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**Secretary of State**  
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# Table of Contents

|  |                        |
|--|------------------------|
| <b>Agency/Action/Subject Index</b> .....                       | iii                    |
| <b>Rules Affected Index</b> .....                              | iv                     |
| <b>Agency Index (Title numbers assigned)</b> .....             | xlvii                  |
| <b>Notices of Rulemaking Intent</b>                            |                        |
| Environmental Quality, Department of (Title 252) .....         | 3047, 3048             |
| <b>Gubernatorial Approvals</b>                                 |                        |
| Water Resources Board, Oklahoma (Title 785) .....              | 3051                   |
| <b>Gubernatorial Disapprovals</b>                              |                        |
| Water Resources Board, Oklahoma (Title 785) .....              | 3053                   |
| <b>Permanent Final Adoptions</b>                               |                        |
| Firefighter Training, Oklahoma Council on (Title 268) .....    | 3055, 3056             |
| Mines, Department of (Title 460) .....                         | 3056, 3057, 3059       |
| Teacher Preparation, Oklahoma Commission for (Title 712) ..... | 3071                   |
| Teachers' Retirement System (Title 715) .....                  | 3073                   |
| Water Resources Board, Oklahoma (Title 785) .....              | 3074, 3076, 3077, 3086 |
| <b>Executive Orders (Title 1)</b> .....                        | 3107                   |



# Agency/Action/Subject Index

## ENVIRONMENTAL Quality, Department of (Title 252)

### *Notices of Rulemaking Intent*

- Rules of Practice and Procedure (Chapter 4) ..... 3047
- Radiation Management (Chapter 410) ..... 3047, 3048

## FIREFIGHTER Training, Oklahoma Council on (Title 268)

### *Permanent Final Adoptions*

- Administrative Operations (Chapter 1) ..... 3055
- Application Process for Tax Credits (Chapter 3) ..... 3056

## GOVERNOR

### *Executive Orders*

- Ordering flags at half-staff to honor Willard O. Willis (06-16) ..... 3107

## MINES, Department of (Title 460)

### *Permanent Final Adoptions*

- Oklahoma Mining Commission (Chapter 1) ..... 3056
- Non-Coal Rules and Regulations (Chapter 10) ..... 3057
- The Permanent Regulations Governing the Coal Reclamation Act of 1979 (Chapter 20) ..... 3059

## TEACHER Preparation, Oklahoma Commission for (Title 712)

### *Permanent Final Adoptions*

- Teacher Preparation Program Accreditation (Chapter 10) ..... 3071

## TEACHERS' Retirement System (Title 715)

### *Permanent Final Adoptions*

- General Operations (Chapter 10) ..... 3073

## WATER Resources Board, Oklahoma (Title 785)

### *Gubernatorial Approvals*

- Organization and Procedure of Oklahoma Water Resources Board (Chapter 1) ..... 3051
- Rules of Practice and Hearings (Chapter 4) ..... 3051
- Well Driller and Pump Installer Licensing (Chapter 35) ..... 3051
- Financial Assistance (Chapter 50) ..... 3051

### *Gubernatorial Disapprovals*

- Fees (Chapter 5) ..... 3053
- Appropriation and Use of Stream Water (Chapter 20) .... 3053
- Taking and Use of Groundwater (Chapter 30) ..... 3053

### *Permanent Final Adoptions*

- Organization and Procedure of Oklahoma Water Resources Board (Chapter 1) ..... 3074
- Rules of Practice and Hearings (Chapter 4) ..... 3076
- Well Driller and Pump Installer Licensing (Chapter 35) ..... 3077
- Financial Assistance (Chapter 50) ..... 3086

# Rules Affected Index

[(E) = Emergency action]

| Rule                  | Register Page            | Rule                   | Register Page               |
|-----------------------|--------------------------|------------------------|-----------------------------|
| 10:1-1-4.1. . . . .   | [AMENDED] . . . . . 2123 | 35:3-1-31. . . . .     | [NEW] . . . . . 2143        |
| 10:15-1-2. . . . .    | [AMENDED] . . . . . 2124 | 35:3-1-32. . . . .     | [NEW] . . . . . 2143        |
| 10:15-18-4. . . . .   | [AMENDED] . . . . . 2127 | 35:13-1-1. . . . .     | [NEW] . . . . . 2144        |
| 10:15-18-9. . . . .   | [AMENDED] . . . . . 2127 | 35:13-1-2. . . . .     | [NEW] . . . . . 2144        |
| 10:15-27-13. . . . .  | [REVOKED] . . . . . 2127 | 35:13-1-3. . . . .     | [NEW] . . . . . 2144        |
| 10:15-29-1.1. . . . . | [REVOKED] . . . . . 2127 | 35:13-1-4. . . . .     | [NEW] . . . . . 2144        |
| 10:15-29-3. . . . .   | [REVOKED] . . . . . 2127 | 35:13-1-5. . . . .     | [NEW] . . . . . 2144        |
| 10:15-29-4. . . . .   | [REVOKED] . . . . . 2128 | 35:15-1-1. . . . .     | [AMENDED] . . . . . 2145    |
| 10:15-29-5. . . . .   | [REVOKED] . . . . . 2128 | 35:15-1-2. . . . .     | [NEW] . . . . . 2145        |
| 10:15-29-6. . . . .   | [REVOKED] . . . . . 2128 | 35:15-1-3. . . . .     | [NEW] . . . . . 2145        |
| 10:15-29-7. . . . .   | [REVOKED] . . . . . 2129 | 35:15-9-7. . . . .     | [AMENDED] . . . . . 2153    |
| 10:15-29-8. . . . .   | [REVOKED] . . . . . 2129 | 35:15-9-8. . . . .     | [AMENDED] . . . . . 2153    |
| 10:15-29-9. . . . .   | [REVOKED] . . . . . 2129 | 35:15-9-9. . . . .     | [AMENDED] . . . . . 2153    |
| 10:15-29-10. . . . .  | [REVOKED] . . . . . 2129 | 35:15-9-10. . . . .    | [AMENDED] . . . . . 2153    |
| 10:15-30-1. . . . .   | [AMENDED] . . . . . 2129 | 35:15-9-11. . . . .    | [AMENDED] . . . . . 2153    |
| 10:15-30-2. . . . .   | [AMENDED] . . . . . 2129 | 35:15-11-5. . . . .    | [AMENDED] . . . . . 2146    |
| 10:15-30-3. . . . .   | [AMENDED] . . . . . 2130 | 35:15-11-15. . . . .   | [AMENDED] . . . . . 2146    |
| 10:15-30-4. . . . .   | [AMENDED] . . . . . 2130 | 35:15-11-17. . . . .   | [AMENDED] . . . . . 2146    |
| 10:15-30-5. . . . .   | [AMENDED] . . . . . 2130 | 35:15-11-18. . . . .   | [AMENDED] . . . . . 2154    |
| 10:15-30-6. . . . .   | [AMENDED] . . . . . 2130 | 35:15-11-20. . . . .   | [AMENDED] (E) . . . . . 11  |
| 10:15-30-7. . . . .   | [AMENDED] . . . . . 2130 | 35:15-11-20. . . . .   | [AMENDED] . . . . . 866     |
| 10:15-30-8. . . . .   | [AMENDED] . . . . . 2130 | 35:15-15-4. . . . .    | [AMENDED] . . . . . 2155    |
| 10:15-30-9. . . . .   | [NEW] . . . . . 2131     | 35:15-15-33. . . . .   | [AMENDED] . . . . . 2156    |
| 10:15-32-5. . . . .   | [AMENDED] . . . . . 2131 | 35:15-15-38. . . . .   | [AMENDED] . . . . . 2157    |
| 10:15-33-1. . . . .   | [AMENDED] . . . . . 2132 | 35:15-15-41. . . . .   | [AMENDED] . . . . . 2157    |
| 10:15-33-2. . . . .   | [AMENDED] . . . . . 2132 | 35:15-16-1. . . . .    | [NEW] . . . . . 2157        |
| 10:15-33-3. . . . .   | [AMENDED] . . . . . 2132 | 35:15-17-1. . . . .    | [AMENDED] . . . . . 2146    |
| 10:15-33-3.1. . . . . | [NEW] . . . . . 2133     | 35:15-19-7. . . . .    | [AMENDED] . . . . . 2148    |
| 10:15-33-5. . . . .   | [AMENDED] . . . . . 2133 | 35:15-22-1. . . . .    | [AMENDED] . . . . . 2158    |
| 10:15-33-6. . . . .   | [AMENDED] . . . . . 2133 | 35:15-22-2. . . . .    | [AMENDED] . . . . . 2160    |
| 10:15-33-7. . . . .   | [AMENDED] . . . . . 2133 | 35:15-22-31. . . . .   | [AMENDED] . . . . . 2160    |
| 10:15-39-1. . . . .   | [AMENDED] . . . . . 2134 | 35:15-22-32. . . . .   | [AMENDED] . . . . . 2161    |
| 10:15-43-1. . . . .   | [NEW] . . . . . 2134     | 35:15-22-33. . . . .   | [AMENDED] . . . . . 2161    |
| 10:15-43-2. . . . .   | [NEW] . . . . . 2135     | 35:15-22-35. . . . .   | [AMENDED] . . . . . 2161    |
| 10:15-43-3. . . . .   | [NEW] . . . . . 2135     | 35:15-22-51. . . . .   | [AMENDED] . . . . . 2162    |
| 10:15-43-4. . . . .   | [NEW] . . . . . 2135     | 35:15-22-53. . . . .   | [AMENDED] . . . . . 2162    |
| 10:15-43-5. . . . .   | [NEW] . . . . . 2135     | 35:15-22-71. . . . .   | [AMENDED] . . . . . 2162    |
| 10:15-43-6. . . . .   | [NEW] . . . . . 2135     | 35:15-22-91. . . . .   | [AMENDED] . . . . . 2163    |
| 20:10-7-14. . . . .   | [NEW] . . . . . 2935     | 35:15-22-113. . . . .  | [AMENDED] . . . . . 2163    |
| 35:1-1-1. . . . .     | [AMENDED] . . . . . 2136 | 35:15-24-2. . . . .    | [AMENDED] . . . . . 2163    |
| 35:1-1-3. . . . .     | [AMENDED] . . . . . 2136 | 35:15-24-3. . . . .    | [AMENDED] . . . . . 2164    |
| 35:1-3-1. . . . .     | [AMENDED] . . . . . 2136 | 35:15-40-1. . . . .    | [AMENDED] . . . . . 2149    |
| 35:1-3-2. . . . .     | [AMENDED] . . . . . 2136 | 35:15-40-49.1. . . . . | [AMENDED] . . . . . 867     |
| 35:1-3-3. . . . .     | [AMENDED] . . . . . 2136 | 35:15-42-1. . . . .    | [AMENDED] . . . . . 2150    |
| 35:1-3-4. . . . .     | [AMENDED] . . . . . 2136 | 35:15-47-2. . . . .    | [AMENDED] . . . . . 2152    |
| 35:1-5-1. . . . .     | [AMENDED] . . . . . 2139 | 35:15-47-6. . . . .    | [AMENDED] (E) . . . . . 105 |
| 35:1-5-2. . . . .     | [AMENDED] . . . . . 2139 | 35:15-47-6. . . . .    | [AMENDED] . . . . . 2165    |
| 35:1-5-3. . . . .     | [AMENDED] . . . . . 2139 | 35:15-47-18. . . . .   | [AMENDED] (E) . . . . . 106 |
| 35:1-5-4. . . . .     | [REVOKED] . . . . . 2139 | 35:15-47-18. . . . .   | [AMENDED] . . . . . 2165    |
| 35:1-5-5. . . . .     | [AMENDED] . . . . . 2139 | 35:15, App. F. . . . . | [REVOKED] . . . . . 869     |
| 35:1-5-6. . . . .     | [REVOKED] . . . . . 2139 | 35:15, App. N. . . . . | [REVOKED] . . . . . 871     |
| 35:1-7-1. . . . .     | [AMENDED] . . . . . 2140 | 35:15, App. O. . . . . | [REVOKED] . . . . . 875     |
| 35:1-7-2. . . . .     | [REVOKED] . . . . . 2140 | 35:17-9-1. . . . .     | [NEW] . . . . . 876         |
| 35:1-7-3. . . . .     | [REVOKED] . . . . . 2140 | 35:17-9-2. . . . .     | [NEW] . . . . . 876         |
| 35:1-7-4. . . . .     | [REVOKED] . . . . . 2140 | 35:17-9-3. . . . .     | [NEW] . . . . . 876         |
| 35:1-7-5. . . . .     | [REVOKED] . . . . . 2140 | 35:17-9-4. . . . .     | [NEW] . . . . . 877         |
| 35:1-9-1. . . . .     | [AMENDED] . . . . . 2140 | 35:17-9-5. . . . .     | [NEW] . . . . . 877         |
| 35:1-9-3. . . . .     | [AMENDED] . . . . . 2140 | 35:17-9-6. . . . .     | [NEW] . . . . . 878         |
| 35:1-9-4. . . . .     | [AMENDED] . . . . . 2141 | 35:17-9-7. . . . .     | [NEW] . . . . . 878         |
| 35:2-3-26. . . . .    | [AMENDED] . . . . . 865  | 35:17-9-8. . . . .     | [NEW] . . . . . 878         |
| 35:3-1-30. . . . .    | [NEW] . . . . . 2141     | 35:20-3-22. . . . .    | [AMENDED] . . . . . 2166    |

|   |      |   |      |
|---|------|---|------|
| 35:30-17-6. . . . . [AMENDED] . . . . .   | 2167 | 38:10-1-2. . . . . [NEW] (E) . . . . .  | 128  |
| 35:30-17-24.1. . . . . [NEW] . . . . .    | 1199 | 38:10-1-2. . . . . [NEW] . . . . .      | 2178 |
| 35:30-17-28. . . . . [AMENDED] . . . . .  | 2169 | 38:10-1-3. . . . . [NEW] (E) . . . . .  | 129  |
| 35:30-29-37. . . . . [AMENDED] . . . . .  | 2172 | 38:10-1-3. . . . . [NEW] . . . . .      | 2179 |
| 35:30-38-1. . . . . [NEW] . . . . .       | 878  | 38:10-1-4. . . . . [NEW] (E) . . . . .  | 129  |
| 35:30-38-2. . . . . [NEW] . . . . .       | 878  | 38:10-1-4. . . . . [NEW] . . . . .      | 2179 |
| 35:30-38-3. . . . . [NEW] . . . . .       | 879  | 38:10-1-5. . . . . [NEW] (E) . . . . .  | 129  |
| 35:30-38-4. . . . . [NEW] . . . . .       | 879  | 38:10-1-5. . . . . [NEW] . . . . .      | 2179 |
| 35:30-38-5. . . . . [NEW] . . . . .       | 879  | 38:10-1-6. . . . . [NEW] (E) . . . . .  | 129  |
| 35:30-38-6. . . . . [NEW] . . . . .       | 879  | 38:10-1-6. . . . . [NEW] . . . . .      | 2180 |
| 35:30-38-7. . . . . [NEW] . . . . .       | 879  | 38:10-1-7. . . . . [NEW] (E) . . . . .  | 129  |
| 35:30-38-8. . . . . [NEW] . . . . .       | 880  | 38:10-1-7. . . . . [NEW] . . . . .      | 2180 |
| 35:30-38-9. . . . . [NEW] . . . . .       | 880  | 38:10-1-8. . . . . [NEW] (E) . . . . .  | 129  |
| 35:30-38-10. . . . . [NEW] . . . . .      | 880  | 38:10-1-8. . . . . [NEW] . . . . .      | 2180 |
| 35:30-38-11. . . . . [RESERVED] . . . . . | 880  | 38:10-1-9. . . . . [NEW] (E) . . . . .  | 130  |
| 35:30-38-12. . . . . [NEW] . . . . .      | 880  | 38:10-1-9. . . . . [NEW] . . . . .      | 2180 |
| 35:37-3-1. . . . . [AMENDED] . . . . .    | 2172 | 38:10-3-1. . . . . [NEW] (E) . . . . .  | 130  |
| 35:37-3-3. . . . . [AMENDED] . . . . .    | 2172 | 38:10-3-1. . . . . [NEW] . . . . .      | 2181 |
| 35:37-5-1. . . . . [AMENDED] . . . . .    | 2173 | 38:10-3-2. . . . . [NEW] (E) . . . . .  | 130  |
| 35:37-5-2. . . . . [AMENDED] . . . . .    | 2173 | 38:10-3-2. . . . . [NEW] . . . . .      | 2181 |
| 35:44-3-1. . . . . [NEW] (E) . . . . .    | 505  | 38:10-3-3. . . . . [NEW] (E) . . . . .  | 130  |
| 35:44-3-1. . . . . [NEW] . . . . .        | 881  | 38:10-3-3. . . . . [NEW] . . . . .      | 2181 |
| 35:44-3-2. . . . . [NEW] (E) . . . . .    | 505  | 38:10-3-4. . . . . [NEW] (E) . . . . .  | 131  |
| 35:44-3-2. . . . . [NEW] . . . . .        | 881  | 38:10-3-4. . . . . [NEW] . . . . .      | 2182 |
| 35:44-3-3. . . . . [NEW] (E) . . . . .    | 506  | 38:10-3-5. . . . . [NEW] (E) . . . . .  | 131  |
| 35:44-3-3. . . . . [NEW] . . . . .        | 882  | 38:10-3-5. . . . . [NEW] . . . . .      | 2182 |
| 38:1-1-1. . . . . [NEW] (E) . . . . .     | 123  | 38:10-3-6. . . . . [NEW] (E) . . . . .  | 132  |
| 38:1-1-1. . . . . [NEW] . . . . .         | 2174 | 38:10-3-6. . . . . [NEW] . . . . .      | 2182 |
| 38:1-1-2. . . . . [NEW] (E) . . . . .     | 123  | 38:10-5-1. . . . . [NEW] (E) . . . . .  | 132  |
| 38:1-1-2. . . . . [NEW] . . . . .         | 2174 | 38:10-5-1. . . . . [NEW] . . . . .      | 2182 |
| 38:1-1-3. . . . . [NEW] (E) . . . . .     | 124  | 38:10-5-2. . . . . [NEW] (E) . . . . .  | 132  |
| 38:1-1-3. . . . . [NEW] . . . . .         | 2175 | 38:10-5-2. . . . . [NEW] . . . . .      | 2182 |
| 38:1-1-4. . . . . [NEW] (E) . . . . .     | 124  | 38:10-5-3. . . . . [NEW] (E) . . . . .  | 132  |
| 38:1-1-5. . . . . [NEW] (E) . . . . .     | 125  | 38:10-5-3. . . . . [NEW] . . . . .      | 2183 |
| 38:1-1-5. . . . . [NEW] . . . . .         | 2175 | 38:10-7-1. . . . . [NEW] (E) . . . . .  | 132  |
| 38:1-1-6. . . . . [NEW] (E) . . . . .     | 125  | 38:10-7-1. . . . . [NEW] . . . . .      | 2183 |
| 38:1-1-6. . . . . [NEW] . . . . .         | 2176 | 38:10-7-2. . . . . [NEW] (E) . . . . .  | 132  |
| 38:1-1-7. . . . . [NEW] (E) . . . . .     | 125  | 38:10-7-2. . . . . [NEW] . . . . .      | 2183 |
| 38:1-1-7. . . . . [NEW] . . . . .         | 2176 | 38:10-7-3. . . . . [NEW] (E) . . . . .  | 133  |
| 38:1-1-8. . . . . [NEW] (E) . . . . .     | 125  | 38:10-7-3. . . . . [NEW] . . . . .      | 2184 |
| 38:1-1-8. . . . . [NEW] . . . . .         | 2176 | 38:10-7-4. . . . . [NEW] (E) . . . . .  | 134  |
| 38:1-1-9. . . . . [NEW] (E) . . . . .     | 125  | 38:10-7-5. . . . . [NEW] (E) . . . . .  | 134  |
| 38:1-1-9. . . . . [NEW] . . . . .         | 2176 | 38:10-7-5. . . . . [NEW] . . . . .      | 2184 |
| 38:1-1-10. . . . . [NEW] (E) . . . . .    | 125  | 38:10-7-6. . . . . [NEW] (E) . . . . .  | 134  |
| 38:1-1-10. . . . . [NEW] . . . . .        | 2176 | 38:10-7-6. . . . . [NEW] . . . . .      | 2184 |
| 38:1-1-11. . . . . [NEW] (E) . . . . .    | 125  | 38:10-7-7. . . . . [NEW] (E) . . . . .  | 134  |
| 38:1-1-11. . . . . [NEW] . . . . .        | 2176 | 38:10-7-7. . . . . [NEW] . . . . .      | 2184 |
| 38:1-1-12. . . . . [NEW] (E) . . . . .    | 126  | 38:10-7-8. . . . . [NEW] (E) . . . . .  | 135  |
| 38:1-1-12. . . . . [NEW] . . . . .        | 2176 | 38:10-7-8. . . . . [NEW] . . . . .      | 2185 |
| 38:1-1-13. . . . . [NEW] (E) . . . . .    | 126  | 38:10-7-9. . . . . [NEW] (E) . . . . .  | 135  |
| 38:1-1-13. . . . . [NEW] . . . . .        | 2176 | 38:10-7-9. . . . . [NEW] . . . . .      | 2185 |
| 38:1-1-14. . . . . [NEW] (E) . . . . .    | 126  | 38:10-9-1. . . . . [NEW] (E) . . . . .  | 135  |
| 38:1-1-14. . . . . [NEW] . . . . .        | 2176 | 38:10-9-1. . . . . [NEW] . . . . .      | 2185 |
| 38:1-1-15. . . . . [NEW] (E) . . . . .    | 126  | 38:10-9-2. . . . . [NEW] (E) . . . . .  | 135  |
| 38:1-1-15. . . . . [NEW] . . . . .        | 2177 | 38:10-9-2. . . . . [NEW] . . . . .      | 2185 |
| 38:1-1-16. . . . . [NEW] (E) . . . . .    | 126  | 38:10-9-3. . . . . [NEW] (E) . . . . .  | 135  |
| 38:1-1-16. . . . . [NEW] . . . . .        | 2177 | 38:10-9-4. . . . . [NEW] (E) . . . . .  | 135  |
| 38:1-3-1. . . . . [NEW] (E) . . . . .     | 126  | 38:10-9-4. . . . . [NEW] . . . . .      | 2185 |
| 38:1-3-1. . . . . [NEW] . . . . .         | 2177 | 38:10-11-1. . . . . [NEW] (E) . . . . . | 136  |
| 38:1-3-2. . . . . [NEW] (E) . . . . .     | 127  | 38:10-11-1. . . . . [NEW] . . . . .     | 2186 |
| 38:1-3-3. . . . . [NEW] (E) . . . . .     | 127  | 38:10-11-2. . . . . [NEW] (E) . . . . . | 136  |
| 38:1-3-4. . . . . [NEW] (E) . . . . .     | 127  | 38:10-11-2. . . . . [NEW] . . . . .     | 2186 |
| 38:1-3-5. . . . . [NEW] (E) . . . . .     | 127  | 38:10-11-3. . . . . [NEW] (E) . . . . . | 137  |
| 38:1-3-6. . . . . [NEW] (E) . . . . .     | 127  | 38:10-11-3. . . . . [NEW] . . . . .     | 2186 |
| 38:1-3-6. . . . . [NEW] . . . . .         | 2177 | 38:10-13-1. . . . . [NEW] (E) . . . . . | 137  |
| 38:10-1-1. . . . . [NEW] (E) . . . . .    | 128  | 38:10-13-1. . . . . [NEW] . . . . .     | 2186 |
| 38:10-1-1. . . . . [NEW] . . . . .        | 2178 | 38:10-13-2. . . . . [NEW] (E) . . . . . | 137  |

## Rules Affected Index – *continued*

|                                  |      |                                      |      |
|----------------------------------|------|--------------------------------------|------|
| 38:10-13-2. .... [NEW] .....     | 2187 | 75:1-5-5.1. .... [NEW] .....         | 2194 |
| 38:10-13-3. .... [NEW] (E) ..... | 137  | 75:1-5-5.2. .... [NEW] (E) .....     | 334  |
| 38:10-13-3. .... [NEW] .....     | 2187 | 75:1-5-5.2. .... [NEW] .....         | 2194 |
| 38:10-13-4. .... [NEW] (E) ..... | 137  | 75:1-5-5.3. .... [NEW] (E) .....     | 334  |
| 38:10-13-4. .... [NEW] .....     | 2187 | 75:1-5-5.3. .... [NEW] .....         | 2194 |
| 38:10-13-5. .... [NEW] (E) ..... | 137  | 75:1-5-5.4. .... [NEW] .....         | 2195 |
| 38:10-13-5. .... [NEW] .....     | 2187 | 75:1-5-5.5. .... [NEW] .....         | 2195 |
| 38:10-13-6. .... [NEW] (E) ..... | 137  | 75:1-5-6. .... [NEW] (E) .....       | 334  |
| 38:10-13-6. .... [NEW] .....     | 2187 | 75:1-5-6. .... [NEW] .....           | 2195 |
| 38:10, App. A. .... [NEW] .....  | 2188 | 75:1-5-7. .... [NEW] (E) .....       | 334  |
| 45:30-1-2. .... [AMENDED] .....  | 882  | 75:1-5-7. .... [NEW] .....           | 2195 |
| 45:30-5-7. .... [AMENDED] .....  | 883  | 75:1-5-8. .... [NEW] (E) .....       | 335  |
| 75:1-1-1. .... [NEW] (E) .....   | 329  | 75:1-5-8. .... [NEW] .....           | 2195 |
| 75:1-1-1. .... [NEW] .....       | 2190 | 75:1-5-9. .... [NEW] (E) .....       | 335  |
| 75:1-1-1.1. .... [NEW] (E) ..... | 329  | 75:1-5-9. .... [NEW] .....           | 2195 |
| 75:1-1-1.1. .... [NEW] .....     | 2190 | 75:1-5-10. .... [NEW] (E) .....      | 335  |
| 75:1-1-2. .... [NEW] (E) .....   | 330  | 75:1-5-10. .... [NEW] .....          | 2196 |
| 75:1-1-2. .... [NEW] .....       | 2191 | 75:1-5-11. .... [NEW] (E) .....      | 336  |
| 75:1-1-3. .... [NEW] (E) .....   | 330  | 75:1-5-11. .... [NEW] .....          | 2196 |
| 75:1-1-3. .... [NEW] .....       | 2191 | 75:1-5-12. .... [NEW] (E) .....      | 336  |
| 75:1-1-4. .... [NEW] (E) .....   | 330  | 75:1-5-12. .... [NEW] .....          | 2196 |
| 75:1-1-4. .... [NEW] .....       | 2191 | 75:1-7-1. .... [NEW] (E) .....       | 336  |
| 75:1-1-5. .... [NEW] (E) .....   | 330  | 75:1-7-1. .... [NEW] .....           | 2197 |
| 75:1-1-5. .... [NEW] .....       | 2191 | 75:1-7-2. .... [NEW] (E) .....       | 336  |
| 75:1-1-6. .... [NEW] (E) .....   | 330  | 75:1-7-2. .... [NEW] .....           | 2197 |
| 75:1-1-6. .... [NEW] .....       | 2191 | 75:1-7-3. .... [NEW] (E) .....       | 336  |
| 75:1-1-7. .... [NEW] (E) .....   | 330  | 75:1-7-3. .... [NEW] .....           | 2197 |
| 75:1-1-7. .... [NEW] .....       | 2191 | 75:1-7-4. .... [NEW] (E) .....       | 336  |
| 75:1-1-8. .... [NEW] (E) .....   | 331  | 75:1-7-4. .... [NEW] .....           | 2197 |
| 75:1-1-8. .... [NEW] .....       | 2191 | 75:1-7-5. .... [NEW] (E) .....       | 336  |
| 75:1-1-9. .... [NEW] (E) .....   | 331  | 75:1-7-5. .... [NEW] .....           | 2197 |
| 75:1-1-9. .... [NEW] .....       | 2192 | 75:1-7-6. .... [NEW] (E) .....       | 337  |
| 75:1-1-10. .... [NEW] (E) .....  | 331  | 75:1-7-6. .... [NEW] .....           | 2197 |
| 75:1-1-10. .... [NEW] .....      | 2192 | 75:1-7-7. .... [NEW] (E) .....       | 338  |
| 75:1-3-1. .... [NEW] (E) .....   | 332  | 75:1-7-7. .... [NEW] .....           | 2199 |
| 75:1-3-1. .... [NEW] .....       | 2192 | 75:1-7-8. .... [NEW] (E) .....       | 339  |
| 75:1-3-2. .... [NEW] (E) .....   | 332  | 75:1-7-8. .... [NEW] .....           | 2199 |
| 75:1-3-2. .... [NEW] .....       | 2192 | 75:1-7-9. .... [NEW] (E) .....       | 339  |
| 75:1-3-3. .... [NEW] (E) .....   | 332  | 75:1-7-9. .... [NEW] .....           | 2199 |
| 75:1-3-3. .... [NEW] .....       | 2192 | 75:1-7-10. .... [NEW] (E) .....      | 339  |
| 75:1-3-14. .... [NEW] (E) .....  | 332  | 75:1-7-10. .... [NEW] .....          | 2200 |
| 75:1-3-14. .... [NEW] .....      | 2193 | 75:1-7-11. .... [NEW] (E) .....      | 339  |
| 75:1-3-15. .... [NEW] (E) .....  | 332  | 75:1-7-11. .... [NEW] .....          | 2200 |
| 75:1-3-15. .... [NEW] .....      | 2193 | 75:15-1-1. .... [AMENDED] (E) .....  | 340  |
| 75:1-3-16. .... [NEW] (E) .....  | 332  | 75:15-1-1. .... [AMENDED] .....      | 2200 |
| 75:1-3-16. .... [NEW] .....      | 2193 | 75:15-1-2. .... [AMENDED] (E) .....  | 340  |
| 75:1-3-17. .... [NEW] (E) .....  | 332  | 75:15-1-2. .... [AMENDED] .....      | 2200 |
| 75:1-3-17. .... [NEW] .....      | 2193 | 75:15-1-3. .... [AMENDED] .....      | 2203 |
| 75:1-3-18. .... [NEW] (E) .....  | 332  | 75:15-1-4. .... [AMENDED] (E) .....  | 342  |
| 75:1-3-18. .... [NEW] .....      | 2193 | 75:15-1-4. .... [AMENDED] .....      | 2204 |
| 75:1-3-19. .... [NEW] (E) .....  | 332  | 75:15-1-5. .... [NEW] .....          | 2204 |
| 75:1-3-19. .... [NEW] .....      | 2193 | 75:15-1-6. .... [AMENDED] (E) .....  | 342  |
| 75:1-3-20. .... [NEW] (E) .....  | 333  | 75:15-1-6. .... [AMENDED] .....      | 2204 |
| 75:1-3-20. .... [NEW] .....      | 2193 | 75:15-3-1. .... [AMENDED] (E) .....  | 343  |
| 75:1-5-1. .... [NEW] (E) .....   | 333  | 75:15-3-1. .... [AMENDED] .....      | 2204 |
| 75:1-5-1. .... [NEW] .....       | 2194 | 75:15-3-2. .... [AMENDED] (E) .....  | 344  |
| 75:1-5-2. .... [NEW] (E) .....   | 333  | 75:15-3-2. .... [AMENDED] .....      | 2205 |
| 75:1-5-2. .... [NEW] .....       | 2194 | 75:15-3-7. .... [AMENDED] (E) .....  | 344  |
| 75:1-5-3. .... [NEW] (E) .....   | 333  | 75:15-3-7. .... [AMENDED] .....      | 2205 |
| 75:1-5-3. .... [NEW] .....       | 2194 | 75:15-3-8. .... [AMENDED] (E) .....  | 345  |
| 75:1-5-4. .... [NEW] (E) .....   | 333  | 75:15-3-8. .... [AMENDED] .....      | 2206 |
| 75:1-5-4. .... [NEW] .....       | 334  | 75:15-3-9. .... [AMENDED] (E) .....  | 345  |
| 75:1-5-4. .... [NEW] .....       | 2194 | 75:15-3-9. .... [REVOKED] .....      | 2207 |
| 75:1-5-5. .... [NEW] (E) .....   | 334  | 75:15-3-10. .... [AMENDED] (E) ..... | 346  |
| 75:1-5-5. .... [NEW] .....       | 334  | 75:15-3-10. .... [AMENDED] .....     | 2208 |
| 75:1-5-5. .... [NEW] .....       | 2194 | 75:15-4-1. .... [NEW] .....          | 2208 |
| 75:1-5-5.1. .... [NEW] (E) ..... | 334  | 75:15-4-2. .... [NEW] .....          | 2208 |

|  |      |  |      |
|--|------|--|------|
| 75:15-4-3. . . . . [NEW] . . . . .           | 2208 | 75:15-13-2. . . . . [AMENDED] (E) . . . . .    | 352  |
| 75:15-4-4. . . . . [NEW] . . . . .           | 2209 | 75:15-13-2. . . . . [AMENDED] . . . . .        | 2219 |
| 75:15-4-5. . . . . [NEW] . . . . .           | 2209 | 75:15-13-3. . . . . [AMENDED] (E) . . . . .    | 353  |
| 75:15-4-6. . . . . [NEW] . . . . .           | 2210 | 75:15-13-3. . . . . [AMENDED] . . . . .        | 2219 |
| 75:15-4-7. . . . . [NEW] . . . . .           | 2210 | 75:15-13-4. . . . . [AMENDED] (E) . . . . .    | 353  |
| 75:15-4-8. . . . . [NEW] . . . . .           | 2210 | 75:15-13-4. . . . . [AMENDED] . . . . .        | 2220 |
| 75:15-4-9. . . . . [NEW] . . . . .           | 2210 | 75:15-13-5. . . . . [AMENDED] (E) . . . . .    | 353  |
| 75:15-4-10. . . . . [NEW] . . . . .          | 2211 | 75:15-13-5. . . . . [AMENDED] . . . . .        | 2220 |
| 75:15-4-11. . . . . [NEW] . . . . .          | 2211 | 75:15-13-8. . . . . [AMENDED] (E) . . . . .    | 353  |
| 75:15-4-12. . . . . [NEW] . . . . .          | 2211 | 75:15-13-8. . . . . [AMENDED] . . . . .        | 2220 |
| 75:15-4-13. . . . . [NEW] . . . . .          | 2211 | 75:15-13-9. . . . . [AMENDED] (E) . . . . .    | 353  |
| 75:15-4-14. . . . . [NEW] . . . . .          | 2211 | 75:15-13-9. . . . . [AMENDED] . . . . .        | 2220 |
| 75:15-4-15. . . . . [NEW] . . . . .          | 2211 | 75:15-13-10. . . . . [AMENDED] (E) . . . . .   | 353  |
| 75:15-4-16. . . . . [NEW] . . . . .          | 2211 | 75:15-13-10. . . . . [AMENDED] . . . . .       | 2220 |
| 75:15-4-17. . . . . [NEW] . . . . .          | 2212 | 75:15-13-20. . . . . [AMENDED] (E) . . . . .   | 353  |
| 75:15-4-18. . . . . [NEW] . . . . .          | 2212 | 75:15-13-20. . . . . [REVOKED] . . . . .       | 2220 |
| 75:15-4-19. . . . . [NEW] . . . . .          | 2212 | 75:15-13-20.1. . . . . [AMENDED] (E) . . . . . | 354  |
| 75:15-5-1. . . . . [AMENDED] . . . . .       | 2212 | 75:15-13-20.1. . . . . [AMENDED] . . . . .     | 2221 |
| 75:15-5-2. . . . . [AMENDED] (E) . . . . .   | 346  | 75:15-13-20.2. . . . . [AMENDED] (E) . . . . . | 354  |
| 75:15-5-2. . . . . [AMENDED] . . . . .       | 2212 | 75:15-13-20.2. . . . . [AMENDED] . . . . .     | 2221 |
| 75:15-5-3. . . . . [AMENDED] (E) . . . . .   | 346  | 75:15-13-24. . . . . [AMENDED] (E) . . . . .   | 354  |
| 75:15-5-3. . . . . [AMENDED] . . . . .       | 2212 | 75:15-13-24. . . . . [AMENDED] . . . . .       | 2222 |
| 75:15-5-3.1. . . . . [AMENDED] (E) . . . . . | 347  | 75:15-13-25. . . . . [AMENDED] . . . . .       | 2222 |
| 75:15-5-3.1. . . . . [AMENDED] . . . . .     | 2213 | 75:15-13-26. . . . . [AMENDED] (E) . . . . .   | 354  |
| 75:15-5-4. . . . . [AMENDED] (E) . . . . .   | 348  | 75:15-13-26. . . . . [AMENDED] . . . . .       | 2222 |
| 75:15-5-4. . . . . [AMENDED] . . . . .       | 2215 | 75:15-13-27. . . . . [AMENDED] (E) . . . . .   | 355  |
| 75:15-5-5. . . . . [AMENDED] (E) . . . . .   | 348  | 75:15-13-27. . . . . [AMENDED] . . . . .       | 2222 |
| 75:15-5-5. . . . . [AMENDED] . . . . .       | 2215 | 75:15-13-28. . . . . [AMENDED] (E) . . . . .   | 355  |
| 75:15-5-6. . . . . [AMENDED] (E) . . . . .   | 349  | 75:15-13-28. . . . . [AMENDED] . . . . .       | 2222 |
| 75:15-5-6. . . . . [AMENDED] . . . . .       | 2215 | 75:15-13-29. . . . . [AMENDED] (E) . . . . .   | 355  |
| 75:15-5-10. . . . . [AMENDED] (E) . . . . .  | 349  | 75:15-13-29. . . . . [AMENDED] . . . . .       | 2222 |
| 75:15-5-10. . . . . [REVOKED] . . . . .      | 2215 | 75:15-13-30. . . . . [AMENDED] (E) . . . . .   | 355  |
| 75:15-7-1. . . . . [AMENDED] (E) . . . . .   | 349  | 75:15-13-30. . . . . [AMENDED] . . . . .       | 2223 |
| 75:15-7-1. . . . . [AMENDED] . . . . .       | 2216 | 75:15-15-1. . . . . [AMENDED] (E) . . . . .    | 355  |
| 75:15-7-2. . . . . [AMENDED] (E) . . . . .   | 350  | 75:15-15-1. . . . . [AMENDED] . . . . .        | 2223 |
| 75:15-7-2. . . . . [AMENDED] . . . . .       | 2216 | 75:15-15-2. . . . . [AMENDED] (E) . . . . .    | 355  |
| 75:15-7-3. . . . . [AMENDED] (E) . . . . .   | 350  | 75:15-15-2. . . . . [REVOKED] . . . . .        | 2223 |
| 75:15-7-3. . . . . [AMENDED] . . . . .       | 2216 | 75:15-15-3. . . . . [AMENDED] (E) . . . . .    | 355  |
| 75:15-7-4. . . . . [AMENDED] (E) . . . . .   | 350  | 75:15-15-3. . . . . [AMENDED] . . . . .        | 2223 |
| 75:15-7-4. . . . . [AMENDED] . . . . .       | 2216 | 75:15-15-4. . . . . [AMENDED] (E) . . . . .    | 356  |
| 75:15-7-5. . . . . [AMENDED] (E) . . . . .   | 350  | 75:15-15-4. . . . . [AMENDED] . . . . .        | 2223 |
| 75:15-7-5. . . . . [AMENDED] . . . . .       | 2216 | 75:15-17-1. . . . . [AMENDED] (E) . . . . .    | 356  |
| 75:15-7-6. . . . . [AMENDED] (E) . . . . .   | 350  | 75:15-17-1. . . . . [AMENDED] . . . . .        | 2224 |
| 75:15-7-6. . . . . [AMENDED] . . . . .       | 2216 | 75:15-17-2. . . . . [AMENDED] (E) . . . . .    | 356  |
| 75:15-7-7. . . . . [AMENDED] (E) . . . . .   | 350  | 75:15-17-2. . . . . [REVOKED] . . . . .        | 2224 |
| 75:15-7-7. . . . . [AMENDED] . . . . .       | 2217 | 75:15-17-3. . . . . [AMENDED] (E) . . . . .    | 356  |
| 75:15-7-8. . . . . [NEW] . . . . .           | 2217 | 75:15-17-3. . . . . [AMENDED] . . . . .        | 2224 |
| 75:15-9-1. . . . . [AMENDED] (E) . . . . .   | 351  | 75:15-17-4. . . . . [AMENDED] (E) . . . . .    | 357  |
| 75:15-9-1. . . . . [AMENDED] . . . . .       | 2218 | 75:15-17-4. . . . . [AMENDED] . . . . .        | 2224 |
| 75:15-9-2. . . . . [AMENDED] (E) . . . . .   | 351  | 87:1-3-14. . . . . [AMENDED] (E) . . . . .     | 12   |
| 75:15-9-2. . . . . [AMENDED] . . . . .       | 2218 | 87:1-3-14. . . . . [AMENDED] . . . . .         | 1637 |
| 75:15-9-7. . . . . [AMENDED] (E) . . . . .   | 351  | 87:10-17-3. . . . . [AMENDED] (E) . . . . .    | 13   |
| 75:15-9-7. . . . . [AMENDED] . . . . .       | 2218 | 87:10-17-3. . . . . [AMENDED] . . . . .        | 1638 |
| 75:15-9-8. . . . . [AMENDED] (E) . . . . .   | 351  | 87:10-19-1. . . . . [AMENDED] (E) . . . . .    | 14   |
| 75:15-9-8. . . . . [AMENDED] . . . . .       | 2218 | 87:10-19-1. . . . . [AMENDED] . . . . .        | 1640 |
| 75:15-9-9. . . . . [AMENDED] (E) . . . . .   | 351  | 87:10-25-2. . . . . [AMENDED] (E) . . . . .    | 14   |
| 75:15-9-9. . . . . [AMENDED] . . . . .       | 2218 | 87:10-25-2. . . . . [AMENDED] . . . . .        | 1640 |
| 75:15-9-10. . . . . [AMENDED] (E) . . . . .  | 352  | 87:10-25-9. . . . . [AMENDED] (E) . . . . .    | 15   |
| 75:15-9-10. . . . . [REVOKED] . . . . .      | 2219 | 87:10-25-9. . . . . [AMENDED] . . . . .        | 1640 |
| 75:15-11-1. . . . . [AMENDED] (E) . . . . .  | 352  | 87:10-25-10. . . . . [AMENDED] (E) . . . . .   | 15   |
| 75:15-11-1. . . . . [REVOKED] . . . . .      | 2219 | 87:10-25-10. . . . . [AMENDED] . . . . .       | 1640 |
| 75:15-11-2. . . . . [AMENDED] (E) . . . . .  | 352  | 87:10-27-2. . . . . [AMENDED] (E) . . . . .    | 15   |
| 75:15-11-2. . . . . [REVOKED] . . . . .      | 2219 | 87:10-27-2. . . . . [AMENDED] . . . . .        | 1640 |
| 75:15-11-3. . . . . [AMENDED] (E) . . . . .  | 352  | 87:10-27-4. . . . . [AMENDED] (E) . . . . .    | 15   |
| 75:15-11-3. . . . . [REVOKED] . . . . .      | 2219 | 87:10-27-4. . . . . [AMENDED] . . . . .        | 1641 |
| 75:15-13-1. . . . . [AMENDED] (E) . . . . .  | 352  | 87:10-27-9. . . . . [AMENDED] (E) . . . . .    | 15   |
| 75:15-13-1. . . . . [AMENDED] . . . . .      | 2219 | 87:10-27-9. . . . . [AMENDED] . . . . .        | 1641 |

**Rules Affected Index – *continued***

|                         |                         |      |                        |                         |      |
|-------------------------|-------------------------|------|------------------------|-------------------------|------|
| 87:10-27-10. . . . .    | [AMENDED] (E) . . . . . | 16   | 140:15-9-5. . . . .    | [NEW] . . . . .         | 2945 |
| 87:10-27-10. . . . .    | [AMENDED] . . . . .     | 1641 | 140:15-9-6. . . . .    | [NEW] . . . . .         | 2945 |
| 87:10-35-1. . . . .     | [NEW] (E) . . . . .     | 16   | 150:10-1-11. . . . .   | [NEW] . . . . .         | 1200 |
| 87:10-35-1. . . . .     | [NEW] . . . . .         | 1641 | 150:65-1-2. . . . .    | [AMENDED] . . . . .     | 1201 |
| 87:20-1-1. . . . .      | [NEW] (E) . . . . .     | 16   | 150:65-1-3. . . . .    | [AMENDED] . . . . .     | 1202 |
| 87:20-1-1. . . . .      | [NEW] . . . . .         | 1642 | 150:65-1-6. . . . .    | [AMENDED] . . . . .     | 1202 |
| 87:20-1-2. . . . .      | [NEW] (E) . . . . .     | 17   | 150:65-6-3. . . . .    | [AMENDED] . . . . .     | 1202 |
| 87:20-1-2. . . . .      | [NEW] . . . . .         | 1642 | 150:65-6-4. . . . .    | [AMENDED] . . . . .     | 1203 |
| 87:20-1-3. . . . .      | [NEW] (E) . . . . .     | 17   | 150:65-6-6. . . . .    | [AMENDED] . . . . .     | 1203 |
| 87:20-1-3. . . . .      | [NEW] . . . . .         | 1642 | 150:115-1-1. . . . .   | [NEW] (E) . . . . .     | 106  |
| 120:10-3-12. . . . .    | [AMENDED] . . . . .     | 1643 | 150:115-1-1. . . . .   | [NEW] . . . . .         | 1204 |
| 120:10-5-1. . . . .     | [REVOKED] . . . . .     | 1644 | 150:115-1-2. . . . .   | [NEW] (E) . . . . .     | 106  |
| 120:10-5-7. . . . .     | [REVOKED] . . . . .     | 1644 | 150:115-1-2. . . . .   | [NEW] . . . . .         | 1204 |
| 120:10-7-1. . . . .     | [AMENDED] . . . . .     | 2931 | 150:115-1-3. . . . .   | [NEW] (E) . . . . .     | 107  |
| 120:10-7-2. . . . .     | [REVOKED] . . . . .     | 2931 | 150:115-1-3. . . . .   | [NEW] . . . . .         | 1204 |
| 120:10-7-3. . . . .     | [REVOKED] . . . . .     | 2932 | 150:115-1-4. . . . .   | [NEW] (E) . . . . .     | 107  |
| 120:10-7-4. . . . .     | [REVOKED] . . . . .     | 2932 | 150:115-1-4. . . . .   | [NEW] . . . . .         | 1205 |
| 120:10-7-5. . . . .     | [REVOKED] . . . . .     | 2932 | 150:120-1-1. . . . .   | [NEW] . . . . .         | 1205 |
| 120:10-7-6. . . . .     | [REVOKED] . . . . .     | 2932 | 150:120-1-2. . . . .   | [NEW] . . . . .         | 1206 |
| 120:10-7-7. . . . .     | [REVOKED] . . . . .     | 2932 | 150:120-1-3. . . . .   | [NEW] . . . . .         | 1206 |
| 120:10-7-8. . . . .     | [REVOKED] . . . . .     | 2933 | 150:120-3-1. . . . .   | [NEW] . . . . .         | 1206 |
| 120:10-7-9. . . . .     | [NEW] . . . . .         | 2933 | 150:120-3-2. . . . .   | [NEW] . . . . .         | 1206 |
| 120:10-7-10. . . . .    | [NEW] . . . . .         | 2933 | 150:120-3-3. . . . .   | [NEW] . . . . .         | 1206 |
| 120:10-7-11. . . . .    | [NEW] . . . . .         | 2933 | 150:120-3-4. . . . .   | [NEW] . . . . .         | 1206 |
| 120:10-7-12. . . . .    | [NEW] . . . . .         | 2935 | 150:120-3-5. . . . .   | [NEW] . . . . .         | 1206 |
| 120:10-7-13. . . . .    | [NEW] . . . . .         | 2935 | 150:120-3-6. . . . .   | [NEW] . . . . .         | 1207 |
| 120:10-7-15. . . . .    | [NEW] . . . . .         | 2936 | 150:120-5-1. . . . .   | [NEW] . . . . .         | 1207 |
| 120:10-7-16. . . . .    | [NEW] . . . . .         | 2936 | 150:120-5-2. . . . .   | [NEW] . . . . .         | 1207 |
| 120:10-7-17. . . . .    | [NEW] . . . . .         | 2936 | 150:120-5-3. . . . .   | [NEW] . . . . .         | 1207 |
| 120:10-15-1. . . . .    | [NEW] . . . . .         | 1645 | 150:120-5-4. . . . .   | [NEW] . . . . .         | 1207 |
| 120:10-15-2. . . . .    | [NEW] . . . . .         | 1645 | 150:120-5-5. . . . .   | [NEW] . . . . .         | 1207 |
| 120:10-15-3. . . . .    | [NEW] . . . . .         | 1645 | 150:120-7-1. . . . .   | [NEW] . . . . .         | 1207 |
| 120:10-15-4. . . . .    | [NEW] . . . . .         | 1646 | 150:120-7-2. . . . .   | [NEW] . . . . .         | 1207 |
| 120:10-15-5. . . . .    | [NEW] . . . . .         | 1646 | 150:120-7-3. . . . .   | [NEW] . . . . .         | 1207 |
| 120:10-15-6. . . . .    | [NEW] . . . . .         | 1646 | 150:120-7-4. . . . .   | [NEW] . . . . .         | 1208 |
| 120:10-15-7. . . . .    | [NEW] . . . . .         | 1646 | 150:120-7-5. . . . .   | [NEW] . . . . .         | 1208 |
| 120:10-15-8. . . . .    | [NEW] . . . . .         | 1646 | 150:120-7-6. . . . .   | [NEW] . . . . .         | 1208 |
| 120:10-15-9. . . . .    | [NEW] . . . . .         | 1646 | 150:120-9-1. . . . .   | [NEW] . . . . .         | 1208 |
| 120:10-15-10. . . . .   | [NEW] . . . . .         | 1647 | 150:120-9-2. . . . .   | [NEW] . . . . .         | 1209 |
| 120:10-15-11. . . . .   | [NEW] . . . . .         | 1647 | 150:120-9-3. . . . .   | [NEW] . . . . .         | 1209 |
| 120:10-15-12. . . . .   | [NEW] . . . . .         | 1647 | 150:120-9-4. . . . .   | [NEW] . . . . .         | 1209 |
| 120:10-15-13. . . . .   | [NEW] . . . . .         | 1647 | 150:120-9-5. . . . .   | [NEW] . . . . .         | 1209 |
| 120:10-15-14. . . . .   | [NEW] . . . . .         | 1647 | 150:120-9-6. . . . .   | [NEW] . . . . .         | 1209 |
| 120:10-15-15. . . . .   | [NEW] . . . . .         | 1647 | 150:120-9-7. . . . .   | [NEW] . . . . .         | 1209 |
| 120:10-17-1. . . . .    | [NEW] . . . . .         | 2936 | 150:120-9-8. . . . .   | [NEW] . . . . .         | 1209 |
| 120:10-17-2. . . . .    | [NEW] . . . . .         | 2937 | 150:120-11-1. . . . .  | [NEW] . . . . .         | 1210 |
| 120:10-17-3. . . . .    | [NEW] . . . . .         | 2937 | 150:120-11-10. . . . . | [NEW] . . . . .         | 1210 |
| 120:10-17-4. . . . .    | [NEW] . . . . .         | 2937 | 150:120-11-11. . . . . | [NEW] . . . . .         | 1210 |
| 120:10-17-5. . . . .    | [NEW] . . . . .         | 2937 | 150:120-11-12. . . . . | [NEW] . . . . .         | 1210 |
| 120:10-17-6. . . . .    | [NEW] . . . . .         | 2937 | 150:120-11-13. . . . . | [NEW] . . . . .         | 1210 |
| 120:10-17-7. . . . .    | [NEW] . . . . .         | 2938 | 150:120-11-20. . . . . | [NEW] . . . . .         | 1210 |
| 120:10-17-8. . . . .    | [NEW] . . . . .         | 2938 | 150:120-11-21. . . . . | [NEW] . . . . .         | 1210 |
| 120:10-17-9. . . . .    | [NEW] . . . . .         | 2938 | 150:120-11-22. . . . . | [NEW] . . . . .         | 1210 |
| 120:10-17-10. . . . .   | [NEW] . . . . .         | 2938 | 150:120-11-30. . . . . | [NEW] . . . . .         | 1211 |
| 120:10, App. C. . . . . | [NEW] . . . . .         | 1648 | 150:120-11-31. . . . . | [NEW] . . . . .         | 1211 |
| 120:10, App. D. . . . . | [NEW] . . . . .         | 1649 | 150:120-11-32. . . . . | [NEW] . . . . .         | 1211 |
| 120:10, App. E. . . . . | [NEW] . . . . .         | 2939 | 150:120-11-33. . . . . | [NEW] . . . . .         | 1211 |
| 140:1-1-2. . . . .      | [AMENDED] . . . . .     | 2940 | 150:120-11-34. . . . . | [NEW] . . . . .         | 1211 |
| 140:1-3-6. . . . .      | [AMENDED] . . . . .     | 2941 | 158:1-3-2. . . . .     | [AMENDED] . . . . .     | 1211 |
| 140:3-3-3. . . . .      | [AMENDED] . . . . .     | 2942 | 158:10-3-1. . . . .    | [AMENDED] . . . . .     | 1212 |
| 140:10-1-2. . . . .     | [AMENDED] . . . . .     | 2943 | 158:10-3-2. . . . .    | [AMENDED] . . . . .     | 1212 |
| 140:10-5-1. . . . .     | [AMENDED] . . . . .     | 2944 | 158:30-1-2. . . . .    | [AMENDED] . . . . .     | 1213 |
| 140:10-8-1. . . . .     | [AMENDED] . . . . .     | 2944 | 158:30-1-4. . . . .    | [AMENDED] . . . . .     | 1214 |
| 140:15-9-1. . . . .     | [NEW] . . . . .         | 2945 | 158:30-5-1. . . . .    | [AMENDED] (E) . . . . . | 1147 |
| 140:15-9-2. . . . .     | [NEW] . . . . .         | 2945 | 158:30-9-1. . . . .    | [AMENDED] (E) . . . . . | 1147 |
| 140:15-9-3. . . . .     | [NEW] . . . . .         | 2945 | 158:30-9-1. . . . .    | [AMENDED] . . . . .     | 1214 |
| 140:15-9-4. . . . .     | [NEW] . . . . .         | 2945 | 158:30-13-2. . . . .   | [AMENDED] . . . . .     | 1215 |

|   |      |   |      |
|---|------|---|------|
| 158:30-13-3. . . . . [AMENDED] . . . . .    | 1215 | 165:10-21-38. . . . . [AMENDED] . . . . .       | 2255 |
| 158:40-3-1. . . . . [AMENDED] . . . . .     | 1216 | 165:10-21-45. . . . . [AMENDED] . . . . .       | 2255 |
| 158:40-7-2. . . . . [AMENDED] . . . . .     | 1216 | 165:10-21-47. . . . . [AMENDED] . . . . .       | 2255 |
| 158:40-7-6. . . . . [NEW] (E) . . . . .     | 1148 | 165:10-21-47.1. . . . . [AMENDED] . . . . .     | 2256 |
| 158:40-13-2. . . . . [AMENDED] . . . . .    | 1216 | 165:10-21-57. . . . . [AMENDED] . . . . .       | 2256 |
| 158:50-1-2. . . . . [AMENDED] . . . . .     | 1217 | 165:10-21-58. . . . . [AMENDED] . . . . .       | 2256 |
| 158:50-1-4. . . . . [AMENDED] . . . . .     | 1218 | 165:10-21-67. . . . . [AMENDED] . . . . .       | 2256 |
| 158:50-9-1. . . . . [AMENDED] (E) . . . . . | 1149 | 165:10-21-68. . . . . [AMENDED] . . . . .       | 2257 |
| 158:50-11-1. . . . . [AMENDED] . . . . .    | 1218 | 165:10-21-77. . . . . [AMENDED] . . . . .       | 2257 |
| 158:50-13-2. . . . . [AMENDED] . . . . .    | 1218 | 165:10-21-82.2. . . . . [AMENDED] . . . . .     | 2257 |
| 158:50-13-3. . . . . [AMENDED] . . . . .    | 1218 | 165:10-21-82.3. . . . . [AMENDED] . . . . .     | 2258 |
| 158:50-13-4. . . . . [AMENDED] . . . . .    | 1219 | 165:10-21-85. . . . . [AMENDED] . . . . .       | 2258 |
| 158:60-1-2. . . . . [AMENDED] . . . . .     | 1219 | 165:10-21-92. . . . . [AMENDED] . . . . .       | 2259 |
| 158:60-5-2. . . . . [AMENDED] . . . . .     | 1220 | 165:10-21-95. . . . . [NEW] . . . . .           | 2259 |
| 158:60-5-4. . . . . [AMENDED] . . . . .     | 1220 | 165:10-21-96. . . . . [NEW] . . . . .           | 2259 |
| 158:60-5-5. . . . . [AMENDED] . . . . .     | 1220 | 165:10-21-97. . . . . [NEW] . . . . .           | 2259 |
| 160:10-5-1.2. . . . . [AMENDED] . . . . .   | 2946 | 165:15-1-1. . . . . [AMENDED] . . . . .         | 1650 |
| 160:45-9-2. . . . . [AMENDED] . . . . .     | 2948 | 165:15-1-2. . . . . [AMENDED] . . . . .         | 1650 |
| 160:55-1-2. . . . . [AMENDED] . . . . .     | 2950 | 165:15-3-16. . . . . [AMENDED] . . . . .        | 1653 |
| 160:55-3-1.4. . . . . [AMENDED] . . . . .   | 2951 | 165:15-3-20. . . . . [AMENDED] . . . . .        | 1653 |
| 160:60-1-3. . . . . [AMENDED] . . . . .     | 2953 | 165:15-3-21. . . . . [AMENDED] . . . . .        | 1653 |
| 160:60-3-1. . . . . [AMENDED] . . . . .     | 2953 | 165:15-3-22. . . . . [AMENDED] . . . . .        | 1656 |
| 160:60-3-2. . . . . [AMENDED] . . . . .     | 2953 | 165:15-3-24.1. . . . . [AMENDED] . . . . .      | 1657 |
| 160:60-3-5. . . . . [AMENDED] . . . . .     | 2953 | 165:15-3-24.3. . . . . [AMENDED] . . . . .      | 1658 |
| 160:60-3-6. . . . . [AMENDED] . . . . .     | 2954 | 165:15-3-25. . . . . [AMENDED] . . . . .        | 1658 |
| 160:60-7-2. . . . . [AMENDED] . . . . .     | 2954 | 165:15-9-1. . . . . [AMENDED] . . . . .         | 1658 |
| 160:70-1-3. . . . . [AMENDED] . . . . .     | 2954 | 165:15-9-3. . . . . [AMENDED] . . . . .         | 1658 |
| 160:70-11-1. . . . . [NEW] . . . . .        | 2955 | 165:15-15-8. . . . . [AMENDED] . . . . .        | 1658 |
| 160:70-11-2. . . . . [NEW] . . . . .        | 2955 | 165:15-15-9. . . . . [AMENDED] . . . . .        | 1658 |
| 160:70-11-3. . . . . [NEW] . . . . .        | 2955 | 165:15-15-28. . . . . [AMENDED] . . . . .       | 1659 |
| 160:70-11-4. . . . . [NEW] . . . . .        | 2955 | 165:15-15-35. . . . . [AMENDED] . . . . .       | 1659 |
| 160:70-11-5. . . . . [NEW] . . . . .        | 2956 | 165:15, App. A. . . . . [REVOKED] . . . . .     | 1660 |
| 160:70-11-6. . . . . [NEW] . . . . .        | 2956 | 165:15, App. A. . . . . [NEW] . . . . .         | 1660 |
| 160:70-11-7. . . . . [NEW] . . . . .        | 2956 | 165:25-1-11. . . . . [AMENDED] . . . . .        | 2261 |
| 160:70-11-8. . . . . [NEW] . . . . .        | 2956 | 165:25-1-23.1. . . . . [NEW] . . . . .          | 2263 |
| 165:5-1-7. . . . . [AMENDED] . . . . .      | 2226 | 165:25-1-24.1. . . . . [NEW] . . . . .          | 2263 |
| 165:5-3-1. . . . . [AMENDED] (E) . . . . .  | 506  | 165:25-1-25. . . . . [RENUMBERED TO             |      |
| 165:5-3-1. . . . . [AMENDED] . . . . .      | 2226 | 165:25-1-24.1] . . . . .                        | 2263 |
| 165:5-7-14. . . . . [AMENDED] . . . . .     | 2228 | 165:25-1-41. . . . . [AMENDED] . . . . .        | 2264 |
| 165:5-7-65. . . . . [AMENDED] (E) . . . . . | 508  | 165:25-1-42. . . . . [AMENDED] . . . . .        | 2264 |
| 165:5-7-65. . . . . [AMENDED] . . . . .     | 2228 | 165:25-1-48. . . . . [AMENDED] . . . . .        | 2264 |
| 165:5-25-1. . . . . [NEW] (E) . . . . .     | 508  | 165:25-1-55. . . . . [AMENDED] . . . . .        | 2264 |
| 165:5-25-1. . . . . [NEW] . . . . .         | 2228 | 165:25-1-56. . . . . [AMENDED] . . . . .        | 2265 |
| 165:5-25-2. . . . . [NEW] (E) . . . . .     | 508  | 165:25-1-101. . . . . [NEW] . . . . .           | 2265 |
| 165:5-25-2. . . . . [NEW] . . . . .         | 2229 | 165:25-1-102. . . . . [NEW] . . . . .           | 2266 |
| 165:5-25-3. . . . . [NEW] (E) . . . . .     | 509  | 165:25-1-103. . . . . [NEW] . . . . .           | 2266 |
| 165:5-25-3. . . . . [NEW] . . . . .         | 2229 | 165:25-2-2. . . . . [AMENDED] (E) . . . . .     | 138  |
| 165:5-25-4. . . . . [NEW] (E) . . . . .     | 509  | 165:25-2-2. . . . . [AMENDED] . . . . .         | 2267 |
| 165:5-25-4. . . . . [NEW] . . . . .         | 2229 | 165:25-2-4. . . . . [AMENDED] . . . . .         | 2268 |
| 165:5-25-5. . . . . [NEW] (E) . . . . .     | 509  | 165:25-2-33. . . . . [AMENDED] . . . . .        | 2268 |
| 165:5-25-5. . . . . [NEW] . . . . .         | 2229 | 165:25-2-39. . . . . [AMENDED] . . . . .        | 2268 |
| 165:10-5-5. . . . . [AMENDED] . . . . .     | 2231 | 165:25-2-40. . . . . [AMENDED] . . . . .        | 2269 |
| 165:10-5-6. . . . . [AMENDED] . . . . .     | 2232 | 165:25-2-42. . . . . [AMENDED] . . . . .        | 2269 |
| 165:10-7-3. . . . . [AMENDED] . . . . .     | 2235 | 165:25-2-51. . . . . [AMENDED] . . . . .        | 2269 |
| 165:10-7-16. . . . . [AMENDED] . . . . .    | 2235 | 165:25-2-53.1. . . . . [NEW] . . . . .          | 2270 |
| 165:10-7-17. . . . . [AMENDED] . . . . .    | 2239 | 165:25-2-54. . . . . [AMENDED AND RENUMBERED TO |      |
| 165:10-7-19. . . . . [AMENDED] . . . . .    | 2242 | 165:25-2-55.1] . . . . .                        | 2270 |
| 165:10-7-20. . . . . [AMENDED] . . . . .    | 2245 | 165:25-2-55. . . . . [REVOKED] . . . . .        | 2270 |
| 165:10-7-22. . . . . [AMENDED] . . . . .    | 2247 | 165:25-2-55.1. . . . . [NEW] . . . . .          | 2271 |
| 165:10-7-26. . . . . [AMENDED] . . . . .    | 2247 | 165:25-2-72. . . . . [AMENDED] . . . . .        | 2271 |
| 165:10-7-27. . . . . [AMENDED] . . . . .    | 2250 | 165:25-2-77. . . . . [AMENDED AND RENUMBERED TO |      |
| 165:10-7-28. . . . . [AMENDED] . . . . .    | 2251 | 165:25-2-91] . . . . .                          | 2271 |
| 165:10-7-29. . . . . [AMENDED] . . . . .    | 2252 | 165:25-2-91. . . . . [NEW] . . . . .            | 2272 |
| 165:10-7-32. . . . . [AMENDED] . . . . .    | 2254 | 165:25-2-111. . . . . [NEW] . . . . .           | 2272 |
| 165:10-21-23. . . . . [AMENDED] . . . . .   | 2254 | 165:25-2-131. . . . . [NEW] . . . . .           | 2272 |
| 165:10-21-24. . . . . [AMENDED] . . . . .   | 2254 | 165:25-2-132. . . . . [NEW] . . . . .           | 2272 |
| 165:10-21-37. . . . . [AMENDED] . . . . .   | 2254 | 165:25-2-133. . . . . [NEW] . . . . .           | 2272 |

## Rules Affected Index – *continued*

|   |      |  |      |
|---|------|--|------|
| 165:25-2-134. .... [NEW] .....  | 2273 | 165:25-8-8. .... [REVOKED] .....                                     | 2291 |
| 165:25-2-135. .... [NEW] .....  | 2273 | 165:25-8-14. .... [AMENDED] (E) .....                                | 143  |
| 165:25-2-136. .... [NEW] .....  | 2273 | 165:25-8-14. .... [AMENDED] .....                                    | 2292 |
| 165:25-2-137. .... [NEW] .....  | 2273 | 165:25-8-15. .... [AMENDED] (E) .....                                | 143  |
| 165:25-2-138. .... [NEW] .....  | 2273 | 165:25-8-15. .... [AMENDED] .....                                    | 2292 |
| 165:25-3-5. .... [AMENDED AND RENUMBERED TO<br>165:25-3-6.20] .....   | 2274 | 165:25-8-29. .... [AMENDED] (E) .....                                | 143  |
| 165:25-3-5.1. .... [RENUMBERED TO<br>165:25-3-6.21] .....             | 2274 | 165:25-8-29. .... [AMENDED] .....                                    | 2292 |
| 165:25-3-5.2. .... [AMENDED AND RENUMBERED TO<br>165:25-3-6.22] ..... | 2274 | 165:25-8-35. .... [AMENDED] (E) .....                                | 143  |
| 165:25-3-5.3. .... [AMENDED AND RENUMBERED TO<br>165:25-3-6.23] ..... | 2275 | 165:25-8-35. .... [AMENDED] .....                                    | 2292 |
| 165:25-3-5.4. .... [AMENDED AND RENUMBERED TO<br>165:25-3-6.24] ..... | 2276 | 165:25-8-36. .... [AMENDED] (E) .....                                | 144  |
| 165:25-3-5.5. .... [AMENDED AND RENUMBERED TO<br>165:25-3-6.25] ..... | 2277 | 165:25-8-36. .... [AMENDED] .....                                    | 2292 |
| 165:25-3-5.6. .... [RENUMBERED TO<br>165:25-3-6.26] .....             | 2277 | 165:25-14-1. .... [AMENDED] .....                                    | 2292 |
| 165:25-3-5.7. .... [AMENDED AND RENUMBERED TO<br>165:25-3-6.27] ..... | 2277 | 165:25-18-19. .... [AMENDED] .....                                   | 2293 |
| 165:25-3-6. .... [AMENDED] (E) .....                                  | 139  | 165:25, App. S. .... [REVOKED] .....                                 | 2294 |
| 165:25-3-6. .... [AMENDED AND RENUMBERED TO<br>165:25-3-6.29] .....   | 2278 | 165:25, App. S. .... [NEW] .....                                     | 2294 |
| 165:25-3-6.1. .... [RENUMBERED TO<br>165:25-3-6.30] .....             | 2278 | 165:26-1-23. .... [RENUMBERED TO<br>165:26-1-25.1] .....             | 2298 |
| 165:25-3-6.20. .... [NEW] .....                                       | 2279 | 165:26-1-24. .... [RENUMBERED TO<br>165:26-1-32] .....               | 2298 |
| 165:25-3-6.21. .... [NEW] .....                                       | 2279 | 165:26-1-25. .... [RENUMBERED TO<br>165:26-1-33] .....               | 2298 |
| 165:25-3-6.22. .... [NEW] .....                                       | 2279 | 165:26-1-25.1. .... [NEW] .....                                      | 2298 |
| 165:25-3-6.23. .... [NEW] .....                                       | 2279 | 165:26-1-29. .... [AMENDED] .....                                    | 2298 |
| 165:25-3-6.24. .... [NEW] .....                                       | 2280 | 165:26-1-30.3. .... [AMENDED] .....                                  | 2298 |
| 165:25-3-6.25. .... [NEW] .....                                       | 2281 | 165:26-1-30.4. .... [RENUMBERED TO<br>165:26-1-70] .....             | 2298 |
| 165:25-3-6.26. .... [NEW] .....                                       | 2282 | 165:26-1-31. .... [AMENDED] (E) .....                                | 145  |
| 165:25-3-6.27. .... [NEW] .....                                       | 2282 | 165:26-1-31. .... [NEW] .....  | 2264 |
| 165:25-3-6.28. .... [NEW] .....                                       | 2282 | 165:26-1-31. .... [AMENDED] .....                                    | 2298 |
| 165:25-3-6.29. .... [NEW] .....                                       | 2283 | 165:26-1-32. .... [NEW] .....  | 2299 |
| 165:25-3-6.30. .... [NEW] .....                                       | 2284 | 165:26-1-33. .... [NEW] .....  | 2299 |
| 165:25-3-8. .... [AMENDED] .....                                      | 2284 | 165:26-1-36. .... [NEW] .....  | 2299 |
| 165:25-3-50. .... [REVOKED] .....                                     | 2285 | 165:26-1-37. .... [NEW] .....  | 2300 |
| 165:25-3-51. .... [REVOKED] .....                                     | 2285 | 165:26-1-41. .... [AMENDED] .....                                    | 2300 |
| 165:25-3-52. .... [REVOKED] .....                                     | 2286 | 165:26-1-48. .... [NEW] .....  | 2300 |
| 165:25-3-55. .... [REVOKED] .....                                     | 2286 | 165:26-1-55. .... [NEW] .....  | 2300 |
| 165:25-3-60. .... [REVOKED] .....                                     | 2286 | 165:26-1-56. .... [NEW] .....  | 2300 |
| 165:25-3-61. .... [REVOKED] .....                                     | 2287 | 165:26-1-57. .... [NEW] .....  | 2300 |
| 165:25-3-62. .... [REVOKED] .....                                     | 2287 | 165:26-1-58. .... [NEW] .....  | 2301 |
| 165:25-3-63. .... [REVOKED] .....                                     | 2287 | 165:26-1-59. .... [NEW] .....  | 2301 |
| 165:25-3-64. .... [REVOKED] .....                                     | 2287 | 165:26-1-60. .... [NEW] .....  | 2301 |
| 165:25-3-64.1. .... [REVOKED] .....                                   | 2287 | 165:26-1-61. .... [NEW] .....  | 2301 |
| 165:25-3-65. .... [REVOKED] .....                                     | 2287 | 165:26-1-70. .... [NEW] .....  | 2301 |
| 165:25-3-66. .... [REVOKED] .....                                     | 2288 | 165:26-2-1. .... [RENUMBERED TO<br>165:26-2-1.3] .....               | 2301 |
| 165:25-3-67. .... [REVOKED] .....                                     | 2288 | 165:26-2-1.1. .... [NEW] .....                                       | 2302 |
| 165:25-5-2. .... [AMENDED] .....                                      | 2288 | 165:26-2-1.2. .... [NEW] (E) .....                                   | 146  |
| 165:25-6-1. .... [AMENDED] .....                                      | 2288 | 165:26-2-1.2. .... [NEW] .....                                       | 2302 |
| 165:25-6-36. .... [REVOKED] .....                                     | 2289 | 165:26-2-1.3. .... [NEW] .....                                       | 2302 |
| 165:25-8-1. .... [AMENDED] (E) .....                                  | 140  | 165:26-2-5. .... [AMENDED] (E) .....                                 | 146  |
| 165:25-8-1. .... [AMENDED] .....                                      | 2289 | 165:26-2-5. .... [AMENDED] .....                                     | 2302 |
| 165:25-8-2. .... [NEW] (E) .....                                      | 140  | 165:26-2-5.1. .... [NEW] .....                                       | 2302 |
| 165:25-8-2. .... [NEW] .....  | 2289 | 165:26-2-8. .... [NEW] .....   | 2303 |
| 165:25-8-3. .... [NEW] (E) .....                                      | 141  | 165:26-2-32. .... [AMENDED] (E) .....                                | 146  |
| 165:25-8-3. .... [NEW] .....  | 2289 | 165:26-2-32. .... [AMENDED] .....                                    | 2303 |
| 165:25-8-4. .... [NEW] (E) .....                                      | 141  | 165:26-2-32.1. .... [NEW] .....                                      | 2303 |
| 165:25-8-4. .... [NEW] .....  | 2289 | 165:26-2-40. .... [NEW] .....  | 2304 |
| 165:25-8-5. .... [REVOKED] (E) .....                                  | 141  | 165:26-2-41. .... [NEW] .....  | 2304 |
| 165:25-8-5. .... [REVOKED] .....                                      | 2290 | 165:26-2-42. .... [NEW] .....  | 2304 |
| 165:25-8-7. .... [REVOKED] (E) .....                                  | 142  | 165:26-2-53. .... [AMENDED] .....                                    | 2304 |
| 165:25-8-7. .... [REVOKED] .....                                      | 2290 | 165:26-2-54. .... [AMENDED] (E) .....                                | 146  |
| 165:25-8-8. .... [REVOKED] (E) .....                                  | 142  | 165:26-2-54. .... [AMENDED] .....                                    | 2304 |
|   |      | 165:26-2-55. .... [AMENDED] (E) .....                                | 147  |
|   |      | 165:26-2-55. .... [AMENDED] .....                                    | 2305 |
|   |      | 165:26-2-56. .... [AMENDED] (E) .....                                | 147  |
|   |      | 165:26-2-56. .... [AMENDED AND RENUMBERED TO<br>165:26-3-20.2] ..... | 2305 |

|                      |  |      |                      |                                      |      |
|----------------------|--|------|----------------------|--------------------------------------|------|
| 165:26-2-57. ....    | [RENUMBERED TO<br>165:26-3-20.3] .....             | 2306 | 165:26-8-41. ....    | [REVOKED] .....                      | 2317 |
| 165:26-2-131. ....   | [AMENDED] (E) .....                                | 148  | 165:26-8-61. ....    | [AMENDED] (E) .....                  | 152  |
| 165:26-2-131. ....   | [AMENDED] .....                                    | 2306 | 165:26-8-61. ....    | [AMENDED] .....                      | 2318 |
| 165:26-2-134. ....   | [AMENDED] (E) .....                                | 148  | 165:26-8-62. ....    | [AMENDED] (E) .....                  | 152  |
| 165:26-2-134. ....   | [AMENDED AND RENUMBERED TO<br>165:26-3-20.1] ..... | 2307 | 165:26-8-62. ....    | [AMENDED] .....                      | 2318 |
| 165:26-2-151. ....   | [AMENDED] .....                                    | 2307 | 165:26-8-80. ....    | [AMENDED] (E) .....                  | 152  |
| 165:26-2-171. ....   | [AMENDED] (E) .....                                | 149  | 165:26-8-80. ....    | [AMENDED] .....                      | 2318 |
| 165:26-2-171. ....   | [AMENDED AND RENUMBERED TO<br>165:26-2-8] .....    | 2307 | 165:26-8-86. ....    | [AMENDED] (E) .....                  | 153  |
| 165:26-2-172. ....   | [RENUMBERED TO<br>165:26-2-1.2] .....              | 2308 | 165:26-8-86. ....    | [AMENDED] .....                      | 2319 |
| 165:26-2-210. ....   | [NEW] .....  | 2308 | 165:26-8-88. ....    | [AMENDED] (E) .....                  | 153  |
| 165:26-2-212.1. .... | [NEW] .....  | 2308 | 165:26-8-88. ....    | [AMENDED] .....                      | 2319 |
| 165:26-2-215. ....   | [RENUMBERED TO<br>165:26-2-212.1] .....            | 2308 | 165:26-10-2. ....    | [AMENDED] .....                      | 2319 |
| 165:26-3-11. ....    | [RENUMBERED TO<br>165:26-1-55] .....               | 2308 | 165:26-12-2. ....    | [AMENDED] .....                      | 2319 |
| 165:26-3-12. ....    | [AMENDED AND RENUMBERED TO<br>165:26-1-56] .....   | 2309 | 165:26-14-2. ....    | [AMENDED] .....                      | 2320 |
| 165:26-3-13. ....    | [AMENDED AND RENUMBERED TO<br>165:26-1-57] .....   | 2309 | 165:26-16-2. ....    | [AMENDED] .....                      | 2320 |
| 165:26-3-14. ....    | [RENUMBERED TO<br>165:26-1-58] .....               | 2309 | 165:26-18-1. ....    | [RENUMBERED TO<br>165:26-1-36] ..... | 2320 |
| 165:26-3-15. ....    | [RENUMBERED TO<br>165:26-1-59] .....               | 2309 | 165:26-18-3. ....    | [RENUMBERED TO<br>165:26-1-37] ..... | 2320 |
| 165:26-3-16. ....    | [AMENDED AND RENUMBERED TO<br>165:26-1-60] .....   | 2309 | 165:26, App. G. .... | [REVOKED] .....                      | 2321 |
| 165:26-3-17. ....    | [RENUMBERED TO<br>165:26-1-48] .....               | 2310 | 165:26, App. G. .... | [NEW] .....                          | 2321 |
| 165:26-3-18. ....    | [RENUMBERED TO<br>165:26-1-61] .....               | 2310 | 165:27-1-2. ....     | [AMENDED] .....                      | 1661 |
| 165:26-3-19. ....    | [NEW] .....  | 2310 | 165:27-1-4. ....     | [AMENDED] .....                      | 1662 |
| 165:26-3-20. ....    | [NEW] .....  | 2310 | 165:27-5-2. ....     | [AMENDED] .....                      | 1662 |
| 165:26-3-20.1. ....  | [NEW] .....  | 2310 | 165:27-5-3. ....     | [AMENDED] .....                      | 1663 |
| 165:26-3-20.2. ....  | [NEW] .....  | 2311 | 165:27-7-2. ....     | [AMENDED] .....                      | 1663 |
| 165:26-3-20.3. ....  | [NEW] .....  | 2312 | 165:27-7-2.1. ....   | [REVOKED] .....                      | 1663 |
| 165:26-3-21. ....    | [AMENDED] (E) .....                                | 149  | 165:27-7-6. ....     | [AMENDED] .....                      | 1664 |
| 165:26-3-21. ....    | [AMENDED AND RENUMBERED TO<br>165:26-2-5.1] .....  | 2312 | 165:27-7-7. ....     | [AMENDED] .....                      | 1664 |
| 165:26-3-22. ....    | [RENUMBERED TO<br>165:26-2-32.1] .....             | 2312 | 165:27-7-11. ....    | [AMENDED] .....                      | 1664 |
| 165:26-3-77. ....    | [NEW] .....  | 2312 | 165:27-9-1. ....     | [AMENDED] .....                      | 1665 |
| 165:26-3-80. ....    | [RENUMBERED TO<br>165:26-2-40] .....               | 2313 | 165:27-9-3. ....     | [AMENDED] .....                      | 1665 |
| 165:26-3-81. ....    | [RENUMBERED TO<br>165:26-2-41] .....               | 2314 | 165:30-1-2. ....     | [AMENDED] .....                      | 2326 |
| 165:26-3-82. ....    | [RENUMBERED TO<br>165:26-2-42] .....               | 2314 | 165:30-3-1. ....     | [AMENDED] (E) .....                  | 510  |
| 165:26-3-191. ....   | [RENUMBERED TO<br>165:26-3-77] .....               | 2314 | 165:30-3-1. ....     | [AMENDED] .....                      | 2327 |
| 165:26-4-10. ....    | [RENUMBERED TO<br>165:26-4-10] .....               | 2315 | 165:30-3-3. ....     | [AMENDED] (E) .....                  | 511  |
| 165:26-4-21. ....    | [NEW] .....  | 2315 | 165:30-3-3. ....     | [AMENDED] .....                      | 2328 |
| 165:26-6-2. ....     | [AMENDED] .....                                    | 2316 | 165:30-3-17. ....    | [AMENDED] .....                      | 2329 |
| 165:26-8-2. ....     | [AMENDED] (E) .....                                | 150  | 165:30-3-76. ....    | [AMENDED] .....                      | 2329 |
| 165:26-8-2. ....     | [AMENDED] .....                                    | 2316 | 165:30-3-92. ....    | [AMENDED] .....                      | 2331 |
| 165:26-8-2.1. ....   | [NEW] (E) .....                                    | 150  | 165:30-3-103. ....   | [AMENDED] (E) .....                  | 511  |
| 165:26-8-2.1. ....   | [NEW] .....  | 2316 | 165:30-3-103. ....   | [AMENDED] .....                      | 2332 |
| 165:26-8-40. ....    | [REVOKED] (E) .....                                | 150  | 165:30-7-2. ....     | [AMENDED] (E) .....                  | 512  |
| 165:26-8-40. ....    | [REVOKED] .....                                    | 2316 | 165:30-7-2. ....     | [AMENDED] .....                      | 2332 |
| 165:26-8-40.1. ....  | [NEW] (E) .....                                    | 151  | 165:30-7-5. ....     | [AMENDED] .....                      | 2332 |
| 165:26-8-40.1. ....  | [NEW] .....  | 2317 | 165:30-7-6. ....     | [AMENDED] .....                      | 2334 |
| 165:26-8-40.2. ....  | [NEW] (E) .....                                    | 151  | 165:30-7-8. ....     | [AMENDED] (E) .....                  | 512  |
| 165:26-8-40.2. ....  | [NEW] .....  | 2318 | 165:30-7-8. ....     | [AMENDED] .....                      | 2334 |
| 165:26-8-41. ....    | [REVOKED] (E) .....                                | 151  | 165:30-9-1. ....     | [AMENDED] (E) .....                  | 512  |
|                      |  |      | 165:30-9-1. ....     | [AMENDED] .....                      | 2334 |
|                      |  |      | 165:30-9-6. ....     | [AMENDED] .....                      | 2335 |
|                      |  |      | 165:30-15-4. ....    | [AMENDED] (E) .....                  | 513  |
|                      |  |      | 165:30-15-4. ....    | [AMENDED] .....                      | 2335 |
|                      |  |      | 165:30-15-5. ....    | [AMENDED] (E) .....                  | 514  |
|                      |  |      | 165:30-15-5. ....    | [AMENDED] .....                      | 2336 |
|                      |  |      | 165:30-16-1. ....    | [NEW] (E) .....                      | 514  |
|                      |  |      | 165:30-16-1. ....    | [NEW] .....                          | 2336 |
|                      |  |      | 165:30-16-2. ....    | [NEW] (E) .....                      | 514  |
|                      |  |      | 165:30-16-2. ....    | [NEW] .....                          | 2337 |
|                      |  |      | 165:30-16-3. ....    | [NEW] (E) .....                      | 514  |
|                      |  |      | 165:30-16-3. ....    | [NEW] .....                          | 2337 |
|                      |  |      | 165:30-16-4. ....    | [NEW] (E) .....                      | 515  |
|                      |  |      | 165:30-16-4. ....    | [NEW] .....                          | 2337 |
|                      |  |      | 165:30-16-5. ....    | [NEW] (E) .....                      | 515  |
|                      |  |      | 165:30-16-5. ....    | [NEW] .....                          | 2337 |
|                      |  |      | 165:30-16-6. ....    | [NEW] (E) .....                      | 515  |
|                      |  |      | 165:30-16-6. ....    | [NEW] .....                          | 2337 |

**Rules Affected Index – *continued***

|                                      |      |   |      |
|--------------------------------------|------|---|------|
| 165:30-16-7. .... [NEW] (E) .....    | 515  | 165:35-38-4. .... [NEW] .....           | 1673 |
| 165:30-16-7. .... [NEW] .....        | 2337 | 165:35-38-5. .... [NEW] (E) .....       | 708  |
| 165:30-16-8. .... [NEW] (E) .....    | 515  | 165:35-38-5. .... [NEW] .....           | 1673 |
| 165:30-16-8. .... [NEW] .....        | 2337 | 165:45-9-2.1. .... [AMENDED] .....      | 1678 |
| 165:30-16-9. .... [NEW] (E) .....    | 515  | 165:45-11-14. .... [AMENDED] .....      | 1678 |
| 165:30-16-9. .... [NEW] .....        | 2337 | 165:45-11-20. .... [AMENDED] .....      | 1680 |
| 165:30-19-1. .... [AMENDED] .....    | 2337 | 165:65-9-2.1. .... [NEW] .....          | 1681 |
| 165:30-19-2. .... [AMENDED] .....    | 2337 | 195:3-1-1.1. .... [AMENDED] .....       | 1221 |
| 165:30-19-3. .... [AMENDED] .....    | 2338 | 195:3-1-2. .... [AMENDED] .....         | 1221 |
| 165:30-19-4. .... [AMENDED] .....    | 2338 | 195:3-1-3. .... [REVOKED] .....         | 1222 |
| 165:30-19-5. .... [AMENDED] .....    | 2339 | 195:3-1-3.1. .... [NEW] .....           | 1222 |
| 165:30-19-6. .... [AMENDED] .....    | 2339 | 195:3-1-4. .... [AMENDED] .....         | 1222 |
| 165:30-19-11. .... [AMENDED] .....   | 2340 | 195:3-1-4.1. .... [AMENDED] .....       | 1223 |
| 165:30-19-13. .... [AMENDED] .....   | 2340 | 195:3-1-4.2. .... [AMENDED] .....       | 1223 |
| 165:30-19-14. .... [AMENDED] .....   | 2340 | 195:3-1-5. .... [AMENDED] .....         | 1223 |
| 165:30-19-15. .... [AMENDED] .....   | 2340 | 195:3-1-5.1. .... [AMENDED] .....       | 1223 |
| 165:30-19-16. .... [AMENDED] .....   | 2340 | 195:3-1-6. .... [AMENDED] .....         | 1224 |
| 165:30-19-17. .... [AMENDED] .....   | 2341 | 195:3-1-7. .... [AMENDED] .....         | 1224 |
| 165:30-19-18. .... [AMENDED] .....   | 2342 | 195:3-1-8. .... [AMENDED] .....         | 1224 |
| 165:30-19-19. .... [NEW] .....       | 2342 | 195:10-9-2. .... [AMENDED] .....        | 1225 |
| 165:30-21-1. .... [NEW] (E) .....    | 515  | 195:10-11-5. .... [AMENDED] .....       | 1226 |
| 165:30-21-1. .... [NEW] .....        | 2342 | 195:10-11-6. .... [AMENDED] .....       | 1226 |
| 165:30-21-2. .... [NEW] .....        | 2342 | 195:10-11-7. .... [AMENDED] .....       | 1227 |
| 165:30-21-3. .... [NEW] .....        | 2343 | 195:10-11-9. .... [AMENDED] .....       | 1227 |
| 165:30-21-4. .... [NEW] .....        | 2343 | 195:10-11-10. .... [AMENDED] .....      | 1227 |
| 165:30-21-5. .... [NEW] .....        | 2343 | 195:25-1-2. .... [AMENDED] .....        | 1228 |
| 165:30-21-6. .... [NEW] .....        | 2343 | 195:25-1-7. .... [AMENDED] .....        | 1229 |
| 165:30-21-7. .... [NEW] .....        | 2343 | 195:25-1-8. .... [AMENDED] .....        | 1229 |
| 165:30-21-8. .... [NEW] .....        | 2344 | 195:25-1-9. .... [NEW] .....            | 1229 |
| 165:30-21-9. .... [NEW] .....        | 2344 | 210:10-13-18. .... [AMENDED] .....      | 1230 |
| 165:30-21-10. .... [NEW] .....       | 2344 | 210:15-3-22. .... [AMENDED] (E) .....   | 61   |
| 165:30-21-11. .... [NEW] .....       | 2344 | 210:15-3-22. .... [AMENDED] .....       | 1682 |
| 165:30-21-12. .... [NEW] .....       | 2344 | 210:15-3-23. .... [AMENDED] (E) .....   | 65   |
| 165:30-21-13. .... [NEW] .....       | 2344 | 210:15-3-23. .... [AMENDED] .....       | 1686 |
| 165:30-21-14. .... [NEW] .....       | 2344 | 210:15-8-1. .... [NEW] (E) .....        | 70   |
| 165:30-21-15. .... [NEW] .....       | 2345 | 210:15-8-1. .... [NEW] .....            | 1233 |
| 165:30-21-16. .... [NEW] .....       | 2345 | 210:15-8-2. .... [NEW] (E) .....        | 70   |
| 165:30-21-17. .... [NEW] .....       | 2345 | 210:15-8-2. .... [NEW] .....            | 1233 |
| 165:35-1-2. .... [AMENDED] (E) ..... | 701  | 210:15-27-1. .... [AMENDED] (E) .....   | 70   |
| 165:35-1-2. .... [AMENDED] .....     | 1666 | 210:15-27-1. .... [AMENDED] .....       | 1233 |
| 165:35-19-4. .... [AMENDED] .....    | 1674 | 210:15-31-1. .... [NEW] (E) .....       | 153  |
| 165:35-19-40. .... [AMENDED] .....   | 1675 | 210:15-31-1. .... [NEW] .....           | 1691 |
| 165:35-21-10. .... [AMENDED] .....   | 1675 | 210:15-31-2. .... [NEW] (E) .....       | 153  |
| 165:35-21-40. .... [AMENDED] .....   | 1677 | 210:15-31-2. .... [NEW] .....           | 1691 |
| 165:35-34-1. .... [NEW] (E) .....    | 703  | 210:20-9-172. .... [AMENDED] (E) .....  | 358  |
| 165:35-34-1. .... [NEW] .....        | 1668 | 210:20-9-172. .... [AMENDED] .....      | 1235 |
| 165:35-34-2. .... [NEW] (E) .....    | 703  | 210:20-9-182. .... [AMENDED] .....      | 1271 |
| 165:35-34-2. .... [NEW] .....        | 1668 | 210:20-9-188. .... [RESERVED] (E) ..... | 72   |
| 165:35-34-3. .... [NEW] (E) .....    | 703  | 210:20-9-189. .... [NEW] .....          | 1272 |
| 165:35-34-3. .... [NEW] .....        | 1669 | 210:20-17-3. .... [AMENDED] (E) .....   | 72   |
| 165:35-35-1. .... [NEW] (E) .....    | 705  | 210:20-17-3. .... [AMENDED] .....       | 1273 |
| 165:35-35-1. .... [NEW] .....        | 1670 | 210:20-19-2. .... [AMENDED] (E) .....   | 154  |
| 165:35-37-1. .... [NEW] (E) .....    | 705  | 210:20-19-2. .... [AMENDED] .....       | 1692 |
| 165:35-37-1. .... [NEW] .....        | 1671 | 210:20-19-3. .... [AMENDED] (E) .....   | 155  |
| 165:35-37-2. .... [NEW] (E) .....    | 706  | 210:20-19-3. .... [AMENDED] .....       | 1692 |
| 165:35-37-2. .... [NEW] .....        | 1671 | 210:20-19-4. .... [AMENDED] (E) .....   | 155  |
| 165:35-37-3. .... [NEW] (E) .....    | 706  | 210:20-19-4. .... [AMENDED] .....       | 1693 |
| 165:35-37-3. .... [NEW] .....        | 1671 | 210:20-26-1. .... [NEW] (E) .....       | 73   |
| 165:35-37-4. .... [NEW] (E) .....    | 706  | 210:20-26-1. .... [NEW] .....           | 1274 |
| 165:35-37-4. .... [NEW] .....        | 1671 | 210:20-26-2. .... [NEW] (E) .....       | 73   |
| 165:35-38-1. .... [NEW] (E) .....    | 707  | 210:20-26-2. .... [NEW] .....           | 1274 |
| 165:35-38-1. .... [NEW] .....        | 1672 | 210:20-26-3. .... [NEW] (E) .....       | 73   |
| 165:35-38-2. .... [NEW] (E) .....    | 707  | 210:20-26-3. .... [NEW] .....           | 1274 |
| 165:35-38-2. .... [NEW] .....        | 1672 | 210:35-3-186. .... [AMENDED] (E) .....  | 47   |
| 165:35-38-3. .... [NEW] (E) .....    | 707  | 210:35-3-186. .... [AMENDED] .....      | 1694 |
| 165:35-38-3. .... [NEW] .....        | 1672 | 210:35-7-43. .... [AMENDED] (E) .....   | 661  |
| 165:35-38-4. .... [NEW] (E) .....    | 707  | 210:35-7-43. .... [AMENDED] .....       | 1695 |

|  |      |   |      |
|--|------|---|------|
| 210:35-9-31. . . . . [AMENDED] (E) . . . . .   | 74   | 230:35-5-31.1. . . . . [AMENDED] . . . . .    | 1298 |
| 210:35-9-31. . . . . [AMENDED] (E) . . . . .   | 1615 | 230:35-5-76. . . . . [AMENDED] . . . . .      | 1298 |
| 210:35-9-31. . . . . [AMENDED] . . . . .       | 1696 | 230:35-5-113.2. . . . . [AMENDED] . . . . .   | 1298 |
| 210:35-9-43. . . . . [AMENDED] (E) . . . . .   | 661  | 230:35-5-175. . . . . [AMENDED] (E) . . . . . | 84   |
| 210:35-9-43. . . . . [AMENDED] . . . . .       | 1696 | 230:35-5-175. . . . . [AMENDED] . . . . .     | 1299 |
| 230:10-3-6. . . . . [AMENDED] . . . . .        | 1275 | 230:35-5-176. . . . . [AMENDED] (E) . . . . . | 85   |
| 230:10-3-8. . . . . [AMENDED] (E) . . . . .    | 76   | 230:35-5-176. . . . . [AMENDED] . . . . .     | 1299 |
| 230:10-3-8. . . . . [AMENDED] . . . . .        | 1275 | 230:35-5-177. . . . . [AMENDED] (E) . . . . . | 85   |
| 230:10-3-28.1. . . . . [AMENDED] (E) . . . . . | 76   | 230:35-5-177. . . . . [AMENDED] . . . . .     | 1300 |
| 230:10-3-28.1. . . . . [AMENDED] . . . . .     | 1275 | 230:35-9-7. . . . . [AMENDED] (E) . . . . .   | 86   |
| 230:10-3-33. . . . . [AMENDED] (E) . . . . .   | 77   | 230:35-9-7. . . . . [AMENDED] . . . . .       | 1301 |
| 230:10-3-33. . . . . [AMENDED] . . . . .       | 1276 | 230:35-9-9. . . . . [AMENDED] . . . . .       | 1301 |
| 230:10-3-34. . . . . [AMENDED] (E) . . . . .   | 77   | 230:40-1-1. . . . . [AMENDED] . . . . .       | 1302 |
| 230:10-3-34. . . . . [AMENDED] . . . . .       | 1276 | 230:40-3-1.1. . . . . [AMENDED] (E) . . . . . | 87   |
| 230:10-3-35. . . . . [AMENDED] (E) . . . . .   | 77   | 230:40-3-1.1. . . . . [AMENDED] . . . . .     | 1302 |
| 230:10-3-35. . . . . [AMENDED] . . . . .       | 1276 | 230:40-5-5. . . . . [AMENDED] (E) . . . . .   | 87   |
| 230:10-7-3. . . . . [AMENDED] . . . . .        | 1276 | 230:40-5-5. . . . . [AMENDED] . . . . .       | 1302 |
| 230:10-7-4. . . . . [AMENDED] . . . . .        | 1277 | 230:40-5-18. . . . . [AMENDED] (E) . . . . .  | 555  |
| 230:10-7-14. . . . . [AMENDED] . . . . .       | 1277 | 230:40-5-18. . . . . [AMENDED] . . . . .      | 1303 |
| 230:10-7-43. . . . . [AMENDED] . . . . .       | 1277 | 230:40-5-46. . . . . [AMENDED] (E) . . . . .  | 556  |
| 230:10-7-45. . . . . [AMENDED] . . . . .       | 1277 | 230:40-5-46. . . . . [AMENDED] . . . . .      | 1303 |
| 230:10-7-66.1. . . . . [AMENDED] . . . . .     | 1278 | 230:40-5-46.1. . . . . [NEW] (E) . . . . .    | 556  |
| 230:10-7-74. . . . . [AMENDED] . . . . .       | 1278 | 230:40-5-46.1. . . . . [NEW] . . . . .        | 1304 |
| 230:10-7-82. . . . . [AMENDED] . . . . .       | 1278 | 230:40-5-60. . . . . [AMENDED] . . . . .      | 1304 |
| 230:10-7-85. . . . . [AMENDED] . . . . .       | 1279 | 230:40-5-65. . . . . [AMENDED] . . . . .      | 1304 |
| 230:15-1-2. . . . . [AMENDED] . . . . .        | 1280 | 230:40-5-77. . . . . [AMENDED] . . . . .      | 1305 |
| 230:15-3-23. . . . . [AMENDED] . . . . .       | 1280 | 230:40-7-4. . . . . [NEW] (E) . . . . .       | 88   |
| 230:15-5-36. . . . . [AMENDED] . . . . .       | 1281 | 230:40-7-4. . . . . [NEW] . . . . .           | 1305 |
| 230:15-5-77. . . . . [AMENDED] . . . . .       | 1282 | 230:40-7-29. . . . . [AMENDED] . . . . .      | 1305 |
| 230:15-9-18. . . . . [AMENDED] . . . . .       | 1282 | 230:40-7-106. . . . . [AMENDED] . . . . .     | 1305 |
| 230:15-9-20. . . . . [AMENDED] . . . . .       | 1283 | 230:40-7-107. . . . . [AMENDED] . . . . .     | 1306 |
| 230:15-9-24. . . . . [AMENDED] . . . . .       | 1283 | 230:45-3-5. . . . . [AMENDED] . . . . .       | 1306 |
| 230:15-9-25. . . . . [AMENDED] . . . . .       | 1284 | 230:45-3-9. . . . . [AMENDED] . . . . .       | 1306 |
| 230:15-11-5. . . . . [AMENDED] (E) . . . . .   | 78   | 230:45-3-10. . . . . [AMENDED] . . . . .      | 1306 |
| 230:15-11-5. . . . . [AMENDED] . . . . .       | 1285 | 230:45-3-39. . . . . [AMENDED] . . . . .      | 1307 |
| 230:30-1-2. . . . . [AMENDED] . . . . .        | 1286 | 235:10-3-1. . . . . [AMENDED] . . . . .       | 884  |
| 230:30-7-6.1. . . . . [AMENDED] . . . . .      | 1286 | 240:1-1-4. . . . . [AMENDED] . . . . .        | 885  |
| 230:30-7-7. . . . . [AMENDED] . . . . .        | 1286 | 240:1-3-5. . . . . [AMENDED] . . . . .        | 885  |
| 230:30-7-11. . . . . [AMENDED] . . . . .       | 1287 | 240:1-3-6. . . . . [AMENDED] . . . . .        | 885  |
| 230:30-7-13. . . . . [AMENDED] (E) . . . . .   | 78   | 240:10-3-12. . . . . [NEW] . . . . .          | 886  |
| 230:30-7-13. . . . . [AMENDED] . . . . .       | 1287 | 240:10-3-20. . . . . [AMENDED] . . . . .      | 886  |
| 230:30-7-14. . . . . [AMENDED] . . . . .       | 1288 | 240:10-3-24. . . . . [AMENDED] . . . . .      | 887  |
| 230:30-7-16. . . . . [NEW] . . . . .           | 1288 | 240:10-3-44. . . . . [REVOKED] . . . . .      | 889  |
| 230:30-9-3. . . . . [AMENDED] . . . . .        | 1288 | 240:10-5-2. . . . . [AMENDED] . . . . .       | 888  |
| 230:30-9-6. . . . . [AMENDED] . . . . .        | 1289 | 240:10-5-11. . . . . [AMENDED] . . . . .      | 888  |
| 230:30-11-6.1. . . . . [AMENDED] (E) . . . . . | 79   | 240:10-5-12. . . . . [AMENDED] . . . . .      | 888  |
| 230:30-11-6.1. . . . . [AMENDED] . . . . .     | 1289 | 240:21-1-1. . . . . [AMENDED] . . . . .       | 890  |
| 230:35-1-2. . . . . [NEW] . . . . .            | 1291 | 240:21-1-2. . . . . [AMENDED] . . . . .       | 890  |
| 230:35-3-3. . . . . [AMENDED] (E) . . . . .    | 80   | 240:21-1-3. . . . . [AMENDED] . . . . .       | 890  |
| 230:35-3-3. . . . . [AMENDED] . . . . .        | 1291 | 240:21-3-1. . . . . [AMENDED] . . . . .       | 890  |
| 230:35-3-30. . . . . [AMENDED] (E) . . . . .   | 81   | 240:21-3-2. . . . . [AMENDED] . . . . .       | 891  |
| 230:35-3-30. . . . . [AMENDED] . . . . .       | 1292 | 240:21-5-2. . . . . [AMENDED] . . . . .       | 891  |
| 230:35-3-40. . . . . [AMENDED] . . . . .       | 1293 | 240:21-5-3. . . . . [AMENDED] . . . . .       | 891  |
| 230:35-3-68. . . . . [AMENDED] . . . . .       | 1293 | 240:21-7-2. . . . . [AMENDED] . . . . .       | 891  |
| 230:35-3-84.1. . . . . [AMENDED] . . . . .     | 1294 | 240:21-7-3. . . . . [AMENDED] . . . . .       | 891  |
| 230:35-3-86. . . . . [AMENDED] . . . . .       | 1294 | 240:21-7-5. . . . . [AMENDED] . . . . .       | 892  |
| 230:35-3-87. . . . . [AMENDED] . . . . .       | 1294 | 240:21-9-1. . . . . [AMENDED] . . . . .       | 892  |
| 230:35-3-91. . . . . [AMENDED] (E) . . . . .   | 82   | 240:21-9-2. . . . . [AMENDED] . . . . .       | 892  |
| 230:35-3-91. . . . . [AMENDED] . . . . .       | 1295 | 240:21-11-1. . . . . [AMENDED] . . . . .      | 892  |
| 230:35-3-125.1. . . . . [NEW] . . . . .        | 1296 | 240:21-11-10. . . . . [AMENDED] . . . . .     | 892  |
| 230:35-3-126. . . . . [AMENDED] . . . . .      | 1296 | 240:21-11-12. . . . . [AMENDED] . . . . .     | 892  |
| 230:35-3-130. . . . . [AMENDED] (E) . . . . .  | 83   | 240:21-11-13. . . . . [AMENDED] . . . . .     | 893  |
| 230:35-3-130. . . . . [AMENDED] . . . . .      | 1296 | 240:21-11-21. . . . . [AMENDED] . . . . .     | 893  |
| 230:35-3-131. . . . . [AMENDED] (E) . . . . .  | 84   | 240:21-11-22. . . . . [AMENDED] . . . . .     | 893  |
| 230:35-3-131. . . . . [AMENDED] . . . . .      | 1296 | 240:21-11-30. . . . . [AMENDED] . . . . .     | 893  |
| 230:35-3-132. . . . . [AMENDED] . . . . .      | 1297 | 240:21-11-31. . . . . [AMENDED] . . . . .     | 893  |
| 230:35-5-28. . . . . [AMENDED] . . . . .       | 1297 | 245:2-1-1. . . . . [AMENDED] . . . . .        | 894  |

**Rules Affected Index – *continued***

|   |     |   |      |
|---|-----|---|------|
| 245:2-1-4. . . . . [AMENDED] . . . . .    | 894 | 245:15-23-2. . . . . [AMENDED] . . . . .    | 918  |
| 245:2-1-5. . . . . [AMENDED] . . . . .    | 894 | 245:15-23-3. . . . . [AMENDED] . . . . .    | 918  |
| 245:2-1-6. . . . . [AMENDED] . . . . .    | 894 | 245:15-23-4. . . . . [AMENDED] . . . . .    | 918  |
| 245:2-1-7. . . . . [AMENDED] . . . . .    | 894 | 245:15-23-5. . . . . [AMENDED] . . . . .    | 918  |
| 245:2-1-9. . . . . [AMENDED] . . . . .    | 895 | 245:15-23-6. . . . . [AMENDED] . . . . .    | 919  |
| 245:2-1-10. . . . . [AMENDED] . . . . .   | 895 | 245:15-23-7. . . . . [AMENDED] . . . . .    | 919  |
| 245:2-1-11. . . . . [AMENDED] . . . . .   | 895 | 245:15-23-8. . . . . [AMENDED] . . . . .    | 920  |
| 245:2-1-18. . . . . [AMENDED] . . . . .   | 895 | 245:15-23-9. . . . . [AMENDED] . . . . .    | 920  |
| 245:15-1-1. . . . . [AMENDED] . . . . .   | 897 | 245:15-23-10. . . . . [AMENDED] . . . . .   | 920  |
| 245:15-1-3. . . . . [AMENDED] . . . . .   | 897 | 245:15-23-11. . . . . [AMENDED] . . . . .   | 920  |
| 245:15-1-4. . . . . [AMENDED] . . . . .   | 899 | 245:15-23-12. . . . . [AMENDED] . . . . .   | 920  |
| 245:15-3-2. . . . . [AMENDED] . . . . .   | 899 | 245:15-23-13. . . . . [AMENDED] . . . . .   | 920  |
| 245:15-3-3. . . . . [AMENDED] . . . . .   | 899 | 245:15-23-14. . . . . [AMENDED] . . . . .   | 920  |
| 245:15-3-4. . . . . [AMENDED] . . . . .   | 899 | 245:15-23-15. . . . . [AMENDED] . . . . .   | 921  |
| 245:15-3-5. . . . . [AMENDED] . . . . .   | 899 | 245:15-23-16. . . . . [AMENDED] . . . . .   | 921  |
| 245:15-3-6. . . . . [AMENDED] . . . . .   | 900 | 245:15-23-17. . . . . [AMENDED] . . . . .   | 921  |
| 245:15-3-7. . . . . [AMENDED] . . . . .   | 900 | 245:15-23-18. . . . . [AMENDED] . . . . .   | 921  |
| 245:15-3-8. . . . . [AMENDED] . . . . .   | 902 | 245:15-23-21. . . . . [AMENDED] . . . . .   | 922  |
| 245:15-3-9. . . . . [AMENDED] . . . . .   | 904 | 245:15-23-22. . . . . [AMENDED] . . . . .   | 922  |
| 245:15-3-10. . . . . [AMENDED] . . . . .  | 904 | 245:15-23-23. . . . . [AMENDED] . . . . .   | 922  |
| 245:15-5-1. . . . . [AMENDED] . . . . .   | 904 | 245:15-23-24. . . . . [AMENDED] . . . . .   | 922  |
| 245:15-5-2. . . . . [AMENDED] . . . . .   | 904 | 245:15-23-25. . . . . [AMENDED] . . . . .   | 922  |
| 245:15-5-4. . . . . [AMENDED] . . . . .   | 905 | 252:20-1-3. . . . . [AMENDED] . . . . .     | 1698 |
| 245:15-5-5. . . . . [AMENDED] . . . . .   | 906 | 252:20-1-4. . . . . [AMENDED] . . . . .     | 1699 |
| 245:15-5-6. . . . . [REVOKED] . . . . .   | 906 | 252:20-1-6. . . . . [AMENDED] . . . . .     | 1699 |
| 245:15-5-7. . . . . [AMENDED] . . . . .   | 906 | 252:20-1-7. . . . . [AMENDED] . . . . .     | 1699 |
| 245:15-7-1. . . . . [AMENDED] . . . . .   | 906 | 252:100-1-3. . . . . [AMENDED] . . . . .    | 1700 |
| 245:15-7-2. . . . . [AMENDED] . . . . .   | 906 | 252:100-4-5. . . . . [AMENDED] . . . . .    | 1731 |
| 245:15-7-3. . . . . [AMENDED] . . . . .   | 906 | 252:100-8-1.1. . . . . [AMENDED] . . . . .  | 1704 |
| 245:15-7-4. . . . . [AMENDED] . . . . .   | 907 | 252:100-8-2. . . . . [AMENDED] . . . . .    | 1706 |
| 245:15-7-5. . . . . [AMENDED] . . . . .   | 907 | 252:100-8-30. . . . . [AMENDED] . . . . .   | 1709 |
| 245:15-9-1. . . . . [AMENDED] . . . . .   | 907 | 252:100-8-31. . . . . [AMENDED] . . . . .   | 1710 |
| 245:15-9-3. . . . . [AMENDED] . . . . .   | 907 | 252:100-8-32. . . . . [REVOKED] . . . . .   | 1717 |
| 245:15-9-4. . . . . [AMENDED] . . . . .   | 907 | 252:100-8-32.1. . . . . [NEW] . . . . .     | 1718 |
| 245:15-9-5. . . . . [AMENDED] . . . . .   | 908 | 252:100-8-32.2. . . . . [NEW] . . . . .     | 1718 |
| 245:15-9-6. . . . . [AMENDED] . . . . .   | 908 | 252:100-8-32.3. . . . . [NEW] . . . . .     | 1718 |
| 245:15-9-7. . . . . [AMENDED] . . . . .   | 908 | 252:100-8-33. . . . . [AMENDED] . . . . .   | 1718 |
| 245:15-11-1. . . . . [AMENDED] . . . . .  | 908 | 252:100-8-34. . . . . [AMENDED] . . . . .   | 1720 |
| 245:15-11-2. . . . . [AMENDED] . . . . .  | 908 | 252:100-8-35. . . . . [AMENDED] . . . . .   | 1720 |
| 245:15-11-3. . . . . [AMENDED] . . . . .  | 909 | 252:100-8-35.1. . . . . [NEW] . . . . .     | 1722 |
| 245:15-11-5. . . . . [AMENDED] . . . . .  | 909 | 252:100-8-35.2. . . . . [NEW] . . . . .     | 1723 |
| 245:15-11-6. . . . . [AMENDED] . . . . .  | 910 | 252:100-8-36. . . . . [AMENDED] . . . . .   | 1723 |
| 245:15-11-7. . . . . [AMENDED] . . . . .  | 910 | 252:100-8-36.1. . . . . [NEW] . . . . .     | 1723 |
| 245:15-11-8. . . . . [AMENDED] . . . . .  | 910 | 252:100-8-36.2. . . . . [NEW] . . . . .     | 1723 |
| 245:15-11-9. . . . . [AMENDED] . . . . .  | 910 | 252:100-8-37. . . . . [AMENDED] . . . . .   | 1724 |
| 245:15-11-10. . . . . [AMENDED] . . . . . | 910 | 252:100-8-38. . . . . [NEW] . . . . .       | 1725 |
| 245:15-11-11. . . . . [AMENDED] . . . . . | 910 | 252:100-8-39. . . . . [NEW] . . . . .       | 1725 |
| 245:15-11-12. . . . . [AMENDED] . . . . . | 910 | 252:100-8-50. . . . . [AMENDED] . . . . .   | 1725 |
| 245:15-11-13. . . . . [AMENDED] . . . . . | 911 | 252:100-8-50.1. . . . . [NEW] . . . . .     | 1726 |
| 245:15-13-2. . . . . [AMENDED] . . . . .  | 911 | 252:100-8-51. . . . . [AMENDED] . . . . .   | 1726 |
| 245:15-13-3. . . . . [AMENDED] . . . . .  | 913 | 252:100-8-51.1. . . . . [NEW] . . . . .     | 1728 |
| 245:15-15-1. . . . . [AMENDED] . . . . .  | 913 | 252:100-8-52. . . . . [AMENDED] . . . . .   | 1728 |
| 245:15-15-2. . . . . [AMENDED] . . . . .  | 913 | 252:100-8-53. . . . . [AMENDED] . . . . .   | 1729 |
| 245:15-15-3. . . . . [AMENDED] . . . . .  | 913 | 252:100-8-54. . . . . [AMENDED] . . . . .   | 1729 |
| 245:15-17-1. . . . . [AMENDED] . . . . .  | 914 | 252:100-8-55. . . . . [NEW] . . . . .       | 1730 |
| 245:15-17-2. . . . . [AMENDED] . . . . .  | 914 | 252:100-8-56. . . . . [NEW] . . . . .       | 1730 |
| 245:15-19-2. . . . . [AMENDED] . . . . .  | 915 | 252:100-8-57. . . . . [NEW] . . . . .       | 1730 |
| 245:15-19-3. . . . . [AMENDED] . . . . .  | 916 | 252:100-41-1.1. . . . . [NEW] (E) . . . . . | 18   |
| 245:15-19-4. . . . . [AMENDED] . . . . .  | 916 | 252:100-41-1.1. . . . . [NEW] . . . . .     | 924  |
| 245:15-19-5. . . . . [AMENDED] . . . . .  | 916 | 252:100-41-13. . . . . [NEW] (E) . . . . .  | 18   |
| 245:15-19-6. . . . . [AMENDED] . . . . .  | 916 | 252:100-41-13. . . . . [NEW] . . . . .      | 924  |
| 245:15-19-7. . . . . [AMENDED] . . . . .  | 916 | 252:100-41-14. . . . . [NEW] (E) . . . . .  | 18   |
| 245:15-19-8. . . . . [AMENDED] . . . . .  | 916 | 252:100-41-14. . . . . [NEW] . . . . .      | 924  |
| 245:15-21-1. . . . . [AMENDED] . . . . .  | 917 | 252:100-41-15. . . . . [AMENDED] . . . . .  | 1732 |
| 245:15-21-3. . . . . [AMENDED] . . . . .  | 917 | 252:100-42-1. . . . . [NEW] (E) . . . . .   | 18   |
| 245:15-21-6. . . . . [AMENDED] . . . . .  | 917 | 252:100-42-1. . . . . [NEW] . . . . .       | 924  |
| 245:15-23-1. . . . . [AMENDED] . . . . .  | 917 | 252:100-42-1.1. . . . . [NEW] (E) . . . . . | 18   |

|  |      |  |      |
|--|------|--|------|
| 252:100-42-1.1. . . . . [NEW] . . . . .      | 924  | 252:515-21-32. . . . . [AMENDED] . . . . .   | 1753 |
| 252:100-42-2. . . . . [NEW] (E) . . . . .    | 18   | 252:515-21-32.1. . . . . [NEW] . . . . .     | 1754 |
| 252:100-42-2. . . . . [NEW] . . . . .        | 924  | 252:515-21-36. . . . . [NEW] . . . . .       | 1754 |
| 252:100-42-3. . . . . [NEW] (E) . . . . .    | 19   | 252:515-21-71. . . . . [AMENDED] . . . . .   | 1754 |
| 252:100-42-3. . . . . [NEW] . . . . .        | 924  | 252:515-21-72. . . . . [AMENDED] . . . . .   | 1754 |
| 252:100-42-4. . . . . [NEW] (E) . . . . .    | 19   | 252:515-21-73. . . . . [AMENDED] . . . . .   | 1755 |
| 252:100-42-4. . . . . [NEW] . . . . .        | 925  | 252:515-21-91. . . . . [AMENDED] . . . . .   | 1755 |
| 252:100-42-20. . . . . [NEW] (E) . . . . .   | 19   | 252:515-21-92. . . . . [AMENDED] . . . . .   | 1755 |
| 252:100-42-20. . . . . [NEW] . . . . .       | 925  | 252:515-23-1. . . . . [AMENDED] . . . . .    | 1748 |
| 252:100-42-30. . . . . [NEW] (E) . . . . .   | 19   | 252:515-25-54. . . . . [AMENDED] . . . . .   | 1748 |
| 252:100-42-30. . . . . [NEW] . . . . .       | 925  | 252:515-27-4. . . . . [AMENDED] . . . . .    | 1749 |
| 252:100-42-31. . . . . [NEW] (E) . . . . .   | 20   | 252:515-27-81.1. . . . . [NEW] . . . . .     | 1749 |
| 252:100-42-31. . . . . [NEW] . . . . .       | 926  | 252:515-35-1. . . . . [AMENDED] . . . . .    | 1749 |
| 252:100-42-32. . . . . [NEW] (E) . . . . .   | 20   | 252:515, App. B. . . . . [REVOKED] . . . . . | 1750 |
| 252:100-42-32. . . . . [NEW] . . . . .       | 926  | 252:515, App. B. . . . . [NEW] . . . . .     | 1750 |
| 252:100, App. E. . . . . [REVOKED] . . . . . | 929  | 252:515, App. H. . . . . [REVOKED] . . . . . | 1757 |
| 252:100, App. E. . . . . [NEW] . . . . .     | 929  | 252:515, App. H. . . . . [NEW] . . . . .     | 1757 |
| 252:100, App. F. . . . . [REVOKED] . . . . . | 930  | 252:515, App. I. . . . . [REVOKED] . . . . . | 1763 |
| 252:100, App. F. . . . . [NEW] . . . . .     | 930  | 252:515, App. I. . . . . [NEW] . . . . .     | 1763 |
| 252:100, App. O. . . . . [NEW] (E) . . . . . | 21   | 252:606-1-4. . . . . [AMENDED] . . . . .     | 1768 |
| 252:100, App. O. . . . . [NEW] . . . . .     | 927  | 252:611-1-3. . . . . [AMENDED] . . . . .     | 1769 |
| 252:205-1-1. . . . . [AMENDED] . . . . .     | 931  | 252:616-3-1. . . . . [AMENDED] . . . . .     | 1769 |
| 252:205-1-2. . . . . [AMENDED] . . . . .     | 931  | 252:631-1-3. . . . . [AMENDED] . . . . .     | 1770 |
| 252:205-1-3. . . . . [AMENDED] . . . . .     | 932  | 252:656-1-1. . . . . [AMENDED] . . . . .     | 937  |
| 252:205-1-4. . . . . [AMENDED] . . . . .     | 932  | 252:656-1-2. . . . . [AMENDED] . . . . .     | 937  |
| 252:205-3-1. . . . . [AMENDED] . . . . .     | 932  | 252:656-3-1. . . . . [AMENDED] . . . . .     | 938  |
| 252:205-3-2. . . . . [AMENDED] . . . . .     | 932  | 252:656-3-2. . . . . [AMENDED] . . . . .     | 938  |
| 252:205-5-5. . . . . [AMENDED] . . . . .     | 934  | 252:656-3-4. . . . . [AMENDED] . . . . .     | 939  |
| 252:205-9-6. . . . . [AMENDED] . . . . .     | 934  | 252:656-3-5. . . . . [AMENDED] . . . . .     | 939  |
| 252:205-9-7. . . . . [REVOKED] . . . . .     | 934  | 252:656-3-6. . . . . [AMENDED] . . . . .     | 940  |
| 252:205-15-2. . . . . [AMENDED] . . . . .    | 934  | 252:656-3-7. . . . . [AMENDED] . . . . .     | 940  |
| 252:205-15-5. . . . . [AMENDED] . . . . .    | 934  | 252:656-3-9. . . . . [AMENDED] . . . . .     | 941  |
| 252:205-17-3. . . . . [AMENDED] . . . . .    | 934  | 252:656-5-1. . . . . [AMENDED] . . . . .     | 941  |
| 252:205-19-1. . . . . [AMENDED] . . . . .    | 935  | 252:656-5-2. . . . . [AMENDED] . . . . .     | 941  |
| 252:205-19-31. . . . . [AMENDED] . . . . .   | 935  | 252:656-5-3. . . . . [AMENDED] . . . . .     | 943  |
| 252:205-23-1. . . . . [AMENDED] . . . . .    | 935  | 252:656-5-4. . . . . [AMENDED] . . . . .     | 943  |
| 252:205, App. A. . . . . [REVOKED] . . . . . | 936  | 252:656-5-5. . . . . [AMENDED] . . . . .     | 944  |
| 252:300-5-1. . . . . [AMENDED] . . . . .     | 1733 | 252:656-7-1. . . . . [AMENDED] . . . . .     | 944  |
| 252:300-7-3. . . . . [AMENDED] . . . . .     | 1733 | 252:656-7-3. . . . . [AMENDED] . . . . .     | 946  |
| 252:300-17-21. . . . . [NEW] . . . . .       | 1734 | 252:656-7-4. . . . . [AMENDED] . . . . .     | 946  |
| 252:300-17-22. . . . . [NEW] . . . . .       | 1734 | 252:656-9-1. . . . . [AMENDED] . . . . .     | 948  |
| 252:300-17-23. . . . . [NEW] . . . . .       | 1734 | 252:656-9-2. . . . . [AMENDED] . . . . .     | 948  |
| 252:300-17-24. . . . . [NEW] . . . . .       | 1734 | 252:656-9-3. . . . . [AMENDED] . . . . .     | 949  |
| 252:300-17-25. . . . . [NEW] . . . . .       | 1734 | 252:656-11-1. . . . . [AMENDED] . . . . .    | 949  |
| 252:300-19-2. . . . . [AMENDED] . . . . .    | 1735 | 252:656-11-2. . . . . [AMENDED] . . . . .    | 949  |
| 252:300-19-3. . . . . [AMENDED] . . . . .    | 1735 | 252:656-11-3. . . . . [AMENDED] . . . . .    | 950  |
| 252:300, App. D. . . . . [REVOKED] . . . . . | 1736 | 252:656-11-4. . . . . [AMENDED] . . . . .    | 952  |
| 252:300, App. D. . . . . [NEW] . . . . .     | 1736 | 252:656-13-1. . . . . [AMENDED] . . . . .    | 952  |
| 252:305, App. A. . . . . [REVOKED] . . . . . | 1738 | 252:656-13-2. . . . . [AMENDED] . . . . .    | 953  |
| 252:305, App. A. . . . . [NEW] . . . . .     | 1738 | 252:656-13-3. . . . . [AMENDED] . . . . .    | 953  |
| 252:305, App. B. . . . . [REVOKED] . . . . . | 1743 | 252:656-13-4. . . . . [AMENDED] . . . . .    | 953  |
| 252:305, App. B. . . . . [NEW] . . . . .     | 1743 | 252:656-15-1. . . . . [REVOKED] . . . . .    | 954  |
| 252:410, App. A. . . . . [REVOKED] . . . . . | 1745 | 252:656-15-2. . . . . [REVOKED] . . . . .    | 956  |
| 252:410, App. A. . . . . [NEW] . . . . .     | 1745 | 252:656-15-3. . . . . [REVOKED] . . . . .    | 957  |
| 252:515-1-4. . . . . [AMENDED] . . . . .     | 1746 | 252:656-16-1. . . . . [NEW] . . . . .        | 957  |
| 252:515-3-1. . . . . [AMENDED] . . . . .     | 1751 | 252:656-16-2. . . . . [NEW] . . . . .        | 960  |
| 252:515-3-35. . . . . [AMENDED] . . . . .    | 1746 | 252:656-16-3. . . . . [NEW] . . . . .        | 960  |
| 252:515-3-39.1. . . . . [NEW] . . . . .      | 1752 | 252:656-17-1. . . . . [REVOKED] . . . . .    | 962  |
| 252:515-3-40. . . . . [AMENDED] . . . . .    | 1747 | 252:656-17-2. . . . . [AMENDED] . . . . .    | 962  |
| 252:515-13-1. . . . . [AMENDED] . . . . .    | 1747 | 252:656-19-1. . . . . [AMENDED] . . . . .    | 962  |
| 252:515-17-3. . . . . [AMENDED] . . . . .    | 1747 | 252:656-19-1.1. . . . . [NEW] . . . . .      | 962  |
| 252:515-19-51. . . . . [AMENDED] . . . . .   | 1748 | 252:656-19-2. . . . . [AMENDED] . . . . .    | 962  |
| 252:515-19-73. . . . . [AMENDED] . . . . .   | 1748 | 252:656-19-3. . . . . [AMENDED] . . . . .    | 963  |
| 252:515-21-2. . . . . [AMENDED] . . . . .    | 1752 | 252:656-19-4. . . . . [AMENDED] . . . . .    | 964  |
| 252:515-21-3. . . . . [AMENDED] . . . . .    | 1753 | 252:656-19-5. . . . . [AMENDED] . . . . .    | 964  |
| 252:515-21-5. . . . . [NEW] . . . . .        | 1753 | 252:656-19-5.1. . . . . [NEW] . . . . .      | 964  |
| 252:515-21-31. . . . . [REVOKED] . . . . .   | 1753 | 252:656-19-6. . . . . [AMENDED] . . . . .    | 965  |

## Rules Affected Index – *continued*

|                          |               |      |                       |       |      |
|--------------------------|---------------|------|-----------------------|-------|------|
| 252:656-21-1. . . . .    | [AMENDED]     | 965  | 300:35-1-3. . . . .   | [NEW] | 1330 |
| 252:656-21-2. . . . .    | [AMENDED]     | 966  | 300:35-1-4. . . . .   | [NEW] | 1330 |
| 252:656-21-3. . . . .    | [AMENDED]     | 967  | 300:35-1-5. . . . .   | [NEW] | 1330 |
| 252:656-23-1. . . . .    | [AMENDED]     | 967  | 300:35-1-6. . . . .   | [NEW] | 1331 |
| 252:656-23-2. . . . .    | [AMENDED]     | 968  | 300:35-3-1. . . . .   | [NEW] | 1331 |
| 252:656-23-3. . . . .    | [AMENDED]     | 968  | 300:35-3-2. . . . .   | [NEW] | 1331 |
| 252:656-25-2. . . . .    | [AMENDED]     | 968  | 300:35-3-3. . . . .   | [NEW] | 1331 |
| 252:656, App. A. . . . . | [REVOKED]     | 970  | 300:35-3-4. . . . .   | [NEW] | 1331 |
| 252:656, App. A. . . . . | [NEW]         | 970  | 300:35-3-5. . . . .   | [NEW] | 1331 |
| 252:656, App. B. . . . . | [REVOKED]     | 971  | 300:35-3-6. . . . .   | [NEW] | 1331 |
| 252:656, App. B. . . . . | [NEW]         | 971  | 300:35-3-7. . . . .   | [NEW] | 1331 |
| 252:690-1-4. . . . .     | [AMENDED]     | 1771 | 300:35-3-8. . . . .   | [NEW] | 1331 |
| 252:710-3-31. . . . .    | [AMENDED]     | 1773 | 300:35-3-9. . . . .   | [NEW] | 1331 |
| 252:710-5-54. . . . .    | [AMENDED]     | 1774 | 300:35-3-10. . . . .  | [NEW] | 1332 |
| 252:710-5-59. . . . .    | [AMENDED]     | 1774 | 300:35-3-11. . . . .  | [NEW] | 1332 |
| 252:710, App. A. . . . . | [REVOKED]     | 1775 | 300:35-3-12. . . . .  | [NEW] | 1332 |
| 252:710, App. A. . . . . | [NEW]         | 1775 | 300:35-3-13. . . . .  | [NEW] | 1332 |
| 268:1-1-2. . . . .       | [AMENDED]     | 3055 | 300:35-5-1. . . . .   | [NEW] | 1332 |
| 268:3-1-1. . . . .       | [NEW]         | 3056 | 300:35-5-2. . . . .   | [NEW] | 1332 |
| 268:3-1-2. . . . .       | [NEW]         | 3056 | 300:35-5-3. . . . .   | [NEW] | 1332 |
| 268:3-1-3. . . . .       | [NEW]         | 3056 | 300:35-5-4. . . . .   | [NEW] | 1333 |
| 270:10-1-5. . . . .      | [AMENDED] (E) | 22   | 300:35-5-5. . . . .   | [NEW] | 1333 |
| 270:10-1-5. . . . .      | [AMENDED]     | 1307 | 300:35-5-6. . . . .   | [NEW] | 1333 |
| 270:10-1-8. . . . .      | [AMENDED]     | 1313 | 300:35-5-7. . . . .   | [NEW] | 1333 |
| 300:1-1-1. . . . .       | [NEW]         | 1319 | 300:35-5-8. . . . .   | [NEW] | 1333 |
| 300:1-1-2. . . . .       | [NEW]         | 1319 | 300:35-5-9. . . . .   | [NEW] | 1333 |
| 300:1-1-3. . . . .       | [NEW]         | 1319 | 300:35-7-1. . . . .   | [NEW] | 1333 |
| 300:1-3-1. . . . .       | [NEW]         | 1319 | 300:35-7-2. . . . .   | [NEW] | 1333 |
| 300:1-3-2. . . . .       | [NEW]         | 1319 | 300:35-7-3. . . . .   | [NEW] | 1333 |
| 300:1-3-3. . . . .       | [NEW]         | 1320 | 300:35-7-4. . . . .   | [NEW] | 1333 |
| 300:1-5-1. . . . .       | [NEW]         | 1320 | 300:35-7-5. . . . .   | [NEW] | 1333 |
| 300:1-5-2. . . . .       | [NEW]         | 1320 | 300:35-7-6. . . . .   | [NEW] | 1333 |
| 300:1-5-3. . . . .       | [NEW]         | 1320 | 300:35-7-7. . . . .   | [NEW] | 1333 |
| 300:15-1-1. . . . .      | [NEW]         | 1321 | 300:35-7-8. . . . .   | [NEW] | 1334 |
| 300:15-1-2. . . . .      | [NEW]         | 1321 | 300:35-7-9. . . . .   | [NEW] | 1334 |
| 300:15-1-3. . . . .      | [NEW]         | 1322 | 300:35-7-10. . . . .  | [NEW] | 1334 |
| 300:15-3-1. . . . .      | [NEW]         | 1322 | 300:35-7-11. . . . .  | [NEW] | 1334 |
| 300:15-3-2. . . . .      | [NEW]         | 1322 | 300:35-7-12. . . . .  | [NEW] | 1334 |
| 300:15-5-1. . . . .      | [NEW]         | 1322 | 300:35-9-1. . . . .   | [NEW] | 1334 |
| 300:15-5-2. . . . .      | [NEW]         | 1323 | 300:35-9-2. . . . .   | [NEW] | 1334 |
| 300:15-5-3. . . . .      | [NEW]         | 1323 | 300:35-9-3. . . . .   | [NEW] | 1334 |
| 300:15-5-4. . . . .      | [NEW]         | 1323 | 300:35-11-1. . . . .  | [NEW] | 1334 |
| 300:20-1-1. . . . .      | [AMENDED]     | 1323 | 300:35-11-2. . . . .  | [NEW] | 1335 |
| 300:20-1-2. . . . .      | [AMENDED]     | 1324 | 300:35-11-3. . . . .  | [NEW] | 1335 |
| 300:20-1-4. . . . .      | [AMENDED]     | 1324 | 300:35-11-4. . . . .  | [NEW] | 1335 |
| 300:20-1-8. . . . .      | [AMENDED]     | 1325 | 300:35-11-5. . . . .  | [NEW] | 1335 |
| 300:20-1-11. . . . .     | [AMENDED]     | 1325 | 300:35-11-6. . . . .  | [NEW] | 1335 |
| 300:20-1-12. . . . .     | [AMENDED]     | 1326 | 300:35-11-7. . . . .  | [NEW] | 1336 |
| 300:20-1-15. . . . .     | [NEW]         | 1326 | 300:35-11-8. . . . .  | [NEW] | 1336 |
| 300:25-1-1. . . . .      | [NEW]         | 1327 | 300:35-11-9. . . . .  | [NEW] | 1336 |
| 300:25-1-2. . . . .      | [NEW]         | 1327 | 300:35-11-10. . . . . | [NEW] | 1336 |
| 300:25-3-1. . . . .      | [NEW]         | 1328 | 300:35-11-11. . . . . | [NEW] | 1336 |
| 300:25-3-2. . . . .      | [NEW]         | 1328 | 300:35-11-12. . . . . | [NEW] | 1336 |
| 300:25-3-3. . . . .      | [NEW]         | 1328 | 300:35-13-1. . . . .  | [NEW] | 1336 |
| 300:25-3-4. . . . .      | [NEW]         | 1328 | 300:35-13-2. . . . .  | [NEW] | 1337 |
| 300:25-5-1. . . . .      | [NEW]         | 1328 | 300:35-13-3. . . . .  | [NEW] | 1337 |
| 300:25-5-2. . . . .      | [NEW]         | 1328 | 300:35-13-4. . . . .  | [NEW] | 1337 |
| 300:25-5-3. . . . .      | [NEW]         | 1328 | 300:35-13-5. . . . .  | [NEW] | 1338 |
| 300:25-5-4. . . . .      | [NEW]         | 1328 | 300:35-13-6. . . . .  | [NEW] | 1338 |
| 300:25-5-5. . . . .      | [NEW]         | 1328 | 300:35-15-1. . . . .  | [NEW] | 1338 |
| 300:25-5-6. . . . .      | [NEW]         | 1328 | 300:35-15-2. . . . .  | [NEW] | 1338 |
| 300:30-1-1. . . . .      | [NEW]         | 1329 | 300:35-15-3. . . . .  | [NEW] | 1338 |
| 300:30-1-2. . . . .      | [NEW]         | 1329 | 300:35-15-4. . . . .  | [NEW] | 1338 |
| 300:30-1-3. . . . .      | [NEW]         | 1329 | 300:35-15-5. . . . .  | [NEW] | 1339 |
| 300:30-1-4. . . . .      | [NEW]         | 1329 | 300:35-15-6. . . . .  | [NEW] | 1339 |
| 300:35-1-1. . . . .      | [NEW]         | 1330 | 300:35-15-7. . . . .  | [NEW] | 1339 |
| 300:35-1-2. . . . .      | [NEW]         | 1330 | 300:35-17-1. . . . .  | [NEW] | 1339 |

|                                       |      |                                    |      |
|---------------------------------------|------|------------------------------------|------|
| 300:35-17-2. .... [NEW] .....         | 1339 | 310:256-3-9. .... [REVOKED] .....  | 2357 |
| 300:35-17-3. .... [NEW] .....         | 1339 | 310:256-3-10. .... [REVOKED] ..... | 2357 |
| 300:35-17-4. .... [NEW] .....         | 1339 | 310:256-3-11. .... [REVOKED] ..... | 2357 |
| 300:35-17-5. .... [NEW] .....         | 1340 | 310:256-3-12. .... [REVOKED] ..... | 2357 |
| 300:35-19-1. .... [NEW] .....         | 1340 | 310:256-3-13. .... [REVOKED] ..... | 2357 |
| 300:35-21-1. .... [NEW] .....         | 1340 | 310:256-3-14. .... [REVOKED] ..... | 2357 |
| 300:35-21-2. .... [NEW] .....         | 1340 | 310:256-3-15. .... [REVOKED] ..... | 2357 |
| 300:35-21-3. .... [NEW] .....         | 1340 | 310:256-3-16. .... [REVOKED] ..... | 2357 |
| 300:35-21-4. .... [NEW] .....         | 1340 | 310:256-3-17. .... [REVOKED] ..... | 2357 |
| 300:35-21-5. .... [NEW] .....         | 1340 | 310:256-3-18. .... [REVOKED] ..... | 2357 |
| 300:35-21-6. .... [NEW] .....         | 1340 | 310:256-3-19. .... [REVOKED] ..... | 2357 |
| 300:35-21-7. .... [NEW] .....         | 1340 | 310:256-5-1. .... [REVOKED] .....  | 2357 |
| 300:35-21-8. .... [NEW] .....         | 1341 | 310:256-5-2. .... [REVOKED] .....  | 2357 |
| 300:35-23-1. .... [NEW] .....         | 1341 | 310:256-5-3. .... [REVOKED] .....  | 2357 |
| 300:35-23-2. .... [NEW] .....         | 1341 | 310:256-5-4. .... [REVOKED] .....  | 2357 |
| 300:35-23-3. .... [NEW] .....         | 1341 | 310:256-5-5. .... [REVOKED] .....  | 2357 |
| 300:35-23-4. .... [NEW] .....         | 1341 | 310:256-5-6. .... [REVOKED] .....  | 2357 |
| 300:35-23-5. .... [NEW] .....         | 1341 | 310:256-5-7. .... [REVOKED] .....  | 2357 |
| 300:35-23-6. .... [NEW] .....         | 1341 | 310:256-5-8. .... [REVOKED] .....  | 2357 |
| 300:35-23-7. .... [NEW] .....         | 1341 | 310:256-5-9. .... [REVOKED] .....  | 2357 |
| 300:35-23-8. .... [NEW] .....         | 1341 | 310:256-5-10. .... [REVOKED] ..... | 2357 |
| 300:35-23-9. .... [NEW] .....         | 1341 | 310:256-5-11. .... [REVOKED] ..... | 2357 |
| 300:35-23-10. .... [NEW] .....        | 1341 | 310:256-5-12. .... [REVOKED] ..... | 2357 |
| 300:35-27-1. .... [NEW] .....         | 1341 | 310:256-5-13. .... [REVOKED] ..... | 2357 |
| 300:35-27-2. .... [NEW] .....         | 1341 | 310:256-5-14. .... [REVOKED] ..... | 2357 |
| 300:35-27-3. .... [NEW] .....         | 1341 | 310:256-5-15. .... [REVOKED] ..... | 2357 |
| 300:35-27-4. .... [NEW] .....         | 1342 | 310:256-5-16. .... [REVOKED] ..... | 2357 |
| 300:35-27-5. .... [NEW] .....         | 1342 | 310:256-5-17. .... [REVOKED] ..... | 2357 |
| 300:35-27-6. .... [NEW] .....         | 1342 | 310:256-5-18. .... [REVOKED] ..... | 2357 |
| 300:35-27-7. .... [NEW] .....         | 1342 | 310:256-5-19. .... [REVOKED] ..... | 2357 |
| 301:256-7-7. .... [REVOKED] .....     | 2357 | 310:256-5-20. .... [REVOKED] ..... | 2357 |
| 301:256-9-2. .... [REVOKED] .....     | 2357 | 310:256-5-21. .... [REVOKED] ..... | 2357 |
| 304:10-1-2. .... [AMENDED] .....      | 2957 | 310:256-5-22. .... [REVOKED] ..... | 2357 |
| 304:10-1-3. .... [AMENDED] .....      | 2958 | 310:256-5-23. .... [REVOKED] ..... | 2357 |
| 304:10-1-4. .... [AMENDED] .....      | 2958 | 310:256-5-24. .... [REVOKED] ..... | 2357 |
| 304:10-1-5. .... [AMENDED] .....      | 2959 | 310:256-5-25. .... [REVOKED] ..... | 2357 |
| 304:10-1-10. .... [AMENDED] .....     | 2959 | 310:256-5-26. .... [REVOKED] ..... | 2357 |
| 304:10-1-11. .... [AMENDED] .....     | 2959 | 310:256-5-27. .... [REVOKED] ..... | 2357 |
| 304:10-1-12. .... [AMENDED] .....     | 2959 | 310:256-5-28. .... [REVOKED] ..... | 2357 |
| 310:110-5-6. .... [AMENDED] .....     | 2346 | 310:256-5-29. .... [REVOKED] ..... | 2357 |
| 310:205-1-2. .... [AMENDED] .....     | 2347 | 310:256-5-30. .... [REVOKED] ..... | 2357 |
| 310:205-3-1. .... [AMENDED] .....     | 2348 | 310:256-5-31. .... [REVOKED] ..... | 2357 |
| 310:205-3-2. .... [AMENDED] .....     | 2349 | 310:256-5-32. .... [REVOKED] ..... | 2357 |
| 310:205-3-3. .... [AMENDED] .....     | 2350 | 310:256-5-33. .... [REVOKED] ..... | 2357 |
| 310:205-3-4. .... [AMENDED] .....     | 2351 | 310:256-5-34. .... [REVOKED] ..... | 2357 |
| 310:205-3-6. .... [REVOKED] .....     | 2353 | 310:256-5-35. .... [REVOKED] ..... | 2357 |
| 310:210-3-3. .... [AMENDED] .....     | 2353 | 310:256-5-36. .... [REVOKED] ..... | 2357 |
| 310:210-5-8. .... [AMENDED] .....     | 2354 | 310:256-5-37. .... [REVOKED] ..... | 2357 |
| 310:210, App. A. .... [REVOKED] ..... | 2355 | 310:256-5-38. .... [REVOKED] ..... | 2357 |
| 310:210, App. A. .... [NEW] .....     | 2355 | 310:256-5-39. .... [REVOKED] ..... | 2357 |
| 310:210, App. C. .... [REVOKED] ..... | 2356 | 310:256-5-40. .... [REVOKED] ..... | 2357 |
| 310:210, App. C. .... [NEW] .....     | 2356 | 310:256-5-41. .... [REVOKED] ..... | 2357 |
| 310:250-3-1. .... [AMENDED] .....     | 972  | 310:256-5-42. .... [REVOKED] ..... | 2357 |
| 310:250-3-6. .... [AMENDED] .....     | 973  | 310:256-5-43. .... [REVOKED] ..... | 2357 |
| 310:256-1-1. .... [REVOKED] .....     | 2357 | 310:256-5-44. .... [REVOKED] ..... | 2357 |
| 310:256-1-2. .... [REVOKED] .....     | 2357 | 310:256-5-45. .... [REVOKED] ..... | 2357 |
| 310:256-1-3. .... [REVOKED] .....     | 2357 | 310:256-5-46. .... [REVOKED] ..... | 2357 |
| 310:256-1-4. .... [REVOKED] .....     | 2357 | 310:256-5-47. .... [REVOKED] ..... | 2357 |
| 310:256-1-4. .... [NEW] .....         | 2358 | 310:256-5-48. .... [REVOKED] ..... | 2357 |
| 310:256-3-1. .... [REVOKED] .....     | 2357 | 310:256-5-49. .... [REVOKED] ..... | 2357 |
| 310:256-3-2. .... [REVOKED] .....     | 2357 | 310:256-5-50. .... [REVOKED] ..... | 2357 |
| 310:256-3-3. .... [REVOKED] .....     | 2357 | 310:256-5-51. .... [REVOKED] ..... | 2357 |
| 310:256-3-4. .... [REVOKED] .....     | 2357 | 310:256-5-52. .... [REVOKED] ..... | 2357 |
| 310:256-3-5. .... [REVOKED] .....     | 2357 | 310:256-5-53. .... [REVOKED] ..... | 2357 |
| 310:256-3-6. .... [REVOKED] .....     | 2357 | 310:256-5-54. .... [REVOKED] ..... | 2357 |
| 310:256-3-7. .... [REVOKED] .....     | 2357 | 310:256-5-55. .... [REVOKED] ..... | 2357 |
| 310:256-3-8. .... [REVOKED] .....     | 2357 | 310:256-5-56. .... [REVOKED] ..... | 2357 |











|                                   |      |                                      |      |
|-----------------------------------|------|--------------------------------------|------|
| 310:257-15-14. .... [NEW] .....   | 2358 | 310:355-21-3. .... [NEW] .....       | 2366 |
| 310:257-15-15. .... [NEW] .....   | 2358 | 310:355-21-4. .... [NEW] .....       | 2366 |
| 310:257-15-16. .... [NEW] .....   | 2358 | 310:355-21-5. .... [NEW] .....       | 2367 |
| 310:257-15-17. .... [NEW] .....   | 2358 | 310:400-5-1. .... [AMENDED] .....    | 2367 |
| 310:257-15-18. .... [NEW] .....   | 2358 | 310:400-5-3. .... [AMENDED] .....    | 2368 |
| 310:257-15-19. .... [NEW] .....   | 2358 | 310:400-7-2. .... [AMENDED] .....    | 2369 |
| 310:257-15-20. .... [NEW] .....   | 2358 | 310:400-7-2.1. .... [AMENDED] .....  | 2370 |
| 310:257-15-21. .... [NEW] .....   | 2358 | 310:400-9-1. .... [AMENDED] .....    | 2370 |
| 310:257-15-22. .... [NEW] .....   | 2358 | 310:400-11-1. .... [AMENDED] .....   | 2371 |
| 310:257-15-23. .... [NEW] .....   | 2358 | 310:400-11-2. .... [AMENDED] .....   | 2371 |
| 310:257-15-24. .... [NEW] .....   | 2358 | 310:400-11-3. .... [AMENDED] .....   | 2371 |
| 310:257-15-25. .... [NEW] .....   | 2358 | 310:400-11-4. .... [AMENDED] .....   | 2371 |
| 310:257-15-26. .... [NEW] .....   | 2358 | 310:400-11-5. .... [AMENDED] .....   | 2372 |
| 310:257-15-27. .... [NEW] .....   | 2358 | 310:400-15-3. .... [AMENDED] .....   | 2372 |
| 310:257-15-28. .... [NEW] .....   | 2358 | 310:400-15-4. .... [AMENDED] .....   | 2372 |
| 310:257-15-29. .... [NEW] .....   | 2358 | 310:400-15-5. .... [AMENDED] .....   | 2373 |
| 310:257-15-30. .... [NEW] .....   | 2358 | 310:400-15-6. .... [AMENDED] .....   | 2373 |
| 310:257-15-31. .... [NEW] .....   | 2358 | 310:400-15-9. .... [AMENDED] .....   | 2373 |
| 310:257-15-32. .... [NEW] .....   | 2358 | 310:403-5-1. .... [AMENDED] .....    | 2374 |
| 310:257-15-33. .... [NEW] .....   | 2358 | 310:403-5-2. .... [AMENDED] .....    | 2374 |
| 310:257-15-34. .... [NEW] .....   | 2358 | 310:403-7-2. .... [AMENDED] .....    | 2375 |
| 310:257-15-35. .... [NEW] .....   | 2358 | 310:403-7-3. .... [AMENDED] .....    | 2376 |
| 310:257-15-36. .... [NEW] .....   | 2358 | 310:403-7-4.1. .... [NEW] .....      | 2377 |
| 310:257-15-37. .... [NEW] .....   | 2358 | 310:403-11-6. .... [AMENDED] .....   | 2377 |
| 310:257-15-38. .... [NEW] .....   | 2358 | 310:403-11-7. .... [AMENDED] .....   | 2377 |
| 310:257-15-39. .... [NEW] .....   | 2358 | 310:403-11-8. .... [AMENDED] .....   | 2377 |
| 310:257-15-40. .... [NEW] .....   | 2358 | 310:403-11-9. .... [AMENDED] .....   | 2378 |
| 310:257-15-41. .... [NEW] .....   | 2358 | 310:403-11-10. .... [AMENDED] .....  | 2378 |
| 310:276-1-3. .... [AMENDED] ..... | 2360 | 310:403-11-11. .... [AMENDED] .....  | 2378 |
| 310:276-9-2. .... [AMENDED] ..... | 2362 | 310:403-15-2. .... [AMENDED] .....   | 2378 |
| 310:355-1-1. .... [AMENDED] ..... | 2363 | 310:403-15-3. .... [AMENDED] .....   | 2379 |
| 310:355-1-2. .... [REVOKED] ..... | 2363 | 310:403-15-4. .... [AMENDED] .....   | 2379 |
| 310:355-1-3. .... [REVOKED] ..... | 2363 | 310:403-15-7. .... [AMENDED] .....   | 2379 |
| 310:355-1-4. .... [REVOKED] ..... | 2363 | 310:403-19-1.1. .... [NEW] .....     | 2379 |
| 310:355-1-5. .... [REVOKED] ..... | 2363 | 310:403-19-6.1. .... [NEW] .....     | 2379 |
| 310:355-1-6. .... [NEW] .....     | 2363 | 310:403-21-3.1. .... [NEW] .....     | 2379 |
| 310:355-3-1. .... [NEW] .....     | 2364 | 310:403-21-4. .... [AMENDED] .....   | 2379 |
| 310:355-3-2. .... [NEW] .....     | 2364 | 310:403-25-11. .... [AMENDED] .....  | 2380 |
| 310:355-3-3. .... [NEW] .....     | 2364 | 310:405-3-2. .... [AMENDED] .....    | 2380 |
| 310:355-3-4. .... [NEW] .....     | 2364 | 310:405-3-3. .... [AMENDED] .....    | 2381 |
| 310:355-5-1. .... [NEW] .....     | 2364 | 310:405-3-4.1. .... [NEW] .....      | 2382 |
| 310:355-5-2. .... [NEW] .....     | 2364 | 310:405-7-1. .... [AMENDED] .....    | 2382 |
| 310:355-5-3. .... [NEW] .....     | 2364 | 310:405-7-2. .... [AMENDED] .....    | 2382 |
| 310:355-5-4. .... [NEW] .....     | 2364 | 310:405-7-4. .... [AMENDED] .....    | 2383 |
| 310:355-7-1. .... [NEW] .....     | 2364 | 310:405-7-5. .... [AMENDED] .....    | 2383 |
| 310:355-7-2. .... [NEW] .....     | 2364 | 310:405-7-6. .... [AMENDED] .....    | 2383 |
| 310:355-9-1. .... [NEW] .....     | 2365 | 310:405-7-7. .... [AMENDED] .....    | 2383 |
| 310:355-9-2. .... [NEW] .....     | 2365 | 310:405-7-8. .... [AMENDED] .....    | 2383 |
| 310:355-9-3. .... [NEW] .....     | 2365 | 310:405-9-2. .... [AMENDED] .....    | 2384 |
| 310:355-11-1. .... [NEW] .....    | 2365 | 310:405-11-1. .... [AMENDED] .....   | 2384 |
| 310:355-11-2. .... [NEW] .....    | 2365 | 310:405-11-2. .... [AMENDED] .....   | 2384 |
| 310:355-11-3. .... [NEW] .....    | 2365 | 310:405-11-5. .... [AMENDED] .....   | 2385 |
| 310:355-11-4. .... [NEW] .....    | 2365 | 310:405-11-6. .... [AMENDED] .....   | 2385 |
| 310:355-13-1. .... [NEW] .....    | 2365 | 310:405-11-7. .... [AMENDED] .....   | 2385 |
| 310:355-13-2. .... [NEW] .....    | 2365 | 310:405-15-1. .... [AMENDED] .....   | 2385 |
| 310:355-15-1. .... [NEW] .....    | 2365 | 310:405-15-4. .... [AMENDED] .....   | 2385 |
| 310:355-15-2. .... [NEW] .....    | 2365 | 310:405-15-8. .... [AMENDED] .....   | 2386 |
| 310:355-15-3. .... [NEW] .....    | 2365 | 310:405-17-6.2. .... [AMENDED] ..... | 2386 |
| 310:355-17-1. .... [NEW] .....    | 2366 | 310:405-23-3. .... [AMENDED] .....   | 2386 |
| 310:355-17-2. .... [NEW] .....    | 2366 | 310:525-3-2. .... [AMENDED] .....    | 1343 |
| 310:355-17-3. .... [NEW] .....    | 2366 | 310:525-3-3. .... [AMENDED] .....    | 1343 |
| 310:355-17-4. .... [NEW] .....    | 2366 | 310:525-3-4. .... [AMENDED] .....    | 1343 |
| 310:355-19-1. .... [NEW] .....    | 2366 | 310:525-3-5. .... [AMENDED] .....    | 1343 |
| 310:355-19-2. .... [NEW] .....    | 2366 | 310:535-1-2. .... [AMENDED] .....    | 1344 |
| 310:355-19-3. .... [NEW] .....    | 2366 | 310:535-1-3. .... [AMENDED] .....    | 1346 |
| 310:355-21-1. .... [NEW] .....    | 2366 | 310:641-3-1. .... [AMENDED] .....    | 2387 |
| 310:355-21-2. .... [NEW] .....    | 2366 | 310:641-3-2. .... [AMENDED] .....    | 2387 |

## Rules Affected Index – *continued*

|                                      |      |   |      |
|--------------------------------------|------|---|------|
| 310:641-3-10. .... [AMENDED] .....   | 2388 | 310:657-27-2. .... [AMENDED] .....      | 2411 |
| 310:641-3-11. .... [AMENDED] .....   | 2389 | 310:657-29-1. .... [AMENDED] .....      | 2411 |
| 310:641-3-13. .... [AMENDED] .....   | 2390 | 310:657-29-2. .... [AMENDED] .....      | 2411 |
| 310:641-3-15. .... [AMENDED] .....   | 2390 | 310:657-31-1. .... [AMENDED] .....      | 2412 |
| 310:641-3-20. .... [AMENDED] .....   | 2391 | 310:657-31-2. .... [REVOKED] .....      | 2412 |
| 310:641-3-22. .... [AMENDED] .....   | 2391 | 310:657-31-3. .... [AMENDED] .....      | 2412 |
| 310:641-3-23. .... [AMENDED] .....   | 2392 | 310:657-33-1. .... [AMENDED] .....      | 2412 |
| 310:641-3-30. .... [AMENDED] .....   | 2394 | 310:657-35-1. .... [REVOKED] .....      | 2412 |
| 310:641-3-34. .... [AMENDED] .....   | 2394 | 310:657-35-2. .... [REVOKED] .....      | 2412 |
| 310:641-3-40. .... [AMENDED] .....   | 2394 | 310:661-1-2. .... [AMENDED] .....       | 2413 |
| 310:641-3-41. .... [AMENDED] .....   | 2394 | 310:661-2-1. .... [AMENDED] .....       | 2414 |
| 310:641-3-44. .... [AMENDED] .....   | 2395 | 310:661-2-2. .... [AMENDED] .....       | 2414 |
| 310:641-3-48.4. .... [AMENDED] ..... | 2395 | 310:661-2-4. .... [AMENDED] .....       | 2415 |
| 310:641-3-90. .... [AMENDED] .....   | 2395 | 310:661-2-5. .... [AMENDED] .....       | 2415 |
| 310:641-3-100. .... [REVOKED] .....  | 2395 | 310:661-2-6. .... [AMENDED] .....       | 2415 |
| 310:641-3-110. .... [AMENDED] .....  | 2395 | 310:675-7-9.1. .... [AMENDED] (E) ..... | 156  |
| 310:641-3-150. .... [AMENDED] .....  | 2396 | 310:675-7-9.1. .... [AMENDED] .....     | 2416 |
| 310:641-3-160. .... [AMENDED] .....  | 2396 | 310:675-9-1.1. .... [AMENDED] (E) ..... | 157  |
| 310:641-3-170. .... [AMENDED] .....  | 2397 | 310:675-9-1.1. .... [AMENDED] .....     | 2417 |
| 310:641-3-180. .... [REVOKED] .....  | 2397 | 310:675-9-5.1. .... [AMENDED] (E) ..... | 158  |
| 310:641-5-1. .... [AMENDED] .....    | 2397 | 310:675-9-5.1. .... [AMENDED] .....     | 2418 |
| 310:641-5-11. .... [AMENDED] .....   | 2397 | 310:675-13-5. .... [AMENDED] (E) .....  | 159  |
| 310:641-5-17. .... [AMENDED] .....   | 2398 | 310:675-13-5. .... [AMENDED] .....      | 2419 |
| 310:641-5-30. .... [AMENDED] .....   | 2399 | 310:675-15-3.1. .... [NEW] .....        | 2420 |
| 310:641-5-61. .... [AMENDED] .....   | 2399 | 310:675-19-1. .... [NEW] (E) .....      | 557  |
| 310:641-5-70. .... [AMENDED] .....   | 2400 | 310:675-19-1. .... [NEW] .....          | 2420 |
| 310:641-7-11. .... [AMENDED] .....   | 2400 | 310:675-19-2. .... [NEW] (E) .....      | 557  |
| 310:641-7-13. .... [AMENDED] .....   | 2401 | 310:675-19-2. .... [NEW] .....          | 2420 |
| 310:641-7-15. .... [AMENDED] .....   | 2401 | 310:675-19-3. .... [NEW] (E) .....      | 557  |
| 310:641-7-20. .... [AMENDED] .....   | 2402 | 310:675-19-3. .... [NEW] .....          | 2420 |
| 310:641-7-21. .... [AMENDED] .....   | 2403 | 310:675-19-4. .... [NEW] (E) .....      | 558  |
| 310:641-7-21.1. .... [NEW] .....     | 2403 | 310:675-19-4. .... [NEW] .....          | 2421 |
| 310:641-7-30. .... [AMENDED] .....   | 2403 | 310:675-19-5. .... [NEW] (E) .....      | 558  |
| 310:641-7-53. .... [AMENDED] .....   | 2404 | 310:675-19-5. .... [NEW] .....          | 2421 |
| 310:641-7-60. .... [AMENDED] .....   | 2404 | 310:675-19-6. .... [NEW] (E) .....      | 558  |
| 310:641-7-61. .... [AMENDED] .....   | 2404 | 310:675-19-6. .... [NEW] .....          | 2421 |
| 310:657-1-2. .... [AMENDED] .....    | 2404 | 310:675-19-7. .... [NEW] (E) .....      | 558  |
| 310:657-3-1. .... [AMENDED] .....    | 2405 | 310:675-19-7. .... [NEW] .....          | 2421 |
| 310:657-3-2. .... [AMENDED] .....    | 2405 | 310:675-19-8. .... [NEW] (E) .....      | 558  |
| 310:657-3-3. .... [AMENDED] .....    | 2405 | 310:675-19-8. .... [NEW] .....          | 2421 |
| 310:657-5-3. .... [AMENDED] .....    | 2405 | 310:677-13-1. .... [AMENDED] (E) .....  | 560  |
| 310:657-5-4. .... [AMENDED] .....    | 2405 | 310:677-13-1. .... [AMENDED] .....      | 2423 |
| 310:657-7-1. .... [AMENDED] .....    | 2406 | 310:677-13-2. .... [AMENDED] (E) .....  | 560  |
| 310:657-7-3. .... [AMENDED] .....    | 2406 | 310:677-13-2. .... [AMENDED] .....      | 2423 |
| 310:657-7-4. .... [AMENDED] .....    | 2407 | 310:677-13-3. .... [AMENDED] (E) .....  | 560  |
| 310:657-7-6. .... [AMENDED] .....    | 2407 | 310:677-13-3. .... [AMENDED] .....      | 2424 |
| 310:657-7-7. .... [AMENDED] .....    | 2407 | 310:677-13-4. .... [AMENDED] (E) .....  | 561  |
| 310:657-9-1. .... [AMENDED] .....    | 2407 | 310:677-13-4. .... [AMENDED] .....      | 2424 |
| 310:657-9-3. .... [AMENDED] .....    | 2407 | 310:677-13-5. .... [AMENDED] (E) .....  | 562  |
| 310:657-11-2. .... [AMENDED] .....   | 2408 | 310:677-13-5. .... [AMENDED] .....      | 2426 |
| 310:657-13-1. .... [AMENDED] .....   | 2408 | 310:677-13-6. .... [NEW] (E) .....      | 563  |
| 310:657-15-4. .... [REVOKED] .....   | 2408 | 310:677-13-6. .... [NEW] .....          | 2426 |
| 310:657-15-5. .... [REVOKED] .....   | 2408 | 310:677-13-7. .... [NEW] (E) .....      | 563  |
| 310:657-15-6. .... [AMENDED] .....   | 2408 | 310:677-13-7. .... [NEW] .....          | 2426 |
| 310:657-15-7. .... [REVOKED] .....   | 2408 | 310:677-13-8. .... [NEW] (E) .....      | 563  |
| 310:657-17-1. .... [AMENDED] .....   | 2408 | 310:677-13-8. .... [NEW] .....          | 2427 |
| 310:657-17-2. .... [AMENDED] .....   | 2408 | 310:677-13-9. .... [NEW] (E) .....      | 564  |
| 310:657-17-5. .... [AMENDED] .....   | 2409 | 310:677-13-9. .... [NEW] .....          | 2427 |
| 310:657-17-6. .... [NEW] .....       | 2409 | 310:677-13-10. .... [NEW] (E) .....     | 564  |
| 310:657-21-2. .... [AMENDED] .....   | 2409 | 310:677-13-10. .... [NEW] .....         | 2427 |
| 310:657-21-4. .... [AMENDED] .....   | 2409 | 310:677-13-11. .... [NEW] (E) .....     | 565  |
| 310:657-23-1. .... [AMENDED] .....   | 2410 | 310:677-13-11. .... [NEW] .....         | 2428 |
| 310:657-23-2. .... [AMENDED] .....   | 2410 | 317:1-3-5. .... [REVOKED] (E) .....     | 759  |
| 310:657-25-1. .... [AMENDED] .....   | 2411 | 317:1-3-5. .... [REVOKED] .....         | 2429 |
| 310:657-25-2. .... [AMENDED] .....   | 2411 | 317:1-7-6. .... [AMENDED] (E) .....     | 760  |
| 310:657-25-3. .... [AMENDED] .....   | 2411 | 317:1-7-6. .... [AMENDED] .....         | 2430 |
| 310:657-27-1. .... [AMENDED] .....   | 2411 | 317:1-7-6.1. .... [AMENDED] (E) .....   | 760  |

|  |      |  |      |
|--|------|--|------|
| 317:1-7-6.1. . . . . [AMENDED] . . . . .     | 2430 | 317:30-3-65.8. . . . . [NEW] . . . . .         | 2471 |
| 317:1-9-7. . . . . [REVOKED] (E) . . . . .   | 760  | 317:30-3-65.9. . . . . [NEW] . . . . .         | 2471 |
| 317:1-9-7. . . . . [REVOKED] . . . . .       | 2430 | 317:30-3-65.10. . . . . [NEW] . . . . .        | 2472 |
| 317:1-9-8. . . . . [REVOKED] (E) . . . . .   | 761  | 317:30-3-65.11. . . . . [NEW] . . . . .        | 2472 |
| 317:1-9-8. . . . . [REVOKED] . . . . .       | 2430 | 317:30-3-74. . . . . [REVOKED] (E) . . . . .   | 263  |
| 317:2-1-1. . . . . [AMENDED] (E) . . . . .   | 761  | 317:30-3-74. . . . . [REVOKED] . . . . .       | 1353 |
| 317:2-1-1. . . . . [AMENDED] . . . . .       | 2431 | 317:30-3-78. . . . . [AMENDED] . . . . .       | 2490 |
| 317:2-1-2. . . . . [AMENDED] (E) . . . . .   | 761  | 317:30-5-2. . . . . [AMENDED] (E) . . . . .    | 241  |
| 317:2-1-2. . . . . [AMENDED] . . . . .       | 2431 | 317:30-5-2. . . . . [AMENDED] . . . . .        | 2480 |
| 317:2-1-2.1. . . . . [REVOKED] (E) . . . . . | 763  | 317:30-5-9. . . . . [AMENDED] (E) . . . . .    | 246  |
| 317:2-1-2.1. . . . . [REVOKED] . . . . .     | 2433 | 317:30-5-14. . . . . [AMENDED] (E) . . . . .   | 28   |
| 317:2-1-2.2. . . . . [REVOKED] (E) . . . . . | 763  | 317:30-5-14. . . . . [AMENDED] . . . . .       | 1353 |
| 317:2-1-2.2. . . . . [REVOKED] . . . . .     | 2433 | 317:30-5-14. . . . . [NEW] . . . . .           | 2520 |
| 317:2-1-2.3. . . . . [REVOKED] (E) . . . . . | 764  | 317:30-5-25. . . . . [AMENDED] (E) . . . . .   | 774  |
| 317:2-1-2.3. . . . . [REVOKED] . . . . .     | 2434 | 317:30-5-25. . . . . [AMENDED] . . . . .       | 2444 |
| 317:2-1-4. . . . . [REVOKED] (E) . . . . .   | 766  | 317:30-5-41. . . . . [AMENDED] (E) . . . . .   | 248  |
| 317:2-1-4. . . . . [REVOKED] . . . . .       | 2436 | 317:30-5-41. . . . . [AMENDED] (E) . . . . .   | 774  |
| 317:2-1-5. . . . . [NEW] (E) . . . . .       | 766  | 317:30-5-41. . . . . [AMENDED] . . . . .       | 2444 |
| 317:2-1-5. . . . . [NEW] . . . . .           | 2436 | 317:30-5-42. . . . . [AMENDED] (E) . . . . .   | 29   |
| 317:2-1-6. . . . . [NEW] (E) . . . . .       | 767  | 317:30-5-42. . . . . [AMENDED] . . . . .       | 1355 |
| 317:2-1-6. . . . . [NEW] . . . . .           | 2437 | 317:30-5-47. . . . . [AMENDED] (E) . . . . .   | 251  |
| 317:2-1-7. . . . . [NEW] (E) . . . . .       | 767  | 317:30-5-47. . . . . [AMENDED] (E) . . . . .   | 807  |
| 317:2-1-7. . . . . [NEW] . . . . .           | 2437 | 317:30-5-47. . . . . [AMENDED] . . . . .       | 2500 |
| 317:2-1-8. . . . . [NEW] (E) . . . . .       | 768  | 317:30-5-47.2. . . . . [NEW] (E) . . . . .     | 259  |
| 317:2-1-8. . . . . [NEW] . . . . .           | 2438 | 317:30-5-47.2. . . . . [NEW] . . . . .         | 1348 |
| 317:2-1-9. . . . . [NEW] (E) . . . . .       | 768  | 317:30-5-47.3. . . . . [NEW] (E) . . . . .     | 260  |
| 317:2-1-9. . . . . [NEW] . . . . .           | 2438 | 317:30-5-47.3. . . . . [NEW] . . . . .         | 1350 |
| 317:2-1-10. . . . . [NEW] (E) . . . . .      | 768  | 317:30-5-47.4. . . . . [NEW] (E) . . . . .     | 260  |
| 317:2-1-10. . . . . [NEW] . . . . .          | 2438 | 317:30-5-47.4. . . . . [NEW] . . . . .         | 1350 |
| 317:2-1-11. . . . . [NEW] (E) . . . . .      | 769  | 317:30-5-47.5. . . . . [NEW] (E) . . . . .     | 261  |
| 317:2-1-11. . . . . [NEW] . . . . .          | 2439 | 317:30-5-47.5. . . . . [NEW] . . . . .         | 1351 |
| 317:2-1-12. . . . . [NEW] (E) . . . . .      | 770  | 317:30-5-48. . . . . [REVOKED] (E) . . . . .   | 262  |
| 317:2-1-12. . . . . [NEW] . . . . .          | 2439 | 317:30-5-48. . . . . [REVOKED] . . . . .       | 1351 |
| 317:2-1-13. . . . . [NEW] (E) . . . . .      | 770  | 317:30-5-62. . . . . [AMENDED] (E) . . . . .   | 778  |
| 317:2-1-13. . . . . [NEW] . . . . .          | 2440 | 317:30-5-62. . . . . [AMENDED] . . . . .       | 2448 |
| 317:30-3-4.1. . . . . [AMENDED] . . . . .    | 2461 | 317:30-5-77.2. . . . . [AMENDED] . . . . .     | 2486 |
| 317:30-3-5. . . . . [AMENDED] (E) . . . . .  | 239  | 317:30-5-95. . . . . [AMENDED] . . . . .       | 2509 |
| 317:30-3-5. . . . . [AMENDED] . . . . .      | 1347 | 317:30-5-95.1. . . . . [AMENDED] . . . . .     | 2510 |
| 317:30-3-15. . . . . [AMENDED] . . . . .     | 2463 | 317:30-5-95.2. . . . . [AMENDED] (E) . . . . . | 779  |
| 317:30-3-19. . . . . [AMENDED] (E) . . . . . | 771  | 317:30-5-95.2. . . . . [REVOKED] . . . . .     | 2512 |
| 317:30-3-19. . . . . [AMENDED] . . . . .     | 2441 | 317:30-5-95.3. . . . . [REVOKED] . . . . .     | 2518 |
| 317:30-3-20. . . . . [AMENDED] (E) . . . . . | 773  | 317:30-5-95.4. . . . . [NEW] . . . . .         | 2518 |
| 317:30-3-20. . . . . [AMENDED] . . . . .     | 2443 | 317:30-5-95.5. . . . . [NEW] . . . . .         | 2519 |
| 317:30-3-21. . . . . [AMENDED] (E) . . . . . | 774  | 317:30-5-95.6. . . . . [NEW] . . . . .         | 2519 |
| 317:30-3-21. . . . . [AMENDED] . . . . .     | 2444 | 317:30-5-95.7. . . . . [NEW] . . . . .         | 2519 |
| 317:30-3-25. . . . . [AMENDED] . . . . .     | 2460 | 317:30-5-95.8. . . . . [NEW] . . . . .         | 2519 |
| 317:30-3-47. . . . . [REVOKED] . . . . .     | 2464 | 317:30-5-95.9. . . . . [NEW] . . . . .         | 2519 |
| 317:30-3-48. . . . . [REVOKED] . . . . .     | 2464 | 317:30-5-95.10. . . . . [NEW] . . . . .        | 2519 |
| 317:30-3-49. . . . . [REVOKED] . . . . .     | 2464 | 317:30-5-95.11. . . . . [NEW] . . . . .        | 2519 |
| 317:30-3-50. . . . . [REVOKED] . . . . .     | 2464 | 317:30-5-95.12. . . . . [NEW] . . . . .        | 2519 |
| 317:30-3-51. . . . . [REVOKED] . . . . .     | 2466 | 317:30-5-95.13. . . . . [NEW] . . . . .        | 2520 |
| 317:30-3-52. . . . . [REVOKED] . . . . .     | 2466 | 317:30-5-95.15. . . . . [NEW] . . . . .        | 2520 |
| 317:30-3-53. . . . . [REVOKED] . . . . .     | 2466 | 317:30-5-95.16. . . . . [NEW] . . . . .        | 2520 |
| 317:30-3-54. . . . . [REVOKED] . . . . .     | 2466 | 317:30-5-95.17. . . . . [NEW] . . . . .        | 2520 |
| 317:30-3-55. . . . . [REVOKED] . . . . .     | 2467 | 317:30-5-95.18. . . . . [NEW] . . . . .        | 2520 |
| 317:30-3-56. . . . . [REVOKED] . . . . .     | 2467 | 317:30-5-95.19. . . . . [NEW] . . . . .        | 2521 |
| 317:30-3-57. . . . . [AMENDED] . . . . .     | 2478 | 317:30-5-95.20. . . . . [NEW] . . . . .        | 2521 |
| 317:30-3-59. . . . . [AMENDED] (E) . . . . . | 241  | 317:30-5-95.21. . . . . [NEW] . . . . .        | 2521 |
| 317:30-3-59. . . . . [AMENDED] . . . . .     | 2487 | 317:30-5-95.22. . . . . [NEW] . . . . .        | 2521 |
| 317:30-3-65. . . . . [NEW] . . . . .         | 2467 | 317:30-5-95.23. . . . . [NEW] . . . . .        | 2521 |
| 317:30-3-65.1. . . . . [NEW] . . . . .       | 2467 | 317:30-5-95.24. . . . . [NEW] . . . . .        | 2522 |
| 317:30-3-65.2. . . . . [NEW] . . . . .       | 2468 | 317:30-5-95.25. . . . . [NEW] . . . . .        | 2522 |
| 317:30-3-65.3. . . . . [NEW] . . . . .       | 2469 | 317:30-5-95.26. . . . . [NEW] . . . . .        | 2522 |
| 317:30-3-65.4. . . . . [NEW] . . . . .       | 2469 | 317:30-5-95.27. . . . . [NEW] . . . . .        | 2523 |
| 317:30-3-65.5. . . . . [NEW] . . . . .       | 2470 | 317:30-5-95.28. . . . . [NEW] . . . . .        | 2523 |
| 317:30-3-65.6. . . . . [NEW] . . . . .       | 2471 | 317:30-5-95.29. . . . . [NEW] . . . . .        | 2523 |
| 317:30-3-65.7. . . . . [NEW] . . . . .       | 2471 | 317:30-5-95.30. . . . . [NEW] . . . . .        | 2523 |

**Rules Affected Index – *continued***

|  |      |  |      |
|--|------|--|------|
| 317:30-5-95.31. .... [NEW] .....         | 2524 | 317:30-5-343. .... [AMENDED] .....       | 1363 |
| 317:30-5-95.32. .... [NEW] .....         | 2524 | 317:30-5-356. .... [AMENDED] .....       | 2476 |
| 317:30-5-95.33. .... [NEW] .....         | 2524 | 317:30-5-375. .... [AMENDED] (E) .....   | 265  |
| 317:30-5-95.34. .... [NEW] .....         | 2525 | 317:30-5-375. .... [AMENDED] .....       | 1360 |
| 317:30-5-95.35. .... [NEW] .....         | 2527 | 317:30-5-376. .... [AMENDED] .....       | 2476 |
| 317:30-5-95.36. .... [NEW] .....         | 2527 | 317:30-5-412. .... [AMENDED] (E) .....   | 816  |
| 317:30-5-95.37. .... [NEW] .....         | 2527 | 317:30-5-412. .... [AMENDED] .....       | 2556 |
| 317:30-5-95.38. .... [NEW] .....         | 2527 | 317:30-5-431. .... [AMENDED] .....       | 2477 |
| 317:30-5-95.39. .... [NEW] .....         | 2527 | 317:30-5-530. .... [NEW] (E) .....       | 30   |
| 317:30-5-95.40. .... [NEW] .....         | 2528 | 317:30-5-530. .... [NEW] .....           | 1356 |
| 317:30-5-95.41. .... [NEW] .....         | 2528 | 317:30-5-531. .... [NEW] (E) .....       | 30   |
| 317:30-5-95.42. .... [NEW] .....         | 2528 | 317:30-5-531. .... [NEW] .....           | 1356 |
| 317:30-5-96. .... [REVOKED] .....        | 2529 | 317:30-5-532. .... [NEW] (E) .....       | 30   |
| 317:30-5-96.1. .... [REVOKED] .....      | 2531 | 317:30-5-532. .... [NEW] .....           | 1356 |
| 317:30-5-96.2. .... [NEW] .....          | 2531 | 317:30-5-555. .... [NEW] (E) .....       | 33   |
| 317:30-5-96.3. .... [NEW] .....          | 2532 | 317:30-5-555. .... [NEW] .....           | 1364 |
| 317:30-5-96.4. .... [NEW] .....          | 2532 | 317:30-5-556. .... [NEW] (E) .....       | 33   |
| 317:30-5-96.5. .... [NEW] .....          | 2532 | 317:30-5-556. .... [NEW] .....           | 1364 |
| 317:30-5-96.6. .... [NEW] .....          | 2532 | 317:30-5-557. .... [NEW] (E) .....       | 33   |
| 317:30-5-96.7. .... [NEW] .....          | 2533 | 317:30-5-557. .... [NEW] .....           | 1364 |
| 317:30-5-110. .... [NEW] (E) .....       | 262  | 317:30-5-558. .... [NEW] (E) .....       | 33   |
| 317:30-5-110. .... [NEW] .....           | 1351 | 317:30-5-558. .... [NEW] .....           | 1364 |
| 317:30-5-111. .... [NEW] (E) .....       | 262  | 317:30-5-559. .... [NEW] (E) .....       | 34   |
| 317:30-5-111. .... [NEW] .....           | 1351 | 317:30-5-559. .... [NEW] .....           | 1365 |
| 317:30-5-112. .... [NEW] (E) .....       | 262  | 317:30-5-560. .... [NEW] (E) .....       | 34   |
| 317:30-5-112. .... [NEW] .....           | 1352 | 317:30-5-560. .... [NEW] .....           | 1365 |
| 317:30-5-113. .... [NEW] (E) .....       | 262  | 317:30-5-560.1. .... [NEW] (E) .....     | 34   |
| 317:30-5-113. .... [NEW] .....           | 1352 | 317:30-5-560.1. .... [NEW] .....         | 1365 |
| 317:30-5-114. .... [NEW] (E) .....       | 263  | 317:30-5-560.2. .... [NEW] (E) .....     | 35   |
| 317:30-5-114. .... [NEW] .....           | 1352 | 317:30-5-560.2. .... [NEW] .....         | 1365 |
| 317:30-5-122. .... [AMENDED] (E) .....   | 264  | 317:30-5-566. .... [AMENDED] .....       | 2488 |
| 317:30-5-122. .... [AMENDED] .....       | 1357 | 317:30-5-586.1. .... [AMENDED] (E) ..... | 805  |
| 317:30-5-123. .... [AMENDED] (E) .....   | 785  | 317:30-5-586.1. .... [AMENDED] .....     | 2459 |
| 317:30-5-123. .... [AMENDED] .....       | 2537 | 317:30-5-595. .... [AMENDED] .....       | 2557 |
| 317:30-5-124. .... [AMENDED] (E) .....   | 788  | 317:30-5-596. .... [AMENDED] .....       | 2559 |
| 317:30-5-124. .... [AMENDED] .....       | 2449 | 317:30-5-596.1. .... [AMENDED] (E) ..... | 806  |
| 317:30-5-131.1. .... [AMENDED] (E) ..... | 790  | 317:30-5-596.1. .... [AMENDED] .....     | 2560 |
| 317:30-5-131.1. .... [AMENDED] .....     | 2450 | 317:30-5-596.2. .... [AMENDED] .....     | 2561 |
| 317:30-5-131.2. .... [AMENDED] (E) ..... | 793  | 317:30-5-597. .... [REVOKED] .....       | 2561 |
| 317:30-5-131.2. .... [AMENDED] .....     | 2454 | 317:30-5-598. .... [REVOKED] .....       | 2561 |
| 317:30-5-133. .... [AMENDED] (E) .....   | 31   | 317:30-5-599. .... [AMENDED] .....       | 2561 |
| 317:30-5-133. .... [AMENDED] .....       | 1358 | 317:30-5-640. .... [AMENDED] .....       | 2562 |
| 317:30-5-195. .... [AMENDED] .....       | 2472 | 317:30-5-640.1. .... [AMENDED] .....     | 2563 |
| 317:30-5-196. .... [AMENDED] .....       | 2473 | 317:30-5-641. .... [AMENDED] .....       | 2563 |
| 317:30-5-197. .... [AMENDED] .....       | 2473 | 317:30-5-641.1. .... [AMENDED] .....     | 2565 |
| 317:30-5-198. .... [AMENDED] .....       | 2473 | 317:30-5-641.2. .... [REVOKED] .....     | 2565 |
| 317:30-5-199. .... [AMENDED] .....       | 2475 | 317:30-5-641.3. .... [AMENDED] .....     | 2565 |
| 317:30-5-200. .... [REVOKED] .....       | 2475 | 317:30-5-642. .... [REVOKED] .....       | 2566 |
| 317:30-5-201. .... [AMENDED] .....       | 2475 | 317:30-5-644. .... [AMENDED] .....       | 2566 |
| 317:30-5-225. .... [AMENDED] (E) .....   | 265  | 317:30-5-695. .... [AMENDED] .....       | 2490 |
| 317:30-5-225. .... [AMENDED] .....       | 1360 | 317:30-5-695.1. .... [AMENDED] .....     | 2490 |
| 317:30-5-240. .... [AMENDED] .....       | 2541 | 317:30-5-695.2. .... [AMENDED] .....     | 2490 |
| 317:30-5-241. .... [AMENDED] (E) .....   | 796  | 317:30-5-696. .... [AMENDED] .....       | 2490 |
| 317:30-5-241. .... [AMENDED] .....       | 2544 | 317:30-5-698. .... [AMENDED] .....       | 2494 |
| 317:30-5-248. .... [AMENDED] .....       | 2553 | 317:30-5-699. .... [AMENDED] .....       | 2496 |
| 317:30-5-275. .... [AMENDED] .....       | 2554 | 317:30-5-700. .... [AMENDED] .....       | 2497 |
| 317:30-5-276. .... [AMENDED] .....       | 2554 | 317:30-5-700.1. .... [AMENDED] .....     | 2497 |
| 317:30-5-278.1. .... [AMENDED] .....     | 2555 | 317:30-5-701. .... [AMENDED] .....       | 2499 |
| 317:30-5-327. .... [AMENDED] (E) .....   | 803  | 317:30-5-703. .... [AMENDED] .....       | 2499 |
| 317:30-5-327. .... [AMENDED] .....       | 2456 | 317:30-5-704. .... [AMENDED] .....       | 2499 |
| 317:30-5-335. .... [AMENDED] (E) .....   | 266  | 317:30-5-705. .... [AMENDED] .....       | 2499 |
| 317:30-5-335. .... [AMENDED] .....       | 1361 | 317:30-5-740. .... [AMENDED] .....       | 2567 |
| 317:30-5-336. .... [AMENDED] (E) .....   | 266  | 317:30-5-741. .... [AMENDED] .....       | 2568 |
| 317:30-5-336. .... [AMENDED] .....       | 1361 | 317:30-5-742. .... [AMENDED] .....       | 2568 |
| 317:30-5-342. .... [REVOKED] (E) .....   | 268  | 317:30-5-742.2. .... [AMENDED] .....     | 2569 |
| 317:30-5-342. .... [REVOKED] .....       | 1363 | 317:30-5-743.1. .... [NEW] .....         | 2570 |
| 317:30-5-343. .... [AMENDED] (E) .....   | 268  | 317:30-5-745. .... [AMENDED] .....       | 2571 |

|  |      |   |      |
|--|------|---|------|
| 317:30-5-746. . . . . [AMENDED] (E) . . . . .  | 806  | 317:35-19-22. . . . . [AMENDED] (E) . . . . . | 623  |
| 317:30-5-746. . . . . [AMENDED] . . . . .      | 2460 | 317:35-19-22. . . . . [AMENDED] . . . . .     | 1386 |
| 317:30-5-761. . . . . [AMENDED] . . . . .      | 1366 | 317:40-1-2. . . . . [NEW] . . . . .           | 1396 |
| 317:30-5-762. . . . . [AMENDED] . . . . .      | 1368 | 317:40-5-102. . . . . [AMENDED] . . . . .     | 1398 |
| 317:30-5-763. . . . . [AMENDED] (E) . . . . .  | 160  | 317:40-5-104. . . . . [NEW] . . . . .         | 1400 |
| 317:30-5-763. . . . . [AMENDED] . . . . .      | 1369 | 317:40-5-110. . . . . [AMENDED] . . . . .     | 1401 |
| 317:30-5-764. . . . . [AMENDED] . . . . .      | 1377 | 317:40-5-150. . . . . [AMENDED] . . . . .     | 1401 |
| 317:30-5-901. . . . . [AMENDED] . . . . .      | 2571 | 317:40-5-152. . . . . [AMENDED] . . . . .     | 1404 |
| 317:30-5-904. . . . . [REVOKED] . . . . .      | 2571 | 317:40-7-2. . . . . [AMENDED] (E) . . . . .   | 624  |
| 317:30-5-1043. . . . . [AMENDED] . . . . .     | 2572 | 317:40-7-2. . . . . [AMENDED] . . . . .       | 1406 |
| 317:30-5-1085. . . . . [NEW] . . . . .         | 2576 | 317:40-7-12. . . . . [AMENDED] (E) . . . . .  | 625  |
| 317:30-5-1086. . . . . [NEW] . . . . .         | 2576 | 317:40-7-12. . . . . [AMENDED] . . . . .      | 1406 |
| 317:30-5-1087. . . . . [NEW] . . . . .         | 2576 | 317:45-1-1. . . . . [NEW] (E) . . . . .       | 279  |
| 317:30-5-1088. . . . . [NEW] . . . . .         | 2576 | 317:45-1-1. . . . . [NEW] . . . . .           | 1408 |
| 317:30-5-1089. . . . . [NEW] . . . . .         | 2577 | 317:45-1-2. . . . . [NEW] (E) . . . . .       | 279  |
| 317:30-5-1090. . . . . [NEW] . . . . .         | 2577 | 317:45-1-2. . . . . [NEW] (E) . . . . .       | 820  |
| 317:30-5-1091. . . . . [NEW] . . . . .         | 2577 | 317:45-1-2. . . . . [NEW] . . . . .           | 2590 |
| 317:30-5-1092. . . . . [NEW] . . . . .         | 2577 | 317:45-1-3. . . . . [NEW] (E) . . . . .       | 280  |
| 317:30-5-1093. . . . . [NEW] . . . . .         | 2577 | 317:45-1-3. . . . . [NEW] . . . . .           | 1408 |
| 317:30-5-1094. . . . . [NEW] . . . . .         | 2578 | 317:45-3-1. . . . . [NEW] (E) . . . . .       | 280  |
| 317:30-5-1095. . . . . [NEW] . . . . .         | 2578 | 317:45-3-1. . . . . [NEW] (E) . . . . .       | 821  |
| 317:30-5-1096. . . . . [NEW] . . . . .         | 2579 | 317:45-3-1. . . . . [NEW] . . . . .           | 2591 |
| 317:30-5-1097. . . . . [NEW] . . . . .         | 2579 | 317:45-3-2. . . . . [NEW] (E) . . . . .       | 280  |
| 317:30-5-1098. . . . . [NEW] . . . . .         | 2579 | 317:45-3-2. . . . . [NEW] . . . . .           | 1408 |
| 317:30-5-1099. . . . . [NEW] . . . . .         | 2580 | 317:45-5-1. . . . . [NEW] (E) . . . . .       | 280  |
| 317:35-1-2. . . . . [AMENDED] (E) . . . . .    | 269  | 317:45-5-1. . . . . [NEW] . . . . .           | 1408 |
| 317:35-1-2. . . . . [AMENDED] . . . . .        | 1379 | 317:45-5-2. . . . . [NEW] (E) . . . . .       | 280  |
| 317:35-3-2. . . . . [AMENDED] (E) . . . . .    | 817  | 317:45-5-2. . . . . [NEW] . . . . .           | 1409 |
| 317:35-3-2. . . . . [AMENDED] . . . . .        | 2581 | 317:45-7-1. . . . . [NEW] (E) . . . . .       | 281  |
| 317:35-5-2. . . . . [AMENDED] (E) . . . . .    | 276  | 317:45-7-1. . . . . [NEW] (E) . . . . .       | 821  |
| 317:35-5-2. . . . . [AMENDED] . . . . .        | 1387 | 317:45-7-1. . . . . [NEW] . . . . .           | 2591 |
| 317:35-5-7. . . . . [AMENDED] (E) . . . . .    | 271  | 317:45-7-2. . . . . [NEW] (E) . . . . .       | 281  |
| 317:35-5-7. . . . . [AMENDED] . . . . .        | 1381 | 317:45-7-2. . . . . [NEW] (E) . . . . .       | 821  |
| 317:35-5-26. . . . . [AMENDED] (E) . . . . .   | 278  | 317:45-7-2. . . . . [NEW] . . . . .           | 2591 |
| 317:35-5-26. . . . . [AMENDED] . . . . .       | 1390 | 317:45-7-3. . . . . [NEW] (E) . . . . .       | 281  |
| 317:35-6-60. . . . . [AMENDED] (E) . . . . .   | 621  | 317:45-7-3. . . . . [NEW] . . . . .           | 1409 |
| 317:35-6-60. . . . . [AMENDED] . . . . .       | 1385 | 317:45-7-4. . . . . [NEW] (E) . . . . .       | 281  |
| 317:35-6-61. . . . . [AMENDED] (E) . . . . .   | 275  | 317:45-7-4. . . . . [NEW] . . . . .           | 1409 |
| 317:35-6-61. . . . . [AMENDED] (E) . . . . .   | 622  | 317:45-7-5. . . . . [NEW] (E) . . . . .       | 281  |
| 317:35-6-61. . . . . [AMENDED] . . . . .       | 1385 | 317:45-7-5. . . . . [NEW] (E) . . . . .       | 821  |
| 317:35-7-16. . . . . [AMENDED] (E) . . . . .   | 276  | 317:45-7-5. . . . . [NEW] . . . . .           | 2591 |
| 317:35-7-16. . . . . [AMENDED] . . . . .       | 1388 | 317:45-7-6. . . . . [NEW] (E) . . . . .       | 281  |
| 317:35-7-17. . . . . [REVOKED] (E) . . . . .   | 277  | 317:45-7-6. . . . . [NEW] . . . . .           | 1409 |
| 317:35-7-17. . . . . [REVOKED] . . . . .       | 1389 | 317:45-7-7. . . . . [NEW] (E) . . . . .       | 281  |
| 317:35-9-75. . . . . [AMENDED] (E) . . . . .   | 623  | 317:45-7-7. . . . . [NEW] . . . . .           | 1409 |
| 317:35-9-75. . . . . [AMENDED] . . . . .       | 1386 | 317:45-7-8. . . . . [NEW] (E) . . . . .       | 281  |
| 317:35-15-8.1. . . . . [AMENDED] (E) . . . . . | 819  | 317:45-7-8. . . . . [NEW] . . . . .           | 1409 |
| 317:35-15-8.1. . . . . [AMENDED] . . . . .     | 2582 | 317:45-9-1. . . . . [NEW] (E) . . . . .       | 282  |
| 317:35-17-3. . . . . [AMENDED] (E) . . . . .   | 169  | 317:45-9-1. . . . . [NEW] (E) . . . . .       | 821  |
| 317:35-17-3. . . . . [AMENDED] . . . . .       | 1391 | 317:45-9-1. . . . . [NEW] . . . . .           | 2592 |
| 317:35-17-14. . . . . [AMENDED] . . . . .      | 1393 | 317:45-9-2. . . . . [NEW] (E) . . . . .       | 282  |
| 317:35-18-1. . . . . [NEW] . . . . .           | 2583 | 317:45-9-2. . . . . [NEW] . . . . .           | 1409 |
| 317:35-18-2. . . . . [NEW] . . . . .           | 2583 | 317:45-9-3. . . . . [NEW] (E) . . . . .       | 282  |
| 317:35-18-3. . . . . [NEW] . . . . .           | 2583 | 317:45-9-3. . . . . [NEW] . . . . .           | 1409 |
| 317:35-18-4. . . . . [NEW] . . . . .           | 2584 | 317:45-9-4. . . . . [NEW] (E) . . . . .       | 282  |
| 317:35-18-5. . . . . [NEW] . . . . .           | 2584 | 317:45-9-4. . . . . [NEW] . . . . .           | 1409 |
| 317:35-18-6. . . . . [NEW] . . . . .           | 2584 | 317:45-9-5. . . . . [NEW] (E) . . . . .       | 282  |
| 317:35-18-7. . . . . [NEW] . . . . .           | 2585 | 317:45-9-5. . . . . [NEW] . . . . .           | 1410 |
| 317:35-18-8. . . . . [NEW] . . . . .           | 2585 | 317:45-9-6. . . . . [NEW] (E) . . . . .       | 282  |
| 317:35-18-9. . . . . [NEW] . . . . .           | 2585 | 317:45-9-6. . . . . [NEW] . . . . .           | 1410 |
| 317:35-18-10. . . . . [NEW] . . . . .          | 2586 | 317:45-9-7. . . . . [NEW] (E) . . . . .       | 283  |
| 317:35-18-11. . . . . [NEW] . . . . .          | 2586 | 317:45-9-7. . . . . [NEW] . . . . .           | 1410 |
| 317:35-19-8. . . . . [AMENDED] . . . . .       | 2587 | 317:45-9-8. . . . . [NEW] (E) . . . . .       | 283  |
| 317:35-19-9. . . . . [AMENDED] . . . . .       | 2587 | 317:45-9-8. . . . . [NEW] . . . . .           | 1410 |
| 317:35-19-14. . . . . [AMENDED] . . . . .      | 2589 | 325:20-1-6. . . . . [AMENDED] . . . . .       | 973  |
| 317:35-19-16. . . . . [AMENDED] (E) . . . . .  | 819  | 325:25-1-5. . . . . [AMENDED] . . . . .       | 2592 |
| 317:35-19-16. . . . . [AMENDED] . . . . .      | 2590 | 325:25-1-17. . . . . [AMENDED] . . . . .      | 2593 |

**Rules Affected Index – *continued***

|                                       |      |                                   |      |
|---------------------------------------|------|-----------------------------------|------|
| 325:30-1-13. .... [AMENDED] .....     | 974  | 325:80-3-1. .... [NEW] (E) .....  | 1152 |
| 325:30-1-17. .... [AMENDED] .....     | 974  | 325:80-3-1. .... [NEW] (E) .....  | 2082 |
| 325:35-1-5. .... [AMENDED] (E) .....  | 2069 | 325:80-3-1. .... [NEW] .....      | 2605 |
| 325:35-1-34. .... [AMENDED] .....     | 975  | 325:80-5-1. .... [NEW] (E) .....  | 1153 |
| 325:40-1-5. .... [AMENDED] (E) .....  | 2071 | 325:80-5-1. .... [NEW] (E) .....  | 2082 |
| 325:40-1-5. .... [AMENDED] .....      | 2593 | 325:80-5-1. .... [NEW] .....      | 2606 |
| 325:45-1-2. .... [AMENDED] .....      | 977  | 325:80-5-2. .... [NEW] (E) .....  | 1153 |
| 325:45-1-2. .... [AMENDED] (E) .....  | 2072 | 325:80-5-2. .... [NEW] (E) .....  | 2083 |
| 325:45-1-2. .... [AMENDED] .....      | 2595 | 325:80-5-2. .... [NEW] .....      | 2606 |
| 325:45-1-4. .... [AMENDED] (E) .....  | 2073 | 325:80-5-3. .... [NEW] (E) .....  | 1153 |
| 325:45-1-4. .... [AMENDED] .....      | 2596 | 325:80-5-3. .... [NEW] (E) .....  | 2083 |
| 325:45-1-5. .... [AMENDED] (E) .....  | 2073 | 325:80-5-3. .... [NEW] .....      | 2607 |
| 325:45-1-5. .... [AMENDED] .....      | 2596 | 325:80-5-4. .... [NEW] (E) .....  | 1153 |
| 325:45-1-6. .... [AMENDED] (E) .....  | 2073 | 325:80-5-4. .... [NEW] (E) .....  | 2083 |
| 325:45-1-6. .... [AMENDED] .....      | 2596 | 325:80-5-4. .... [NEW] .....      | 2607 |
| 325:45-1-7. .... [AMENDED] (E) .....  | 2074 | 325:80-5-5. .... [NEW] (E) .....  | 1153 |
| 325:45-1-7. .... [AMENDED] .....      | 2596 | 325:80-5-5. .... [NEW] (E) .....  | 2083 |
| 325:45-1-8. .... [REVOKED] (E) .....  | 2074 | 325:80-5-5. .... [NEW] .....      | 2607 |
| 325:45-1-8. .... [REVOKED] .....      | 2597 | 325:80-5-6. .... [NEW] (E) .....  | 1154 |
| 325:45-1-9. .... [AMENDED] (E) .....  | 2074 | 325:80-5-6. .... [NEW] (E) .....  | 2083 |
| 325:45-1-9. .... [AMENDED] .....      | 2597 | 325:80-5-6. .... [NEW] .....      | 2607 |
| 325:45-1-10. .... [REVOKED] (E) ..... | 2074 | 325:80-7-1. .... [NEW] (E) .....  | 1154 |
| 325:45-1-10. .... [REVOKED] .....     | 2597 | 325:80-7-1. .... [NEW] (E) .....  | 2084 |
| 325:45-1-11. .... [AMENDED] (E) ..... | 2075 | 325:80-7-1. .... [NEW] .....      | 2608 |
| 325:45-1-11. .... [AMENDED] .....     | 2597 | 325:80-7-2. .... [NEW] (E) .....  | 1154 |
| 325:45-1-12. .... [AMENDED] (E) ..... | 2075 | 325:80-7-2. .... [NEW] (E) .....  | 2084 |
| 325:45-1-12. .... [AMENDED] .....     | 2598 | 325:80-7-2. .... [NEW] .....      | 2608 |
| 325:45-1-13. .... [AMENDED] (E) ..... | 2075 | 325:80-7-3. .... [NEW] (E) .....  | 1155 |
| 325:45-1-13. .... [AMENDED] .....     | 2598 | 325:80-7-3. .... [NEW] (E) .....  | 2085 |
| 325:45-1-15. .... [AMENDED] (E) ..... | 2076 | 325:80-7-3. .... [NEW] .....      | 2608 |
| 325:45-1-15. .... [AMENDED] .....     | 2598 | 325:80-7-4. .... [NEW] (E) .....  | 1155 |
| 325:45-1-17. .... [AMENDED] (E) ..... | 2076 | 325:80-7-4. .... [NEW] (E) .....  | 2085 |
| 325:45-1-17. .... [AMENDED] .....     | 2599 | 325:80-7-4. .... [NEW] .....      | 2609 |
| 325:45-1-18. .... [AMENDED] (E) ..... | 2076 | 325:80-7-5. .... [NEW] (E) .....  | 1156 |
| 325:45-1-18. .... [AMENDED] .....     | 2599 | 325:80-7-5. .... [NEW] (E) .....  | 2085 |
| 325:45-1-19. .... [AMENDED] (E) ..... | 2076 | 325:80-7-5. .... [NEW] .....      | 2609 |
| 325:45-1-19. .... [AMENDED] .....     | 2599 | 325:80-9-1. .... [NEW] (E) .....  | 1156 |
| 325:45-1-20. .... [AMENDED] (E) ..... | 2076 | 325:80-9-1. .... [NEW] (E) .....  | 2085 |
| 325:45-1-20. .... [AMENDED] .....     | 2599 | 325:80-9-1. .... [NEW] .....      | 2609 |
| 325:45-1-22. .... [AMENDED] (E) ..... | 2077 | 325:80-9-2. .... [NEW] (E) .....  | 1156 |
| 325:45-1-22. .... [AMENDED] .....     | 2600 | 325:80-9-2. .... [NEW] (E) .....  | 2086 |
| 325:45-1-23. .... [AMENDED] (E) ..... | 2077 | 325:80-9-2. .... [NEW] .....      | 2609 |
| 325:45-1-23. .... [AMENDED] .....     | 2600 | 325:80-11-1. .... [NEW] (E) ..... | 1156 |
| 325:45-1-24. .... [AMENDED] (E) ..... | 2078 | 325:80-11-1. .... [NEW] (E) ..... | 2086 |
| 325:45-1-24. .... [AMENDED] .....     | 2600 | 325:80-11-1. .... [NEW] .....     | 2609 |
| 325:45-1-25. .... [REVOKED] (E) ..... | 2078 | 325:80-11-2. .... [NEW] (E) ..... | 1156 |
| 325:45-1-25. .... [REVOKED] .....     | 2601 | 325:80-11-2. .... [NEW] (E) ..... | 2086 |
| 325:45-1-26. .... [NEW] (E) .....     | 2078 | 325:80-11-2. .... [NEW] .....     | 2610 |
| 325:45-1-26. .... [NEW] .....         | 2601 | 325:80-11-3. .... [NEW] (E) ..... | 1156 |
| 325:45-1-27. .... [NEW] (E) .....     | 2078 | 325:80-11-3. .... [NEW] (E) ..... | 2086 |
| 325:45-1-27. .... [NEW] .....         | 2601 | 325:80-11-3. .... [NEW] .....     | 2610 |
| 325:45-1-28. .... [NEW] (E) .....     | 2078 | 325:80-11-4. .... [NEW] (E) ..... | 1156 |
| 325:45-1-28. .... [NEW] .....         | 2601 | 325:80-11-4. .... [NEW] (E) ..... | 2086 |
| 325:45-1-29. .... [NEW] (E) .....     | 2079 | 325:80-11-4. .... [NEW] .....     | 2610 |
| 325:45-1-29. .... [NEW] .....         | 2601 | 325:80-13-1. .... [NEW] (E) ..... | 1157 |
| 325:50-1-2. .... [AMENDED] .....      | 978  | 325:80-13-1. .... [NEW] (E) ..... | 2086 |
| 325:70-1-2. .... [AMENDED] .....      | 979  | 325:80-13-1. .... [NEW] .....     | 2610 |
| 325:70-1-22. .... [AMENDED] .....     | 2602 | 325:80-13-2. .... [NEW] (E) ..... | 1157 |
| 325:80-1-1. .... [NEW] (E) .....      | 1150 | 325:80-13-2. .... [NEW] (E) ..... | 2086 |
| 325:80-1-1. .... [NEW] (E) .....      | 2080 | 325:80-13-2. .... [NEW] .....     | 2610 |
| 325:80-1-1. .... [NEW] .....          | 2604 | 325:80-13-3. .... [NEW] (E) ..... | 1157 |
| 325:80-1-2. .... [NEW] (E) .....      | 1150 | 325:80-13-3. .... [NEW] (E) ..... | 2087 |
| 325:80-1-2. .... [NEW] (E) .....      | 2080 | 325:80-13-3. .... [NEW] .....     | 2610 |
| 325:80-1-2. .... [NEW] .....          | 2604 | 325:80-13-4. .... [NEW] (E) ..... | 1157 |
| 325:80-1-3. .... [NEW] (E) .....      | 1152 | 325:80-13-4. .... [NEW] (E) ..... | 2087 |
| 325:80-1-3. .... [NEW] (E) .....      | 2082 | 325:80-13-4. .... [NEW] .....     | 2610 |
| 325:80-1-3. .... [NEW] .....          | 2605 | 325:80-13-5. .... [NEW] (E) ..... | 1157 |

|                                     |      |                                    |      |
|-------------------------------------|------|------------------------------------|------|
| 325:80-13-5. .... [NEW] (E) .....   | 2087 | 325:85-11-8.1. .... [NEW] .....    | 2620 |
| 325:80-13-5. .... [NEW] .....       | 2610 | 325:85-11-9. .... [NEW] (E) .....  | 1167 |
| 325:80-13-6. .... [NEW] (E) .....   | 1157 | 325:85-11-9. .... [NEW] (E) .....  | 2097 |
| 325:80-13-6. .... [NEW] (E) .....   | 2087 | 325:85-11-9. .... [NEW] .....      | 2621 |
| 325:80-13-6. .... [NEW] .....       | 2610 | 325:85-11-10. .... [NEW] (E) ..... | 1167 |
| 325:80-13-7. .... [NEW] (E) .....   | 1157 | 325:85-11-11. .... [NEW] (E) ..... | 1167 |
| 325:80-13-7. .... [NEW] (E) .....   | 2087 | 325:85-11-12. .... [NEW] (E) ..... | 1167 |
| 325:80-13-7. .... [NEW] .....       | 2611 | 325:85-11-12. .... [NEW] (E) ..... | 2097 |
| 325:80-13-8. .... [NEW] (E) .....   | 1157 | 325:85-11-12. .... [NEW] .....     | 2621 |
| 325:80-13-8. .... [NEW] (E) .....   | 2087 | 325:85-12-1. .... [NEW] (E) .....  | 2097 |
| 325:80-13-8. .... [NEW] .....       | 2611 | 325:85-12-1. .... [NEW] .....      | 2621 |
| 325:80-15-1. .... [NEW] (E) .....   | 1158 | 325:85-12-2. .... [NEW] (E) .....  | 2097 |
| 325:80-15-1. .... [NEW] (E) .....   | 2087 | 325:85-12-2. .... [NEW] .....      | 2621 |
| 325:80-15-1. .... [NEW] .....       | 2611 | 325:85-12-3. .... [NEW] (E) .....  | 2097 |
| 325:80-17-1. .... [NEW] (E) .....   | 1159 | 325:85-12-3. .... [NEW] .....      | 2621 |
| 325:80-17-1. .... [NEW] (E) .....   | 2088 | 325:85-12-4. .... [NEW] (E) .....  | 2098 |
| 325:80-17-1. .... [NEW] .....       | 2612 | 325:85-12-4. .... [NEW] .....      | 2622 |
| 325:80-19-1. .... [NEW] (E) .....   | 1159 | 325:85-12-5. .... [NEW] (E) .....  | 2098 |
| 325:80-19-1. .... [NEW] (E) .....   | 2089 | 325:85-12-5. .... [NEW] .....      | 2622 |
| 325:80-19-1. .... [NEW] .....       | 2612 | 325:85-12-6. .... [NEW] (E) .....  | 2099 |
| 325:80-19-2. .... [NEW] (E) .....   | 1159 | 325:85-12-6. .... [NEW] .....      | 2623 |
| 325:80-19-2. .... [NEW] (E) .....   | 2089 | 325:85-13-1. .... [NEW] (E) .....  | 1168 |
| 325:80-19-2. .... [NEW] .....       | 2612 | 325:85-13-1. .... [NEW] (E) .....  | 2099 |
| 325:80-19-3. .... [NEW] (E) .....   | 1159 | 325:85-13-1. .... [NEW] .....      | 2623 |
| 325:80-19-3. .... [NEW] (E) .....   | 2089 | 325:85-13-2. .... [NEW] (E) .....  | 1168 |
| 325:80-19-3. .... [NEW] .....       | 2613 | 325:85-13-3. .... [NEW] (E) .....  | 1168 |
| 325:80-19-4. .... [NEW] (E) .....   | 1160 | 325:85-13-4. .... [NEW] (E) .....  | 1168 |
| 325:80-19-4. .... [NEW] (E) .....   | 2089 | 325:85-13-4. .... [NEW] (E) .....  | 2099 |
| 325:80-19-4. .... [NEW] .....       | 2613 | 325:85-13-4. .... [NEW] .....      | 2623 |
| 325:80-19-5. .... [NEW] (E) .....   | 1160 | 325:85-13-5. .... [NEW] (E) .....  | 1169 |
| 325:80-19-5. .... [NEW] (E) .....   | 2089 | 325:85-13-5. .... [NEW] (E) .....  | 2099 |
| 325:80-19-5. .... [NEW] .....       | 2613 | 325:85-13-5. .... [NEW] .....      | 2623 |
| 325:85-1-1. .... [NEW] (E) .....    | 1160 | 325:85-13-6. .... [NEW] (E) .....  | 1169 |
| 325:85-1-1. .... [NEW] (E) .....    | 2092 | 325:85-13-6. .... [NEW] (E) .....  | 2099 |
| 325:85-1-1. .... [NEW] .....        | 2616 | 325:85-13-6. .... [NEW] .....      | 2623 |
| 325:85-1-2. .... [NEW] (E) .....    | 1160 | 325:85-13-7. .... [NEW] (E) .....  | 1169 |
| 325:85-1-2. .... [NEW] (E) .....    | 2092 | 325:85-13-7. .... [NEW] (E) .....  | 2099 |
| 325:85-1-2. .... [NEW] .....        | 2616 | 325:85-13-7. .... [NEW] .....      | 2623 |
| 325:85-3-1. .... [NEW] (E) .....    | 1162 | 325:85-13-8. .... [NEW] (E) .....  | 1169 |
| 325:85-3-1. .... [NEW] (E) .....    | 2094 | 325:85-13-8. .... [NEW] (E) .....  | 2100 |
| 325:85-3-1. .... [NEW] .....        | 2618 | 325:85-13-8. .... [NEW] .....      | 2624 |
| 325:85-3-2. .... [NEW] (E) .....    | 2094 | 325:85-13-9. .... [NEW] (E) .....  | 1169 |
| 325:85-3-2. .... [NEW] .....        | 2618 | 325:85-15-0. .... [NEW] (E) .....  | 2100 |
| 325:85-5-1. .... [NEW] (E) .....    | 1162 | 325:85-15-0. .... [NEW] .....      | 2624 |
| 325:85-5-1. .... [NEW] (E) .....    | 2094 | 325:85-15-1. .... [NEW] (E) .....  | 1169 |
| 325:85-5-1. .... [NEW] .....        | 2618 | 325:85-15-1. .... [NEW] (E) .....  | 2100 |
| 325:85-7-1. .... [NEW] (E) .....    | 1163 | 325:85-15-1. .... [NEW] .....      | 2624 |
| 325:85-7-1. .... [NEW] (E) .....    | 2095 | 325:85-15-2. .... [NEW] (E) .....  | 1170 |
| 325:85-7-1. .... [NEW] .....        | 2619 | 325:85-15-3. .... [NEW] (E) .....  | 1170 |
| 325:85-9-1. .... [NEW] (E) .....    | 1163 | 325:85-15-3. .... [NEW] (E) .....  | 2101 |
| 325:85-9-1. .... [NEW] (E) .....    | 2095 | 325:85-15-3. .... [NEW] .....      | 2625 |
| 325:85-9-1. .... [NEW] .....        | 2619 | 325:85-15-4. .... [NEW] (E) .....  | 1170 |
| 325:85-11-1. .... [NEW] (E) .....   | 1163 | 325:85-15-4. .... [NEW] (E) .....  | 2101 |
| 325:85-11-1. .... [NEW] (E) .....   | 2095 | 325:85-15-4. .... [NEW] .....      | 2625 |
| 325:85-11-1. .... [NEW] .....       | 2619 | 325:85-15-5. .... [NEW] (E) .....  | 1171 |
| 325:85-11-1.1. .... [NEW] (E) ..... | 2096 | 325:85-15-6. .... [NEW] (E) .....  | 1171 |
| 325:85-11-1.1. .... [NEW] .....     | 2620 | 325:85-15-7. .... [NEW] (E) .....  | 1171 |
| 325:85-11-2. .... [NEW] (E) .....   | 1164 | 325:85-15-8. .... [NEW] (E) .....  | 1171 |
| 325:85-11-3. .... [NEW] (E) .....   | 1164 | 325:85-15-8. .... [NEW] (E) .....  | 2101 |
| 325:85-11-4. .... [NEW] (E) .....   | 1164 | 325:85-15-8. .... [NEW] .....      | 2625 |
| 325:85-11-5. .... [NEW] (E) .....   | 1164 | 325:85-15-9. .... [NEW] (E) .....  | 1171 |
| 325:85-11-5. .... [NEW] (E) .....   | 2096 | 325:85-15-9. .... [NEW] (E) .....  | 2101 |
| 325:85-11-5. .... [NEW] .....       | 2620 | 325:85-15-9. .... [NEW] .....      | 2625 |
| 325:85-11-6. .... [NEW] (E) .....   | 1165 | 325:85-15-10. .... [NEW] (E) ..... | 1171 |
| 325:85-11-7. .... [NEW] (E) .....   | 1166 | 325:85-15-10. .... [NEW] (E) ..... | 2101 |
| 325:85-11-8. .... [NEW] (E) .....   | 1167 | 325:85-15-10. .... [NEW] .....     | 2625 |
| 325:85-11-8.1. .... [NEW] (E) ..... | 2096 | 325:85-15-11. .... [NEW] (E) ..... | 1171 |



|               |           |      |               |           |      |
|---------------|-----------|------|---------------|-----------|------|
| 325:85-17-1.  | [NEW] (E) | 1178 | 325:85-21-12. | [NEW]     | 2635 |
| 325:85-17-2.  | [NEW] (E) | 1178 | 325:85-21-13. | [NEW] (E) | 1186 |
| 325:85-17-3.  | [NEW] (E) | 1178 | 325:85-21-13. | [NEW] (E) | 2111 |
| 325:85-17-4.  | [NEW] (E) | 1179 | 325:85-21-13. | [NEW]     | 2635 |
| 325:85-17-5.  | [NEW] (E) | 1179 | 325:85-21-14. | [NEW] (E) | 1186 |
| 325:85-17-6.  | [NEW] (E) | 1179 | 325:85-21-15. | [NEW] (E) | 1186 |
| 325:85-17-7.  | [NEW] (E) | 1180 | 325:85-21-16. | [NEW] (E) | 1186 |
| 325:85-17-8.  | [NEW] (E) | 1180 | 325:85-21-17. | [NEW] (E) | 1186 |
| 325:85-17-9.  | [NEW] (E) | 1180 | 325:85-21-17. | [NEW] (E) | 2111 |
| 325:85-17-10. | [NEW] (E) | 1180 | 325:85-21-17. | [NEW]     | 2635 |
| 325:85-17-11. | [NEW] (E) | 1180 | 325:85-21-18. | [NEW] (E) | 1186 |
| 325:85-17-12. | [NEW] (E) | 1180 | 325:85-21-18. | [NEW] (E) | 2112 |
| 325:85-19-1.  | [NEW] (E) | 1181 | 325:85-21-18. | [NEW]     | 2636 |
| 325:85-19-2.  | [NEW] (E) | 1181 | 325:85-21-19. | [NEW] (E) | 1187 |
| 325:85-19-3.  | [NEW] (E) | 1181 | 325:85-21-19. | [NEW] (E) | 2112 |
| 325:85-19-4.  | [NEW] (E) | 1182 | 325:85-21-19. | [NEW]     | 2636 |
| 325:85-20-1.  | [NEW] (E) | 2109 | 325:85-21-20. | [NEW] (E) | 1187 |
| 325:85-20-1.  | [NEW]     | 2633 | 325:85-21-21. | [NEW] (E) | 1187 |
| 325:85-20-2.  | [NEW] (E) | 2109 | 325:85-21-21. | [NEW] (E) | 2112 |
| 325:85-20-2.  | [NEW]     | 2633 | 325:85-21-21. | [NEW]     | 2636 |
| 325:85-20-3.  | [NEW] (E) | 2109 | 325:85-21-22. | [NEW] (E) | 1187 |
| 325:85-20-3.  | [NEW]     | 2633 | 325:85-21-22. | [NEW] (E) | 2112 |
| 325:85-20-4.  | [NEW] (E) | 2109 | 325:85-21-22. | [NEW]     | 2636 |
| 325:85-20-4.  | [NEW]     | 2633 | 325:85-21-23. | [NEW] (E) | 1187 |
| 325:85-20-5.  | [NEW] (E) | 2109 | 325:85-21-23. | [NEW] (E) | 2112 |
| 325:85-20-5.  | [NEW]     | 2633 | 325:85-21-23. | [NEW]     | 2636 |
| 325:85-20-6.  | [NEW] (E) | 2110 | 325:85-21-24. | [NEW] (E) | 1187 |
| 325:85-20-6.  | [NEW]     | 2634 | 325:85-21-24. | [NEW] (E) | 2112 |
| 325:85-20-7.  | [NEW] (E) | 2110 | 325:85-21-24. | [NEW]     | 2636 |
| 325:85-20-7.  | [NEW]     | 2634 | 325:85-21-25. | [NEW] (E) | 1187 |
| 325:85-20-8.  | [NEW] (E) | 2110 | 325:85-21-25. | [NEW] (E) | 2112 |
| 325:85-20-8.  | [NEW]     | 2634 | 325:85-21-25. | [NEW]     | 2636 |
| 325:85-20-9.  | [NEW] (E) | 2110 | 325:85-21-26. | [NEW] (E) | 2112 |
| 325:85-20-9.  | [NEW]     | 2634 | 325:85-21-26. | [NEW]     | 2636 |
| 325:85-20-10. | [NEW] (E) | 2110 | 325:85-21-27. | [NEW] (E) | 2112 |
| 325:85-20-10. | [NEW]     | 2634 | 325:85-21-27. | [NEW]     | 2636 |
| 325:85-20-11. | [NEW] (E) | 2110 | 325:85-21-28. | [NEW] (E) | 2113 |
| 325:85-20-11. | [NEW]     | 2634 | 325:85-21-28. | [NEW]     | 2637 |
| 325:85-20-12. | [NEW] (E) | 2110 | 325:85-21-29. | [NEW] (E) | 2113 |
| 325:85-20-12. | [NEW]     | 2634 | 325:85-21-29. | [NEW]     | 2637 |
| 325:85-20-13. | [NEW] (E) | 2110 | 325:85-21-30. | [NEW] (E) | 2113 |
| 325:85-20-13. | [NEW]     | 2634 | 325:85-21-30. | [NEW]     | 2637 |
| 325:85-21-1.  | [NEW] (E) | 1182 | 325:85-21-31. | [NEW] (E) | 2113 |
| 325:85-21-2.  | [NEW] (E) | 1182 | 325:85-21-31. | [NEW]     | 2637 |
| 325:85-21-2.  | [NEW] (E) | 2111 | 325:85-21-32. | [NEW] (E) | 2113 |
| 325:85-21-2.  | [NEW]     | 2635 | 325:85-21-32. | [NEW]     | 2637 |
| 325:85-21-3.  | [NEW] (E) | 1183 | 325:85-23-1.  | [NEW] (E) | 1187 |
| 325:85-21-4.  | [NEW] (E) | 1183 | 325:85-23-2.  | [NEW] (E) | 1188 |
| 325:85-21-5.  | [NEW] (E) | 1183 | 325:85-23-3.  | [NEW] (E) | 1188 |
| 325:85-21-6.  | [NEW] (E) | 1184 | 325:85-23-4.  | [NEW] (E) | 1188 |
| 325:85-21-6.  | [NEW] (E) | 2111 | 325:85-23-5.  | [NEW] (E) | 1188 |
| 325:85-21-6.  | [NEW]     | 2635 | 325:85-23-6.  | [NEW] (E) | 1188 |
| 325:85-21-7.  | [NEW] (E) | 1184 | 325:85-23-7.  | [NEW] (E) | 1188 |
| 325:85-21-8.  | [NEW] (E) | 1185 | 325:85-25-1.  | [NEW] (E) | 1188 |
| 325:85-21-8.  | [NEW] (E) | 2111 | 325:85-25-1.  | [NEW] (E) | 2113 |
| 325:85-21-8.  | [NEW]     | 2635 | 325:85-25-1.  | [NEW]     | 2637 |
| 325:85-21-9.  | [NEW] (E) | 1185 | 325:85-25-2.  | [NEW] (E) | 1189 |
| 325:85-21-9.  | [NEW] (E) | 2111 | 325:85-25-2.  | [NEW] (E) | 2113 |
| 325:85-21-9.  | [NEW]     | 2635 | 325:85-25-2.  | [NEW]     | 2637 |
| 325:85-21-10. | [NEW] (E) | 1185 | 325:85-25-3.  | [NEW] (E) | 1189 |
| 325:85-21-10. | [NEW] (E) | 2111 | 325:85-25-3.  | [NEW] (E) | 2114 |
| 325:85-21-10. | [NEW]     | 2635 | 325:85-25-3.  | [NEW]     | 2638 |
| 325:85-21-11. | [NEW] (E) | 1185 | 325:85-25-4.  | [NEW] (E) | 1189 |
| 325:85-21-11. | [NEW] (E) | 2111 | 325:85-25-4.  | [NEW] (E) | 2114 |
| 325:85-21-11. | [NEW]     | 2635 | 325:85-25-4.  | [NEW]     | 2638 |
| 325:85-21-12. | [NEW] (E) | 1186 | 325:85-25-5.  | [NEW] (E) | 1190 |
| 325:85-21-12. | [NEW] (E) | 2111 | 325:85-25-5.  | [NEW] (E) | 2114 |

**Rules Affected Index – *continued***

|                     |                 |      |                     |                  |      |
|---------------------|-----------------|------|---------------------|------------------|------|
| 325:85-25-5. ....   | [NEW] .....     | 2638 | 330:36-4-1.1. ....  | [NEW] .....      | 2970 |
| 325:85-25-6. ....   | [NEW] (E) ..... | 1190 | 330:36-4-2. ....    | [AMENDED] .....  | 2970 |
| 325:85-25-6. ....   | [NEW] (E) ..... | 2115 | 330:36-4-2.1. ....  | [AMENDED] .....  | 2974 |
| 325:85-25-6. ....   | [NEW] .....     | 2639 | 330:36-4-3. ....    | [AMENDED] .....  | 2975 |
| 325:85-25-7. ....   | [NEW] (E) ..... | 1190 | 330:36-6-1. ....    | [AMENDED] .....  | 2976 |
| 325:85-25-7. ....   | [NEW] (E) ..... | 2115 | 330:36-6-3. ....    | [AMENDED] .....  | 2977 |
| 325:85-25-7. ....   | [NEW] .....     | 2639 | 330:36-6-5. ....    | [AMENDED] .....  | 2978 |
| 325:85-27-1. ....   | [NEW] (E) ..... | 1191 | 330:36-6-7. ....    | [AMENDED] .....  | 2978 |
| 325:85-27-1. ....   | [NEW] (E) ..... | 2115 | 330:36-8-1. ....    | [NEW] .....      | 2981 |
| 325:85-27-1. ....   | [NEW] .....     | 2639 | 330:36-8-2. ....    | [RESERVED] ..... | 2981 |
| 325:90-1-1. ....    | [NEW] (E) ..... | 1192 | 330:36-8-3. ....    | [NEW] .....      | 2981 |
| 325:90-1-1. ....    | [NEW] (E) ..... | 2117 | 330:36-8-4. ....    | [RESERVED] ..... | 2981 |
| 325:90-1-1. ....    | [NEW] .....     | 2640 | 330:36-8-5. ....    | [NEW] .....      | 2981 |
| 325:90-1-2. ....    | [NEW] (E) ..... | 1192 | 330:36-8-6. ....    | [RESERVED] ..... | 2981 |
| 325:90-1-2. ....    | [NEW] (E) ..... | 2117 | 330:36-8-7. ....    | [NEW] .....      | 2981 |
| 325:90-1-2. ....    | [NEW] .....     | 2641 | 330:36-8-8. ....    | [RESERVED] ..... | 2982 |
| 325:90-3-1. ....    | [NEW] (E) ..... | 1192 | 330:36-8-9. ....    | [NEW] .....      | 2982 |
| 325:90-3-1. ....    | [NEW] (E) ..... | 2117 | 330:36-8-10. ....   | [RESERVED] ..... | 2982 |
| 325:90-3-1. ....    | [NEW] .....     | 2641 | 330:36-8-11. ....   | [NEW] .....      | 2982 |
| 325:90-3-2. ....    | [NEW] (E) ..... | 1193 | 340:2-1-40. ....    | [AMENDED] .....  | 2645 |
| 325:90-3-2. ....    | [NEW] (E) ..... | 2118 | 340:2-1-41. ....    | [AMENDED] .....  | 2645 |
| 325:90-3-2. ....    | [NEW] .....     | 2642 | 340:2-1-42. ....    | [AMENDED] .....  | 2645 |
| 325:90-3-3. ....    | [NEW] (E) ..... | 1193 | 340:2-1-43. ....    | [AMENDED] .....  | 2646 |
| 325:90-3-3. ....    | [NEW] (E) ..... | 2118 | 340:2-1-44. ....    | [AMENDED] .....  | 2647 |
| 325:90-3-3. ....    | [NEW] .....     | 2642 | 340:2-3-2. ....     | [AMENDED] .....  | 1776 |
| 325:90-3-4. ....    | [NEW] (E) ..... | 1193 | 340:2-3-32. ....    | [AMENDED] .....  | 1780 |
| 325:90-3-4. ....    | [NEW] (E) ..... | 2118 | 340:2-3-33. ....    | [AMENDED] .....  | 1782 |
| 325:90-3-4. ....    | [NEW] .....     | 2642 | 340:2-3-35. ....    | [AMENDED] .....  | 1784 |
| 325:90-3-5. ....    | [NEW] (E) ..... | 1193 | 340:2-3-36. ....    | [AMENDED] .....  | 1785 |
| 325:90-3-5. ....    | [NEW] (E) ..... | 2118 | 340:2-3-37. ....    | [AMENDED] .....  | 1789 |
| 325:90-3-5. ....    | [NEW] .....     | 2642 | 340:2-3-38. ....    | [AMENDED] .....  | 1790 |
| 325:90-3-6. ....    | [NEW] (E) ..... | 2118 | 340:2-3-45. ....    | [AMENDED] .....  | 1793 |
| 325:90-3-6. ....    | [NEW] .....     | 2642 | 340:2-3-46. ....    | [AMENDED] .....  | 1800 |
| 325:90-5-1. ....    | [NEW] (E) ..... | 1194 | 340:2-3-50. ....    | [AMENDED] .....  | 1800 |
| 325:90-5-1. ....    | [NEW] (E) ..... | 2118 | 340:2-3-51. ....    | [AMENDED] .....  | 1801 |
| 325:90-5-1. ....    | [NEW] .....     | 2642 | 340:2-3-52. ....    | [AMENDED] .....  | 1802 |
| 325:90-5-2. ....    | [NEW] (E) ..... | 1194 | 340:2-3-53. ....    | [AMENDED] .....  | 1803 |
| 325:90-5-2. ....    | [NEW] (E) ..... | 2119 | 340:2-3-64. ....    | [AMENDED] .....  | 1804 |
| 325:90-5-2. ....    | [NEW] .....     | 2643 | 340:2-3-71. ....    | [AMENDED] .....  | 1805 |
| 325:90-5-3. ....    | [NEW] (E) ..... | 1194 | 340:2-11-79. ....   | [AMENDED] .....  | 1808 |
| 325:90-5-3. ....    | [NEW] (E) ..... | 2119 | 340:2-11-79.1. .... | [NEW] .....      | 1809 |
| 325:90-5-3. ....    | [NEW] .....     | 2643 | 340:2-11-80. ....   | [REVOKED] .....  | 1809 |
| 325:90-5-4. ....    | [NEW] (E) ..... | 1195 | 340:2-11-81. ....   | [REVOKED] .....  | 1809 |
| 325:90-5-4. ....    | [NEW] (E) ..... | 2120 | 340:2-11-82. ....   | [REVOKED] .....  | 1809 |
| 325:90-5-4. ....    | [NEW] .....     | 2644 | 340:2-11-83. ....   | [REVOKED] .....  | 1810 |
| 325:90-5-5. ....    | [NEW] (E) ..... | 1195 | 340:2-11-84. ....   | [REVOKED] .....  | 1811 |
| 325:90-5-5. ....    | [NEW] (E) ..... | 2120 | 340:2-11-85. ....   | [AMENDED] .....  | 1811 |
| 325:90-5-5. ....    | [NEW] .....     | 2644 | 340:2-11-86. ....   | [AMENDED] .....  | 1814 |
| 325:90-7-1. ....    | [NEW] (E) ..... | 1195 | 340:2-11-87. ....   | [AMENDED] .....  | 1816 |
| 325:90-7-1. ....    | [NEW] (E) ..... | 2120 | 340:2-11-88. ....   | [REVOKED] .....  | 1817 |
| 325:90-7-1. ....    | [NEW] .....     | 2644 | 340:2-11-89. ....   | [REVOKED] .....  | 1818 |
| 330:36-1-2.1. ....  | [AMENDED] ..... | 2960 | 340:2-11-90. ....   | [REVOKED] .....  | 1819 |
| 330:36-1-3.2. ....  | [AMENDED] ..... | 2960 | 340:2-11-91. ....   | [AMENDED] .....  | 1820 |
| 330:36-1-4. ....    | [AMENDED] ..... | 2960 | 340:2-11-92. ....   | [AMENDED] .....  | 1823 |
| 330:36-1-9. ....    | [AMENDED] ..... | 2967 | 340:2-11-93. ....   | [REVOKED] .....  | 1826 |
| 330:36-2-1. ....    | [AMENDED] ..... | 2967 | 340:2-11-94. ....   | [REVOKED] .....  | 1826 |
| 330:36-2-2. ....    | [AMENDED] ..... | 2967 | 340:2-11-95. ....   | [REVOKED] .....  | 1826 |
| 330:36-2-3. ....    | [AMENDED] ..... | 2967 | 340:2-11-96. ....   | [REVOKED] .....  | 1827 |
| 330:36-2-5. ....    | [AMENDED] ..... | 2968 | 340:2-11-97. ....   | [AMENDED] .....  | 1827 |
| 330:36-2-7. ....    | [AMENDED] ..... | 2968 | 340:2-11-98. ....   | [AMENDED] .....  | 1828 |
| 330:36-2-9. ....    | [AMENDED] ..... | 2968 | 340:2-11-99. ....   | [REVOKED] .....  | 1828 |
| 330:36-2-11. ....   | [AMENDED] ..... | 2968 | 340:2-11-100. ....  | [AMENDED] .....  | 1828 |
| 330:36-2-12. ....   | [AMENDED] ..... | 2968 | 340:2-11-115. ....  | [AMENDED] .....  | 1828 |
| 330:36-2-13. ....   | [AMENDED] ..... | 2969 | 340:2-11-116. ....  | [AMENDED] .....  | 1828 |
| 330:36-2-13.1. .... | [NEW] .....     | 2969 | 340:2-11-117. ....  | [AMENDED] .....  | 1829 |
| 330:36-2-17. ....   | [NEW] .....     | 2969 | 340:2-11-118. ....  | [REVOKED] .....  | 1830 |
| 330:36-4-1. ....    | [AMENDED] ..... | 2970 | 340:2-11-119. ....  | [AMENDED] .....  | 1830 |

|                          |               |      |                         |               |      |
|--------------------------|---------------|------|-------------------------|---------------|------|
| 340:2-11-119.1 . . . . . | [NEW]         | 1832 | 340:25-1-5.1 . . . . .  | [AMENDED]     | 1846 |
| 340:2-11-120. . . . .    | [REVOKED]     | 1833 | 340:25-3-1. . . . .     | [AMENDED]     | 1847 |
| 340:2-11-121. . . . .    | [AMENDED]     | 1833 | 340:25-3-1.1. . . . .   | [AMENDED]     | 1847 |
| 340:2-11-122. . . . .    | [REVOKED]     | 1834 | 340:25-3-3. . . . .     | [AMENDED]     | 1848 |
| 340:2-11-123. . . . .    | [REVOKED]     | 1834 | 340:25-5-55. . . . .    | [AMENDED]     | 1848 |
| 340:2-11-124. . . . .    | [REVOKED]     | 1834 | 340:25-5-66. . . . .    | [AMENDED]     | 1848 |
| 340:2-15-1. . . . .      | [AMENDED]     | 2648 | 340:25-5-67. . . . .    | [AMENDED]     | 1848 |
| 340:2-15-2. . . . .      | [AMENDED]     | 2648 | 340:25-5-67.1. . . . .  | [AMENDED]     | 1849 |
| 340:2-15-3. . . . .      | [REVOKED]     | 2650 | 340:25-5-75. . . . .    | [AMENDED]     | 1850 |
| 340:2-15-4. . . . .      | [AMENDED]     | 2650 | 340:25-5-95. . . . .    | [AMENDED]     | 1850 |
| 340:2-15-5. . . . .      | [AMENDED]     | 2652 | 340:25-5-110. . . . .   | [AMENDED]     | 1850 |
| 340:2-15-6. . . . .      | [REVOKED]     | 2652 | 340:25-5-110.1. . . . . | [AMENDED]     | 1850 |
| 340:2-15-7. . . . .      | [NEW]         | 2653 | 340:25-5-114. . . . .   | [AMENDED]     | 1851 |
| 340:2-15-25. . . . .     | [AMENDED]     | 2653 | 340:25-5-117. . . . .   | [AMENDED]     | 1851 |
| 340:2-15-26. . . . .     | [REVOKED]     | 2653 | 340:25-5-123. . . . .   | [AMENDED]     | 1852 |
| 340:2-15-27. . . . .     | [AMENDED]     | 2653 | 340:25-5-124. . . . .   | [AMENDED]     | 1852 |
| 340:2-15-27.1. . . . .   | [NEW]         | 2654 | 340:25-5-124.2. . . . . | [AMENDED]     | 1853 |
| 340:2-15-28. . . . .     | [AMENDED]     | 2654 | 340:25-5-133. . . . .   | [AMENDED]     | 1854 |
| 340:2-15-29. . . . .     | [REVOKED]     | 2655 | 340:25-5-140. . . . .   | [AMENDED]     | 1854 |
| 340:2-15-30. . . . .     | [REVOKED]     | 2656 | 340:25-5-140.1. . . . . | [AMENDED]     | 1855 |
| 340:2-15-31. . . . .     | [REVOKED]     | 2656 | 340:25-5-155. . . . .   | [AMENDED]     | 1855 |
| 340:2-15-32. . . . .     | [REVOKED]     | 2656 | 340:25-5-168. . . . .   | [AMENDED]     | 1856 |
| 340:2-15-33. . . . .     | [REVOKED]     | 2657 | 340:25-5-170. . . . .   | [AMENDED]     | 1856 |
| 340:2-21-12. . . . .     | [AMENDED]     | 1835 | 340:25-5-171. . . . .   | [AMENDED]     | 1856 |
| 340:2-21-13. . . . .     | [AMENDED]     | 1835 | 340:25-5-176. . . . .   | [AMENDED]     | 1856 |
| 340:2-21-14. . . . .     | [REVOKED]     | 1836 | 340:25-5-178. . . . .   | [AMENDED]     | 1857 |
| 340:2-21-15. . . . .     | [AMENDED]     | 1836 | 340:25-5-179. . . . .   | [AMENDED]     | 1858 |
| 340:2-21-16. . . . .     | [AMENDED]     | 1836 | 340:25-5-179.1. . . . . | [AMENDED]     | 1858 |
| 340:2-21-20. . . . .     | [AMENDED]     | 1837 | 340:25-5-198. . . . .   | [AMENDED]     | 1858 |
| 340:2-21-21. . . . .     | [REVOKED]     | 1837 | 340:25-5-198.1. . . . . | [AMENDED]     | 1859 |
| 340:2-21-22. . . . .     | [REVOKED]     | 1837 | 340:25-5-198.2. . . . . | [AMENDED]     | 1860 |
| 340:2-21-23. . . . .     | [REVOKED]     | 1838 | 340:25-5-200. . . . .   | [AMENDED] (E) | 627  |
| 340:2-21-24. . . . .     | [REVOKED]     | 1839 | 340:25-5-200. . . . .   | [AMENDED]     | 1860 |
| 340:2-21-25. . . . .     | [REVOKED]     | 1839 | 340:25-5-200.1. . . . . | [AMENDED]     | 1861 |
| 340:2-21-26. . . . .     | [REVOKED]     | 1839 | 340:25-5-200.2. . . . . | [AMENDED]     | 1861 |
| 340:2-21-27. . . . .     | [REVOKED]     | 1839 | 340:25-5-201.1. . . . . | [AMENDED]     | 1862 |
| 340:2-21-28. . . . .     | [REVOKED]     | 1839 | 340:25-5-203. . . . .   | [AMENDED]     | 1862 |
| 340:2-21-29. . . . .     | [REVOKED]     | 1840 | 340:25-5-203.1. . . . . | [NEW] (E)     | 628  |
| 340:2-21-30. . . . .     | [REVOKED]     | 1840 | 340:25-5-203.1. . . . . | [NEW]         | 1862 |
| 340:2-21-31. . . . .     | [REVOKED]     | 1840 | 340:25-5-211.1. . . . . | [AMENDED]     | 1862 |
| 340:2-21-32. . . . .     | [REVOKED]     | 1840 | 340:25-5-212. . . . .   | [AMENDED]     | 1862 |
| 340:2-21-33. . . . .     | [REVOKED]     | 1840 | 340:25-5-213. . . . .   | [AMENDED]     | 1863 |
| 340:2-21-34. . . . .     | [REVOKED]     | 1840 | 340:25-5-214. . . . .   | [AMENDED]     | 1864 |
| 340:2-21-35. . . . .     | [REVOKED]     | 1841 | 340:25-5-215. . . . .   | [AMENDED]     | 1864 |
| 340:2-35-4. . . . .      | [AMENDED]     | 2661 | 340:25-5-215.1. . . . . | [AMENDED]     | 1864 |
| 340:2, App. L. . . . .   | [REVOKED]     | 2659 | 340:25-5-225. . . . .   | [AMENDED]     | 1864 |
| 340:2, App. M. . . . .   | [REVOKED]     | 2660 | 340:25-5-235. . . . .   | [AMENDED]     | 1865 |
| 340:5-5-3. . . . .       | [AMENDED]     | 2662 | 340:25-5-244. . . . .   | [AMENDED]     | 1865 |
| 340:10-2-2. . . . .      | [AMENDED]     | 981  | 340:25-5-265. . . . .   | [AMENDED]     | 1865 |
| 340:10-2-7. . . . .      | [AMENDED]     | 982  | 340:25-5-265.1. . . . . | [AMENDED]     | 1866 |
| 340:10-2-8. . . . .      | [AMENDED] (E) | 626  | 340:25-5-270. . . . .   | [AMENDED]     | 1866 |
| 340:10-2-8. . . . .      | [AMENDED]     | 984  | 340:25-5-285. . . . .   | [NEW]         | 1867 |
| 340:10-3-5. . . . .      | [AMENDED]     | 985  | 340:25-5-305. . . . .   | [AMENDED]     | 1867 |
| 340:10-3-32. . . . .     | [AMENDED]     | 988  | 340:25-5-312. . . . .   | [AMENDED] (E) | 629  |
| 340:10-3-40. . . . .     | [AMENDED]     | 989  | 340:25-5-312. . . . .   | [AMENDED]     | 1868 |
| 340:10-3-56. . . . .     | [AMENDED]     | 990  | 340:25-5-328. . . . .   | [AMENDED]     | 1868 |
| 340:10-3-57. . . . .     | [AMENDED]     | 992  | 340:25-5-339. . . . .   | [NEW]         | 1868 |
| 340:10-10-3. . . . .     | [AMENDED]     | 994  | 340:25-5-340.1. . . . . | [AMENDED]     | 1869 |
| 340:15-1-4. . . . .      | [AMENDED]     | 1841 | 340:25-5-345.1. . . . . | [AMENDED]     | 1869 |
| 340:20, App. B. . . . .  | [REVOKED]     | 997  | 340:25-5-350.2. . . . . | [AMENDED]     | 1869 |
| 340:20, App. C. . . . .  | [REVOKED]     | 999  | 340:25-5-350.3. . . . . | [AMENDED]     | 1869 |
| 340:20, App. F. . . . .  | [REVOKED]     | 1002 | 340:25-5-351. . . . .   | [AMENDED]     | 1870 |
| 340:25-1-1. . . . .      | [AMENDED]     | 1843 | 340:40-3-1. . . . .     | [AMENDED]     | 1873 |
| 340:25-1-1.1. . . . .    | [AMENDED]     | 1843 | 340:40-5-1. . . . .     | [AMENDED] (E) | 35   |
| 340:25-1-1.2. . . . .    | [AMENDED]     | 1845 | 340:40-5-1. . . . .     | [AMENDED]     | 1874 |
| 340:25-1-2. . . . .      | [AMENDED]     | 1846 | 340:40-7-3. . . . .     | [AMENDED]     | 1878 |
| 340:25-1-2.1. . . . .    | [AMENDED]     | 1846 | 340:40-7-3.1. . . . .   | [NEW]         | 1878 |

## Rules Affected Index – *continued*

|                                    |      |                                       |      |
|------------------------------------|------|---------------------------------------|------|
| 340:40-7-4. .... [AMENDED] .....   | 1879 | 340:75-1-4. .... [REVOKED] .....      | 1024 |
| 340:40-7-6. .... [AMENDED] .....   | 1879 | 340:75-1-5. .... [REVOKED] .....      | 1024 |
| 340:40-7-7. .... [AMENDED] .....   | 1880 | 340:75-1-10. .... [REVOKED] .....     | 1024 |
| 340:40-7-8. .... [AMENDED] .....   | 1882 | 340:75-1-12.2. .... [AMENDED] .....   | 1024 |
| 340:40-7-9. .... [AMENDED] .....   | 1885 | 340:75-1-15. .... [REVOKED] .....     | 1024 |
| 340:40-7-11. .... [AMENDED] .....  | 1888 | 340:75-1-26. .... [AMENDED] .....     | 1024 |
| 340:40-9-1. .... [AMENDED] .....   | 1890 | 340:75-1-29. .... [NEW] .....         | 1024 |
| 340:40-9-2. .... [AMENDED] .....   | 1891 | 340:75-1-30. .... [NEW] .....         | 1024 |
| 340:40-13-3. .... [AMENDED] .....  | 1892 | 340:75-1-31. .... [NEW] .....         | 1024 |
| 340:40-13-5. .... [AMENDED] .....  | 1892 | 340:75-1-110. .... [REVOKED] .....    | 1024 |
| 340:45-1-1. .... [REVOKED] .....   | 1003 | 340:75-1-111. .... [REVOKED] .....    | 1024 |
| 340:45-1-2. .... [REVOKED] .....   | 1003 | 340:75-1-112. .... [REVOKED] .....    | 1024 |
| 340:45-1-3. .... [REVOKED] .....   | 1003 | 340:75-1-113. .... [AMENDED] .....    | 1024 |
| 340:45-1-4. .... [REVOKED] .....   | 1004 | 340:75-1-114. .... [AMENDED] .....    | 1024 |
| 340:45-1-5. .... [REVOKED] .....   | 1004 | 340:75-1-115. .... [AMENDED] .....    | 1024 |
| 340:45-1-6. .... [REVOKED] .....   | 1005 | 340:75-1-116. .... [AMENDED] .....    | 1024 |
| 340:45-1-7. .... [REVOKED] .....   | 1005 | 340:75-1-117. .... [AMENDED] .....    | 1024 |
| 340:45-1-8. .... [REVOKED] .....   | 1005 | 340:75-1-118. .... [AMENDED] .....    | 1024 |
| 340:45-3-1. .... [REVOKED] .....   | 1005 | 340:75-1-119. .... [AMENDED] .....    | 1024 |
| 340:45-3-2. .... [REVOKED] .....   | 1006 | 340:75-1-120. .... [AMENDED] .....    | 1024 |
| 340:45-3-3. .... [REVOKED] .....   | 1007 | 340:75-1-150. .... [AMENDED] .....    | 1024 |
| 340:45-3-4. .... [REVOKED] .....   | 1009 | 340:75-1-151. .... [AMENDED] .....    | 1024 |
| 340:45-3-5. .... [REVOKED] .....   | 1010 | 340:75-1-151.2. .... [AMENDED] .....  | 1024 |
| 340:45-3-6. .... [REVOKED] .....   | 1010 | 340:75-1-152. .... [AMENDED] .....    | 1024 |
| 340:45-3-7. .... [REVOKED] .....   | 1010 | 340:75-1-152.3. .... [AMENDED] .....  | 1024 |
| 340:45-3-8. .... [REVOKED] .....   | 1010 | 340:75-1-152.4. .... [AMENDED] .....  | 1024 |
| 340:50-5-45. .... [AMENDED] .....  | 1011 | 340:75-1-152.5. .... [AMENDED] .....  | 1024 |
| 340:50-5-64. .... [AMENDED] .....  | 1012 | 340:75-1-152.6. .... [AMENDED] .....  | 1024 |
| 340:50-7-2. .... [AMENDED] .....   | 1013 | 340:75-1-152.7. .... [AMENDED] .....  | 1024 |
| 340:50-7-22. .... [AMENDED] .....  | 1016 | 340:75-1-152.8. .... [AMENDED] .....  | 1024 |
| 340:50-7-30. .... [AMENDED] .....  | 1897 | 340:75-1-152.9. .... [AMENDED] .....  | 1024 |
| 340:50-7-31. .... [AMENDED] .....  | 2665 | 340:75-1-154. .... [AMENDED] .....    | 1024 |
| 340:50-7-49. .... [REVOKED] .....  | 2667 | 340:75-1-155. .... [AMENDED] .....    | 1024 |
| 340:50-7-50. .... [REVOKED] .....  | 2668 | 340:75-1-175. .... [REVOKED] .....    | 1024 |
| 340:50-7-51. .... [REVOKED] .....  | 2668 | 340:75-1-176. .... [REVOKED] .....    | 1024 |
| 340:50-7-52. .... [REVOKED] .....  | 2668 | 340:75-1-179. .... [REVOKED] .....    | 1024 |
| 340:50-7-53. .... [REVOKED] .....  | 2668 | 340:75-1-231. .... [AMENDED] .....    | 1024 |
| 340:50-9-1. .... [AMENDED] .....   | 1899 | 340:75-3-1. .... [AMENDED] .....      | 1024 |
| 340:50-9-5. .... [AMENDED] .....   | 1902 | 340:75-3-2. .... [AMENDED] .....      | 1024 |
| 340:50-11-20. .... [AMENDED] ..... | 1904 | 340:75-3-6. .... [AMENDED] .....      | 1024 |
| 340:50-11-22. .... [AMENDED] ..... | 1904 | 340:75-3-7. .... [AMENDED] .....      | 1024 |
| 340:50-11-23. .... [AMENDED] ..... | 1905 | 340:75-3-7.1. .... [AMENDED] .....    | 1024 |
| 340:50-11-25. .... [AMENDED] ..... | 1905 | 340:75-3-8.1. .... [AMENDED] .....    | 1024 |
| 340:50-11-26. .... [REVOKED] ..... | 1905 | 340:75-3-8.2. .... [AMENDED] .....    | 1024 |
| 340:50-11-27. .... [AMENDED] ..... | 1906 | 340:75-3-8.3. .... [AMENDED] .....    | 1024 |
| 340:55-1-1. .... [REVOKED] .....   | 1019 | 340:75-3-9.1. .... [AMENDED] .....    | 1024 |
| 340:55-1-2. .... [REVOKED] .....   | 1019 | 340:75-3-10.2. .... [AMENDED] .....   | 1024 |
| 340:55-1-3. .... [REVOKED] .....   | 1019 | 340:75-3-10.3. .... [AMENDED] .....   | 1024 |
| 340:55-1-4. .... [REVOKED] .....   | 1020 | 340:75-3-13. .... [AMENDED] .....     | 1024 |
| 340:55-1-5. .... [REVOKED] .....   | 1020 | 340:75-4-9. .... [AMENDED] .....      | 1024 |
| 340:55-1-6. .... [REVOKED] .....   | 1021 | 340:75-4-11. .... [REVOKED] .....     | 1024 |
| 340:55-1-7. .... [REVOKED] .....   | 1021 | 340:75-4-12.1. .... [AMENDED] .....   | 1024 |
| 340:55-1-8. .... [REVOKED] .....   | 1021 | 340:75-4-12.2. .... [AMENDED] .....   | 1024 |
| 340:55-1-9. .... [REVOKED] .....   | 1022 | 340:75-4-13. .... [AMENDED] .....     | 1024 |
| 340:60-1-1. .... [AMENDED] .....   | 1022 | 340:75-6-40.5. .... [AMENDED] .....   | 1024 |
| 340:60-1-2. .... [AMENDED] .....   | 1022 | 340:75-6-47. .... [AMENDED] .....     | 1024 |
| 340:60-1-3. .... [AMENDED] .....   | 1022 | 340:75-6-48. .... [AMENDED] .....     | 1024 |
| 340:60-1-4. .... [REVOKED] .....   | 1023 | 340:75-6-48.3. .... [NEW] .....       | 1024 |
| 340:60-1-5. .... [AMENDED] .....   | 1023 | 340:75-6-85. .... [AMENDED] .....     | 1024 |
| 340:60-1-6. .... [AMENDED] .....   | 1023 | 340:75-6-90. .... [REVOKED] .....     | 1024 |
| 340:60-1-7. .... [REVOKED] .....   | 1024 | 340:75-6-115.3. .... [AMENDED] .....  | 1024 |
| 340:65-3-1. .... [AMENDED] .....   | 1907 | 340:75-6-115.4. .... [AMENDED] .....  | 1024 |
| 340:65-3-2. .... [AMENDED] .....   | 1909 | 340:75-6-115.10. .... [AMENDED] ..... | 1024 |
| 340:65-5-1. .... [AMENDED] .....   | 1909 | 340:75-7-14. .... [AMENDED] .....     | 1024 |
| 340:75-1-1. .... [REVOKED] .....   | 1024 | 340:75-7-18. .... [AMENDED] .....     | 1024 |
| 340:75-1-2. .... [AMENDED] .....   | 1024 | 340:75-7-24. .... [AMENDED] .....     | 1024 |
| 340:75-1-3. .... [REVOKED] .....   | 1024 | 340:75-7-52. .... [AMENDED] .....     | 1024 |

|                          |               |      |                            |               |      |
|--------------------------|---------------|------|----------------------------|---------------|------|
| 340:75-7-65. . . . .     | [AMENDED]     | 1024 | 340:105-10-21. . . . .     | [AMENDED]     | 1072 |
| 340:75-8-1. . . . .      | [AMENDED]     | 1024 | 340:105-10-24. . . . .     | [AMENDED]     | 1073 |
| 340:75-13-7. . . . .     | [AMENDED]     | 1024 | 340:105-10-25. . . . .     | [AMENDED]     | 1073 |
| 340:75-13-8. . . . .     | [AMENDED]     | 1024 | 340:105-10-41. . . . .     | [AMENDED]     | 1073 |
| 340:75-13-10. . . . .    | [AMENDED]     | 1024 | 340:105-10-51. . . . .     | [AMENDED]     | 1074 |
| 340:75-13-18. . . . .    | [AMENDED]     | 1024 | 340:105-10-54. . . . .     | [AMENDED]     | 1076 |
| 340:75-13-26. . . . .    | [AMENDED]     | 1024 | 340:105-10-59. . . . .     | [AMENDED]     | 1078 |
| 340:75-13-28. . . . .    | [AMENDED]     | 1024 | 340:105-10-63. . . . .     | [AMENDED]     | 1078 |
| 340:75-13-29. . . . .    | [AMENDED]     | 1024 | 340:105-10-68. . . . .     | [AMENDED]     | 1078 |
| 340:75-13-64. . . . .    | [AMENDED]     | 1024 | 340:105-10-70. . . . .     | [AMENDED]     | 1078 |
| 340:75-13-65. . . . .    | [AMENDED]     | 1024 | 340:105-10-72. . . . .     | [AMENDED]     | 1079 |
| 340:75-13-79. . . . .    | [AMENDED]     | 1024 | 340:105-10-75. . . . .     | [AMENDED]     | 1079 |
| 340:75-13-81. . . . .    | [AMENDED]     | 1024 | 340:105-10-79. . . . .     | [AMENDED]     | 1080 |
| 340:75-15-6. . . . .     | [AMENDED]     | 1024 | 340:105-10-82. . . . .     | [AMENDED]     | 1080 |
| 340:75-15-7. . . . .     | [AMENDED]     | 1024 | 340:105-10-84. . . . .     | [AMENDED]     | 1081 |
| 340:75-15-8. . . . .     | [AMENDED]     | 1024 | 340:105-10-90.1 . . . . .  | [AMENDED]     | 1081 |
| 340:75-15-41. . . . .    | [AMENDED]     | 1024 | 340:105-10-91. . . . .     | [AMENDED]     | 1082 |
| 340:75-15-42. . . . .    | [AMENDED]     | 1024 | 340:105-10-95. . . . .     | [AMENDED]     | 1082 |
| 340:75-15-43. . . . .    | [AMENDED]     | 1024 | 340:105-10-97. . . . .     | [AMENDED]     | 1084 |
| 340:75-15-45. . . . .    | [AMENDED]     | 1024 | 340:105-10-101. . . . .    | [AMENDED]     | 1084 |
| 340:75-15-85. . . . .    | [AMENDED]     | 1024 | 340:105-10-105.1 . . . . . | [AMENDED]     | 2669 |
| 340:75-15-87. . . . .    | [AMENDED]     | 1024 | 340:105-10-114. . . . .    | [AMENDED] (E) | 396  |
| 340:75-15-107. . . . .   | [AMENDED]     | 1024 | 340:105-10-114. . . . .    | [AMENDED]     | 1086 |
| 340:75-15-126. . . . .   | [AMENDED]     | 1024 | 340:105-10-114. . . . .    | [AMENDED]     | 1086 |
| 340:75-15-128.1. . . . . | [AMENDED]     | 1024 | 340:105-10-120. . . . .    | [AMENDED]     | 1086 |
| 340:75-15-128.4. . . . . | [AMENDED]     | 1024 | 340:105-10-121. . . . .    | [AMENDED]     | 1086 |
| 340:75-18-2. . . . .     | [AMENDED]     | 1024 | 340:105-11-233. . . . .    | [AMENDED]     | 1087 |
| 340:75-18-10. . . . .    | [AMENDED]     | 1024 | 340:105-11-234. . . . .    | [AMENDED]     | 1087 |
| 340:75-18-13. . . . .    | [AMENDED]     | 1024 | 340:105-11-240. . . . .    | [AMENDED]     | 1088 |
| 340:75-19-26. . . . .    | [AMENDED]     | 1024 | 340:105-11-245. . . . .    | [AMENDED]     | 1089 |
| 340:75-19-26.1 . . . . . | [NEW]         | 1024 | 340:105-11-248. . . . .    | [AMENDED]     | 1090 |
| 340:75-19-27. . . . .    | [REVOKED]     | 1024 | 340:105-11-249. . . . .    | [AMENDED]     | 1090 |
| 340:75-19-28. . . . .    | [AMENDED]     | 1024 | 340:105-11-250. . . . .    | [AMENDED]     | 1091 |
| 340:75-19-29. . . . .    | [AMENDED]     | 1024 | 340:105-11-251. . . . .    | [AMENDED]     | 1091 |
| 340:75-19-30. . . . .    | [AMENDED]     | 1024 | 340:105-11-252. . . . .    | [AMENDED]     | 1091 |
| 340:75-19-32. . . . .    | [AMENDED]     | 1024 | 340:105-11-255. . . . .    | [AMENDED]     | 1092 |
| 340:75-19-33. . . . .    | [AMENDED]     | 1024 | 340:110-1-4.1. . . . .     | [AMENDED]     | 1092 |
| 340:100-1-2. . . . .     | [AMENDED]     | 1027 | 340:110-1-5. . . . .       | [AMENDED]     | 1092 |
| 340:100-3-4. . . . .     | [AMENDED]     | 1032 | 340:110-1-6. . . . .       | [AMENDED]     | 1092 |
| 340:100-3-4.1. . . . .   | [REVOKED]     | 1034 | 340:110-1-8. . . . .       | [AMENDED]     | 1092 |
| 340:100-3-5.1. . . . .   | [AMENDED]     | 1036 | 340:110-1-8.1. . . . .     | [AMENDED]     | 1092 |
| 340:100-3-27. . . . .    | [AMENDED]     | 1038 | 340:110-1-8.3. . . . .     | [AMENDED]     | 1092 |
| 340:100-3-27.1 . . . . . | [AMENDED]     | 1041 | 340:110-1-9. . . . .       | [AMENDED]     | 1092 |
| 340:100-3-28. . . . .    | [AMENDED]     | 1043 | 340:110-1-9.1. . . . .     | [AMENDED]     | 1092 |
| 340:100-3-29. . . . .    | [AMENDED]     | 1043 | 340:110-1-9.2. . . . .     | [AMENDED]     | 1092 |
| 340:100-3-36. . . . .    | [NEW]         | 1911 | 340:110-1-9.3. . . . .     | [AMENDED]     | 1092 |
| 340:100-3-38. . . . .    | [AMENDED]     | 1911 | 340:110-1-11. . . . .      | [AMENDED]     | 1092 |
| 340:100-5-22.1. . . . .  | [AMENDED]     | 1044 | 340:110-1-17. . . . .      | [AMENDED]     | 1092 |
| 340:100-5-22.3. . . . .  | [REVOKED]     | 1048 | 340:110-3-29. . . . .      | [AMENDED]     | 1092 |
| 340:100-5-22.6. . . . .  | [NEW]         | 1914 | 340:110-3-49.5. . . . .    | [AMENDED]     | 1092 |
| 340:100-5-26.3. . . . .  | [NEW]         | 1048 | 340:110-3-87. . . . .      | [AMENDED]     | 1092 |
| 340:100-5-29. . . . .    | [AMENDED]     | 1050 | 340:110-3-154.5. . . . .   | [AMENDED]     | 1092 |
| 340:100-5-52. . . . .    | [AMENDED]     | 1052 | 340:110-3-239. . . . .     | [AMENDED]     | 1092 |
| 340:100-6-76. . . . .    | [AMENDED]     | 1917 | 340:110-5-1. . . . .       | [AMENDED]     | 1092 |
| 340:100, App. D. . . . . | [REVOKED]     | 1054 | 340:110-5-2. . . . .       | [AMENDED]     | 1092 |
| 340:100, App. J. . . . . | [REVOKED]     | 1056 | 340:110-5-3. . . . .       | [AMENDED]     | 1092 |
| 340:100, App. K. . . . . | [REVOKED]     | 1060 | 340:110-5-4. . . . .       | [AMENDED]     | 1092 |
| 340:105-1-4. . . . .     | [AMENDED]     | 1062 | 340:110-5-6. . . . .       | [AMENDED]     | 1092 |
| 340:105-7-2. . . . .     | [AMENDED] (E) | 394  | 340:110-5-7. . . . .       | [AMENDED]     | 1092 |
| 340:105-7-2. . . . .     | [AMENDED]     | 1063 | 340:110-5-8. . . . .       | [AMENDED]     | 1092 |
| 340:105-7-7. . . . .     | [AMENDED]     | 1065 | 340:110-5-9. . . . .       | [AMENDED]     | 1092 |
| 340:105-7-8. . . . .     | [AMENDED]     | 1066 | 340:110-5-10. . . . .      | [AMENDED]     | 1092 |
| 340:105-10-3. . . . .    | [AMENDED]     | 1066 | 340:110-5-11. . . . .      | [AMENDED]     | 1092 |
| 340:105-10-11. . . . .   | [AMENDED]     | 1070 | 340:110-5-11.1. . . . .    | [NEW]         | 1092 |
| 340:105-10-12. . . . .   | [AMENDED]     | 1070 | 340:110-5-12. . . . .      | [AMENDED]     | 1092 |
| 340:105-10-15. . . . .   | [AMENDED]     | 1071 | 340:110-5-13. . . . .      | [AMENDED]     | 1092 |
| 340:105-10-19. . . . .   | [AMENDED]     | 1071 | 340:110-5-14. . . . .      | [AMENDED]     | 1092 |
|                          |               |      | 340:110-5-24. . . . .      | [AMENDED]     | 1092 |

**Rules Affected Index – *continued***

|                                      |      |                                      |      |
|--------------------------------------|------|--------------------------------------|------|
| 340:110-5-25. .... [AMENDED] .....   | 1092 | 365:15-1-3. .... [AMENDED] .....     | 2730 |
| 340:110-5-27. .... [AMENDED] .....   | 1092 | 365:15-7-3. .... [AMENDED] .....     | 2732 |
| 340:110-5-29. .... [AMENDED] .....   | 1092 | 365:15-7-14. .... [AMENDED] .....    | 2733 |
| 340:110-5-30. .... [AMENDED] .....   | 1092 | 365:15-7-29. .... [NEW] .....        | 2733 |
| 340:110-5-31. .... [AMENDED] .....   | 1092 | 365:15, App. D. .... [REVOKED] ..... | 2734 |
| 340:110-5-32. .... [AMENDED] .....   | 1092 | 365:15, App. D. .... [NEW] .....     | 2734 |
| 340:110-5-33. .... [AMENDED] .....   | 1092 | 365:25-3-1. .... [AMENDED] .....     | 2735 |
| 340:110-5-34. .... [AMENDED] .....   | 1092 | 365:25-5-41. .... [AMENDED] .....    | 2738 |
| 340:110-5-35. .... [AMENDED] .....   | 1092 | 365:25-17-1. .... [NEW] .....        | 2739 |
| 340:110-5-36. .... [AMENDED] .....   | 1092 | 365:25-17-2. .... [NEW] .....        | 2739 |
| 340:110-5-37. .... [AMENDED] .....   | 1092 | 365:25-17-3. .... [NEW] .....        | 2739 |
| 340:110-5-37.1. .... [AMENDED] ..... | 1092 | 365:25-17-4. .... [NEW] .....        | 2739 |
| 340:110-5-38. .... [AMENDED] .....   | 1092 | 365:25-17-5. .... [NEW] .....        | 2739 |
| 340:110-5-55. .... [AMENDED] .....   | 1092 | 365:25-17-6. .... [NEW] .....        | 2739 |
| 340:110-5-56. .... [AMENDED] .....   | 1092 | 365:25-17-7. .... [NEW] .....        | 2740 |
| 340:110-5-57. .... [AMENDED] .....   | 1092 | 365:25-17-8. .... [NEW] .....        | 2741 |
| 340:110-5-58. .... [AMENDED] .....   | 1092 | 365:25-17-9. .... [NEW] .....        | 2741 |
| 340:110-5-59. .... [AMENDED] .....   | 1092 | 365:25-19-1. .... [NEW] .....        | 2741 |
| 340:110-5-60. .... [AMENDED] .....   | 1092 | 365:25-19-2. .... [NEW] .....        | 2741 |
| 340:110-5-61. .... [AMENDED] .....   | 1092 | 365:25-19-3. .... [NEW] .....        | 2741 |
| 340:110-5-61.1. .... [NEW] .....     | 1092 | 365:25-19-4. .... [NEW] .....        | 2741 |
| 340:110-5-62. .... [AMENDED] .....   | 1092 | 365:25-19-5. .... [NEW] .....        | 2742 |
| 340:110-5-63. .... [AMENDED] .....   | 1092 | 365:25-19-6. .... [NEW] .....        | 2743 |
| 340:110-5-115. .... [AMENDED] .....  | 1092 | 365:25-19-7. .... [NEW] .....        | 2743 |
| 340:110-5-117. .... [AMENDED] .....  | 1092 | 365:25-19-8. .... [NEW] .....        | 2743 |
| 340:110-5-118. .... [AMENDED] .....  | 1092 | 365:25-19-9. .... [NEW] .....        | 2743 |
| 340:110-5-119. .... [AMENDED] .....  | 1092 | 365:25, App. S. .... [NEW] .....     | 2744 |
| 340:110-5-120. .... [AMENDED] .....  | 1092 | 365:40-5-44. .... [AMENDED] .....    | 2758 |
| 340:110-5-121. .... [AMENDED] .....  | 1092 | 377:1-1-5. .... [AMENDED] .....      | 2759 |
| 340:110-5-122. .... [AMENDED] .....  | 1092 | 377:3-13-42. .... [AMENDED] .....    | 2761 |
| 340:110-5-123. .... [AMENDED] .....  | 1092 | 377:3-13-43. .... [AMENDED] .....    | 2762 |
| 340:110-5-124. .... [AMENDED] .....  | 1092 | 377:3-13-86. .... [AMENDED] .....    | 2765 |
| 345:10-1-2. .... [NEW] (E) .....     | 630  | 377:3-13-88. .... [AMENDED] .....    | 2765 |
| 345:10-1-2. .... [NEW] .....         | 2982 | 377:25-5-3. .... [REVOKED] .....     | 2767 |
| 345:10-3-1. .... [AMENDED] (E) ..... | 630  | 377:25-7-1. .... [REVOKED] .....     | 2767 |
| 345:10-3-1. .... [AMENDED] .....     | 2983 | 377:25-7-3. .... [AMENDED] .....     | 2767 |
| 345:10-5-2. .... [AMENDED] (E) ..... | 631  | 377:25-7-4. .... [REVOKED] .....     | 2768 |
| 345:10-5-2. .... [AMENDED] .....     | 2983 | 377:25-7-27. .... [AMENDED] .....    | 2768 |
| 360:10-3-4. .... [AMENDED] .....     | 1918 | 377:25-7-28. .... [AMENDED] .....    | 2768 |
| 360:10-3-20. .... [AMENDED] .....    | 1918 | 377:25-7-29. .... [AMENDED] .....    | 2768 |
| 360:10-3-33. .... [NEW] .....        | 1919 | 377:30-1-1. .... [AMENDED] .....     | 2770 |
| 360:10-5-75. .... [AMENDED] .....    | 1919 | 377:30-3-1. .... [REVOKED] .....     | 2770 |
| 360:10-5-77. .... [AMENDED] .....    | 1919 | 377:35-11-2. .... [REVOKED] .....    | 2771 |
| 360:15-1-2. .... [AMENDED] .....     | 1920 | 377:35-11-3. .... [AMENDED] .....    | 2771 |
| 360:15-1-12. .... [AMENDED] .....    | 1921 | 380:20-1-1. .... [AMENDED] .....     | 2984 |
| 360:15-1-18. .... [AMENDED] .....    | 1921 | 380:20-1-2. .... [AMENDED] .....     | 2984 |
| 365:1-1-2. .... [AMENDED] .....      | 2670 | 380:20-1-3. .... [AMENDED] .....     | 2985 |
| 365:1-5-1. .... [AMENDED] .....      | 2672 | 380:20-1-4. .... [AMENDED] .....     | 2986 |
| 365:1-5-2. .... [AMENDED] .....      | 2672 | 380:20-1-5. .... [AMENDED] .....     | 2986 |
| 365:1-5-3. .... [AMENDED] .....      | 2672 | 380:20-1-6. .... [AMENDED] .....     | 2986 |
| 365:1-5-4. .... [AMENDED] .....      | 2672 | 380:20-1-7. .... [AMENDED] .....     | 2987 |
| 365:10-5-170. .... [AMENDED] .....   | 2673 | 380:20-1-8. .... [AMENDED] .....     | 2987 |
| 365:10-5-171. .... [AMENDED] .....   | 2673 | 380:20-1-9. .... [AMENDED] .....     | 2987 |
| 365:10-5-172. .... [AMENDED] .....   | 2673 | 380:20-1-10. .... [AMENDED] .....    | 2988 |
| 365:10-5-173. .... [AMENDED] .....   | 2674 | 380:20-1-11. .... [AMENDED] .....    | 2988 |
| 365:10-5-174. .... [REVOKED] .....   | 2675 | 380:20-1-12. .... [AMENDED] .....    | 2988 |
| 365:10-5-175. .... [REVOKED] .....   | 2676 | 380:20-1-13. .... [AMENDED] .....    | 2988 |
| 365:10-5-176. .... [AMENDED] .....   | 2678 | 380:20-1-14. .... [AMENDED] .....    | 2989 |
| 365:10-5-177. .... [AMENDED] .....   | 2682 | 380:20, App. E. .... [NEW] .....     | 2990 |
| 365:10-5-178. .... [REVOKED] .....   | 2683 | 380:20, App. F. .... [NEW] .....     | 2991 |
| 365:10-23-1. .... [NEW] .....        | 2684 | 380:20, App. G. .... [NEW] .....     | 2992 |
| 365:10-23-2. .... [NEW] .....        | 2685 | 380:25-7-18. .... [AMENDED] .....    | 1411 |
| 365:10, App. S. .... [REVOKED] ..... | 2686 | 380:40-1-5. .... [AMENDED] .....     | 2772 |
| 365:10, App. S. .... [NEW] .....     | 2686 | 380:40-1-14. .... [AMENDED] .....    | 2772 |
| 365:10, App. Z. .... [REVOKED] ..... | 2726 | 380:40-1-23. .... [NEW] .....        | 2773 |
| 365:10, App. Z. .... [NEW] .....     | 2726 | 390:1-1-2.1. .... [NEW] .....        | 1922 |
| 365:10, App. GG. .... [NEW] .....    | 2729 | 390:1-1-9. .... [NEW] .....          | 1922 |

|                                      |      |                                      |      |
|--------------------------------------|------|--------------------------------------|------|
| 390:1-1-10. .... [NEW] .....         | 1922 | 429:10-1-8. .... [NEW] (E) .....     | 178  |
| 390:1-1-11. .... [NEW] .....         | 1923 | 429:10-1-8. .... [NEW] .....         | 2782 |
| 390:2-1-8. .... [AMENDED] .....      | 1923 | 429:10-1-9. .... [NEW] (E) .....     | 178  |
| 390:10-1-2. .... [AMENDED] .....     | 1924 | 429:10-1-9. .... [NEW] .....         | 2782 |
| 390:10-1-5. .... [AMENDED] .....     | 1924 | 429:10-1-10. .... [NEW] (E) .....    | 178  |
| 390:15-1-2. .... [AMENDED] .....     | 1925 | 429:10-1-10. .... [NEW] .....        | 2782 |
| 390:15-1-3. .... [AMENDED] .....     | 1926 | 429:10-1-11. .... [NEW] (E) .....    | 179  |
| 390:15-1-9. .... [AMENDED] .....     | 1926 | 429:10-1-11. .... [NEW] .....        | 2782 |
| 390:15-1-13. .... [AMENDED] .....    | 1926 | 429:10-1-12. .... [NEW] (E) .....    | 179  |
| 390:15-1-19. .... [AMENDED] .....    | 1927 | 429:10-1-12. .... [NEW] .....        | 2783 |
| 390:15-3-3. .... [AMENDED] .....     | 1928 | 429:15-1-1. .... [NEW] (E) .....     | 180  |
| 390:15-3-6. .... [AMENDED] .....     | 1928 | 429:15-1-1. .... [RESERVED] .....    | 2784 |
| 390:15-3-7. .... [AMENDED] .....     | 1928 | 429:15-1-2. .... [NEW] (E) .....     | 180  |
| 390:15, App. A. .... [REVOKED] ..... | 1929 | 429:15-1-2. .... [NEW] .....         | 2784 |
| 390:25-1-8. .... [AMENDED] .....     | 1930 | 429:15-1-3. .... [NEW] (E) .....     | 183  |
| 390:30-1-4. .... [AMENDED] .....     | 1931 | 429:15-1-3. .... [NEW] .....         | 2786 |
| 390:30-1-6. .... [AMENDED] .....     | 1931 | 429:15-1-4. .... [NEW] (E) .....     | 183  |
| 390:30-1-7. .... [AMENDED] .....     | 1932 | 429:15-1-4. .... [NEW] .....         | 2786 |
| 390:31-1-1. .... [NEW] .....         | 1932 | 429:15-1-5. .... [NEW] (E) .....     | 183  |
| 390:31-1-2. .... [NEW] .....         | 1932 | 429:15-1-5. .... [NEW] .....         | 2786 |
| 390:31-1-3. .... [NEW] .....         | 1933 | 429:15-1-6. .... [NEW] (E) .....     | 183  |
| 390:31-1-4. .... [NEW] .....         | 1933 | 429:15-1-6. .... [NEW] .....         | 2787 |
| 390:31-1-5. .... [NEW] .....         | 1933 | 429:15-1-7. .... [NEW] (E) .....     | 184  |
| 390:31-1-6. .... [NEW] .....         | 1933 | 429:15-1-7. .... [NEW] .....         | 2787 |
| 390:31-1-7. .... [NEW] .....         | 1934 | 429:15-1-8. .... [NEW] (E) .....     | 184  |
| 390:35-1-4. .... [AMENDED] .....     | 1934 | 429:15-1-8. .... [NEW] .....         | 2787 |
| 390:35-5-2. .... [AMENDED] .....     | 1935 | 429:15-1-9. .... [NEW] (E) .....     | 184  |
| 390:35-5-3. .... [AMENDED] .....     | 1936 | 429:15-1-9. .... [NEW] .....         | 2787 |
| 390:35-5-5. .... [AMENDED] .....     | 1936 | 429:15-1-10. .... [NEW] (E) .....    | 184  |
| 390:35-7-1. .... [AMENDED] .....     | 1937 | 429:15-1-10. .... [NEW] .....        | 2787 |
| 390:35-7-4. .... [AMENDED] .....     | 1937 | 429:15-1-11. .... [NEW] (E) .....    | 184  |
| 390:35-11-3. .... [AMENDED] .....    | 1937 | 429:15-1-11. .... [NEW] .....        | 2787 |
| 390:35-13-2. .... [AMENDED] .....    | 1938 | 429:15-1-12. .... [NEW] (E) .....    | 184  |
| 390:40-1-4. .... [AMENDED] .....     | 1939 | 429:15-1-12. .... [NEW] .....        | 2787 |
| 390:40-7-1. .... [AMENDED] .....     | 1939 | 429:15-1-13. .... [NEW] (E) .....    | 184  |
| 390:45-1-3. .... [AMENDED] .....     | 1939 | 429:15-1-13. .... [NEW] .....        | 2788 |
| 390:45-1-4. .... [AMENDED] .....     | 1940 | 429:15-1-14. .... [NEW] (E) .....    | 185  |
| 390:45-1-5. .... [AMENDED] .....     | 1940 | 429:15-1-14. .... [NEW] .....        | 2788 |
| 390:45-1-6. .... [AMENDED] .....     | 1940 | 429:15, App. A. .... [NEW] .....     | 2789 |
| 390:50-1-4. .... [AMENDED] .....     | 1941 | 429:15, App. A. .... [NEW] (E) ..... | 186  |
| 429:1-1-1. .... [NEW] (E) .....      | 171  | 429:15, App. B. .... [NEW] .....     | 2790 |
| 429:1-1-1. .... [RESERVED] .....     | 2774 | 429:15, App. B. .... [NEW] (E) ..... | 187  |
| 429:1-1-2. .... [NEW] (E) .....      | 171  | 429:20-1-1. .... [NEW] (E) .....     | 188  |
| 429:1-1-2. .... [NEW] .....          | 2774 | 429:20-1-1. .... [RESERVED] .....    | 2791 |
| 429:1-1-3. .... [NEW] (E) .....      | 171  | 429:20-1-2. .... [NEW] (E) .....     | 188  |
| 429:1-1-3. .... [NEW] .....          | 2774 | 429:20-1-2. .... [NEW] .....         | 2791 |
| 429:1-1-4. .... [NEW] (E) .....      | 173  | 429:20-1-3. .... [NEW] (E) .....     | 190  |
| 429:1-1-4. .... [NEW] .....          | 2777 | 429:20-1-3. .... [NEW] .....         | 2794 |
| 429:1-1-5. .... [NEW] (E) .....      | 173  | 429:20-1-4. .... [NEW] (E) .....     | 190  |
| 429:1-1-5. .... [NEW] .....          | 2777 | 429:20-1-4. .... [NEW] .....         | 2794 |
| 429:1-1-6. .... [NEW] .....          | 2777 | 429:20-1-5. .... [NEW] (E) .....     | 190  |
| 429:10-1-1. .... [NEW] (E) .....     | 174  | 429:20-1-5. .... [NEW] .....         | 2794 |
| 429:10-1-1. .... [RESERVED] .....    | 2778 | 429:20-1-6. .... [NEW] (E) .....     | 191  |
| 429:10-1-2. .... [NEW] (E) .....     | 174  | 429:20-1-6. .... [NEW] .....         | 2794 |
| 429:10-1-2. .... [NEW] .....         | 2778 | 429:20-1-7. .... [NEW] (E) .....     | 191  |
| 429:10-1-3. .... [NEW] (E) .....     | 177  | 429:20-1-7. .... [NEW] .....         | 2794 |
| 429:10-1-3. .... [NEW] (E) .....     | 179  | 429:20-1-8. .... [NEW] (E) .....     | 191  |
| 429:10-1-3. .... [NEW] .....         | 2781 | 429:20-1-8. .... [NEW] .....         | 2794 |
| 429:10-1-4. .... [NEW] (E) .....     | 177  | 429:20-1-9. .... [NEW] (E) .....     | 191  |
| 429:10-1-4. .... [NEW] (E) .....     | 180  | 429:20-1-9. .... [NEW] .....         | 2795 |
| 429:10-1-4. .... [NEW] .....         | 2781 | 429:20-1-10. .... [NEW] (E) .....    | 191  |
| 429:10-1-5. .... [NEW] (E) .....     | 177  | 429:20-1-10. .... [NEW] .....        | 2795 |
| 429:10-1-5. .... [NEW] .....         | 2781 | 429:20-1-11. .... [NEW] (E) .....    | 191  |
| 429:10-1-6. .... [NEW] (E) .....     | 178  | 429:20-1-11. .... [NEW] .....        | 2795 |
| 429:10-1-6. .... [NEW] .....         | 2781 | 429:20-1-12. .... [NEW] (E) .....    | 191  |
| 429:10-1-7. .... [NEW] (E) .....     | 178  | 429:20-1-12. .... [NEW] .....        | 2795 |
| 429:10-1-7. .... [NEW] .....         | 2782 | 429:20-1-13. .... [NEW] (E) .....    | 191  |

**Rules Affected Index – *continued***

|                                      |      |   |      |
|--------------------------------------|------|---|------|
| 429:20-1-13. .... [NEW] .....        | 2795 | 450:15-3-82. .... [AMENDED] .....                                   | 1417 |
| 429:20-1-14. .... [NEW] (E) .....    | 192  | 450:15-7-3. .... [AMENDED] .....                                    | 1417 |
| 429:20-1-14. .... [NEW] .....        | 2795 | 450:15-7-11. .... [AMENDED] .....                                   | 1417 |
| 429:20-1-15. .... [NEW] (E) .....    | 192  | 450:15-7-15. .... [AMENDED] .....                                   | 1417 |
| 429:20-1-15. .... [NEW] .....        | 2795 | 450:16-1-2. .... [AMENDED] .....                                    | 1419 |
| 429:20-1-16. .... [NEW] (E) .....    | 192  | 450:16-13-18. .... [AMENDED] .....                                  | 1420 |
| 429:20-1-16. .... [NEW] .....        | 2795 | 450:16-13-46. .... [AMENDED] .....                                  | 1420 |
| 429:20-1-17. .... [NEW] (E) .....    | 192  | 450:16-21-1. .... [AMENDED] .....                                   | 1421 |
| 429:20-1-17. .... [NEW] .....        | 2795 | 450:16-21-4. .... [AMENDED] .....                                   | 1421 |
| 429:20, App. A. .... [NEW] .....     | 2796 | 450:17-1-2. .... [AMENDED] .....                                    | 1422 |
| 429:20, App. A. .... [NEW] (E) ..... | 193  | 450:17-3-1. .... [AMENDED] .....                                    | 1426 |
| 429:20, App. B. .... [NEW] .....     | 2797 | 450:17-3-21. .... [AMENDED] .....                                   | 1426 |
| 429:20, App. B. .... [NEW] (E) ..... | 194  | 450:17-3-41. .... [AMENDED] .....                                   | 1427 |
| 435:1-1-7. .... [AMENDED] .....      | 1094 | 450:17-3-43. .... [AMENDED] .....                                   | 1427 |
| 435:10-4-6. .... [AMENDED] .....     | 1097 | 450:17-3-61. .... [AMENDED] .....                                   | 1427 |
| 435:10-4-7. .... [AMENDED] .....     | 1098 | 450:17-3-62. .... [AMENDED] .....                                   | 1427 |
| 435:10-11-3.1. .... [AMENDED] .....  | 1098 | 450:17-3-81. .... [AMENDED] .....                                   | 1427 |
| 435:20-3-1.1. .... [AMENDED] .....   | 1098 | 450:17-3-84. .... [AMENDED] .....                                   | 1428 |
| 435:20-3-6. .... [AMENDED] .....     | 1101 | 450:17-3-101. .... [AMENDED] .....                                  | 1428 |
| 435:20-9-2. .... [AMENDED] .....     | 1102 | 450:17-3-101.1. .... [AMENDED] .....                                | 1428 |
| 435:45-3-5. .... [AMENDED] .....     | 1103 | 450:17-3-103. .... [AMENDED] .....                                  | 1429 |
| 435:45-5-1. .... [AMENDED] (E) ..... | 822  | 450:17-3-141. .... [AMENDED] .....                                  | 1429 |
| 435:55-3-6. .... [AMENDED] .....     | 1103 | 450:17-3-144. .... [AMENDED] .....                                  | 1430 |
| 450:1-1-1.1. .... [AMENDED] .....    | 1942 | 450:17-5-34. .... [AMENDED] .....                                   | 1430 |
| 450:1-1-2. .... [AMENDED] .....      | 1943 | 450:17-5-45. .... [AMENDED] .....                                   | 1430 |
| 450:1-1-5. .... [AMENDED] .....      | 1943 | 450:17-5-56. .... [AMENDED] .....                                   | 1431 |
| 450:1-1-7. .... [AMENDED] .....      | 1943 | 450:17-5-95. .... [AMENDED] .....                                   | 1431 |
| 450:1-3-1. .... [AMENDED] .....      | 1944 | 450:17-5-96. .... [AMENDED] .....                                   | 1431 |
| 450:1-3-3. .... [AMENDED] .....      | 1944 | 450:17-5-98. .... [AMENDED] .....                                   | 1432 |
| 450:1-3-14. .... [AMENDED] .....     | 1944 | 450:17-7-3. .... [AMENDED] .....                                    | 1432 |
| 450:1-3-15. .... [AMENDED] .....     | 1944 | 450:17-7-5. .... [AMENDED] .....                                    | 1432 |
| 450:1-3-21. .... [AMENDED] .....     | 1944 | 450:17-7-5.1. .... [NEW] .....                                      | 1433 |
| 450:1-3-22. .... [AMENDED] .....     | 1944 | 450:17-7-8. .... [AMENDED] .....                                    | 1433 |
| 450:1-5-1. .... [AMENDED] .....      | 1944 | 450:17-7-10. .... [AMENDED] .....                                   | 1434 |
| 450:1-5-5. .... [AMENDED] .....      | 1945 | 450:17-13-1. .... [AMENDED] .....                                   | 1434 |
| 450:1-5-5.4. .... [AMENDED] .....    | 1945 | 450:17-19-2. .... [AMENDED] .....                                   | 1435 |
| 450:1-5-6. .... [AMENDED] .....      | 1945 | 450:17-21-2. .... [AMENDED] .....                                   | 1435 |
| 450:1-5-7. .... [AMENDED] .....      | 1945 | 450:17-21-3. .... [AMENDED] .....                                   | 1435 |
| 450:1-5-8. .... [AMENDED] .....      | 1945 | 450:17-25-2. .... [AMENDED] .....                                   | 1435 |
| 450:1-5-9. .... [AMENDED] .....      | 1945 | 450:18-1-1. .... [AMENDED] .....                                    | 1953 |
| 450:1-5-10. .... [AMENDED] .....     | 1946 | 450:18-1-2. .... [AMENDED] .....                                    | 1953 |
| 450:1-5-11. .... [AMENDED] .....     | 1946 | 450:18-3-1. .... [AMENDED AND RENUMBERED TO<br>450:18-13-1] .....   | 1953 |
| 450:1-5-14. .... [AMENDED] .....     | 1946 | 450:18-3-2. .... [AMENDED AND RENUMBERED TO<br>450:18-13-2] .....   | 1953 |
| 450:1-7-1. .... [AMENDED] .....      | 1947 | 450:18-3-3. .... [AMENDED AND RENUMBERED TO<br>450:18-13-3] .....   | 1953 |
| 450:1-7-4.1. .... [NEW] .....        | 1947 | 450:18-3-21. .... [AMENDED AND RENUMBERED TO<br>450:18-13-21] ..... | 1953 |
| 450:1-9-1. .... [AMENDED] .....      | 1947 | 450:18-3-22. .... [AMENDED AND RENUMBERED TO<br>450:18-13-22] ..... | 1953 |
| 450:1-9-3. .... [AMENDED] .....      | 1947 | 450:18-3-23. .... [AMENDED AND RENUMBERED TO<br>450:18-13-23] ..... | 1953 |
| 450:1-9-4. .... [AMENDED] .....      | 1947 | 450:18-3-41. .... [AMENDED AND RENUMBERED TO<br>450:18-13-41] ..... | 1953 |
| 450:1-9-5. .... [AMENDED] .....      | 1947 | 450:18-3-42. .... [AMENDED AND RENUMBERED TO<br>450:18-13-42] ..... | 1953 |
| 450:1-9-6. .... [AMENDED] .....      | 1948 | 450:18-3-43. .... [AMENDED AND RENUMBERED TO<br>450:18-13-43] ..... | 1953 |
| 450:1-9-7. .... [AMENDED] .....      | 1948 | 450:18-3-44. .... [AMENDED AND RENUMBERED TO<br>450:18-13-44] ..... | 1953 |
| 450:1-9-8. .... [AMENDED] .....      | 1950 | 450:18-3-61. .... [AMENDED AND RENUMBERED TO<br>450:18-13-61] ..... | 1953 |
| 450:1-9-9. .... [AMENDED] .....      | 1951 | 450:18-3-62. .... [AMENDED AND RENUMBERED TO<br>450:18-13-62] ..... | 1953 |
| 450:1-9-9.1. .... [NEW] .....        | 1951 | 450:18-3-63. .... [AMENDED AND RENUMBERED TO<br>450:18-13-63] ..... | 1953 |
| 450:1-9-10. .... [AMENDED] .....     | 1951 |   |      |
| 450:1-9-12. .... [AMENDED] .....     | 1951 |   |      |
| 450:1-11-3. .... [AMENDED] .....     | 1951 |   |      |
| 450:1-11-4. .... [NEW] .....         | 1952 |   |      |
| 450:1-11-5. .... [NEW] .....         | 1952 |   |      |
| 450:1-11-6. .... [NEW] .....         | 1952 |   |      |
| 450:1-11-7. .... [NEW] .....         | 1952 |   |      |
| 450:1-11-8. .... [NEW] .....         | 1952 |   |      |
| 450:15-1-2. .... [AMENDED] .....     | 1412 |   |      |
| 450:15-3-2. .... [AMENDED] .....     | 1415 |   |      |
| 450:15-3-14. .... [AMENDED] .....    | 1415 |   |      |
| 450:15-3-16. .... [AMENDED] .....    | 1415 |   |      |
| 450:15-3-81. .... [AMENDED] .....    | 1416 |   |      |

|                       |  |      |                        |                     |      |
|-----------------------|--|------|------------------------|---------------------|------|
| 450:18-3-81. . . . .  | [AMENDED AND RENUMBERED TO<br>450:18-13-81] . . . . .  | 1953 | 450:18-7-82. . . . .   | [AMENDED] . . . . . | 1953 |
| 450:18-3-82. . . . .  | [AMENDED AND RENUMBERED TO<br>450:18-13-82] . . . . .  | 1953 | 450:18-7-84. . . . .   | [AMENDED] . . . . . | 1953 |
| 450:18-3-83. . . . .  | [AMENDED AND RENUMBERED TO<br>450:18-13-83] . . . . .  | 1953 | 450:18-7-101. . . . .  | [AMENDED] . . . . . | 1953 |
| 450:18-3-101. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-101] . . . . . | 1953 | 450:18-7-121. . . . .  | [AMENDED] . . . . . | 1953 |
| 450:18-3-102. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-102] . . . . . | 1953 | 450:18-7-145. . . . .  | [AMENDED] . . . . . | 1953 |
| 450:18-3-103. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-103] . . . . . | 1953 | 450:18-9-2. . . . .    | [AMENDED] . . . . . | 1953 |
| 450:18-3-121. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-121] . . . . . | 1953 | 450:18-9-22. . . . .   | [AMENDED] . . . . . | 1953 |
| 450:18-3-122. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-122] . . . . . | 1953 | 450:18-11-1. . . . .   | [AMENDED] . . . . . | 1953 |
| 450:18-3-123. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-123] . . . . . | 1953 | 450:18-13-1. . . . .   | [NEW] . . . . .     | 1953 |
| 450:18-3-141. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-141] . . . . . | 1953 | 450:18-13-2. . . . .   | [NEW] . . . . .     | 1953 |
| 450:18-3-142. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-142] . . . . . | 1953 | 450:18-13-3. . . . .   | [NEW] . . . . .     | 1953 |
| 450:18-3-143. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-143] . . . . . | 1953 | 450:18-13-4. . . . .   | [NEW] . . . . .     | 1953 |
| 450:18-3-161. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-161] . . . . . | 1953 | 450:18-13-21. . . . .  | [NEW] . . . . .     | 1953 |
| 450:18-3-162. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-162] . . . . . | 1953 | 450:18-13-22. . . . .  | [NEW] . . . . .     | 1953 |
| 450:18-3-163. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-163] . . . . . | 1953 | 450:18-13-23. . . . .  | [NEW] . . . . .     | 1953 |
| 450:18-3-181. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-181] . . . . . | 1953 | 450:18-13-41. . . . .  | [NEW] . . . . .     | 1953 |
| 450:18-3-182. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-182] . . . . . | 1953 | 450:18-13-42. . . . .  | [NEW] . . . . .     | 1953 |
| 450:18-3-183. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-183] . . . . . | 1953 | 450:18-13-43. . . . .  | [NEW] . . . . .     | 1953 |
| 450:18-3-190. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-190] . . . . . | 1953 | 450:18-13-44. . . . .  | [NEW] . . . . .     | 1953 |
| 450:18-3-191. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-191] . . . . . | 1953 | 450:18-13-61. . . . .  | [NEW] . . . . .     | 1953 |
| 450:18-3-192. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-192] . . . . . | 1953 | 450:18-13-62. . . . .  | [NEW] . . . . .     | 1953 |
| 450:18-3-201. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-201] . . . . . | 1953 | 450:18-13-63. . . . .  | [NEW] . . . . .     | 1953 |
| 450:18-3-202. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-202] . . . . . | 1953 | 450:18-13-81. . . . .  | [NEW] . . . . .     | 1953 |
| 450:18-3-203. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-203] . . . . . | 1953 | 450:18-13-82. . . . .  | [NEW] . . . . .     | 1953 |
| 450:18-3-241. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-241] . . . . . | 1953 | 450:18-13-83. . . . .  | [NEW] . . . . .     | 1953 |
| 450:18-3-242. . . . . | [AMENDED AND RENUMBERED TO<br>450:18-13-242] . . . . . | 1953 | 450:18-13-101. . . . . | [NEW] . . . . .     | 1953 |
| 450:18-5-1. . . . .   | [AMENDED] . . . . .                                    | 1953 | 450:18-13-102. . . . . | [NEW] . . . . .     | 1953 |
| 450:18-5-3.1. . . . . | [AMENDED] . . . . .                                    | 1953 | 450:18-13-103. . . . . | [NEW] . . . . .     | 1953 |
| 450:18-5-3.2. . . . . | [AMENDED] . . . . .                                    | 1953 | 450:18-13-121. . . . . | [NEW] . . . . .     | 1953 |
| 450:18-5-5. . . . .   | [AMENDED] . . . . .                                    | 1953 | 450:18-13-122. . . . . | [NEW] . . . . .     | 1953 |
| 450:18-7-1. . . . .   | [NEW] . . . . .  | 1953 | 450:18-13-123. . . . . | [NEW] . . . . .     | 1953 |
| 450:18-7-1.1. . . . . | [NEW] . . . . .  | 1953 | 450:18-13-141. . . . . | [NEW] . . . . .     | 1953 |
| 450:18-7-2. . . . .   | [AMENDED] . . . . .                                    | 1953 | 450:18-13-142. . . . . | [NEW] . . . . .     | 1953 |
| 450:18-7-21. . . . .  | [AMENDED] . . . . .                                    | 1953 | 450:18-13-143. . . . . | [NEW] . . . . .     | 1953 |
| 450:18-7-41. . . . .  | [AMENDED] . . . . .                                    | 1953 | 450:18-13-161. . . . . | [NEW] . . . . .     | 1953 |
| 450:18-7-61. . . . .  | [AMENDED] . . . . .                                    | 1953 | 450:18-13-162. . . . . | [NEW] . . . . .     | 1953 |
| 450:18-7-62. . . . .  | [AMENDED] . . . . .                                    | 1953 | 450:18-13-163. . . . . | [NEW] . . . . .     | 1953 |
| 450:18-7-63. . . . .  | [AMENDED] . . . . .                                    | 1953 | 450:18-13-181. . . . . | [NEW] . . . . .     | 1953 |
| 450:18-7-64. . . . .  | [NEW] . . . . .  | 1953 | 450:18-13-182. . . . . | [NEW] . . . . .     | 1953 |
| 450:18-7-65. . . . .  | [NEW] . . . . .  | 1953 | 450:18-13-183. . . . . | [NEW] . . . . .     | 1953 |
| 450:18-7-81. . . . .  | [AMENDED] . . . . .                                    | 1953 | 450:18-13-190. . . . . | [NEW] . . . . .     | 1953 |
|                       |  |      | 450:18-13-191. . . . . | [NEW] . . . . .     | 1953 |
|                       |  |      | 450:18-13-192. . . . . | [NEW] . . . . .     | 1953 |
|                       |  |      | 450:18-13-201. . . . . | [NEW] . . . . .     | 1953 |
|                       |  |      | 450:18-13-202. . . . . | [NEW] . . . . .     | 1953 |
|                       |  |      | 450:18-13-203. . . . . | [NEW] . . . . .     | 1953 |
|                       |  |      | 450:18-13-241. . . . . | [NEW] . . . . .     | 1953 |
|                       |  |      | 450:18-13-242. . . . . | [NEW] . . . . .     | 1953 |
|                       |  |      | 450:21-1-3. . . . .    | [AMENDED] . . . . . | 1954 |
|                       |  |      | 450:21-1-5. . . . .    | [AMENDED] . . . . . | 1955 |
|                       |  |      | 450:21-1-6. . . . .    | [AMENDED] . . . . . | 1955 |
|                       |  |      | 450:21-1-8. . . . .    | [AMENDED] . . . . . | 1956 |
|                       |  |      | 450:21-1-10. . . . .   | [AMENDED] . . . . . | 1956 |
|                       |  |      | 450:21-3-1.1. . . . .  | [NEW] . . . . .     | 1957 |
|                       |  |      | 450:22-1-3. . . . .    | [AMENDED] . . . . . | 1958 |
|                       |  |      | 450:22-1-6. . . . .    | [AMENDED] . . . . . | 1959 |
|                       |  |      | 450:22-1-11. . . . .   | [AMENDED] . . . . . | 1959 |
|                       |  |      | 450:22-1-12. . . . .   | [AMENDED] . . . . . | 1960 |
|                       |  |      | 450:22-1-15. . . . .   | [AMENDED] . . . . . | 1961 |
|                       |  |      | 450:22-1-15.1. . . . . | [NEW] . . . . .     | 1962 |
|                       |  |      | 450:23-1-2. . . . .    | [AMENDED] . . . . . | 1436 |
|                       |  |      | 450:23-3-1. . . . .    | [AMENDED] . . . . . | 1438 |
|                       |  |      | 450:23-3-2. . . . .    | [AMENDED] . . . . . | 1438 |
|                       |  |      | 450:23-3-3. . . . .    | [AMENDED] . . . . . | 1438 |
|                       |  |      | 450:23-3-4. . . . .    | [AMENDED] . . . . . | 1438 |
|                       |  |      | 450:23-3-5. . . . .    | [AMENDED] . . . . . | 1439 |
|                       |  |      | 450:23-5-4. . . . .    | [AMENDED] . . . . . | 1439 |

**Rules Affected Index – *continued***

|                                    |      |                                     |      |
|------------------------------------|------|-------------------------------------|------|
| 450:23-5-5. .... [AMENDED] .....   | 1440 | 450:60-11-2. .... [NEW] (E) .....   | 1624 |
| 450:23-5-7.1. .... [AMENDED] ..... | 1440 | 450:60-11-3. .... [NEW] (E) .....   | 1624 |
| 450:23-5-8. .... [AMENDED] .....   | 1440 | 450:60-13-1. .... [NEW] (E) .....   | 1624 |
| 450:23-11-1. .... [AMENDED] .....  | 1440 | 450:60-13-2. .... [NEW] (E) .....   | 1625 |
| 450:23-17-2. .... [AMENDED] .....  | 1441 | 450:60-15-1. .... [NEW] (E) .....   | 1625 |
| 450:23-19-2. .... [AMENDED] .....  | 1441 | 450:60-15-2. .... [NEW] (E) .....   | 1625 |
| 450:23-19-3. .... [AMENDED] .....  | 1441 | 450:60-17-1. .... [NEW] (E) .....   | 1626 |
| 450:30-15-2. .... [AMENDED] .....  | 1962 | 450:60-17-2. .... [NEW] (E) .....   | 1626 |
| 450:30-15-3. .... [AMENDED] .....  | 1963 | 450:60-17-3. .... [NEW] (E) .....   | 1626 |
| 450:50-1-2. .... [AMENDED] .....   | 1442 | 450:60-19-1. .... [NEW] (E) .....   | 1626 |
| 450:50-3-1. .... [AMENDED] .....   | 1442 | 450:60-19-2. .... [NEW] (E) .....   | 1626 |
| 450:50-3-2. .... [AMENDED] .....   | 1443 | 450:60-19-3. .... [NEW] (E) .....   | 1626 |
| 450:50-5-1. .... [AMENDED] .....   | 1443 | 450:60-19-4. .... [NEW] (E) .....   | 1627 |
| 450:50-5-2. .... [AMENDED] .....   | 1444 | 450:60-21-1. .... [NEW] (E) .....   | 1627 |
| 450:50-5-3. .... [AMENDED] .....   | 1444 | 450:60-23-1. .... [NEW] (E) .....   | 1627 |
| 450:50-5-4. .... [AMENDED] .....   | 1445 | 450:60-25-1. .... [NEW] (E) .....   | 1627 |
| 450:50-7-4. .... [AMENDED] .....   | 1445 | 450:60-25-2. .... [NEW] (E) .....   | 1628 |
| 450:55-1-2. .... [AMENDED] .....   | 1446 | 450:65-1-1. .... [NEW] (E) .....    | 1628 |
| 450:55-3-2. .... [AMENDED] .....   | 1447 | 450:65-1-2. .... [NEW] (E) .....    | 1628 |
| 450:55-3-5. .... [AMENDED] .....   | 1448 | 450:65-3-1. .... [NEW] (E) .....    | 1631 |
| 450:55-3-6. .... [AMENDED] .....   | 1448 | 450:65-3-2. .... [NEW] (E) .....    | 1631 |
| 450:55-3-7. .... [AMENDED] .....   | 1449 | 450:65-3-3. .... [NEW] (E) .....    | 1631 |
| 450:55-3-9. .... [AMENDED] .....   | 1449 | 450:65-3-4. .... [NEW] (E) .....    | 1631 |
| 450:55-3-10. .... [AMENDED] .....  | 1449 | 450:65-3-5. .... [NEW] (E) .....    | 1632 |
| 450:55-5-4. .... [AMENDED] .....   | 1451 | 450:65-3-6. .... [NEW] (E) .....    | 1632 |
| 450:55-5-5. .... [AMENDED] .....   | 1452 | 450:65-3-7. .... [NEW] (E) .....    | 1632 |
| 450:55-11-1. .... [AMENDED] .....  | 1452 | 450:65-3-8. .... [NEW] (E) .....    | 1632 |
| 450:55-11-2. .... [AMENDED] .....  | 1452 | 450:65-5-1. .... [NEW] (E) .....    | 1633 |
| 450:55-15-2. .... [AMENDED] .....  | 1452 | 450:65-5-2. .... [NEW] (E) .....    | 1633 |
| 450:55-17-2. .... [AMENDED] .....  | 1453 | 450:65-5-3. .... [NEW] (E) .....    | 1633 |
| 450:55-17-3. .... [AMENDED] .....  | 1453 | 450:65-5-4. .... [NEW] (E) .....    | 1633 |
| 450:60-1-1. .... [NEW] (E) .....   | 1618 | 450:65-5-5. .... [NEW] (E) .....    | 1633 |
| 450:60-1-2. .... [NEW] (E) .....   | 1618 | 450:65-7-1. .... [NEW] (E) .....    | 1633 |
| 450:60-1-3. .... [NEW] (E) .....   | 1619 | 450:65-7-2. .... [NEW] (E) .....    | 1633 |
| 450:60-1-4. .... [NEW] (E) .....   | 1619 | 450:65-7-3. .... [NEW] (E) .....    | 1633 |
| 450:60-1-5. .... [NEW] (E) .....   | 1619 | 460:1-7-1. .... [AMENDED] .....     | 3057 |
| 450:60-3-1. .... [NEW] (E) .....   | 1619 | 460:10-37-2. .... [AMENDED] .....   | 3058 |
| 450:60-3-2. .... [NEW] (E) .....   | 1619 | 460:10-37-6. .... [AMENDED] .....   | 3058 |
| 450:60-3-3. .... [NEW] (E) .....   | 1619 | 460:10-37-7. .... [AMENDED] .....   | 3059 |
| 450:60-3-4. .... [NEW] (E) .....   | 1619 | 460:20-31-13. .... [AMENDED] .....  | 3060 |
| 450:60-3-5. .... [NEW] (E) .....   | 1620 | 460:20-43-14. .... [AMENDED] .....  | 3061 |
| 450:60-3-6. .... [NEW] (E) .....   | 1620 | 460:20-43-44. .... [AMENDED] .....  | 3063 |
| 450:60-3-7. .... [NEW] (E) .....   | 1620 | 460:20-43-46. .... [AMENDED] .....  | 3063 |
| 450:60-3-8. .... [NEW] (E) .....   | 1620 | 460:20-45-44. .... [AMENDED] .....  | 3066 |
| 450:60-3-9. .... [NEW] (E) .....   | 1620 | 460:20-45-46. .... [AMENDED] .....  | 3066 |
| 450:60-3-10. .... [NEW] (E) .....  | 1620 | 460:20-45-47. .... [AMENDED] .....  | 3069 |
| 450:60-3-11. .... [NEW] (E) .....  | 1620 | 460:20-57-6. .... [AMENDED] .....   | 3070 |
| 450:60-3-12. .... [NEW] (E) .....  | 1620 | 465:10-7-4. .... [REVOKED] .....    | 2993 |
| 450:60-3-13. .... [NEW] (E) .....  | 1620 | 465:10-7-5. .... [REVOKED] .....    | 2993 |
| 450:60-3-14. .... [NEW] (E) .....  | 1620 | 485:10-7-2. .... [AMENDED] .....    | 1454 |
| 450:60-3-15. .... [NEW] (E) .....  | 1621 | 485:10-9-1. .... [AMENDED] .....    | 1455 |
| 450:60-3-16. .... [NEW] (E) .....  | 1621 | 485:10-9-2. .... [AMENDED] .....    | 1456 |
| 450:60-5-1. .... [NEW] (E) .....   | 1621 | 485:10-10-8.1. .... [NEW] .....     | 1458 |
| 450:60-5-2. .... [NEW] (E) .....   | 1621 | 485:10-15-4. .... [AMENDED] .....   | 1458 |
| 450:60-5-3. .... [NEW] (E) .....   | 1622 | 485:10-15-4.1. .... [AMENDED] ..... | 1458 |
| 450:60-7-1. .... [NEW] (E) .....   | 1622 | 485:10-15-6. .... [AMENDED] .....   | 1458 |
| 450:60-7-2. .... [NEW] (E) .....   | 1622 | 485:10-15-7. .... [AMENDED] .....   | 1459 |
| 450:60-7-3. .... [NEW] (E) .....   | 1622 | 485:10-16-1. .... [AMENDED] .....   | 1460 |
| 450:60-7-4. .... [NEW] (E) .....   | 1622 | 485:10-16-2. .... [AMENDED] .....   | 1460 |
| 450:60-7-5. .... [NEW] (E) .....   | 1622 | 485:10-16-3. .... [AMENDED] .....   | 1460 |
| 450:60-7-6. .... [NEW] (E) .....   | 1623 | 485:10-16-4. .... [AMENDED] .....   | 1461 |
| 450:60-7-7. .... [NEW] (E) .....   | 1623 | 485:10-16-5. .... [AMENDED] .....   | 1461 |
| 450:60-7-8. .... [NEW] (E) .....   | 1623 | 485:10-16-6. .... [AMENDED] .....   | 1461 |
| 450:60-7-9. .... [NEW] (E) .....   | 1624 | 485:10-16-7. .... [AMENDED] .....   | 1462 |
| 450:60-7-10. .... [NEW] (E) .....  | 1624 | 485:10-16-8. .... [AMENDED] .....   | 1462 |
| 450:60-9-1. .... [NEW] (E) .....   | 1624 | 485:10-18-2. .... [AMENDED] .....   | 1462 |
| 450:60-11-1. .... [NEW] (E) .....  | 1624 | 490:1-1-1. .... [AMENDED] .....     | 1463 |

|   |      |   |      |
|---|------|---|------|
| 490:1-1-2. . . . . [AMENDED] . . . . .        | 1463 | 530:15-1-1. . . . . [AMENDED] . . . . .     | 3006 |
| 490:1-3-1. . . . . [AMENDED] . . . . .        | 1465 | 530:15-1-2. . . . . [AMENDED] (E) . . . . . | 637  |
| 490:1-3-2. . . . . [AMENDED] . . . . .        | 1465 | 530:15-1-2. . . . . [AMENDED] . . . . .     | 3006 |
| 490:1-3-3. . . . . [AMENDED] . . . . .        | 1465 | 530:15-1-9. . . . . [AMENDED] (E) . . . . . | 638  |
| 490:1-3-4. . . . . [REVOKED] . . . . .        | 1466 | 530:15-1-9. . . . . [AMENDED] . . . . .     | 3007 |
| 490:1-3-6. . . . . [AMENDED] . . . . .        | 1466 | 530:15-3-8. . . . . [AMENDED] (E) . . . . . | 638  |
| 490:1-3-6. . . . . [AMENDED] . . . . .        | 2994 | 530:15-3-8. . . . . [AMENDED] . . . . .     | 3007 |
| 490:1-3-7. . . . . [NEW] . . . . .            | 2995 | 530:20-1-2. . . . . [AMENDED] . . . . .     | 3008 |
| 490:1-5-1. . . . . [REVOKED] . . . . .        | 1467 | 530:20-1-3. . . . . [NEW] . . . . .         | 3008 |
| 490:1-5-2. . . . . [NEW] . . . . .            | 1468 | 530:20-1-4. . . . . [NEW] . . . . .         | 3008 |
| 490:1-5-3. . . . . [NEW] . . . . .            | 1468 | 530:20-1-14. . . . . [AMENDED] . . . . .    | 3009 |
| 490:1-5-4. . . . . [NEW] . . . . .            | 1468 | 530:20-1-16. . . . . [AMENDED] . . . . .    | 3009 |
| 490:1-5-5. . . . . [NEW] . . . . .            | 1469 | 530:20-3-7. . . . . [AMENDED] . . . . .     | 3009 |
| 490:1-5-6. . . . . [NEW] . . . . .            | 1469 | 540:10-1-4. . . . . [AMENDED] . . . . .     | 1105 |
| 490:1-5-7. . . . . [NEW] . . . . .            | 1469 | 540:30-5-1. . . . . [AMENDED] . . . . .     | 1106 |
| 490:1-5-8. . . . . [NEW] . . . . .            | 1469 | 540:45-1-1. . . . . [NEW] . . . . .         | 1107 |
| 490:1-6-1. . . . . [NEW] . . . . .            | 1469 | 540:45-1-2. . . . . [NEW] . . . . .         | 1107 |
| 490:1-7-1. . . . . [AMENDED] . . . . .        | 1470 | 540:45-1-3. . . . . [NEW] . . . . .         | 1107 |
| 490:10-1-1. . . . . [AMENDED] . . . . .       | 1471 | 540:45-1-4. . . . . [NEW] . . . . .         | 1107 |
| 490:10-1-2. . . . . [REVOKED] . . . . .       | 1471 | 540:45-1-5. . . . . [NEW] . . . . .         | 1107 |
| 490:10-1-3. . . . . [AMENDED] . . . . .       | 1472 | 540:45-1-6. . . . . [NEW] . . . . .         | 1108 |
| 490:10-1-4. . . . . [AMENDED] . . . . .       | 1472 | 540:45-1-7. . . . . [NEW] . . . . .         | 1108 |
| 490:10-1-4. . . . . [AMENDED] . . . . .       | 2996 | 540:45-1-8. . . . . [NEW] . . . . .         | 1108 |
| 490:10-1-5. . . . . [REVOKED] . . . . .       | 1472 | 545:15-1-3. . . . . [AMENDED] . . . . .     | 1109 |
| 490:10-1-6. . . . . [AMENDED] . . . . .       | 1472 | 545:20-3-3. . . . . [AMENDED] . . . . .     | 1109 |
| 490:10-1-8. . . . . [NEW] . . . . .           | 1473 | 550:1-7-2. . . . . [AMENDED] . . . . .      | 2799 |
| 490:10-3-1. . . . . [AMENDED] . . . . .       | 1473 | 550:15-1-2. . . . . [AMENDED] . . . . .     | 2800 |
| 490:10-5-1. . . . . [AMENDED] . . . . .       | 1474 | 550:20-1-2. . . . . [AMENDED] . . . . .     | 2801 |
| 490:10-5-2. . . . . [AMENDED] . . . . .       | 1474 | 560:1-1-2. . . . . [AMENDED] . . . . .      | 1964 |
| 490:10-5-3. . . . . [AMENDED] . . . . .       | 1474 | 560:1-1-4. . . . . [AMENDED] . . . . .      | 1965 |
| 490:10-5-4. . . . . [AMENDED] . . . . .       | 1475 | 560:1-1-7. . . . . [AMENDED] . . . . .      | 1965 |
| 490:10-8-1. . . . . [AMENDED] . . . . .       | 2997 | 560:10-1-13.1. . . . . [NEW] . . . . .      | 1966 |
| 490:10-8-2. . . . . [AMENDED] . . . . .       | 1475 | 575:1-1-3. . . . . [AMENDED] . . . . .      | 1478 |
| 490:10-8-4. . . . . [AMENDED] . . . . .       | 1475 | 575:1-1-4. . . . . [AMENDED] . . . . .      | 1479 |
| 490:10-8-5. . . . . [AMENDED] . . . . .       | 1475 | 575:10-1-5. . . . . [AMENDED] . . . . .     | 1481 |
| 490:10-8-5. . . . . [AMENDED] . . . . .       | 2997 | 575:10-1-9. . . . . [AMENDED] . . . . .     | 1482 |
| 490:10-8-10. . . . . [AMENDED] . . . . .      | 1476 | 575:10-1-10. . . . . [AMENDED] . . . . .    | 1482 |
| 490:10-8-16. . . . . [AMENDED] . . . . .      | 1476 | 580:10-9-21. . . . . [NEW] . . . . .        | 3010 |
| 490:10-8-17. . . . . [AMENDED] . . . . .      | 1476 | 580:10-9-22. . . . . [NEW] . . . . .        | 3010 |
| 490:10-9-1. . . . . [AMENDED] . . . . .       | 1476 | 580:10-9-23. . . . . [NEW] . . . . .        | 3010 |
| 490:10-9-2. . . . . [NEW] . . . . .           | 1477 | 580:15-2-2. . . . . [AMENDED] (E) . . . . . | 88   |
| 490:10-9-2. . . . . [NEW] . . . . .           | 2997 | 580:15-2-2. . . . . [AMENDED] . . . . .     | 3011 |
| 490:10-10-1. . . . . [AMENDED] . . . . .      | 1477 | 580:15-6-21. . . . . [NEW] (E) . . . . .    | 91   |
| 490:10-10-1. . . . . [AMENDED] . . . . .      | 2997 | 580:15-6-21. . . . . [NEW] . . . . .        | 3014 |
| 510:10-7-1. . . . . [AMENDED] . . . . .       | 2798 | 580:15-6-22. . . . . [NEW] (E) . . . . .    | 91   |
| 527:10-1-2. . . . . [AMENDED] . . . . .       | 1104 | 580:15-6-22. . . . . [NEW] . . . . .        | 3014 |
| 530:10-3-22. . . . . [AMENDED] (E) . . . . .  | 632  | 580:15-6-23. . . . . [NEW] (E) . . . . .    | 91   |
| 530:10-3-22. . . . . [AMENDED] . . . . .      | 2999 | 580:15-6-23. . . . . [NEW] . . . . .        | 3014 |
| 530:10-5-52. . . . . [NEW] (E) . . . . .      | 632  | 580:15-6-24. . . . . [NEW] (E) . . . . .    | 91   |
| 530:10-5-52. . . . . [NEW] . . . . .          | 3000 | 580:15-6-24. . . . . [NEW] . . . . .        | 3014 |
| 530:10-7-19. . . . . [NEW] (E) . . . . .      | 635  | 580:45-1-1. . . . . [REVOKED] . . . . .     | 3016 |
| 530:10-7-19. . . . . [NEW] . . . . .          | 3000 | 580:45-1-2. . . . . [REVOKED] . . . . .     | 3016 |
| 530:10-7-21. . . . . [NEW] . . . . .          | 3000 | 580:45-1-3. . . . . [REVOKED] . . . . .     | 3016 |
| 530:10-7-24. . . . . [AMENDED] (E) . . . . .  | 632  | 580:45-1-4. . . . . [REVOKED] . . . . .     | 3016 |
| 530:10-7-24. . . . . [AMENDED] . . . . .      | 3001 | 580:45-1-5. . . . . [REVOKED] . . . . .     | 3016 |
| 530:10-13-35. . . . . [AMENDED] (E) . . . . . | 633  | 580:45-1-6. . . . . [REVOKED] . . . . .     | 3017 |
| 530:10-13-35. . . . . [AMENDED] . . . . .     | 3001 | 580:45-1-7. . . . . [REVOKED] . . . . .     | 3017 |
| 530:10-15-11. . . . . [AMENDED] (E) . . . . . | 633  | 580:45-1-8. . . . . [REVOKED] . . . . .     | 3017 |
| 530:10-15-11. . . . . [AMENDED] . . . . .     | 3002 | 580:45-1-9. . . . . [REVOKED] . . . . .     | 3018 |
| 530:10-17-31. . . . . [AMENDED] (E) . . . . . | 636  | 580:45-1-11. . . . . [REVOKED] . . . . .    | 3018 |
| 530:10-17-31. . . . . [AMENDED] . . . . .     | 3003 | 580:45-1-12. . . . . [REVOKED] . . . . .    | 3018 |
| 530:10-17-113. . . . . [AMENDED] . . . . .    | 3003 | 580:45-1-13. . . . . [REVOKED] . . . . .    | 3019 |
| 530:10-17-115. . . . . [AMENDED] . . . . .    | 3004 | 580:45-1-14. . . . . [REVOKED] . . . . .    | 3019 |
| 530:10-17-138. . . . . [AMENDED] . . . . .    | 3004 | 580:45-1-15. . . . . [REVOKED] . . . . .    | 3019 |
| 530:10, App. A. . . . . [REVOKED] . . . . .   | 3005 | 580:45-1-16. . . . . [REVOKED] . . . . .    | 3019 |
| 530:10, App. A. . . . . [NEW] . . . . .       | 3005 | 580:45-1-17. . . . . [REVOKED] . . . . .    | 3019 |
| 530:15-1-1. . . . . [AMENDED] (E) . . . . .   | 637  | 580:45-1-18. . . . . [REVOKED] . . . . .    | 3020 |

**Rules Affected Index – *continued***

|                 |            |      |               |                |      |
|-----------------|------------|------|---------------|----------------|------|
| 580:45-1-19.    | [REVOKED]  | 3020 | 590:15-3-3.   | [NEW]          | 1486 |
| 580:45-1-20.    | [RESERVED] | 3020 | 590:15-3-4.   | [NEW] (E)      | 109  |
| 580:45-1-21.    | [NEW]      | 3020 | 590:15-3-4.   | [NEW]          | 1487 |
| 580:45-1-22.    | [RESERVED] | 3020 | 590:15-3-5.   | [NEW] (E)      | 109  |
| 580:45-1-23.    | [NEW]      | 3020 | 590:15-3-5.   | [NEW]          | 1487 |
| 580:45-1-24.    | [RESERVED] | 3020 | 590:15-3-6.   | [NEW] (E)      | 109  |
| 580:45-1-25.    | [NEW]      | 3020 | 590:15-3-6.   | [NEW]          | 1487 |
| 580:45-1-26.    | [RESERVED] | 3020 | 590:30-1-4.   | [AMENDED]      | 1488 |
| 580:45-1-27.    | [NEW]      | 3020 | 600:10-1-5.   | [AMENDED]      | 1110 |
| 580:45-1-28.    | [RESERVED] | 3021 | 600:10-1-7.   | [AMENDED]      | 1110 |
| 580:45-1-29.    | [NEW]      | 3021 | 600:10-1-8.   | [AMENDED]      | 1111 |
| 580:45-1-30.    | [RESERVED] | 3021 | 600:10-1-16.  | [AMENDED]      | 1111 |
| 580:45-1-31.    | [NEW]      | 3021 | 600:15-1-6.   | [AMENDED]      | 1113 |
| 580:45-1-32.    | [RESERVED] | 3021 | 600:20-1-3.   | [AMENDED]      | 1114 |
| 580:45-1-33.    | [NEW]      | 3021 | 610:1-11-2.   | [RENUMBERED TO |      |
| 580:45-1-34.    | [RESERVED] | 3023 | 610:1-11-20]  |                | 3038 |
| 580:45-1-35.    | [NEW]      | 3023 | 610:1-11-4.   | [AMENDED]      | 3038 |
| 580:45-1-36.    | [RESERVED] | 3023 | 610:1-11-5.   | [AMENDED]      | 3039 |
| 580:45-1-37.    | [NEW]      | 3023 | 610:1-11-6.   | [AMENDED]      | 3039 |
| 580:45-1-38.    | [RESERVED] | 3025 | 610:1-11-7.   | [AMENDED]      | 3039 |
| 580:45-1-39.    | [NEW]      | 3025 | 610:1-11-9.   | [REVOKED]      | 3041 |
| 580:45-1-40.    | [RESERVED] | 3026 | 610:1-11-13.  | [AMENDED]      | 3041 |
| 580:45-1-41.    | [NEW]      | 3026 | 610:1-11-14.  | [AMENDED]      | 3041 |
| 580:45-1-42.    | [RESERVED] | 3026 | 610:1-11-16.  | [AMENDED]      | 3041 |
| 580:45-1-43.    | [NEW]      | 3026 | 610:1-11-17.  | [AMENDED]      | 3041 |
| 580:45-1-44.    | [RESERVED] | 3027 | 610:1-11-18.  | [NEW]          | 3042 |
| 580:45-1-45.    | [NEW]      | 3027 | 610:1-11-19.  | [NEW]          | 3042 |
| 580:45-1-46.    | [RESERVED] | 3028 | 610:1-11-20.  | [NEW]          | 3042 |
| 580:45-1-47.    | [NEW]      | 3028 | 610:1-11-21.  | [NEW]          | 3042 |
| 580:45-1-48.    | [RESERVED] | 3029 | 610:1-11-22.  | [NEW]          | 3042 |
| 580:45-1-49.    | [NEW]      | 3029 | 610:25-1-4.   | [AMENDED]      | 1968 |
| 580:45-1-50.    | [RESERVED] | 3029 | 610:25-3-3.   | [AMENDED]      | 3043 |
| 580:45-1-51.    | [NEW]      | 3029 | 610:25-7-6.   | [AMENDED]      | 1970 |
| 580:45-1-52.    | [RESERVED] | 3029 | 610:25-23-4.  | [AMENDED]      | 1972 |
| 580:45-1-53.    | [NEW]      | 3029 | 610:25-23-7.  | [AMENDED]      | 1973 |
| 580:45-1-54.    | [RESERVED] | 3029 | 610:25-27-4.  | [AMENDED]      | 1115 |
| 580:45-1-55.    | [NEW]      | 3029 | 610:25-27-6.  | [AMENDED]      | 1115 |
| 580:45-1-56.    | [RESERVED] | 3030 | 612:1-7-2.    | [AMENDED]      | 1974 |
| 580:45-1-57.    | [NEW]      | 3030 | 612:3-5-12.   | [AMENDED]      | 1975 |
| 580:45, App. A. | [REVOKED]  | 3031 | 612:10-1-2.   | [AMENDED]      | 1976 |
| 580:45, App. A. | [NEW]      | 3031 | 612:10-1-5.   | [AMENDED]      | 1980 |
| 580:45, App. B. | [NEW]      | 3034 | 612:10-3-4.   | [AMENDED]      | 1982 |
| 580:45, App. C. | [NEW]      | 3035 | 612:10-3-5.   | [AMENDED]      | 1982 |
| 580:65-1-9.     | [AMENDED]  | 3036 | 612:10-7-1.   | [AMENDED]      | 1982 |
| 580:70-1-2.     | [AMENDED]  | 3037 | 612:10-7-4.   | [AMENDED]      | 1984 |
| 580:70-3-1.     | [AMENDED]  | 3037 | 612:10-7-5.   | [AMENDED]      | 1986 |
| 585:20-1-1.     | [NEW] (E)  | 2121 | 612:10-7-8.   | [AMENDED]      | 1987 |
| 585:20-1-2.     | [NEW] (E)  | 2121 | 612:10-7-87.  | [AMENDED]      | 1988 |
| 585:20-5-1.     | [NEW] (E)  | 2121 | 612:10-7-88.  | [AMENDED]      | 1989 |
| 585:20-5-2.     | [NEW] (E)  | 2121 | 612:10-7-104. | [AMENDED]      | 1989 |
| 585:20-5-3.     | [NEW] (E)  | 2121 | 612:10-7-117. | [AMENDED]      | 1989 |
| 585:20-7-1.     | [NEW] (E)  | 2121 | 612:10-7-131. | [AMENDED]      | 1990 |
| 585:20-7-2.     | [NEW] (E)  | 2122 | 612:10-7-157. | [AMENDED]      | 1990 |
| 585:20-7-3.     | [NEW] (E)  | 2122 | 612:10-7-162. | [AMENDED]      | 1990 |
| 590:10-1-4.     | [AMENDED]  | 1483 | 612:10-7-179. | [AMENDED]      | 1991 |
| 590:10-1-20.    | [NEW] (E)  | 516  | 612:10-7-180. | [AMENDED]      | 1991 |
| 590:10-1-20.    | [NEW]      | 1483 | 612:10-7-185. | [AMENDED]      | 1991 |
| 590:10-3-6.     | [AMENDED]  | 1483 | 612:10-7-199. | [AMENDED]      | 1992 |
| 590:10-7-16.    | [AMENDED]  | 1484 | 612:10-7-216. | [AMENDED]      | 1992 |
| 590:10-19-14.   | [AMENDED]  | 1484 | 612:10-7-221. | [NEW]          | 1993 |
| 590:15-1-5.     | [AMENDED]  | 1485 | 612:10-11-4.  | [AMENDED]      | 1993 |
| 590:15-1-6.     | [REVOKED]  | 1486 | 695:10-1-2.   | [AMENDED]      | 1116 |
| 590:15-3-1.     | [NEW] (E)  | 108  | 695:10-1-5.   | [AMENDED]      | 1117 |
| 590:15-3-1.     | [NEW]      | 1486 | 695:10-1-6.   | [AMENDED]      | 1117 |
| 590:15-3-2.     | [NEW] (E)  | 108  | 695:10-1-8.   | [AMENDED]      | 1118 |
| 590:15-3-2.     | [NEW]      | 1486 | 695:10-1-9.   | [AMENDED]      | 1118 |
| 590:15-3-3.     | [NEW] (E)  | 108  | 695:10-1-10.  | [AMENDED]      | 1118 |

|                        |               |      |                        |           |      |
|------------------------|---------------|------|------------------------|-----------|------|
| 695:10-1-11. . . . .   | [AMENDED]     | 1119 | 710:45-9-72. . . . .   | [AMENDED] | 2822 |
| 695:10-3-2. . . . .    | [AMENDED]     | 1119 | 710:45-9-73. . . . .   | [AMENDED] | 2822 |
| 695:10-3-3. . . . .    | [AMENDED]     | 1119 | 710:45-9-80. . . . .   | [AMENDED] | 2822 |
| 695:10-3-4. . . . .    | [AMENDED]     | 1119 | 710:45-9-81. . . . .   | [AMENDED] | 2822 |
| 695:10-5-3. . . . .    | [AMENDED]     | 1120 | 710:45-9-82. . . . .   | [AMENDED] | 2823 |
| 695:10-5-4. . . . .    | [AMENDED]     | 1120 | 710:45-9-83. . . . .   | [AMENDED] | 2823 |
| 695:10-5-6. . . . .    | [AMENDED] (E) | 639  | 710:45-9-84. . . . .   | [AMENDED] | 2823 |
| 695:10-5-6. . . . .    | [AMENDED]     | 1120 | 710:45-9-92. . . . .   | [AMENDED] | 2823 |
| 695:10-7-2. . . . .    | [AMENDED]     | 1120 | 710:50-15-33. . . . .  | [NEW]     | 2825 |
| 695:10-7-3. . . . .    | [AMENDED]     | 1121 | 710:50-15-48. . . . .  | [AMENDED] | 2825 |
| 695:10-9-2. . . . .    | [AMENDED]     | 1121 | 710:50-15-49. . . . .  | [AMENDED] | 2825 |
| 695:10-11-2. . . . .   | [AMENDED]     | 1121 | 710:50-15-50. . . . .  | [AMENDED] | 2826 |
| 695:10-13-3. . . . .   | [AMENDED]     | 1121 | 710:50-15-66. . . . .  | [AMENDED] | 2827 |
| 710:1-5-86. . . . .    | [AMENDED]     | 2802 | 710:50-15-76. . . . .  | [AMENDED] | 2827 |
| 710:10-4-1. . . . .    | [AMENDED]     | 2804 | 710:50-15-85. . . . .  | [AMENDED] | 2828 |
| 710:10-4-2. . . . .    | [AMENDED]     | 2804 | 710:50-15-90. . . . .  | [AMENDED] | 2828 |
| 710:10-4-3. . . . .    | [AMENDED]     | 2804 | 710:50-15-92. . . . .  | [AMENDED] | 2828 |
| 710:10-4-6. . . . .    | [AMENDED]     | 2805 | 710:50-15-97. . . . .  | [NEW]     | 2829 |
| 710:10-4-7. . . . .    | [AMENDED]     | 2805 | 710:50-15-98. . . . .  | [NEW]     | 2829 |
| 710:10-4-8. . . . .    | [AMENDED]     | 2805 | 710:50-15-99. . . . .  | [NEW]     | 2830 |
| 710:10-4-9. . . . .    | [AMENDED]     | 2806 | 710:50-15-100. . . . . | [NEW]     | 2830 |
| 710:10-7-2. . . . .    | [AMENDED]     | 2806 | 710:50-15-101. . . . . | [NEW]     | 2832 |
| 710:10-7-2.1. . . . .  | [AMENDED]     | 2807 | 710:50-15-103. . . . . | [NEW]     | 2833 |
| 710:10-7-4. . . . .    | [AMENDED]     | 2809 | 710:50-15-104. . . . . | [NEW]     | 2833 |
| 710:10-7-5. . . . .    | [AMENDED]     | 2809 | 710:50-15-105. . . . . | [NEW]     | 2834 |
| 710:10-7-6. . . . .    | [AMENDED]     | 2809 | 710:50-15-106. . . . . | [NEW]     | 2834 |
| 710:10-7-10. . . . .   | [AMENDED]     | 2809 | 710:50-15-107. . . . . | [NEW]     | 2835 |
| 710:10-7-11. . . . .   | [AMENDED]     | 2810 | 710:50-17-3. . . . .   | [AMENDED] | 2836 |
| 710:10-7-12. . . . .   | [AMENDED]     | 2810 | 710:55-4-103. . . . .  | [AMENDED] | 2836 |
| 710:10-7-13. . . . .   | [AMENDED]     | 2810 | 710:60-3-30. . . . .   | [AMENDED] | 2838 |
| 710:10-7-14. . . . .   | [AMENDED]     | 2810 | 710:60-3-32. . . . .   | [AMENDED] | 2838 |
| 710:10-7-15. . . . .   | [AMENDED]     | 2810 | 710:60-3-112. . . . .  | [AMENDED] | 2838 |
| 710:10-7-16. . . . .   | [AMENDED]     | 2810 | 710:60-3-140. . . . .  | [NEW]     | 2839 |
| 710:10-7-17. . . . .   | [AMENDED]     | 2811 | 710:60-3-141. . . . .  | [NEW]     | 2839 |
| 710:10-7-22. . . . .   | [AMENDED]     | 2811 | 710:60-3-142. . . . .  | [NEW]     | 2839 |
| 710:10-7-23. . . . .   | [AMENDED]     | 2811 | 710:60-3-150. . . . .  | [AMENDED] | 2840 |
| 710:10-7-24. . . . .   | [AMENDED]     | 2811 | 710:60-3-210. . . . .  | [REVOKED] | 2840 |
| 710:10-7-25. . . . .   | [AMENDED]     | 2811 | 710:60-3-211. . . . .  | [REVOKED] | 2840 |
| 710:10-12-1. . . . .   | [AMENDED]     | 2811 | 710:60-3-212. . . . .  | [REVOKED] | 2841 |
| 710:10-12-4. . . . .   | [AMENDED]     | 2811 | 710:60-3-213. . . . .  | [REVOKED] | 2841 |
| 710:10-12-7. . . . .   | [AMENDED]     | 2811 | 710:60-5-53. . . . .   | [AMENDED] | 2841 |
| 710:10-12-8. . . . .   | [AMENDED]     | 2811 | 710:60-5-71. . . . .   | [AMENDED] | 2841 |
| 710:10-12-9. . . . .   | [AMENDED]     | 2812 | 710:60-5-91. . . . .   | [AMENDED] | 2842 |
| 710:10-12-10. . . . .  | [AMENDED]     | 2812 | 710:60-5-92. . . . .   | [AMENDED] | 2843 |
| 710:10-12-11. . . . .  | [AMENDED]     | 2812 | 710:60-5-96. . . . .   | [AMENDED] | 2843 |
| 710:10-12-13. . . . .  | [AMENDED]     | 2812 | 710:60-5-116. . . . .  | [AMENDED] | 2844 |
| 710:10-12-20. . . . .  | [AMENDED]     | 2812 | 710:60-7-3. . . . .    | [AMENDED] | 2845 |
| 710:10-14-1. . . . .   | [AMENDED]     | 2812 | 710:60-8-4. . . . .    | [AMENDED] | 2846 |
| 710:10-14-3. . . . .   | [AMENDED]     | 2813 | 710:60-9-95. . . . .   | [AMENDED] | 2847 |
| 710:10-14-5. . . . .   | [AMENDED]     | 2813 | 710:65-3-4. . . . .    | [AMENDED] | 2849 |
| 710:10-14-6. . . . .   | [AMENDED]     | 2813 | 710:65-3-8. . . . .    | [AMENDED] | 2850 |
| 710:20-5-6. . . . .    | [AMENDED]     | 2813 | 710:65-7-15. . . . .   | [AMENDED] | 2850 |
| 710:22-1-17. . . . .   | [AMENDED]     | 2814 | 710:65-7-17. . . . .   | [NEW]     | 2851 |
| 710:25-1-7. . . . .    | [AMENDED]     | 2815 | 710:65-7-18. . . . .   | [NEW]     | 2851 |
| 710:35-5-64. . . . .   | [REVOKED]     | 2815 | 710:65-9-8. . . . .    | [AMENDED] | 2851 |
| 710:40-1-17. . . . .   | [NEW]         | 2816 | 710:65-13-1. . . . .   | [AMENDED] | 2852 |
| 710:45-9-27. . . . .   | [AMENDED]     | 2817 | 710:65-13-63. . . . .  | [NEW]     | 2853 |
| 710:45-9-28. . . . .   | [AMENDED]     | 2817 | 710:65-13-123. . . . . | [NEW]     | 2853 |
| 710:45-9-32. . . . .   | [AMENDED]     | 2818 | 710:65-13-154. . . . . | [AMENDED] | 2853 |
| 710:45-9-42. . . . .   | [AMENDED]     | 2818 | 710:65-13-156. . . . . | [NEW]     | 2853 |
| 710:45-9-43. . . . .   | [AMENDED]     | 2818 | 710:65-13-176. . . . . | [NEW]     | 2855 |
| 710:45-9-52. . . . .   | [AMENDED]     | 2819 | 710:65-13-194. . . . . | [AMENDED] | 2856 |
| 710:45-9-53. . . . .   | [AMENDED]     | 2819 | 710:65-13-275. . . . . | [NEW]     | 2858 |
| 710:45-9-60. . . . .   | [AMENDED]     | 2820 | 710:65-13-339. . . . . | [AMENDED] | 2858 |
| 710:45-9-62. . . . .   | [AMENDED]     | 2820 | 710:65-13-343. . . . . | [AMENDED] | 2859 |
| 710:45-9-62.1. . . . . | [AMENDED]     | 2821 | 710:65-13-344. . . . . | [NEW]     | 2859 |
| 710:45-9-64. . . . .   | [NEW]         | 2821 | 710:65-13-345. . . . . | [NEW]     | 2859 |

**Rules Affected Index – *continued***

|                                      |      |                                     |      |
|--------------------------------------|------|-------------------------------------|------|
| 710:65-13-346. .... [NEW] .....      | 2860 | 725:20-7-1. .... [AMENDED] .....    | 2004 |
| 710:65-13-347. .... [NEW] .....      | 2860 | 725:20-7-2. .... [AMENDED] .....    | 2005 |
| 710:65-13-348. .... [NEW] .....      | 2861 | 725:20-7-3. .... [AMENDED] .....    | 2005 |
| 710:65-13-450. .... [NEW] .....      | 2861 | 725:20-7-4. .... [AMENDED] .....    | 2006 |
| 710:65-19-74. .... [AMENDED] .....   | 2862 | 725:20-7-5. .... [AMENDED] .....    | 2006 |
| 710:65-19-77. .... [AMENDED] .....   | 2862 | 725:20-7-6. .... [AMENDED] .....    | 2006 |
| 710:65-19-142. .... [AMENDED] .....  | 2862 | 725:20-7-7. .... [AMENDED] .....    | 2007 |
| 710:65-19-195. .... [NEW] .....      | 2863 | 725:20-7-9. .... [AMENDED] .....    | 2008 |
| 710:65-19-328. .... [AMENDED] .....  | 2863 | 725:20-7-10. .... [NEW] (E) .....   | 38   |
| 710:65-19-330. .... [AMENDED] .....  | 2863 | 725:20-9-5. .... [AMENDED] .....    | 2002 |
| 710:65-21-7. .... [AMENDED] .....    | 2865 | 725:20-9-6. .... [AMENDED] .....    | 2002 |
| 710:70-2-9.1. .... [NEW] .....       | 2868 | 725:20-11-3.1. .... [AMENDED] ..... | 2002 |
| 710:70-2-11. .... [NEW] .....        | 2868 | 725:20-13-1. .... [AMENDED] .....   | 2002 |
| 710:70-2-12. .... [NEW] (E) .....    | 639  | 725:20-13-2. .... [AMENDED] .....   | 2002 |
| 710:70-2-12. .... [NEW] .....        | 2868 | 725:20-13-3. .... [AMENDED] .....   | 2003 |
| 710:70-2-13. .... [NEW] (E) .....    | 1196 | 725:20-13-4. .... [AMENDED] .....   | 2003 |
| 710:70-2-13. .... [NEW] .....        | 2866 | 725:20-13-5. .... [AMENDED] .....   | 2003 |
| 710:70-5-13. .... [NEW] .....        | 2869 | 725:20-13-6. .... [AMENDED] .....   | 2003 |
| 710:85-7-3. .... [AMENDED] .....     | 2870 | 725:20-13-7. .... [AMENDED] .....   | 2003 |
| 710:90-3-4. .... [AMENDED] .....     | 2871 | 725:20-13-8. .... [AMENDED] .....   | 2003 |
| 710:90-3-11. .... [AMENDED] .....    | 2872 | 725:20-13-9. .... [AMENDED] .....   | 2003 |
| 710:90-3-15. .... [AMENDED] .....    | 2873 | 725:20-13-10. .... [AMENDED] .....  | 2003 |
| 710:90-3-17. .... [AMENDED] .....    | 2874 | 725:25-1-1. .... [REVOKED] .....    | 2009 |
| 710:95-5-2. .... [AMENDED] .....     | 2874 | 725:25-1-2. .... [REVOKED] .....    | 2009 |
| 710:95-5-13. .... [AMENDED] .....    | 2875 | 725:25-3-1. .... [REVOKED] .....    | 2009 |
| 710:95-5-14. .... [AMENDED] .....    | 2875 | 725:25-3-2. .... [REVOKED] .....    | 2009 |
| 710:95-5-20. .... [AMENDED] .....    | 2876 | 725:25-7-1. .... [REVOKED] .....    | 2009 |
| 710:95-5-21. .... [AMENDED] .....    | 2877 | 725:25-7-2. .... [REVOKED] .....    | 2010 |
| 710:95-5-22. .... [NEW] .....        | 2877 | 725:25-9-1. .... [REVOKED] .....    | 2010 |
| 710:95-13-1. .... [REVOKED] .....    | 2879 | 725:25-9-2. .... [REVOKED] .....    | 2010 |
| 712:10-7-1. .... [AMENDED] .....     | 3071 | 725:25-9-3. .... [REVOKED] .....    | 2010 |
| 712:10-11-1. .... [AMENDED] .....    | 3072 | 725:25-9-4. .... [REVOKED] .....    | 2010 |
| 715:10-1-7. .... [AMENDED] (E) ..... | 641  | 725:25-9-5. .... [REVOKED] .....    | 2010 |
| 715:10-1-7. .... [AMENDED] .....     | 3073 | 725:25-9-6. .... [REVOKED] .....    | 2010 |
| 715:10-3-4. .... [AMENDED] .....     | 3074 | 725:25-11-1. .... [REVOKED] .....   | 2011 |
| 715:10-9-7. .... [AMENDED] .....     | 3074 | 725:25-11-3. .... [REVOKED] .....   | 2011 |
| 725:1-1-1. .... [AMENDED] .....      | 1994 | 725:25-11-4. .... [REVOKED] .....   | 2011 |
| 725:1-3-1. .... [AMENDED] .....      | 1994 | 725:25-11-5. .... [REVOKED] .....   | 2011 |
| 725:1-3-2. .... [AMENDED] .....      | 1994 | 725:25-11-6. .... [REVOKED] .....   | 2011 |
| 725:1-5-1. .... [AMENDED] .....      | 1994 | 725:25-15-1. .... [REVOKED] .....   | 2011 |
| 725:1-5-2. .... [AMENDED] .....      | 1994 | 725:25-15-2. .... [REVOKED] .....   | 2011 |
| 725:1-5-3. .... [AMENDED] .....      | 1994 | 725:25-15-3. .... [REVOKED] .....   | 2011 |
| 725:1-5-4. .... [AMENDED] .....      | 1995 | 725:25-23-1. .... [REVOKED] .....   | 2011 |
| 725:15-3-3. .... [AMENDED] .....     | 1996 | 725:25-23-2. .... [REVOKED] .....   | 2011 |
| 725:15-3-4. .... [AMENDED] .....     | 1996 | 725:25-25-1. .... [REVOKED] .....   | 2011 |
| 725:15-9-2. .... [AMENDED] .....     | 1996 | 725:25-25-2. .... [REVOKED] .....   | 2012 |
| 725:15-17-1. .... [AMENDED] .....    | 1996 | 725:25-27-1. .... [REVOKED] .....   | 2012 |
| 725:15-17-2. .... [AMENDED] .....    | 1996 | 725:25-27-2. .... [REVOKED] .....   | 2012 |
| 725:15-19-1. .... [AMENDED] .....    | 1997 | 725:25-29-1. .... [REVOKED] .....   | 2012 |
| 725:15-27-1. .... [AMENDED] .....    | 1997 | 725:25-29-2. .... [REVOKED] .....   | 2012 |
| 725:15-29-2. .... [AMENDED] .....    | 1997 | 725:30-2-1. .... [AMENDED] .....    | 2013 |
| 725:15-29-10. .... [AMENDED] .....   | 1997 | 725:30-2-2. .... [AMENDED] .....    | 2013 |
| 725:15-29-11. .... [AMENDED] .....   | 1997 | 725:30-2-5. .... [AMENDED] .....    | 2013 |
| 725:15-29-20. .... [AMENDED] .....   | 1997 | 725:30-4-1. .... [AMENDED] .....    | 2013 |
| 725:15-29-21. .... [AMENDED] .....   | 1998 | 725:30-4-2. .... [AMENDED] .....    | 2014 |
| 725:15-29-32. .... [AMENDED] .....   | 1998 | 725:30-4-9. .... [REVOKED] .....    | 2014 |
| 725:15-31-11. .... [AMENDED] .....   | 1998 | 725:30-6-1. .... [AMENDED] .....    | 2014 |
| 725:15-31-21. .... [AMENDED] .....   | 1998 | 725:30-8-6. .... [AMENDED] .....    | 2015 |
| 725:15-31-32. .... [AMENDED] .....   | 1998 | 725:30-10-1. .... [AMENDED] .....   | 2015 |
| 725:15-33-1. .... [AMENDED] .....    | 1999 | 725:30-10-2. .... [AMENDED] .....   | 2015 |
| 725:15-33-2. .... [AMENDED] .....    | 1999 | 725:30-12-3. .... [AMENDED] .....   | 2015 |
| 725:15-33-3. .... [AMENDED] .....    | 2000 | 725:30-12-5. .... [AMENDED] .....   | 2016 |
| 725:15-33-4. .... [AMENDED] .....    | 2000 | 725:30-12-6. .... [AMENDED] .....   | 2018 |
| 725:15-33-5. .... [AMENDED] .....    | 2001 | 725:30-23-1. .... [AMENDED] .....   | 2018 |
| 725:15-33-6. .... [AMENDED] .....    | 2001 | 725:30-23-3. .... [AMENDED] .....   | 2018 |
| 725:15-35-1. .... [AMENDED] .....    | 2001 | 725:30-24-1. .... [AMENDED] .....   | 2018 |
| 725:20-1-2. .... [AMENDED] .....     | 2002 | 725:30-26-12. .... [AMENDED] .....  | 2019 |

|  |      |   |      |
|--|------|---|------|
| 725:30-28-1. . . . . [AMENDED] . . . . . | 2019 | 765:25-3-4. . . . . [AMENDED] . . . . .     | 2895 |
| 725:30-28-2. . . . . [AMENDED] . . . . . | 2019 | 765:25-5-1. . . . . [AMENDED] . . . . .     | 2895 |
| 725:30-29-1. . . . . [NEW] . . . . .     | 2019 | 765:25-5-2. . . . . [AMENDED] . . . . .     | 2895 |
| 725:30-29-2. . . . . [NEW] . . . . .     | 2019 | 765:30-3-1. . . . . [AMENDED] . . . . .     | 2896 |
| 725:30-29-3. . . . . [NEW] . . . . .     | 2020 | 765:30-3-2. . . . . [AMENDED] . . . . .     | 2896 |
| 725:30-29-4. . . . . [NEW] . . . . .     | 2020 | 765:30-7-2. . . . . [AMENDED] . . . . .     | 2896 |
| 725:30-29-5. . . . . [NEW] . . . . .     | 2020 | 765:35-5-1. . . . . [AMENDED] . . . . .     | 2897 |
| 725:30-29-6. . . . . [NEW] . . . . .     | 2020 | 765:35-7-1. . . . . [AMENDED] . . . . .     | 2897 |
| 725:30-29-7. . . . . [NEW] . . . . .     | 2020 | 765:36-7-1. . . . . [AMENDED] . . . . .     | 2898 |
| 725:30-29-8. . . . . [NEW] . . . . .     | 2020 | 765:37-9-1. . . . . [NEW] . . . . .         | 2899 |
| 725:30-29-9. . . . . [NEW] . . . . .     | 2021 | 765:37-9-2. . . . . [NEW] . . . . .         | 2899 |
| 725:30-29-10. . . . . [NEW] . . . . .    | 2021 | 765:38-1-1. . . . . [NEW] . . . . .         | 2899 |
| 725:30-29-11. . . . . [NEW] . . . . .    | 2021 | 765:38-1-2. . . . . [NEW] . . . . .         | 2899 |
| 725:30-29-12. . . . . [NEW] . . . . .    | 2021 | 765:38-1-3. . . . . [NEW] . . . . .         | 2900 |
| 725:30-29-13. . . . . [NEW] . . . . .    | 2021 | 765:38-1-4. . . . . [NEW] . . . . .         | 2900 |
| 725:30-29-14. . . . . [NEW] . . . . .    | 2021 | 765:38-1-5. . . . . [NEW] . . . . .         | 2900 |
| 725:30-29-15. . . . . [NEW] . . . . .    | 2021 | 765:38-1-6. . . . . [NEW] . . . . .         | 2900 |
| 725:35-1-1. . . . . [AMENDED] . . . . .  | 2022 | 765:38-3-1. . . . . [NEW] . . . . .         | 2900 |
| 725:35-1-2. . . . . [AMENDED] . . . . .  | 2022 | 765:38-5-1. . . . . [NEW] . . . . .         | 2900 |
| 725:35-1-3. . . . . [AMENDED] . . . . .  | 2022 | 765:38-5-2. . . . . [NEW] . . . . .         | 2901 |
| 725:35-1-5. . . . . [AMENDED] . . . . .  | 2023 | 775:10-3-12. . . . . [AMENDED] . . . . .    | 2024 |
| 730:40-5-1. . . . . [NEW] (E) . . . . .  | 429  | 775:10-5-30. . . . . [AMENDED] . . . . .    | 2025 |
| 730:40-5-1. . . . . [NEW] . . . . .      | 2880 | 775:10-7-9.1. . . . . [NEW] . . . . .       | 2026 |
| 730:40-5-2. . . . . [NEW] (E) . . . . .  | 429  | 775:10-10-10. . . . . [NEW] . . . . .       | 2027 |
| 730:40-5-2. . . . . [NEW] . . . . .      | 2880 | 775:25-1-3. . . . . [AMENDED] . . . . .     | 2027 |
| 730:40-5-3. . . . . [NEW] (E) . . . . .  | 430  | 775:26-1-1. . . . . [NEW] . . . . .         | 2028 |
| 730:40-5-3. . . . . [NEW] . . . . .      | 2880 | 780:10-3-2. . . . . [AMENDED] . . . . .     | 2901 |
| 730:40-5-4. . . . . [NEW] (E) . . . . .  | 430  | 780:10-5-2. . . . . [AMENDED] . . . . .     | 2902 |
| 730:40-5-4. . . . . [NEW] . . . . .      | 2881 | 780:10-5-4. . . . . [AMENDED] . . . . .     | 2902 |
| 735:80-3-11. . . . . [NEW] . . . . .     | 3043 | 780:10-9-1. . . . . [AMENDED] . . . . .     | 2903 |
| 765:1-1-2.1. . . . . [AMENDED] . . . . . | 2881 | 780:10-9-2. . . . . [AMENDED] . . . . .     | 2903 |
| 765:2-3-5.1. . . . . [NEW] . . . . .     | 2882 | 780:15-3-2. . . . . [AMENDED] . . . . .     | 2904 |
| 765:2-3-6. . . . . [AMENDED] . . . . .   | 2882 | 780:15-3-3. . . . . [AMENDED] . . . . .     | 2908 |
| 765:2-3-11. . . . . [AMENDED] . . . . .  | 2882 | 780:15-3-6. . . . . [AMENDED] . . . . .     | 2909 |
| 765:2-5-12. . . . . [AMENDED] . . . . .  | 2883 | 780:20-3-1. . . . . [AMENDED] . . . . .     | 2911 |
| 765:3-1-6. . . . . [AMENDED] . . . . .   | 2883 | 780:20-3-2. . . . . [AMENDED] . . . . .     | 2914 |
| 765:10-1-3. . . . . [AMENDED] . . . . .  | 2884 | 780:20-3-3. . . . . [AMENDED] . . . . .     | 2919 |
| 765:10-3-1. . . . . [AMENDED] . . . . .  | 2885 | 780:20-3-4. . . . . [AMENDED] . . . . .     | 2920 |
| 765:10-3-3. . . . . [AMENDED] . . . . .  | 2886 | 780:20-3-5. . . . . [AMENDED] . . . . .     | 2920 |
| 765:10-3-4. . . . . [NEW] . . . . .      | 2886 | 785:1-1-2. . . . . [AMENDED] . . . . .      | 3075 |
| 765:10-3-5. . . . . [NEW] . . . . .      | 2886 | 785:1-9-2. . . . . [AMENDED] . . . . .      | 3075 |
| 765:10-5-1. . . . . [AMENDED] . . . . .  | 2886 | 785:1-11-1. . . . . [AMENDED] . . . . .     | 3075 |
| 765:11-3-1. . . . . [AMENDED] . . . . .  | 2887 | 785:4-5-4. . . . . [AMENDED] . . . . .      | 3076 |
| 765:11-5-1. . . . . [AMENDED] . . . . .  | 2887 | 785:4-5-6. . . . . [NEW] . . . . .          | 3077 |
| 765:15-1-1. . . . . [AMENDED] . . . . .  | 2888 | 785:4-5-7. . . . . [NEW] . . . . .          | 3077 |
| 765:15-1-2. . . . . [AMENDED] . . . . .  | 2888 | 785:35-1-2. . . . . [AMENDED] . . . . .     | 3078 |
| 765:15-1-3. . . . . [AMENDED] . . . . .  | 2888 | 785:35-3-1.1. . . . . [NEW] . . . . .       | 3079 |
| 765:15-1-4. . . . . [AMENDED] . . . . .  | 2888 | 785:35-7-1. . . . . [AMENDED] . . . . .     | 3080 |
| 765:15-1-5. . . . . [AMENDED] . . . . .  | 2888 | 785:35-7-1.1. . . . . [AMENDED] . . . . .   | 3082 |
| 765:15-1-7. . . . . [AMENDED] . . . . .  | 2889 | 785:35-7-2. . . . . [AMENDED] . . . . .     | 3083 |
| 765:15-3-1. . . . . [AMENDED] . . . . .  | 2889 | 785:35-11-2. . . . . [AMENDED] . . . . .    | 3085 |
| 765:15-5-1. . . . . [AMENDED] . . . . .  | 2889 | 785:45-1-2. . . . . [AMENDED] . . . . .     | 1490 |
| 765:16-1-2. . . . . [AMENDED] . . . . .  | 2890 | 785:45-5-10. . . . . [AMENDED] . . . . .    | 1493 |
| 765:16-3-7. . . . . [AMENDED] . . . . .  | 2891 | 785:45-5-12. . . . . [AMENDED] . . . . .    | 1494 |
| 765:16-3-11. . . . . [AMENDED] . . . . . | 2891 | 785:45-5-13. . . . . [AMENDED] . . . . .    | 1497 |
| 765:16-3-12. . . . . [NEW] . . . . .     | 2891 | 785:45-5-20. . . . . [AMENDED] . . . . .    | 1497 |
| 765:20-1-1. . . . . [AMENDED] . . . . .  | 2892 | 785:45-5-29. . . . . [NEW] . . . . .        | 1498 |
| 765:20-1-2. . . . . [AMENDED] . . . . .  | 2892 | 785:45, App. A. . . . . [REVOKED] . . . . . | 1500 |
| 765:20-1-4. . . . . [AMENDED] . . . . .  | 2892 | 785:45, App. A. . . . . [NEW] . . . . .     | 1500 |
| 765:20-1-6. . . . . [AMENDED] . . . . .  | 2893 | 785:45, App. C. . . . . [REVOKED] . . . . . | 1549 |
| 765:20-3-2. . . . . [AMENDED] . . . . .  | 2893 | 785:45, App. E. . . . . [REVOKED] . . . . . | 1550 |
| 765:20-5-1. . . . . [NEW] . . . . .      | 2893 | 785:45, App. E. . . . . [NEW] . . . . .     | 1550 |
| 765:25-1-3. . . . . [AMENDED] . . . . .  | 2894 | 785:45, App. F. . . . . [REVOKED] . . . . . | 1557 |
| 765:25-1-4. . . . . [AMENDED] . . . . .  | 2894 | 785:45, App. F. . . . . [NEW] . . . . .     | 1557 |
| 765:25-1-5. . . . . [AMENDED] . . . . .  | 2894 | 785:45, App. H. . . . . [NEW] . . . . .     | 1565 |
| 765:25-1-6. . . . . [AMENDED] . . . . .  | 2894 | 785:46-1-2. . . . . [AMENDED] . . . . .     | 1568 |
| 765:25-3-1. . . . . [AMENDED] . . . . .  | 2895 | 785:46-1-6. . . . . [AMENDED] . . . . .     | 1570 |

**Rules Affected Index – *continued***

---

|   |      |  |      |
|---|------|--|------|
| 785:46-9-5. . . . . [AMENDED] . . . . .     | 1571 | 800:25-7-62. . . . . [AMENDED] . . . . .     | 1585 |
| 785:46-15-3. . . . . [AMENDED] . . . . .    | 1571 | 800:25-7-63. . . . . [AMENDED] . . . . .     | 1585 |
| 785:46-19-2. . . . . [AMENDED] . . . . .    | 1573 | 800:25-7-64. . . . . [AMENDED] . . . . .     | 1585 |
| 785:46-19-3. . . . . [AMENDED] . . . . .    | 1573 | 800:25-7-86.1. . . . . [AMENDED] . . . . .   | 1586 |
| 785:50-7-5. . . . . [AMENDED] . . . . .     | 3088 | 800:25-7-87. . . . . [REVOKED] . . . . .     | 1586 |
| 785:50-8-5. . . . . [AMENDED] . . . . .     | 3093 | 800:25-7-90. . . . . [AMENDED] . . . . .     | 1587 |
| 785:50-9-9. . . . . [AMENDED] . . . . .     | 3097 | 800:25-7-98. . . . . [AMENDED] . . . . .     | 1587 |
| 785:50-9-21. . . . . [AMENDED] . . . . .    | 3100 | 800:25-7-105.6. . . . . [AMENDED] . . . . .  | 1587 |
| 785:50-9-35. . . . . [AMENDED] . . . . .    | 3101 | 800:25-7-131.2. . . . . [AMENDED] . . . . .  | 1588 |
| 785:50-9-40. . . . . [AMENDED] . . . . .    | 3102 | 800:25-7-133.2. . . . . [NEW] (E) . . . . .  | 1634 |
| 785:50-9-41. . . . . [AMENDED] . . . . .    | 3102 | 800:25-7-133.3. . . . . [NEW] (E) . . . . .  | 1634 |
| 785:50-9-42. . . . . [AMENDED] . . . . .    | 3103 | 800:25-9-3. . . . . [AMENDED] . . . . .      | 1588 |
| 785:50-9-44. . . . . [AMENDED] . . . . .    | 3103 | 800:25-9-10. . . . . [REVOKED] . . . . .     | 1589 |
| 785:50-9-60. . . . . [AMENDED] . . . . .    | 3103 | 800:25-9-11. . . . . [AMENDED] . . . . .     | 1589 |
| 800:1-15-2. . . . . [AMENDED] . . . . .     | 1574 | 800:25-9-12. . . . . [AMENDED] . . . . .     | 1589 |
| 800:1-15-3. . . . . [AMENDED] . . . . .     | 1574 | 800:25-13-6. . . . . [AMENDED] (E) . . . . . | 565  |
| 800:1-15-4. . . . . [AMENDED] . . . . .     | 1575 | 800:25-13-6. . . . . [AMENDED] . . . . .     | 1589 |
| 800:10-1-4. . . . . [AMENDED] . . . . .     | 1576 | 800:25-13-9. . . . . [AMENDED] (E) . . . . . | 566  |
| 800:10-1-5. . . . . [AMENDED] . . . . .     | 1577 | 800:25-13-9. . . . . [AMENDED] . . . . .     | 1590 |
| 800:10-5-3. . . . . [AMENDED] . . . . .     | 1578 | 800:25-23-2. . . . . [AMENDED] . . . . .     | 1590 |
| 800:15-5-2. . . . . [AMENDED] . . . . .     | 1580 | 800:25-26-3. . . . . [AMENDED] . . . . .     | 1591 |
| 800:15-7-3. . . . . [AMENDED] (E) . . . . . | 709  | 800:30-1-5. . . . . [AMENDED] (E) . . . . .  | 662  |
| 800:15-7-3. . . . . [AMENDED] . . . . .     | 1580 | 800:30-1-5. . . . . [AMENDED] . . . . .      | 1592 |
| 800:20-3-2. . . . . [AMENDED] . . . . .     | 1582 | 800:30-3-1. . . . . [AMENDED] . . . . .      | 1593 |
| 800:25-3-1. . . . . [AMENDED] . . . . .     | 1583 | 800:30-3-2. . . . . [AMENDED] . . . . .      | 1593 |
| 800:25-7-3. . . . . [AMENDED] . . . . .     | 1584 | 800:30-3-3. . . . . [AMENDED] . . . . .      | 1593 |
| 800:25-7-17. . . . . [AMENDED] . . . . .    | 1584 | 800:30-3-4. . . . . [AMENDED] . . . . .      | 1593 |
| 800:25-7-17.1. . . . . [NEW] . . . . .      | 1584 | 800:30-3-5. . . . . [AMENDED] . . . . .      | 1594 |
| 800:25-7-55. . . . . [AMENDED] . . . . .    | 1585 | 800:30-3-6. . . . . [AMENDED] . . . . .      | 1594 |
| 800:25-7-60. . . . . [AMENDED] . . . . .    | 1585 | 800:30-3-7. . . . . [AMENDED] . . . . .      | 1594 |
| 800:25-7-61. . . . . [AMENDED] . . . . .    | 1585 | 800:30-3-8. . . . . [AMENDED] . . . . .      | 1596 |

# Agency/Title Index

[Assigned as of 7-17-06]

| Agency  | Title | Agency   | Title |
|---|-------|--|-------|
| Oklahoma <b>ACCOUNTANCY</b> Board   | 10    | Board of Regents of <b>EASTERN</b> Oklahoma State  |       |
| State <b>ACCREDITING</b> Agency   | 15    | College  | 205   |
| <b>AD Valorem</b> Task Force ( <i>abolished 7-1-93</i> )  | 20    | State Department of <b>EDUCATION</b>   | 210   |
| Oklahoma <b>AERONAUTICS</b> Commission  | 25    | <b>EDUCATION</b> Oversight Board   | 215   |
| Board of Regents for the Oklahoma <b>AGRICULTURAL</b> and<br>Mechanical Colleges  | 30    | Oklahoma <b>EDUCATIONAL</b> Television Authority   | 220   |
| Oklahoma Department of <b>AGRICULTURE</b> , Food, and<br>Forestry   | 35    | [RESERVED]   | 225   |
| Oklahoma Board of Licensed <b>ALCOHOL</b> and Drug<br>Counselors  | 38    | State <b>ELECTION</b> Board  | 230   |
| Board of Tests for <b>ALCOHOL</b> and Drug Influence  | 40    | Oklahoma <b>FUNERAL</b> Board ( <i>Formerly</i> : Oklahoma State<br>Board of <b>EMBALMERS</b> and Funeral Directors)   | 235   |
| <b>ALCOHOLIC</b> Beverage Laws Enforcement<br>Commission  | 45    | Oklahoma Department of <b>EMERGENCY</b> Management<br>( <i>Formerly</i> : Department of <b>CIVIL</b> Emergency<br>Management) - <i>See</i> Title 145                               |       |
| <b>ANATOMICAL</b> Board of the State of Oklahoma  | 50    | Oklahoma <b>EMPLOYMENT</b> Security Commission   | 240   |
| Board of Governors of the Licensed <b>ARCHITECTS</b> and<br>Landscape Architects of Oklahoma  | 55    | Oklahoma <b>ENERGY</b> Resources Board   | 243   |
| <b>ARCHIVES</b> and Records Commission  | 60    | State Board of Licensure for Professional <b>ENGINEERS</b> and<br>Land Surveyors ( <i>Formerly</i> : State Board of Registration<br>for Professional Engineers and Land Surveyors) | 245   |
| Board of Trustees for the <b>ARDMORE</b> Higher Education<br>Program  | 65    | Board of Trustees for the <b>ENID</b> Higher Education<br>Program  | 250   |
| Oklahoma <b>ARTS</b> Council  | 70    | Department of <b>ENVIRONMENTAL</b> Quality   | 252   |
| <b>ATTORNEY</b> General   | 75    | State Board of <b>EQUALIZATION</b>   | 255   |
| State <b>AUDITOR</b> and Inspector  | 80    | <b>ETHICS</b> Commission ( <i>Title revoked</i> )  | 257   |
| State <b>BANKING</b> Department   | 85    | <b>ETHICS</b> Commission   | 258   |
| Oklahoma State Employees <b>BENEFITS</b> Council  | 87    | Office of State <b>FINANCE</b>   | 260   |
| Council of <b>BOND</b> Oversight  | 90    | State <b>FIRE</b> Marshal Commission   | 265   |
| Oklahoma Professional <b>BOXING</b> Commission  | 92    | Oklahoma Council on <b>FIREFIGHTER</b> Training  | 268   |
| State <b>BURIAL</b> Board ( <i>abolished 7-1-92</i> )   | 95    | Oklahoma <b>FIREFIGHTERS</b> Pension and Retirement<br>System  | 270   |
| [RESERVED]  | 100   | [RESERVED]   | 275   |
| Oklahoma <b>CAPITOL</b> Investment Board  | 105   | State Board of Registration for <b>FORESTERS</b>   | 280   |
| Oklahoma <b>CAPITOL</b> Improvement Authority   | 110   | <b>FOSTER</b> Care Review Advisory Board   | 285   |
| State <b>CAPITOL</b> Preservation Commission  | 115   | Oklahoma <b>FUNERAL</b> Board ( <i>Formerly</i> : Oklahoma State<br>Board of Embalmers and Funeral Directors) - <i>See</i> Title<br>235  |       |
| <b>CAPITOL-MEDICAL</b> Center Improvement and Zoning<br>Commission  | 120   | Oklahoma <b>FUTURES</b>  | 290   |
| Oklahoma Department of <b>CAREER</b> and Technology<br>Education ( <i>Formerly</i> : Oklahoma Department of<br><b>VOCATIONAL</b> and Technical Education) - <i>See</i> Title<br>780 |       | <b>GOVERNOR</b>  | 295   |
| Board of Regents of <b>CARL</b> Albert State College  | 125   | <b>GRAND</b> River Dam Authority   | 300   |
| Department of <b>CENTRAL</b> Services ( <i>Formerly</i> : Office of<br><b>PUBLIC</b> Affairs) - <i>See</i> Title 580  |       | Group Self-Insurance Association <b>GUARANTY</b> Fund<br>Board   | 302   |
| <b>CEREBRAL</b> Palsy Commission  | 130   | Individual Self-Insured <b>GUARANTY</b> Fund Board   | 303   |
| Commission on <b>CHILDREN</b> and Youth   | 135   | <b>STATE</b> Use Committee ( <i>Formerly</i> : Committee on<br>Purchases of Products and Services of the Severely<br><b>HANDICAPPED</b> )  | 304   |
| Board of <b>CHIROPRACTIC</b> Examiners  | 140   | Office of <b>HANDICAPPED</b> Concerns  | 305   |
| Oklahoma Department of <b>EMERGENCY</b> Management<br>( <i>Formerly</i> : Department of <b>CIVIL</b> Emergency<br>Management)   | 145   | Oklahoma State Department of <b>HEALTH</b>   | 310   |
| Oklahoma Department of <b>COMMERCE</b>  | 150   | Oklahoma Basic <b>HEALTH</b> Benefits Board ( <i>abolished</i><br><i>11-1-97</i> )   | 315   |
| <b>COMMUNITY</b> Hospitals Authority  | 152   | Oklahoma <b>HEALTH</b> Care Authority  | 317   |
| <b>COMPSOURCE</b> Oklahoma ( <i>Formerly</i> : State <b>INSURANCE</b><br>Fund) - <i>See</i> Title 370   |       | <b>HIGHWAY</b> Construction Materials Technician Certification<br>Board  | 318   |
| Oklahoma <b>CONSERVATION</b> Commission   | 155   | Oklahoma <b>HISTORICAL</b> Society   | 320   |
| <b>CONSTRUCTION</b> Industries Board  | 158   | Oklahoma <b>HORSE</b> Racing Commission  | 325   |
| Department of <b>CONSUMER</b> Credit  | 160   | Oklahoma <b>HOUSING</b> Finance Agency   | 330   |
| <b>CORPORATION</b> Commission   | 165   | Oklahoma <b>HUMAN</b> Rights Commission  | 335   |
| Department of <b>CORRECTIONS</b>  | 170   | Department of <b>HUMAN</b> Services  | 340   |
| State Board of <b>COSMETOLOGY</b>   | 175   | Committee for <b>INCENTIVE</b> Awards for State<br>Employees   | 345   |
| Oklahoma State <b>CREDIT</b> Union Board  | 180   | Oklahoma <b>INDIAN</b> Affairs Commission  | 350   |
| <b>CRIME</b> Victims Compensation Board   | 185   | Oklahoma <b>INDIGENT</b> Defense System  | 352   |
| Joint <b>CRIMINAL</b> Justice System Task Force<br>Committee  | 190   | Oklahoma <b>INDUSTRIAL</b> Finance Authority   | 355   |
| Board of <b>DENTISTRY</b>   | 195   | <b>INJURY</b> Review Board   | 357   |
| Oklahoma <b>DEVELOPMENT</b> Finance Authority   | 200   |  |       |

**Agency/Title Index – continued**

| Agency   | Title | Agency   | Title |
|--|-------|--|-------|
| Oklahoma State and Education Employees Group                       |       | <b>PUBLIC</b> Employees Relations Board                              | 585   |
| <b>INSURANCE</b> Board   | 360   | Oklahoma <b>PUBLIC</b> Employees Retirement System                   | 590   |
| <b>INSURANCE</b> Department  | 365   | Department of <b>PUBLIC</b> Safety                                   | 595   |
| <b>COMPSOURCE</b> Oklahoma ( <i>Formerly:</i>                      |       | <b>REAL</b> Estate Appraiser Board                                   | 600   |
| State <b>INSURANCE</b> Fund)                                       | 370   | Oklahoma <b>REAL</b> Estate Commission                               | 605   |
| Oklahoma State Bureau of <b>INVESTIGATION</b>                      | 375   | Board of Regents of <b>REDLANDS</b> Community College                | 607   |
| Council on <b>JUDICIAL</b> Complaints                              | 376   | State <b>REGENTS</b> for Higher Education                            | 610   |
| Office of <b>JUVENILE</b> Affairs                                  | 377   | State Department of <b>REHABILITATION</b> Services                   | 612   |
| Department of <b>LABOR</b>   | 380   | Board of Regents of <b>ROGERS</b> State College                      | 615   |
| Department of the Commissioners of the <b>LAND</b> Office          | 385   | Board of Regents of <b>ROSE</b> State College                        | 620   |
| Council on <b>LAW</b> Enforcement Education and Training           | 390   | Oklahoma <b>SAVINGS</b> and Loan Board ( <i>abolished</i>            |       |
| Oklahoma <b>LAW</b> Enforcement Retirement System                  | 395   | 7-1-93)  | 625   |
| Board on <b>LEGISLATIVE</b> Compensation                           | 400   | <b>SCENIC</b> Rivers Commission                                      | 630   |
| Oklahoma Department of <b>LIBRARIES</b>                            | 405   | Oklahoma Commission on <b>SCHOOL</b> and County Funds                |       |
| <b>LIEUTENANT</b> Governor   | 410   | Management   | 635   |
| Oklahoma <b>LINKED</b> Deposit Review Board                        | 415   | Advisory Task Force on the Sale of <b>SCHOOL</b> Lands               |       |
| Oklahoma <b>LIQUEFIED</b> Petroleum Gas Board                      | 420   | ( <i>functions concluded 2-92</i> )                                  | 640   |
| Oklahoma <b>LIQUEFIED</b> Petroleum Gas Research, Marketing        |       | The Oklahoma School of <b>SCIENCE</b> and Mathematics                | 645   |
| and Safety Commission  | 422   | Oklahoma Center for the Advancement of <b>SCIENCE</b> and            |       |
| <b>LITERACY</b> Initiatives Commission                             | 425   | Technology   | 650   |
| <b>LONG-RANGE</b> Capital Planning Commission                      | 428   | <b>SECRETARY</b> of State  | 655   |
| <b>LOTTERY</b> Commission, Oklahoma                                | 429   | Department of <b>SECURITIES</b>                                      | 660   |
| Board of Trustees for the <b>MCCURTAIN</b> County Higher           |       | Board of Regents of <b>SEMINOLE</b> State College                    | 665   |
| Education Program  | 430   | <b>SHEEP</b> and Wool Commission                                     | 670   |
| Commission on <b>MARGINALLY</b> Producing Oil and Gas              |       | State Board of Licensed <b>SOCIAL</b> Workers                        | 675   |
| Wells  | 432   | <b>SOUTHERN</b> Growth Policies Board                                | 680   |
| State Board of <b>MEDICAL</b> Licensure and Supervision            | 435   | Oklahoma <b>SOYBEAN</b> Commission ( <i>abolished 7-1-97</i> )       | 685   |
| <b>MEDICAL</b> Technology and Research Authority of                |       | Board of Examiners for <b>SPEECH-LANGUAGE</b> Pathology              |       |
| Oklahoma   | 440   | and Audiology  | 690   |
| Board of <b>MEDICOLEGAL</b> Investigations                         | 445   | <b>STATE</b> Agency Review Committee                                 | 695   |
| Department of <b>MENTAL</b> Health and Substance Abuse             |       | <b>STATE</b> Use Committee ( <i>Formerly:</i> Committee on           |       |
| Services   | 450   | Purchases of Products and Services of the Severely                   |       |
| <b>MERIT</b> Protection Commission                                 | 455   | <b>HANDICAPPED</b> ) – <i>See</i> Title 304                          |       |
| <b>MILITARY</b> Planning Commission, Oklahoma                      |       | Oklahoma <b>STUDENT</b> Loan Authority                               | 700   |
| Strategic  | 457   | <b>TASK</b> Force 2000   | 705   |
| Department of <b>MINES</b>   | 460   | Oklahoma <b>TAX</b> Commission                                       | 710   |
| Oklahoma <b>MOTOR</b> Vehicle Commission                           | 465   | Oklahoma Commission for <b>TEACHER</b> Preparation                   | 712   |
| Board of Regents of <b>MURRAY</b> State College                    | 470   | <b>TEACHERS'</b> Retirement System                                   | 715   |
| Oklahoma State Bureau of <b>NARCOTICS</b> and Dangerous            |       | State <b>TEXTBOOK</b> Committee                                      | 720   |
| Drugs Control  | 475   | Oklahoma <b>TOURISM</b> and Recreation Department                    | 725   |
| Board of Regents of <b>NORTHERN</b> Oklahoma College               | 480   | Department of <b>TRANSPORTATION</b>                                  | 730   |
| Oklahoma Board of <b>NURSING</b>                                   | 485   | Oklahoma <b>TRANSPORTATION</b> Authority                             | 731   |
| Oklahoma State Board of Examiners for <b>NURSING</b> Home          |       | State <b>TREASURER</b>   | 735   |
| Administrators   | 490   | Board of Regents of <b>TULSA</b> Community College                   | 740   |
| Board of Regents of <b>OKLAHOMA</b> City Community                 |       | Oklahoma <b>TURNPIKE</b> Authority ( <i>name changed - see Title</i> |       |
| College  | 495   | 731)   | 745   |
| Board of Regents of <b>OKLAHOMA</b> Colleges                       | 500   | Board of Trustees for the <b>UNIVERSITY</b> Center                   |       |
| Board of Examiners in <b>OPTOMETRY</b>                             | 505   | at Tulsa   | 750   |
| State Board of <b>OSTEOPATHIC</b> Examiners                        | 510   | <b>UNIVERSITY</b> Hospitals Authority                                | 752   |
| <b>PARDON</b> and Parole Board                                     | 515   | <b>UNIVERSITY</b> Hospitals Trust                                    | 753   |
| Oklahoma <b>PEANUT</b> Commission                                  | 520   | Board of Regents of the <b>UNIVERSITY</b> of Oklahoma                | 755   |
| Oklahoma State <b>PENSION</b> Commission                           | 525   | Board of Regents of the <b>UNIVERSITY</b> of Science and Arts of     |       |
| State Board of Examiners of <b>PERFUSIONISTS</b>                   | 527   | Oklahoma   | 760   |
| Office of <b>PERSONNEL</b> Management                              | 530   | Oklahoma <b>USED</b> Motor Vehicle and Parts Commission              | 765   |
| Oklahoma State Board of <b>PHARMACY</b>                            | 535   | Oklahoma Department of <b>VETERANS</b> Affairs                       | 770   |
| <b>PHYSICIAN</b> Manpower Training Commission                      | 540   | Board of <b>VETERINARY</b> Medical Examiners                         | 775   |
| Board of <b>PODIATRIC</b> Medical Examiners                        | 545   | Oklahoma Department of <b>CAREER</b> and Technology                  |       |
| Oklahoma <b>POLICE</b> Pension and Retirement System               | 550   | Education ( <i>Formerly:</i> Oklahoma Department of                  |       |
| State Department of <b>POLLUTION</b> Control ( <i>abolished</i>    |       | <b>VOCATIONAL</b> and Technical Education)                           | 780   |
| 1-1-93)  | 555   | Oklahoma <b>WATER</b> Resources Board                                | 785   |
| <b>POLYGRAPH</b> Examiners Board                                   | 560   | Board of Regents of <b>WESTERN</b> Oklahoma State                    |       |
| Oklahoma Board of <b>PRIVATE</b> Vocational Schools                | 565   | College  | 790   |
| State Board for <b>PROPERTY</b> and Casualty Rates                 | 570   | Oklahoma <b>WHEAT</b> Commission                                     | 795   |
| State Board of Examiners of <b>PSYCHOLOGISTS</b>                   | 575   | Department of <b>WILDLIFE</b> Conservation                           | 800   |
| Department of <b>CENTRAL</b> Services ( <i>Formerly:</i> Office of |       | <b>WILL</b> Rogers and J.M. Davis Memorials Commission               | 805   |
| <b>PUBLIC</b> Affairs)   | 580   |  |       |

# Notices of Rulemaking Intent

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

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

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

## **TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 4. RULES OF PRACTICE AND PROCEDURE**

*[OAR Docket #06-1205]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 3. Meetings and Public Forums  
252:4-3-1. Meetings [AMENDED]

### **SUMMARY:**

The proposed amendment is to reduce the number of meetings the Environmental Quality Board is required to hold each year. The current rules require the Board to hold quarterly meetings. The amendment would require at least three meetings per year.

### **AUTHORITY:**

Environmental Quality Board Powers and Duties, 27A O.S. § 2-2-101; also 75 O.S. § 302

### **COMMENT PERIOD:**

Written comments will be accepted prior to and at the Environmental Quality Board meeting on August 22, 2006. Oral comments may be presented at the Environmental Quality Board meeting on August 22, 2006.

### **PUBLIC HEARINGS:**

Before the Environmental Quality Board at 9:30 a.m. on August 22, 2006, at the Kruse Auditorium, Noble Foundation, 2510 Sam Noble Parkway in Ardmore, Oklahoma.

### **REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:**

The DEQ requests that business entities affected by the proposed rule provide, 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 due to compliance with the proposed rule. Other persons may provide comments regarding a specific rule. Comments should not be of a general nature.

### **COPIES OF PROPOSED RULES:**

The proposed rule may be obtained from the contact person and reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, 73102, or from the DEQ webpage at <http://www.deq.state.ok.us>.

### **RULE IMPACT STATEMENT:**

The rule impact statement for the proposed rule may be obtained from the contact person or from the DEQ webpage at <http://www.deq.state.ok.us>.

### **CONTACT PERSON:**

Contact Jimmy Givens at [jimmy.givens@deq.state.ok.us](mailto:jimmy.givens@deq.state.ok.us) or (405) 702-7100 (phone) or 702-7101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

### **ADDITIONAL INFORMATION:**

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three days in advance of the hearing, TDD Relay Number 1-800-522-8506.

*[OAR Docket #06-1205; filed 6-21-06]*

## **TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 410. RADIATION MANAGEMENT**

*[OAR Docket #06-1211]*

### **RULEMAKING ACTION:**

Notice of proposed EMERGENCY rulemaking

### **PROPOSED RULES:**

Subchapter 1. General Provisions  
252:410-1-2. [AMENDED]  
Subchapter 10. Radioactive Materials Program  
Part 32. Byproduct Material: Specific Licenses for Manufacturing and Transferring Certain Items  
252:410-10-32. [AMENDED]  
Subchapter 20. Standards for Protection Against Radiation  
252:410-20-1. [AMENDED]

### **SUMMARY:**

The proposed emergency rulemaking will add new requirements for the reporting of the amounts of certain radioactive materials possessed. This report would be required initially before March 15, 2007 or before March 30, 2007, depending upon the Category status of the source, and annually thereafter by January 31 of each succeeding year. This new system, to be known as the National Source Tracking System (NSTS), is being implemented to comply with requirements of the Energy Policy Act of 2005. The U. S. Nuclear Regulatory Commission (NRC) is required by the Act to implement this system within a very short time frame. Oklahoma must adopt

## Notices of Rulemaking Intent

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the proposed rules to meet the compatibility requirements of its agreement with NRC. When completely operational, the NSTS will be a secure Web-based system that will allow licensees to meet the proposed reporting requirements of the proposed rule online. The rule would require the reporting of transfers and receipts of sources by the close of the next business day. The information to be reported would be sufficient to identify each source by serial number.

The proposed rulemaking would add an appendix (Appendix E) which lists the applicable amounts, in units of teraBecquerels and Curies, of the various radioisotopes to fall under regulation and which further divides those materials into Categories 1 and 2.

The proposed rulemaking would add the definition of "Nationally tracked source" in 252:410-10-32(1) (B). This definition would be the same as that added by the rulemaking in 252:410-20-1(c)(1)(C). The proposed rulemaking would amend 252:410-1-7 to include reference to the Federal Register notice in which the final version of the federal rule being adopted will be published.

Note that permanent versions of these emergency rules are being proposed in a separate rulemaking. It is expected that the permanent versions will go into effect upon expiration of the emergency rule.

### **AUTHORITY:**

Environmental Quality Board and Radiation Management Advisory Council powers and duties, 27A O.S. §§ 2-2-101, 2-2-104, 2-2-201, and 2-9-104.

### **COMMENT PERIOD:**

Deliver or mail written comments on the proposed rules to the contact person from July 17, 2006 through August 29, 2006. Oral comments may be made at the Radiation Management Advisory Council meeting on August 29, 2006 to be held in Tulsa at the Tulsa Technology Center Riverside campus.

Oral comments may be made at the Environmental Quality Board meeting on November 14, 2006, at the Oklahoma State University, Tulsa Campus, 700 N. Greenwood, Tulsa, OK.

### **PUBLIC HEARINGS:**

Before the Radiation Management Advisory Council meeting on August 29, 2006 at the Riverside campus of the Tulsa Technology Center, 801 E. 91st, Tulsa, Oklahoma.

Before the Environmental Quality Board meeting on November 14, 2006 at the Tulsa location stated above.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

The Department requests that business entities affected by these proposed rules provide the Department, within the comment period and in dollar amounts if possible, the increase or decrease 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.

### **COPY OF PROPOSED RULES:**

A copy of the proposed rules may be obtained from the contact person or may be viewed on the DEQ Web site at [www.deq.state.ok.us](http://www.deq.state.ok.us) or may be reviewed in person at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

### **RULE IMPACT STATEMENT:**

The Rule Impact Statement for the proposed rules will be on file at the Department of Environmental Quality and may be requested from the contact person.

### **CONTACT PERSON:**

Mike Broderick, Land Protection Division, Radiation Management Section, P. O. Box 1677, Oklahoma City, OK 73101-1677; e-mail at [mike.broderick@deq.state.ok.us](mailto:mike.broderick@deq.state.ok.us), phone 405-702-5100, or fax 405-702-5101.

### **ADDITIONAL INFORMATION:**

Persons with disabilities who desire to attend the public hearing to be held before the Radiation Management Advisory Council and need assistance should notify the contact person three days in advance of the meeting during business hours at 405-702-5100 or by using TDD relay number 1-800-722-0353.

*[OAR Docket #06-1211; filed 6-23-06]*

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## **TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 410. RADIATION MANAGEMENT**

*[OAR Docket #06-1212]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 1. General Provisions

252:410-1-7. [AMENDED]

Subchapter 5. Certification of Industrial Radiographers

252:410-5-3. [AMENDED]

Subchapter 10. Radioactive Materials Program

Part 1. General Provisions

252:410-10-1. [AMENDED]

Part 30. Byproduct Material Licensing in General

252:410-10-30. [AMENDED]

Part 31. Byproduct Material: General Licenses

252:410-10-31. [AMENDED]

Part 32. Byproduct Material: Specific Licenses for Manufacturing and Transferring Certain Items

252:410-10-32. [AMENDED]

Part 34. Industrial Radiographic Operations

252:410-10-34. [AMENDED]

Part 35. Medical Use of Byproduct Material

252:410-10-35. [AMENDED]

Part 39. Well Logging

252:410-10-39. [AMENDED]

Part 70. Special Nuclear Material: Licensing

252:410-10-70. [AMENDED]

Part 71. Packaging and Transporting Radioactive Material  
252:410-10-71. [AMENDED]

Part 101. Radioactive Materials Program Fees  
252:410-10-118. [AMENDED]

Subchapter 20. Standards for Protection Against Radiation  
252:410-20-1. [AMENDED]

### **SUMMARY:**

The proposed Subchapter 1 amendments (1) update the reference to the Nuclear Regulatory Commission (NRC) regulations in Title 10 of the Code of Federal Regulations (10 CFR) to incorporate by reference the 10 CFR regulations as they existed on January 1, 2005, with the addition of two later-promulgated NRC regulations covering the recognition of specialty boards for the medical use of byproduct material and increased security requirements for portable gauges and (2) clarify that when a provision of CFR is incorporated by reference all referenced citations are also incorporated by reference. Subchapter 1 also includes a Federal Register notice containing rules governing source tracking which are to be adopted by reference. This Federal Register notice will be adopted by the permanent portion of the rule when the emergency portion expires.

The proposed Subchapter 5 amendments will raise the fee paid by first-time applicants for certification as a Radioactive Materials industrial radiographer from \$90.00 to \$140.00 and lower the fee paid by persons applying to retake the certification examination from \$90.00 to \$80.00 for each time that the examination is retaken. The amendment will separate the initial fee paid into two parts, a fee of \$60.00 for the review of the qualifications of the applicant and a fee of \$80.00 for the examination itself. This will align user fees more closely with the Department's actual costs. Other amendments will rearrange the language of the subsection for greater clarity in the application of the rules.

The proposed Subchapter 10 and Subchapter 20 amendments contain conforming changes resulting from the updated incorporations by reference, correct scrivener's errors, and make minor formatting changes to simplify reading. They also update the listing of 10 CFR authorities reserved to NRC. The proposed amendments to Subchapter 10, Part 101, Section 118, will revise 252:410-10-118(1)(A) to delete (l). The effect of this deletion will lower the reciprocity fees to be paid by service providers to \$1,500.00 for applications received three or more days before the work is to be performed or to \$2,500.00 for applications received less than three days before the work is to be performed. A further revision to Section 118 will create a new subsection (3) which will allow an additional fee of \$1,000.00 to be charged in those cases where the person holding a reciprocity recognition, or having an application in process for such recognition, requests that additional changes be made to the recognition or application, and the change request is made less than three days prior to the date of the work to be performed.

Other proposed Subchapter 10 amendments will add new requirements for the reporting of the amounts of certain radioactive materials possessed. This new system, to be

known as the National Source Tracking System (NSTS), is being implemented on an accelerated basis to comply with requirements of the Energy Policy Act of 2005. The NSTS will be a secure Web-based system that will allow licensees to meet the proposed reporting requirements of the proposed rule online.

The proposed rulemaking would add the definition of "Nationally tracked source" in 252:410-10-32(1)(B). This definition would be the same as that added by the rulemaking in 252:410-20-1(c)(1)(C).

The proposed rulemaking would add an appendix (Appendix E) which lists the applicable amounts, in units of teraBecquerels and Curies, of the various radioisotopes to fall under regulation and which further divides those materials into Categories 1 and 2.

### **AUTHORITY:**

Environmental Quality Board and Radiation Management Advisory Council powers and duties, 27A O.S. §§ -101, 2-2-104, 2-2-201, and 2-9-104.

### **COMMENT PERIOD:**

Deliver or mail written comments on the proposed rules to the contact person from July 17, 2006 through August 29, 2006. Oral comments may be made at the Radiation Management Advisory Council meeting on August 29, 2006 to be held in Tulsa at Tulsa Technology Center Riverside campus.

Oral comments may be made at a meeting of the Environmental Quality Board on a date to be announced.

### **PUBLIC HEARINGS:**

Before the Radiation Management Advisory Council meeting on August 29, 2006 at the Riverside campus of the Tulsa Technology Center, 801 E. 91st, Tulsa, Oklahoma.

Before the Environmental Quality Board meeting in Oklahoma City at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma on a date to be announced.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

The Department requests that business entities affected by these proposed rules provide the Department, within the comment period and in dollar amounts if possible, the increase or decrease 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.

### **COPY OF PROPOSED RULE CHANGES:**

A copy of the proposed rules may be obtained from the contact person or may be viewed on the DEQ Web site at [www.deq.state.ok.us](http://www.deq.state.ok.us) or may be reviewed in person at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

### **RULE IMPACT STATEMENT:**

The Rule Impact Statement for the proposed rules will be on file at the Department of Environmental Quality and may be requested from the contact person.

## Notices of Rulemaking Intent

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**CONTACT PERSON:**

Mike Broderick, Land Protection Division, Radiation Management Section, P. O. Box 1677, Oklahoma City, OK 73101-1677; e-mail at mike.broderick@deq.state.ok.us, phone 405-702-5100, or fax 405-702-5100.

**ADDITIONAL INFORMATION:**

Persons with disabilities who desire to attend the public hearing to be held before the Radiation Management Advisory

Council and need assistance should notify the contact person three days in advance of the meeting during business hours at 405-702-5100 or by using TDD relay number 1-800-722-0353.

*[OAR Docket #06-1212; filed 6-23-06]*

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# Gubernatorial Approvals

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

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

## TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 1. ORGANIZATION AND PROCEDURE OF OKLAHOMA WATER RESOURCES BOARD

*[OAR Docket #06-1213]*

### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

### **RULES:**

- Subchapter 1. General Provisions
- 785:1-1-2. Definitions [AMENDED]
- Subchapter 9. Time Periods for Permit and License Issuance and Denial
- 785:1-9-2. Permit and license applications subject to rule [AMENDED]
- Subchapter 11. Complaints and Complaint Resolution
- 785:1-11-1. Complaint evaluation and resolution procedures [AMENDED]

### **GUBERNATORIAL APPROVAL:**

May 8, 2006

*[OAR Docket #06-1213; filed 6-23-06]*

## TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 4. RULES OF PRACTICE AND HEARINGS

*[OAR Docket #06-1214]*

### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

### **RULES:**

- Subchapter 5. Pre-Hearing Actions and Proceedings
- 785:4-5-4. Application protests; comments and objections [AMENDED]
- 785:4-5-6. Electronic mail notice [NEW]
- 785:4-5-7. Copies of motions, requests and orders [NEW]

### **GUBERNATORIAL APPROVAL:**

May 8, 2006

*[OAR Docket #06-1214; filed 6-23-06]*

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

*[OAR Docket #06-1215]*

### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

### **RULES:**

- Subchapter 1. General Provisions
- 785:35-1-2. Definitions [AMENDED]
- Subchapter 3. Licensing and Certifications
- 785:35-3-1.1. Activities authorized; electrician and plumbing license [NEW]
- Subchapter 7. Minimum Standards for Construction of Wells
- 785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observation wells, and water well test holes [AMENDED]
- 785:35-7-1.1 Minimum standards for construction of heat exchange wells [AMENDED]
- 785:35-7-2. Minimum standards for construction of monitoring wells and geotechnical borings [AMENDED]
- Subchapter 11. Plugging and Capping Requirements for Wells and Test Holes
- 785:35-11-2. Plugging requirements for site assessment observation wells, monitoring wells and geotechnical borings [AMENDED]

### **GUBERNATORIAL APPROVAL:**

May 8, 2006

*[OAR Docket #06-1215; filed 6-23-06]*

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

*[OAR Docket #06-1216]*

### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

### **RULES:**

- Subchapter 7. Water and Sewer Program (Bond Proceed Loans and Emergency Grants) Requirements and Procedures
- 785:50-7-5. Emergency grant priority point system [AMENDED]
- Subchapter 8. Rural Economic Action Plan (REAP) Grant Program Requirements and Procedures

## Gubernatorial Approvals

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785:50-8-5. REAP grant priority point system  
[AMENDED]

Subchapter 9. Clean Water State Revolving Fund  
Regulations

Part 1. General Provisions

785:50-9-9. Definitions [AMENDED]

Part 3. General Program Requirements

785:50-9-21. Eligible project [AMENDED]

785:50-9-35. Loan closing [AMENDED]

785:50-9-40. Building phase submittal [AMENDED]

785:50-9-41. Progress payments [AMENDED]

785:50-9-42. Retainage [AMENDED]

785:50-9-44. Accounting [AMENDED]

Part 7. SRF Environmental Review Process

785:50-9-60. Requirement of environmental review  
[AMENDED]

**GUBERNATORIAL APPROVAL:**

May 8, 2006

*[OAR Docket #06-1216; filed 6-23-06]*

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# Gubernatorial Disapprovals

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

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

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## **TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 5. FEES**

*[OAR Docket #06-1217]*

### **RULEMAKING ACTION:**

Gubernatorial disapproval of permanent rules

### **RULES:**

Subchapter 1. General Provisions

785:5-1-6. Stream water permit application and water rights administration fees [AMENDED]

785:5-1-10. Groundwater application and water rights administration fees [AMENDED]

### **GUBERNATORIAL DISAPPROVAL:**

Failure of the Governor to approve the rules within 45 calendar days after submission resulted in disapproval on May 8, 2006

*[OAR Docket #06-1217; filed 6-23-06]*

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

*[OAR Docket #06-1218]*

### **RULEMAKING ACTION:**

Gubernatorial disapproval of permanent rules

### **RULES:**

Subchapter 9. Actions After Stream Water Right Obtained  
785:20-9-5. Reports [AMENDED]

### **GUBERNATORIAL DISAPPROVAL:**

Failure of the Governor to approve the rules within 45 calendar days after submission resulted in disapproval on May 8, 2006

*[OAR Docket #06-1218; filed 6-23-06]*

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

*[OAR Docket #06-1219]*

### **RULEMAKING ACTION:**

Gubernatorial disapproval of permanent rules

### **RULES:**

Subchapter 5. Groundwater Permits

785:30-5-9. Annual reports of water use [AMENDED]

### **GUBERNATORIAL DISAPPROVAL:**

Failure of the Governor to approve the rules within 45 calendar days after submission resulted in disapproval on May 8, 2006

*[OAR Docket #06-1219; filed 6-23-06]*

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# 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 268. OKLAHOMA COUNCIL ON FIREFIGHTER TRAINING CHAPTER 1. ADMINISTRATIVE OPERATIONS

*[OAR Docket #06-1209]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

268:1-1-2. Description of organization [AMENDED]

### AUTHORITY:

74 O.S. § 325.1.; Oklahoma Council on Firefighter Training

### DATES:

#### Comment period:

February 15, 2006 through March 28, 2006

#### Public hearing:

March 28, 2006

#### Adoption:

March 28, 2006

#### Submitted to Governor:

March 31, 2006

#### Submitted to House:

March 31, 2006

#### Submitted to Senate:

March 31, 2006

#### Gubernatorial approval:

May 11, 2006

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 25, 2006

#### Final adoption:

May 25, 2006

#### Effective:

July 27, 2006

#### SUPERSEDED EMERGENCY ACTIONS:

N/A

#### INCORPORATIONS BY REFERENCE:

N/A

#### ANALYSIS:

This change is to correct the numbering so that the number of COFT Council members is clearly understood.

#### CONTACT PERSON:

Chris Bain, Executive Director, Oklahoma State Firefighters Association, Tel. (405) 424-1452.

**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 27, 2006:**

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 268:1-1-2. Description of organization

(a) The Council on Firefighter Training is charged with the responsibility of:

- (1) identifying firefighter training needs and setting the firefighter training goals for the State of Oklahoma;
- (2) interacting with the Homeland Security Department's Preparedness and Awareness Division on firefighter training and grants; and
- (3) administering and maintaining the incentive and recognition programs established for Oklahoma firefighters, working in conjunction with Oklahoma State University - Fire Service Training, as set forth in the statute.

(b) In addition, as set forth in 74 O.S., Section 325.1., the Council shall also advise the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the State Senate and the Oklahoma State Fire Service on fire and emergency service training needs for the state. The Council shall submit an annual report or recommendations regarding fire and emergency service training needs to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the State Senate not later than December 31 each year.

(c) In accordance with 74 O.S., Section 325.1., the Council shall consist of nine (9) members, two of whom shall be ex-officio and nonvoting, as follows:

- (1) One member to be appointed by the Oklahoma State Firefighters Association who shall be a member of an Oklahoma fire department representing all members of paid, volunteer and combination fire departments;
- (2) One member to be appointed by the Professional Fire Fighters of Oklahoma who shall be a fire union officer, chief officer, or fire service instructor from a full-time paid fire department;
- (3) One member to be appointed by the Oklahoma Fire Chiefs' Association who shall be a chief officer or fire service instructor from an Oklahoma combination fire department;
- (4) One member to be appointed by the State Fire Marshal Commission who shall be a representative of the Oklahoma Fire Service with commensurate skills in arson investigation or code enforcement;
- (5) One member to be appointed by the Oklahoma Rural Fire Coordinators who shall be a chief officer or fire service instructor from a volunteer fire department;
- (6) One member to be appointed by the Director of the State Department of Health-Emergency Medical Services

# Permanent Final Adoptions

- Division who shall be a chief officer or fire service EMS instructor from an Oklahoma fire department;
- (7) One member to be appointed by the Director of the Oklahoma Department of Homeland Security who shall be a municipal emergency management official;
- (8) The Director of Fire Service Training, Oklahoma State University, ex-officio and non-voting; and
- (9) The Director of Fire Service Publications, Oklahoma State University, ex-officio and non-voting.

[OAR Docket #06-1209; filed 6-23-06]

## **TITLE 268. OKLAHOMA COUNCIL ON FIREFIGHTER TRAINING CHAPTER 3. APPLICATION PROCESS FOR TAX CREDITS**

[OAR Docket #06-1210]

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

- 268:3-1-1. Scope [NEW]  
268:3-1-2. Description of Process [NEW]  
268:3-1-3. Methods [NEW]

### **AUTHORITY:**

4 O.S. § 325.1.; Oklahoma Council on Firefighter Training

### **DATES:**

#### **Comment period:**

February 15, 2006 through March 28, 2006

#### **Public hearing:**

March 28, 2006

#### **Adoption:**

March 28, 2006

#### **Submitted to Governor:**

March 31, 2006

#### **Submitted to House:**

March 31, 2006

#### **Submitted to Senate:**

March 31, 2006

#### **Gubernatorial approval:**

May 11, 2006

#### **Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 25, 2006

#### **Final adoption:**

May 25, 2006

#### **Effective:**

July 27, 2006

#### **SUPERSEDED EMERGENCY ACTIONS:**

N/A

#### **INCORPORATIONS BY REFERENCE:**

N/A

#### **ANALYSIS:**

This is a new chapter to address the proceedings of firefighter training incentive programs which the Legislature assigned to COFT.

#### **CONTACT PERSON:**

Chris Bain, Executive Director, Oklahoma State Firefighters Association, Tel. (405) 424-1452.

**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 27, 2006:**

### **268:3-1-1. Scope of process**

The Legislature has given responsibility for administering and maintaining current and new State incentive and recognition programs for firefighters to the Council on Firefighter Training.

### **268:3-1-2. Description of process**

- (a) Depending on the specifics of these state incentive and recognition programs, the Council on Firefighter Training shall work together with the other appropriate State agencies which are involved in the various programs created. This includes, but is not limited to, the Oklahoma Tax Commission, the Oklahoma State Firefighters Pension System, the State Fire Marshal's Office, the Rural Fire Coordinators, the Oklahoma Office of Homeland Security, the Oklahoma Emergency Management Agency, the Emergency Medical Services Division of the Oklahoma Department of Health, as well as educational institutions such as Oklahoma State University - Fire Service Training and the Oklahoma Department of Career Technology.
- (b) An appropriate process for each specific incentive or recognition program shall be developed which carries out the intent of the programs and which provides for necessary safeguards and record-keeping, while trying to be as user-friendly to those who are eligible as possible.

### **268:3-1-3. Methods**

- (a) In order to maximize effectiveness, the Council on Firefighter Training shall coordinate all the existing and new State incentive and recognition programs for firefighters. The Council on Firefighter Training shall administer and maintain these State programs in such a manner that allows it discretion based on the evolving needs of the fire service community and taking into consideration new training mandated by State and/or Federal Government.
- (b) In the case of those programs which involve taxes, the Council on Firefighter Training shall abide by the rules of the Oklahoma Tax Commission and keep all records pertaining to tax incentives for the prescribed period of time.

[OAR Docket #06-1210; filed 6-23-06]

## **TITLE 460. DEPARTMENT OF MINES CHAPTER 1. OKLAHOMA MINING COMMISSION**

[OAR Docket #06-1206]

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 7. Oklahoma Miner Training Institute  
460:1-7-1. [AMENDED]

### **AUTHORITY:**

45 O.S. Section 1.5, Oklahoma Mining Commission

### **DATES:**

#### **Comment period:**

January 4, 2006, until February 3, 2006

#### **Public Hearing:**

February 7, 2006, and February 9, 2006

**Adoption:**

March 16, 2006

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July 27, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

This amendment establishes requirements, such as training plans and MSHA training certificates, to allow private instructors, those outside of the Oklahoma Miner Training Institute, to be approved to provide training for certification and/or re-certification of Blasting Certificates to Oklahoma State Supervisors.

**CONTACT PERSON:**

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

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 27, 2006:**

**SUBCHAPTER 7. OKLAHOMA MINER TRAINING INSTITUTE**

**460:1-7-1. Operational authority**

(a) The Oklahoma Mining Training Institute (OMTI) shall operate under the control and advise of the Oklahoma Mining Commission. The Commission shall establish and approve curriculum standards for all courses taught at OMTI. The Commission shall ensure that all courses taught at OMTI will meet current MSHA and OSM standards and that all graduates receiving certificates of competency have complied with all state, federal, and local permitting and licensing requirements.

(b) The Commission shall ensure the following:

- (1) All blasting certifications be conducted by OMTI.
- (2) All original certification for state supervisor cards shall be issued only by OMTI

(c) The Commission may approve re-certification training for the Oklahoma State Surface Supervisor's card through outside contractors or private instructors, if the following guidelines are met:

- (1) A resume, including experience and education, must be submitted on each instructor utilized to the Commission for review.
- (2) Training plans must be submitted that include, at a minimum, an outline of the topics to be addressed and a list of the instruction aids that will be utilized during class.

The training outline must address the Surface Safety Standards requirements in Title 45 of the Oklahoma Statutes.

(3) A copy of the resume and training plan of each instructor must be filed, accompanied by a letter of request for Certification of Recognition, with the Oklahoma Department of Mines (ODM) and OMTI for review.

(A) The ODM and OMTI review shall determine whether the program offered is consistent with the OMTI's program and that the program adequately emphasizes the State of Oklahoma Safety Standards.

(B) After the review, OMTI and ODM shall submit a recommendation to the Commission for approval or disapproval for the program's accreditation.

(C) Once a complete application is filed, the review, the recommendation, and the issuance of the Certificate Recognition shall be completed within a ninety (90) day time-period.

(D) Once training is completed, a notification of re-certification for each individual shall be submitted to OMTI for action, on forms developed by OMTI. OMTI shall then issue the re-certification for authentication of the training received and the card issued shall identify the contractor or private instructor who provided the training.

(E) The Commission's approval for the re-certification training of the Oklahoma State Surface Supervisor's card by any outside contractors or private instructors shall be for a one (1) year approval period only.

(4) All existing and established time frames for re-certification, every two years, are not altered by the approval of outside contractors or private instructors pursuant to this Section.

[OAR Docket #06-1206; filed 6-22-06]

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

[OAR Docket #06-1207]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 37. State Enforcement
- 460:10-37-2. [AMENDED]
- 460:10-37-6. [AMENDED]
- 460:10-37-7. [AMENDED]

**AUTHORITY:**

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

**DATES:**

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# Permanent Final Adoptions

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## SUPERSEDED EMERGENCY ACTIONS:

N/A

## INCORPORATIONS BY REFERENCE:

N/A

## ANALYSIS:

The 2005 Oklahoma Legislature amended statutory law, 45 O.S. Section 729, to provide that the Department, upon determination that an entity or individual has mined without first obtaining a state mining permit, shall assess a fine up to Ten Thousand Dollars (\$10,000.00), against said entity, individual(s) or agents of said entity. The Legislative change also allows the Department to pursue the needed legal proceedings without involving or requesting the Attorney General's Office to file or act on the Department's behalf and adds that all monies collected, pursuant to this change, shall be deposited in the Department's Revolving Fund.

## CONTACT PERSON:

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

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 27, 2006:**

## SUBCHAPTER 37. STATE ENFORCEMENT

### 460:10-37-2. Cessation Orders

(a) The ~~Chief Mine Inspector~~ Director or his or her authorized representative shall immediately order a cessation of non-coal surface mining and reclamation operations or of the relevant portion thereof, if finding on the basis of any inspection, and condition or practice, or any violation of 45 O.S. ~~(1984)~~, Section 721 et seq., this Chapter, other state law, or any condition of a permit imposed under 45 O.S. ~~(1981)~~, 721 et seq., or this Chapter which creates an imminent danger to the health and safety of the public. If the cessation ordered under this Section will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the ~~Chief Mine Inspector~~ Director or his or her authorized representative shall impose affirmative obligations on the operator to whom it issued to abate the condition, practice or violation. The order shall specify the time by which abatement shall be accomplished.

(b) The ~~Chief Mine Inspector~~ Director or his or her authorized representative shall immediately order a cessation of non-coal surface mining and reclamation operations, or of the relevant portion thereof, when notice of violation has been issued and an operator fails to abate the violations within the abatement period fixed or subsequently extended by the ~~Chief Mine Inspector~~ Director or authorized representative. A cessation order issued under this subsection shall require

the operator to whom it is issued to take all steps the ~~Chief Mine Inspector~~ Director or his or her authorized representative deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) Any citation(s) issued by the Department to an entity or individual that the Department determines has mined without a permit in violation of 45 O.S. Section 724 or this Chapter shall be assessed by the Department a fine up to Ten Thousand Dollars (\$10,000.00), including individuals, or agents of said entity. Any agent is jointly and severally liable with its principal for such violation and any resulting fines. Any fine assessment, by the Department shall be made pursuant to, but not limited to, the following categories or criteria:

(1) Damages;

(2) Seriousness;

(3) Negligence;

(4) Recklessness;

(5) Knowing and willful conduct;

(6) Imminent significant danger to health or safety of the public; and

(7) Imminent significant environmental harm.

(~~ed~~) A Cessation order issued under (a), ~~or~~ (b) or (c) of this Section shall be in writing, signed by the ~~Chief Mine Inspector~~ Director or authorized representative, and shall set forth with reasonable specificity:

(1) ~~the~~ The nature of the violation;

(2) ~~the~~ The remedial action or affirmative obligation required, if any including interim steps, if appropriate;

(3) ~~the~~ The time established for abatement, if appropriate, including the time for meeting any interim steps; and

(4) ~~a~~ A reasonable description of the portion of the non-coal surface mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice or violation has been abated or until vacated, modified or terminated in writing by the ~~Chief Mine Inspector~~ Director or his or her authorized representative.

(~~de~~) Reclamation operations and other activities intended to protect the public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(~~ef~~) The ~~Chief Mine Inspector~~ Director or authorized representative may modify, terminate or vacate a cessation order for good cause and may extend the time for abatement if the failure to abate within the time for previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(~~fg~~) The ~~Chief Mine Inspector~~ Director or authorized representative shall terminate a cessation order, by written notice to the operator to whom the order was issued, when he or she determines that all conditions, practices or violations listed in the order have been abated.

### 460:10-37-6. Review of citations

(a) An operator issued a notice of violation or cessation order under Sections 460:10-37-2 or 460:10-37-3, may request review of that action by filing an application for review within 30 days after receiving notice of the action, at the following

address: ~~Office of the Chief Mine Inspector~~, Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, Oklahoma 73105.

(b) The filing of an application for review under this Section shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

**460:10-37-7. Injunctive relief**

(a) The Department may request the Attorney General for the State of Oklahoma to institute a civil action for relief, including a permanent or temporary injunction, restraining order or any order in the district court for the district in which the non-coal surface mining and reclamation operation has been issued has his principal office, whenever that person or his or her agent, in violation of 45 O.S. ~~(1981)~~, Section 721 et seq. or this Chapter, does the following:

- (1) Violates or fails or refuses to comply with any order or decision of the Department under 45 O.S. ~~(1981)~~, Section 721 et seq. or this Chapter;
- (2) Interferes with, hinders or delays the Department in carrying out the provisions of 45 O.S. ~~(1981)~~, Section 721 et seq. or this Chapter;
- (3) Refuses to admit an authorized representative of the Department to a mine;
- (4) Refuses to permit inspection of a mine by an authorized representative of the Department;
- (5) Refuses to furnish any required information or report;
- (6) Refuses to permit access to or copying of any required records; or
- (7) Refuses to permit inspection of monitoring equipment.

(b) The Department may pursue civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court for the district in which any unpermitted mining, as referenced in Section 10-37-2(2) of this Subchapter, is located, in which the entity, individuals or agents of said entity, have their principal offices, or in Oklahoma County, to enforce any Department action against the entity, individual, or agents. The Department shall be entitled to recover penalties or fines assessed for mining without a permit from the entity, individuals or agents conducting said mining in violation of 45 O.S. Section 721 et seq. and this Chapter. The Department shall also be entitled to reasonable attorneys fees incurred in enforcing this section. All monies collected pursuant to this section shall be deposited in the Department of Mines Revolving Fund

[OAR Docket #06-1207; filed 6-22-06]

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

[OAR Docket #06-1208]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 31. Underground Mining Permit Applications: Minimum Requirements for Reclamation

460:20-31-13. [AMENDED]

Subchapter 43. Permanent Program Performance Standards: Surface Mining Standards

460:20-43-14. [AMENDED]

460:20-43-44. [AMENDED]

460:20-43-46. [AMENDED]

Subchapter 45. Permanent Program Performance Standards: Underground Mining Activities

460:20-45-44. [AMENDED]

460:20-45-46. [AMENDED]

460:20-45-47. [AMENDED]

Subchapter 57. State Inspections

460:20-57-6. [AMENDED]

**AUTHORITY:**

45 O.S. Section 1.5; 45 O.S. Section 789; Oklahoma Mining Commission

**DATES:**

**Comment period:**

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July 27, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

The Department's 2004 promulgated amendments were never federally approved by our oversight agency, The Office of Surface Mining (OSM), who upon review requested changes be made. Most of these 2006 amendments reflect the federally requested changes and are located in numerous places throughout Chapter 20, although there are a few new amendments proposed. The new amendments are basically incorrect numerical reference changes caused by earlier amendments, plus initially the Department's regulations were written in Parts, which during the Code conversion were changed to Subchapters, although as found in 460:20-15-5(a)(e) the word really needs to be part.

Subchapter 13, Underground Mining Permit Applications: Minimum Requirements For Reclamation, contains some language, relating to planned subsidence survey exemptions, that is either being amended or stricken. Also, in 460:20-45-47 (c)(4) some language is being reworded for a clearer understanding and in (E) a grammar error was corrected.

In 2004, 460:20-43-14 (a), a new (14) was added requiring embankment slopes not be closer than 100 feet to any county road, unless approved otherwise. This new 100 feet requirement was also referenced in 460:20-43-52

# Permanent Final Adoptions

(d)(3). OSM is requiring added language stating that this 100 feet is to be measured horizontally.

In 460:20-43-46 (b)(3)(B), new language is being added that minimum stocking and planting arrangements for areas to be developed for recreation, shelter belts, or forest products be specified to the local and regional conditions with consultations and approval by the state agencies responsible for those areas. This new language caused some renumbering amendments, along with some other numerical errors that were discovered. These same changes are also being proposed to the underground mining counterpart section found in 460:20-45-46.

A new amendment (b) is being proposed to 460:20-43-44, Revegetation: timing, which requires that pursuant to the approved permit and its reclamation plan, vegetation shall be established not more than 36 months after the disturbed areas have been retopsoiled. The current language is renumbered as (a).

In 460:20-57-6, the Department is proposing to rescind some of the amendments or modifications made in 2004.

## CONTACT PERSON:

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

## PURSUANT TO THE ACTIONS DESCRIBED HEREIN THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 27, 2006:

### SUBCHAPTER 31. UNDERGROUND MINING PERMIT APPLICATIONS: MINIMUM REQUIREMENTS FOR RECLAMATION

#### 460:20-31-13. Subsidence control plan

- (a) **Presubsidence survey.** Each application must include:
- (1) A map of the permit and adjacent areas at a scale of 1:12,000, or larger if determined necessary by the Department, showing the location and type of structures and renewable resource lands that subsidence may materially damage or for which value or reasonably foreseeable use may be diminished by subsidence, and showing the location and type of drinking, domestic, and residential water supplies that could be contaminated, diminished, or interrupted by subsidence.
  - (2) A narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish, or interrupt drinking, domestic, or residential water supplies.
  - (3) ~~Except for the areas where unplanned subsidence is projected to be used, a survey of the condition of all non-commercial buildings or occupied residential dwellings and structures related thereto, that may be materially damaged or for which the reasonably foreseeable use may be diminished by the subsidence, within the area encompassed by the applicable angle of draw; except for areas where there is no planned subsidence. Also, each application must include a survey of the quantity and quality of all drinking, domestic, and residential water as well as a survey of the quantity and quality of all drinking, domestic, and residential water supplies within the permit area and adjacent area that could be~~

contaminated, diminished, or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the applicant will notify the owner, in writing, of the effect the denial of access will have as described in 460:20-45-47(c)(4)-4 of this Chapter. The applicant must pay for any technical assessment or engineering evaluation to determine the premining condition or value of such non-commercial buildings or occupied residential dwellings or structures related thereto and the quantity and quality of the drinking, domestic, or residential water supplies. The applicant must provide copies of the survey and any technical assessment or engineering evaluation to the property owner and Department.

(b) **Subsidence control plan.** If the survey conducted under paragraph (a) of this section shows that no structures, or drinking, domestic, or residential water supplies, or renewable resource lands exist, or that no material damage or diminution in value or reasonably foreseeable use of such structures or lands, and no contamination, or interruption of such water supplies would occur as a result of mine subsidence, and if the Department agrees with this conclusion, no further information need be provided under this section. If the survey shows that structures, renewable resource lands, or water supplies exist and that subsidence could cause material damage or diminution in value or foreseeable use, or contamination, diminution, or interruption of protected water supplies, or if the Department determines that damage, diminution in value or foreseeable use, or contamination, diminution, or interruption could occur, that application shall include a subsidence control plan that contains the following information:

- (1) A description of the method of coal removal, such as longwall mining, room-and-pillar removal, hydraulic mining, or other extraction methods, including the size, sequence, and timing for the development of underground workings.
- (2) A map of underground workings which describes the location and extent of areas in which planned-subsidence mining methods will be used and which includes all areas where the measures described in (4), (5) and (b)(7) of this Section will be taken to prevent or minimize subsidence and subsidence related damage; and where appropriate, to correct subsidence-related material damage.
- (3) A description of the physical conditions, such as depth of cover, seam thickness, and lithology, which affect the likelihood or extent of subsidence and subsidence-related damage.
- (4) A description of monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce, or correct material damage in accordance with 460:20-45-47(c) of this Chapter.
- (5) Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage, including, but not limited to:
  - (A) Backstowing or backfilling of voids;
  - (B) Leaving support pillars of coal;

(C) Leaving areas in which no coal is removed, including by leaving coal in place; and

(D) Taking measures on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface.

(6) A description of the anticipated effects of planned subsidence, if any.

(7) For those areas where planned subsidence is projected to be used, a description of methods to be employed to minimize damage from planned subsidence to non-commercial buildings and occupied residential dwellings and structures related thereto; or the written consent of the owner of the structure or facility that minimization measures not be taken; or unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs minimizing damage exceed the anticipated costs repair.

(8) A description of the measures to be taken in accordance with 460:20-45-8 and 460:20-45-47(c) of this Chapter to replace adversely affected protected water supplies or to mitigate or remedy any subsidence-related material damage to the land and protected structures; and

(9) Other information specified by the Department as necessary to demonstrate that the operation will be conducted in accordance with the performance standards of Section 460:20-45-47 of this Chapter for subsidence control.

### SUBCHAPTER 43. PERMANENT PROGRAM PERFORMANCE STANDARDS: SURFACE MINING STANDARDS

#### 460:20-43-14. Impoundments

(a) **General requirements.** The requirements of this subsection apply to both temporary and permanent impoundments.

(1) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-V1-TR60, Oct. 1985), shall comply with "Minimum Emergency Spillway Hydrologic criteria" table in TR-60 and the requirements of this section. The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 5529a) and 1 CFR Part 51. Copies may be obtained from the national technical Information Service (NTIS), 5285 Port royal Road, Springfield, Virginia 22161, order No. PB 87-157509/AS. Copies can be inspected at the OSM headquarters Office, office of Surface Mining Reclamation and Enforcement, administrative Records, Room 660, 800 North Capitol Street, Washington, D.C. or at the Office of the Federal register, 800 North Capitol Street, NW, Suite 700, Washington, D.C.

(2) Impoundments meeting the criteria of 30 CFR Section 77.216 shall comply with the requirements of 30 CFR Section 77.216 and this Section. The plan required to be submitted to the District Manager Of MSHA under

30 CFR Section 77.216 shall also be submitted to the Department as part of the permit application.

(3) **Design Certification.** The design of impoundments shall be certified in accordance with Section 460:20-27-14(a) of this Chapter as designed to meet the requirement of this Subchapter using current, prudent, engineering practices and any design criteria established by the Department. The qualified, registered, professional engineer or qualified, registered, professional, land surveyor shall be experienced in the design and construction of impounds.

(4) **Stability.**

(A) An impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(B) Impoundments not included in Section (a)(4)(A) of this Section, except for a coal mine waste impounding structure, or located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.3 for normal pool with a steady state seepage saturation conditions or meet the requirements of Section 460:20-27-14(c)(3).

(5) **Freeboard.** Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

(6) **Foundation.**

(A) Foundation and abutments for the impoundment structure shall be stable under all conditions of construction and operation of the impoundment and shall be designed based on accurate and adequate information on the foundation conditions. For an impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), sufficient foundation investigations and laboratory testing of foundation material shall be performed in order to determine the design requirements for foundation stability.

(B) All vegetative and organic materials shall be removed and foundation excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(7) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden draw-down.

(8) Faces of embankments and surrounding areas shall be vegetated, except the faces where water is impounded may be riprapped on otherwise stabilized in accordance with accepted design practices.

## Permanent Final Adoptions

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(9) **Spillways.** An impoundment shall include either a combination of principal emergency spillways or a single spillway configured as specified in (a)(9)(A) of this Section, designed and constructed to safely pass the applicable design precipitation event specified in (a)(9)(B) of this Section, except as set forth in (c)(2) of this Section.

(A) The Department may approve a single open-channel spillway that is:

- (i) Of nonerodible construction and designed to carry sustained flows; or
- (ii) Earth-or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) Except as specified in (c)(2) of this Section, the required design precipitation event for an impoundment meeting the spillway requirements of (a)(9) of this Section is:

- (i) For an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the Department.
- (ii) For an impoundment meeting or exceeding the size or other criteria of 30 CFR 77.216(a), a 100-year 6-hour event, or greater event as specified by the Department.
- (iii) For an impoundment not meeting the requirements of Subsection (a)(9)(B)(i) or (ii) of this Section or, a 25-year 6-hour event, or greater event as specified by the Department.

(10) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of highwall to provide adequate safety and access for the proposed water users.

(11) **Inspections.** Except as provided in (a)(11)(D) of this section, a qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, shall inspect each impoundment as provided in (a)(11)(A) of this Section. The professional engineer or specialist shall be experienced in the construction of impoundments.

(A) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(B) The qualified registered professional engineer, or qualified registered professional land surveyor as specified in (a)(11)(D) of this Section, shall promptly after each inspection required in (a)(11)(A) of this Section provide to the Department a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this Chapter. The report shall include discussion of any appearance of instability, structural weakness or other hazardous condition, depth and elevation of any impounded waters, existing storage

capacity, and existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.

(C) A copy of the report shall be retained at or near the minesite.

(D) A qualified registered professional land surveyor may inspect any temporary or permanent impoundment that does not meet the SCS Class B or C criteria for dams in TR-60 or the size or other criteria of 30 CFR 77.216(a) and certify and submit the report required by (a)(11)(B) of this Section, except that all coal mine waste impounding structure covered by Section 460:20-43-31 of this Chapter shall be certified by a qualified registered professional engineer. The professional land surveyor shall be experienced in the construction of impoundments.

(12) Impoundments meeting the SCS Class B or C criteria for dams in TR-60 or other criteria of 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3. Other impoundments shall be examined at least quarterly by a qualified person designated by the operator for the appearance of structural weakness and other hazardous conditions.

(13) **Emergency procedures.** If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the Department of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Department shall be notified immediately. The Department shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(14) The embankment slopes of each impoundment shall not be closer than 100 feet, measured horizontally, to any public road right-of-way unless otherwise approved under procedures established in 460:20-7-4(4) and 460:20-7-5(d). The area between the road right-of-way and the impoundment slopes, clear zone slopes, shall not be steeper than a 1V:6H grade.

(b) **Permanent impoundments.** A permanent impoundment of water may be created, if authorized by the Department in the approved permit based upon the following demonstration:

(1) The size and configuration of such impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable State and Federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable State and Federal water quality standards.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provide for adequate safety and access for proposed water users.

(5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining landuse.

(c) **Temporary Impoundments.**

(1) The Department may authorize the construction of temporary impoundments as part of a surface coal mining operation.

(2) In lieu of meeting the requirements of (a)(9)(A) of this Section, the Department may approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered land surveyor in accordance with Section 460:20-27-14(a) of this Chapter that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(A) In the case of an impoundment meeting the SCS Class B or C criteria for dams in TR-60, or other size or other criteria of Section 77.216(a) of 30 CFR, it is designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the Department, or

(B) In the case of an impoundment not included in Subsection (c)(2)(A) of this Section it shall be designed to control the precipitation of a 100- year 6-hour event, or greater event as specified by the Department.

**460:20-43-44. Revegetation: timing**

(a) Disturbed areas shall be planted during the first normal period for favorable planting conditions after replacement of the plant-growth medium. The normal period for favorable planting is that planting time generally accepted locally for the type of plant materials selected.

(b) Vegetation that is in accordance with the approved permit and reclamation plan shall be established not more than 36 month after the disturbed areas have been retopsoiled, unless a written request for an extension has been submitted and approved by the Department prior to the expiration of the 36 month period.

(c) Extensions shall be approved solely on the basis of adverse climatic conditions demonstrated to the Department by the operator. Extensions shall be granted for no more than up to 12 months. Only one extension shall be approved.

**460:20-43-46. Revegetation: standards for success**

(a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural

vegetation of the area, and the general requirements of Section 460:20-43-43.

(1) Standards for success and statistically valid sampling techniques for measuring success are identified in the Bond Release Guidelines published by the Department.

(2) Comparison of ground cover and productivity may be made on the basis of either ~~of~~ reference areas or ~~of~~ technical standards representative of unmined lands in the area. Management of references areas, if required for the approved postmining land use of the permit area. Species composition of the vegetation of the reference area and the reclaimed area must be comparable. Ground cover, production, or stocking shall be considered equal to the approved success standard (reference area of technical standard) when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided t-test with a 0.10 alpha error).

(b) The following minimum success standards must be achieved:

(1) For areas with a post-mining land use of pasture land or grazing land, the minimum ground cover of desirable living plants on the revegetated area shall be equal (as defined above) to the ground cover of living plants of the approved reference area(s) or to a standard of ninety percent desirable living ground cover if no reference area is used. The minimum production of desirable living plants on the revegetated area shall be at least equal (as defined in (a)(2) of this Section to the production of desirable living plants on the approved reference area or to technical standards. For permits using reference areas, at no time shall an area reclaimed to improved pasture be released from Phase III or III liability if it is composed of less than 70 percent ground cover of desirable living plants or, if reclaimed with desirable native grasses, less than 50 percent desirable cover.

(2) For areas developed for use as cropland, crop production on the revegetated area shall be at least equal (as defined in (a)(2) of this Section to that of a reference area or technical standards.

(3) For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

(A) Minimum stocking and planting arrangements for fish and wildlife habitat shall be specified by the Department after consultation with the State agencies responsible for the administration of forestry and wildlife programs.

(i) If trees or shrubs are to be planted, the following are required to be included in the wildlife habitat plan. The minimum tree and shrub stocking rate will be 250 per acre. Of that 250, there will be 100 hard mast producing trees of at least three native species such as red oak, post oak, bur oak, black oak, willow oak, shumard oak, water

## Permanent Final Adoptions

oak . Of that 250, there will be 100 soft mast producing trees of at least three native species such as sugarberry, sweet gum, black cherry, black gum, sycamore, and hackberry. In addition to the hard mast and soft mast producing trees, 50 soft mast producing shrubs of at least two native species such as American plum, Mexican plum, deciduous holly, Carolina buckthorn or rusty blackhaw must be planted.

(ii) If native grasses and forbs are to be planted, the following are required to be included in the wildlife habitat plan. At a minimum seeding rate of two lbs of pure live seed per species per acre, at least three of the following grasses must be planted: big bluestem, little bluestem, indiangrass, switchgrass, and side oats grama. A ~~minimum~~ minimum seeding rate of one lb. of pure live seed per species per acre, at least three of the following forbs must be planted: maximilian sunflower, showy partridge peas, Illinois bundleflower, partridge pea, purple prairie clover, roundhead, common and Korean lespedeza.

(iii) If the applicant chooses not to follow (b)(3)(A)(i) or (b)(3)(A)(ii) of this subsection then an alternative wildlife habitat plan must be submitted to the Department for review, along with written approval of the alternative planting rates and species from the state agency responsible for the management of Fish and Wildlife.

(B) Minimum stocking and planting arrangements for areas to be developed for recreation, shelter belts, or forest products shall be specified by the Department on the basis of local and regional conditions and after consultation with and approval by the state agencies responsible for administration of forestry and wildlife programs and will be incorporated into an approved reclamation plan. Consultation and approval will occur on a permit specific basis.

~~(B)~~ Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for at least three years or 60% of the responsibility period.

~~(D)~~ The technical standard for vegetative ground cover on these areas is 80 percent. In no cases shall vegetative ground cover be less than that required to achieve the approved postmining land use and must be sufficient to control erosion.

~~(E)~~ Comments from state Agencies responsible for management of Fish and Wildlife are required.

(4) Bare areas shall not exceed one-sixteenth acres in size and total not more than one percent of the area planted.

(5) For areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion.

(6) For areas previously disturbed by mining that were not reclaimed to the requirements of this Chapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion. In general this is considered to be at least 70% vegetative ground cover.

(c) **Responsibility period.**

(1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the Department in accordance with (c)(4) of this Section.

(2) In areas of more than 26.0 inches average annual precipitation, the period of responsibility shall continue for a period of not less than:

(A) Five full years, except as provided in paragraph (c)(2)(B) of this section. The vegetation parameters identified in Subsection (b) of this Section for grazing land or pasture land and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other uses identified in Subsection (b) of this Section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(B) Two full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by subsection (b)(6), the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than:

(A) Ten full years, except as provided in subsection (c)(3)(B) below. Vegetation parameters identified in Subsection (b) of this Section shall equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period.

(B) Five full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by subsection (b)(6), the lands shall equal or exceed the standards during the growing seasons of the last two consecutive years of the responsibility period.

(4) The Department has approved selective husbandry practices that, when accomplished in accordance with (c)(4)(A) through (G) of this Section, do not extend the period of responsibility for revegetation success and bond

liability. The approved practices shall be required to continue as part of the postmining land use and shall also be considered a normal husbandry practice within the region for unmined lands having uses similar to the approved postmining land use of the disturbed area. Since no absolute limits for individual parameters for fertility, liming, etc. can be set by the Department, established approved and published information sources and other variables involved shall be considered in determining what is approved selective husbandry practice. Evaluations shall include professional judgements and the incorporation of guidelines provided by approved source documents and information provided by Oklahoma State University (OSU) and the United States Department of Agriculture National Resources Conservation Service (NRCS). OSU has established and publishes many recommended fertility and management practices for row crops, hayland, and grazingland tailored for soil conditions, crop rotations, tillage and application practices plus OSU also has Extension Offices through out the state that can provide more site specific recommendations. The Department will judge management practices on mined lands against the recommended practices provided by OSU and NRCS to judge if the practices are normal husbandry practices and shall through routine inspection process, monitor liability starts dates, liming and fertilization activities and the success of the reclamation. The Department shall review and assess whether site specific activities are outside the normal husbandry practices and the liability period must restart. Giving allowance for flexibility to maintain conditions and latitude for proper management of reclaimed areas, the Department's review and assessment, for determination of whether or not site specific activities are outside the normal husbandry practice, shall incorporate the following:

(A) The Department will consider limited re-seeding and associated fertilizing and liming as non-augmentative if the area is small in relation to the permit area, watershed(s) or surface property boundary(ies), whichever is smaller. Also, the size of the area relative to the surrounding area and the ability of the reclaimed area to meet the postmining land use will be considered. Removal and reclamation of temporary structures identified in (c)(4)(E) of this Section would not be considered augmentation. Repair of rills and gullies that are not in excess of the stipulations within (c)(4)(D) of this Section would not be considered augmentation. The Department will require any minor reseeded areas to be fully established and meet the requirements of (a) and (b) of this Section at the time of the bond release.

(B) Approved agricultural practices described by the Oklahoma State University (OSU) Cooperative Extension Service are not considered augmentation. These practices include but are not limited to: fertilizing, liming, weed and pest control, and mulching. The OSU Cooperative Extension Services publishes recommended agricultural practices as Fact Sheets

and are available by contacting the state or local OSU Extension Office.

(C) On all lands with a postmining land use other than cropland, any areas reseeded or replanted as a part or result of a normal husbandry practice must be sufficiently small in size and limited in extent of occurrence, as described in (c)(4)(A) of this Section, or as a part of a hay management plan that is an agricultural practice described by the OSU Cooperative Extension Service. The reestablished vegetation must be in place for a sufficient length of time to not adversely affect the Department's ability to make a valid determination at the time of bond release as to whether the site has been properly reclaimed.

(D) Pursuant to (c)(4) of this Section, the repair of rills and gullies will not be allowed in Oklahoma without restarting the revegetation liability period. However, the repair the repair of rills and gullies will not be considered an augmentation practice if the occurrences and treatment of such rills and gullies constitutes a normal conservation practice in the region as defined by the Department. In Oklahoma the normal range of precipitation during the fall or spring seeding seasons may result in the formation of rills and gullies of permanent vegetative cover for any land use. The Department has determined the NRCS prepared guidelines for the treatment of and repair of these rills and gullies constitutes the treatment practice which is the usual degree of management customarily performed to prevent exploitation, destruction, or neglect of the soil resource and maintain the productivity of the land use. This treatment would not be prohibited as an augmentative practice because the NRCS guidance is the standard developed for the normal treatment of rills and gullies that may develop on permanent cover of vegetation on unmined lands in Oklahoma. After initial vegetation establishment, the Department defines the treatment of rills and gullies requiring permanent reseeded of more than 10 acres in a contiguous block or 10% of a permit area initially seeded during a single year to be an augmentative practice because of the potential for delayed seeding of large areas to reduce the probability of revegetation success. The NRCS guidelines for repair of rills and gullies require that acreage with active furrows, rills, ditches, or gullies be filled to aid the conservation practice application. The rills and gullies should be contoured or smoothed if the site is large.

(i) These areas must be seeded during the appropriate seeding season with approved perennial species followed by an application of mulch. If permanent seeding of the area must be delayed due to weather conditions, then appropriate temporary erosion control measures must be utilized. Mulch that is to be applied must be free of noxious weeds, anchored during or immediately after application, and may be applied at the following rates:

## Permanent Final Adoptions

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- (I) Hay or straw shall be applied at the rate of 2 tons/acre and crimped into the soil, or 1 ton/acre with the additional application of 300 gallons/acre of asphalt emulsion spray to bind the mulch to the soil. Hay mulch must be less than 2 years old. Straw derived from small grain species shall not be used as mulch.
- (II) Wood chips shall be applied at a rate of 11-15 tons/acres alone or 6/tons/acre with the additional application of 300 gallon/acre of asphalt emulsion spray to bind the mulch to the soil.
- (III) Strawy manure shall be applied at the rate of 10 tons/acre. Strawy manure need not be anchored if it contains heavy solids.
- (ii) The use of hay bales and rock rip-rap to fill or repair rills and gullies will be approved on a case by case basis. Monitoring will be required to assure that the treatment provides long term erosion control, does not disrupt the postmining land use, and that permanent vegetation becomes established. If this treatment is not effective then filling of the rills and gullies with topsoil then revegetating the areas will be required. If the drainage area is of sufficient size to create continued problems with rills and gullies, the operator shall install terraces to control the amount and velocity of water moving across the area. These terraces shall be designed and constructed accordance with this Chapter.
- (E) Liming, fertilization, mulching, seeding or stocking following the reclamation of any temporary roads, remaining after a Phase I Bond Release approval, temporary sediment or hydraulic control structures, areas disturbed by the installation or removal of oil and gas wells or utility lines, and areas where the vegetation was disturbed by vehicular traffic not under the control of the permittee will not be considered augmentation.
- (F) Irrigation, reliming, refertilization of revegetated areas; reseeded cropland; renovating pastureland by overseeding with legumes after a Phase II bond release shall be considered normal husbandry practices and shall not restart liability period if the amount and frequency of these practices used on unmined land within the region.
- (G) Other normal husbandry practices that may be conducted on postmining land uses of fish and wildlife habitat, recreation, and forestry without restarting the liability period are disease, pest, and vermin control; pruning; and transplanting and replanting trees and shrubs in accordance with (b)(3) of this Section.

### **460:20-45-44. Revegetation: timing**

(a) Disturbed areas shall be planted during the first normal period for favorable planting conditions after replacement of the plant-growth medium. The normal period for favorable planting is that planting time generally accepted locally for the type of plant materials selected.

(b) Vegetation that is in accordance with the approved permit and reclamation plan shall be established not more than 36 months after the disturbed areas have been retopsopiled, unless a written request for an extension has been submitted and approved by the Department prior to the expiration of the 36 month period.

(c) Extensions shall be approved solely on the basis of adverse climatic conditions demonstrated to the Department by the operator. Extensions shall be granted for no more than up to 12 months. Only one extension shall be approved.

### **460:20-45-46. Revegetation: standards for success**

(a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of Section 460:20-43-43.

(1) Standards for success and statistically valid sampling techniques for measuring success are identified in the Bond Release Guidelines published by the Department.

(2) Comparison of ground cover and productivity may be made on the basis of either ~~of~~ reference areas or ~~of~~ technical standards representative of unmined lands in the area. Management of references areas, if required for the approved postmining land use of the permit area. Species composition of the vegetation of the reference area and the reclaimed area must be comparable. Ground cover, production, or stocking shall be considered equal to the approved success standard (reference area of technical standard) when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided t-test with a 0.10 alpha error).

(b) The following minimum success standards must be achieved:

(1) For areas with a post-mining land use of pasture land or grazing land, the minimum ground cover of desirable living plants on the revegetated area shall be equal (as defined above) to the ground cover of living plants of the approved reference area(s) or to a standard of ninety percent desirable living ground cover if no reference area is used. The minimum production of desirable living plants on the revegetated area shall be at least equal (as defined in (a)(2) of this Section to the production of desirable living plants on the approved reference area or to technical standards. For permits using reference areas, at no time shall an area reclaimed to improved pasture be released from Phase III or III liability if it is composed of less than 70 percent ground cover of desirable living plants or, if reclaimed with desirable native grasses, less than 50 percent desirable cover.

## **SUBCHAPTER 45. PERMANENT PROGRAM PERFORMANCE STANDARDS: UNDERGROUND MINING ACTIVITIES**

(2) For areas developed for use as cropland, crop production on the revegetated area shall be at least equal (as defined in (a)(2) of this Section to that of a reference area or technical standards.

(3) For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

(A) Minimum stocking and planting arrangements for fish and wildlife habitat shall be specified by the Department after consultation with the State agencies responsible for the administration of forestry and wildlife programs.

(i) If trees and shrubs are to be planted, the following are required to be included in the wildlife habitat plan. The minimum tree and shrub stocking rate is 250 per acre. Of that 250, there will be 100 hard mast producing trees of at least three native species such as red oak, post oak, bur oak, black oak, willow oak, shumard oak, water oak, of that 250, there will be 100 soft mast producing trees of at least three native species such as sugarberry, sweet gum, black cherry, black gum sycamore, and hackberry. In addition to the hard mast and soft mast producing trees, 50 soft mast producing shrubs of at least two native species such as Americam plum, Mexican plum, deciduous holly, Carolina buckthorn or rusty blackhaw must be planted.

(ii) If native grasses and forbs are to be planted the following are required. A minimum of two lbs of pure live seed per species per acre, at least three of the following grasses must be planted: big bluestem, little blue stem, indiangrass, switchgrass, and side oats grama. At a minimum seeding rate of one lb of pure live seed per species per acre, at least three of the following forbs must be planted: maximilian sunflower, showy partridge pea, Illinois bundleflower, purple prairie clover, roundhead, common and Korean lespedeza.

(iii) If the Applicant chooses not to follow (b)(3)(A)(i) or (b)(3)(A)(ii) of this Subsection then an alternative wildlife habitat plan must be submitted to the Department for review, along with written approval of the alternative planting rates and species from the state agency responsible for the management of Fish and Wildlife.

(B) Minimum stocking and planting arrangements for areas to be developed for recreation, shelter belts, or forest products shall be specified by the Department on the basis of local and regional conditions and after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs and will be incorporated into an approved reclamation plan. Consultation and approval will occur on a permit specific basis.

~~(BC)~~ Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for at least three years or 60% of the responsibility period.

~~(CD)~~ The technical standard for vegetative ground cover on these areas is 80 percent. In no cases shall vegetative ground cover be less than that required to achieve the approved postmining land use and must be sufficient to control erosion.

~~(DE)~~ Comments from State agencies responsible for management of Fish and wildlife are required.

(4) Bare areas shall not exceed one-sixteenth acres in size and total not more than one percent of the area planted.

(5) For areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion.

(6) For areas previously disturbed by mining that were not reclaimed to the requirements of this Chapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion. In general this is considered to be at least 70% vegetative ground cover.

(c) **Responsibility time frame.**

(1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the Department in accordance with (c)(4) of this Section.

(2) In areas of more than 26.0 inches average annual precipitation, the period of responsibility shall continue for a period of not less than:

(A) Five full years, except as provided in paragraph (c)(2)(B) of this section. The vegetation parameters identified in Subsection (b) of this Section for grazing land or pasture land and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other uses identified in Subsection (b) of this Section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(B) Two full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by subsection (b), the lands shall equal or exceed the standards during

## Permanent Final Adoptions

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the growing season of the last year of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than:

(A) Ten full years, except as provided in subsection (c)(3)(B) below. Vegetation parameters identified in Subsection (b) of this Section shall equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period.

(B) Five full years for lands eligible for re-mining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by subsection (b), the lands shall equal or exceed the standards during the growing seasons of the last two consecutive years of the responsibility period.

(4) The Department has approved selective husbandry practices that, when accomplished in accordance with (c)(4)(A) through (G) of this Section, do not extend the period of responsibility for revegetation success and bond liability. The approved practices shall be required to continue as part of the postmining land use and shall also be considered a normal husbandry practice within the region for unmined lands having uses similar to the approved postmining land use of the disturbed area. Since no absolute limits for individual parameters for fertility, liming, etc. can be set by the Department, established approved and published information sources and other variables involved shall be considered in determining what is approved selective husbandry practice. Evaluations shall include professional judgements and the incorporation of guidelines provided by approved source documents and information provided by Oklahoma State University (OSU) and the United States Department of Agriculture National Resources Conservation Service (NRCS). OSU has established and publishes many recommended fertility and management practices for row crops, hayland, and grazingland tailored for soil conditions, crop rotations, tillage and application practices plus OSU also has Extension Offices through out the state that can provide more site specific recommendations. The Department will judge management practices on mined lands against the recommended practices provided by OSU and NRCS to judge if the practices are normal husbandry practices and shall through routine inspection process, monitor liability starts dates, liming and fertilization activities and the success of the reclamation. The Department shall review and assess whether site specific activities are outside the normal husbandry practices and the liability period must restart. Giving allowance for flexibility to maintain conditions and latitude for proper management of reclaimed areas, the Department's review and assessment, for determination of whether or not site specific activities are outside the normal husbandry practice, shall incorporate the following:

(A) The Department will consider limited re-seeding and associated fertilizing and liming as

non-augmentative if the area is small in relation to the permit area, watershed(s) or surface property boundary(ies), whichever is smaller. Also, the size of the area relative to the surrounding area and the ability of the reclaimed area to meet the postmining land use will be considered. Removal and reclamation of temporary structures identified in (c)(4)(E) of this Section would not be considered augmentation. Repair of rills and gullies that are not in excess of the stipulations within (c)(4)(D) of this Section would not be considered augmentation. The Department will require any minor reseeded areas to be fully established and meet the requirements of (a) and (b) of this Section at the time of the bond release.

(B) Approved agricultural practices described by the Oklahoma State University (OSU) Cooperative Extension Service are not considered augmentation. These practices include but are not limited to: fertilizing, liming, weed and pest control, and mulching. The OSU Cooperative Extension Services publishes recommended agricultural practices as Fact Sheets and are available by contacting the state or local OSU Extension Office.

(C) On all lands with a postmining land use other than cropland, any areas reseeded or replanted as a part or result of a normal husbandry practice must be sufficiently small in size and limited in extent of occurrence, as described in (c)(4)(A) of this Section, or as a part of a hay management plan that is an agricultural practice described by the OSU Cooperative Extension Service. The reestablished vegetation must be in place for a sufficient length of time to not adversely affect the Department's ability to make a valid determination at the time of bond release as to whether the site has been properly reclaimed.

(D) Pursuant to (c)(4) of this Section, the repair of rills and gullies will not be allowed in Oklahoma without restarting the revegetation liability period. However, the repair the repair of rills and gullies will not be considered an augmentation practice if the occurrences and treatment of such rills and gullies constitutes a normal conservation practice in the region as defined by the Department. In Oklahoma the normal range of precipitation during the fall or spring seeding seasons may result in the formation of rills and gullies of permanent vegetative cover for any land use. The Department has determined the NRCS prepared guidelines for the treatment of and repair of these rills and gullies constitutes the treatment practice which is the usual degree of management customarily performed to prevent exploitation, destruction, or neglect of the soil resource and maintain the productivity of the land use. This treatment would not be prohibited as an augmentative practice because the NRCS guidance is the standard developed for the normal treatment of rills and gullies that may develop on permanent cover of vegetation on unmined lands in Oklahoma. After initial vegetation establishment, the

Department defines the treatment of rills and gullies requiring permanent reseeding of more than 10 acres in a contiguous block or 10% of a permit area initially seeded during a single year to be an augmentative practice because of the potential for delayed seeding of large areas to reduce the probability of revegetation success. The NRCS guidelines for repair of rills and gullies require that acreage with active furrows, rills, ditches, or gullies be filled to aid the conservation practice application. The rills and gullies should be contoured or smoothed if the site is large.

(i) These areas must be seeded during the appropriate seeding season with approved perennial species followed by an application of mulch. If permanent seeding of the area must be delayed due to weather conditions, then appropriate temporary erosion control measures must be utilized. Mulch that is to be applied must be free of noxious weeds, anchored during or immediately after application, and may be applied at the following rates:

(I) Hay or straw shall be applied at the rate of 2 tons/acre and crimped into the soil, or 1 ton/acre with the additional application of 300 gallons/acre of asphalt emulsion spray to bind the mulch to the soil. Hay mulch must be less than 2 years old. Straw derived from small grain species shall not be used as mulch.

(II) Wood chips shall be applied at a rate of 11-15 tons/acre alone or 6 tons/acre with the additional application of 300 gallon/acre of asphalt emulsion spray to bind the mulch to the soil.

(III) Straw manure shall be applied at the rate of 10 tons/acre. Straw manure need not be anchored if it contains heavy solids.

(ii) The use of hay bales and rock rip-rap to fill or repair rills and gullies will be approved on a case by case basis. Monitoring will be required to assure that the treatment provides long term erosion control, does not disrupt the postmining land use, and that permanent vegetation becomes established. If this treatment is not effective then filling of the rills and gullies with topsoil then revegetating the areas will be required. If the drainage area is of sufficient size to create continued problems with rills and gullies, the operator shall install terraces to control the amount and velocity of water moving across the area. These terraces shall be designed and constructed accordance with this Chapter.

(E) Liming, fertilization, mulching, seeding or stocking following the reclamation of any temporary roads, remaining after a Phase I Bond Release approval, temporary sediment or hydraulic control structures, areas disturbed by the installation or removal of oil and gas wells or utility lines, and areas

where the vegetation was disturbed by vehicular traffic not under the control of the permittee will not be considered augmentation.

(F) Irrigation, reliming, refertilization of revegetated areas; reseeding cropland; renovating pastureland by overseeding with legumes after a Phase II bond release shall be considered normal husbandry practices and shall not restart liability period if the amount and frequency of these practices used on unmined land within the region.

(G) Other normal husbandry practices that may be conducted on postmining land uses of fish and wildlife habitat, recreation, and forestry without restarting the liability period are disease, pest, and vermin control; pruning; and transplanting and replanting trees and shrubs in accordance with (b)(3) of this Section.

**460:20-45-47. Subsidence control**

**(a) Operator measures to prevent or minimize damage.**

(1) The operator shall either adopt measures consistent with known technology which prevents subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface land; or adopt mining technology which provides for planned subsidence in a predictable and controlled manner. Nothing in this Subchapter shall be construed to prohibit the standard method of room-and-pillar mining.

(2) If an operator employs mining technology that provides for planned subsidence in a predictable and controlled manner, the operator must take necessary and prudent measures, consistent with mining method employed, to minimize material damage to the extent technologically and economically feasible to non-commercial buildings and occupied residential dwellings and structures related thereto except that measures required to minimize material damages to such structures are not required if:

(A) The operator has the written consent of their owners or

(B) Unless the anticipated damage would constitute a threat to health or safety, costs of such measures exceed the anticipated costs of repair.

(3) Nothing in this part prohibits the standard method of room-and pillar-mining.

(b) **Operator compliance.** The operator shall comply with all provisions of the approved subsidence control plan prepared pursuant to Section 460:20-31-13 of this Chapter.

**(c) Repair of damage to surface lands.** The operator shall:

(1) Correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses which it was capable of supporting before subsidence; and

(2) Promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any

## Permanent Final Adoptions

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non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. If repair option is selected, the operator must fully rehabilitate, restore, or replace the damaged structure. If compensation is selected, the permittee must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence-related damage. The operator may provide compensation by the purchase, before mining, of non-cancelable premium-prepaid insurance policy. The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

(3) Either correct material damages resulting from subsidence caused to any structures or facilities not protected by paragraph (c)(2) of this section by repairing the damage or compensate the owner of the structure or facilities for the full amount of the decrease in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase, before mining of a non-cancelable premium-prepaid insurance policy.

(4) Be governed by a rebuttable presumption of causation by subsidence. The information to be considered in determination of causation is whether damage to protected structures was caused by subsidence from underground mining. All relevant and reasonably available information will be considered by the Department.

(5) **Adjustments of bond amounts for subsidence damage.** When subsidence-related material damage to land, structures, or facilities protected under paragraph (c)(1) through (c)(3) of this section occurs, or when contamination, diminution, or interruption to a water supply protected under 460:2045-8(j) occurs, the Department must require the operator to obtain additional performance bond in the amount of the estimated cost of repairs if the operator will be repairing, or in the amount of the decrease in value if the operator will be compensating the owner, or in the amount of the estimated cost to replace the protected water supply if the operator will be replacing the water supply, until the repair, compensation, or replacement is completed within 90 days of the occurrence of damage, no additional bond is required. The Department may extend a 90-day time frame, but not to exceed one year, if the operator demonstrates and the Department finds in writing that the subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonably anticipated changes have occurred affecting the protected water supply, and that therefore it would be unreasonable to complete within 90 days the repair of the subsidence-related material damage to lands or protected structures, or the replacement of the protected water supply.

(d) Underground mining activities shall not be conducted beneath or adjacent to:

- (1) Public buildings and facilities;
- (2) Churches, schools, and hospitals; or

(3) Impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, such features or facilities. If the Department determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above or to any aquifer or body of water that serves as a significant water source for any public supply system, it may limit the percentage of coal extracted under or adjacent thereto.

(e) If subsidence causes material damage to any of the features or facilities covered by Subsection (d) of this Section, the Department may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.

(f) The Department shall suspend underground mining activities under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

(g) Within a schedule approved by the Department, the operator shall submit a detailed plan of the underground workings. The detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the Department. Upon request of the operator, information submitted with the detailed plan may be held as confidential, in accordance with the requirements of Section 460:20-15-5 (d) of this Chapter.

### SUBCHAPTER 57. STATE INSPECTIONS

#### 460:20-57-6. Review of decision not to inspect or enforce

(a) Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may request the Department to review informally an authorized representative's decision not to inspect or take the appropriate enforcement action with respect to any violation alleged by that person in request for a State inspection under Section 460:20-57-3. ~~The request for review shall follow the procedures set forth in this Section.~~ be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

(b) The Department shall conduct the review in accordance with the Department's Rules of Practice and Procedure for the Coal Reclamation Act of 1979, OAC 460:2-31-1 et seq., and inform the adversely affected person, in writing, of the review results within 30 days from the receipt of the request, unless said time-frame has been waived by that person. The operator alleged to be in violation shall also be given a copy of the results of the review, except the name of the affected person

shall not be disclosed, in the result copy, unless confidentiality was not requested pursuant to 460:20-57-3(b), or if disclosure of that person is required by law. **Informal Conference.** Any person requesting review under paragraph (a) of this Section shall:

- (1) Briefly summarize in writing how the requestor is or may be affected and the issues to be raised by the requestor at the conference.
  - (2) State whether the requestor desires to have the conference conducted in the locality of the mine site; and
  - (3) Be filed within thirty days of the departmental decision.
  - (4) The conference shall be conducted by a representative of the Department who may accept oral or written statements and any other relevant information from any party to the conference. An electronic record shall be made of the conference, unless waived by the parties.
- (e) Except as provided in (d) of this Section, if an informal conference is requested in accordance with (b) of this Section, the Department shall hold an informal conference within a reasonable time following the receipt of the request. The informal conference shall be conducted as follows:
- (1) If requested under (b)(2) of this Section, it shall be held in the locality of the mine site.
  - (2) The date, time, and location of the informal conference shall be sent to the requestor and other parties to the conference and advertised by the Department in a newspaper of general circulation in the locality of the mine site at least two weeks before the scheduled conference.
- (d) If all parties the person requesting the informal conference review withdraws their the request before the conference review is held, the informal conference review may be canceled.
- (e) Informal review under this Section shall not affect any right to formal review by the Director under 45 O.S., Section 786, or to a citizen's suit under 45 O.S, Section 774.
- (f) Any determination made under (b) of this Section shall constitute a decision of the Department within the meaning of OAC 460:2-21-1 et seq., the Department's Rules of Practice and Procedure for the Coal Reclamation Act of 1979, and shall contain a right of an appeal to formal administrative in accordance with the Rules of Practice and Procedure

[OAR Docket #06-1208; filed 6-22-06]

**TITLE 712. OKLAHOMA COMMISSION FOR TEACHER PREPARATION  
CHAPTER 10. TEACHER PREPARATION PROGRAM ACCREDITATION**

[OAR Docket #06-1203]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 7. Teacher Preparation Teacher Assessment 712:10-7-1. [AMENDED]
- Subchapter 11. Education Leadership Oklahoma 712:10-11-1. [AMENDED]

**AUTHORITY:**

Oklahoma Commission for Teacher Preparation; 70 O.S. Supp. 1998, §6-180 et seq. Oklahoma Teacher Preparation Act

**DATES:**

**Comment period:**

December 17, 2005 through January 17, 2006

**Public hearing:**

January 17, 2006

**Adoption:**

February 9, 2006

**Submitted to Governor:**

February 17, 2006

**Submitted to House:**

February 17, 2006

**Submitted to Senate:**

February, 17, 2006

**Gubernatorial approval:**

April 3, 2006

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 18, 2006

**Final adoption:**

April 18, 2006

**Effective:**

July 27, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

The rule provides for the establishment of procedures and consequences for examinees who fail to comply with test conditions and requirement. The rule also provides for clarification for funding of Education Leadership Oklahoma scholarships.

**CONTACT PERSON:**

Ted Gillispie, Executive Director, (405)525-2612

**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 27, 2006:**

**SUBCHAPTER 7. TEACHER PREPARATION  
TEACHER ASSESSMENT**

**712:10-7-1. Teacher assessment regulations**

(a) **Examinees-initial licensure and certification.**

(1) Any individual who applies for a teaching license/certification must successfully complete the competency examination as defined by the Oklahoma Commission for Teacher Preparation. (70 O.S. 1998 Supp., 6-182(14). The competency examination is made up of three components: The Oklahoma General Education Test (OGET), the Oklahoma Subject Area Test (OSAT) and the Oklahoma Professional Teaching Exam (OPTE).

(2) See Appendix A for competency exam requirements by certification area and test codes.

(b) **Examinees - additional certification**

(1) Individuals wishing to add a certification area to an existing teaching credential must successfully complete the Oklahoma Subject Area Test for the field of the desired certification.

# Permanent Final Adoptions

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(2) See Appendix A for competency exam requirements by certification area and test codes

(c) **Examinees - alternative preparation program**

(1) Individuals seeking a teaching license via the Alternative Preparation Program must successfully complete the Oklahoma General Education Test and the Oklahoma Subject Area Test in their recommended certification area. A licensed teacher via the Alternative Preparation Program seeking a standard certificate must successfully complete the Oklahoma Professional Teaching Exam.

(2) See Appendix A for competency exam requirements by certification area and test codes.

(d) **Examinees-out of state certification.** Individuals seeking an Oklahoma license/certification who are certified educators in another state (s) shall meet the same assessment requirements as all other individuals seeking initial licensure/certification individuals having successfully completed comparable examination(s), as determined by OCTP, shall be exempt from the corresponding part(s) of Oklahoma's assessment requirement.

(e) **Examinees - testing conditions and requirements compliance.**

(1) If an examinee fails to comply with the conditions and requirements specified or referenced in the Certification Examinations for Oklahoma Educators Test Registration Bulletin, including the *Conditions of Test Participation*, or take any prohibited actions, the test results may be voided, no refund will be issued, no portion of the testing fee can be applied toward the cost of any future test administrations and/or the examinee's registration may be cancelled.

(2) If an examinee's test score is found to be unverifiable by either the testing company or the Oklahoma Commission for Teacher Preparation (OCTP), the examinee will be allowed one (1) retake under controlled conditions at no cost to the examinee.

(5) OCTP shall designate the place and time for each application review and candidate selection process.

(6) The application review committee shall review and score applications to award scholarships.

(A) The selection committee consists of thirteen members- preferably National Board Certified Teachers.

(B) The application review committee may serve as oversight of a subcommittee that will read and score Education Leadership Oklahoma applications.

(C) Application review committee members will participate in training to score applications and may train and conduct the application reading with the subcommittee members.

(D) Each application review committee member may choose up to five classroom teachers, preferably National Board Certified Teachers if available, to assist that member in reading and scoring the applications. The subcommittee members shall be selected by the following guidelines. During their term the subcommittee member shall:

(i) Have at least three years of teaching experience in an accredited school;

(ii) Be a full time public school classroom teacher or is a National Board Certified Teacher;

(E) The application review committee members and/or subcommittee members shall serve a term of no more than five years.

(F) If an application review committee member resigns before the end of his/her term, the agency responsible for that nomination will submit a nomination of a person to replace that member.

(7) The selection process may include an application with requested information, short answer question(s), and an essay. The items reviewed may include:

(A) Knowledge of NBPTS process

(B) Inclusion of the five core propositions within the essay question

(C) Degree to which the applicant's essay conveys his/her application of the five core propositions

(D) Demonstration of community involvement

(E) Demonstration of parental involvement

(F) Demonstration of educational achievement

(G) Conveyance of commitment to rigorous process

(H) Provision of quality writing which is clear and sufficiently elaborated

(I) Demonstration of knowledge, ability, and leadership

(8) The candidate shall be chosen based on scores determined within the application process.

(b) **Selection and Utilization of Alternates.**

(1) Alternate must be a current, full-time, public school classroom teacher to receive the Education Leadership Oklahoma Scholarship.

(2) Alternates shall be ranked (from highest to lowest), based on the score of the application. In case of a tie score,

## SUBCHAPTER 11. EDUCATION LEADERSHIP OKLAHOMA

### 712:10-11-1. Education Leadership Oklahoma regulations

(a) **Selection of scholarship recipients.**

(1) Applicant can be funded for one scholarship only for National Board for Professional Teaching Standards (NBPTS).

(2) Applicant must be a current, full-time, Oklahoma public school classroom teacher from a public school to receive the Education Leadership Oklahoma Scholarship. Applicants shall be ranked (from highest to lowest), based on the score of the application. In case of a tie score, the locale (under represented areas of the state may be given consideration) for candidate selection.

(3) OCTP shall develop the application and any associated deadlines.

(4) OCTP shall provide candidates, his/her school district and other organizations of the names and contact information of ELO candidates.

~~the locale~~ (under represented areas of the state may be given consideration) for candidate selection.

(3) Alternates not selected during the year may reapply for candidacy the following year.

(c) **Payment and reimbursement of assessment fees.**

(1) OCTP shall make assessment fee payments in full to NBPTS for each scholarship candidate ~~to the NBPTS,~~ upon signing a contract.

~~(2) OCTP shall make a payment of a stipend after the application deadline to each candidate receiving the Education Leadership Oklahoma Scholarship.~~

(3) Should a candidate not be able to complete the process by the National Board deadline, the following shall apply:

(A) If the candidate withdraws by the National Board deadline and OCTP can recover partial amount of the application fee, the candidate may pay the amount not recovered and will then be placed in the next applicant pool.

(B) If the candidate does not withdraw or submit a portfolio by the National Board deadlines, he/she will be responsible to OCTP for the reimbursement of the assessment fee and will not be eligible for another Education Leadership Oklahoma Scholarship.

(4) OCTP shall reimburse candidates who pay the National Board assessment fee as long as they are a full-time, public school classroom teacher in the year in which they certify.

(5) OCTP will fund a maximum of two retakes for re-assessment to candidates that bank scores with the NBPTS provided funding is available.

*[OAR Docket #06-1203; filed 6-19-06]*

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

*[OAR Docket #06-1202]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. Membership Provisions  
715:10-1-7. [AMENDED]
- Subchapter 3. Service Eligibility  
715:10-3-4. [AMENDED]
- Subchapter 9. Survivor Benefits  
715:10-9-7. [AMENDED]

**AUTHORITY:**

70 O.S. Section 17-101, et seq., especially Section 17-106; Board of Trustees

**DATES:**

**Comment period:**

February 15, 2006 through March 17, 2006

**Public hearing:**

March 20, 2006

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March 22, 2006

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March 23, 2006

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**Gubernatorial approval:**

April 25, 2006

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2006

**Final adoption:**

May 18, 2006

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July 27, 2006

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 1. Membership Provisions  
715:10-1-7. [AMENDED]

**Gubernatorial approval:**

September 1, 2005

**Register publication:**

23 Ok Reg 640

**Docket number:**

06-140

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

715:10-1-7 allows a TRS member to receive service credit for the time he or she serves as an officer in an education association. The primary proposed amendment changes from eight years to 12 years the maximum service eligible for TRS service credit, as prescribed by statute. Other changes are as follows: Paragraph (1): corrects capitalization of "state"; Paragraphs (2), (3) and (5): adds section symbol (§) before statute section number; Paragraph (3): changes "his" to "the member's" to conform to language in rest of rule; Paragraph (6): changes "section" to "paragraph" to conform to Secretary of State's Administrative Rules on Rulemaking.

715:10-3-4 provides credit for a terminating member who has a partial year of work experience and/or accumulated unused sick leave.

715:10-9-7 clarifies beneficiary designation after a divorce to incorporate requirements of 15 O.S. § 178.

**CONTACT PERSON:**

Jacqueline Scott Shannon, Communications Director/Rules Liaison, Teachers' Retirement System of Oklahoma, 2500 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-4743

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 27, 2006:**

**SUBCHAPTER 1. MEMBERSHIP PROVISIONS**

**715:10-1-7. Membership in education associations**

Any member absent from employment in the public schools of Oklahoma because of election or appointment as a local, state or national education association officer shall be allowed to retain membership in TRS by making the contribution required of such member by Title 70 Okla. Stat. Section 17-116.2 and any other applicable statute. For purposes of this section the following shall apply:

(1) An education association is defined as an organization of educators established for the sole purpose of promoting the advancement of educational goals in Oklahoma or at the national level. A local or state association must be duly organized under the laws of the ~~State~~ state of Oklahoma with a charter or articles of incorporation filed

# Permanent Final Adoptions

with the appropriate state agency and must comply with all applicable laws of the ~~State~~state of Oklahoma. A national association must be duly registered or chartered for the purpose of furthering educational goals at the national level.

(2) An "officer in an association" is a current member of TRS who is elected or appointed to an employment position within the association commensurate with a position in the public schools of Oklahoma defined as "classified" personnel by 70 O.S. 17-101. The officer must receive compensation for services rendered commensurate with compensation received for similar services in the public schools of Oklahoma.

(3) A member must notify TRS in writing on the form provided by TRS, ~~his~~the member's intent to elect to continue membership in TRS within thirty (30) days of becoming employed by an eligible association. In making this election the member shall agree to make payment in accordance with 70 O.S. 17-116.2 for the period of employment that qualifies for continued membership and to comply with all statutes and rules of TRS in maintaining membership.

(4) The maximum years of creditable service a member may receive for one such absence shall not exceed ~~eight~~ ~~(8)~~ twelve (12) continuous years. A member may again qualify for creditable service in an educational association provided that the member returns to employment in the public schools of Oklahoma for a minimum of the same number of years received as credit in the former education association.

(5) On the recommendation of the ~~executive secretary~~ Executive Secretary, the Board of Trustees may deny eligibility to any local state or national association, when it is judged not to conform with the intent of 70 O.S. 17-116.2 or when it is determined that the association was not established for the sole purpose of promoting the advancement of education.

(6) Effective July 1, 1994, a member may elect to continue membership as provided in ~~Section~~ paragraph (3) above only if the member has ten (10) years of contributory Oklahoma service prior to July 1, 1994.

## SUBCHAPTER 3. SERVICE ELIGIBILITY

### 715:10-3-4. Combining fractional years of service

Fractions of school terms performed as an active contributing member of TRS of at least one (1) school month, in different school years, may be combined to make a total of six (6) months for one (1) year of creditable service. It is not permissible to divide service rendered in one (1) year into fractional parts and combine these fractions with service rendered in two (2) or more years in order to gain additional years of service. All fractional service must be combined together before days of unused sick leave are applied to fractional service to obtain service credit. No more than one (1) year of credit will be given for all employment in any one (1) school year. However, if the member has one hundred twenty (120) or

more days of unused sick leave and has ninety (90) or more days of combined work experience at the end of the school year when the member retires, TRS will grant one (1) year of service credit for the 120 days of unused sick leave and round the 90 days of work experience to count as one (1) year of service.

## SUBCHAPTER 9. SURVIVOR BENEFITS

### 715:10-9-7. Beneficiary designation following a divorce

Following a divorce between an active or retired member and his or her spouse whom the member had designated as a beneficiary, the former spouse shall be treated as having predeceased the member for purposes of the death benefit payment and/or a return of contributions from the deceased member's Teachers' Retirement System account, unless the member has renamed the former spouse as a designated beneficiary. (Note: The beneficiary designation is voided by this section and See required by 15 O.S. §178, only if the member's designation of beneficiary was signed and dated after November 1, 1987).

[OAR Docket #06-1202; filed 6-15-06]

## TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 1. ORGANIZATION AND PROCEDURE OF OKLAHOMA WATER RESOURCES BOARD

[OAR Docket #06-1220]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

785:1-1-2. Definitions [AMENDED]

Subchapter 9. Time Periods for Permit and License Issuance and Denial

785:1-9-2. Permit and license applications subject to rule [AMENDED]

Subchapter 11. Complaints and Complaint Resolution

785:1-11-1. Complaint evaluation and resolution procedures [AMENDED]

### AUTHORITY:

Oklahoma Water Resources Board; 27A O.S. §1-1-204 and 82 O.S., §1085.2

### DATES:

#### Comment period:

November 28, 2005 - January 17, 2006

#### Public hearing:

January 17, 2006

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March 14, 2006

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#### Submitted to Senate:

March 24, 2006

#### Gubernatorial approval:

May 8, 2006

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2006.

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**Effective:**  
July 27, 2006

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**ANALYSIS:**  
The staff of the Oklahoma Water Resources Board ("OWRB") is proposing to amend various provisions of Oklahoma Administrative Code ("OAC") 785: as follows:

Clarify the definition of "complaint" to acknowledge that any person, not just any 'interested person' can file a complaint.

Add language about the procedures for handling a complaint to clarify that if the subject of an inquiry or concern deals with a jurisdictional area of responsibility of another state environmental agency, the staff member receiving the inquiry or statement of concern may provide contact information for the appropriate state agency without logging in the matter or providing further status updates as required for formal complaints.

A list of permits and licenses subject to a rule about processing times needs to be revised to delete the reference to types of permits the Board no longer issues.

The Board may propose other amendments or provisions to these proposals or other provisions of Chapter 1 of its rules due to comments and input received in the rulemaking process.

**CONTACT PERSON:**  
Dean A. Couch, General Counsel, Oklahoma Water Resources Board, 3800 North Classen Boulevard, Oklahoma City, Oklahoma 73118, 405-530-8800, [dacouch@owrb.state.ok.us](mailto:dacouch@owrb.state.ok.us)

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 27, 2006:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**785:1-1-2. Definitions**

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

"**APA**" means and refers to the Oklahoma Administrative Procedures Act set forth in 75 O.S. 1981, §§301 et seq., as amended.

"**Board**" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, for duties authorized by law to be delegated to the Executive Director, the Executive Director or any employee or agent or staff member thereof as assigned by the Executive Director.

"**Complaint**" means any written or verbal concern expressed by ~~an interested~~ any person that alleges site specific problems relating to matters under the Board's jurisdiction and for which a reply is expected, provided a complaint shall not include a protest of an application or other matters relating to an application presented to the Board by interested parties during the proceedings on the application.

"**Executive Director**" means the Executive Director of the Oklahoma Water Resources Board.

"**Person**" means any individual, firm, partnership, association, corporation, business or public trusts, federal agency, state agency, the State or any political subdivision thereof, municipalities, and any other duly constituted legal entity.

"**Response**" means the determination of the course of action to be taken by the Board in addressing a complaint.

"**Resolution**" means the finding that appropriate administrative, jurisdictional, and/or legal remedies have been completed to the extent possible by the Board.

**SUBCHAPTER 9. TIME PERIODS FOR PERMIT AND LICENSE ISSUANCE AND DENIAL**

**785:1-9-2. Permit and license applications subject to rule**

Permit and license applications subject to this subchapter include the following:

- (1) Application for permits and licenses considered under Chapter 15 on Weather Modification;
- (2) Applications for permits to appropriate stream water and notices of completion of works considered under Chapter 20 on Appropriation of Stream Water;
- (3) Applications for approval of plans and specifications to construct, enlarge, alter, remove or repair a dam and notices of completion of works considered under Chapter 25 on Dams and Reservoirs;
- (4) Applications to use groundwater considered under Chapter 30 on Taking and Use of Groundwater;
- (5) Applications for licenses and certifications considered under Chapter 35 on Well Driller and Pump Installer Licensing;
- ~~(6) Applications for waste disposal permits, water quality certifications and laboratory certifications considered under Chapter 40 on Pollution Remedies;~~
- ~~(7) Applications for development permits considered under Chapter 55 on Development on State Owned or Operated Property Within Floodplain;~~
- ~~(8) Applications for renewal or modification of permits, licenses or certifications listed in paragraphs (1) through (7) of this section.~~

**SUBCHAPTER 11. COMPLAINTS AND COMPLAINT RESOLUTION**

**785:1-11-1. Complaint evaluation and resolution procedures**

- (a) Upon receipt, each complaint will be logged in by Division and on a central filing system established at the Board. The Chief or Chief's designee of the respective Division shall be immediately advised of the complaint. If the concern presented clearly involves the jurisdictional area of responsibility of another state environmental agency, the Board's staff receiving the written or verbal concern may immediately provide the person expressing the concern contact information

# Permanent Final Adoptions

for the other state environmental agency, and no further action on the concern will be required by Board's staff.

(b) The Division Chief or Chief's designee shall determine the appropriate courses of action to further investigate the facts underlying the complaint. Such actions may include an on-site field investigation, telephone calls, written correspondence, etc. After gathering such facts as necessary and appropriate, the Division Chief or Chief's designee shall review pertinent law and rules, in consultation with the Office of General Counsel, the Assistant Director and/or Executive Director, if necessary, to prepare a response the Board may be able to pursue to resolve the complaint or whether the matter should be referred to another environmental regulatory agency.

(c) The Board will notify the complainant by telephone or in writing of the status of the complaint within two (2) working days of receipt of the complaint. A complaint status report form shall also be prepared and forwarded to the Oklahoma Conservation Commission.

(d) During the pendency of the fact-finding investigation or of the preparation of the response for action or remedies, the Board shall continue to update the complainant of the status of the complaint at least once a month or such other frequency as determined necessary.

(e) After completion of the fact-finding investigation and of the preparation of the recommended response, a written report, approved by the Division Chief or the Chief's designee and if necessary by the Assistant Director or Executive Director, of the same shall be forwarded to the complainant. If the recommended action or remedy includes the initiation of litigation, the matter shall be presented to the Board for consideration of staff's recommendation unless the Assistant Director or Executive Director determines that an emergency exists necessitating the initiation of litigation without prior approval of the Board. In such case, the matter will be presented to the Board at its next meeting for ratification of the action taken.

(f) The Board shall mail a written report of the resolution of the complaint to the complainant within seven (7) working days. A complaint status report shall also be prepared and forwarded to the Oklahoma Conservation Commission.

[OAR Docket #06-1220; filed 6-23-06]

## TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 4. RULES OF PRACTICE AND HEARINGS

[OAR Docket #06-1221]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. Pre-Hearing Actions and Proceedings

785:4-5-4. Application protests; comments and objections [AMENDED]

785:4-5-6. Electronic mail notice [NEW]

785:4-5-7. Copies of motions, requests and orders [NEW]

### AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. §1085.2(9) and 82 O.S. §1085.4

### DATES:

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Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2006.

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#### SUPERSEDED EMERGENCY ACTIONS:

n/a

#### INCORPORATIONS BY REFERENCE:

n/a

#### ANALYSIS:

Section 785:4-5-4 is to clarify and distinguishing between protest, comment and objection, and adding language to requiring persons who want to present evidentiary material at a hearing to become parties by providing sufficient notice of the protest to an applicant, and to provide sufficient information to make a determination about standing. It includes language to clarify that the Hearing Examiner can allow statements to be presented at hearings with no evidence presented, that the Hearing Examiner can limit such statements to avoid duplication, and to allow for abbreviated notice of proceedings to be provided to persons who are not parties.

New provisions concerning the use of electronic mail are to acknowledge the ever-increasing availability and use of e-mail. Finally, a new provision about notice is proposed to shift some of the responsibility of providing notice to parties to a party who requests some form of relief from the Board.

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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 27, 2006:**

## SUBCHAPTER 5. PRE-HEARING ACTIONS AND PROCEEDINGS

### 785:4-5-4. Application protests; comments and objections

(a) ~~Who may file. Subject to the requirements herein set forth, any~~ interested person may ~~present and file a written protests, objections or comments protest, objection or comment to any permit application—or, petition or other matter subject of a hearing, and, may thereupon be recognized and entitled to be heard as an interested party and entitled to participate in the hearing and present matters in support of their respective position.~~ Persons signing form letters, multiple letters containing substantially similar or duplicate text or information, or persons signing written submittals in

petition format containing multiple signatures, may not be considered parties to a proceeding unless all requirements specified in subsection b are set forth for each person signing such letters or petitions.

**(b) Requirements for ~~protest~~ protests; standing.** ~~Except for enforcement actions initiated by Board staff, all application protests~~ Protests, objections or comments must be filed with the Board in writing and must contain the following information:

- (1) Name, telephone number, e-mail (if available) and postal address of the interested person;
- (2) The application to which the protest, ~~objection or comment~~ relates;
- (3) ~~The nature and basis of the interest of the person affected~~ Specific information to show how approval of the application, petition or action proposed may directly and adversely affect legally protected interests of the person filing the protest; and
- (4) A statement of the ~~protest, objection or comment,~~ the basis therefor and the relief sought by the interested person.

**(c) Party Protest required for party status.** To become a party and to facilitate reasonable notice to the applicant or petitioner, all ~~application protests, objections or comments~~ must contain the information as set forth in paragraphs (1) through (4) of subsection (b) and be filed with the Board, and a copy must be provided to the applicant or petitioner, within 15 days of the last publication date of notice of the application, or as otherwise the time period stated in the notice. In enforcement actions initiated by Board staff, all respondents named in the notice of hearing shall be deemed parties for purposes of participation in the proceedings. A person who fails to provide a copy of the protest with the applicant or petitioner within the time period stated may not be considered a party unless otherwise determined by the Hearing Examiner.

**(d) Hearing examiner discretion on allowing presentation of protest.** If an interested person appears at the hearing for purposes of presenting a ~~protest, objection or comment~~ to the application without first meeting the requirements set forth above, the Hearing Examiner may at the Examiner's discretion, reject the protest, receive the protest, ~~objection or comment,~~ orally or in writing, and proceed with the hearing; or may defer receiving such ~~protest, objection or comment~~ and direct a continuance of the hearing in order to allow the interested person an opportunity to file the ~~protest, objection or comment~~ in compliance with the requirements set forth above. In the last described instance, the Examiner may take into consideration the wishes of the applicant or petitioner with respect to proceeding with or continuing the hearing. The Hearing Examiner may allow any interested person to make a statement in support of or in opposition to an application or petition without cross examination if the statement is not intended as evidence, provided the Hearing Examiner may limit such presentations to avoid duplication.

**(e) ~~Protest and comments in file~~ Record of protests, comments and objections.**

(1) All correspondence relating to an application, including all protest, objection and comment letters, shall be retained in the permanent application file.

(2) Persons who submit objections or comments to an application or petition will not be deemed to be parties, but, as described in subsection (d), may be allowed to make statements at a hearing.

(3) Abbreviated notice, including but not limited to notice by electronic mail, of further proceedings or of the availability of proposed findings, conclusions and order prepared after a hearing may be given to a person who files objections and comments or who makes a statement at a hearing.

**785:4-5-6. Electronic mail notice**

(a) The Board may allow protests, comments and objections to applications to be submitted through electronic mail to an e-mail address specified in the notice of application.

(b) Unless a request is made to provide notice to a U.S. Postal Service address, persons who submit protests, comments or objections by electronic mail will be given notice to the electronic mail address from which the protest, comment or objection was received, unless another electronic mail address is provided.

(c) Hard copies of electronic mail messages and attachments sent or received by the Board relating to applications, protests, comments and objections and will be made and placed in the application file.

**785:4-5-7. Copies of motions, requests and orders**

(a) Any person filing a motion or other request to the Board shall mail a copy of the motion or request to all parties of record. A certificate of such mailing shall be filed with the motion or request.

(b) Unless otherwise directed within the interlocutory order, a copy of the interlocutory order relating to the motion or request shall be provided by the Board to the person filing the motion or request. That person shall mail a copy of the interlocutory order to all parties of record.

(c) A written copy of the proposed final order of the Board prepared by the Hearing Examiner after the conclusion of any hearing shall be provided to the applicant, and the applicant shall be required to serve all other parties at least fifteen (15) days prior to Board meeting at which the proposed final order is scheduled to be considered.

*[OAR Docket #06-1221; filed 6-23-06]*

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

*[OAR Docket #06-1222]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

# Permanent Final Adoptions

## RULES:

- Subchapter 1. General Provisions
- 785:35-1-2. Definitions [AMENDED]
- Subchapter 3. Licensing and Certifications
- 785:35-3-1.1. Activities authorized; electrician and plumbing license [NEW]
- Subchapter 7. Minimum Standards for Construction of Wells
- 785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observation wells, and water well test holes [AMENDED]
- 785:35-7-1.1 Minimum standards for construction of heat exchange wells [AMENDED]
- 785:35-7-2. Minimum standards for construction of monitoring wells and geotechnical borings [AMENDED]
- Subchapter 11. Plugging and Capping Requirements for Wells and Test Holes
- 785:35-11-2. Plugging requirements for site assessment observation wells, monitoring wells and geotechnical borings [AMENDED]

## AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. §1020.16 and 82 O.S. §1085.2

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### Gubernatorial approval:

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Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2006.

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## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## ANALYSIS:

The definition section of the water well and pump installer licensing rules is amended by clarifying the appurtenant equipment that is considered a "pump" and to correct language in the definition of "sleeve".

Subchapter 3 on licensing requirements adding provisions to clarify when a well driller pump installer license is required relative to the licensing requirements for electricians and plumbers regulated by the Construction Licensing Board. Within those provisions, language was added to allow pump installers to plug abandoned water wells but only if the pump installer successfully passes an examine about plugging requirements for water wells.

The minimum standards for construction of water wells will prohibit the location of such wells within 300 feet of waste disposal wells; clarify that a sleeve must extend a minimum of eight feet below the ground surface, that cement and water must be mixed before installing in a well for a seal, and that installing dry cement then adding water is not acceptable.

The minimum standards relating to construction of monitoring wells will specify a minimum screen depth of two and one-half feet, and that dry cement and water must be mixed before installing around a monitoring well, and that flush mounting of casing for monitoring wells located at concentrated animal feeding operations after July 1, 2006, shall be prohibited.

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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 27, 2006:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 785:35-1-2. Definitions

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

**"Abandoned well"** means a well that has been permanently taken out of use, or is in such a state of disrepair that using it is impracticable or threatens to contaminate the groundwaters of the State.

**"APA"** means and refers to the Oklahoma Administrative Procedures Act set forth in 75 O.S. 1981, §§250 et seq., as amended.

**"Application"** means a formal request to the Board and the first step required by law to acquire the right to perform or engage in activities regulated by the Board.

**"Board"** means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, for duties authorized by law to be delegated to the Executive Director, the Executive Director or any employee or agent or staff member thereof as assigned by the Executive Director.

**"Commercial drilling"** means *drilling and installation as a business, trade, or occupation for compensation.* [82:1010.1]

**"Commercial installation"** means *installation as a business, trade or occupation for compensation.* [82:1020.1]

**"Commercial plugging"** means *plugging wells or borings as a business, trade or occupation for compensation.* [82:1020.1]

**"Direct push geological boring"** means a geological boring in which tools and sensors are pushed into the ground using static weight combined with percussion as the energy to remove soil or make a path for the tool to obtain geotechnical, soil, water, and/or vapor information.

**"Drilling water"** means water that is used in the drilling of a well which is of a quality suitable for drinking or is uncontaminated water with a residual chlorine content equal to or greater than one hundred (100) milligrams per liter.

**"Firm"** means an individual or any kind of legal entity, such as a sole proprietorship, partnership or corporation that holds a license to conduct any well drilling or pump installation activity.

**"Fresh water observation well"** means any well used to measure the depth to the water table or parameters of fresh water aquifer performance.

**"Geotechnical boring"** means any excavation deeper than four feet (4'), that is drilled, augured, bored, cored, washed, driven, jetted or otherwise constructed and which is used or capable of being used to obtain soil or geological formation samples or information, or for the determination of groundwater quality or remediation.

**"Geothermal well"** means heat pump well.

"**Groundwater well**" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed which is used or is capable of being used for the production of groundwater.

"**Heat exchange well**" means the same as, and includes, the terms "geothermal well", "heat pump well", and "heat sink well".

"**Heat pump well**" means a boring or cased hole that uses or is capable of using the thermal characteristics of the geologic formations or groundwater if encountered, and includes but is not limited to an open or closed loop groundwater heat pump system.

"**Heat sink well**" means a well utilized for heat exchange purposes, including but not limited to, a heat pump well and a geothermal well.

"**License**" means a certification issued by the Board to qualified persons making application therefor authorizing such persons to engage in the business of drilling or plugging wells or borings and installing water well pumps.

"**Monitoring well**" means a well used to obtain a representative groundwater sample for determining groundwater chemistry or quality; for detecting, recovering, or remediation of actual or potential contamination; or for monitoring the unsaturated zone above a water table or confined aquifer, and includes site assessment observation wells and unsaturated zone monitoring wells.

"**Open-loop heat pump water supply well**" means a well drilled to supply water for the purpose of heat transfer.

"**Operator**" means the individual person engaging in the actual operation and use of the well drilling equipment and facilities and who performs and supervises the actual on-site construction, completion and handling of wells or well test holes, and conducts tests, and obtains and records well or well test hole data.

"**Piezometer**" means cased holes that monitor or are capable of monitoring water pressures or soil moisture tensions, primarily located at dam sites or other man-made water retention structures.

"**Pump**" means mechanical equipment or device used to remove water from wells and shall include, but is not limited to pumps, seals, tanks, fittings, pipes from wells to pressure tanks, pressure switches, shut off valves for pressure tanks, related equipment and controls.

"**Pump installer**" means a person who is qualified to engage in the installation, removal, alteration, or repair of water well pumps and pumping equipment used in connection with a water well and breaking of the water well seal.

"**Sand point well**" means a groundwater well with a borehole constructed by means of driving a small diameter pipe having perforations downward into a loose sandy soil or by means of forcing uncontaminated groundwater through a small diameter pipe having perforations with sufficient pressure to displace loose sandy soil with the pipe.

"**Site assessment observation well**" means a well used to measure the depth to the water when used for evaluation, classification or determination of the groundwater flow direction at a site that is or might be contaminated.

"**Sleeve**" means well casing that is installed at the surface surrounding the production casing and used solely for the purpose of attaching a pitless adapter unit. ~~Not to be confused with and is separate from~~ surface casing ~~or~~ and conductor pipe.

"**Unsaturated zone monitoring well**" means any well used for the characterization, evaluation or monitoring of the unsaturated area above the water table or zone.

"**Vertical closed-loop heat pump well**" means the borehole perpendicular to the natural grade of the earth surface drilled deeper than ten (10) feet into which a closed-loop pipe is placed for the purpose of heat transfer.

"**Water return well**" means a well constructed for the purpose of returning water that has passed through the heat pump system to the same aquifer from which the water was produced by the open-loop water supply well.

"**Water well test hole**" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed which is used or is capable of being used to determine the location of fresh groundwater and/or the capacity of the geologic formation to yield groundwater.

"**Well**" means any type of excavation for the purpose of obtaining groundwater, to monitor, to remediate, or observe conditions under the surface of the earth, but does not include oil and gas wells.

"**Well driller**" means and refers to the individual owner-proprietor or partnership, firm or corporation engaged in the business of the commercial drilling, plugging or reconstruction and the test drilling of wells in the State of Oklahoma.

### SUBCHAPTER 3. LICENSING AND CERTIFICATIONS

#### 785:35-3-1.1. Activities authorized; electrician and plumbing license

(a) The provisions of the Electrical License Act in Sections 1680 through 1697 of Title 59 of the Oklahoma Statutes shall not apply to . . . the installation, maintenance, repair or replacement of water supply pumps and related equipment and devices, provided such work is performed from the output side of a fused disconnect or breaker box. [59: 1692(A)(6)]

(b) Persons holding a license or operator certification from the Board are not required to become licensed under the Electrical Licensing Act for the installation, maintenance, repair or replacement of water supply pumps, provided the work conducted by persons holding licenses or operator certifications from the Board is performed from the output side of a fused disconnect or breaker box.

(c) Persons holding a license or operator certification from the Board are not required to become licensed under the Plumbing Law of 1955 in Sections 1001 through 1023.1 of Title 59 of the Oklahoma Statutes for the installation, maintenance, repair or replacement of water supply pumps and related equipment and devices, provided the work conducted by persons holding licenses or operator certifications from the Board is performed from the water well to the pressure tank,

## Permanent Final Adoptions

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including the shut off valve between the pressure tank and supply line on the discharge side of the pressure tank.

(d) Persons holding a license or operator certification for Category 3 Activities, Commercial Installation of Water Well Pumps, are authorized to plug permanently abandoned fresh water wells or test holes if the water in the well or test hole is uncontaminated, provided that persons shall comply with 785:35-11-1 and successfully complete a Board examination for such abandonment activities.

### SUBCHAPTER 7. MINIMUM STANDARDS FOR CONSTRUCTION OF WELLS

#### **785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observation wells, and water well test holes**

##### **(a) General requirements.**

(1) **Minimum standards.** The minimum standards set forth in this subchapter apply to all groundwater wells, fresh water observation wells and water well test holes whether constructed by a person having a valid license or by any other person.

(2) **Construction of wells.** Flowing and non-flowing groundwater wells, observation wells and water well test holes are to be constructed in a manner as to prevent waste and to prevent contamination of groundwater by pollution material either entering the ground around the casings or tubing, or entering the fresh groundwater from pollution sources below the ground, or by entering the fresh well water by leaking wells, casing pipe fittings, pumps, or well seals.

(3) **Proper maintenance, plugging and capping.** The well driller and/or the well owner are charged with the responsibility of taking whatever steps are reasonable in a particular situation to guard against waste and contamination of the groundwater resources, and to see that unused wells are properly capped or plugged.

##### **(b) Minimum location standards.**

(1) Every new groundwater well, fresh water observation well and water well test hole shall be located a minimum distance from possible pollution sources as prescribed in this subsection or as otherwise authorized by a variance granted by the Executive Director. Possible pollution sources include but are not limited to existing or proposed septic tanks, sewer lines, absorption fields or beds, seepage pits, building foundations, waste pits, lagoons, oil or gas wells, and landfills. The minimum distance between the possible pollution source and the well or test hole shall be as follows, provided that other governmental agencies may require wells to be located at distances greater than the minimum distances set forth in this paragraph:

(A) 10 feet from a closed or tight sanitary sewer line,

(B) 300 feet from the outside perimeter of an existing or proposed waste lagoon for a feedlot or confined animal feeding operation,

(C) 50 feet from all other pollution sources, provided however, if the well is 50 feet to 75 feet and located down-gradient or level from a possible source of pollution, a twenty foot (20') surface seal shall be installed, and

(D) 75 feet from all other pollution sources if the well is level with the pollution source and 100 feet from all other pollution sources if the well is located down-gradient from the pollution source.

(2) If not prohibited by the owner of the well or other governmental agency requirements, groundwater wells which will not be used for drinking water may be located closer to a possible pollution source than the minimum distances specified in paragraph (1) of this subsection if all of the following conditions are met:

(A) the possible pollution source is not a wastewater lagoon,

(B) before the well is drilled, the well driller advises the person wanting the well drilled that the well is subject to contamination,

(C) the owner of the proposed well notifies the Board that the owner will authorize the driller to drill the well closer to the possible pollution source than the minimum location standard,

(D) the outside water-tight casing is properly cement grouted or completed with ten (10) feet bentonite in the lower one-half (1/2) portion and ten (10) feet cement grout in the upper one-half (1/2) portion at least twenty (20) feet down from the land surface or pitless adaptor connection.

(3) If a well driller or other person proposing to drill a well encounters a structure, object or other situation and is unsure whether it may be a possible source of pollution, he shall contact Board staff and obtain approval for location of the well.

(c) **Casing of groundwater and fresh water observation wells.** Except for sand point wells, requirements for casing of groundwater wells and fresh water observation wells shall be as follows:

(1) The casing shall be installed to seal off any groundwater zones containing water which does not meet the groundwater quality standards as set forth in Oklahoma's Water Quality Standards. In no case shall a well be completed in a salt water zone.

(2) New groundwater and fresh water observation wells shall have:

(A) Outside water-tight production casing cement grouted from land surface to a minimum depth of ten (10) feet below the land surface, and to such further depth as may be necessary, depending upon the character of the underground formations, to extend into an impervious stratum, where such stratum is found above the source aquifer.

(B) Casing seated at top of the first impervious stratum suitable for casing point. Where an impervious formation or tight confined bed does not occur at the well site, the casing shall be extended as far as practicable below the water table and wherever possible, at least ten (10) feet below the minimum seasonal stage of the water table.

(C) Casing joints threaded, welded, or glued with water well construction glue so as to be water-tight.

(D) Casing that extends at least eight (8) inches above the natural ground level or preferably twelve (12) above the natural ground level or eight (8) inches above the floor surface for surface pad completions. In areas where known flooding occurs, the casing shall extend twenty-four (24) inches above the maximum level of such flooding.

(E) Casing meeting or exceeding the following:

- (i) new or clean and sanitary used carbon or stainless steel, or
- (ii) new PVC fresh water well casing which has a S.D.R. rating of twenty-six or stronger and which may be plain end with threaded connector, and with all joints made water-tight by cleaning and cementing, using manufacturer's recommended thinner and cement for use in fresh water wells, or
- (iii) fiberglass or other material which meets or exceeds N.S.F. approval for casing which is specially designed for use in a water well.

(d) **Cement grouting and concreting.** Except for sand point wells, cement grouting and concreting requirements for groundwater wells and fresh water observation wells shall be as follows. These requirements must be met before the drilling rig is taken from the site.

(1) All new groundwater wells and fresh water observation wells shall be made water-tight around the outside of the production casing by cement grouting to such depths as may be necessary to exclude pollution, but in no case shall the cement grout seals be less than ten (10) continuous feet in depth, provided that five (5) feet of bentonite may be installed immediately below five (5) feet of cement grout for the total 10 feet continuous seal. If surface pipe and production casing are used, the cement grouting and/or bentonite seal shall be installed outside the surface pipe casing in all instances beginning July 1, 2005, provided the following provisions apply:

- (~~i~~ A) a variance may be issued by the Director for an alternative completion design due to site specific conditions, and
- (~~ii~~ B) if a sleeve is used at the surface for the sole purpose of attaching a pitless adapter, the sleeve shall be installed or embedded within the surface seal, extend a minimum of eight feet (8') below ground level in the borehole, and the surface seal shall be a minimum of one and one-half inch (1 1/2") thick.

(2) The cement or cement/bentonite seal shall originate at a minimum ten (10) foot depth and terminate no deeper

than four feet (4') from the natural land surface after all settling of the cement or bentonite/cement has occurred, unless a written waiver is first obtained from the Board.

(3) The cement grout shall consist of a mix ratio of one (1) 94 pound sack of cement to a maximum of six (6) U.S. gallons of water. The cement and water must be mixed to the proper consistency as recommended by the cement manufacturer before the mixture is installed around the casing. A maximum of fifty percent (50%) aggregate by dry weight may be added to the portland cement to form the cement grout, provided the aggregate is a size that will not create a potential to cause bridging in the annular space.

(4) A maximum of ~~six percent (6%)~~ twenty percent (20%) bentonite may be added to the slurry, which bentonite shall be prehydrated to the manufacturer's recommended consistency. Prehydration requires that the bentonite be properly mixed with the recommended amount of water before the mixture is installed.

(5) The well borehole shall be a minimum diameter of at least three (3) inches greater than the outside diameter of the well casing or production tubing adjacent to the borehole utilized in the surface seal.

(6) This annular space shall be filled with cement grout or cement/bentonite to the minimum ten (10) foot depth, or such further depth as may be necessary to exclude pollution.

(7) Where a pitless well adapter or unit is being installed, the grouting shall start below the junction of the pitless well adapter or unit where it attaches to the well casing and shall continue to at least ten (10) feet below this junction.

(8) If a high solids bentonite grout is used for the bentonite seal portion below the cement grout portion of the surface seal, the grout shall contain at a minimum, twenty percent (20%) solids by dry weight.

(9) It is not an acceptable installation method to install dry cement around the casing and then add water.

(e) **Well development requirements for groundwater wells except sand point wells or fresh water observation wells.** Upon completion of the groundwater well or fresh water observation wells and before conducting the yield of draw-down tests, the well driller shall clean and develop the well to remove drill cuttings and drilling mud.

(f) **Disinfection of groundwater or fresh water observation wells.** Requirements for disinfection of groundwater or fresh water observation wells shall be as follows:

(1) All water used in the drilling of the well shall be potable water or uncontaminated chlorinated water having not less than 100 parts per million chlorine.

(2) A new, repaired, or modified well shall first be thoroughly cleaned and prepared for receiving pumping equipment.

(3) Thereafter, the well and pumping equipment shall be disinfected with chlorine so applied that a concentration of at least one hundred (100) parts per million of chlorine shall be obtained in all parts of the water in the well.

## Permanent Final Adoptions

- (4) A minimum contact period of two (2) hours shall be provided before pumping the well to flush chlorine solution from the fresh water distribution system.
- (g) **Access port or water level measuring device.** Upon completion of a new groundwater or fresh water observation well and before the well is put into service, the well driller will equip the well with either an access port that will allow for the measurement of the depth to static water surface or a static water level measuring device.
- (h) **Sand point well construction requirements.** Unless otherwise approved by variance, applicable minimum standards set forth in this section and the following minimum construction requirements apply to sand point wells:
- (1) The sand point well shall be drilled to a total depth of no more than thirty feet (30'); and
  - (2) A pilot hole shall be constructed first, with cement installed to a depth of three feet (3') around surface casing, then the remaining bore hole can be installed then production casing installed.

### 785:35-7-1.1. Minimum standards for construction of heat exchange wells

- (a) **General requirements.**
- (1) **Applicability of minimum standards.** The minimum standards set forth herein apply to all heat exchange wells as defined in 785:35-1-2, whether constructed by a person having a valid license or by any other person.
  - (2) **Prohibition against other uses.** Heat exchange wells cannot be used for any purpose other than heat exchange. After completion, heat exchange wells shall not be converted to any other type of well except by written approval by the Board. The licensee shall ensure that the heat exchange well is constructed according to the rules.
  - (3) **Maximum protection of groundwater required.** Construction of geothermal and heat exchange wells shall provide maximum protection to the groundwater from contamination and movement and migration of water from one zone or aquifer to another.
- (b) **Location of heat exchange wells.**
- (1) A vertical heat pump well shall be located on a site so that surface water will not pool or pond around or within ten (10) feet of the heat exchange well location.
  - (2) Placement of a heat exchange well must meet or exceed standards as set forth by section 785:35-7-1(b) relating to location requirements for groundwater wells except as set forth in paragraph 3 of this subsection.
  - (3) If not prohibited by the owner of the well or other federal or state agency requirements, heat exchange wells may be located closer to a possible source of pollution than the minimum distances specified in Section 785:35-7-1(b) if all of the following conditions are met:
    - (A) The possible pollution source is not a wastewater lagoon.
    - (B) The well annulus is completely sealed as described in paragraph 7 of subsection (c) of this section.
- (c) **Construction standards for vertical closed-loop exchange wells.** Vertical closed-loop heat exchange wells shall be constructed in accordance with this subsection. Site

specific conditions shall be assessed to determine the best method and materials to be used for sealing and filling the well annulus to protect the groundwater. In addition, but not as an alternative, to the requirements stated in (1) through (9) of this subsection, methods and materials for construction of heat exchange wells that meet or exceed recommendations specified in "Grouting for Vertical Geothermal Heat Pump Systems Engineering Design and Field Procedures Manual", International Ground Source Heat Pump Association, Oklahoma State University, First Ed. 2000, and in "Grouting Procedures for Ground Source Heat Pump Systems", International Ground Source Heat Pump Association, Oklahoma State University, 1991, may be used for construction of vertical closed-loop heat exchange wells.

- (1) **Casing material.** If permanent casing is needed in a heat exchange well, it must meet standards set out in Section 785:35-7-1 for steel and for plastic.
- (2) **Heat exchange loop material.** In a closed-loop heat exchange well, the material used to make up the heat exchange loop that is placed into the ground must be equal to or exceed PE3408, DR 11, 160 PSI high density polyethylene (HDPE) or ASTM D-3350.
- (3) **Connecting closed-loop pipe.** All pipe joints and fittings installed and buried shall be socket, butt or thermally fused according to the pipe manufacturer's specifications. Glued or clamped joints shall not be used below ground unless the joint or connection serves as a service outlet and the joint or connection is not covered with earth material. Joints must not leak after assembly.
- (4) **Heat transfer fluid.** The fluid used inside the closed-loop assembly must be non-toxic, food grade quality and approved for use by the U.S. Environmental Protection Agency and a release of the fluid to the groundwater must not violate Oklahoma Water Quality Standards set forth in Chapter 45, OAC 785.
- (5) **Borehole size.** The hole size for heat exchange wells must be of sufficient size to allow placement of the material to surround all pipe, but in no case shall the borehole diameter be less than four (4) inches.
- (6) **Grouting of vertical heat exchange wells.** Grouting and filling the annulus of a heat exchange well must be completed immediately after the well is drilled to avoid cave-in of the uncased hole, provided that no heat exchange boring shall be left open over twenty-four (24) hours if groundwater is encountered, or seventy-two (72) hours if groundwater is not encountered.
- (7) **Vertical heat exchange well sealing and filling materials and methods.** The well annulus must be completely sealed or filled the total length of the borehole with approved materials and methods as listed below.
  - (A) A bentonite, cementitious, or Portland cement grout seal shall be installed from a point thirty (30) feet below land surface up to the excavation trench that connects the closed loop to the heat exchange system. Spreading or expanding clips shall not be used within the top thirty (30) feet of the borehole.
  - (B) Approved annulus sealing and filling materials below thirty (30) feet shall include Portland

cement, high solids bentonite grout (20-30% solids by weight), bentonite pellets or chips, water well filter pack sand or gravel, or approved high efficiency or thermally enhanced grouts designed for geothermal borehole.

(C) The annulus sealing or fill material shall be installed from the bottom of the borehole to a termination point of no less than thirty (30) feet from land surface.

(D) Bentonite chip or pellet fill material installed shall be hydrated immediately after installation if installed in the unsaturated zone.

(E) Fill material placed in the annulus shall be uncontaminated, provided that cuttings shall not be used as fill material unless the cuttings are dry, uncontaminated sands or gravels containing less than ten percent (10%) clay.

(F) When non-slurry sealing and filling materials are used, only clean water well filter pack sand or gravel or chipped or pelletized sodium bentonite varieties that are designed to fall through standing water are acceptable when sealing the annulus of a well that is below the water level in the saturated zone. The borehole shall be flushed clean of all drilling mud and debris left over from the drilling operation so that the bentonite products designed for this type of installation will gravity feed without obstruction. Material shall be introduced in a manner to prevent bridging of the materials in the borehole annulus. A measuring device such as a tagline shall be used to measure and document placement of the materials installed.

(G) Slurry mixes of bentonite grout or Portland cement shall be installed by pumping through a tremie pipe in a continuous operation using a positive displacement method. Polymer additives designed to retard swelling are acceptable for use with the bentonite grout or Portland cement. The tremie pipe will extend the full depth of the borehole before pumping begins. The borehole diameter shall be of adequate size to allow proper placement of materials using this method. Slurry volume used must equal the annulus volume of the borehole.

(H) For air drilled boreholes in which the borehole is completely dry and the normal static water level is deeper than the total depth of the heat exchange well, the bentonite slurry may be pumped from the surface without a tremie pipe.

(8) **Multiple formations, lost circulation zones, or zones of differing water quality.** When multiple formations, lost circulation zones, or zones of differing water quality are encountered within the same borehole, the listed sealing and filling materials set forth in paragraph (7) may be used, provided, that if sand or gravel material is used as the fill material, a solid plug of Portland grout, bentonite pellets, or bentonite chips must be installed to separate the formations or zones to prevent cross contamination. The total length of the plug must be a minimum of five (5) feet and installed in a consolidated area of the

borehole. If no consolidated area or formation is present to install the plug (such as loose sand or gravel), sand and /or gravel shall not be acceptable annulus fill material.

(9) **Wells drilled in lost circulation conditions.** If caves or large fractures are encountered in drilling the borehole, grouting may not be possible and the Board must pre-approve completion of the heat pump well in such conditions based on plans to bridge and seal such areas. If completion is not approved, the well must be properly plugged. Chipped bentonite or clean fill (gravel, sand and other appropriate material) may be used to seal small fractures.

(d) **Construction standards for open-loop and return heat exchange wells.**

(1) Open-loop heat exchange wells must meet the minimum construction standards set forth in Section 785:35-7-1 relating to groundwater.

(2) Water return wells for domestic heat exchange systems must meet the minimum construction requirements set forth in Section 785:35-7-1, and the groundwater used in the system must be returned to the same aquifer from which the groundwater was withdrawn by the open-loop heat exchange well, provided that authorization from the Oklahoma Department of Environmental Quality may also be required.

**785:35-7-2. Minimum standards for construction of monitoring wells and geotechnical borings**

(a) **General requirements.**

(1) **Applicability of minimum standards.** The minimum standards set forth herein apply to all monitoring wells, including site assessment observation wells and unsaturated zone monitoring wells, and geotechnical borings, whether constructed by a person having a valid license or by any other person.

(2) **Construction.** Monitoring wells and geotechnical borings shall be constructed in such a manner as to prevent waste and contamination of groundwater by pollution material entering the ground around the casing or boring, by entering the wells or boring, or by entering the fresh groundwater from pollution sources below the ground.

(A) **Drilling equipment.** Drilling equipment shall be decontaminated if contamination is encountered in the well or borehole.

(B) **Drilling procedures.** Drilling procedures shall be carried out in such a manner that will prevent or minimize contamination.

(C) **Construction material.** All construction material shall be in a condition that will prevent or minimize contamination.

(3) **Proper maintenance and plugging.** The driller and the well owner are charged with the responsibility of taking whatever steps are reasonable in a particular situation to guard against waste and contamination of the groundwater resources and to see that unused wells and boring are properly plugged.

## Permanent Final Adoptions

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- (4) **Other regulations.** These rules are minimum standards and other laws and regulations which are more stringent may be applicable.
- (b) **Minimum standards for construction of monitoring wells.**
- (1) **Diameter of borehole.**
- (A) The diameter of boreholes for monitoring wells, with the exception of boreholes for unsaturated zone monitoring wells, shall be at least three inches greater than the nominal diameter of the well casing and screen for the entire length of the casing.
- (B) The diameter of boreholes for unsaturated zone monitoring wells shall be at least one and one-half (1 1/2") inches greater than the nominal diameter of the well casing for the entire length of the casing.
- (2) **Casing selection and casing joints.**
- (A) All wells shall be cased. Casing material shall be selected according to groundwater geochemistry, anticipated lifetime of monitoring program, well depth, parameters to be monitored and other site specific considerations.
- (B) When PVC casing is used, the casing shall meet or exceed the standard dimension ratio (SDR) of twenty-one (21).
- (C) The minimum diameter for monitoring well casing shall be a nominal two (2) inches, with the exception of casing for unsaturated zone monitoring wells. The minimum diameter for unsaturated zone monitoring well casing shall be a nominal one-half inch. Methane gas probes at solid waste management sites shall be exempt from minimum casing diameter requirements.
- (D) The casing shall be connected by flush threaded joints or have the ability to be connected by another mechanical method that does not introduce pollutants into the well. Glued joint casing shall not be used when monitoring organics.
- (E) The casing joints shall be made water tight by a method that does not introduce pollutants into the well (e.g. wrapping the casing joint with Teflon tape or placing an o-ring or gasket in the joint).
- (3) **Bottom cap required.** A bottom cap shall be installed on each monitoring well.
- (4) **Screen selection and setting.**
- (A) All wells shall be screened and screen material shall be selected according to groundwater geochemistry, anticipated lifetime of monitoring program, well depth, parameters to be monitored and other site specific considerations, provided that the minimum screen depth shall be two and one-half feet (2 ½') below the land surface, provided further that the minimum screen depth shall be two feet (2') below land surface for tank pit monitoring wells at tank locations regulated by the Oklahoma Corporation Commission.
- (B) The well screen shall be factory wire wrapped or factory slotted. Well screens shall not be field slotted.
- (C) Slot size shall be selected to prevent or minimize infiltration of the filter pack through the well screen.
- (D) Screens shall be of sufficient length to detect, monitor or otherwise describe the contaminant plume according to site specific conditions (e.g. seasonal water level fluctuations). Screen length shall be determined so that commingling of fluids from separate groundwater zones does not occur.
- (E) Screen joints shall be placed in the well in such a manner as not to interfere with the accurate investigation of the groundwater quality.
- (5) **Filter pack selection and placement.**
- (A) All wells shall have a filter pack and aggregates used for filter pack shall consist of uncontaminated quartz sand, silica or other material that will not affect the groundwater quality.
- (B) Filter pack shall be selected to prevent or minimize infiltration of the geologic formation (e.g. fines migration or sand buildup).
- (C) Filter pack shall extend two (2) feet above the top of the screen unless such extension would allow vertical communication of pollution through the filter pack.
- (D) Filter pack shall be placed in the annulus of the well in such a manner that bridging of the filter pack material will not occur.
- (E) When water or vapor levels being monitored are encountered within five (5) feet of the land surface, the filter pack shall extend a minimum of 0.5 feet above the top of the screen.
- (6) **Sealing requirements.** Requirements for proper filter pack sealing, annular sealing and surface sealing for monitoring wells shall be as follows:
- (A) **Sealing material.** All sealing materials shall be compatible with ambient geological, hydrogeological and climatic conditions, as well as any man-induced conditions anticipated to occur during the life of the monitoring well. Any cement used as a sealant shall be equivalent to or have the same properties as ASTM C-150 cement types I-V (commonly known as Portland cement).
- (B) **Filter pack seal.** A minimum of two (2) feet of uniformly sized particles of sodium bentonite pellets or granules of no less than 0.25 inches and no more than 0.75 inches in size shall be placed immediately over the filter pack in each site assessment observation well or monitoring well.
- (C) **Annular seal.** The annular space above the filter pack seal shall be filled with a cement grout, bentonite grout, bentonite chips or a cement/bentonite grout mixture to within two (2) feet of the surface. The cement grout shall have a mix ratio of one 94 pound sack of cement to a maximum of six U.S. gallons of water. The cement and water must be mixed to the proper consistency as recommended by the cement manufacturer before the mixture is installed around the casing. A maximum of twenty

percent (20%) bentonite by dry weight may be added to the cement grout to form the cement/bentonite grout mixture. The bentonite shall be prehydrated to the manufacturer's recommended consistency. The bentonite grout shall be a high solids bentonite grout with at least twenty percent (20%) bentonite by dry weight. The bentonite shall be mixed according to the manufacturer's recommended consistency.

(D) **Surface seal.** A concrete or cement grout surface seal shall be placed around the casing immediately above the annular seal from a depth of two (2) feet to land surface.

(E) **Tremie requirements for grout.** When the placement of grout will exceed twenty (20) feet, the grout shall be placed in the annulus of the well through a tremie pipe and filled or pumped from the bottom upward.

(F) **Multiple cased or screened wells.** No adjacent or collinear casing in the same borehole shall be allowed. No multiple screened intervals in the same casing shall be allowed. Wells shall be drilled with sufficient distances between them so as to prevent the commingling of aquifer zones.

(G) **Special annular, filter pack, and surface seal conditions.** When water or vapor levels being monitored are encountered within five (5) feet of the land surface, the required depths set forth in C and D above for the filter pack and annular seals shall be reduced to fill the annular space from the top of the filter pack materials to the bottom of the cement surface seal, provided that the minimum screen depth shall be two and one-half feet (2 1/2') below the land surface, provided further that the minimum screen depth shall be two feet (2') below land surface for tank pit monitoring wells at tank locations regulated by the Oklahoma Corporation Commission. The surface seal shall extend a minimum of one (1) foot below land surface.

(7) **Surface pad requirements.**

(A) A concrete or cement surface pad shall be installed around the casing at the surface with minimum dimensions of 3 feet in diameter by 3.5 inches thick.

(B) The surface pad shall be sloped so to insure that all surface water flows away from the well.

(C) The surface pad is not required if the well is completed in competent concrete or asphalt paving, or if the well is an unsaturated zone monitoring well or a site assessment well that is located in a proposed solid waste disposal site and neither is used for a period exceeding one (1) year.

(8) **Top cap requirements.**

(A) A threaded or flange cap or compression seal shall be installed upon completion of the well to prevent unauthorized use of the well (e.g. tampering with the well or the entrance of foreign material into the well).

(B) The cap or seal shall have the capability of being locked if the well is flush mounted and the well protector is not capable of being locked.

(9) **Monitoring well and site assessment observation well protection.** Protection shall be provided for the casing of monitoring wells or site assessment observation wells by either of the following methods:

(A) An aluminum or steel surface casing shall be set a minimum of 12 inches through the cement or concrete surface pad and shall extend a minimum of 24 inches above the pad or ground. The top of the protective casing shall be fitted with a locking cap and shall be marked to clearly identify the well as a monitoring well or site assessment observation well; or

(B) If flush mounting is required, then the well shall be completed with a well protector that is capable of supporting vehicular traffic, provided that flush mounting of the casing of monitoring wells installed at concentrated animal feeding operations after July 1, 2006, shall be prohibited. The well protector shall be raised a minimum of one-half (1/2) inch above the surface pad or paving and shall be clearly marked to identify the well as a monitoring well or site assessment observation well. The surface seal shall be sloped so that surface water flows away from the well protector and the bond between the well protector and the removable cover shall be made watertight.

**SUBCHAPTER 11. PLUGGING AND CAPPING REQUIREMENTS FOR WELLS AND TEST HOLES**

**785:35-11-2. Plugging requirements for site assessment observation wells, monitoring wells and geotechnical borings**

(a) **Monitoring wells and site assessment observation wells.** Monitoring wells and site assessment observation wells shall be plugged to prevent pollution of groundwater within three (3) days after completion of use or immediately if drilled by an unlicensed or uncertified person or if the Board determines that the well does not meet the minimum construction standards set forth in this Chapter. The following are minimum requirements for plugging monitoring wells and site assessment observation wells, and the owner of such wells or other federal or state agency may specify more stringent requirements:

(1) If no contaminated soil or contaminated groundwater is present in the well, cement grout shall be placed in the well through a tremie pipe and filled or pumped from the bottom of the well to an elevation four (4) feet below the land surface. In the alternative, bentonite pellets, granules or high solids (a minimum of twenty percent (20%) solids by dry weight) bentonite grout shall be placed from the bottom of the well to an elevation fourteen (14) feet below land surface and a minimum of ten (10) feet shall be filled with cement grout to an elevation four (4) feet below

## Permanent Final Adoptions

land surface, unless contaminated soil or contaminated groundwater is present in the well. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil. If the depth of the well is fourteen (14) feet or less, cement grout shall be placed from the bottom of well to land surface.

(2) If contaminated soil or contaminated groundwater is present or was previously present in the well and the top of the screen is less than 20 feet below land surface, overdrilling of the well is required. The casing shall be removed or drilled out and the same size auger used to drill the borehole or larger shall be used to drill out the casing and associated seals, annular space and filter pack. Cement grout shall be placed from the bottom of the well to an elevation four (4) feet below land surface. If the top of the well screen is 20 feet or more below land surface and the well meets current minimum construction standards, then the casing need not be removed and cement grout shall be placed in the well through a tremie pipe and filled or pumped from the bottom upward to within four (4) feet of land surface or to land surface. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil.

(b) **Geotechnical borings except direct push geotechnical borings.** Geotechnical borings shall be plugged to prevent pollution of groundwater within thirty (30) days after completion of drilling or immediately if drilled by an unlicensed or uncertified person or if the Board determines that the well does not meet the minimum construction standards set forth in this Chapter. The following are minimum requirements for plugging geotechnical borings, and the owner of the boring or other federal or state agency may specify more stringent requirements:

(1) If no contaminated soil and groundwater is encountered in the boring, uncontaminated drill cuttings, uncontaminated surface clay, cement, and/or high solids (a minimum of twenty percent (20%) solids by dry weight) bentonite grout, pellets, or granules shall be placed from the bottom of the boring to an elevation fourteen (14) feet below land surface and a minimum of ten (10) feet shall be filled with cement grout to an elevation four (4) feet below land surface. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil.

(2) If contaminated soil or contaminated groundwater is encountered in the boring, or if the boring is located at an underground storage tank site or within 300 feet of the outside perimeter of an existing wastewater lagoon or is located on a tract of land where a wastewater lagoon is proposed, cement grout shall be placed from the bottom of the borehole to an elevation four (4) feet below land surface. Cement grout shall be placed in the borehole through a tremie pipe and filled or pumped from the bottom upward. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil.

(3) If the boring is twenty (20) feet or less in total depth and groundwater has not been encountered, the boring

shall, at a minimum, be filled with compacted uncontaminated cuttings from the bottom of the boring to land surface.

(c) **Direct push geotechnical borings.** Direct push geotechnical borings shall be plugged to prevent pollution of groundwater within thirty (30) days after completion of drilling or immediately if drilled by an unlicensed or uncertified person or if the Board determines that the well does not meet the minimum construction standards set forth in this Chapter as follows:

(1) Bentonite chips shall be placed and effectively compressed within the annulus space from the bottom of the borehole to within ten (10) feet of the land surface.

(2) Cement grout shall be installed through a tremie pipe in the remaining annulus space from ten (10) feet to land surface, provided that no cement grout shall be required if the boring is less than ten feet (10') in total depth and no groundwater and no contaminated soil was encountered.

(d) **Cement grout requirements.** If cement grout is used, the grout shall have a mix ratio of one 94 pound sack of cement to a maximum of six U.S. gallons of water.

(e) **Abandonment after equipment removed.** If a site assessment observation well, monitoring well or geotechnical boring is abandoned after the drilling equipment has been removed from the site, responsibility for proper plugging within the applicable time period specified in this section shall lie with the owner of the land where the well or boring is located.

[OAR Docket #06-1222; filed 6-23-06]

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

[OAR Docket #06-1223]

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

Subchapter 7. Water and Sewer Program (Bond Proceed Loans and Emergency Grants) Requirements and Procedures

785:50-7-5. Emergency grant priority point system [AMENDED]

Subchapter 8. Rural Economic Action Plan (REAP) Grant Program Requirements and Procedures

785:50-8-5. REAP grant priority point system [AMENDED]

Subchapter 9. Clean Water State Revolving Fund Regulations

Part 1. General Provisions

785:50-9-9. Definitions [AMENDED]

Part 3. General Program Requirements

785:50-9-21. Eligible project [AMENDED]

785:50-9-35. Loan closing [AMENDED]

785:50-9-40. Building phase submittal [AMENDED]

785:50-9-41. Progress payments [AMENDED]

785:50-9-42. Retainage [AMENDED]

785:50-9-44. Accounting [AMENDED]

Part 7. SRF Environmental Review Process

785:50-9-60. Requirement of environmental review [AMENDED]

#### AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. §1085.2; 82 O.S. §§1085.31, et seq.; 82 O.S. §§1085.51, et seq; and 82 O.S. §§1085.71, et seq.

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Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2006.

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**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

OAC 785:50-9-35(a)(8), Documentation to be submitted prior to loan closing is proposed to be amended by deleting the requirement that all bid protests be resolved by the applicant before concurrence by the Board in the award of a construction contract. The circumstance which created the need for these amendments is that some bid protests cannot be resolved until a contract is awarded and executed and the rule requires that all bid protests be resolved before a contract is awarded. The circumstance becomes quite literally impossible to resolve in a manner that satisfies the rule. The intended effect is to remove the circular reasoning and allow OWRB staff to take the action necessary (including closing a loan) for the bid protest to be resolved.

OAC 785:50-7-5 and 785:50-8-5, Emergency grant priority point system and REAP grant priority point system are proposed to be amended by modifying the points awarded for systems charging certain water rates, certain water and sewer rates combined, and for certain median household income (MHI). The amendments may include listing the scoring system in one subchapter, eliminating the detailed breakout in the other subchapter, and including a reference in the non-detailed subchapter to the detailed breakout in the other subchapter. The circumstance which created the need for these amendments is that some grant applicants are charging rates far in excess of the rate for which maximum points are currently awarded. Those applicants are receiving no more points than applicants whose rates are only slightly above the rate for which maximum points are awarded. Because of general inflation, applicants whose median household income is rising each year are losing points even though the true purchasing power of the applicant's MHI may be constant or even falling. The intended effect is that the scoring criteria will accurately reflect the general increase in water rates, sewer rates and MHI since the criteria was last amended. By listing the detailed scoring criteria that applies to both REAP and Emergency grants in only one subchapter and referencing such criteria in the other subchapter, the rules will be more efficient and more concise, with less duplication of wording.

OAC 785:50-9-40, Building phase submittal is proposed to be amended by removing the requirement that a complete set of as-built drawings be submitted to the Board upon completion of all construction. The circumstance which created the need for this amendment is that the Board currently has many more boxes of archived records than it has space to store. The Department of Environmental Quality is collecting the same as-built drawings, the Board does not have storage space available in which to store the as-built drawings, and the Board could obtain the as-built drawings from the DEQ if they were ever needed. The intended effect is to minimize the quantity of records required to be collected and stored and to eliminate duplication of effort between the Board and the DEQ.

OAC 785:50-9-41, Progress payments is proposed to be amended by replacing the requirement that requests for disbursement from the construction fund be certified with a requirement that such requests be only verified, or similar language. The circumstance which created the need for this amendment is that engineers interpret the word "certified" as requiring their seal and some are reluctant to seal such requests because of the potential

liability that may attach to such a certification. If the rule requires the engineer's seal and the engineer is unwilling to use the seal, then progress payments for construction cannot be made. The engineers are willing to sign such requests to indicate that they have reviewed the request and supporting documentation. They believe a lesser degree of liability would attach to them for simply verifying the request than for certifying that the request is for properly performed construction. The intended effect is to obtain language that is familiar and comfortable to the engineering profession so that progress payments can be processed without undue hindrance.

OAC 785:50-9-42, Retainage is proposed to be amended by adding a requirement that all applicable tests of the construction be performed and satisfactory results thereof be obtained before retainage is released. The circumstance which created the need for these amendments is that testing for some things (such as concrete) can take up to a month from the time the construction is complete. In some instances, contractors were finishing their work and receiving their retainage before test results could be obtained. If test results came back as unacceptable, the project owner had no bargaining power with which to persuade the contractor to redo the work. The intended effect is to help insure that work performed in CWSRF funded construction projects is done according to specifications and in a quality manner such that it will pass all applicable tests or else be redone by the responsible party before final payment is released.

OAC 785:50-9-44(b)(1), Accounting is proposed to be amended by clarifying that loan funds left over after the planned project is complete may be used for other CWSRF eligible purposes as approved by Board staff. Also, the requirement that any interest earned on the account be applied toward principal reduction on the loan will be loosened to allow such interest to be used in the same manner as left over funds. The circumstance which created the need for this amendment is that sometimes projects finish under or right at budget, leaving some money (if only the contingency) unspent. Many times borrowers have other projects that are eligible for CWSRF funding. The language in the Board's Order regarding each loan allows staff to approve amendments to the scope of the funded project as long as doing so does not adversely impact the loan. The intended effect is to insure that the rules not be interpreted to prohibit staff from approving such amendments to the project scope.

OAC 785:50-9-60, Requirement of Environmental review is proposed to be amended to clarify that non-point source projects that can not be defined as section 212 projects (treatment works) and are not funded with funds directly made available from capitalization grants do not require an environmental review. The proposed amendment would also clarify that loans for design studies (engineering fees) are not subject to the environmental review process and approval. The circumstance which created the need for this amendment is that the rule makes reference to the Federal statute that sets forth numerous requirements, one of which is an environmental review. Greater specificity within the rule is desirable to clarify the requirements to those not familiar with the Federal statutes, regulations and terminology. The intended effect is to make the rule easier to understand while remaining consistent with the underlying Federal statutes and regulations.

OAC 785:50-9-9, Definition of Excessive Inflow/Infiltration ("I/I") is proposed to be amended by adding a numeric quantifier of 140 gallons per capita per day (GPCD). The 140 GPCD limit may be incorporated as either a strict standard or as a rule of thumb guideline. The circumstance which created the need for this amendment is that recent industry standards as evidenced in textbooks tend to use 140 GPCD as a point of distinction between excessive and non-excessive I/I. New engineers are trained in school to use this standard and put it in to practice. The intended effect is to give Board staff greater guidance in determining whether a certain level of I/I is excessive while keeping in tune to standards in the industry.

OAC 785:50-9-21(a)(7), Eligible project is proposed to be amended by adding the heading "Category VII". The circumstance which created the need for these amendments was an omission of the heading when the rule was originally drafted. The intended effect is to align the rule with the underlying Federal regulations that set forth the categories of wastewater treatment projects that are eligible for assistance.

OAC 785:50-9-35(a)(9), Documentation to be submitted prior to loan closing is proposed to be amended by changing the 5% maximum contingency amount in the project budget to a higher amount that is consistent with the Oklahoma Public Competitive Bidding Act. The circumstance which created the need for this amendment is that construction costs (especially pipe and fuel) have become quite volatile and have tended to rise from the time the loan is closed until the construction is complete. The contingency amount allowed in the OPCBA and the amount in the rule have been misaligned resulting in an inability of borrowers from the CWSRF program to take full advantage of the amount allowed in the OPCBA. The intended effect is to allow borrowers

# Permanent Final Adoptions

to have sufficient funds available to complete their projects should costs rise unexpectedly during construction.

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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 27, 2006:**

## **SUBCHAPTER 7. WATER AND SEWER PROGRAM (BOND PROCEED LOANS AND EMERGENCY GRANTS) REQUIREMENTS AND PROCEDURES**

**785:50-7-5. Emergency grant priority point system**

(a) **Basis of priority system and formula.**

(1) **General description.** The priority system consists of a mathematical equation rating the applicants and the proposed project in accordance with the requirements of the statutes by means of a formula awarding points for each criteria used in the evaluation. The maximum point total under the system is one hundred twenty (120). The Board may consider each month, and in order from the highest rating, those applications awarded point ratings of 60 or more priority points. If the Board determines that the applicant with the highest point rating cannot promptly proceed with the project due to delays, including but not limited to those caused by legal problems, engineering problems, feasibility problems or availability of other funding sources, the Board may pass over consideration of such application then proceed to consider in order the next highest rated application. Applications which are bypassed shall retain their ratings and thus remain eligible for further consideration. Applications preliminarily determined by Board staff to have point ratings of 59 or fewer shall be deemed denied; provided, such applications may be reevaluated if the applicant submits additional information showing changed circumstances within 120 days after the date of staff's determination, and such information improves the applicant's preliminary point rating.

(2) **Statutory criteria.** The basis of the priority formula has been developed from the enacting legislation. The two primary statutory criteria are:

(A) The emergency situation of the applicant.

(B) Whether or not the applicant can reasonably finance the project without assistance from the state.

(3) **Total priority points.** Total priority points will be calculated and awarded for individual projects. Therefore, eligible entities will be required to complete separate applications for each project for which grant funds are requested. Priority lists compiled and published by other

Oklahoma State agencies and/or seniority dates of applications submitted shall be utilized to decide ties in point totals among applicants.

(b) **Priority formula for eligible entities other than school districts.**

(1) **Formula.** The following formula has been devised to rank grant applications:  $P = E + WR + I + L + MHI + FP + AR + BP - AN$ , Where:

(A) P = Priority ranking

(B) E = Emergency ranking

(C) WR = Water and sewer rate structure

(D) I = Indebtedness per customer

(E) L = Amount of local contribution toward project

(F) MHI = Median household income

(G) FP = Applicant's ability to finance project

(H) AR = Amount of grant requested

(I) BP = Benefit of project to other systems

(J) AN = Application number

(2) **Explanation.** Each of these criteria are explained below:

(A) **Emergency rankings (E).** Emergencies are ranked by severity with Category 1 being the most severe and Category 3 being the least severe. Points awarded range from a maximum of 50 points for Category 1 and a minimum of 30 points for Category 3. If an applicant requests funds to correct more than one emergency category need, only the amount of assistance needed to correct the most severe need will be considered in the calculation for the application ranking. The applicant will be informed that separate and additional applications must be filed for other needs and projects. An applicant who receives funding for a project under any of the listed emergencies may not reapply under the same emergency. The three (3) emergency ranking categories are as follows:

(i) **Category 1.** Total loss of a water supply or sewage system or loss of a major component of a system due to a natural or unforeseen disaster which could not have been prevented by the exercise of reasonable care by the applicant. Examples of such disasters may include but are not necessarily limited to: tornado; flood; fire; severe weather; landslide; sudden loss of a water supply system; sudden collapse of a major structural portion of a system; signs of imminent failure of a public water supply lake dam, spillway or outlet structure such as settlement or slumping of the crest, excessive seepage, slides, cracks or sloughs along the upstream and downstream slopes of the dam. Category 1 emergencies receive 50 points.

(ii) **Category 2.** Water or sewer emergencies which could not have been prevented by the exercise of reasonable care by the applicant and which cause immediate danger or an imminent health hazard to the community or other nearby citizens. Such emergencies may include but are not necessarily limited to: users or systems whose water

supply is deemed to be dangerous or unhealthy; systems whose supply source becomes contaminated by man-made pollution caused by a person other than the applicant; overflow of raw sewage into homes or streets due to structural failure in the collection mains and/or structural, mechanical, or electrical failure at a lift station due to disasters which could not have been prevented by the exercise of reasonable care by the applicant, including but not limited to tornado, flooding, fire, or landslides; sewage treatment systems which discharge raw or inadequately treated sewage effluent whose quality and/or quantity causes an immediate and imminent health or safety danger to a public water supply due to a structural, mechanical or electrical failure of a process unit(s) caused by disasters which could not have been prevented by the exercise of reasonable care by the applicant, including but not limited to tornado, flooding, fire, or landslides. Category 2 emergencies receive 40 points.

(iii) **Category 3.** Water system improvements needed to meet the average and/or maximum daily demands of a system's customers caused by a large increase in the number of customers. The increase could result from annexation or the sale of treated water to another entity(ies) based on an engineering study that indicates purchasing to be the most cost effective alternative. Also included under this category is the construction of a new water system to serve areas where residents are without water or are supplied by domestic sources or domestic systems (i) which are dangerous or unhealthy as a consequence of circumstances which could not have been prevented by the exercise of reasonable care by the applicant and (ii) which do not otherwise supply the basic needs of the residents. In such cases where new or extended systems are proposed, the Board shall consider and determine whether an adequate population density is available to utilize the proposed system. Notwithstanding any other provision of this Chapter, if the density is preliminarily determined by Board staff to be inadequate for the applicant to feasibly provide operation and maintenance of the new or extended system, then the application will not be recommended for approval until the proper density, which will make the extension feasible, is achieved. Category 3 emergencies receive 30 points.

**(B) Water and Sewer rate structure (WR)**

**(i) For Systems Providing Water Service Only:**

- (I) If the cost per 5000 gallons is ~~\$26~~ \$34 or greater, the applicant shall be given 10 points.
- (II) If the cost per 5000 gallons is ~~\$24~~ \$31 to ~~\$25.99~~ \$33.99, the applicant shall be given 9 points.

(III) If the cost per 5000 gallons is ~~\$22~~ \$29 to ~~\$23.99~~ \$30.99, the applicant shall be given 8 points.

(IV) If the cost per 5000 gallons is ~~\$20~~ \$26 to ~~\$21.99~~ \$28.99, the applicant shall be given 7 points.

(V) If the cost per 5000 gallons is ~~\$18~~ \$24 to ~~\$19.99~~ \$25.99, the applicant shall be given 6 points.

(VI) If the cost per 5000 gallons is ~~\$16~~ \$21 to ~~\$17.99~~ \$23.99, the applicant shall be given 5 points.

(VII) If the cost per 5000 gallons is ~~\$14~~ \$18 to ~~\$15.99~~ \$20.99, the applicant shall be given 4 points.

(VIII) If the cost per 500 gallons is ~~\$12~~ \$16 to ~~\$13.99~~ \$17.99, the applicant shall be given 3 points.

(IX) If the cost per 5000 gallons is ~~\$10~~ \$13 to ~~\$11.99~~ \$15.99, the applicant shall be given 2 points.

(X) If the cost per 5000 gallons is less than ~~\$8~~ \$10 to ~~\$9~~ \$12.99, the applicant shall be given 1 point.

(XI) If the cost per 5000 gallons is less than ~~\$8~~ \$10, the applicant shall be given 0 points.

**(ii) For Systems Providing Water and Sewer Services:**

(I) If the cost per 5000 gallons is ~~\$30~~ \$39 or greater, the applicant shall be given 10 points.

(II) If the cost per 5000 gallons is ~~\$29~~ \$38 to ~~\$29.99~~ \$38.99, the applicant shall be given 9 points.

(III) If the cost per 5000 gallons is ~~\$27~~ \$35 to ~~\$28.99~~ \$37.99, the applicant shall be given 8 points.

(IV) If the cost per 5000 gallons ~~\$24~~ \$31 to ~~\$26.99~~ \$34.99, the applicant shall be given 7 points.

(V) If the cost per 5000 gallons is ~~\$22~~ \$29 to ~~\$23.99~~ \$30.99, the applicant shall be given 6 points.

(VI) If the cost per 5000 gallons is ~~\$21~~ \$27 to ~~\$21.99~~ \$28.99, the applicant shall be given 5 points.

(VII) If the cost per 5000 gallons is ~~\$20~~ \$26 to ~~\$20.99~~ \$26.99, the applicant shall be given 4 points.

(VIII) If the cost per 5000 gallons is ~~\$18~~ \$24 to ~~\$19.99~~ \$25.99, the applicant shall be given 3 points.

(IX) If the cost per 5000 gallons is ~~\$16~~ \$21 to ~~\$17.99~~ \$23.99, the applicant shall be given 2 points.

(X) If the cost per 5000 gallons is ~~\$13~~ \$17 to ~~\$15.99~~ \$20.99, the applicant shall be given 1 point.

## Permanent Final Adoptions

- (XI) If the cost per 5000 gallons is less than ~~\$13~~ \$17, the applicant shall be given 0 points.
- (iii) **For Systems Providing Sewer Service Only:**
- (I) If the cost per connection per month is \$23 or greater, the applicant shall be given 10 points.
- (II) If the cost of connection per month is \$21 to \$22.99, the applicant shall be given 9 points.
- (III) If the cost of connection per month is \$19 to \$20.99, the applicant shall be given 8 points.
- (IV) If the cost of connection per month is \$17 to \$18.99, the applicant shall be given 7 points.
- (V) If the cost of connection per month is \$15 to \$16.99, the applicant shall be given 6 points.
- (VI) If the cost of connection per month is \$13 to \$14.99, the applicant shall be given 5 points.
- (VII) If the cost of connection per month is \$11 to \$12.99, the applicant shall be given 4 points.
- (VIII) If the cost of connection per month is \$10 to \$10.99, the applicant shall be given 3 points.
- (IX) If the cost of connection per month is \$8 to \$9.99, the applicant shall be given 2 points.
- (X) If the cost of connection per month is \$7 to \$7.99, the applicant shall be given 1 point.
- (XI) If the cost of connection per month is less than \$7, the applicant shall be given 0 points.
- (iv) The Board will deduct 3 points from the total of the Water and Sewer Rate Structure ranking for any system which charges a flat water rate (unmetered) without regard to the amount of water used, and 2 points for a decreasing block rate which lowers the cost per 1000 gallons for customers using larger amounts of water. No points will be added or subtracted for systems using a fixed rate per 1,000 gallons above the minimum. Two points will be added for systems using an increasing block rate. Entities who dedicate sales tax for water and/or sewer improvements will be awarded 1 additional point. Under the category the maximum number of points is 13 and the minimum is -3 points.
- (C) **Indebtedness per customer (I).** The indebtedness per customer ranking is calculated by taking the applicant's monthly requirements for debt service on debt incurred for water and/or sewer system purposes and dividing it by the number of customers served.
- (i) If the indebtedness per customer is \$15.00 or greater, the applicant shall be given 10 points.
- (ii) If the indebtedness per customer is \$13.00 to \$14.99, the applicant shall be given 9 points.
- (iii) If the indebtedness per customer is \$11.00 to \$12.99, the applicant shall be given 8 points.
- (iv) If the indebtedness per customer is \$10.00 to \$10.99, the applicant shall be given 7 points.
- (v) If the indebtedness per customer is \$9.00 to \$9.99, the applicant shall be given 6 points.
- (vi) If the indebtedness per customer is \$8.00 to \$8.99, the applicant shall be given 5 points.
- (vii) If the indebtedness per customer is \$7.00 to \$7.99, the applicant shall be given 4 points.
- (viii) If the indebtedness per customer is \$6.00 to \$6.99, the applicant shall be given 3 points.
- (ix) If the indebtedness per customer is \$5.00 to \$5.99, the applicant shall be given 2 points.
- (x) If the indebtedness per customer is \$4.00 to \$4.99, the applicant shall be given 1 point.
- (xi) If the indebtedness per customer is less than \$4.00, the applicant shall be given 0 points.
- (D) **Local participation (L).**
- (i) The Board will not approve nor fund any grant application unless the applicant contributes at least fifteen percent (15%) of the total cost of the proposed project.
- (ii) The local participation ranking is based on the percent of the total project cost which is locally funded through cash contributions, or incurrence of additional debt through a loan. Grant funds received through other agencies will not be counted as local funding. Points awarded for participation are as follows:
- (I) If the percentage of the project cost locally funded is 90% or greater, the applicant shall be given 10 points.
- (II) If the percentage of the project cost locally funded is at least 80% but less than 90%, the applicant shall be given 9 points.
- (III) If the percentage of the project cost locally funded is at least 70% but less than 80%, the applicant shall be given 8 points.
- (IV) If the percentage of the project cost locally funded is at least 60% but less than 70%, the applicant shall be given 7 points.
- (V) If the percentage of the project cost locally funded is at least 50% but less than 60%, the applicant shall be given 6 points.
- (VI) If the percentage of the project cost locally funded is at least 40% but less than 50%, the applicant shall be given 5 points.
- (VII) If the percentage of the project cost locally funded is at least 30% but less than 40%, the applicant shall be given 4 points.
- (VIII) If the percentage of the project cost locally funded is at least 25% but less than 30%, the applicant shall be given 3 points.

(IX) If the percentage of the project cost locally funded is at least 20% but less than 25%, the applicant shall be given 2 points.

(X) If the percentage of the project cost locally funded is at least 15% but less than 20%, the applicant shall be given 1 point.

(XI) If the percentage of the project cost locally funded is less than 15%, the application shall not be approved nor funded.

(E) **Median household income (MHI).** The median household income is calculated according to the latest federal decennial census.

(i) The county median figure for median household income will be used in cases where data for the applicant's service area is not available.

(ii) Points are awarded as follows:

(I) If the median household income is less than ~~\$10,000~~ \$13,000, the applicant shall be given 10 points.

(II) If the median household income is ~~\$10,000~~ \$13,000 to ~~\$11,999~~ \$15,999, the applicant shall be given 9 points.

(III) If the median household income is ~~\$12,000~~ \$16,000 to ~~\$13,999~~ \$17,999, the applicant shall be given 8 points.

(IV) If the median household income is ~~\$14,000~~ \$18,000 to ~~\$15,999~~ \$20,999, the applicant shall be given 7 points.

(V) If the median household income is ~~\$16,000~~ \$21,000 to ~~\$17,999~~ \$23,999, the applicant shall be given 6 points.

(VI) If the median household income is ~~\$18,000~~ \$24,000 to ~~\$21,999~~ \$28,999, the applicant shall be given 5 points.

(VII) If the median household income is ~~\$22,000~~ \$29,000 to ~~\$23,999~~ \$30,999, the applicant shall be given 4 points.

(VIII) If the median household income is ~~\$24,000~~ \$31,000 to ~~\$25,999~~ \$33,999, the applicant shall be given 3 points.

(IX) If the median household income is ~~\$26,000~~ \$34,000 to ~~\$27,999~~ \$36,999, the applicant shall be given 2 points.

(X) If the median household income is ~~\$28,000~~ \$37,000 to ~~\$29,999~~ \$38,999, the applicant shall be given 1 point.

(XI) If the median household income is ~~\$30,000~~ \$39,000 or greater, the applicant shall be given 0 points.

(F) **Ability to finance project (FP)**

(i) The maximum points possible under this criterion for the ability of the applicant to finance the project without assistance from the state is 12.

(ii) The FP ranking gives a standardized account of the amount the existing water/sewer rates would have to be raised in order for the applicant to finance the project through a loan. A standard interest rate and term of 10% for 25 years is assumed.

The cost per customer per month is calculated using the following formula: FP equals the product of AR multiplied by (0.1102), divided by the product of (12) multiplied by (C), Where:

(I) FP = Estimate of the amount monthly water/sewer rates would have to be raised to finance the amount of grant request for the project.

(II) AR = Amount of grant request. For this calculation, the amount of available reserve not dedicated to the project will be deducted from the amount requested.

(III) (0.1102) = Annual rate factor for a 25 year loan at 10%

(IV) (12) = Number of months per year.

(V) (C) = Number of customers

(iii) In cases where the applicant's current revenues exceed expenses by a large margin, the Board will appropriately adjust the (AR) figure to accurately represent the applicant's ability to finance the project.

(iv) Points in the FP ranking are awarded as follows:

(I) If the ability to finance the project is \$10.00 or greater, the applicant shall be given 12 points.

(II) If the ability to finance the project is \$8.00 to \$9.99, the applicant shall be given 11 points.

(III) If the ability to finance the project is \$6.00 to \$7.99, the applicant shall be given 10 points.

(IV) If the ability to finance the project is \$5.00 to \$5.99, the applicant shall be given 9 points.

(V) If the ability to finance the project is \$4.00 to \$4.99, the applicant shall be given 8 points.

(VI) If the ability to finance the project is \$3.00 to \$3.99, the applicant shall be given 7 points.

(VII) If the ability to finance the project is \$2.00 to \$2.99, the applicant shall be given 6 points.

(VIII) If the ability to finance the project is \$1.75 to \$1.99, the applicant shall be given 5 points.

(IX) If the ability to finance the project is \$1.50 to \$1.75, the applicant shall be given 4 points.

(X) If the ability to finance the project is \$1.25 to \$1.49, the applicant shall be given 3 points.

(XI) If the ability to finance the project is \$1.00 to \$1.24, the applicant shall be given 2 points.

## Permanent Final Adoptions

(XII) If the ability to finance the project is \$0.75 to \$0.99, the applicant shall be given 1 point.

(XIII) If the ability to finance the project is less than \$0.75, the applicant shall be given 0 points.

(G) **Amount of grant requested (AR).**

(i) Points under this category for amount of grant requested are distributed as follows:

- (I) \$95,001 to \$100,000: -5
- (II) \$90,001 to \$95,000: -4
- (III) \$85,001 to \$90,000: -3
- (IV) \$80,001 to \$85,000: -2
- (V) \$75,001 to \$80,000: -1
- (VI) \$70,001 to \$75,000: 0
- (VII) \$65,001 to \$70,000: +1
- (VIII) \$60,001 to \$65,000: +2
- (IX) \$55,001 to \$60,000: +3
- (X) \$50,000 to \$55,000: +4
- (XI) \$45,001 to \$50,000: +5
- (XII) \$40,001 to \$45,000: +6
- (XIII) \$35,001 to \$40,000: +7
- (XIV) \$30,001 to \$35,000: +8
- (XV) \$25,001 to \$30,000: +9
- (XVI) \$25,000 or less: +10

(ii) If a project exceeds \$75,000 and the amount of funds needed over and above the OWRB grant request are being secured through a loan from OWRB, then there will be no deduction of points under this category.

(H) **Project benefit to other systems (BP).** If the applicant's project will benefit other adjacent systems as well as applicant's, or result in or lead to consolidation of systems, an additional five (5) priority points will be included in the total of priority points assigned to the application.

(I) **Number of grants.** Since it is anticipated that entities who have received emergency grants might submit additional grant applications for approval, points will be deducted from such applications according to the following schedule; provided, points shall not be deducted from such any emergency grant which was funds 10 or more years prior to the date of Board action on the pending application and which has been subjected to a Board audit:

- (i) 1 prior grant = 5 reduction points
- (ii) 2 prior grants = 8 reduction points
- (iii) 3 prior grants = 10 reduction points
- (iv) 4 prior grants = 12 reduction points
- (v) 5 or more prior grants = 14 reduction points

(c) **Priority formula for school districts.**

(1) School districts, created under Article V of the 1971 School Code, 70 O.S. 1981, §5-101 et seq., are political subdivisions of the State, and therefore are eligible for financial assistance under the Board's program.

(2) In evaluating and prioritizing grant applications from school districts similar criteria to those applied to

municipalities, towns and rural water districts will be utilized.

(3) In developing a priority formula for school district applicants, again, the two primary statutory criteria are:

- (A) The emergency situation of the school district.
- (B) Whether the school district can reasonably finance the emergency project without the Board's assistance.

(4) The emergency aspect of each project is ranked with a maximum of 50 points being given to the most serious situations and a minimum of 10 points to the least serious. The emergency categories and points given for each are the same as those listed in (b)(2) of this Section.

(5) The school district's financial situation is given an maximum of 66 points and is derived by analyzing the following:

- (A) Local tax levies
- (B) Bonded indebtedness
- (C) Local contribution
- (D) Median household income within the school district's geographical area
- (E) Applicant's ability to finance project
- (F) Amount of grant requested
- (G) Application number

(6) Priority lists compiled and published by other Oklahoma state agencies shall be utilized to assess the seriousness of the emergency.

(7) Using the previously mentioned analysis, the following formula has been devised to rank school districts' grant applications:  $P = E + LT + BI + L + MHI + FP + AR - AN$ , Where:

- (A) P = Priority ranking total points
- (B) E = Emergency ranking
- (C) LT = Local tax levies
- (D) BI = Bonded indebtedness
- (E) L = School's contribution toward the project
- (F) MHI = median household income of population within a school district
- (G) FP = Applicant's ability to finance project
- (H) AR = Amount of grant requested
- (I) AN = Application number

(8) The criteria E, MHI, FP, AR and AN are the same as that set forth in (b) of this section. LT, BI and L are explained as follows:

(A) **Local tax levies (LT).** Points awarded under this category for local tax levies are based on the total amount of miles levied, as follows:

- (i) 95 to 100.00 mills = 13 points
- (ii) 90 to 94.99 mills = 11 points
- (iii) 85 to 89.99 mills = 10 points
- (iv) 80 to 84.99 mills = 8 points
- (v) 70 to 79.99 mills = 6 points
- (vi) 60 to 69.99 mills = 4 points
- (vii) 55 to 59.99 mills = 2 points
- (viii) 50 to 54.99 mills = 1 point
- (ix) 45 to 49.99 mills = 0 points
- (x) 40 to 44.99 mills = -1 points
- (xi) Less than 40 mills = -2 points

**(B) Bonded indebtedness (BI).**

(i) Priority points for Bonded Indebtedness are as follows: **Percentage of Indebtedness Points**

- (I) 95% to 100% of debt limitation = 10 points
- (II) 90% to 94.99% of debt limitation = 8 points
- (III) 80% to 89.99% of debt limitation = 7 points
- (IV) 75% to 79.99% of debt limitation = 6 points
- (V) 70% to 74.99% of debt limitation = 5 points
- (VI) 65% to 69.99 of debt limitation = 4 points
- (VII) 60% to 64.99% of debt limitation = 3 points
- (VIII) 55% to 59.99% of debt limitation = 2 points
- (IX) 50% to 54.99% of debt limitation = 1 point
- (X) 45% to 49.99% of debt limitation = 0 points
- (XI) 40% to 44.99% of debt limitation = -1 point
- (XII) 30% to 39.99% of debt limitation = -2 points
- (XIII) Less than 30% of debt limitation = -3 points

(ii) A deduction of one (1) point from the indebtedness ranking total will be made for applicants with 75% of existing debts financed at rates of 5% or less, and one (1) point will be added if 75% of existing debts are financed at rates greater than 10%.

**(C) Local participation (L).**

(i) In order to achieve the maximum benefit from available grant funds, the Board will not approve nor fund any grant application unless the applicant contributes at least fifteen percent (15%) of the total cost of the proposed project.

(ii) The local participation ranking is based on the percent of the total project cost which is locally funded through cash contributions or incurrence of additional debt through a loan. Points awarded are as follows:

- (I) If the percentage of the project cost locally funded is 90% or greater, the applicant shall be given 10 points.
- (II) If the percentage of the project cost locally funded is at least 80% but less than 90%, the applicant shall be given 9 points.
- (III) If the percentage of the project cost locally funded at least 70% but less than 80%, the applicant shall be given 8 points.

(IV) If the percentage of the project cost locally funded at least 60% but less than 70%, the applicant shall be given 7 points.

(V) If the percentage of the project cost locally funded at least 50% but less than 60%, the applicant shall be given 6 points.

(VI) If the percentage of the project cost locally funded is at least 50% but less than 60%, the applicant shall be given 5 points.

(VII) If the percentage of the project cost locally funded is at least 40% but less than 40%, the applicant shall be given 4 points.

(VIII) If the percentage of the project cost locally funded is at least 25% but less than 30%, the applicant shall be given 3 points.

(IX) If the percentage of the project cost locally funded is at least 20% but less than 25%, the applicant shall be given 2 points.

(X) If the percentage of the project cost locally funded is at least 15% but less than 20%, the applicant shall be given 1 point.

(XI) If the percentage of the project cost locally funded is less than 15%, the application shall not be approved nor funded.

(iii) Under the Ability to Finance Project (FP) category the Number of Customers (C) as previously discussed will be replaced by the Number of Families within a school district. Points awarded under the FP category are the same as discussed and shown in (b) of this Section.

**SUBCHAPTER 8. RURAL ECONOMIC ACTION PLAN (REAP) GRANT PROGRAM REQUIREMENTS AND PROCEDURES**

**785:50-8-5. REAP grant priority point system**

**(a) Basis of priority system and formula.**

(1) **General description.** The priority system consists of a mathematical equation rating the qualified entities and the proposed project in accordance with the requirements of state law by means of a formula awarding points for each criterion used in the evaluation. The maximum point total under the system is one hundred fifteen (115). The Board may consider each month, and in order from the highest rating, those applications awarded point ratings of 40 or more priority cots. If the Board determines that the qualified entity with the highest point rating cannot promptly proceed with the project due to delays, including but not limited to those caused by legal problems, engineering problems, feasibility problems or availability of other funding sources, the Board may pass over consideration of such application then proceed to consider in order the next highest rated application. Applications which are bypassed shall retain their ratings and thus remain eligible for further consideration. Applications preliminarily determined by Board staff to have point ratings of 39 or fewer shall be deemed denied; provided, such applications

## Permanent Final Adoptions

may be reevaluated if the applicant submits additional information showing changed circumstances within 120 days after the date of staff's determination, and such information improves the applicant's preliminary point rating.

(2) **Statutory criteria.** The basis of the priority formula has been developed from the enacting legislation. The primary statutory criteria are:

(A) There shall be a higher priority for any city or town with a population less than one thousand seven hundred fifty (1,750) according to the latest federal decennial census than for any jurisdiction with a greater population according to the census; and

(B) *Among other cities or towns, those municipalities having relatively weaker fiscal capacity shall have a priority for project funding in preference to other municipalities* [62:2003]. In order to give a priority evaluation to each applicant, the Board shall evaluate all applications according to the fiscal capacity criteria set forth in this Section.

(3) **Total priority points.** Total priority points will be calculated and awarded for individual projects. Therefore, qualified entities will be required to complete separate applications for each project for which grant funds are requested. Priority lists compiled and published by other Oklahoma State agencies and/or seniority dates of applications submitted shall be utilized to decide ties in point totals among qualified entities.

(b) **Priority formula for eligible entities other than school districts and counties.**

(1) **Formula.** The following formula has been devised to rank grant applications:  $T = P + WR + I + MHI + FP + N + AR + BP + PG$ , Where:

- (A) T = Total of priority points
- (B) P = Population
- (C) WR = Water and sewer rate structure
- (D) I = Indebtedness per customer
- (E) MHI = Median household income
- (F) FP = Applicant's ability to finance project
- (G) N = Need
- (H) AR = Amount of grant requested
- (I) BP = Project benefit to other systems
- (J) PG = Previous grant assistance

(2) **Explanation.** Each of these criteria are explained below:

(A) **Population (P).** Municipalities which have a population of less than 1,750 according to the latest federal decennial census shall be given 55 priority points. Rural water or sewer districts which have less than 525 non-pasture customers shall be given 55 points.

(B) **Water and Sewer rate structure (WR).**

(i) For systems providing water service only, points are figured according to the same scale set forth in Section 50-7-5(b)(2)(B)(i), as follows:

- (I) ~~If the rate is \$26 or greater, the applicant shall be given 10 points.~~
- (II) ~~If the rate is \$24 to \$25.99, the applicant shall be given 9 points.~~

(III) ~~If the rate is \$22 to \$23.99, the applicant shall be given 8 points.~~

(IV) ~~If the rate is \$20 to \$21.99, the applicant shall be given 7 points.~~

(V) ~~If the rate is \$18 to \$19.00, the applicant shall be given 6 points.~~

(VI) ~~If the rate is \$16 to \$17.99, the applicant shall be given 5 points.~~

(VII) ~~If the rate is \$14 to \$5.99, the applicant shall be given 4 points.~~

(VIII) ~~If the rate is \$12 to \$13.99, the applicant shall be given 3 points.~~

(IX) ~~If the rate is \$10 to \$11.99, the applicant shall be given 2 points.~~

(X) ~~If the rate is \$8 to \$9.99, the applicant shall be given 1 point.~~

(XI) ~~If the rate is less than \$8, the applicant shall be given 0 points.~~

(ii) For systems providing both water and sewer services, point are figured according to the same scale set forth in Section 50-7-5(b)(2)(B)(ii), as follows:

(I) ~~If the rate is \$30 or greater, the applicant shall be given 10 points.~~

(II) ~~If the rate is \$29 to \$29.99, the applicant shall be given 9 points.~~

(III) ~~If the rate is \$27 to \$28.99, the applicant shall be given 8 point.~~

(IV) ~~If the rate is \$24 to \$26.99, the applicant shall be given 7 points.~~

(V) ~~If the rate is \$22 to \$23.99, the applicant shall be given 6 points.~~

(VI) ~~If the rate is \$21 to \$21.99, the applicant shall be given 5 points.~~

(VII) ~~If the rate is \$20 to \$20.99, the applicant shall be given 4 points.~~

(VIII) ~~If the rate is \$18 to \$19.00, the applicant shall be given 3 points.~~

(IX) ~~If the rate is \$16 to \$17.99, the applicant shall be given 2 points.~~

(X) ~~If the rate is \$13 to \$15.99, the applicant shall be given 1 point.~~

(XI) ~~If the rate is less than \$13, the applicant shall be given 0 points.~~

(iii) For systems providing sewer service only, points are figured according to the same scale set forth in Section 50-7-5(b)(2)(B)(iii), as follows:

(I) ~~If the rate is \$23 or greater, the applicant shall be given 10 points.~~

(II) ~~If the rate is \$21 to \$22.99, the applicant shall be given 9 points.~~

(III) ~~If the rate is \$19 to \$20.99, the applicant shall be given 8 points.~~

(IV) ~~If the rate is \$24 to \$26.99, the applicant shall be given 7 points.~~

(V) ~~If the rate is \$22 to \$23.99, the applicant shall be given 6 points.~~

- ~~(VI) If the rate is \$21 to \$21.99, the applicant shall be given 5 points.~~
- ~~(VII) If the rate is \$20 to \$20.99, the applicant shall be given 4 points.~~
- ~~(VIII) If the rate is \$18 to \$19.99, the applicant shall be given 3 points.~~
- ~~(IX) If the rate is \$16 to \$17.99, the applicant shall be given 2 points.~~
- ~~(X) If the rate is \$13 to \$15.99, the applicant shall be given 1 point.~~
- ~~(XI) If the rate is less than \$13, the applicant shall be given 0 points.~~

(iv) The Board will deduct 3 points from the total of the Water and Sewer Rate Structure ranking for any system which charges a flat water rate (unmetered) without regard to the amount of water used, and 2 points for a decreasing block rate which lowers the cost per 1000 gallons for customers using larger amounts of water. No points will be added or subtracted for systems using a fixed rate per 1,000 gallons above the minimum. Two points will be added for systems using an increasing block rate. Entities who dedicate sales tax for water and/or sewer improvements will be awarded 1 additional point. Under this category the maximum number of points is 13 and the minimum is -3 points.

(C) **Indebtedness per customer (I).** The indebtedness per customer ranking is calculated by taking the applicant's monthly requirements for debt service on debt incurred for water and/or sewer system purposes and dividing it by the number of customers served.

- (i) If the indebtedness per customer is \$15.00 or greater, the applicant will be given 10 points.
- (ii) If the indebtedness per customer is \$13.00 to \$14.99, the applicant will be given 9 points.
- (iii) If the indebtedness per customer is \$11.00 to \$12.99, the application will be given 8 points.
- (iv) If the indebtedness per customer is \$10.00 to \$10.99, the application will be given 7 points.
- (v) If the indebtedness per customer is \$9.00 to \$9.99, the applicant will be given 6 points.
- (vi) If the indebtedness per customer is \$8.00 to \$8.99, the applicant will be given 5 points.
- (vii) If the indebtedness per customer is \$7.00 to \$7.99, the applicant will be given 4 points.
- (viii) If the indebtedness per customer is \$6.00 to \$6.99, the applicant will be given 3 points.
- (ix) If the indebtedness per customer is \$5.00 to \$5.99, the applicant will be given 2 points.
- (x) If the indebtedness per customer is \$4.00 to \$4.99, the applicant will be given 1 point
- (xi) If the indebtedness per customer is \$4.00, the applicant will be given 0 points.

(D) **Median household income (MHI).** The median household income is calculated according to the latest federal decennial census.

(i) The county median figure for median household income will be used in cases where data for the applicant's service area is not available.

(ii) Points for this MHI criterion are awarded according to the scale set forth in Section 50-7-5(b)(2)(E)(ii), as follows:

- ~~(I) If the MHI is less than \$10,000, the applicant shall be given 10 points.~~
- ~~(II) If the MHI is \$10,000 to \$11,999, the applicant shall be given 9 points.~~
- ~~(III) If the MHI is \$12,000 to \$13,999, the applicant shall be given 8 points.~~
- ~~(IV) If the MHI is \$14,000 to \$15,999, the applicant shall be given 7 points.~~
- ~~(V) If the MHI is \$16,000 to \$17,999, the applicant shall be given 6 points.~~
- ~~(VI) If the MHI is \$18,000 to \$21,999, the applicant shall be given 5 points.~~
- ~~(VII) If the MHI is \$22,000 to \$23,999, the applicant shall be given 4 points.~~
- ~~(VIII) If the MHI is \$24,000 to \$25,999, the applicant shall be given 3 points.~~
- ~~(IX) If the MHI is \$26,000 to \$27,999, the applicant shall be given 2 points.~~
- ~~(X) If the MHI is \$28,000 to \$29,999, the applicant shall be given 1 point.~~
- ~~(XI) If the MHI is \$30,000 or greater, the applicant shall be given 0 points.~~

(E) **Ability to finance project (FP).**

(i) The maximum points possible under this criterion for the ability of the applicant to finance the project without assistance from the state is 12.

(ii) The FP ranking gives a standardized account of the amount the existing water/sewer rates would have to be raised in order for the applicant to finance the project through a loan. A standard interest rate and term of 10% for 25 years is assumed. The cost per customer per month is calculated using the following formula:  $FP = AR (0.1102)/(12)(C)$ , Where:

- (I) FP = Estimate of the amount monthly water/sewer rates would have to be raised to finance the amount of grant requested for the project.
- (II) AR = Amount of grant requested.
- (III) (0.1102) = Annual rate factor for a 25 year loan at 10%
- (IV) (12) = Number of months per year.
- (V) (C) = Number of customers

(iii) In cases where the applicant's current revenues exceed expenses by a large margin, the Board will appropriately adjust the (AR) figure to accurately represent the applicant's ability to finance the project.

(iv) Points in the FP ranking, based upon the cost per customer per month calculated as set forth in (ii) of this subparagraph, are awarded as follows:

## Permanent Final Adoptions

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- (I) If the FP is \$10.00 or greater, the applicant shall be given 12 points.
- (II) If the FP is \$8.00 to \$9.99, the applicant shall be given 11 points.
- (III) If the FP is \$6.00 to \$7.99, the applicant shall be given 10 points.
- (IV) If the FP is \$5.00 to \$5.99, the applicant shall be given 9 points.
- (V) If the FP is \$4.00 to \$4.99, the applicant shall be given 8 points.
- (VI) If the FP is \$3.00 to \$3.99, the applicant shall be given 7 points.
- (VII) If the FP is \$2.00 to \$2.99, the applicant shall be given 6 points.
- (VIII) If the FP is \$1.75 to \$1.99, the applicant shall be given 5 points.
- (IX) If the FP is \$1.50 to \$1.74, the applicant shall be given 4 points.
- (X) If the FP is \$1.25 to \$1.49, the applicant shall be given 3 points.
- (XI) If the FP is \$1.00 to \$1.24, the applicant shall be given 2 points.
- (XII) If the FP is \$0.75 to \$0.99, the applicant shall be given 1 point.
- (XIII) If the FP is less than \$0.75, the applicant shall be given 0 points.
- (F) **Need (N).** An applicant who is subject to an enforcement order issued by a governmental agency with environmental jurisdiction shall be given 5 priority points for a proposed project which will remedy the violation out of which the order arose if the order specifies a project construction start date which is on or before June 30 of the Board's current fiscal year for funding REAP grants.
- (G) **Amount of grant requested (AR).** Points under this category for amount of grant requested are determined as follows:
- (i) If the AR is \$140,001 to \$150,000, the applicant shall be given -5 points.
  - (ii) If the AR is \$130,001 to \$140,000, the applicant shall be given -4 points.
  - (iii) If the AR is \$120,001 to \$130,000, the applicant shall be given -3 points.
  - (iv) If the AR is \$110,001 to \$120,000, the applicant shall be given -2 points.
  - (v) If the AR is \$100,001 to \$110,000, the applicant shall be given -1 point.
  - (vi) If the AR is \$100,000, the applicant shall be given 0 points.
  - (vii) If the AR is \$80,000 to \$99,999, the applicant shall be given 1 point.
  - (ix) If the AR is \$60,000 to \$79,999, the applicant shall be given 2 points.
  - (x) If the AR is \$40,000 to \$59,999, the applicant shall be given 3 points.
  - (xi) If the AR is \$20,000 to \$39,999, the applicant shall be given 5 points.
  - (xii) Any portion of an AR that is more than \$150,000 shall be denied.
- (H) **Project benefit to other systems (BP).** If the applicant's project will benefit other adjacent systems as well as applicant's or result in or lead to consolidation of systems, an additional five (5) priority points will be included in the total of priority points assigned to the application.
- (I) **Previous grant assistance (PG).** No qualified entity shall receive more than \$150,000 in REAP grant assistance in any twelve (12) month period. For purposes of this subparagraph a political subdivision and all its public trusts and similar subordinate entities together shall be treated as one and the same qualified entity; provided, rural water or sewer districts shall not be construed to be subordinate entities of counties unless the effect would be to make multiple grants to substantially the same entity and/or service area. If a qualified entity has been approved for or received one (1) or more REAP grants from the Board in the past, points shall be deducted from the application according to all of the following provisions that apply:
- (i) If the qualified entity has been approved for or received one (1) REAP grant in the preceding twelve (12) month period, the application will be given -8 points.
  - (ii) If the qualified entity has been approved for or received more than one (1) REAP grant in the preceding twelve (12) month period, the application will be given - 10 points for each REAP grant so received.
  - (iii) If the qualified entity has been approved for or received one (1) REAP grant more than twelve (12) months in the past, the application will be given -5 points.
  - (iv) If the qualified entity has been approved for or received two (2) REAP grants more than twelve (12) months in the past, the application will be given - 8 points.
  - (v) If the qualified entity has been approved for or received three (3) REAP grants more than twelve (12) months in the past, the application will be given -10 points.
  - (vi) If the qualified entity has been approved for or received four (4) REAP grants more than twelve (12) months in the past, application will be given -12 points.
  - (vii) If the qualified entity has been approved for or received five (5) or more REAP grants more than twelve (12) months in the past, the application will be given -14 points.
- (c) **Priority formula for school districts and counties.**
- (1) School districts created under Article V of the School Code, 70 O.S. 1991, §5-101 et seq., and counties are political subdivisions of the State, and therefore are eligible for financial assistance under the Board's REAP grant program.

(2) In evaluating and prioritizing grant applications from school districts and counties, similar criteria to those applied to municipalities and rural water districts will be utilized.

(3) In developing a priority formula for school district and county applicants, the primary criteria are average daily membership (for schools only), fiscal capacity, need, amount requested, and previous grant assistance.

(4) The following formula has been devised to rank REAP grant applications by counties and school districts:  $T = ADM + LT + BI + MHI + FP + N + AR + PG$ , Where:

- (A) T = Total of priority points
- (B) ADM = Average daily membership
- (C) Lt = Local tax levies
- (D) BI = Bonded indebtedness
- (E) MHI = Median household income of population within the school district or area of county to be served
- (F) FP = Applicant's ability to finance project
- (G) N = Need
- (H) AR = Amount of grant requested
- (I) PG = Previous grant assistance

(5) The criteria MHI, FP, N, AR and PG are the same as that set forth in (b) of this Section. The criteria ADM, LT and BI are explained as follows:

(A) **Average daily membership (ADM).** School districts with an average daily membership of less than 525 students shall be given 55 priority points.

(B) **Local tax levies (LT).** Points awarded under this category for local tax levies are based on the total amount of mills levied, as follows:

- (i) If the mills are 95 to 100; the applicant shall be given 13 points.
- (ii) If the mills are 90 to 94.99, the applicant shall be given 11 points.
- (iii) If the mills are 85 to 89.00, the applicant shall be given 10 points.
- (iv) If the mills are 80 to 84.99, the applicant shall be given 8 points.
- (v) If the mills are 70 to 79.99, the applicant shall be given 6 points.
- (vi) If the mills are 60 to \$69.99, the applicant shall be given 4 points.
- (vii) If the mills are 55 to 59.99, the applicant shall be given 2 points.
- (viii) If the mills are 50 to 54.99, the applicant shall be given 1 point.
- (ix) If the mills are 45 to 49.99, the applicant shall be given 0 points.
- (x) If the mills are 40 to 49.99, the applicant shall be given -1 point.
- (xi) If the mills are less than 40, the applicant shall be given -2 points.

(C) **Bonded indebtedness (BI).**

- (i) Priority points for Bonded Indebtedness are as follows:
  - (I) If the percentage is 95% to 100%, the applicant shall be given 10 points.

(II) If the percentage is 90% to 94.99%, the applicant shall be given 8 points.

(III) If the percentage is 80% to 89.99%, the applicant shall be given 7 points.

(IV) If the percentage is 75% to 79.99%, the applicant shall be given 6 points.

(V) If the percentage is 65% to 69.99%, the applicant shall be given 5 points.

(VI) If the percentage is 65% to 69.99%, the applicant shall be given 4 points.

(VII) If the percentage is 60% to 64.99%, the applicant shall be given 3 points.

(VIII) If the percentage is 55% to 59.99%, the applicant shall be given 2 points.

(IX) If the percentage is 50% to 54.99%, the applicant shall be given 1 point.

(X) If the percentage is 45% to 49.99%, the applicant shall be given 0 points.

(XI) If the percentage is 40% to 44.99%, the application shall be given -1 point.

(XII) If the percentage is 30% to 39.99%, the applicant shall be given -2 points.

(XIII) If the percentage is less than 30%, the applicant shall be given -3 points.

(ii) A deduction of one (1) point from the indebtedness ranking total will be made for applicants with 75% of existing debts financed at rates of 5% or less, and one (1) point will be added if 75% of existing debts are financed at rates greater than 10%.

**SUBCHAPTER 9. CLEAN WATER STATE REVOLVING FUND REGULATIONS**

**PART 1. GENERAL PROVISIONS**

**785:50-9-9. Definitions**

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

"**303(d) List**" means the list of impaired waters of the State, or most recent approved revision thereof, developed pursuant to Section 303(d) of the Clean Water Act as amended and maintained on file at the Board.

"**Act**" means The Federal Clean Water Act, as amended.

"**Applicant**" means any municipality, as defined, that submits a preapplication/application for financial assistance in accordance with this subchapter.

"**Architectural or engineering services**" means consultation, investigations, reports, or services for design-type projects within the scope of the practice of architecture or professional engineering.

"**As a result of**" means funds in the Clean Water SRF including the capitalization grant, repayments of first round loans, bond proceeds, and the State match.

## Permanent Final Adoptions

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**"Binding commitment"** means binding commitments are legal obligations by the State to the local recipient that define the terms and the timing for assistance under Clean Water SRF.

**"Board"** means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, for duties authorized by law to be delegated to the Executive Director, the Executive Director or any employee or agent or staff member thereof as assigned by the Executive Director.

**"Brownfield"** means an abandoned, idled or underused industrial or commercial facility or other real property at which expansion or redevelopment of the real property is complicated by environmental contamination caused by regulated substances [27A:2-15-103(2)].

**"Brownfield assessment"** means any phase I, phase II, phase III or other study required by the Department which is used to assess a brownfield.

**"Building"** means the erection, acquisition, alteration, remodeling, improvement or extension of treatment works.

**"Capitalization grant"** means an agreement between EPA and State whereby federal dollars are made available to partially fund a Clean Water SRF.

**"Collector sewer"** means the common lateral sewers, within a publicly owned treatment system which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service "Y" connections designed for connection with those facilities including:

(A) Crossover sewers connecting more than one property on one side of a major street, road, or highway to a lateral sewer on the other side when more cost effective than parallel sewers; and

(B) Pumping units and small diameter lines serving individual structures or groups of structures.

**"Combined sewer"** means a sewer that is designed as a sanitary sewer and a storm sewer.

**"Conservation Commission"** means the Oklahoma Conservation Commission.

**"Construction"** means any one or more of the following: brownfield assessment; preliminary planning to determine feasibility, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other actions or undertakings necessary to a project; erection, building, acquisition, alteration, remodeling, improvement, or extension of a project; or the inspection or supervision of any of the foregoing items.

**"Contingency section"** means that portion of the planning portion of the priority list consisting of projects which may receive loans due to bypass provision or due to additional funds becoming available.

**"Cross-cutting laws and orders"** means Federal laws and authorities that apply to all activities supported with funds "directly made available by" capitalization grants.

**"Department"** means the Oklahoma Department of Environmental Quality.

**"Enforceable requirements of the Act"** means those conditions or limitations of NPDES or other discharge permits which, if violated, could result in the issuance of a compliance order or initiation of a civil or criminal action. If a permit has not been issued, the term shall include any requirement which would be included in the permit when issued. Where no permit applies, the term shall include any requirement which is necessary to meet applicable criteria for best practicable wastewater treatment technology (BPWTT).

**"Equivalency projects"** means projects cited by the Board as meeting the requirement of the capitalization grant.

**"Excessive infiltration/inflow"** means the quantities of infiltration/inflow above 140 gallons per capita per day (GPCD), which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.

**"Fundable portion"** means that portion of the Project Priority List which includes projects scheduled for financial assistance during the funding year.

**"Funding year"** means the first year of the planning period represented by a project priority list.

**"Infiltration"** means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from inflow.

**"Inflow"** means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from infiltration.

**"In perpetuity"** means maintaining the principal amounts of the federal capitalization grants and state matching funds within the CWSRF.

**"Intended Use Plan"** means a document prepared each year by the State, which identifies the intended uses of the funds in the CWSRF and describes how those uses support the goals of the CWSRF.

**"Interceptor sewer"** means a sewer which is designed for one or more of the following purposes:

(A) To intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor.

(B) To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant.

(C) To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment.

(D) To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.

**"Loan"** means an agreement between the State and the local recipient through which the Clean Water SRF provides funds for eligible assistance and the recipient promises to repay the principal sum to the Clean Water SRF over a period not to exceed 20 years at an interest rate established at or below market rates (may be interest free).

**"MBE"** means Minority Business Enterprise.

**"MBE/WBE participation"** means the federal requirement for negotiation of a "fair share" objective for minority and women owned businesses (MBE/WBE) applies to assistance in an amount equal to the capitalization grant.

**"MGD"** means millions of gallons per day.

**"Municipality"** means a city, town, county, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, or an Indian tribe or an authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other waste, or a designated and approved management agency consistent with the State Water Quality Management Plan.

**"Nonexcessive infiltration"** means the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effectiveness analysis.

**"Nonexcessive inflow"** means the rainfall induced peak inflow rate which does not result in chronic operational problems related to hydraulic overloading of the treatment works during storm events. These problems may include surcharging, backups, bypasses, and overflows.

**"Nonpoint source"** means a source of pollution which is diffuse and does not have a single point of origin or is introduced into a receiving stream from a specific outlet.

**"Nonpoint source activities"** means capital works, capital improvements, capital equipment, environmental cleanups, land acquisition, or implementation of management practices for the purpose of protecting or improving surface or underground water quality through watershed management or reduction of nonpoint source pollution as authorized by the Act.

**"Operable treatment works"** means a treatment works that, upon completion, will meet the enforceable requirements of the Act.

**"Operation and maintenance"** means activities required to assure the dependable and economical function of treatment works.

(A) **"Maintenance"** means preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment.

(B) **"Operation"** means control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

**"OWQS"** means the Oklahoma Water Quality Standards promulgated by the Board at Oklahoma Administrative Code Title 785, Chapter 45, as amended.

**"Planning"** means the process of evaluating alternative solutions to water pollution problems, and through a systematic screening procedure, selecting the most cost effective environmentally sound alternative.

**"Planning portion"** means that part of the Project Priority List containing all projects outside the fundable portion of the list that may, under anticipated allotment levels, receive funding during the five-year planning period represented by the list.

**"Project"** means the water quality project for which Clean Water SRF assistance is provided. Water quality projects include:

(A) construction and design, or construction of an operable treatment works or segment thereof the principal purpose of which is for the treatment of domestic users' discharges within the jurisdiction, community, sewer service area, region or district concerned;

(B) urban storm water activities;

(C) nonpoint source activities; or

(D) other water quality projects as defined by 82 O.S. §1085.52, as amended.

**"Project completion"** means the date operations of the project are initiated or are capable of being initiated, whichever is earlier.

**"Project Priority List"** means a contiguous list of projects in order of priority for which Clean Water SRF assistance is expected during a five-year planning period.

**"Project priority points"** means the total number of points assigned to a project by using the priority ranking formula.

**"Reallotment"** means allotment of previously allotted unused funds.

**"Recipient"** means a municipality or other entity which receives assistance under the Clean Water SRF program.

**"Repayment"** means principal and interest payments on loans which must be credited directly to the Clean Water SRF.

**"Replacement"** means those expenditures for obtaining and installing equipment, accessories, or appurtenances during the useful life of the treatment works necessary to maintain the capacity and performance for which such works are designed and constructed.

**"Responsible bidder"** means a prospective contractor that currently meets the minimum standards of financial and technical ability to perform the tasks identified in the project specifications.

**"Revenue programs"** means a formally documented determination of sewer use charges which is designed to provide revenues for operation and maintenance (including replacement) cost, and/or any combination of revenue generating programs necessary to meet local debt service requirements.

**"Sewer System Evaluation Survey (SSES)"** means a study which shall identify the location, estimated flow rate, method of rehabilitation, and cost of rehabilitation versus the cost of transportation and treatment for each defined source of infiltration/inflow.

**"State match"** means funds equaling at least 20% of the amount of the capitalization grant which the State must deposit into the Clean Water SRF.

## Permanent Final Adoptions

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"**State Revolving Fund**" or "**SRF**" means funds for loans or providing other assistance for pollution control projects established through capitalization grants from EPA and State matching funds.

"**Storm sewer**" means a sewer designed to carry only storm waters, surface runoff, street wash waters, and drainage.

"**Treatment works**" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances. In addition "**treatment works**" means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, including on-site systems and waste in combined storm water and sanitary sewer systems.

"**Urban storm water activities**" means those activities which are conducted under the Oklahoma Brownfields Voluntary Redevelopment Act for eligible entities that have obtained a draft or final permit pursuant to the National Pollution Discharge Elimination Act or Oklahoma Pollutant Discharge Elimination System Act, which are designed to improve water quality, and which are exempt from funds administered under the Nonpoint Source Management Program of the federal Clean Water Act.

"**User charge**" means a charge levied on users of a treatment works for the user's share of the cost of operation and maintenance (including replacement) of such works.

"**WBE**" means Women's Business Enterprise.

### PART 3. GENERAL PROGRAM REQUIREMENTS

#### 785:50-9-21. Eligible project

(a) The categories of wastewater treatment projects eligible for assistance are as follows:

(1) **Category I - Secondary Treatment.** The treatment facility necessary to discharge an effluent meeting the secondary treatment definition. This category may include outfall lines and lines which take existing treatment plants out of operation by transporting the effluent to a different plant;

(2) **Category II - Advanced Treatment.** The additional treatment necessary to meet more stringent than secondary effluent requirements as established in water quality management plans;

(3) **Category IIIA -- Infiltration/Inflow Correction.** The correction of infiltration/inflow conditions including all costs necessary for removing excessive I/I from the sewer system, such as replacement or relining sewer sections, flow routing systems, etc;

(4) **Category IIIB -- Sewer System Rehabilitation.** Replacement or major rehabilitation of sewers, where it has been determined that such replacement or rehabilitation is necessary to the total integrity and performance of the wastewater treatment works;

(5) **Category IVA -- New Collector Sewer Systems.** Sewage collection system is the common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual structures or from private property, and which include service connection "Y" fittings designed for connection with those facilities. Pumping units, and pressurized lines, for individual structures or groups of structures when such units are cost effective and are owned and maintained by the applicant are included in this category;

(6) **Category IVB - New Interceptor Sewer Systems and Appurtenances.** A sewer whose primary purpose is to transport wastewaters from collector sewers to a treatment facility;

(7) **Category V -- Combined Sewer Overflow Correction.** Correction of combined sewer overflows including cost of new collectors, interceptors, storm sewers, retention basin, etc., necessary to alleviate the overflow problem;

(8) **Category VI - Storm Sewers.** Urban storm water activities;

(9) Category VII - Nonpoint source activities; and

(10) Other water quality projects as defined under 82 O.S. §1085.51, as amended.

(b) The Board will determine annually the amount of funding necessary and the project categories that will be placed on the fundable portion of the Priority List.

(c) Costs associated with the planning or assessing, design and building of the eligible categories of projects are considered allowable by the Board. Eligible construction costs will be based on the lowest responsible bidder.

(d) Eligibility for equivalency projects is subject to the applicable Federal requirements including those identified in 785:50-9-38(e) and 785:50-9-45(2) through (4).

(e) Additionally, the Board shall consider the following issues in determining project eligibility:

(1) **Capacity funding limitations.** The eligible capacity shall be determined using average dry weather flow and peak flows in accordance with population and per capita flow estimates provided by the applicant. Project capacity must be consistent with environmental constraints.

(A) Eligible capacity for treatment plants will be up to a period of 20 years from the estimated date of initiation of construction.

(B) Eligible capacity for interceptors and outfalls will be up to 40 years from the estimated date of initiation of construction.

(C) Eligible capacity shall be calculated by multiplying the Board approved local population projection by an appropriate local per capita flow figure. The flow thus calculated will be deemed to include all the eligible project flows (residential, commercial, federal facilities, industrial, and infiltration/inflow). Eligible capacity will be determined during the development of the planning documents.

(D) The applicant will be responsible for documenting, in the planning document, the peaking factors used for the project.

(E) Eligible capacity will be determined when planning documents are approved by the Board.

(2) **Collection systems.** The common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service "Y" connections.

(3) **Population and flow projections.** Section 208 Areawide Water Quality Management Plan population and flow projections will be used to determine the eligible project capacity. A discussion of the local projections should be included in the planning document.

(4) **Land costs.** Allowable costs for land and rights-of-way include the cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement that will be an integral part of the treatment process or that will be used for the ultimate disposal of residues resulting from such treatment, including:

(A) The cost of a reasonable amount of land, considering irregularities in application patterns and the need for buffer areas, berms, and dikes;

(B) The cost of land acquired for a soil absorption system for a group of two or more homes;

(C) The cost of land acquired for composting or temporary storage of compost residues which result from wastewater treatment; and

(D) The cost of land acquired for storage of treated wastewater in land treatment systems before land application. The total land area for construction of a pond for both treatment and storage of wastewater is allowable if the volume necessary for storage is greater than the volume necessary for treatment. Otherwise, the allowable cost will be determined by the ratio of storage volume to the total volume of the pond.

(5) **On-site systems.** Treatment and collection systems constructed at or near the wastewater source where the system serving individual structures or groups of structures are cost-effective and are owned and operated by the loan recipient.

(6) **Brownfield remediation.** The types of urban storm water activities that may be qualified for Clean Water SRF funding include, but are not limited to: excavation and disposal of underground storage tanks; constructing wetlands or other filtering mechanisms; capping wells; excavation, removal and disposal of contaminated soil or sediments; tunnel demolition; well abandonment; and all phases or brownfield assessments or planning required by the Department.

**785:50-9-35. Loan closing**

(a) **Documentation to be submitted prior to loan closing.** Prior to loan closing the applicant will submit to the Board, the following bid and contract documents:

(1) Bidding documents, including all addenda, approved in accordance with 785:50-9-32.

(2) A tabulation of all bids received and an explanation for any rejected bids or otherwise disqualified bidders.

(3) Contingently executed construction contract to be entered into by the applicant for building of the projects containing the appropriately executed bonds, insurance certificates, act of assurance, and other documents required by this chapter.

(4) Other or additional engineering data and information, if deemed necessary by the Board staff.

(5) A certification that all required acquisitions, leases, easements, rights-of-way, relocations, (both voluntary and involuntary) have been obtained for the project to be built.

(6) Evidence that the applicant has obtained all required permits and financing to build the project.

(7) Information requested by the Board regarding loan closing documents.

~~(8) Prior to concurrence by the Board in the award of a construction contract, any and all bid protests must be resolved by the applicant.~~

~~(9) A detailed project budget which limits the contingency to five percent (5%) of the contracted amount the maximum allowable change order amount set forth in Section 121 of the Public Competitive Bidding Act of 1974 as amended.~~

~~(10) Copies of all legal, financial, engineering and inspection contracts that will be paid in whole or in part from the loan proceeds.~~

(b) **General conditions for all loans.**

(1) Under the federal Water Quality Act of 1987 and 82 O.S., §1085.54, the Board is authorized to make available financial assistance from the Clean Water State Revolving Fund Loan Account under the following conditions:

(A) The financial assistance application, project and planning documents have been approved by the Board pursuant to Section 1085.58 of Title 82 or the Oklahoma Conservation Commission pursuant to Section 1085.65 of Title 82 of the Oklahoma Statutes.

(B) The loan is made at or below market interest rates, including interest-free loans, at terms consistent with the federal Water Quality Act of 1987.

(C) Principal and interest payments will begin not later than one year after completion of any project, which completion date shall be determined by the Board, and all loans will be fully amortized consistent with the federal Water Quality Act of 1987.

(D) The applicant demonstrates to the satisfaction of the Board the financial capability to assure sufficient revenues to pay debt service.

(E) The recipient of the loan establishes a dedicated source of revenue for payment of debt service for the loan.

## Permanent Final Adoptions

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- (F) The recipient agrees to maintain financial records in accordance with governmental accounting standards, to conduct an annual audit of the financial records relating to the wastewater project and to submit the audit report to the Board on a scheduled annual basis, and
- (G) The project is identified in the Board's current Intended Use Plan.
- (2) Financial assistance shall not be made from the Wastewater Revolving Loan Account until the conditions in (1) of this subsection are met.
- (c) **Evidence of indebtedness.** The financial assistance loans contemplated within this subchapter shall be provided by the Board for approved projects pursuant to such notes, bonds, revenue bonds or other appropriate form of evidence of indebtedness from the applicant as the Board may require.
- (d) **Criteria for determining interest rates.**
- (1) The interest rates on loans to be made from the Clean Water State Revolving Fund Loan Account shall be at or below market rates for similar indebtedness by eligible entities.
- (A) Interest rates for interim construction loans may be reviewed and determined by the Board every six (6) months.
- (B) The percentage of the market interest rate to be utilized for long-term loans is set by the Board based on recommendations made by Board staff.
- (2) Factors which may be used to calculate the interest rate for a particular entity or class of entities include without limitation the following:
- (A) Guidelines utilized by the United States Environmental Protection Agency and federal Farmers Home Administration or successor agency for similar type financial assistance for facilities that could qualify as Clean Water SRF projects.
- (B) Maintenance of the Clean Water State Revolving Fund Loan Account in perpetuity.
- (C) Statewide needs for Clean Water SRF project financial assistance.
- (D) Five-year demand projections of the Board of Clean Water SRF project financial assistance.
- (E) Prevailing market interest rates which shall be the interest rates on long-term bonds maintaining a rating of AA.
- (F) Debt service requirements of investment certificates issued by the Board to provide funds for the Clean Water State Revolving Fund Loan Account.
- (G) Financial resources of the entity.
- (H) The ability of the entity to repay the loan.
- (I) Whether the entity discharges municipal wastewater into scenic river areas as defined in Section 1452 of Title 82 of the Oklahoma Statutes.
- (e) **Security for loan.**
- (1) As security for the assistance loan provided by the Board to an approved applicant, applicant must provide if required by the Board a mortgage on any or all facilities of the project for which application is made.
- (2) The Board shall require a pledge and lien on revenues to be derived from the operation of the project.
- (3) For purposes of this subsection, the pledge of lien on project revenues shall be a pledge of and lien on such project revenue, as is necessary to secure repayment of the loan obligation of applicant.
- (4) Also, for purposes of this subsection, if the specific project for which application is made and approved is not of itself a revenue producing unit, then such pledge of an lien on revenues shall be on the revenues of the revenue producing system of which the specific project is a part and on such other additional revenue sources or systems which may be pledged by the applicant to satisfy the loan security requirements necessary to obtain assistance from the Board.
- (5) The Board may require additional security which the Board deems necessary, which such additional security may include such pledges, liens, revenues and/or mortgages on additional facilities or systems of and as may be tendered by the applicant.
- (f) **Conditions for disbursement of funds.** At or following the loan closing, the following conditions and requirements must be met prior to the release and disbursement of any financial assistance funds:
- (1) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents for loan closing, including but not limited to all mortgages, notes, financing statements and pledges of project security and revenues where appropriate.
- (2) Recipient sends disbursement requests based on costs incurred to the Board, who shall review the requests and approve them as appropriate.

### 785:50-9-40. Building phase submittal

The following submittal and accompanying actions by the recipient will be required during the building phase of the project.

- (1) Upon completion of all construction, verification of a complete set of as-built drawings will be submitted to the Board that a complete set of as-built drawings has been submitted to the Department upon completion of all construction.
- (2) Notice of completion of construction will be submitted to the Board upon completion of project construction.
- (3) Any other building phase submittal required as part of the financial assistance documents will be submitted for the Board's approval.

### 785:50-9-41. Progress payments

Disbursements from the construction fund established by the recipient will require approval by the Board. ~~Certified~~Verified requests for payment and documentation should be submitted to the Board monthly. Upon approval, the Board will authorize the progress payments to be made from the fund.

**785:50-9-42. Retainage**

- (a) **Retainage withheld.** Up to ten percent (10%) of all partial payments made may be withheld as retainage.
- (b) **Partial release of retainage.** At any time that the contractor has completed in excess of fifty percent (50%) of the total contract amount the retainage may be reduced to five percent (5%) of the amount earned to date, if prior approval is obtained from the Board.
- (c) **Final release.** After completion of construction, ~~and acceptance by the applicant, and receipt of satisfactory test results that all work has been performed according to specifications (if such tests are required),~~ the final release of retainage may be made with approval of the project by the Board.

**785:50-9-44. Accounting**

- (a) The recipient shall agree that project accounts shall be maintained in accordance with standards set forth by the Governmental Accounting Standards and the Board. All funds in the project account shall be secured in the manner provided by law for the security of county funds or city funds, as appropriate. All proceeds acquired by the recipient to plan, design and construct the project shall be placed in the project account. All proceeds in the project account shall be used for the sole purpose of planning, design and building the project as approved by the Board.
- (b) Upon completion of the project a final accounting will be made to the Board. The final accounting shall provide:
  - (1) The total cost of the project. If the project is finally completed at a total cost less than the amount of available funds for building the project, or if the Board disapproves construction of any portion of the project as not being in accordance with the plans and specifications, the recipient shall immediately, with filing the final accounting,
    - (A) ~~return~~ Return to the Clean Water SRF the sum of such amounts described above; or of any such excess and/or the cost as determined by the Board relating to the parts of the project not built in accordance with the plans and specifications.
    - (B) Use the sum of such amounts described above for other eligible CWSRF purposes.
  - (2) If the recipient elects to spend loan proceeds pursuant to subsection (B), OWRB staff approval must be obtained in advance. Interest earned on funds in the recipient's construction account made available as a result of a loan from the SRF must be utilized to reduce the SRF principal amount or spent for other CWSRF eligible purposes with prior OWRB staff approval.
  - (~~2~~3) That an annual audit of the recipient, prepared by a certified public accountant or licensed public accountant be provided to the Board.
  - (~~3~~4) That the recipient shall maintain adequate insurance coverage on the project in an amount adequate to protect the State's interest.
  - (4~~5~~) That the recipient will comply with any special conditions specified by the Board's environmental determination until all financial obligations to the State have been discharged.

(~~5~~6) That the recipient covenants to continually abide by the terms of the financial assistance agreement, the Board's rules and regulations, and relevant State statutes for operation and maintenance of the facility.

**PART 7. SRF ENVIRONMENTAL REVIEW PROCESS**

**785:50-9-60. Requirement of environmental review**

As required by the provisions of Section 602(b) (6) of the Clean Water Act, the Board shall conduct an interdisciplinary environmental review consistent with the National Environmental Policy Act of the project proposed for funding through the Clean Water State Revolving Fund Loan Account. This review will insure that the project will comply with the applicable local, state and federal laws and Board regulations relating to the protection and enhancement of the environment. Based upon the staff's review, the Board will make formal determinations regarding the potential social and environmental impacts of the proposed project. As necessary, the determination will include mitigative provisions as a condition of financial assistance for building and no financial assistance will be provided until a final environmental determination has been made. Nothing in this Part shall prohibit any public, private or governmental party from seeking administrative or legal relief from the determinations of the Board. Potential applicants to the Clean Water State Revolving Fund Loan Account should obtain guidance from the staff regarding the scope of the environmental review to be conducted by the Board and the environmental information which the applicant will be required to submit in support of the proposed project.

(1) **Basic environmental determination.** There are three (3) basic environmental determinations that will apply to projects proposed to be implemented with assistance from the Clean Water State Revolving Fund Loan Account. These are: a determination to categorically exclude a project from a formal environmental review; a finding of no significant impact (FNSI) based upon a formal environmental review supported by an environmental information document (EID); and a determination to provide or not to provide financial assistance based upon a Record of Decision following the preparation of an environmental impact statement (EIS). The appropriate determination will be based on the following criteria.

- (A) The categorical exclusion determination applies to categories of projects that have shown over time not to entail significant impacts on the quality of the human environment.
  - (i) Projects which meet any of the following criteria may be categorically excluded from formal environmental review requirements.
    - (I) The project is directed solely toward rehabilitation of existing facilities, functional replacement of equipment, or toward the construction of related facilities adjoining the existing facilities that do not affect the degree of treatment or the capacity of the works (i.e.

## Permanent Final Adoptions

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infiltration and inflow correction, rehabilitation of existing equipment and structures, and the construction of small structures on existing sites).

(II) The project is in a community of less than 10,000 population and is for minor expansions or upgrading of existing treatment works or on-site disposal systems are proposed.

(ii) Categorical exclusions will not be granted for projects that entail:

(I) the construction of new collection lines;

(II) a new discharge or relocation of an existing discharge;

(III) a substantial increase in the volume or loading of pollutants;

(IV) providing capacity for a population thirty (30) percent greater than the existing population;

(V) known or expected impacts to cultural resources, threatened or endangered species, or other environmentally sensitive areas; and

(VI) the construction of facilities that are known or expected to be not cost-effective or are likely to cause significant public controversy.

(iii) The Board may exclude, by amendment to these regulations, other categories of projects for which there is sufficient documentation demonstrating that they are not likely to have significant effects on the quality of the human environment.

(B) The FNSI will be based upon an environmental review by the staff supported by an EID prepared by the applicant in conformance with 785:50-9-61(2)(A). Based upon its review, the staff will prepare an environmental assessment (EA) resulting in the issuance of either a FNSI or a public notice that the preparation of an EIS will be required. All applicants whose projects do not meet the criteria for either a categorical exclusion or EIS will be required to prepare an EID. The Board's issuance of a FNSI will be based upon an EA documenting that the potential environmental impacts will not be significant or that they may be mitigated without extraordinary measures.

(C) The Record of Decision may only be based upon an EIS in conformance with the format and guidelines described in 785:50-9-61(3). An EIS will be required when the Board determines any of the following:

(i) the project will significantly affect the pattern and type of land use or growth and distribution of the population;

(ii) the effects of the project's construction or operation will conflict with local or state laws or policies;

(iii) the project may have significant adverse impacts upon:

(I) wetlands,

(II) floodplains,

(III) threatened and endangered species or their habitats,

(IV) cultural resources including parklands, reserves, other public lands or areas of recognized scenic, recreational, agricultural, archeological or historic value;

(iv) the project will displace population or significantly alter the characteristics of existing residential areas;

(v) the project may directly or indirectly (i.e., through induced development) have significant adverse effect upon local ambient air quality, local noise levels, surface and ground water quality or quantity, fish, shellfish, wildlife or their natural habitats;

(vi) the project may generate significant public controversy;

(vii) the treated effluent will be discharged into a body of water where the present classification is too lenient or is being challenged as too low to protect present or recent uses, and the effluent will not be of sufficient quality to meet the requirements of those uses.

(2) **Other determinations that are required of the Board.**

(A) Recognizing that a project may be altered at some time after an environmental determination on the project has been issued, the Board will provide that, prior to approval, the plans and specifications, assistance application, and related documents will be examined for consistency with the environmental determination. If inconsistencies are found, the Board may revoke a categorical exclusion and require the preparation of an EID or an EIS, consistent with the criteria of this subsection, or require the preparation of amendments to an EID or supplements to an EIS, as appropriate. Based upon the staff's review of the amended project, the Board will:

(i) reaffirm the original determination through the issuance of a public notice or statement of finding;

(ii) issue a FNSI for a project for which a categorical exclusion has been revoked, or issue a public notice that the preparation of an EIS will be required;

(iii) issue an amendment to a FNSI, or revoke a FNSI and issue a public notice that the preparation of an EIS will be required, or

(iv) issue a supplement to a record of decision, or revoke a record of decision and issue a public notice that financial assistance will not be provided.

(B) When five (5) or more years have elapsed between the last environmental determination and the submittal of an application to the Fund, the Board will re-evaluate the project, environmental conditions and

public views, and prior to the approval of application, proceed in accordance with 785:50-9-60(2)(A).

**(3) Other determinations that are available to the Board.**

(A) An applicant may request advance authority to construct part of the proposed wastewater treatment project prior to completion of the necessary environmental review when the part of the project will:

- (i) immediately remedy a severe public health, water quality or environmental problem;
- (ii) not preclude any reasonable alternatives identified for the complete system;
- (iii) not cause significant or indirect environmental impacts including those which cannot be acceptably mitigated without completing the entire project; and
- (iv) not be highly controversial.

(B) Based upon the review of the information required by Section 785:50-9-61, the Board will issue a FNSI so conditioned as to prohibit construction of the remainder of the project until a complete environmental review has been performed and a subsequent environmental determination has been issued.

(C) The Board may choose to accept determinations made by a federal agency in a previously issued environmental decision in lieu of conducting a formal environmental review when the proposed project will not cause adverse impacts to the environment and is not highly controversial.

**(4) Projects exempt from environmental review. The Board is not required to perform an environmental review of the following projects:**

**(A) Nonpoint source projects that**

**(i) cannot be defined as Section 212 projects; and**

**(ii) are not funded with funds directly made available from a capitalization grant**

**(B) Projects that consist of design and planning fees only.**

*[OAR Docket #06-1223; filed 6-23-06]*



# 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

**1:2006-16.**

### EXECUTIVE ORDER 2006-16

I, Brad Henry, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Saturday, July 1, 2006, to honor Willard O. Willis, former member of the Oklahoma House of Representatives, who died on Wednesday, June 28, 2006.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 30th day of June, 2006.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Brad Henry

ATTEST:  
Kathy Jekel  
Acting Assistant Secretary of State

*[OAR Docket #06-1225; filed 6-30-06]*

