the effective utilization of the skills and aptitudes of individuals who are blind or individuals who have severe disabilities. Small business enterprise provides substantial gainful employment or self-employment commensurate with the time devoted by the operators to the business, the cost of establishing the business and other factors of an economic nature.

"Stabilization" means the period of time when job coach support is reduced to the long-term maintenance level while the individual retains employment, and personal satisfaction with the job, as well as employer satisfaction with the person's job performance. Stabilization must include appropriate individualized supports, including a minimum of two employee contacts and one employer contact per month.

"Substantial impediment to employment" means that a physical or mental disability (in the light of related medical, psychological, vocational, educational, cultural, social or environmental factors) that impedes an individual's occupational performance, by preventing his/her obtaining, retaining, or preparing for a gainful occupation consistent with his/her capacities and abilities.

"Supported employment" (SE) means competitive work in integrated work settings, or employment in integrated work settings in which individuals are working toward competitive work, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most severe disabilities who meet the eligibility criteria for supported employment. This term includes transitional employment for persons who are individuals with the most severe disabilities due to mental illness (see the definition for "transitional employment").

"Supportive services" means vocational rehabilitation services provided so eligible individuals may derive the full benefit of core services being provided under an IPE.

"Transitional employment" (TE) means, when referring to the Supported Employment Program, a series of temporary job placements in competitive work in integrated settings with

ongoing support services for individuals with the most severe disabilities due to mental illness.

"Transportation" means a supportive service provided to assist with the costs of travel, including instruction in the use of public transportation vehicles and systems, which result from and are needed to support the individual's participation in diagnostic, evaluative, or other substantial and necessary VR services.

"Unpaid family worker" means a person who works without pay on a family farm or in a family business, operated by a family member who is related by blood or marriage.

"VR" means the Division of Vocational Rehabilitation, or the more general term vocational rehabilitation services, depending upon the context.

~~**"VR Counselor"** means the qualified rehabilitation professional, who is an employee of the designated state unit, and who has primary responsibility for the management of an individual's VR services case record, including determination of eligibility, service planning and management, and determination of successful or unsuccessful rehabilitation. VR Counselor is equivalent to such terms as VR Specialist, VR Coordinator, and Rehabilitation Teacher who manage Visual Services cases with Homemaker goals.~~

"VS" means the Division of Visual Services, or the more general term visual services, depending upon the context.

612:10-1-7. Purchase of services and goods for individuals with disabilities

(a) All Department authorizations are made in compliance with the state purchasing policy under legal authority of the Director or by an employee to whom the Director has delegated such authority. Services, other than diagnosis, must be in an approved Individualized Plan for Employment prior to authorization. All authorizations are to be issued prior to or simultaneously with the provision of the services. Verbal authorizations may be made when needed to ensure effective delivery of services. Verbal authorization must be followed immediately by the actual authorization. Separate authorizations for each fiscal year are required when a planned service extends beyond a single fiscal year. Rehabilitation professionals may not authorize fees for services in excess of those established by the Department unless approved by the Division Administrator. A prior written purchasing agreement is required before authorization can be made to any medical vendor or post-secondary school. Other nonmedical vendors will not require a prior written purchasing agreement unless stated otherwise in the DRS policy manual section(s) for that service. When a vendor has a prior written purchasing agreement with the Department, and required approvals have been obtained, authorization may be issued for consumer services directly to that vendor. All other consumer services will be purchased pursuant to the rules in (g) and (h) of this Section. However, a requisition may be submitted to the DRS Purchasing Section if, in the judgment of the responsible rehabilitation professional, the best interests of the consumer and/or the agency would be served by having the Purchasing Section handle the procurement. In either case, once items have been received and checked against the authorization, the appropriate DVR or DVS staff, in accordance with (g) and (h) of this Section, signs the claim, then forwards it to the DRS Budget and Finance Unit. When a vendor does not abide by the authorization or written purchasing agreement or bills and accepts fees from the client in addition to those agreed upon, the rehabilitation professional will bring this to the immediate attention of the supervisor for action by the administration. The vendor will not be used for further rehabilitation services until agreement to discontinue the objectionable practice is reached.

(b) Since the Department is a state-federal agency, it does not pay sales, excise, or transportation taxes.

(c) All claims for medical and/or nonmedical client services must be filed on claim forms approved by the Department. When the provision of an authorization is fulfilled, payment for the authorized client services constitutes payment in full. The client will not have any financial liability other than the amount required of clients who must participate in the cost of the service provided. The individual is liable for services he/she arranged which were not planned and initiated under the auspices of DRS. When DVR and DVS funds are used to supplement third party medical resources, participation cannot exceed the difference between the third-party payment and the Department's established schedule.

(d) The client must transfer, assign, or authorize payments to the Department of any and all claims against Health Insurance or Liability Insurance companies or other third parties, to the full extent of all payments for medical services made by the Department.

(e) The Department retains right and title to any tools, equipment, durable medical equipment, or other goods costing $500 or more purchased with DVR and DVS funds, until and unless such goods are released to the client. Upon delivery of any such goods to the client, a Receipt for Equipment and Title Agreement must be completed and signed.

(1) **Completion of Program:** Any tools, equipment or durable medical goods purchased for training or occupational purposes remain with the client after completion of the program of services if they can be used in the client's chosen vocation. If the client fails to complete the program of service, the counselor will make effort to reclaim the goods to transfer to another client.

(2) **Disposition at closure:** Case recording must reflect the disposition at the time of closure of tools, equipment, and goods provided the client. All occupational tools, equipment, and durable medical goods remain the property of the agency until released. If the client is not using the items, the counselor will pick them up if an economical savings to the agency will result, and if the transfer will not endanger the health or safety of the client.

(3) **Title Release:** Title on any tools, equipment or durable medical equipment purchased with DRS funds for training or occupational purposes will not be released to the client until the counselor has determined the client is rehabilitated and using the items as planned.

(f) When the rehabilitation professional determines an authorization or portion of an authorization will not be utilized, procedures to cancel the remaining services will be completed. Before the case is closed, all unliquidated authorizations must

be canceled or accounted for to determine if a claim will be made against any outstanding authorization.

(g) Purchasing consumer goods or services, other than direct client payments, when there is no prior written purchasing agreement is basically a three step process. These steps include specifying the requirements for the goods or services, authorizing for the purchase, and receiving delivery of the goods or services. For audit purposes, no one person can perform more than one of these steps. A different person is required for:

(1) identifying the requirement for the purchase;

(2) placing the order; and

(3) accepting the material or service.

(h) When a prior written purchasing agreement for consumer goods or services, other than direct client payments, is not required, and the service or package of services to be obtained will cost $2500 or less, the rehabilitation professional and client will jointly choose an appropriate vendor. The rehabilitation professional will then authorize for the planned services to the chosen vendor. When a prior written purchasing agreement for consumer services, other than direct client payments, is not required, and the service or package of services will cost more than $2500, the rehabilitation professional will follow rules in (1) through (7) of this Subsection.

(1) The rehabilitation professional will obtain specialist recommendations for purchase requirements and approvals in accordance with agency policy.

(2) The participation of the client, or the client's authorized representative, will be obtained in deciding upon at least three vendors to be contacted by the rehabilitation professional to obtain bids for the goods or services. The rehabilitation professional will review available vendor information with the client, or client's authorized representative, to jointly determine which vendor(s) can best meet the needs of the client in terms of product and service function, quality, and vendor accessibility.

(3) At least three vendors offering the goods or services will be contacted to obtain bids. To expedite planning and service delivery, bids may be obtained verbally. Upon request, contacted vendors will be afforded at least 24 hours in which to prepare and submit the verbal bid. The rehabilitation professional will ensure that all bids are submitted in writing for the same or comparable items, and will document the bids received by using the Vendor Bid Documentation Form.

(4) The rehabilitation professional will issue the appropriate authorization and claim to the vendor submitting the lowest and best bid. If the rehabilitation professional managing the case is also the recognized specialist who identified the purchase requirements, then the supervisor will issue the appropriate authorization. Authorization may be issued to a vendor not submitting the lowest bid only with strong documentation that the selected vendor can best meet the needs of the client. When the bid is in excess of $10,000.00 ~~The~~the successful bidder will sign a non-collusion statement (to be sent with the claim), which will be maintained in the case service record.

(5) In the case of a vehicle modification or housing modification, upon completion of the authorized services, the counselor will contact the AT Specialist to schedule inspection of the work in accordance with 612:10-7-220 and 612:10-11-38. The AT Specialist will complete the "Assistive Technology Inspection Report" verifying the modification conforms to acceptable standards and the work is satisfactory.

(6) Upon delivery of the goods or services in accordance with the IPE and authorization, a rehabilitation staff person other than the specialist who specified the purchase requirements and the rehabilitation professional who authorized the purchase will accept delivery, verify that goods received match the vendor invoice, sign the appropriate claim form, sign and attach the invoice and forward them to the DRS Budget and Finance Unit.

(7) Upon delivery of any goods costing $500 or more to the client, a Receipt for Equipment and Title Agreement must be completed and signed.

(8) Itemized documentation will be in the case record on all orders costing less than $500 and the client will acknowledge their receipt. (For example, signing and dating the packaging slip, vendor's invoice, or typed list of goods.)

(9) Returned or repossessed items must be documented on for "Receipt for Equipment and Title Agreement" and the final disposition noted in Case Narrative entry.

(i) Program Managers will review case records when submitted for approvals to ensure that purchases are being awarded in a manner that ensures competition and client participation within the scope of DRS and applicable fiscal rules. At least once each fiscal year a random selection of case records will be reviewed by the DRS Central/Departmental Services Unit to monitor compliance with DRS and applicable fiscal rules. If a Program Manager has reason to believe that a rehabilitation professional is not making a good faith effort to award purchases in a competitive manner and in accordance with agency policy, a fiscal audit of the entire caseload will be requested to determine the appropriate action to take.

(j) Pursuant to 74 O.S. 85.44A, any goods or services required under a court order shall be purchased in accordance with DRS fiscal rules.

SUBCHAPTER 7. VOCATIONAL REHABILITATION AND VISUAL SERVICES

PART 1. SCOPE OF VOCATIONAL REHABILITATION AND VISUAL SERVICES

612:10-7-2. Counselor's responsibilities

(a) The counselor is responsible for contacting each referral within 30 days of receipt of the referral information. The counselor is responsible for completing a contact by telephone or in person. The counselor is responsible for providing interpreter services to applicants who are deaf or non-English speaking.

(b) The rehabilitation counselor is responsible for the determination of an individual's eligibility to receive services from DVR or DVS. Individuals who are legally blind are to be

referred to the appropriate rehabilitation teacher for determination of eligibility for the rehabilitation teaching program. In cases where the counselor has difficulty in making an eligibility determination, the counselor will consult with the supervisor. For further clarification, the case will be reviewed by the field coordinator for a decision. All cases referred must be accompanied by all available medical information and sufficient social and vocational information. The rehabilitation teacher is responsible for the determination of an individual's eligibility to receive services from the Rehabilitation Teaching Program. The counselor will apply eligibility criteria to all applicants in an equitable manner, without regard to race, age, sex, color, creed, national origin or disability type.

(c) The counselor always considers the primary and basic vocational rehabilitation service as counseling and guidance with job placement. Any service beyond this must be justified as necessary to compensate, correct or circumvent an impediment to employment. Every IPE must include a plan of counseling and guidance services. Regular documentation of counseling sessions will be included in every DVR and DVS case.

(d) The rehabilitation counselor is to ensure that the client is a full participant in the decisions that are made concerning his or her vocational rehabilitation. This responsibility is carried out by providing the individual with as much relevant information as is available so that the individual, and/or the individual's authorized representative, can exercise informed choice consistent with the Department's policies. The minimum information concerning service choice to be supplied includes:

(1) service cost;

(2) available service providers;

(3) service accessibility;

(4) expected duration of services;

(5) consumer satisfaction with the services in question, to the extent that such information is available;

(6) qualifications of potential service providers;

(7) the types of services offered by the potential service providers;

(8) the degree to which services are provided in integrated settings; and

(9) outcomes achieved by individuals working with the service provider, to the extent such information is available.

(e) The individual will be notified in writing of any adverse determination made by professional staff concerning that individual's case. This notification will be made in a timely manner, and in a manner that supports the individual's right to due process.

(f) The counselor will complete a financial status determination form prior to the provision of any service (other than exempt services listed in 612:10-3-4) to determine if the client will be required to participate in the cost of services.

(g) An individual must be in status 06, 16 through 24 or 32 before any non-diagnostic service is authorized. A non-diagnostic service authorization will not be issued until after the service has been included in the IPE or amendment.

(h) All Department authorizations are made in compliance with the state purchasing policy under legal authority of the Director or by an employee to whom the Director has delegated such authority. The counselor will verify the client has received any tools, equipment, or durable medical goods purchased with DVR and DVS funds and, when appropriate, complete the Receipt for Equipment and Title Agreement.

(i) The counselor will inform each individual of his or her rights and responsibilities as an applicant or client of DVR and DVS. Cross reference 612:10-7-150

(j) The Department of Rehabilitation Services (DRS) has an obligation under state and federal law to provide services in a fair and impartial manner. State Ethics Commission Rules state that the proper operation of state government requires that the state employee be independent and impartial; that state employees not use state office to obtain private benefits; that a state employee must avoid action which creates the appearance of using state office to obtain a private or inappropriate benefit; and that state employees exercise their powers without prejudice or favoritism.

(k) The counselor is limited in determining eligibility for services for friends or relatives. At the time of application or referral, if in the counselor's judgment, the individual is familiar to the point of friendship, the counselor must immediately disclose this relationship to their supervisor in writing and obtain approval before determining eligibility. If the applicant is related by blood or marriage, the counselor must immediately refer the case to another counselor, if available. If no other counselor is available, the counselor must notify their supervisor immediately for appropriate case assignment. The counselor should also disclose the potential conflict of interest to the applicant and explain the reason for the potential delay of eligibility determination. The counselor must not only be impartial in the determination of eligibility but also act so that there can be no question of impartiality.

(l) The counselor will assess the stability of an individual's disability throughout the case to evaluate their ability to achieve their vocational objective and successfully achieve an employment outcome. If the goal is determined to be no longer realistic, the counselor must re-evaluate the IPE in order to make necessary and appropriate changes with the client. Provision of services must be aimed at removing, substantially modifying or compensating for restrictions, limitations, or impediments.

612:10-7-3. Client responsibilities

To make the rehabilitation effort a success, the individual and agency's staff must work together to reach chosen goals. This shared responsibility requires that the client or applicant for services accept the basic responsibilities in (1) through ~~(10)~~ (11) of this Subsection. Other specific client responsibilities are stated in relevant manual sections. It is the counselor's responsibility to fully and appropriately inform the client of client responsibilities.

(1) Keep appointments for medical examinations and other evaluations.

(2) Follow the advice of doctors and other licensed treatment professionals.

(3) Take an active part in developing the Individualized Plan for Employment.

(4) Provide enrollment documents to home/supervisor counselor before the college or university's designated "Drop and Add" deadline so an authorization can be issued.

(5) Attend training classes on a regular basis.

(6) Take part in regular reviews (at least once a year) of the Individualized Plan for Employment; and also take part in any revisions to the program.

(7) Maintain satisfactory progress toward completing the IPE.

(8) Must abstain from abuse of drugs and/or alcohol. Individuals who abuse drugs and/or alcohol while receiving services will be referred to the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) and/or other appropriate agencies for purposes of seeking treatment. All case services will be suspended. If the client refuses or fails to cooperate with seeking treatment, or is not available to pursue a DRS program, this will be considered as reasonable cause for case closure.

(~~8~~ 9) Keep the appropriate ~~DVR or DVS~~ professional informed of changes in the individual's address, financial status, or other program-related changes.

(~~9~~ 10) Apply for and make appropriate use of any comparable benefits and services for which the client is eligible to defray in whole or in part the cost of services in the individual's IPE and provide verification of financial aid award status to counselor.

(~~10~~ 11) Working with the counselor to obtain suitable gainful employment or appropriate independent living outcomes as services are being completed.

612:10-7-4. Basic eligibility requirements for vocational rehabilitation services

(a) An individual is eligible for vocational rehabilitation services under the Rehabilitation Act through the State Department of Rehabilitation Services if the individual:

(1) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment;

(2) can benefit in terms of an employment outcome from vocational rehabilitation services; and

(3) requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment.

(b) An individual who has a disability or is blind as determined pursuant to Title II or Title XVI of the Social Security Act [42 U. S. C. 401 et seq. and 1381 et seq.] shall be:

(1) considered to have a severe disability under the order of selection; and

(2) presumed to be eligible for vocational rehabilitation services, (provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual) unless clear and convincing evidence demonstrates that the individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the individual's disability.

(c) Determinations by other agencies, particularly education agencies, regarding whether an individual has an impairment or is an individual with a severe disability are to be used to the extent appropriate, available and consistent with the Rehabilitation Act.

(d) Every person must be evaluated individually regarding history, prognosis and functional limitations to determine if the individual can benefit from rehabilitation services in terms of an employment outcome.

(e) Some conditions have unique criteria that must be considered when determining eligibility.

(1) **Alcoholism/Drugs.** Eligibility documentation for vocational rehabilitation services requires both medical and psychological records. Clients who are accepted on the basis of alcoholism and/or drug dependency, whether a primary or secondary disability, must be enrolled in a treatment or maintenance program and be willing to undergo random alcohol/drug screening ~~at the counselor/employer's discretion~~. DRS does not pay for detoxification. DRS will not provide services to individuals who abuse drugs and/or alcohol. The client must provide the agency with supportive documents from qualified Drug and Alcohol treatment professionals that the client is presently substance-free, maintaining sobriety, actively participating in a treatment or maintenance program, and ready to engage in vocational rehabilitation services. Those individuals who are alcohol/drug free for two or more years will not be eligible on a primary disability of alcoholism/drug dependency.

(2) **Allergies/Asthma.** Only the most serious allergies/asthmatic condition requiring continuous medical intervention will be considered eligible for services.

(3) **Deafness and Hearing Loss.** The rehabilitation professional will base eligibility determination upon one of the measurement methods listed below. The case record must document the method chosen provides the most accurate evaluation of functional hearing level for the individual.

(A) **Eligibility criteria.** Eligibility criteria for each method of measurement are listed in (1) through (4) of this Subsection. An individual will also be considered to have a qualifying disability when documentation indicates the hearing loss is progressive and the progression is substantial enough to result in an impediment to employment.

(i) **Average hearing loss.** Average hearing loss, which is determined by computing average of the pure tone thresholds for each ear at 1000Hz, 2000Hz, 3000Hz and 4000Hz. An individual is considered to have a qualifying disability based upon average hearing loss when:

(I) The hearing loss in one ear is profound (91 dB or greater) and the hearing loss in the better ear is at least 15 dB; or

(II) The hearing loss in the better ear is 30 dB or greater.

(ii) **Speech recognition threshold (SRT).** An individual is considered to have a qualifying disability when:

(I) the speech reception threshold in one ear is 91 dB or greater and is at least 15 dB in the better ear; or

(II) the speech reception threshold in the better ear is 30 dB or greater.

(iii) **Speech discrimination or word recognition score.** An individual is considered to have a qualifying disability when the speech discrimination or word recognition score is 70% or less.

(iv) **Articulation index.** An individual is considered to have a qualifying disability when the articulation index is 70% or less.

(B) **Evaluation of need for visual examination.** Clients with a disability of deafness or hearing loss will be offered a visual exam annually unless adequate existing records are available.

(4) **Diabetes:** The individual must require prescribed medication to control the condition. Those persons whose diabetes is controlled by diet and exercise alone will not be considered eligible. Eligible clients will be offered a visual exam at least once per year. It is recommended all insulin dependent diabetics attend diabetic education training as part of their IPE. If diabetic education is provided, a separate intermediate objective addressing this service must be included on the IPE.

(5) **Facial and Disfigurement Conditions.** Treatment of any of these conditions may also be provided under intercurrent illness policy. Treatment may be provided when:

(A) it is necessary to correct or substantially modify a condition which is stable or slowly progressive;

(B) such correction or modification may reasonably be expected to eliminate or reduce the impediment to employment within a reasonable length of time.

(6) **Learning Disabilities.** Individuals must meet **one** of the following three criteria to be identified as learning disabled:

(A) Have a marked discrepancy between verbal and performance intellectual level;

(B) Be diagnosed or identified as having a specific learning disability from the local educational system; or

(C) When the individual's achievement on individually administered, standardized test in reading, mathematics or written expression is substantially below that expected for age, schooling and level of intelligence (DSM IV).

(7) **Mental Disorders:** Treatment must be incorporated as a service in the IPE for individuals with a diagnosis of mental disorder. Comparable benefits will be used when available.

(8) **Mental Retardation.** To be eligible, individuals having an I.Q. of 69 or below and substantially limited adaptive functioning, as measured by an individual ~~clinical~~ intelligence test, will be considered to have a substantial disability. For individuals eligible under IDEA with an I.Q. level higher than 69 may be considered to have a substantial impairment provided the documentation used by the school in determining eligibility under IDEA, in the counselor's judgment, confirms the individual is functioning in the mentally retarded range of ability. Individuals not enrolled in public school special education classes with an I.Q. higher than 69 may be considered to have a substantial impairment provided appropriate documentation confirms the individual is functioning in the mentally retarded range of ability.

(9) **Height.** To be eligible, a person under 52 inches must be unable to participate in activities of daily living.

(10) **Obesity.** To be eligible, a person must be 100% over normal weight using the designated weight chart and unable to participate in activities of daily living. Any radical surgery i.e., bypass or stapling of the stomach, treatment plans are beyond the scope of VR services. Any vocational plan for a person who is obese must include some type of treatment plan. A licensed dietician or a physician skilled in weight reduction must monitor any treatment program authorized by the agency.

(11) **Visual.** The individual must be found to have at least a 25% loss of total visual efficiency with best correction, or there must be evidence the condition is progressive and will soon reach the visual loss described above. Any one or all of the following factors may be used to determine whether a 25% loss of total efficiency exists.

(A) **Central visual acuity (Snellen method or equivalent).** Acuity of 20/60 or less in the better eye after best correction (in the case of difference of acuity between reading and distance use the greater loss).

(B) **Loss of depth perception or stereopsis.**

(i) **Eligibility on the basis of depth perception loss.** When defining eligibility based on depth perception alone, it is generally accepted a total loss of depth perception would not constitute a 25% loss of visual efficiency. Other factors to consider include: Is the client's loss of depth perception acute? Did the client recently lose his or her depth perception? Did the client's past vocational experience require good depth perception? If the client is currently working, does his/her present vocation require good depth perception? After considering these factors the counselor will determine if there are functional limitations to the extent the individual would be prevented from obtaining, retaining or preparing for employment.

(ii) **Eligibility based on loss of stereopsis.** Stereopsis is defined as the blending into one-picture two images of an object seen from slightly different points of view so as to produce the impression of relief and solidity. This type of loss usually results from suppression of vision in one eye due to alternating exotropia, esotropia, hypertropia or a difference in the refractive power of the two eyes so great that separate images cannot be

fused. When determining eligibility based on lack of stereopsis the counselor will take into account most of the factors used in determining eligibility based on loss of depth perception. One major difference is stereopsis cannot be learned. In other words, if an individual does not have binocular vision, it is impossible for the individual to have stereopsis. From a functional standpoint, stereopsis is considerably different from depth perception. The individual can still do many jobs with various degrees of depth perception yet these same jobs may have certain steps that require acute stereopsis. Thus an employee losing the stereopsis part of his visual function would be at risk for injuring himself or other workers or might be considered as a target for termination.

(iii) **Limited peripheral vision.** This is restriction of visual fields by 25% or more as documented by a formal visual field examination. The examination should report the qualitative percentage of visual field loss and/or remaining percentage of visual efficiency.

(iv) **Diplopia (Double Vision).** There are different degrees of double vision. The type of double vision most disabling is the type that manifests itself in the primary direction of gaze.

(v) **Aphakia.** In cases of binocular Aphakia the central visual efficiency of the better eye will be accepted at 75% of its value (25% loss of visual efficiency) and in monocular Aphakia the central visual efficiency will be accepted at 50% of its value (50% loss of visual efficiency). Individuals with intraocular lens implants are not considered to have a visual disability as a result of an aphakic condition.

(vi) **Color deficiency.** When total absence of color discrimination or red-green deficiency exists it will be considered a disability. Supervisory approval is necessary for establishing an impediment to employment when the disabling condition is a red-green deficiency.

(12) **Hearing evaluation.** Individuals who have been identified as "legally blind" will be carefully evaluated regarding the need for a hearing evaluation. When a hearing deficit is indicated by a medical examination report, statement of the client and/or family, or observation of one of the professional staff members working with the individual, it is noted in the case record. The counselor will make arrangements for a hearing examination unless existing records are adequate and appropriate for this assessment.

(13) **Re-evaluation.** Individuals with chronic disabilities that can be removed with little or no residual limitations will not be eligible for purchase of services other than those related to the required treatment.

612:10-7-8. Order of selection

(a) **Need for order of selection.** The Department, in consultation with the State Rehabilitation Council, has determined, due to budgetary constraints or other reasoned limitations~~;~~, that it cannot serve all individuals who are determined eligible for DVR and DVS services. The Department consults with the State Rehabilitation Council regarding the:

(1) need to establish an order of selection, including any re-evaluation of the need;

(2) priority categories of the particular order of selection;

(3) criteria for determining individuals with the most severe disabilities; and

(4) administration of the order of selection.

(b) **Priority groups.** It is the policy of DRS to provide vocational rehabilitation services to eligible individuals under an order of selection. Under the order of selection, the Department has established ~~four~~ three priority groups on the basis of serving first those with the most severe disabilities. Every individual determined to be eligible for DVR and DVS services is placed in the appropriate priority group based upon the documentation used to determine eligibility and/or vocational rehabilitation needs. Selection and placement in a priority group is based solely upon the severity of the eligible individual's disability, and is not based upon the type of disability, geographical area in which the individual lives, projected type of vocational outcome, age, sex, race, color, creed, religion, or national origin of the individual. The priority groups are:

(1) **Priority Group 1.** Eligible individuals with the most severe disabilities. A most severe disability is a severe mental or physical disability resulting in serious limitations in three or more functional capacities and requiring multiple services over an extended period of time.

(2) **Priority Group 2.** Eligible individuals with severe disabilities resulting in serious limitations in at least one, but not more than, two functional capacities and requiring multiple services over an extended period of time.

~~(3) **Priority Group 3.** Eligible individuals with severe disabilities resulting in serious limitations in one functional capacity and requiring multiple services over an extended period of time.~~

(~~4~~3) **Priority Group ~~4~~3.** Eligible individuals with disabilities not meeting the definition of individual with a severe disability.

(c) **Implementation.** Prior to the start of each fiscal quarter, or when circumstances require, the DRS Director will determine in which priority groups new Individualized Plans for Employment will be written and initiated. The Director may restrict the writing and initiation of new Individualized Plans for Employment within a priority group to cases having application dates falling on or before a specified date providing that all consumers in higher priority groups are being served. Considerations in making this determination will include, but not be limited to, the projected outcomes, service goals, expenditures, and resources available for each priority group. Projected costs and resources for each priority group will be based upon costs of current Individualized Plans for Employment, anticipated referrals, availability of financial resources,

and adequacy of staffing levels. The Director will implement actions under the order of selection through written notice to DVR and DVS staff. The written notice will specify the implementation date of the action and direct DVR and DVS staff on how to handle cases by priority group and application date. DVR and DVS staff will inform each eligible individual on their caseloads:

(1) of the priority groups in the order of selection;

(2) of the individual's assignment to a priority group; and

(3) of the individual's right to appeal that assignment.

(d) **Closing and opening priority groups.** When all or part of a priority group is closed, designated cases within that priority group without a written IPE will be placed on a waiting list after the individual has been determined to be eligible. No IPE will be written for cases on the waiting list. Staff will continue to take applications, diagnose and evaluate all applicants to determine eligibility and vocational rehabilitation needs, find the individual eligible when documentation supports such a decision, then place each eligible individual's case in the appropriate priority group. If an eligible individual is placed in a closed priority group, his or her case will go on the waiting list and no IPE will be written or initiated. The DRS Director will notify DVR and DVS staff in writing when all or part of a closed priority group is opened. When this directive includes new applicants who are found eligible, individuals already on the waiting list within that same priority group will be given priority over new applicants. When all or part of closed priority groups are opened, staff will contact individuals on the waiting list to develop and implement their Individualized Plans for Employment using the priorities in Paragraphs (1) - (3) of this Subsection:

(1) contact individuals within the highest open priority group first, Priority Group 1 being the highest of all priority groups;

(2) within each opened priority group, staff will contact individuals on the waiting list in order of application date, earliest application date first; then

(3) staff will contact individuals whose cases will remain on the waiting list to explain how their cases will be handled.

(e) **Continuity of services.** Any individual with an IPE that existed prior to the date all or part of that individual's priority group was closed will continue to receive services as planned. Such an IPE may be amended if the changes are necessary for the individual to continue progress toward achieving an appropriate employment outcome, or are otherwise necessary within policy. Persons requiring post employment services will also be provided the necessary services regardless of priority group assignment.

(f) **Information and referral services.** Information and referral services will remain available to eligible individuals who are not in an open priority group. No IPE will be written to provide such services to these individuals.

PART 5. CASE STATUS AND CLASSIFICATION SYSTEM

612:10-7-47. Status 02 - applicant

(a) **Application for services.** Referrals will be placed in status 02 as soon as the individual submits an application with the Department. An individual is considered to have submitted an application when the individual, or the individual's authorized representative, as appropriate:

(1) has completed and signed an application form or has otherwise requested services (includes, but is not limited to requests made verbally, by telephone, in writing, by facsimile, etc.);

(2) has submitted the application form, or other documentation meeting the requirements of paragraphs (a) & (b), to the receiving office where it will be date-stamped;

(~~2~~ 3) has provided information necessary to initiate an assessment to determine eligibility and priority for services; and

(~~3~~ 4) is available to complete the assessment process.

(b) **Necessary information.** The minimum information necessary to initiate an assessment to determine eligibility and priority for services consists of:

(1) individual's name;

(2) reported disability;

(3) individual's address, with finding directions when needed;

(4) individual's social security number, if available; and

(5) availability of documentation of the reported disability.

(c) **Use of status 02.** While the client is in this status, the counselor will secure sufficient information to make a determination of eligibility and priority group assignment, determine ineligibility for vocational rehabilitation services, or to make a decision to put the client into status 06. The VR Professional will determine whether an individual is eligible for vocational rehabilitation services within a reasonable period of time, not to exceed 60 days from the date of application. [612:10-7-6]

(d) **Case recording requirements - initial interview.** One of the significant steps in the case process is recording the initial interview. Pertinent information is recorded on the client information sheet and in a narrative recording. This assists the counselor in summarizing the significant information known about the client. The client information sheet will indicate the available background information such as social, vocational, psychological, medical and educational data; as well as the basis for application. The narrative recording includes factors affecting the individual's rehabilitation needs and goals, counselor's impressions, and counselor/teacher and client plans. The counselor will address such significant factors as client's appearance, social skills, attitudes, communication skills, etc. Counselor will also include any impressions concerning potential eligibility and other significant environmental factors that may have impact on the planning and provision of services. Outline the next steps to be taken in the vocational rehabilitation process, including time frames and specific responsibilities.

(1) The record must document that the applicant or representative was provided an explanation of his/her rights and responsibilities and given a copy of the CAP brochure and a "A Personal Directory: Your Rights and

Responsibilities as an Applicant or Client for Vocational Rehabilitation or Visual Services."

(2) The counselor's perceptions are extremely important during the initial interview since most of the information, attitudes, and impressions gathered during the initial interview will have a major impact on the rehabilitation process.

612:10-7-50. Status 10 - accepted for services and IPE under development

(a) **Use of status 10.** An active case is defined as one which has been accepted as meeting the basic eligibility requirements and placed in one of the statuses 10 through 24. An individual who is placed in an order of selection priority group that is not currently being served will be placed in status 10 and held there pending further directives from the Director concerning opening or closing of priority groups. While an individual is in status 10, the comprehensive assessment is completed to provide a basis for the formulation of the client's IPE. The comprehensive assessment is used to determine the scope and nature of services to be provided to accomplish the vocational objective of the client. The counselor records activities during this period by individual entry or by summary recording at regular intervals on the case narrative form. Copies of pertinent case information will be shared with all DVR or DVS professionals involved in the case. Pertinent case information will also be shared with contracted vendors, when appropriate, with a release signed by the client. During the provision of services, the counselor and teacher will share pertinent information including narrative recording. If an IPE cannot be developed during this period, the client's case is closed in status 30 with a full explanation to the client and documentation as to the reason for closing the case. This documentation will be completed on the Notification of Case Closure form. The counselor may not find an individual ineligible for supported employment services because a resource for providing extended services cannot be identified. In this instance, the counselor will:

(1) accept the individual as eligible for VR services;

(2) plan VR services as appropriate, including the expected availability of extended services; and

(3) seek out and/or help in developing the needed extended services resource.

(b) **Case recording requirements.**

(1) **Notification of eligibility.** The VR counselor will discuss eligibility with the individual, and provide a written notification of eligibility to the individual.

(2) **Comprehensive assessment.** A comprehensive assessment will be done in every case. It is conducted once the individual has been accepted as eligible for VR services. Additional assessments may be obtained for the comprehensive assessment to the extent information additional to that already obtained is necessary to determine the vocational rehabilitation needs of the individual and to develop the IPE. Existing information, and information supplied by the individual, or the individual's authorized representative, is to be used for the comprehensive assessment to the maximum extent possible. Rehabilitation technology will be used in the comprehensive assessment when necessary to assess and/or develop the capacities of the individual to perform in a work environment. The results of the comprehensive assessment and the VR Counselor's analysis of them will be recorded in a case narrative titled "Comprehensive Assessment". This case narrative will contain reasonable justification of the employment goal and services that will be provided in the IPE, considering the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual. For individuals who find selection of a vocational objective difficult because of unsuccessful or limited exposure to work, the counselor may refer the client to a Community Rehabilitation Provider (CRP) or an Independent Living (IL) provider for additional assessments to establish a vocational goal. Employment and Retention (ER) contracts offer standardized, commercial assessments, work skills assessments, as well as short-term situational assessments in community settings. Employment and Retention contractors also provide job readiness services through work experience programs or Job Clubs, as well as benefits analysis to assure the individual understands the effect of work on public benefits.

(3) **The comprehensive assessment for supported employment.** In supported employment cases, the record must document, in a case narrative titled "Comprehensive Assessment", the counselor's determination that the client is an individual:

(A) for whom competitive employment has not traditionally occurred; or

(B) for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(C) who, because of the nature and severity of the disability, needs intensive supported employment services, and extended services after the transition from intensive supported employment services, in order to perform such work.

(4) **Referral.** The counselor refers the client to a supported employment provider to gather the information necessary to complete the comprehensive assessment, and authorizes the "Assessment and ~~Determination of Needs~~ Career Planning" milestone. The provider will conduct situational assessments in community settings based on client choice and negotiations with the counselor, and in accordance with their contract requirements. Results of the assessments will assist the client and counselor in establishing a vocational goal.

(c) **Development of the Individualized Plan for Employment.** The VR counselor will provide the eligible individual, or the individual's authorized representative, in writing and in appropriate mode of communication, with information on the individual's options for developing the IPE.

(1) The required information will include the following:

(A) information on the availability of assistance, to the extent determined to be appropriate by the eligible

individual, or authorized representative, from a qualified VR counselor in developing all or part of the IPE, and the availability of technical assistance for this purpose;

(B) a description of the required content of the IPE;

(C) as appropriate:

(i) an explanation of agency requirements for client participation in cost of services;

(ii) additional information requested by the individual or authorized representative;

(iii) information on the availability of assistance in completing DVR/DVS forms required in developing the IPE;

(iv) For cases involving Alcoholism/Drugs, Mental Disorders and Obesity, treatment must be incorporated as a service in the IPE (See 612:10-7-4(e)(1), (7) and (10) respectively).

(D) a copy of a DRS publication addressing client's rights and responsibilities.

(2) For cases in an open priority group, the IPE must be completed and signed as soon as possible, consistent with the needs of the individual, but not more than 90 calendar days following the eligibility determination, unless the individual or the authorized representative and the VR or VS counselor jointly agree to an extension of time of a specific duration. The 90-day time frame for development of the IPE will be applied from the date a closed priority group is reopened.

(d) **Vocational objective.** The primary purpose in providing vocational rehabilitation services is to assist an eligible individual obtain appropriate competitive employment in an integrated setting consistent with the individual's informed choice. The choice of a vocational objective for an individual receiving vocational rehabilitation services must be based primarily upon the individual's strengths, resources, priorities, concerns, abilities, and capabilities.

(1) **Informed choice.** The vocational objective is to be chosen with the full participation of the client. The client's interests and informed choice determine his or her vocational goal to the extent these factors are consistent with the client's strengths, resources, priorities, concerns, abilities, and capabilities.

(2) **External conditions.** Factors such as the local labor market or local economy must also be taken into consideration. However, in most cases these factors cannot be used as the only basis upon which to determine whether a vocational objective is appropriate.

(3) **Currently employed individuals.** When post-employment is not appropriate, the individual's functioning in current employment must be judged against the basic eligibility criteria for vocational rehabilitation services. Services may be provided to an eligible individual who is employed when:

(A) the employment is not consistent with the individual's strengths, resources, priorities, concerns, abilities, and capabilities; and

(B) vocational rehabilitation services are required to assist the individual to obtain an employment outcome consistent with the individual's strengths, resources, priorities, concerns, abilities, and capabilities.

(e) **Non-competitive vocational objectives.** The primary mission of DVR and DVS is to help eligible individuals achieve competitive employment in an integrated work setting. Therefore, careful consideration and planning are required when services are to be provided to achieve a long term goal of non-competitive employment.

(1) **Homemaker.** A homemaker is defined as a person whose primary work is performance of duties related to the upkeep and maintenance of a home. This work takes place in the individual's own home, without remuneration.

(A) The IPE can have a vocational objective of homemaker only when services will directly and substantially improve the individual's ability to perform the primary homemaking work activities for their home.

(B) Self-care activities are not sufficient to meet the definition of gainful occupation. The individual must not be receiving any type of assistance in performing primary homemaking duties.

(C) A vocational objective of homemaker can be established for only one person within the same household.

(2) **Unpaid family worker.** A vocational objective of unpaid family worker is appropriate when services will enable the individual to perform work without pay on a family farm or in a family business operated by one or more members of the client's family. The record must document how the services will substantially improve the productivity of the client and his/her contribution to the family farm or business.

612:10-7-54. Status 18 - training

(a) **Use of status 18.** Cases are placed in status 18 when the major services being provided are training in a public or private school, on-the-job training in a commercial or industrial establishment under employment conditions or personal adjustment or other training. Cases remain in this status until the client has completed or otherwise terminated the training. Cases can be placed in status 18 if an individual chooses to participate in extended employment for the purposes of training or otherwise preparing for employment in an integrated setting through supported employment or other programs. Cases will be placed in this status even if the services are being provided by comparable services and benefits and they are the major services.

(b) **Supported employment.** Cases are placed in status 18 at the "Job Placement" Milestone, when the supported employment provider places the client on the job and the employment training specialist begins on-the-job training. If the client started working in a job at less than minimum wage, the client's wage must have increased to minimum wage or greater before training is completed. Job placement is complete when the individual has completed the third day of work. Job site training ~~for the Preparation/Place/Train model~~ is considered complete when the individual has completed the ~~"Four Weeks~~

~~Job Retention" Milestone. In the Place/Train model, job site training is considered complete when the individual has completed the~~ "Eight Weeks Job ~~Retention~~ Support" Milestone. The contracted service provider will identify and negotiate necessary job accommodations with the employer and discuss any need for assistance with the counselor. Only weeks in which hours exceed 40% of the weekly work goal and in which training and supports are provided will be counted towards training weeks.

(c) **Employment and retention.** Cases are placed in status 18 at the "Job Placement" Milestone, for those individuals who require the "Four Weeks Job ~~Retention~~ Support" Milestone to maintain successful employment. On and off job site supports are provided during this time to assist the client in adjusting to the demands of the job.

(d) **Case recording requirements.** Recording of client contacts during a training period will vary in frequency depending upon the location and type of training. There will be documentation of counselor contacts with the client to discuss general progress of the training. A program review is required at least annually. When services requiring client participation in service costs are being provided, a financial status review is required at least annually. Program amendments will be made when appropriate. Periodic reviews and evaluations as set forth on the IPE will be documented in the case record.

612:10-7-56. Status 22 - in employment

(a) **Use of status 22.** A case is placed in status 22 when the client begins employment. The client must be followed in employment for a minimum of 90 days after the completion of services and prior to being closed in status 26 to ensure the adequacy of the employment in relation to the needs and limitations of the client.

(b) **Supported employment.** Cases are placed into status 22 after the requirements have been met for completion of the "Stabilization" Milestone, and the client is ready to begin the final milestone, "Successful Rehabilitation". During this milestone, the provider must continue ~~follow up~~ ongoing supports for a minimum of 90 days before the case can be closed in status 26.

(c) **Employment and Retention.** Cases are placed into status 22 when the individual has completed the third day of work ("Job Placement" Milestone), or after completion of "Four Weeks Job ~~Retention~~ Support" Milestone if short term job coach training or support is needed. The client must be followed in employment for a minimum of 90 days prior to being closed in status 26.

(d) **Case recording requirements.** At the time planned services are completed and the client has entered employment, it is the client's responsibility to provide the counselor with employment and salary information. When an individual is placed in employed status, case recording will document:

(1) Beginning date of employment;

(2) Name and address of the employer;

(3) Client's wages or salary;

(4) Suitability of the employment [612:10-7-58]; and

(5) How the job was obtained. If the information is obtained from a source other than the client, the source of the information will be identified.

(e) **Contact.** When a client is placed in employed status, contact is maintained and documented until it is determined the employment is satisfactory and the case can be closed. This determination that the employment outcome is satisfactory will be made with the full participation of the individual.

612:10-7-58. Status 26 - closed rehabilitated

(a) **Use of status 26.** A case is placed in status 26 when being closed as rehabilitated because the client has achieved an employment outcome as a result of vocational rehabilitation services. Cases closed as rehabilitated must as a minimum meet the requirements in (1) through (5) of this Subsection:

(1) the provision of services under the individual's IPE has contributed to the achievement of the employment outcome;

(2) the employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(3) the employment outcome is in the most integrated setting possible, consistent with the individual's informed choice;

(4) the individual has maintained the employment outcome for a period of at least 90 days; and

(5) at the end of the appropriate period under Paragraph (4) of this Section, the individual and the VR Counselor consider the employment outcome to be satisfactory and agree that the individual is performing well on the job.

(b) **Out of state.** Clients who move out of state after services have been completed are closed in status 26 if the requirements in Subsection (a) of this Section can be met. If those requirements cannot be met the case will be closed in status 28, not rehabilitated.

(c) **Successful closure prior to completion of IPE.** If employment is secured before completion of the IPE, a counselor must document the conditions of substantial services and suitable employment were met. If planned services are interrupted prior to achieving the originally planned vocational goal, and services provided have directly contributed to the employment outcome for the individual or to job retention, an IPE amendment is not needed to revise the vocational goal prior to closure. A plan amendment is required when there is a substantial deviation from the original employment goal.

(d) **Cases closed from supported employment.** An individual with the most severe disabilities who is receiving supported employment services is considered to be successfully rehabilitated if the individual maintains a supported employment placement for a minimum of 90 days beyond stabilization. In addition to the criteria for "suitably employed", the counselor must document, the individual has met or has made substantial progress toward meeting the weekly work goal defined in the IPE, the client is satisfied with the job, the employer is satisfied with the client's job performance, extended services are in place, all supported employment requirements have been met, and the case is ready for closure.

The closure amendment will address any significant differences in the ultimate work week achieved as compared with the predicted goal.

(e) **Cases closed from employment and retention.** An individual with severe disabilities who is receiving employment and retention services is considered to be successfully rehabilitated when the client maintains employment for a minimum of 90 days after placement, or for a minimum of 4 weeks plus 90 days if the individual required the "4 Weeks Job Support" Milestone.

(f) **Cases closed as homemakers.** A homemaker is defined as a person whose primary work is performance of duties related to the upkeep and maintenance of a home. This work takes place in the individual's own home, without remuneration.

(1) For homemaking to be considered as a gainful occupation, primary work activities must be performed by the individual and benefits derived from DVR and DVS services must have improved the client's ability to function in these tasks. Homemaking activities must render a significant contribution to the home.

(2) Self-care activities are not sufficient to meet the definition of gainful occupation. The individual must not be receiving any type of assistance in performing primary homemaking duties.

(3) Multiple homemaking closures within the same household are prohibited.

(4) Suitable employment, substantial services and significant contribution of services to vocational adjustment must be documented on the closing amendment to the IPE. This documentation must be very explicit when the individual's vocational objective is changed to homemaking during the rehabilitation process or there could be a question as to whether the homemaking activities render a significant contribution to the home.

(g) **Cases closed as unpaid family worker.** A case may be closed as rehabilitated when the individual is performing work without pay on a family farm or in a family business operated by one or more members of the client's family. The case recording on the closing amendment to the IPE must include the same documentation as in the case of any other rehabilitated closure but particular attention is to be given to the description of the client's work activities and their regularity. The record must confirm the productivity of the client and his/her contribution to the family farm or business.

(h) **Case recording requirements.** Closure in status 26 is accomplished by amending the IPE on a Closing Amendment to IPE form. The client, or the client's authorized representative as appropriate, will be a full participant in the decision to close the case. The last discussion of the closure decision with the client, or the client's authorized representative, will be held within 30 days of the closure, and will be documented in a case narrative. The client will also be given a copy of the amendment and advised of the availability of Post-Employment Services. The documentation on the amendment will specifically address the substantiality of the services provided, how they contributed to the client's suitable employment and type of employment, the name and address of the employer, and the client's wages. The need for post-employment services will be reassessed prior to closure. The form must include the results of this reassessment.

612:10-7-62. Status 32 - post-employment services

(a) **Use of status 32.** Post-employment services may be provided to assist rehabilitated clients to retain, regain, or advance in employment. Planning for and provision of post-employment services is one of the more important elements of the agency's service. The need for post-employment services will be assessed at initiation of the IPE. Ongoing assessment continues during case services, is documented as needed, and is reassessed just prior to case closure. Counseling and guidance is the core service around which all other post-employment services are provided. Post employment services can be provided to individuals who receive Supported Employment Services if such services are needed to maintain the supported employment placement and those services are not available from an extended services provider. Some examples of post employment services are maintenance of assistive technology, job station redesign, and replacement of prosthetic and orthotic devices. Post employment services are not to be used in instances of underemployment when extensive retraining is needed. Cases reopened on a post-employment basis do not require re-establishment of eligibility. New diagnosis is needed only if there has been a change in the client's physical or mental condition. Any vocational rehabilitation service or combination of services necessary to assist the individual retain, regain, or advance in employment may be provided if the service(s) does not involve a complex or comprehensive effort unrelated to the original IPE. If comprehensive services are indicated, a new application is taken. Federal regulations forbid the setting of arbitrary time limits on the provision of post-employment services. If the client has been employed for a long period of time, the counselor must carefully review the client's situation before making the decision to provide post-employment services as opposed to opening a new case.

(b) **Other considerations.** Other considerations in determining a client's eligibility for post-employment services are:

(1) **Financial Status.** A new financial status determination must be made if services requiring consideration of client participation in the cost of services are to be provided.

(2) **Emergency conditions.** Treatment of an emergency condition will not be considered as a post-employment service.

(3) **Upgrading.** Post-employment services are not provided to upgrade an individual's financial status. Post-employment services are provided to help the individual advance in employment only when the nature of the individual's impediment to employment makes advancement the most appropriate post-employment outcome consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(c) **Transfer of cases.** Clients needing post-employment services who have moved to another area of the state will have their cases transferred. When a rehabilitant who has moved

out of state requests post-employment services, the counselor will refer the individual to the rehabilitation program in the state where the individual resides. Upon receipt of a release signed by the client, copies of the requested information from the closed case record will be forwarded to the receiving state agency. If an individual who was a rehabilitant in another state requests post-employment services from our state, information must be requested from the state where services were previously provided. All requests must include a specific release of confidential information signed by the applicant. The case will be processed as a new referral, but will be served and documented as a post-employment case.

(d) **Criteria for terminating post-employment services.** Decisions to terminate post-employment services must be made on an individual basis in consultation with the client and will be recorded in the Closing Amendment to the IPE. The counselor will need to work with the individual to achieve a satisfactory level of self sufficiency independent of post-employment support. ~~Post employment services can be provided individuals who receive Supported Employment Services if such services are needed to maintain the supported employment placement and those services are not available from an extended services provider. Examples of post employment services include maintenance of assistive technology, job station redesign, and replacement of prosthetic and orthotic devices. Post employment services are not to be used in instances of underemployment when extensive retraining is needed.~~

(e) **Case recording requirements.** Status 32 is the same as any other service status. An IPE and a narrative program summary on a case narrative form are developed in the same manner as prescribed under 612:10-7-51. The same principles of client involvement are required in the IPE for Post-Employment Services as are required under any other IPE. Case recording will be made at significant times during the process, including assessment of progress, and the results achieved at the completion or termination of services.

(f) **Closure status.** All cases terminated from status 32 will be closed in status 33.

PART 11. PHYSICAL AND MENTAL RESTORATION SERVICES

612:10-7-102. Dental services

(a) ~~Physical restoration services to correct a dental condition may be provided for eligible individuals for job retention if it is found the dental condition imposes an impediment to the job, or under the intercurrent illness policy. Dental services can be provided during active job search if approved by field coordinator~~ If the counselor determines the client has a dental condition that poses a substantial impediment to job search or retention, dental services may be provided with Field Coordinator approval. Dental services provided concurrently during the provision of other services must meet the requirements for intercurrent illness (612:10-7-107) and do not require Field Coordinator approval.

(b) Dental services may be provided only by licensed dentists who have current medical vendor agreements with the Department of Rehabilitation Services. Hospitalization for such treatment is done only when there is the presence of a medical condition requiring hospitalization. Field Coordinator approval is required.

PART 15. TRAINING

612:10-7-153. Textbook allowance for college and university students

(a) A textbook allowance may be provided for clients, based on the number of credit hours taken per semester~~.~~, ~~The~~ at a rate, established by the Oklahoma Commission for Rehabilitation Services~~, will be adjusted yearly at 200% of the Consumer Price Index as established by the U.S. Secretary of Labor~~. If the textbook allowance does not cover the total cost of necessary textbooks for any client, a direct client payment will be made to cover the balance. The client will be required to furnish documentation of the remaining balance before an authorization will be issued to cover it. When DRS provides a textbook allowance, the counselor will explain to the client that the warrant will not be issued until after enrollment due to authorization processing time. The counselor will work with the client in obtaining and utilizing comparable benefits and planning for the use of other resources to help meet this expense. The textbook allowance will be adjusted the following semester for clients who fail or withdraw from courses paid by DVR and DVS. The textbook allowance for books to be used for recording or reader services will be at actual cost of the textbooks.

(b) Only textbooks for the current semester's enrollment will be provided.

612:10-7-155. College courses offered through Talkback TV [REVOKED]

~~DRS funds may be used to pay for Talkback TV college courses only when the course being taken is necessary to achieve the chosen vocational objective and is unavailable through regular resident course work when the client needs a required course for timely completion of the IPE.~~

612:10-7-165. ~~Correspondence training~~ Distance Education

~~(a) Correspondence study may be provided if:~~ Distance Education includes but is not limited to internet training, correspondence training and talkback TV.

(1) ~~training cannot be arranged by any other method;~~ Distance education may be provided if the client needs training which may be obtained most practically by distance education.

(2) ~~the client needs preliminary training which may be obtained most practically by correspondence;~~ Tuition for college and/or vocational distance education cannot exceed the State rate for comparable training.

(3) ~~the severity of the client's disability makes it impossible to obtain training by conventional methods; or~~ Distance educational programs will only be approved if institution has recognized accreditation.

~~(4) the client needs a required course for timely completion of the IPE.~~

~~(b) Supervisory approval is needed before correspondence study is provided as the primary training service.~~

~~(c) Tuition for college-type correspondence courses cannot exceed the charges listed for correspondence work in the State supported colleges and universities in Oklahoma.~~

PART 17. SUPPORTED EMPLOYMENT SERVICES

612:10-7-179. Overview of Supported Employment Services

(a) Supported employment services are provided to individuals with the most severe disability, in Priority Group 1, who need supports on and off the job to obtain and maintain employment. Supported employment is for individuals who need substantial assistance in making a job choice; getting a job matching that choice; learning job tasks, gaining work adjustment skills, and stabilizing in employment; as well as long term support to retain employment. ~~Supported employment services are provided by the Department for a period of time not to exceed 18 months, unless under special circumstances the eligible individual and the rehabilitation professional jointly agree to extend the time in order to achieve the rehabilitation objective identified in the IPE. Following transition, supported employment services can be provided as post employment services when unavailable from an extended services provider and when necessary to maintain or regain the job placement or advance in employment.~~

~~(b) There are two models of supported employment services that can be purchased by the counselor from contracted providers. The Place and Train model of service is intended for individuals who have never worked in competitive employment before or have experienced significant problems in maintaining employment because of their disability, have difficulty transferring job skills learned in one job setting to another job setting, and require long term support to retain employment. The Preparation/Place/Train model of service is intended for individuals who need to build their work adjustment skills and ego strength to prepare for work, learn how to obtain and maintain employment, clarify their strengths and interests, make a career choice, adjust to the demands of the work environment, and maintain long term employment.~~

(b) Supported employment services are provided by the Department for a period of time not to exceed 18 months, unless under special circumstances the eligible individual and the rehabilitation professional jointly agree to extend the time in order to achieve the rehabilitation objective identified in the IPE. Following transition, post employment services can be provided, when unavailable from an extended services provider and when necessary, to maintain or regain the job placement or advance in employment.

(c) ~~Within each service model, there~~ There are two levels of service: regular and highly challenged. The DRS counselor, working with the client and the provider, will designate the service model to be used and whether the individual meets the regular or highly challenged criteria. The highly challenged criteria is defined in the provider contract.

612:10-7-185. Provision of supported employment services

(a) Supported employment (SE) services are not subject to financial status determination. Services are purchased from a qualified vendor under contract with the Department. However, services may be available from a variety of providers and should be furnished to each client by the most appropriate means. This would include training from certified job coaches or employment training specialists, as well as other qualified individuals, including co-workers, through natural supports.

(b) Supported employment services include:

(1) Situational assessments to help develop, finalize or reassess a supported employment plan of services;

(2) job development and job placement;

(3) provision of time-limited job coach services needed to support an individual with the most severe disabilities, in Priority Group 1, in employment such as:

(A) intensive on-the-job skills training and other training and support services needed to achieve and maintain job stability;

(B) follow-up services with employers, supported employee, parents and guardians, and others for the purpose of supporting and stabilizing the job placement; and

(C) post employment services, following transition to extended services, not available from the extended services provider and needed to maintain job placement such as job station redesign, repair and maintenance of assistive technology, and replacement of prosthetic and orthotic devices.

(c) Time-limited supported employment services cannot exceed 18 months unless an amendment indicates more time is necessary for the individual to achieve job stability before transition to extended services. Case documentation justifying the extension must indicate two criteria have been met. The first is substantial progress has been made toward meeting the hours-per-week goal established in the IPE; and secondly, extended services are available and can be provided without a break in services. The 18 months of time-limited services are based on the time the client actually spends in employment. When DVR and DVS services are re-initiated through opening a new case, a new period of up to 18 months of time limited services begins. The time counted towards the 18 month limitation does not include:

(1) time during a break in employment;

(2) the period between transition to extended services and closure of the DVR or DVS case; or

(3) time in post employment services.

(d) Re-placement services are intended for recently rehabilitated individuals who have completed the final SE milestone (Successful Rehabilitation), with the same provider within the

last 2 years. The Counselor reviews the documentation from the provider regarding the job loss, and determines if extended services are not adequate to cover re-placement at no cost to DRS. Re-placement services include:

(1) Vocational Preparation/Job Club (optional);
(2) 4 Weeks Job Support;
(3) Job Stabilization; and
(4) Successful Rehabilitation.

(e) The Highly Challenged rate can only be authorized if the previous case was designated as Highly Challenged.

(~~d~~ f) There are special provisions for individuals with serious mental illness, who may be placed in transitional employment (TE). Transitional employment services are not subject to financial status determination. Services are purchased from a qualified vendor under contract with the Department. Transitional employment, like work adjustment, is designed to assist individuals who have not had significant, successful or recent work experience to build their work adjustment skills and ego strength/self-esteem, develop a positive work history, learn adjustment skills in a real work environment or clarify their strengths and interests. TE addresses the need for a transitional work period to lay the foundation for a career decision that is expected to involve employment beyond the entry level.

PART 18. EMPLOYMENT AND RETENTION SERVICES

612:10-7-186. Overview of Employment and Retention Services

Employment and Retention (E&R) Services are short-term job coach support for individuals with severe disabilities, ~~in Priority Group 2 or 3,~~ requiring assistance preparing for, obtaining, and maintaining employment. This service model consists of 5 Milestones: "Assessment", "~~Employment~~ Vocational Preparation/Job Club", "Job Placement", "Four Weeks Job ~~Retention~~ Support" and "Successful Rehabilitation". In consultation with the client and the provider chosen by the client, the counselor will determine the milestones that will be required by the client to achieve a competitive employment outcome. Each milestone will be pre-authorized by the counselor and will be paid only once per case.

612:10-7-188. Provision of employment and retention services

(a) Employment and retention (E&R) services are not subject to financial status determination. E&R services are purchased from a qualified vendor under contract with DRS, and are provided by certified job coaches or employment training specialists. Employment and retention services can be initiated during the final graduating semester of high school.

(b) Employment and retention services include:

(1) Situational assessments or Community Rehabilitation Program (CRP) based assessments to help develop a vocational goal;
(2) ~~Employment~~ Vocational preparation or Job Club, if job preparation is needed;
(3) Job development and job placement;
(4) Short-term job coach training including on and off site support, if needed, to maintain employment; and
(5) Follow-up services to ensure employer and client satisfaction to prepare for case closure.

PART 19. SPECIAL SERVICES FOR INDIVIDUALS WHO ARE BLIND, DEAF, OR HAVE OTHER SEVERE DISABILITIES

612:10-7-196. Interpreter services

An individual who is deaf or has a hearing impairment may require interpreter services to communicate effectively. This service is especially important when information concerning the individual's rights and access to services is being presented. Interpreter services do not require client participation in cost of services. In training situations, the counselor must document that interpreter services are not available through the training facility or other sources before interpreter services are provided. Interpreter services are authorized directly to the individual who will provide the service. The authorization will include the number of hours to be provided and the period of time over which the service is to be provided in addition to the per hour fee. The interpreter will submit a claim at the end of each specified time period. ~~Rates to be paid for interpreter services are presented in 612:10-13-3. Refer to OAC 612:10-13 for a more complete description of this service.~~

PART 23. SELF-EMPLOYMENT PROGRAMS AND OTHER SERVICES

612:10-7-232. Placement

(a) Placement is an important part of the client's vocational rehabilitation, and the counselor must start preparing the client for placement prior to completion of training or other employment related services. Placement is the joint responsibility of the counselor and client.

(b) In addition to placement services provided by counselors, DRS also contracts with certified vendors for Job Placement Services. In consultation with the client and the provider, the counselor will determine the milestones required by the individual to achieve a competitive employment outcome. Job Placement Services consist of 3 milestones:

(1) During "Assessment and Job Preparation" Milestone, the provider will assess the individual's specific job interests and qualifications for employment to determine a specific job match, and may include job seeking skills training or assistance with a self- directed career search.
(2) During "Job Placement" Milestone, the provider will provide job development, ~~and~~ perform a job analysis, and develop job accommodations as needed by the client. Job placement is complete when the individual has completed the 3rd day of work.
(3) During "Successful Rehabilitation" Milestone, the provider follows up with the client to provide work adjustment counseling a minimum of two times during the first month of employment, and monthly thereafter until

case closure, ~~90 days~~ to assure satisfaction and retention of ~~with~~ the job placement. ~~, and~~ The provider follows up with the employer to assure the employment is secure and the employer is satisfied with the client.

~~(c) Each milestone will be pre-authorized by the counselor and will be paid only once per case. Mileage reimbursement can be paid at the Federal rate to vendors if they travel 50 miles beyond the immediate service area to provide services.~~

PART 25. TRANSITION FROM SCHOOL TO WORK PROGRAM

612:10-7-245. Definitions

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

"FLSA" means the Fair Labor Standards Act which sets forth labor standards and protections as enforced by the U.S. Department of Labor.

"IDEA" means the Individuals with Disabilities Education Act, P.L. 101-476 which insures the rights and protections of children with disabilities and their parents being served by public education agencies.

"IEP" means Individualized Education Program.

"LEA" means Local Education Agency, or local school district.

"SDE" means State Department of Education.

"SECTION 504" is a plan designed as a protection for students with disabilities who may not be considered eligible for special education under IDEA in compliance with Section 504 of the Rehabilitation Act of 1973 as amended.

"Teacher coordinator" means a teacher employed by a LEA who is released to work with students eligible for the Transition from School to Work Program.

612:10-7-248. Coordination of Individualized Education Program and Individualized Plan for Employment

(a) The Local Education Agency and DRS must document coordination of objectives and services planned in an individual's IEP/Section 504 Plan and IPE. Both documents, as well as other case documentation, must reflect the effective interaction of the two agencies in providing the services necessary for a smooth transition from school to work. While it is understood that it is not possible for a VR counselor to attend all formal IEP/Section 504 Plan meetings in assigned schools, the counselor will collaborate in transitional planning in the most effective manner possible.

(b) State Department of Education policies and procedures require that all identified special education students, and other students with physical disabilities, age ~~16~~14 years and over, shall be referred by the LEA to DRS. Upon referral, the VR counselor and IEP/Section 504 Plan team will determine when the processing of a VR case on any particular student is appropriate. This determination will be documented on the Transition Services page of the individual's IEP/Section 504 Plan.

612:10-7-249. Counselor responsibilities in the Transition from School to Work Program

Each DVR and DVS VR counselor assigned a Transition from School to Work Program will:

(1) serve as a working member of the IEP/Section 504 Plan placement team as appropriate;

(2) take application on LEA referrals when appropriate as jointly decided by the VR counselor and teacher coordinator;

(3) make parental contact with teacher coordinator to explain rehabilitation services and obtain necessary parental cooperation and approvals;

(4) provide diagnostic services to determine eligibility for DVR and DVS services;

(5) develop each student's IPE/Section 504 Plan in coordination with that student's IEP/Section 504 Plan;

(6) act as a consultant to the school and parents concerning rehabilitation services;

(7) designate specific days and hours for time in the school in consultation with the VR supervisor and school principal;

(8) explore job market for potential training and/or placement with emphasis upon job development for individuals with disabilities;

(9) assist teacher coordinator with job placement and follow up in conformance with FLSA requirements;

(10) review transitional planning with parent, student, and teacher coordinator prior to graduation to assure a smooth transition;

(11) review the appropriateness of referral for supported employment services during the final graduating semester of high school;

(~~11~~12) consult with parent and teacher coordinator before closing any student's case prior to graduation, and as appropriate thereafter; and

(~~12~~13) be thoroughly familiar with the terms and conditions of the cooperative agreement for the Transition from School to Work Program.

SUBCHAPTER 11. INDEPENDENT LIVING REHABILITATION SERVICES

PART 1. SCOPE OF ~~ILRS~~ SERVICES

612:10-11-1. Purpose

(a) ~~Independent Living Rehabilitation Services (ILRS)~~ Older Blind Independent Living Services (OL) is a formalized program of services with the purpose of enhancing the ability of an individual with severe ~~disabilities~~ vision loss to live independently and function within his/her family and community. ~~and, if appropriate, secure and maintain appropriate employment.~~ Older persons who have vision loss remain more independent when they learn new skills to help them adjust to blindness and make the most of their remaining vision. Through one-on-one instruction, they remain independent or

reach this goal which increases confidence, self-esteem and quality of life.

(b) ~~Independent living~~ Personal adjustment services through OL is defined as services that allow control of one's life based on the choice of acceptable options which minimize reliance on others in decision making and in performing every day activities.

612:10-11-2. Basic eligibility requirements

(a) There are three basic criteria for eligibility for OL services:

(1) the ~~presence of a severe physical or mental disability;~~ consumer's primary disability is defined as legal blindness;

(A) Legal blindness is defined as a Visual Acuity of 20/200 or less in the better eye with best correction, or a visual field of 20 degrees or less. Best correction means the best visual acuity that can be obtained with normal prescription lenses. If there is a difference in near and distance acuity, the worse acuity is used for determination of eligibility.

(B) Documentation of legal blindness should be obtained from an eye care physician. If only a general medical report is available stating legal blindness or if documentation is unobtainable, a functional assessment consisting of a detailed explanation of how the consumer functions with distance and near acuity will be provided.

(2) the ~~disability results in a substantial limitation or inability to function independently in the family or community or to continue in employment~~ age of the individual is 55 years or older; and

(3) a reasonable expectation that ~~independent living~~ OL services will significantly assist the individual to improve his/her ability to function independently.

(b) ~~For purposes of determining an individual's eligibility for ILRS, improvement in ability to function independently in the family or community refers to a demonstration in functional and behavioral terms of an individual's greater independence or maintenance of independence in such areas as self-care, activities of daily living, driving, using public transportation, shopping, housekeeping, communicating or decision making.~~ Eligibility must be determined within 60 days of the date an application for services is submitted. An individual is considered to have submitted an application when the individual, or the individual's authorized representative, as appropriate:

(1) has completed and signed an application form or has ~~otherwise~~ verbally requested services;

(2) has provided information necessary to initiate an assessment to determine eligibility ~~and priority for services~~; and

(3) is available to ~~complete~~ participate in the assessment process.

(c) The minimum information necessary to initiate an assessment to determine eligibility ~~and priority for services~~ consists of:

(1) individual's name;

(2) reported disability;

(3) individual's address, with finding directions when needed;

(4) individual's social security number, if available;

(5) availability of documentation of the reported disability; ~~and~~

(6) agreement between individual and staff person taking application on the next steps to be taken in the application process~~.~~; and

(7) the age of the individual is 55 years or older.

~~(d) Clients who are legally blind are to be referred to the appropriate rehabilitation teacher for determination of eligibility for the rehabilitation teaching program.~~

612:10-11-3. Age [REVOKED]

~~There is not an upper or lower age limit for independent living services. Clients accepted for ILRS are expected to be of sufficient age to consider independent living and have a self-directed life style as a viable objective by the time provisions of the Individualized Rehabilitation Program are completed.~~

612:10-11-4. ~~Citizenship~~ Residency

~~(a)~~ ~~ILRS~~ OL services are available to any eligible individual residing in the State.

~~(b) Those persons residing in the United States for educational purposes only are not considered to be eligible for ILRS.~~

612:10-11-5. Order of selection [REVOKED]

~~(a) It is the policy of DRS to provide ILRS to all eligible individuals under an order of selection. Each applicant will be placed in one of the priority categories listed below when eligibility is determined. When funds are not available, staff will be advised which priority level(s) are to be served. Services will be continued for clients whose IRPs have been written prior to implementation of the Order of Selection regardless of priority. When additional funds are available, IRPs will be initiated in the order in which the application for services was completed. Levels of priority are:~~

~~(1) Those persons who are institutionalized (nursing homes, mental hospitals, groups homes, state institutions) for whom there is a strong likelihood the provision of ILRS will result in the client leaving the institution.~~

~~(2) Those home-bound persons who have previously been institutionalized or who are at risk of being institutionalized.~~

~~(3) Those individuals who are home-bound and are in need of ILRS to become more independent within their own home or community.~~

~~(4) Those persons in need of ILRS to maintain their level of independence within their home and/or community.~~

~~(b) The implementation of the Order of Selection will not preclude development and initiation of an IRP which does not require expenditure of ILRS funds.~~

612:10-11-6. Client participation in cost of ~~ILRS~~ OL services

~~The services in this Subchapter~~ OL services are available to individuals who are determined eligible for ~~ILRS~~ services and who have shown need for ~~a specific service or a group of services. Client's participation in the cost of services will be determined in accordance with 612:10-3-1 through 612:10-3-7.~~multiple rehabilitation teaching services and are not required to participate in their cost. If the consumer wishes to participate in the cost of case service, such expenditures can be negotiated.

612:10-11-7. Administrative review ~~and fair hearing~~

Any individual who is an applicant or client of ~~ILRS~~ OL services must be advised of his/her right to request a timely review or a re-determination of any action taken by DRS staff ~~and of his/her right to request a fair hearing before an impartial hearing officer~~. The review will be conducted by the Administrator for Visual Services or his/her designee, who shall respond to the applicant or client in writing with the findings and conclusions of the review.

612:10-11-9. Consumer Independence Support Services [REVOKED]

~~(a) **Consumer Independence Support Services.** Consumer Independence Support Services (CISS) may be provided to individuals with severe disabilities (Priority Groups 1 or 2). It has been found successful rehabilitation can be impeded by lack of independent living services to augment other traditional case services. These services can be purchased from vendors contracted to provide Consumer Independence Support Services.~~

~~(b) **Criteria for referral to Consumer Independence Support Services.** An individual may be referred for CISS if:~~

~~(1) the individual is determined to be eligible for VR, VS or IL services;~~

~~(2) whose functional limitations have caused them to be placed in Priority Group 1 or 2; and~~

~~(3) a comprehensive assessment identifies Consumer Independence Support Services are necessary for the rehabilitation/independent living objective to be obtained.~~

PART 3. ~~ILRS~~ CASE ~~STATUS CLASSIFICATION SYSTEM~~ PROCESSING

612:10-11-17. Case ~~statuses and case flow~~ processing

To provide an orderly manner for progression of an ~~ILRS~~ OL services case through the process from referral to closure, a status classification system has been developed. This system has been developed so the status will tell at what stage in the process a case is at a given time. The statuses are:

(1) 02 - Application signed
(2) 08 - Closure From Application
(3) 10 - Eligibility
(4) 22 - Services Initiated
(5) ~~24 - Services Interrupted~~ 26 - Successful Closure
(6) ~~26 - Successful Closure~~ 28 - Unsuccessful Closure
(7) ~~28 - Unsuccessful Closure~~ 32 - Post OL Services
(8) 33 - Post OL Services Completed

612:10-11-19. Status 02- application

(a) A case will be opened in status 02 when an individual submits an application with ~~the DVR and~~ DVS. An individual is considered to have submitted an application when the individual, or the individual's authorized representative, as appropriate:

(1) has completed and signed an application form or has ~~otherwise~~ verbally requested services;
(2) has provided information necessary to initiate an assessment to determine eligibility and priority for services; and
(3) is available to ~~complete~~ participate in the assessment process.

(b) The minimum information necessary to initiate an assessment to determine eligibility ~~and priority for services~~ consists of:

(1) individual's name;
(2) reported disability;
(3) individual's address, with finding directions when needed;
(4) individual's social security number, if available;
(5) availability of documentation of the reported disability; ~~and~~
(6) agreement between individual and staff person taking application on the next steps to be taken in the application process~~.~~; and
(7) the age of the individual is 55 years or older.

(c) Any applicant or client of ~~ILRS~~ OL services who is dissatisfied with any decision in regard to the provision of services must be advised of his/her right to request a timely review or a re-determination of any action taken by DRS staff. ~~may file a request for a fair hearing. The procedure followed in a fair hearing is set forth in 612:10-1-6. Furthermore, the client has the right to request the assistance of the Client Assistance Program.~~

(d) While an applicant is in status 02, ~~the counselor will gather the necessary information required~~ all necessary information will be gathered to ~~for the preliminary diagnostic study and~~ make a determination of eligibility or ineligibility within 60 days of application.

(e) All individuals seeking or receiving services must be advised about the availability of the Client Assistance Program, the purposes of the services provided by the program, and how to contact the program.

612:10-11-20. Status 08 - closure from application

An individual's case record is closed in status 08 when it is determined the individual does not meet the basic eligibility criteria for ~~ILRS~~ OL services or there are other reasons why an IRP cannot be developed. The reasons for ineligibility will be stated on the Case Closure for ~~Independent Living and~~ Rehabilitation Teaching ~~Programs~~ Program form. The certification is made only after full consultation with the individual or, as

appropriate, his/her parent, guardian, or other representative, or after giving a clear opportunity for this consultation. In this case, the individual is notified in writing of the action taken and of his/her rights, and the means by which he/she may seek remedy for any dissatisfactions, including procedures for administrative review ~~and fair hearings~~.

612:10-11-21. Status 10 - case accepted

Cases of individuals who have been certified as meeting basic eligibility criteria will be placed in status 10. While the case is in this status the ~~counselor~~ Department will complete a Comprehensive Assessment ~~for Independent Living/Rehabilitation Teaching form~~ and, with the participation of the individual, jointly develop the individual's IRP.

(1) A Certification of Eligibility for ~~Independent Living and~~ Rehabilitation Teaching Services will be completed on each individual determined eligible. Each certification will analyze information obtained in the preliminary diagnostic study in terms of the effect on the individual's ability to function in the home or community.

(2) The eligibility certification must also describe how the provision of ~~ILRS~~ OL services ~~is~~ are expected to improve the individual's ability to function in such areas as self care, activities of daily living, ~~driving,~~ using public transportation, shopping, housekeeping, communication, or to minimize reliance on others in decision making and performing every day activities.

612:10-11-22. Status 22 - services initiated

(a) An individual's case is placed in status 22 when the client's Individualized Rehabilitation Program (IRP) for ~~Independent Living~~ Older Blind is completed and services are initiated. The IRP is designed to formalize case planning and management. The client and ~~counselor~~ the Department establish both ~~intermediate and~~ a long ~~range goals~~ term goal and objectives with time frames. ~~Independent living goals include~~ The long-term goal of personal adjustment will include intermediate objectives which include, but are not limited to:

(1) ~~independent living in the client's own home~~ improvement in ability to perform activities of daily living;

(2) ~~decreased dependence on family members~~ living independently in the client's own home;

(3) ~~decreased need for personal assistance care~~ decreased dependence on family members; and/or

(4) ~~increased ability to manage personal assistance care~~ decreased need for supervision of activities of daily living.

~~(5) decreased need for supervision of activities of daily living;~~

~~(6) increased self-direction in life style; and/or~~

~~(7) improvement in ability to perform activities of daily living.~~

(b) The IRP is to be developed jointly by the client and ~~counselor~~ the Department. ~~It is to be coordinated with an Individual Education Program (IEP) prepared under the Individuals With Disabilities Education Act (IDEA) or any Individual Habilitation Program (IHP) prepared under the Developmental Disabilities Assistance and Bill of Rights Act.~~ Each IRP amendment must be signed by the client, or as appropriate, parent, guardian, or representative. A copy is given to the client, or as appropriate, parent, guardian, or representative and if possible in consumer's preferred format.

(c) Each IRP will be reviewed at least annually and the results of the review will become part of the case record. The client will receive a copy of any amendments to the original IRP and if possible in consumer's preferred format.

(d) The ~~counselor~~ Department will make regular contact with the client while the case is in this status to provide needed instructional services ~~to ensure needed services are provided~~ and to evaluate progress of the client toward the ~~goals~~ goal established with the client in the IRP.

612:10-11-23. Status 24 - services interrupted [REVOKED]

~~A case is placed in status 24 when services are interrupted and progress toward the chosen goal is not being made. The case record will contain documentation regarding the reasons for interruption of services and the steps being taken to resume the services. A case in this status will be reviewed at least every 90 days to determine if services can be resumed.~~

612:10-11-24. Status 26 - successful closure

(a) To successfully close an IRP of ~~ILRS~~ OL services in status 26, a client must have:

(1) been certified as eligible;

(2) participated in development of an IRP;

(3) completed the IRP insofar as possible;

(4) been provided counseling and one or more other ~~independent living~~ older blind services; and

(5) been determined to have shown substantial improvement in the ability to function more independently in the home or community for a period of 60 days, which is substantiated by a documented client contact within 30 days of closure.

(b) The ~~counselor~~Department will prepare a Case Closure ~~for Independent Living and Rehabilitation Teaching Programs~~ form which will include information regarding:

(1) ~~the extent to which planned services were provided~~ closure status;

(2) ~~the extent to which planned goals were met~~ living status;

(3) ~~referral to other sources of assistance; and~~ completed objectives;

(4) ~~how the individual has significantly improved his/her ability to engage or continue in employment or function independently in the family or community.~~ were planned services accomplished;

(5) were planned services completed; and

(6) how did services enhance independence.

612:10-11-25. Status 28 - unsuccessful closure

(a) Cases are closed in status 28 when services have been initiated, but have not resulted in the client gaining greater independence~~, or when the client becomes ineligible~~. A case may be closed in this status only after full consultation with the

client, his/her ~~parent,~~ guardian, or other representative, or after there has been opportunity provided for full consultation.

(b) The Case Closure ~~for Independent Living and Rehabilitation Teaching~~ form must explain the reason for closure, document consultation with the client~~,~~ and describe plans for referral to other agencies~~, and establish a date for an annual review as appropriate~~. The client, ~~a parent,~~ guardian or other representative as appropriate, will be given a copy of the closure document.

(c) Cases are also closed in status 28 due to the death of the client.

612:10-11-26. Previously closed cases

(a) A new application can be taken on a case closed as successful (status 26) when the client is in need of additional multiple services of a complex nature to remain independent, or to become more independent. No more than one case can be closed as successful (status 26) on the same client in the same fiscal year.

(b) A new application can be taken on a case closed as unsuccessful (status 08, 28) when there is indication the client can benefit from ~~ILRS~~ OL services. ~~in terms of greater independence within the home and/or community. The client must meet order of selection criteria.~~

612:10-11-27. Inter-program transfers

Cases cannot be transferred in the usual manner between the DRS traditional services program and the ~~ILRS~~ OL services program.

612:10-11-28. Status 32 - post-OL services

(a) Use of status 32, post-OL services, may be provided to assist rehabilitated clients to retain, regain, or advance in independence. These services must continue to follow the guidelines delineated by the Older Blind Program.

(b) Planning for and provision of the need for post-OL services will be assessed at initiation of the IRP. Ongoing assessment continues during case services, is documented as needed, and is reassessed just prior to case closure. Counseling and guidance is the core service around which all other post-OL services are provided. Cases reopened on a post-OL basis do not require re-establishment of eligibility. Any Older Blind service or combination of services necessary to assist the individual retain, regain, or advance in independence may be provided if the service(s) does not involve a complex or comprehensive effort unrelated to the original IRP. If comprehensive services are indicated, a new application is taken. Federal regulations forbid the setting of arbitrary time limits on the provision of post-OL services. If the original case has been closed for a long period of time, the Department must carefully review the client's situation before making the decision to provide post-OL services as opposed to opening a new case.

(c) Criteria for terminating post-OL services must be made on an individual basis in consultation with the client and will be recorded in the Closing Amendment to the IRP. The Department will need to work with the individual to achieve a satisfactory level of self-sufficiency independent of post-OL support.

(d) Post OL services might include limited adapted equipment, limited assistive technology, repair of adaptive equipment for which the agency maintains title, adapted equipment for a newly established additional disability and limited instructional services.

(e) Status 32 is the same as any other service status. An IRP and a narrative program summary on a case narrative form are developed in the same manner as prescribed in 612:10-7-51. The same principles of client involvement are required in the IRP for post-OL services as are required under any other IRP. Case recording will be made at significant times during the process, including assessment of progress, and the results achieved at the completion or termination of services.

(f) All cases terminated from status 32 will be closed in status 33.

612:10-11-29. Status 33 - Post-OL services completed

(a) **Use of status 33.** Only those cases terminated from status 32 can be closed in status 33. The case can be closed as soon as the services in the post-OL services amendment have been completed insofar as possible and the client has been consulted regarding the closure decision.

(b) **Case recording requirements.** The documentation of closure in status 33 is done on the Closing Amendment to IRP form. The recording takes into account the following factors:

(1) the problem which required post-OL services is remedied;

(2) the client has attained sufficient independence to function without continuing services;

(3) independence appears secure and is at a suitable level in relation to the particular skills and abilities of the consumer; and

(4) the circumstances become such that further services of a post-OL nature cannot help the client maintain independence.

(c) **Closure.** As with all amendments to the IRP, the client will be given a copy of the closure amendment as appropriate and if possible in their preferred format.

PART 5. PROVISION OF SERVICES

612:10-11-37. Counseling services

~~Client participation in cost of services is not required for counseling services.~~ Counseling to the consumer and/or family members may be provided by DRS staff, but also may include peer counseling, advocacy services and related services for the purpose of personal adjustment.

612:10-11-38. Housing services [REVOKED]

~~(a) All housing services, except assistance with location of suitable housing, require client participation in cost of services. Modification of housing space is provided as a support service incidental to one or more other ILRS. Modification of a residence will be limited to installation of ramps, widening of doors, installation of grab bars and similar types of modifications. Room additions, installation of bathrooms, removal of~~

~~walls and other major structural modifications are considered beyond the scope of ILRS.~~

~~(b) In all situations where house modification is to be done, the owner of the house must sign a written release form (House Modifications Written Release). In those situations where the client is a renter, it is the renter/client's responsibility to obtain the written release from the homeowner. The renter/client must have a third party witness the signing of the release form by the homeowner. The maximum amount authorized without further approval in making a place of residence accessible, whether owned or rented, is $2,500. The counselor will make a referral to a Rehabilitation Engineer or Assistive Technology Specialist who will evaluate the house and recommend the modifications needed to make the house accessible and usable by the client. In situations where the counselor is unable to locate an organization willing to pay for the necessary modifications, essential materials and labor may be purchased provided supervisory approval has been obtained. After the home modification work has been completed, the counselor will contact the Specialist for inspection of the home, to ensure the modifications conform to prescribed standards and meet the client's accessibility needs. The Specialist will provide an "Assistive Technology Inspection Report" to the counselor. The counselor must also obtain a statement of satisfaction from the client.~~

~~(c) House modifications that will cost more than $2,500 require field coordinator approval, and a requisition must be submitted to the Department's Central/Departmental Services Unit who will arrange for acquisition of the house modifications. This limit must include the total cost of both labor and materials for the entire home modification. This limit also includes modifications completed by the Department of Human Services Architectural and Construction Unit as well as home modifications done through private vendors or other public agencies. If the client is required to participate in the cost of the modification, the payment by the client will be made to the vendor.~~

612:10-11-39. Physical ~~and mental~~ restoration service

~~Physical and mental restoration services require client participation in cost of services, and may be provided in accordance with guidelines stated in 612:10-7-98 if they are not available from other sources.~~ Physical ~~and mental~~ restoration ~~services~~ service available to individuals eligible for ~~ILRS~~ OL service ~~are:~~ is provision of prescriptive eye glasses where correction does not improve above the legal blindness level.

~~(1) physical restoration services;~~

~~(2) nursing services;~~

~~(3) therapeutic treatment (such as physical therapy; occupational therapy; speech; language and hearing therapy; therapeutic recreation; drama, music, art and dance therapy;~~

~~(4) health maintenance;~~

~~(5) eye glasses and visual services;~~

~~(6) prosthetic, orthotic and other assistive appliances and devices; and~~

~~(7) psychotherapy or psychological counseling.~~

612:10-11-40. Personal assistance services [REVOKED]

~~(a) Personal assistance services do not require client participation in cost of services. Personal assistance services are those tasks performed by an attendant when assisting a person with a severe disability in bathing, dressing, grooming, toilet care, and other activities of daily living. Personal care attendants (PCA's) may be paid up to the Department's approved fee for a minimum of three hours of daily service, and may work up to 7 days per week.~~

~~(b) All clients receiving personal assistance services must make application for NTMC (Non Technical Medical Care). DRS will pay for personal assistance services until the client is certified as eligible for NTMC, or up to six weeks. If the client is found not eligible for NTMC, DRS will immediately discontinue payment for personal assistance services.~~

~~(c) The provision of personal assistance services must be fully documented on the IRP.~~

~~(d) A formal contract with a specific vendor is necessary when the Department's expenditures to the vendor will be $750 or more per year.~~

~~(e) Personal assistance services are provided to prevent inappropriate institutionalization, but only if the person does not require skilled nursing care.~~

~~(f) Personal assistance services are not to be confused with services which are provided by persons who do chores in the home. Examples of chores which are not to be included as personal assistance care are:~~

~~(1) cleaning of floor and furniture in areas not occupied by the person. For example, cleaning of the entire living area if the person occupies only one small room;~~

~~(2) laundry, other than incidental to the care of the person. For example, laundering of clothing and bedding for the entire household, as opposed to simple laundering of the person's bed smock or gown; or~~

~~(3) shopping for groceries or household items other than items required specifically for the health and maintenance of the person. This would not preclude a personal care provider shopping for items needed by the person but also used by the rest of the household.~~

612:10-11-41. Transportation

(a) Transportation is considered to be incidental to the provision of other ~~independent living~~ OL services. Transportation is a supportive service provided in conjunction with one or more other ~~independent living~~ OL services necessary to achieve the goals established in the IRP. It is never provided as the sole service.

(b) When transportation is required, it will be provided by the most economical source available after all other resources have been exhausted. Authorization may be made directly to the client or to the individual who provides the transportation. ~~A client having a surplus must participate in the cost of this service.~~

612:10-11-42. Interpreter services

(a) Interpreter services including tactile interpretation for individuals who are deaf-blind may be purchased for clients who are deaf and hearing impaired when necessary to enable them to benefit from ~~ILRS~~ OL services. Rate of pay will be determined by ~~the certification of the interpreter in accordance with 612:10-13-3~~ rates adopted by the commission for Rehabilitation Services.

(b) Special telecommunications services and devices for the hearing impaired are also available. ~~(612:10-13-4)~~

(c) Interpreter services may also be provided to individuals who do not speak English and/or who have a speaking impairment. The rate of pay for interpreter services of this type will be determined by the DRS commission ~~not exceed the prevailing Federal minimum wage~~.

(d) Interpreter services are authorized directly to the individual who will provide the service.

612:10-11-43. Reader/Sighted Guide services

~~DVR and DVS counselors will refer all clients needing reader services to the Oklahoma Library for the Blind and Physically Handicapped. In planning the provision of reader services, the counselor will make use of available volunteer reading from family members, community groups, and others. If library services or volunteers cannot meet the client's needs and reader services are required to meet specific intermediate objectives on the IRP, reader service may be provided. The rate of pay for reader services will not exceed the prevailing Federal minimum wage. Payment is authorized directly to the client and cannot be paid in advance. Client participation in cost of services is not required. This service requires supervisory approval for clients with disabilities other than blindness.~~ Reader/Sighted Guide services includes the provision of volunteers to read mail, etc. and use of sighted guides to get to medical, recreational activities, etc. In planning the provision of reader services, the Department may also make use of available volunteer reading from family members, community groups and others.

612:10-11-44. Orientation and Mobility services (O&M)

~~DRS clients who are legally blind can receive direct instruction from O&M specialists employed by the Department.~~ O&M ~~specialists~~ services assist ~~these clients~~ consumers to adjust to their surroundings and learn to move around safely in one's home or community. OL consumers can be referred for evaluation and training.

612:10-11-45. Rehabilitation teaching services [REVOKED]

~~Rehabilitation teachers provide counseling and instruction to aid clients in adjusting to blindness. All clients who are legally blind or have a rapidly progressive eye condition are to be referred to a rehabilitation teacher. Exceptions are allowed in instances where rehabilitation teaching services have been provided and the client appears to be functioning independently, or when physical restoration services are planned which will likely restore the client's functioning to a level which would remove the need for rehabilitation teaching.~~

612:10-11-46. ~~Recreational services~~ Community Integration

~~The counselor will identify and make appropriate referrals to community based resources when recreational services are part of the IRP. If such services are not available, the counselor will work with the client and the community in helping develop such resources. Independent Living funds are not used to purchase these recreational services.~~ The Department, when appropriate, will assist consumers with activities to get re-involved in the life of the community again for social interaction, educational, or recreational purposes.

612:10-11-47. Low Vision Training

~~Training may be provided when necessary to improve an individual's ability to function more independently in the home or community or to improve his/her ability to engage in or continue employment. Training may be provided to help the client acquire a specific independent living skill. Eligible individuals who are planning to enter vocational training will be served under an IPE.~~ Low vision training includes training in how to use remaining vision effectively, such as the use of optical and non-optical devices, use of lighting, color contrast, reducing glare, learning eccentric viewing (learning how to use residual peripheral vision to read and perform tasks typically done with central vision) and learning scanning techniques to compensate for loss of peripheral vision.

612:10-11-48. Services to family members [REVOKED]

~~Services to family members of an otherwise eligible individual may be provided in accordance with 612:10-7-132 when necessary to improve an individual's ability to live and function more independently in the home or community.~~

612:10-11-49. Referral services

~~It is the responsibility of the counselor to~~ The Department will refer individuals as appropriate to other sources for assistance when the required service is beyond the scope of the ~~ILRS~~ OL services or the service can best be provided by another agency. Referrals will be made in a timely manner and followed to determine the results of the referral. Such referrals can assist in connecting the consumer with other agencies/organizations within the vision field and outside the field such as agencies serving the elderly, the health system, and home health care.

612:10-11-50. Rehabilitation technology, sensory aids, and adaptive aids [REVOKED]

~~Purchase of rehabilitation technology, sensory aids and adaptive aids and/or services may be made under the conditions in (1) - (7) of this Subsection:~~

~~(1) the IPE clearly justifies the purchase of these devices and explains their relationship to the client's independent living objectives;~~
~~(2) recommendations for purchase of these devices are made by Assistive Technology Specialists, Sensory Aids Specialists, Rehabilitation Teachers or qualified medical professionals as appropriate;~~
~~(3) the ability of the client to participate in the cost of services must be determined;~~
~~(4) the item to be purchased meets established health and safety standards and is to be provided by individuals licensed or certified by State law, when applicable;~~
~~(5) supervisory approval must be obtained for the purchase of any "special" telecommunications, sensory or other technological aid or device;~~
~~(6) agency purchasing and contract policy are followed;~~
~~(7) the client agrees to return the aid or device when it is no longer needed.~~

612:10-11-51. Services for groups of persons with disabilities [REVOKED]

~~Services to groups of individuals with severe disabilities may be provided through community based independent living centers and/or other available community resources.~~

612:10-11-52. Purchase of special equipment for motor vehicles [REVOKED]

~~Modification of a vehicle may be provided for an individual actively involved in a program to achieve independent living. Purchase of equipment to modify a motor vehicle requires client participation in cost of services when the client has a surplus.~~

612:10-11-53. Daily Living Skills

Daily living skills may include but are not limited to: meal and/or food preparation, personal management (such as personal grooming), money management skills, identifying and matching clothing, clothing care and home management (such as cleaning and keeping the home in order, basic safety in the kitchen and basic home maintenance).

612:10-11-54. Management of Secondary Disabilities

Staff will provide instructions, when appropriate, to assist consumer's in the management of secondary disabilities. Such services can include but are not limited to:
(1) instruction on management of diabetes including coping with dietary restrictions and methods for gauging insulin;
(2) basic home modifications to insure safety;
(3) alternative techniques for identification of medications; and
(4) locating appropriate resources to assist consumer in managing secondary disabilities.

612:10-11-55. Referral for VR Services

Staff will refer consumers, when appropriate, to the Rehabilitation Counselor, one-stop center or Title V (of the Older Americans Act program) to assist with job training and placement.

612:10-11-56. Low Vision Evaluation Services

When appropriate, a low vision evaluation to ascertain consumer's need for low vision optical devices which will maximize consumer's residual vision, may be obtained.

612:10-11-57. Purchase of Adapted Devices

Staff will evaluate the consumer's need for adapted devices which can maximize the consumer's independence. Instructions in the utilization of each device will be provided to insure safe and efficient use of each device.

612:10-11-58. Adapted Communication Skills Training

Staff will evaluate the consumer's need for instruction in communication skills which includes but is not limited to:
(1) use of full page, signature, check book, envelope or other hand writing guides;
(2) reading and writing Braille;
(3) keyboarding;
(4) using the telephone;
(5) taking messages;
(6) telling time - watch and clock;
(7) evaluating the need for assistive listening devices for hearing impaired consumers;
(8) developing skills in expressive and receptive communications; and
(9) utilizing access technology when appropriate.

612:10-11-59. Advocacy

Staff will instruct consumers how to advocate for one's self, making one's needs known in an assertive and positive manner; speaking up for one's self; and getting one's needs met in an appropriate way.

612:10-11-60. Peer or Facilitated Support Groups

Staff will provide consumers with resource information regarding peer support groups within communities to assist individuals with vision loss.

SUBCHAPTER 13. SPECIAL SERVICES FOR THE DEAF AND HARD OF HEARING

PART 1. SERVICE PROGRAMS

612:10-13-2. Interpreter services for the deaf [REVOKED]

~~(a) Interpreter services are provided to DRS consumers to facilitate the communication with individuals who are deaf,~~

~~hard of hearing and deaf blind during the processing of the consumer's application or provision of rehabilitation services. This service does not require consideration of consumer participation in cost. There is no limit on the number of hours a particular individual can be provided this service. The counselor will try, however, to hold the number of hours to the lowest number practical. In training situations, if a vendor refuses to comply with the law, DRS may provide the accommodation after assisting the client in filing a complaint and after notifying the vendor a bill for all services provided will be sent to the vendor following resolution of the complaint. The rate of payment is determined by the certification held by the interpreter as documented in their current contract.~~

~~(b) Interpreter services are authorized directly to the individual who will provide the service. The authorization will include the number of hours to be provided and the period of time over which the service is to be provided in addition to the per hour fee as listed in 612:10-13-3. The interpreter will submit a claim at the end of each specified time period.~~

~~(c) Interpreter services for the hard of hearing may be authorized to individuals who have valid interpreter contracts with the Department. The rate of payment is determined by the certification held by the interpreter as documented in their current contract. Rates to be paid for interpreter services according to the interpreter's level of certification are found in 612:10-13-3.~~

612:10-13-3. Interpreter service fees [REVOKED]

~~Fees for interpreting services have been approved by the Rates and Standards Board and by the DRS Commission. Fees are based on interpreter certification level. An interpreter holding certification at more than one level will be paid the fee for the highest level held. Interpreters who do not have certification with either Registry of Interpreters (RID), National Association of the Deaf (NAD) or Quality Assurance Screening Test (QAST) but who have been screened by the Rehabilitation Services to the Deaf Unit will receive payment at the non-certified rate. An interpreter will be paid for a minimum of 1.5 hours per assignment. If an interpreter is cancelled less than 24 hours from the start of the assignment, they will be compensated 1.5 hours of their scheduled time.~~

612:10-13-4. Special services and devices for individuals who are deaf, hard of hearing, deaf-blind or have communicative disorders

This section applies to individuals with deafness, hard of hearing, deaf-blindness or communicative disorders who require access to telecommunication services and devices to enhance communication and contribute to the individual's residential and personal safety.

(1) **Telecommunication and safety devices.** Consumers may be provided telecommunications equipment, personal or home safety devices, or other specialized equipment determined by individual need. The recipient of services may be asked to participate in the cost of the services provided based upon individual or family income in accordance with (d) of this Section. Equipment will not be replaced before five (5) years have lapsed unless determined by DRS staff to be malfunctioning and not caused by consumer misuse or neglect. Appeals of this waiting period must be presented in writing for administrative review. DRS staff will consider possible changes in disability. The consumer is responsible for the equipment when the manufacturer's warranty expires prior to the five (5) year period. DRS will provide surge protection which must be used. Failure to use surge protection will be considered consumer neglect. Additional requirements are stated in (A) through (E) of this Subsection.

(A) All recipients of equipment must be residents of the state.

(B) Medical or audiological verification will be required to support the applicant's diagnosis of a hearing loss to the extent the applicant cannot use the telephone, or communicative disorders to the extent speech is unintelligible. If verification is not available, DRS will authorize the initial audiological evaluation. Individuals with deaf-blindness will be referred to the deaf blind program to determine equipment needs. Documentation of legal blindness or inability to read standard print is required.

(C) Parents or other legal guardians must assume responsibility for the telecommunication devices assigned to clients under 18 years of age.

(D) The guidelines in (i) - (iv) of this Paragraph will be used in determining the priority of service.

(i) Qualified persons with disabilities living alone.

(ii) Qualified households where all residents have substantial disabilities.

(iii) Qualified households where two or more residents have substantial disabilities.

(iv) Qualified households where one of the residents has a substantial disability.

(E) To apply for assistance, an individual must complete an application and registration using the Application for the Equipment Distribution Program form. Applications may be obtained by contacting ~~Services to the Deaf and Hard of Hearing or~~ any DRS office. Equipment may be mailed to the closest DRS office for the consumer to pick up. If not picked up within 30 days, the equipment will be returned to DRS inventory to be issued to the next consumer on the waiting list.

(2) **Hearing aids for senior citizens.** Hearing aids may be purchased ~~through the Services to the Deaf and Hard of Hearing Unit of DRS~~ for individuals who are sixty (60) years of age or older and have a hearing loss of 35 decibels or greater in the better ear. The level of hearing loss is to be determined by a vendor audiologist selected by the applicant and having a current contract to provide services under this program. One hearing aid will be purchased per person with the exception of (E) below. All services and equipment purchased will be paid at the contracted rate. The individual may be required to participate in the cost of services in the form of a co-payment

as determined under (~~d~~3) of this Section. Procedures for providing hearing aids under this program are presented in (A) through (D) of this Section.

(A) **Application.** An applicant will complete the Application for the Equipment Distribution Program ~~(form DRS-D-001)~~ and submit the completed application along with proof of income to ~~the Services to the Deaf and Hard of Hearing Unit~~ DRS.

(B) **Eligibility determination and authorization of services.** Upon receipt of a completed application, ~~the staff of the Services to the Deaf and Hard of Hearing Unit~~DRS will determine the amount of any required co-payment in accordance with (~~d~~3) of this Section. Staff will authorize an audiological evaluation to the preferred vendor designated on the application form. The referral source and applicant will be notified of the authorization and the amount of any required co-payment to be made to the vendor. The report of audiological evaluation is sent to the DRS Services to the Deaf and Hard of Hearing Unit. If the result is a hearing loss of 35 decibels in the better ear, staff will issue an authorization for a hearing aid and appropriate ancillary services and devices in accordance with the vendor contract. The level of hearing loss will be determined averaging the readings reported at the 1000 Hz, 2000 Hz, 3000 HZ and 4000 HZ frequency ranges.

(C) **Appointments and transportation.** ~~The~~DRS staff ~~of the DRS Services to the Deaf and Hard of Hearing Unit~~ will notify the individual of any authorizations for evaluation or services. This notification will instruct the individual to contact his/her selected vendor for an appointment.

(D) **Disposal of unused hearing aids.** Service recipients will be encouraged to return hearing aids to DRS if no longer needed.

(E) **Applicants who have hearing loss and are legally blind.** If a hearing aid applicant meets the adiological criteria for (B) above, and is also legally blind, they can be approved to receive two hearing aids. Eligibility will be determined by referring the application to the Deaf-Blind specialist. Processing of the application should not be delayed by referral to the Deaf-blind specialist.

(3) **Client participation in cost of services.** Allowable income levels for these services will be 200% of the current income guidelines for food stamps. The monthly earnings, evaluated annually, that fall above the income guidelines create a surplus. Ten percent (10%) of that surplus will be the consumer's participation in the cost of services payable to DRS/Fund 235. If the surplus exceeds the service cost DRS will not participate.

(4) **Disposal of unused telecommunications equipment and assistive communication devices.** As with hearing aids, service recipients will be encouraged to return useable equipment to DRS if no longer needed.

PART 3. CERTIFICATION OF INTERPRETERS

612:10-13-14. Legal basis

Title 56, Section 199.~~1, 1991~~2 of Oklahoma statute assigns responsibility to the Department of Rehabilitation Services for the evaluation and certification of interpreters for the deaf in Oklahoma, and authorizes the Department to charge a fee to recoup costs incurred in testing and certifying interpreters. The Department has selected the Quality Assurance Screening Test (QAST) as the method to be used in establishing the proficiency of each person requesting Oklahoma certification as an interpreter for the deaf.

[OAR Docket #05-853; filed 5-12-05]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 15. OKLAHOMA LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED (OLBPH)

[OAR Docket #05-854]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. OLBPH Services
612:15-3-6. Descriptive video service [AMENDED]
AUTHORITY:
The Oklahoma Commission for Rehabilitation Services; 2 U.S.C. 135a et seq.; Oklahoma Statute Title 74, Section 166.1 et seq.
DATES:
Comment period:
January 3, 2005 through February 9, 2005
Public Hearing:
February 7, 8 and 9, 2005
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Failure of the Legislature to disapprove the rules resulted in approval on May 12, 2005
Final adoption:
May 12, 2005
Effective:
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The agency is no longer charging a one-time non-refundable subscription fee for the descriptive video service.
CONTACT PERSON:
Larry Bishop, Policy Development Administrator, Department of Rehabilitation Services, 3535 N.W. 58th, Suite 500, Oklahoma City, OK 73112 (405) 951-3408

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 3. OLBPH SERVICES

612:15-3-6. Descriptive video service

(a) Descriptive video is a service offered by the Oklahoma Library for the Blind and Physically Handicapped (OLBPH). However, it is not a part of the services offered by the National Library Service for the Blind and Physically Handicapped (NLS). Descriptive video tapes are feature films that are specially adapted for the visually impaired. A narrator describes what is happening in the video without interfering with the dialogue. An ordinary TV and VCR are the only equipment needed to play these videos. OLBPH will not provide or repair VCR equipment.

(b) ~~A one time non-refundable subscription fee may be charged to begin the descriptive video service. This money will be used only for the costs associated with providing this service. For example, the funds will be used to add new video selections, or to replace damaged videotapes.~~ To subscribe, one must be eligible for other OLBPH services. A parental permission slip must be on file for borrowers under 18. When a subscription application is received, a list of available video titles will be sent to the patron. The application provides a check off for the patron to indicate the format needed for this list: braille, large print, or cassette.

(c) The borrower will be expected to pay full replacement costs for a damaged or lost video checked out in the borrower's name. OLBPH reserves the right to discontinue descriptive video services to any patron who is abusing the service. This will not affect the patron's access to other OLBPH services.

(d) Only one tape at a time may be borrowed. The loan period is two weeks. Notices will be sent when videos are overdue. After three notices are sent, the patron will be billed for the video tape. Requests for videos may be made by telephone or in writing. Selections will not be made for patrons by OLBPH reader advisors. Videos will be sent automatically upon the return of a used video provided the patron's request is on file, and the requested video is available at the time of the request.

[OAR Docket #05-854; filed 5-12-05]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 20. SPECIAL SCHOOLS

[OAR Docket #05-855]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. General operating procedures for the schools
Part 1. General Educational policies
612:20-3-2. Administrative responsibility [AMENDED]
612:20-3-3. Comprehensive programming for all basic needs [AMENDED]
612:20-3-7. Discipline [AMENDED]
Part 3. Abuse, Neglect, and Inappropriate Body Contact
612:20-3-20. Reporting requirements [AMENDED]
Part 7. Student Rights [NEW]
612:20-3-49. Residential Life [NEW]

AUTHORITY:
The Oklahoma Commission for Rehabilitation Services; Oklahoma Statute Title 74, Section 166.1 et seq. and Oklahoma Statute Title 10, Section 1418 through 1420.

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SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
The proposed changes to Chapter 20 involve clarifying policy regarding transportation of children including school responsibility, driver qualifications, procedures, passenger restraints and vehicle requirements. It also clarifies policy regarding physical needs and medical services; prohibitions in regards to discipline; procedures for reporting suspected abuse, neglect, verbal abuse, caretaker misconduct and exploitation. It also puts student rights in policy.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 3. GENERAL OPERATING PROCEDURES FOR THE SCHOOLS

PART 1. GENERAL EDUCATIONAL POLICIES

612:20-3-2. Administrative responsibility

The superintendent is responsible for the operation of the school. It is the responsibility of the superintendent to designate and assign an administrator in charge in the superintendent's absence. The person so designated will fulfill the responsibilities of the superintendent until his or her return.

(1) **Staff attitudes and conduct.** Because positive staff attitudes are essential to constructive work with any

child, staff members in the schools are required to demonstrate genuine interest and concern in the growth and development of each child, and possess the willingness and ability to take risks of becoming effectively involved with children in a positive and meaningful relationship. There must, regardless of position, be a willingness to communicate with other staff members on a cooperative basis which allows for self-criticism without personal threat. Staff members are required to conduct themselves, at all times, in such a way as not to bring discredit on themselves, the institution, or the Department. Decorum with the children with whom they work shall be warm, friendly, and understanding, and professional in quality. They shall be able to set appropriate limits for children and accept responsibility for the propriety with which it is done. Except in line of duty, staff members shall not discuss confidential matters of personnel or students.

(2) **In-service training.** The administrative/teaching staff will abide by H.B. 1706, 1981, which provides for the formation of a staff development plan to be submitted and approved annually by the State Department of Education.

(3) **Transportation of children.** Transportation needs may range from weekly trips home to occasional trips to doctor's offices, local stores, etc. The superintendent of each school shall designate an individual to coordinate transportation needs and arrange for the safe, appropriately chaperoned transport of students locally and throughout the state as needs arise. Close cooperative efforts in transporting students to and from school and home will be maintained with parents and local education agencies.

(A) **School responsibility.** Employees provide transportation originating from the campus for home going and field trips.

(i) The vehicle and operator of a vehicle used to transport children are in compliance with all applicable state laws. School buses used to transport students must meet the requirements of the Oklahoma State Department of Education.

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

(iii) Supervision of the children begins at the designated pick-up locations.

(iv) 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. Changes to these instructions from the parent are required.

(B) **Driver qualifications.**

(i) All drivers will have an operator's license of the type appropriate for the vehicle that is valid in the driver's state of residence.

(ii) All staff/drivers must notify the Superintendent in writing of any conviction of driving under the influence of alcohol or drugs or other impaired driving offense or reckless driving within the last five years.

(C) **Staff-child ratios.** Staff-student ratios are appropriate to ensure the safety and welfare of the children being transported.

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

(i) A schedule showing accurate route and itinerary is planned and kept at OSB/OSD 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.

(ii) The driver is provided with:

(I) A copy of the scheduled route;

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

(III) Names of children being transported; and

(IV) A method to contact the children's parents in case of emergency.

(iii) Safe conduct to and from all vehicles and safe off-street loading space is provided to protect children from backing vehicles, from being between vehicles, and from all traffic hazards.

(iv) Attendance is checked each time children board and exit the vehicle.

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

(vi) Vehicles containing children are never left unattended.

(vii) 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, 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. Schools may, at their discretion, require students to be secured with seat belts during their transport.

(i) 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.

(ii) 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.

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

(iv) 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. The school bus driver must always use a seat belt.

(v) Children under 50 pounds and/or under five feet in height are prohibited from sitting in the front seat of a passenger vehicle equipped with air bags.

(F) **Vehicle requirements.** Any vehicle used to transport children complies with the requirements listed in this subsection.

(i) 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.

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

(iii) 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.

(iv) Children are not transported in vehicles or parts of vehicles, which were not designed for the purpose of transporting people, for example, truck beds, campers, and trailers.

(v) Each vehicle must have door locks. The driver is responsible for keeping the doors locked when the vehicle is moving.

(vi) The transporting vehicle is covered by medical and liability insurance as required by Oklahoma laws.

(vii) A vehicle used to transport children has an operable heater and an adequate ventilation system.

(viii) A first aid kit is placed on each bus.

(4) **Report of injuries, fires, assaults, etc.** Should a child be injured in an incident or accident, an accident report is completed. The parents or the guardian are to be notified of the child's accident and given complete details and a report of the child's condition at the time.

(5) **Fire and safety.** The superintendents and their staffs at OSB and OSD have a responsibility to observe fire and safety regulations and to comply with official inspections. Buildings and premises will be maintained in a safe condition and free from fire hazards. From time to time, inspections are made by the State Fire Marshall to determine fire and safety precautions taken by the school and the school is expected to correct any deficiencies noted. Fire drills shall be conducted on a regular basis in all occupied buildings, and a record of such drills maintained in the superintendent's office.

(6) **Sanitation.** The superintendents and their staffs at OSB and OSD have a responsibility to see that sanitary conditions at the schools meet acceptable standards as prescribed by public health authorities. From time to time, inspections are made of such matters under the direction of the State Department of Health, and the school is expected to correct any deficiencies found.

612:20-3-3. Comprehensive programming for all basic needs

Each student's educational needs will be addressed in an Individualized Educational Plan (IEP) developed in a manner consistent with 20 U.S.C., 1400-1485 and State Department of Education guidelines. More specific information regarding the IEP may be requested from the superintendent's office.

(1) **Meeting physical needs.**

(A) **Food service.** Food must be plentiful to meet the requirements of growing children. It must be sanitary, nutritious, attractively served in a pleasant atmosphere, and palatable. Menus should vary and reflect sensitive planning by food service staff. Employees in direct supervision of children at mealtime should encourage proper eating, both in terms of good manners and adequate diet, stressing the need to eat nutritious foods.

(i) Menu Planning. Menus are planned at least one week in advance. Menus are dated, posted, and kept on file for one year. Any substitutions are noted on the menu. Food services are directed by a nutritionist or licensed dietitian and/or facilities consult annually with a qualified nutritionist.

(ii) Frequency and quality of meals. All meals should meet the nutritional guidelines of the students.

(I) The facility provides or arranges for the provision of breakfast, lunch, and dinner and one or more snacks from food that is selected, stored, prepared, and served in a sanitary and palatable manner. Brunch and dinner may be provided on weekends and holidays only.

(II) Each meal contains a sufficient amount of food for every student and additional servings are available and permitted.

(III) Cool, potable drinking water is available for students at all times.

(iii) Special diets. Facilities recognize the religious, cultural, and health needs of students when planning, preparing, and serving food.

(I) The facility makes available, as necessary, an alternate choice of food for each meal served for students on special diets or residents who, because of religious beliefs, cannot eat particular foods.

(II) The facility follows individualized diets and feeding schedules that are prescribed by the student's physician.

(iv) Meals. Facilities recognize the social and emotional needs of residents during mealtime.

(I) Students and the staff who eat with them are served the same menu, except for tea and coffee, unless differences in age or special dietary needs are factors.

(II) Students who have not had opportunities to learn how to handle food with the usual table service are managed in such a way that they are not embarrassed or subject to the ridicule of other students.

(B) **Student housing.** Ample living quarters in a pleasant setting are considered essential to the growth of any child. Some degree of privacy, adequate bedding, suitable space for clothing and personal effects, recreation areas, clean and ample bath and toilet facilities, and a pleasant atmosphere are all basic to this provision. In planning residential quarters in the schools, consideration should be given to color schemes, housekeeping possibilities, whether the area lends itself to proper supervision, heating, cooling and lighting.

(C) **Clothing.** Provision for appropriate student clothing is a parental responsibility. If the child's parents are unable or unwilling to make such provision, other resources will be sought. Care should be taken to label clothing and personal items.

(D) **Health ~~needs~~ and medical services.** Emergency and routine health care of students is provided by a staff of licensed nurses, and a physician contracted by the Department. Minor medical and health needs will be addressed in the school clinic. Illnesses not amenable to recovery within a one to two day period will be referred to parents for care and follow-up. All medication administered will be prescribed by a physician. The cost of such prescriptions shall be borne by the parents. All medication is kept under lock and key in the school clinic. Dispensing of medication is supervised by nursing personnel. Parents will be notified immediately of any serious illness or injury, and the situation will be addressed in a manner mutually agreed upon.

(i) Medical plan. The facility has an operational medical plan to meet the medical needs of the students.

(ii) Physical examination. Each student is offered a physical examination annually, or at more frequent intervals as recommended by a health care professional.

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

(iv) Immunizations. Students are required to have immunizations against communicable diseases in accordance with the rules and regulations of the State Department of Health and the Oklahoma State Department of Education.

(v) Medication. The facility has current, written medication procedures

(I) When any medication is administered to a student, a precise record is kept with the student's name, the name of the medication, the dosage, date and time given, and the signature of the person who administered it. The reason for the medication is noted and any unusual reaction is documented. The student, the parents or custodian, and all staff members responsible for the student are informed of the side effects of the medication prescribed for the student.

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

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

(vi) First aid supplies. The facility maintains first aid supplies.

(vii) Tobacco use. The facility prohibits the use of any tobacco on campus.

(2) **Meeting emotional needs.**

(A) **Staff-child relationships.** Positive relationships with adults are vital to the growth and development of any child. To permit such relationships to occur, the adult must be able to express an involved interest in the child, be willing to accept the risk of being rebuffed by the child, and be sensitive to the reason the child behaves as he does. Moreover, he must respect the child as an individual worthy of being heard, and recognize his strengths. He must be honest with the child and, above all, be willing to listen to him. His concern should be to meet the needs of the child, rather than his own, so his involvement will be of a professional nature.

(B) **Counseling.** While some children may require only the structure of the school and the relationships formed in the day-to-day environment, others may require special attention. Students with special problems will be referred to the school psychologist.

(C) **Location of authority.** To achieve fairness and consistency of controls in the school, authority and responsibility for proper limit setting must be established. Such authority rests finally with the superintendent. Minor day-to-day behavior problems may be handled routinely by the youth guidance specialist on duty when the incident occurs, but is subject to review by the administration. In no case should any individual staff member impose disciplinary action upon a child which is not within the scope of authorized policy.

(D) **Appropriate methods of discipline and control.** Control of children through consistent but

reasonable limit setting is viewed as an integral part of the school program. One objective for emotional growth of children is self-control. This can develop only when children are availed of opportunities to make choices for themselves. Controls should be applied only when a child demonstrates an inability to control himself, and then only to the degree necessary to the situation.

(i) Good supervision of children will reduce the need for drastic measures. Verbal or visual controls, written reports, loss of privilege, and many other such methods can be used effectively, if the person relating to the child is sensitive to the needs of the child and the part controls play in his development.

(ii) Discipline when used with children shall be appropriate to the situation and designed to contribute to student well being. An example of an appropriate method of control might be withdrawal of privileges. Children also may be required to reimburse the school for damage of property through negligence or intent.

(iii) Reasonable restraint may be necessary to prevent a child from injuring himself or others.

(iv) No procedures will be implemented which could be construed as abuse or neglect according to the Department of Human Services' policy on abuse and/or neglect of clients in residential facilities. A copy of this policy is available from the superintendent's office.

(E) **Abuse complaint referral.** Alleged abuse of a student by a staff member, substantiated by investigation, may constitute cause for referral to the District Attorney. Refer to 612:20-3-19 through 612:20-3-27 for specific information.

(F) **Disciplinary review.** The superintendent of each school shall establish procedures for review of disciplinary measures when infractions are of a chronic or serious nature and may result in suspension. Such procedures will include appropriate opportunity for students to have their view heard and considered. Parents and students will be apprised of their right to appeal decisions made.

(3) **Meeting social needs.**

(A) **Education.** Opportunities will be provided in the school area for student involvement in class activities, clubs, organizations, and various extracurricular activities designed to foster personal responsibility and healthy interpersonal relationships.

(B) **Religious services.** Opportunity is provided for resident children at the School for the Blind and the School for the Deaf to attend worship services of their choice.

(C) **Recreation.** Recreation for children embodies a wide range of activities, from sedentary recreation to competitive sports. In programming for meeting the recreation needs of children, consideration is given to their interests, their abilities, their need for successful experiences, and their need to learn team play. Consideration also is given to the use of hobbies and cultural exposures as opportunities for social and personal growth. Off-campus activities are programmed within the limits of good judgement, and with an awareness of the child's interests.

(D) **Children's correspondence.** Correspondence provides a means of family and social contact for children. It can be a definite factor in meeting social needs; therefore, correspondence between children and their parents, relatives, and close friends is encouraged insofar as it appears to be in the best interest of the child. Incoming or outgoing mail is not to be inspected or censored.

(E) **Visitation on campus.** Visits by family and friends of students are encouraged. Visitors are expected to abide by all school rules.

(F) **Dormitory living.** Social needs of children can be met also in group living where an atmosphere of mutual respect is essential. Sharing of work, participation in dormitory activities, and identifying with the group can be vital in the growth and development of the child. Moreover, in his association with the ~~Youth Guidance~~ Direct Care Specialist, the child is given an opportunity to come to terms with an authority figure and to form a positive relationship with an adult. Still another opportunity for growth is provided by participation in group decision making, as practiced in varied degrees by the dormitories in the schools.

(G) **Student allowances.** Disbursement of allowances to students may be done weekly subject to arrangements made by parents with the student finance office. The Department does not provide for routine allowances except for certain children in custody of the Department of Human Services who are attending OSB or OSD. For any financially needy children, monthly allowances can be arranged in accordance with the needs of the individual child.

612:20-3-7. Discipline

(a) **Disciplinary measures.** Disciplinary measures at the OSB and OSD will be consistent with Oklahoma Statutes, policy as established by the Commission for Rehabilitation Services, and regulations of publicly supported schools in the state of Oklahoma.

(b) **Prohibitions.** Facility policy prohibits:

(1) Shaking, striking, spanking, or other cruel treatment;

(2) Harsh, humiliating, cruel, abusive or degrading language;

(3) Denial of food or sleep;

(4) Work tasks that are degrading or unnecessary and inappropriate to the residential student's age and ability;

(5) Denial of private familial and significant other contact, including visits, phone calls, and mail, as a means of punishment;

(6) Use of chemical agents, including tear gas, mace, or similar agents;
(7) Seclusion;
(8) Extreme physical exercise;
(9) One resident punishing another resident:
(10) Chemical restraint;
(11) Mechanical restraint; and
(12) Violating residential student's rights.

(c) **Separation.** A resident may be removed from the group or group activity as a method of behavior management. The resident remains within hearing of an adult in an unlocked, safe, clean, well-lit, well-ventilated area.

PART 3. ABUSE, NEGLECT, AND INAPPROPRIATE BODY CONTACT

612:20-3-20. Reporting requirements

(a) Any staff member or volunteer who suspects that a child under the age of 18 years has been abused or neglected by any person, including parent, shall make an immediate report to ~~Children's Services~~ Child Welfare and/or the Office of Client Advocacy in the Department of Human Services, or to the police as appropriate. A written report shall also be made by the end of his or her shift to his or her supervisor. The supervisor will report the incident to the school social worker or designee as soon as he or she receives the report. The social worker or designee will be the contact person for the police, ~~Children's Services~~ Child Welfare and/or the Office of Client Advocacy in the Department of Human Services as appropriate. The school social worker or designee shall also submit a report to the Superintendent within 24 hours of receiving notice of the incident. Parents will be contacted unless the home environment is suspect.

(b) Anyone making a report in accordance with this policy, State statute, and in good faith is immune from any civil or criminal liability that otherwise results from reporting the incident, or from any resulting judicial proceeding, even if the suspicion is proven to be unfounded.

(c) Reports submitted to the supervisor and the social worker or designee shall include the information given in Paragraphs (1) through (6).

(1) Name of student(s) involved;
(2) name of any staff involved;
(3) age of student(s);
(4) location of incident;
(5) nature and extent of injuries or description of abuse, neglect, or inappropriate body contact; and
(6) other information that might be pertinent to the situation.

(d) Final reports submitted to appropriate authorities by the social worker or designee will include:

(1) name of student(s) involved;
(2) location of incident;
(3) name of any staff involved;
(4) date(s) of birth of student(s);
(5) parent names, addresses, and phone numbers;
(6) nature and extent of injuries or description of abuse, neglect, or inappropriate body contact; and
(7) other information that might be pertinent to the situation.

(e) The school social worker or designee will document the information in Paragraphs (1) through (7) for each incident reported in a separate record which will be kept in a locked file:

(1) date the report was received;
(2) person contacted, and date/time of contact, when report was forwarded to the appropriate authorities;
(3) date and time parent was contacted (as appropriate);
(4) response of authorities to include date, time, and time of response and name of contact person;
(5) investigative reports from staff;
(6) investigative summary by school social worker or designee; and
(7) parent contacts with the school.

(f) Procedure for reporting suspected abuse, neglect, verbal abuse, caretaker misconduct and exploitation

(1) **Reporting requirements and reportable incidents.**

(A) Persons having reason to believe that a minor is a victim of abuse or neglect are required by Section 7103 of Title 10 of the Oklahoma Statutes to promptly report it to the Oklahoma Department of Human Services (OKDHS).

(B) Persons having reason to believe that a minor or vulnerable adult is a victim of abuse, neglect, verbal abuse, threat, or exploitation are required by Section 10-104 of Title 43A of the Oklahoma Statutes to promptly report it to OKDHS. This reporting requirement applies to providers, as defined in OAC 340:2-3-2, and their employees and agents.

(C) In addition, employees of the Oklahoma School for the Blind and the Oklahoma School for the Deaf, who have reason to believe that caretaker misconduct, according to State Statutes (amendable), with regard to a student, has occurred, promptly report it to OCA intake, to their immediate supervisor and to the school social services department.

(D) A person can have reason to believe that maltreatment has occurred based on information they have learned directly or indirectly, including information provided by the alleged victim or witnesses to an incident. When an allegation of maltreatment is made by the alleged victim or the guardian or parent of the alleged victim, it is reported to OCA intake. Persons unsure of what to report call OCA intake (1-800-522-8014) during business hours, and after hours call the Abuse Hotline (1-800-522-3511).

(E) Knowledge of circumstances which may constitute maltreatment is reported even if the person reporting it cannot substantiate the information.

(F) In addition to the reportable incidents in paragraphs (1), (2), and (3) of this subsection, Oklahoma School for the Blind and Oklahoma School for the Deaf employees and schools report to OCA events

listed in (a) through (c) of this paragraph involving a person listed in OAC 340:2-3-32(a)(2) are:

(i) a death;

(ii) a suspicious or unexplained assault or physical injury, as defined in OAC 340:2-3-2;

(iii) a rape, sodomy, or other sexual activity prohibited by state law.

(G) Such incidents must be reported within 24 hours.

(H) The reporting obligations under this section are individual. Employers, supervisors, and administrators do not impede or inhibit the reporting obligations of any employee or other person; however, employees must also report any reasonable suspicions of child abuse or neglect involving any student or staff to their immediate supervisor and to the school social services department.

(I) Any incidents involving criminal activities will be reported to local law enforcement by Oklahoma School for the Blind and Oklahoma School for the Deaf administration.

(2) **Reporting responsibilities.**

(A) **Reportable incidents.** Reportable incidents are defined in subsection (a) of this Section.

(B) **Immunity from liability.** Oklahoma law provides that any person exercising good faith and due care in making a report of alleged abuse, neglect, verbal abuse, or exploitation pursuant to the Oklahoma Child Abuse Reporting and Prevention Act or the Oklahoma Protective Services for Vulnerable Adults Act shall have immunity from any civil or criminal liability the person might otherwise incur.

(C) **Questions about reporting.** A person who is uncertain if a particular incident is reportable contacts OCA intake (1-800-522-8014) during business hours, and after hours calls the Abuse Hotline (1-800-522-3511).

(3) **Failure to report.** Any person who knowingly and willfully fails to promptly report a reportable incident as provided for in this Section may be subject to administrative action or criminal sanctions. Section 10-104(C) of Title 43A and Section 7103(C) of Title 10 of the Oklahoma Statutes makes failure to report a misdemeanor, upon conviction. In addition, failure to report by an Oklahoma School for the Blind or Oklahoma School for the Deaf employee can result in disciplinary action.

(4) **False reporting.**

(A) Any person who knowingly and willfully makes a false report regarding alleged maltreatment of a minor, or a report that the person knows lacks factual foundation, may be reported to local law enforcement for criminal investigation and, upon conviction, is guilty of a misdemeanor.

(B) With regard to vulnerable adults, any person who willfully or recklessly makes a false report may be liable in a civil action for any actual damages suffered by the person(s) being reported and for any punitive damages set by the court or jury.

(5) **Method of reporting.**

(A) Any person obligated to report an allegation of suspected abuse, neglect, verbal abuse, exploitation, or caretaker misconduct towards a student, contacts OCA intake in Oklahoma City.

(B) Allegations of abuse or neglect at the Oklahoma School for the Blind or Oklahoma School for the Deaf should be reported to the social services department or to the superintendent of the respective school.

(6) **Retaliation prohibited.** Oklahoma Statutes state that an employer shall not terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the Vulnerable Adults Act.

(7) **Staff training.** All administrators ensure their employees receive relevant training regarding their reporting responsibilities detailed in this Section. Employees receive this training within 30 calendar days of initial employment and subsequent training annually.

PART 7. STUDENT RIGHTS

612:20-3-49. Residential Life

(a) **Rights of students.** Students and parents are provided a handbook. OSB/OSD has current, written students' rights policy that supports and protects all students and is available for students, parents or custodians, and staff.

(1) Students have individualized education plans that focus the services of the facility toward meeting the student's needs. Students have the right to participate in the development of their IEP.

(2) Personal finances. Students are given the opportunity to have and handle their own money for personal use. For money in excess of their ability to manage, the schools provide student accounts and a dorm safe box managed by the dorm staff.

(3) Personal possessions. Students are allowed to bring personal possessions to the facility and to acquire personal belongings as permitted by OSB/OSD policy and procedure.

(4) Personal care and hygiene. Students are expected to provide their own personal care and hygiene products. For needy students, assistance is provided through donations and the needy fund.

(5) Clothing. Students possess adequate, clean, well-fitting, and seasonable clothing and have a safe place to keep it. Each dorm provides washers and dryers for the care of student clothing.

(6) Community activities. Students have the right to community contacts and opportunities for participation in the local community.

(7) Telephone contacts. Students have access to a telephone to initiate and receive uncensored personal calls in accordance with OSB/OSD policy and procedure.

(8) Mail. Student's letters, both incoming and outgoing, are not opened unless there is suspicion of contraband. If correspondence is opened, the student is informed in advance, and is present when the letter is opened. This action is documented.

(9) Restrictions. Any restrictions placed on communications are explained to the student and clearly documented. For example, if the student has abused telephone privileges by making prank calls, he/she may have their telephone privileges limited until the disciplinary period is over.

(10) Publicity. Consent is obtained by either OSB/OSD from the student and the student's parents or custodian prior to the use of any publicity about or related to the student. Students are not caused embarrassment by any publicity or promotional materials.

(11) Grievance. Residents and parents/custodians have the right to file a grievance.

(12) Work. Students are taught good work habits and are provided with a variety of tasks. A student work program allows students to work and receive pay for performing work details.

(13) Safety. Adequate measures are taken to prevent accidents and to avoid health and safety hazards.

(A) Students participate in fire exit drills performed by OSB/OSD at least four timers per year during a school day and a minimum of two drills conducted at night.

(B) Students participate in tornado drills conducted each year.

(C) Facilities maintain a log of all evacuation and sheltering drills.

(14) Recreation. Residents are given time to pursue talents, hobbies, and chosen interests.

(A) The facility provides both an on-grounds and off-grounds recreational programs.

(B) A written schedule of planned recreational, leisure, or physical exercise activities is developed with input from staff members and residents and is kept on file and available.

(15) Water activities. If students engage in water activities, safety precautions are followed.

(A) A staff member is in the water or is appropriately dressed to enter the water at any time.

(B) A person with a Community Water Safety Certificate or a comparable certificate is in attendance at all times.

(16) Sleep. The facility provides adequate time and facilities for proper rest and sleep commensurate with each student's age and activities.

(b) **Visitation.** The facility provides the students and parents or custodian the opportunity for on-or-off-campus visits. A record is kept of all off-campus visits.

(c) **Tutoring.** Tutoring is provided or arranged by the facility for students, as needed.

[OAR Docket #05-855; filed 5-12-05]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES
CHAPTER 25. BUSINESS ENTERPRISE PROGRAM

[OAR Docket #05-856]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 2. General Provisions
612:25-2-5. Definitions [AMENDED]
612:25-2-7. State and Federal Assurances Policy of non-discrimination [AMENDED]
Subchapter 4. The State Licensing Agency
Part 1. Organization and General Operation Standards
612:25-4-1. Organization of the State Licensing Agency [AMENDED]
612:25-4-2. SLA staff responsibilities [REVOKED]
612:25-4-3. Guidelines for communication [AMENDED]
612:25-4-4. Management services provided by the State Licensing Agency [AMENDED]
Part 3. Business Enterprise Program Training
612:25-4-14. Training for new or potential licensed managers [AMENDED]
612:25-4-15. Training for present licensed managers [AMENDED]
Part 5. State Licensing Agency Responsibility for Business Enterprise Operations
612:25-4-25. Management of BEP equipment and fixtures [AMENDED]
612:25-4-26. Maintenance and replacement of business enterprise equipment [AMENDED]
612:25-4-27. Initial inventory and supplies [AMENDED]
612:25-4-30. Second merchandise loan [AMENDED]
Part 7. Support Services and Warehouse [REVOKED]
612:25-4-40. Overview of support services [REVOKED]
612:25-4-41. Support services personnel [REVOKED]
612:25-4-42. Warehouse operations [REVOKED]
Part 9. Assignment and Transfer of Licensed Managers
612:25-4-54. Business enterprise vacancy announcement [AMENDED]
612:25-4-55. Qualifications [AMENDED]
612:25-4-56. Applications [AMENDED]
612:25-4-57. Applicant Selection Committee [AMENDED]
612:25-4-58. ~~Interviews~~Annual Evaluation [AMENDED]
612:25-4-59. Interview, Selection Process and Scoring [AMENDED]
612:25-4-60. Ninety day replacement [AMENDED]
612:25-4-61. Satellite/remote business enterprise locations [AMENDED]
Part 11. Business Enterprise Program Auditing and Due Process
612:25-4-72. ~~Audit procedures~~Audits [AMENDED]
612:25-4-73. Due process [AMENDED]
612:25-4-74. Probation [AMENDED]
Subchapter 6. Licensed Managers and Business Enterprise Operation
Part 3. Business Enterprises
612:25-6-15. Setting aside of funds [AMENDED]
612:25-6-18. Establishing~~Procedures to establish~~ new business enterprises [AMENDED]
Part 5. The Elected Committee of Licensed Managers
612:25-6-33. Organization and operation of the Elected Committee of Licensed Managers [AMENDED]

AUTHORITY:
The Oklahoma Commission for Rehabilitation Services; United States Code Title 20, Sections 107 et seq.; Title 29, Sections 701through 791, Oklahoma Statute Title 7, Section 71 et seq.

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ANALYSIS:
The proposed changes to Chapter 25 were developed to reduce the amount of Business Enterprise Program policy by removing procedures from policy as well as job duties listed for state employees working in the BEP. The BEP will begin use of annual evaluations of each business manager and begin charging penalties for late payment of set-aside funds as well as clarification of policy, including the interview, selection process and scoring; plus clean-up language.
CONTACT PERSON:
Larry Bishop, Policy Development Administrator, Department of Rehabilitation Services, 3535 N.W. 58th, Suite 500, Oklahoma City, OK 73112 (405) 951-3408

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 2. GENERAL PROVISIONS

612:25-2-5. Definitions

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

"Acquired stock" means that stock in which the licensed manager has accrued equity and which the State Licensing Agency, in conjunction with the licensed manager or licensed managers involved, has determined is suitable for use. Stock in which the licensed manager has not accrued equity is not acquired stock and remains the property of the State Licensing Agency.

"Act" means the Randolph-Sheppard Vending Facility Act (Public Law 74-732), as Amended by Public Law 83-565 and Pub Law 93-516, 20 U.S.C., Ch. 6A, Sec. 107.

"Active participation" means a process of good faith negotiations involving the Elected Committee of Licensed Managers and the State Licensing Agency. The Committee must be given the opportunity to have meaningful input into the decision-making process in the formulation of program policies which affect licensed managers. The SLA is charged with the ultimate responsibility for the administration and operation of all aspects of the Business Enterprise Program.

"BEP" means the Business Enterprise Program of the State Licensing Agency which provides self-employment opportunities for qualified persons who are blind.

"BEP Programs Manager ~~Administrator~~" means the person who has responsibility for the operation of the Business Enterprise Program in the State.

"BEP Training Specialist" means an individual who is responsible for the SLA's part in planning, coordinating, and/or conducting the training activities for prospective licensed managers and for in-service and upward mobility training activities for experienced licensed managers.

"Blind person" means a person who, after examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the person shall select, has been determined to have (1) not more than 20/200 central visual acuity in the better eye with correcting lenses, or (2) an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

"Board" or "Commission" means the governing body for the State Licensing Agency.

"Business consultant (BC)" means an individual who provides consultative and management services to those business enterprises and licensed managers in the area of the State to which the consultant is assigned.

"Business enterprise" means an approved business administered by the State Licensing Agency. See definition of "Vending Facility."

"Business Enterprise Program (BEP)" means the Business Enterprise Program services available to establish business enterprises for persons who are blind.

"Cafeteria facility" means a food dispensing business enterprise capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where customers serve themselves from displayed selections. A cafeteria may be fully automatic or provide limited waiter or waitress service. Table and/or booth seating facilities are always provided.

"Client or Consumer" means any person who has made application for the State Licensing Agency's services and has been determined by the State Licensing Agency to be eligible for services.

"Commissioner" means the Commissioner of the Rehabilitation Services Administration (RSA) who exercises approval authority for the Federal government under the Randolph-Sheppard Act.

"Committee" means the Elected Committee of Licensed Managers.

"Contract" means a written agreement between the State Licensing Agency and officials in control of Federal or other property to establish a business enterprise.

"Contract labor" means a person or company that performs duties or services not a part of the regular duties of the business enterprise.

"Counselor" means Division of Vocational Rehabilitation or Division of Visual Services counselors assigned to the State Licensing Agency's program of vocational rehabilitation.

"Director" or **"Executive Director"** means the chief administrator of the State Licensing Agency.

"Displaced licensed manager" means a licensed manager who has been displaced from his or her business enterprise through no fault of his or her own.

"Dry/Wet facility" means any business enterprises providing manual dispensing of prepackaged articles, refreshments, and services.

"Elected Committee of Licensed Managers (ECM)" means the committee elected biennially by licensed managers in accordance with 34 CFR 395.14.

"Emergency" means an unforeseen circumstance that calls for immediate action. When a piece of equipment is out of order it is not normally considered an emergency unless it will harm/destroy lives, other equipment or property.

"Employee" means an individual who receives compensation for services rendered to a licensed manager.

"Equipment, expendable" means items having a relatively small cost per item and having a relatively short life expectancy.

"Equipment, non-expendable" means all necessary equipment which requires a relatively high capital outlay and has a normal life expectancy of several years.

"Federal property" means any building, land or other real property owned, leased, or occupied by any department, agency, or instrumentality of the United States (including the Department of Defense and the United States Postal Service), or any other instrumentality wholly owned by the United States.

"Federal regulations" means the regulations issued pursuant to the Randolph-Sheppard Act.

"Grantor" means a Federal, State, County, Parish, city government, private corporation, company, partnership or individual, who grants a permit or enters into an agreement with the State Licensing Agency to operate a business enterprise on its/their property.

"Grantor's agreement" means a written document between a Grantor and the State Licensing Agency which sets forth the terms, conditions and responsibilities of all parties to the agreement for the operation of a business enterprise on private and/or public property.

"Gross receipts" means all revenue from a business enterprise, including sales tax.

"Inactive Licensee" means a licensed individual who is not currently working in the Business Enterprise Program.

"Initial stock and supplies" means those resalable items or supplies necessary for the opening and operation of a specific type of business enterprise.

"Interim manager" means a licensed manager appointed to manage a business enterprise on a temporary basis.

"License" means a written instrument issued by the State Licensing Agency to a person who is blind, authorizing such person to manage a business enterprise.

"Licensed employee" means a licensed individual who is currently working for a licensed manager.

"Licensed manager (LM)" means a licensed individual who has signed an agreement with the State Licensing Agency to manage a Randolph-Sheppard business enterprise under the supervision of the State Licensing Agency.

"Licensee" means a person who is blind and holds a valid BEP license.

"Licensing agency" means the State Licensing Agency (SLA), which has been designated by the Commissioner, pursuant to the Act, to issue licenses to persons who are blind for the management of business enterprises.

"Management services" means inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve business enterprises operated by licensed managers.

"Manager's agreement" means an agreement between a licensed manager and the State Licensing Agency, establishing basic terms and conditions for management of a business enterprise.

"Net earnings" or "Net profits" means gross profit after deducting operating expenses and set-aside collected.

"Net proceeds" means the amount remaining from the sale of articles or services of business enterprises and any vending machine income or other income accruing to licensed managers after deducting the cost of such sales and other authorized expenses excluding set-aside charges required to be paid by the licensed managers.

"Net sales" means the sum total of sales, excluding sales tax.

"Nominee" means a nonprofit agency or organization designated by the State Licensing Agency through a written agreement to act as its agent in the provision of services to licensed managers under the State's Business Enterprise Program.

"Other income" means money received by a licensed manager from sources other than over the counter and machine sales.

"Other property" means property which is not Federal property and on which business enterprises are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any Federal property.

"Permit" means the official approval given a State Licensing Agency by a department, agency, or instrumentality in control of the maintenance, operation and protection of Federal property or person in control of other property where the State Licensing Agency is authorized to establish a business enterprise.

"Purveyor" means an approved source of supply for food, beverages, supplies, or services.

"Randolph-Sheppard Act" means Public Law 74-732 as amended by Public Law 83-565, Public Law 93-516, and Public Law 95-602, 20 U.S.C. Chapter 6A, Section 107.

"Retained vending machine income" means vending machine income disbursed by a property managing department, agency or instrumentality of the United States, or received from vending machines on State or other property in excess of the amounts eligible to accrue to licensed managers.

"Routine preventive maintenance" means the regular care, upkeep, and cleaning of equipment used in a business enterprise whether owned by the State Licensing Agency or the licensed manager.

"Rules and regulations" means the instrument written by the State Licensing Agency and approved by the Secretary of Education setting forth the conduct and operation of the Business Enterprise Program. A copy of the document granting approval of the rules and regulations from RSA, will be mailed to each licensed manager as a revision to the BEP handbook.

"Saleable stock/merchandise" means products comprising the merchandise available for sale to the public and determined by the SLA to be from an approved source in the original container, in date, consistent with the needs of the customers for a particular business enterprise.

"Satellite business enterprise" means a business enterprise without a permanently assigned licensed manager which is being managed by a licensed manager who is also managing his/her regularly assigned business enterprise.

"Satisfactory site" means an area determined by the BEP Programs Manager ~~Administrator~~ to have sufficient space, electrical and plumbing outlets, and other such accommodations as prescribed by the Act, for the location and operation of a business enterprise in accordance with applicable health laws and building codes.

"Secretary" means the United States Secretary of Education.

"Set-aside funds" means funds which accrue to a State Licensing Agency from an assessment against the net proceeds of each business enterprise in the State's business enterprise Program and any income from vending machines on Federal property which accrues to the SLA.

"Snack bar business enterprise" means a business enterprise engaged in selling limited lines of refreshment and prepared food items necessary for a light meal service.

"State Licensing Agency (SLA)" means the State agency that issues licenses to persons who are blind for the operation of business enterprises on public and/or private property.

"State property" means lands, buildings, and/or equipment owned, leased, or otherwise controlled by the State.

"Statewide average manager earnings" means the average annual manager earnings (after set-aside) as calculated each year for the RSA-15 Report.

"Trainee" means a qualified client of the Division of Visual Services, who when referred to the Business Enterprise Program, is placed in training to prepare for licensing under the rules and regulations of the State Licensing Agency.

"Training program" means the program of study and/or on-the-job training provided to prospective and/or experienced licensed managers.

"Vending facility" means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by licensed managers and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws and including the vending or exchange of chances for any lottery authorized by State Law and conducted by an agency of a State within such State. [CFR 34, Part 395.1(X)]

"Vending machine" means any ~~coin or currency operated~~ machine, operated using currency or other medium of exchange, which dispenses articles or services, except any machine operated by the United States Postal Service for the sale of postage stamps or other postal products and services. Machines providing services of a recreational nature and telephones shall not be considered to be vending machines.

"Vending machine facility" means an automated ~~coin or currency operated~~ business enterprise which dispenses a variety of food and refreshment items and services from vending machines. Included in this category would be interstate highway locations and vending machine routes.

"Vocational Rehabilitation Services" means those services as defined in the Rehabilitation Act. [29 USC 701 et seq.]

"Volunteer" means an individual who works in a business enterprise and receives no compensation.

612:25-2-7. State and Federal Assurances Policy of non-discrimination

(a) The SLA will assure compliance with all State and Federal Rules and Regulations applicable to the Randolph Sheppard Act.

(~~a~~b) The State Licensing Agency assures that it shall not exclude from participation, deny the benefits of the program, or otherwise subject any person to discrimination because of the person's gender, age, physical or mental impairment, religion, race, creed, national origin, or political affiliation in accordance with the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act of 1990.

(~~b~~c) Every licensed manager of a business enterprise shall operate the business enterprise in such a manner that no person shall be subject to discrimination because of the person's gender, age, physical or mental impairment, religion, race, creed, national origin, or political affiliation whether that person is a present or prospective purveyor, customer, employee or other individual who might come into contact with the business enterprise.

(d) Confidentiality and requests for information. Policies on confidentiality of client records in the BEP will apply also to licensed managers in the BEP and to those who apply for training. Such information will be limited to purposes directly connected with the administration of the BEP and may not be released either directly or indirectly for any other purpose without the consent of the licensed manager/applicant or his/her legal representative. While the SLA complies with the Freedom of Information Act, protection of confidential information takes precedence. When information is requested that is not clearly of a public nature, the information will be treated as confidential unless and until ruled otherwise by the general counsel for the SLA. The SLA may charge reasonable fees for copies of information.

SUBCHAPTER 4. THE STATE LICENSING AGENCY

PART 1. ORGANIZATION AND GENERAL OPERATION STANDARDS

612:25-4-1. Organization of the State Licensing Agency

(a) **Governing board.** The governing board of the SLA is the Oklahoma Commission for Rehabilitation Services. There are three members of the Commission. One member is appointed by the Governor, one member is appointed by the President Pro Tempore of the Oklahoma Senate, and one member is appointed by the Speaker of the Oklahoma House of Representatives. The Director of the Department of Rehabilitation Services (SLA) reports directly to the Commission.

(b) **Central office staff.** The Business Enterprise Program is located in the Division of Visual Services and is administered by the Business Enterprise Program Programs Manager ~~Administrator~~ who reports directly to the Visual Services Division Administrator. The BEP Programs Manager ~~Administrator~~ is assisted by the business consultants, training officer, support services personnel and an administrative assistant.

(c) **Field staff.** The State is divided into specific geographic areas for the purpose of administering the Business Enterprise Program, and a business consultant is assigned to each area. The business consultant provides the link between the licensed managers and the central office and is authorized to provide the services and is obligated to assist and support the licensed managers in complying with the rules and regulations of the Rehabilitation Services Administration and the SLA relative to business enterprises established under the Randolph-Sheppard Act.

(d) **Support services staff.** The SLA purchases and provides equipment for use in business enterprises as required by Federal Law. The equipment is purchased, stored and serviced by the Support Services Section of the BEP. Personnel include a Support Services Supervisor, Clerk Typist, Mechanical Contractor, Vending Machine Technician, Warehouse Worker and a Custodial Worker. The support services personnel are responsible for all support services including the purchase, delivery, storage, maintenance and inventory control of equipment. The Support Services Section is also responsible for writing and administering support contracts associated with the BEP.

(e) **Licensed managers.** The individual enterprises established by the Business Enterprise Program are managed by licensed managers who derive their livelihood from net profits of the operations. Licensed managers are subject to instructions, policies, rules and regulations of the Business Enterprise Program, but are not employees of the program, the SLA, or the State of Oklahoma. They do, however, have a contractual relationship with the SLA and are required to manage the business enterprise in accordance with established rules and regulations.

612:25-4-2. SLA staff responsibilities [REVOKED]

~~(a) **Duties of the Business Enterprise Program Administrator.** The duties of the Business Enterprise Program Administrator are as follows:~~

~~(1) assure compliance with all applicable rules, regulations and statutory provisions;~~

~~(2) prepare program budgets and approve expenditures;~~

~~(3) plan for the development and expansion of the program and upgrading of existing business enterprises;~~

~~(4) draft program policy, operating instructions and regulation changes as needed to make the program more efficient or to conform to current legislative mandates;~~

~~(5) promote the program to the general public;~~

~~(6) actively participate with the ECM in accordance with 34 CFR 395.14;~~

~~(7) review reports generated by the licensed managers and business consultants;~~

~~(8) visit business enterprises on a regular basis;~~

~~(9) hold regular staff meetings; and~~

~~(10) investigate complaints related to the BEP.~~

~~(b) **Duties of the business consultant.** Each business consultant is assigned consultant responsibility for business enterprises in a particular area of the state, and may inquire into any aspect which effects each business enterprise. The duties of the business consultant include:~~

~~(1) assist each licensed manager in managing the business enterprise within applicable rules and regulations;~~

~~(2) initiate negotiations for new business enterprises;~~

~~(3) locate and survey locations for possible business enterprises on County, State, Federal and private property;~~

~~(4) supervise the development of new installations;~~

~~(5) design each business enterprise including the floor plans, specifications, and equipment list;~~

~~(6) recommend closure of unprofitable business enterprises;~~

~~(7) supervise the removal of business enterprises;~~

~~(8) establish licensed managers in business enterprises;~~

~~(9) conduct public relations activities which promote a positive image of the program to existing and potential host organizations, rehabilitation workers, consumers, and the general public;~~

~~(10) attend area DVR OR DVS counselor meetings when requested by the Program Manager;~~

~~(11) provide management services to licensed managers;~~

~~(12) collect and analyze data on the operation of each business enterprise in order to provide technical assistance and for monitoring and reporting purposes;~~

~~(13) responsibility for program goals and objectives as they relate to that part of the state to which he/she is assigned; and~~

~~(14) collect data for the RSA-15 report from his/her assigned area and forward the information to the Sate Office no later than October 15 of each year. The data will include:~~

~~(A) a detailed list of equipment expenditures for new business enterprises;~~

~~(B) a detailed list of equipment expenditures for upgrade of established business enterprises; and~~

~~(C) a list of all upward mobility training provided to licensed managers.~~

~~(15) The business consultant in conjunction with DRS staff persons in his/her assigned area will actively promote the Business Enterprise Program, making known to blind persons and to professionals working with blind persons the employment opportunities in the Business Enterprise Program. He/she will receive referrals from and work cooperatively with the DVR and DVS counselors in processing applications.~~

~~(c) **SLA staff conduct.** SLA staff will adhere to the guidelines for conduct in (1) through (3) of this Subsection.~~

~~(1) Staff will not buy or sell products for resale from or to a licensed manager.~~

~~(2) Any item received by the SLA staff will be paid for at retail prices.~~

~~(3) Staff will not receive membership cards, account numbers or other similar information from the licensed managers.~~

612:25-4-3. Guidelines for communication

~~(a) **General principles.** Communication of information is to occur so that the best interests of the Business Enterprise Program is served. This is best accomplished when information is shared and acted upon by those who can respond most effectively in the circumstances. The administrative staff of the SLA is responsible for assuring that active communication among SLA staff and licensed managers contributes to the effective operation of the entire Business Enterprise Program. Management services and operational matters are best handled by communicating with the appropriate business consultant.~~

~~(b)~~ **Communications originated by a licensed manager.** The licensed manager is to maintain appropriate and professional communication with customers and grantor. The point of communication for licensed managers with the SLA is the business consultant. Circumstances in which a licensed manager may contact the BEP Programs Manager ~~Administrator~~ are:

(1) when a problem cannot be resolved through ~~normal channels~~ the area business consultant or the Elected Committee of Managers,

(2) when there is a specific complaint concerning the conduct and/or behavior of a business consultant, or

(3) when an emergency develops and the business consultant is not available.

~~(c) **Business consultant communication.** A business consultant is expected to maintain open and ongoing communications with all the licensed managers in his/her area. Should a situation require immediate action beyond the business consultant's authority, he/she may contact the proper administrative official. All significant information will be communicated to the BEP Administrator at the earliest opportunity.~~

~~(d) **Written communications.** Any communication of major consequence is to be documented in writing. Situations needing immediate action are to be addressed promptly by the appropriate official and subsequently documented in writing. Records of written documentation will be maintained in accordance with agency policy. Written requests require written responses.~~

~~(e) **Business consultant reporting.** Reports that are the responsibility of the business consultant will conform to the standards in (1) through (4) of this Subsection.~~

~~(1) All originals will be forwarded to the state office.~~

~~(2) Each document will include date and facility number.~~

~~(3) All reports should be typed when possible.~~

~~(4) Location reviews will be conducted and submitted for each business enterprise each month.~~

~~(f) **Reporting of possible litigation.** Any possible litigation against a licensed manager, business enterprise, or the SLA should be reported immediately to the BEP Administrator.~~

~~(g) **Confidentiality and requests for information.** Policies on confidentiality of client records in the BEP will apply also to licensed managers in the BEP and to those who apply for training. Such information will be limited to purposes directly connected with the administration of the BEP and may not be released either directly or indirectly for any other purpose without the consent of the licensed manager/applicant or his/her legal representative. While the SLA complies with the Freedom of Information Act, protection of confidential information takes precedence. When information is requested that is not clearly of a public nature, the information will be treated as confidential unless and until ruled otherwise by the general council for the SLA. The SLA may charge reasonable fees for copies of information.~~

612:25-4-4. Management services provided by the State Licensing Agency

(a) **Overview of management services.** Management services include inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve business enterprises.

(b) **Technical assistance services.** The SLA will provide each licensed manager with:

(1) Recommendations for optimizing the profitability of the business enterprise.

(2) Recommendations and feedback on business enterprise operations including quality, service, and cleanliness.

(3) Possible solutions to problems recognized by the licensed manager or brought to the licensed manager's attention by BEP staff or the grantor.

(4) Providing upward mobility and in-service training.

(5) Explanation of the SLA's procedures, policies, and standards.

(c) **Services provided by the business consultant.** Business consultants will assist licensed managers, in their assigned area, to meet Business Enterprise Program requirements through review and consultation on:

(1) compliance with applicable laws and program regulations;

(2) compliance with all conditions in the manager's license;

(3) assuring that merchandise is:

(A) sold in accordance with the grantor's agreement;

(B) of high quality, adequately stocked, and properly displayed;

(4) standards for employee personal appearance and hygiene;

(5) quality customer service;

(6) maintenance of sanitation and safety standards;

(7) proper maintenance of equipment;

(8) communications and working relationships between the licensed manager and customers, purveyor, employees, grantor, and the general public;

(9) SLA and other agency requirements for record keeping; and

(10) licensed manager performance evaluations.

(d) **Business consultants' on-site review.** Business consultants' on-site reviews will be made as often as necessary, but not less than once each month to ensure the continued success of the business enterprise. ~~licensed managers whose performance indicates a need for assistance are visited more frequently. The business consultant must place extra emphasis on helping licensed managers where business shows marginal performance. The length of visits will be of adequate duration to determine any deficiencies in the operation of the business enterprise and advise the licensed manager of such deficiencies and operational changes which the business consultant considers of benefit. The business consultant will work with licensed managers to maximize profits.~~ Each time the business consultant visits a business enterprise, he/she will document the visit on the case memorandum form.

(e) **Inspection reports.** The business consultant completes an inspection of the facility using the Location Review form at least monthly. The report will contain at least the information in (1) - (6) of this Subsection to the extent relevant:

(1) Suggestions which will aid the licensed manager in the successful operation of the business enterprise.

(2) Violations of State or Federal Laws and the SLA's policies, rules and regulations.

(3) Comments on any conditions relating to any aspect of the business enterprise and recommendations for improvement.

(4) Follow-up action from previous inspection reports about noted discrepancies.

(5) Training needed or requested.

(6) Proper insurance, permits and license are current and posted.

(f) **Visits by the BEP Programs Manager ~~Administrator~~.** The BEP Programs Manager ~~Administrator~~ will periodically visit business enterprises.

(g) **Assistance of Rehabilitation Services staff.** At the request of the business consultant or other BEP staff members, rehabilitation staff will provide necessary assistance to the program when in the best interest of the licensed manager or the SLA.

(h) **SLA provision of training.** The SLA shall ensure that effective programs of vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials, shall be provided to trainees as vocational rehabilitation services. Such programs shall include on-the-job training in all aspects of business enterprise operations for licensed managers, and upward mobility training including further education and additional training or retraining for improved work opportunities for all licensed managers. [34 CFR 395.11] Details of the BEP training provided by the SLA are presented in 612:25-4-14 and 612:25-4-15.

PART 3. BUSINESS ENTERPRISE PROGRAM TRAINING

612:25-4-14. Training for new or potential licensed managers

(a) **General statement.** The Business Enterprise Training Program trains clients in the day to day operations of the business enterprise. The scope of the program includes training in the Randolph-Sheppard Act, rules and regulations of the Business Enterprise Program, state and federal tax reporting, food service preparation and delivery, sanitation, personal appearance and hygiene, inventory and stocking, money management, staffing of personnel, and safety procedures. Through the Division of ~~Vocational Rehabilitation~~ Visual Services and Division of ~~Visual Services~~ Vocational Rehabilitation, the SLA will provide training necessary for each blind individual, including, personal and vocational adjustment, vocational counseling and guidance, training materials, and licensed manager training.

(1) The SLA will provide training that leads to licensing and ~~placement~~ potential for employment in the Business Enterprise Program. The Business Enterprise Training Program provides training in essential aspects of business enterprise operation and management for blind persons with the capability to operate a business enterprise.

(2) Through the Division of ~~Vocational Rehabilitation~~ Visual Services and Division of ~~Visual Services~~ Vocational Rehabilitation and the Business Enterprise Training Program, the SLA provides additional training or retraining for improved work opportunities for the licensed managers.

(3) Post-employment services are provided to the licensed managers through vocational rehabilitation services as necessary to assure that the optimum employment outcome is achieved and suitable employment is maintained.

(b) **Prerequisites for training.** Before an individual can qualify as a Business Enterprise Program trainee, the ~~DVR~~ DVS or ~~DVS~~ DVR Counselor assures the prerequisites set forth in (1) through (~~6~~7) of this Subsection are met.

(1) a current general physical examination;

(2) current eye examination;

(3) current psychological evaluation, if indicated;

(4) completion of personal adjustment training, when indicated;

(5) good general health and stamina; ~~and~~

(6) completion of all needed physical restoration services when indicated~~.~~; and

(7) an evaluation from the Visual Services Evaluator including completion of the "Job Fit Survey".

(c) **Application process.** Each applicant who meets the prerequisites for training is interviewed by the local business consultant. Before the interview, the business consultant reviews the applicant's rehabilitation case folder. The business consultant assesses the applicant's qualifications and reports his or her recommendations to the local counselor. The local counselor sends the application to the Business Enterprise Program training officer with a cover memorandum which includes:

(1) current eye examination, documenting blindness;

(2) documentation for citizenship;

(3) documentation the client is 18 years of age;

(4) client's work history;

(5) educational background;

(6) personal adjustment training when indicated;

(7) rehabilitation training ~~when indicated;~~ prerequisites established by BEP Program Staff to better optimize the successful employment outcome;

~~(8) counselor's relevant observations of the client;~~

(~~9~~8) desired training date~~,~~ consistent with the BEP Program Training schedule;

(~~10~~9) current physical examination;

(~~11~~10) current psychological evaluation, when indicated; and

(~~12~~11) business consultants evaluation.

(12) This application must be received and approved by BEP Programs Manager a minimum of 60 days prior to the next scheduled training session.

(d) **Duration of training.** The normal duration of training is six months. Training may be extended or reduced at the discretion of the training officer based on the training needs of the individual trainee.

(e) **Evaluation.** Each trainee's progress is evaluated monthly with regard to his/her potential for future success. The Monthly Trainee Progress Form is completed by the training officer and discussed with and acknowledged by the trainee~~.~~ and a copy forwarded to trainee's counselor.

(f) **Completion of training.** Each trainee who completes the Managers Training Course is issued a certificate certifying that the trainee has met all the criteria to be a licensed manager in the Business Enterprise Program. The individual is granted a license upon actual entry into the program.

(g) **Failure to complete training.** The training officer will notify the BEP Programs Manager ~~Administrator~~ whenever it appears that a trainee will not be able to successfully complete training. The BEP Programs Manager ~~Administrator~~ will review the written recommendation of the training officer along with all pertinent information concerning the trainee and make a decision regarding continuation or termination of the training. The BEP Programs Manager ~~Administrator~~ will notify the trainee's DVR or DVS counselor of a decision to terminate training.

(h) **Post-training interview.** Upon completion of training, each trainee is interviewed by a representative of the Elected Committee of Licensed Managers, normally the chairperson, to evaluate the effectiveness of the training program. The interviewer formulates recommendations and comments to provide to the BEP Programs Manager ~~Administrator. The SLA will make the final determination as to who will be licensed~~. This interview does not determine the trainee's eligibility. The purpose of this interview is to evaluate the performance of the training officer and the effectiveness of the training program. The SLA will make the final determination as to who will be licensed.

(i) **Acceptance of out-of-state licenses.** The training officer will evaluate the skills and knowledge of applicants for the Business Enterprise Program who were licensed managers in other states. Training will be provided to correct any noted deficiencies and acquaint the applicant with Oklahoma's program. Special training will be given the applicant in preparation for the Oklahoma Health Department's Certified Food Handler's test. After qualifications are met, the applicant is issued a certificate.

(j) **Longevity.** Longevity in the Oklahoma Business Enterprise Program will start the first work day upon entering into the program after training. Only time actually worked in the Oklahoma BEP may be counted.

612:25-4-15. Training for present licensed managers

Post-employment (upward mobility) training will be provided by the SLA to encourage greater professional competence and to promote the upward mobility of licensed managers~~. The training will, through instruction and on the job training, enhance the knowledge, skills, and abilities needed to operate and improve the operation of present enterprises, and to prepare for the operation of a more comprehensive enterprise, supervisory practices relevant to larger operations, changing policies and laws, and state of the art merchandising techniques and equipment. Such a training program will also incorporate the use of peer trainer workshops in best practices.~~

PART 5. STATE LICENSING AGENCY RESPONSIBILITY FOR BUSINESS ENTERPRISE OPERATIONS

612:25-4-25. Management of BEP equipment and fixtures

(a) The SLA will provide each business enterprise with fixtures and equipment in such quantity and quality so as to give reasonable assurance of successful operation by the licensed manager. The SLA retains the right, title, and interest to all BEP equipment and fixtures. The SLA has the authority to direct, control, transfer and dispose of such equipment as it deems necessary. All capital equipment is purchased, inventoried, and disposed of in accordance with Department of Rehabilitation Services policy.

~~(b) New equipment incoming to the warehouse shall be handled as directed in (1) and (2) of this Subsection.~~

~~(1) All new equipment shall be unpacked and checked for shipping damage. If the equipment is damaged, proper claims shall be completed and filed with the proper carrier~~

~~to insure the damage will be repaired at the expense of the freight carrier or supplier.~~

~~(2) All incoming new equipment will be placed in a holding area until it can be thoroughly inspected for proper operation by support services personnel. Once it is working properly it will be tagged and delivered or stored.~~

(~~c~~b) Equipment for new locations will be determined by the business consultant and BEP Programs Manager ~~Administrator~~ in consultation with an ECM member specified by the ECM Chairperson.

~~(d) Used equipment incoming to warehouse shall be handled as directed in (1) through (3) of this Subsection.~~

~~(1) All used equipment being returned to the warehouse will be immediately cleaned and sanitized.~~

~~(2) It will be placed in a holding area until it can be checked for proper operation, repairs completed if necessary, properly tagged with the functional status and moved to the area of the warehouse specified for equipment to be distributed.~~

~~(3) All used replacement equipment will be placed in a business enterprise at the discretion of the business consultant and the support services supervisor.~~

~~(e) Equipment delivery will be handled as directed in (1) through (12) of this Subsection.~~

~~(1) All equipment new and used will be rechecked for proper operation immediately before being transported to a business enterprise.~~

~~(2) The warehouse staff shall ensure that all equipment leaving the warehouse has a proper ID tag with nomenclature code and VS number in a easily accessible area.~~

~~(3) All equipment leaving the warehouse will be properly logged with nomenclature code, VS number, and destination in a log book.~~

~~(4) When delivering equipment to a new location, support services personnel will coordinate with the business consultant in regards to the specific date and time for delivery.~~

~~(5) When adding or removing equipment in an established location, the equipment or item will not be delivered or removed during the business enterprise lunch rush hour.~~

~~(6) Equipment shall be covered with proper pads and tarpaulins.~~

~~(7) Heavy equipment will require more than one person to move.~~

~~(8) All vending machines will be level, stable and in working order before the support services personnel leave the business enterprise.~~

~~(9) The business consultant will determine when machines will be bolted together.~~

~~(10) Personnel shall take every precaution against damaging the building. In the event the building is damaged, the support services supervisor and the BEP Administrator will be notified immediately. The support services supervisor will make every effort to get building damage caused by BEP personnel repaired as soon as possible.~~

~~(11) All equipment shall be delivered as scheduled except where unsafe conditions exist.~~

~~(12) The delivery person will not be expected to return equipment to the warehouse unless failure to do so would be unsafe.~~

~~(f) Equipment will be considered for disposal when the equipment is not repairable, does not meet appearance standards, parts are no longer available, it is no longer used in the BEP, or it is out of date. Equipment shall be disposed of in accordance with state law and DRS Policy.~~

~~(g) When steps (1) through (5) of this Subsection are completed, a written request is made to the BEP Administrator for determination if equipment is available or can be purchased within the BEP budget. The permit/contract must be modified to reflect the new equipment before the equipment is placed in the business enterprise. Equipment may be added to existing locations when:~~

~~(1) it is determined by the business consultant that the requirement for the service requested is valid or will increase the net proceeds of the location;~~

~~(2) an increased storage requirement exists based on an increase in documented gross sales;~~

~~(3) space is available for the additional equipment;~~

~~(4) sufficient electrical and plumbing service is available or can be made available to adequately operate the equipment within code specifications; and~~

~~(5) the grantor has given his/her approval.~~

(~~h~~c) The licensed manager will make no additions, deletions or modifications to the business enterprise and its operation, in the form of equipment, fixtures or facilities, without first obtaining written authorization from the SLA. ~~When it is determined by the business consultant that a piece of equipment is no longer needed in a business enterprise, the business consultant will make a request to the support services supervisor for the equipment to be picked up and placed in the warehouse for redistribution or disposal.~~

612:25-4-26. Maintenance and replacement of business enterprise equipment

~~(a)~~ The SLA shall maintain, or cause to be maintained, all business enterprise equipment in good repair and in an attractive condition and shall replace or cause to be replaced worn-out and obsolete equipment as required to ensure the continued successful operation of the business enterprise. [34 CFR 395.10]

~~(b) All repair requests are to be initiated by the business consultant and communicated to the support services supervisor, or in his absence other warehouse staff, who generates a work order and enters the work order number into the Work Order Log. A new work order is assigned when it is a different problem even with the same machine. If it is the original problem, it is a call back.~~

~~(c) A call back is a report to return to a business enterprise and repair the original problem within a seven (7) day period. The business consultant will make the determination as to when it is considered a call back when the problem is reported. The service technician will coordinate the call back schedule with the licensed manager and business consultant. The support services supervisor must expedite the return of the service~~

~~technician to this location to complete repairs as soon as possible. The date of the original repair request is to be considered in scheduling this return visit.~~

~~(d) In the event that equipment cannot immediately be repaired, or if replacement is necessary, the business consultant is to be informed as soon as possible. If use of the equipment cannot be delayed, the business consultant will request that support services personnel deliver a loaner until the repairs can be completed.~~

~~(e) A repair request log will be maintained by the support services supervisor. Each work order will be assigned a log number which will also be given to the business consultant at the time the request for repair is made.~~

~~(f) Service technicians are to contact the licensed manager upon entering a business enterprise before attempting repair and before leaving, to inform the licensed manager as to repair status and what repairs were required and to leave a copy of the Service Technicians Report (STR).~~

~~(g) Commercial repair services may be purchased when:~~

~~(1) BEP service technicians cannot respond to pending repair orders because of present commitments, and the BEP Administrator approves the authorization; or~~

~~(2) an emergency repair is needed that will cost $150 or less, and the business consultant approves the authorization.~~

~~(h) Service technicians should also attempt to repair other broken pieces of equipment not reported after informing the licensed manager. The service technician will complete a work order on the additional repairs and forward copies to the support services supervisor and the business consultant. The service technician shall remain on location long enough to make sure repairs are effective. While waiting for temperature stabilization, preventive maintenance on other equipment will be performed.~~

~~(i) If the repair is not completed, it shall be the responsibility of the service technician to inform the licensed manager of the condition of the equipment, what is required to repair the equipment and approximately when the repairs can be accomplished. The service technician may need to call the support services supervisor for date of return. Also the service technician must notify the business consultant as soon as possible.~~

~~(j) The service technician must complete a separate work order for additional repairs. A copy of each work order will be forwarded to the business consultant.~~

~~(k) At no time will support services personnel give advice to a licensed manager pertaining to the business operation. Any observations that could improve the operations should be communicated to the business consultant.~~

~~(l) The support services supervisor periodically assists service technicians to complete work order assignments.~~

~~(m) Each service technician will complete a STR each time he/she works on a piece of equipment. If the technician leaves the machine to get parts within the same day, one STR is sufficient. If the technician leaves and works on another project and returns even the same day, a new STR is completed. If a single machine is repaired over several days, a new STR is completed each day.~~

612:25-4-27. Initial inventory and supplies

(a) The SLA shall provide for initial inventory of merchandise for resale as needed by a licensed manager.

(b) All merchandise purchased and placed on a merchandise loan must have prior approval by the SLA.

(c) The licensed manager will at all times keep an adequate stock of merchandise consistent with the needs of the business enterprise. At no time will inventory level fall below that of the balance of the merchandise loan.

(d) The total amount of the merchandise loan will not exceed the average of the prior year's ~~quarterly~~ inventories without approval from the BEP Programs Manager ~~Administrator~~.

~~(e) Cleaning chemicals and trash bags will be considered saleable merchandise for merchandise loan purposes~~.

(~~f~~e) The incoming licensed manager, the business consultant, and BEP Programs Manager ~~Administrator~~ will have final say as to what is purchased from the existing stock. If the leased/owned equipment transfers to the new licensed manager, the products for that piece of equipment will be placed on merchandise loan.

(~~g~~f) The SLA will not make multiple purchases from any purveyor. The SLA will make a one time purchase from each purveyor to acquire the proper and sufficient merchandise to manage the business enterprise.

(~~h~~g) The licensed manager will sign a merchandise security agreement which will be filed at the county courthouse.

(~~i~~h) If a licensed manager wishes to provide his or her own merchandise and will not require a merchandise loan, he or she must sign a statement to that effect.

612:25-4-30. Second merchandise loan

(a) Under documented extreme circumstances, a licensed manager ~~who does not owe a merchandise loan,~~ who has paid off his/her previous merchandise loan, may receive a second (2nd) merchandise loan for the same ~~that~~ facility when it has been determined that the merchandise loan is necessary to ~~will~~ allow the licensed manager to remain in his/her facility as manager. ~~However the licensed manager will be placed on probation until the loan is paid in full.~~

(b) If a licensed manager requires a 2nd merchandise loan while the first loan is still outstanding, other than for the expansion of his/her facility, he/she will automatically be placed on probation until one of the loans is paid in full.

(c) When a licensed manager moves from one location to another, the licensed manager will be given a merchandise loan based on need. If the manager has an outstanding loan, the SLA will not make a 2nd merchandise loan unless such loan has been approved by 3/4 of the Selection Committee and the BEP Programs Manager. However the new and old merchandise ~~loan~~ loans will not be combined. If the first (1st) merchandise loan is not clear when the inventory is extended, the licensed manager will be placed on probation.

(d) If a facility expands, the SLA will provide a merchandise loan to cover the additional saleable merchandise needed.

PART 7. SUPPORT SERVICES AND WAREHOUSE [REVOKED]

612:25-4-40. Overview of support services [REVOKED]

~~(a) The support services supervisor will assign work orders and review the STR's of service technicians. Review of STR's cannot be delegated.~~

~~(b) When the support services supervisor is not available to assign work orders, the senior service technician will assign work orders until the return of the support services supervisor.~~

~~(c) The support services supervisor will schedule the work of service technicians so that there is sufficient time for daily warehouse equipment rebuild, repair and preventive maintenance.~~

~~(d) The support services supervisor is to randomly check and evaluate each employee's field work to ascertain quality, performance and time consumed on repairs. Written records of all evaluations will be maintained in each employees file.~~

~~(e) The support services supervisor will meet with local sales representatives to keep abreast of new equipment and to seek information on special one time orders. The support services supervisor will provide this equipment information to other staff when needed.~~

~~(f) It is the support services supervisor's responsibility to locate, order and maintain an acceptable inventory of spare parts for all program machines.~~

612:25-4-41. Support services personnel [REVOKED]

~~(a) Each support services person is to notify in advance, to the fullest extent possible, the appropriate business consultant when deliveries or repairs will be made in his or her area. The business consultant will be present to supervise these activities as time permits.~~

~~(b) Any support services person working past scheduled hours will be given compensation in accordance with the current DRS policy.~~

612:25-4-42. Warehouse operations [REVOKED]

~~(a) **Purpose of warehouse.** The warehouse supports the ongoing operation of the BEP by providing space for storage of equipment, fixtures, materials, and parts; and by providing work areas for service technicians, the support services supervisor, and administrative staff.~~

~~(b) **General warehouse management.** Warehouse management for the BEP shall ensure that the duties in (1) through (5) of this Subsection are carried out.~~

~~(1) Hold quarterly inventory of warehouse stock and provide the BEP Director projections of inventory needs.~~

~~(2) Once a year forward all inventories to the assigned business consultant.~~

~~(3) Clear all inventories with warehouse records before forwarding to the next higher level.~~

~~(4) Maintain transfer records on each piece of equipment including assigned receiving/shipping report number for each fiscal year.~~

~~(5) Send corrected inventories to business consultants who will forward a copy to the licensed manager.~~

~~(c) **Hours of operation.** The warehouse will be open from 8:00 AM until 5:00 PM on scheduled work days. All warehouse personnel will observe these hours or their approved flex time hours and will be given proper time for lunch and breaks. All repair personnel shall report to their work stations at the proper times to receive repair orders and their work assignments for the day. All repairs should be completed the same date as the repair order when possible.~~

~~(d) **Telephone coverage.** The telephone will be answered during normal working hours. Any deviation from this policy will require prior approval from the BEP Administrator.~~

~~(e) **Duties of support services supervisor related to warehouse operation.** Duties of the support services supervisor are presented in (1) through (13) of this Subsection.~~

~~(1) Assure that the smoking policy is enforced.~~

~~(2) Assure that paint and wash areas are not used as storage.~~

~~(3) Assure that all fire extinguisher have correct service dates.~~

~~(4) Assure that the warehouse is cleaned on a daily basis.~~

~~(5) Schedule warehouse personnel in a manner to assure the warehouse is at a level of cleanliness and order that is acceptable to the BEP Administrator.~~

~~(6) Verify BEP support staff travel claims and itineraries.~~

~~(7) Participate in work related training, including 16 hours of supervisory level training annually.~~

~~(8) Maintain files for:~~

~~(A) memos;~~

~~(B) letters;~~

~~(C) training records;~~

~~(D) class rosters; and~~

~~(E) certificates.~~

~~(9) Forward to the BEP Administrator the records of licensed manager training for inclusion in each licensed manager's file.~~

~~(10) Provide information for the RSA-15.~~

~~(11) Submit monthly vehicle reports to the BEP Administrator and to DRS Departmental Services.~~

~~(12) Maintain all purchase documentation.~~

~~(13) Work closely with the BEP Administrator to ensure that all needs and/or requirements of licensed managers are met to ensure their continued success.~~

~~(f) **Requests for capital equipment replacement.** The business consultant requests replacement of capital equipment by memorandum. The written request is sent to the BEP administrator with written response requested.~~

~~(g) **Acquisition of equipment.** The support services supervisor, in consultation with the BEP Administrator and business consultant, is responsible for acquisition of all equipment and for maintaining a stock of expendable supplies and parts.~~

~~(h) **Purchasing duties of the support services supervisor.** To ensure that purchases for the BEP support the mission of the program, the support services supervisor will:~~

~~(1) follow DRS and Department of Central Services policy in all purchases;~~

~~(2) keep abreast of new equipment as it enters the market;~~

~~(3) research new equipment for adaptability to the BEP program;~~

~~(4) work with field engineers and company representatives to modify business enterprise equipment;~~

~~(5) work closely with Department purchasing agents to ensure that each purchase handled through the competitive bidding process is awarded to the best, as well as the most competitive bidder;~~

~~(6) use accurate commodity codes for equipment;~~

~~(7) arrange for in-service training by factory representatives on new equipment;~~

~~(8) obtain all required signatures and approvals on purchase documents;~~

~~(9) prepare annual contracts for service and equipment for the forthcoming fiscal year;~~

~~(10) assist each business consultant in planning for the opening of new locations or remodeling of established business enterprises;~~

~~(11) provide technical information and assistance;~~

~~(12) work with building contractors, subcontractors, and other host personnel as required;~~

~~(13) prepare and submit work orders in a timely manner; and~~

~~(14) provide preventative maintenance to business enterprise equipment as time permits.~~

~~(i) **Duties of the service technicians.** The service technicians will:~~

~~(1) install and repair business enterprise equipment;~~

~~(2) maintain an acceptable number of purveyors for parts and equipment;~~

~~(3) make written recommendation to replace unserviceable equipment;~~

~~(4) instruct licensed managers and business consultants on maintenance procedures that are within the scope of their authorized maintenance;~~

~~(5) submit completed work orders in a timely manner;~~

~~(6) provide preventative maintenance to business enterprise equipment as time permits; and~~

~~(7) keep service area in warehouse area clean and orderly.~~

~~(j) **Duties of the warehouse worker and custodial worker.** The Warehouse Worker and Custodial Worker will:~~

~~(1) place equipment in storage as per procedures in section 612:25-4-25 (log-in equipment);~~

~~(2) remove equipment and supplies from storage as per section 612:25-4-25 (log-out equipment);~~

~~(3) deliver and pickup equipment to be repaired taking proper care as to not cause damage;~~

~~(4) keep warehouse clean;~~

~~(5) immediately inform licensed manager of arrival when entering location; and~~

~~(6) inform licensed manager of departure prior to leaving location.~~

~~(k) **Duties of the clerk typist.** The clerk typist will:~~

~~(1) file reports;~~

~~(2) file work orders;~~

~~(3) type equipment request;~~

~~(4) answer phone;~~

~~(5) act as receptionist;~~

~~(6) receive work orders by phone and generate a work order, immediately pass work order to support services supervisor or senior service technician for disposition;~~

~~(7) do not allow unauthorized person access to warehouse; and~~

~~(8) do not allow unauthorized persons to remove any equipment from the warehouse.~~

~~(l) **Warehouse truck.** The warehouse truck will be used only as described in (1) through (5) of this Subsection.~~

~~(1) The warehouse truck will only be driven by authorized personnel.~~

~~(2) The warehouse truck will have all routine maintenance as scheduled.~~

~~(3) The warehouse truck shall be cleaned and properly parked when not in use.~~

~~(4) All products being moved shall be properly secured and protected.~~

~~(5) The driver is to adhere to State law at all times.~~

PART 9. ASSIGNMENT AND TRANSFER OF LICENSED MANAGERS

612:25-4-54. Business enterprise vacancy announcement

(a) The procedure for announcing business enterprise openings is a mail out to all licensed managers, licensed employees, and licensees on the mailing list.

(b) The announcement period will be ten working days. The BEP Programs Manager ~~Administrator~~ and the Chairperson of the Elected Committee of Licensed Managers may issue an announcement for a shorter period of time due to extenuating circumstances. The closing date for the vacancy will be stated on the announcement.

(c) The information in (1) through (~~9~~10) of this Subsection will be contained on each announcement.

(1) type of business enterprise;

(2) estimated number of employees in the building and/or traffic flow;

(3) location of the business enterprise;

(4) classification;

(5) average gross sales as reported on monthly report;

(6) for a new business enterprise, estimates of monthly net sales based upon potential patronage, with disclaimer this estimate is not a guarantee of sales;

(7) application due date;

(8) name and telephone number of the BEP Consultant; and

(9) name and work phone number of the current manager. Unlisted phone numbers will not be listed on the announcement without prior approval of the Licensed Manager.

(10) According to policy Chapter 612:25-4-59 paragraph (g); Any agreement made to the selection committee

by a candidate will be transferred to an addendum in the operator's agreement if selected to manage the facility.

612:25-4-55. Qualifications

(a) In order to apply for placement as a licensed manager in the Business Enterprise Program, an individual must hold a current license issued by the SLA. In addition, the SLA requires experience in the program before an individual will be considered eligible to apply for "A" and "B" classification business enterprises. ~~Although a~~ A new location is to be classified "C" for the initial 90 days of operation.~~, the Selection Committee may require prior business enterprise experience on applications for new locations. Verified experience in a business enterprise in another state may be considered by the Selection Committee.~~ Experience requirements for each classification are:

(1) Classification A. Applicants will be restricted to individuals who have a minimum of three (3) years total experience in an Oklahoma business enterprise including a minimum of one (1) year of management experience.

(2) Classification B. Applicants will be restricted to individuals who have a minimum of two (2) years total experience in an Oklahoma business enterprise, including a minimum of six (6) months of management experience, or two (2) years additional employment in a business enterprise may be substituted for the management experience.

(3) Classification C. No experience required, except on new locations as determined by the Selection Committee.

(4) Classification D. No experience required.

(b) The Selection Committee may require prior business enterprise experience on applications for any facility including new locations. Verified experience in a business enterprise in another state may be considered by the selection committee.

(~~b~~c) A displaced licensed manager will have priority in the selection process for a comparable business enterprise, including type, size and geographical location, for one year from the date of displacement.

(d) Applicants will not be eligible to apply for a business enterprise facility if any of the following conditions exist:

(1) The licensed manager is on probation or the SLA has initiated suspension/termination proceedings against the licensed manager.

(2) The applicant is not current with their merchandise loan payments.

(3) The applicant is not current with his/her set-aside owed to the SLA.

(4) The applicant has not submitted a business plan for their current business enterprise facility.

(5) The applicant has not scored at least an 80 on the annual evaluation.

(6) Conditions 1-5 will not apply to new BEP training graduates.

~~(c) Licensed managers on probation are not eligible to apply for another business enterprise.~~

(~~d~~e) Applicants must be eligible to obtain an Oklahoma Tax Permit.

~~(e) There is not a specified minimum time period that a licensed manager must remain in a particular facility. However, it is preferred that a licensed manager manage the business enterprise he/she is selected to manage for a minimum of one year. Although the one year operation of a business enterprise is not mandatory, the Selection Committee may give preference to licensed managers who have managed a business enterprise for a year or more.~~

~~(f) If a licensed manager is not current with his/her merchandise loan, the licensed manager is not eligible to apply for another business enterprise.~~

~~(g) Licensee's are not eligible to apply for a facility if set-aside is owed or loan payments are not current with the payment plan.~~

~~(h) The minimum requirements for each classification of a business enterprise will be listed in the business enterprise opening announcement.~~

~~(i) Experience requirements for each classification are:~~

~~(1) **Classification A.** Applicants will be restricted to individuals who have a minimum of three (3) years total experience in a business enterprise including a minimum of one (1) year of management experience.~~

~~(2) **Classification B.** Applicants will be restricted to individuals who have a minimum of two (2) years total experience in a business enterprise, including a minimum of six (6) months of management experience, or two (2) years additional employment in a business enterprise may be substituted for the management experience.~~

~~(3) **Classification C.** No experience required, except on new locations as determined by the Selection Committee.~~

~~(4) **Classification D.** No experience required.~~

612:25-4-56. Applications

(a) Applications must be received in the ~~state office~~ BEP Headquarters by the deadline date and time in order to be considered. The applications may be mailed, facsimiled or hand delivered. Phone applications will be accepted prior to the deadline, however the applicant must sign an application form prior to being interviewed by the Selection Committee.

(b) Applications received before the announcement expiration date and time are reviewed to determine if the applicant meets the basic qualifications.

(c) All eligible applicants will be scheduled for an interview with the Selection Committee. Applicants who do not meet the basic qualifications will be notified in writing.

612:25-4-57. Applicant Selection Committee

~~(a)~~ **Selection Committee.** The Selection Committee shall be established and convened by the SLA. The Selection Committee will consider applicants for assignment and transfer. The Selection Committee shall make recommendation(s) to the SLA or designee.

(1) The BEP selection committee is chaired by the BEP Programs Manager ~~Administrator~~ or designee. Members include the area BEP Consultant or designee, the BEP training officer or designee, the area member of the ECM or alternate and the chairperson of the ECM or vice-chair

or secretary. ~~, the BEP training officer or designee and the area member of the ECM or alternate.~~

(2) In the event the Area member of ECM or the alternate cannot attend or serve, or is related to an applicant, another ECM member or alternate may be called as a substitute member to be determined by the Chairman of ECM.

~~(b) **Eligibility verification and referral to Selection Committee.** The SLA shall provide a list of eligibility criteria and refer eligible applicants to the Selection Committee. Selection shall be based upon factors in (1) through (3) of this Subsection.~~

~~(1) Managerial and other skills and abilities demonstrated by the licensed managers under consideration as they fit the available business enterprise, including:~~

~~(A) handling labor needs;~~

~~(B) complexity of financial skills;~~

~~(C) food preparation and production; and~~

~~(D) customer relations.~~

~~(2) Previous records of the licensed manager under consideration, including:~~

~~(A) consideration of the timeliness and accuracy of record keeping;~~

~~(B) customer satisfaction;~~

~~(C) improvements in profits;~~

~~(D) safety and sanitation inspections;~~

~~(E) fees, taxes, and bill payment history;~~

~~(F) initiative shown in upgrading skills;~~

~~(G) regularity of work attendance;~~

~~(H) compliance with applicable rules and laws; and~~

~~(I) past evaluations by the SLA.~~

~~(3) Seniority of eligible licensed manager.~~

612:25-4-58. ~~Interviews~~ Annual Evaluation

~~(a) The Selection Committee interviews all qualified applicants and submits a written recommendation to the BEP Administrator. The Selection Committee evaluates on a point system and recommends the two best suited applicants. The licensed manager selected is contacted by the SLA. Other applicants are notified of the licensed manager selected.~~

~~(b) All personal information made available to the Selection Committee and all information discussed in the course of a selection is held confidential. Information will not be released under any circumstances to any other individual, agency, or organization by Selection Committee members.~~

~~(c) Licensed managers should visit the business enterprise, and questions about the business enterprise should be answered by the business consultant before the interview. The interview is not the place or time for an applicant to determine if he/she wants the location.~~

~~(d) When only one applicant applies, the selection Committee will interview the applicant to determine if the candidate has the necessary skills to manage the facility.~~

~~(e) Any agreement made to the selection committee by a candidate will be transferred to an addendum in the operators agreement if selected to manage the facility.~~

(a) The BEP consultants will conduct an annual evaluation of each business enterprise manager in his/her area. The manager will be evaluated in the following areas:

(1) Tasks/responsibilities

(A) Timely submission and accuracy of all required monthly reports and Payments.

(B) Appropriate gross profit percentage attained as reported on monthly reports.

(C) Appropriate net profit percentage attained as reported on monthly reports.

(D) Maintains an acceptable level of merchandise inventory.

(E) Attendance at Agency and other certified training.

(F) Active participation in the Business Enterprise Program.

(2) Work Habits

(A) Provides preventive maintenance and appropriate cleaning/sanitation.

(B) Merchandise displayed, rotated and stocked sufficiently.

(C) Maintains required insurances.

(D) Maintains agreed upon hours of operation.

(E) Maintains good relations with customers and grantors.

(b) Any business enterprise manager not receiving at least 80 points of the available 100 points on an annual evaluation will not be eligible to apply for a business enterprise facility during the current evaluation year.

(c) Any score above 80 obtained by the licensed manager will accrue to the benefit of the licensed manager in any selection process during the current evaluation year.

612:25-4-59. Interview, Selection Process and Scoring

(a) All eligible applicants will be referred by the SLA to the Selection Committee for a personal interview. ~~The personal interview by the Selection Committee is required. An applicant not present for the interview will have his/her name removed from consideration for this location.~~

(b) All personal information made available to the Selection committee and all information discussed in the course of a selection is held confidential. Information will not be released to any other individual, agency, or organization by Selection Committee members, unless they are advised by legal counsel to release information. ~~Following every interview, each Selection Committee member will complete a score sheet on the applicant. All members of the Selection Committee must complete his or her own score sheet before assisting another member. After all interviews are completed, the overall rating from all score sheets on each applicant will be totaled. The combined scores for all applicants will then be ranked.~~

(c) An applicant not present for the interview will have his/her name removed from consideration for this location. ~~At the end of the interview process, each form will be reviewed by the person submitting the score sheet to make sure he/she has maintained consistency in scoring throughout the interviewing process.~~

(d) Following every interview, each Selection Committee member will complete a score sheet on the applicant. Members of the Selection committee must complete their own score sheets before assisting another member. After each

interview, the scores from all score sheets on the applicant will be totaled. Selection Committee members may not change their scores for an applicant after scores for the applicant have been tabulated. The total scores for all applicants will then be ranked. ~~The BEP Administrator/Chairperson of the Selection Committee or designee's score will not be added into the ranking unless it is a tie.~~

(e) Any candidate not scoring a minimum of 50 percent of the available points, not considering the points given for number of years in the program, will be considered not qualified to manage the facility being considered. ~~The names of the two top scoring applicants will be submitted to the BEP Administrator in order of ranking. The BEP Administrator may choose either name submitted.~~

(f) The BEP Programs Manager/Chairperson of the Selection Committee or designee's score will not be added into the ranking unless it is a tie. ~~The BEP Administrator may re-interview each of the two candidates before making a final decision. However, the decision cannot be extended more than 5 working days before a decision is rendered.~~

(g) Any agreement made to the selection committee by a candidate will be transferred to an addendum in the manager's agreement if the candidate is selected to manager the facility. ~~Any candidate not scoring a minimum of 50 percent of the available points, not considering the points given for number of years in the program, will be considered not qualified to manage the facility being considered.~~

(h) After all applicants' scores from the initial interview have been tabulated, any applicant whose total score is within 5 points of the applicant receiving the highest score will be awarded a second interview. The SLA will have the responsibility of convening the Selection Committee and notifying all eligible applicants of the time and place of the second interview. The second interview will be governed by the same process rules as the initial interview described above.

(i) After the second interview has been completed the combined scores of the first and second interviews of each applicant will be added together and divided by two (2) to determine the final rankings of the applicants. The names of the two top scoring applicants will be submitted to the BEP Programs Manager in order of ranking. The BEP Programs Manager may choose either applicant submitted.

(j) The BEP Programs Manager may re-interview each of the two candidates before making a final decision. However, the decision cannot be extended more than 5 working days following the second interview.

(k) The scoring shall be based on the following factors:

(1) Personal interview;

(2) Business Plan;

(3) Annual licensing/training evaluation; and

(4) Seniority.

612:25-4-60. Ninety day replacement

If the licensed manager defaults on the licensed managers Agreement for any reason (i.e. resignation, removal by the SLA or death) during the first 90 days from the date of selection, the BEP Programs Manager ~~Administrator~~ will offer the business enterprise to the second of the two candidates submitted by the Selection Committee during the previous selection process. If the second person decides to remove his/her name for consideration, it will be offered to the next applicant with the highest accumulated points. In the event of a tie, the BEP Programs Manager ~~Administrator~~ and Chairperson of the Elected Committee of Licensed Managers will review the applications and make the final selection. This procedure will be exercised until a qualified licensed manager accepts the business enterprise. If all the applicants have removed their names from consideration, a determination will be made by the BEP Programs Manager ~~Administrator~~ to remove, re-announce, or satellite the business enterprise.

612:25-4-61. Satellite/remote business enterprise locations

(a) A business enterprise or vending machine facility will be assigned to a licensed manager on a temporary basis when the regular selection process does not produce a permanent licensed manager, or when a business enterprise is vacated on short notice by a licensed manager and the time element to follow the regular selection process will cause the grantor to terminate the permit/contract with the SLA.

(b) The BEP Programs Manager ~~Administrator~~, in consultation with the Chairperson of the Elected Committee of Licensed Managers, may assign a licensed manager to a satellite/remote business enterprise on a temporary basis. The length of the agreement for a temporary assignment will be until the regular selection process can generate a permanent licensed manager to manage the vacant business enterprise with a minimum of 90 days. At the SLA's discretion, in order to achieve an equitable distribution of satellite business enterprises, a licensee that currently operates a location and a satellite will not be eligible for an additional satellite unless there are no other applicants.

(c) ~~After the regular selection process is unsuccessful for a full-time licensed manager, the facility will be advertised again as a satellite facility.~~ After the selection process is completed, a temporary agreement will be issued for a maximum of one year, at which time the satellite business enterprise will be advertised and a permanent licensed manager selected through the normal selection process. At the end of one year, if a permanent licensed manager is not produced through the selection process, the temporary location may be closed, added permanently to another business enterprise through the selection process, or again be placed on a temporary agreement for a maximum of one year.

(d) The temporary agreement for a satellite business enterprise may be canceled only for cause shown.

(e) The licensed manager may resign the satellite agreement with 20 days written notice.

(f) The satellite business enterprise will be managed as a separate business location for all purposes except for insurance and the tax permit. It is the licensed manager's responsibility to notify the Oklahoma Tax Commission and his or her insurance carrier of the addition.

(g) When a licensed manager is managing a satellite location, travel expenses to go between the two business enterprises

will be considered a business expense of the satellite/remote location at the state rate.

PART 11. BUSINESS ENTERPRISE PROGRAM AUDITING AND DUE PROCESS

612:25-4-72. Audits ~~procedures~~

~~(a)~~ The SLA reserves the right to develop procedures and conduct audits including the use of third party auditors. ~~A business enterprise to be audited will be selected at random unless monthly reports indicate a possible problem and the need to audit a specific business enterprise. The business consultant, after consultation with the BEP Administrator, may inventory or audit the business enterprise without notice.~~

~~(b) **Inventory.** An actual beginning inventory will be taken at the close of business on the 20th of each month or the nearest work day. The ending inventory will be taken at the close of business on the 20th of the following month. The licensed manager or his/her approved representatives, the business consultant for the area, the SLA accountant, and any necessary personnel approved to assist with the physical count of the inventory will be present at the two inventories. The licensed manager or his/her representatives will not participate at any time with the actual count of the inventory but must be on the premises during the count. The SLA accountant will complete wholesale pricing of the inventory using information obtained from the licensed manager or his/her purveyor.~~

~~(c) **Sales.** The licensed manager maintains all sales on the Daily Sales Record form. This form is supplied to the SLA accountant at the end of the audit period or as requested.~~

~~(d) **Merchandise purchases and expenses.** Copies of all invoices for merchandise purchased and invoices and statements for all business expenses during the accounting period under audit are maintained in the business enterprise. The SLA accountant may request these invoices and statements periodically during the month or at the close of the accounting period. Salary information along with supporting payroll records for the accounting period will be supplied to the SLA accountant upon request.~~

~~(e) **Audit summary.** When the final inventory is completed, all data will be taken to the SLA state office for analysis and evaluation. An audit report is prepared by the SLA accountant when the evaluation is completed and a copy sent to the licensed manager, business consultant and BEP Administrator. If the audit analysis reveals deficiencies, a corrective action plan will be implemented by the licensed manager and business consultant. If the audit analysis recommends changes be made by the licensed manager, a periodic follow-up review will be made by the SLA staff to monitor and assist. All information obtained during the audit is held confidential for SLA and licensed manager use only.~~

612:25-4-73. Due process

(a) **Due process overview.** The SLA provides procedures for fair hearings of licensed managers' grievances. These procedures provide each licensed manager the opportunity to seek remediation of dissatisfaction with any SLA action arising from the operation of the BEP.

(b) **Informal administrative review.** It is the policy of the SLA to resolve complaints in an expeditious and facilitative manner. These resolutions shall be accomplished through the informal administrative review process whenever possible. A licensed manager has the right to request a full evidentiary hearing at any time within established due process time lines.

(1) Informal administrative reviews are conducted by the SLA staff person closest to the problem who was not involved in the action resulting in the complaint, and who can resolve the complaint in the most expeditious manner.

(2) The informal administrative review is to be completed within 45 calendar days of receipt of the complaint to the appropriate SLA staff person.

(3) The results of the informal administrative review are to be reported in writing to the BEP Programs Manager ~~Administrator~~, with a copy going to the licensed manager affected.

(c) **Full evidentiary hearings.** licensed managers have the right to a full evidentiary hearing to resolve dissatisfaction with any SLA action arising from the operation or administration of the Business Enterprise Program.

(1) If the complaint cannot be resolved with an informal administrative review, or in the absence of an informal administrative review, the licensed manager may request a full evidentiary hearing. The request for a full evidentiary hearing must be made to the BEP Programs Manager ~~Administrator~~ in writing within 30 calendar days from the date the licensed manager receives the written notification of adverse action, or the written report of the informal administrative review. The request for a full evidentiary hearing is to be sent by certified mail.

(2) The licensed manager may be represented in the evidentiary hearing by legal counsel, or other representation of the licensed manager's choice, and at the licensed manager's expense.

(3) Reader services or other reasonable accommodations will be arranged by the SLA upon the request of the licensed manager.

(4) The hearing will be scheduled by the SLA for a time and place convenient and accessible to the licensed manager and the SLA staff involved in the hearing. The licensed manager will be notified of the place and time of the hearing and the right to be represented by legal or other counsel in writing.

(5) The hearing will be conducted by an impartial and qualified official with no involvement or vested interest in the SLA, action at issue, or with the operation of the affected business enterprise. The presiding officer will conduct the hearing in accordance with State and/or Federal laws and rules governing the conduct of such proceedings. In any case, the hearing will be conducted in a manner that avoids delay, maintains order, and provides for a full recording and reporting of the proceedings so that a full and true disclosure of the facts and issues occurs.

(6) The hearing officer's determination will be based upon the facts as presented by both parties and upon applicable law and the existing rules of the SLA. The hearing officer does not have the power to rule upon the legality or construction of the rules themselves. The officer's decision will determine the relevant issues and facts to be ruled upon.

(7) The hearing officer shall make a written report of the evidence presented, the laws and rules used in determining a resolution, and the resolution itself. This report shall be issued to the BEP Programs Manager ~~Administrator~~ and the licensed manager, or his/her authorized representative within 15 calendar days of the conclusion of the full evidentiary hearing.

(8) The hearing officer's report shall be issued to the Director of the SLA within 15 calendar days of the conclusion of the full evidentiary hearing. The SLA Director issues his or her final written decision to the BEP Programs Manager ~~Administrator~~ and the licensed manager within 30 calendar days of the date on which he or she receives the hearing officer's report.

(9) If the licensed manager is dissatisfied with the decision, she or he may request that the Secretary (USDE) convene an arbitration panel.

612:25-4-74. Probation

(a) **Scope.** It is the SLA's responsibility to protect the taxpayer's investment from abuse and the interest of all Licensed Managers in the state. For these reasons, disciplinary actions/procedures have been established for licensed managers who refuse to follow rules, regulations, or specified procedures. A licensed manager who is not meeting all of the requirements or qualifications set forth in the rules and regulations, or a licensed manager who is not managing the business enterprise in a proper manner, may be placed on probation. Intensive review/consultation will be provided during the probationary period. The period of the probation will be used to focus on specific problem areas and attempts will be made to improve the licensed manager's performance. This is the first step in the disciplinary ladder. If proper results are not achieved, suspension or revocation of BEP License may be necessary.

(b) **Initiation of probation procedure.** The BEP Programs Manager ~~Administrator~~ will place licensed managers on probation through a probation letter. The business consultant will deliver, read and explain the letter of probation to the licensed manager. The business consultant and licensed manager will then sign the probation letter. The original is given to the licensed manager, one copy returned to the BEP Programs Manager ~~Administrator~~, and one copy mailed to the Chairperson of the Elected Committee of Licensed Managers.

(c) **Probationary letter.** The probationary letter will specify by reference to specific sections of the rules and regulations, the violation(s) which prompted the probation. It will clearly state the terms of the probation, including the length of the probationary period, the remedial action required and the consequences of failure to take remedial action. A statement will be included which indicates it has been read and understood by the licensed manager, followed by a space for the licensed ~~managers's~~ manager's and business consultant's signature, and the date. This acknowledgement does not imply that the licensed manager agrees with the charges, but rather, that he/she understands the terms of his/her probation. Refusal to sign does not invalidate the letter.

(d) **Probationary periods.** Probationary periods are usually 30 to 90 days, at the discretion of the BEP Programs Manager ~~Administrator~~, but may be longer or shorter as circumstances warrant. The exact period of probation will be specified in the probationary letter.

(e) **Consequences.** The business consultant may recommend to the BEP Programs Manager ~~Administrator~~ that the licensed manager be taken off probation whenever the licensed manager's performance improves to a satisfactory level. If remedial action does not result in improved performance within the time specified, the BEP Programs Manager ~~Administrator~~ may recommend that:

(1) the SLA Director transfer the licensed manager to a more suitable business enterprise;

(2) the probationary period be extended; and/or

(3) the SLA Director terminate the Managers Agreement and suspend/terminate the licensed manager's BEP license.

SUBCHAPTER 6. LICENSED MANAGERS AND BUSINESS ENTERPRISE OPERATION

PART 3. BUSINESS ENTERPRISES

612:25-6-15. Setting aside of funds

(a) Set-aside charges paid by the licensed manager will be placed in a revolving account maintained by the SLA. Set-aside charges will be re-evaluated yearly by the SLA and the Elected Committee of Licensed Managers. Adjustments will be made accordingly in the appropriate classification, with allowances for reasonable charges for improving services, fluctuation of costs, and for program expansion.

(b) Funds will be set aside only for the purpose of:

(1) maintenance and replacement of equipment;

(2) the purchase of new equipment;

(3) management services;

(4) assuring a fair minimum of return to licensed managers; or

(5) the establishment and maintenance of retirement or pension funds, health insurance contributions, or provisions for paid sick leave and vacation time.

(c) The licensed manager's set-aside charges will be on a sliding scale of 0% to not more than 12% of the net proceeds of the business enterprise during any one month. The sliding scale will be in four classifications: Class A, B, C, and D (based on prior year's performance).

(1) Class A - 12% of net proceeds, $26,000 and above.

(2) Class B - 10% of net proceeds, $15,000 to $25,999.

(3) Class C - 6% of net proceeds, $4500 to $14,999.

(4) Class D - 0% of net proceeds, $4499 and below.

(d) When a licensed manager timely submits his/her set-aside payment to the BEP by the 25th of the month, the manager's set-aside obligation will be reduced by 1% of the set-aside amount due that month. However, if the set-aside payment is received in the BEP office ten days or more after the due date, the licensed manager will be assessed a late fee in the amount of 20% of the set-aside due for that month. If the licensed manager's set aside payment is 60 days late, the licensed manager will be placed on probation until their set aside payments to the agency are current. If the licensed manager's set aside payment is more than 90 days late his/her operating agreement will be suspended or terminated by the BEP Programs Manager.

(~~d~~e) If a business enterprise should show a marked change in net proceeds, a request for reclassification may be made by the licensed manager or the SLA after 90 days. Each licensed manager will be notified of changes in set-aside charges, and the new percentage of net proceeds will be effective at the beginning of the first business month following the mailing of notice to the licensed manager. The licensed manager will start paying the higher or lower percentage of set-aside with the second report due following notification.

(~~e~~f) All new business enterprises will be placed in class C for 90 days, at which time the SLA will review the business enterprise for reclassification and notify the licensed manager of changes in set-aside charges and the new percentage of net proceeds shall be effective at the beginning of the first business month following the mailing of notice to the licensed manager.

612:25-6-18. Establishing~~Procedures to establish~~ new business enterprises

(a) **Site selection, planning, and initial stocking.** After the business consultant designs, plans and makes specifications for a business enterprise, he/she submits the plans and specifications for approval to the BEP Programs Manager ~~Administrator~~. The business consultant will assist the support services supervisor in preparing requisitions for submission to purchase new equipment and building fixtures. This applies to equipment, merchandise, electrical installation, plumbing installation, repairs, etc. The SLA will provide each business enterprise with adequate suitable equipment and initial stock as required by federal law. When stocking these business enterprises, all purchases will be made in accordance with DRS rules and state law.

(b) **Establishment of a licensed manager.** The establishment of a licensed manager will normally be by the business consultant in whose area the business enterprise is located. Before assuming the operation of any business enterprise, the licensed manager must sign an application and agreement with the SLA. The agreement provides, among other things, for the payment each month of a set-aside charge for the use of the equipment furnished by the SLA. The business consultant will remain at the business enterprise for a sufficient time to assure a smooth business operation. The licensed manager, if possible, will be available one week prior to the opening of a new facility to become familiar with the business enterprise, consult with the business consultant regarding the operation, and assist in purchasing the initial stock of merchandise. Every effort will be made to provide customers of operating business enterprises with uninterrupted service during the change of licensed managers. If the business enterprise is closed for inventory, prior arrangements must be made with grantor.

(c) **Installation process.** The business consultant will complete a change over sheet for each installation completed. The business consultant will insure that all address, phone numbers and other related information are correct. The business consultant will assist licensed manager in filling out any insurance or retirement enrollment or change cards as necessary. The licensed manager is given a copy of the permit/contract. The licensed manager is given a supply of the forms required by the SLA relative to the business enterprise operation. The business consultant will verify that workers' compensation, general and product liability insurance on the business enterprises are in effect. The business enterprise will not be opened by the new licensed manager until this can be verified.

(d) **Managers agreement.** When all of the requirements in (a) through (c) of this Section have been met, the licensed manager must sign a licensed managers agreement before assuming the operation of any business enterprise. Before signing, the licensed manager will read or have read to him/her by the business consultant the licensed managers agreement.

(e) **Merchandise inventory.** The licensed manager will be advised of the two optional methods of initially stocking the facility. An accurate merchandise inventory is completed, then signed by both the incoming and outgoing licensed managers, accepting the count of merchandise. The outgoing licensed manager, incoming licensed manager or designee, and a representative from the SLA must be present when merchandise is counted. The SLA has the option to purchase the licensed manager's stock at wholesale cost to be fixed by two persons, agreed upon by the licensed manager and a representative of the SLA.

(f) **Equipment inventory.** An equipment inventory is completed and the incoming licensed manager signs the inventory sheet and assumes responsibility for the equipment.

(g) **Merchandise inventory procedures.** The merchandise inventory shall be conducted by the business consultant with the assistance of the outgoing and incoming licensed managers. Any additional assistance will require approval from the BEP Programs Manager ~~Administrator~~. If the facility is to be closed for the inventory, sufficient and proper notice (one week minimum) will be given to the customers and grantor. Items that are not to be included on inventory are deposits and personal equipment. Arrangements will need to be made between the outgoing and incoming licensed managers for these items. Receipts should be collected that day for pricing purposes. They should be returned to the outgoing licensed manager at the conclusion of the pricing phase.

(h) **Extending the inventory.** The extended inventory will be forward to the BEP Programs Manager ~~Administrator~~ within 10 working days of the date of the merchandise inventory. If more time is needed, a written request must be forwarded to the BEP Administrator explaining the circumstances for the delay and asking for an extension. The inventory will be extended to four (4) decimal places rounded to two (2). The inventory extension should be check at least 3

times for accuracy. If errors continue to occur, keep checking it until there are no more errors.

PART 5. THE ELECTED COMMITTEE OF LICENSED MANAGERS

612:25-6-33. Organization and operation of the Elected Committee of Licensed Managers

(a) **Organization.** The ECM will be organized according to the provisions set forth in (1) through (7) of this Subsection.

(1) The ECM consists of five committee members and four alternate members.

(2) Representation of all licensed managers will be obtained by area districts. The districts are formed by dividing the state into four areas starting with a point to be determined and drawing a line east and west and north and south to the state borders. The four quadrants are divided in order to have as close to an equal number of business enterprises as possible. Each quadrant will have one ECM member and one alternate.

(3) The term of office for ECM members is two years. A member of the committee will not serve more than two consecutive terms in any one office.

(4) The fifth ECM member is elected at large and will be the Chairperson of the Elected Committee of Licensed Managers.

(5) The Vice Chairperson will be elected by and from the Elected Committee of Licensed Managers.

(6) When the Chairperson is not present, the Vice Chairperson will preside at the meeting and the alternate for the Vice Chairperson will represent the area of the Vice Chairperson.

(7) Elections will be held in the northeast and northwest districts on even numbered years. Southeast district, southwest district, and the member-at-large elections will be held on odd numbered years.

(b) **Nominations and elections.** The procedures set forth in (1) through (14) of this Subsection shall be used to nominate and elect members of the committee.

(1) The ECM Chairperson of the Committee of Licensed Managers presides over the election of the Committee of Licensed Managers.

(2) The election will be conducted annually at the licensed managers training conference. The SLA presents the districts for nomination and a list of eligible voters and candidates for each district. The Chairperson will call for nominations from the floor for ECM members. Nominees must give consent to be nominated. The ECM members will receive advance written notice of the election.

(3) A licensed manager or licensed employee is eligible to be a nominated candidate and to vote for the member at large and one candidate for the ECM in the district in which his or her facility is located.

(4) The voting is by secret ballot. The ballot will contain the name of the nominees in their respective district and will be circulated and read by the SLA to each eligible voter.

(5) Eligible voters at the ECM meeting at the annual training conference, will mark their ballot or sign a written waiver if the licensed manager does not wish to vote.

(6) ECM members are elected by a majority vote of licensed managers present at the ECM meeting voting in the district in which their business enterprise is located. If a candidate does not receive a majority vote in the first election, a run-off election will be conducted. The candidate receiving the second highest number of votes will be the alternate ECM member.

(7) If no licensed manager or no licensed employee will accept the nomination for an ECM district, during the prescribed election process, the new Elected Committee of Licensed Managers will appoint an ECM member and alternate member to represent the district. If the ECM member appointed is the past ECM member and not eligible for a third term, the two-term limitation is waived for this term.

(8) If an ECM member or alternate ECM member is placed on probation for any reason, the ECM member or alternate ECM member will be suspended from participation with the Elected Committee of Licensed Managers during the period of the probation.

(9) licensed managers or licensed employees on probation are not eligible to run for any Elected Committee of Licensed Managers position.

(10) If an ECM member moves to another district, resigns from the Elected Committee of Licensed Managers, or resigns from his/her facility, the alternate ECM member will fill the ECM member's position for the remainder of the term and the Elected Committee of Licensed Managers will appoint a new alternate ECM member.

(11) The SLA is responsible for the collection and tallying of votes.

(12) Newly elected ECM members of the Committee of Licensed Managers will take office at the end of the annual training conference.

(13) The Elected Committee of Licensed Managers will appoint a new alternate ECM member for the district where there is a vacancy.

(14) If both the ECM member and the alternate ECM member resign, the Elected Committee of Licensed Managers will appoint licensed managers or licensed employees from the district to fill both vacancies.

(15) If an ECM member misses two (2) consecutive meetings, it is considered that he/she has resigned from the Elected Committee.

(c) **Operation.** The Elected Committee of Licensed Managers shall operate according to (1) through (3) of this Subsection.

(1) The Elected Committee of Licensed Managers will convene at least once each year at the licensed manager's training conference. The time and place of joint meetings scheduled by SLA staff and the Elected Committee of Licensed Managers. Requests for meetings by the ECM committee will be made in writing to the SLA for prior approval of financial assistance.

(2) The ECM members will be notified of matters within its purview that are being considered for decision. The ECM committee members will have the opportunity to initiate subjects for consideration by it and the SLA. Recommendations by the ECM members will be in writing and given serious consideration by the SLA.

(3) The SLA has the ultimate responsibility for the administration of the Business Enterprise Program. If the SLA does not adopt the views and positions of the Elected Committee of Licensed Managers it will notify the ECM Committee in writing of the decision reached or the action taken and the reasons therefore.

(4) A quorum will consist of three (3) of the members or alternates of the Elected Committee be present.

(d) **Materials.** The SLA will supply the necessary materials for the function of the Elected Committee of Licensed Managers upon written request to the SLA. The Elected Committee of Licensed Managers may elect to carry on its functions through subcommittees.

(e) **Travel Expenses.** ECM members on committee business will be reimbursed for travel expenses at the same rates and conditions as state employees.

[OAR Docket #05-856; filed 5-12-05]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 10. AD VALOREM TAX

[OAR Docket #05-998]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 2. Business Personal Property Valuation Schedules [NEW]
710:10-2-1. General provisions [NEW]
710:10-2-2. Agricultural products and related equipment [NEW]
710:10-2-3. Business related equipment [NEW]
710:10-2-4. Industrial related equipment [NEW]
710:10-2-5. Petroleum related equipment [NEW]
710:10-2-6. Other equipment [NEW]
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SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rules describe the sources utilized in the "Schedules of Values" provided annually to aid county assessors throughout the state in the assessment of business personal property values.
CONTACT PERSON:
Carolyn Swifthurst, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 2. BUSINESS PERSONAL PROPERTY VALUATION SCHEDULES

710:10-2-1. General provisions

(a) **Purpose.** The provisions of this Subchapter have been adopted, pursuant to 68 O.S.2001, § 2875(D)(4), to provide information regarding the schedules of values of personal property given to county assessors to assist in the assessment of personal property.

(b) **Schedules of values.** Schedules of values are intended only to provide the user with an approximation of value for the personalty "typical" for the class, not an absolute value.

(c) **Schedules of trending and depreciation.** Trending schedules are used to adjust historical cost to a current estimated replacement cost new. Depreciation schedules are used to estimate normal depreciation as applied to replacement cost new to estimate current value of the asset. The factors or percentages used are taken from Marshall and Swift Valuation Service, a national valuation service contracted by the Division to provide values and schedules of trending and depreciation for real and personal property. This service is updated on a monthly basis.

(d) **Caveat.** Nothing in this Subchapter, nor any other guidelines, procedures, or rates provided to assessors by the Oklahoma Tax Commission Ad Valorem Division (**"Division"**) is intended to relieve property owners or assessing officials of their obligations by law to report, value, or assess personal property at its fair cash value. Though the schedule of values referred to in this Subchapter are typical values for business personal property, actual value of any particular asset may be affected by conditions or use.

(e) **Disclosure.** A copy of the "Business Personal Property Valuation Schedule" provided to the county assessors may be obtained upon written request to the Ad Valorem Division of the Oklahoma Tax Commission, 2501 N. Lincoln, Oklahoma City, OK 73194.

(f) **Surveys.** Individuals and organizations who wish to participate in surveys conducted by the Ad Valorem Division may

notify the Division in writing at 2501 N. Lincoln, Oklahoma City, OK, 73194 or by email at: cheath@oktax.state.ok.us

710:10-2-2. Agricultural products and related equipment

(a) **Agricultural products.** The term **"agricultural products"** includes, but is not limited to: wheat, milo, peanuts, alfalfa hay, grass hay, corn, soybeans, native pecans, improved pecans, grains, and cotton.

(b) **Source.** The source for values of agricultural products is determined by reference to the current average Oklahoma market prices, as of May of each year, provided by the Oklahoma Department of Agriculture.

(c) **Livestock.** The term **"livestock"** includes, but is not limited to: horses, cattle, commercial pigs, commercial chickens, commercial turkeys, table eggs, and other livestock.

(d) **Source.** The source for values of livestock is determined by reference to the current average Oklahoma market prices, as of May of each year, provided by the Oklahoma Department of Agriculture.

(e) **Agricultural related equipment.** The term **"agricultural related equipment"** includes, but is not limited to: balers, combines, cotton pickers and strippers, forage harvesters, mower conditioners, sweepers and brooms, tractors, and windrowers.

(f) **Source.** The source for values of agricultural related equipment is the Interactive Realtime Online Network (IRONS), Farm Equipment Guide for the Southwest Region. The guide uses data collected from new equipment manufacturers and dealers, used equipment dealers, and auctioneers in the southwest region, and is updated annually.

(g) **Specialized agricultural industries.** The Oklahoma State University Department of Agricultural Economics provides reviews of selected types of values for specialized agricultural industries. This is completed on an "as needed" basis.

710:10-2-3. Business related equipment

(a) **Business related equipment. "Business related equipment"** includes, but is not limited to: computers, computer components, copiers, facsimile machines, office equipment, office furniture, office machines, printers, including peripherals, safes, and typewriters.

(b) **Sources.** Sources of values for business related equipment are:

(1) For computers, computer components, office furniture, office machines, safes, and typewriters values are determined from average Oklahoma retail market prices ascertained by data collected annually from local retail merchants' published catalogs and advertisements, such as, but not limited to, those published by Dell, Hewlett-Packard, Gateway, Office Depot, and Office Max.

(2) For copiers, facsimiles, and printers, values are determined by reference to Buyers Laboratory Multi-functional Specification Guide, which contains all specification data for each type, model, and brand of equipment. Values are listed as average base new retail price without optional equipment. These guides are updated once each year for each type of electronic equipment.

710:10-2-4. Industrial related equipment

(a) **Industrial related equipment. "Industrial related equipment"** includes, but is not limited to: air equipment, asphalt distributors and finishers, compaction equipment, cranes, crawlers, loaders, crushing equipment, ditchers (trenchers), excavators (hydraulic and mechanical), forestry equipment, generator sets, motor graders, motor scrapers, pavement millers, pumps, reclaimers/stabilizers, skid steer loaders, sweepers/brooms, tractor (backhoes), tractor (crawlers), tractor (wheel), and wheel loaders.

(b) **Sources.** The sources utilized for valuation of industrial related equipment is the Green Guide, The Hand Book of New and Used Equipment.The Green Guide, published by **Equipment Watch, Primedia Business Directories**, is a listing of construction and industrial equipment based on equipment dealers' average retail price of new equipment and average sale price of used equipment. This guide is contracted yearly with quarterly updates for the various equipment.

710:10-2-5. Petroleum related equipment

(a) **Petroleum related equipment. "Petroleum related equipment"** includes, but is not limited to: cable tool rigs, casing and tubing, crude oil, drill pipe, drilling rigs, gas compressors, meters, natural gas, pipeline costs, tanks, and valves.

(b) **Sources.** Sources utilized to determine the values of petroleum related equipment are:

(1) For cable tool rigs, values are determined by reference to catalogs of equipment manufacturers and dealers.

(2) For casing, tubing, and drill pipe, the source for values utilized is Hadco International, an appraisal and data firm specializing in the petroleum industry which measures current market conditions and values of various assets. This is a monthly publication.

(3) For crude oil, values are determined from the Oklahoma market twelve-month average.

(4) For valves and tanks, values utilized are taken from Marshall and Swift Valuation Service, a national valuation service contracted by the Division to provide tables of values for real and personal property, depreciation schedules, and trending tables for historical costs. The service is updated on a monthly basis.

(5) For natural gas in storage, value is determined by reference to the New York Mercantile Exchange (NYMEX), which provides average cost of natural gas purchased from the storage facility, including data on well head gas purchase price, pipeline transportation, and storage fees.

(6) For gas compressors, meters, pipeline costs, and related equipment, values are determined from surveys of Oklahoma companies, research of records filed in the various counties, and other available sources. Such values may be adjusted using Marshall and Swift Valuation Service tables as provided in OAC 710:10-2-1(c).

710:10-2-6. Other equipment

(a) **Miscellaneous equipment. "Miscellaneous equipment"** means, but is not limited to, coin changers, food merchandisers, game machines, golf cars, industrial motors, organs, phonographs, pianos, and vending machines.

(b) **Sources.** The Division utilizes a national valuation service to provide tables of values for personal property, depreciation schedules, and trending tables for historical cost of the various industries. The current service prescribed by the Division is the Marshall and Swift Valuation Service. This service is contracted yearly and updated on a monthly basis.

[OAR Docket #05-998; filed 5-26-05]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 70. TOBACCO, TOBACCO PRODUCTS, AND CIGARETTES

[OAR Docket #05-995]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 2. Cigarette Stamp Tax
Part 1. General Provisions [NEW]
710:70-2-5. Filing requirements for persons making "delivery sales of cigarettes" [RENUMBERED to 710:70-2-50]
710:70-2-6. Requirements placed on vendors making delivery sales of cigarettes [RENUMBERED to 710:70-2-51]
710:70-2-7. Payment of taxes due on delivery sales of cigarettes [RENUMBERED to 710:70-2-52]
710:70-2-9. Cigarette stamp tax rates [NEW]
710:70-2-10. Discount on cigarette tax stamps purchased [NEW]
Part 3. Delivery Sales [NEW]
710:70-2-50. Filing requirements for persons making "delivery sales of cigarettes" [NEW]
710:70-2-51. Requirements placed on vendors making delivery sales of cigarettes [NEW]
710:70-2-52. Payment of taxes due on delivery sales of cigarettes [NEW]
Subchapter 5. Excise on Tobacco Products
710:70-5-12. Oklahoma tobacco products tax rates [NEW]
Subchapter 7. Cigarette and Tobacco Products Sales by Federally-recognized Indian Tribes and Nations
710:70-7-2. Definitions [NEW]
710:70-7-8. Cigarette stamp tax rates for sales by federally-recognized Indian tribes and nations [NEW]
710:70-7-9. Tobacco products tax rates for sales by federally-recognized Indian tribes and nations [NEW]
Subchapter 9. Reporting Required by the Prevention of Youth Access to Tobacco Act and the Master Settlement Agreement Complementary Act [AMENDED]
710:70-9-1. Purpose [AMENDED]
710:70-9-4. Quarterly escrow installments required from certain nonparticipating manufacturers pursuant to the Master Settlement Agreement Complementary Act [NEW]
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710:70-2-10. Discount on cigarette tax stamps purchased [NEW]
Subchapter 5. Excise on Tobacco Products
710:70-5-12. Oklahoma tobacco products tax rates [NEW]
Subchapter 7. Cigarette and Tobacco Products Sales by Federally-recognized Indian Tribes and Nations
710:70-7-2. Definitions [NEW]
710:70-7-8. Cigarette stamp tax rates for sales by federally-recognized Indian tribes and nations [NEW]
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These proposed new rules implement and administer certain provisions of House Bill 2660 §, of which was approved by a vote of the people (State Question 713) on November 2, 2004. Sections 2 through 11 of the Bill altered the manner in which cigarettes and tobacco products will be taxed in Oklahoma, removing these items from the purview of the Sales Tax Code and levying a new tax under Articles 3 and 4 of Title 68. [68:302.5; 346; 402.3]

The new rules set out the appropriate rates for both non-tribal and for tribal sales under the new law, setting out the various permutations allowed by the compacts and the new statutory provisions. Additionally, the new discount rate for timely reporting and paying the cigarette tax is described. The discount rate applicable for tobacco and tobacco products remains unchanged.

Additionally, the new rules implement Section 360.8(E) of the Master Settlement Agreement Complementary Act, 68 O.S.Supp.2004, §§ 360.1 - 360.8. The Complementary Act mandates that rules be promulgated to implement, upon request by the Attorney General, a quarterly payment procedure for escrow payments required from nonparticipating manufacturers by the Tobacco Master Settlement Agreement. [68 O.S.Supp.2004, § 360.6(E)] Nonparticipating tobacco manufacturers selling products within Oklahoma, either directly or through intermediaries, incur a duty to pay certain monies into an escrow fund to guarantee a source of compensation for any future liability established. The proposed rule defines the circumstances and procedures under which those nonparticipating manufacturers may be required to make those escrow payments in quarterly installments.

CONTACT PERSON:
Carolyn Swifthurst, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 2. CIGARETTE STAMP TAX

PART 1. GENERAL PROVISIONS

710:70-2-5. Filing requirements for persons making "delivery sales of cigarettes" [RENUMBERED TO 710:70-2-50]

~~(a) **General.** Before delivering any cigarettes to purchasers, every person making delivery sales into Oklahoma, or mailing, shipping, or otherwise delivering cigarettes in connection with any such sales, must provide to the Oklahoma Tax Commission a written statement containing the following information:~~

~~(1) The name of the seller;~~

~~(2) The trade name of the seller;~~

~~(3) The address of the principal place of business of the seller; and,~~

~~(4) The address of any other place of business of the seller. [68 O.S. § 317.5(A)]~~

~~(b) **Monthly report of delivery sales required.** No later than the tenth day of each calendar month, each person who has made a delivery sale, or mailed, shipped, or otherwise delivered cigarettes in connection with any such sale during the previous month, must make a memorandum report to the Oklahoma Tax Commission of the following information:~~

~~(1) The name of the purchaser;~~

~~(2) The brands of cigarettes sold; and,~~

~~(3) The quantity of cigarettes sold. [68 O.S. § 317.5(B)]~~

~~(c) **Alternative method of compliance with reporting requirement.** Any person who satisfies the requirements set out in 15 U.S.C. § 376 shall be deemed to have met the reporting requirements set out in (b) of this Section. [68 O.S. § 317.5(C)]~~

710:70-2-6. Requirements placed on vendors making delivery sales of cigarettes [RENUMBERED TO 710:70-2-51]

~~(a) *No person shall mail, ship or otherwise deliver cigarettes in connection with a delivery sale unless, prior to the first delivery sale to such consumer, the person:*~~

~~(1) *Obtains from the prospective customer a certification which includes:*~~

~~(A) *Reliable confirmation that the purchaser is at least the legal minimum purchase age; and,*~~

~~(B) *A statement signed by the prospective purchaser, in writing and under penalty of perjury, which:*~~

~~(i) *Certifies the prospective purchaser's address and date of birth; and,*~~

~~(ii) *Confirms that the prospective purchaser understands:*~~

~~(I) *That signing another person's name to such certification is illegal;*~~

~~(II) *That sales of cigarettes to individuals under the legal minimum purchase age are illegal;*~~

~~(III) *That the purchase of cigarettes by individuals under the legal minimum purchase age is illegal under the laws of Oklahoma; and,*~~

~~(IV) *That the prospective consumer wants to receive mailings from a tobacco company;*~~

~~(2) *Makes a good faith effort to verify the information contained in the certification provided by the prospective purchaser pursuant to (a)(1) of this Section against a commercially available database or obtains a photocopy or other image of the valid, government-issued identification, stating the date of birth or age of the individual placing the order;*~~

~~(3) *Provides to the prospective purchaser, via e-mail or other means, a notice which meets the requirements of (c) of this Section and requests confirmation that the delivery sale order was placed by the prospective purchaser; and,*~~

~~(4) *In the case of an order for cigarettes pursuant to an advertisement on the Internet, receives payment for the delivery sale from the prospective purchaser by a credit or debit card that has been issued in such purchaser's name or by check.*~~

~~(b) *Persons taking delivery sale orders may request that prospective purchasers provide their e-mail addresses.* [68 O.S. § 317.2]~~

~~(c) *The notice required under (a)(3) of this Section shall include:*~~

~~(1) *A prominent and clearly legible statement that cigarette sales to individuals below the legal minimum purchase age are illegal;*~~

~~(2) *A prominent and clearly legible statement that consists of one of the warnings set forth in Section 4(a)(1) of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1333(a)(1), rotated on a quarterly basis;*~~

~~(3) *A prominent and clearly legible statement that sales of cigarettes are restricted to those individuals who provide verifiable proof of age in accordance with (a)(1) of this Section; and,*~~

~~(4) *A prominent and clearly legible statement that cigarette sales are taxable under Section 301 et seq. of Title 68 of the Oklahoma Statutes, and an explanation of how such tax has been, or is to be, paid with respect to such delivery sale.* [68 O.S. § 317.3]~~

~~(d) *Each person who mails, ships or otherwise delivers cigarettes in connection with a delivery sale:*~~

~~(1) *Shall include as part of the shipping documents a clear and conspicuous statement providing as follows:*~~

~~"CIGARETTES: OKLAHOMA LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER THE AGE OF EIGHTEEN, AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES";~~

~~(2) Shall use a method of mailing or shipping that obligates the delivery service to require:~~

~~(A) The purchaser placing the delivery sale, or another adult of legal minimum purchase age residing at the purchaser's address, to sign to accept delivery of the shipping container; and,~~

~~(B) Proof, in the form of a valid, government issued identification bearing a photograph of the individual who signs to accept delivery of the shipping container, demonstrating that such person is either the addressee or another adult of legal minimum purchase age residing at the purchaser's address, but such proof shall be required only if that individual appears to be under twenty-seven (27) years of age; and~~

~~(3) Shall provide to the delivery service retained to deliver such delivery sale evidence of full compliance with 710:70-2-7.~~

~~(e) If the person taking a purchase order for a delivery sale delivers the cigarettes without using a delivery service, such person shall comply with all requirements of this act applicable to a delivery service and shall be in violation of this act if it fails to comply with any such requirement. [68 O.S. § 317.4]~~

710:70-2-7. Payment of taxes due on delivery sales of cigarettes [RENUMBERED TO 710:70-2-52]

~~Any person accepting a purchase order for a delivery sale of cigarettes in Oklahoma shall collect and remit all taxes due on the cigarettes sold, except that cigarette excise tax need not be collected and remitted if proof has been obtained that the cigarette packages sold already bear the correct Oklahoma Cigarette Excise Tax Stamps, showing that the correct tax has previously been paid. [68 O.S. § 317.6]~~

710:70-2-9. Cigarette stamp tax rates

(a) **Designation of rates.** Tax rates set out in this Section are for packages of twenty (20) cigarettes. Rates for packages of twenty-five (25) cigarettes are One Hundred Twenty-five percent (125%) greater than the rates for the twenty-unit packages.

(b) **Inventories in stock.** The rates set out in this Section shall only be applicable to inventories of cigarettes acquired on or after January 1, 2005.

(c) **Rates effective January 1, 2005, applicable to non-tribal sales.** The non-tribal rate is $1.03 per pack and is applicable to all non-tribal sales.

710:70-2-10. Discount on cigarette tax stamps purchased

(a) **Allowable discount.** Every person purchasing cigarette or tobacco tax stamps from the Oklahoma Tax Commission may do so at a reduction of one and one-half cents ($0.015) per stamp. The discount herein provided shall be the only discount allowed to purchasers from the Tax Commission.

(b) **Exceptions and limitations.** The discount described in this Section shall not be applicable or available:

(1) On purchases of less than One Hundred Dollars ($100.00) at any one time;

(2) To out-of-state purchasers who reside in states that do not give discounts on cigarette stamps purchased by State of Oklahoma cigarette dealers; or,

(3) To a purchaser who refuses to comply with the laws of the State of Oklahoma. [**See:** 68 O.S.Supp.2004, § 311]

PART 3. DELIVERY SALES

710:70-2-50. Filing requirements for persons making "delivery sales of cigarettes"

(a) **General.** Before delivering any cigarettes to purchasers, every person making delivery sales into Oklahoma, or mailing, shipping, or otherwise delivering cigarettes in connection with any such sales, must provide to the Oklahoma Tax Commission a written statement containing the following information:

(1) The name of the seller;

(2) The trade name of the seller;

(3) The address of the principal place of business of the seller; and,

(4) The address of any other place of business of the seller. [68 O.S. § 317.5(A)]

(b) **Monthly report of delivery sales required.** No later than the tenth day of each calendar month, each person who has made a delivery sale, or mailed, shipped, or otherwise delivered cigarettes in connection with any such sale during the previous month, must make a memorandum report to the Oklahoma Tax Commission of the following information:

(1) The name of the purchaser;

(2) The brands of cigarettes sold; and,

(3) The quantity of cigarettes sold. [68 O.S. § 317.5(B)]

(c) **Alternative method of compliance with reporting requirement.** Any person who satisfies the requirements set out in 15 U.S.C. § 376 shall be deemed to have met the reporting requirements set out in (b) of this Section. [68 O.S. § 317.5(C)]

710:70-2-51. Requirements placed on vendors making delivery sales of cigarettes

(a) *No person shall mail, ship or otherwise deliver cigarettes in connection with a delivery sale unless, prior to the first delivery sale to such consumer, the person:*

(1) *Obtains from the prospective customer a certification which includes:*

(A) *Reliable confirmation that the purchaser is at least the legal minimum purchase age; and,*

(B) *A statement signed by the prospective purchaser, in writing and under penalty of perjury, which:*

(i) *Certifies the prospective purchaser's address and date of birth; and,*

(ii) *Confirms that the prospective purchaser understands:*

(I) *That signing another person's name to such certification is illegal;*

(II) *That sales of cigarettes to individuals under the legal minimum purchase age are illegal;*

(III) *That the purchase of cigarettes by individuals under the legal minimum purchase age is illegal under the laws of Oklahoma; and,*

(IV) *That the prospective consumer wants to receive mailings from a tobacco company;*

(2) *Makes a good-faith effort to verify the information contained in the certification provided by the prospective purchaser pursuant to (a)(1) of this Section against a commercially available database or obtains a photocopy or other image of the valid, government-issued identification, stating the date of birth or age of the individual placing the order;*

(3) *Provides to the prospective purchaser, via e-mail or other means, a notice which meets the requirements of (c) of this Section and requests confirmation that the delivery sale order was placed by the prospective purchaser; and,*

(4) *In the case of an order for cigarettes pursuant to an advertisement on the Internet, receives payment for the delivery sale from the prospective purchaser by a credit or debit card that has been issued in such purchaser's name or by check.*

(b) *Persons taking delivery sale orders may request that prospective purchasers provide their e-mail addresses.* [68 O.S. § 317.2]

(c) *The notice required under (a)(3) of this Section shall include:*

(1) *A prominent and clearly legible statement that cigarette sales to individuals below the legal minimum purchase age are illegal;*

(2) *A prominent and clearly legible statement that consists of one of the warnings set forth in Section 4(a)(1) of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1333(a)(1), rotated on a quarterly basis;*

(3) *A prominent and clearly legible statement that sales of cigarettes are restricted to those individuals who provide verifiable proof of age in accordance with (a)(1) of this Section; and,*

(4) *A prominent and clearly legible statement that cigarette sales are taxable under Section 301 et seq. of Title 68 of the Oklahoma Statutes, and an explanation of how such tax has been, or is to be, paid with respect to such delivery sale.* [68 O.S. § 317.3]

(d) *Each person who mails, ships or otherwise delivers cigarettes in connection with a delivery sale:*

(1) *Shall include as part of the shipping documents a clear and conspicuous statement providing as follows: "CIGARETTES: OKLAHOMA LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER THE AGE OF EIGHTEEN, AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES";*

(2) *Shall use a method of mailing or shipping that obligates the delivery service to require:*

(A) *The purchaser placing the delivery sale, or another adult of legal minimum purchase age residing at the purchaser's address, to sign to accept delivery of the shipping container; and,*

(B) *Proof, in the form of a valid, government-issued identification bearing a photograph of the individual who signs to accept delivery of the shipping container, demonstrating that such person is either the addressee or another adult of legal minimum purchase age residing at the purchaser's address, but such proof shall be required only if that individual appears to be under twenty-seven (27) years of age; and*

(3) *Shall provide to the delivery service retained to deliver such delivery sale evidence of full compliance with 710:70-2-7.*

(e) *If the person taking a purchase order for a delivery sale delivers the cigarettes without using a delivery service, such person shall comply with all requirements of this act applicable to a delivery service and shall be in violation of this act if it fails to comply with any such requirement.* [68 O.S. § 317.4]

710:70-2-52. Payment of taxes due on delivery sales of cigarettes

Any person accepting a purchase order for a delivery sale of cigarettes in Oklahoma shall collect and remit all taxes due on the cigarettes sold, except that cigarette excise tax need not be collected and remitted if proof has been obtained that the cigarette packages sold already bear the correct Oklahoma Cigarette Excise Tax Stamps, showing that the correct tax has previously been paid. [68 O.S. § 317.6]

SUBCHAPTER 5. EXCISE ON TOBACCO PRODUCTS

710:70-5-12. Oklahoma tobacco products tax rates

(a) **Inventories in stock.** The rates set out in this Section shall only be applicable to inventories acquired on or after January 1, 2005.

(b) **Rates effective January 1, 2005, applicable to non-tribal sales.** The non-tribal rates are:

(1) For little (Class A) cigars: $0.036 each.

(2) For Class B cigars: $0.11 each.

(3) For all other (Class C) cigars: $0.12 each.

(4) For smoking tobacco: Eighty percent (80%) of the Factory List Price.

(5) For chewing tobacco: Sixty percent (60%) of the Factory List Price.

SUBCHAPTER 7. CIGARETTE AND TOBACCO PRODUCTS SALES BY FEDERALLY-RECOGNIZED INDIAN TRIBES AND NATIONS

710:70-7-2. Definitions

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

"Indian country" means:

(A) *Land held in trust by the United States of America for the benefit of a federally recognized Indian tribe or nation;*

(B) *All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, including rights-of-way running through the reservation;*

(C) *All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and,*

(D) *All Indian allotments, the Indian titles to which have not been extinguished, including individual allotments held in trust by the United States or allotments owned in fee by individual Indians subject to federal law restrictions regarding disposition of said allotments and including rights-of-way running through the same.* [68 O.S. § 348(3)]

710:70-7-8. Cigarette stamp tax rates for sales by federally-recognized Indian tribes and nations

(a) **Designation of rates.** Tax rates set out in this Section are for packages of twenty (20) cigarettes. Rates for packages of twenty-five (25) cigarettes are One Hundred Twenty-five percent (125%) greater than the rates for the twenty-unit packages.

(b) **Rates effective January 1, 2005, applicable to sales on Indian country by federally-recognized Indian tribes or nations, or their licensees.** Rates applicable to sales of cigarettes made on Indian country by federally-recognized Indian tribes or nations, or their licensees are:

(1) **Non-compact rate.** The non-compact rate is 77.25 cents per pack. This rate is applicable to sales made by tribes or their licensees who have **not** entered into a compact with the State of Oklahoma.

(2) **Original compact rate.** The original compact rate is 25.75 cents per pack. This rate applies to sales made by tribes or their licensees with an existing compact with the State of Oklahoma in which the tax rate is specified as twenty-five percent (25%) of the rate applied to non-tribal sales.

(3) **New compact rate.** The new compact rate is 85.75 cents per pack. The terms **"new compact"** and **"new compact rate"** apply to compacts signed after January 1, 2003, which contain the provision that the rate will increase by an amount equal to any tax increase that becomes effective on or after January 1, 2004, and to sales made thereunder, unless the terms of subsection (b)(6) apply by specific compact provision.

(4) **Arkansas border rate.** The Arkansas border rate is 30.75 cents per pack. This rate applies to tribes' or licensees' locations close to the Arkansas border, as designated by the terms of their "new" compacts.

(5) **Kansas border rate.** The Kansas border rate is 60.75 cents per pack. This rate applies to tribes' or licensees' locations close to the Kansas border, as designated by the terms of their "new" compacts.

(6) **Exception rate.** The "exception" rate is 5.75 cents per pack. This rate applies to sales made by tribes or their licensees under compacts, the terms of which are not applicable to the circumstances set out in (b)(1) through (b)(5) of this Section.

710:70-7-9. Tobacco products tax rates for sales by federally-recognized Indian tribes and nations

(a) **Non-compact rate.** Non-compact rates apply to sales made by tribes or their licensees who have **not** entered into a compact with the State of Oklahoma:

(1) For little (Class A) cigars: $0.027 each.

(2) For all other (Class C) cigars: $0.09 each.

(3) For smoking tobacco: Sixty percent (60%) of the Factory List Price.

(4) For chewing tobacco: Forty-five percent (45%) of the Factory List Price.

(b) **Original compact rate.** The original compact rate applies to sales made by tribes or their licensees with an existing compact with the State of Oklahoma in which the tax rate is specified as twenty-five percent (25%) of the rate applied to non-tribal sales.

(1) For little (Class A) cigars: $0.009 each.

(2) For all other (Class C) cigars: $0.03 each.

(3) For smoking tobacco: Twenty percent (20%) of the Factory List Price.

(4) For chewing tobacco: Fifteen percent (15%) of the Factory List Price.

(c) **New compact rate.** The terms **"new compact"** and **"new compact rate"** apply to compacts signed after January 1, 2003, which contain the provision that the rate will increase by an amount equal to any tax increase that becomes effective on or after January 1, 2004, and to sales made thereunder, unless the terms of subsection (f) apply by specific compact provision:

(1) For little (Class A) cigars $0.02925 each.

(2) For all other (Class C) cigars: $0.0975 each.

(3) For smoking tobacco: Fifty percent (50%) of the Factory List Price.

(4) For chewing tobacco: Thirty-seven and one-half percent (37.5%) of the Factory List Price.

(d) **Arkansas border rate.** The Arkansas border rates apply to tribes' or licensees' locations that are close to the Arkansas border, as designated by the terms of their "new" compacts":

(1) For little (Class A) cigars $0.01225 each.

(2) For all other (Class C) cigars: $0.0375 each.

(3) For smoking tobacco: Seventeen percent (17%) of the Factory List Price.

(4) For chewing tobacco: Fourteen and one-half percent (14.5%) of the Factory List Price.

(e) **Kansas border rate.** The Kansas border rates apply to tribes' or licensees' locations that are close to the Kansas border, as designated by the terms of their "new" compacts:

(1) For little (Class A) cigars: $0.00225 each.

(2) For all other (Class C) cigars: $0.0075 each.

(3) For smoking tobacco: Ten percent (10%) of the Factory List Price.

(4) For chewing tobacco: Seven and one-half percent (7.5%) of the Factory List Price.

(f) **Exception rate.** The "exception" rates apply to sales made by tribes or their licensees under compacts, the terms of which are not applicable to the circumstances set out in (a) through (e) of this Section.

(1) For little (Class A) cigars: $0.00225 each.

(2) For all other (Class C) cigars: $0.0075 each.

(3) For smoking tobacco: Ten percent (10%) of the Factory List Price.

(4) For chewing tobacco: Seven and one-half percent (7.5%) of the Factory List Price.

SUBCHAPTER 9. REPORTING REQUIRED BY THE PREVENTION OF YOUTH ACCESS TO TOBACCO ACT AND THE MASTER SETTLEMENT AGREEMENT COMPLEMENTARY ACT

710:70-9-1. Purpose

The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§250.1 et seq. and to facilitate the determination, compilation, and reporting of certain information required by Sections 600.21 through 600.23 of the Prevention of Youth Access to Tobacco Act (37 O.S.Supp.1999, §600.1 et seq.) Further, the provisions are intended to implement, administer, and interpret "The Master Settlement Agreement Complementary Act (68 O.S.Supp.2004, §§ 360.1 through 360.8).

710:70-9-4. Quarterly escrow installments required from certain nonparticipating manufacturers pursuant to the Master Settlement Agreement Complementary Act

(a) **Quarterly escrow payments for certain nonparticipating manufacturers required.** The Oklahoma Tax Commission shall require a tobacco product manufacturer subject to the escrow requirements of 37 O.S. § 600.23, to make quarterly installments during the year in which the sales covered by the deposits are made when the Attorney General notifies the Tax Commission that:

(1) A nonparticipating manufacturer has not previously established and funded a qualified escrow fund in Oklahoma; or,

(2) A nonparticipating manufacturer has not made any escrow deposits for more than one year; or,

(3) A nonparticipating manufacturer has failed to pay any judgment awarded to the state, including any civil penalty; or,

(4) A nonparticipating manufacturer sells more than 2,000,000 sticks or 180,000 ounces of roll-your-own product during a quarter.

(b) **Quarterly escrow payments for all nonparticipating manufacturers may be required.** All nonparticipating manufacturers shall be required to make quarterly payments if, thirty (30) days prior to the beginning of any quarter, the Attorney General serves a written request upon the Tax Commission, requesting that quarterly payments be required. Such quarterly payments under this subsection shall be required for every quarter after such notice until such time as the Attorney General notifies the Tax Commission that quarterly payments, in his judgment, are no longer necessary to provide compliance with the escrow requirements of a nonparticipating manufacturer.

(c) **Deadlines.** Nonparticipating manufacturers required to make quarterly payments must do so as follows:

(1) Payments for sales occurring in the first quarter, January 1 through March 31, are due April 30 of the same year. The Attorney General's office must receive official notification of the payments no later than May 15 of the same year.

(2) Payments for sales occurring in the second quarter, April 1 through June 30, are due July 31 of the same year. The Attorney General's office must receive official notification of the payments no later than August 15 of the same year.

(3) Payments for sales occurring in the third quarter, July 1 through September 30, are due October 31 of the same year. The Attorney General's office must receive official notification of the payments no later than November 15 of the same year.

(4) Payments for sales occurring in the fourth quarter, October 1 through December 31, are due January 31 of the next year. The Attorney General's office must receive official notification of the payments no later than February 15 of the next year.

(d) **Penalties.** The nonparticipating manufacturer and its brands may be removed from the Oklahoma Directory of Certified Tobacco Manufacturers and Brands by the Attorney General if:

(1) Required quarterly escrow payments are not timely made in full; or,

(2) An outstanding final judgment, and interest thereon, for a violation of 37 O.S. §§ 600.21 through 600.23 has not been fully satisfied; or,

(3) The Attorney General is not timely notified that the quarterly escrow payments have been made in full; or,

(4) The Attorney General determines that the nonparticipating manufacturer has otherwise failed to comply

with any requirement of the Master Settlement Agreement Complementary Act.

[OAR Docket #05-995; filed 5-25-05

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 85. VARIOUS TAX INCENTIVES

[OAR Docket #05-996]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Oklahoma Quality Jobs Program
710:85-1-3. Procedure upon qualification; reporting [AMENDED]
710:85-1-6. Qualified establishments are employers [AMENDED]
710:85-1-8. Procedure for filing claim, verification, payment, protest [AMENDED]
710:85-1-10. Limitation on incentive payments [AMENDED]
710:85-1-12. Cessation, suspension, resumption of incentive payments [AMENDED]
710:85-1-13. Qualified establishment may protest suspension of incentive payments [AMENDED]
Subchapter 3. Saving Quality Jobs Program
Part 3. Premium Payment Program
710:85-3-30. Procedure upon qualification; reporting [AMENDED]
710:85-3-32. Qualified establishments are employers [AMENDED]
710:85-3-34. Procedure for filing claim, verification, payment, protest [AMENDED]
Part 5. High Impact Projects
710:85-3-57. Qualified establishment may protest suspension of payments [AMENDED]
Subchapter 5. Small Employer Quality Jobs Program
710:85-5-3. Procedure upon qualification; reporting [AMENDED]
710:85-5-6. Qualified establishments are employers [AMENDED]
710:85-5-7. Transfers to Small Employer Quality Jobs Incentive Payment Fund [AMENDED]
710:85-5-8. Procedure for filing report, review, determination [AMENDED]
710:85-5-10. Payment of claim [AMENDED]
710:85-5-11. Procedure when claim cannot be verified, is revised, or is denied [AMENDED]
710:85-5-13. Limitation on incentive payments [AMENDED]
710:85-5-15. Denial, cessation, and resumption of incentive payments [AMENDED]
Subchapter 7. Oklahoma Film Enhancement Rebate Program
710:85-7-2. Definitions [AMENDED]
710:85-7-3. Procedure upon qualification; payment [AMENDED]
Subchapter 9. Oklahoma Quality Investment Act [NEW]
710:85-9-1. Purpose [NEW]
710:85-9-2. Definitions [NEW]
710:85-9-3. Transfers to Quality Investment Payment Fund [NEW]
710:85-9-4. Procedure for filing claim, review determination [NEW]
710:85-9-5. Disclosure of information [NEW]
710:85-9-6. Limitation on incentive payments [NEW]
710:85-9-7. Incentive payments unavailable to delinquent tax reporters/remitters [NEW]
710:85-9-8. Cessation of incentive payments [NEW]
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Sections 710:85-1-10, 710:85-1-12, 710:85-5-7, 710:85-5-8, 710:85-5-10, 710:85-5-13, and 710:85-5-15 have been amended to conform to recent statutory changes. Further detail is included.
Sections 710:85-1-8, 710:85-1-13, 710:85-3-34, 710:85-3-57, and 710:85-5-11 have been amended to conform to **Laws 2002, c. 458, §1 [68:221(C)]**, wherein the time within which to appeal an agency action was increased from 30 days to 60 days. Further detail is included.
New Subchapter 9. Oklahoma Quality Investment Act, Sections 710:85-9-1 through 710:85-9-8 was adopted to implement the provisions of **Laws 2004, c. 391[68:4101 through 4109].** Further detail is included.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 1. OKLAHOMA QUALITY JOBS PROGRAM

710:85-1-3. Procedure upon qualification; reporting

(a) **Procedures upon initial qualification.** Upon receipt of each approved incentive offer and notification of the start date from the Oklahoma Department of Commerce, the Commission will establish a withholding tax account. Such account shall be utilized by the qualified establishment to report the actual number and gross payroll of new direct jobs for the qualified establishment.

(b) **Reports required.** The reports, on forms prescribed by the Commission, shall be filed in the same manner as returns for withholding, reporting and remitting Oklahoma Income Taxes. A return shall be filed for each period following notification by the Commission, even if the qualified establishment has no new direct jobs and gross payroll for the period. [**See:** 68 O.S. §2385.1 et seq., OAC 710:90-1-1 through ~~710:90-7-3~~ 710:90-7-2]

710:85-1-6. Qualified establishments are employers

Qualified establishments are employers for purposes of Oklahoma Income Tax Withholding taxes. [**See:** 68 O.S. §2385.1 et seq. and 710:90-1-1 through~~ 710:90-7-3~~ 710:90-7-2]

710:85-1-8. Procedure for filing claim, verification, payment, protest

(a) **Contents of claim.** As soon as practicable after the end of a calendar quarter, the qualified establishment shall file a claim for gross payroll paid the previous quarter. The claim, on forms prescribed by the Commission, shall include:

(1) Name of qualified establishment;

(2) Identification number of qualified establishment;

(3) Period for which claim is filed;

(4) Actual number of new direct jobs during period of claim;

(5) Gross payroll of new direct jobs during period of claim;

(6) Net benefit rate; and

(7) Amount claimed for period.

(b) **Amount of claim not to include penalty, interest paid.** The amount claimed shall not include any portion of penalty and/or interest paid by the qualified establishment because of delinquent filing and/or payment of withholding tax. [**See:** 68 O.S. §2385.6]

(c) **Verification of claim.** The Commission shall verify the actual gross payroll utilizing information available to the Commission. All participating companies are required to retain documentation to verify the quality jobs employees and rebate amounts claimed. Documents retained shall include all employee names, both base and new employees, social security numbers, original hire dates, individual wages drawn for each month, and copies of claim forms for the duration of the contract. These records shall be retained in both hard copy form and in an electronic format approved by the Commission for a minimum of three (3) years after the final rebate payment is received by the company. In the event the Commission is unable to verify the gross payroll, the Commission may request additional information from the qualified establishment or may request the qualified establishment revise its claim to the amount verified by the Commission.

(d) **Payment of claim.** Except as provided in 710:85-1-11, the qualified establishment whose claim has been approved shall receive a warrant in an amount not to exceed the net benefit rate multiplied by the actual gross payroll for new direct jobs for the calendar quarter for which the claim is filed.

(e) **Procedure when claim cannot be verified or is revised.** The following shall apply when a claim cannot be verified or is revised by the Commission.

(1) The qualified establishment may, within ~~thirty (30)~~ sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or a duly authorized agent setting out:

(A) a statement of the action by the Commission that is protested;

(B) a statement of the qualified establishment's disagreement with such action; and

(C) supporting documentation relied on by the qualified establishment in support of its claim.

(2) If the qualified establishment fails to file a written protest within the ~~thirty (30)~~ sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.

(3) A protest to the action of the Commission filed by a qualified establishment shall be governed by 710:1-5-21 through 710:1-5-48.

710:85-1-10. Limitation on incentive payments

(a) **Ten year limitation from initial claim.** No claim for an incentive payment shall be honored if made for a period later than ten (10) years after the quarter for which the qualified establishment's first claim was made.

(b) **Ceiling for total payments limited to "estimated net direct state benefits."** No claim for an incentive payment shall be honored if payment and other incentive payments made to the qualified establishment exceeds the "estimated net direct state benefits" established by the Oklahoma Department of Commerce except for establishments subject to 68 O.S. § 3603(A)(6)(d).

710:85-1-12. Cessation, suspension, resumption of incentive payments

(a) **Cessation of incentive payments.** The Commission shall cease incentive payments if the gross payroll of the qualified establishment for one of any four (4) consecutive ~~quarter periods~~ calendar quarters does not equal or exceed ~~$2.5 million dollars during the twelve (12) quarters immediately following the quarter for which the qualified establishment receives its first incentive payment~~ the applicable total required by Section 3604 of Title 68 within three (3) years of the start date. A qualified establishment whose incentive payments have ceased under this subsection may not receive any further incentive payments unless and until ~~the Commission receives another approved incentive offer from the Oklahoma Department of Commerce~~ actual gross payroll equals or exceeds the amount specified in Section 3604 of Title 68.

(b) **Suspension, resumption of incentive payments for certain establishments that were approved prior to June 4, 2003.** Additionally, the Commission shall suspend the incentive payments ~~at any time during the period following the three (3) years in subsection (a) of this Section and before the expiration of ten (10) years after the quarter for which the first incentive payment is made, if the gross payroll for any four (4) consecutive quarters does not equal or exceed $2.5 million dollars. The amount of gross payroll will be determined by adding the gross payroll for the most recent four (4) consecutive quarters. The Commission shall resume making incentive payments at such time as the gross payroll of the qualified establishment for the most recent four (4) consecutive quarters equals or exceeds $2.5 million dollars~~ if the average annualized wage of an establishment fails to meet the criteria required by the provisions of law under which it

initially applied and was approved within three (3) years of the first incentive payment.

710:85-1-13. Qualified establishment may protest suspension of incentive payments

The following procedures shall apply if the Commission ceases or suspends a qualified establishment's incentive payment(s):

(1) **Filing of protest.** The qualified establishment may, within ~~thirty (30)~~ sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or his duly authorized agent setting out:

(A) a statement of action as determined by the Commission;

(B) a statement of the qualified establishment's disagreement with such action; and

(C) supporting documentation relied on by the qualified establishment in support of its claim.

(2) **Result of failure to file protest.** If the qualified establishment fails to file a written protest within the ~~thirty (30)~~ sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.

(3) **Rules of procedure to govern.** A protest to the action of the Commission filed by a qualified establishment shall be governed by 710:1-5-21 through 710:1-5-48.

SUBCHAPTER 3. SAVING QUALITY JOBS PROGRAM

PART 3. PREMIUM PAYMENT PROGRAM

710:85-3-30. Procedure upon qualification; reporting

(a) **Procedures upon initial qualification.** Upon receipt of each approved application for incentive payments from the Department and notification of the start date from the qualified establishment, the Commission will establish a withholding tax account. Such account shall be utilized by the qualified establishment to report the actual number and gross payroll of new direct jobs for the qualified establishment.

(b) **Reports required.** The reports, on forms prescribed by the Commission, shall be filed in the same manner as returns for withholding, reporting and remitting Oklahoma Income Taxes. A return shall be filed for each period following notification by the Commission, even if the qualified establishment has no new direct jobs and gross payroll for the period. [**See:** 68 O.S. § 2385.1 et seq., OAC 710:90-1-1 through ~~710:90-7-3~~ 710:90-7-2]

710:85-3-32. Qualified establishments are employers

Qualified establishments are employers for purposes of Oklahoma Income Tax Withholding taxes. [**See:** 68 O.S. §2385.1 et seq. and 710:90-1-1 through ~~710:90-7-3~~ 710:90-7-2]

710:85-3-34. Procedure for filing claim, verification, payment, protest

(a) **Contents of claim.** As soon as practicable after the end of a calendar quarter, the qualified establishment shall file a claim for gross payroll paid the previous quarter. The claim, on forms prescribed by the Commission, shall include:

(1) Name of qualified establishment;

(2) Identification number of qualified establishment;

(3) Period for which claim is filed;

(4) Actual number of new direct jobs or at risk jobs during period of claim;

(5) Gross payroll of new direct jobs or at risk jobs during period of claim;

(6) Premium benefit rate; and

(7) Amount claimed for period.

(b) **Amount of claim not to include penalty, interest paid.** The amount claimed shall not include any portion of penalty and/or interest paid by the qualified establishment because of delinquent filing and/or payment of withholding tax. [**See:** 68 O.S. §2385.6]

(c) **Verification of claim.** The Commission shall verify the actual gross payroll utilizing information available to the Commission. In the event the Commission is unable to verify, the Commission may request additional information from the qualified establishment or may request the qualified establishment revise its claim to the amount verified by the Commission.

(d) **Payment of claim.** The qualified establishment whose claim has been approved will receive the amount claimed for the "Saving Quality Job" premium payment and the "Quality Job" incentive payment in one warrant. The combined premium payment and quality job payment cannot exceed five percent (5%) of the gross payroll of the establishment.

(e) **Procedure when claim cannot be verified or is revised.** The following shall apply when a claim cannot be verified or is revised by the Commission.

(1) The qualified establishment may, within ~~thirty (30)~~ sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or its duly authorized agent setting out:

(A) a statement of action as determined by the Commission;

(B) a statement of the qualified establishment's disagreement with such action; and

(C) supporting documentation relied on by the qualified establishment in support of its claim.

(2) If the qualified establishment fails to file a written protest within the ~~thirty (30)~~ sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.

(3) A protest to the action of the Commission filed by a qualified establishment shall be governed by the Rules of Practice and Procedure before the Commission set out in 710:1-5-21 through 710:1-5-48.

PART 5. HIGH IMPACT PROJECTS

710:85-3-57. Qualified establishment may protest suspension of payments

The following procedures shall apply if the Commission ceases or suspends a qualified establishment's payment(s):

(1) **Filing of protest.** The qualified establishment may, within ~~thirty (30)~~ sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or its duly authorized agent setting out:

(A) a statement of action as determined by the Commission;

(B) a statement of the qualified establishment's disagreement with such action; and

(C) supporting documentation relied on by the qualified establishment in support of its claim.

(2) **Result of failure to file protest.** If the qualified establishment fails to file a written protest within the ~~thirty (30)~~ sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.

(3) **Rules of procedure to govern.** A protest to the action of the Commission filed by a qualified establishment shall be governed by the Rules of Practice and Procedure before the Commission set out in 710:1-5-21 through 710:1-5-48.

SUBCHAPTER 5. SMALL EMPLOYER QUALITY JOBS PROGRAM

710:85-5-3. Procedure upon qualification; reporting

(a) **Procedures upon initial qualification.** Upon receipt of each approved incentive offer from the Oklahoma Department of Commerce and notification of start date from the qualified establishment, the Commission will establish a separate withholding tax account. Such account shall be utilized by the qualified establishment to report the actual number and gross payroll of new direct jobs for the qualified establishment.

(b) **Reports required.** The reports, on forms prescribed by the Commission, shall be filed in the same manner as returns for withholding, reporting and remitting Oklahoma Income Taxes. A report shall be filed for each quarter following notification by the Commission, even if the qualified establishment has no new direct jobs and gross payroll for the quarter. [**See:** 68 O.S. § 2385.1 et seq. and *OAC* 710:90-1-1 through ~~710:90-7-3~~ 710:90-7-2]

710:85-5-6. Qualified establishments are employers

Qualified establishments are employers for purposes of Oklahoma Income Tax Withholding taxes. [**See:** 68 O.S. § 2385.1 et seq. and *OAC* 710:90-1-1 through ~~710:90-7-3~~ 710:90-7-2]

710:85-5-7. Transfers to Small Employer Quality Jobs Incentive Payment Fund

Each month the Commission shall transfer from income tax withholding collected, to the Small Employer Quality Jobs Incentive Payment Fund ("Fund"), the sum total of the ~~5% of gross payroll~~ net benefit rate multiplied by the amount of gross payroll of new direct jobs actually paid by qualified establishments.

710:85-5-8. Procedure for filing report, review, determination

(a) **Contents of report.** As soon as practicable after the end of a calendar quarter, the qualified establishment shall file a report for gross payroll paid the previous quarter. The report on forms prescribed by the Commission, shall include:

(1) Name of qualified establishment;

(2) Identification number of qualified establishment;

(3) Period for which report is filed;

(4) Actual number of new direct jobs during period of report;

(5) Individual gross payroll for each new direct job for the establishment for the report period; and

(6) Other information required to be submitted by the Commission.

(b) **Reports to constitute a claim.** The reports filed pursuant to this Section shall constitute an annual a claim ~~once four consecutive quarterly reports have been filed.~~ for incentive payments. The establishment must continue to file quarterly reports until reports covering the ~~five~~ seven year incentive period have been filed, or until it is no longer qualified to receive incentive payments.

(c) **Commission action upon receipt of reports.** Upon receipt of the reports for the initial ~~twelve months~~ calendar quarter and for each subsequent ~~twelve month~~ calendar quarter ~~incentive period~~, the Commission shall make the following determinations:

(1) That the establishment has created or maintained ~~at least ten (10)~~ the minimum number of new direct jobs as specified in 68 O.S. §3904(C)(3);

(2) That ~~at least 80% of~~ the individuals employed in the new direct jobs were paid an annualized wage which equaled or exceeded ~~150% of the per capita personal income~~ the applicable percentage of the average county wage as determined by the Department upon the approval of the application; and

(3) That a determination by the Department has been made that the establishment continues to meet the requirements set out in the initial approval.

710:85-5-10. Payment of claim

(a) After the review of the reports and the verification that the establishment qualifies, as set out in *OAC* 710:85-5-9, the Commission shall issue a warrant in the amount ~~of 5% of the gross payroll of~~ equal to the net benefit multiplied by the amount of gross payroll of new direct jobs actually paid by the establishment.

(b) The amount claimed shall not include in the computation of gross payroll any portion of penalty or interest paid as a result of delinquency in filing or paying income tax withheld.

(c) **Commission action upon receipt of reports.** Upon receipt of the reports for the initial ~~twelve months~~ calendar quarter and for each subsequent ~~twelve month~~ calendar quarter

~~incentive period~~, the Commission shall make the following determinations:

(1) That the establishment has created or maintained ~~at least ten (10)~~ the minimum number of new direct jobs as specified in 68 O.S. §3904(C)(3);

(2) That ~~at least 80% of~~ the individuals employed in the new direct jobs were paid an annualized wage which equaled or exceeded ~~150% of the per capita personal income~~ the applicable percentage of the average county wage as determined by the Department upon the approval of the application; and

(3) That a determination by the Department has been made that the establishment continues to meet the requirements set out in the initial approval.

710:85-5-11. Procedure when claim cannot be verified, is revised, or is denied

The procedures set out in this Section shall apply when a claim cannot be verified, or is revised, by the Commission:

(1) The qualified establishment may, within ~~thirty (30)~~ sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or a duly authorized agent, setting out:

(A) A statement of the action determined by the Commission;

(B) A statement of the qualified establishment's disagreement with such action; and

(C) Supporting documentation relied on by the qualified establishment in support of its claim.

(2) If the qualified establishment fails to file a written protest within the ~~thirty (30)~~ sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.

(3) A protest to the action of the Commission filed by a qualified establishment shall be governed by *OAC* 710:1-5-21 through 710:1-5-48.

710:85-5-13. Limitation on incentive payments

No claim for an incentive payment shall be honored if made for a period later than ~~five (5)~~ seven (7) years after the first quarter of the year for which the qualified establishment's first ~~annual~~ claim was made.

710:85-5-15. Denial, cessation, and resumption of incentive payments

(a) **Failure to meet requirements for incentive payments within 12 months of the date of approval.** An establishment that has not met the requirements for receiving incentive payments, as determined by the review described in *OAC* 710:85-5-8, within 12 months of the date the application is approved, is ineligible to receive any incentive payments under the existing application and approval.

(b) **Failure to meet requirements during any of the ~~four annual periods~~ twenty-seven calendar quarters subsequent to the initial ~~annual period~~ calendar quarter.** An establishment which fails to meet the requirements set out in *OAC* 710:85-5-8 in any of the ~~four annual periods~~ twenty-seven calendar quarters subsequent to the initial ~~annual period~~ calendar quarter, is ineligible for an incentive payment for that ~~annual period~~ calendar quarter. If the establishment meets the requirements in a later ~~annual period~~ calendar quarter, the incentive payment for the later ~~annual period~~ calendar quarter may be made after the review and determination for that later ~~annual period~~ calendar quarter, as set out in *OAC* 710:85-5-8 is completed.

SUBCHAPTER 7. OKLAHOMA FILM ENHANCEMENT REBATE PROGRAM

710:85-7-2. Definitions

In addition to terms defined in 68 O.S. § 3623, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Commission" means the Oklahoma Tax Commission.

"Fund" means the Oklahoma Film Enhancement Rebate Program Revolving Fund.

"Office" means the ~~Oklahoma Film~~ Office of the Oklahoma Film and Music Commission.

710:85-7-3. Procedure upon qualification; payment

(a) **Procedures upon approval by Office.** Upon notification to the Commission of each approved claim by the Office, the Commission will verify:

(1) That the claim of the production company contains an affidavit stating that the company has not received an exemption from sales taxes pursuant to the provisions of 68 O.S. § 1357(21); and,

(2) That an Oklahoma income tax return has been filed by the claimant for the tax year in which the production expenses were made.

(b) **When repayment of taxes may be required.** If the facts set out in (a) of this Section cannot be verified, then the Commission shall require repayment of previously exempted sales taxes, and documentation that the taxes have been repaid shall be included in the claim.

(c) **Payment of claims.** Upon approval of the claim by the Office and processing by the Commission, the Commission shall issue payment for all approved claims from funds in the "Fund". The amount of payments in any single fiscal year shall not exceed Two Million Dollars ($2,000,000.00). If the amount of approved claims exceeds the amount of funds available for rebate payments in the Fund, or if payment will cause total payments from the Fund to exceed Two Million Dollars ($2,000,000.00) in the fiscal year, then the payment may be made in part, if funds exist to do so, and any remaining approved claims will be carried over to the next fiscal year, subject to the same limitations for that year as set out in this Section.

SUBCHAPTER 9. OKLAHOMA QUALITY INVESTMENT ACT

710:85-9-1. Purpose

The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§ 250.1 et seq. and to facilitate the administration, allocation and payment of certain tax incentives pursuant to the Oklahoma Quality Investment Act.

710:85-9-2. Definitions

In addition to terms defined in 68 O.S. § 4103, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Capital costs" means costs incurred by a qualified establishment for land, buildings, improvements to buildings, fixtures and for machinery, equipment, and other personal property used in and for the manufacturing process with respect to its manufacturing site in Oklahoma and specified in a quality investment agreement.

"Commission" means the Oklahoma Tax Commission.

"Department" means the Oklahoma Department of Commerce.

"Manufacturing site" *means a location where a manufacturing operation is conducted, including a location consisting of one or more buildings or structures in an area owned, leased, or controlled by a manufacturer.* [68 O.S.Supp.2004, § 1352(15)]

"Qualified establishment" means an establishment for which the Commission has been notified of an approved application for incentive payments by the Oklahoma Department of Commerce.

"Qualified investment agreement" means an agreement between a qualified establishment and the Department for a period not to exceed 5 years for the purpose of computing the total incentive payment amount.

"Start date" means the date on which an establishment may begin accruing benefits because of investment of new capital costs in a manufacturing site that is designated in a quality investment agreement.

710:85-9-3. Transfers to Quality Investment Payment Fund

Each month the Commission shall transfer from state sales tax and withholding tax collected, to the Quality Investment Payment Fund, ("Fund") the sum total of the amount required to make the investment payments.

710:85-9-4. Procedure for filing claim, review determination

(a) **Contents of claim.** As soon as practicable after the end of a fiscal year, the qualified establishment shall file a claim for the payment with the commission for ten percent (10%) of the total amount of capital costs actually invested by the establishment during that fiscal year. The claim, on forms prescribed by the Commission, shall include:

(1) Name of qualified establishment;

(2) Identification number of qualified establishment;

(3) Period for which claim is filed;

(4) Total amount of capital costs invested during the period of claim;

(5) Amount claimed for period.

(b) **Verification of claim.** The Commission shall verify the actual amount of capital costs and the actual tax benefit accrued or accruing to the State of Oklahoma utilizing information available to the Commission. In the event the Commission is unable to verify, the Commission may request additional information from the qualified establishment or may reject the establishment's claim based upon analysis of actual capital costs incurred by the establishment.

(c) **Payment of claim.** Except as provided in 710:85-9-7, the qualified establishment whose claim has been approved shall receive a warrant in an amount not to exceed a total of One Millions ($1,000,000.00). If the amount of investment payment claimed exceeds $1,000,000.00, the establishment may carry over the excess investment payment amount to any subsequent fiscal year during the term of the quality investment agreement and may be paid such amount if the combined amount of carryover and the investment payment claimed in that subsequent fiscal year do not exceed $1,000,000.00. No more than Five Million Dollars ($5,000,000.00) in total investment payments shall be payable or paid to a qualified establishment.

(d) **Procedure when claim cannot be verified or is revised.** The following shall apply when a claim cannot be verified and is rejected by the Commission.

(1) The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or a duly authorized agent setting out:

(A) a statement of the action by the Commission that is protested;

(B) a statement of the qualified establishment's disagreement with such action; and

(C) supporting documentation relied on by the qualified establishment in support of its claim.

(2) If the qualified establishment fails to file a written protest within the sixty (60) days then the action of the Commission shall become final and no appeal will be entertained.

(3) A protest to the action of the Commission filed by a qualified establishment shall be governed by 710:1-5-21 through 710:1-5-48.

710:85-9-5. Disclosure of information

The Commission may, upon request, disclose the name of the qualified establishment that has received any incentive payment and the amount of payments received.

710:85-9-6. Limitation on incentive payments

No claim for an incentive payment shall be honored if filed later than two (2) years from the start date designated by the Department.

710:85-9-7. Incentive payments unavailable to delinquent tax reporters/remitters

No incentive payment will be made to any qualified establishment that is delinquent in the filing of any state tax return or report or for which there is an established liability for any state tax until all delinquent reports or returns are filed and the established liability paid.

710:85-9-8. Cessation of incentive payments

In the event an establishment does not meet the terms of the agreement and all provisions of the Act, investment payments shall cease and shall not be resumed, and the agreement shall expire and be void.

[OAR Docket #05-996; filed 5-25-05]

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

[OAR Docket #05-984]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Membership Provisions
715:10-1-2. [AMENDED]
715:10-1-3. [AMENDED]
715:10-1-5. [AMENDED]
Subchapter 5. Establishing Other Service Credits
715:10-5-1. [AMENDED]
715:10-5-18. [AMENDED]
715:10-5-27. [AMENDED]
715:10-5-28. [AMENDED]
Subchapter 9. Survivor Benefits
715:10-9-2. [AMENDED]
Subchapter 13. Contributions for Membership Service
715:10-13-1. [AMENDED]
715:10-13-3. [AMENDED]
Subchapter 15. Service Retirement
715:10-15-1. [AMENDED]
715:10-15-2. [AMENDED]
715:10-15-7.1. [AMENDED]
715:10-15-10. [AMENDED]
Subchapter 17. Post-Retirement Employment
715:10-17-13. [AMENDED]
Subchapter 19. Tax-Sheltered Annuity Program
715:10-19-8. [AMENDED]
715:10-19-9. [AMENDED]
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715:10-1-2, 715:10-1-3, 715:10-1-5 and **715:10-5-1:** Minor changes to recognize that membership in TRS is now optional for comprehensive university employees and that once these employees elect to participate in the alternate retirement plan the comprehensive university offers, they are not eligible for membership service credit in the Teachers' Retirement System.

715:10-15-7.1: A complete rewrite of the procedures used to calculate retirement benefits for comprehensive university employees.

715:10-5-28, 715:10-9-2 and **715:10-13-1** are being changed due to the 49th Legislature's passage of Senate Bill 1134 and House Bill 2643, which changed the definition of regular annual compensation and extended sick leave credit and the $18,000 death benefit payment to Teachers' Retirement System members joining the retirement system beginning July 1, 1992, or later.

715:10-5-18, 715:10-5-27, 715:10-15-1 and **715:10-15-2** change TRS membership vesting time from 10 to five years.

715:10-13-3 changes the names of certain higher education entities named in TRS rules.

Proposed changes to **715:10-15-10** bring TRS retirement options in line with IRS regulations. The changes limit the designation of beneficiaries when a member selects a reduced monthly benefit that will continue monthly benefits to a beneficiary. Proposed changes to the Options 2 and 3 plans expand opportunities to name a beneficiary that is not the member's spouse. The proposed change to the Option 4 plan would affect only TRS members retiring at the age of 93 or older, but this change is not likely to be significant because it is unlikely that TRS will ever have a member retire at that age.

Proposed amendments to **715:10-17-13** are designed to prevent a retiree from returning to full-time employment on January 1, working through December 31 of that year, and receiving two years of credited service. Changes to paragraph (7)(D) amend the calculation of the retiree's average salary for work performed after his or her initial retirement to an average of salary earned during the re-employment period. A provision is being added to paragraph 9 requiring that retirees who return to full-time employment meet the same 60-day break in service required by members retiring for the first time.

Amendments to **715:10-19-8** and **715:10-19-9** are typographic and grammatical changes for these two rules governing the TRS 403(b) Tax-Sheltered Annuity Plan.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 1. MEMBERSHIP PROVISIONS

715:10-1-2. TRS membership eligibility

Except as provided in the Alternate Retirement Plan for Comprehensive Universities Act (70 O.S. § 17-201, et seq.), all ~~All~~ "regular" employees of the public schools operated by and for the State of Oklahoma are eligible to become members of the Teachers' Retirement System, subject to the restrictions in paragraphs 1 through 3 of this section.

(1) Regular employee means an employee working twenty (20) hours or more per week, who has assigned duties and responsibilities, and who is treated by all standard conventions as an employee of the school; and, who receives compensation commensurate with the responsibilities of the position. Temporary, seasonal, supplemental and other employees employed on a limited or short term basis are not regular employees, and are thus ineligible.

(2) Regular employees receive payment for service by a school or state warrant, recorded on a warrant register with standard payroll deductions and receive benefits generally provided to other "regular" employees.

(3) The minimum requirement of twenty (20) hours per week shall be determined by the actual time the employee is required to be present at the place of employment.

715:10-1-3. Mandatory TRS membership

Except as provided in the Alternate Retirement Plan for Comprehensive Universities Act, the ~~The~~ following employees are required by 70 O.S. 17-103 to be members of the Teachers' Retirement System as a condition of employment:

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

(2) An administrative or supervisory employee of the State Department of Education, or other state agency whose function is primarily devoted to public education and who works twenty (20) hours or more per week at a rate of compensation comparable to other persons employed in similar positions.

(3) A county superintendent of schools. (This paragraph will become obsolete January 1, 1993, when provisions of H.B. 1017 abolish the office of county superintendent).

715:10-1-5. Ineligible for TRS membership

The following employees are ineligible to be members of the Teachers' Retirement System. (Note: Ineligible employment cannot be combined with eligible employment.)

(1) An employee working less than 20 hours per week.

(2) A substitute, irregular, seasonal, graduate assistant, fellowship recipient, adjunct supplemental or temporary employee. *(Note: Certain substitute and adjunct employment may qualify for service credit. See OAC 715:10-5-2 and OAC 715:10-5-34).*

(3) "Non-classified" employees who withdrew from membership in the Teachers' Retirement System after July 1, 1990, under provisions of OAC 715:10-11-2.

(4) Persons employed as a consultant or persons contracting with a public school to transport students, to provide food service, or to provide any other services, who are not "regular" employees of the school. (NOTE: School bus drivers or food service personnel who are regular employees of the school are eligible for membership, subject to the requirements of OAC 715:10-1-2, 10-1-4, 10-1-5.)

(5) An employee whose primary function at a school or institution is that of a student. If both the following conditions apply, a person employed in an Oklahoma public school, college or university shall be considered to be a student employee.

(A) The employment is conditional upon the employee's being enrolled as a student at the same institution; and

(B) The employee has no other employment during the same payroll period which is eligible for membership in TRS.

(6) A regular employee who earns less than $2,000 per year.

(7) Any persons whose employment compensation comes from federal or other funds and is not administered by an Oklahoma public education employer. (Note: If the employee is not paid by the school on a state warrant, the employee is not considered to be an employee of the school or the State of Oklahoma. Regular employees whose salaries are paid in part or in whole by federal or other funds are eligible for membership if they were hired by the school and paid by the school.)

(8) Any person employed by the public schools of Oklahoma after July 1, 1991, who is covered by another federal, state, county or local public retirement plan which will provide benefits on the employment service covered by the Teachers' Retirement System.

(9) Employees of employers that are not governmental employers within the definition of Internal Revenue Code Section 414 and 70 O.S. 17-116.2J.

(10) Any person employed by the University of Oklahoma or Oklahoma State University or the entities of either comprehensive university who elects to participate in an alternative retirement plan provided by the comprehensive university as provided by the Alternate Retirement Plan for Comprehensive Universities Act,

SUBCHAPTER 5. ESTABLISHING OTHER SERVICE CREDITS

715:10-5-1. Oklahoma service credit after July 1, 1943

Members may purchase credit for years of employment from July 1, 1943, to date of membership in the public schools of Oklahoma on which contributions were not remitted. One (1) full year (twelve calendar months) as a contributing member of TRS must be completed before a member may make such purchases. All purchased service must meet Teachers' Retirement System minimum requirements for eligibility, in

effect at the time of purchase, and be properly documented before purchase is allowed. Payment shall not be allowed for any employment during a school year that was less than one-half (1/2) time, and no credit is allowed for periods of employment when a member participated in an alternate retirement plan as provided for by the Alternate Retirement Plan for Comprehensive Universities Act.. All payments for past service must be made while an active contributing member of the Teachers' Retirement System or within sixty (60) days of termination of employment in the public schools of Oklahoma. Payment for service credit must be completed prior to the effective date of retirement and cannot be purchased by any person after the death of the member. (See OAC 715:10-5-4 for cost and method of payment).

715:10-5-18. Other restrictions on military service

Military service performed after the last year of Oklahoma membership service shall not qualify as military service. A member who returns to Oklahoma public education employment after serving in the military shall purchase that military service in the same manner as a new member of TRS: i.e., the member must have two (2) years of Oklahoma service after the military service for each year of military service purchased. No military service can be used to meet the minimum requirement of ~~ten (10)~~ five (5) full years of employment in the public schools of Oklahoma to qualify for vesting and retirement benefits.

715:10-5-27. Other restrictions on out-of-state service

Out-of-state service performed after the last year of Oklahoma membership service shall not qualify as out-of-state credit. A member who returns to Oklahoma public education employment after working out-of-state shall purchase that out-of-state service in the same manner as a new member of TRS: i.e., the member must have two (2) years of Oklahoma service after the out-of-state service for each year of out-of-state service purchased. No out-of-state service or salaries shall be utilized for the calculation of a member's final average salary at retirement. No out-of-state service can be used to meet the minimum requirement of ~~ten (10)~~ five (5) full years of employment in the public schools of Oklahoma to qualify for vesting and retirement benefits.

715:10-5-28. Sick leave service credit

A member~~,~~ who ~~joined TRS prior to July 1, 1992, and~~ has one hundred twenty (120) days of accumulated unused sick leave days at retirement shall receive one (1) year of additional credit toward retirement. A member~~,~~ who ~~joined TRS prior to July 1, 1992, and~~ has less than one hundred twenty (120) days of unused sick leave at retirement may add such days to days employed by the public schools of Oklahoma in obtaining an additional year of credit toward retirement. It is the responsibility of the member to obtain verification of sick leave from the employing school prior to the member's official retirement date. No adjustment in retirement benefits shall be made for sick leave documented after the member's retirement date. Sick leave cannot be combined with out-of-state, military service or any non-public Oklahoma school employment to obtain additional credit toward retirement. Service credit obtained by unused sick leave may be used in qualifying for retirement benefits under the "Combination of 80" and "Combination of 90" rule. For any member who joined TRS prior to July 1, 1995, the ~~The~~ year of credit received for sick leave shall be treated as service earned prior to July 1, 1995. Unused sick leave may not be used to vest an account or to meet the minimum requirement of ~~ten (10)~~ five (5) years of employment in the public schools of Oklahoma to qualify for retirement benefits. Sick leave accumulated while employed by any employer other than a public school as defined by 70 O.S. 17-101 shall not be counted for purposes of obtaining additional retirement credit under this rule. ~~An individual who becomes a member of TRS after June 30, 1992, is not eligible for the year of credit as provided by statutes and this section.~~

SUBCHAPTER 9. SURVIVOR BENEFITS

715:10-9-2. Death benefit when death occurs before retirement

(a) A death benefit of $18,000 shall be paid by TRS to the designated beneficiary upon the death of an in-service member~~, who joined TRS prior to July 1, 1992~~. If there is no designated beneficiary, or if the designated beneficiary predeceases the member, the member's estate shall receive the death benefit. [See OAC 715:10-9-7, if the member and beneficiary were divorced before death].

(b) "In-service" membership shall include:

(1) Employees in an active-member status within the Oklahoma public education system at the time of death.

(2) Members who have been, or would have been, rehired, automatically or otherwise, for the next school year when death occurs during the summer break.

(3) Members on sick leave, for up to one (1) full year, who would be returned to employment by the employer upon satisfactory recovery.

(c) "In-service" membership shall not include:

(1) Employees who are not eligible for membership in TRS.

(2) Any member in an in-active employment status, except as noted above in paragraph (b).

(3) Any member who resigned as an employee of the public schools of Oklahoma.

~~(d) Any member who joined TRS after June 30, 1992, is not eligible for the $18,000 death benefit described in this section or the monthly annuity in lieu of death benefit described in OAC 715:10-9-3.~~

SUBCHAPTER 13. CONTRIBUTIONS FOR MEMBERSHIP SERVICE

715:10-13-1. Regular annual compensation requirements

Each member of the Teachers'Retirement System is required to make contributions to the Retirement Fund. Monthly contributions are a set percent of "regular annual compensation". Regular annual compensation is defined as wages plus fringe benefits, excluding the flexible benefit allowance provided by Section 26-105 of Title 70 of the Oklahoma Statutes, and shall include all normal periodic payments as provided in subsection D of Section 17-116.2 of Title 70~~,~~ of the Oklahoma Statutes. Wages and fringe benefits for retirement purposes are defined as normal periodic payment for service the right to which accrues on a regular basis in proportion to the service performed. Such periodic payments shall include staff development or other periodic payments to qualifying members. Fringe benefits shall include employer-paid group health and disability insurance, group term life insurance, annuities and pension contributions and IRS Code Section 125 cafeteria benefits provided on a periodic basis to all qualified members of the employer, which qualify as fringe benefits under the United States Internal Revenue Code. Reimbursement for travel, housing or other expenses are not fringe benefits and do not qualify as regular annual compensation. Payment for unused vacation or sick leave, retirement bonuses or any other payment when made for reason of termination or retirement shall not be included as regular annual compensation. Contributions can only be remitted on actual wages and fringe benefits. No individual can contribute on unearned or non-existent compensation. Under no circumstances can members pay retirement contributions on more than they actually earn.

715:10-13-3. ~~Statutory Teachers' Retirement System employee~~ Employee contribution rates

(a) Beginning with the 1996-97 school year, the maximum compensation level for all members, other than those members employed by a comprehensive university on or before June 30, 1995, shall be the member's regular annual compensation. This includes any employee of a comprehensive university who transfers to another school or university after June 30, 1996, or who terminates paid employment status with a comprehensive university and returns to employment at a later date.

(b) Beginning with the 1996-97 school year, the maximum compensation level for those employees of a "comprehensive university", defined in statutes as the University of Oklahoma and all of its constituent agencies, including the University of Oklahoma Health Sciences Center, the University of Oklahoma Law Center and the Geological Survey, and Oklahoma State University and all of its constituent agencies, including the Oklahoma State Agricultural Experiment Station, the Oklahoma State University Agricultural Extension Division, the Oklahoma State University College of Veterinary Medicine, the Oklahoma State University ~~College of Osteopathic Medicine~~ Center for Health Sciences, the Technical Branch at Oklahoma City ~~and~~ the Technical Branch at Okmulgee and Oklahoma State University-Tulsa, who were employed on or before June 30, 1995, shall contribute the following:

(1) for members who, prior to June 30, 1995, elected to contribute on a maximum compensation level not to exceed $25,000:

(A) $32,500 for service between July 1, 1996 and June 30, 1997,

(B) $37,500 for service between July 1, 1997 and June 30, 1998,

(C) $42,500 for service between July 1, 1998 and June 30, 2000,

(D) $47,500 for service between July 1, 2000, and June 30, 2001,

(E) $52,500 for service between July 1, 2001, and June 30, 2002,

(F) $57,500.00 for service between July 1, 2002, and June 30, 2003,

(G) $62,500.00 for service between July 1, 2003, and June 30, 2004,

(H) $67,500.00 for service between July 1, 2004, and June 30, 2005,

(I) $72,500.00 for service between July 1, 2005, and June 30, 2006,

(J) $77,500.00 for service between July 1, 2006, and June 30, 2007, and

(K) the full amount of regular annual compensation for service authorized and performed after June 30, 2007, and

(2) for members who, prior to June 30, 1995, elected to contribute on a maximum compensation level in excess of $25,000, or who did not make an election prior to June 30, 1995, because their annual salary was less than $25,000:

(A) $49,000 for service between July 1, 1996 and June 30, 1997,

(B) $54,000 for service between July 1, 1997 and June 30, 1998,

(C) $59,000 for service between July 1, 1998 and June 30, 2000,

(D) $64,000 for service between July 1, 2000, and June 30, 2001,

(E) $69,000 for service between July 1, 2001, and June 30, 2002,

(F) $74,000 for service between July 1, 2002, but not later than June 30, 2003,

(G) $79,000 for service between July 1, 2003, and June 30, 2004,

(H) $84,000 for service between July 1, 2004, and June 30, 2005,

(I) $89,000 for service between July 1, 2005, and June 30, 2006,

(J) $94,000 for service between July 1, 2006, and June 30, 2007, and

(K) the full amount of regular annual compensation for service authorized and performed after June 30, 2007.

(c) Every teacher employed by any school district or Career and Technology Education district, who qualifies for a minimum salary pursuant to the State's minimum salary schedule shall have a specific amount credited against the employee's contribution to the Teachers' Retirement System. The State of

Oklahoma shall pay an annual amount for each fiscal (or plan) year as follows:

(1) 0 years of service = $60.15
(2) 1 year of service = $103.41
(3) 2 years of service = $145.65
(4) 3 years of service = $188.15
(5) 4 years of service = $233.33
(6) 5 years of service = $278.76
(7) 6 years of service = $325.26
(8) 7 years of service = $372.82
(9) 8 years of service = $421.44
(10) 9 years of service = $471.12
(11) 10 years of service = $521.87
(12) 11 years of service = $573.67
(13) 12 years of service = $626.54
(14) 13 years of service = $680.48
(15) 14 years of service = $735.47
(16) 15 years of service = $791.53
(17) 16 years of service = $848.65
(18) 17 years of service = $906.83
(19) 18 years of service = $966.07
(20) 19 years of service = $1,026.38
(21) 20 years of service = $1,087.75
(22) 21 years of service = $1,150.18
(23) 22 years of service = $1,213.68
(24) 23 years of service = $1,278.23
(~~26~~25) 24 years of service = $1,343.85
(~~27~~26) 25 or more years of service = $1,410.53

(d) Each school district or Career and Technology Education school district shall adjust each eligible employee's monthly contribution to the Teachers' Retirement System in accordance with statutory provisions, and shall cause the annual amount paid by the State of Oklahoma as provided in the preceding paragraph to be deducted from the monthly remittance to each eligible employee's retirement account and a like amount added to the net pay of the eligible employee.

(1) If the school district pays the retirement contribution in addition to the employee's total compensation, the employer must reduce the employee's annual retirement contribution which the school pays to the Teachers' Retirement System by the appropriate amount and add that amount to each eligible employee's net pay.

(2) If the school district deducts the retirement contribution from each employee's total compensation, whether as a salary reduction to pay the retirement contribution as a fringe benefit or as a deduction on an after-tax basis, the employer must adjust the employee's annual retirement deduction in accordance with the amount to be paid by the State. The adjustment in the retirement deduction will result in an increase to the eligible employee's net pay.

(3) The State contribution to each eligible employee's retirement account is determined by the total experience of each employee as verified by the State Department of Education or the Oklahoma Department of Career and Technology Education.

(4) The State contribution must be calculated and paid in equal monthly installments as determined by the eligible employee's contract, i.e. ten months, eleven months or twelve months. Eligible employees who work less than a full contract year, whether full-time for less than a full contract year or part-time for the full contract year, shall have the prescribed State contribution prorated in accordance with the eligible employee's full-time equivalent rate of employment.

SUBCHAPTER 15. SERVICE RETIREMENT

715:10-15-1. Eligibility for service retirement

Members are eligible for service retirement benefits when they have:

(1) withdrawn from employment in the public education institutions of Oklahoma;

(2) obtained a minimum of ~~ten (10)~~ five (5) years of creditable service in the public schools of Oklahoma;

(3) satisfied the age and service requirements of Title 70, Okla. Stat., Section 17-105, as defined in OAC 715:10-15-2; and,

(4) made application as provided in OAC 715:10-15-3.

715:10-15-2. Age, service requirements for regular retirement

A member is eligible for service retirement benefits when the following requirements of age and service are met. Any member who joins TRS after July 1, 1991, shall be required to have ~~ten (10)~~ five (5) full years of membership as a contributing member of the System. For members who join after July 1, 1991, Oklahoma service purchased after membership will not be counted for "vesting" purposes.

(1) For any member who joined TRS prior to July 1, 1992, full retirement benefits will be paid to members who:

(A) Have reached age 62, or

(B) Whose age as of their last birthday and number of years of creditable service total 80.

(2) For any member who joined TRS after June 30, 1992, full retirement benefits shall be paid to the member who:

(A) Has reached age 62, or

(B) Whose age as of his or her last birthday and number of years of creditable service total 90.

(3) Reduced retirement benefits will be paid to members who:

(A) Are between ages 55 to 61 and have at least ~~ten (10)~~ five (5) years of Oklahoma creditable service, but do not have 80 or 90 "points"; the reductions shall be as shown below:

~~Age Percent~~
~~55 61.89~~
~~56 65.95~~
~~57 70.38~~
~~58 75.23~~
~~59 80.00~~
~~60 86.66~~
~~61 93.33~~

~~62-100.00~~

(i) 55 - 61.89%
(ii) 56 - 65.95%
(iii) 57 - 70.38%
(iv) 58 - 75.23%
(v) 59 - 80.00%
(vi) 60 - 86.66%
(vii) 61 - 93.33%
(viii) 62 - 100.00%

(B) Have thirty (30) or more years of creditable service, regardless of age, but do not have 80 or 90 "points." (TRS will provide reduction percentages upon request to any member desiring reduced benefit calculations who is under age 50 with 30 years of service.)

715:10-15-7.1. Retirement formula for members employed by ~~an entity or institution within the Oklahoma State System of Higher Education~~ a comprehensive university

~~(a) For members employed on or before June 30, 1995, by an entity or institution within the Oklahoma State System of Higher Education, other than a comprehensive university, the member's retirement benefit will be calculated as follows:~~

~~(1) For service prior to July 1, 1995, in the same manner as described in OAC 715:10-15-7;~~

~~(2) For service credit earned between July 1, 1995, and June 30, 1996, two percent (2%) multiplied by the member's regular annual compensation on which contributions were made not to exceed the member's maximum compensation level for the school year 1995-96;~~

~~(3) For service credits earned after June 30, 1996, two percent (2%) multiplied by the member's final average salary on which contributions were made time the years of creditable service performed after July 1, 1996.~~

~~(b) For members employed on or before June 30, 1995, by a comprehensive university, the member's retirement benefit will be calculated as follows:~~

~~(1) For service prior to July 1, 1995, in the same manner as described in OAC 715:10-15-7;~~

~~(2) For service credit earned between July 1, 1995, and June 30, 2007:~~

~~(A) two percent (2%) multiplied by the member/s salary not to exceed the maximum compensation level on which contributions were made for service between July 1, 1995 and June 30, 1996;~~

~~(B) two percent (2%) multiplied by the member's salary not to exceed the maximum compensation level on which contributions were made for service between July 1, 1996 and June 30, 1997;~~

~~(C) two percent (2%) multiplied by the member's salary not to exceed the maximum compensation level on which contributions were made for service between July 1, 1997 and June 30, 1998;~~

~~(D) two percent (2%) multiplied by the member's salary not to exceed the maximum compensation level on which contributions were made for service between July 1, 1998 and June 30, 2000;~~

~~(E) two percent (2%) multiplied by the member's salary not to exceed the maximum compensation level on which contributions were made for service between July 1, 2000 and June 30, 2001;~~

~~(F) two percent (2%) multiplied by the member's salary not to exceed the maximum compensation level on which contributions were made for service between July 1, 2001 and June 30, 2002;~~

~~(G) two percent (2%) multiplied by the member's salary not to exceed the maximum compensation level on which contributions were made for service between July 1, 2002 and June 30, 2003;~~

~~(H) two percent (2%) multiplied by the member's salary not to exceed the maximum compensation level on which contributions were made for service between July 1, 2003 and June 30, 2004;~~

~~(I) two percent (2%) multiplied by the member's salary not to exceed the maximum compensation level on which contributions were made for service between July 1, 2004 and June 30, 2005;~~

~~(J) two percent (2%) multiplied by the member's salary not to exceed the maximum compensation level on which contributions were made for service between July 1, 2005 and June 30, 2006;~~

~~(K) two percent (2%) multiplied by the member's salary not to exceed the maximum compensation level on which contributions were made for service between July 1, 2006 and June 30, 2007;~~

~~(3) For service credits earned after June 30, 2007, two percent (2%) multiplied by the member's final average salary on which contributions were made time the years of creditable service performed after July 1, 2007.~~

~~(c) For members employed by any entity or institution in the Oklahoma State System of Higher Education employed on or after July 1, 1995, two percent (2%) multiplied by the member's average salary upon which contributions were made times the years of creditable service performed after July 1, 1995.~~

~~(d) If a member of an entity or institution in the Oklahoma State System of Higher Education transfers to or from employment by a comprehensive university, or transfers to or from employment by a remitting agency other than an entity or institution in the Oklahoma State System of Higher Education, the member's retirement benefit will be calculated in accordance the contributions made on regular annual compensation based on the time the member was employed by the different employers described in this section and OAC 715:10-15-7.~~

(a) For a member employed on or after July 1, 1995, two percent (2%) multiplied by the member's final average salary on which contributions were made times the years of creditable service performed on or after July 1, 1995.

(b) For a member employed on or before July 1, 1995, as follows:

(1) For service prior to July 1, 1995, in the same manner as described in OAC 715:10-15-7; plus

(2) Two percent (2%) multiplied by the average of the member's maximum compensation level for those years

between July 1, 1995 and June 30, 2007, in which the member's regular annual compensation meets the maximum compensation level in effect for the member, times the years of creditable service earned during this period in which the member's regular annual compensation meets the maximum compensation level in effect for the member; plus

(3) Two percent (2%) of the member's final average salary multiplied by the years of creditable service earned for those years between July 1, 1995 and June 30, 2007, that did not meet the member's maximum compensation level in effect for this period, plus

(4) Two percent (2%) of the member's final average salary multiplied by the years of creditable service earned by the member for service performed after June 30, 2007; plus

(5) Two percent (2%) of the member's final average salary upon which contributions were made, multiplied by the member's years of creditable service performed for an employer other than an entity or institution within The Oklahoma State System of Higher Education on or after July 1, 1995.

(c) The member's maximum compensation level for the years between July 1, 1995 and June 30, 2007, shall be determined by the contribution election made by the member prior to July 1, 1995.

(d) The term "average of the member's maximum compensation level" means an average of the annual salary on which contributions were made for the years between July 1, 1995 and June 30, 2007.

(e) In the event there is an insufficient number of years for the time period between July 1, 1995 and June 30, 2007, to reach the high three (3) or high five (5) consecutive years as defined in 70 O.S. § 17-101, the member's maximum compensation level shall be determined by an average of the salary on which contributions were made. In no case shall the member's average maximum compensation level exceed the average salary that would be calculated for any other TRS member for the same period of service with the same contribution level.

715:10-15-10. Retirement plans

A member may elect to receive a monthly life annuity under one of the following plans:

(1) The Maximum Retirement Plan provides the greatest monthly lifetime benefit that each individual member's years of creditable service and average salary permit. The maximum retirement plan is the monthly entitlement calculated using the standard retirement formula set by statutes. In the event the total retirement payments made prior to the death of a retired member are less than the member's accumulated contributions (with any interest credited to the account prior to July 1, 1968), the difference shall be paid to the member's designated beneficiary or to the member's estate if no designated beneficiary survives the member.

(2) Retirement Option 1 provides a slightly reduced lifetime benefit. The monthly entitlement is the difference between the annuity portion of the maximum retirement plan and the annuity portion of an Option 1 retirement plan subtracted from the Maximum retirement plan. If the retired member dies before receiving in the annuity portion of the monthly payments an amount equal to the member's deposits (with any interest credited to the account prior to July 1, 1968), the remaining balance shall be paid in a lump sum to the member's designated beneficiary or to the member's estate if no beneficiary survives the member. (The member's deposits are "protected" for the member's beneficiary for a longer period of time than under the maximum retirement plan, hence, the monthly benefit is less than the Maximum benefit.)

(3) Retirement Option 2 provides a reduced monthly benefit payable to the member for life. At the death of the retired member, the same monthly benefit payable to the member, shall continue to the member's beneficiary, if living. This option is known as a "100% joint survivor annuity." The reduction in the monthly benefit is based on actuarial tables developed for this purpose and approved by the Board of Trustees. The ages of the member and beneficiary are an important factor in computing this benefit. The beneficiary for the Option 2 retirement plan may be the member's spouse or another person. If the designated beneficiary is not the member's spouse, IRS Regulations require that the adjusted member/beneficiary age difference cannot be more than ten (10) years. The adjusted member/beneficiary age difference is determined by first calculating the excess of the age of the member over the age of the beneficiary based on their ages on the date of retirement. If the member is younger than age 70, the age difference determined in the previous sentence is reduced by the number of years that the member is younger than age 70 based on the member's age on the date of retirement. If the adjusted member/beneficiary age difference is greater than ten (10) years, the Option 2 retirement plan is not available. ~~Retirement Option 2 is not available to a member whose expected benefit is less than fifty percent (50%) of the lump sum actuarial equivalent and the designated beneficiary is not the spouse of the member.~~ In the event the member's beneficiary dies at any time after the member's retirement date~~,~~ but before the death of the member, the member shall return to the retirement benefit, including any post-retirement benefit increases the member would have received, had the member not selected the Option 2 retirement plan. ~~This option is known as a "100% joint survivor annuity."~~ The beneficiary designation cannot be changed under any circumstance after the date of retirement. The reduction in the monthly payment is much greater than under all other retirement options because two people are protected for the life of both individuals. ~~The actual reduction is based on actuarial tables developed for this purpose and approved by the Board of Trustees. The age of the beneficiary is an important factor in computing this benefit.~~

(4) Retirement Option 3 provides a reduced monthly benefit payable to the member for life. At the death of the retired member, one-half (or 50%) of the monthly benefit payable to the member, shall continue to the member's

beneficiary, if living. This option is known as a "50% joint survivor annuity." The reduction in the monthly benefit is based on actuarial tables developed for this purpose and approved by the Board of Trustees. The age of the beneficiary is an important factor in computing this benefit. The beneficiary for the Option 3 retirement plan may be any person. ~~Retirement Option 3 is not available to a member whose expected benefit is less than fifty percent (50%) of the lump sum actuarial equivalent and the designated beneficiary is not the spouse of the member.~~ In the event the member's beneficiary dies at any time after the member's retirement date~~,~~ but before the death of the member, the member shall return to the retirement benefit, including any post-retirement benefit increases, the member would have received had the member not selected the Option 3 retirement plan. ~~This option is known as a "50% joint survivor annuity."~~ The beneficiary cannot be changed under any circumstance after the date of retirement. The reduction in the monthly payment, while not as great as in the Option 2 plan, still requires a substantial reduction because two people are protected for the life of both individuals. ~~The actual reduction is based on actuarial tables developed for this purpose and approved by the Board of Trustees. The age of the beneficiary is an important factor in computing this benefit.~~

(5) Retirement Option 4 provides a reduced monthly benefit payable to the member for life. In the event the retired member dies within one hundred twenty (120) continuous months from the date of retirement, the balance of the payments ~~are~~ is continued to the designated beneficiary until a total of one hundred twenty (120) months have been completed. The actual reduction is based on actuarial tables developed for this purpose and approved by the Board of Trustees. The beneficiary must be designated at the time of retirement. The Option 4 retirement plan is not available for a member whose retirement date is on or after the member reaches age 93. However, if the designated beneficiary is the member's spouse, the Option 4 retirement plan may be selected if the 120-month period does not extend beyond the joint life and last survivor expectancy of the member and the member's spouse. If the beneficiary dies before the total number of "guaranteed" months have been completed, the remaining payments shall be computed at the rate of interest used in determining the original guarantee. The funds remaining shall be paid to the administrators, executors or assigns of the last surviving payee.

SUBCHAPTER 17. POST-RETIREMENT EMPLOYMENT

715:10-17-13. Election to return to qualifying employment

Any retired member who returns to employment in the public schools of Oklahoma and is employed half-time or more as defined in OAC 715:10-3-2 and OAC 715:10-3-3 may return to membership contributing status under the following conditions:

(1) The retired member must file an irrevocable election to discontinue retirement benefits for the period of such employment. The return to membership contributing status must coincide with the beginning of a school year or the member must refund all benefit payments received from the beginning of the school year in which employment begins and make employee contributions on any compensation earned from the beginning of the school year to the date of the election to return to contributing status.

(2) The election form must be completed by the employing school and signed by the retired member and an official who has authority to employ or pay regular employees of the school. In addition, a new Personal Data Form 1-A shall be completed and submitted to TRS to return a member to work status.

(3) The form must include the nature of the position held and the beginning date of employment.

(4) Retirement payments shall be discontinued ~~with the last check received before employment begins~~ in accordance with OAC 715:10-17-14. Retirement payments shall not be resumed during the summer months between consecutive years of this type of employment.

(5) The retired member and the employing public school shall remit employee and employer contributions in the same manner as active contributing employees.

(6) The retired member shall accumulate service credit in the same manner as active contributing employees of the system.

(7) Upon termination of employment, the retired member's monthly retirement benefits will resume with an adjustment to reflect credit for the additional employment as follows:

(A) The initial benefit calculated at the time of retirement will not be affected by the additional employment.

(B) Service credits will be accumulated and credited to the member's record in accordance with Subchapter 3 of this Chapter.

(C) A supplemental benefit for the year(s) of additional service will be calculated using the standard retirement benefit formula and the retirement plan selected by the retiree when the member first retired (See OAC 715:10-15-7 and 715:10-15-7.1).

(D) ~~The average salary used in calculating any supplemental benefit will be obtained by averaging in the new earnings with prior earnings. Earnings for employment of less than one full year will be used, if the earnings are greater than previous years. (Earnings for employment of less than a full school are not annualized.)~~ The average salary used in calculating the supplement benefit will be the average of the salaries earned during this period of employment. In the event the member is employed for less than the number of years required to determine the appropriate average salary, the average will be determined by the number

of years employed. Annual salaries will be based on contributions made and determined on a school year basis.

~~(E) The average salary used in calculating the supplemental benefit will not be less than the final average used in calculating the retired member's initial final average salary.~~

(8) If the retired member is employed for a period less than six months, or for a period of time which does not qualify for additional service credit, the employee contributions remitted by the employee or by the employer on the retired member's behalf will be refunded to the member without interest. Employer contributions as provided by OAC 715:10-13-3 will not be refunded.

(9) The employer shall provide written notice to the Teachers' Retirement System when the retired member's employment is terminated. The member cannot resume benefit payments under this rule and remain employed. The member must comply with the sixty (60)-day non-employment rule that applies to a member who elects regular retirement. Retirement payments will be resumed effective the first of the following month, provided employment terminates on or before the ~~10th~~ 15th of the month, otherwise benefits will be resumed the first of the next succeeding month. Any supplemental benefit determined pursuant to this section shall commence at the same time.

(10) If the retired member dies while engaging in half-time or more employment as provided in this section, the retired member's beneficiaries will receive any survivor benefits specified in the terms of the retirement contract elected by the member, the $18,000 death benefit provided by OAC 715:10-9-2, if applicable, and a return of employee contributions, plus interest accumulated during the current employment, as defined in OAC 715:10-9-1. The beneficiaries of the deceased retired member will not be entitled to both the $18,000 death benefit and the $5,000 death benefit defined in OAC 715:10-9-4.

(11) If a retired member does not file an election to discontinue monthly benefits while employed by the public schools of Oklahoma, he or she waives the accrual of service credit and the right to any supplemental benefit from service in the position, except to the extent that the value of the accrual of additional service credit and the supplemental benefit would exceed the actuarial value of the benefits received under this Chapter and that were continued or begun pursuant to an election under this section. In such a case, a supplemental benefit equal only to the difference in value will be payable upon subsequent retirement.

(12) Retired members returning to half-time or more employment under this subchapter and section shall not be considered "active members" for purposes of purchasing or transferring any form of prior service credit of whatever nature.

(13) A retiree having received a partial lump-sum payment, who is re-employed and returns to membership contributing status pursuant to OAC 715:10-17-13, shall have his or her subsequent retirement benefit calculated taking into consideration that a partial lump-sum payment has been received.

SUBCHAPTER 19. TAX-SHELTERED ANNUITY PROGRAM

715:10-19-8. Distributions

(a) Distributions from members' accounts must be made in accordance with the Internal Revenue Code. TRS will distinguish pre-'87 and post-'86 account balances. Both account balances will be distributed in accordance with the applicable Internal Revenue Code provisions as they pertain to individual retirement accounts or annuities. The post-'86 account balance will include earnings after 1986 on the pre-'87 account balance. TRS will adjust each balance as required under IRS rules and regulations.

(b) Distribution of deposits made, or income earned, after December 31, 1988, will not be made to members except under one of the following circumstances:

(1) Attainment of age fifty-nine and one-half (59 1/2).

(2) Death.

(3) Disability. For the purpose of this section, a member is considered disabled if the member is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration.

(4) Separation from service (termination of employment).

(5) Retirement.

(6) Financial hardship (this distribution does not include accumulated earnings).

(7) Transfer to another tax-sheltered annuity program.

(c) Distributions from this tax-sheltered annuity program are subject to federal and state income taxes. Certain distributions may also be subject to penalties and/or excise taxes under the Internal Revenue Code. Members should seek tax advice prior to requesting distributions.

(d) Upon filing a properly executed distribution request application, a portion or all of a member's tax-sheltered annuity balance that qualifies under Internal Revenue Code regulations, may be distributed. Distributions, other than required minimum distributions and hardship withdrawals, are subject to a mandatory federal withholding of twenty percent (20%). (Distribution of these deposits shall not affect membership status.)

(e) Members who have attained age ~~59 2~~ 59 1/2 are eligible to withdraw all or any portion of their deposits, subject to the provisions of subsection (i) of this section.

(f) Members who have not attained age ~~59 2~~ 59 1/2 and who have not separated from service (retired or terminated employment) may withdraw only contributions made prior to January 1, 1989, unless a financial hardship exist. (See OAC 715:10-19-9.)

(g) Members eligible to take a distribution may take up to 80% of their account balance at any time. For those desiring to close their accounts, they may do so after earnings from the

previous month have been posted. No earnings will be paid during the month in which an account is closed.

(h) Members who roll-over their tax-sheltered annuity accounts to another tax-sheltered annuity program may return these funds to the Teachers' Retirement System's program at a later time.

(i) At termination or retirement, a member may elect one of the following annuity distribution options subject to Internal Revenue Service requirements, including Code Section 403(b)(10), Code Section 401(a)(9), and the incidental death benefit requirements of Code Section 401(a);

(1) Minimum distribution option under Code Section 401(a)(9), with the post-1986 deferrals and all post-1986 earnings subject to the current Internal Revenue Service distribution rules and the pre-1987 account balance subject to the prior applicable Internal Revenue Service distribution rules.

(2) Lump sum surrender option, payable only to the member.

(3) Partial lump sum, where the member selects a specified lump sum payable to the member.

(j) Earnings on Teachers' Retirement System tax-sheltered annuity accounts are calculated each month-end, based on accumulated deposits as of the first day of the month.

(k) The beneficiary(ies) designated on a member's regular retirement account also shall serve as beneficiary(ies) for the tax-sheltered annuity account, unless otherwise designated by the member.

(l) In the event the member dies, and if the member's sole beneficiary is his or her spouse, the surviving spouse has the same privileges to the account as the member. In order to satisfy minimum distribution rules, if the sole designated beneficiary is the member's surviving spouse, distributions must commence on or before the later of:

(1) the end of the calendar year immediately following the calendar year in which the member died; or

(2) the end of the calendar year in which the member would have attained age 70 1/2.

(m) Non-spousal beneficiaries (individuals or trusts) must begin taking a required minimum distribution no later than December 31 of the year following the year of the member's death. In the event there is no designated beneficiary, or if the member's estate or a charitable organization is the designated beneficiary, the entire account balance must be distributed by the fifth year following the member's death.

(n) In all cases, distribution of a termination or retirement benefit must begin no later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70 1/2 or retires.

715:10-19-9. Withdrawals for financial hardship

(a) Financial hardship is defined as an immediate and heavy financial need experienced by the participant, resulting from a sudden and unexpected illness or accident of the participant or of a dependent of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The circumstances that constitute a financial hardship will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved:

(1) through reimbursement or compensation by insurance or otherwise, or

(2) by liquidation of the participant's assets, to the extent the liquidation of these assets would not itself cause severe financial hardship,

(3) by cessation of deferrals under the plan,

(4) by other distributions or nontaxable (at the time of the loan) loans from plans maintained by the employer, by any other employer, the employer(s) of the participant's spouse, or by borrowing from commercial sources on reasonable commercial terms, in an amount sufficient to satisfy the need.

(b) Specific needs that are deemed to satisfy the requirements of a hardship withdrawal include, but are not limited to:

(1) Medical expenses incurred by the participant, the participant's spouse or dependents which are not covered by insurance or other reimbursement;

(2) Costs directly related to the purchase of a principal residence for the participant (excluding mortgage payments);

(3) Payment of tuition, related educational fees, and room and board expenses, for the next twelve (12) months of post-secondary education for the participant, or the participant's spouse or dependents; or

(4) Payments necessary to prevent the eviction of the employee from the employee's principal residence or foreclosure on the mortgage of that residence.

(c) Withdrawal amounts are permitted only to the extent reasonably necessary to satisfy the financial hardship. Withdrawal of credited earnings in the member's account is not permitted.

(d) Once a member has satisfactorily completed a hardship application for withdraw, an administrative review will be conducted by a committee consisting of the ~~secretary-treasurer~~ Secretary-Treasurer, ~~director of operations~~ Director of Operations and the administrative assistant responsible for the Tax-Sheltered Annuity Program. The review committee will recommend to the ~~executive secretary~~ Executive Secretary those applications that meet the requirement of a financial hardship.

(e) The ~~executive secretary~~ Executive Secretary will have the authority to approve payment of qualifying requests. The ~~executive secretary~~ Executive Secretary will also report all approved requests and denials to the Board of Trustees each month.

(f) Distributions made via a hardship withdrawal request may be subject to an early distribution penalty of ten percent (10%).

[OAR Docket #05-984; filed 5-24-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 1. ORGANIZATION AND METHOD OF OPERATIONS

[OAR Docket #05-870]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
765:1-1-2. [AMENDED]
AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission; 47 O.S. Section 582(E)(1), 75 O.S. Section 302(A)(1), and 75 O.S. Section 307
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June 25, 2005
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The adopted rule gives the Chairman of the Commission the option of postponing a Commission meeting for lack of a quorum until such time as a quorum is present.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

765:1-1-2. Description of Commission

(a) **Creation.** The Used Motor Vehicle and Parts Commission (hereinafter "Commission") is created by 47 O.S. Section 581 et seq. Applicable definitions and the powers and the duties of the Commission are set forth in 47 O.S. Section 581 et seq. and 47 O.S. Section 591.1 et seq.

(b) **Members.** The Commission shall consist of ten (10) members, one from each of the congressional districts of the state, a chair and all other members selected from the state at large.

(c) **Quorum.** Six (6) members of the Commission shall constitute a quorum and may transact any business or hold any hearing by a simple majority vote of the quorum. If a quorum is not present, the Chairman may postpone or cancel the meeting for lack of a quorum.

[OAR Docket #05-870; filed 5-16-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 2. INFORMAL AND FORMAL PROCEDURES

[OAR Docket #05-871]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Informal Procedures - Consumer Complaints
765:2-1-3. [AMENDED]
AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission; 47 O.S. Section 582(E)(1), 75 O.S. Section 302(A)(1), and 75 O.S. Section 307
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n/a
ANALYSIS:
The adopted rule deletes the requirement for convening a Consumer Action Panel to handle complaints and instead requires an informal conference conducted by the Executive Director first, then if the complaint is not resolved and it pertains to a matter that gives rise to a disciplinary proceeding, a formal proceeding is then held.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 1. INFORMAL PROCEDURES - CONSUMER COMPLAINTS

765:2-1-3. Procedure

~~If complaints cannot be satisfied in any other manner, a Used Car Consumer Action Panel will hear complaints on a condition of sale, implied and written warranties and service complaints on those warranties. The Used Car Consumer Action Panel shall consist of three (3) individuals, appointed by the Chairman. If the Panel cannot informally resolve the problem, any party involved in a particular complaint may seek an individual proceeding before the entire Commission. Such action shall be done in accordance with the procedures set out in 765:2-3-1 et seq.~~ If a complaint cannot be resolved in any other manner, an informal conference may be conducted by the Executive Director or his designee to attempt to resolve the complaint. If the informal conference does not resolve the complaint and the complaint concerns a matter which may give rise to disciplinary proceedings against a dealer, the matter may become the subject of a formal proceeding for disciplinary action.

[OAR Docket #05-871; filed 5-16-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 10. USED MOTOR VEHICLE DEALERS

[OAR Docket #05-872]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees
765:10-1-8. [AMENDED]
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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The adopted rule sets out what constitutes a change of ownership which requires a new application and approval by the Commission, the notification requirements involved and deadlines for submittal of requirements for any change.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:10-1-8. Changes

~~Any change, such as change of name, address, ownership, or employment, which make Commission records no longer accurate must be reported to the Commission immediately in writing on forms prescribed by the Commission for approval by the Commission. The dealership must meet all the requirements as prescribed for licensing. The Commission may revoke or suspend a license after it has been granted for change of condition resulting in failure to maintain the qualifications for license. Failure to complete the requirements for licensing at the new location within thirty (30) days shall result in suspension of the dealer's license until the licensing requirements are met. The Commission may endorse changes on the license without charge.~~

(a) **Ownership.** A change of ownership, including a change in a primary stockholder in the case of a corporation, or membership in the case of a limited liability company, shall require a new application and approval by the Commission before the business may begin operation.

(b) **Notification.** A change of ownership or any other change, such as change of name or address, which makes Commission records no longer accurate must be reported to the Commission immediately in writing on forms prescribed by the Commission for approval by the Commission. The dealership must meet all the requirements as prescribed for licensing. The Commission may revoke or suspend a license after it has been granted for change of condition resulting in failure to maintain the qualifications for license. Failure to complete the requirements for licensing at the new location within thirty (30) days shall result in suspension of the dealer's license until the licensing requirements are met. The Commission may endorse changes on the license without charge.

[OAR Docket #05-872; filed 5-16-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 15. USED MOTOR VEHICLE SALESMEN

[OAR Docket #05-873]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees
765:15-1-3. [AMENDED]
765:15-1-7. [AMENDED]
Subchapter 3. Authority of Salesmen
765:15-3-1. [AMENDED]
AUTHORITY:
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The adopted rule adds sales managers and finance and insurance managers or any one acting in a sales capacity to those persons required to obtain a license as a salesperson.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:15-1-3. Applicant

(a) **Activities requiring license.** A used motor vehicle salesman is anyone who:

(1) receives gain or compensation of any kind, directly or indirectly, regularly or occasionally for, or negotiates for, sale or trade of a specified used motor vehicle for a specified used motor vehicle dealer, or

(2) operates as a broker only for a specified used motor vehicle dealer, or

(3) receives compensation for referral of a prospective buyer to his employer or acts on behalf of the dealer in the purchase or sale of a used motor vehicle, or

(4) is authorized to transfer and/or sign titles for the dealership, or

(5) displays or offers used motor vehicles for sale for the dealership at a licensed location,

(6) acts in the capacity of sales manager or finance and insurance manager or acts in any capacity as part of the sales process.

(b) **Information required.** An applicant shall provide sufficient information on the application or otherwise to enable the Commission to determine whether the applicant should be granted a license. The information shall include:

(1) information relating to the applicant's business integrity, the applicant's experience in the same or similar businesses, and his business history,

(2) whether the applicant will devote full or part time to the business, and

(3) any other pertinent information consistent with the safeguarding of the public interest and welfare.

(c) **Application required.** Applications for license shall be verified by the oath or affirmation of the applicant and shall be on forms prescribed by the Commission and furnished to such applicants. The applications shall contain such information as the Commission deems necessary to enable it to fully determine the qualifications and eligibility of the applicant for the license applied for.

(d) **Activity not requiring a license.** A dealer, by written instrument, may authorize another licensed individual or dealer to purchase vehicles for the dealer. Said authorization shall not authorize the individual to conduct any other business for the dealer or represent the dealer in any other manner.

(e) **Activity not authorized.** A salesperson's license shall not authorize the person to refer a prospective customer or consumer to another used motor vehicle dealer and obtain compensation therefor without an employment relationship with the other used motor vehicle dealer.

765:15-1-7. Changes

(a) **Employer.** If the salesman changes employer, the licensee shall immediately mail the license to the Commission for its endorsement of the change of employer. There shall be no charge for such endorsement. The licensee shall keep his license on his person while engaged in his business and shall display it upon request; however, there shall be no penalty for not having the license upon his person when he has submitted it to the Commission for its endorsement of a change of employer.

(b) **Notice.** The dealer will notify the Commission in writing when a salesman's employment is terminated ~~by returning the salesman's certificate as set out below~~. The dealer may be liable for actions of the salesman until proper notice is filed with the Commission.

(c) **Salesman's card.** Each salesman shall surrender his identification card to the Commission for endorsement of change of employer, before again engaging in the business as a salesman for another used motor vehicle dealer or as a used motor vehicle dealer.

SUBCHAPTER 3. AUTHORITY OF SALESMEN

765:15-3-1. Authority

(a) **Salesman only.** A used motor vehicle salesman's license shall permit the licensee to engage in the activities of a used motor vehicle salesman. A salesman's license does not entitle the licensee to perform as a dealer as defined in 47 O.S. Section 581 (4). A used motor vehicle salesman's license does not entitle a person to separately own vehicles for sale or any interest in the vehicles or dealer business without first qualifying as a partner, corporate member, or part owner of the dealership and meeting the qualifications of a dealer as prescribed in 47 O.S. Sections 581-583.

~~(b) **Certificate.** A certificate will be issued by the Commission to be retained by the employing dealer as evidence that its salesmen are properly licensed. Upon termination of employment, the certificate will be returned by the dealer to the office of the Oklahoma Used Motor Vehicle and Parts Commission within ten (10) days.~~

(~~c~~b) **One card only.** A salesman may not hold more than one used motor vehicle salesman's license at any one time or be employed by or sell for any dealer other than the dealer and at the address designated on the salesman's license, with the exception that the licensed dealer has more than one location. Then the licensed dealer and licensed salesman may sell on each location properly licensed as additional locations.

(~~d~~c) **Restrictions.** A salesman's license shall not be issued for an individual who is not actively engaged in the activities of a used motor vehicle salesman, nor shall it be issued for the purpose of allowing an individual to operate a vehicle with a used motor vehicle dealer's plate for any use not benefitting the dealer's business.

[OAR Docket #05-873; filed 5-16-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 20. WHOLESALE USED MOTOR VEHICLE DEALERS

[OAR Docket #05-874]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees
765:20-1-7. [NEW]
AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission; 47 O.S. Section 582(E)(1), 75 O.S. Section 302(A)(1), and 75 O.S. Section 307
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The adopted rule sets out what constitutes a change of ownership which requires a new application and approval by the Commission, the notification requirements involved and deadlines for submittal of requirements for any change.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:20-1-7. Changes

(a) **Ownership.** A change of ownership, including a change in a primary stockholder in the case of a corporation, or membership in the case of a limited liability company, shall require a new application and approval by the Commission before the business may begin operation.

(b) **Notification.** A change of ownership or any other change, such as change of name or address, which makes Commission records no longer accurate must be reported to the Commission immediately in writing on forms prescribed by the Commission for approval by the Commission. The dealership must meet all the requirements as prescribed for licensing. The Commission may revoke or suspend a license after it has been granted for change of condition resulting in failure to maintain the qualifications for license. Failure to complete the requirements for licensing at the new location within thirty (30) days shall result in suspension of the dealer's

license until the licensing requirements are met. The Commission may endorse changes on the license without charge.

[OAR Docket #05-874; filed 5-16-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 25. AUTOMOTIVE DISMANTLER AND PARTS RECYCLERS

[OAR Docket #05-875]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees
765:25-1-7. [AMENDED]
AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission; 47 O.S. Section 582(E)(1), 75 O.S. Section 302(A)(1), and 75 O.S. Section 307
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
The adopted rule sets out what constitutes a change of ownership which requires a new application and approval by the Commission, the notification requirements involved and deadlines for submittal of requirements for any change.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:25-1-7. Changes

~~Any changes which would render no longer accurate any information contained in an application for a license filed with the Commission shall be amended before the occurrence of the change on a form as the Commission may prescribe by rule or regulation.~~

(a) **Ownership.** A change of ownership, including a change in a primary stockholder in the case of a corporation, or membership in the case of a limited liability company, shall require a new application and approval by the Commission before the business may begin operation.

(b) **Notification.** A change of ownership or any other change, such as change of name or address, which would render no longer accurate any information contained in an application for a license filed with the Commission shall be amended before the occurrence of the change on a form as the Commission may prescribe by rule or regulation.

[OAR Docket #05-875; filed 5-16-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 30. BUYER'S IDENTIFICATION CARDS

[OAR Docket #05-876]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees
765:30-1-7. [NEW]
Subchapter 7. Salvage Pools and Salvage Disposal Sales
765:30-7-1. [AMENDED]
765:30-7-3. [NEW]
AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission; 47 O.S. Section 582(E)(1), 75 O.S. Section 302(A)(1), and 75 O.S. Section 307
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765:30-1-7 [NEW]
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Register publication:
22 Ok Reg 242
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04-1407
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The adopted rule establishes the criteria for licensing foreign buyers to buy wrecked vehicles at salvage pools or salvage disposal sales.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:30-1-7. Foreign buyers

(a) **Definition.** A foreign buyer shall be a Buyer's Identification Cardholder residing outside the boundaries of the fifty states of the United States and having the authority to engage in the automotive dismantling business in the country of the buyer's residence.

(b) **Application.** All applications for a Buyer's Identification Card shall be submitted in English. All foreign buyer applicants shall submit a copy of a photo identification issued by the governmental authority of the nation in which they reside.

(c) **Limitation.** Buyer's Identification Cards for foreign buyers shall not be issued to an address within the boundaries of the fifty states of the United States.

SUBCHAPTER 7. SALVAGE POOLS AND SALVAGE DISPOSAL SALES

765:30-7-1. Bidding privileges

(a) **Limitation.** Sales at a salvage pool or salvage disposal sale shall be opened only to persons possessing a current, legal BID card to buy at a salvage pool or salvage disposal sale. Only Buyers Identification Card holders shall be allowed at salvage pool sales on the date of the sale. Visitors shall not be allowed in the sales areas.

(b) **Verification.** It shall be the duty of the owner, manager, or person in charge of any salvage pool or salvage disposal sale to prohibit the bidding by any person who does not display his BID card, and further, to refuse to sell to any person any wrecked or repairable motor vehicle if such person does not display a valid BID card. The BID card shall be carried upon the cardholder's person and same displayed to owner, manager, or person in charge of any salvage pool or salvage disposal sale. Physical description and signature of cardholder must be compared with cardholder's driver's license for valid identification by owner, manager, or person in charge of any salvage pool or salvage disposal sale. It shall be the duty of the person in charge of any salvage pool or salvage disposal sale to refuse to sell to any person any wrecked or repairable motor vehicle if such person does not display a valid BID card.

(c) **Internet bidding.** It shall be the duty of the owner, manager or person in charge of any salvage pool or salvage disposal sale to initiate appropriate procedures to comply with paragraph (b) above when the salvage disposal sale is conducted in whole or in part by internet bidding. Identification of a bidder on the internet may include, but not limited to, issuance of a unique identifying number or password to each individual BID cardholder.

(d) **Bidder's responsibility.** It shall be the responsibility of the BID cardholder to secure and maintain the secrecy and integrity of the unique identifying number and password issued to the cardholder by the salvage pool. Use of the unique identifying number or password by any person other than the cardholder shall be deemed an unauthorized use and may be grounds for revocation of the BID card.

765:30-7-3. Sales to foreign buyers

Sales of vehicles to foreign Buyer's Identification Cardholders shall be reported to the Oklahoma Tax Commission, Motor Vehicle Division, on the prescribed form within five (5) calendar days of the sales of said vehicle.

[OAR Docket #05-876; filed 5-16-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 35. MANUFACTURED HOME DEALERS

[OAR Docket #05-877]

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RULES:
Subchapter 3. Licensing Qualifications, Procedures and Fees
765:35-3-7. [AMENDED]
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ANALYSIS:
The adopted rule sets out what constitutes a change of ownership which requires a new application and approval by the Commission, the notification requirements involved and deadlines for submittal of requirements for any change.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 3. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:35-3-7. Changes

~~Any change, such as change of name, address, or ownership, which make Commission records no longer accurate must be reported to the Commission immediately in writing on forms prescribed by the Commission for approval by the Commission. The dealership must meet all the requirements as prescribed for licensing. The Commission may revoke or suspend a license after it has been granted for change of condition resulting in failure to maintain the qualifications for license. The Commission may endorse changes on the license without charge.~~

(a) **Ownership.** A change of ownership, including a change in a primary stockholder in the case of a corporation, or membership in the case of a limited liability company, shall require a new application and approval by the Commission before the business may begin operation.

(b) **Notification.** A change of ownership or any other change, such as change of name or address, which makes Commission records no longer accurate must be reported to the Commission immediately in writing on forms prescribed by the Commission for approval by the Commission. The dealership must meet all the requirements as prescribed for licensing. The Commission may revoke or suspend a license after it has been granted for change of condition resulting in failure to maintain the qualifications for license. The Commission may endorse changes on the license without charge.

[OAR Docket #05-877; filed 5-16-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 36. MANUFACTURED HOME MANUFACTURERS

[OAR Docket #05-878]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Licensing Qualifications, Procedures and Fees
765:36-3-7. [AMENDED]
AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission; 47 O.S. Section 582(E)(1), 75 O.S. Section 302(A)(1), and 75 O.S. Section 307
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
The adopted rule sets out what constitutes a change of ownership which requires a new application and approval by the Commission, the notification requirements involved and deadlines for submittal of requirements for any change.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 3. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:36-3-7. Changes

~~Any change, such as change of name, address, or ownership, which make Commission records no longer accurate must be reported to the Commission immediately in writing on forms prescribed by the Commission for approval by the Commission. The manufacturer must meet all the requirements as~~

~~prescribed for licensing. The Commission may revoke or suspend a license after it has been granted for change of condition resulting in failure to maintain the qualifications for license. The Commission may endorse changes on the license without charge.~~

(a) **Ownership.** A change of ownership, including a change in a primary stockholder in the case of a corporation, or membership in the case of a limited liability company, shall require a new application and approval by the Commission before the business may begin operation.

(b) **Notification.** A change of ownership or any other change, such as change of name or address, which makes Commission records no longer accurate must be reported to the Commission immediately in writing on forms prescribed by the Commission for approval by the Commission. The manufacturer must meet all the requirements as prescribed for licensing. The Commission may revoke or suspend a license after it has been granted for change of condition resulting in failure to maintain the qualifications for license. The Commission may endorse changes on the license without charge.

[OAR Docket #05-878; filed 5-16-05]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 37. MANUFACTURED HOME INSTALLERS

[OAR Docket #05-879]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Licensing Qualifications, Procedures and Fees
765:37-3-7. [AMENDED]
Subchapter 5. Operation
765:37-5-4. [NEW]
AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission; 47 O.S. Section 582(E)(1), 75 O.S. Section 302(A)(1), and 75 O.S. Section 307
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amended rule sets out what constitutes a change of ownership which requires a new application and approval by the Commission, the notification requirements involved and deadlines for submittal of requirements for any change. The new rule specifically allows Commission investigators to randomly or systematically inspect manufactured home installations for compliance with installation standards.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2005:

SUBCHAPTER 3. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:37-3-7. Changes

~~Any change, such as change of name, address, or ownership, which make Commission records no longer accurate must be reported to the Commission for approval immediately in writing on forms prescribed by the Commission. The installer must meet all the requirements as prescribed for licensing. The Commission may revoke or suspend a license after it has been granted for change of condition resulting in failure to maintain the qualifications for license. The Commission may endorse changes on the license without charge.~~

(a) **Ownership.** A change of ownership, including a change in a primary stockholder in the case of a corporation, or membership in the case of a limited liability company, shall require a new application and approval by the Commission before the business may begin operation.

(b) **Notification.** A change of ownership or any other change, such as change of name or address, which makes Commission records no longer accurate must be reported to the Commission for approval immediately in writing on forms prescribed by the Commission. The installer must meet all the requirements as prescribed for licensing. The Commission may revoke or suspend a license after it has been granted for change of condition resulting in failure to maintain the qualifications for license. The Commission may endorse changes on the license without charge.

SUBCHAPTER 5. OPERATION

765:37-5-4. Inspections

The Commission may conduct inspections of manufactured home installations at random or systematically, as required, to verify compliance by the installer with installation standards.

[OAR Docket #05-879; filed 5-16-05]

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

[OAR Docket #05-861]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Civil Rights Compliance
780:1-7-1. [AMENDED]
AUTHORITY:
State Board of Career and Technology Education; 70 O.S. 2001, §14-104, as amended; 75 O.S. 2001, §250 et. seq., as amended
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April 28, 2005
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July 1, 2005
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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule amendment clarifies the policy that ensures the Department's compliance with civil rights-related laws. The action taken provides clarification of the civil rights-related laws for which the Agency ensures compliance. Clarification was needed to make compliance with the applicable federal laws easier to accomplish. 70 O.S. Supp.2003, Section 14-108. The Department ensures that it will conduct all operations to ensure compliance with the civil rights-related laws and their implementing regulations.
CONTACT PERSON:
Marie Saatkamp, (405) 743-5455

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 7. CIVIL RIGHTS COMPLIANCE

780:1-7-1. General Provisions

(a) **Legislation.** The Department shall conduct all operations in a manner that ensures compliance with the following civil rights-related laws and their implementing regulations:

(1) Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin;

(2) Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex; ~~and,~~

(3) Section 504 of the Rehabilitation Act of 1973 ~~and the Americans with Disabilities Act of 1990,~~ which ~~prohibit~~ prohibits discrimination on the basis of disability.

(4) The Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability.

(b) **Nondiscrimination.** The Department will not require, approve of, or engage in any discrimination or denial of services on the basis of race, color, national origin, sex, age, or disability in performing any of the following activities:

(1) Establishing criteria or formulas for the distribution of federal or state funds to career and technology education programs in the state;

(2) Establishing requirements for admission to or administering career and technology education programs;

(3) Approving actions by local entities providing career and technology education; and,

(4) Conducting its own programs and state agency operations, including, but not limited to, employing staff, developing and disseminating materials and the awarding of competitive grants and contracts.

(c) **Filing of methods and procedures.** The Department shall submit and maintain on file with the Office for Civil Rights the methods of administration and procedures it will follow in complying with requirements of the **Guidelines for Eliminating Discrimination and Denial of Service on the Basis of Race, Color, National Origin, Sex, and Handicap** [44 FR 17162 (March 21, 1979)].

(d) **Compliance program.** The Department will adopt a compliance program to prevent, identify, and remedy discrimination on the basis of race, color, national origin, sex, age, and disability by its subrecipients. This program will include the following activities:

(1) Collecting and analyzing civil rights-related data and information that subrecipients compile for their own purposes or that are submitted to state and federal officials under existing authorities;

(2) Conducting periodic compliance reviews of selected subrecipients (i.e., an investigation of a subrecipient to determine whether it engages in unlawful discrimination in any aspect of its program); upon finding unlawful discrimination, notifying the subrecipient of steps it must take to attain compliance, and attempting to obtain voluntary compliance;

(3) Providing technical assistance upon request to subrecipients, which includes assisting subrecipients in identifying unlawful discrimination and instructing them in remedies for and prevention of such discrimination; and,

(4) Periodically reporting the Department's activities and findings to the Office for Civil Rights.

[OAR Docket #05-861; filed 5-13-05]

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

[OAR Docket #05-862]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Local Programs: Application; Student Accounting; Evaluation
780:10-7-2. [AMENDED]
Subchapter 9. Service Contracts and Equipment Guidelines [AMENDED]
780:10-9-2. [AMENDED]
AUTHORITY:
State Board of Career and Technology Education; 70 O.S. 2001, §14-104, as amended; 75 O.S. 2001, §250 et. seq., as amended
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule amendment clarifies data reporting, due dates for reporting data as well as procedures for requesting data. The action taken provides clarification in reporting data and requesting data. Clarification was needed as procedures and due dates have changed. 70 Oklahoma Statutes § 14-103. All data required will be reported to the agency by the established due dates. Data requests will be documented and completed by the established due dates. The rule amendment clarifies the inventory policy for all agency-purchased or reimbursed instructional equipment. The action taken provides clarification of the agency equipment and identification procedure. Clarification was needed to make compliance with the applicable federal and state laws easier to accomplish. 70 O.S. Supp.2003, Section 14-108. Agency purchased equipment and instructional equipment reimbursed with state and federal funds would be identified and tagged as part of the inventory.
CONTACT PERSON:
Marie Saatkamp, (405) 743-5455

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 7. LOCAL PROGRAMS: APPLICATION; STUDENT ACCOUNTING; EVALUATION

780:10-7-2. Student accounting system

(a) **Data collection.**

(1) **Report submissions.** Each local education agency or eligible recipient shall submit student accounting reports by ~~on~~ the established due dates as instructed by the Information Management Division in their yearly guidebooks.

~~(2) **Recipients of student accounting system reports.** All student accounting system reports and related materials will be mailed from the Information Management Division to a locally designated administrative official for all programs. The locally designated administrative official will be responsible for distributing the materials to and collecting materials from teachers in these programs.~~

(~~3~~ 2) **Program enrollment data ~~forms~~.** Each local education agency or eligible recipient shall submit enrollment information for every student who received *Career*Tech services during the school year or fiscal year as instructed by the Information Management Division in their yearly guidebooks. ~~Enrollment data for secondary and full-time adult programs is due during the month of October of each school year. Supplemental data must be submitted as additional students enter the program up until the end of the school year or until the end of the fiscal year on June 30. Enrollment data for all other programs is due by the designated due date.~~

(~~4~~ 3) **Completion/Follow-Up Report.**

~~(A) **Information.**~~ All secondary and full-time adult programs that have been designated occupational (skill training) are also required to submit completion data for ~~all~~ secondary and adult students as instructed by the Information Management Division in their yearly guidebooks. ~~In grades 11 and 12 and for all adult students~~. Follow-up information is required for all students identified as occupational or program completers.

~~(B) **Due date.** The "Student Completion/Follow Up Report" is computer generated from the previous year's program enrollment information and is due by the established due date as set forth by the Information Management Division.~~

(4) **Other Requests for Data.** As federal and state requests for data change, other types of data may be requested from each local education agency or eligible recipient. Guidebooks/ instructions will be provided from the Information Management Division as needed to explain reporting requirements and due dates.

(b) **Data requests.**

(1) **Student data analysis requests.** All requests for student data analysis shall be directed to the Information Management Division. Specialized or very detailed data analysis should be requested at least three weeks prior to the needed date to allow adequate time for computer programming and/or manual data compilation.

(2) **Documentation; non-staff requests.** All information released shall be dated and documented with the date of request, person to whom data is released, and purpose of data's use. Non-staff information requests will be completed ~~as workload permits.~~within a reasonable time.

~~(3) **Other student data.** Student data that is not available through existing data collection procedures should be presented to the Information Management Division at least six months prior to the needed date so that appropriate procedures for collecting and processing the data can be developed and implemented.~~

(~~4~~3) **Release of data.** All data requests that require the release of individual identifiable student data to anyone outside the Department must receive prior approval from the State Director. Third parties receiving such data are to protect against re-disclosure of the information.

SUBCHAPTER 9. SERVICE CONTRACTS AND EQUIPMENT GUIDELINES

780:10-9-2. Equipment

(a) **State-owned equipment.**

(1) **Donated or purchased equipment.** Equipment donated to ~~the Department~~ or purchased by the Department through ~~full or partial~~ reimbursement with non-federal funds shall be considered the property of the Department.

(2) **Special funding.** Equipment purchased through special funding, which require that the equipment be used in specific programs, shall be placed in those programs and shall be subject to appropriate state and federal laws, rules and regulations.

(~~2~~3) **Maintenance.** The receiving institution shall be responsible for maintaining equipment supplied by the Department.

(~~3~~4) ~~**Written notification to Inventory Specialist.**~~**Closing program.** The Program Administrator of the training program shall notify the Department inventory ~~Specialist~~ personnel, in writing, when a program or class is to be terminated or completed.

(b) **Loaning of equipment.** Equipment purchased or reimbursed for use by the Department's Business and Industry Development Division may be loaned to other eligible training sites. The equipment shall be subject to any restrictions and is subject to recall on notice by the Department when needed for industrial training.

(c) **Identification ~~and disposal.~~**

(1) ~~**Identification tag; disposal.**~~ **Department Purchased.** ~~All agency purchased equipment and instructional equipment reimbursed with state funds having a value of $500 or more shall be affixed with an appropriate identifying tag. Disposal of state-owned equipment shall be in accordance with state law as administered by the Department of Central Services.~~ All equipment purchased by the Department with a value of $500 or more shall be affixed with an appropriate tag.

(2) ~~**Ownership of state-owned equipment.**~~ **Department Reimbursement.** ~~The ownership of state-owned equipment over five years of age may be transferred upon approval of the Department to the local education agency in possession of equipment unless said equipment is essential for operation of industry specific or new industry training programs. Notification of transfer of ownership shall be made by the Inventory Specialist of the Department.~~ All equipment purchased by local education agencies (LEA) and reimbursed by the Department with state funds and has a value of $2500 or more shall be affixed with an appropriate tag.

(3) ~~**Inventory records.**~~ **Specialty Programs.** ~~The Department shall maintain inventory records on all tagged equipment. Identification tags will be assigned by the Department and sent to technology centers and public schools to be affixed to the equipment.~~ All equipment purchased for Industry Training, Safety Training, and Existing Industry with a value of $500 or more shall be affixed with an appropriate tag.

(4) ~~**Annual inventory.**~~ **Federal Funds.** ~~Tagged equipment will be inventoried annually.~~

~~(A) **List.** A printout list of equipment to be inventoried will be mailed to equipment users by the Department.~~

~~(B) **Update printouts.** Users of tagged equipment should update the printouts and return them to the Department no later than 60 days after receiving the printout.~~

~~(C) **Inventory removal requests.** Department personnel will inspect and/or make recommendations on lost, stolen, or salvage equipment that is requested to be removed from the user's inventory.~~

~~(D) **Adjustments.** The Department will make necessary adjustments to the inventory.~~ All equipment purchased by local education agencies and reimbursed with federal funds with a value of $5000 or more shall be affixed with an appropriate tag.

(5) ~~**Transfers.**~~ **Inventory records.** ~~In no case shall an item be transferred from one school to another or disposed of without approval from the Department. A form will be provided by the Department for making a request for transfers, trade-ins, or salvage.~~ The Department shall maintain inventory records on all tagged equipment. Identification tags will be assigned by the Department and sent to the local education agency or to the appropriate Department personnel to be affixed to the equipment.

(d) ~~**Equipment distribution.**~~ **Accountability.** ~~Equipment purchased through funding agencies which require that the equipment be used in specific programs shall be placed in those types of programs and shall be subject to appropriate state and federal laws and regulations.~~

(1) **Tagged equipment.** Equipment to be inventoried annually will be mailed to Superintendent or their designee, by the Department, with a request to update the list and return within 60 days unless a physical inventory is conducted by Department inventory personnel.

(2) **Non-tagged equipment.** The local education agency (LEA) is responsible for maintaining an accurate list of items that were reimbursed with state funds with a value of $500 to $2500.

(3) **Adjustments.** The Department, after review of requests, will make necessary adjustments to the inventory.

(e) **Disposal.** Schools requesting items to be removed due to lost, stolen, salvage, or surplus must submit an inventory adjustment form for approval. Department personnel will inspect and/or make recommendations on the request.

(f) **Transfer of Ownership.** In no case shall an equipment transfer be made without advanced approval from Department inventory personnel. The ownership of state-owned equipment over five years of age may be transferred upon approval of the Department to the local education agency (LEA) in possession of equipment unless said equipment is essential for operation of industry specific or new industry training programs. Department inventory personnel will provide requests to accept and notification of transfers.

(g) **Guidelines.** Equipment procedures and guidelines, and the inventory adjustment forms can be found on the Department Website and will be utilized to enforce these rules.

[OAR Docket #05-862; filed 5-13-05]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 15. TECHNOLOGY CENTERS

[OAR Docket #05-863]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Technology Centers Education
780:15-3-2. [AMENDED]
780:15-3-4. [AMENDED]
780:15-3-5. [AMENDED]
780:15-3-6. [AMENDED]
780:15-3-7. [AMENDED]
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ANALYSIS:
The rule amendment clarifies the program approval process for State Board funding. The action taken provides clarification of the program approval process for State Board funding. No one knows why the rule was written to say "other accreditation factors" because the accreditation factors are printed and available for review. §70-14-103 Make it easier to understand the rule. The rule amendment provides more consistency and balance in the language between annexation and deannexation procedures. The rule amendment provides more consistency and balance in the language between annexation and deannexation procedures. Consistency was needed to provide a sense of fairness whether patrons were choosing to annex or deannex. 70 O.S. Supp.2003, Section 14-108. To ensure that a technology center can continue to provide quality programs and services when a deannexation occurs. A phase out allows more time for a technology center to plan and adjust their budget as revenue decreases. This is a rule that has never been used. Deletes a rule that has never been used. A review of existing rules showed no evidence that this rule had ever been used or would be used in the future. N/A Delete a rule that has never been used. The rule amendment makes the terminology more consistent with the terminology used by the Oklahoma State Department of Education. Many of the election statutes apply to technology centers and independent school districts in the same way; yet, the State Department of Education uses the term "board district" and the State Department of Career and Technology Education uses the term "zone". This will make it easier to understand how other rules and statutes impact this rule. Replace the word "zone" with the words "board district" for the purpose of clarity. Understanding the rule was difficult because different terminology is used in State Department of Education rules and State Department of Career and Technology Education rules. §70-14-110. There would not be any change in how the rule is applied. The change would make it easier to understand this rule in relation to other rules about school board elections since the terminology would be consistent. The proposed rule amendment will allow residents of territory not presently located within a technology center school district to vote to annex into such a district, and if the election is successful, those residents would pay a lesser ad valorem rate for the first two years following the successful annexation election. In year one after the election, residents would pay 50% of the ad valorem rate attributable to membership in the technology center school district, and in year two the residents would pay 80% of the rate. An amendment is proposed to allow residents not currently located within a technology center school district to vote to annex into the district, but pay a reduced ad valorem rate the first two years after a successful annexation election. The rule amendment is needed to enhance economic development and will benefit person living in a territory that successfully annexes into a technology center school district, including high school students, adult students, as well as business and industry clients that previously had to pay a higher out of-district tuition to attend classes or to not attend. Several school districts and other areas are currently examining the benefits of being within a technology center school district and the positive impact they would immediately receive would encourage the residents to voate and decide whether their residents should have all the benefits of membership in a technology center school district including, but not limited to, increased access to business and industry training at lower costs, adults and secondary students attending classes at a lower tuition rate (no tuition for high school students), and residents initially pay a lower ad valorem tax rate for the first two years after the successful annexation election. This change will also mirror proposed language changing the rules for proposed deannexations.

70 O.S. § 14-108 As a result of the proposed rule amendment, residents living within the newly annexed area would immediately be able to attend classes at a lower tuition rate (no tuition for high school students), and initially pay a lower ad valorem tax rate for the first two years after the successful annexation election. The rule amendment provides more consistency and balance in the language between annexation and deannexation procedures. The action taken provides for similar and consistent procedures for annexing and deannexing. It also adds language regarding the content and procedures in organizing a petition. The petition language for annexation is now consistent with the language for deannexation. Consistency was needed to provide a sense of fairness whether patrons were choosing to annex or deannex. Also, in order to verifying signatures and determine the intent of patrons, a more organized and consistent petition needed to be developed. 70 O.S. Supp.2003, Section 14-108. To provide patrons an opportunity to gradually phase into a technology center district without paying the full amount of taxes in their first year of membership. Secondly, to provide a more readable and consistent instrument for gathering signatures from patrons. This proposed amendment provides greater clarity to an existing rule. The proposed amendment provides a better description of the type of data collected. After reviewing the type of data collected, it was determined that more clarity is needed §70-14-103. The intended effect of the rule is to provide a more accurate description of the type of data collected. The rule amendments are consistent with compliance and governance policies recently adopted by the State Board of Career and Technology Education. The rule amendments incorporate into the rules policies adopted by the State Board of Career and Technology Education. The State Board of Career and Technology Education policies that were passed during the past calendar year have not been integrated into the rules §70-14-103.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2005:

SUBCHAPTER 3. TECHNOLOGY CENTERS EDUCATION

780:15-3-2. Establishment of a technology center district; sites and buildings

(a) **Establishment.** A technology center district shall be established in accordance with the steps outlined in this section.

(b) **State Board study of proposed technology center district.**

(1) **Proposed district study.** The State Board, upon request of the public school(s) within a proposed district, board of county commissioners, or citizens within a proposed district, shall make a study of the proposed district in regard to the following factors:

(A) Size;

(B) Total population;

(C) Assessed valuation;

(D) Current school enrollments;

(E) Estimated secondary school enrollments;

(F) Estimated full-time adult enrollments;

(G) Other information pertinent to determining the feasibility of a technology center district.

(2) **Costs.** The study shall also include building and equipment costs, as well as estimated annual operating costs.

(3) **Sharing of study information.** The information compiled as a result of the study shall be shared with the local schools and/or county commissioners and other interested persons within the proposed technology center district.

(c) **State Board determination of technology center feasibility.**

(1) **Decision by State Board.** After a study of the proposed technology center district has been completed and reviewed by the interested and affected schools and/or county commissioners, a decision will be reached as to the course of action to be taken. The State Board shall finally determine if the proposed technology center district meets the criteria and requirements prescribed, if there is a need for the district, and if the operation of the district can be adequately funded.

(2) **Valuation of district; waivers.** A proposed technology center district shall have a minimum valuation of $100,000,000 after homestead exemptions. In situations involving low valuations and/or sparsely populated areas where this requirement is not feasible, the State Board, upon presentation of sufficient justification, may give special permission to waive the minimum criteria.

(d) **Presentation of resolutions.**

(1) **Resolutions signees.** If the State Board determines the proposed technology center district is feasible and needed, resolutions shall be presented to the State Board signed by:

(A) Local boards of education of districts desiring to become a part of a technology center district,

(B) A majority of the membership of a board of county commissioners, or

(C) A combination of (A) and (B) of this subsection where there exists a county and school districts outside that county desiring to become a part of the same technology center district.

(2) **Cooperation.** The State Board shall work with the area in order to establish a district that is feasible and will fit into its state plan.

(3) **Established school districts.** The State Board shall protect the attendance area of established technology centers and not approve any part of an existing technology center district for inclusion into a new area district unless that area cannot be served adequately by the existing technology center (Deannexation proceedings may have to be followed first.)

(e) **Technology center district formation election.**

(1) **Call for election.** The State Board shall call an election in each district submitting a resolution, or in each district within a county submitting the resolution, if a technology center district is found to be feasible and needed.

(2) **Election.** An election will be held in each independent and elementary school district, and/or entire county, having territory that would be included in the proposed technology center district, for the purpose of permitting electors of the district to vote on the question of whether the territory comprising the independent or elementary

school district, and/or entire county, shall be included in the proposed technology center district.

(f) **Elections relative to the creation of new technology center district (general rules).** The rules of this subsection shall be used for conducting elections relative to the creation of at technology center district, electing the initial board of education, voting the initial operating levy, and for annexation of an independent or elementary school district to an existing technology center district.

(1) **Election date.** The State Board with advice and counsel of local boards of independent and elementary school districts and/or county commissioners shall designate the date on which an election shall be conducted.

(2) **Responsibilities of county election board; State Board.** The State Board shall cooperate with the county election board designated to conduct the election. The county election board shall receive notice from the State Board and shall conduct the elections in the school district at the time specified by the State Board. The State Board shall prepare the publication notice and submit it to at least one newspaper of general circulation in each county officially calling the election, stating the purpose of the election and listing the polling places in the county. The State Board shall assume the cost of such publication.

(3) **Forms.** All forms to be used in technology center district elections will be provided by the County Election Board.

(4) **Hours.** The polls for election shall be open from 7 a.m. until 7 p.m.

(5) **Certification of results.** The county election boards shall, when appropriate, certify to the local school boards the results of an election. The county election boards shall certify to the State Board, also, the results of any election pertaining to the creation of a new technology center district, the initial board of education election, and the initial operating levy election.

(6) **Costs of elections.** When holding the election for the creation of a technology center district, the election of the original board of education, and the election for the first operation levy, the cost for these elections will be borne by the State Board.

(7) **Annexation election costs.** Annexation election costs of individual independent and elementary school districts will be borne by the State Board.

(g) **Formation election results determination.**

(1) **Election results.** Results of the election for the formation of a technology center district shall be submitted to the State Board and each school district involved. If the results of the election satisfy the criteria for the formation of a technology center district, the State Board may declare the district formed.

(2) **Election results from resolutions from school districts.**

(A) **Inclusion in the proposed district.** The territory comprising an independent or elementary school district shall be included in the proposed technology center district if a majority of the electors who voted cast ballots in favor of the question.

(B) **Establishment after an unfavorable vote.** Notwithstanding an unfavorable vote in an independent or elementary school district(s), a technology center district may be established and the territory comprising other independent and elementary school districts in which the votes have been favorable may be included in the technology center district, if criteria prescribed by the State Board can be met.

(i) **Study of election results.** The State Board shall study the results of the elections to determine if a sufficient number of the school districts voted in favor of becoming a part of a technology center district. If the area is deemed sufficient, the State Board shall form the district.

(ii) **Valuation; reconsideration of districts.** If the valuation of the area that voted in favor of the proposition is not sufficient to form the district, the State Board shall continue to work with the proposed area; and if the school districts that were opposed to becoming a part of the technology center district wish to vote again on the proposition, they may do so by presenting another resolution to the State Board.

(C) **District establishment suspension; second election.** If the criteria cannot be met because of unfavorable votes in one or more independent or elementary school districts, the State Board may hold establishment of the proposed technology center district in suspension for a period not to exceed one year, and in the meantime may, but no sooner than after ninety (90) days, at the request of the local board of education where the election failed, call another election on the same question.

(3) **Election results from resolutions by a majority of a board of commissioners.**

(A) **Voters.** The majority of the votes cast in the county shall determine whether the territory of the county becomes a part of a technology center district. The electors residing in any portion of a county that is already a part of an existing technology center district shall not be allowed to participate in this election.

(B) **Electors in adjoining county.** A local school district that has its main buildings within the county calling the election but has electors residing in an adjoining county should pass a resolution for that part and present it to the State Board, which shall call an election as provided in these rules and regulations.

(C) **Addition of adjoining county electors to the technology center district.** If the majority of the voting electors in the county vote to establish a technology center district, then that part of the local district located in the adjoining county shall become part of the new district, provided a majority of those voting cast ballots in the affirmative, and they shall be entitled to the rights and privileges and be subject to the assessments as are all other patrons in the district.

(D) **Second election.** If the election fails, the State Board may call another election in the county at the

request of the county commissioners after a period of three months or 90 days has elapsed since the previous election.

(4) **Declaration; number designation.** Whenever there has been a compliance with these rules and regulations, the State Board may issue an order declaring the technology center district to be established and designating its number.

(5) **Validation period.** Results of school districts and/or counties that voted to become a part of a technology center district shall be held valid for a period of 12 months, or one year, to allow time for the passage of an operational mill levy election.

(6) **Branch campuses.** Branch campuses may be established by the technology center board of education to serve special needs or remote areas of the district. In the event the local board elects to pursue an additional campus or provide an ongoing occupational program at a site other than the main campus, prior approval must be granted by the State Board. Factors that will be used in determining approval will include, but not be limited to, student travel time to nearest available *Career*Tech programs, district valuation, student enumeration, and local industry needs. If the branch campus is able to provide a minimum of five full-time programs, then it may be recognized as an official satellite campus and will be eligible for additional funding under a formula approved by the State Board.

(h) **Zoning of the new technology center district.**

(1) **Advisement.** When the State Board forms a technology center district, it shall then ~~zone~~ divide the district into board districts with the advice and counsel of the local school districts.

(2) **Five ~~zones~~ board districts.** After consultation with the local school officials, the State Board will divide each technology center district into five numbered ~~zones~~ board districts of approximately equal population.

(i) **Election of members to the board of education of the new technology center district.**

(1) **Call to elect members.** When a technology center district is established, the State Board shall call, and the appropriate county election board(s) shall conduct an election to choose a board of education, which shall consist of five (5) members except as hereinafter provided, elected by all of the school district electors of the technology center district.

(2) **Composition of board.** Candidates for ~~zone~~ board district offices of the board shall be residents of the ~~zone~~ board district. Electors shall vote on all candidates in board elections.

(3) **Terms.** The newly elected board members will serve initial terms as follows:

(A) Office Number 1, ~~Zone~~ Board District 1: One year

(B) Office Number 2, ~~Zone~~ Board District 2: Two years

(C) Office Number 3, ~~Zone~~ Board District 3: Three years

(D) Office Number 4, ~~Zone~~ Board District 4: Four years

(E) Office Number 5, ~~Zone~~ Board District 5: Five years

(4) **Cycle of elections; terms.** At the first regular school election, as prescribed by the state statutes, after the technology center district has become operative for one year, an election shall be held to fill the office that expires in one year. The terms of other offices shall expire in the sequence noted in the schedule above. After the initial terms of offices expire, each school board member shall be elected for a five-year term.

(5) **Notification and declaration of intent.** Each candidate shall file a written notification and declaration of intent to be a candidate for the ~~zone~~ board district in which he/she resides or as a candidate-at-large. The notification and declaration of intent shall be filed with the county election board within the time prescribed by the election board.

(6) **Seven-member board.** In the event the total area of five or more counties is involved, a seven (7) member board of education may be elected to serve the technology center district.

(7) **Seven-member terms.** When there are seven board members, they shall be elected in the same manner as board of education members of other technology center districts. The terms of office of members shall be staggered so that the term of office of only one member shall expire each year. Offices shall be numbered one through seven.

(8) **Relations with State Board.** Representatives of the State Board shall meet with the elected board and administer the oath of office, which shall be the same as for boards of independent school districts. The State Board shall provide guidance, direction, and technical assistance to the newly elected board members.

(j) **Operational tax levy election for a new technology center.**

(1) **Call for election.** As soon as practical, and when it can legally do so, after members of the board of education of a technology center district are first elected following the establishment of the district, the board of education shall call an election to vote on an operational tax levy for the district.

(2) **Educational plan.** The elected board of the technology center district shall make a study utilizing the services of the State Board and all other agencies that may be at its disposal to determine an educational plan for the district.

(3) **Tax levy; estimate of needs.** No technology center district shall begin operations until the electors have approved a tax levy as provided by Section 9B, Article 10, Oklahoma Constitution and 70 O.S. Sup. 2000, § 14-108, and the county excise board has approved an "Estimate of Needs" for the district.

(4) **Second election.** If an election for an operational levy is held and the proposed levy fails to receive a majority of the votes cast, a second election will be held within

180 days after the original election for the purpose of voting again on an operational levy.

(5) **Dissolution of district; board.** The State Board has the authority to disband a newly formed technology center district, release the board of education of its obligations, and release all public school districts from any obligation in the new technology center district when an operational levy is rejected by the voters a second time. Disbanding or dissolving a newly created technology center district will be done only after consultation with the local school districts involved.

(6) **School planning.** After passage of a successful operational levy, the technology center board shall employ professional help, engage the services of an architect to plan buildings, and take such action as necessary to establish the technology center.

(k) **Selection of the technology center superintendent.**

(1) **Choice of superintendent.** Following passage of a successful operational tax levy, the local board of education shall employ a technology center district superintendent.

(2) **Duties; qualifications.** The duties and minimum qualifications of technology center superintendents shall be as follows:

(A) **Duties.** The technology center superintendent shall be the principal administrative officer of the technology center. He/she shall be responsible for the organization, curriculum development, evaluation, and improvement of the technology center program. The technology center superintendent shall maintain close contact with the employment services, advisory committees, potential employers, and all agencies and institutions relative to employment needs and job opportunities in order that training may be closely coordinated with current needs and anticipated opportunities in the employment market. He/she shall evaluate programs continuously and bring about changes and improvements which will ensure that students will obtain the occupational skills and knowledge for which instruction is being provided. The technology center superintendent shall be responsible for maintaining a system of complete and accurate records and shall make such financial, statistical, and descriptive reports as may be required by the State Board.

(B) **Qualifications.** First, the technology center superintendent shall have a superintendent's certificate as defined in the **Teacher Education, Certification and Assignment Handbook** published by the State Department of Education. Second, the technology center superintendent shall have had at least five years of experience as a teacher, supervisor, or administrator of an approved *Career*Tech program. Third, the technology center superintendent shall hold a valid Oklahoma *Career*Tech teaching certificate. Persons having these three qualifications shall be issued a Standard Technology Center Administrator Credential.

(3) **Provisional technology center credential.** A person without a valid Oklahoma *Career*Tech teaching certificate shall be issued a provisional technology center credential and be given three years from the date of issuance to complete the requirements for a standard technology center credential. The issuance of the technology center standard credential shall be based on the completion of a minimum of eight semester hours from three of the following areas:

(A) History and Philosophy of Career and Technology Education;

(B) Technology Center Finance;

(C) Curriculum for Career and Technology Education; and,

(D) Career and Technology Education Program Planning Development and Evaluation.

(4) **Issuance by the Technology Center Services Division.** The Technology Center Services Division of the Oklahoma Department of Career and Technology Education shall be responsible for the issuance of the technology center credential.

(5) **Technology Center Administration Credential.** Other school administrators who are responsible for the evaluation of certified faculty under the provisions of the Education Improvement Act of 1985 shall also be required to have a Technology Center Administrator Credential as provided for above in 780:15-3-2(k)(2) & (3) of the rules and regulations governing technology centers. The technology center superintendent shall be responsible for assigning appropriate administrative personnel to evaluate the technology center's certified faculty and determining that such persons have a technology center administrator credential.

(l) **Other actions necessary to establish a new technology center.**

(1) **Funding for buildings and equipment.** The elected board may submit a building fund levy proposal or a capital outlay bond proposal to finance new buildings and equipment after a study has been made and professional help has been employed.

(2) **Election guidelines.** The building fund levy election or capital outlay bond election shall be conducted in accordance with the prescribed election rules and regulations.

(m) **State Board approval of site.** The location of a site for a technology center district building shall be approved by the State Board.

(n) **Approval of buildings.** All plans and specifications for technology center buildings, additions thereto and major modifications thereof that are designed to have career tech education programs and services shall be approved by the Local board and the technology center services division of the Oklahoma Department of Career and Technology Education.

(o) **Ownership of instructional equipment.** Instructional equipment purchased or reimbursed with state and/or federal funds will remain the property of the State Board except as provided in 780:10-9-2(d)(2). When a program can no longer be justified, the State Board may remove the equipment and

transfer it to another technology center or place it in the equipment pool warehouse.

(p) **Insurance and equipment maintenance.** The technology center district shall be responsible for insurance and maintenance and repair of state-owned equipment while it is being utilized in training programs conducted by the district.

(q) **Architect involvement.** Technology center buildings that are to be remodeled, repaired, or constructed at a cost of greater than $40,000 shall have an architect engaged in the planning of such building as provided in 59 O.S. Supp. 1986, §46.3.

(r) **Accommodations for individuals with disabilities.** It shall be the responsibility of the board of education of a technology center district to follow the provisions of the Uniform Federal Accessibility Standards or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities when constructing new facilities or altering existing structures.

780:15-3-4. Financial management procedures for technology centers

(a) **Annual "Estimate of Needs. "** The board of education of a technology center district shall file an "Estimate of Needs" annually with the county excise board of the county in which the technology center site of the district is located or is to be located. If the district has, or is to have, more than one technology center site, the "Estimate of Needs" shall be filed with and approved by the county excise board designated by the technology center board of education.

(b) **Preliminary "Estimate of Needs. "** Only when an election is called to increase or decrease the levy shall a preliminary "Estimate of Needs" be published. The date of publication must be at least ten days before the election. Such elections may be called by the board of education whenever it determines it to be in the best interest of the district to do so.

(c) **Response to levy petition.**

(1) **Operating levy.** It shall be mandatory for the board of education to call an election upon receiving a petition relative to the operating levy millage bearing the signatures of a majority of the qualified technology center electors of the district. The petition shall be filed with the clerk of the board of education. The election shall be held at the next annual election as prescribed by law.

(2) **Incentive levy.** It shall be mandatory for the board of education to call an election to decrease the local incentive levy upon receiving a petition from the electors of the technology center district. Such petition shall be signed by at least fifty (50) percent of the number of technology center district electors who voted in the last school board election in the technology center district. The election shall be held at the next annual election as prescribed by law.

(d) **Preparation of the budget.** The "Estimate of Needs," or budget, shall be prepared, published, and filed at the same times specified for independent school districts, and shall include such financial statements, estimates, and information as may be prescribed by the State Board.

(e) **Duties of county assessor; distribution of tax monies.** After approving the "Estimate of Needs," the county excise board shall certify the required levies to the county assessor of each county having property within the boundaries of the area district. The county assessor shall include the levies on the tax rolls for collection by the county treasurer. The taxes collected by the county treasurer shall be apportioned and remitted to the treasurer of the technology center district in the same manner as that provided by law for tax collections accruing to the benefit of independent school districts.

(f) **Alternate system of accounting.** All technology center districts are authorized to use the alternate system of accounting set forth in 70 O.S. Supp. 1990, §5-135.

(g) **Guidelines.** As a general rule all technology centers will adhere to the **State Board of Education Policies and Procedures for Implementation of the Oklahoma Cost Accounting System (OCAS) and School Finance** in the areas that are not covered by the technology center rules and regulations.

(h) **Classification of funds, cash accounts, expenditures and receipts.**

(1) **Coding of revenue.** All technology center districts are required to maintain an ongoing record of income that will ensure a complete and accurate income report as required by the Department. All income will be identified in separate categories for local, state, and federal funds. Effective July 1, 1993, for FY 1994, all technology center districts will be required to use the Oklahoma cost accounting system for coding revenue.

(2) **Coding of expenditures.** All technology center districts will be required to use the Oklahoma cost accounting system for coding expenditures.

(3) **Final expenditure report.** All technology center districts are required to file a completed "Cost Per Program Report" using guidelines furnished by the Department on or before October 1 of each year.

(i) **Management of and Responsibilities for the Activity Fund (70 O. S. Supp. 1990, §5-129).** All technology center districts shall adhere to the State Board of Education's Policies and Procedures for Implementation of the Oklahoma Cost Accounting System (OCAS) and School Finance section entitled "School Activity Fund."

(j) **Factors in determining the allocation formula for technology centers.**

(1) **Formula allocation plan.** The State Board will approve allocation of funds to Technology Centers.

(2) **Finance of operational programs.** The State Board shall provide state funds to technology centers based on a formula developed by the Oklahoma Department of Career and Technology Education.

(3) **Formula factors.** Factors considered in determining the formula may include enrollment capacity, local funding resources, program count incentive for maximum local support and allowable general fund balance.

(4) **Annual approval of programs.** Programs to be offered at the technology centers shall be approved each year in order:

(A) That high school credit may be given to the students enrolled;

(B) To ensure that ~~That any other~~ accreditation factors ~~may be~~ are in proper form; and,

(C) For the State Board to participate in the funding.

(k) **Audit resolution process.**

(1) **Independent audits.** The Department shall be responsible for ensuring that audits are performed by independent auditors in a timely manner and are in accordance with OMB Circular A-133 and the Single Audit Act.

(2) **Audits from technology centers.** Upon receipt of an independent audit from a technology center, the Department will review and categorize any audit exceptions, comments or findings.

(A) **Notification of findings.** The Department shall notify the technology center of the findings and will request a letter of commitment of corrective action for procedural finding(s) and finding(s) involving questioned costs.

(B) **Assurance of settlement.** In the case of a legal requirement, the technology center shall supply written documentation that the issue has been settled.

(C) **Response to letter of commitment.** If the commitment from the technology center is satisfactory as determined by the Department, the school will be notified of the decision.

(D) **Return of funds.** If the commitment is determined to be unsatisfactory, the Department may request the return of funds connected with the questioned cost(s) or the questioned procedure(s).

(E) **Disallowed costs.** If the finding involves disallowed costs, the Department will request the refund of funds for the questioned costs.

780:15-3-5. Changes in districts' status

(a) **Rezoning of existing technology center districts.**

(1) **Review of ~~zone~~ board district population.** In order to comply with the federal and state rules of equal representation in all units of government, it will be necessary from time to time to review the population of the ~~zones~~ board districts as originally designed to see that reasonably equal ~~zones~~ board districts exist as far as population is concerned. Between August 1 and December 31 of the year following the submission of the official Federal Decennial Census, the board of education will reapportion the school district into board districts. The local technology center will formulate the rezoning plan, that must be submitted to the State Board for approval.

(2) **Board of education; ~~zone~~ board district size.**

(A) **Five members.** The board of education shall consist of five (5) members, except as provided in 70 O.S. Supp. ~~1990~~2001, §5-107A, 70 O.S. Supp. ~~1990~~2001, §14-110, 70 O.S. Supp. ~~1990~~2001, §4419, as amended, 780:15-3-2(I)(6) rules and regulations governing technology center districts, and 780:15-3-5(a)(2)(E) of this section.

(B) **Size of ~~zones~~ board districts.** Internal boundaries of board districts shall follow clearly visible, definable, and observable physical boundaries that are based upon criteria established and recognized by the Bureau of the Census of the United States Department of Commerce for the purposes of defining census blocks for its decennial census and shall follow, as much as is possible, precinct boundaries. Board districts shall be compact, contiguous and shall be as equal in population as practical with not more than a ten percent (10%) variance between the most populous and least populous board districts.

(C) **Restructure of noncontiguous ~~zones~~ board districts.** Technology center districts that are not contiguous shall structure their ~~zones~~ board districts where there are no intervening ~~zones~~ board districts between the noncontiguous portion of the district and the remainder of the same ~~zone~~ board district that contains the noncontiguous portion of said technology center district.

(D) **~~Zone~~ Board district residency.** All members shall reside in the ~~zone~~ board district that they represent.

(E) **Seven-member ~~zones~~ board districts; annexation.** Any technology center district that consisted of a seven (7) member school board on July 1, 1987, and later has added or will add more geographical territory by annexation, shall continue to have a seven (7) member school board whose terms of office shall be the same as previously served.

(b) **Annexations.**

(1) **Proposed annexations**

(A) **Annexation, as proposed by a board of education.** Boards of education of a public school district desiring their district or a part of their district to annex to an existing technology center district shall submit a resolution to the State Board requesting an election be called for that purpose. Territory shall not be annexed to a technology center district without the approval of the State Board. No territory may be included in a petition for annexation within one (1) year from the date of an unsuccessful election for annexation where that territory was a part of the territory seeking to annex. A study of the proposed annexation will be conducted by the Department to ascertain whether the annexation would unlawfully exclude students on the basis of race, color, national origin, or disability. If the board of education of the technology center district agrees to the annexation, and if the resolution is approved, the State Board after counseling with the local school district board will set the election date and shall request the county election board to conduct the aforementioned annexation election. If a majority of the electors voting vote for the proposition, the State Board shall declare the public school district, or that portion designated, annexed to the local technology center.

(B) **Annexation, as proposed by patrons/electors.** In the event the patrons of any designated territory comprising all or part of a local public school

district desire to have such designated territory annexed to a technology center district, a petition may be submitted to the State Board calling for an election on the desired annexation. The petition shall be signed by at least 50 percent of the number of school district electors who voted in the last school board election in the territory proposed to be annexed, as determined by the secretary of the county election board, who shall certify the adequacy of the number of signatures on the petition. The State Board, after obtaining approval of the technology center district to which the territory is sought for annexation, shall request the county election board to conduct the requested annexation election-provided the period of time from which the petition was initiated to its time of filing with the State Board did not exceed 90 days. All qualified voters within the local school district shall be entitled to vote at such election. If a majority of the electors voting at such election vote in favor of the proposition, as certified by the county election board, the designated territory shall thereupon be declared by the State Board to be annexed to the respective technology center districts.

(C) **Petition.** A petition form shall be developed by the Oklahoma Department of Career and Technology Education. Any petition to be circulated must be on that form or must incorporate the exact language of the form. To effect the annexing of territory, a petition requesting the annexation must be:

(i) submitted to the technology center board of education, and

(ii) filed with the State Board.

(D) **Petition content.** The petition shall be signed by at least 50 percent of the number of school district electors who voted in the last school board election in the territory proposed to be annexed, as determined by the secretary of the county election board, who shall certify the adequacy of the number of signatures on the petition. Each page of the petition shall contain the exact language except for signatures and addresses of school district electors. Electors must personally sign their own name to any petition and must swear of affirm that they have read the contents of the petition and are signing the document as a free and voluntary act.

(~~C~~E) **Annexation, as proposed by a board of county commissioners.** When a large area such as a county, or portions thereof, desires to be annexed to an established technology center district, the board of county commissioners may submit a resolution to the State Board requesting the State Board to call an annexation election for the area so designated. If a majority of the electors voting in the designated area vote for the proposition, the State Board shall declare the area annexed.

(~~D~~F) **Annexations or transfers of independent and elementary school districts, or portions thereof.** Technology center district membership resulting from annexation or transfers of territory shall be determined by the following:

(i) When an elementary or independent school district, whose territory is a part of a technology center district, is annexed to another elementary or independent school district whose territory is not a part of a technology center district, the annexation shall not affect the status of the annexing district with respect to the technology center district.

(ii) When an elementary or independent school district, or a portion thereof, whose territory is not a part of a technology center district, is annexed or transferred to another elementary or independent school district whose territory is a part of a technology center district, the territory of the annexed or transferred elementary or independent school district shall become a part of the technology center district.

(iii) When an elementary or independent school district or a portion thereof, whose territory is already a part of a technology center district is annexed or transferred to another elementary or independent school district whose territory is a part of a second technology center district, the territory of the annexed or transferred elementary or independent school district shall become a part of the second technology center district.

(2) **Liability of annexed territory for bonded indebtedness of technology center district.** If the territory is annexed to a technology center district, the assessed valuation of property in the territory will be subject to taxes thereafter levied to pay existing bonded indebtedness that was incurred by the technology center district before the territory was annexed.

(3) **Benefits of annexed territory.** When a public school district or a part of a public school district is annexed to a technology center district, the people residing in the newly annexed district or part of a district shall immediately become eligible to all the rights and privileges as those residing in the technology center district and shall be subject to the tax levies of the technology center district provided by Section 9B Article 10 of the Oklahoma Constitution except as outlined in section (4) below.

(4) **Newly annexed territory tax collection.** For all successful annexation elections occurring after January 1, 2005, the collection of advalorem taxes from patrons in the annexing territory shall begin with a phase-in period of three consecutive tax years following the successful annexation election. Taxes will be collected according to the following schedule:

(A) First tax year following the election, 50% of the current technology center rate.

(B) Second tax year following the election, 80% of the technology center rate.

(C) Third tax year following the election, 100% of the technology center rate and to remain at 100% for all subsequent years unless a successful deannexation election occurs as outlined in these rules.

(c) **Proposed deannexation.**

(A) **Approval of State Board.** Territory shall not be deannexed from a technology center district without the approval of the State Board. No territory may be included in a petition for deannexation within one (1) year from the date of an unsuccessful election for deannexation where that territory was a part of the territory seeking to deannex. A study of the proposed deannexation will be conducted by the Department to ascertain whether deannexation would unlawfully exclude students on the basis of race, color, national origin, or disability. All deannixations shall become effective December 31 of the calendar year in which the deannexation was approved by the voters.

(B) **Petition.** A petition form shall be developed by the Oklahoma Department of Career and Technology Education. Any petition to be circulated must be on that form or must incorporate the exact language of the form, in addition to the reason for deannexing. To effect the deannexing of territory, a petition requesting the deannexation must be:

(i) submitted to the technology center board of education, and

(ii) filed with the State Board.

(C) **Petition content.** The petition shall state the reason for deannexing and shall be signed by at least 50 percent of the number of school district electors who voted in the last school board election in the territory proposed to be deannexed. Each page of the petition shall contain the same information except for signatures of school district electors. Electors must personally sign their own name to any petition and must swear or affirm that they have read the contents of the petition and are signing the document as a free and voluntary act.

(D) **Order and Notice of Election.** If the State Board determines that there is a valid reason for the deannexation, it will issue an "Order and Notice of Election," and the election will be held and conducted by the County Election Board at some public place in the technology center district. Copies of the "Order and Notice of Election" will be published in one issue of a newspaper of general circulation in the technology center district.

(E) **Eligible electors.** If, prior to the issuance of the "Order and Notice of Election," the board of education of the technology center district shall have given written notice of approval of the deannexation to the State Board, only those school district electors who reside in the territory proposed to be deannexed shall be eligible to vote at the election. In the event the board of education of the technology center district will not give written approval of the deannexation, then school district electors of the entire technology center district shall be eligible to vote on the deannexation question.

(F) **Exceptions.** In situations where the reason for deannexation is because an approved consolidation has resulted in a sending school district with membership in two or more technology center districts, approval from the local technology center board is not necessary and upon approval from the State Board, only those school district electors who reside in the territory proposed to be deannexed shall be eligible to vote at the election.

(G) **Deannexation approval.** If a majority of the eligible school district electors voting at the election approve the deannexation, the State Board shall issue an order deannexing the territory from the technology center district and will transmit copies thereof to the county clerk, county assessor, and county treasurer of each county in which any of the deannexed area lies.

(H) **Property valuation; taxation.** If the territory is deannexed from a technology center district, the assessed valuation of property in the deannexed territory will be subject to taxes thereafter levied to pay bonded indebtedness that was incurred by the technology center district while the deannexed territory was a part of the technology center district.

(I) ~~Should a successful deannexation election occur the collection of advalorem from patrons in the deannexing territory shall continue for a period of five consecutive tax cycles following the successful deannexation election. Collections will be prorated from the date of the election according to the following schedule:~~ For all successful deannexation elections occurring after January 1, 2005, the collection of advalorem taxes from patrons in the deannexing territory shall begin with a phase-out period of three consecutive tax years following the successful deannexation election. Taxes will be prorated according to the following schedule:

~~(i) Cycle one following the election, 85% of the current technology center rate.~~

~~(ii) Cycle two following the election, 70% of the current technology center rate.~~

~~(iii) Cycle three following the election, 55% of the current technology center rate.~~

~~(iv) Cycle four following the election, 40% of the current technology center rate.~~

~~(v) Cycle five following the election, 25% of the current technology center rate.~~

~~(vi) Cycle six following the election no advalorem taxes will be collected from patrons in the territory voting to deannex from the technology center.~~

(i) First tax year following the election, 80% of the current technology center rate.

(ii) Second tax year following the elections, 50% of the technology center rate.

(iii) Third year following the election, 0% of the technology center rate and to remain at 0% for all subsequent years unless a successful annexation election occurs as outlined in these rules.

~~(2) **Annexation/detachment without an election.** The State Board may annex or detach territory from a~~

~~technology center district as authorized in 70 O.S. Supp. 1990, §14-108, provided such action is in the best interest of the citizens of Oklahoma and in a situation where there are no qualified electors residing in the affected area. Such action will not require an election and will take effect immediately following the adoption of a resolution by the State Board.~~

(d) **School consolidation.**

(1) **Nondiscrimination study.** When consolidation of school districts is being considered, the Department of Career and Technology Education will conduct a study to ascertain whether or not consolidation would unlawfully exclude students on the basis of race, color, national origin, or disability.

(2) **Consolidation of technology center member district and nonmember district.** When two common school districts consolidate to form a new district and one of the school districts has a majority of its territory located in a technology center district, then the State Board shall call a separate election to be held on the same day as the consolidation election, in that part of the new district that is not already a part of the technology center district, for membership in the technology center district.

(3) **Consolidation of districts with membership in different technology center districts.** When two or more common school districts consolidate to form a new district and each district already is included in a different technology center district, the location of the high school shall determine the technology center membership for the entire consolidated district. When more than one high school will be located within the new consolidated district, a feasibility study will be performed by the State Board. After consideration of the feasibility study and such other information as may be deemed relevant, the State Board shall determine the technology center membership for the entire consolidated district.

(4) **Consolidation of three or more districts.** When three or more common school districts consolidate to form a new district and at least one of the school districts has a majority of its territory located in a technology center district and one or more of the other districts to be merged is not a part of any technology center district, a feasibility study performed by the State Board shall include a recommendation for membership in a technology center district and, on the same date as the consolidation election, the State Board shall call a separate election in that part of the newly formed district, that is not already a part of a technology center district, for membership in the recommended technology center district.

780:15-3-6. Technology center students

(a) **Student eligibility.**

(1) **High school students.** For students currently enrolled in high school, the technology center is an extension of the student's high school and shall be subject to the regulations thereof. The student's home high school shall transcript the units of instruction earned by high school students attending the technology center. High school students who successfully complete their occupational plans of study shall be awarded a competency/completion certificate by the technology center. The technology center is a separate entity in that it also serves adult students.

(2) **Admission criteria and enrollment procedures.** High school students shall meet the admission criteria established by the technology center for the specific program of study in which they wish to enroll. All high school students shall be enrolled through a cooperative effort of the sending comprehensive high school and the technology center, except in cases where the student's parent or guardian has provided an affidavit and sufficient evidence that he/she is participating in a home-schooled education plan in accordance with 70 O.S. 1981, §10-105.

(3) **Approval to withdraw and withdrawal procedures.** Students who wish to withdraw from a technology center must have approval of both the technology center and the comprehensive high school. Specific procedures for withdrawal are established cooperatively by the technology center and the respective home high school.

(4) **Student discipline.** High school students' discipline and control shall be a cooperative effort between the comprehensive (home) high school and the technology center. Each institution shall enforce rules and regulations in accordance with their board-approved policies. Both institutions shall recognize the students' rights to "due process."

(A) **Qualified Students with Disabilities under IDEA.** Discipline for students with disabilities who have an IEP shall be in accordance with current federal and state legislation and rule of law.

(B) **Qualified Students with Disabilities under Section 504/ADA.** Qualified students with disabilities under Section 504 of the Rehabilitation Act of 1973 as amended or the Americans with Disabilities Act of 1990 as amended who are disabled by drug addiction or alcoholism may be disciplined to the same extent as other students. However, a student who is disabled by some other condition in addition to drug addiction or alcoholism must be evaluated and afforded due process prior to disciplinary action that would constitute a significant change in placement. Denial of access, and/or a significant change in placement, should not occur when there is a definable relationship between the misconduct and the disability. The student's 504/ADA team should meet and make this determination. There is no requirement in Section 504 or the ADA for the continuation of educational services following the expulsion of a student for behavior unrelated to the student's disability.

(5) **Certified coursework.** Units of coursework earned by a student in an approved technology center in Oklahoma shall be certified by the technology center to the sending high school in which the student is regularly enrolled. These units of coursework shall be counted toward meeting local and state requirements for graduation. The technology center is considered to be an extension of

the sending school curriculum and shall be subject to the regulations thereof.

(6) **Hours of attendance.** High school students attending a technology center may spend one-half day pursuing a high school diploma or GED and one-half day completing a *Career*Tech program in the technology center. The students are counted as attending a full day at the home high school.

(7) **Secondary Students.** Secondary *Career*Tech programs in the technology centers may be offered to secondary students. Students who are on an Individualized Education Program may participate in the technology center program for up to four years.

(8) **Postsecondary/adult students.** The technology center functions as a separate postsecondary-level educational institution for adult students who are beyond the age of compulsory school attendance and/or are not enrolled in high school. Postsecondary/adult students may attend full-time programs in the technology center or short-term classes held any time during the day on or off campus. Postsecondary/adult students are subject to the policies and procedures established for adult students by the technology center. Units of coursework completed at a technology center by a postsecondary/adult student are transcripted by the technology center as postsecondary level credit. Postsecondary/adult students who successfully complete their occupational plan of study shall be awarded a competency/completion certification by the technology center. Units of instruction and/or credits earned by postsecondary/adult students may also be applied toward an associate degree, in accordance with the cooperative agreements developed by each technology center.

(9) **Residency.** Students that meet the residency requirements of 70 O.S. Supp. 1996, Section 1-113, shall have the same opportunity to access technology center programs as any other in-district student. These students may enroll in an appropriate program following the same admission and enrollment procedures as other students.

(b) **Tuition.**

(1) **Resident high school students.** High school students who are residents of the technology center district attend on a tuition-free basis.

(2) **Tuition charge.** Technology centers are authorized to charge tuition to postsecondary students. Amounts charged by a technology center district for tuition are subject to the approval of the State Board.

(3) **Out of District Tuition.** Technology center districts shall charge a tuition to any secondary student who does not reside in the technology center district. The fee for tuition shall be not less than twice the amount of the local cost of providing the program for the student. The State Board may waive this requirement in situations where the technology center district has shown evidence that such requirement will be detrimental to the mission of the local technology center district. Reciprocity agreements to benefit in-district students may be made between technology centers and approved by the Oklahoma Department of Career and Technology Education.

(c) **Transportation.**

(1) **Responsibility.** The technology center is responsible for providing transportation of daytime secondary students to and from in-district, sending schools for those students who are enrolled in a three-period block of instruction. Transportation for students requesting alternative schedules or programs shall be determined by an agreement between the comprehensive school and the technology center.

(2) **Operation under Oklahoma school laws.** All technology centers owning or leasing and operating school buses that transport students to and from points being served by the technology center shall operate under the current school laws of Oklahoma.

(3) **Adult transportation.** Upon approval of the technology center board of education, postsecondary students enrolled in *Career*Tech programs may be transported, as space is available, on established bus routes and related auxiliary activities.

(d) **Student accounting.** ~~Program enrollment~~ Student Accounting information shall be submitted to the Information Management Division as outlined in OAC 780:10-7-2.

780:15-3-7. Special provisions

(a) **Sex discrimination.** It shall be the responsibility of the board of education of the technology center district to review and conform to all regulations that prohibit sex discrimination. *No person in the United States shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance* [Public Law 92-318, Title IX, Sec. 901 (A)]. Any reference to discriminatory language or practices relative to race, creed, or national origin should be deleted.

(b) **Basic education.** No technology center district shall be required to provide any training or instruction that is independent of career and/or technology education. However, foundational and contextual academic education should be provided to persons in order to bring them up to a level at which they may successfully accomplish occupational training.

(c) **Programs in other districts.** No technology center district shall offer *Career*Tech education programs and/or services to any entities inside another technology center district without prior approval of that district. Territory not presently a part of any technology center district may be served by a technology center district in accordance with the policy and procedures approved by the State Board.

(d) **Agreements between technology center and two-year colleges.** Cooperative agreements negotiated between technology centers and two-year colleges, which would permit postsecondary students to receive college credit for *Career*Tech programs offered at the technology center, shall be approved by the State Board. The merits of each request will be evaluated by the following criteria:

(1) Increased utilization of existing resources;

(2) Increased student access to additional educational options;

(3) Continued credibility of the instructional programs at both institutions;

(4) Increased student employability; and,

(5) Consistency with goals and objectives of *Career*Tech education in Oklahoma.

(e) **Live Work Policy.** The live work policy adopted by the State Board of Career and Technology Education in February 2004 shall be incorporated into all technology center policies and procedures. The policies developed by the technology centers will become an item for review during all standard accreditation visits or audit/reviews. This policy will take effect July 1, 2004. Live work is work performed by students in a laboratory, classroom, shop, or in a field setting under written contract and under the direction of the program instructor. The process by which all live work projects will be approved should be outlined in the live work policy. Live work projects should be chosen on the basis of merit in relation to the instructional objectives of the individual program as well as the determined value of the project to allow students to achieve a desired level of competency. Live work projects may be undertaken for any individual or organization residing within the technology center district. Superintendents, Deputy Superintendents, Assistant Superintendents and local board members shall be ineligible from utilizing live work services. These projects are not to replace other learning activities, nor to compete with other organizations within the district, but are to complement the program learning activities. These projects will allow students to experience situations not easily duplicated in a lab or classroom, and at little or no cost to the school. Documentation for each live work project will be maintained by the technology center and will contain pre-numbered live work tickets, authorization signatures, signature of the project owner, estimated amount, amount paid or deposited, scope of the work, estimated completion date, and record of all materials and parts purchased. Live work accounts shall be paid in full upon the completion of the project. The list of live work projects may be reviewed at any time by the ODCTE audit/review staff or others as designated by the State Director of Career and Technology Education. All records of live work projects will be maintained by the technology center for at least three (3) fiscal years following the most recent technology center financial audit. The following policy should be incorporated into all technology center policies and procedures. The policies developed by the technology centers will become an item for review during all standard accreditation visits or audit/reviews. This policy will take effect July 1, 2004.

(f) **Technology Center Code of Ethics Guidelines.** Each technology center will ensure that its district policies and procedures comply with the guidelines for the Technology Center Code of Ethics approved by the State Board of Career and Technology Education in April 2004. If a technology center has an existing code of ethics that meets or exceeds these guidelines, no additional action is necessary. However, if a code of ethics does not meet these guidelines, or if a technology center has not adopted a code of ethics, revision or development is necessary to ensure that the essence of these guidelines is incorporated by October 1, 2004. Technology center district boards may add any other provisions to these guidelines with discretion. Policies and procedures shall be developed by each technology center board for reporting and resolving alleged violations. The guidelines for the Technology Center Code of Ethics are:

(A) **Focus on the success of students and clients as the fundamental value upon which all decisions are made.** Provide a safe, supportive environment to include up-to-date facilities, equipment, instructional materials, and methods, as well as other appropriate student services to enhance the educational experience and enable all students to achieve their full potential for success. Ensure that all instructors are appropriately qualified to provide a high level of instruction to enable students to obtain realistic training and education for successful career and workplace readiness.

(B) **Acknowledge that the System is accountable to the taxpayers and patrons of the local district and the State of Oklahoma.** The district will compile and make available an annual report or profile that identifies the standards by which the district measures program success. A copy of this report will also be published on the district website. The annual report or profile may measure standards such as teacher qualifications, cost per program, cost per student, economic impact of programs and services, completion rates, sending school secondary service rate, positive placement of completers, percentage of completers who attain a state or national licensure or certification, etc.

(C) **Understand that the role of the board of education is to set policy and direction for the school district, and the role of the administration and staff is to implement the policies of the board in a fair and consistent manner.** The district will maintain and enforce an up-to-date manual of Policies and Procedures. The district will utilize a strategic planning process that will include, at a minimum, the following components: core values and beliefs, vision statement, mission statement, and strategic goals. Adoption of policies not in conformity with the administrator's recommendations or beliefs is not just cause for refusal by the administration to support and implement those policies. Administration must be impartial in the execution of the school policies and the enforcement of rules and regulations. It is a breach of ethics to give preferential consideration to any individual or group because of special status or position in the school system or the community.

(D) **Not use position or influence for any personal gain; and will avoid actions that create a conflict of interest and strive to avoid actions that might appear to create a conflict of interest.** The term "conflict of interest" describes any circumstance that could cast doubt on a person's ability to act with total objectivity with regard to the district's interest. Conflicts of interest are prohibited. It is improper for

a board member or school administrator to profit financially from interest in any business which publishes, sells, manufactures, or in any way deals in goods or services which are, or may be expected to be, purchased by the school system they serve. It is a breach of public trust for a board member or administrator to use confidential information concerning schools affairs (such as the knowledge of the selection of specific school sites) for personal profit or to divulge such information to others who might profit. Although it is impossible to list all potential conflict of interest situations, the following examples represent situations where a conflict of interest could arise: A direct or indirect financial interest in any business or organization that is a district vendor or competitor, if the employee or board of education member can influence decisions with respect to the district's business. Use of any district asset for the employee's personal business advantage (examples of such assets include not only equipment, tools, and supplies, but also valuable ideas, technical data, and other confidential information). Relationships, including business, financial, personal, and family may give rise to conflicts of interest or the appearance of a conflict. Employees should carefully evaluate relationships as they relate to district business to avoid conflict or the appearance of a conflict.

(E) **Fulfill professional responsibilities with honesty and integrity.** The Board of Education, superintendent, administration, faculty, and staff will fulfill their duties and responsibilities with honesty and integrity and improve their professional effectiveness through continuing professional development. Board members will be diligent and well informed of issues surrounding Board decisions and regularly attend Board meetings.

(F) **Support the Constitutions of the State of Oklahoma and the United States of America and obey all federal, state, and local laws.** Board members will uphold the Oath of Office. Professional development will be held annually for board members, superintendent, administration, faculty, and staff to learn about new laws.

(G) **Encourage effective communication between the Board, the students, the staff, and all elements of the community.** A communication plan will be developed to address internal and external audiences.

(H) **Improve professional effectiveness through continuing professional development.** In addition to meeting the minimum requirements for continuing education mandated by state law, board members, administration and staff have a professional obligation to attend conferences, seminars, and other learning activities that hold promise of contributing to their professional growth and development.

(~~e~~g) **Rules; regulations.** In the absence or omission of specific rules and regulations pertaining to the technology center districts, the state statutes and the rules and regulations governing independent school districts will prevail.

(~~f~~h) **Present rules supersede.** The rules and regulations contained herein supersede all rules and regulations in existence prior to the date of this publication.

(~~g~~i) **Review of the Policy and Procedures manual.** The **Policy and Procedures** manual approved by the State Board should be reviewed in connection with developing *Career*Tech training programs.

[OAR Docket #05-863; filed 5-13-05]

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

1:2005-14.

EXECUTIVE ORDER 2005-14

I, Brad Henry, Governor of the State of Oklahoma, in observation of Memorial Day, hereby direct the appropriate steps be taken to fly the American and Oklahoma flags at the State Capitol Building at half-staff from 8:00 a.m. until 5:00 p.m. on Monday, May 30, 2005, to honor those Americans who gave their lives for the freedom we enjoy today.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented at the State Capitol Building.

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 25th day of May 2005.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

BRAD HENRY

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #05-1041; filed 5-26-05]

1:2005-15.

EXECUTIVE ORDER 2005-15

To the Honorable Members of the House of Representatives and

the Honorable Members of the State Senate of Oklahoma:

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the authority vested in me by the provisions of Section 7 of Article VI of the Oklahoma Constitution, hereby convoke the First Extraordinary Session of the Fiftieth Oklahoma Legislature to convene at the State Capitol at 4:00 p.m. on May 27, 2005. I recommend for consideration of legislation relating to Oklahoma's workers compensation system.

Copies of this Executive Order shall be distributed to every member of the Oklahoma House of Representatives, every member of the Oklahoma State Senate, the Clerk of the House of Representatives, the Secretary of the Senate and the Director of the Office of State Finance.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma this 27th day of May 2005.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

BRAD HENRY

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #05-1044; filed 5-27-05]