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Table of Contents

Agency/Action/Subject Index iii
Rules Affected Index v
Agency Index (Title numbers assigned) xxii
Submissions for Review
Aeronautics Commission, Oklahoma (Title 25) 1461
Mines, Department of (Title 460) 1461
Gubernatorial Approvals
Accountancy Board, Oklahoma (Title 10) 1463
Dentistry, Board of (Title 195) 1463
Fire Marshal Commission, State (Title 265) 1463
Health, Oklahoma State Department of (Title 310) 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471
Insurance Board, Oklahoma State and Education Employees Group (Title 360) 1471, 1472
Labor, Department of (Title 380) 1472
Medical Licensure and Supervision, State Board of (Title 435) 1473
Personnel Management, Office of (Title 530) 1473
Public Employees Relations Board (Title 585) 1473, 1474
Transportation, Department of (Title 730) 1475
Withdrawn Rules
Human Services, Department of (Title 340) 1477
Permanent Final Adoptions
Corporation Commission (Title 165) 1479
Dentistry, Board of (Title 195) 1480
Education, State Department of (Title 210) 1481, 1483, 1487
Election Board, State (Title 230) 1489, 1490, 1492, 1493, 1497, 1501, 1502
Environmental Quality, Department of (Title 252) 1506, 1513, 1515, 1521, 1522, 1525, 1526, 1535, 1540, 1541, 1542, 1556
Firefighters Pension and Retirement System, Oklahoma (Title 270) 1560
Insurance Board, Oklahoma State and Education Employees Group (Title 360) 1569, 1573, 1592
Investigation, Oklahoma State Bureau of (Title 375) 1597
Long-Term Care Administrators, Oklahoma State Board of Examiners for (Title 490) 1599, 1608
Personnel Management, Office of (Title 530) 1621
Public Employees Relations Board (Title 585) 1624, 1630, 1638, 1640, 1644, 1645
Rehabilitation Services, State Department of (Title 612) 1651, 1652, 1668, 1687
Tax Commission, Oklahoma (Title 710) 1688, 1691
Teachers' Retirement System (Title 715) 1692
Textbook Committee, State (Title 720) 1696
Transportation, Department of (Title 730) 1697
Executive Orders (Title 1) 1699

Agency/Action/Subject Index

ACCOUNTANCY Board, Oklahoma (Title 10)
Gubernatorial Approvals
Licensure and Regulation of Accountancy (Chapter 15) 1463
AERONAUTICS Commission, Oklahoma (Title 25)
Submissions for Review
Aircraft Excise Tax Dedication Program (Chapter 20) ... 1461
CORPORATION Commission (Title 165)
Permanent Final Adoptions
Aboveground Storage Tanks (Chapter 26) 1479
DENTISTRY, Board of (Title 195)
Gubernatorial Approvals
Examinations and Licensing of Dentists, Dental Hygienists, and Dental Specialists (Chapter 10) 1463
Permanent Final Adoptions
Examinations and Licensing of Dentists, Dental Hygienists, and Dental Specialists (Chapter 10) 1480
EDUCATION, State Department of (Title 210)
Permanent Final Adoptions
School Administration and Instructional Services (Chapter 10) 1481
Curriculum and Instruction (Chapter 15) 1483
Standards for Accreditation of Elementary, Middle Level, Secondary, and Career and Technology Schools (Chapter 35) 1487
ELECTION Board, State (Title 230)
Permanent Final Adoptions
The County Election Board (Chapter 10) 1489
Voter Registration (Chapter 15) 1490
Candidate Filing (Chapter 20) 1492
Ballot Printing (Chapter 25) 1493
Absentee Voting (Chapter 30) 1497
Election Conduct (Chapter 35) 1497
Types of Elections (Chapter 40) 1501
Contests of Election (Chapter 45) 1502
Automated Systems (Chapter 50) 1502
ENVIRONMENTAL Quality, Department of (Title 252)
Permanent Final Adoptions
Rules of Practice and Procedure (Chapter 4) 1506
Highway Spill Remediation (Chapter 210) 1513
Laboratory Accreditation (Chapter 300) 1515
Radiation Management (Chapter 410) 1521
Oklahoma Pollutant Discharge Elimination System (OPDES) Standards (Chapter 606) 1522
General Water Quality (Chapter 611) 1525
Industrial Wastewater Systems (Chapter 616) 1526
Pretreatment for Central Treatment Trusts (Chapter 623) 1535
Public Water Supply Construction Standards (Chapter 626) 1540
Public Water Supply Operation (Chapter 631) 1541
Water Quality Standards Implementation (Chapter 690) 1542
Waterworks and Wastewater Works Operator Certification (Chapter 710) 1556
FIRE Marshal Commission, State (Title 265)
Gubernatorial Approvals
Smoke Detectors (Chapter 10) 1463
Adopted National Codes and Standards (Chapter 25) 1463
FIREFIGHTERS Pension and Retirement System, Oklahoma (Title 270)
Permanent Final Adoptions
Firefighters Pension and Retirement Plan (Chapter 10) 1560
GOVERNOR
Executive Orders
Temporarily suspending certain regulatory requirements as they apply to vehicles used for wildfire suppression in Georgia (07-18) 1699
Ordering flags at half-staff in recognition of Peace Officers Memorial Day (07-19) 1699
Designating Lieutenant Governor as Oklahoma's Small Business Advocate (07-20) 1700
Declaring disaster emergency caused by severe storms throughout entire state (07-21) 1700
Temporarily suspending certain regulatory requirements as they apply to vehicles used for storm relief in Kansas (07-22) 1700
HEALTH, Oklahoma State Department of (Title 310)
Gubernatorial Approvals
Procedures of the State Department of Health (Chapter 2) 1463
Vital Statistics (Chapter 105) 1464
Fee and Fine Schedule for Occupational Licensing (Chapter 110) 1464
Alarm and Locksmith Industry (Chapter 205) 1464
Barbers (Chapter 210) 1464
Body Piercing ~~Rules~~and Tattooing (Chapter 233) 1464
Medical Micropigmentation (Chapter 234) 1465
Hearing Aid Dealers and Fitters (Chapter 265) 1465
Home Inspection Industry (Chapter 276) 1465
Registration of Sanitarians and Environmental Specialists (Chapter 345) 1466
Licensed Marital and Family Therapists (Chapter 400) 1466
Licensed Behavioral Practitioners (Chapter 403) 1466
Licensed Professional Counselors (Chapter 405) 1466
Licensed Genetic Counselors (Chapter 406) 1467
Communicable Disease and Injury Reporting (Chapter 515) 1467
Control and Treatment of Communicable Disease (Chapter 521) 1467
Dental Services (Chapter 526) 1467
Alternatives to Abortion Service (Chapter 527) 1468
Immunizations (Chapter 535) 1468
State Central Cancer Registry (Chapter 567) 1468
Emergency Medical Services (Chapter 641) 1468
Hospice (Chapter 661) 1469
Home Care Agencies (Chapter 662) 1469
Continuum of Care and Assisted Living (Chapter 663) 1469
Home Care Administrator Certification (Chapter 664) 1469
Hospital Standards (Chapter 667) 1469
Uncompensated Care Fund [REVOKED] (Chapter 668) 1470
Trauma Care Assistance Revolving Fund (Chapter 669) 1470
Nursing and Specialized Facilities (Chapter 675) 1470
Nurse Aide Training and Certification (Chapter 677) 1471
HUMAN Services, Department of (Title 340)
Withdrawn Rules
Administrative Components (Chapter 2) 1477
Public Assistance Procedures (Chapter 65) 1477

INSURANCE Board, Oklahoma State and Education Employees Group (Title 360)
Gubernatorial Approvals
Administrative Operations (Chapter 1) 1471
State and Education Employees Health, ~~Life, and~~ Dental, Vision and Life Plans (Chapter 10) 1471
The Disability ~~Program~~Plan (Chapter 15) 1472
Permanent Final Adoptions
Administrative Operations (Chapter 1) 1569
State and Education Employees Health, ~~Life, and~~ Dental, Vision and Life Plans (Chapter 10) 1573
The Disability ~~Program~~Plan (Chapter 15) 1592
INVESTIGATION, Oklahoma State Bureau of (Title 375)
Permanent Final Adoptions
Records Retention and Destruction (Chapter 8) 1597
Oklahoma Reward System (Chapter 15) 1597
LABOR, Department of (Title 380)
Gubernatorial Approvals
Protection of Labor (Chapter 30) 1472
Elevator Safety Act Rules (Chapter 70) 1472
MEDICAL Licensure and Supervision, State Board of (Title 435)
Gubernatorial Approvals
Physicians and Surgeons (Chapter 10) 1473
Physical Therapist and Assistants (Chapter 20) 1473
Registered Electrologists (Chapter 40) 1473
Licensed Orthotists and Prosthetists and Registered Technicians and Assistants (Chapter 55) 1473
MINES, Department of (Title 460)
Submissions for Review
Non-Coal Rules and Regulations (Chapter 10) 1461
The Permanent Regulations Governing the Coal Reclamation Act of 1979 (Chapter 20) 1461
LONG-TERM Care Administrators, Oklahoma State Board of Examiners for (Title 490)
Permanent Final Adoptions
Administrative Operations (Chapter 1) 1599
~~Rules and Regulations for Nursing Home~~ Long Term Care Administrators (Chapter 10) 1608
PERSONNEL Management, Office of (Title 530)
Gubernatorial Approvals
Merit System of Personnel Administration Rules (Chapter 10) 1473
Permanent Final Adoptions
Merit System of Personnel Administration Rules (Chapter 10) 1621
PUBLIC Employees Relations Board (Title 585)
Gubernatorial Approvals
Operations (Chapter 1) 1473
Operations Under the FPAA and the MECBA (Chapter 2) 1474
Unfair Labor Practice Charges [REVOKED] (Chapter 10) 1474
Certification Cases [REVOKED] (Chapter 15) 1474
Unfair Labor Practice and Prohibited Practice Charges (Chapter 30) 1474
Certification Cases (Chapter 35) 1474
Permanent Final Adoptions
Operations (Chapter 1) 1624
Operations Under the FPAA and the MECBA (Chapter 2) 1630
Unfair Labor Practice Charges [REVOKED] (Chapter 10) 1638
Certification Cases [REVOKED] (Chapter 15) 1640
Unfair Labor Practice and Prohibited Practice Charges (Chapter 30) 1644
Certification Cases (Chapter 35) 1645
REHABILITATION Services, State Department of (Title 612)
Permanent Final Adoptions
Administrative Operations (Chapter 1) 1651
Vocational Rehabilitation and Visual Services (Chapter 10) 1652, 1668
Special Schools (Chapter 20) 1687
TAX Commission, Oklahoma (Title 710)
Permanent Final Adoptions
Administrative Operations (Chapter 1) 1688
Coin Operated Vending Devices (Chapter 25) 1691
TEACHERS' Retirement System (Title 715)
Permanent Final Adoptions
General Operations (Chapter 10) 1692
TEXTBOOK Committee, State (Title 720)
Permanent Final Adoptions
Textbook Selection (Chapter 10) 1696
TRANSPORTATION, Department of (Title 730)
Gubernatorial Approvals
Department Programs (Chapter 10) 1475
Permanent Final Adoptions
Department Programs (Chapter 10) 1697

Rules Affected Index

[(E) = Emergency action]

Rule		Register Page
10:15-33-7.	[AMENDED] (E)	25
25:20-1-1.	[REVOKED] (E)	71
25:20-1-2.	[REVOKED] (E)	71
25:20-1-3.	[REVOKED] (E)	72
25:20-1-4.	[REVOKED] (E)	72
25:20-1-5.	[REVOKED] (E)	72
25:20-1-6.	[NEW] (E)	72
25:20-1-7.	[NEW] (E)	72
25:20-1-8.	[NEW] (E)	73
25:20-1-9.	[NEW] (E)	73
25:20-1-10.	[NEW] (E)	73
35:10-7-15.	[AMENDED] (E)	7
35:15-14-1.	[RESERVED] (E)	575
35:15-14-2.	[NEW] (E)	575
35:15-42-1.	[AMENDED] (E)	8
35:15-42-34.	[AMENDED] (E)	9
35:15-42-37.	[AMENDED] (E)	9
35:15-42-39.	[AMENDED] (E)	10
35:15-42-41.	[AMENDED] (E)	10
35:15-42-43.	[AMENDED] (E)	10
35:15-42-44.	[AMENDED] (E)	11
35:15-42-51.	[AMENDED] (E)	11
35:15-44-1.	[NEW] (E)	373
35:15-44-2.	[NEW] (E)	373
35:15-44-3.	[NEW] (E)	373
35:15-44-4.	[NEW] (E)	374
35:15-44-5.	[NEW] (E)	374
35:15-44-6.	[NEW] (E)	374
35:15-44-7.	[NEW] (E)	375
35:15-44-8.	[NEW] (E)	375
35:15-44-9.	[NEW] (E)	375
35:15-44-10.	[NEW] (E)	375
35:15-44-11.	[NEW] (E)	375
35:15-44-12.	[NEW] (E)	375
35:15-44-13.	[NEW] (E)	376
35:15-44-14.	[NEW] (E)	376
35:15-44-15.	[NEW] (E)	376
35:15-44-16.	[NEW] (E)	376
35:15-44-17.	[NEW] (E)	376
35:15-44-18.	[NEW] (E)	376
35:15-44-19.	[NEW] (E)	376
35:15-44-20.	[RESERVED] (E)	377
35:15-45-131.	[AMENDED] (E)	809
35:15-45-132.	[AMENDED] (E)	809
40:25-1-2.	[AMENDED] (E)	285
40:25-1-3.	[AMENDED] (E)	285
40:30-1-3.	[AMENDED] (E)	286
40:50-1-1.	[AMENDED] (E)	287
40:50-1-2.	[AMENDED] (E)	292
40:50-1-3.	[AMENDED] (E)	292
40:50-1-4.	[AMENDED] (E)	293
40:50-1-5.	[AMENDED] (E)	294
40:50-1-7.	[AMENDED] (E)	294
40:50-1-8.	[AMENDED] (E)	296
40:50-1-9.	[AMENDED] (E)	296
40:50-1-11.	[AMENDED] (E)	297
55:10-1-1.	[AMENDED]	815
55:10-1-3.	[AMENDED]	815
55:10-1-4.	[AMENDED]	818
55:10-3-1.	[AMENDED]	818
55:10-3-2.	[AMENDED]	818
55:10-3-3.	[AMENDED]	818
55:10-3-4.	[AMENDED]	818
55:10-3-6.	[AMENDED]	818
55:10-3-7.	[AMENDED]	818
55:10-3-8.	[AMENDED]	819
55:10-3-9.	[AMENDED]	819
55:10-3-10.	[AMENDED]	819
55:10-3-11.	[AMENDED]	819
55:10-3-12.	[AMENDED]	819
55:10-3-13.	[AMENDED]	819
55:10-5-2.	[AMENDED]	820
55:10-5-3.	[AMENDED]	820
55:10-5-4.	[AMENDED]	820
55:10-5-5.	[AMENDED]	820
55:10-5-6.	[AMENDED]	820
55:10-5-7.	[AMENDED]	821
55:10-5-8.	[AMENDED]	821
55:10-5-9.	[REVOKED]	821
55:10-5-10.	[NEW]	822
55:10-5-11.	[NEW]	823
55:10-7-1.	[AMENDED]	824
55:10-7-2.	[AMENDED]	825
55:10-7-3.	[AMENDED]	825
55:10-7-5.	[AMENDED]	825
55:10-7-6.	[AMENDED]	825
55:10-7-7.	[AMENDED]	825
55:10-7-8.	[AMENDED]	825
55:10-7-9.	[AMENDED]	825
55:10-9-1.	[AMENDED]	826
55:10-9-2.	[AMENDED]	826
55:10-9-3.	[AMENDED]	826
55:10-9-4.	[AMENDED]	826
55:10-9-5.	[AMENDED]	826
55:10-9-6.	[AMENDED]	826
55:10-9-7.	[AMENDED]	826
55:10-9-8.	[AMENDED]	827
55:10-9-9.	[AMENDED]	827
55:10-9-10.	[AMENDED]	827
55:10-9-11.	[NEW]	828
55:10-11-1.	[AMENDED]	828
55:10-11-2.	[AMENDED]	828
55:10-11-3.	[AMENDED]	828
55:10-11-4.	[AMENDED]	828
55:10-11-5.	[AMENDED]	829
55:10-11-6.	[AMENDED]	829
55:10-11-7.	[AMENDED]	829
55:10-11-8.	[AMENDED]	830
55:10-11-9.	[AMENDED]	830
55:10-11-10.	[AMENDED]	830
55:10-11-11.	[AMENDED]	831
55:10-11-12.	[AMENDED]	831
55:10-13-1.	[AMENDED]	831
55:10-13-2.	[AMENDED]	831
55:10-13-3.	[AMENDED]	831
55:10-13-4.	[AMENDED]	831
55:10-13-5.	[AMENDED]	831
55:10-13-6.	[AMENDED]	832
55:10-13-7.	[AMENDED]	832
55:10-13-8.	[AMENDED]	832
55:10-13-9.	[AMENDED]	833
55:10-13-10.	[AMENDED]	833

55:10-13-11. [AMENDED] 833
55:10-13-12. [AMENDED] 833
55:10-13-13. [AMENDED] 833
55:10-13-14. [AMENDED] 833
55:10-13-15. [AMENDED] 833
55:10-13-16. [AMENDED] 833
55:10-13-17. [AMENDED] 834
55:10-13-18. [AMENDED] 834
55:10-13-19. [AMENDED] 834
55:10-13-20. [AMENDED] 834
55:10-13-21. [AMENDED] 834
55:10-15-1. [AMENDED] 834
55:10-15-2. [AMENDED] 835
55:10-15-3. [AMENDED] 835
55:10-15-4. [AMENDED] 835
55:10-15-5. [AMENDED] 835
55:10-15-6. [AMENDED] 836
55:10-15-7. [AMENDED] 836
55:10-15-8. [AMENDED] 836
55:10-15-9. [AMENDED] 837
55:10-15-11. [AMENDED] 837
55:10-15-12. [AMENDED] 837
55:10-15-13. [AMENDED] 837
55:10-15-14. [AMENDED] 837
55:10-15-15. [AMENDED] 837
55:10-15-18. [AMENDED] 838
55:10-15-19. [AMENDED] 838
55:10-15-21. [AMENDED] 839
55:10-15-22. [AMENDED] 839
55:10-15-23. [AMENDED] 839
55:10-15-24. [AMENDED] 839
55:10-15-25. [AMENDED] 839
55:10-17-1. [AMENDED] 840
55:10-17-2. [AMENDED] 840
55:10-17-3. [AMENDED] 840
55:10-17-4. [AMENDED] 840
55:10-17-5. [AMENDED] 840
55:10-17-6. [AMENDED] 840
55:10-17-7. [AMENDED] 841
55:10-17-8. [AMENDED] 841
55:10-17-9. [AMENDED] 842
55:10-17-10. [AMENDED] 842
55:10-17-11. [AMENDED] 842
55:10-17-12. [AMENDED] 842
85:15-1-1. [NEW] 844
85:15-1-2. [NEW] 844
85:15-1-3. [NEW] 845
85:15-3-1. [NEW] 846
85:15-3-2. [NEW] 846
85:15-3-3. [NEW] 847
85:15-3-4. [NEW] 847
85:15-3-5. [NEW] 847
85:15-3-6. [NEW] 848
85:15-5-1. [NEW] 848
85:15-5-2. [NEW] 848
85:15-7-1. [NEW] 848
85:15-7-2. [NEW] 848
85:15-7-3. [NEW] 849
85:15-7-4. [NEW] 849
85:15-7-5. [NEW] 849
85:15-7-6. [NEW] 850
85:15-9-1. [NEW] 850
85:15-9-2. [NEW] 850
85:15-11-1. [NEW] 850
85:15-11-2. [NEW] 851
85:15-11-3. [NEW] 851
85:15-11-4. [NEW] 851
85:15-11-5. [NEW] 851
85:15-11-6. [NEW] 852
92:10-1-4. [AMENDED] (E) 59
150:1-9-10. [NEW] 1201
150:1-19-3. [AMENDED] 1202
150:65-1-2. [AMENDED] 1203
150:65-1-3. [AMENDED] 1205
150:65-1-4. [AMENDED] 1205
150:65-5-2. [AMENDED] 1206
150:65-5-5. [AMENDED] 1206
150:65-6-4. [AMENDED] 1206
150:90-1-3. [AMENDED] 1207
150:90-1-4. [AMENDED] 1207
150:90-1-6. [AMENDED] 1208
150:90-1-7. [AMENDED] 1208
150:90-1-8. [AMENDED] 1208
150:115-1-2. [AMENDED] 1209
150:125-1-1. [NEW] 1210
150:125-1-2. [NEW] 1210
150:125-1-3. [NEW] 1210
150:125-1-4. [NEW] 1210
150:125-1-5. [NEW] 1210
158:1-1-2. [AMENDED] 1211
158:20-1-1. [REVOKED] 1211
158:20-1-2. [REVOKED] 1211
158:20-1-3. [REVOKED] 1212
158:20-3-1. [REVOKED] 1212
158:40-5-4. [AMENDED] 1213
158:40-7-6. [NEW] 1213
160:55-3-1.4. [AMENDED] (E) 181
165:10-12-1. [NEW] (E) 183
165:10-12-2. [NEW] (E) 183
165:10-12-3. [NEW] (E) 184
165:10-12-4. [NEW] (E) 184
165:10-12-5. [NEW] (E) 184
165:10-12-6. [NEW] (E) 184
165:10-12-7. [NEW] (E) 184
165:10-12-8. [NEW] (E) 185
165:10-12-9. [NEW] (E) 185
165:10-12-10. [NEW] (E) 185
165:26-10-2. [AMENDED] 1479
165:26-12-1. [AMENDED] 1480
165:26-12-2. [AMENDED] 1480
175:10-3-16. [AMENDED] 852
175:10-3-31. [AMENDED] 853
175:10-3-34. [AMENDED] 853
175:10-3-37. [AMENDED] 855
175:10-3-38. [AMENDED] 855
175:10-3-41. [AMENDED] 856
175:10-3-43. [AMENDED] 857
175:10-3-55. [AMENDED] 857
175:10-3-56. [AMENDED] 857
175:10-3-60. [AMENDED] 858
175:10-7-28. [NEW] 858
175:10-9-1. [AMENDED] 858
175:10-9-25. [AMENDED] 859
175:10-9-26. [AMENDED] 860
175:10-11-2. [AMENDED] 860
175:10-13-1. [AMENDED] 860
195:10-11-10. [AMENDED] 1480
210:10-1-13. [AMENDED] (E) 576
210:10-1-13. [AMENDED] 1213
210:10-11-1. [REVOKED] 1482
210:10-11-2. [REVOKED] 1482
210:10-11-3. [REVOKED] 1483
210:10-11-4. [REVOKED] 1483
210:10-11-5. [REVOKED] 1483

210:10-11-6. . . . . [REVOKED] 1483
210:10-11-7. . . . . [REVOKED] 1483
210:15-3-51. . . . . [AMENDED] (E) 137
210:15-3-51. . . . . [AMENDED] 1216
210:15-3-52. . . . . [AMENDED] 1484
210:15-3-53. . . . . [AMENDED] 1486
210:15-11-3. . . . . [NEW] (E) 60
210:15-11-3. . . . . [NEW] 1218
210:15-19-6. . . . . [AMENDED] 1219
210:20-9-98. . . . . [AMENDED] (E) 139
210:20-9-98. . . . . [AMENDED] 1220
210:20-9-99.1. . . . . [NEW] (E) 578
210:20-9-99.1. . . . . [NEW] 1221
210:20-19-2. . . . . [AMENDED] (E) 61
210:20-19-2. . . . . [AMENDED] 1222
210:20-19-3. . . . . [AMENDED] (E) 61
210:20-19-3. . . . . [AMENDED] 1222
210:20-19-4. . . . . [AMENDED] (E) 62
210:20-19-4. . . . . [AMENDED] 1223
210:20-26-3. . . . . [AMENDED] (E) 186
210:20-26-3. . . . . [AMENDED] 1224
210:25-3-5. . . . . [AMENDED] 1225
210:30-5-1. . . . . [AMENDED] 1225
210:35-3-87. . . . . [REVOKED] 1488
210:35-3-109. . . . . [NEW] (E) 1177
210:35-5-45. . . . . [AMENDED] 1488
210:35-7-44. . . . . [AMENDED] 1489
210:40-87-1. . . . . [AMENDED] (E) 140
210:40-87-1. . . . . [AMENDED] 1231
210:40-87-2. . . . . [REVOKED] (E) 140
210:40-87-2. . . . . [REVOKED] 1231
210:40-87-3. . . . . [AMENDED] (E) 140
210:40-87-3. . . . . [AMENDED] 1231
210:40-87-4. . . . . [AMENDED] (E) 141
210:40-87-4. . . . . [AMENDED] 1232
230:10-5-2. . . . . [AMENDED] 1490
230:10-7-3. . . . . [AMENDED] 1490
230:10-7-44. . . . . [AMENDED] 1490
230:15-9-25. . . . . [AMENDED] 1491
230:15-9-31. . . . . [AMENDED] 1492
230:20-3-44. . . . . [NEW] 1493
230:25-7-3. . . . . [AMENDED] 1494
230:25-9-3. . . . . [AMENDED] 1494
230:25-13-1.1. . . . . [AMENDED] 1495
230:25-13-1.2. . . . . [AMENDED] 1495
230:25-13-12. . . . . [NEW] 1496
230:25-17-2. . . . . [AMENDED] 1496
230:25-19-2. . . . . [AMENDED] 1496
230:25-19-3. . . . . [AMENDED] 1496
230:30-7-4. . . . . [AMENDED] 1497
230:35-3-56.1. . . . . [NEW] 1498
230:35-3-71. . . . . [NEW] 1498
230:35-5-119. . . . . [AMENDED] 1499
230:35-5-177. . . . . [AMENDED] 1500
230:40-7-35. . . . . [AMENDED] 1501
230:45-3-14. . . . . [AMENDED] 1502
230:50-9-1. . . . . [NEW] 1503
230:50-9-2. . . . . [NEW] 1503
230:50-9-3. . . . . [NEW] 1503
230:50-9-4. . . . . [NEW] 1504
230:50-9-5. . . . . [NEW] 1504
230:50-9-6. . . . . [NEW] 1505
230:50-9-7. . . . . [NEW] 1505
230:50-9-8. . . . . [NEW] 1505
230:50-9-9. . . . . [NEW] 1505
235:10-13-10. . . . . [AMENDED] (E) 27
235:10-13-10. . . . . [AMENDED] 862
235:10-13-11. . . . . [AMENDED] (E) 27
235:10-13-11. . . . . [AMENDED] 862
235:10-13-12. . . . . [AMENDED] (E) 27
235:10-13-12. . . . . [AMENDED] 863
235:10-13-13. . . . . [AMENDED] (E) 28
235:10-13-13. . . . . [AMENDED] 863
235:10-13-14. . . . . [AMENDED] (E) 28
235:10-13-14. . . . . [AMENDED] 863
240:1-1-5. . . . . [AMENDED] 1232
240:1-3-3. . . . . [AMENDED] 1232
240:1-3-5. . . . . [AMENDED] 1232
240:1-3-6. . . . . [AMENDED] 1233
240:10-1-2. . . . . [AMENDED] 1233
240:10-1-3. . . . . [AMENDED] 1235
240:10-3-2. . . . . [AMENDED] 1235
240:10-3-10. . . . . [AMENDED] 1235
240:10-3-12. . . . . [AMENDED] 1236
240:10-3-20. . . . . [AMENDED] 1236
240:10-3-22. . . . . [AMENDED] 1236
240:10-3-23. . . . . [AMENDED] 1237
240:10-3-24. . . . . [AMENDED] 1237
240:10-3-26. . . . . [AMENDED] 1238
240:10-3-27. . . . . [AMENDED] 1239
240:10-3-28. . . . . [AMENDED] 1239
240:10-3-30. . . . . [AMENDED] 1240
240:10-3-35. . . . . [AMENDED] 1240
240:10-3-42. . . . . [AMENDED] 1240
240:10-3-43. . . . . [AMENDED] 1240
240:10-3-52. . . . . [AMENDED] 1240
240:10-3-63. . . . . [AMENDED] 1241
240:10-3-65. . . . . [AMENDED] 1241
240:10-5-10. . . . . [AMENDED] 1241
240:10-5-13. . . . . [REVOKED] 1241
240:10-11-3. . . . . [AMENDED] 1242
240:10-11-25. . . . . [AMENDED] 1242
240:10-11-30. . . . . [AMENDED] 1242
240:10-13-20. . . . . [AMENDED] 1243
240:10-13-39. . . . . [AMENDED] 1243
240:10-13-40. . . . . [AMENDED] 1243
240:10-13-60. . . . . [AMENDED] 1243
240:15-1-7. . . . . [AMENDED] 1244
245:2-1-18. . . . . [AMENDED] (E) 810
245:15-13-1. . . . . [AMENDED] 863
245:15-13-2. . . . . [AMENDED] 864
245:15-17-2. . . . . [AMENDED] 866
252:4-3-1. . . . . [AMENDED] 1245
252:4-7-51. . . . . [AMENDED] (E) 579
252:4-7-51. . . . . [AMENDED] 1245
252:4-7-52. . . . . [AMENDED] (E) 579
252:4-7-52. . . . . [AMENDED] 1246
252:4-7-53. . . . . [AMENDED] (E) 580
252:4-7-53. . . . . [AMENDED] 1246
252:4-17-1. . . . . [NEW] 1507
252:4-17-2. . . . . [NEW] 1507
252:4-17-3. . . . . [NEW] 1508
252:4-17-4. . . . . [NEW] 1508
252:4-17-5. . . . . [NEW] 1508
252:4-17-6. . . . . [NEW] 1508
252:4-17-7. . . . . [NEW] 1508
252:4, App. E. . . . . [NEW] 1509
252:100-8-72. . . . . [NEW] (E) 299
252:100-2-1. . . . . [NEW] 1247
252:100-2-2. . . . . [RESERVED] 1247
252:100-2-3. . . . . [NEW] 1247
252:100-4-1. . . . . [REVOKED] 1247
252:100-4-3. . . . . [REVOKED] 1247
252:100-4-5. . . . . [REVOKED] 1248

252:100-5-1.1. . . . . [AMENDED] 1267
252:100-5-2.1. . . . . [AMENDED] 1273
252:100-7-1.1. . . . . [AMENDED] 1268
252:100-8-70. . . . . [NEW] (E) 298
252:100-8-70. . . . . [NEW] 1275
252:100-8-71. . . . . [NEW] (E) 298
252:100-8-71. . . . . [NEW] 1275
252:100-8-72. . . . . [NEW] 1276
252:100-8-73. . . . . [NEW] (E) 299
252:100-8-73. . . . . [NEW] 1276
252:100-8-74. . . . . [NEW] (E) 299
252:100-8-74. . . . . [NEW] 1276
252:100-8-75. . . . . [NEW] (E) 300
252:100-8-75. . . . . [NEW] 1276
252:100-8-76. . . . . [NEW] (E) 300
252:100-8-76. . . . . [NEW] 1277
252:100-8-77. . . . . [NEW] (E) 300
252:100-8-77. . . . . [NEW] 1277
252:100-8-78. . . . . [NEW] (E) 300
252:100-8-78. . . . . [NEW] 1277
252:100-9-2. . . . . [AMENDED] 1269
252:100-17-61. . . . . [AMENDED] 1278
252:100-17-90. . . . . [NEW] 1279
252:100-17-91. . . . . [NEW] 1279
252:100-17-92. . . . . [NEW] 1279
252:100-17-93. . . . . [NEW] 1279
252:100-17-94. . . . . [NEW] 1280
252:100-17-95. . . . . [NEW] 1280
252:100-17-96. . . . . [NEW] 1281
252:100-17-97. . . . . [NEW] 1281
252:100-17-98. . . . . [NEW] 1281
252:100-17-99. . . . . [NEW] 1281
252:100-17-100. . . . . [NEW] 1281
252:100-17-101. . . . . [NEW] 1281
252:100-17-102. . . . . [NEW] 1281
252:100-17-103. . . . . [NEW] 1281
252:100-17-104. . . . . [NEW] 1281
252:100-17-105. . . . . [NEW] 1281
252:100-17-106. . . . . [NEW] 1282
252:100-17-107. . . . . [NEW] 1282
252:100-17-108. . . . . [NEW] 1282
252:100-23-2. . . . . [AMENDED] 1269
252:100-40-1. . . . . [NEW] 1248
252:100-40-2. . . . . [RESERVED] 1248
252:100-40-3. . . . . [NEW] 1248
252:100-40-4. . . . . [RESERVED] 1248
252:100-40-5. . . . . [NEW] 1248
252:100-41-1. . . . . [REVOKED] 1248
252:100-41-1.1. . . . . [REVOKED] 1248
252:100-41-2. . . . . [REVOKED] 1248
252:100-41-13. . . . . [REVOKED] 1250
252:100-41-14. . . . . [REVOKED] 1250
252:100-41-15. . . . . [REVOKED] 1250
252:100-41-16. . . . . [REVOKED] 1250
252:100-41-35. . . . . [REVOKED] 1250
252:100-41-36. . . . . [REVOKED] 1250
252:100-41-37. . . . . [REVOKED] 1250
252:100-41-38. . . . . [REVOKED] 1251
252:100-41-39. . . . . [REVOKED] 1251
252:100-41-40. . . . . [REVOKED] 1251
252:100-41-41. . . . . [REVOKED] 1251
252:100-41-42. . . . . [REVOKED] 1251
252:100-41-43. . . . . [REVOKED] 1252
252:100-41-44. . . . . [REVOKED] 1252
252:100, App. P. . . . . [NEW] 1271
252:100, App. Q. . . . . [NEW] 1253
252:205-3-1. . . . . [AMENDED] (E) 581
252:205-3-1. . . . . [AMENDED] 1282
252:205-3-2. . . . . [AMENDED] (E) 581
252:205-3-2. . . . . [AMENDED] 1283
252:210-1-1. . . . . [NEW] (E) 582
252:210-1-1. . . . . [NEW] 1513
252:210-1-2. . . . . [NEW] (E) 582
252:210-1-2. . . . . [NEW] 1513
252:210-1-3. . . . . [NEW] (E) 583
252:210-1-3. . . . . [NEW] 1514
252:210-1-4. . . . . [NEW] (E) 583
252:210-1-4. . . . . [NEW] 1514
252:210-1-5. . . . . [NEW] (E) 583
252:210-1-5. . . . . [NEW] 1514
252:210-1-6. . . . . [NEW] (E) 584
252:210-1-6. . . . . [NEW] 1514
252:210-1-7. . . . . [NEW] (E) 584
252:210-1-7. . . . . [NEW] 1515
252:210-1-8. . . . . [NEW] (E) 584
252:210-1-8. . . . . [NEW] 1515
252:300-17-3. . . . . [AMENDED] 1284
252:300-19-3. . . . . [AMENDED] 1284
252:300-19-4. . . . . [NEW] 1516
252:300-21-1. . . . . [AMENDED] 1516
252:300-21-2. . . . . [AMENDED] 1516
252:300, App. B. . . . . [REVOKED] 1286
252:300, App. B. . . . . [NEW] 1286
252:300, App. B. . . . . [REVOKED] 1517
252:300, App. B. . . . . [NEW] 1517
252:410-1-7. . . . . [AMENDED] 1290
252:410-5-3. . . . . [AMENDED] 1521
252:410-10-1. . . . . [AMENDED] 1290
252:410-10-30. . . . . [AMENDED] 1292
252:410-10-31. . . . . [AMENDED] 1292
252:410-10-32. . . . . [AMENDED] 1293
252:410-10-34. . . . . [AMENDED] 1293
252:410-10-35. . . . . [AMENDED] 1294
252:410-10-39. . . . . [AMENDED] 1296
252:410-10-70. . . . . [AMENDED] 1297
252:410-10-71. . . . . [AMENDED] 1297
252:410-10-118. . . . . [AMENDED] 1522
252:410-20-1. . . . . [AMENDED] 1298
252:515-19-1. . . . . [AMENDED] 1300
252:515-19-131. . . . . [NEW] 1300
252:515-19-132. . . . . [NEW] 1300
252:515-19-133. . . . . [NEW] 1300
252:515-19-134. . . . . [NEW] 1300
252:515-19-135. . . . . [NEW] 1300
252:515-19-136. . . . . [NEW] 1301
252:515-19-137. . . . . [NEW] 1301
252:515-19-138. . . . . [NEW] 1301
252:606-1-3. . . . . [AMENDED] 1523
252:606-1-4. . . . . [AMENDED] 1525
252:611-1-3. . . . . [AMENDED] 1526
252:616-3-4. . . . . [AMENDED] 1526
252:616-11-1. . . . . [AMENDED] 1527
252:616-11-5. . . . . [AMENDED] 1527
252:616-11-7. . . . . [NEW] 1527
252:616-11-8. . . . . [NEW] 1528
252:616-13-3. . . . . [AMENDED] 1528
252:616, App. D. . . . . [NEW] 1531
252:616, App. E. . . . . [NEW] 1533
252:623-1-3. . . . . [AMENDED] 1535
252:623-1-4. . . . . [AMENDED] 1535
252:623-1-7. . . . . [AMENDED] 1538
252:623-5-3. . . . . [AMENDED] 1538
252:623-7-4. . . . . [AMENDED] 1538
252:623-9-2. . . . . [AMENDED] 1539

252:623-11-7. . . . . [AMENDED] 1539
252:623-15-1. . . . . [AMENDED] 1540
252:626-3-10. . . . . [AMENDED] 1540
252:631-1-3. . . . . [AMENDED] 1541
252:690-1-2. . . . . [AMENDED] 1543
252:690-1-3. . . . . [AMENDED] 1545
252:690-1-4. . . . . [AMENDED] 1547
252:690-3-2. . . . . [AMENDED] 1549
252:690-3-3. . . . . [AMENDED] 1549
252:690-3-10. . . . . [AMENDED] 1549
252:690-3-14. . . . . [AMENDED] 1549
252:690-3-19. . . . . [AMENDED] 1549
252:690-3-26. . . . . [AMENDED] 1549
252:690-3-29. . . . . [AMENDED] 1550
252:690-3-31. . . . . [AMENDED] 1550
252:690-3-32. . . . . [AMENDED] 1550
252:690-3-41. . . . . [AMENDED] 1551
252:690-3-42. . . . . [AMENDED] 1551
252:690-3-91. . . . . [AMENDED] 1551
252:690, App. I. . . . . [REVOKED] 1553
252:690, App. I. . . . . [NEW] 1553
252:710-1-4. . . . . [AMENDED] 1556
252:710-7-1. . . . . [NEW] 1557
252:710-7-2. . . . . [NEW] 1557
252:710, App. A. . . . . [REVOKED] 1559
252:710, App. A. . . . . [NEW] 1559
270:10-1-5. . . . . [AMENDED] 1560
270:10-1-9. . . . . [AMENDED] 1568
310:205-1-1. . . . . [AMENDED] (E) 585
310:205-1-2. . . . . [AMENDED] (E) 585
310:205-1-3. . . . . [AMENDED] (E) 588
310:205-1-3.1. . . . . [AMENDED] (E) 589
310:205-3-1. . . . . [AMENDED] (E) 589
310:205-3-2. . . . . [AMENDED] (E) 589
310:205-3-3. . . . . [AMENDED] (E) 591
310:205-3-4. . . . . [AMENDED] (E) 592
310:205-3-5. . . . . [AMENDED] (E) 594
310:205-3-7. . . . . [AMENDED] (E) 595
310:205-3-8. . . . . [NEW] (E) 596
310:205-3-9. . . . . [NEW] (E) 597
310:205-3-10. . . . . [NEW] (E) 598
310:205-3-11. . . . . [NEW] (E) 598
310:205-5-1. . . . . [AMENDED] (E) 599
310:205-7-1. . . . . [AMENDED] (E) 600
310:205-7-2. . . . . [AMENDED] (E) 601
310:233-1-1. . . . . [AMENDED] (E) 187
310:233-1-2. . . . . [AMENDED] (E) 187
310:233-3-1. . . . . [AMENDED] (E) 189
310:233-3-2. . . . . [AMENDED] (E) 189
310:233-3-3. . . . . [AMENDED] (E) 189
310:233-3-4. . . . . [AMENDED] (E) 190
310:233-3-5. . . . . [AMENDED] (E) 190
310:233-3-6. . . . . [AMENDED] (E) 190
310:233-3-7. . . . . [AMENDED] (E) 191
310:233-5-1. . . . . [AMENDED] (E) 191
310:233-5-2. . . . . [AMENDED] (E) 192
310:233-7-1. . . . . [AMENDED] (E) 192
310:233-7-2. . . . . [NEW] (E) 193
310:233-9-1. . . . . [AMENDED] (E) 193
310:233-9-2. . . . . [AMENDED] (E) 193
310:233-9-3. . . . . [AMENDED] (E) 195
310:233-9-4. . . . . [NEW] (E) 195
310:233-9-5. . . . . [NEW] (E) 195
310:233-9-6. . . . . [NEW] (E) 195
310:233-9-7. . . . . [NEW] (E) 195
310:233-9-8. . . . . [NEW] (E) 196
310:233-11-1. . . . . [AMENDED] (E) 196
310:233-11-2. . . . . [AMENDED] (E) 196
310:233-11-3. . . . . [AMENDED] (E) 197
310:233-11-4. . . . . [AMENDED] (E) 197
310:234-1-2. . . . . [AMENDED] (E) 1178
310:234-3-2. . . . . [AMENDED] (E) 1179
310:234-3-3. . . . . [AMENDED] (E) 1180
310:234-3-3.1. . . . . [AMENDED] (E) 1180
310:234-3-4. . . . . [AMENDED] (E) 1180
310:234-3-5. . . . . [AMENDED] (E) 1181
310:234-7-1. . . . . [AMENDED] (E) 1182
310:234-7-2. . . . . [AMENDED] (E) 1182
310:234-11-4. . . . . [NEW] (E) 1183
310:406-1-1. . . . . [NEW] (E) 198
310:406-1-2. . . . . [NEW] (E) 198
310:406-3-1. . . . . [NEW] (E) 198
310:406-3-2. . . . . [NEW] (E) 198
310:406-3-3. . . . . [NEW] (E) 199
310:406-3-4. . . . . [NEW] (E) 199
310:406-3-5. . . . . [NEW] (E) 199
310:406-5-1. . . . . [NEW] (E) 199
310:406-5-2. . . . . [NEW] (E) 199
310:406-5-3. . . . . [NEW] (E) 199
310:406-5-4. . . . . [NEW] (E) 200
310:406-7-1. . . . . [NEW] (E) 200
310:406-7-2. . . . . [NEW] (E) 200
310:406-7-3. . . . . [NEW] (E) 200
310:406-9-1. . . . . [NEW] (E) 201
310:406-11-1. . . . . [NEW] (E) 201
310:406-13-1. . . . . [NEW] (E) 201
310:406-13-2. . . . . [NEW] (E) 201
310:406-13-3. . . . . [NEW] (E) 201
310:406-13-4. . . . . [NEW] (E) 201
310:406-13-5. . . . . [NEW] (E) 201
310:406-17-1. . . . . [NEW] (E) 201
310:406-17-2. . . . . [NEW] (E) 201
310:406-17-3. . . . . [NEW] (E) 201
310:406-17-4. . . . . [NEW] (E) 201
310:406-17-5. . . . . [NEW] (E) 201
310:406-17-6. . . . . [NEW] (E) 201
310:406-19-1. . . . . [NEW] (E) 202
310:406-19-2. . . . . [NEW] (E) 202
310:406-19-3. . . . . [NEW] (E) 202
310:406-19-4. . . . . [NEW] (E) 202
310:406-19-5. . . . . [NEW] (E) 202
310:406-19-6. . . . . [NEW] (E) 202
310:406-21-1. . . . . [NEW] (E) 202
310:406-21-2. . . . . [NEW] (E) 202
310:406-21-3. . . . . [NEW] (E) 202
310:406-21-4. . . . . [NEW] (E) 202
310:406-21-5. . . . . [NEW] (E) 202
310:406-21-6. . . . . [NEW] (E) 202
310:406-21-7. . . . . [NEW] (E) 202
310:406-21-8. . . . . [NEW] (E) 202
310:406-21-9. . . . . [NEW] (E) 203
310:406-21-10. . . . . [NEW] (E) 203
310:406-23-1. . . . . [NEW] (E) 203
310:406-23-2. . . . . [NEW] (E) 203
310:406-23-3. . . . . [NEW] (E) 203
310:406-23-4. . . . . [NEW] (E) 203
310:406-23-5. . . . . [NEW] (E) 203
310:406-23-6. . . . . [NEW] (E) 203
310:406-23-7. . . . . [NEW] (E) 203
310:406-23-8. . . . . [NEW] (E) 203
310:526-1-1. . . . . [NEW] (E) 204
310:526-1-2. . . . . [NEW] (E) 204
310:526-1-3. . . . . [NEW] (E) 204
310:526-3-1. . . . . [NEW] (E) 205

310:526-3-2. . . . . [NEW] (E) 205
310:526-3-3. . . . . [NEW] (E) 205
310:526-3-4. . . . . [NEW] (E) 206
310:526-3-5. . . . . [NEW] (E) 206
310:526-3-6. . . . . [NEW] (E) 206
310:527-1-1. . . . . [NEW] (E) 206
310:527-1-2. . . . . [NEW] (E) 206
310:527-1-3. . . . . [NEW] (E) 207
310:527-1-4. . . . . [NEW] (E) 207
310:527-1-5. . . . . [NEW] (E) 207
310:531-1-1. . . . . [NEW] 867
310:531-1-2. . . . . [NEW] 867
310:531-1-3. . . . . [NEW] 867
310:531-3-1. . . . . [NEW] 868
310:531-3-2. . . . . [NEW] 868
310:531-3-3. . . . . [NEW] 868
310:531-5-1. . . . . [NEW] 868
310:531-5-2. . . . . [NEW] 868
310:531-5-3. . . . . [NEW] 869
310:638-1-2. . . . . [AMENDED] (E) 1183
310:638-1-3. . . . . [AMENDED] (E) 1184
310:638-1-4. . . . . [AMENDED] (E) 1184
310:638-1-5. . . . . [AMENDED] (E) 1184
310:638-1-6.2. . . . . [NEW] (E) 1185
310:638-1-7.2. . . . . [NEW] (E) 1185
310:638-1-8.2. . . . . [NEW] (E) 1185
310:638-1-10. . . . . [AMENDED] (E) 1186
310:638-3-4. . . . . [REVOKED] (E) 1186
310:638-3-7. . . . . [AMENDED] (E) 1186
310:638-5-2. . . . . [AMENDED] (E) 1186
310:638-5-3. . . . . [AMENDED] (E) 1187
310:638-5-4. . . . . [AMENDED] (E) 1188
310:638-5-9. . . . . [AMENDED] (E) 1188
310:638-5-10. . . . . [AMENDED] (E) 1189
310:667-15-6. . . . . [AMENDED] (E) 1190
310:667-19-2. . . . . [AMENDED] (E) 1190
310:667-19-13. . . . . [AMENDED] (E) 1192
310:667-21-7. . . . . [AMENDED] (E) 1193
310:667-21-8. . . . . [AMENDED] (E) 1193
310:667-25-2. . . . . [AMENDED] (E) 1193
310:667-39-6. . . . . [AMENDED] (E) 1194
310:667-39-9. . . . . [AMENDED] (E) 1194
310:667-39-11. . . . . [AMENDED] (E) 1195
310:667-40-6. . . . . [AMENDED] (E) 1196
310:667-40-9. . . . . [AMENDED] (E) 1197
310:667-40-11. . . . . [AMENDED] (E) 1198
317:2-1-2. . . . . [AMENDED] (E) 301
317:2-1-2. . . . . [AMENDED] 869
317:2-1-5. . . . . [AMENDED] (E) 302
317:2-1-5. . . . . [AMENDED] 870
317:10-1-1. . . . . [AMENDED] 872
317:10-1-2. . . . . [AMENDED] 872
317:10-1-3. . . . . [AMENDED] 873
317:10-1-4. . . . . [AMENDED] 873
317:10-1-5. . . . . [AMENDED] 873
317:10-1-7. . . . . [AMENDED] 874
317:10-1-9. . . . . [AMENDED] 874
317:10-1-10. . . . . [AMENDED] 874
317:10-1-11. . . . . [AMENDED] 874
317:10-1-12. . . . . [AMENDED] 875
317:10-1-15. . . . . [AMENDED] 875
317:10-1-16. . . . . [AMENDED] 876
317:10-1-17. . . . . [AMENDED] 876
317:10-1-18. . . . . [AMENDED] 876
317:10-1-18.1. . . . . [AMENDED] 877
317:10-1-18.2. . . . . [AMENDED] 877
317:10-1-19. . . . . [AMENDED] 877
317:10-1-20. . . . . [AMENDED] 878
317:25-7-2. . . . . [AMENDED] (E) 74
317:25-7-10. . . . . [AMENDED] (E) 74
317:25-7-13. . . . . [AMENDED] (E) 76
317:25-7-13. . . . . [AMENDED] 879
317:30-3-40. . . . . [AMENDED] 880
317:30-3-57. . . . . [AMENDED] (E) 303
317:30-3-57. . . . . [AMENDED] (E) 655
317:30-3-59. . . . . [AMENDED] (E) 142
317:30-3-59. . . . . [AMENDED] 890
317:30-3-65.4. . . . . [AMENDED] (E) 76
317:30-3-65.4. . . . . [AMENDED] 893
317:30-5-2. . . . . [AMENDED] (E) 144
317:30-5-2. . . . . [AMENDED] (E) 312
317:30-5-2. . . . . [AMENDED] (E) 661
317:30-5-8. . . . . [AMENDED] (E) 148
317:30-5-8. . . . . [AMENDED] (E) 671
317:30-5-12. . . . . [AMENDED] (E) 306
317:30-5-12. . . . . [AMENDED] 896
317:30-5-13. . . . . [AMENDED] (E) 78
317:30-5-13. . . . . [AMENDED] 903
317:30-5-14. . . . . [AMENDED] (E) 316
317:30-5-14. . . . . [AMENDED] 904
317:30-5-22. . . . . [AMENDED] (E) 208
317:30-5-22. . . . . [AMENDED] 896
317:30-5-24. . . . . [AMENDED] (E) 209
317:30-5-24. . . . . [AMENDED] (E) 306
317:30-5-24. . . . . [AMENDED] 897
317:30-5-25. . . . . [AMENDED] (E) 79
317:30-5-25. . . . . [AMENDED] 894
317:30-5-40. . . . . [AMENDED] (E) 318
317:30-5-40. . . . . [AMENDED] 906
317:30-5-40.1. . . . . [NEW] (E) 318
317:30-5-40.1. . . . . [NEW] 906
317:30-5-40.2. . . . . [NEW] (E) 318
317:30-5-40.2. . . . . [NEW] 906
317:30-5-41. . . . . [AMENDED] (E) 318
317:30-5-41. . . . . [AMENDED] 906
317:30-5-41.1. . . . . [NEW] (E) 322
317:30-5-41.1. . . . . [NEW] 910
317:30-5-41.2. . . . . [NEW] (E) 322
317:30-5-42. . . . . [REVOKED] (E) 322
317:30-5-42. . . . . [REVOKED] 910
317:30-5-42.1. . . . . [NEW] (E) 323
317:30-5-42.1. . . . . [NEW] 911
317:30-5-42.2. . . . . [NEW] (E) 323
317:30-5-42.2. . . . . [NEW] 911
317:30-5-42.3. . . . . [NEW] (E) 323
317:30-5-42.3. . . . . [NEW] 911
317:30-5-42.4. . . . . [NEW] (E) 323
317:30-5-42.4. . . . . [NEW] 911
317:30-5-42.5. . . . . [NEW] (E) 324
317:30-5-42.5. . . . . [NEW] 911
317:30-5-42.6. . . . . [NEW] (E) 324
317:30-5-42.6. . . . . [NEW] 911
317:30-5-42.7. . . . . [NEW] (E) 324
317:30-5-42.7. . . . . [NEW] 912
317:30-5-42.8. . . . . [NEW] (E) 324
317:30-5-42.8. . . . . [NEW] 912
317:30-5-42.9. . . . . [NEW] (E) 324
317:30-5-42.9. . . . . [NEW] 912
317:30-5-42.10. . . . . [NEW] (E) 324
317:30-5-42.10. . . . . [NEW] 912
317:30-5-42.11. . . . . [NEW] (E) 324
317:30-5-42.11. . . . . [NEW] 912
317:30-5-42.12. . . . . [NEW] (E) 324
317:30-5-42.12. . . . . [NEW] 912

317:30-5-42.13. . . . . [NEW] (E) 324
317:30-5-42.13. . . . . [NEW] 912
317:30-5-42.14. . . . . [NEW] (E) 325
317:30-5-42.14. . . . . [NEW] 912
317:30-5-42.15. . . . . [NEW] (E) 325
317:30-5-42.15. . . . . [NEW] 913
317:30-5-42.16. . . . . [NEW] (E) 325
317:30-5-42.16. . . . . [NEW] 913
317:30-5-42.17. . . . . [NEW] (E) 326
317:30-5-42.17. . . . . [NEW] 914
317:30-5-42.18. . . . . [NEW] (E) 326
317:30-5-42.18. . . . . [NEW] 914
317:30-5-47. . . . . [AMENDED] (E) 326
317:30-5-47. . . . . [AMENDED] 914
317:30-5-47.1. . . . . [AMENDED] (E) 327
317:30-5-47.1. . . . . [AMENDED] 915
317:30-5-47.2. . . . . [AMENDED] (E) 327
317:30-5-47.2. . . . . [AMENDED] 915
317:30-5-47.3. . . . . [AMENDED] (E) 328
317:30-5-47.3. . . . . [AMENDED] 916
317:30-5-47.4. . . . . [AMENDED] (E) 329
317:30-5-47.4. . . . . [AMENDED] 917
317:30-5-50. . . . . [AMENDED] (E) 330
317:30-5-50. . . . . [AMENDED] 918
317:30-5-56. . . . . [NEW] (E) 330
317:30-5-56. . . . . [NEW] 918
317:30-5-57. . . . . [NEW] (E) 331
317:30-5-57. . . . . [NEW] 919
317:30-5-70.2. . . . . [AMENDED] 903
317:30-5-96.2. . . . . [AMENDED] (E) 679
317:30-5-134. . . . . [AMENDED] (E) 676
317:30-5-137. . . . . [NEW] (E) 142
317:30-5-137. . . . . [NEW] 891
317:30-5-138. . . . . [NEW] (E) 142
317:30-5-138. . . . . [NEW] 891
317:30-5-139. . . . . [NEW] (E) 143
317:30-5-139. . . . . [NEW] 892
317:30-5-140. . . . . [NEW] (E) 143
317:30-5-140. . . . . [NEW] 892
317:30-5-141. . . . . [NEW] (E) 143
317:30-5-141. . . . . [NEW] 892
317:30-5-180. . . . . [NEW] (E) 677
317:30-5-180.1. . . . . [NEW] (E) 677
317:30-5-180.2. . . . . [NEW] (E) 677
317:30-5-180.3. . . . . [NEW] (E) 677
317:30-5-180.4. . . . . [NEW] (E) 677
317:30-5-180.5. . . . . [NEW] (E) 678
317:30-5-211. . . . . [AMENDED] (E) 658
317:30-5-226. . . . . [AMENDED] (E) 307
317:30-5-226. . . . . [AMENDED] 898
317:30-5-335. . . . . [AMENDED] (E) 601
317:30-5-335. . . . . [AMENDED] 921
317:30-5-335.1. . . . . [NEW] (E) 601
317:30-5-335.1. . . . . [NEW] 921
317:30-5-336. . . . . [AMENDED] (E) 602
317:30-5-336. . . . . [NEW] (E) 604
317:30-5-336. . . . . [AMENDED] 922
317:30-5-336.1. . . . . [NEW] (E) 604
317:30-5-336.1. . . . . [NEW] 924
317:30-5-336.2. . . . . [NEW] (E) 604
317:30-5-336.2. . . . . [NEW] 924
317:30-5-336.3. . . . . [NEW] (E) 604
317:30-5-336.3. . . . . [NEW] 924
317:30-5-336.4. . . . . [NEW] (E) 604
317:30-5-336.4. . . . . [NEW] 924
317:30-5-336.5. . . . . [NEW] 924
317:30-5-336.6. . . . . [NEW] (E) 605
317:30-5-336.6. . . . . [NEW] 924
317:30-5-336.7. . . . . [NEW] (E) 605
317:30-5-336.7. . . . . [NEW] 924
317:30-5-336.8. . . . . [NEW] (E) 605
317:30-5-336.8. . . . . [NEW] 924
317:30-5-336.9. . . . . [NEW] (E) 606
317:30-5-336.9. . . . . [NEW] 925
317:30-5-336.10. . . . . [NEW] (E) 606
317:30-5-336.10. . . . . [NEW] 925
317:30-5-336.11. . . . . [NEW] (E) 606
317:30-5-336.11. . . . . [NEW] 926
317:30-5-336.12. . . . . [NEW] (E) 606
317:30-5-336.12. . . . . [NEW] 926
317:30-5-336.13. . . . . [NEW] (E) 606
317:30-5-336.13. . . . . [NEW] 926
317:30-5-337. . . . . [AMENDED] (E) 606
317:30-5-337. . . . . [AMENDED] 926
317:30-5-339. . . . . [AMENDED] (E) 607
317:30-5-339. . . . . [AMENDED] 926
317:30-5-355.1. . . . . [AMENDED] (E) 307
317:30-5-355.1. . . . . [AMENDED] 898
317:30-5-361. . . . . [AMENDED] (E) 309
317:30-5-361. . . . . [AMENDED] 900
317:30-5-391. . . . . [AMENDED] (E) 80
317:30-5-391. . . . . [AMENDED] 927
317:30-5-392. . . . . [AMENDED] (E) 80
317:30-5-392. . . . . [AMENDED] 927
317:30-5-393. . . . . [AMENDED] (E) 82
317:30-5-393. . . . . [AMENDED] 929
317:30-5-410. . . . . [AMENDED] 881
317:30-5-411. . . . . [AMENDED] 881
317:30-5-412. . . . . [AMENDED] 881
317:30-5-466. . . . . [AMENDED] (E) 310
317:30-5-466. . . . . [AMENDED] 901
317:30-5-467. . . . . [AMENDED] (E) 311
317:30-5-467. . . . . [AMENDED] 902
317:30-5-480. . . . . [AMENDED] 883
317:30-5-481. . . . . [AMENDED] 883
317:30-5-482. . . . . [AMENDED] 883
317:30-5-545. . . . . [AMENDED] (E) 333
317:30-5-545. . . . . [AMENDED] 929
317:30-5-556. . . . . [AMENDED] (E) 334
317:30-5-556. . . . . [AMENDED] 930
317:30-5-558. . . . . [AMENDED] (E) 334
317:30-5-558. . . . . [AMENDED] 930
317:30-5-560. . . . . [AMENDED] (E) 334
317:30-5-560. . . . . [AMENDED] 931
317:30-5-560.1. . . . . [AMENDED] (E) 335
317:30-5-560.1. . . . . [AMENDED] 931
317:30-5-560.2. . . . . [AMENDED] (E) 335
317:30-5-560.2. . . . . [AMENDED] 931
317:30-5-566. . . . . [AMENDED] (E) 331
317:30-5-566. . . . . [AMENDED] 919
317:30-5-567. . . . . [AMENDED] (E) 332
317:30-5-567. . . . . [AMENDED] 920
317:30-5-676. . . . . [AMENDED] (E) 83
317:30-5-676. . . . . [AMENDED] 932
317:30-5-695. . . . . [AMENDED] (E) 665
317:30-5-696. . . . . [AMENDED] (E) 666
317:30-5-696.1. . . . . [NEW] (E) 669
317:30-5-698. . . . . [AMENDED] (E) 669
317:30-5-763. . . . . [AMENDED] (E) 83
317:30-5-763. . . . . [AMENDED] 933
317:30-5-764. . . . . [AMENDED] (E) 91
317:30-5-764. . . . . [AMENDED] 941
317:30-5-901. . . . . [AMENDED] (E) 311
317:30-5-901. . . . . [AMENDED] 902

317:30-5-951. . . . . [AMENDED] (E) 92
317:30-5-951. . . . . [AMENDED] 942
317:30-5-952. . . . . [AMENDED] (E) 93
317:30-5-952. . . . . [AMENDED] 943
317:30-5-953. . . . . [AMENDED] (E) 93
317:30-5-953. . . . . [AMENDED] 943
317:30-5-1076. . . . . [AMENDED] (E) 678
317:35-3-2. . . . . [AMENDED] (E) 94
317:35-3-2. . . . . [AMENDED] 943
317:35-5-41. . . . . [AMENDED] (E) 681
317:35-7-48. . . . . [AMENDED] (E) 693
317:35-10-26. . . . . [AMENDED] (E) 694
317:35-15-2. . . . . [AMENDED] (E) 96
317:35-15-2. . . . . [AMENDED] 946
317:35-15-8. . . . . [AMENDED] (E) 96
317:35-15-8. . . . . [AMENDED] 946
317:35-15-8.1. . . . . [AMENDED] (E) 98
317:35-15-8.1. . . . . [AMENDED] 948
317:35-15-10. . . . . [AMENDED] (E) 99
317:35-15-10. . . . . [AMENDED] 948
317:35-15-13.1. . . . . [AMENDED] (E) 100
317:35-15-13.1. . . . . [AMENDED] 950
317:35-21-12. . . . . [AMENDED] (E) 152
317:35-21-12. . . . . [AMENDED] 952
317:40-5-3. . . . . [AMENDED] 953
317:40-5-55. . . . . [AMENDED] 959
317:40-5-103. . . . . [AMENDED] 961
317:40-5-152. . . . . [AMENDED] 955
317:40-7-8. . . . . [AMENDED] 957
317:40-7-18. . . . . [AMENDED] 957
317:45-1-2. . . . . [AMENDED] (E) 102
317:45-1-2. . . . . [AMENDED] 963
317:45-1-3. . . . . [AMENDED] (E) 103
317:45-1-3. . . . . [AMENDED] 964
317:45-1-4. . . . . [NEW] (E) 103
317:45-1-4. . . . . [NEW] 965
317:45-5-1. . . . . [AMENDED] (E) 104
317:45-5-1. . . . . [AMENDED] 965
317:45-7-1. . . . . [AMENDED] (E) 153
317:45-7-1. . . . . [AMENDED] (E) 700
317:45-7-2. . . . . [AMENDED] (E) 104
317:45-7-2. . . . . [AMENDED] (E) 701
317:45-7-8. . . . . [AMENDED] (E) 104
317:45-7-8. . . . . [AMENDED] (E) 701
317:45-9-1. . . . . [AMENDED] (E) 104
317:45-9-1. . . . . [AMENDED] (E) 703
317:45-9-3. . . . . [AMENDED] (E) 105
317:45-9-3. . . . . [AMENDED] 965
317:45-9-5. . . . . [REVOKED] (E) 105
317:45-9-5. . . . . [REVOKED] 965
317:45-9-7. . . . . [AMENDED] (E) 105
317:45-9-7. . . . . [AMENDED] 966
317:45-11-1. . . . . [NEW] (E) 105
317:45-11-1. . . . . [NEW] 966
317:45-11-2. . . . . [NEW] (E) 105
317:45-11-2. . . . . [NEW] 966
317:45-11-10. . . . . [NEW] (E) 106
317:45-11-10. . . . . [NEW] (E) 701
317:45-11-10. . . . . [NEW] (E) 811
317:45-11-11. . . . . [NEW] (E) 107
317:45-11-11. . . . . [NEW] (E) 702
317:45-11-11. . . . . [NEW] (E) 813
317:45-11-20. . . . . [NEW] (E) 107
317:45-11-20. . . . . [NEW] (E) 704
317:45-11-21. . . . . [NEW] (E) 108
317:45-11-21. . . . . [NEW] 966
317:45-11-22. . . . . [NEW] (E) 108
317:45-11-22. . . . . [NEW] 966
317:45-11-23. . . . . [NEW] (E) 108
317:45-11-23. . . . . [NEW] 967
317:45-11-24. . . . . [NEW] (E) 109
317:45-11-24. . . . . [NEW] 967
317:45-11-25. . . . . [NEW] (E) 109
317:45-11-25. . . . . [NEW] 967
317:45-11-26. . . . . [NEW] (E) 109
317:45-11-26. . . . . [NEW] 967
317:45-11-27. . . . . [NEW] (E) 109
317:45-11-27. . . . . [NEW] 967
317:45-11-28. . . . . [NEW] (E) 109
317:45-11-28. . . . . [NEW] 968
320:10-1-1. . . . . [NEW] (E) 336
320:10-1-2. . . . . [NEW] (E) 336
320:10-3-1. . . . . [NEW] (E) 337
320:10-3-2. . . . . [NEW] (E) 337
320:10-3-3. . . . . [NEW] (E) 337
320:10-3-4. . . . . [NEW] (E) 337
320:10-3-5. . . . . [NEW] (E) 338
320:10-3-6. . . . . [NEW] (E) 338
320:10-3-7. . . . . [NEW] (E) 338
320:10-3-8. . . . . [NEW] (E) 338
320:10-3-9. . . . . [NEW] (E) 338
320:10-3-10. . . . . [NEW] (E) 338
320:10-3-11. . . . . [NEW] (E) 338
320:10-3-12. . . . . [NEW] (E) 338
320:10-3-13. . . . . [NEW] (E) 339
320:10-3-14. . . . . [NEW] (E) 339
320:10-3-15. . . . . [NEW] (E) 339
320:10-3-16. . . . . [NEW] (E) 339
320:10-3-17. . . . . [NEW] (E) 339
320:10-3-18. . . . . [NEW] (E) 339
320:10-3-19. . . . . [NEW] (E) 340
320:10-3-20. . . . . [NEW] (E) 340
320:10-3-21. . . . . [NEW] (E) 340
320:10-5-1. . . . . [NEW] (E) 340
320:10-5-2. . . . . [NEW] (E) 340
320:10-5-3. . . . . [NEW] (E) 340
320:10-5-4. . . . . [NEW] (E) 340
320:10-5-5. . . . . [NEW] (E) 340
320:10-5-6. . . . . [NEW] (E) 340
320:10-5-7. . . . . [NEW] (E) 340
320:10-7-1. . . . . [NEW] (E) 340
320:10-7-2. . . . . [NEW] (E) 341
320:10-7-3. . . . . [NEW] (E) 341
320:10-7-4. . . . . [NEW] (E) 341
320:10-7-5. . . . . [NEW] (E) 341
320:10-7-6. . . . . [NEW] (E) 341
320:10-7-7. . . . . [NEW] (E) 341
320:10-7-8. . . . . [NEW] (E) 341
320:10-7-9. . . . . [NEW] (E) 341
320:10-7-10. . . . . [NEW] (E) 342
320:10-9-1. . . . . [NEW] (E) 342
320:10-9-2. . . . . [NEW] (E) 342
320:10-9-3. . . . . [NEW] (E) 342
325:15-5-15. . . . . [AMENDED] 968
325:15-5-21. . . . . [AMENDED] 968
325:25-1-10. . . . . [AMENDED] 969
325:25-1-17. . . . . [AMENDED] 970
325:30-1-17. . . . . [AMENDED] 970
325:35-1-5. . . . . [AMENDED] 971
325:35-1-17. . . . . [REVOKED] 972
325:35-1-38. . . . . [AMENDED] 972
325:45-1-9. . . . . [AMENDED] 973
325:45-1-28. . . . . [AMENDED] 974
325:60-1-12. . . . . [AMENDED] 974

325:75-1-7. [AMENDED] 975
325:75-1-9. [AMENDED] 975
340:1-1-17. [AMENDED] 976
340:1-1-21. [AMENDED] 976
340:2-1-32. [AMENDED] (E) 342
340:2-1-32. [AMENDED] 977
340:2-3-2. [AMENDED] 979
340:2-3-33. [AMENDED] 983
340:2-3-34. [AMENDED] 985
340:2-3-35. [AMENDED] 986
340:2-3-36. [AMENDED] 987
340:2-3-37. [AMENDED] 991
340:2-3-38. [AMENDED] 992
340:2-3-45. [AMENDED] 995
340:2-3-46. [AMENDED] 1002
340:2-3-47. [AMENDED] 1002
340:2-3-48. [AMENDED] 1003
340:2-3-49. [AMENDED] 1003
340:2-3-50. [AMENDED] 1003
340:2-3-51. [AMENDED] 1004
340:2-3-52. [AMENDED] 1005
340:2-3-53. [AMENDED] 1006
340:2-3-55. [AMENDED] 1007
340:2-3-64. [AMENDED] 1007
340:2-3-73. [AMENDED] 1009
340:2-3-74. [AMENDED] 1010
340:2-31-10. [AMENDED] 1012
340:2-31-31. [AMENDED] 1013
340:2-31-32. [AMENDED] 1013
340:2-31-33. [AMENDED] 1014
340:2-33-1. [AMENDED] 1015
340:2-33-2. [AMENDED] 1015
340:2-33-3. [AMENDED] 1015
340:2-33-4. [REVOKED] 1015
340:2-33-5. [REVOKED] 1015
340:2-39-1. [NEW] 1016
340:5-1-8. [AMENDED] 1017
340:10-2-1. [AMENDED] (E) 344
340:10-2-1. [AMENDED] 1018
340:10-2-3. [AMENDED] 1021
340:10-2-5. [AMENDED] 1022
340:10-2-6. [AMENDED] 1022
340:10-2-7. [AMENDED] 1023
340:10-3-33. [AMENDED] (E) 28
340:10-3-33. [AMENDED] 1020
340:10-10-4. [AMENDED] 1025
340:10-10-6. [AMENDED] 1026
340:25-1-1.1. [AMENDED] 1302
340:25-1-1.2. [AMENDED] 1304
340:25-1-2. [AMENDED] 1305
340:25-1-2.1. [AMENDED] 1305
340:25-1-3.1. [AMENDED] 1305
340:25-3-3. [AMENDED] 1306
340:25-5-55. [AMENDED] 1306
340:25-5-67. [AMENDED] 1306
340:25-5-67.1. [AMENDED] 1307
340:25-5-110. [AMENDED] 1308
340:25-5-110.1. [AMENDED] 1308
340:25-5-114. [AMENDED] 1308
340:25-5-117. [AMENDED] 1309
340:25-5-123. [AMENDED] 1310
340:25-5-124. [AMENDED] 1310
340:25-5-124.2. [AMENDED] 1311
340:25-5-124.3. [NEW] 1311
340:25-5-140. [AMENDED] 1312
340:25-5-168. [AMENDED] 1313
340:25-5-171. [AMENDED] 1313
340:25-5-176. [AMENDED] 1314
340:25-5-176.1. [NEW] 1315
340:25-5-178. [AMENDED] 1315
340:25-5-179.1. [AMENDED] 1316
340:25-5-198.1. [AMENDED] 1316
340:25-5-198.2. [AMENDED] 1318
340:25-5-200. [AMENDED] 1318
340:25-5-214. [AMENDED] 1319
340:25-5-215.1. [AMENDED] 1320
340:25-5-235. [AMENDED] 1320
340:25-5-244. [AMENDED] 1320
340:25-5-305. [AMENDED] 1320
340:25-5-339. [AMENDED] 1321
340:25-5-340. [AMENDED] 1321
340:25-5-340.1. [AMENDED] 1322
340:25-5-350.3. [AMENDED] 1322
340:40-3-1. [AMENDED] 1027
340:40-5-1. [AMENDED] 1029
340:40-7-1. [AMENDED] 1031
340:40-7-13. [AMENDED] 1031
340:40-9-1. [AMENDED] 1032
340:40-9-2. [AMENDED] 1032
340:40-9-3. [AMENDED] 1033
340:40-10-4. [AMENDED] 1033
340:40-13-1. [AMENDED] 1034
340:40-13-2. [AMENDED] 1035
340:40-13-3. [AMENDED] 1036
340:40-13-5. [AMENDED] 1037
340:50-9-5. [AMENDED] 1040
340:65-3-4. [AMENDED] 1042
340:65-3-8. [AMENDED] 1043
340:65-5-6. [AMENDED] 1044
340:75-1-12.2. [AMENDED] 1044
340:75-1-12.8. [NEW] 1323
340:75-1-16. [AMENDED] (E) 631
340:75-1-16. [AMENDED] 1323
340:75-1-18. [AMENDED] 1044
340:75-1-18.1. [AMENDED] 1044
340:75-1-44. [AMENDED] 1044
340:75-3-2. [AMENDED] 1323
340:75-3-4. [AMENDED] 1323
340:75-3-5. [AMENDED] (E) 633
340:75-3-5. [AMENDED] 1323
340:75-3-6.1. [AMENDED] 1323
340:75-3-7. [AMENDED] 1323
340:75-3-7.1. [AMENDED] 1323
340:75-3-8.1. [AMENDED] 1323
340:75-3-8.6. [AMENDED] 1323
340:75-3-10.1. [AMENDED] 1323
340:75-3-10.2. [AMENDED] 1323
340:75-3-13. [AMENDED] 1323
340:75-4-12.1. [AMENDED] 1044
340:75-4-12.2. [AMENDED] 1044
340:75-4-13. [AMENDED] 1044
340:75-6-31. [AMENDED] 1044
340:75-6-31.5. [AMENDED] 1044
340:75-6-40.2. [AMENDED] 1044
340:75-6-40.3. [AMENDED] 1044
340:75-6-40.4. [AMENDED] 1044
340:75-6-40.5. [AMENDED] 1044
340:75-6-48. [AMENDED] 1044
340:75-6-85. [AMENDED] 1044
340:75-6-85.2. [AMENDED] 1044
340:75-6-85.4. [AMENDED] 1044
340:75-6-85.5. [AMENDED] 1044
340:75-6-85.6. [AMENDED] 1044
340:75-6-86. [AMENDED] 1044

340:75-6-88. . . . . [AMENDED] 1044
340:75-6-89. . . . . [AMENDED] 1044
340:75-7-2. . . . . [AMENDED] 1323
340:75-7-14. . . . . [AMENDED] 1323
340:75-7-15. . . . . [AMENDED] 1323
340:75-7-18. . . . . [AMENDED] 1323
340:75-7-19. . . . . [AMENDED] 1323
340:75-7-24. . . . . [AMENDED] 1323
340:75-7-37.1. . . . . [NEW] 1323
340:75-7-52. . . . . [AMENDED] 1323
340:75-7-52.1. . . . . [NEW] 1323
340:75-7-65. . . . . [AMENDED] 1323
340:75-7-94. . . . . [AMENDED] 1323
340:75-8-1. . . . . [AMENDED] 1044
340:75-8-6. . . . . [AMENDED] 1044
340:75-8-7. . . . . [AMENDED] 1044
340:75-8-8. . . . . [AMENDED] 1044
340:75-8-9. . . . . [AMENDED] 1044
340:75-8-10. . . . . [AMENDED] 1044
340:75-8-11. . . . . [AMENDED] 1044
340:75-8-36. . . . . [AMENDED] 1044
340:75-8-37. . . . . [AMENDED] 1044
340:75-8-38. . . . . [AMENDED] 1044
340:75-8-39. . . . . [AMENDED] 1044
340:75-13-62. . . . . [AMENDED] 1323
340:75-13-63. . . . . [AMENDED] 1323
340:75-13-65. . . . . [AMENDED] 1323
340:75-13-74. . . . . [AMENDED] 1323
340:75-13-75. . . . . [AMENDED] 1323
340:75-13-77. . . . . [AMENDED] 1323
340:75-13-79. . . . . [AMENDED] 1323
340:75-13-80. . . . . [AMENDED] 1323
340:75-15-8. . . . . [AMENDED] 1323
340:75-15-9. . . . . [AMENDED] 1323
340:75-15-41. . . . . [AMENDED] 1323
340:75-15-45. . . . . [AMENDED] 1323
340:75-15-47. . . . . [AMENDED] 1323
340:75-15-59. . . . . [AMENDED] 1323
340:75-15-82. . . . . [AMENDED] 1323
340:75-15-84. . . . . [AMENDED] 1323
340:75-15-87. . . . . [AMENDED] 1323
340:75-15-88. . . . . [AMENDED] 1323
340:75-15-89. . . . . [AMENDED] 1323
340:75-15-93. . . . . [AMENDED] 1323
340:75-15-103. . . . . [AMENDED] 1323
340:75-15-106. . . . . [AMENDED] 1323
340:75-15-107. . . . . [AMENDED] 1323
340:75-15-128.1. . . . . [AMENDED] (E) 210
340:75-15-128.1. . . . . [AMENDED] 1044
340:75-15-128.2. . . . . [AMENDED] 1044
340:75-15-128.3. . . . . [AMENDED] 1044
340:75-15-128.5. . . . . [AMENDED] 1044
340:75-15-128.6. . . . . [AMENDED] 1044
340:75-16-29. . . . . [AMENDED] 1044
340:75-16-30. . . . . [AMENDED] 1044
340:75-16-31. . . . . [AMENDED] 1044
340:75-16-32. . . . . [AMENDED] 1044
340:75-16-34. . . . . [AMENDED] 1044
340:75-16-35. . . . . [AMENDED] 1044
340:75-16-36. . . . . [AMENDED] 1044
340:75-16-37. . . . . [AMENDED] 1044
340:75-16-45. . . . . [AMENDED] 1044
340:75-19-1. . . . . [AMENDED] 1044
340:75-19-2. . . . . [AMENDED] 1044
340:75-19-3. . . . . [AMENDED] 1044
340:75-19-4. . . . . [AMENDED] 1044
340:75-19-11. . . . . [AMENDED] 1044
340:75-19-16. . . . . [AMENDED] 1044
340:75-19-22. . . . . [AMENDED] 1044
340:75-19-26. . . . . [AMENDED] 1044
340:75-19-26.1. . . . . [AMENDED] 1323
340:75-19-28. . . . . [AMENDED] 1044
340:75-19-29. . . . . [AMENDED] 1044
340:75-19-30. . . . . [AMENDED] 1044
340:75-19-31. . . . . [AMENDED] 1044
340:75-19-33. . . . . [AMENDED] 1044
340:100-1-2. . . . . [AMENDED] 1047
340:100-3-1.1. . . . . [REVOKED] 1053
340:100-3-5. . . . . [AMENDED] 1054
340:100-3-5.1. . . . . [AMENDED] 1056
340:100-3-5.2. . . . . [AMENDED] 1058
340:100-3-33.2. . . . . [NEW] 1060
340:100-3-34. . . . . [AMENDED] 1060
340:100-3-37. . . . . [REVOKED] 1061
340:100-3-39. . . . . [AMENDED] 1062
340:100-5-15. . . . . [AMENDED] 1068
340:100-5-19. . . . . [REVOKED] 1068
340:100-5-22.6. . . . . [AMENDED] 1068
340:100-6-1. . . . . [REVOKED] 1072
340:100-6-2. . . . . [AMENDED] 1072
340:100-6-10. . . . . [AMENDED] 1073
340:100-6-11. . . . . [AMENDED] 1074
340:100-6-12. . . . . [AMENDED] 1074
340:100-6-13. . . . . [AMENDED] 1075
340:100-6-14. . . . . [AMENDED] 1075
340:100-6-15. . . . . [AMENDED] 1075
340:100-6-16. . . . . [REVOKED] 1076
340:100-6-17. . . . . [REVOKED] 1076
340:100-6-18. . . . . [AMENDED] 1076
340:100-6-19. . . . . [AMENDED] 1077
340:100-6-20. . . . . [AMENDED] 1077
340:100-6-21. . . . . [AMENDED] 1077
340:100-6-30. . . . . [AMENDED] 1078
340:100-6-31. . . . . [REVOKED] 1078
340:100-6-32. . . . . [REVOKED] 1079
340:100-6-33. . . . . [REVOKED] 1079
340:100-6-34. . . . . [REVOKED] 1079
340:100-6-35. . . . . [REVOKED] 1079
340:100-6-40. . . . . [REVOKED] 1079
340:100-6-41. . . . . [AMENDED] 1079
340:100-6-42. . . . . [REVOKED] 1080
340:100-6-43. . . . . [REVOKED] 1080
340:100-6-44. . . . . [AMENDED] 1080
340:100-6-45. . . . . [NEW] 1080
340:100-6-50. . . . . [AMENDED] 1081
340:100-6-55. . . . . [AMENDED] 1081
340:100-6-56. . . . . [NEW] 1083
340:100-6-60. . . . . [AMENDED] 1083
340:100-6-61. . . . . [REVOKED] 1084
340:100-6-62. . . . . [REVOKED] 1084
340:100-6-70. . . . . [REVOKED] 1085
340:100-6-75. . . . . [REVOKED] 1085
340:100-6-76. . . . . [REVOKED] 1085
340:100-6-85. . . . . [AMENDED] 1085
340:100-6-86. . . . . [AMENDED] 1086
340:100-6-87. . . . . [REVOKED] 1086
340:100-6-88. . . . . [AMENDED] 1086
340:100-6-95. . . . . [AMENDED] 1086
340:100-6-96. . . . . [REVOKED] 1087
340:100-6-97. . . . . [AMENDED] 1088
340:100-6-98. . . . . [REVOKED] 1088
340:100-17-30. . . . . [AMENDED] 1088
340:105-1-2. . . . . [AMENDED] 1326
340:105-1-3. . . . . [AMENDED] 1326

340:105-1-5. . . . . [AMENDED] 1327
340:105-1-6. . . . . [AMENDED] 1328
340:105-1-8. . . . . [AMENDED] 1329
340:105-1-10. . . . . [AMENDED] 1329
340:105-7-1. . . . . [AMENDED] 1329
340:105-7-2. . . . . [AMENDED] 1330
340:105-7-4. . . . . [AMENDED] 1332
340:105-7-7. . . . . [AMENDED] 1332
340:105-7-8. . . . . [AMENDED] 1333
340:105-7-9. . . . . [AMENDED] 1333
340:105-10-17. . . . . [AMENDED] 1333
340:105-10-31. . . . . [AMENDED] 1334
340:105-10-33. . . . . [AMENDED] 1334
340:105-10-40. . . . . [AMENDED] 1335
340:105-10-45. . . . . [AMENDED] 1336
340:105-10-51. . . . . [AMENDED] 1336
340:105-10-59. . . . . [AMENDED] 1339
340:105-10-70. . . . . [AMENDED] 1339
340:105-10-72. . . . . [AMENDED] 1340
340:105-10-74. . . . . [AMENDED] 1340
340:105-10-75. . . . . [AMENDED] 1341
340:105-10-79. . . . . [AMENDED] 1341
340:105-10-85. . . . . [AMENDED] 1342
340:105-10-86. . . . . [AMENDED] 1342
340:105-10-91. . . . . [AMENDED] 1343
340:105-10-92. . . . . [AMENDED] 1343
340:105-10-93. . . . . [AMENDED] 1344
340:105-10-101. . . . . [AMENDED] 1344
340:105-10-112. . . . . [AMENDED] 1345
340:105-10-114. . . . . [AMENDED] 1346
340:105-10-116. . . . . [AMENDED] 1346
340:105-11-234. . . . . [AMENDED] 1346
340:105-11-235. . . . . [AMENDED] 1348
340:105-11-240. . . . . [AMENDED] 1348
340:105-11-245. . . . . [AMENDED] 1348
340:105-11-246. . . . . [AMENDED] 1349
340:105-11-248. . . . . [AMENDED] 1349
340:105-11-252. . . . . [AMENDED] 1350
340:105-11-253. . . . . [AMENDED] 1350
340:110-1-3. . . . . [AMENDED] 1352
340:110-1-4. . . . . [AMENDED] 1352
340:110-1-4.1. . . . . [AMENDED] 1352
340:110-1-6. . . . . [AMENDED] 1354
340:110-1-8. . . . . [AMENDED] 1355
340:110-1-8.1. . . . . [AMENDED] 1357
340:110-1-8.3. . . . . [AMENDED] 1358
340:110-1-9. . . . . [AMENDED] 1366
340:110-1-9.1. . . . . [AMENDED] 1367
340:110-1-9.2. . . . . [AMENDED] 1369
340:110-1-9.3. . . . . [AMENDED] 1370
340:110-1-9.4. . . . . [AMENDED] 1372
340:110-1-9.5. . . . . [AMENDED] 1373
340:110-1-10. . . . . [AMENDED] 1373
340:110-1-13. . . . . [AMENDED] 1374
340:110-1-14. . . . . [AMENDED] 1375
340:110-1-15. . . . . [AMENDED] 1376
340:110-1-17. . . . . [AMENDED] 1376
340:110-1-20. . . . . [AMENDED] 1378
340:110-1-21. . . . . [AMENDED] 1378
340:110-1-43. . . . . [AMENDED] 1378
340:110-1-43.1. . . . . [AMENDED] 1379
340:110-1-45. . . . . [AMENDED] 1380
340:110-1-46. . . . . [AMENDED] 1380
340:110-1-47. . . . . [AMENDED] 1381
340:110-1-47.1. . . . . [AMENDED] 1382
340:110-1-47.2. . . . . [AMENDED] 1384
340:110-1-51. . . . . [AMENDED] 1385
340:110-1-52. . . . . [AMENDED] 1387
340:110-1-53. . . . . [AMENDED] 1388
360:1-1-1.5. . . . . [NEW] 1570
360:1-1-2. . . . . [AMENDED] 1570
360:1-1-2.1. . . . . [AMENDED] 1570
360:1-1-2.2. . . . . [AMENDED] 1570
360:1-3-2. . . . . [AMENDED] 1570
360:1-3-3. . . . . [AMENDED] 1570
360:1-3-6. . . . . [AMENDED] 1570
360:1-3-7. . . . . [AMENDED] 1570
360:1-3-8. . . . . [AMENDED] 1570
360:1-3-8.1. . . . . [AMENDED] 1571
360:1-3-9. . . . . [AMENDED] 1571
360:1-3-12. . . . . [AMENDED] 1571
360:1-5-1. . . . . [AMENDED] 1571
360:1-5-2. . . . . [AMENDED] 1572
360:1-5-3. . . . . [AMENDED] 1572
360:1-5-4. . . . . [AMENDED] 1572
360:1-5-5. . . . . [AMENDED] 1572
360:1-5-7. . . . . [AMENDED] 1572
360:1-7-1. . . . . [AMENDED] 1573
360:1-7-2. . . . . [AMENDED] 1573
360:1-7-3. . . . . [AMENDED] 1573
360:10-1-2. . . . . [AMENDED] 1574
360:10-3-2. . . . . [AMENDED] 1576
360:10-3-3. . . . . [AMENDED] 1576
360:10-3-3.1. . . . . [AMENDED] 1576
360:10-3-3.5. . . . . [AMENDED] 1576
360:10-3-4. . . . . [AMENDED] 1577
360:10-3-6.1. . . . . [AMENDED] 1577
360:10-3-7. . . . . [AMENDED] 1577
360:10-3-13. . . . . [AMENDED] 1578
360:10-3-17. . . . . [AMENDED] 1578
360:10-3-20. . . . . [AMENDED] 1578
360:10-3-20.1. . . . . [AMENDED] 1579
360:10-3-22. . . . . [AMENDED] 1579
360:10-3-23. . . . . [AMENDED] 1579
360:10-3-24. . . . . [AMENDED] 1580
360:10-3-25. . . . . [AMENDED] 1581
360:10-3-26. . . . . [AMENDED] 1581
360:10-3-27. . . . . [AMENDED] 1581
360:10-3-27.1. . . . . [AMENDED] 1582
360:10-3-28. . . . . [AMENDED] 1582
360:10-3-29.1. . . . . [NEW] 1582
360:10-3-33. . . . . [AMENDED] 1582
360:10-5-1. . . . . [AMENDED] 1583
360:10-5-2. . . . . [AMENDED] 1583
360:10-5-3. . . . . [AMENDED] 1583
360:10-5-16. . . . . [AMENDED] 1583
360:10-5-17. . . . . [AMENDED] 1584
360:10-5-20. . . . . [AMENDED] 1584
360:10-5-30. . . . . [AMENDED] 1585
360:10-5-32. . . . . [AMENDED] 1586
360:10-5-33. . . . . [AMENDED] 1586
360:10-5-34. . . . . [AMENDED] 1586
360:10-5-45. . . . . [AMENDED] 1586
360:10-5-56. . . . . [AMENDED] 1587
360:10-5-61. . . . . [AMENDED] 1587
360:10-5-75. . . . . [AMENDED] 1587
360:10-5-76. . . . . [AMENDED] 1587
360:10-5-77. . . . . [AMENDED] 1588
360:10-5-79. . . . . [AMENDED] 1588
360:10-5-86. . . . . [AMENDED] 1588
360:10-5-87. . . . . [AMENDED] 1589
360:10-5-89. . . . . [AMENDED] 1591
360:10-5-90. . . . . [AMENDED] 1591
360:10-5-100. . . . . [AMENDED] 1591

360:10-7-1. . . . . [AMENDED] 1591
360:10-9-1. . . . . [AMENDED] 1591
360:10-9-2. . . . . [AMENDED] 1591
360:15-1-2. . . . . [AMENDED] 1592
360:15-1-3. . . . . [AMENDED] 1593
360:15-1-4. . . . . [AMENDED] 1593
360:15-1-7. . . . . [AMENDED] 1593
360:15-1-8. . . . . [AMENDED] 1593
360:15-1-8.5. . . . . [AMENDED] 1594
360:15-1-10. . . . . [AMENDED] 1594
360:15-1-11. . . . . [AMENDED] 1594
360:15-1-12. . . . . [AMENDED] 1595
360:15-1-14. . . . . [AMENDED] 1596
360:15-1-15. . . . . [AMENDED] 1596
360:15-1-16. . . . . [AMENDED] 1596
360:15-1-17. . . . . [AMENDED] 1596
360:15-1-18. . . . . [AMENDED] 1596
360:15-1-19. . . . . [AMENDED] 1596
360:15-1-20. . . . . [AMENDED] 1596
360:15-1-21. . . . . [AMENDED] 1596
360:15-1-22. . . . . [AMENDED] 1596
360:15-1-23. . . . . [AMENDED] 1597
360:15-1-25. . . . . [AMENDED] 1597
375:8-13-1. . . . . [AMENDED] 1597
375:15-1-2. . . . . [AMENDED] 1598
375:15-1-3. . . . . [AMENDED] 1598
375:15-1-4. . . . . [AMENDED] 1598
377:1-1-3. . . . . [AMENDED] 1389
377:1-1-5. . . . . [AMENDED] 1390
377:1-1-11. . . . . [AMENDED] 1391
377:1-1-12. . . . . [AMENDED] 1391
377:3-1-23. . . . . [AMENDED] 1392
377:3-1-26. . . . . [AMENDED] 1393
377:3-1-28. . . . . [AMENDED] 1393
377:3-1-31. . . . . [AMENDED] 1394
377:3-1-46. . . . . [AMENDED] 1394
377:3-1-47. . . . . [AMENDED] 1394
377:3-1-48. . . . . [AMENDED] 1395
377:3-3-3. . . . . [AMENDED] 1396
377:3-7-1. . . . . [AMENDED] 1396
377:3-11-5. . . . . [AMENDED] 1396
377:3-11-20. . . . . [AMENDED] 1396
377:3-15-1. . . . . [AMENDED] 1397
377:3-15-2. . . . . [AMENDED] 1397
377:3-15-3. . . . . [AMENDED] 1397
377:3-16-1. . . . . [REVOKED] 1397
377:3-16-2. . . . . [REVOKED] 1397
377:3-16-3. . . . . [REVOKED] 1397
377:3-16-4. . . . . [REVOKED] 1397
377:3-17-25. . . . . [AMENDED] 1397
377:3-17-28. . . . . [AMENDED] 1398
377:5-1-3. . . . . [AMENDED] 1398
377:5-3-1. . . . . [AMENDED] 1398
377:5-3-2. . . . . [AMENDED] 1398
377:5-5-1. . . . . [AMENDED] 1399
377:5-5-2. . . . . [AMENDED] 1399
377:5-5-5. . . . . [AMENDED] 1400
377:10-1-3. . . . . [AMENDED] 1402
377:10-1-5. . . . . [AMENDED] 1402
377:10-1-8. . . . . [AMENDED] 1403
377:10-1-9. . . . . [AMENDED] 1403
377:10-1-10. . . . . [AMENDED] 1404
377:10-1-11. . . . . [AMENDED] 1404
377:10-7-1. . . . . [AMENDED] 1405
377:10-7-3. . . . . [AMENDED] 1405
377:10-7-4. . . . . [AMENDED] 1408
377:10-7-50. . . . . [AMENDED] 1408
377:10-11-1. . . . . [AMENDED] 1408
377:10-13-36. . . . . [AMENDED] 1408
377:10-13-100. . . . . [AMENDED] 1409
377:15-1-1. . . . . [AMENDED] 1410
377:15-1-2. . . . . [AMENDED] 1410
377:15-1-3. . . . . [REVOKED] 1410
377:15-1-4. . . . . [REVOKED] 1410
377:15-1-5. . . . . [REVOKED] 1410
377:15-1-6. . . . . [REVOKED] 1410
377:15-1-7. . . . . [REVOKED] 1411
377:15-3-1. . . . . [NEW] 1411
377:15-5-1. . . . . [NEW] 1411
377:15-5-2. . . . . [NEW] 1411
377:15-5-3. . . . . [NEW] 1411
377:15-5-4. . . . . [NEW] 1411
377:15-5-5. . . . . [NEW] 1412
377:15-5-6. . . . . [NEW] 1412
377:15-7-1. . . . . [NEW] 1413
377:15-7-2. . . . . [NEW] 1413
377:15-7-3. . . . . [NEW] 1413
377:15-7-4. . . . . [NEW] 1413
377:15-7-5. . . . . [NEW] 1413
377:15-7-6. . . . . [NEW] 1414
377:15-7-7. . . . . [NEW] 1414
377:15-7-8. . . . . [NEW] 1414
377:15-7-9. . . . . [NEW] 1414
377:15-7-10. . . . . [NEW] 1414
377:15-7-11. . . . . [NEW] 1414
377:15-7-12. . . . . [NEW] 1414
377:15-7-13. . . . . [NEW] 1414
377:15-9-1. . . . . [NEW] 1414
377:25-1-2. . . . . [AMENDED] 1415
377:25-3-15. . . . . [AMENDED] 1415
377:25-7-2. . . . . [AMENDED] 1415
377:25-7-50. . . . . [AMENDED] 1415
377:25-9-1. . . . . [AMENDED] 1416
377:25-13-1. . . . . [REVOKED] 1416
377:25-13-2. . . . . [REVOKED] 1416
377:30-1-1. . . . . [AMENDED] 1417
377:35-1-1. . . . . [AMENDED] 1418
377:35-3-3. . . . . [AMENDED] 1418
377:35-3-8. . . . . [AMENDED] 1418
377:35-7-2. . . . . [AMENDED] 1419
377:35-9-1. . . . . [AMENDED] 1419
377:35-11-5. . . . . [AMENDED] 1419
377:35-17-1. . . . . [AMENDED] 1420
380:70-1-1. . . . . [NEW] (E) 30
380:70-1-2. . . . . [NEW] (E) 30
380:70-3-1. . . . . [NEW] (E) 31
380:70-3-2. . . . . [NEW] (E) 32
380:70-3-3. . . . . [NEW] (E) 32
380:70-3-4. . . . . [NEW] (E) 32
380:70-3-5. . . . . [NEW] (E) 32
380:70-3-6. . . . . [NEW] (E) 33
380:70-3-7. . . . . [NEW] (E) 33
380:70-3-8. . . . . [NEW] (E) 33
380:70-3-9. . . . . [NEW] (E) 33
380:70-3-10. . . . . [NEW] (E) 34
380:70-3-11. . . . . [NEW] (E) 34
380:70-3-12. . . . . [NEW] (E) 34
380:70-3-13. . . . . [NEW] (E) 34
380:70-3-14. . . . . [NEW] (E) 35
380:70-3-15. . . . . [NEW] (E) 35
380:70-5-1. . . . . [NEW] (E) 35
380:70-5-2. . . . . [NEW] (E) 36
380:70-5-3. . . . . [NEW] (E) 36
380:70-5-4. . . . . [NEW] (E) 37

380:70-5-5. . . . . [NEW] (E) 37
380:70-5-6. . . . . [NEW] (E) 37
380:70-5-7. . . . . [NEW] (E) 37
380:70-5-8. . . . . [NEW] (E) 38
380:70-5-9. . . . . [NEW] (E) 38
380:70-7-1. . . . . [NEW] (E) 38
380:70-7-2. . . . . [NEW] (E) 38
380:70-7-3. . . . . [NEW] (E) 39
380:70-9-1. . . . . [NEW] (E) 39
380:70-9-2. . . . . [NEW] (E) 39
380:70-9-3. . . . . [NEW] (E) 40
380:70-9-4. . . . . [NEW] (E) 40
380:70-11-1. . . . . [NEW] (E) 40
380:70-11-2. . . . . [NEW] (E) 40
380:70-11-3. . . . . [NEW] (E) 40
380:70-11-4. . . . . [NEW] (E) 40
380:70-11-5. . . . . [NEW] (E) 41
380:70-11-6. . . . . [NEW] (E) 41
380:70-11-7. . . . . [NEW] (E) 41
380:70-11-8. . . . . [NEW] (E) 41
380:70-11-9. . . . . [NEW] (E) 41
380:70-11-10. . . . . [NEW] (E) 42
380:70-11-11. . . . . [NEW] (E) 42
380:70-11-12. . . . . [NEW] (E) 42
380:70-11-13. . . . . [NEW] (E) 42
380:70-11-14. . . . . [NEW] (E) 42
380:70, App. A. . . . . [NEW] (E) 43
429:1-1-3. . . . . [AMENDED] 1089
429:10-1-2. . . . . [AMENDED] 1092
429:10-1-3. . . . . [AMENDED] 1095
429:10-1-4. . . . . [AMENDED] 1095
429:10-1-6. . . . . [AMENDED] 1095
429:10-1-7. . . . . [AMENDED] 1095
429:10-1-8. . . . . [AMENDED] 1096
429:10-1-10. . . . . [AMENDED] 1096
429:15-1-2. . . . . [AMENDED] 1097
429:15-1-11. . . . . [AMENDED] 1099
429:20-1-2. . . . . [AMENDED] 1100
429:20-1-12. . . . . [AMENDED] 1102
435:10-4-6. . . . . [AMENDED] (E) 213
435:10-4-7. . . . . [AMENDED] (E) 214
435:10-21-1. . . . . [NEW] (E) 214
435:15-3-1. . . . . [AMENDED] 1103
435:15-3-18. . . . . [AMENDED] 1103
435:15-11-1. . . . . [AMENDED] 1103
435:30-1-4. . . . . [AMENDED] 1104
435:30-1-5. . . . . [AMENDED] 1105
435:45-5-1. . . . . [AMENDED] 1107
450:15-3-6. . . . . [AMENDED] 1420
450:15-3-45. . . . . [AMENDED] 1421
450:16-5-1. . . . . [AMENDED] 1422
450:16-21-4. . . . . [AMENDED] 1422
450:55-1-2. . . . . [AMENDED] 1423
450:55-3-2. . . . . [AMENDED] 1424
450:55-3-3. . . . . [AMENDED] 1425
450:55-3-5. . . . . [AMENDED] 1425
450:55-3-6. . . . . [AMENDED] 1425
450:55-3-7. . . . . [AMENDED] 1426
450:55-3-8. . . . . [AMENDED] 1426
450:55-5-6. . . . . [AMENDED] 1427
450:55-5-7. . . . . [AMENDED] 1427
450:55-5-9. . . . . [AMENDED] 1427
450:55-11-2. . . . . [AMENDED] 1428
450:60-1-1. . . . . [NEW] 1428
450:60-1-2. . . . . [NEW] 1429
450:60-1-3. . . . . [NEW] 1429
450:60-1-4. . . . . [NEW] 1430
450:60-1-5. . . . . [NEW] 1430
450:60-3-1. . . . . [NEW] 1430
450:60-3-2. . . . . [NEW] 1430
450:60-3-3. . . . . [NEW] 1430
450:60-3-4. . . . . [NEW] 1430
450:60-3-5. . . . . [NEW] 1430
450:60-3-6. . . . . [NEW] 1430
450:60-3-7. . . . . [NEW] 1430
450:60-3-8. . . . . [NEW] 1431
450:60-3-9. . . . . [NEW] 1431
450:60-3-10. . . . . [NEW] 1431
450:60-3-11. . . . . [NEW] 1431
450:60-3-12. . . . . [NEW] 1431
450:60-3-13. . . . . [NEW] 1431
450:60-3-14. . . . . [NEW] 1431
450:60-3-15. . . . . [NEW] 1431
450:60-3-16. . . . . [NEW] 1431
450:60-5-1. . . . . [NEW] 1432
450:60-5-2. . . . . [NEW] 1432
450:60-5-3. . . . . [NEW] 1432
450:60-7-1. . . . . [NEW] 1432
450:60-7-2. . . . . [NEW] 1433
450:60-7-3. . . . . [NEW] 1433
450:60-7-4. . . . . [NEW] 1433
450:60-7-5. . . . . [NEW] 1433
450:60-7-6. . . . . [NEW] 1433
450:60-7-7. . . . . [NEW] 1434
450:60-7-8. . . . . [NEW] 1434
450:60-7-9. . . . . [NEW] 1434
450:60-7-10. . . . . [NEW] 1434
450:60-9-1. . . . . [NEW] 1435
450:60-11-1. . . . . [NEW] 1435
450:60-11-2. . . . . [NEW] 1435
450:60-11-3. . . . . [NEW] 1435
450:60-13-1. . . . . [NEW] 1435
450:60-13-2. . . . . [NEW] 1436
450:60-15-1. . . . . [NEW] 1436
450:60-15-2. . . . . [NEW] 1436
450:60-17-1. . . . . [NEW] 1437
450:60-17-2. . . . . [NEW] 1437
450:60-17-3. . . . . [NEW] 1437
450:60-19-1. . . . . [NEW] 1437
450:60-19-2. . . . . [NEW] 1437
450:60-19-3. . . . . [NEW] 1437
450:60-19-4. . . . . [NEW] 1437
450:60-21-1. . . . . [NEW] 1437
450:60-23-1. . . . . [NEW] 1438
450:60-25-1. . . . . [NEW] 1438
450:60-25-2. . . . . [NEW] 1438
465:10-3-2. . . . . [AMENDED] 1109
465:10-3-3. . . . . [AMENDED] 1109
465:10-7-1. . . . . [AMENDED] 1109
465:10-7-2. . . . . [AMENDED] 1109
465:10-7-3. . . . . [AMENDED] 1109
465:10-9-1. . . . . [AMENDED] 1110
465:10-9-2. . . . . [AMENDED] 1110
465:15-1-2. . . . . [AMENDED] 1110
465:15-3-7. . . . . [AMENDED] 1111
465:15-3-14. . . . . [AMENDED] 1111
465:15-7-2. . . . . [AMENDED] 1112
475:55-1-5. . . . . [NEW] (E) 607
485:10-1-2. . . . . [AMENDED] 1440
485:10-3-5. . . . . [AMENDED] 1440
485:10-5-4. . . . . [AMENDED] 1441
485:10-5-4.1. . . . . [AMENDED] 1441
485:10-5-6. . . . . [AMENDED] 1441
485:10-5-12. . . . . [AMENDED] 1442

485:10-7-1. . . . . [AMENDED] 1442
485:10-7-2. . . . . [AMENDED] (E) 44
485:10-7-2. . . . . [AMENDED] 1443
485:10-7-6. . . . . [AMENDED] 1444
485:10-7-9. . . . . [AMENDED] 1444
485:10-9-2. . . . . [AMENDED] (E) 45
485:10-9-2. . . . . [AMENDED] 1445
485:10-9-6. . . . . [AMENDED] 1446
485:10-9-9. . . . . [AMENDED] 1446
485:10-13-1. . . . . [AMENDED] 1446
485:10-15-5. . . . . [AMENDED] 1447
485:10-15-6. . . . . [AMENDED] 1447
485:10-16-6. . . . . [AMENDED] 1448
485:10-16-7. . . . . [AMENDED] 1448
485:10-19-5. . . . . [AMENDED] 1449
490:1-1-1. . . . . [AMENDED] 1599
490:1-1-2. . . . . [AMENDED] 1600
490:1-3-1. . . . . [AMENDED] 1601
490:1-3-2. . . . . [AMENDED] 1601
490:1-3-3. . . . . [AMENDED] 1602
490:1-3-6. . . . . [REVOKED] 1602
490:1-3-7. . . . . [REVOKED] 1603
490:1-3-8. . . . . [NEW] 1603
490:1-3-9. . . . . [NEW] 1603
490:1-5-2. . . . . [AMENDED] 1604
490:1-5-2.1. . . . . [NEW] 1604
490:1-5-3. . . . . [AMENDED] 1604
490:1-5-4. . . . . [AMENDED] 1604
490:1-5-5. . . . . [AMENDED] 1605
490:1-5-6. . . . . [AMENDED] 1605
490:1-5-7. . . . . [AMENDED] 1605
490:1-5-7.1. . . . . [NEW] 1605
490:1-5-8. . . . . [AMENDED] 1606
490:1-6-1. . . . . [AMENDED] 1606
490:1-7-1. . . . . [AMENDED] 1606
490:1-7-2. . . . . [NEW] 1606
490:1-9-1. . . . . [NEW] 1607
490:1-9-2. . . . . [NEW] 1607
490:1-9-3. . . . . [NEW] 1608
490:1-9-4. . . . . [NEW] 1608
490:1-9-5. . . . . [NEW] 1608
490:10-1-1. . . . . [AMENDED] 1609
490:10-1-3. . . . . [AMENDED] 1609
490:10-1-4. . . . . [AMENDED] 1610
490:10-1-5. . . . . [AMENDED] 1610
490:10-1-6. . . . . [AMENDED AND RENUMBERED TO 490:10-13-2] 1611
490:10-1-7. . . . . [REVOKED] 1611
490:10-1-8. . . . . [AMENDED AND RENUMBERED TO 490:10-13-1] 1612
490:10-1-9. . . . . [NEW] 1612
490:10-1-10. . . . . [NEW] 1612
490:10-1-11. . . . . [NEW] 1612
490:10-3-1. . . . . [AMENDED] 1613
490:10-3-2. . . . . [NEW] 1614
490:10-3-3. . . . . [NEW] 1614
490:10-3-4. . . . . [NEW] 1614
490:10-3-5. . . . . [NEW] 1614
490:10-3-6. . . . . [NEW] 1615
490:10-5-1. . . . . [AMENDED AND RENUMBERED TO 490:10-3-6] 1615
490:10-5-2. . . . . [AMENDED AND RENUMBERED TO 490:10-3-5] 1615
490:10-5-3. . . . . [AMENDED] 1615
490:10-5-4. . . . . [REVOKED] 1616
490:10-5-5. . . . . [NEW] 1616
490:10-7-3. . . . . [NEW] 1616
490:10-8-1. . . . . [REVOKED] 1617
490:10-8-2. . . . . [AMENDED] 1617
490:10-8-5. . . . . [AMENDED] 1617
490:10-8-7. . . . . [AMENDED] 1617
490:10-8-9. . . . . [AMENDED] 1618
490:10-8-13. . . . . [AMENDED] 1618
490:10-8-14. . . . . [AMENDED] 1618
490:10-8-15. . . . . [AMENDED AND RENUMBERED TO 490:10-3-4] 1618
490:10-8-16. . . . . [AMENDED] 1618
490:10-8-17. . . . . [AMENDED] 1618
490:10-9-1. . . . . [REVOKED] 1618
490:10-9-2. . . . . [REVOKED] 1618
490:10-10-1. . . . . [REVOKED] 1619
490:10-13-1. . . . . [NEW] 1619
490:10-13-2. . . . . [NEW] 1620
490:l0-l-2. . . . . [AMENDED] 1609
530:10-1-2. . . . . [AMENDED] 1114
530:10-1-43. . . . . [AMENDED] 1117
530:10-3-33.6. . . . . [AMENDED] 1118
530:10-3-33.7. . . . . [AMENDED] 1118
530:10-3-54. . . . . [AMENDED] 1119
530:10-7-1. . . . . [AMENDED] 1119
530:10-7-6. . . . . [AMENDED] 1119
530:10-7-7. . . . . [AMENDED] 1120
530:10-7-11. . . . . [AMENDED] 1120
530:10-7-12. . . . . [AMENDED] 1120
530:10-7-14. . . . . [AMENDED] 1121
530:10-7-17. . . . . [AMENDED] 1122
530:10-7-24. . . . . [AMENDED] 1133
530:10-9-4. . . . . [AMENDED] 1122
530:10-9-5. . . . . [AMENDED] 1122
530:10-9-37. . . . . [AMENDED] 1122
530:10-9-38. . . . . [AMENDED] 1122
530:10-9-39. . . . . [AMENDED] 1122
530:10-9-40. . . . . [AMENDED] 1122
530:10-9-51. . . . . [AMENDED] 1123
530:10-9-52. . . . . [AMENDED] 1123
530:10-9-54. . . . . [REVOKED] 1123
530:10-9-76. . . . . [AMENDED] 1123
530:10-9-99. . . . . [AMENDED] 1123
530:10-9-100. . . . . [AMENDED] 1124
530:10-9-130. . . . . [AMENDED] 1124
530:10-11-1. . . . . [AMENDED] 1124
530:10-11-31. . . . . [AMENDED] 1124
530:10-11-32. . . . . [AMENDED] 1124
530:10-11-39. . . . . [AMENDED] 1125
530:10-11-71. . . . . [AMENDED] 1125
530:10-13-1. . . . . [AMENDED] 1125
530:10-13-2. . . . . [AMENDED] 1125
530:10-13-3. . . . . [AMENDED] 1126
530:10-13-32. . . . . [AMENDED] 1126
530:10-15-1. . . . . [AMENDED] 1127
530:10-15-10. . . . . [AMENDED] 1127
530:10-15-11. . . . . [AMENDED] 1621
530:10-15-12. . . . . [AMENDED] 1622
530:10-15-43. . . . . [AMENDED] 1134
530:10-15-45. . . . . [AMENDED] 1127
530:10-15-49. . . . . [AMENDED] 1128
530:10-15-71. . . . . [AMENDED] (E) 608
530:10-15-71. . . . . [AMENDED] 1623
530:10-15-72. . . . . [REVOKED] (E) 609
530:10-15-72. . . . . [REVOKED] 1624
530:10-17-74. . . . . [AMENDED] 1129
530:10-17-75. . . . . [AMENDED] 1130
530:10-17-77. . . . . [AMENDED] 1131
530:10-17-80. . . . . [AMENDED] 1131

530:10-17-110. [AMENDED] 1132
530:10-17-111. [AMENDED] 1132
530:10-17-115. [AMENDED] 1132
530:15-3-15. [NEW] 1135
585:1-1-1. [REVOKED] 1624
585:1-1-2. [REVOKED] 1625
585:1-1-3. [REVOKED] 1625
585:1-1-4. [REVOKED] 1625
585:1-1-5. [REVOKED] 1625
585:1-3-1. [REVOKED] 1625
585:1-3-2. [REVOKED] 1625
585:1-3-3. [REVOKED] 1625
585:1-3-4. [REVOKED] 1625
585:1-5-1. [REVOKED] 1625
585:1-5-2. [REVOKED] 1626
585:1-5-3. [REVOKED] 1626
585:1-5-4. [REVOKED] 1626
585:1-5-5. [REVOKED] 1626
585:1-5-6. [REVOKED] 1627
585:1-5-7. [REVOKED] 1627
585:1-5-8. [REVOKED] 1627
585:1-7-1. [REVOKED] 1627
585:1-7-2. [REVOKED] 1627
585:1-7-3. [REVOKED] 1627
585:1-7-4. [REVOKED] 1627
585:1-7-5. [REVOKED] 1627
585:1-7-6. [REVOKED] 1627
585:1-7-7. [REVOKED] 1628
585:1-7-8. [REVOKED] 1628
585:1-7-9. [REVOKED] 1628
585:1-7-10. [REVOKED] 1628
585:1-7-11. [REVOKED] 1628
585:1-7-12. [REVOKED] 1628
585:1-7-13. [REVOKED] 1628
585:1-7-14. [REVOKED] 1628
585:1-7-15. [REVOKED] 1629
585:1-7-16. [REVOKED] 1629
585:1-7-17. [REVOKED] 1629
585:1-7-18. [REVOKED] 1629
585:1-7-19. [REVOKED] 1629
585:2-1-1. [NEW] 1630
585:2-1-2. [NEW] 1630
585:2-1-3. [NEW] 1630
585:2-1-4. [NEW] 1631
585:2-1-5. [NEW] 1631
585:2-3-1. [NEW] 1631
585:2-3-2. [NEW] 1631
585:2-3-3. [NEW] 1631
585:2-3-4. [NEW] 1631
585:2-3-5. [NEW] 1631
585:2-3-6. [NEW] 1631
585:2-3-7. [NEW] 1632
585:2-3-8. [NEW] 1632
585:2-3-9. [NEW] 1632
585:2-5-1. [NEW] 1633
585:2-5-2. [NEW] 1633
585:2-5-3. [NEW] 1633
585:2-5-4. [NEW] 1633
585:2-5-5. [NEW] 1633
585:2-5-6. [NEW] 1633
585:2-5-7. [NEW] 1634
585:2-5-8. [NEW] 1634
585:2-5-9. [NEW] 1635
585:2-5-10. [NEW] 1635
585:2-5-11. [NEW] 1635
585:2-7-1. [NEW] 1635
585:2-7-2. [NEW] 1635
585:2-7-3. [NEW] 1635
585:2-7-4. [NEW] 1636
585:2-7-5. [NEW] 1636
585:2-7-6. [NEW] 1636
585:2-7-7. [NEW] 1636
585:2-7-8. [NEW] 1636
585:2-7-9. [NEW] 1636
585:2-7-10. [NEW] 1636
585:2-7-11. [NEW] 1637
585:2-7-12. [NEW] 1637
585:2-7-13. [NEW] 1637
585:2-7-14. [NEW] 1637
585:2-7-15. [NEW] 1638
585:2-7-16. [NEW] 1638
585:10-1-1. [REVOKED] 1639
585:10-1-2. [REVOKED] 1639
585:10-1-3. [REVOKED] 1639
585:10-1-4. [REVOKED] 1639
585:10-1-5. [REVOKED] 1639
585:10-1-6. [REVOKED] 1640
585:10-1-7. [REVOKED] 1640
585:10-1-8. [REVOKED] 1640
585:10-1-9. [REVOKED] 1640
585:10-1-10. [REVOKED] 1640
585:10-1-12. [REVOKED] 1640
585:15-1-1. [REVOKED] 1640
585:15-1-2. [REVOKED] 1640
585:15-1-3. [REVOKED] 1641
585:15-1-4. [REVOKED] 1641
585:15-1-5. [REVOKED] 1641
585:15-1-6. [REVOKED] 1641
585:15-1-8. [REVOKED] 1641
585:15-3-1. [REVOKED] 1641
585:15-3-2. [REVOKED] 1642
585:15-3-3. [REVOKED] 1642
585:15-3-4. [REVOKED] 1642
585:15-3-5. [REVOKED] 1642
585:15-3-6. [REVOKED] 1642
585:15-3-7. [REVOKED] 1642
585:15-3-8. [REVOKED] 1642
585:15-3-9. [REVOKED] 1642
585:15-5-1. [REVOKED] 1643
585:15-5-2. [REVOKED] 1643
585:30-1-1. [NEW] 1644
585:30-1-2. [NEW] 1644
585:30-1-3. [NEW] 1644
585:30-1-4. [NEW] 1645
585:30-1-5. [NEW] 1645
585:30-1-6. [NEW] 1645
585:30-1-7. [NEW] 1645
585:30-1-8. [NEW] 1645
585:35-1-1. [NEW] 1646
585:35-1-2. [NEW] 1646
585:35-1-3. [NEW] 1646
585:35-1-4. [NEW] 1646
585:35-1-5. [NEW] 1646
585:35-3-1. [NEW] 1647
585:35-3-2. [NEW] 1647
585:35-3-3. [NEW] 1648
585:35-3-4. [NEW] 1648
585:35-3-5. [NEW] 1648
585:35-3-6. [NEW] 1648
585:35-3-7. [NEW] 1648
585:35-3-8. [NEW] 1648
585:35-3-9. [NEW] 1648
585:35-5-1. [NEW] 1648
585:35-5-2. [NEW] 1649

585:35-5-3. [NEW] 1649
585:35-5-4. [NEW] 1649
585:35-5-5. [NEW] 1650
585:35-5-6. [NEW] 1650
585:35-5-7. [NEW] 1650
585:35-5-8. [NEW] 1650
585:35-7-1. [NEW] 1650
585:35-7-2. [NEW] 1651
590:10-1-18. [AMENDED] 1136
590:10-3-10. [AMENDED] 1137
590:10-7-5. [AMENDED] (E) 47
590:10-7-5. [AMENDED] 1137
590:10-7-13. [AMENDED] 1138
590:10-7-16. [AMENDED] 1138
590:10-9-1. [AMENDED] 1139
590:10-19-2. [AMENDED] 1139
590:10-19-4. [AMENDED] 1139
590:10-19-5. [AMENDED] 1140
590:10-19-6. [AMENDED] 1140
590:10-19-7. [AMENDED] 1140
590:10-19-8. [AMENDED] 1140
590:25-9-17. [AMENDED] 1141
590:35-13-9. [AMENDED] 1142
600:10-1-4. [AMENDED] (E) 215
600:10-1-6. [AMENDED] (E) 215
600:10-1-8. [AMENDED] (E) 215
600:10-1-16. [AMENDED] (E) 216
600:15-1-14. [AMENDED] (E) 218
605:10-3-1. [AMENDED] (E) 219
612:1-7-3. [AMENDED] 1652
612:10-1-2. [AMENDED] 1653
612:10-1-6. [AMENDED] 1657
612:10-3-4. [AMENDED] 1669
612:10-3-5. [AMENDED] 1660
612:10-7-2. [AMENDED] 1669
612:10-7-4. [AMENDED] 1661
612:10-7-6. [AMENDED] 1670
612:10-7-8. [AMENDED] 1663
612:10-7-20. [AMENDED] 1664
612:10-7-35. [AMENDED] 1671
612:10-7-45. [AMENDED] 1671
612:10-7-47. [AMENDED] 1672
612:10-7-48. [AMENDED] 1672
612:10-7-49. [AMENDED] 1673
612:10-7-50. [AMENDED] 1674
612:10-7-51. [AMENDED] 1676
612:10-7-52. [AMENDED] 1677
612:10-7-53. [REVOKED] 1677
612:10-7-54. [REVOKED] 1677
612:10-7-55. [AMENDED] 1678
612:10-7-56. [AMENDED] 1678
612:10-7-57. [REVOKED] 1678
612:10-7-58. [AMENDED] 1678
612:10-7-59. [AMENDED] 1679
612:10-7-60. [AMENDED] 1680
612:10-7-61. [AMENDED] 1680
612:10-7-62. [AMENDED] 1680
612:10-7-63. [AMENDED] 1681
612:10-7-87. [AMENDED] 1681
612:10-7-88. [AMENDED] 1664
612:10-7-161. [AMENDED] 1665
612:10-7-166. [AMENDED] 1665
612:10-7-182. [AMENDED] 1665
612:10-7-230. [AMENDED] 1665
612:10-7-230.1. [AMENDED] 1666
612:10-7-230.2. [AMENDED] 1666
612:10-7-230.3. [AMENDED] 1666
612:10-9-2. [AMENDED] 1666
612:10-9-3. [AMENDED] 1667
612:10-9-15. [AMENDED] 1682
612:10-9-17. [AMENDED] 1682
612:10-9-18. [AMENDED] 1682
612:10-9-19. [AMENDED] 1682
612:10-9-20. [AMENDED] 1683
612:10-9-21. [AMENDED] 1683
612:10-9-22. [AMENDED] 1683
612:10-9-23. [REVOKED] 1683
612:10-9-24. [NEW] 1684
612:10-9-25. [NEW] 1684
612:10-9-26. [NEW] 1684
612:10-11-1. [AMENDED] 1667
612:10-11-2. [AMENDED] 1667
612:10-11-6. [AMENDED] 1668
612:10-11-7. [AMENDED] 1668
612:10-11-17. [AMENDED] 1684
612:10-11-19. [AMENDED] 1684
612:10-11-20. [AMENDED] 1685
612:10-11-21. [AMENDED] 1685
612:10-11-22. [AMENDED] 1685
612:10-11-24. [AMENDED] 1685
612:10-11-25. [AMENDED] 1686
612:10-11-26. [AMENDED] 1686
612:10-11-27. [AMENDED] 1668
612:10-11-28. [AMENDED] 1686
612:10-11-29. [AMENDED] 1686
612:10-11-39. [AMENDED] 1668
612:10-11-41. [AMENDED] 1668
612:10-11-42. [AMENDED] 1668
612:10-11-44. [AMENDED] 1668
612:10-11-49. [AMENDED] 1668
612:20-1-3. [REVOKED] 1687
612:20, App. A. [REVOKED] 1688
612:20, App. B. [REVOKED] 1688
612:20, App. C. [REVOKED] 1688
612:20, App. D. [REVOKED] 1688
612:20, App. E. [REVOKED] 1688
612:20, App. F. [REVOKED] 1688
650:12-1-1. [NEW] (E) 429
650:12-1-2. [NEW] (E) 430
650:12-1-3. [NEW] (E) 430
650:12-1-4. [NEW] (E) 430
650:12-1-5. [NEW] (E) 430
650:12-1-6. [NEW] (E) 430
650:12-1-7. [NEW] (E) 430
650:12-1-8. [NEW] (E) 430
650:12-1-9. [NEW] (E) 431
650:12-1-10. [NEW] (E) 431
650:12-1-11. [NEW] (E) 431
650:12-1-12. [NEW] (E) 431
650:12-1-13. [NEW] (E) 432
650:12-1-14. [NEW] (E) 432
650:12-1-15. [NEW] (E) 432
710:1-1-2. [AMENDED] 1688
710:1-3-2. [AMENDED] 1689
710:1-3-72. [AMENDED] 1690
710:1-5-42. [AMENDED] 1690
710:1-5-88. [AMENDED] 1690
710:1-5-89. [AMENDED] 1691
710:1-5-91. [AMENDED] 1691
710:25-1-9. [AMENDED] 1692
710:75-1-1. [REVOKED] 1450
710:75-1-2. [REVOKED] 1450
710:75-1-3. [REVOKED] 1450
710:75-1-4. [REVOKED] 1450

710:75-1-5. . . . . [REVOKED] 1451
710:75-1-6. . . . . [REVOKED] 1451
710:75-1-7. . . . . [REVOKED] 1451
710:75-1-8. . . . . [REVOKED] 1451
710:75-1-9. . . . . [REVOKED] 1451
710:75-1-10. . . . . [REVOKED] 1451
710:85-1-2. . . . . [AMENDED] 1452
710:85-1-3. . . . . [REVOKED] 1453
710:85-1-8. . . . . [AMENDED] 1453
710:85-5-3. . . . . [REVOKED] 1453
710:85-5-10. . . . . [AMENDED] 1454
710:95-6-1. . . . . [REVOKED] 1454
710:95-6-2. . . . . [REVOKED] 1454
710:95-6-3. . . . . [REVOKED] 1454
710:95-6-4. . . . . [REVOKED] 1455
710:95-6-5. . . . . [REVOKED] 1455
715:10-5-4.1. . . . . [NEW] (E) 221
715:10-5-4.1. . . . . [NEW] 1692
715:10-5-32. . . . . [AMENDED] (E) 221
715:10-5-32. . . . . [AMENDED] 1693
715:10-5-35. . . . . [AMENDED] (E) 222
715:10-5-35. . . . . [AMENDED] 1693
715:10-13-3.1. . . . . [AMENDED] (E) 223
715:10-13-3.1. . . . . [AMENDED] 1695
715:10-15-7.2. . . . . [NEW] (E) 223
715:10-15-7.2. . . . . [NEW] 1695
720:10-3-7. . . . . [AMENDED] 1696
725:20-7-11. . . . . [NEW] (E) 501
730:10-23-1. . . . . [NEW] (E) 224
730:10-23-1. . . . . [NEW] 1697
730:10-23-2. . . . . [NEW] (E) 225
730:10-23-2. . . . . [NEW] 1697
730:10-23-3. . . . . [NEW] (E) 225
730:10-23-3. . . . . [NEW] 1697
730:10-23-4. . . . . [NEW] (E) 225
730:10-23-4. . . . . [NEW] 1697
730:10-23-5. . . . . [NEW] (E) 225
730:10-23-5. . . . . [NEW] 1698
730:10-23-6. . . . . [NEW] (E) 225
730:10-23-6. . . . . [NEW] 1698
730:10-23-7. . . . . [NEW] (E) 225
730:10-23-7. . . . . [NEW] 1698
730:10-23-8. . . . . [NEW] (E) 225
730:10-23-8. . . . . [NEW] 1698
730:10-23-9. . . . . [NEW] (E) 226
730:10-23-9. . . . . [NEW] 1698
775:10-3-8.1. . . . . [AMENDED] 1143
775:10-3-8.2. . . . . [RESERVED] 1143
775:10-3-8.3. . . . . [NEW] 1143
775:10-3-12. . . . . [AMENDED] 1143
800:10-1-3. . . . . [AMENDED] (E) 226
800:10-1-4. . . . . [AMENDED] (E) 610
800:10-1-5. . . . . [AMENDED] (E) 611
800:10-5-2. . . . . [AMENDED] (E) 226
800:10-5-3. . . . . [AMENDED] (E) 612
800:15-7-3. . . . . [AMENDED] (E) 110
800:25-7-120.3. . . . . [NEW] (E) 228

Agency/Title Index

[Assigned as of 6-1-07]

Agency	Title
Oklahoma **ACCOUNTANCY** Board	10
State **ACCREDITING** Agency	15
AD Valorem Task Force *(abolished 7-1-93)*	20
Oklahoma **AERONAUTICS** Commission	25
Board of Regents for the Oklahoma **AGRICULTURAL** and Mechanical Colleges	30
Oklahoma Department of **AGRICULTURE**, Food, and Forestry	35
Oklahoma Board of Licensed **ALCOHOL** and Drug Counselors	38
Board of Tests for **ALCOHOL** and Drug Influence	40
ALCOHOLIC Beverage Laws Enforcement Commission	45
ANATOMICAL Board of the State of Oklahoma	50
Board of Governors of the Licensed **ARCHITECTS,** Landscape Architects and Interior Designers of Oklahoma	55
ARCHIVES and Records Commission	60
Board of Trustees for the **ARDMORE** Higher Education Program	65
Oklahoma **ARTS** Council	70
ATTORNEY General	75
State **AUDITOR** and Inspector	80
State **BANKING** Department	85
Oklahoma State Employees **BENEFITS** Council	87
Council of **BOND** Oversight	90
Oklahoma Professional **BOXING** Commission	92
State **BURIAL** Board *(abolished 7-1-92)*	95
[RESERVED]	100
Oklahoma **CAPITAL** Investment Board	105
Oklahoma **CAPITOL** Improvement Authority	110
State **CAPITOL** Preservation Commission	115
CAPITOL-MEDICAL Center Improvement and Zoning Commission	120
Oklahoma Department of **CAREER** and Technology Education (*Formerly:* Oklahoma Department of **VOCATIONAL** and Technical Education) - See Title 780	
Board of Regents of **CARL** Albert State College	125
Department of **CENTRAL** Services (*Formerly:* Office of **PUBLIC** Affairs) - *See* Title 580	
CEREBRAL Palsy Commission	130
Commission on **CHILDREN** and Youth	135
Board of **CHIROPRACTIC** Examiners	140
Oklahoma Department of **EMERGENCY** Management (*Formerly:* Department of **CIVIL** Emergency Management)	145
Oklahoma Department of **COMMERCE**	150
COMMUNITY Hospitals Authority	152
COMPSOURCE Oklahoma (*Formerly:* State **INSURANCE** Fund) - *See* Title 370	
Oklahoma **CONSERVATION** Commission	155
CONSTRUCTION Industries Board	158
Department of **CONSUMER** Credit	160
CORPORATION Commission	165
Department of **CORRECTIONS**	170
State Board of **COSMETOLOGY**	175
Oklahoma State **CREDIT** Union Board	180
CRIME Victims Compensation Board	185
Joint **CRIMINAL** Justice System Task Force Committee	190
Board of **DENTISTRY**	195
Oklahoma **DEVELOPMENT** Finance Authority	200
Board of Regents of **EASTERN** Oklahoma State College	205
State Department of **EDUCATION**	210
EDUCATION Oversight Board	215
Oklahoma **EDUCATIONAL** Television Authority	220
[RESERVED]	225
State **ELECTION** Board	230
Oklahoma **FUNERAL** Board (*Formerly:* Oklahoma State Board of **EMBALMERS** and Funeral Directors)	235
Oklahoma Department of **EMERGENCY** Management (*Formerly:* Department of **CIVIL** Emergency Management) - *See* Title 145	
Oklahoma **EMPLOYMENT** Security Commission	240
Oklahoma **ENERGY** Resources Board	243
State Board of Licensure for Professional **ENGINEERS** and Land Surveyors (***Formerly:*** State Board of Registration for Professional **ENGINEERS** and Land Surveyors)	245
Board of Trustees for the **ENID** Higher Education Program	250
Department of **ENVIRONMENTAL** Quality	252
State Board of **EQUALIZATION**	255
ETHICS Commission *(Title revoked)*	257
ETHICS Commission	258
Office of State **FINANCE**	260
State **FIRE** Marshal Commission	265
Oklahoma Council on **FIREFIGHTER** Training	268
Oklahoma **FIREFIGHTERS** Pension and Retirement System	270
[RESERVED]	275
State Board of Registration for **FORESTERS**	280
FOSTER Care Review Advisory Board	285
Oklahoma **FUNERAL** Board (*Formerly:* Oklahoma State Board of Embalmers and Funeral Directors) - *See* Title 235	
Oklahoma **FUTURES**	290
GOVERNOR	295
GRAND River Dam Authority	300
Group Self-Insurance Association **GUARANTY** Fund Board	302
Individual Self-Insured **GUARANTY** Fund Board	303
STATE Use Committee (*Formerly:* Committee on Purchases of Products and Services of the Severely **HANDICAPPED**)	304
Office of **HANDICAPPED** Concerns	305
Oklahoma State Department of **HEALTH**	310
Oklahoma Basic **HEALTH** Benefits Board *(abolished 11-1-97)*	315
Oklahoma **HEALTH** Care Authority	317
HIGHWAY Construction Materials Technician Certification Board	318
Oklahoma **HISTORICAL** Society	320
Oklahoma **HORSE** Racing Commission	325
Oklahoma **HOUSING** Finance Agency	330
Oklahoma **HUMAN** Rights Commission	335
Department of **HUMAN** Services	340
Committee for **INCENTIVE** Awards for State Employees	345
Oklahoma **INDIAN** Affairs Commission	350
Oklahoma **INDIGENT** Defense System	352
Oklahoma **INDUSTRIAL** Finance Authority	355
INJURY Review Board	357
Oklahoma State and Education Employees Group **INSURANCE** Board	360
INSURANCE Department	365
COMPSOURCE Oklahoma (*Formerly:* State **INSURANCE** Fund)	370
Oklahoma State Bureau of **INVESTIGATION**	375
Council on **JUDICIAL** Complaints	376
Office of **JUVENILE** Affairs	377
Department of **LABOR**	380
Department of the Commissioners of the **LAND** Office	385

Agency	Title
Council on **LAW** Enforcement Education and Training	390
Oklahoma **LAW** Enforcement Retirement System	395
Board on **LEGISLATIVE** Compensation	400
Oklahoma Department of **LIBRARIES**	405
LIEUTENANT Governor	410
Oklahoma **LINKED** Deposit Review Board	415
Oklahoma **LIQUEFIED** Petroleum Gas Board	420
Oklahoma **LIQUEFIED** Petroleum Gas Research, Marketing and Safety Commission	422
LITERACY Initiatives Commission	425
LONG-RANGE Capital Planning Commission	428
Oklahoma State Board of Examiners for **LONG-TERM** Care Administrators (*Formerly:* Oklahoma State Board of Examiners for NURSING Home Administrators) - *See* Title 490	
LOTTERY Commission, Oklahoma	429
Board of Trustees for the **MCCURTAIN** County Higher Education Program	430
Commission on **MARGINALLY** Producing Oil and Gas Wells	432
State Board of **MEDICAL** Licensure and Supervision	435
MEDICAL Technology and Research Authority of Oklahoma	440
Board of **MEDICOLEGAL** Investigations	445
Department of **MENTAL** Health and Substance Abuse Services	450
MERIT Protection Commission	455
MILITARY Planning Commission, Oklahoma Strategic	457
Department of **MINES**	460
Oklahoma **MOTOR** Vehicle Commission	465
Board of Regents of **MURRAY** State College	470
Oklahoma State Bureau of **NARCOTICS** and Dangerous Drugs Control	475
Board of Regents of **NORTHERN** Oklahoma College	480
Oklahoma Board of **NURSING**	485
Oklahoma State Board of Examiners for **LONG-TERM** Care Administrators (*Formerly:* Oklahoma State Board of Examiners for **NURSING** Home Administrators	490
Board of Regents of **OKLAHOMA** City Community College	495
Board of Regents of **OKLAHOMA** Colleges	500
Board of Examiners in **OPTOMETRY**	505
State Board of **OSTEOPATHIC** Examiners	510
PARDON and Parole Board	515
Oklahoma **PEANUT** Commission	520
Oklahoma State **PENSION** Commission	525
State Board of Examiners of **PERFUSIONISTS**	527
Office of **PERSONNEL** Management	530
Oklahoma State Board of **PHARMACY**	535
PHYSICIAN Manpower Training Commission	540
Board of **PODIATRIC** Medical Examiners	545
Oklahoma **POLICE** Pension and Retirement System	550
State Department of **POLLUTION** Control *(abolished 1-1-93)*	555
POLYGRAPH Examiners Board	560
Oklahoma Board of **PRIVATE** Vocational Schools	565
State Board for **PROPERTY** and Casualty Rates *(abolished 7-1-06; see also Title 365)*	570
State Board of Examiners of **PSYCHOLOGISTS**	575
Department of **CENTRAL** Services (*Formerly*: Office of **PUBLIC** Affairs)	580
PUBLIC Employees Relations Board	585
Oklahoma **PUBLIC** Employees Retirement System	590
Department of **PUBLIC** Safety	595
REAL Estate Appraiser Board	600
Oklahoma **REAL** Estate Commission	605
Board of Regents of **REDLANDS** Community College	607
State **REGENTS** for Higher Education	610
State Department of **REHABILITATION** Services	612
Board of Regents of **ROGERS** State College	615
Board of Regents of **ROSE** State College	620
Oklahoma **SAVINGS** and Loan Board *(abolished 7-1-93)*	625
SCENIC Rivers Commission	630
Oklahoma Commission on **SCHOOL** and County Funds Management	635
Advisory Task Force on the Sale of **SCHOOL** Lands *(functions concluded 2-92)*	640
The Oklahoma School of **SCIENCE** and Mathematics	645
Oklahoma Center for the Advancement of **SCIENCE** and Technology	650
SECRETARY of State	655
Department of **SECURITIES**	660
Board of Regents of **SEMINOLE** State College	665
SHEEP and Wool Commission	670
State Board of Licensed **SOCIAL** Workers	675
SOUTHERN Growth Policies Board	680
Oklahoma **SOYBEAN** Commission *(abolished 7-1-97)*	685
Board of Examiners for **SPEECH–LANGUAGE** Pathology and Audiology	690
STATE Employee Charitable Contributions, Oversight Committee for (*Formerly*: **STATE** Agency Review Committee)	695
STATE Use Committee (*Formerly:* Committee on Purchases of Products and Services of the Severely **HANDICAPPED**) – *See* Title 304	
Oklahoma **STUDENT** Loan Authority	700
TASK Force 2000	705
Oklahoma **TAX** Commission	710
Oklahoma Commission for **TEACHER** Preparation	712
TEACHERS' Retirement System	715
State **TEXTBOOK** Committee	720
Oklahoma **TOURISM** and Recreation Department	725
Department of **TRANSPORTATION**	730
Oklahoma **TRANSPORTATION** Authority (*Name changed to* Oklahoma **TURNPIKE** Authority *11-1-05 - See Title 731*)	
Oklahoma **TURNPIKE** Authority (*Formerly:* Oklahoma **TRANSPORTATION** Authority AND Oklahoma **TURNPIKE** Authority - See also Title 745)	731
State **TREASURER**	735
Board of Regents of **TULSA** Community College	740
Oklahoma **TURNPIKE** Authority (*Name changed to* Oklahoma **TRANSPORATION** Authority *11-1-99 - no rules enacted in this Title - See Title 731*)	745
Board of Trustees for the **UNIVERSITY** Center at Tulsa	750
UNIVERSITY Hospitals Authority	752
UNIVERSITY Hospitals Trust	753
Board of Regents of the **UNIVERSITY** of Oklahoma	755
Board of Regents of the **UNIVERSITY** of Science and Arts of Oklahoma	760
Oklahoma **USED** Motor Vehicle and Parts Commission	765
Oklahoma Department of **VETERANS** Affairs	770
Board of **VETERINARY** Medical Examiners	775
Oklahoma Department of **CAREER** and Technology Education (*Formerly:* Oklahoma Department of **VOCATIONAL** and Technical Education)	780
Oklahoma **WATER** Resources Board	785
Board of Regents of **WESTERN** Oklahoma State College	790
Oklahoma **WHEAT** Commission	795
Department of **WILDLIFE** Conservation	800
WILL Rogers and J.M. Davis Memorials Commission	805

Submissions for Review

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

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

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

[OAR Docket #07-910]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
25:20-1-6. through 25:20-1-10. [NEW]
SUBMITTED TO GOVERNOR:
May 3, 2007
SUBMITTED TO HOUSE:
May 3, 2007
SUBMITTED TO SENATE:
May 3, 2007

[OAR Docket #07-910; filed 5-3-07]

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

[OAR Docket #07-927]

RULEMAKING ACTION:
Submission of gubernatorial and legislative review
RULES:
Chapter 10. Non-Coal Rules And Regulations [AMENDED]
SUBMITTED TO GOVERNOR:
April 2, 2007
SUBMITTED TO HOUSE:
April 2, 2007
SUBMITTED TO SPEAKER:
April 2, 2007

[OAR Docket #07-927; filed 5-7-07]

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

[OAR Docket #07-928]

RULEMAKING ACTION:
Submission of gubernatorial and legislative review
RULES:
Chapter 20. The Permanent Regulations Governing The Coal Reclamation Act Of 1979 [AMENDED]
SUBMITTED TO GOVERNOR:
April 2, 2007
SUBMITTED TO HOUSE:
April 2, 2007
SUBMITTED TO SPEAKER:
April 2, 2007

[OAR Docket #07-928; filed 5-7-07]

Gubernatorial Approvals

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

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

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

[OAR Docket #07-965]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
10:15-1-2 [AMENDED]
Subchapter 25. Permits
10:15-25-3 [AMENDED]
Subchapter 30. Continuing Professional Education
10:15-30-5 [AMENDED]
10:15-30-8 [AMENDED]
Subchapter 32. Standards For Continuing Professional Education (CPE) Programs
10:15-32-5 [AMENDED]
Subchapter 33. Peer Review
10:15-33-4 [AMENDED]
10:15-33-6 [AMENDED]
10:15-33-7 [AMENDED]
Subchapter 39. Rules of Professional Conduct
10:15-39-1 [AMENDED]
10:15-39-9 [AMENDED]
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-965; filed 5-9-07]

TITLE 195. OKLAHOMA BOARD OF DENTISTRY
CHAPTER 10. EXAMINATIONS AND LICENSING OF DENTISTS, DENTAL HYGIENISTS, AND DENTAL SPECIALISTS

[OAR Docket #07-920]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 11. Specialty Examinations
195:10-11-0 [AMENDED]
GUBERNATORIAL APPROVAL:
March 15, 2007

[OAR Docket #07-920; filed 5-7-07]

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

[OAR Docket #07-930]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Rationalization
265:10-3-3 [AMENDED]
265:10-3-4 [AMENDED]
GUBERNATORIAL APPROVAL:
April 2, 2007

[OAR Docket #07-930; filed 5-8-07]

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

[OAR Docket #07-931]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
265:25-1-3 [AMENDED]
GUBERNATORIAL APPROVAL:
April 2, 2005

[OAR Docket #07-931; filed 5-8-07]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 2. PROCEDURES OF THE STATE DEPARTMENT OF HEALTH

[OAR Docket #07-934]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 2. Procedures of the State Department of Health [AMENDED]
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-934; filed 5-8-07]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 105. VITAL STATISTICS

[OAR Docket #07-935]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Birth Registration
310:105-3-3 [AMENDED]
310:105-3-4 [AMENDED]
Subchapter 5. Death Registration
310:105-5-4 [AMENDED]
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-935; filed 5-8-07]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 110. FEE AND FINE SCHEDULE FOR OCCUPATIONAL LICENSING

[OAR Docket #07-936]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Administrative Fine Schedule
310:110-5-5 [AMENDED]
310:110-5-7 [AMENDED]
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-936; filed 5-8-07]

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

[OAR Docket #07-937]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
310:205-1-1 [AMENDED]
310:205-1-2 [AMENDED]
310:205-1-3. [AMENDED]
310:205-1-3.1 [AMENDED]
Subchapter 3. License Requirements
310:205-3-1 [AMENDED]
310:205-3-2 [AMENDED]
310:205-3-3 [AMENDED]
310:205-3-4 [AMENDED]
310:205-3-5 [AMENDED]
310:205-3-7 [AMENDED]
310:205-3-8 [NEW]
310:205-3-9 [NEW]
310:205-3-10 [NEW]
310:205-3-11 [NEW]
Subchapter 5. Special Provisions
310:205-5-1 [AMENDED]
Subchapter 7. Enforcement
310:205-7-1 [AMENDED]
310:205-7-2 [AMENDED]
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-937; filed 5-8-07]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 210. BARBERS

[OAR Docket #07-938]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
310:210-1-2 [AMENDED]
Subchapter 5. Licensing
310:210-5-1 [AMENDED]
310:210-5-4 [AMENDED]
Subchapter 7. General Sanitation
310:210-7-15 [NEW]
310:210-7-16 [NEW]
Subchapter 11. Barber School or College Management Requirements
310:210-11-13 [AMENDED]
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-938; filed 5-8-07]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 233. BODY PIERCING ~~RULES~~AND TATTOOING

[OAR Docket #07-939]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
310:233-1-1 [AMENDED]

310:233-1-2 [AMENDED]
Subchapter 3. Body Piercing Artist and Tattoo Artist Requirements and Professional Standards
310:233-3-1 [AMENDED]
310:233-3-2 [AMENDED]
310:233-3-3 [AMENDED]
310:233-3-4 [AMENDED]
310:233-3-5 [AMENDED]
310:233-3-6 [AMENDED]
310:233-3-7 [AMENDED]
Subchapter 5. Sanitation and Sterilization Procedures
310:233-5-1 [AMENDED]
310:233-5-2 [AMENDED]
Subchapter 7. Requirements for Premises
310:233-7-1 [AMENDED]
310:233-7-2 [NEW]
Subchapter 9. ~~Permit~~License Requirements
310:233-9-1 [AMENDED]
310:233-9-2 [AMENDED]
310:233-9-3 [AMENDED]
310:233-9-4 [NEW]
310:233-9-5 [NEW]
310:233-9-6 [NEW]
310:233-9-7 [NEW]
310:233-9-8 [NEW]
Subchapter 11. Enforcement
310:233-11-1 [AMENDED]
310:233-11-2 [AMENDED]
310:233-11-3 [AMENDED]
310:233-11-4 [NEW]
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-939; filed 5-8-07]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 234. MEDICAL MICROPIGMENTATION

[OAR Docket #07-940]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
310:234-1-2 [AMENDED]
Subchapter 3. Medical Micropigmentation Certification
310:234-3-2 [AMENDED]
310:234-3-3 [AMENDED]
310:234-3-3.1 [AMENDED]
310:234-3-4 [AMENDED]
310:234-3-5 [AMENDED]
Subchapter 7. Requirements for Premises
310:234-7-1 [AMENDED]
310:234-7-2 [AMENDED]
Subchapter 11. Enforcement
310:234-11-4 [NEW]
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-940; filed 5-8-07]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 265. HEARING AID DEALERS AND FITTERS

[OAR Docket #07-941]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
310:265-1-2 [AMENDED]
Subchapter 3. Examinations
310:265-3-2 [AMENDED]
310:265-3-3 [AMENDED]
Subchapter 5. License Requirements
310:265-5-1 [AMENDED]
310:265-5-2 [AMENDED]
310:265-5-3 [AMENDED]
310:265-5-4 [AMENDED]
310:265-5-5 [AMENDED]
310:265-5-6 [AMENDED]
310:265-5-8 [NEW]
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-941; filed 5-8-07]

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

[OAR Docket #07-942]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
310-276-1-3 [AMENDED]
Subchapter 3. Procedures of the Committee
310-276-3-1 [AMENDED]
Subchapter 9. Examinations Applications, Examinations, Course Approval Requirements, Instructor Requirements, Continuing Education, Denied Application Appeal, Submission of Records, and ~~Continuing Education~~Substantial Compliance and Reciprocity

310-276-9-3 [AMENDED]
310-276-9-5 [AMENDED]
310:276-9-7 [AMENDED]
310:276-9-8 [AMENDED]
Subchapter 11. License Revocation and Suspension and Additional Prohibited Acts
310-276-11-1 [AMENDED]
310-276-11-2 [AMENDED]

GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-942; filed 5-8-07]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 345. REGISTRATION OF SANITARIANS AND ENVIRONMENTAL SPECIALISTS

[OAR Docket #07-943]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions
310:345-1-1.1 [AMENDED]
Subchapter 9. Continued Education [NEW]
310:345-9-1 [NEW]
310:345-9-2 [NEW]

GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-943; filed 5-8-07]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 400. LICENSED MARITAL AND FAMILY THERAPISTS

[OAR Docket #07-944]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions
310:400-1-1 [AMENDED]
310:400-1-3 [NEW]
310:400-1-4 [NEW]
Subchapter 5. Rules of Professional Conduct
310:400-5-2 [AMENDED]
310:400-5-8.1 [NEW]
Subchapter 7. Application for Licensure
310:400-7-2.2[NEW]
Subchapter 9. Licensure Examinations
310:400-9-1 [AMENDED]
310:400-9-4 [AMENDED]
Subchapter 11. Supervised Experience Requirements
310:400-11-2 [AMENDED]
310:400-11-5 [AMENDED]
Subchapter 13. Fees
310:400-13-2 [AMENDED]
Subchapter 15. Issuance and Maintenance of License
310:400-15-4 [AMENDED]
310:400-15-8 [AMENDED]

GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-944; filed 5-8-07]

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

[OAR Docket #07-945]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions
310:403-1-2 [AMENDED]
310:403-1-4 [NEW]
Subchapter 7. Rules of Professional Conduct
310:403-7-2 [AMENDED]
310:403-7-3 [AMENDED]
310:403-7-4 [AMENDED]
310:403-7-6 [AMENDED]
310:403-7-7 [AMENDED]
Subchapter 11. Application Procedures
310:403-11-12 [NEW]
Subchapter 13. Academic Requirements
310:403-13-1 [AMENDED]

GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-945; filed 5-8-07]

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

[OAR Docket #07-946]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions
310:405-1-2.1 [AMENDED]
310:405-1-2.2 [NEW]

Subchapter 3. Rules of Professional Conduct
310:405-3-2 [AMENDED]
310:405-3-3 [AMENDED]
310:405-3-3.1 [AMENDED]
310:405-3-4 [AMENDED]
310:405-3-5 [AMENDED]
Subchapter 7. Application Procedures
310:405-7-9 [NEW]
Subchapter 9. Academic Requirements
310:405-9-1 [AMENDED]
310:405-9-2 [AMENDED]
Subchapter 11. Supervised Experience Requirement
310:405-11-5 [AMENDED]
Subchapter 17. Continuing Education Requirements
310:405-17-2 [AMENDED]
310:405-17-4.1 [NEW]
Subchapter 19. Issuance of License
310:405-19-1.1 [NEW]

GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-946; filed 5-8-07]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 406. LICENSED GENETIC COUNSELORS

[OAR Docket #07-947]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Chapter 406. Licensed Genetic Counselors [NEW]

GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-947; filed 5-8-07]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 515. COMMUNICABLE DISEASE AND INJURY REPORTING

[OAR Docket #07-948]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. Disease and Injury Reporting Requirements
310:515-1-1.1 [NEW]
310:515-1-2 [AMENDED]
310:515-1-3 [AMENDED]
310:515-1-4 [AMENDED]
310:515-1-7 [AMENDED]
310:515-1-8 [AMENDED]
Subchapter 3. Disclosures and Uses of Disease Prevention and Control Information [NEW]
310:515-3-1 [NEW]
310:515-3-2 [NEW]
310:515-3-3 [NEW]
310:515-3-4 [NEW]

GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-948; filed 5-8-07]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 521. CONTROL AND TREATMENT OF COMMUNICABLE DISEASE

[OAR Docket #07-949]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions
310:521-1-2 [AMENDED]
Subchapter 3. Tuberculosis
310:521-3-2 [AMENDED]
Subchapter 5. HIV (Human Immunodeficiency Virus) and AIDS (Acquired Immunodeficiency Syndrome) [NEW]
310:521-5-1 [NEW]
310:521-5-2 [NEW]
310:521-5-3 [NEW]

GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-949; filed 5-8-07]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 526. DENTAL SERVICES

[OAR Docket #07-950]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions [NEW]
310:526-1-1 through 310:526-1-3 [NEW]
Subchapter 3. Oklahoma Dental Loan Repayment Program [NEW]
310:526-3-1 through 310:526-3-6 [NEW]

GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-950; filed 5-8-07]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 527. ALTERNATIVES TO ABORTION SERVICE

[OAR Docket #07-951]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
310:527-1-1 through 310:527-1-5 [NEW]
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-951; filed 5-8-07]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 535. IMMUNIZATIONS

[OAR Docket #07-952]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Childhood Immunizations
310:535-1-2 [AMENDED]
310:535-1-3 [AMENDED]
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-952; filed 5-8-07]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 567. STATE CENTRAL CANCER REGISTRY

[OAR Docket #07-953]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Reporting
310:567-3-2 [AMENDED]
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-953; filed 5-8-07]

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

[OAR Docket #07-954]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
310:641 Emergency Medical Services [AMENDED}
Subchapter 3. Ambulance Services
Part 1. General Provisions
310:641-3-2 [AMENDED]
Part 3. Ambulance Services
310:641-3-11 [AMENDED]
310:641-3-14 [AMENDED]
310:641-3-15 [AMENDED]
Part 5. Ground Transport Vehicles
310:641-3-20 [AMENDED]
Part 7. Air Ambulances
310:641-3-38 [AMENDED]
Part 10. Stretcher Aid Vans
310:641-3-48 [AMENDED]
310:641-3-48.1 [AMENDED]
310:641-3-48.2 [AMENDED]
Part 11. Medical Control
310:641-3-50 [AMENDED]
Part 17. Controlled Substances
310:641-3-80 [AMENDED]
Part 19. Inspection, Correction, Action
310:641-3-91 [AMENDED]
Part 25. Operational Protocols
310-641-3-120 [AMENDED]
Part 31. Certified ~~First~~Emergency Medical Response Agencies
310:641-3-150 [AMENDED]
Part 33. Service and Agency Files
310:641-3-160 [AMENDED]
Part 39. Enforcement Action
310:641-3-190 [AMENDED]
Subchapter 5. Personnel Licenses and Certification
Part 3. Emergency Medical Personnel Licenses
310:641-5-11 [AMENDED]
Part 9. Medical Control
310:641-5-50 [AMENDED]
Part 11. Emergency Medical Personnel Certification
310:641-5-61 [AMENDED]
310-641-5-70 [REVOKED]
Subchapter 7. Training Programs
Part 3. Training Programs
310:641-7-15 [AMENDED]
Part 5. Instructor Qualifications
310:641-7-20 [AMENDED]

GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-954; filed 5-8-07]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 661. HOSPICE

[OAR Docket #07-955]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 2. Licenses
310:661-2-6 [AMENDED]
Subchapter 6. Hospice Inpatient Service Requirements
310:661-6-4 [AMENDED]
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-955; filed 5-8-07]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 662. HOME CARE AGENCIES

[OAR Docket #07-956]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
310:662-1-2 [AMENDED]
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-956; filed 5-8-07]

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

[OAR Docket #07-957]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
310:663-1-2 [AMENDED]
310:663-1-4 [NEW]
Subchapter 3. Services and Care
310:663-3-5 [AMENDED]
310:663-3-8 [NEW]
Subchapter 7. Physical Plant Design
310:663-7-2 [AMENDED]
Subchapter 9. Staffing Requirements
310:663-9-6 [AMENDED]
Subchapter 13. Resident Contract
310:663-13-1 [AMENDED]
Subchapter 15. Resident Rights and Responsibilities
310:663-15-1 [AMENDED]
310:663-15-2 [AMENDED]
310:663-15-3 [NEW]
Subchapter 19. Administration, Records and Policies
310:663-19-1 [AMENDED]
310:663-19-2 [AMENDED]
310:663-19-3 [NEW]
Subchapter 25. Inspections and Investigations
310:663-25-3 [AMENDED]
310:663-25-4 [AMENDED]
Subchapter 29. Terminating and Continuing Services
310:663-29-2 [AMENDED]
Appendix B. Reference List for Standards of Practice [NEW]
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-957; filed 5-8-07]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 664. HOME CARE ADMINISTRATOR CERTIFICATION

[OAR Docket #07-958]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Preparedness Program
310:664-5-2 [AMENDED]
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-958; filed 5-8-07]

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

[OAR Docket #07-959]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
310:667-1-3. [AMENDED]
Subchapter 17. Food and Nutritional Services

310:667-17-4. [AMENDED]
310:667-17-5. [AMENDED]
Subchapter 33. Specialized Requirements - Psychiatric
310:667-33-2 [AMENDED]

GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-959; filed 5-8-07]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 668. UNCOMPENSATED CARE FUND [REVOKED]

[OAR Docket #07-960]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions [REVOKED]
310:668-1-1 through 310:668-1-3 [REVOKED]
Subchapter 3. Reports and Financial Statements [REVOKED]
310:668-3-1 through 310:668-3-4 [REVOKED]
310:668-5-1 through 310:668-5-4 [REVOKED]
Subchapter 7. Fund Distribution [REVOKED]
310:668-7-1 through 310:668-7-2 [REVOKED]
Subchapter 9. Enforcement and Grievance [REVOKED]
310:668-9-1 through 310:668-9-2 [REVOKED]

GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-960; filed 5-8-07]

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

[OAR Docket #07-961]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions
310:669-1-2 [AMENDED]
Subchapter 5. Reports and Financial Statements
310:669-5-1 [AMENDED]
310:669-5-2 [AMENDED]
310:669-5-4 [AMENDED]
Subchapter 7. Fund Distribution
310:669-7-1 [AMENDED]

GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-961; filed 5-8-07]

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

[OAR Docket #07-962]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions
310:675-1-2 [AMENDED]
Subchapter 3. Licenses
310:675-3-1.1 [AMENDED]
310:675-3-4.1 [AMENDED]
310:675-3-5.1 [AMENDED]
310:675-3-8 [AMENDED]
Subchapter 7. Administration
310:675-7-5.1 [AMENDED]
310:675-7-12.1 [AMENDED]
310:675-7-17.1 [AMENDED]
310:675-7-18.1 [AMENDED]
310:675-7-21 [NEW]
Subchapter 9. Resident Care Services
310:675-9-13.1 [AMENDED]
Subchapter 13. Staff Requirements
310:675-13-7 [AMENDED]
Subchapter 21. Nontechnical Services Workers [NEW]
310:675-21-1 [NEW]
310:675-21-2 [NEW]
310:675-21-3 [NEW]
310:675-21-4 [NEW]
310:675-21-5 [NEW]
Appendix B. Reference List for Standards of Practice [REVOKED]
Appendix B. Reference List for Standards of Practice [NEW]

GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-962; filed 5-8-07]

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

[OAR Docket #07-963]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
310:677-1-3 [AMENDED]
310:677-1-4 [AMENDED]
310:677-1-5 [AMENDED]
Subchapter 3. Nurse Aide Training and Competency Examination Program
310:677-3-2 [AMENDED]
310:677-3-3 [AMENDED]
310:677-3-4 [AMENDED]
310:677-3-5 [AMENDED]
Subchapter 5. Nurse Aide Registry
310:677-5-2 [AMENDED]
310:677-5-5 [NEW]
Subchapter 9. Home Care Aides
310:677-9-3 [AMENDED]
Subchapter 13. Certified Medication Aides
310:677-13-1 [AMENDED]
310:677-13-4 [AMENDED]
310:677-13-5 [AMENDED]
310:677-13-8 [AMENDED]
310:677-13-9 [AMENDED]
310:677-13-12 [NEW]
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-963; filed 5-8-07]

TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #07-881]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
360:1-1-1.5 [NEW]
360:1-1-2 [AMENDED]
360:1-1-2.1 [AMENDED]
360:1-1-2.2 [AMENDED]
Subchapter 3. The Board
360:1-3-2 [AMENDED]
360:1-3-3 [AMENDED]
360:1-3-6 [AMENDED]
360:1-3-7 [AMENDED]
360:1-3-8 [AMENDED]
360:1-3-8.1 [AMENDED]
360:1-3-9 [AMENDED]
360:1-3-12 [AMENDED]
Subchapter 5. Hearing Procedures
360:1-5-1 [AMENDED]
360:1-5-2 [AMENDED]
360:1-5-3 [AMENDED]
360:1-5-4 [AMENDED]
360:1-5-5 [AMENDED]
360:1-5-7 [AMENDED]
Subchapter 7. Declaratory Rulings
360:1-7-1 [AMENDED]
360:1-7-2 [AMENDED]
360:1-7-3 [AMENDED]
GUBERNATORIAL APPROVAL:
March 15, 2007

[OAR Docket #07-881; filed 4-27-07]

TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD CHAPTER 10. STATE AND EDUCATION EMPLOYEES HEALTH, ~~LIFE, AND~~ DENTAL, VISION AND LIFE PLANS

[OAR Docket #07-881A]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
360:10-1-2 [AMENDED]
Subchapter 3. Administration of Plans
360:10-3-2 [AMENDED]
360:10-3-3 [AMENDED]
360:10-3-3.1 [AMENDED]
360:10-3-3.5 [AMENDED]
360:10-3-4 [AMENDED]
360:10-3-6.1 [AMENDED]
360:10-3-7 [AMENDED]
360:10-3-13 [AMENDED]
360:10-3-17 [AMENDED]
360:10-3-20 [AMENDED]
360:10-3-20.1 [AMENDED]
360:10-3-22 [AMENDED]
360:10-3-23 [AMENDED]
360:10-3-24 [AMENDED]
360:10-3-25 [AMENDED]
360:10-3-26 [AMENDED]
360:10-3-27 [AMENDED]
360:10-3-27.1 [AMENDED]
360:10-3-28 [AMENDED]

360:10-3-29.1 [NEW]
360:10-3-33 [AMENDED]
Subchapter 5. Coverage and Limitations
Part 1. Policy Provisions
360:10-5-1 [AMENDED]
360:10-5-2 [AMENDED]
360:10-5-3 [AMENDED]
Part 3. ~~Health Benefit Plans~~the Plans
360:10-5-16 [AMENDED]
360:10-5-17 [AMENDED]
360:10-5-20 [AMENDED]
Part 5. Life Benefits
360:10-5-30 [AMENDED]
360:10-5-32 [AMENDED]
360:10-5-33 [AMENDED]
360:10-5-34 [AMENDED]
Part 7. Limitations and Exclusions for Life Plans
360:10-5-45 [AMENDED]
Part 9. Dental Benefits, Limitations, and Exclusions
360:10-5-56 [AMENDED]
360:10-5-61 [AMENDED]
Part 11. Medicare Supplement
360:10-5-75 [AMENDED]
360:10-5-76 [AMENDED]
360:10-5-77 [AMENDED]
360:10-5-79 [AMENDED]
Part 13. Coordination of Health and Dental Benefits
360:10-5-86 [AMENDED]
360:10-5-87 [AMENDED]
360:10-5-89 [AMENDED]
360:10-5-90 [AMENDED]
Part 15. Subrogation
360:10-5-100 [AMENDED]
Subchapter 7. Termination of Benefits
360:10-7-1 [AMENDED]
Subchapter 9. Cobra Health Insurance Continuation
360:10-9-1 [AMENDED]
360:10-9-2 [AMENDED]

GUBERNATORIAL APPROVAL:
March 15, 2007

[OAR Docket #07-881A; filed 4-27-07]

TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD CHAPTER 15. THE DISABILITY ~~PROGRAM~~PLAN

[OAR Docket #07-881B]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
360:15-1-2 [AMENDED]
360:15-1-3 [AMENDED]
360:15-1-4 [AMENDED]
360:15-1-7 [AMENDED]
360:15-1-8 [AMENDED]
360:15-1-8.5 [AMENDED]
360:15-1-10 [AMENDED]
360:15-1-11 [AMENDED]
360:15-1-12 [AMENDED]
360:15-1-14 [AMENDED]
360:15-1-15 [AMENDED]
360:15-1-16 [AMENDED]
360:15-1-17 [AMENDED]
360:15-1-18 [AMENDED]
360:15-1-19 [AMENDED]
360:15-1-20 [AMENDED]
360:15-1-21 [AMENDED]
360:15-1-22 [AMENDED]
360:15-1-23 [AMENDED]
360:15-1-25 [AMENDED]

GUBERNATORIAL APPROVAL:
March 15, 2007

[OAR Docket #07-881B; filed 4-27-07]

TITLE 380. DEPARTMENT OF LABOR CHAPTER 30. PROTECTION OF LABOR

[OAR Docket #07-925]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions
380:30-1-2. Definitions [AMENDED]
Subchapter 3. Wage Claim Procedures
380:30-3-2. Employee wage claim form [AMENDED]

GUBERNATORIAL APPROVAL:
April 23, 2007

[OAR Docket #07-925; filed 5-8-07]

TITLE 380. DEPARTMENT OF LABOR CHAPTER 70. ELEVATOR SAFETY ACT RULES

[OAR Docket #07-926]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Chapter 70. Elevator Safety Act Rules [NEW]

GUBERNATORIAL APPROVAL:
April 23, 2007

[OAR Docket #07-926; filed 5-8-07]

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 10. PHYSICIANS AND SURGEONS

[OAR Docket #07-921]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
435:10-1-4. Definitions [AMENDED]
Subchapter 4. Application and Examination Procedures for Licensure as Physician and Surgeon
435:10-4-6. Medical licensure examination [AMENDED]
435:10-4-7. Licensure by endorsement [AMENDED]
Subchapter 21. Abortions [NEW]
435:10-21-1. Informed consent [NEW]
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-921; filed 5-7-07]

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

[OAR Docket #07-922]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Licensure of Physical Therapists and Assistants
435:20-3-1.1. Training outside the U.S. [AMENDED]
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-922; filed 5-7-07]

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

[OAR Docket #07-923]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
435:40-1-6. Curriculum of study and internship requirements [AMENDED]
435:40-1-7. Application procedures [AMENDED]
435:40-1-9. License renewal and replacement [AMENDED]
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-923; filed 5-7-07]

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 55. LICENSED ORTHOTISTS AND PROSTHETISTS AND REGISTERED TECHNICIANS AND ASSISTANTS

[OAR Docket #07-924]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Annual Renewal/Continuing Education
435:55-5-2. Requirements for renewal of license or registration [AMENDED]
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-924; filed 5-7-07]

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

[OAR Docket #07-889]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Appendix A. Pay Band Schedule
GUBERNATORIAL APPROVAL:
APRIL 24, 2007

[OAR Docket #07-889; filed 4-30-07]

TITLE 585. PUBLIC EMPLOYEES RELATIONS BOARD CHAPTER 1. OPERATIONS

[OAR Docket #07-896]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions [REVOKED]
585:1-1-1 through 585:1-1-5 [REVOKED]
Subchapter 3. Program Administration and Description
585:1-3-1 through 585:1-3-4 [REVOKED]

Subchapter 5. Procedures [REVOKED]
585:1-5-1 through 585:1-5-8 [REVOKED]
Subchapter 7. Certification Cases: Representation Petitions [REVOKED]
585:1-7-1 through 585:1-7-19 [REVOKED]
GUBERNATORIAL APPROVAL:
March 15, 2007

[OAR Docket #07-896; filed 4-30-07]

TITLE 585. PUBLIC EMPLOYEES RELATIONS BOARD CHAPTER 2. OPERATIONS UNDER THE FPAA AND THE MECBA

[OAR Docket #07-897]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions [NEW]
585:2-1-1 through 585:2-1-5 [NEW]
Subchapter 3. Program Administration and Description [NEW]
585:2-3-1 through 585:2-3-9 [NEW]
Subchapter 5. Procedures [NEW]
585:2-5-1 through 585:2-5-11 [NEW]
Subchapter 7. Hearings [NEW]
585:2-7-1 through 585:2-7-16 [NEW]
GUBERNATORIAL APPROVAL:
April 15, 2007

[OAR Docket #07-897; filed 4-30-07]

TITLE 585. PUBLIC EMPLOYEES RELATIONS BOARD CHAPTER 10. UNFAIR LABOR PRACTICE CHARGES [REVOKED]

[OAR Docket #07-898]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
585:10-1-1 through 585:10-1-10 [REVOKED]
585:10-1-12 [REVOKED]
GUBERNATORIAL APPROVAL:
March 15, 2007

[OAR Docket #07-898; filed 4-30-07]

TITLE 585. PUBLIC EMPLOYEES RELATIONS BOARD CHAPTER 15. CERTIFICATION CASES [REVOKED]

[OAR Docket #07-899]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions [REVOKED]
585:15-1-1 through 585:15-1-6 [REVOKED]
Subchapter 3. Representation Petitions [REVOKED]
585:15-3-1 through 585:15-3-9 [REVOKED]
Subchapter 5. Elections [REVOKED]
585:15-5-1 through 585:15-5-2 [REVOKED]
GUBERNATORIAL APPROVAL:
March 15, 2007

[OAR Docket #07-899; filed 4-30-07]

TITLE 585. PUBLIC EMPLOYEES RELATIONS BOARD CHAPTER 30. UNFAIR LABOR PRACTICE AND PROHIBITED PRACTICE CHARGES

[OAR Docket #07-900]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
585:30-1-1 through 585:30-1-8 [NEW]
GUBERNATORIAL APPROVAL:
March 15, 2007

[OAR Docket #07-900; filed 4-30-07]

TITLE 585. PUBLIC EMPLOYEES RELATIONS BOARD CHAPTER 35. CERTIFICATION CASES

[OAR Docket #07-901]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions [NEW]
585:35-1-1 through 585:35-1-5 [NEW]
Subchapter 3. Representation Petitions Under the FPAA [NEW]
585:35-3-1 through 585:35-3-9 [NEW]
Subchapter 5. Representation Petitions Under the MECBA [NEW]
585:35-5-1 through 585:35-5-8 [NEW]
Subchapter 7. Elections [NEW]

585:35-7-1 through 585:35-7-2 [NEW]
GUBERNATORIAL APPROVAL:
March 15, 2007

[OAR Docket #07-901; filed 4-30-07]

TITLE 730. DEPARTMENT OF TRANSPORTATION
CHAPTER 10. DEPARTMENT PROGRAMS

[OAR Docket #07-886]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 23. County Improvements for Roads and Bridges Program [NEW]
730:10-23-1 through 730:10-23-9 [NEW]
GUBERNATORIAL APPROVAL:
April 2, 2007

[OAR Docket #07-886; filed 4-30-07]

Withdrawn Rules

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

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

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

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

[OAR Docket #07-904]

RULEMAKING ACTION:
Withdrawal of PERMANENT rulemaking
WITHDRAWN RULES:
Subchapter 28. Office of Administrative Hearings: Child Support
340:2-28-22
(Reference APA WF 07-02)
DATES:
Adoption:
March 27, 2007
Submitted to Governor:
March 27, 2007
Submitted to House:
March 27, 2007
Submitted to Senate:
March 27, 2007
Gubernatorial approval:
Pending
Withdrawn:
May 1, 2007
CONTACT PERSON:
Dena Thayer, Programs Manager at 521-4326

[OAR Docket #07-904; filed 5-1-07]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 65. PUBLIC ASSISTANCE PROCEDURES

[OAR Docket #07-966]

RULEMAKING ACTION:
Withdrawal of PERMANENT rulemaking
WITHDRAWN RULES:
Subchapter 3. Eligibility for Benefits
340:65-3-1
(Reference APA WF 07-04)
DATES:
Adoption:
March 27, 2007
Submitted to Governor:
March 27, 2007
Submitted to House:
March 27, 2007
Submitted to Senate:
March 27, 2007
Gubernatorial approval:
Pending
Withdrawn:
May 9, 2007
CONTACT PERSON:
Dena Thayer, Programs Manager at 521-4326

[OAR Docket #07-966; filed 5-9-07]

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 165. CORPORATION COMMISSION CHAPTER 26. ABOVEGROUND STORAGE TANKS

[OAR Docket #07-918]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 10. Requirements for Aboveground Storage Tank Systems Utilized by Retail Facilities
Part 1. General Application and Compliance Provisions
165:26-10-2. Timeframes for registration and compliance with rules [AMENDED]
Subchapter 12. Requirements for Aboveground Storage Tank Systems Utilized at Fleet and Commercial Facilities
Part 1. General Application and Compliance Provisions
165:26-12-1. Application [AMENDED]
165:26-12-2. Timeframes for registration and compliance with rules [AMENDED]
AUTHORITY:
Oklahoma Corporation Commission
Article IX, §§18, 19 Oklahoma Constitution
17 O.S. §301 *et seq.*; 27A O.S. § 1-1-201 *et seq.* and § 1-3-101 *et seq.*; 42 U.S.C. § 6991 *et seq.*
DATES:
Comment Period:
January 23, 2007 through February 27, 2007
Public Hearing:
February 27, 2007
Adoption:
February 27, 2007
Submitted to the Governor:
March 8, 2007
Submitted to the House:
March 8, 2007
Submitted to Senate:
March 8, 2007
Gubernatorial approval:
April 2, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 3, 2007.
Final Adoption:
May 3, 2007
Effective Date:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
OAC 165:26-10-2 is amended to reflect a change in compliance date, and prohibits the use of non-approved tanks.

OAC 165:26-12-2 is amended to reflect recent statutory changes regarding fleet and commercial individual tank system size, provides a date certain for new tank or tank upgrade requirements, prohibits the use of certain non-conforming tanks, and strikes references to alternative solutions.

CONTACT PERSON:
Jeff Southwick @ 522-4457.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2007:

SUBCHAPTER 10. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY RETAIL FACILITIES

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-10-2. Timeframes for registration and compliance with rules

(a) Tanks at retail facilities except marinas that are greater than 110 gallons must be registered with the Petroleum Storage Tank Division of the Commission before January 15, 2001. New construction of aboveground storage tank systems or tank replacement at existing aboveground storage tank facilities after ~~The tank system must come in compliance with the rules of this Chapter and Subchapter before~~ July 15, 2007, must install aboveground storage tanks that are UL or API approved as aboveground fuel storage tanks. ~~Compliance may be required sooner for any part of an existing system which poses a threat to property, people or to the environment.~~

(b) Temporary tanks and tanks that do not meet aboveground fuel storage tank construction and design requirements may not be used at retail facilities.

SUBCHAPTER 12. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED AT FLEET AND COMMERCIAL FACILITIES

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-12-1. Application

(a) This Subchapter applies to the storage, handling and use of gasoline and diesel fuel at fleet and commercial facilities which are kept in aboveground storage tanks, with ~~a~~ an individual capacity of ~~2,100~~ 1,321 gallons or more. Aboveground storage tanks with an individual capacity of 1,320 gallons or less are not subject to Oklahoma Corporation Commission regulation, and may not access the Petroleum Storage Tank Indemnity Fund in the event of a release from such aboveground storage tanks. Although the Oklahoma Corporation Commission does not regulate aboveground storage tanks with an individual capacity of 1,320 gallons or less, owners of such tanks should be aware they may be subject to regulation by other jurisdictions.

(b) Subchapters 1, 2, 3, and 4 shall also apply in addition to this Subchapter.

165:26-12-2. Timeframes for registration and compliance with rules

(a) Tanks at fleet or commercial facilities with ~~a~~ an individual capacity greater than ~~2,100~~ 1,320 gallons must be registered with the Petroleum Storage Tank Division of the Commission. New construction of aboveground storage tank systems or tank replacement at existing aboveground storage tank facilities after ~~The tanks must come in compliance with the rules of this Chapter and Subchapter before~~ July 15, 2007, must install aboveground storage tanks that are UL or API approved as aboveground fuel storage tanks. ~~Compliance may be required sooner for any part of an existing system which poses a threat to property, people or to the environment.~~

(b) Temporary tanks and tanks that do not meet aboveground fuel storage tank construction and design requirements may not be used at fleet and commercial facilities.

~~(c) Where alternative solutions are as good as, or better than, those set out in this Subchapter, changes may not be required. Alternatives that fail to protect property, people or the environment will not be accepted.~~

[OAR Docket #07-918; filed 5-4-07]

TITLE 195. BOARD OF DENTISTRY CHAPTER 10. EXAMINATIONS AND LICENSING OF DENTISTS, DENTAL HYGIENISTS, AND DENTAL SPECIALISTS

[OAR Docket #07-907]

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PERMANENT final adoption
RULES:
Subchapter 11. Specialty Examinations
195:10-11-10 [AMENDED]
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ANALYSIS:
Amendment to rule to eliminate the clinical portion of the Periodontic Specialty Examination.
CONTACT PERSON:
Linda C. Campbell, Executive Director, (405) 524-9037

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2007:

SUBCHAPTER 11. SPECIALTY EXAMINATIONS

195:10-11-10. The examination

An applicant for licensure in a Specialty shall satisfactorily pass such examination as the Board may require. The examination will be both theoretical and practical.

(1) Theoretical examination. The theoretical examination shall be in writing and will include all the subjects that are pertinent to the Specialty in which the applicant desires to be licensed. Written examinations may be supplemented by oral examinations. The Board shall accept any and all test results from the respective American Board(s) regarding written examinations for all specialties. Written specialty examinations recognized by a regional testing agency may also be accepted as approved by the Board.

(2) Practical examination. The practical examination will be designed to test the applicant's knowledge and skill of all phases of diagnosis and treatment in the specialty in which the applicant desires to be licensed. This may consist of case reports, clinical procedures on patients, and laboratory work. The following practical examinations will be required in the respective specialties:

(A) Oral and Maxillofacial Surgery.

(i) Surgical anatomy of the Head and Neck with both written and oral examination on subjects relating to Oral Surgery.

(ii) Applicant will furnish a list of fifteen (15) (within three (3) years) hospital cases (including

case histories), certified by the Hospital Administrator, demonstrating diversities of experience in Oral Surgery.

(B) Orthodontics.

(i) Applicants for examination must submit the following pretreatment and post-treatment record materials for two cases treated exclusively by the applicants: Cephalometric radiographs, Cephalometric analysis, study models, extraoral photographs (profile and front view) and general radiographs or panoramic radiographs. One case must be treated by extraction of first or second premolars. Mutilated cases and surgical cases are not eligible. Applicants enrolled in a residency whose term is more than 24 months (or whose term is more than 30 days past the examination date in June) will be allowed to bring records of one case in progress in lieu of a completed case with case records as described for finished cases, provided that these cases have been treated solely by the applicant and have been in treatment at least 18 months.

(ii) Applicant must be prepared to demonstrate his ability to construct appliances on models or typodont submitted by applicant.

(iii) Applicant will be expected to diagnose and treatment plan cases provided by the Examining Committee.

(C) Pediatric Dentistry.

(i) Evaluation of the oral and perioral soft and hard tissues of a child.

(ii) Evaluation of the growth and development of a child and interceptive procedures as indicated.

(iii) Oral disease prevention and control for a child. Operative procedures for a child including amalgam, composite, and stainless steel crowns.

(D) Periodontics.

(i) ~~Demonstrate scaling and gingival curettage on one or more patients having a well advanced case of Periodontitis, with abundant deposits of supragingival and subgingival calculus.~~ Each applicant must submit two case reports that must be original, composed by the applicant, and of periodontal cases treated by the applicant. Both cases must have been treated within the last five (5) years. Both cases must document generalized moderate periodontitis (AAP Case Type III or greater) in both arches; there should be at least moderate pocket depth and moderate bone loss. Cases must be of sufficient complexity to test the diagnostic and therapeutic competence of an expert in periodontics.

(ii) ~~Prepare Periodontal Surgery under anesthesia~~ The applicant will successfully complete an oral examination on periodontics and the cases presented.

(iii) ~~Be prepared to demonstrate or discuss occlusal adjustment, types of temporary splinting for a Periodontal patient and various methods of oral physiotherapy and adjunctive tooth movement~~. The applicant will successfully complete a written examination on periodontics.

~~(iv) Submit three (3) case reports which should include case histories, study models, before and after full mouth x-rays and photographic slides. These case reports must be of Periodontal cases diagnosed and treated by the applicant. At least two of the three cases should be of advanced Periodontal disease and each case must have at least eighteen teeth. The third case may be of a type such as ulcerative gingivitis or other mouth lesions.~~

(E) Prosthodontics.

(i) All applicants must submit a patient history and treatment record of a patient for whom the required fabrication of at least two partial dentures involving both the maxilla and the mandible has been completed. One of the partial dentures must be fixed, replacing one or more teeth; and one must be removable, incorporating a unilateral or bilateral distal extension base.

(ii) The applicant will successfully complete an oral examination on prosthodontics and the case presentation.

(iii) The applicant will successfully complete a written examination on prosthodontics.

(F) Endodontics.

(i) The presentation of ten cases, which were treated by the applicant, and which have follow-up radiographs.

(ii) An oral and written examination.

(G) Oral Pathology.

(i) An oral examination with a qualified pathologist as specified, required, and selected by the Board.

(ii) A written microscopic and clinical examination.

[OAR Docket #07-907; filed 5-2-07]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 10. SCHOOL ADMINISTRATION AND INSTRUCTIONAL SERVICES

[OAR Docket #07-986]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 11. Regional Education Service Centers [REVOKED]
210:10-11-1. Purpose [REVOKED]
210:10-11-2. Student appraisal [REVOKED]
210:10-11-3. Media [REVOKED]
210:10-11-4. Individual learning plans [REVOKED]
210:10-11-5. Professional development [REVOKED]
210:10-11-6. Coordination of Education Services [REVOKED]
210:10-11-7. Regional Education Service Center staff [REVOKED]

AUTHORITY:
70 O. S. § 3-104, State Board of Education
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ANALYSIS:
The Oklahoma Legislature repealed the RESC Act, in the appropriations bill, House Bill 1162, effective June 30, 2003.
CONTACT PERSON:
Connie Holland, 405-521-3308

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2007:

SUBCHAPTER 11. REGIONAL EDUCATION SERVICE CENTERS [REVOKED]

210:10-11-1. Purpose [REVOKED]

~~The twenty one Regional Education Service Centers (RESCs) provide the services mandated by law and the State Board of Education. The rules in this subchapter provide procedures for the implementation of those mandated and related services. Professional assistance is offered local school districts in a variety of efforts, all aimed toward the improvement of instruction for students.~~

210:10-11-2. Student appraisal [REVOKED]

~~The Regional Education Service Center's (RESC's) responsibilities for student appraisal consist of the following areas: educational and readiness screening, diagnostic and evaluation services for possible placement in special education programs, and evaluations for placement in the gifted programs.~~

~~(a) **Educational and readiness screening.**~~

~~(1) RESC's responsibilities for screening of all K, 1, and 2 students~~

~~(A) Delivery of Oklahoma Screening instruments, Administration Directions, and Teacher's Report and Follow-up Forms to school districts during the last two weeks in September of each school year.~~

~~(B) Inservicing public school personnel in the correct administration and scoring procedures to be used with the screening instruments.~~

~~(C) Informing public school personnel of the timelines for administering and scoring the screening instruments (during the first two weeks in October of each year) and the due date for the Teacher's report and Follow-up Forms to be returned to the RESC (October 24th of each year).~~

~~(D) Delivery and retrieval of follow-up forms for completion by school representatives.~~

~~(E) Collecting screening results from schools who exercised the option of designing and implementing their own screening program.~~

~~Confidentiality. The results of individual student screening shall be confidential, except that information and results shall on request be made available to parents and professional personnel involved in the education of the students. No student shall be subjected to individual evaluation without prior written parental permission.~~

~~(2) Readiness screening. The RESC will work with local public school personnel in their readiness screening program for students who are enrolled in or expected to enroll in kindergarten for the next school year.~~

~~(b) **Individual diagnostic and evaluation services.** The RESCs provide individual psychoeducational and prescriptive evaluations of students referred by the public schools for possible placement in special education programs. RESC evaluative services to schools consist of:~~

~~(1) Administering and scoring of formal test batteries for students referred for individual evaluation. Test batteries may include a variety of tests which will evaluate intelligence, achievement, visual motor skills, ability, auditory perception or language.~~

~~(2) Test interpretations and prescriptive recommendations in write-up form.~~

~~(3) In order for schools to obtain evaluative services from the RESCs, the following conditions must be met:~~

~~(A) All referrals for evaluation must be initiated by the local public school district in which the student/child resides.~~

~~(B.) Schools must complete SDE Referral for Evaluation and Parent Permission Forms before submitting to the RESC.~~

~~(C) Referrals should be current. Current is defined as any referral less than one year. old.~~

~~(4) Upon completion of the above conditions, the RESC will make arrangements to evaluate the referred students as quickly as possible in line with established priorities.~~

~~(5) Upon completion of the evaluation of the student referred for possible special education placement, the RESC will provide a written evaluation report which~~

~~may include prescriptive educational recommendations to the referring school. The report will be clearly stamped "confidential." The RESC will also notify the parent or guardian that the evaluation has been completed and that the results have been transmitted to the referring school. Upon receipt of the evaluation report provided by the RESC the local school is responsible for compliance with confidentiality procedures and timelines required by legislation.~~

~~(c) **Evaluations for placement in gifted programs.** The third area is individual evaluation of students referred for consideration for gifted programs. RESC evaluation of gifted students consists of:~~

~~(1) Administration and scoring of a normed intelligence test.~~

~~(2) Providing schools with the test results.~~

~~(3) In order for schools to obtain an evaluation for a possibly gifted student, a Referral/Parent Permission for Evaluation, Gifted Student form must be completed.~~

~~(4) Upon completion of the evaluation, the RESC will provide the results to the referring school district. The RESC will also notify the parent or guardian that the evaluation has been completed and that the results have been transmitted to the referring school. Upon receipt of the evaluation report, the local school district becomes responsible for compliance with all confidentiality procedures which must be afforded the report.~~

210:10-11-3. Media [REVOKED]

~~Each Regional Education Service Center maintains a media library containing materials to be loaned to teachers for meeting the needs of exceptional children. The RESC shall be responsible for maintaining an acquisition list, cataloging and shelving the media materials for the purpose of providing a lending service. Media library procedures will be followed as directed by the RESC Administrator.~~

210:10-11-4. Individual learning plans [REVOKED]

~~The individual psychoeducational evaluation report is the Prescriptive Learning Plan. Results and recommendations are derived from the assessment battery administered by the RESC Psychometrist. Materials from the RESC Media Library are available to be used in developing the prescriptive plan. Suggested prescriptive techniques may be used by a regular classroom teacher, special education teacher, or parent. Actual placement of a student in any special education program remains the responsibility of the local school district.~~

210:10-11-5. Professional development [REVOKED]

~~Every Regional Education Service Center shall offer the schools which they serve professional assistance in a variety of efforts aimed toward the improvement of instruction for students. The RESCs organize and present workshops and inservice programs for school personnel, parents and the general public working with students who have special needs. The programs range in scope from region-wide conferences to personal assistance by RESC staff at a local school site. These programs will emphasize the awareness, utilization and adoption of appropriate materials, learning theories, research findings, and other educational topics. The training programs will assist schools in the procedures to be followed for full implementation of the laws.~~

210:10-11-6. Coordination of Education Services [REVOKED]

~~(a) The RESCs will maintain a close working relationship with other government agencies and teacher training institutions to increase learning opportunities for teachers and students. This shall include Regional Guidance Centers, County Health Departments, Mental Health Department Clinics, Youth Service Centers, and any other governmental agencies providing any or all of the above services. Such coordination shall include cooperative efforts of local districts joining with the RESC staff to engage in any educational activities to increase the learning opportunities for teachers and students in the public schools.~~

~~(b) The RESCs will cooperate and assist in the coordination of efforts by the colleges and universities in the respective regions to encourage the offering of course work aimed at increasing the skills of teachers and public school administrators providing an optimum education for all students.~~

~~(c) The RESCs will assist in the dissemination of educational policies, guidelines and other information relative to implementing the educational programs for children with special needs in the public schools.~~

210:10-11-7. Regional Education Service Center staff [REVOKED]

~~(a) Each Center staff may include, but not be limited to, the personnel listed:~~

~~(1) RESC administrator~~

~~(2) Psychometrist/Prescriptive Teacher~~

~~(3) Secretary/Clerk Typist/Media Librarian~~

~~(4) Available services of an Occupational and/or Physical Therapist who is registered and licensed as a physical therapist by the State of Oklahoma.~~

~~(b) Staff members are to fill multiple services oriented roles.~~

[OAR Docket #07-986; filed 5-9-07]

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

[OAR Docket #07-985]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Priority Academic Student Skills

Part 7. Mathematics

210:15-3-52. Mathematics content standards geometry [AMENDED]

210:15-3-53. Mathematics content standards algebra II [AMENDED]

AUTHORITY:
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ANALYSIS:
The proposed amendment to rules revises the core curriculum to comply with the requirements set for in 70 O. S. § 11-103.6(a) The amendments provide reorganization and alignment to the Priority Academic Students Skills, Oklahoma's core curriculum. The changes will allow public school educators responsible for implementing the curriculum in geometry and algebra II to pursue appropriate depths of content.
CONTACT PERSON:
Connie Holland, 405-521-3308

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2007:

SUBCHAPTER 3. PRIORITY ACADEMIC STUDENT SKILLS

PART 7. MATHEMATICS

210:15-3-52. Mathematics content standards geometry

~~(a) **Standard - logical reasoning.** The student will use deductive and inductive reasoning to solve problems.~~

~~(1) Properties and Relationships of Figures.~~

~~(A) Identify the relationships of parallel lines with a transversal.~~

~~(B) Identify relationships between pairs of angles (e.g., adjacent, complementary, vertical).~~

~~(2) Determine and use the relationships of congruency and similarity to determine unknown values.~~

~~(3) Use logical reasoning skills (inductive and deductive) to make and test conjectures, formulate counter examples, follow logical arguments, judge the validity of arguments and construct simple valid arguments.~~

~~(b) **Standard - properties of 2- and 3- dimensional figures.** The student will use the properties and formulas of geometric figures to solve problems.~~

~~(1) Polygons~~

~~(A) Identify and describe polygons (i.e., convex, concave, regular, etc.).~~

~~(B) Apply the interior and exterior angle sum of convex polygons to solve problems.~~

~~(C) Develop and apply the properties of quadrilaterals to solve problems (e.g., rectangles, parallelograms, rhombi, trapezoids, kites).~~

~~(2) Draw and analyze 2- and 3-dimensional figures.~~

~~(3) Use properties of 2- and 3-dimensional figures to determine unknown values (e.g., given the perimeter/circumference, find the area).~~

~~(4) Compute length, perimeter or circumference, area, volume, and surface area of geometric figures with missing information and correctly identify the appropriate unit of measure of each.~~

~~(5) Use geometric tools (e.g., protractor, compass, straight edge) to construct a variety of figures.~~

~~(6) Find angle measures and arc measures related to circles.~~

~~(7) Chords, Secants and Tangents~~

~~(A) Identify and describe the relationship between two chords that intersect in the interior of a circle.~~

~~(B) Identify and describe the relationship between two secants that intersect in the exterior of a circle.~~

~~(C) Identify and describe the relationship between a secant and a tangent that intersect in the exterior of a circle.~~

~~(c) **Standard - coordinate geometry.** The student will solve problems with geometric figures in the coordinate plane.~~

~~(1) Use transformations (reflection, rotation, translation) within coordinate geometry (e.g., reflect points across the y-axis).~~

~~(2) Use coordinate geometry to find the distance between two points; the midpoint of a segment; and to calculate the slopes of parallel, perpendicular, horizontal, and vertical lines.~~

~~(3) Given a set of points determine the type of figure based on its properties (e.g., parallelogram, isosceles triangle, regular octagon).~~

~~(d) **Standard - Angles, Triangles and Similar Polygons.** The student will use the properties of angles, right triangles and similar polygons to solve problems.~~

~~(1) Solve problems using properties of angles (e.g., interior, exterior, complementary, vertical, angle sums, 30-60-90).~~

~~(2) Use the Pythagorean Theorem and its converse to find missing side lengths and to determine acute, right, and obtuse triangles.~~

~~(3) Apply the 45-45-90 and 30-60-90 right triangle relationships to solve problems.~~

~~(4) Express the trigonometric functions as ratios and derive the relationship between sine, cosine, and tangent ratios, and use to solve real-world problems.~~

~~(5) Similar Polygons~~

~~(A) Use similar figures to construct ratios and solve for a missing side.~~

~~(B) Use ratios of similar figures to find linear distance, perimeter, area, and volume.~~

(a) **Standard 1: Logical Reasoning** - The student will use deductive and inductive reasoning to solve problems.

(1) Identify and use logical reasoning skills (inductive and deductive) to make and test conjectures, formulate counter examples, and follow logical arguments.

(2) State, use, and examine the validity of the converse, inverse, and contrapositive of "if-then" statements.

(3) Compare the properties of Euclidean geometry to non-Euclidean geometries (for example, elliptical geometry, as shown on the surface of a globe, does not uphold the parallel postulate).

(b) **Standard 2: Properties of 2-Dimensional Figures** - The student will use the properties and formulas of geometric figures to solve problems.

(1) Use geometric tools (for example, protractor, compass, straight edge) to construct a variety of figures.

(2) Line and Angle Relationships

(A) Use the angle relationships formed by parallel lines cut by a transversal to solve problems.

(B) Use the angle relationships formed by two lines cut by a transversal to determine if the two lines are parallel and verify, using algebraic and deductive proofs.

(C) Use relationships between pairs of angles (for example, adjacent, complementary, vertical) to solve problems.

(3) Polygons and Other Plane Figures

(A) Identify, describe, and analyze polygons (for example, convex, concave, regular, pentagonal, hexagonal, n-gonal).

(B) Apply the interior and exterior angle sum of convex polygons to solve problems, and verify using algebraic and deductive proofs.

(C) Develop and apply the properties of quadrilaterals to solve problems (for example, rectangles, parallelograms, rhombi, trapezoids, kites).

(D) Use properties of 2-dimensional figures and side length, perimeter or circumference, and area to determine unknown values and correctly identify the appropriate unit of measure of each.

(4) Similarity

(A) Determine and verify the relationships of similarity of triangles, using algebraic and deductive proofs.

(B) Use ratios of similar 2-dimensional figures to determine unknown values, such as angles, side lengths, perimeter or circumference, and area.

(5) Congruence

(A) Determine and verify the relationships of congruency of triangles, using algebraic and deductive proofs.

(B) Use the relationships of congruency of 2-dimensional figures to determine unknown values, such as angles, side lengths, perimeter or circumference, and area.

(6) Circles

(A) Find angle measures and arc measures related to circles.

(B) Find angle measures and segment lengths using the relationships among radii, chords, secants, and tangents of a circle.

(c) **Standard 3: Triangles and Trigonometric Ratios** - The student will use the properties of right triangles and trigonometric ratios to solve problems.

(1) Use the Pythagorean Theorem and its converse to find missing side lengths and to determine acute, right, and obtuse triangles, and verify using algebraic and deductive proofs.

(2) Apply the 45-45-90 and 30-60-90 right triangle relationships to solve problems, and verify using algebraic and deductive proofs.

(3) Express the trigonometric functions as ratios and use sine, cosine, and tangent ratios to solve real-world problems.

(4) Use the trigonometric ratios to find the area of a triangle.

(d) **Standard 4: Properties of 3-Dimensional Figures** - The student will use the properties and formulas of geometric figures to solve problems.

(1) Polyhedra and Other Solids

(A) Identify, describe, and analyze polyhedra (for example, regular, decahedral).

(B) Use properties of 3-dimensional figures; side lengths, perimeter or circumference, and area of a face; and volume, lateral area, and surface area to determine unknown values and correctly identify the appropriate unit of measure of each.

(2) Similarity and Congruence

(A) Use ratios of similar 3-dimensional figures to determine unknown values, such as angles, side lengths, perimeter or circumference of a face, area of a face, and volume.

(B) Use the relationships of congruency of 3-dimensional figures to determine unknown values, such as angles, side lengths, perimeter or circumference of a face, area of a face, and volume.

(3) Create a model of a 3-dimensional figure from a 2-dimensional drawing and make a 2-dimensional representation of a 3-dimensional object (for example, nets, blueprints, perspective drawings).

(e) **Standard 5: Coordinate Geometry** - The student will solve problems with geometric figures in the coordinate plane.

(1) Use transformations (reflection, rotation, translation) within coordinate geometry.

(2) Use coordinate geometry to find the distance between two points; the midpoint of a segment; and to calculate the slopes of parallel, perpendicular, horizontal, and vertical lines.

(3) Given a set of points determine the type of figure formed based on its properties.

210:15-3-53. Mathematics content standards algebra II

~~(a) **Standard - number systems and algebraic operations.** The student will perform operations with real numbers, complex numbers and matrices.~~

~~(1) Define and perform operations on real and complex numbers.~~

~~(2) Convert expressions from radical notations and vice versa.~~

~~(3) Matrices~~

~~(A) Add, subtract, and multiply matrices to solve problems.~~

~~(B) Find the inverse and determinant of a matrix to solve problems.~~

~~(C) Use matrices to solve systems of equations.~~

~~(b) **Standard - functions and relations.** The student will use functions and relations to solve problems.~~

~~(1) Recognize the parent graph of the function y = x2 and predict the effects of transformations on the parent graph (e.g., y = x2+ 3 shifts the graph up 3, y = 3 x2 creates vertical stretching by a factor of 3).~~

~~(2) Solve, graph and analyze systems of linear equations and inequalities.~~

~~(3) Solve quadratic equations by graphing, factoring, completing the square and quadratic formula.~~

~~(4) Compare the relationship between the x-intercepts (zeros) of a quadratic function and the roots of a quadratic equation to solve problems.~~

~~(5) Interpret the maximum and minimum value and the y-intercept of a quadratic function.~~

~~(6) Identify, graph, and write the equations of the conic sections.~~

~~(7) Define and distinguish between relations and functions.~~

~~(8) Use functional notation and specify domain and range.~~

~~(9) Find and graph the inverse of a function.~~

~~(10) Exponential and Logarithmic Functions~~

~~(A) Interpret and graph exponential and logarithmic functions.~~

~~(B) Apply the inverse relationship between exponential and logarithmic functions.~~

~~(C) Use exponential and logarithmic functions to solve problems (e.g., compound interest, exponential growth or exponential decay).~~

~~(11) Solve multistep problems using concepts such as rate, distance, ratio and proportion, average, and percent.~~

~~(12) Polynomials~~

~~(A) Use synthetic division to find the solutions of a polynomial.~~

~~(B) Use factoring to find the solutions of a polynomial.~~

~~(C) Graph a polynomial and identify the x- and y-intercepts, relative maximums and relative minimums.~~

~~(13) Rational Expressions and Equations~~

~~(A) Simplify rational expressions.~~

~~(B) Solve rational equations.~~

~~(C) Graph rational expressions and identify x- and y-intercepts, horizontal asymptotes and vertical asymptotes.~~

~~(c) **Standard - data analysis and statistics.** The student will use data analysis and statistics to formulate and justify predictions from a set of data.~~

~~(1) Collect data involving two variables and display on a scatter plot, interpret results using a linear, exponential or quadratic model/equation and identify whether the model/equation is a curve of best fit for the data.~~

~~(2) Analyze and synthesize data using measures of central tendency and standard deviation.~~

~~(3) Identify how given outliers affect representations of data (e.g., a regression line may be strongly affected by a few aberrant points while the same aberrant points might indicate a mistake on a scatter plot).~~

~~(4) Differentiate between arithmetic and geometric sequences and series.~~

(a) **Standard 1: Number Systems and Algebraic Operations** - The student will perform operations with rational, radical, and polynomial expressions, as well as expressions involving complex numbers.

(1) Rational Exponents

(A) Convert expressions from radical notations to rational exponents and vice versa.

(B) Add, subtract, multiply, divide, and simplify radical expressions and expressions containing rational exponents.

(2) Polynomial and Rational Expressions

(A) Divide polynomial expressions by lower degree polynomials.

(B) Add, subtract, multiply, divide, and simplify rational expressions, including complex fractions.

(3) Complex Numbers

(A) Recognize that to solve certain problems and equations, number systems need to be extended from real numbers to complex numbers.

(B) Add, subtract, multiply, divide, and simplify expressions involving complex numbers.

(b) **Standard 2: Relations and Functions** - The student will use the relationships among the solution of an equation, zero of a function, x-intercepts of a graph, and factors of a polynomial expression to solve problems involving relations and functions.

(1) Functions and Function Notation

(A) Recognize the parent graphs of polynomial, exponential, and logarithmic functions and predict the effects of transformations on the parent graphs, using various methods and tools which may include graphing calculators.

(B) Add, subtract, multiply, and divide functions using function notation.

(C) Combine functions by composition.

(D) Use algebraic, interval, and set notations to specify the domain and range of functions of various types.

(E) Find and graph the inverse of a function, if it exists.

(2) Systems of Equations

(A) Model a situation that can be described by a system of equations or inequalities and use the model to answer questions about the situation.

(B) Solve systems of linear equations and inequalities using various methods and tools which may include substitution, elimination, matrices, graphing, and graphing calculators.

(C) Use either one quadratic equation and one linear equation or two quadratic equations to solve problems.

(3) Quadratic Equations and Functions

(A) Solve quadratic equations by graphing, factoring, completing the square and quadratic formula.

(B) Graph a quadratic function and identify the x- and y-intercepts and maximum or minimum value, using various methods and tools which may include a graphing calculator.

(C) Model a situation that can be described by a quadratic function and use the model to answer questions about the situation.

(4) Identify, graph, and write the equations of the conic sections (circle, ellipse, parabola, and hyperbola).

(5) Exponential and Logarithmic Functions

(A) Graph exponential and logarithmic functions.

(B) Apply the inverse relationship between exponential and logarithmic functions to convert from one form to another.

(C) Model a situation that can be described by an exponential or logarithmic function and use the model to answer questions about the situation.

(6) Polynomial Equations and Functions

(A) Solve polynomial equations using various methods and tools which may include factoring and synthetic division.

(B) Sketch the graph of a polynomial function.

(C) Given the graph of a polynomial function, identify the x- and y-intercepts, relative maximums and relative minimums, using various methods and tools which may include a graphing calculator.

(D) Model a situation that can be described by a polynomial function and use the model to answer questions about the situation.

(7) Rational Equations and Functions

(A) Solve rational equations.

(B) Sketch the graph of a rational function.

(C) Given the graph of a rational function, identify the x- and y-intercepts, asymptotes, using various methods and tools which may include a graphing calculator.

(D) Model a situation that can be described by a rational function and use the model to answer questions about the situation.

(c) **Standard 3: Data Analysis and Statistics -** The student will use data analysis and statistics to formulate and justify predictions from a set of data.

(1) Analysis of Collected Data Involving Two Variables

(A) Display data on a scatter plot.

(B) Interpret results using a linear, exponential or quadratic model/equation.

(C) Identify whether the model/equation is a curve of best fit for the data, using various methods and tools which may include a graphing calculator.

(2) Measures of Central Tendency and Variability

(A) Analyze and synthesize data from a sample using appropriate measures of central tendency (mean, median, mode, weighted average).

(B) Analyze and synthesize data from a sample using appropriate measures of variability (range, variance, standard deviation).

(C) Use the characteristics of the Gaussian normal distribution (bell-shaped curve) to solve problems.

(D) Identify how given outliers affect representations of data.

(3) Identify and use arithmetic and geometric sequences and series to solve problems.

[OAR Docket #07-985; filed 5-9-07]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #07-987]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Standards for Elementary, Middle Level, Secondary, and Career and Technology Schools
Part 9. Standard V: The School Staff
210:35-3-87. Professional development programs [REVOKED]
Subchapter 5. Additional Standards for Elementary Schools
Part 9. Standard V: The School Staff
210:35-5-45. Qualifications [AMENDED]
Subchapter 7. Additional Standards for Middle Level Schools
Part 9. Standard V: The School Staff
210-35-7-44. Staff qualifications [AMENDED]
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70 O. S. § 3-104, State Board of Education
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N/A
ANALYSIS:
The proposed change is to delete rules not reflected in law (70 O. S. § 1210.508F) which requires every teacher to be trained in remedial reading. Deletion of rules no longer relevant to law will eliminate any confusion for local boards of education, administrators, and teachers.
CONTACT PERSON:
Connie Holland, 405-521-3308

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2007:

SUBCHAPTER 3. STANDARDS FOR ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

PART 9. STANDARD V: THE SCHOOL STAFF

210:35-3-87. Professional development programs [REVOKED]

~~(a) Professional development programs and inservice training shall be developed through program objectives, needs assessment, and faculty involvement. Inservice training shall be planned to meet program objectives and identified needs. Participants shall evaluate the professional development program. Such evaluation shall include an evaluation of the program, including each inservice activity.~~

~~(b) Orientation and professional development inservice programs shall provide initial assistance for beginning teachers and encourage continued professional growth of all teachers.~~

SUBCHAPTER 5. ADDITIONAL STANDARDS FOR ELEMENTARY SCHOOLS

PART 9. STANDARD V: THE SCHOOL STAFF

210:35-5-45. Qualifications

(a) **Teachers.** All elementary teachers shall meet the regular elementary certification standards of the state of Oklahoma for their specific assignments.

(1) Teachers of early childhood or kindergarten classes shall hold a valid Early Childhood Education License/Certificate.

(2) Teachers of first through third grade shall hold either a valid Early Childhood Education (PK-3) or a valid Elementary License/Certificate (1-8).

(3) Elementary Licenses/Certificates are valid for grades seven and eight in the elementary schools with the exception of seventh and eighth grade mathematics. Teachers of seventh or eighth grade mathematics who are certified after September 1, 1999, shall be required to have intermediate mathematics certification or advanced/secondary mathematics certification. Teachers of seventh or eighth grade mathematics who are certified prior to September 1, 1999, shall be required to have intermediate mathematics or advanced/secondary mathematics certification prior to September 1, 2003. Secondary and elementary-secondary certified teachers in grades 7 and 8 in an accredited elementary school shall hold a credential in each subject area to be taught.

(b) **Specialists.** Specialists such as library media specialists (librarians), reading specialists, guidance counselors, school psychologists, and speech-language pathologists shall meet the certification requirements of the state of Oklahoma.

~~(1) Beginning and/or reassigned teachers, as of 1975-76, who instruct Remedial Reading a major portion of the day shall hold a valid Reading Specialist Certificate. Other Remedial Reading teachers shall hold a valid elementary or special education license/certificate and have completed a minimum of 6 semester hours in one or more of the following reading courses:~~

~~(A) Diagnosis and Correction of Reading Disabilities,~~

~~(B) Foundations or Survey of Reading,~~

~~(C) Laboratory or Clinical and Practicum in Reading, or~~

~~(D) other comparable courses approved by the Accreditation Section.~~

(~~2~~1) School counselors shall hold a valid Oklahoma School Counselor Certificate appropriate for the grade levels to which they are assigned.

(~~3~~2) All athletic coaches, being assigned coaching duties ~~as of 1975-76, shall have completed 2 semester hours~~, shall have completed a course in the care and prevention of athletic injuries ~~or hold an athletic coaching endorsement~~.

(~~4~~3) All coaches and athletic directors shall be employed by the school district and shall hold a valid teaching certificate. Their names shall appear on the class schedule.

(c) **Principal or assistant principal.** The principal or assistant principal shall hold a valid Oklahoma Elementary Principal's Certificate. A teaching principal or assistant teaching principal shall have an Elementary Principal's Certificate; shall teach at the school site and organizational level where the administrative assignment occurs; and shall devote a portion of the day to administration and supervision.

SUBCHAPTER 7. ADDITIONAL STANDARDS FOR MIDDLE LEVEL SCHOOLS

PART 9. STANDARD V: THE SCHOOL STAFF

210:35-7-44. Staff qualifications

(a) Each teacher assigned to teach in an accredited middle level school must hold an Elementary Certificate, or Elementary-Secondary, or Secondary Certificate with a credential in the area, Library Media Specialist (Librarian) or Speech-Language Pathology License/Certificate. Teachers of seventh or eighth grade mathematics who are certified after September 1, 1999, shall be required to have intermediate mathematics certification or advanced/secondary mathematics certification. Teachers of seventh or eighth grade mathematics who are certified prior to September 1, 1999, shall be required to have intermediate mathematics or advanced/secondary mathematics certification prior to September 1, 2003. Teachers holding an Elementary Certificate shall be eligible to teach only grades 7 and 8 in an accredited junior high school. Teachers teaching in the ninth grade must hold a secondary credential in the specific subject taught.

~~(1) Teachers who instruct Remedial Reading a major portion of the day shall hold a valid Reading Specialist Certificate. Other Remedial Reading teachers shall hold a minimum of 6 semester hours in one or more of the following areas of specialization and an appropriate grade level (Elementary, Elementary/Secondary, or Secondary) license/certificate with a credential in Language Arts: Diagnosis and Correction of Reading Disabilities, Foundations or Survey of Reading, Laboratory or Clinical Practicum in Reading, or comparable courses approved by the Accreditation Section. Beginning and/or reassigned teachers as of 1975-76 shall comply with these requirements.~~

~~(2) Teachers of exploratory subjects, work experience, precareer/career technology, and other subjects must hold a valid certificate for the respective field issued by the State of Oklahoma.~~

(b) School counselors shall hold a valid Oklahoma School Counselor Certificate appropriate for the grade levels to which they are assigned.

(c) The library media specialist (librarian) shall hold a valid Oklahoma Library Media Specialist (Librarian) Certificate.

(d) The middle school principal or assistant principal shall hold a valid Oklahoma Elementary or Secondary Principal's Certificate. The junior high principal or assistant principal shall hold a valid Oklahoma Secondary Principal's Certificate. A teaching principal or assistant teaching principal shall have a Principal's Certificate appropriate to the grade level of the school; shall teach at the school site and organizational level where the administrative assignment occurs; and shall devote a portion of the day to administration and supervision.

(e) All athletic coaches, being assigned coaching duties as of 1975-76, shall have completed 2 semester hours in the care and prevention of athletic injuries or hold an athletic coaching endorsement.

(f) All coaches and athletic directors shall be employed by the school district and shall hold a valid teaching certificate. Their names shall appear on the class schedule.

[OAR Docket #07-987; filed 5-9-07]

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

[OAR Docket #07-911]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Election Training
Part 1. The County Election Board
230:10-5-2. Reimbursement for workshops [AMENDED]
Subchapter 7. General Administration of the County Election Board
Part 1. Meetings of the Board
230:10-7-3. Types of meetings; terms defined [AMENDED]
Part 5. Maintaining the Office
230:10-7-44. Retention of ballots [AMENDED]

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ANALYSIS:
The rules amended in this Chapter are needed to conform language in the rules with language in the Oklahoma Statutes. Specifically, a Section concerning reimbursement of County Election Board personnel who travel to mandated training workshops is amended to include current information from the State Travel Reimbursement Act concerning rates of reimbursement for lodging and meals in various counties in the state. Another Section containing information from the Open Meetings Act is amended to restore language inadvertently removed by a previous amendment. The Section concerns the types of meetings that may be held by the County Election Board. The language restored to this Section concerns one of the reasons an emergency meeting may be called. A final Section in this Chapter is amended to clarify that unused absentee ballots may be destroyed 30 days following an election. (Voted absentee ballots are retained for 24 months following an election.)

CONTACT PERSON:
Suzanne Cox, Publications Editor, State Election Board. Telephone: (405) 521-2391.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2007:

SUBCHAPTER 5. ELECTION TRAINING

PART 1. THE COUNTY ELECTION BOARD

230:10-5-2. Reimbursement for workshops

(a) For attendance at statewide or regional workshops, County Election Board members and staff personnel are entitled to be reimbursed for expenses from state funds. [26:3-110] Mileage reimbursement is paid for a round trip from the individual's hometown to the location of the workshop at the rate currently allowed by the Internal Revenue Service for a business expense deduction.

(b) The amount of reimbursement for lodging and meal expenses shall not exceed the amount allowed in the Internal Revenue Code of 1986, as amended. [74:500.9] Expenses for overnight lodging will be reimbursed at a rate not to exceed ~~$40~~ $60 per night. [74:500.9] Reimbursement for meal expenses will be made to persons in authorized overnight travel status at a rate not to exceed ~~$25~~ $39 per day. [74:500.8] In Oklahoma County, however, reimbursement for lodging is $73 per night and for meals is $49 per day, and in Creek, Osage, Rogers, and Tulsa Counties, reimbursement for lodging is $68 per night and for meals is $44 per day.

SUBCHAPTER 7. GENERAL ADMINISTRATION OF THE COUNTY ELECTION BOARD

PART 1. MEETINGS OF THE BOARD

230:10-7-3. Types of meetings; terms defined

The County Election Board may conduct four different types of meetings.

(1) **Regularly scheduled meeting.** A regularly scheduled meeting (or a "regular meeting") shall include all meetings at which the regular business of the Board is conducted. [25:304(3)] That includes meetings to canvass returns of elections, meetings to certify the results of elections, meetings to organize the Board, etc. Secretaries shall schedule regular or special meetings only when there is specific business to be considered.

(2) **Special meeting.** A special meeting shall include any meeting of the Board other than a regular or emergency meeting. [25:304(4)] Secretaries shall schedule a special meeting only when there is specific business to be considered that cannot wait until the next regular meeting.

(3) **Emergency meeting.** An emergency meeting may be held in only two situations. The first is if a situation involves injury to a person or injury or damage to public or personal property and the second is if a situation involves immediate financial loss. [25:304(5)] In either case, an emergency meeting may be called only when the time requirements for giving public notice of a special meeting would make calling a special meeting impractical and would increase the likelihood of injury, damage, or immediate financial loss. [25:304(5)] In the event an emergency meeting is contemplated, the Secretary shall contact the State Election Board immediately.

(4) **Continued or reconvened meeting.** A continued or reconvened meeting shall include all meetings held to finish business appearing on an agenda of a previous meeting. [25:304(6)]

PART 5. MAINTAINING THE OFFICE

230:10-7-44. Retention of ballots

All ballots shall be retained in sealed ballot transfer boxes for at least 30 days after an election. [26:7-134] Voted precinct ballots used in an election involving federal candidates, as outlined in 230:10-7-41, shall be retained for 24 months after the election. Unused precinct and unused absentee ballots from elections involving federal candidates may be destroyed 30 days after the election, provided that the unused ballots were retained separately from the used ballots. Voted absentee ballots and all related materials shall be retained for 24 months after the election. [26:14-132] Voted provisional ballots and all related materials shall be retained for 24 months after the election. [26:7-116.1]

[OAR Docket #07-911; filed 5-4-07]

TITLE 230. STATE ELECTION BOARD
CHAPTER 15. VOTER REGISTRATION

[OAR Docket #07-911A]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Receiving and Processing Voter Registration Applications
Part 5. Processing Voter Registration Applications
230:15-9-25. Processing applications for restricted records status [AMENDED]
Part 7. Acknowledgment of Voter Registration Applications
230:15-9-31. Rejected applications [AMENDED]
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ANALYSIS:

A Section concerning voters who request restricted records status as provided by Title 26, Section 4-115.2 is amended to include a Declaration of Candidacy among the records to be kept confidential. This amendment has been made in response to concerns raised in 2006 by several judicial and District Attorney candidates in restricted records status with their County Election Board. A new form will be made available during future filing periods for restricted records status voters to request that their Declaration of Candidacy forms be kept confidential.

A Section concerning rejected voter registration applications is amended to remove insufficient identification number as a reason for rejecting an otherwise valid voter registration application. Although most voters provide the requested identification number, a few do not because of identity theft fears. The voter registration processing software used by County Election Boards is able to assign a unique numerical identifier to each application entered. When a voter refuses to provide the driver license number as requested, we can use the system-generated number to track and identify the voter.

CONTACT PERSON:

Suzanne Cox, Publications Editor, State Election Board. Telephone: (405) 521-2391.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2007:

SUBCHAPTER 9. RECEIVING AND PROCESSING VOTER REGISTRATION APPLICATIONS

PART 5. PROCESSING VOTER REGISTRATION APPLICATIONS

230:15-9-25. Processing applications for restricted records status

(a) Members of the judiciary, district attorneys, assistant district attorneys, law enforcement personnel, corrections officers, and persons covered by victim's protection orders are entitled by law to apply to the Secretary of the County Election Board for restricted records status. [26:4-115.2] The spouse and/or dependent of a voter entitled to apply for restricted records status also may apply for restricted records status. Restricted records status shall apply to the voter registration form in the Central File, to registration information in OEMS, ~~and~~ to materials used to request and cast absentee ballots, and if specifically requested by the voter, any Declaration of Candidacy filed by the voter. Voter registration information for a restricted records voter shall be available only to authorized County Election Board personnel for administrative purposes, with the exception that it may be provided to a candidate or a candidate's representative or other lawful authority in connection with a contest of candidacy, contest of election, or a petition challenge as provided by law. [26:4-115.2]

(b) A voter who is eligible for restricted records status may apply for such status by writing a letter to the Secretary of the County Election Board setting forth the following information.

(1) Voter's name as it appears on the voter registration form.

(2) Voter's date of birth.

(3) Last four digits of the voter's Social Security number.

(4) Reason for application for restricted records status. (If voter is covered by victim's protection order, include case number, date of issue and the expiration date of the order.)

(5) Voter's signature.

(6) Date.

(c) Upon receipt of an application for restricted records status, the Secretary of the County Election Board shall cause the following action to be taken.

(1) Make a placeholder for the Central File. Write only the voter's name, date of birth, and political affiliation on a blank voter registration application form. Write the words "Restricted Records" in the space for item 6, "Street address or directions to your home."

(2) Remove the voter's original voter registration application form from the Central File and replace it with the placeholder form.

(3) Check the Additional Information file. Remove any documentation of the voter's registration and attach it to the voter registration application form.

(4) Remove the voter's absentee ballot application from the appropriate file and attach it to the voter registration form.

(5) Locate the voter's registration information in OEMS and follow the appropriate software instructions to delete the registration information.

(6) Attach the voter's application for restricted records status to the voter's registration form and other materials and file in the restricted records status file.

(d) The Secretary of the County Election Board shall designate a file cabinet with a lock or any other appropriate container with a lock as the restricted records status file. Access to the restricted records status file shall be restricted to the Secretary, Assistant Secretary or Chief Clerk and other County Election Board employees authorized by the Secretary.

(e) Restricted records status shall be effective immediately upon receipt of an application from a qualified voter, and it shall remain in effect until the voter chooses to end it. The voter's registration information may be removed from restricted records status only upon receipt of written instruction from the voter.

(f) Any subsequent application for change of voter registration initiated by a restricted records voter shall be processed routinely, with the exception that the voter registration application information shall not be entered in OEMS and the form shall be filed in the restricted records status file instead of the Central File. Any application for absentee ballots from such a voter also shall be processed manually. The application for absentee ballots shall be filed in the restricted records status file.

(g) The Secretary shall prepare and maintain a list of restricted records status voters. The list shall be organized by precinct and shall include only the restricted records status

voter's name, school district code, and municipal code. See 230:35-3-56.1.

(h) An ACP Application for Absentee Ballots and ACP Voter History Record form received from the State Election Board shall be filed immediately in the restricted records status file. No entry shall be made in OEMS concerning ACP voters and the name, address, and precinct number of an ACP voter shall not appear on any list or report.

PART 7. ACKNOWLEDGMENT OF VOTER REGISTRATION APPLICATIONS

230:15-9-31. Rejected applications

(a) The Secretary of the County Election Board shall prepare and mail rejection notices to each applicant whose voter registration application is rejected. The rejection notice shall include the reason that the application was rejected and shall inform the applicant of steps, if any, that may be taken to provide additional information to complete or to correct the application.

(b) A voter registration application shall be rejected for any of the following reasons.

(1) **Duplicate.** An application that exactly duplicates an existing voter registration or an application that exactly duplicates another pending application shall be rejected.

(2) **Unsigned.** An application that is not signed by the applicant or that does not bear the applicant's mark, except as provided in 230:15-5-36, shall be rejected.

(3) **Under 18 years of age.** An application from a person who has not yet reached the age of 18, except as outlined in 230:15-5-2, shall be rejected.

(4) **Insufficient address.** An application with an incomplete or improper residence address shall be rejected. An application that lists either a post office box number or a rural route box number as a residence address shall be rejected. An application that lists a physical description or a legal description of the residence address that is incomplete or insufficient to locate the residence on a map shall be rejected.

(5) **Insufficient name.** An application with no name or with a name that does not appear to be a sufficient name shall be rejected.

(6) **Insufficient date of birth.** An application with no date of birth or an incomplete date of birth shall be rejected.

(7) ~~**Insufficient identification number.** An application that does not include the last four digits of the applicant's social security number shall be rejected. An application submitted on a version of the Oklahoma Voter Registration Application that does not require the last four digits of the applicant's social security number is not a valid application and shall be rejected.~~

~~(8)~~ **Other.** Other reasons for rejecting a voter registration application may include, but shall not necessarily be limited to, the following:

(A) **Application is illegible.** An application that cannot be read due to illegible handwriting shall be rejected.

(B) **Residence address in another jurisdiction.** If the residence address indicated on an application is not located within the boundaries of the county indicated on the application, the County Election Board processing the application shall reject it.

(c) A voter registration application shall not be rejected for an insufficient political affiliation if the application is valid in all other respects. See 230:15-5-84, 230:15-9-18, and 230:15-9-22.

[OAR Docket #07-911A; filed 5-4-07]

TITLE 230. STATE ELECTION BOARD CHAPTER 20. CANDIDATE FILING

[OAR Docket #07-912]

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PERMANENT final adoption
RULES:
Subchapter 3. Filing for State and County Office
Part 7. Procedure for Filing
230:20-3-44. Candidates in restricted records status [NEW]
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ANALYSIS:
This new Section has been adopted to accommodate requests from several judicial and/or District Attorney candidates in 2006 to keep their Declaration of Candidacy forms confidential. A new form will be provided to permit candidates who are in restricted record status as provided by state law (Title 26, Section 4-115.2) to request that their Declarations of Candidacy be kept confidential. Such confidential Declarations of Candidacy will be available to other candidates in connection with a contest of candidacy or contest of election as provided by law.
CONTACT PERSON:
Suzanne Cox, Publications Editor, State Election Board. Telephone: (405) 521-2391.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2007:

SUBCHAPTER 3. FILING FOR STATE AND COUNTY OFFICE

PART 7. PROCEDURE FOR FILING

230:20-3-44. Candidates in restricted records status

(a) A voter who has applied for restricted records status, as described in 230:15-9-25, and who files a Declaration of Candidacy with the Secretary of the State Election Board or the Secretary of the County Election Board may choose to keep his or her residence and mailing address information on the Declaration of Candidacy form confidential. However, as provided by law, the information contained in the Declaration of Candidacy, including address information, may be made available to another candidate in anticipation of or as part of a contest of candidacy or a contest of election. In order for information on a Declaration of Candidacy to be kept confidential, the candidate must have applied for restricted records status with the County Election Board Secretary. The candidate also must take the following steps when filing the Declaration of Candidacy.

(1) Complete and sign a Confidential Declaration of Candidacy Request form.

(2) Submit the Confidential Declaration of Candidacy Request form to the Secretary of the appropriate election board with the Declaration of Candidacy.

(b) Upon receipt of a Confidential Declaration of Candidacy Request form with a Declaration of Candidacy, the Secretary of the County Election Board shall take the following action.

(1) Check the Declaration of Candidacy as outlined in 230:20-3-37.

(2) Make at least two copies of the Confidential Declaration of Candidacy Request form.

(3) File the white and yellow copies of the Declaration of Candidacy in the candidate's restricted record status file. Return the pink copy to the candidate.

(4) File the original Confidential Declaration of Candidacy Request form with the white copies of other Declarations of Candidacy.

(5) File a copy of the Confidential Declaration of Candidacy Request form with the yellow copies of other Declarations of Candidacy.

(6) Give one copy of the Confidential Declaration of Candidacy Request form to the candidate.

(c) Upon receipt of a Confidential Declaration of Candidacy Request form from a candidate, the Secretary of the State Election Board shall take appropriate steps to ensure that the candidate's Declaration of Candidacy is withheld from public inspection and that the address information is withheld from publication. At least one copy of the Confidential Declaration of Candidacy Request form shall be made available for public inspection in place of the Declaration of Candidacy.

[OAR Docket #07-912; filed 5-4-07]

TITLE 230. STATE ELECTION BOARD
CHAPTER 25. BALLOT PRINTING

[OAR Docket #07-913]

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PERMANENT final adoption
RULES:
Subchapter 7. Competitive Bidding Process for Ballot Printing
230:25-7-3. Specifications for printing and preparing ballots [AMENDED]
Subchapter 9. Providing Copy to the Printer
230:25-9-3. Preparing materials for printer [AMENDED]
Subchapter 13. Placing Parties, Candidates on Ballot
230:25-13-1.1. Separate ballot cards for entities [AMENDED]
230:25-13-1.2. Order of political party candidates and symbols and Independent candidates on General Election ballots [AMENDED]
230:25-13-12. Judicial candidates [NEW]
Subchapter 17. Proofing of Ballots
230:25-17-2. Proofreading ballots [AMENDED]
Subchapter 19. Demonstration Ballots
230:25-19-2. Requests for ballot printing information [AMENDED]
230:25-19-3. Return of printer's questionnaire [AMENDED]
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ANALYSIS:
One Section is amended to clarify the name of the manufacturer of the voting device system currently in use in Oklahoma. Business Records Corporation is now known as Election Systems and Software. The manual containing complete ballot specifications is now produced by ES&S.

A Section concerning materials provided to the ballot printer is amended streamline the process of providing materials to the printer. Some items previously listed are no longer provided because they are not widely used by the printers. The Section included a new reference to a form, the Ballot Quantities Form; however, this form is not new.

A Section is amended to transfer the responsibility for printing certain ballots from the State Election Board to the County Election Board.

A Section is amended to change the date by which the party order drawing must be held from August 15 to July 31. By holding the drawing earlier, some

ballot printing tasks for the General Election can be accomplished earlier in the year.

A new Section concerns the placement of judicial candidates on the ballot. The Section is adopted in response to questions raised by a judicial candidate in 2006.

One Section concerning proofreading ballots is amended to remove a reference to a specific report that is no longer routinely used in proofreading.

Two Sections concerning demonstration ballots are amended to revise the list of materials provided to printers who request information about printing ballots in Oklahoma and the list of materials provided to printers who wish to print demonstration ballots. Demonstration ballots are used by State Election Board ballot printing staff to evaluate a printer's ability to produce ballots that can be read by our voting devices.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2007:

SUBCHAPTER 7. COMPETITIVE BIDDING PROCESS FOR BALLOT PRINTING

230:25-7-3. Specifications for printing and preparing ballots

(a) **Printer's Manual.** The complete specifications for printing and preparing ballots for use in the electronic vote tabulating devices utilized by the Oklahoma Election Management System (OEMS) are contained in a publication prepared by Business Records Corporation, the manufacturer of the devices. The publication, entitled "Ballot Specification and Printer's Manual for OPTECH III-P Eagle and OPTECH IV-C Ballot Tabulators," is hereby incorporated by reference as provided by Title 75 O.S. 1991, Section 251(D). The publication is commonly referred to by election officials and by Business Records Corporation personnel as "the Printer's Manual." (Business Records Corporation is now Election Systems and Software. The referenced publication is now produced by Election Systems and Software.) Copies of the Printer's Manual shall be available for public inspection in the offices of the State Election Board. The State Election Board shall provide ~~a copy of the Printer's Manual~~ ballot specifications to printers as outlined in Subchapter 19 of this Chapter.

(b) **Adherence to specifications required.** Printers who obtain a contract to print ballots for elections conducted by the State Election Board or by the County Election Board shall be required to adhere strictly to the specifications for printing and preparing ballots that are set forth in the Printer's Manual, in the materials provided by the State and/or County Election Board and in the rules contained in this Chapter.

(c) **Summary of Specifications.** The State Election Board shall provide an appropriate summary of ballot printing specifications for use by County Election Boards. The summary of specifications shall be included for informational purposes with requisitions for advertisement for bids for ballot printing, as outlined in 230:25-7-2. The summary of specifications also shall be included with the ballot printing contract and other materials that the Secretary of the County Election Board is required to provide to the printer at the time ballot printing begins for an election. See 230:25-9-3. The summary of specifications shall not be considered a substitute for the complete specifications contained in the Printer's Manual.

SUBCHAPTER 9. PROVIDING COPY TO THE PRINTER

230:25-9-3. Preparing materials for printer

(a) The names of candidates who have filed for office shall be entered into the election programming software utilized by OEMS as soon as possible following the close of the contest period at 5 p.m. on Friday following the filing period. See 230:50-3-52 through 230:50-3-58. Candidates who are unopposed shall not be entered and offices for which candidates are unopposed or for which no candidate filed shall be deleted. See 230:25-13-6 and 230:25-13-7. If a contest of candidacy is pending for any office, the appropriate information shall be entered as soon as possible following resolution of the contest.

(b) The Secretary shall notify the State Election Board when all ballot-related information has been entered into the system. See 230:50-3-54 and 230:50-3-55. After receiving notification from the State Election Board to continue election programming, the Secretary shall prepare the following items for immediate delivery to the printer.

(1) ~~**Ballot Printing Contract.** The Secretary shall prepare a copy of the Ballot Printing contract described in 230:25-7-4. If ballots for more than one entity are being ordered, a separate contract shall be prepared for each entity's ballots.~~

~~(2) **Specifications.** The Secretary shall provide a copy of the summary of specifications for printing and preparing ballots described in 230:25-7-3(c).~~

~~(3) **Ballot Layout/Position Assignment Report.** The Secretary shall print a copy of the Ballot Layout/Position Assignment Report. This report provides a listing of all print only and regular races, the column in which the race will appear, and all candidate names.~~

~~(4)~~ **Ballot Layout Report.** The Secretary shall print a copy of the Ballot Layout Report which illustrates each ballot style that is to be printed. This report provides a "picture" of each ballot style created for the election and includes security codes, ~~the ballot heading, print only races,~~ and the correct order of all candidate races and questions.

~~(5) **Ballot Quantity by Style Report** The Secretary shall print a copy of the Ballot Quantity by Style Report. This report lists the quantities needed for each ballot style created for the election. Other information on this report includes ballot style numbers, security codes, ballot type, the precincts in which each style will be distributed, the quantity of ballots needed and ballot sequence numbers. The Secretary shall indicate on this report the quantity of absentee, test and reserve ballots required.~~

(~~6~~2) ~~**Heading text**~~ **Ballot heading and question text.** The Secretary shall prepare on a separate piece of paper

the exact text which will appear in the ballot heading. The Secretary also shall provide a photocopy of the original question text which was provided with the election resolution. The Secretary shall make any modifications to the Ballot Layout Report that should be reflected on the ballot.

(3) **Completed Ballot Quantities form.** The Secretary shall complete a Ballot Quantities form, which identifies absentee ballot styles and includes instructions about ballot colors and ballot quantities.

(c) The Secretary shall transmit these items to the printer immediately.

SUBCHAPTER 13. PLACING PARTIES, CANDIDATES ON BALLOT

230:25-13-1.1. Separate ballot cards for entities

(a) The ballot for county offices at the Primary, Runoff Primary and General Elections shall appear on the same ballot card with state offices and state questions. The ballot for county questions also shall appear on the state ballot card if space allows. If there is not enough space on the state ballot card to accommodate the county question or questions, they shall appear on a separate ballot card. The county question ballot card, if needed, shall be printed by the ~~State~~ County Election Board.

(b) The ballots for school districts, municipalities and other entities, with the exception of a county question as outlined in (a) of this Section, shall appear on separate ballot cards. The ballot cards for each entity involved in an election shall be printed on different colors of card stock if possible. The County Election Board is responsible for printing these separate ballot cards.

230:25-13-1.2. Order of political party candidates and symbols and Independent candidates on General Election ballots

(a) The candidates and symbols of political parties shall be placed on the General Election ballot in the order determined by a drawing conducted by the Secretary of the State Election Board. The drawing shall be conducted at a public meeting held ~~no earlier than August 15 and~~ no later than ~~August~~ July 31 in each even-numbered year. The Secretary of the State Election Board shall announce the date, time and location of the drawing not less than ten days preceding the public meeting.

(b) The Secretary of the State Election Board shall provide written notice of the drawing to the state central committee of each recognized political party. Each recognized political party may designate one person to be its official representative at the drawing. The designation of the party's official representative shall be made in writing and shall be signed by two members of the party's state central committee.

(c) Presidential electors shall be placed on the General Election ballot in the following order.

(1) Presidential electors of each recognized political party shall be listed first on the ballot in the order determined by the drawing described in (d) of this Section.

(2) Uncommitted presidential electors, if any, shall be listed immediately following the electors of the recognized political parties. If there are two or more slates of uncommitted presidential electors, they shall be placed on the ballot in the order they were received by the Secretary of the State Election Board.

(3) Presidential electors for unrecognized political parties shall be listed after the electors of the recognized parties or after the uncommitted electors, if any. If there are electors for more than one unrecognized political party, the electors shall be placed on the ballot in the order determined by the drawing described in (d) of this Section.

(4) Presidential electors for Independent candidates for President shall be placed on the ballot following the electors for the recognized parties, uncommitted electors, if any, and the unrecognized party electors, if any. If there are two or more Independent candidates for President, the electors shall be placed on the ballot in the order determined by the drawing described in (d) of this Section.

(d) A drawing to determine the order of political parties and Independent candidates on the General Election ballot shall be conducted according to the following procedure.

(1) The names of the recognized political parties shall be printed on separate pieces of paper of equal size, shape, color, and thickness. The pieces of paper shall be prepared by the State Election Board staff in advance of the public meeting and shall be available when the meeting begins for examination by the designated party representatives.

(2) The papers each shall be folded in half so that the party names are not visible and placed inside a container.

(3) The Secretary of the State Election Board shall select one person to draw the pieces of paper from the container. The person selected to draw the papers shall not be either the designated representative of any recognized political party or a candidate for any federal or state office during the current year.

(4) The person selected shall draw one piece of paper from the container and shall announce the party name on the paper. The paper shall be displayed to each recognized party representative. The drawing shall continue until all the papers have been drawn and a ballot position has been assigned to each recognized political party.

(5) Steps 1 through 4 shall be repeated to determine the order for the presidential electors of unrecognized political parties and for Independent candidates for any federal or state office.

(e) The candidates and symbols of recognized political parties shall appear on all General Election ballots for all offices in the order determined by the drawing described in (d). The order determined by the drawing shall apply to all special elections for Congress, State Senate, State Representative, for all county offices, and for both regular and special partisan municipal elections. The order determined by the drawing shall remain in effect for all elections until the drawing is repeated in ~~August~~ July of the next succeeding even-numbered year.

(f) If there are two or more Independent candidates for the same county office, a drawing shall be conducted by the Secretary of the County Election Board. The county drawing

shall be conducted at the same time as the drawing for absentee ballot order for the Primary Election. See 230:25-11-1.

230:25-13-12. Judicial candidates

(a) *If two persons file for the same judicial office, their names shall appear on the ballot only at the time of the General Election.* [26:11-110] The order in which the candidates' names appear on the ballot at the General Election is determined by a drawing conducted as outlined in 230:25-11-1(b). *If, at the time of the Primary Election, more than two persons have filed for the same judicial office, their names shall appear on the ballot at the time of the Primary Election.* [26:11-111] The order in which the candidates' names appear on the Primary Election ballot is determined by a drawing conducted as outlined in 230:25-11-1(b).

(b) *If no candidate for the office of an associate district judge, or district judge, if the nominating district is coextensive with the entire judicial district, receives a majority of the votes cast for that office at the Primary Election, the two candidates who receive the highest number of votes will have their names placed on the ballot for the General Election. In the case of district judges, if the nominating district is not coextensive with the whole judicial district or electoral division of a judicial district, the two candidates who receive the highest number of votes at the Primary Election will have their names placed on the ballot for the General Election, whether or not one received a majority of votes cast for that office at the Primary Election.* [26:11-112] The candidate who received the most votes at the Primary Election shall appear first on the General Election ballot.

(c) *If one candidate for the office of an associate district judge receives a majority of all votes cast for that office at the Primary Election and, in the case of district judges, if the nominating district is coextensive with the whole judicial district or electoral division of a judicial district, the candidate who received the majority of all votes cast at the Primary Election shall be deemed to have been elected to that office, and that office shall not be listed on the ballot for the General Election.* [26:11-113]

(d) Judicial retention candidates shall appear on the ballot at the General Elections. Such candidates shall appear in order by district number and by office number.

SUBCHAPTER 17. PROOFING OF BALLOTS

230:25-17-2. Proofreading ballots

It shall be the responsibility of the Secretary of the County Election Board to insure correctness of all ballots printed by the County Election Board. The Secretary shall require a perfect proof from the printer before the ballots are printed. The Secretary shall verify the accuracy of all information on the ballots as outlined below.

(1) Use copies of the resolution and the Declarations of Candidacy to verify that the correct offices appear on the ballots, that each candidate's name is spelled correctly, and that questions appear on the ballot exactly as in the resolution.

(2) Use the ~~Ballot Layout/Position Assignment Report and the~~ Ballot Layout Report to verify that all ballot styles are accounted for, that all races and candidate names appear in the correct position on the ballot, that the text of the ballot headings is correct and that the security codes are correct.

(3) Any errors shall be marked on the proof sheet and the correct information written on the proof sheet if necessary.

(4) Notify the printer immediately of the corrections required.

SUBCHAPTER 19. DEMONSTRATION BALLOTS

230:25-19-2. Requests for ballot printing information

Printers may request initial information about printing ballots from the State Election Board. Upon receipt of such a request, it shall be the responsibility of the Secretary of the State Election Board to provide to the printer the following materials.

(1) ~~An information packet entitled "Introduction to OPTECH III-PE Ballots." This packet includes information about the voting devices used in Oklahoma, basic ballot specifications, and an illustration of ballot components.~~

~~(2) An information sheet that describes the steps the printer will take to demonstrate the ability to produce ballots that can be accurately read by the voting devices.~~

~~(3)~~ A copy of the "Optech Ballot Printing Demonstration Process" form which describes the steps that the printer must take to demonstrate the ability to produce readable Optech ballots.

(2) A questionnaire that requests information concerning the printer's facilities, equipment and personnel.

230:25-19-3. Return of printer's questionnaire

Printers who desire to print demonstration ballots shall complete the questionnaire provided by the State Election Board in the initial information packet. The completed questionnaire shall be returned to the State Election Board. Upon receipt of the completed questionnaire, the State Election Board shall provide the following items to the printer.

(1) ~~One copy of "Ballot Specifications and Printer's Manual for OPTECH III-P Eagle and OPTECH IV-C Ballot Tabulators."~~ Introduction to Optech Ballots and Specifications.

(2) Instructions for printing Optech demonstration ballots.

(3) ~~One set of~~ Mylar overlays of ballot components.

(~~3~~ 4) ~~Ballot copy for the~~ Computer reports illustrating text for each demonstration ~~ballots~~ ballot. ~~Ballot copy consists of several computer-generated reports. See 230:25-9-3.~~

~~(4) Instructions for printing the demonstration ballots.~~

~~(5) Instructions for using the computer generated reports to print ballots.~~
(5) Example of a two-sided sample ballot.
(6) Oklahoma Specifications for Optech Ballot Printing.
(7) ES&S "Ballot and Ballot Printing Specifications" manual.
(8) Optech III-PE Ballot Evaluation Form.

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TITLE 230. STATE ELECTION BOARD
CHAPTER 30. ABSENTEE VOTING

[OAR Docket #07-914]

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Subchapter 7. Absentee Voting Boards
230:30-7-4. ~~Arrangements~~ Appointments shall be made promptly [AMENDED]
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The amended Section concerns the time for the appointment of Absentee Voting Board members. The date by which Absentee Voting Board members must be appointed is changed from August 1 to July 1. Because of changes to the Oklahoma election calendar enacted several years ago, it is preferable to appoint Absentee Voting Board members prior to the Primary Election so that the same Absentee Voting Boards perform at the Primary, Runoff Primary and General Elections. The August 1 date fell between the Primary and Runoff Primary.
CONTACT PERSON:
Suzanne Cox, Publications Editor, State Election Board. Telephone: (405) 521-2391.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2007:

SUBCHAPTER 7. ABSENTEE VOTING BOARDS

230:30-7-4. ~~Arrangements~~ Appointments shall be made promptly

As soon after ~~August~~ July 1 as possible, the Secretary of the County Election Board shall appoint an Absentee Voting Board and shall consult with the two members to make certain that both are willing and able to serve. The Chairman and Vice Chairman of the County Election Board shall be appointed, if possible, but their names must appear on the lists described in 230:30-7-2 before they can become eligible. In some cases, it may be necessary to appoint more than one Absentee Voting Board.

[OAR Docket #07-914; filed 5-4-07]

TITLE 230. STATE ELECTION BOARD
CHAPTER 35. ELECTION CONDUCT

[OAR Docket #07-915]

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Subchapter 3. County Election Board Responsibilities
Part 7. Final Preparations
230:35-3-56.1. List of restricted records status voters [NEW]
Part 9. Distributing Supplies and Ballots
230:35-3-71. Voting device not issued to precinct polling place [NEW]
Subchapter 5. Instructions for Precinct Election Officials
Part 23. Voter Assistance
230:35-5-119. Assistance outside the polling place for physically disabled or infirm voter [AMENDED]
Part 34. Provisional Voting Procedures
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A new Section concerns a list of voters in restricted records status. This list is used by Precinct Officials and Absentee Voting Board members to verify the eligibility of restricted records status voters who choose to vote in person. The names and addresses of restricted records status voters do not appear in the Precinct Registry or in OEMS.

Another new Section concerns a procedure to be followed when a voting device is not issued to a precinct polling place on an election day. The circumstances in which this procedure is followed are rare. A new form is required by this procedure.

The Section concerning "curbside voting" for physically disabled voters is amended to clarify instructions for using the Voter Assistance Form. The form was revised and the instructions in this Section did not match the revised form.

The Section concerning the procedure for provisional voting is amended to clarify instructions for the provisional voting officer.

CONTACT PERSON:

Suzanne Cox, Publications Editor, State Election Board. Telephone: (405) 521-2391.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2007:

SUBCHAPTER 3. COUNTY ELECTION BOARD RESPONSIBILITIES

PART 7. FINAL PREPARATIONS

230:35-3-56.1. List of restricted records status voters

The Secretary of the County Election Board shall prepare and maintain a list of restricted records status voters. See 230:15-9-25. The list shall include only the name, school district code and municipal code of each restricted records status voter. The list shall be arranged by precinct. Prior to each election, the Secretary shall attach the restricted records status voter list to the appropriate Precinct Registry. The Secretary also shall provide a complete copy of the list to the in-person Absentee Voting Board. Any restricted records status voter who votes in person at his or her precinct polling place or at the in-person absentee polling place shall sign the restricted records status voter list beside his or her own name. The signed list shall be used to give credit for voting after the election.

PART 9. DISTRIBUTING SUPPLIES AND BALLOTS

230:35-3-71. Voting device not issued to precinct polling place

(a) The Secretary of the County Election Board shall have the authority not to issue a voting device to a precinct polling place on election day only when all of the following circumstances exist.

(1) Only one entity is holding an election in the precinct.

(2) Voter registration records indicate that there are no registered voters assigned to the entity in the precinct.

(3) The County Election Board Secretary and entity officials believe that no one resides within the entity's boundaries in the precinct.

(b) The Precinct Election Board shall be assigned to the precinct polling place on election day. The Inspector shall receive appropriate precinct supplies, which shall include ballots, provisional voting supplies, and a copy of the special instructions for Precinct Officials outlined in (f) of this section.

(c) In the event that a voter appears at the polling place on election day and claims to be eligible to vote in the election, Precinct Officials shall issue a provisional ballot to the voter according to the procedure outlined in 230:35-5-177.

(d) At 7 p.m., the Inspector shall indicate the number of provisional ballots cast on each copy of the Provisional Ballots Cast sheet included in the precinct supplies. The Precinct Officials each shall sign the copies. The copies shall be distributed as follows.

(1) One copy shall be posted on the polling place door.

(2) One copy shall be placed inside the ballot transfer case.

(3) One copy shall be placed inside the clear plastic sleeve on the orange Provisional Ballot Bag.

(e) At the County Election Board office on election night, in the presence of the other County Election Board members, the Secretary shall observe the following procedure. These tasks may be completed prior to 7 p.m.

(1) Insert the memory pack for the precinct in a voting device and print the zero printout as outlined in 230:35-5-75.1

(2) After the zero printout prints, insert one blank ballot for the precinct in the voting device. The voting device will return the blank ballot and will print the "un-voted blank ballot!" message.

(3) Do not remove the blank ballot from the voting device. Press the override key to accept the blank ballot.

(4) Follow the procedure outlined in 230:35-5-75.1 to close the polls and obtain the Totals Printout. The Totals Printout will show zero votes for all candidates and one undervote (the blank ballot).

(5) Tear the Totals Printout, which includes the zero printout, off the voting device. The Secretary and the other two Board members shall sign the Totals Printout in the spaces indicated for the Inspector, Judge, and Clerk. Set the original Totals Printout aside in a secure place. Print at least one additional copy of the Totals Printout to make available for public inspection after 7 p.m.

(6) Indicate on the Ballot Accounting Form for the precinct that one blank ballot was processed through the voting device.

(f) The following special instructions shall be provided to the Precinct Officials for use on election day when a voting device is not issued to a precinct polling place.

(1) Although the polling place must be open for today's election, County Election Board records indicate that there are no voters in this precinct eligible to participate in the

election. Therefore, a voting device has not been issued for this polling place.

(2) In the event that a voter appears and claims to be eligible to vote in the election, Precinct Officials shall issue a provisional ballot to the voter following the provisional voting procedure in 230:35-5-177.

(3) At 7 p.m., the Inspector shall indicate the number of provisional ballots cast on each copy of the Provisional Ballots Cast sheet included in the precinct supplies. The Precinct Officials each shall sign the copies. The copies shall be distributed as follows:

(A) One copy shall be posted on the polling place door.

(B) One copy shall be placed inside the ballot transfer box.

(C) One copy shall be placed inside the clear plastic sleeve on the orange Provisional Ballot Bag.

(4) If a provisional ballot is cast, follow the instructions in 230:35-5-75.3(g) to secure the orange Provisional Ballot Bag for return to the County Election Board office.

SUBCHAPTER 5. INSTRUCTIONS FOR PRECINCT ELECTION OFFICIALS

PART 23. VOTER ASSISTANCE

230:35-5-119. Assistance outside the polling place for physically disabled or infirm voter

(a) A voter who comes to the polling place but who cannot come inside to vote because of a physical disability or infirmity is entitled to vote outside the polling place assisted by two Precinct Officials. [26:7-123.1] If the voter is only visually disabled, this procedure does not apply. [26:7-123.1]

(b) Precinct Officials use this procedure when they learn that a physically disabled or infirm voter is outside wanting to vote. Before going outside to help the voter, the Precinct Officials must stop processing voters inside the polling place.

(1) The Inspector tells the Judge to stop allowing voters to sign the Precinct Registry.

(2) After all the voters who already have signed the Precinct Registry finish voting, the Inspector and one of the other Precinct Officials go outside to help the voter. The Inspector and the other Precinct Official must be registered to vote in different political parties.

(3) The Inspector and the other Precinct Official take these items outside with them to assist the voter.

(A) Precinct Registry

(B) Ballots

(C) Secrecy folder

(D) FORMS FOR USE BY PRECINCT ELECTION OFFICIALS booklet

(E) MANUAL FOR PRECINCT ELECTION OFFICIALS

(F) PRECINCT PROBLEM SOLVER

(G) Oklahoma Voter Registration Application form

(H) Address Information Requested handout

(4) The Precinct Official who stays inside the polling place does not allow any voters to vote while the Inspector and the other Precinct Official are outside.

(c) The Inspector and the other Precinct Official follow this procedure when they go outside to help the voter.

(1) The Inspector reads this oath to the voter: "Do you swear or affirm that you cannot enter the polling place to cast your ballot today because of a physical disability or infirmity? Do you further swear or affirm that the disability or infirmity is not a visual disability?"

(2) The voter signs the Precinct Registry if able to do so. If the voter cannot sign the Precinct Registry, the other Precinct Official prints the voter's name in the Precinct Registry and writes his own initials beside the voter's printed name.

(3) If the Precinct Registry contains either the "Confirm Address" or "Insufficient Address" message, give the voter the Address Information Requested handout and the Oklahoma Voter Registration Application form. See 230:35-5-113.1.

(4) If the voter can mark the ballot without assistance, the Precinct Officials allow the voter to do so. The Precinct Officials allow the voter as much privacy as possible to mark the ballot in secret. The voter puts the ballot in the secrecy folder.

(5) If the voter cannot mark the ballot, the voter chooses an assistant. The voter's assistant may be the other Precinct Official or any other person the voter wants. However, the Inspector cannot be the voter's assistant.

(6) The Inspector reads this oath to the voter's assistant."Do you swear or affirm that you are not the voter's employer or an agent of the voter's employer? [26:7-123.3] Do you swear or affirm that you are not an officer or agent of the voter's union? [26:7-123.3] Do you swear or affirm that you will mark the voter's ballot or help the voter mark the ballot according to the voter's wishes?" [26:7-123.3]

(7) The voter's assistant marks the voter's ballot as the voter instructs. The Precinct Officials allow the voter and the voter's assistant as much privacy as possible to mark the ballot in secret. The voter's assistant puts the ballot in the secrecy folder.

(8) The Inspector prints the names of the voter and the voter's assistant on the Voter Assistance Form and puts a check mark in the "Physically Disabled Voter (Other Than Visual) Who Cannot Enter Polling Place" column.

(9) If the voter marked his or her own ballot, the ~~voter and the Inspector sign~~ other Precinct Official signs the Voter Assistance Form. If the voter did not mark his or her own ballot, the voter's assistant and the ~~Inspector~~ other Precinct Official shall sign the Voter Assistance Form. If the other Precinct Official served as the voter's assistant, he or she shall sign the Voter Assistance Form only in the column labeled "Precinct Official Who Takes Ballots Outside Polling Place." The Inspector signs the Voter Assistance Form in the space provided at the bottom of the form.

(10) The Precinct Officials go back inside the polling place. The Inspector, using the secrecy folder and with the other two Precinct Officials watching, immediately puts the ballot in the voting device.

(11) Return to the routine procedure.

PART 34. PROVISIONAL VOTING PROCEDURES

230:35-5-177. Provisional voting procedure

The Inspector or the Provisional Voting Officer greets the voter and follows these steps to help the voter cast a provisional ballot.

(1) Take the Provisional Ballot Voucher from the voter. If the voter did not receive a Provisional Ballot Voucher from the Judge, ~~make sure the voter has seen the Judge~~ send the voter to the Judge for a Provisional Ballot Voucher.

(2) Give the voter a copy of the Provisional Voting Information handout.

(3) Tell the voter that if County Election Board personnel cannot verify the voter's registration in this precinct, the provisional ballot will not be counted.

(4) Give the voter an Oklahoma Voter Registration Application form and ask the voter to fill it out and sign it. A voter is not required to complete the registration application to receive a provisional ballot but should be encouraged to do so. If the voter completes the application, set it aside in a secure place.

(5) Fill out an Oklahoma Provisional Ballot Affidavit envelope for the voter.

(A) Write the election date, county name, and precinct number in the spaces provided at the top of the affidavit.

(B) Ask the voter for the following information and write it on the affidavit in the appropriate spaces.

(i) name

(ii) residence address

(iii) date of birth

(iv) Oklahoma driver license number, if available

(v) last four digits of Social Security number

(vi) political affiliation

(C) Place a checkmark beside the appropriate statement of the reason the voter is casting a provisional ballot. Note the following special instructions for some of the listed reasons.

(i) **Voter Not in Precinct Registry.** If the voter offers any information about where and when he/she may have registered, last voted, or another name under which he/she may be registered, record the information in the spaces provided. If the voter has a voter identification card, take it and attach it with a paperclip to the voter registration application form.

(ii) **Voter without acceptable form of identification.** Ask the voter to read the statement on the affidavit envelope and the oath before signing the affidavit.

(iii) **Voter disputes political affiliation indicated in Precinct Registry.** Write the political affiliation claimed by the voter in the space provided.

(iv) **Voter disputes school district or municipal assignment in Precinct Registry.** Write the name of the school district or municipality in which the voter claims to reside.

(v) **Other.** Record any explanation the voter offers concerning the reason he/she may be eligible to vote.

(D) Record the ballot style or styles indicated on the voter's Provisional Ballot Voucher in the spaces provided on the Affidavit.

(6) Ask the voter to review the information on the affidavit. Tell the voter to read the oath and to sign it. Also ask the voter to write his/her daytime telephone number in the space provided.

(7) Sign the affidavit in the space provided for the Provisional Voting Officer.

(8) Print the voter's name on the Provisional Ballot Roster and record the codes for the ballots issued to the voter in the space provided. Tell the voter to sign the roster.

(9) If the voter's Provisional Ballot Voucher indicates that the voter has requested absentee ballots, have the voter sign the Absentee Voter Affidavit.

(10) Issue the appropriate ballots indicated on the voucher. Fold each ballot in half before giving it to the voter. Put the voucher inside the affidavit envelope. Give the voter the affidavit envelope, a secrecy envelope, and the ballot.

(11) Tell the voter to go to the provisional ballot voting booth to mark the ballot. Tell the voter to follow these steps to secure the ballot.

(A) Fold the ballot in half.

(B) Put the folded ballot inside the secrecy envelope and seal the envelope.

(C) Put the sealed secrecy envelope inside the affidavit envelope and seal the affidavit envelope.

(D) Return to the table with the sealed affidavit envelope.

(12) If necessary, follow the procedures for spoiled ballots (230:35-5-127) or voter assistance (230:35-5-120.1), using the PRECINCT PROBLEM SOLVER.

(13) When the voter returns the sealed affidavit envelope, put it in the orange Provisional Ballot Bag immediately.

(14) Tell the voter that information concerning disposition of the provisional ballot may be obtained from the County Election Board after 5 p.m. on Friday. Make sure the voter takes a copy of the Provisional Voting Information handout.

[OAR Docket #07-915; filed 5-4-07]

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

[OAR Docket #07-916]

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A Section that concerns the procedure for closing certain split precincts in school district elections is amended to clarify that the procedure cannot be exercised in special school elections held in conjunction with regular state elections.
CONTACT PERSON:
Suzanne Cox, Publications Editor, State Election Board. Telephone: (405) 521-2391.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2007:

SUBCHAPTER 7. SCHOOL ELECTIONS

PART 9. PROCEDURES

230:40-7-35. Precincts in school elections

(a) **Precincts in school and technology center district elections.** All precincts totally or partially contained within the geographical boundaries of a school district or a technology center district shall be open for all elections held by the district except as provided in (b) or (c) of this section.

(b) **Closing a split precinct in which no one lives in the district.** A school district or technology center district may close a split precinct by certifying in the resolution that no one resides in the part of the precinct located within the district's boundaries. [26:13A-101(B)] Prior to preparing the resolution, district officials should contact the Secretary of the County Election Board to verify that no registered voters in the precinct are assigned by OEMS to the district and that no voters who are unassigned to a school district in the precinct are believed to be located within the district's boundary. In addition, before including the certification required to close the precinct in the resolution, a district official should visit the area in question to verify that no one resides there. When a split precinct is closed as provided in this subsection, the precinct shall not be included in the district's election; the district shall incur no expenses related to the precinct polling place; neither regular nor absentee ballots shall be printed for the precinct; and the services of neither the nursing home or in-person Absentee Voting Board shall be required by the district for the precinct.

(c) **Closing a split precinct with 100 or fewer voters.** A school district or technology center school district may close a split precinct in which there are 100 or fewer registered voters in the district only under the circumstances outlined in 230:40-7-35.1 and by following the procedure outlined in that Section. [26:13A-101(C)] When a split precinct is closed as outlined in 230:40-7-35.1, the district shall not incur any costs or share in Precinct Official compensation, Precinct Registry fees, or polling place rent for the precinct for the election. Regular ballots shall not be printed. However, absentee ballots shall be printed and the services of the in-person Absentee Voting Board and a nursing home Absentee Voting Board, if necessary, shall be required.

(d) **Closing a split precinct in an affected county.** If the split precinct to be closed as outlined in (b) of this section is located in an affected county, the Secretary of the parent County Election Board shall notify the Secretary of the affected County Election Board that the precinct will be closed for the election. If the split precinct to be closed as outlined in (c) of this section and in 230:40-7-35.1 is located in an affected county, the request to close the precinct shall be submitted to the Secretary of the parent County Election Board with the resolution calling the election. The parent county Secretary immediately shall forward the request to the Secretary of the affected County Election Board. The Secretary of the affected County Election Board shall follow the procedure outlined in 230:40-7-35.1 and shall notify both the district officials and the parent County Election Board Secretary of the approval or denial of the request.

(e) **Closing split precinct prohibited on state election dates.** A school district shall not be permitted to close a precinct for any reason in a special election held on the date of the state Primary Election, Runoff Primary Election, General Election, or Presidential Preferential Primary Election.

[OAR Docket #07-916; filed 5-4-07]

TITLE 230. STATE ELECTION BOARD CHAPTER 45. CONTESTS OF ELECTION

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A Section concerning the expenses involved in a recount is amended to specify that Counters are reimbursed at the same rate as Precinct Judges and Clerks. The amendment removes a reference to the specific dollar amount paid to Counters, which was incorrect.
CONTACT PERSON:
Suzanne Cox, Publications Editor, State Election Board. Telephone: (405) 521-2391.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2007:

SUBCHAPTER 3. RECOUNTS

PART 1. RECOUNTS FOR COUNTY OFFICE

230:45-3-14. Expenses of recount

(a) Actual expenses of the recount shall be entered in OEMS and a Record of Expense shall be requested and printed at the conclusion of the recount. Lawful expenses of a recount include the following items:

(1) Expense of service performed by the County Sheriff or County Clerk. [26:8-117]

(2) Mileage and per diem for County Election Board members, including the Secretary. [26:8-117]

(3) Salaries for Counters for a manual recount. Counters shall be reimbursed at the same rate ~~of $67 per day~~ as a Precinct Judge or Clerk. [26:8-114; 8-117] However, County Election Board employees who act as Counters in a manual recount shall not receive such reimbursement.

(4) Reimbursement for the Court Reporter, Judge and witnesses, if any. [26:8-117]

(b) The Record of Expense for the recount shall be provided to the person who shall bear the expense of the recount. See 230:45-3-15.

[OAR Docket #07-916A; filed 5-4-07]

TITLE 230. STATE ELECTION BOARD CHAPTER 50. AUTOMATED SYSTEMS

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Subchapter 9. Telephone Voting System [NEW]
230:50-9-1. Purpose of telephone voting system [NEW]
230:50-9-2. Use of telephone voting system [NEW]
230:50-9-3. Telephone voting procedure [NEW]
230:50-9-4. Procedure when telephone is not available at polling place [NEW]
230:50-9-5. Procedure when voter is referred from polling place without telephone [NEW]
230:50-9-6. Telephone Voting System Aide responsibilities [NEW]
230:50-9-7. Telephone Voting System Precinct Log [NEW]
230:50-9-8. Receiving telephone ballots by fax from State Election Board [NEW]
230:50-9-9. Counting telephone voting system ballots [NEW]
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These new rules describe the use of the Inspire Vote-by-Phone system. This system, hereafter referred to as the telephone voting system, is a ballot marking system intended to provide disabled voters, especially visually disabled voters, with the opportunity to vote independently and with the same degree of privacy as all other voters. Use of the system in Oklahoma is intended to comply with the accessibility mandates of the federal Help America Vote Act of 2002.

The telephone voting system is available at precinct polling places only for elections that involve federal offices. The telephone voting system was used successfully in the Primary, Runoff Primary, and General Elections in Oklahoma in 2006. It is likely that it will be used again in 2008.

In order to use the system, a voter must go to his or her regular precinct polling place on election day or to the County Election Board office on a day of in-person absentee voting. At the polling place, Precinct Officials verify the voter's eligibility in the Precinct Registry as they do for all voters. When a voter wishes to use the telephone voting system, a Precinct Official must first dial a special toll-free number and activate the appropriate ballot for the voter. The voter then listens as the ballot is read and votes by pressing specific keys on the telephone key pad. The voter can move backward and forward through the ballot by pressing keys on the keypad and can hear his or her own votes read back by the computer. The voter can make changes until taking specific action to cast the ballot. Once the ballot is cast, it can no longer be changed, but it can be "spoiled" or invalidated.

When the voter is ready to hear the ballot read back, the ballot is printed on a laser printer in the State Election Board office in Oklahoma City. Once the ballot is printed, it is scanned and read back to the voter by the computer. The printing and scanning process takes only a few seconds. If the voter chooses to change his or her vote at this point, the ballot is spoiled and the voter starts again.

The ballots printed in the State Election Board office contain a precinct and county code. State Election Board staff sort the ballots by county as they are received. On the day after the election, the ballots are faxed to the appropriate County Election Board, where they are sealed inside secrecy envelopes until they are ready to be counted on Friday following the election. All telephone ballots received are counted unless the voter was a provisional voter. If a provisional voter uses the telephone voting system, the ballot also contains a provisional ballot code, and the same procedures used to verify the eligibility of any other provisional voter are followed.

On Friday following the election, the bi-partisan County Election Board meets to count the telephone ballots. They follow a procedure to mark an Optech ballot card to match each telephone ballot. The substitute ballot card is then inserted into a voting device. New Totals Printouts are obtained and the final election results are certified.

CONTACT PERSON:
Suzanne Cox, Publications Editor, State Election Board. Telephone: (405) 521-2391.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2007:

SUBCHAPTER 9. TELEPHONE VOTING SYSTEM

230:50-9-1. Purpose of telephone voting system

The purpose of the rules in this subchapter is to authorize the use of the Inspire Vote-by-Phone system and to establish procedures for implementation and use of this system in federal elections in Oklahoma. The implementation of the Inspire Vote-by-Phone system for federal elections in Oklahoma is intended to satisfy the accessibility requirements of the federal Help America Vote Act of 2002. The Inspire Vote-by-Phone system, hereafter referred to as the telephone voting system, is a ballot marking system which enables voters with disabilities, including voters who are blind or visually impaired, to vote with the same degree of access and participation, including privacy and independence, as other voters.

230:50-9-2. Use of telephone voting system

(a) The telephone voting system shall be available at precinct polling places and at the in-person absentee polling place in the county. The Secretary of the County Election Board shall follow instructions provided by the Secretary of the State Election Board to arrange for access to a telephone for Precinct Officials and voters to use with the telephone voting system.

(b) The Secretary of the State Election Board shall provide instructions, forms, and materials for the County Election Board Secretary and Precinct Officials to use with the telephone voting system.

(c) All ballots marked using the telephone voting system shall be printed in the offices of the State Election Board and subsequently shall be transmitted to the appropriate County Election Board. The County Election Board shall observe the procedure outlined in 230:50-9-9 to count the telephone ballots after the election. The results of the counted telephone ballots shall be added to the final election results for each appropriate precinct.

(d) All materials produced in the casting and counting of telephone ballots shall be retained by the County Election Board for 24 months following the election.

230:50-9-3. Telephone voting procedure

(a) **Routine procedure.** If a voter chooses to use the telephone voting system, the following procedure shall be observed.

(1) The Judge follows the instructions in 230:35-5-55(a) (1) through (7) to process the voter. Write "telephone voter" above the voter's name in the Precinct Registry. If the voter is casting a provisional ballot, see (b) of this Section.

(2) The Judge prints the voter's name on the Telephone Voting System Roster and asks the voter to sign the Roster.

(3) The Judge writes the appropriate ballot codes for the voter on the Roster.

(4) The Judge indicates on the Roster whether the voter is casting a provisional ballot. If the voter is casting a provisional ballot, see (b) of this Section.

(5) The Judge refers the voter to the Inspector or the Telephone Voting System Aide.

(6) The Inspector escorts the voter to the designated telephone and explains the telephone voting system to the voter. Tell the voter:

(A) You must listen carefully to the recorded instructions.

(B) You will vote the ballot using the telephone keypad.

(C) You can confirm your vote in each race.

(D) When you have finished voting your ballot, you can listen to the entire ballot read back to you.

(E) You can go back and make changes to your ballot.

(F) When you are certain that your ballot is marked correctly, you must press the "#" key to submit the ballot.

(G) Do not hang up until you hear "Thank you for voting." After you hear this message, you may hang up the telephone and leave the polling place.

(H) If you need help at any point during the voting process, please let me know. You can put the phone down during the voting process. The call will not end until you hang up.

(I) If you are disconnected during the call, please tell me. Your ballot can be reissued as long as you have not submitted the ballot.

(7) The Inspector dials the toll-free number for the telephone voting system and follows the recorded instructions to enter the six-digit precinct number and the ballot access code.

(8) When prompted, the Inspector gives the telephone receiver to the voter and leaves the voter alone to vote.

(9) The Inspector writes the time the call is initiated on the Roster.

(10) If the voter informs the Inspector that he was unable to complete the ballot, the Inspector follows these steps to verify that the voter's ballot was not submitted.

(A) Dial the toll-free number again from the same telephone using the same line if there is more than one line available.

(B) Listen for a message that states the previous call from this telephone number was not completed. Write "call not completed" in the Comments column on the Roster.

(11) The Inspector gives the voter the choice to continue voting by telephone or to vote by regular ballot with assistance as necessary.

(A) If the voter chooses to continue voting by telephone, reinitiate the voter's ballots by repeating steps (7) and (8). Write the time the call is reinitiated in the Comments column on the Roster.

(B) If the voter chooses to vote by regular ballot with assistance, issue the appropriate regular ballots to the voter and provide assistance as needed as outlined in 230:35-5-120. Indicate in the Comments column on the Roster that the voter continued voting with a regular ballot.

(b) **Provisional voting procedure.** If a voter who chooses to use the telephone voting system is casting a provisional ballot, the Inspector shall follow the instructions in 230:35-5-177 to fill out an Oklahoma Provisional Ballot Affidavit envelope for the voter. If necessary, make the following adjustments to the procedure.

(1) If necessary, fill out the Oklahoma Voter Registration Application form for the voter. Offer the voter the use of a signature guide to use to sign the form. If the voter is unable to sign the form himself, print the voter's name on the signature line and write your own initials beside the printed name. Print your name in the space provided at the bottom of the form.

(2) If necessary, read the information on the Oklahoma Provisional Ballot Affidavit envelope aloud to the voter and ask the voter to confirm its accuracy.

(3) Offer the voter the use of a signature guide to sign the affidavit. If the voter is unable to sign, print the voter's name on the signature line and write your own initials beside the printed name.

(4) The line number from the Telephone Voting System Roster on which the voter's name is printed will be used to identify this provisional ballot. Write this number on the upper right corner of the affidavit envelope. Enter this number into the telephone voting system when prompted to indicate that this is a provisional ballot.

230:50-9-4. Procedure when telephone is not available at polling place

(a) In the event that a telephone for use with the telephone voting system is not available in a precinct polling place, any voter who wishes to use the telephone voting system must be referred to a polling place with a telephone. The Secretary of the County Election Board shall designate a polling place with an available telephone for each polling place where there is no telephone.

(b) When a voter who wants to use the telephone voting system must be referred to another polling place, the Judge follows these instructions.

(1) Locate the voter's name in the Precinct Registry and tell the voter to sign the Precinct Registry, unless the voter is casting a provisional ballot. Write "telephone voter sent to Precinct (NUMBER)" above the voter's name.

(2) If there is a message in the signature line beside the voter's name in the Precinct Registry, follow the appropriate instructions in the Precinct Problem Solver.

(3) Fill out a Telephone Voting System Precinct Voucher.

(A) Write the voter's name on the Voucher.

(B) Write the six-digit precinct number and the ballot access code on the Voucher.

(C) Check the appropriate ballots on the Voucher.

(D) Indicate whether the voter is casting a provisional ballot.

(E) Write the name and address of the designated polling place on the voucher.

(F) Sign the Voucher in the space provided.

(4) Tell the voter to give the Voucher to the Judge at the designated polling place.

230:50-9-5. Procedure when voter is referred from polling place without telephone

When a voter presents a Telephone Voting System Precinct Voucher from another precinct to the Judge, the Judge immediately refers the voter to the Inspector. The Inspector takes the Telephone Voting System Precinct Voucher from the voter and uses it to fill out the Telephone Voting System Roster. This

voter is required to sign the Roster in this precinct. Indicate in the "Comments" column of the Roster the precinct from which the voter was referred. Use the six-digit precinct number, ballot access code, and ballot information on the Telephone Voting System Precinct Voucher to access the voter's ballot. Attach the voucher to the Roster.

230:50-9-6. Telephone Voting System Aide responsibilities

A Telephone Voting System Aide is a special-purpose precinct worker as described in 230:10-3-28.1. The same individual may also serve as a Provisional Voting Officer or as a Registration Official at this election. (For payment purposes, a Telephone Voting System Aide is entered in OEMS as a Provisional Voting Officer or Registration Official.) When a Telephone Voting System Aide is employed in a precinct, the telephone voting system duties prescribed for the Inspector are instead performed by the Aide. A Telephone Voting System Aide has the following responsibilities.

(1) Fill out information on the Telephone Voting System Roster form.

(2) Explain the telephone voting process to the voter.

(3) Escort the voter to the designated telephone.

(4) Dial the toll-free number.

(5) Enter the six-digit precinct number and the ballot access code.

(6) Give phone to voter and leave voter alone to vote.

230:50-9-7. Telephone Voting System Precinct Log

The Telephone Voting System Precinct Log is either a paper form or a Microsoft Word (TM) template form.

(1) List all regular precincts using the six-digit OEMS precinct number on the Telephone Voting System Precinct Log.

(2) Indicate whether a telephone is available for use with the telephone voting system in each precinct's polling place by placing a checkmark in the appropriate column.

(3) Enter the number of signatures on the Telephone Voting System Roster for each precinct listed. If there are no signatures on the Roster, enter "0" in the "Number of Signatures" column. If there was not a telephone available in a precinct, enter a "0." Do not leave the "Number of Signatures" column blank for any listed precinct.

(4) After returns have been received from all precincts, total the "Number of Signatures" column and enter the total in the space provided.

(5) Fax or email the Telephone Voting System Precinct Log to the State Election Board.

(6) Make copies of the Telephone Voting System Precinct Log and of the Telephone Voting System Rosters from each precinct and make the copies available for public inspection. Keep the originals in a secure location in your office.

230:50-9-8. Receiving telephone ballots by fax from State Election Board

On Wednesday, the State Election Board staff faxes the telephone ballots to the County Election Board. The fax cover sheet lists the total number of pages transmitted, the total number of ballots transmitted, and identifies any provisional ballots. Upon receipt of the fax from the State Election Board, the Secretary takes the following steps to confirm the transmission and to secure the ballots.

(1) Examine each page of the transmission to be certain that it is completely legible. If you cannot read a faxed ballot or cannot discern how it is marked, call the State Election Board immediately.

(2) Use information recorded on the fax transmission cover sheet to verify that you received the entire transmission. If you do not receive the same number of pages indicated on the cover sheet, call the State Election Board immediately.

(3) Sort the faxed ballots by precinct.

(4) Use the Telephone Voting System Precinct Log to verify that you received by fax the same number of telephone ballots as were cast. If the number of ballots you received is not the same as the total number shown on the Precinct Log, call the State Election Board.

(5) Identify and set aside any provisional telephone ballots.

(6) Seal each faxed telephone ballot inside a ballot secrecy envelope and set them aside in a secure location in your office until the County Election Board meets on Friday.

(7) Take these steps to process the telephone provisional ballots.

(A) Match the provisional ballot with the Oklahoma Provisional Ballot Affidavit envelope completed for the voter.

(B) Put the faxed ballot inside a ballot secrecy envelope, seal it, and place the secrecy envelope inside the affidavit envelope.

(C) Follow the procedures in Sections 230:35-3-125 through 230:35-3-130 to verify the telephone provisional ballots.

(D) If the telephone provisional ballot is verified and approved for counting, it must be counted along with the other telephone ballots as outlined in Section 230:50-9-9.

230:50-9-9. Counting telephone voting system ballots

Upon receipt from the State Election Board of the ballots marked and printed by the telephone voting system, the Secretary of the County Election Board shall observe the same procedure outlined in 230:30-19-6 and in this Section to count the telephone ballots and to include them in the final election results for the appropriate precincts. These procedures shall be conducted in a public meeting of the County Election Board.

(1) Open the secrecy envelopes containing the faxed telephone ballots one at a time in the presence of the County Election Board members.

(A) The Secretary selects the correct Optech absentee ballot style for each telephone ballot. Use the Ballot Style Listing by Precinct report to select the correct absentee ballot style.

(B) Follow the procedure outlined in 230:30-19-6 to mark the Optech ballot to substitute for the faxed telephone ballot.

(2) Insert the absentee precinct memory pack in the voting device. If there is more than one absentee precinct for the election, be certain that the correct memory pack is used.

(3) Press the Print Totals key to obtain a Totals Printout. Verify that the totals exactly match the totals on the absentee Totals Printout obtained on election night.

(4) Enter the four-digit access code and follow the appropriate instructions to reopen the polls so that the voting device will accept ballots.

(5) Insert all the substitute telephone ballots in the voting device.

(6) After all substitute telephone ballots have been counted, obtain a new Totals Printout. (Set the first new Totals Printout aside in a safe place. Do not put it in a ballot transfer case.) Print at least three more copies of the Totals Printout. The following message will print after each race on the Totals Printout: "Test Results Only. Results Are Not Official!" However, these results are official and this message should be disregarded.

(7) Remove the counted telephone ballots from the ballot box and place them in a ballot transfer case with one signed copy of the Totals Printout. (The telephone ballots may be placed in the same ballot transfer case as the counted provisional ballots.)

(8) Seal the ballot transfer case with a long white State Election Board seal signed by the County Election Board members and the employee. The seal shall be clearly marked to indicate that it contains both counted provisional and telephone voting system ballots.

(9) Give the sealed ballot transfer case to the Sheriff, who shall provide security for the counted ballots until 5 p.m. or until the ballots are delivered to the court room for a recount.

(10) One copy of each of the new Totals Printouts shall be made available for public inspection in the County Election Board office.

(11) Follow the appropriate software instructions to read the absentee precinct memory pack into the computer.

(12) Print a Precinct Report for the absentee precinct. Proof the Precinct Report against the Totals Printout.

[OAR Docket #07-917; filed 5-4-07]

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

[OAR Docket #07-967]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 17. Electronic Reporting [NEW]
252:4-17-1. Purpose, authority and applicability [NEW]
252:4-17-2. Definitions [NEW]
252:4-17-3. Use of electronic document receiving system [NEW]
252:4-17-4. Electronic signature agreement [NEW]
252:4-17-5. Valid electronic signature [NEW]
252:4-17-6. Effect of electronic signature [NEW]
252:4-17-7. Enforcement [NEW]
Appendix E. Electronic Signature Agreement [NEW]

AUTHORITY:
Environmental Quality Board; 27A O.S., § 2-2-101; Administrative Procedures Act, 75 O.S., § 302; Oklahoma Uniform Electronic Transactions Act, 12 O.S., §§ 15-101 *et seq.*

DATES:
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SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
The Department is enacting a new Subchapter 17 and a new Appendix E to implement applicable portions of the United States Environmental Protection Agency's Cross Media Electronic Reporting Rule (CROMERR), as published in the October 13, 2005 issue of the Federal Register (70 FR 59848 - 59889), and which became effective January 11, 2006. The CROMERR requirements set mandatory standards for electronic document receiving systems operated by states with federally authorized, approved or delegated programs. Where states receive or intend to receive documents or reports electronically, CROMERR specifies criteria for their acceptable submission in order to ensure enforceability under the federally authorized program. The Department is required to submit an application to EPA by October 13, 2007 for approval of its CROMERR-compliant electronic document receiving system. The application must include an attorney's statement certifying that applicable rules and statutes are adequate, in force, and effective at the time the application is filed to meet the requirements of CROMERR. The application must also include a technical paper outlining how the Department's electronic document receiving system, and any known or anticipated future enhancements, meet the requirements of CROMERR.

CONTACT PERSON:
Martha Penisten at martha.penisten@deq.state.ok.us or (405) 702-7100 (telephone) or (405) 702-7101 (fax). The DEQ is located at 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2007:

SUBCHAPTER 17. ELECTRONIC REPORTING

252:4-17-1. Purpose, authority and applicability

(a) **Purpose.** The rules in this Subchapter implement the United States Environmental Protection Agency's Cross Media Electronic Reporting Rule (CROMERR), as published in the October 13, 2005 issue of the *Federal Register* (70 FR 59848 - 59889), and which became effective January 11, 2006.

(b) **Authority.** The rules in this Subchapter were promulgated and adopted under the authority of the Oklahoma Environmental Quality Code, 27A O.S. §§ 2-1-101 *et seq*., including specifically § 2-2-101(H); the Oklahoma Administrative Procedures Act, 75 O.S. § 302; and the Oklahoma Uniform Electronic Transactions Act, 12A O.S. §§ 15-101 *et seq*.

(c) **Applicability.** The rules in this Subchapter:

(1) apply to:

(A) persons and signatories who submit electronic reports or other documents to the DEQ to satisfy requirements of Title 40 of the Code of Federal Regulations (40 CFR) for authorized programs for which the Executive Director has designated on the DEQ's public website that the DEQ is accepting specified electronic documents; and

(B) the DEQ's electronic document receiving system and other software applications implemented, revised, or modified as communicated by the DEQ.

(2) do not apply to:

(A) documents submitted via facsimile;

(B) electronic documents submitted via magnetic or optical media such as diskette, compact disc, digital video disc, or tape; or

(C) electronic documents submitted through the DEQ's electronic document receiving system pursuant to a non-federal state-only program.

252:4-17-2. Definitions

In addition to the Definitions in Subchapter 1 of this Chapter, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Authorized program" means a federal program that the United States Environmental Protection Agency (EPA) has delegated to, authorized, or approved the DEQ, on behalf of the State of Oklahoma, to administer, or a program that the EPA has delegated to, authorized, or approved the DEQ to administer in lieu of a federal program, under provisions of 40 CFR and for which the delegation, authorization or approval has not been withdrawn or expired.

"Copy of record" means a true and correct copy of an electronic document received by an electronic document receiving system, which can be viewed in a human-readable format that clearly and accurately associates all the information provided in the electronic document with descriptions or labeling of the information. A copy of record includes:

(A) any electronic signature contained in or logically associated with the document;

(B) the date and time of receipt; and

(C) any other information used to record the meaning of the document or the circumstances of its receipt.

"Electronic document" means any information that is submitted to the DEQ's electronic document receiving system in digital form to satisfy requirements of an authorized program and may include data, text, sounds, codes, computer programs, software, or databases.

"Electronic document receiving system" means the apparatus, procedures, software, or records established and used by the DEQ to receive electronic documents in lieu of paper.

"Electronic signature" means any information in digital form attached to or logically associated with a record submitted to the DEQ's electronic document receiving system and executed or adopted by a person with the intent of expressing the same meaning as would a handwritten signature if affixed to an equivalent paper document with the same content.

"Electronic signature agreement" means a written agreement prepared by the Executive Director and signed by an individual with respect to an electronic signature device that the individual will use to create his or her electronic signature.

"Electronic signature device" means a code or other mechanism, assigned to an individual who is uniquely entitled to use it and that is then used to create the individual's electronic signature.

"Federal program" means any program administered by EPA under any provision of 40 CFR.

"Handwritten signature" means the scripted name or legal mark of an individual made by that individual with the present intention to authenticate a writing in a permanent form.

"Signatory" means an individual authorized to and who signs a document submitted to the DEQ's electronic document receiving system pursuant to an electronic signature agreement in a format acceptable to the DEQ.

"State program" means any program other than an authorized program that is implemented by DEQ under the Oklahoma Environmental Quality Code or other laws of the State of Oklahoma.

"Valid electronic signature" means an electronic signature on an electronic document created by using an electronic signature device that the identified signatory is uniquely entitled to use for signing the electronic document, provided the device has not been compromised and provided the signatory is an individual authorized to sign the document by virtue of legal status or relationship to the entity on whose behalf the signature is created.

252:4-17-3. Use of electronic document receiving system

(a) **Announcement on public website.** When the Executive Director has announced on the DEQ's public website that the DEQ is accepting specified electronic documents in lieu of paper to satisfy requirements under authorized programs, individuals who submit such electronic documents must use the DEQ's CROMERR-compliant electronic document receiving system.

(b) **Submittals requiring signature.** Any electronic document submitted must bear a valid electronic signature of a signatory, if that signatory would be required under the authorized program to sign the paper document for which the electronic document substitutes.

(c) **Submittals not requiring signature.** If no signature is required under the authorized program, individuals may submit electronic documents in lieu of paper to satisfy requirements of such programs through the DEQ's CROMERR-compliant electronic document receiving system without an electronic signature or an electronic signature agreement.

252:4-17-4. Electronic signature agreement

(a) **Agreement to be executed.** In the case of an electronic document that must bear the electronic signature of a signatory under an authorized program, each signatory must execute an electronic signature agreement.

(b) **Form and content of agreement.** All agreements shall be in writing and filed with the electronic document receiving system administrator via the U.S. postal service or by hand delivery. The agreement shall include the information and follow the format in Appendix E. The agreement form may be downloaded and printed for execution from the DEQ's public website.

(c) **Verification.** The identity and authority of each individual submitting an electronic signature agreement shall be verified by the DEQ. After the DEQ has satisfactorily completed the verification, the DEQ shall notify the individual electronically, issue a unique electronic signature device to the individual, and request that the individual establish a password to be used in connection with the device.

252:4-17-5. Valid electronic signature

(a) **Signatory.** An authorized signatory may not allow another individual to use the electronic signature device unique to his or her electronic signature.

(b) **Unique signature device.** When the electronic signature device is used to create an individual's electronic signature, the code or mechanism must be unique to that individual at the time the signature is created and the individual must be uniquely entitled to use it. The signatory shall:

(1) protect the electronic signature device from compromise; and

(2) report to the DEQ, within one business day of discovery, any evidence that the security of the device has been compromised.

252:4-17-6. Effect of electronic signature

(a) **Electronic signature establishes intent.** The presence of an electronic signature on an electronic document submitted to the DEQ establishes that the signatory intended to sign the electronic document and to submit it to the DEQ to fulfill the purpose of the electronic document.

(b) **Electronic signature legally binding.** Where an electronic document submitted to satisfy a reporting requirement of an authorized program bears an electronic signature, the electronic signature legally binds, obligates, and makes the signatory responsible to the same extent as the signatory's handwritten signature on a paper document submitted to satisfy the same reporting requirement. If an applicable law or rule requires a handwritten signature on a document, an electronic signature satisfies that requirement.

252:4-17-7. Enforcement

(a) **Penalties and other remedies.** If the submitter or signatory fails to comply with a reporting requirement by failing to comply with the provisions of this subchapter, the electronic signature agreement, or other applicable reporting requirements, the submitter or signatory is subject to any appropriate civil or criminal penalties or other remedies under State law.

(b) **Electronic document as evidence.** Nothing in this subchapter or the authorized program limits the use of an electronic document, copy of record, or other information derived from an electronic document as evidence in enforcement proceedings.

APPENDIX E. ELECTRONIC SIGNATURE AGREEMENT [NEW]

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

Company Name: _____

Street/Physical Address: _____

_____

City, State, Zip: _____

Telephone Number: _____

Fax Number: _____

Site/Facility Name and Address (if different from company name/address above): _____

_____

_____

I, _____,
(Name of authorized individual)

- Understand that this Electronic Signature Agreement allows me to submit electronic documents to the Oklahoma Department of Environmental Quality's ("DEQ") approved electronic document receiving system ("EDRS") under authorized programs in lieu of paper submissions.

- Understand that the DEQ has adopted applicable rules at Oklahoma Administrative Code 252:4-17, entitled "Electronic Reporting".

- Agree to protect my unique electronic signature device from compromise and from use by anyone except me. Specifically, I agree to maintain the secrecy of the password; I will not divulge or delegate my user name and password to any other individual; I will not store my password in an unprotected location; and I will not allow my password to be written into computer scripts to achieve automated log-in.

- Agree to contact the DEQ EDRS administrator at deqreporting@deq.state.ok.us as soon as possible, but no later than 24 hours, after suspecting or determining that my account

identification and/or password have become lost, stolen or otherwise compromised.

- Agree that I will review the contents of all electronic submissions prior to submission and/or make all reasonable inquiry as to the accuracy and completeness of the information.

- Understand and agree that I will be legally bound, obligated, or responsible by my use of my electronic signature as I would be using my hand-written signature.

- Understand that I will automatically receive an e-mail receipt from the DEQ's EDRS for any submission that contains a valid electronic signature, identifying the document received, the signatory, and the date and time of receipt.

- Agree that I will contact the DEQ EDRS Administrator if I do not receive an e-mail receipt as specified above within five (5) business days for any submission to the DEQ's EDRS.

- Understand that I will have the opportunity to review the document submitted in a human-readable format and an opportunity to repudiate the electronic document based on this review.

- Understand that the DEQ's EDRS will automatically reject any electronic document submitted without a valid electronic signature if such signature is required.

- Understand that the DEQ may contact the Immediate Supervisor or Company Official who signs below to authorize me as signatory for the company in order to verify my identity.

- Agree to notify the DEQ EDRS Administrator if I cease to represent the regulated entity specified above as signatory as soon as this change in relationship occurs.

- Agree to retain a copy of this signed agreement as long as I continue to represent the regulated entity specified above as signatory of the company's electronic submissions.

Printed Name of Authorized Signatory:

_____

Signatory's E-mail Address for EDRS correspondence:

_____

_____
Signature of Authorized Signatory

_____
Official Title

Date: _____

Subscribed and sworn to before me this _____ day of _____, 20___.

_____
NOTARY PUBLIC

My commission expires:
_____

AUTHORIZATION BY IMMEDIATE SUPERVISOR OR COMPANY OFFICIAL

I, _____, acknowledge that the individual named above works at/for _____ and is authorized to submit electronic documents and act as signatory for purposes of the DEQ's electronic document receiving system.

_____

Signature of Immediate Supervisor or Company Official

Official Title: _____

Date: _____

Subscribed and sworn to before me this _____ day of _____, 20___.

_____

NOTARY PUBLIC

My commission expires:

_____

PLEASE MAIL THIS DOCUMENT AS SOON AS POSSIBLE TO:

Oklahoma Department of Environmental Quality
Attn.: EDRS Coordinator
Customer Services Division
P.O. Box 1677
Oklahoma City, OK 73101-1677

[OAR Docket #07-967; filed 5-9-07]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 210. HIGHWAY SPILL REMEDIATION

[OAR Docket #07-968]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
252:210-1-1. Purpose, authority and applicability [NEW]
252:210-1-2. Definitions [NEW]
252:210-1-3. General provisions [NEW]
252:210-1-4. Prerequisites for new licenses and renewal [NEW]
252:210-1-5. Licensure requirements [NEW]
252:210-1-6. Licensee's duties; record keeping [NEW]
252:210-1-7. License suspension and revocation [NEW]
252:210-1-8. Fees [NEW]
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Environmental Quality Board; 27A O.S., § 2-2-101, 2-2-201, 2-2-104, 2-7-105, 2-7-106 and 2-7-403
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252:210-1-3. General provisions [NEW]
252:210-1-4. Prerequisites for new licenses and renewal [NEW]
252:210-1-5. Licensure requirements [NEW]
252:210-1-6. Licensee's duties; record keeping [NEW]
252:210-1-7. License suspension and revocation [NEW]
252:210-1-8. Fees [NEW]
Gubernatorial approval:
January 4, 2007
Register publication:
24 Ok Reg 582
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07-119
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ANALYSIS:
The permanent Chapter 210 is intended to replace existing emergency rules, which were adopted to implement the requirements of Senate Bill 1938, passed by the Oklahoma Legislature during its 2006 session. The Bill creates the Oklahoma Highway Remediation and Cleanup Services Act, 27A O.S.§ 2-7-401, *et seq.* The Act gives the DEQ the authority to license, supervise, govern and regulate highway remediation and cleanup services and highway remediation and cleanup service operators in the State of Oklahoma. The Act further grants the Environmental Quality Board authority to pass rules implementing its requirements. The statutory effective date is November 1, 2006.

CONTACT PERSON:
Mista Turner Burgess (405) 702-7189, 707 North Robinson, Seventh Floor, Oklahoma City, Oklahoma 73102. Mailing address is P. O. Box 1677, Oklahoma City, OK 73101-1677. E-mail address is mista.turner-burgess@deq.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2007:

252:210-1-1. Purpose, authority and applicability

(a) **Purpose.** The purpose of this Chapter is to implement and enforce the Oklahoma Highway Remediation and Cleanup Services Act. The rules in this Chapter are to provide for regulation of highway spill remediation and cleanup services and regulation of highway spill remediation and cleanup service operators as necessary for protection of the waters of the State, the public health and the environment.

(b) **Authority.** 252:210 is authorized by 27A O.S.§§ 2-7-401 through 405.

(c) **Applicability.** The rules in this Chapter apply to:

(1) Any business that provides services to contain, remove and/or remediate spills of hazardous materials on highways in Oklahoma; and

(2) Any person who owns or operates those businesses or is employed by them to perform such containment and/or remediation services.

252:210-1-2. Definitions

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

"Collision" means any physical impact of a truck, truck-tractor, trailer or any combination thereof with the land or road surface or any other vehicle, structure or object.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Hazardous material" means any substance that, if spilled, is or has the potential to be harmful to humans or the environment such that it is appropriate to impose special requirements upon those who remediate a spill of the substance. Such substances include, but are not limited to, explosives, flammable and/or combustible liquids, acids, caustics, poisons, containerized gases, toxic chemicals, hazardous materials as defined in 49 CFR 171.8 and hazardous wastes as defined in 40 CFR Part 260.

"Highway" means highway as defined by 47 O.S.§ 1-122.

"Law enforcement officer" means the lead official as defined by the Oklahoma Emergency Response Act.

"Remediation" includes containment, removal, and cleanup of a hazardous material spill, and the handling and disposition of cargo to the extent the cargo is contaminated with hazardous material as a result of the spill.

"Spill" means release of a hazardous material, caused by a collision on or adjacent to a highway in Oklahoma, in a quantity that could be harmful to humans or the environment.

252:210-1-3. General provisions

(a) **License required.** Spills shall be remediated only by businesses licensed pursuant to this Chapter. The person who spilled the hazardous material may employ any licensed highway spill remediation service unless the on-scene law enforcement officer has determined that there are hazardous conditions that pose an imminent threat to health or the environment. In these cases where time is critical, the law enforcement officer may contact any licensed highway spill remediation service or any non-licensed provider of a service needed to resolve the emergency.

(b) **Employee training.** Any person who participates in the remediation of spills must:

(1) Be employed by a business licensed pursuant to this Chapter;

(2) Be currently certified as a hazardous materials technician pursuant to 29 CFR 1910.120; and

(3) Upon request by DEQ personnel or local law enforcement personnel at the scene of a spill, provide proof of their current hazardous materials technician certification.

(c) **Vehicle requirements.** All vehicles used in the remediation of spills shall visibly display the highway spill cleanup license number on both sides of the vehicle in numbers at least four inches (4") high.

(d) **Tow trucks.** All tow trucks used in the remediation of spills shall be registered and licensed by the Oklahoma Department of Public Safety.

(e) **Disposal.** All waste material collected or generated in the remediation of spills must be managed and disposed of in accordance with all applicable laws.

(f) **Specified dates.** If any date specified in this Chapter falls on a weekend or holiday, the date of the following working day shall be the effective date.

(g) **License period.** Licenses shall be effective from the day of licensure and expire on December 31 of the same year, unless modified by an Administrative Proceeding. Licenses issued prior to January 1, 2007, will expire December 31, 2007.

(h) **Application time frame.** Applications will become void if the applicant fails to meet all licensure requirements within one hundred eighty (180) days of being notified of any deficiencies. All fees paid are non-refundable when an application is voided.

252:210-1-4. Prerequisites for new licenses and renewal

To be eligible for initial licensure or renewal:

(1) The owner of the business must be eighteen (18) years of age or older;

(2) The owner of the business must be a resident of the State of Oklahoma or the business must be an Oklahoma corporation;

(3) The principal business facilities must be located in the State of Oklahoma;

(4) The owner and/or business must owe no outstanding fees or fines to the Department of Environmental Quality or any income taxes to the State of Oklahoma; and

(5) The owner and/or business must be in compliance with these rules and all DEQ final orders.

252:210-1-5. Licensure requirements

(a) **Initial license.** An applicant may become licensed to remediate spills by:

(1) Submitting to the DEQ a completed and signed DEQ Form 210-001 "Highway Spill Cleanup License Application";

(2) Remitting payment to DEQ for the required initial licensure fee; and

(3) Submitting documentation to DEQ that the applicant has a general liability insurance policy that includes pollution coverage in the amount of at least $1,000,000. The documentation shall include a copy of the certificate of insurance.

(b) **Renewal license.** An applicant may renew an unexpired license to remediate spills by doing the following no later than the 15th of the month preceding the expiration date of the current license (December 31st):

(1) Submitting to the DEQ a completed and signed DEQ Form 210-001 "Highway Spill Cleanup License Application";

(2) Remitting payment to DEQ for the required renewal licensure fee; and

(3) Submitting documentation to DEQ that the applicant has a general liability insurance policy that includes pollution coverage in the amount of at least $1,000,000. The documentation shall include a copy of the certificate of insurance.

(c) **Late renewals.** The applicant shall pay the late fee in addition to the renewal fee for renewal applications postmarked or delivered to the DEQ after December 15th.

(d) **Failure to renew.** Once a license expires, the applicant may not continue to remediate spills until the license is actually renewed. Any license that has not been renewed within twelve (12) months of expiring may not be renewed. Such applicants must apply for a new license and pay the new license fee in full.

252:210-1-6. Licensee's duties; record keeping

(a) **Remediation records.** The licensee shall maintain and make available to DEQ upon request, a record of all remediations performed pursuant to this Chapter. Each record shall include, at a minimum, the following:

(1) Name and contact information for the person or entity responsible for the materials spilled;

(2) Date of the spill;

(3) Legal description, highway mile marker, physical address,
or latitude and longitude of the spill;

(4) Description and quantity of material spilled;

(5) Method of remediation;

(6) Results of all analyses; and

(7) Location and date of disposal or disposition.

(b) **Employee training records.** The licensee shall maintain and make available to DEQ upon request all hazardous materials technician certification training records for all employees who participate in remediation services for the licensee.

(c) **Records retention.** All records required to be maintained by the licensee pursuant to this Section shall be retained for a minimum of three (3) years.

252:210-1-7. License suspension and revocation

(a) **Reasons for suspension or revocation.** After notice and opportunity for hearing, the DEQ may suspend or revoke a license for:

(1) Procedural violations such as allowing the insurance to expire, allowing untrained employees to participate in remediation of a spill or other related procedural issues;

(2) Gross inefficiency or incompetence in providing spill containment or remediation services or in complying otherwise with the requirements of this Chapter and other applicable law;

(3) Any violation of this Chapter or any final DEQ order; or

(4) Dishonesty, fraud or misrepresentation to DEQ.

(b) **Suspension.** Any entity or person whose license is suspended by the DEQ:

(1) May not provide remediation services until their license has been reinstated or they have received a new license.

(2) May apply for reinstatement of their license at any time during the twelve (12) months following the date of their suspension by:

(A) Correcting any deficiency(ies);

(B) Paying any outstanding fees or fines owed to DEQ;

(C) Remitting payment to DEQ for the reinstatement fee;

(D) Meeting the renewal requirements of Section 1-9(b) of this Chapter, including remitting payment for the renewal fee if the license expired during the suspension period; and

(E) Being in compliance with all final DEQ rules and orders.

(c) **Revocation.** Any entity or person whose license has been revoked by the DEQ must wait one (1) year from the date of revocation before filing an application for a new license.

252:210-1-8. Fees

Unless otherwise provided by statute, license fees shall be as follows:

(1) New license fee - $10,000.00

(2) Annual renewal fee - $1,000.00

(3) Late fee - $100.00

(4) Reinstatement fee - $100.00

[OAR Docket #07-968; filed 5-9-07]

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

[OAR Docket #07-969]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 19. Classifications
252:300-19-4 [NEW]
Subchapter 21. Categories
252:300-21-1 [AMENDED]
252:300-21-2 [AMENDED]
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Appendix B. Analytes for General Water Quality Laboratory Categories [NEW]
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Environmental Quality Board and Laboratory Certification Advisory Council powers and duties: 27A O.S., §§ 2-2-101, 2-2-201, and 2-4-101 *et seq.*
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N/A
ANALYSIS:
The DEQ is requiring several municipalities to perform freshwater mussel toxicity testing and/or perchlorate sampling as a condition of the OPDES permit. Laboratory analyses must be performed by certified laboratories. Therefore, freshwater mussel toxicity testing and perchlorate sampling were added to Subchapter 19 and Subchapter 21 as well as Appendix B.
CONTACT PERSON:
David Caldwell, Customer Services Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at david.caldwell@deq.state.ok.us, phone 405-702-1000, or fax 405-702-1001.

PURSUANT TO THE ACTION DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2007:

SUBCHAPTER 19. CLASSIFICATIONS

252:300-19-4. Additional methods

Additional approved methodologies for general water quality laboratories are listed as follows:

(1) ASTM E 2455-06 Conducting Laboratory Toxicity Test with Freshwater Mussels;

(2) Determination of Perchlorate in Soils, Test Methods for Evaluating Solid Waste, Draft Update IV B, Laboratory Manual Physical/Chemical Methods:

(A) Methods 9058, Ion Chromatography with Chemical Suppression;

(B) Method 6850, Ion Chromatography/Mass Spectrometry;

(C) Method 6860, Liquid Chromatography/Mass Spectrometry

(3) Determination of Perchlorate in Water:

(A) Method 314.0, by Ion Chromatography;

(B) Method 314.1, Using Inline Column Concentration/ Matrix Elimination Ion Chromatography with Suppressed Conductivity Detection;

(C) Method 331.0 Rev. 1.0, Determination of Perchlorate in Drinking Water by Liquid Chromatography Electrospray Ionization Mass Spectrometry;

(D) Method 332.0, Ion Chromatography with Suppressed Conductivity and Electrospray Ionization Mass Spectrometry.

SUBCHAPTER 21. CATEGORIES

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

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

252:300-21-2. ~~Categories for general~~ General water quality certification

(a) A laboratory may be accredited in a general water quality classification for metals, nutrients, demands, extractable organics, general chemistry I and/or II, microbiology, pesticides - herbicides - PCBs, purgeable organics, radiological, bioassay, hazardous waste characterization, and/or basic environmental laboratory. Analytes for each category are specified in Appendix B.

(b) A laboratory may also be accredited in a general water quality classification for perchlorate and/or toxicity testing in freshwater mussels as specified in Appendix B.

APPENDIX B. ANALYTES FOR GENERAL WATER QUALITY LABORATORY CATEGORIES [REVOKED]

APPENDIX B. ANALYTES FOR GENERAL WATER QUALITY LABORATORY CATEGORIES [NEW]

Analytes considered for general water quality laboratory accreditation include the following:

Category I - Metals.

(A) Flame atomic absorption (AA)
(B) Furnace (AA)
(C) Inductively coupled plasma (ICP)
(D) Cold vapor
(E) Hydride
(F) Colorimetric

Category II - Nutrients.

(A) Ammonia-nitrogen
(B) Total Kjeldahl-nitrogen
(C) Nitrate-nitrogen
(D) Nitrate-nitrite-nitrogen
(E) Nitrite-nitrogen
(F) Organic-nitrogen
(G) Orthophosphate phosphorus
(H) Total phosphorus

Category III - Demands.

(A) Five day biochemical oxygen demand
(B) Five day carbonaceous biochemical oxygen demand
(C) Chemical oxygen demand
(D) Total organic carbon

Category IV - Extractable Organics.

(A) Methods by Gas Chromatography (GC) and Liquid Chromatography (LC) analysis include the following:
(i) EPA method 604 (phenols)
(ii) EPA method 605 (benzidines)
(iii) EPA method 606 (phthalic esters)
(iv) EPA method 607 (nitrosoamines)
(v) EPA method 609 (nitroaromatics and isophorone)
(vi) EPA method 610 - (polynuclear aromatic hydrocarbons)
(vii) GC or LC analysis)
(viii) EPA Method 611 (haloethers)
(ix) EPA method 612 (chlorinated hydrocarbons)
(B) Methods by Gas Chromatography-Mass Spectroscopy (GC-MS) analysis include the following:
(i) EPA method 613 (dioxin)
(ii) EPA method 625 (base-neutrals and acids)

(iii) EPA method 1625 (semi-volatiles, revision B).

Category V - General Chemistry I.

(A) Acidity
(B) Alkalinity
(C) Bromine
(D) Bromide
(E) Bromates
(F) Calcium
(G) Chloride
(H) Color
(I) Copper
(J) Fluoride
(K) Hardness
(L) Hydrogen ion (pH)
(M) Iron
(N) Magnesium
(O) Manganese
(P) Total residue
(Q) Total dissolved solids (Filterable residue)
(R) Total suspended solids (Non-filterable residue)
(S) Settleable residue
(T) Volatile residue
(U) Sulfate
(V) Nitrate
(W) Turbidity
(X) Zinc

Category VI - General Chemistry II.

(A) Residual chlorine
(B) Total cyanide
(C) Cyanide amenable to chlorination
(D) Oil & grease
(E) Dissolved oxygen
(F) Total phenols
(G) Elemental phosphorus
(H) Dissolved silica
(I) Specific conductance
(J) Sulfide
(K) Sulfite
(L) Surfactants
(M) Total dissolved gases
(N) Hexavalent chromium
(O) Corrosivity-calcium carbonate stability

Category VII - Microbiology.

Specific methods are listed in 40 C.F.R. Part 136, Table 1A.

(A) Fecal coliform bacteria
(B) Fecal coliform bacteria in the presence of chlorine
(C) Total coliform bacteria
(D) Total coliform bacteria in the presence of chlorine
(E) Fecal streptococci
(F) Salmonella

Category VIII - Pesticides - Herbicides - PCB's.

(A) Methods by GC analysis.
(i) Methods 608, 608.1, 608.2, 509A - Organochlorine pesticides
(ii) methods 614, 614.1, 622, 622.1 - Organophosphorus pesticides
(iii) EPA method 617 - Organohalide pesticides and PCB's
(iv) EPA method 618 - Volatile pesticides
(v) EPA method 619 - Triazine
(vi) EPA method 627 - Dinitroaniline
(vii) EPA method 633 - Organonitrogen compounds
(viii) EPA method 645 - Amine and lethane
(ix) Methods 509B, 615 - Chlorinated herbicides
(B) Methods by GC-MS analysis.
(i) EPA method 625 - GC-MS
(ii) EPA method 1625 - GC-MS
(C) Methods by High Performance Liquid Chromatography (HPLC) analysis
(i) EPA method 629 - Cyanazine
(ii) EPA method 631 - Benomyl
(iii) EPA method 632, 632.1 - Carbamates
(iv) EPA method 612 - Biphenyl and o-Phenyl phenol
(v) EPA method 643 - Bentazon
(vi) EPA method 644 - Picloram

Category IX - Purgeable Organics.

(A) Methods by GC analysis
(i) EPA method 601 - Purgeable halocarbon
(ii) EPA method 602 - Purgeable aromatics
(iii) EPA method 603 - Acrolein and acrylonitrile
(B) Methods by GC-MS analysis
(i) EPA method 624 - Purgeable by GC-MS
(ii) EPA method 1624 Revision B - Volatile organics
(iii) EPA method 8260 Revision C - Volatile organics

Category X - Radiological.

(A) Total alpha, including alpha-counting error
(B) Total beta, including beta-counting error
(C) Total radium
(D) Radium-226

Category XI - Bioassay.

(A) Acute - Freshwater organisms
(B) Acute - Saltwater organisms
(C) Chronic - Freshwater organisms
(D) Chronic - Saltwater organisms
(E) Toxicity Testing - Freshwater Mussels

Category XII - Hazardous Waste Characterization.

(A) Waste ignitability
(B) Waste corrosivity
(C) Waste reactivity
(D) Toxicity Characteristic Leaching Procedure (TCLP)

Category XIII - Perchlorate.

Perchlorate

[OAR Docket #07-969; filed 5-9-07]

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

[OAR Docket #07-970]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Certification of Industrial Radiographers
252:410-5-3 [AMENDED]
AUTHORITY:
Environmental Quality Board and Radiation Management Advisory Council powers and duties: 27A O.S., §§ 2-2-101, 2-2-201, and 2-9-104.
DATES:
Comment Period:
July 17, 2006, through August 29, 2006, and October 2, 2006, through February 23, 2007
Public Hearing:
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Legislative approval:
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Final adoption:
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The Subchapter 5 amendments will raise the fee paid by first-time applicants for certification as a Radioactive Materials industrial radiographer and lower the fee paid by persons applying to retake the certification examination. Other amendments will rearrange the language of the subsection for greater clarity in the application of the rules.
CONTACT PERSON:
Mike Broderick, Radiation Management Section, Land Protection Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, phone 405-702-5100 and FAX 405-702-5101.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2007:

SUBCHAPTER 5. CERTIFICATION OF INDUSTRIAL RADIOGRAPHERS

252:410-5-3. DEQ certification examination.

DEQ will establish and give notice of the date, time, location and application deadline for each industrial radiography examination. An examination will be scheduled at least once a year in both Oklahoma City and Tulsa.

(1) **Confidentiality; criteria and procedures.** Examinations and answer keys are confidential. Each examination will have a maximum score of 100 percent. A score of 70 percent or higher is required for passing. To be seated for the examination, an individual must present a driver's license or other photo I.D. unless approved otherwise by DEQ. The closed-book examination will be administered by DEQ proctors. Calculators may be used except for exposure calculators or those capable of containing programmed data or formulas. ~~The application fee for each examination is $90.00.~~

(2) **Certification fees.** The application fee for each examination is $80.00. An additional qualification review fee of $60.00 shall be charged upon initial application for certification as a radiographer.

(~~2~~3) **Retakes.** Any applicant retaking the examination must reapply, pay the application fee and take a different examination version.

(4) **Replacement cards.** Replacement cards are available from DEQ for a $20.00 nonrefundable fee and a written request explaining why a new card is needed. A certified individual may use the DEQ receipt confirming payment and the replacement request as proof of certification until the replacement card is issued.

(~~3~~5) **Prohibition.** Any individual observed by a proctor to be cheating shall be deemed to have failed the examination and shall be prohibited from applying for a retake for 12 months.

[OAR Docket #07-970; filed 5-9-07]

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

[OAR Docket #07-971]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 10. Radioactive Materials Program
Part 101. Radioactive Materials Program Fees
252:410-10-118 [AMENDED]
AUTHORITY:
Environmental Quality Board and Radiation Management Advisory Council powers and duties: 27A O.S., §§ 2-2-101, 2-2-201, and 2-9-104.
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N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The amendments to Subchapter 10, Part 101, Section 118 will revise 252:410-10-118(1)(A) to delete the reference to 252:410-10-104(l) in order to lower the reciprocity fees for service providers. The amendments also create a new subsection (3) which will allow an additional fee 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 covering the period of less than three days prior to the date the work is to be performed.
CONTACT PERSON:
Mike Broderick, Radiation Management Section, Land Protection Division, Department of Environmental Quality, P. O. Box 1677, Oklahoma City, OK 73101-1677, phone 405-702-5100 and FAX 405-702-5101.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O. S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2007:

SUBCHAPTER 10. RADIOACTIVE MATERIALS PROGRAM

PART 101. RADIOACTIVE MATERIALS PROGRAM FEES

252:410-10-118. Reciprocity fees

Applicants for reciprocity shall pay an annual fee as follows:

(1) For applications received three or more days before the work is to be performed, the higher of $2,500.00 or full cost up to the applicable annual fee, and for applications received less than three days before the work is to be performed, the higher of $3,500.00 or full cost, but not to exceed the applicable annual fee for the following license categories:

(A) 252:410-10-104 (e)~~, (l)~~ and (m);
(B) 252:410-10-105;
(C) 252:410-10-106(b);
(D) 252:410-10-107;
(E) 252:410-10-110.

(2) For applications received three or more days before the work is to be performed, $1,500.00, and for applications received less than three days before the work is to be performed, $2,500.00, for each license category not listed in paragraph (1) of this section.

(3) If an application has been approved or if the application for approval has been filed, the holder of that DEQ recognition or the person whose application is in process to receive DEQ recognition of reciprocity shall pay an additional fee of $1,000.00 if such holder or person chooses to add one or more additional sites requiring reciprocity if such request for recognition of these additional sites is received less than three days before the work related to such request is to be performed.

[OAR Docket #07-971; filed 5-9-07]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 606. OKLAHOMA POLLUTANT DISCHARGE ELIMINATION SYSTEM (OPDES) STANDARDS

[OAR Docket #07-972]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Introduction
252:606-1-3 [AMENDED]
252:606-1-4 [AMENDED]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S., § 2-6-101 *et seq.*
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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATIONS BY REFERENCE:
Incorporated standards:
The following from 40 CFR (July 1, 2006):
Part 116 (Hazardous Substances List)
Part 117 (Reportable Quantities for Hazardous Substances)
The following from PART 122 (NPDES PERMIT REGULATIONS):
122.1 (b)-(scope of NPDES permit requirements)
122.2 - (definitions)
122.3 - (exclusions)
122.4 - (prohibitions)
122.5 - (effect of permit)
122.6 - (continuation of expiring permits)
122.7 (b) and (c) - (confidential information)
122.21 - (application for a permit)

122.22 - (signatories)
122.24 - (concentrated aquatic animal production facilities)
122.25 - (aquaculture projects)
122.26 - (stormwater discharges)
122.27 - (silviculture)
122.28 (a) and (b) - (general permits)
122.29 - (new sources and new dischargers)
122.30 - What are the objectives of the storm water regulations for small MS4s?
122.31 - As a tribe, what is my role under the NPDES storm water program?
122.32 - As an operator of a small MS4, am I regulated under the NPDES storm water program?
122.33 - If I am an operator of a regulated small MS4, how do I apply for an NPDES permit and when do I have to apply?
122.34 - As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?
122.35 - As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?
122.36 - As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in §§ 122.33 through 122.35?
122.41 - (permit conditions)
122.42 - conditions for specified categories of permits)
122.43 - establishing permit conditions)
122.44 - (establishing permit limitations, standards and other conditions)
122.45 - (calculating permit conditions)
122.46 - (permit duration)
122.47 (a) - (schedules of compliance)
122.48 - (monitoring requirements)
122.50 - (disposal into wells)
122.61 - (permit transfer)
122.62 - (permit modification)
122.63 - (minor modifications of permits)
122.64 - (permit termination)
122 - Appendices A through I
The following from PART 124 (Procedures for Decision making):
124.1 - (introduction)
124.2 - (definitions)
124.3 (a), (c), and (d)- (application for a permit)
124.5 (a),(c),(d) and (f) - (modification of permits)
124.6 (a),(c),(d) and (e) - (draft permit)
124.7 - (statement of basis of conditions where no fact sheet is adopted)
124.8 - (fact sheet)
124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e) - (public notice)
124.11 - (public comments and requests for hearings)
124.12 (a) and (c) - (public hearings)
124.13 - (obligation of protestors, etc., to raise all issues)
124.14 - (reopening)
124.15 - (issuance & effective dates of permits)
124.17 (a) and (c) - (response to comments)
124.51 (a) and (b) - (specific permitting procedures-purpose and scope)
124.52 - (permits required on a case-by-case basis)
124.56 - (fact sheets)
124.57 (a) - (public notice)
124.59 - (comments from government agencies)
124.62 - (decision on variances)
124.66 - (thermal variance procedures)
The following from PART 125 (criteria and standards for NPDES):
Subpart A (technology-based treatment),
Subpart B (criteria for aquaculture projects),
Subpart D (fundamentally different factors),
Subpart H (alternative effluent limitations),
Subpart I (new cooling water intakes), and
Subpart J (existing cooling water intakes).
40 CFR Part 129 (Toxic Pollutant Effluent Standards)
40 CFR Part 136 (testing and laboratory)
40 CFR §§ 401-471 (Effluent Guidelines and Standards)
40 CFR § 110.6 (notice of oil discharge) and
40 CFR Part 302 (Reportable Quantities and Notification).
The following provisions of 40 CFR (July 1, 2006) that are applicable to biosolids are hereby incorporated by reference, subject to any modifications and additional requirements specified in this Chapter:
The following Sections from Part 503, Subpart A (General Provisions):
503.1 (Purpose and applicability)
503.2 (Compliance period)
503.3 (Permits and direct enforceability)
503.4 (Relationship to other regulations)
503.5 (Additional or more stringent requirements)
503.6(a)-(e),(g)-(j) (Exclusions)
503.7 (Requirement for a person who prepares biosolids)
503.8 (Sampling and analysis)
503.9 (General definitions)
The following Sections from Part 503, Subpart B (Land Application):
503.10(a),(b)(1)&(2),(e),(f),(g) (Applicability)
503.11 (Special definitions)
503.12 (General requirements)
503.13 (Pollutant limits)
503.14 (Management practices)
503.15 (Operational standards - pathogens and vector attraction reduction)
503.16(a) (Frequency of monitoring)
503.17(a) (Recordkeeping)
503.18 (Reporting)
The following Sections from Part 503, Subpart D (Pathogens and Vector Attraction Reduction):
503.30 (Scope)
503.31 (Special definitions)
503.32(a), (b) (Pathogens)
503.33(a), (b)(1)-(11) (Vector attraction reduction)
The following Sections from Part 503 Subpart E (Incineration)
503.40 (Applicability)
503.41 (Special definitions)
503.42 (General requirements)
503.43 (Pollutant (Metal) limits)
503.44 (Operational standard - total hydrocarbons)
503.45 (Management practices)
503.46 (Frequency of monitoring)
503.47 (Recordkeeping)
503.48 (Reporting)
The following Appendices from Part 503:
Appendix A (Procedure to determine the annual whole biosolids application rate for a biosolids)
Appendix B (Pathogen treatment processes)

Incorporating rules:
252:606-1-3
252:606-1-4

Availability:
Copies of the incorporated standards may be examined during regular business hours at the Oklahoma City offices of the Department of Environmental Quality.

ANALYSIS:
The Department is updating its rules concerning the adoption of the Phase II rules concerning cooling water intakes for power plants and the date of the incorporation by reference of certain federal regulations from July 1, 2005, to July 1, 2006.

CONTACT PERSON:
Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2007:

SUBCHAPTER 1. INTRODUCTION

252:606-1-3. Adoption of U.S. EPA regulations by reference

(a) **Interpretation of rules.** Narrative provisions of this Chapter apply control over any provision of regulations of the

Environmental Protection Agency (EPA) which are adopted by reference. The rules set forth in this Chapter are interpreted consistently with state compliance with the requirements of 40 CFR Part 123 (EPA Regulations on State NPDES Permit Program Requirements), and applicable provisions of the federal Clean Water Act and Oklahoma law.

(b) **Federal regulations adopted.** The following provisions of Title 40 of the Code of Federal Regulations (CFR) and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference in their entirety:

(1) Part 116 (Hazardous Substances List)

(2) Part 117 (Reportable Quantities for Hazardous Substances)

(3) The following from PART 122 (NPDES PERMIT REGULATIONS):

(A) 122.1(b) - (scope of NPDES permit requirements)

(B) 122.2 - (definitions)

(C) 122.3 - (exclusions)

(D) 122.4 - (prohibitions)

(E) 122.5 - (effect of permit)

(F) 122.6 - (continuation of expiring permits)

(G) 122.7(b) and (c) - (confidential information)

(H) 122.21 - (application for a permit)

(I) 122.22 - (signatories)

(J) 122.24 - (concentrated aquatic animal production facilities)

(K) 122.25 - (aquaculture projects)

(L) 122.26 - (stormwater discharges)

(M) 122.27 - (silviculture)

(N) 122.28(a) and (b) - (general permits)

(O) 122.29 - (new sources and new dischargers)

(P) 122.30 - What are the objectives of the storm water regulations for small MS4s?

(Q) 122.31 - As a tribe, what is my role under the NPDES storm water program?

(R) 122.32 - As an operator of a small MS4, am I regulated under the NPDES storm water program?

(S) 122.33 - If I am an operator of a regulated small MS4, how do I apply for an NPDES permit and when do I have to apply?

(T) 122.34 - As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?

(U) 122.35 - As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?

(V) 122.36 - As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in §§ 122.33 through 122.35?

(W) 122.41 - (permit conditions)

(X) 122.42 - conditions for specified categories of permits)

(Y) 122.43 - establishing permit conditions)

(Z) 122.44 - (establishing permit limitations, standards and other conditions)

(AA) 122.45 - (calculating permit conditions)

(BB) 122.46 - (permit duration)

(CC) 122.47(a) - (schedules of compliance)

(DD) 122.48 - (monitoring requirements)

(EE) 122.50 - (disposal into wells)

(FF) 122.61 - (permit transfer)

(GG) 122.62 - (permit modification)

(HH) 122.63 - (minor modifications of permits)

(II) 122.64 - (permit termination)

(JJ) Appendices A through I

(4) The following from PART 124 (Procedures for Decision making):

(A) 124.1 - (introduction)

(B) 124.2 - (definitions)

(C) 124.3(a), (c), and (d) - (application for a permit)

(D) 124.5(a), (c), (d) and (f) - (modification of permits)

(E) 124.6(a), (c), (d) and (e) - (draft permit)

(F) 124.7 - (statement of basis of conditions where no fact sheet is adopted)

(G) 124.8 - (fact sheet)

(H) 124.10(a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e) - (public notice)

(I) 124.11 - (public comments and requests for hearings)

(J) 124.12(a) and (c) - (public hearings)

(K) 124.13 - (obligation of protestors, etc., to raise all issues)

(L) 124.14 - (reopening)

(M) 124.15 - (issuance & effective dates of permits)

(N) 124.17(a) and (c) - (response to comments)

(O) 124.51(a) and (b) - (specific permitting procedures-purpose and scope)

(P) 124.52 - (permits required on a case-by-case basis)

(Q) 124.56 - (fact sheets)

(R) 124.57(a) - (public notice)

(S) 124.59 - (comments from government agencies)

(T) 124.62 - (decision on variances)

(U) 124.66 - (thermal variance procedures)

(5) The following from PART 125 (criteria and standards for NPDES):

(A) Subpart A (technology-based treatment),

(B) B (criteria for aquaculture projects),

(C) D (fundamentally different factors),

(D) H (alternative effluent limitations),

(E) I (new cooling water intakes), and

(F) J (existing cooling water intakes).

(6) 40 CFR Part 129 (Toxic Pollutant Effluent Standards)

(7) 40 CFR Part 136 (testing and laboratory)

(8) 40 CFR §§ 401-471 (Effluent Guidelines and Standards)

(9) 40 CFR § 110.6 (notice of oil discharge) and

(10) 40 CFR Part 302 (Reportable Quantities and Notification).

(c) The following provisions of 40 CFR that are applicable to biosolids are hereby incorporated by reference, subject to

any modifications and additional requirements specified in this Chapter:

(1) The following Sections from Part 503, Subpart A (General Provisions):

(A) 503.1 (Purpose and applicability)
(B) 503.2 (Compliance period)
(C) 503.3 (Permits and direct enforceability)
(D) 503.4 (Relationship to other regulations)
(E) 503.5 (Additional or more stringent requirements)
(F) 503.6(a)-(e), (g)-(j) (Exclusions)
(G) 503.7 (Requirement for a person who prepares biosolids)
(H) 503.8 (Sampling and analysis)
(I) 503.9 (General definitions)

(2) The following Sections from Part 503, Subpart B (Land Application):

(A) 503.10(a),(b)(1)&(2),(e),(f),(g) (Applicability)
(B) 503.11 (Special definitions)
(C) 503.12 (General requirements)
(D) 503.13 (Pollutant limits)
(E) 503.14 (Management practices)
(F) 503.15 (Operational standards - pathogens and vector attraction reduction)
(G) 503.16(a) (Frequency of monitoring)
(H) 503.17(a) (Recordkeeping)
(I) 503.18 (Reporting)

(3) The following Sections from Part 503, Subpart D (Pathogens and Vector Attraction Reduction):

(A) 503.30 (Scope)
(B) 503.31 (Special definitions)
(C) 503.32(a), (b) (Pathogens)
(D) 503.33(a), (b)(1)-(11) (Vector attraction reduction)

(4) The following Sections from Part 503 Subpart E (Incineration):

(A) 503.40 (Applicability)
(B) 503.41 (Special definitions)
(C) 503.42 (General requirements)
(D) 503.43 (Pollutant (Metal) limits)
(E) 503.44 (Operational standard - total hydrocarbons)
(F) 503.45 (Management practices)
(G) 503.46 (Frequency of monitoring)
(H) 503.47 (Recordkeeping)
(I) 503.48 (Reporting)

(5) The following Appendices from Part 503:

(A) Appendix A (Procedure to determine the annual whole biosolids application rate for a biosolids)
(B) Appendix B (Pathogen treatment processes)

(d) **Exclusions.** Provisions of 40 CFR relating to CAFOs are excluded because they are beyond the jurisdiction of this Chapter.

252:606-1-4. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on July 1, ~~2005~~ 2006.

[OAR Docket #07-972; filed 5-9-07]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 611. GENERAL WATER QUALITY

[OAR Docket #07-973]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:611-1-3 [AMENDED]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S., § 2-6-101 *et seq.*
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Incorporated standards:
40 CFR, Part 130 (July 1, 2006)
Incorporating rules:
252:611-1-3
Availability:
Copies of the incorporated standards may be examined during regular business hours at the Oklahoma City offices of the Department of Environmental Quality.
ANALYSIS:
The amendments are to update Department rules concerning the date of the incorporation by reference of certain federal regulations. The change updates the publication date of the federal rules to July 1, 2006.
CONTACT PERSON:
Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED

FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

252:611-1-3. Adoption and incorporation by reference

40 CFR Part 130 is adopted and incorporated by reference, as published on July 1, ~~2005~~ 2006, and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference in their entirety.

[OAR Docket #07-973; filed 5-9-07]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 616. INDUSTRIAL WASTEWATER SYSTEMS

[OAR Docket #07-974]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Permit Procedures
252:616-3-4 [AMENDED]
Subchapter 11. Land Application Standards
252:616-11-1 [AMENDED]
252:616-11-5 [AMENDED]
252:616-11-7 [NEW]
252:616-11-8 [NEW]
Subchapter 13. Closure Standards
252:616-13-3 [AMENDED]
Appendix D. Class III Surface Impoundment Design [NEW]
Appendix E. Generic Closure Plan for Class III Impoundments [NEW]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S., § 2-6-101 *et seq.*
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ANALYSIS:
These amendments affect the permitting and closure requirements for certain Class III impoundments, such that if certain Class III impoundments are designed in accordance with the requirements of the new Appendix D and/or closed pursuant to the requirements of the new Appendix E, then a Registered Professional Engineer, certified by the State of Oklahoma, is not necessary for the design, construction or closure. These amendments also include industrial sludge requirements to meet the requirements of state statute concerning sludge management plans and heavy metals.
CONTACT PERSON:
Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2007:

SUBCHAPTER 3. PERMIT PROCEDURES

252:616-3-4. Applications

(a) **Form.** Submit legible applications on DEQ Form 1, Form 2SI and 2L, as needed (see Appendices).

(b) **Signature Applications.** Signature applications shall be signed by the owner, and by the operator if different.

(c) **Construction plans are required.** Submit construction plans to the DEQ at least 120 days before starting on-site construction or modifying any new or existing surface impoundment or wastewater treatment system. Include the proposed wastewater characteristics, treatment processes and other pertinent information.

(d) **Construction certification.** An Engineer must certify that tank systems and surface impoundments ~~that will contain Class I or Class II wastewater~~ have been designed and constructed according to this Chapter. The certification must include:

(1) a chronological description of major construction activities;

(2) ~~as-built drawings~~ plans and specifications of record for each industrial wastewater unit;

(3) a description of quality control tests, results and inspections;

(4) a statement that the wastewater system will protect humans, aquatic life, wildlife and the environment; and

(5) for surface impoundments, certification that the liner was constructed properly and not damaged by freezing, desiccation or other damage during construction.

An engineer certification is not required for a single cell total retention surface impoundment system that holds only Class III wastewater designed pursuant to the requirements of Appendix D of this Chapter.

(e) **Construction report.** For tank systems and surface impoundments that will contain Class III, Class IV or V wastewater, the owner/operator shall submit a written report

that construction was completed in accordance with the requirements of the permit. It is not required that this report be prepared by an engineer.

(f) **Financial responsibility.** The applicant must demonstrate to the satisfaction of the DEQ the financial capability for operation, maintenance, replacement and closure for the facility.

(g) **Transfer.** Applications and unexpired permits may be transferred upon showing the transferee has legal authority and financial accountability, and that both parties agree to the transfer.

(h) **Permit.** Applicants must comply with the terms of the permits that are issued. Permits shall contain a description of all wastewater treatment units to be constructed at the facility. Permits may contain provisions more stringent than these rules in order to meet Oklahoma Water Quality Standards.

SUBCHAPTER 11. LAND APPLICATION STANDARDS

252:616-11-1. Restrictions

(a) **Beneficial use.** No person may land apply sludge or wastewater except for the purpose of beneficial use.

(b) **Manner.** Land apply sludge and wastewater in a manner to prevent surface runoff and to control objectionable odors. Incorporate sludge into the soil before the end of each working day (material from impoundments that is recovered as product is exempt). Do not store or land apply, or allow to runoff, sludge or wastewater to wetlands or waters of the State. Discharges to waters of the State are prohibited without a discharge permit under OAC 252:606.

(c) **Storage.** Store industrial sludge as specified in the MOP. Industrial sludge shall not be stored for greater than six (6) months without prior written approval from the DEQ and in no case for longer than one (1) year.

(d) **Endangered or threatened species.** Do not land apply if it is likely to adversely affect a threatened or endangered species listed under section 4 of the federal Endangered Species Act, 16 U.S.C. 1533(c), or the critical habitat of such species.

(e) **Topography.** A land application site shall have minimal slope or be contoured to prevent ponding and soil erosion. No application shall occur on land having a slope exceeding five percent (5%) unless erosion and runoff control provisions are implemented, except that land having a slope of ten percent (10%) or less. Land having a slope greater than ten percent (10%) may be utilized for land application only with Department approval. For land application for dust suppression on roadways, clean wastewater hauling vehicles prior to leaving the site with provisions for disposition of rinse water.

(f) **Waste classification.** Do not land apply Class I or II wastewaters.

(g) **Scenic river basin prohibition.** Do not land apply industrial sludge in a scenic river basin as defined by OAC 785:45 Oklahoma's Water Quality Standards.

252:616-11-5. Recordkeeping

(a) **Records.** ~~Maintain~~ Submit yearly to the DEQ the following land application records:

(1) location, day and hour land application began and ended, and the method of application;

(2) analytical data, volume and source(s) of wastewater or industrial sludge applied;

(3) loading rates;

(4) weather conditions during the application period;

(5) type of crop, grass or vegetation grown on site;

(6) pH of wastewater at beginning of application, or weekly if application exceeds seven consecutive days; and

(7) monitoring records, including the date, time and exact place of the sampling or measurement, the name of the sampler, when analysis began, the name of the certified laboratory and the analytical results~~.~~;

(8) for industrial sludge generated outside the State of Oklahoma, test results demonstrating the quality of the sludge, including samples of each load of sludge performed by an independent laboratory approved by the DEQ and an agreement that the DEQ may perform random quality assurance sampling at the site of the generation of the industrial sludge;

(~~8~~9) In the case of dust suppression (OAC 252:616-11-6), the following records must be maintained:

(A) location, day and hour land application began and ended, and the method of application;

(B) volume and source(s) of wastewater applied; and

(C) weather conditions during the application period.

(b) **Reporting to DEQ.** The owner or operator shall submit reports of monitoring and land application records by month on a quarterly basis. The quarterly reports will be due on or before the last working day of the month following the close of each quarter (i.e., April, July, October and January). Monitoring information shall be submitted to the DEQ on self-monitoring report (SMR) forms or other forms provided or approved by the DEQ.

(c) **Notice of changes.** An owner or operator shall give advance notice to the DEQ of any change in sludge or wastewater source(s), treatment or characteristics, method(s) of land application, or the addition of any specific land application site not previously approved in his/her permit. Such change may require a major modification of the permit.

252:616-11-7. Sludge Management Plans

Any facility that produces and land applies industrial sludge must develop and submit to the DEQ for approval a sludge management plan. This section does not apply to the land application of drilling wastes from oil and gas production or salt water disposal facilities under the jurisdiction of the Oklahoma Corporation Commission. A sludge management plan must include the following:

(1) a breakdown of the anticipated types and volumes of industrial sludge generated;

(2) daily generation and annual production of semi-solids, solids as total volume and percent solids converted to dry tons;
(3) laboratory analysis showing whether the industrial sludge is hazardous and the chemical and physical properties of industrial sludge to be land applied including concentrations of metals (listed and other), and any other pollutants. A TCLP need only be conducted once a year, unless there is a change in the process for the development of the industrial sludge;
(4) the amount of industrial sludge from each source expected to be used or disposed during each year of operation;
(5) identification of specific sites and identifying name for each;
(6) documentation of the applicant's right to use the site, including time restrictions, if any;
(7) land use descriptions of adjacent property;
(8) finding descriptions, legal descriptions, and latitude and longitude of each site;
(9) distance to nearest residence;
(10) topography of the site;
(11) soil types, permeability, infiltration and drainage patterns;
(12) proposed methods of tillage, crop types and patterns, crop utilization, expected yield and final use of crop;
(13) irrigation practices, if any;
(14) depth to groundwater, including highest seasonal groundwater level, and any other data available;
(15) records of previous land application conducted at the site, including data on the cumulative metal loading;
(16) results of any sampling, analyses or monitoring previously performed by the applicant at the site, including metal and nutrient assessment, based on an annual and lifetime use;
(17) access controls;
(18) narrative description of buffer zones and other methods to be used to control surface drainage, stormwater runoff, and erosion at each site;
(19) narrative description of proposed land application method and related details including depth and frequency of incorporation or injection;
(20) estimated application rate, frequencies, rest periods between applications, and estimated life of the site. Include calculations on which estimates are based for cumulative metal loading rates;
(21) NRCS soil map of each specific site which shows soil classification, suitability, and soil profiles to a depth of sixty (60) inches;
(22) quadrangle topographic map or maps that is an original U.S.G.S. 7.5 minutes series (or 15 minute series if the 7.5 series has not yet been printed) with the following clearly marked:
(A) boundary of the site;
(B) public water supply sources and treatment facilities;
(C) pipelines and utility easements;
(D) oil or gas wells or drilling sites;
(E) wellhead delineation areas;
(F) groundwater flow direction;
(G) waters of the state with special emphasis for "scenic rivers";
(H) parks, recreation areas and any government owned land dedicated for special purposes (for example, wildlife refuges)
(I) identification of the 100-year flood plain or floodway if it affects the proposed site;
(J) any area inhabited by an endangered or threatened wildlife or plant species listed under Section 4 of the federal Endangered Species Act, 16 U.S.C. 1533(c); and
(K) any additional information determined necessary by the DEQ.

252:616-11-8. Heavy Metals

The DEQ shall not approve the land application of industrial sludge that contains heavy metals above the concentration ranges normal to sludges with a demonstrated effectiveness on Oklahoma soils, unless the permittee provides a study on the effects of the sludge on a variety of Oklahoma soils and crops found at the location of the proposed land application site. Said study shall:
(1) be conducted by a qualified research institute familiar with crops and soils in Oklahoma and approved by the DEQ;
(2) be included with the sludge management plan; and
(3) demonstrate the effect of the sludge during four (4) growing seasons.

SUBCHAPTER 13. CLOSURE STANDARDS

252:616-13-3. Closure plan submittal and amendment

(a) **Closure plan required.** A written closure plan shall be submitted to the DEQ at least 90 days prior to commencing closure, unless a lesser amount of time is granted by the DEQ.
(b) **Closure plan amendment.** Closure activities shall occur as specified in the closure plan. Any amendments to the closure plan shall be submitted, in writing, to the DEQ for review and approval before any closure activity is altered, replaced, or deleted.
(c) **Commencement of closure activities.** Closure activities shall not commence until the closure plan and all amendments thereto have been reviewed and approved by the DEQ.
(d) **Content.** The written closure plan shall include the following information, except as specifically waived by the DEQ in accordance with OAC 252:616-13-1(c):
(1) **General information.** The following general information shall be provided in all closure plans:
(A) purpose of closure indicating the reason why the surface impoundment, tank system or land application site is no longer in use and whether wastewater or sludge will be closed in place (in-place closure) or removed (clean closure);

(B) the DEQ Industrial Wastewater Treatment Permit number for the facility. If the facility has not been permitted, submit a completed application for a DEQ Industrial Wastewater Treatment Permit;

(C) the name, address, and telephone number of all record owner(s) of the land upon which the surface impoundment, tank system or land application site is located;

(D) if the operator is not the sole record owner of the land, surface property interests and all water rights, they must provide a written document from each owner(s) indicating consent to on-site or off-site disposal of the contents of the surface impoundment, tank system, or land application site and any other activities associated with closure;

(E) provide a time schedule indicating the major closure activities, approximate time to complete each activity, and the estimated date of final completion of all closure activities; and

(F) the closure plan shall include certification by a Registered Professional Engineer~~ for Class I and Class II wastewater~~, except for Class III impoundments closed pursuant to the specifications contained in Appendix E of this Chapter.

(2) **Site assessment.** The following minimum information about the site shall be provided in the closure plan.

(A) **Soil information.** Identify the type of soil(s) by soil series name impacted and include a description of the soil profile and the depth to bedrock. List chemical and physical properties of the soil, and their average values for the site, that predict transport and fate of the wastewater contained in the surface impoundment, tank system, or land application.

(B) **Groundwater information.** Identify major and minor aquifers, recharge areas, depth to ground water for both shallow aquifer and drinking water sources, local and regional direction of flow, and estimated or background water quality.

(C) **Surface water information.** Identify surface water bodies that may be hydrologically connected to the groundwater or are immediately downgradient of the surface impoundment, tank system or land application site. Trace the drainage to the nearest major watercourse on a topographic map.

(D) **Plans and specifications.** Provide plans and specifications of the impoundment(s), or tank system(s) to be closed indicating the dimensions of the surface impoundment(s), or tank system(s), location of inflow and outflow piping, location and thickness of sludge, and depth of wastewater in the impoundment.

(3) **Wastewater characterization.** The following minimum information about the wastewater shall be included in the closure plan. Additional information may be required.

(A) **Inventory of wastewater.** Provide an inventory of the types and concentrations of wastewater discharged to the surface impoundment, or tank system. Indicate the frequency and volume of each wastewater that was or may have been discharged to or otherwise placed in the tank system or impoundment.

(B) **Chemical analysis.** When requested by the DEQ, provide a chemical analysis of representative sample(s) of the sludges, sediments, bottom sediments, liners, or other media.

(4) **Sampling, analysis, and monitoring plans.** Sampling, analysis, and monitoring used before, during, and after closure shall be proposed to the DEQ in a written plan as follows:

(A) **Sampling and analysis.** Design a sampling and analysis plan that includes all requirements listed in OAC 252:616-5-4.

(B) **Monitoring.** Design a monitoring plan that will adequately monitor groundwater, soil vapor, or other media according to OAC 252:616-5-4.

(C) **Sampling and monitoring locations.** Indicate on a facility map the location of each sampling site, each monitoring site, the direction of groundwater flow, and the wells used to determine groundwater flow direction.

(5) **Treatment, removal, and disposal.** The closure plan shall include the following minimum discussion of treatment, removal, and disposal activities, as well as any additional information requested by the DEQ:

(A) **Treatment.** Describe all methods to be used to treat or reduce any wastewater or sludge from the surface impoundment or tank system (such as chemical or physical treatment, phase separation, waste stabilization, or other method). Provide a written rationale for each treatment method to be used and sufficient evidence of its effectiveness.

(B) **Removal.** Describe all removal activities for all wastewaters, sludges, liner materials, and subsoils (e.g., volume removed, equipment used, dust control, and other activities).

(C) **Backfill.** If the impoundment is to be closed by backfilling with soil, estimate the volume of soil needed. Include discussion of the material to be used as backfill, sampling used to determine the characteristics of the backfill, the method of compaction, and other methods to be used.

(D) **Disposal.** Provide the name and location of any off-site facility to be used to dispose of the tank system, the lateral lines, the piping and fittings, the contents of the tank system or the impoundment, liner materials, or subsoils, and provide the name of the issuing agency, permit number or other information necessary to determine authorization obtained for such disposal.

(6) **In-place closure requirements.** The following additional requirements apply for in-place closure:

(A) If the pollutants cannot be physically removed or must otherwise be closed in-place, the closure plan shall include:

(i) a discussion of remediation alternatives (e.g., clean closure, waste reduction, or chemical, physical, or biological treatment) and documentation as to effectiveness of each alternative;

(ii) a discussion of containment alternatives, (e.g., waste stabilization, impervious cap, or other system) and documentation as to the effectiveness of the containment measure; and

(iii) a proposal of which remediation or containment alternative(s) will be implemented for each surface impoundment or tank system site.

(B) When impervious caps or covers are proposed to be constructed as a method of closure in connection with a closure plan, the following requirements shall be met:

(i) compacted clay caps used to contain wastes in closed surface impoundments shall have a maximum hydraulic conductivity of 1×10^{-7} cm/sec and shall be protected by covering with a soil layer. The clay cap shall be designed and constructed according to the requirements of Subchapter 5 relating to clay liners;

(ii) caps containing flexible membrane liners used to contain wastes in closed impoundments shall be installed according to requirements of Subchapter 5 relating to flexible membrane liners in addition to manufacturer's and installer's specifications and accepted industry practices and shall be protected by covering with a composite soil and gravel layer; and

(C) address post-closure activities, as required by the DEQ, such as groundwater monitoring, water or land use restrictions, or deed restrictions.

(7) **Clean closure requirement.** The following additional requirements apply for clean closure:

(A) provide an evaluation of the feasibility of clean closure of the surface impoundment, tank system site including a discussion of available technology, extent of contamination, and other factors; and

(B) discuss target clean-up levels of wastewater, the possible risks at those levels, and the methods to be used to determine that clean closure has been achieved.

APPENDIX D. CLASS III SURFACE IMPOUNDMENT DESIGN [NEW]

Facilities that wish to dispose of Class III wastewater into a single total retention surface impoundment may opt to use the design shown in this Appendix in lieu of hiring a Professional Engineer. This option is not available for designs of multiple or flow-through impoundment systems. To qualify for the use of this design, you must demonstrate that:

A. The bottom of the impoundment shall be a minimum of fifteen feet (15') from groundwater. This information must be submitted with the plan documents outlined below. If there is no water well data available, the facility must determine the depth of the groundwater and submit that data with the plan documents outlined below.

B. The soil at a depth of eight (8) feet at the proposed impoundment site must have a permeability of 5 X 10^{-7} cm/sec or less. A soil test result that documents the permeability of the impoundment site must be submitted with the plan below.

C. If a facility is able to comply the requirements of A and B above, then it can opt to use the design shown on the diagram on the following page. To use this Impoundment Design:

1. Send an attachment to the permit application stating an intent to use the following design and document the ability to meet the two qualifications shown above. Also submit the proposed wastewater flow in gallons/day.

2. Determine the top dimensions of a square or rectangle impoundment by using the Industrial Wastewater sizing Chart on the following pages. If constructing a rectangle impoundment, the length shall be no more than double of the width. If the proposed flow falls in between two flow values on the table, go the next highest flow value to determine the impoundment dimensions.

3. Copy the diagram shown on the following page. Write or type in the appropriate dimensions on the diagram. Submit this with the attachment. Design parameters include:

i. Minimum three feet of freeboard;

ii. Inner and outer dike slopes shall be 1 vertical to 3 horizontal (1:3);

iii. Total depth of eight feet;

iv. The top of the dikes shall be at least one foot above surrounding terrain to divert surface runoff; and

v. Berms and dikes will be a minimum of four feet wide and provide a flat surface to facilitate inspection and maintenance.

4. After receiving approval from the DEQ to construct the impoundment, the impoundment should be built exactly as indicated on this plan. Once construction is completed a signed certification must be sent to the DEQ stating the impoundment was constructed in accordance with this plan. Facilities that need to deviate from this design in any way must contract the services of a professional engineer and notify the DEQ accordingly.

D. If a facility is not able to comply with the requirements of A, B and C above, then the facility must retain the services of a Registered Professional Engineer, licensed by the State of Oklahoma to design the impoundment(s).

APPENDIX E. GENERIC CLOSURE PLAN FOR CLASS III IMPOUNDMENTS [NEW]

Facilities that have permits for impoundments that contain Class III wastewater and that have not received wastewater generated by washing vehicles or equipment may opt to use the following closure plan in lieu of contracting the services of a professional engineer.

To use the plan:

A. Notify the DEQ in writing at least 90 days before initiating closure of the intent to close and the intent to use this generic plan. This notification will include a proposed schedule for closure and the name of the person responsible for overseeing the closure.

B. Submit the closure plan. The plan shall include the following:

1. Background: Describe the activity that took place at the site during the life of the impoundment. Describe the current condition of the impoundment, including the amount of water remaining and an estimate of the amount of sludge remaining.

2. Proposed Closure Activities: Please indicate what will be done with the water and sludge remaining in the impoundments:

a. Water in surface impoundments (select those that apply):

____ will be allowed to evaporate
____ will be pumped out and disposed of into a POTW
____ will be pumped out and used in an industrial process
____ will be used for dust suppression (gallon limit)
____ will be left in place (convert to a farm/stormwater pond-for quarries/sand mining facilities only)

b. Sludge in impoundments (select those that apply)
____ will be removed and taken to a landfill
____ will be removed and taken to a company for recycling
____ will remain in place (for quarries/sand mining facilities only)

3. Backfill: If no visible cracks are seen, the liner will be filled in with dirt from _____. (Put N/A if converting to a farm/stormwater pond).

4. Disposal: All piping going to the impoundments will be removed. These materials will be sent to _____ (name of offsite facility being used for disposal of the piping and fittings).

C. Certification of Closure: Upon receiving approval from the DEQ, the facility may complete closure per the plan. After completion of the above activities, the DEQ will be notified via a signed certification that all closure activities were completed in accordance with this plan as required by OAC 252:616-13-4(d).

D. If there is a need to deviate from this plan in any way, or the closure plan is not approved by the DEQ, then the closure of the facility must be submitted by a Registered Professional Engineer, licensed by the State of Oklahoma.

[OAR Docket #07-974; filed 5-9-07]

TITLE 252. OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 623. PRETREATMENT FOR CENTRAL TREATMENT TRUSTS

[OAR Docket #07-975]

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Subchapter 5. Pretreatment of Wastewater
252:623-5-3 [AMENDED]
Subchapter 7. Wastewater Discharge Permit Application
252:623-7-4 [AMENDED]
Subchapter 9. Permit Issuance Process
252:623-9-2 [AMENDED]
Subchapter 11. Reporting Requirements
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Subchapter 15. Confidential Information
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40 CFR § 403.12(b), (c), (d) and (p)
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Availability:
Copies of the incorporated standards may be examined during regular business hours at the Oklahoma City offices of the Department of Environmental Quality.
ANALYSIS:
The Department is amending its rules concerning Central Treatment Trusts [Oklahoma Ordnance Works Authority (OOWA)] to bring the rules into compliance with federal regulatory requirements, update the incorporation by reference date to July 1, 2006, and make other clean-up language changes.
CONTACT PERSON:
D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

252:623-1-3. Abbreviations

The following abbreviations, when used in this Chapter, shall have the following meanings:

(1) **"BOD"** means Biochemical Oxygen Demand.
(2) **"CFR"** means Code of Federal Regulations.
(3) **"COD"** means Chemical Oxygen Demand.
(4) **"CTT"** means Central Treatment Trust.
(5) **"DEQ"** means the Oklahoma Department of Environmental Quality.
(6) **"EPA"** means United States Environmental Protection Agency.
(7) **"gpd"** means gallons per day.
(8) **"mg/l"** means milligrams per liter.
(9) **"NPDES"** means National Pollutant Discharge Elimination System.
(10) **"OAC"** means Oklahoma Administrative Code.
(11) **"O. S."** means Oklahoma Statutes.
(~~10~~12) **"POTW"** means Publicly Owned Treatment Works.
(~~11~~13) **"RCRA"** means Resource Conservation and Recovery Act.
(~~12~~14) **"SIC"** means Standard Industrial Classification.
(~~13~~15) **"TSS"** means Total Suspended Solids.
(~~14~~16) **"U. S.C."** means United States Code.

252:623-1-4. Definitions

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

"Act" or **"the Act"** means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251 *et seq.*

"Approval authority" means the Executive Director of the DEQ.

"Authorized representative of the user" means:

(A) if the user is a corporation:

(i) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(ii) The manager of one or more manufacturing, production, or operation facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five (25) million dollars (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(B) If the user is a partnership or sole proprietorship, a general partner or proprietor, respectively.

(C) If the user is a Federal, State, or local governmental facility, a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

(D) A designee of any of the individuals described in subparagraphs (A) through (C), of this definition. The individual may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the DEQ and the CTT.

"Background level concentrations" means concentrations of pollutants, expressed in mg/l, assumed to be present in a POTW influent due to natural background sources, nonpoint sources, and discharges from users determined to be not significant, as established during the CTT's development of technically based local limits and as approved by the Approval Authority.

"Biochemical oxygen demand" means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20 degrees centigrade, usually expressed as a concentration (e.g., mg/l).

"Categorical pretreatment standard" means any regulation containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Act [33 U.S.C. Section 1317(b) and (c)] which apply to a specific category of users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

"Categorical standard" means any regulation containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Act [33 U.S.C. Section 1317(b) and (c)] which apply to a specific category of users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

"Central treatment trust" means a public trust having the State of Oklahoma as beneficiary which holds a permit issued under the ~~National Pollutant Discharge Elimination System Act (NPDES)~~ NPDES Act, pursuant to the Federal Water Pollution Control Act, as amended by the Federal Clean Water Act, 33 U.S.C., Section 1251 *et seq.* and which receives waste water streams from third parties into a central waste water treatment system owned and operated by the public trust, and treats the commingled waste streams in the central waste water treatment system before discharging the resulting effluent pursuant to an NPDES permit into navigable water of the United States of America located in this state.

~~**"Control authority"** means the Department of Environmental Quality.~~

~~**"DEQ"** means the Department of Environmental Quality.~~

"Discharge" means the introduction of pollutants into the POTW from any nondomestic source regulated under Section 307(b), (c), or (d) of the Act.

"Environmental Protection Agency" means the U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, or other duly authorized official of said agency.

"Executive Director" means the executive officer of the Department of Environmental Quality.

"Existing source" means any source of discharge, the construction or operation of which commenced prior to the publication by EPA of proposed categorical pretreatment standards, which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.

"Grab sample" means a sample which is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed fifteen (15) minutes.

"Indirect discharge" means the introduction of pollutants into the POTW from any nondomestic source regulated under Section 307(b), (c), or (d) of the Act.

"Industrial User" means a source of indirect discharge.

"Interference" means a discharge, which alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of the CTT's NPDES permit (including an increase in magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

"Loading capacity" means the amount of loading of a pollutant that a POTW can receive without risk of pass through or interference.

"Maximum allowable headworks loadings" means the loading capacity of the POTW for pollutants, expressed in lbs/day, minus allocations for background level concentrations and a safety factor.

"Medical waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

"Municipality" means a city, town, county, district, association, or other public body created by or under State law.

"New source" means:

(A) any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

(i) the building, structure, facility, or installation is constructed at a site at which no other source is located;

(ii) the building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(iii) the production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

(B) construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subparagraph (A)(ii) or (iii) of this definition, but otherwise alters, replaces, or adds to existing process or production equipment.

(C) construction of a new source as defined under this definition has commenced if the owner or operator has:

(i) begun, or caused to begin, as part of a continuous onsite construction program:

(I) any placement, assembly, or installation of facilities or equipment; or

(II) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.

"Noncontact cooling water" means water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

"Pass through" means a discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the CTT's NPDES permit, including an increase in the magnitude or duration of a violation.

"Person" means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, public trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, and local governmental entities.

"pH" means the logarithm (base 10) of the reciprocal of the concentration of the hydrogen ions measured in grams per liter of solution and expressed in Standard Units (SU).

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

"Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained:

(A) by physical, chemical, or biological processes;

(B) by process changes; or

(C) by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

"Pretreatment requirements" means any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.

"Pretreatment standards" means prohibited discharge standards, categorical pretreatment standards, and local limits.

"Prohibited discharge standards" means absolute prohibitions against the discharge of certain substances; these prohibitions appear in OAC 252:623-3-1 and OAC 252:623-1-7(a).

"Prohibited discharges" means absolute prohibitions against the discharge of certain substances; these prohibitions appear in OAC 252:623-3-1 and OAC 252:623-1-7(a).

"Publicly owned treatment works" means a treatment works, as defined by Section 212 of the Act (33 U.S.C. Section 1292) which is owned by the CTT. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant.

"Septic tank waste" means any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

"Sewage" means human excrement and gray water (household showers, dishwashing operations, etc.).

"Significant industrial user" means:

(A) a user subject to categorical pretreatment standards; or

(B) a user that:

(i) discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);

(ii) contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

(iii) is designated as such by the DEQ on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

(C) Upon a finding that a user meeting the criteria in (B) of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the DEQ may at any time, on its own initiative or in response to a petition received from a user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such user should not be considered a significant industrial user.

"Slug" means any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge.

"Slug load" means any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge.

"Standard Industrial Classification (SIC) Code" means a classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.

"Standards" means prohibited discharge standards, categorical pretreatment standards, and local limits.

"Storm water" means any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

"Suspended solids" means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

"Treatment plant" means that portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.

"User" means a source of indirect discharge.

"Wastewater" means liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

"Wastewater treatment plant" means that portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.

252:623-1-7. Incorporation by reference

The following sections and subsections of Title 40 Chapter I, Subchapter N, Part 403 of the ~~Code of Federal Regulations (CFR)~~ CFR as published on July 1, 2006 are adopted and incorporated by reference:

(1) § 403.5
(2) § 403.6
(3) § 403.7
(4) ~~403.8(f)(2)(vii)~~ § 403.8(f)(2)(viii)
(5) § 403.12(b), (c), (d) and (p)
(6) § 403.13
(7) § 403.15
(8) § 403.16
(9) § 403.17

SUBCHAPTER 5. PRETREATMENT OF WASTEWATER

252:623-5-3. Accidental discharge/slug control plans

~~At least once every two (2) years~~ When the Permittee applies for a new or renewed permit, the DEQ shall evaluate whether each significant industrial user needs an accidental discharge/slug control plan. The DEQ may require any user to develop, submit for approval, and implement such a plan. Alternatively, the DEQ may develop such a plan for any user. An accidental discharge/slug control plan shall address, at a minimum, the following:

(1) Description of discharge practices, including non-routine batch discharges;

(2) Description of stored chemicals;

(3) Procedures for immediately notifying the CTT of any accidental or slug discharge, as required by OAC 252:623-11-3; and

(4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

SUBCHAPTER 7. WASTEWATER DISCHARGE PERMIT APPLICATION

252:623-7-4. Permit application contents

(a) All users required to obtain a wastewater discharge permit must submit a permit application containing the following information:

(1) All information required by OAC 252:623-1-7(e) adopting by reference 40 CFR § 403.12(b);

(2) Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or

could accidentally or intentionally be, discharged to the POTW;

(3) Number and type of employees, hours of operation, and proposed or actual hours of operation;

(4) Each product produced by type, amount, process or processes, and rate of production;

(5) Type and amount of raw materials processed (average and maximum per day);

(6) Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;

(7) Time and duration of discharges; and

(8) Any other information as may be deemed necessary by the DEQ to evaluate the wastewater discharge permit application.

(b) Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.

SUBCHAPTER 9. PERMIT ISSUANCE PROCESS

252:623-9-2. Permit contents

A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the DEQ to meet the requirements of this Chapter.

(1) Wastewater discharge permits must contain:

(A) A statement that indicates wastewater discharge permit duration;

(B) A statement that the wastewater discharge permit is nontransferable without prior notification to the DEQ in accordance with this Subchapter, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;

(C) Effluent limits based on applicable pretreatment standards and the Central Treatment Trust's capacity for treating wastewater;

(D) Self-monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law; and

(E) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond federal or state deadlines~~.~~;

(F) When required, a slug control plan that meets the requirements of OAC 252:623-5-3.

(2) Wastewater discharge permits may contain the following additional conditions:

(A) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;

(B) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;

(C) Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges;

(D) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;

(E) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW;

(F) Requirements for installation and maintenance of inspection and sampling facilities and equipment;

(G) A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the term of the wastewater discharge permit; and

(H) Other conditions as deemed appropriate by the DEQ to ensure compliance with this Chapter, and State and Federal laws, rules, and regulations.

SUBCHAPTER 11. REPORTING REQUIREMENTS

252:623-11-7. Sample collection

(a) ~~Except as indicated in (b) of this Section, the user must collect wastewater samples using flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the DEQ may authorize the use of time proportional sampling or a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. In addition, grab samples may be required to show compliance with instantaneous discharge limits.~~ Permit applications required by OAC 252:623-7-4 and periodic compliance reports required by OAC 252:623-11-1 must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The DEQ shall require that frequency of monitoring necessary to assess and assure compliance by Industrial Users with applicable Pretreatment Standards and Requirements. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the DEQ. Where time-proportional composite sampling or grab sampling is authorized by the DEQ, the samples must be representative of the Discharge and the decision to allow the alternative sampling must be documented in the Industrial User

file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR, Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: For cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil & grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the DEQ, as appropriate.

(b) ~~Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.~~ If an Industrial User subject to the reporting requirements in 252:623-11-1 monitors any pollutant(s) at the appropriate sampling location more frequently than required by the DEQ, using the procedures prescribed in 252:623-11-6, the results of all such monitoring shall be included in the report.

SUBCHAPTER 15. CONFIDENTIAL INFORMATION

252:623-15-1. Confidential information

Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from the DEQ's inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the DEQ, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under 27A O.S.~~Supp. 1999,~~ § 2-6-204(F), 40 CFR § 122.7 and any implementing rules promulgated thereunder. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public. Wastewater constituents and characteristics and other effluent data as defined by 40 CFR § 2.302 will not be recognized as confidential information and will be available to the public without restriction.

[OAR Docket #07-975; filed 5-9-07]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 626. PUBLIC WATER SUPPLY CONSTRUCTION STANDARDS

[OAR Docket #07-976]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Permit Procedures
252:626-3-10 [AMENDED]

AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S.,§ 2-2-201; and Water Quality, 27A O.S.,§ 2-6-101 *et seq.*

DATES:
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Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 27, 2007
Final adoption:
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Effective:
June 15, 2007

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
The Department is amending its rules concerning fees charged to Public Water Supplies for new and amended construction permit applications.

CONTACT PERSON:
Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2007:

SUBCHAPTER 3. PERMIT PROCEDURES

252:626-3-10. Permit fees

(a) Permits will not be issued until all fees are paid. Applicants may enter into a monthly billing agreement with the DEQ.

(b) The DEQ shall review fees for applications under this Chapter every five (5) years. Fees for water treatment facility construction ~~permits~~ permit applications submitted from July 1, 2007 through June 30, 2012 are:

(1) New treatment facilities:

(A) Non-community systems (new) - ~~$250~~ $380.00

(B) Community systems (new)

(i) Conventional design

(I) less than 10 MGD - ~~$1,000~~ $1,530.00

(II) 10 MGD or greater design flow - ~~$2,000~~ $3,065.00

(ii) Advanced design - ~~$2,000~~ $3,065.00

(2) Modifications of existing water treatment systems:

(A) Chlorination or fluoridation - ~~$150~~ $230.00

(B) Minor modifications - ~~$500~~ $765.00

(C) Major modifications - ~~$1,000~~ $1,530.00

(3) Supply facilities:

(A) Well(s) - ~~$200~~ $305.00 each (maximum ~~$1,000~~ $1,530.00)

(B) Storage Tanks - ~~$150~~ $230.00 each

(C) Raw water transmission lines - ~~$150~~ $230.00

(4) Distribution system improvements:

(A) Line extensions (rounded to nearest 100 feet) - ~~$10~~ $15.00 per 100 feet (~~$50~~ $80.00 minimum, $3,065.00 maximum)

(B) Booster station(s) - ~~$150~~ $230.00 each

(5) Permit Exemption - $100.00

(c) REAP (Rural Economic Assistance Program)~~, CBEP (Community Based Environmental Projects),~~ and emergency grant projects (PWS systems funded ~~in part or~~ in whole by grant monies made available through the Oklahoma Water Resources Board as authorized by Title 82 O.S. § 1085.39) are exempt from permit fees. Projects partially funded by REAP and emergency grant projects may be exempt from a portion of the permit fees by the percentage said funding is providing for the total cost of the project.

(d) The maximum fee for any one PWS application will not exceed ~~$2,000.00~~ $6,130.00.

(e) Individual household well inspection - ~~$55.00~~ $125.00 each.

[OAR Docket #07-976; filed 5-9-07]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 631. PUBLIC WATER SUPPLY OPERATION

[OAR Docket #07-977]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Introduction
252:631-1-3 [AMENDED]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S., § 2-6-101 *et seq.*
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INCORPORATIONS BY REFERENCE:
Incorporated standards:
40 CFR, Part 141 (July 1, 2006), except for the following: 40 CFR §§ 141.600 - 141.605; 40 CFR §§ 141.620 - 141.629; and 40 CFR §§ 141.700 - 141.723.
40 CFR, Part 143 (July 1, 2006).
Incorporating rules:
252:631-1-3
Availability:
Copies of the incorporated standards may be examined during regular business hours at the Oklahoma City offices of the Department of Environmental Quality.
ANALYSIS:
The Department is amending its rules concerning the date of the incorporation by reference of certain federal regulations from July 1, 2005 to July 1, 2006, but not adopting certain federal rules by reference concerning Stage 2 Disinfectants and Disinfection Byproducts Rule and Long Term 2 Enhanced Surface Water Treatment Rule.
CONTACT PERSON:
Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2007:

SUBCHAPTER 1. INTRODUCTION

252:631-1-3. Adoption of U.S. EPA regulations by reference

The provisions of Parts 141, "National Primary Drinking Water Regulations," and 143, "National Secondary Drinking Water Regulations," of Title 40 of the Code of Federal Regulations (CFR) as published on July 1, ~~2005~~ 2006, and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference ~~in their entirety~~, except for the following:

(1) 40 CFR §§ 141.600 - 141.605;

(2) 40 CFR §§ 141.620 - 141.629; and

(3) 40 CFR §§ 141.700 - 141.723.

[OAR Docket #07-977; filed 5-9-07]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 690. WATER QUALITY STANDARDS IMPLEMENTATION

[OAR Docket #07-978]

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PERMANENT final adoption
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252:690-1-2 [AMENDED]
252:690-1-3 [AMENDED]
252:690-1-4 [AMENDED]
Subchapter 3. Point Source Discharges
252:690-3-2 [AMENDED]
252:690-3-3 [AMENDED]
252:690-3-10 [AMENDED]
252:690-3-14 [AMENDED]
252:690-3-19 [AMENDED]
252:690-3-26 [AMENDED]
252:690-3-29 [AMENDED]
252:690-3-31 [AMENDED]
252:690-3-32 [AMENDED]
252:690-3-41 [AMENDED]
252:690-3-42 [AMENDED]
252:690-3-91 [AMENDED]
Appendix I. Performance-Based Effluent Monitoring Frequency Reductions [REVOKED]
Appendix I. Performance-Based Effluent Monitoring Frequency Reductions [NEW]
AUTHORITY:
Water Quality Standards Implementation Plan, 27A O.S., § 1-1-202; Environmental Quality Board powers and duties, 27A O.S.,§ 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S.,§ 2-2-201; and Water Quality, 27A O.S., §2-6-101 *et seq.*
DATES:
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INCORPORATIONS BY REFERENCE:
Incorporated standards:
The following at 40 CRF (July 1, 2006):
40 CFR Part 260. Hazardous Waste Management System: General, except 260.20 through 260.22
40 CFR Part 261. Identification and Listing of Hazardous Waste. In 261.5(f)(3)(iv), and (v), and in 261.5(g)(3)(iv), and (v) add "other than Oklahoma" after the word "State"
40 CFR 262.42(a)(2)(e)
40 CFR Part 263. Standards Applicable to Transporters of Hazardous Waste
40 CFR Part 264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except:
40 CFR 264.1(f)
40 CFR 264.149
40 CFR 264.150
40 CFR 264.301(l)
40 CFR Part 264 Appendix VI
40 CFR Part 265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except:
40 CFR 265.1(c)(4)
40 CFR 265.149
40 CFR 265.150
40 CFR Part 266. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities
40 CFR Part 268. Land Disposal Restrictions, except:
40 CFR 268.5
40 CFR 268.6
40 CFR 268.10
40 CFR 268.11
40 CFR 268.12
40 CFR 268.13
40 CFR 268.42(b)
40 CFR 268.44(a) through (g)
40 CFR 268.44(m) through (p)
40 CFR Part 270. Permit Programs, except 270.14(b)(18)
40 CFR Part 273. Universal Waste Rule
40 CFR Part 279. Used Oil Management Standards. The only portion of 279.82 which is adopted by reference is "The use of used oil as a dust suppressant is prohibited."
40 CFR Part 116 (Hazardous Substances List)
40 CFR Part 117 (Reportable Quantities for Hazardous Substances)
40 CFR 122.2 - (definitions)
40 CFR 122.24 - (concentrated aquatic animal production facilities)
40 CFR 122.25 - (aquaculture projects)
40 CFR 122.26 - (stormwater discharges)
40 CFR 122.27 - (silviculture)
40 CFR 122.28 (a) and (b) - (general permits)
40 CFR 122.29 - (new sources and new dischargers)
40 CFR 122.32 - As an operator of a small MS4, am I regulated under the NPDES storm water program?
40 CFR 122.34 - As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?
40 CFR 122.35 - As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?
40 CFR 122.41 - (permit conditions)
40 CFR 122.42 - (conditions for specified categories of permits)
40 CFR 122.43 - (establishing permit conditions)
40 CFR 122.44 - (establishing permit limitations, standards and other conditions)
40 CFR 122.45 - (calculating permit conditions)
40 CFR 122.46 - (permit duration)
40 CFR 122.47 (a) - (schedules of compliance)
40 CFR 122.48 - (monitoring requirements)
40 CFR 122.50 - (disposal into wells)
40 CFR 122.61 - (permit transfer)
40 CFR 122.62 - (permit modification)
40 CFR 122.63 - (minor modifications of permits)
40 CFR 122.64 - (permit termination)
40 CFR Part 122 Appendices A through J
40 CFR PART 125 (criteria and standards for NPDES):
Subpart A (technology-based treatment),
Subpart B (criteria for aquaculture projects),
Subpart D (fundamentally different factors),
Subpart H (alternative effluent limitations),
Subpart I (new cooling water intakes),
Subpart J (existing cooling water intakes), and
Subpart L (disposal of sewage sludge under CWA 405)
40 CFR Part 129 (Toxic Pollutant Effluent Standards)
40 CFR Part 136 (testing and laboratory)
40 CFR Sections 401-471 (Effluent Guidelines 7 and Standards)
40 CFR Section 110.6 (notice of oil discharge)
40 CFR Part 302 (CERCLA exemption from NPDES permits)
40 CFR 503.1 (Purpose and applicability)
40 CFR 503.2 (Compliance period)
40 CFR 503.3 (Permits and direct enforceability)
40 CFR 503.4 (Relationship to other regulations)

40 CFR 503.5 (Additional or more stringent requirements)
40 CFR 503.6(a)-(e),(g)-(j) (Exclusions)
40 CFR 503.7 (Requirement for a person who prepares biosolids)
40 CFR 503.8 (Sampling and analysis)
40 CFR 503.9 (General definitions)
40 CFR 503.10(a),(b)(1)&(2),(e),(f),(g) (Applicability)
40 CFR 503.11 (Special definitions)
40 CFR 503.12 (General requirements)
40 CFR 503.13 (Pollutant limits)
40 CFR 503.14 (Management practices)
40 CFR 503.15 (Operational standards - pathogens and vector attraction reduction)
40 CFR 503.16(a) (Frequency of monitoring)
40 CFR 503.17(a) (Recordkeeping)
40 CFR 503.18 (Reporting)
40 CFR 503.30 (Scope)
40 CFR 503.31 (Special definitions)
40 CFR 503.32(a), (b) (Pathogens)
40 CFR 503.33(a), (b)(1)-(11) (Vector attraction reduction)
40 CFR 503.40 (Applicability)
40 CFR 503.41 (Special definitions)
40 CFR 503.42 (General requirements)
40 CFR 503.43 (Pollutant (Metal) limits)
40 CFR 503.44 (Operational standard - total hydrocarbons)
40 CFR 503.45 (Management practices)
40 CFR 503.46 (Frequency of monitoring)
40 CFR 503.47 (Recordkeeping)
40 CFR 503.48 (Reporting)
40 CFR Part 503 Appendicies:
Appendix A (Procedure to determine the annual whole sludge application rate for a sludge)
Appendix B (Pathogen treatment processes)
40 CFR Part 130 (Water Quality Planning and Management)
40 CFR Part 144 (Underground Injection Control Program)
40 CFR Part 145 (State UIC Program Requirements)
40 CFR Part 146 (Underground Injection Control Program: Criteria and Standards)
40 CFR Part 147 (State Underground Injection Control Programs)
40 CFR Part 148 (Hazardous Waste Injection Restrictions)
EPA Publication No. 821-R-02-012 (October, 2002), fifth edition, *Methods for Measuring the Acute Toxicity Of Effluent to Freshwater and Marine Organisms,* Method 2021.0
ASTM Publication E-1193-97 (Reapproved 2004), *Standard Guide for Conducting Daphnia Magna Life Cycle Toxicity Tests,* ASTM Designation E-1193
ASTM Publication E-2455-06 (Approved April, 2006), *Standard Guide for Conducting Laboratory Toxicity Test with Freshwater Mussels,* ASTM Designation E-2455

Incorporating rules:
252:690-1-4
252:690-3-29

Availability:
Copies of the incorporated standards may be examined during regular business hours at the Oklahoma City offices of the Department of Environmental Quality.

ANALYSIS:
The Department is updating its rules concerning the date of the incorporation by reference of certain federal regulations. The changes include: updating the publication date of the federal rules to July 1, 2006, including adoption of the Phase II rules concerning cooling water intakes for power plants; how to characterize reasonable potential for toxicity; monitoring frequencies for ammonia; adding EPA approved tests, testing requirements, test failure notification, retest requirements, testing frequency, testing reductions and trial periods for whole effluent toxicity. Additional changes include how the DEQ will deal with unmeasurable levels of a parameter which is at or below an MQL, from 2 of the detection limit to Robust ROS and testing frequency increases and/or reductions for parameters other than Whole Effluent Toxicity.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2007:

SUBCHAPTER 1. INTRODUCTION

252:690-1-2. Definitions

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

"Acute WET testing" means WET testing which measures short-term lethality to specific aquatic animal test species over a 48-hour period.

"Arithmetic mean" means the sum of the values of individual data points in a data set divided by the number of data points. This term is synonymous with arithmetic average.

"Background concentration" means the concentration of a substance in receiving water immediately upstream of, but not influenced by, a wastewater discharge.

"Chronic WET testing" means WET testing which measures long term lethal and sublethal effects to specific aquatic animal test species over a 7 day period.

"Coefficient of variation (CV)" means, when used in the context of effluent data, the measure of an effluent distribution's variation relative to its mean. When used in the context of WET test acceptability, CV means the % variation among test replicates in either the control or the critical dilution.

"Conservative substance" means a substance which persists in the environment, having characteristics which are resistant to ordinary biological or biochemical degradation.

"Critical dilution" means an effluent dilution, expressed as a percentage, representative of the dilution afforded a wastewater discharge according to the appropriate Q*-dependent chronic mixing zone equation for chronic WET testing. The critical dilution for acute WET testing is 100%.

"Defensible analytical data" means data traceable to a laboratory certified for that pollutant by the DEQ under OAC 252:300 or data accepted by EPA; data traceable to a municipal laboratory operated by a properly certified laboratory technician by OAC 252:710; or data generated by a state or federal agency laboratory with equivalent certification. Quality assurance procedures, including chain of custody records, must be adequate and documentable. Quality control data required in the analytical method must be available from the laboratory upon request.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Detectable concentration" means a concentration greater than zero (0) using a ninety-nine percent (99%) probability basis.

"Dilution series" means a set of proportional effluent dilutions for acute or chronic WET testing based on a specified critical dilution, which is typically the next-to-highest dilution in the series.

"Effluent-dominated receiving stream" means a stream which receives a point source discharge greater than or equal to one-third (1/3) of its 7Q2 flow.

"Engineer" means professional engineer registered in the state of Oklahoma.

"EPA" means the United States Environmental Protection Agency.

"Geometric mean" means the antilog of the arithmetic average of the natural logarithms of the individual points in a data set.

"Intermittent lethality" means two or more lethal effect test failures of a routine acute or chronic WET test within any 18-month period.

"LC_{50} (lethal concentration)" means the concentration of a toxicant in an external medium that is lethal to fifty percent of the test animals for a specified period of exposure.

"Load Allocation or LA" means the portion of a receiving water's TMDL that is attributed either to one of its existing or future nonpoint sources or to natural background sources.

"Log transformation" means the mathematical transformation of an observed data set which results in a data set consisting of the natural logarithms of the individual data points in the observed data set.

"Log-normally distributed" means a distribution of effluent data which is positively skewed.

"Major discharger" means an industrial facility which has a point rating greater than or equal to 80 according to the NPDES permit rating system for industrial discharges; a POTW with a design flow greater than or equal to 1 mgd; or any facility designated as such by EPA in conjunction with the state permitting authority.

"Mineral constituents" means chlorides, sulfates and total dissolved solids collectively.

"Measurable level" means a detectable concentration ~~equal to an EPA established MQL~~ for which the analytical signal to noise ratio is significantly high to report a reliable single number. The measurable level corresponds to the lowest point at which the analytical calibration curve is determined based on analyses for the pollutant of concern.

"Municipal" means a publicly owned treatment works or facilities which are privately owned that generate only domestic waste including mobile home parks, home owner's associations, etc.

"Narrative water quality criterion" means statements or other qualitative expressions of chemical, physical, or biological parameters that are assigned to protect a beneficial use.

"Numerical water quality criterion" means concentrations or other quantitative measures of chemical, physical, or biological parameters that are assigned to protect a beneficial use.

"No Observed Effect Concentration-Lethal" or **"$NOEC_L$"** means the greatest tested effluent dilution in a WET test at and below which lethality to test organisms does not occur that is statistically different from the control (0% effluent) at the 95% confidence level.

"No Observed Effect Concentration-Sublethal" or **"$NOEC_S$"** means the greatest tested effluent dilution in a WET test at and below which a sublethal effect to test organisms does not occur that is statistically different from the control (0% effluent) at the 95% confidence level.

"Non-conservative substance" means a substance which undergoes significant short-term degradation or change in the environment other than by dilution.

"OAC" means Oklahoma Administrative Code.

"Once-through cooling water" means cooling water that is not recirculated.

"OWQS" means the Oklahoma Water Quality Standards, contained at OAC 785:45.

"Permit cycle" means the life of a permit from the date of issuance to the date of expiration as specifically stated on a permit, unless the expiration of the permit is extended by operation of statute, rule or agreement of the permittee and the DEQ.

"Period of Record" means a continuous period for which a facility's effluent data is reviewed for the purposes of characterizing the effluent.

"Persistent lethality" means the repeated failure of an acute WET test or the repeated lethal effect of a chronic WET test. If the required WET testing frequency is monthly, repeated failure occurs upon the failure of two out of three consecutive monthly tests for the same test species. If the required WET testing frequency is other than monthly, repeated failure occurs upon the failure of the required test plus one of the two monthly retests for the same test species in the ensuing two-month period.

"Persistent sublethality" means two consecutive chronic sublethal effect test failures.

"Percent mortality" means 100% minus percent survival in a WET test effluent dilution.

"Positively skewed" means a data distribution which is asymmetric about its arithmetic mean with a tail in the positive direction.

"POTW" means publically owned treatment works.

"Reasonable potential" means causes, or has a reasonable potential to cause or contribute to an exceedance of a water quality criterion.

"Robust Regression on Order Statistics (Robust ROS)" means a statistical method that computes a regression line to estimate values for non-detect data and combines these estimates with detected observations to compute sample statistics.

"RPF_{95}" means the reasonable potential factor for an effluent distribution, based on a 95% probability basis, for the purpose of determining whether an effluent limitation is required.

"$RPF_{95(M)}$" means the reasonable potential factor for an effluent distribution, based on a 95% confidence interval and 95% probability basis, and accounting for the size of the effluent data set, for the purpose of determining whether further effluent monitoring is required.

"Receiving water" means the water of the State to which a wastewater is discharged.

"Regulatory effluent flow" means the effluent flow, which is water quality criterion-dependent, used in determining reasonable potential and wasteload allocations for a substance.

"SMCRA" means the Surface Mining Control and Reclamation Act of 1977.

"Standard deviation (s_x)" means the standard deviation of an untransformed data set based on a sample of size N.

"Standard deviation of log-transformed x ($s_{ln(x)}$)" means the standard deviation of a log-normally transformed data set based on a sample of size N.

"T_{95}" means the 95th percentile of the effluent temperature distribution (in EC) of sustained two-hour daily maximum effluent temperatures where effluent temperature is recorded continuously and the distribution of daily maximum effluent temperatures where temperature is recorded at discrete intervals of two hours or longer, provided that recording intervals for temperature do not exceed six hours.

"Trigger Background concentration" means the background concentration necessary to trigger reasonable potential for a substance to exceed an applicable criterion given a specified mean effluent concentration.

~~**"Two year period of record"** means a continuous 24 month period for which a facility's effluent data is reviewed for purposes of characterizing the effluent. The two year period of record shall begin the first month of a calendar quarter and end the last month of the preceding calendar quarter two years afterwards.~~

"Wasteload allocation" or **"WLA"** means the portion of a receiving water's TMDL that is allocated to one of its existing or future point sources of pollution.

"WET limit" means a WET testing limitation in the form of a $NOEC_L$, $NOEC_S$, or LC_{50}, the exceedance of which constitutes a permit violation.

"WET testing" means testing for whole effluent toxicity, using an effluent dilution series based on a critical dilution, to specific aquatic animal species according to EPA-approved testing methods.

252:690-1-3. Technical Acronyms

The following technical acronyms, when used in this Chapter, shall have the following meaning:

~~(a)~~ **"$ÄT_{max}$"** means the maximum temperature increase in EC at the edge of the temperature mixing zone.

~~(b)~~ **"7Q2"** means the 7 day low flow of a stream likely to occur with a 50% probability each year. The procedure for determining a site-specific 7Q2 is described at OAC 785:46.

~~(c)~~ **"7T2"** means the 7 day maximum temperature likely to occur with a 50% probability each year. The procedure for determining a site-specific 7T2 is described at OAC 785:46.

~~(d)~~ **"ACD"** means acute critical dilution.

~~(e)~~ **"BOD_5"** means 5-day biochemical oxygen demand.

~~(f)~~ **"BT/C ratio"** means the ratio of trigger background concentration to associated water quality criterion.

~~(g)~~ **"$(BT/C)_{max}$"** means the maximum BT/C ratio for a given criterion for which background monitoring is required as a permit condition.

~~(h)~~ **"C_{95}"** means the 95th percentile maximum likelihood effluent concentration of a substance. It is the product of $C_{E(mean)}$ and RPF_{95}.

~~(i)~~ **"$C_{95(M)}$"** means the 95th percentile maximum likelihood effluent concentration of a substance, accounting for the size of the effluent data set. It is the product of $C_{E(max)}$ and $RPF_{95(M)}$.

~~(j)~~ **"C_A"** means the acute numerical criterion for toxic substances.

~~(k)~~ **"C_B"** means background concentration.

~~(l)~~ ~~**"$C_{B(SS)}$"** means the historical SS value from Appendix F of OAC 785:45.~~

~~(m)~~ ~~**"$C_{B(YMS)}$"** means the historical YMS value from Appendix F of OAC 785:45.~~

~~(n)~~ **"C_C"** means the chronic numerical criterion for toxic substances.

~~(o)~~ **"C_d"** means the instream concentration of a substance resulting from a wastewater discharge.

~~(p)~~ **"$C_{d(A)}$"** means the instream concentration of a substance as determined by the acute mixing equation.

~~(q)~~ **"$C_{d(c)}$"** means the maximum instream concentration of a substance at the edge of the chronic mixing zone.

~~(r)~~ **"$C_{d(FF)}$"** means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed a human health criterion for the consumption of fish flesh.

~~(s)~~ **"$C_{d(FFW)}$"** means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed a human health criterion for the consumption of fish flesh and water.

~~(t)~~ **"$C_{d(NRWQC)}$"** means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed an EPA human health criterion for the consumption of fish flesh.

~~(u)~~ **"$C_{d(RAW)}$"** means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed a raw water column criterion.

~~(v)~~ **"$C_{d(SS)}$"** means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed an agriculture sample standard (SS).

~~(w)~~ **"$C_{d(YMS)}$"** means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed an agriculture yearly mean standard (YMS).

~~(x)~~ **"$C_{E(max)}$"** means the maximum concentration of a substance in an effluent data set.

~~(y)~~ **"$C_{E(mean)}$"** means mean effluent concentration.

~~(z)~~ **"C_{FF}"** means the numerical criterion for the protection of human health for the consumption of fish flesh.

~~(aa)~~ **"C_{FFW}"** means the numerical criterion for the protection of human health for the consumption of fish flesh and water.

~~(bb)~~ **"C_{NRWQC}"** means the EPA recommended national water quality criterion for the protection of human health for the consumption of fish flesh.

~~(cc)~~ **"C_{RAW}"** means the numerical criterion for protection of the raw water column.

~~(dd)~~ **"C_{SS}"** means agriculture sample standard numerical criterion, i.e., the historic segment averaged SS value from

Appendix F of OAC 785:45, unless data more representative of the receiving stream are available.

~~(ee)~~ **"C_{YMS}"** means agriculture yearly mean standard numerical criterion, i.e., the historic segment averaged YMS value from Appendix F of OAC 785:45, unless data more representative of the receiving stream are available.

~~(ff)~~ **"$CBOD_5$"** means 5-day carbonaceous biochemical oxygen demand.

~~(gg)~~ **"CCD"** means chronic critical dilution.

~~(hh)~~ **"CFU"** means colony forming units.

~~(ii)~~ **"CPP"** means the Continuing Planning Process document required under Section 303(e) of the Clean Water Act.

~~(jj)~~ **"CWAC"** means cool water aquatic community.

~~(kk)~~ **"D"** means, in the context of a discharge to a lake through a pipe, the pipe diameter in feet.

~~(ll)~~ ~~**"DEQ"** means the Oklahoma Department of Environmental Quality.~~

~~(mm)~~ **"DML"** means daily maximum permit limitation.

~~(nn)~~ **"DML_A"** means the toxic substance acute criterion DML.

~~(oo)~~ **"DML_C"** means the toxic substance chronic criterion DML.

~~(pp)~~ **"DML_{CL}"** means agriculture criterion-based DML for chlorides.

~~(qq)~~ **"DML_{FF}"** means the human health/fish flesh DML.

~~(rr)~~ **"DML_{FFW}"** means the human health/fish flesh and water DML.

~~(ss)~~ **"DML_{HH}"** means human health-based DML.

~~(tt)~~ **"DML_{RAW}"** means the raw water column DML.

~~(uu)~~ **"DML_{SO4}"** means agriculture criterion-based DML for sulfates.

~~(vv)~~ **"DML_T"** means the temperature based DML.

~~(ww)~~ **"DML_{TDS}"** means agriculture criterion-based DML for total dissolved solids (dried at 180EC).

~~(xx)~~ **"DML_{TOX}"** means toxic substance-based DML.

~~(yy)~~ **"DMR"** means Discharge Monitoring Report.

~~(zz)~~ **"DO"** means dissolved oxygen.

~~(aaa)~~ ~~**"EPA"** means the United States Environmental Protection Agency.~~

~~(bbb)~~ **"gpd"** means gallons per day.

~~(ccc)~~ **"HLAC"** means habitat-limited aquatic community.

~~(ddd)~~ **"LTA"** means long term average.

~~(eee)~~ **"LTA_A"** means the toxic substance acute numerical criterion LTA.

~~(fff)~~ **"LTA_C"** means the toxic substance chronic numerical criterion LTA.

~~(ggg)~~ **"LTA_{FF}"** means the fish flesh human health criterion LTA.

~~(hhh)~~ **"LTA_{FFW}"** means the fish flesh and water human health criterion LTA.

~~(iii)~~ **"LTA_{RAW}"** means the raw water column criterion LTA.

~~(jjj)~~ **"LTA_{SS}"** means the agriculture sample standard LTA.

~~(kkk)~~ **"LTA_T"** means the temperature criterion LTA.

~~(lll)~~ **"LTA_{TOX}"** means the limiting toxic substance-based LTA, i.e., the smallest of LTA_A or LTA_C, as applicable.

~~(mmm)~~ **"LTA_{YMS}"** means the agriculture yearly mean standard LTA.

~~(nnn)~~ **"MAL"** means monthly average permit limitation.

~~(ooo)~~ **"MAL_A"** means the toxic substance acute criterion MAL.

~~(ppp)~~ **"MAL_C"** means the toxic substance chronic criterion MAL.

~~(qqq)~~ **"MAL_{CL}"** means agriculture criterion-based MAL for chlorides.

~~(rrr)~~ **"MAL_{FF}"** means the human health/fish flesh MAL.

~~(sss)~~ **"MAL_{FFW}"** means the human health/fish flesh and water MAL.

~~(ttt)~~ **"MAL_{RAW}"** means the raw water column MAL.

~~(uuu)~~ **"MCL"** means maximum contaminant level (when used in the context of primary drinking water standards).

~~(vvv)~~ **"MAL_{HH}"** means human health-based MAL.

~~(www)~~ **"MAL_{SO4}"** means agriculture criterion-based MAL for sulfates.

~~(xxx)~~ **"MAL_T"** means temperature MAL.

~~(yyy)~~ **"MAL_{TDS}"** means agriculture criterion-based MAL for total dissolved solids (dried at 180EC).

~~(zzz)~~ **"MAL_{TOX}"** means toxic substance-based MAL.

~~(aaaa)~~ **"mgd"** means million gallons per day.

~~(bbbb)~~ **"mg/l"** means milligrams per liter.

~~(cccc)~~ **"MQL"** means minimum quantifiable level, as established by EPA, Region 6.

~~(dddd)~~ **"N"** means the number of individual data points, collected over time, in an effluent or background data set.

~~(eeee)~~ **"N_m"** means the per month monitoring frequency where a permit limitation is established. When used in the context of temperature limitations, N_m is equal to four times N_w (i.e., $N_m = 4$ H N_w).

~~(ffff)~~ **"N_w"** means the per week monitoring frequency where a temperature permit limitation is established.

~~(gggg)~~ **"NRWQC"** means the National Recommended Water Quality Criteria, publication no. EPA 822-Z-99-001, April 1999.

~~(hhhh)~~ ~~**"OWQS"** means the Oklahoma Water Quality Standards, OAC 785:45.~~

~~(iiii)~~ **"PBCR"** means Primary Body Contact Recreation.

~~(jjjj)~~ **"PCS"** means Permit Compliance System, an EPA database which tracks NPDES permit compliance.

~~(kkkk)~~ ~~**"POTW"** means publicly owned treatment works.~~

~~(llll)~~ **"Q*"** means the ratio of the regulatory effluent flow to the regulatory receiving water flow.

~~(mmmm)~~ **"Q_e"** means regulatory effluent flow.

~~(nnnn)~~ **"$Q_{e(30)}$"** means the Q_e which is the highest monthly average flow over the two year period of record for an industrial facility.

~~(oooo)~~ **"$Q_{e(D)}$"** means the Q_e which is the design flow for a municipal POTW.

~~(pppp)~~ **"$Q_{e(LTA)}$"** means the Q_e which is the arithmetic (long term) average flow over the two year period of record for an industrial facility.

~~(qqqq)~~ **"Q_u"** means regulatory receiving water flow upstream of a point of wastewater discharge.

~~(rrrr)~~ **"$Q_{u(7Q2)}$"** means the same as 7Q2.

~~(ssss)~~ **"$Q_{u(LTA)}$"** means the Q_u which is the mean annual (long term) receiving water flow.

~~(tttt)~~ **"$Q_{u(STA)}$"** means the Q_u which is the short term average receiving water flow and is equal to $Q_{u(LTA)}$ H 0.68.

~~(uuuu)~~ **"SBCR"** means Secondary Body Contact Recreation
~~(vvvv)~~ ~~**"SMCRA"** means the Surface Mining Control and Reclamation Act of 1977.~~
~~(wwww)~~ **"SNC"** means significant noncompliance, a PCS term used to indicate significant permit violations, which may be either permit limit violations, non-reporting violations or compliance schedule violations.
~~(xxxx)~~ **"SS"** means sample standard.
"s.u." means standard units for the measurement of pH.
~~(yyyy)~~ **"T_{95}"** means 95th percentile effluent temperature in EC.
~~(zzzz)~~ **"T_a"** means regulatory ambient temperature in EC.
~~(aaaaa)~~ **"TBLL"** means technically based local limits
~~(bbbbb)~~ **"TDS"** means total dissolved solids.
~~(ccccc)~~ **"TIE"** means toxicity identification evaluation.
~~(ddddd)~~ **"TMDL"** means total maximum daily load.
~~(eeeee)~~ **"TRC"** means total residual chlorine.
~~(fffff)~~ **"TRE"** means toxicity reduction evaluation.
~~(ggggg)~~ **"TRO"** means total residual (halogenated) oxidants.
~~(hhhhh)~~ **"µg/l"** means micrograms per liter.
~~(iiiii)~~ **"W"** means, in the context of a discharge to a lake through an open channel (i.e., canal), the channel width in feet.
~~(jjjjj)~~ **"WAL"** means weekly average permit limitation.
~~(kkkkk)~~ **"WAL_T"** means temperature WAL.
~~(lllll)~~ **"WET"** means whole effluent toxicity.
~~(mmmmm)~~ **"WLA"** means waste load allocation.
~~(nnnnn)~~ **"WLA_A"** means an toxic substance acute criterion WLA.
~~(ooooo)~~ **"WLA_C"** means a toxic substance chronic criterion WLA.
~~(ppppp)~~ **"WLA_{FF}"** means a human health/fish flesh criterion WLA.
~~(qqqqq)~~ **"WLA_{FFW}"** means a human health/fish flesh and water criterion WLA.
~~(rrrrr)~~ **"WLA_{RAW}"** means a raw water column criterion WLA.
~~(sssss)~~ **"WLA_{SS}"** means an agriculture sample standard WLA.
~~(ttttt)~~ **"WLA_T"** means a temperature criterion WLA.
~~(uuuuu)~~ **"WLA_{YMS}"** means an agriculture yearly mean standard WLA.
~~(vvvvv)~~ **"WQMP"** means the statewide Section 208 Water Quality Management Plan.
~~(wwwww)~~ **"WWAC"** means warm water aquatic community.
~~(xxxxx)~~ **"YMS"** means yearly mean standard.

252:690-1-4. Incorporation of USEPA regulations by reference

The following federal regulations at 40 CFR, as published on July 1, ~~2005~~ 2006, are incorporated by reference and applicable to this Chapter:

(1) **OAC 252:205 (Hazardous Waste Management).** 124.31, 124.32, & 124.33, substituting DEQ for EPA, and deleting the following sentence from each section: For the purposes of this section only, "Hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271.

(A) **Part 260.** Hazardous Waste Management System: General, except 260.20 through 260.22.

(B) **Part 261.** Identification and Listing of Hazardous Waste. In 261.5(f)(3)(iv), and (v), and in 261.5(g)(3)(iv), and (v) add "other than Oklahoma" after the word "State".

(C) 262.42(a)(2)(e).

(D) **Part 263.** Standards Applicable to Transporters of Hazardous Waste.

(E) **Part 264.** Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except:

(i) 264.1(f)
(ii) 264.149
(iii) 264.150
(iv) 264.301(l)
(v) Part 264 Appendix VI

(F) **Part 265.** Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except:

(i) 265.1(c)(4)
(ii) 265.149
(iii) 265.150

(G) **Part 266.** Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.

(H) **Part 268.** Land Disposal Restrictions, except:

(i) 268.5
(ii) 268.6
(iii) 268.10
(iv) 268.11
(v) 268.12
(vi) 268.13
(vii) 268.42(b)
(viii) 268.44(a) through (g)
(ix) 268.44(m) through (p).

(I) **Part 270.** Permit Programs, except 270.14(b)(18).

(J) **Part 273.** Universal Waste Rule.

(K) **Part 279.** Used Oil Management Standards. The only portion of 279.82 which is adopted by reference is "The use of used oil as a dust suppressant is prohibited."

(2) **OAC 252:606 (Discharge Standards).**

(A) Part 116 (Hazardous Substances List)

(B) Part 117 (Reportable Quantities for Hazardous Substances)

(C) The following from PART 122 (NPDES PERMIT REGULATIONS):

(i) 122.2 - (definitions)
(ii) 122.24 - (concentrated aquatic animal production facilities)
(iii) 122.25 - (aquaculture projects)
(iv) 122.26 - (stormwater discharges)
(v) 122.27 - (silviculture)

(vi) 122.28(a) and (b) - (general permits)
(vii) 122.29 - (new sources and new dischargers)
(viii) 122.32 B As an operator of a small MS4, am I regulated under the NPDES storm water program?
(ix) 122.34 B As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?
(x) 122.35 B As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?
(xi) 122.41 - (permit conditions)
(xii) 122.42 - (conditions for specified categories of permits)
(xiii) 122.43 - (establishing permit conditions)
(xiv) 122.44 - (establishing permit limitations, standards and other conditions)
(xv) 122.45 - (calculating permit conditions)
(xvi) 122.46 - (permit duration)
(xvii) 122.47(a) - (schedules of compliance)
(xviii) 122.48 - (monitoring requirements)
(xix) 122.50 - (disposal into wells)
(xx) 122.61 - (permit transfer)
(xxi) 122.62 - (permit modification)
(xxii) 122.63 - (minor modifications of permits)
(xxiii) 122.64 - (permit termination)
(xxiv) Appendices A through J

(D) The following from PART 125 (criteria and standards for NPDES):
(i) Subpart A (technology-based treatment),
(ii) Subpart B (criteria for aquaculture projects),
(iii) Subpart D (fundamentally different factors),
(iv) Subpart H (alternative effluent limitations),
(v) Subpart I (new cooling water intakes), ~~and~~
(vi) Subpart J (existing cooling water intakes), and
(~~vi~~vii) Subpart L (disposal of sewage sludge under CWA 405)

(E) Part 129 (Toxic Pollutant Effluent Standards)
(F) Part 136 (testing and laboratory)
(G) Sections 401-471 (Effluent Guidelines 7 and Standards)
(H) Section 110.6 (notice of oil discharge)
(I) Part 302 (CERCLA exemption from NPDES permits)
(J) The following Sections from Part 503, Subpart A (General Provisions):
(i) 503.1 (Purpose and applicability)
(ii) 503.2 (Compliance period)
(iii) 503.3 (Permits and direct enforceability)
(iv) 503.4 (Relationship to other regulations)
(v) 503.5 (Additional or more stringent requirements)
(vi) 503.6(a)-(e),(g)-(j) (Exclusions)
(vii) 503.7 (Requirement for a person who prepares biosolids)
(viii) 503.8 (Sampling and analysis)
(ix) 503.9 (General definitions)

(K) The following Sections from Part 503, Subpart B (Land Application):
(i) 503.10(a),(b)(1)&(2),(e),(f),(g) (Applicability)
(ii) 503.11 (Special definitions)
(iii) 503.12 (General requirements)
(iv) 503.13 (Pollutant limits)
(v) 503.14 (Management practices)
(vi) 503.15 (Operational standards - pathogens and vector attraction reduction)
(vii) 503.16(a) (Frequency of monitoring)
(viii) 503.17(a) (Recordkeeping)
(ix) 503.18 (Reporting)

(L) The following Sections from Part 503, Subpart D (Pathogens and Vector Attraction Reduction):
(i) 503.30 (Scope)
(ii) 503.31 (Special definitions)
(iii) 503.32(a), (b) (Pathogens)
(iv) 503.33(a), (b)(1)-(11) (Vector attraction reduction)

(M) The following Sections from Part 503 Subpart E (Incineration)
(i) 503.40 (Applicability)
(ii) 503.41 (Special definitions)
(iii) 503.42 (General requirements)
(iv) 503.43 (Pollutant (Metal) limits)
(v) 503.44 (Operational standard - total hydrocarbons)
(vi) 503.45 (Management practices)
(vii) 503.46 (Frequency of monitoring)
(viii) 503.47 (Recordkeeping)
(ix) 503.48 (Reporting)

(N) The following Appendices from Part 503:
(i) Appendix A (Procedure to determine the annual whole sludge application rate for a sludge)
(ii) Appendix B (Pathogen treatment processes)

(O) Provisions of 40 CFR relating to CAFOs are excluded because they are beyond the jurisdiction of this Chapter.

(3) **OAC 252:611 (General Water Quality)** Part 130 (Water Quality Planning and Management)

(4) **OAC 252:652 (Underground Injection Control).** The following apply in their entirety as they apply to the underground injection control program:
(A) Part 144 (Underground Injection Control Program)
(B) Part 145 (State UIC Program Requirements)
(C) Part 146 (Underground Injection Control Program: Criteria and Standards)
(D) Part 147 (State Underground Injection Control Programs)
(E) Part 148 (Hazardous Waste Injection Restrictions)

(5) In all cases where these rules conflict with or are less stringent than federal regulations, the federal regulations apply.

SUBCHAPTER 3. POINT SOURCE DISCHARGES

252:690-3-2. ~~Analytical detection levels~~ Measurable levels and data characterization

~~Analytical detection~~ Measurable levels for effluent and background data ~~should~~ shall be less than or equal to EPA established MQLs. Where a background or effluent concentration data set reflects some measurable and some unmeasurable levels of a substance at or below the EPA MQL, the DEQ will use ~~an assumed value of one-half the reported level of analytical sensitivity for~~ Robust ROS to estimate the unmeasureable quantities. If a substance is unmeasurable in all samples collected for a background or effluent concentration dataset, the DEQ will use a zero level. If analytical data submitted reflects a substance is unmeasurable at a ~~detection~~ measurable level higher than the established MQL, the DEQ will allow the permit applicant to provide additional data analyzed at an appropriate ~~detection~~ measurable level. If the applicant does not do so, the DEQ will assume the substance is present at the reported ~~detection~~ measurable level. Where a pollutant has an established MQL, the DEQ will include a provision in the permit requiring the measurable levels be less than or equal to the MQL.

252:690-3-3. Effluent characterization for determining reasonable potential

An effluent's C_{95} concentration is used to characterize the effluent to determine if there is reasonable potential for a substance. Permit applicants must retain all analytical laboratory reports used for effluent characterization in a permit application and provide copies to the DEQ upon request. Where DMRs or facility records are used to characterize effluent the DEQ will use, at a minimum, the most recent two-year period of record. When characterizing whole effluent toxicity, the DEQ may use the most recent five-year period of record. Effluent monitoring data must be defensible analytical data, must be representative of the discharge, and must account for any seasonality or other variability in effluent quality. For reasonable potential determination, see OAC 252:690-3-3 through 3-9.

252:690-3-10. Receiving water background characterization

~~The~~ Where available, the DEQ will include upstream background levels of substances in assessing the reasonable potential evaluation and in calculating wasteload allocations. For background characterizations, see OAC 252:690-3-10 through 3-16.

252:690-3-14. Requirements specific to numeric criteria for toxic substances for the Fish and Wildlife propagation beneficial use

(a) **Background assumed zero.** The DEQ will assume zero background levels for direct discharges of once through cooling water.

(b) **Hardness or pH dependent criteria.** Where a criterion for a pollutant is hardness or pH-dependent, the DEQ will add hardness or pH monitoring, as appropriate, to the background monitoring requirements.

(c) **Representative of low flow conditions in streams.** The permittee must collect background samples as close to low flow conditions as possible in streams.

(d) **Background data from a previous permit.** The DEQ will not use background data referenced in the fact sheet or statement of basis of a previous permit unless the data is defensible analytical data.

(e) **Background monitoring.** Where toxicity-based effluent limitations for a substance are established in a permit and a complete background data set meeting the requirements of OAC 252:690-3-11 is not available, background monitoring of the limited substance is required. This requirement does not apply where the background must be considered equal to zero in accordance with OAC ~~252:690-3-14(a)~~ 252:690-3-14(a), where Q*_ 0.333, or where the 7Q2 of the receiving stream is assumed to be 1 cfs.

252:690-3-19. TREs, TIEs and WET limits

(a) **TRE and TIE.** A TRE is required where persistent lethality is demonstrated. The DEQ may require a TRE or TIE where persistent sublethality or intermittent lethality is demonstrated.

(b) **WET limits.** The DEQ will incorporate a WET limit into a permit for the species affected by whole effluent toxicity upon the completion of a TRE, unless the DEQ determines that chemical-specific effluent limits or toxicity-specific management practices in accordance with OAC 252:690-3-27 are sufficient to comply with the narrative toxicity criterion and protect the designated use. The DEQ may also incorporate a WET limit or chemical-specific effluent limits into a permit where reasonable potential is established by the presence in a discharge of a known toxicant in toxic amounts. The effective date of WET limits or chemical-specific limits may be deferred up to three years from the date of completion of the TRE or the effective date of a permit, as applicable. The effective date of toxicity-specific management practices may be deferred up to one year from the date of completion of the TRE or the effective date of a permit, as applicable.

252:690-3-26. Monitoring frequencies for ammonia

Where ammonia limits are toxicity-based, permits will require the permittee to monitor ammonia at a frequency of ~~3/week~~ three (3) times per week. ~~during the first year of a permit. After one year at this monitoring frequency, permittees may request that the DEQ grant an ammonia monitoring frequency reduction to 1/week if the highest daily maximum level reported during the first year is no greater than 1.5 times~~

~~the toxicity based MAL and there were no exceedances of either the monthly average limit or the daily maximum limit for ammonia during that period.~~ At any time during the term of a permit, where the permittee has completed twelve (12) consecutive reporting periods subject to toxicity based ammonia limits where the highest daily maximum concentration did not exceed 1.5 times the toxicity based MAL and there were not exceedences of the monthly average or daily maximum limits for ammonia, the permittee may request a reduction of the ammonia monitoring frequency to one (1) time per week. If WET test failures attributable to ammonia are experienced at any time during the term of a permit, or there are exceedences of the monthly average limit or daily maximum limit for ammonia, the ammonia monitoring frequency must be continued at or be returned to ~~3/week~~ three (3) times per week. If there are no WET test failures attributable to ammonia and no exceedences of either the monthly average limit or the daily maximum limit for ammonia following a reduction of the monitoring frequency for toxicity-based ammonia limits to one (1) time per week, the reduced ammonia monitoring frequency may be continued in the ensuing permit cycle. This paragraph does not apply to ammonia monitoring required to be performed concurrently with WET testing.

252:690-3-29. WET testing methods

The specific tests and test organisms used for determining whole effluent toxicity include:

(1) **Acute test/*D. pulex*.** Acute 48-hour static renewal toxicity test using *Daphia pulex* (Method 2021.0) as described in EPA publication no. 821-R-02-012 (October 2002),Fifth Edition, Methods for Measuring the Acute Toxicity of Effluent to Freshwater and Marine Organisms.

(2) **Acute test/*P. promelas.*** Acute 48-hour static renewal toxicity test using *Pimephales promelas* (Method 2000.0) as described in EPA publication no. 821-R-02-012 (October 2002), Fifth Editon, Methods for Measuring the Acute Toxicity of Effluent to Freshwater and Marine Organisms.

(3) **Chronic test/*C. dubia*.** Chronic 7-day static renewal ~~7 day~~ survival and reproduction test using *Ceriodaphnia dubia* (Method 1002.0), as described in EPA publication no. 821-R-02-013 (October 2002), Fourth Edition, Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms.

(4) **Chronic test/*P. promelas*.** Chronic 7-day static renewal ~~7 day~~ larval survival and growth test using *Pimephales promelas* (fathead minnow) (Method 1000.0), as described in EPA publication no. 821-R-02-013 (October 2002), Fourth Edition, Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms.

(5) **Acute test/*D. Magna.*** Acute 48-hour static renewal toxicity test using *Daphnia magna* (Method 2021.0), as described in EPA Publication No. 821-R-02-012 (October, 2002), fifth edition, *Methods for Measuring the Acute Toxicity Of Effluent to Freshwater and Marine Organisms.*

(6) **Chronic test/*D. Magna.*** Chronic 21-day static renewal life-cycle toxicity test using *Daphnia magna*, (ASTM Designation E-1193), as described in ASTM Publication E-1193-97 (Reapproved 2004), *Standard Guide for Conducting Daphnia Magna Life Cycle Toxicity Tests.*

(7) **Acute test/Mussels.** Acute toxicity test using mussels (ASTM Designation E-2455) as described in ASTM Publication E-2455-06 (Approved April, 2006), *Standard Guide for Conducting Laboratory Toxicity Test with Freshwater Mussels.*

252:690-3-31. WET test requirements

WET testing is required for all major dischargers and those minor dischargers identified by DEQ as posing a significant unaddressed toxic risk. Q* is calculated as described in Appendix D. The following WET testing requirements apply:

(1) **Acute testing only.** Acute testing only is required for all discharges to lakes and where Q* < 0.054 in streams.

(2) **Chronic testing only.** Chronic testing only is required where Q* > 0.3333.

(3) **Acute and chronic testing, except for *Daphnia Magna*.** Both acute and chronic testing are required where 0.054 #Q* # 0.3333.

(4) **Acute and/or chronic testing using *D. magna*.** Acute and/or chronic testing using *Daphnia magna* may be considered by the DEQ on a case-by-case basis where the TDS level in an effluent is high and the background TDS level of the receiving stream causes toxicity to *Ceriodaphnia dubia* or *Pimephales promelas* species in a control dilution (0% effluent).

(5) **Mussels.** Acute and/or chronic testing of mussels shall be required if the DEQ determines that the discharge may affect an indigenous population(s) of mussels.

252:690-3-32. Test failure notification and retesting

Permittees must notify the DEQ by telephone within 24 hours and in writing within five days of becoming aware of a WET test failure and must perform WET retests on the affected test species. Retests are required as follows:

(1) If a permit contains a WET limit, monthly WET retests of the same type as the failed test are required until the permittee achieves three consecutive passing retests, at which time the permittee returns to the routine WET testing frequency.

(2) If a permit does not contain a WET limit, two monthly WET retests of the same type as the failed test are required during the two month period following the month in which the test failure is experienced, unless the permittee is actively engaged in conducting a TRE or is in the process of implementing toxicity reduction measures which have resulted from a completed TRE related to the type of failure in question, and which are reflected in a DEQ-issued compliance schedule. It is the responsibility of the permittee to request such an exemption from retesting and provide a basis for the request within thirty (30) days of the completion of the failed test. If the routine

testing frequency is monthly, a retest may be used to fulfill a routine testing requirement only if a routine test would have been required for that month. If the routine testing frequency is other than monthly, neither of the retests may be substituted for routine WET testing.

252:690-3-41. WET testing frequency and trial period

The minimum required WET testing frequency for each new or renewed permit is once per quarter. Monitoring frequency reductions may be granted in accordance with OAC 252:690-3-42 after completion of a trial period. The length of the WET testing trial period will be established by the DEQ based on whether and to what degree a facility poses an increased toxicity risk due to the nature of its activities (e.g., accepting external waste streams, a history of WET test failures, or reported discharges of toxic compounds in toxic amounts). The minimum WET testing trial period is one year. The length of the WET testing trial period will be specified in the new or renewed permit. If the DEQ determines that an increased toxicity risk so warrants, quarterly or more frequent testing may be required for the life of the permit.

252:690-3-42. WET testing frequency reductions after WET testing trial period

Permittees may request reduction of the WET testing frequency for the remaining term of the permit depending on the results of WET testing during the WET testing trial period. Any reduction will be considered on a test species-specific basis. To qualify for a WET testing frequency reduction, the permittee must certify that tests submitted in fulfillment of its WET testing requirements during the WET testing trial period meet all test acceptability criteria set forth in OAC 252:690-3-38 and EPA WET test method documents. In addition the following apply:

(1) **WET limit established in permit.** Reductions in WET testing frequency are not allowed during the first five years of applicability of a WET limit. The DEQ may consider a reduced testing frequency when the permit is renewed, based on the WET testing results during the term of the then previous permit.

(2) **No test failure for a species during WET testing trial period.** The DEQ may reduce the testing frequency for a species to not less than once per six months. If the monitoring frequency reduction is denied, the permittee must continue WET testing at a frequency of once per quarter for the affected species for the remaining life of the permit.

(A) To be eligible, the permittee must:

(i) demonstrate no lethal or sublethal test failures for either test species during the WET testing trial period; and

(ii) certify in writing to the DEQ that it has fulfilled the test acceptability requirements set forth in OAC 252:690-3-38;

(B) The DEQ will either approve or deny the certification in writing within 90 days of receipt. The DEQ may deny the certification based on facility specific criteria if it finds that any of the permittee's WET test reports during the period for which certification is submitted:

(i) are substantively incomplete;

(ii) are in error regarding test acceptability criteria or statistical interpretation of results; or

(iii) were not received by the DEQ by the due date prescribed in the permit.

(3) **Test failure for ~~either test~~ a species demonstrated during the WET testing trial period.**

(A) If a lethal test failure is demonstrated at any time during the WET testing trial period, the permittee must continue testing at a frequency of once per quarter for the affected species for the remaining life of the permit upon completion of the WET testing trial period.

(B) If a sublethal test failure is demonstrated at any time during the WET testing trial period, the permittee must continue testing at a frequency of once per quarter for the affected species until no sublethal effects are demonstrated for four consecutive quarters. After demonstrating no sublethal effects for four quarters, the DEQ may reduce the testing frequency for the affected species to once per six months.

252:690-3-91. Performance-based monitoring frequency reductions and increases

Where MALs are established in a previous permit, performance-based monitoring frequency reductions or increases will be considered. New permitees, or permittees with newly established permit limitations, must go through one permit cycle (five years) before being eligible for performance-based monitoring frequency reductions or increases. Where a permittee has exhibited SNC for a parameter during the ~~two-year period of record~~ permit cycle, the permittee is ineligible for a performance-based monitoring frequency reduction for that parameter for the ensuing permit cycle, and a monitoring frequency increase is required in accordance with Table I-3. Where a permittee has experienced a permit limit violation of any kind for a limited parameter, short of SNC, during the ~~two year period of record~~ permit cycle, a performance-based monitoring frequency reduction may be granted according to Table I-1. Where a permittee has experienced no permit limit violation of any kind for a limited parameter during the ~~two year period of record~~ permit cycle, a performance-based monitoring frequency reduction may be granted according to Table I-2. Permittees may request toxicity-based ammonia limit monitoring frequency reductions according to OAC 252:690-3-26 or WET testing frequency reductions according to OAC 252:690-3-42. For facilities which have a long-term average effluent concentration for the permit cycle of less than ten percent (10%) of the Monthly Average Concentration Limit and no longer show reasonable potential for a metal (either from monitoring or effluent limit), but have a limit for that parameter in a previous permit that cannot be removed, the monitoring frequency for said parameter may be reduced to once every six (6) months, provided the parameter is not

causing the receiving water body to be listed as a Category 5 water body in Oklahoma's Integrated Report.

APPENDIX I. PERFORMANCE-BASED EFFLUENT MONITORING FREQUENCY REDUCTIONS [REVOKED]

APPENDIX I. PERFORMANCE-BASED EFFLUENT MONITORING FREQUENCY REDUCTIONS [NEW]

Where one or more permit violations of any kind for a limited parameter (not resulting in SNC) have been exhibited during the previous permit cycle, Table I-1 is used to determine performance-based monitoring frequency reductions. Where there has been no permit violation of any kind for a limited parameter during the previous permit cycle, Table I-2 is used to determine performance-based monitoring frequency reductions. If a permit contains a monthly average mass loading limit, but not a monthly average concentration limit, the equivalent monthly average concentration limit may be derived from the monthly average mass loading limit and the flow basis (the high 30-day average flow during the previous permit cycle for industrial facilities and the design flow for municipal facilities). Performance-based monitoring frequency reductions shall not be based on a weekly average, a daily minimum or a daily maximum concentration limit. If a facility has demonstrated SNC during the previous permit cycle, then an increase in monitoring frequency pursuant to Table I-3 is used.

Table I-1. Performance Based Monitoring Frequency Reductions (One or More Permit Violations During the Previous Permit Cycle Not Resulting in SNC)

Baseline Monitoring Frequency (previous permit cycle)	Ratio (Percent) of Long-term Average Effluent Concentration for The Previous Permit Cycle to Monthly Average Concentration Limit [a]				
	< 25%	≥25% and <50%	≥50% and <65%	≥65% and <75%	≥75%
7/week (daily)	3/week	4/week	5/week	6/week	NR
6/week	3/week	4/week	4/week	5/week	NR
5/week	3/week	3/week	4/week	NR	NR
4/week	2/week	3/week	NR	NR	NR
3/week	2/week	2/week	NR	NR	NR
2/week	1/week	NR	NR	NR	NR
1/week	2/month	NR	NR	NR	NR
2/month	NR	NR	NR	NR	NR
1/month	NR	NR	NR	NR	NR

[a] NR means "no reduction."

Table I-2. Performance Based Monitoring Frequency Reductions (No Permit Violations During The Previous Permit Cycle)

Baseline Monitoring Frequency (previous permit cycle)	Ratio (Percent) of Long-term Average Effluent Concentration for The Previous Permit Cycle to Monthly Average Concentration Limit [a]				
	< 25%	≥25% and <50%	≥50% and <65%	≥65% and <75%	≥75%
7/week (daily)	2/week	3/week	4/week	5/week	6/week
6/week	2/week	3/week	3/week	4/week	5/week
5/week	1/week	2/week	3/week	4/week	4/week
4/week	1/week	2/week	2/week	3/week	NR
3/week	1/week	2/week	2/week	NR	NR
2/week	2/month	1/week	1/week	NR	NR
1/week	1/month	2/month	NR	NR	NR
2/month	1/month	NR	NR	NR	NR
1/month	1/2 months	NR	NR	NR	NR
1/2 months	NR	NR	NR	NR	NR

[a] NR means "no reduction."

Table I-3. Monitoring Frequency Increases

Baseline Monitoring Frequency (previous permit cycle)	Increased Monitoring Frequency for parameters demonstrating SNC during the previous permit cycle [a]
7/week (daily)	NI
6/week	7/week
5/week	7/week
4/week	6/week
3/week	5/week
2/week	4/week
1/week	3/week
2/month	2/week
1/month	1/week
1/2 months (every other month)	2/month
1/3 months (once per quarter)	1/month
1/6 months (semi-annually)	1/month
1/year	1/month

[a] NI means "no increase"

[OAR Docket #07-978; filed 5-9-07]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 710. WATERWORKS AND WASTEWATER WORKS OPERATOR CERTIFICATION

[OAR Docket #07-979]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:710-1-4. Definitions [AMENDED]
Subchapter 7. Shared Operators For Small Systems [NEW]
252:710-7-1. Purpose [NEW]
252:710-7-2. Requirements [NEW]
Appendix A. Classification of Community and Nontransient Noncommunity Water Systems, Wastewater Systems and Laboratories [REVOKED]
Appendix A. Classification of Community and Nontransient Noncommunity Water Systems, Wastewater Systems and Laboratories [NEW]
AUTHORITY:
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This rulemaking is to implement the requirements set forth in Senate Bill 1293 (2006) which was codified at 59 O.S.§ 1118. Definitions have been amended to reflect the addition of the new provisions. New provisions include requirements for operators providing services to multiple facilities. Additionally, clarification language was added to Appendix A.
CONTACT PERSON:
Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

252:710-1-4. Definitions

In addition to the definitions contained in the Environmental Quality Code (27A O.S. § 2-1-101 et seq), and the Waterworks and Wastewater Works Operator Certification Act (59 O.S. § 1101 et seq.), the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Waterworks and Wastewater Works Operator Certification Act, 59 O.S. ~~Section 1101 - 1107;~~§ 1101 *et seq.*

"Associated laboratory" means any laboratory, not directly owned by or located on the premises of a waterworks or wastewater works, that performs required laboratory tests for the works.

"Available" means on site or able to be contacted as needed to initiate the appropriate action in a timely manner.

"Certificate year" means July 1 through June 30.

"Certification of competency" means a certification issued by the Department pursuant to this Chapter.

"Code" means the Oklahoma Environmental Quality Code, 27A O.S.§ 2-1-101 *et seq.*

"Collection system" shall have the same definition as contained in ~~Chapter 656, Wastewater Construction Rules~~ OAC 252:656, Water Pollution Control Facility Construction Rules.

"Community Water System (CWS)" means a public water system providing water to at least 15 service connections used by year round residents or regularly serving at least 25 year-round residents.

"DEQ" means the Oklahoma Department of Environmental Quality and, for purposes of certifications issued and enforcement matters arising from certifications issued prior to July 1, 1993, "DEQ" also means the Oklahoma State Department of Health.

"Distribution and Collection Technician" means a person who works solely on distribution and collection lines and is not in responsible charge.

"Distribution system" means any combination of pipes, tanks, pumps or other equipment which delivers water from the source(s) and/or treatment facility(ies) to the consumer.

"Distribution system complexity" means pressure zones, booster stations, storage tanks, fire protection, chlorination, nonresidential consumers, cross connection potential, and/or demand variations.

"Groundwater system" means a waterworks where all water is obtained from dug, drilled, bored or driven wells or infiltration lines not under the influence of surface water contamination, but not springs which are a surface water supply.

"Laboratory operator" means an individual who is in general supervision of a laboratory which performs laboratory analyses for waterworks and wastewater works and who is responsible for the accuracy of the laboratory tests and reports for the facility, but who does not operate the waterworks or wastewater works unless appropriately certified as an operator for that type facility.

"Lagoon" shall have the same definition as contained in ~~Chapter 620, Nonindustrial Impoundments~~ OAC 252:619, Operation and Maintenance of Non-Industrial Total Retention Lagoon Systems and Land Application or OAC 252:621, Non-Industrial Flow Through and Public Water Supply Impoundments Including Land Application.

"Nontransient noncommunity (NTNC) water system" means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over six months per year, including schools, day care centers, factories, restaurants and hospitals.

"OAC" means Oklahoma Administrative Code.

"Operating experience" means the time spent at a plant or system in performance of operational duties.

"Operating shift" means that period of time during which operator decisions that affect public health are necessary for proper operation of the system.

"Operational engineering assistance" means regulatory or consulting experience in providing technical assistance to a variety of water/wastewater works systems.

"O.S." means Oklahoma Statutes.

"Owner" means:

(A) a sole proprietor;

(B) a homeowners' association;

(C) the controlling or managing partner of a partnership;

(D) the major stockholders of a corporation; or

(E) a government entity including the State of Oklahoma, municipalities, counties, or districts, and all sub-divisions thereof.

"Purchased water system" means a water supply system which buys its water from a waterworks and has a mastermeter.

"Responsible charge" means making decisions regarding the daily operational activities of

(A) a public water system, water treatment facility and/or distribution system that will directly impact the quality and/or quantity of drinking water; or

(B) a wastewater system, wastewater treatment facility and/or collection system.

"Small system" as used in 59 O.S.§ 1118 means a Waterworks or a Wastewater Works required to be operated by a Class C operator with a population of five hundred (500) or less.

"Source water" means the type (surface water, groundwater, groundwater under the influence of surface water, purchased water), quality (variability) and/or protection (e.g. wellhead protection).

"Standard course" means a DEQ approved training class or classes that directly relate to waterworks, wastewater works, waterworks laboratories or wastewater works laboratories and that meet the requirements of OAC 252:710-3-36 for content and clock hours, completed in preparation for an Operator Certification examination for initial certification.

"Superintendent" means an operator in direct responsible charge of day to day operations of an entire plant, distribution system or collection system.

"Supervision" means the act of supervising and or giving direction. "Direct" supervision requires a certified operator to be present one hundred percent (100%) of the time while supervising an uncertified person. "General" supervision means that the certified operator must be available to help the certified person and give advice, but the person can work alone.

"Supervisor" means an individual who directs and inspects the work of operators, helpers or plumbers/contractors.

"Treatment facility complexity" means difficulty in controlling water quality, potential effect to the consumer and/or safety of the operator.

"Water treatment facility" means any place(s) where a community water system or nontransient noncommunity water system alters the physical or chemical characteristics of the drinking water. Chlorination may be considered as a function of a distribution system.

"Validated exam" means an examination that is independently reviewed by subject matter experts to ensure that the exam is based on a job analysis and related to the classification of the system or facility.

SUBCHAPTER 7. SHARED OPERATORS FOR SMALL SYSTEMS

252:710-7-1. Purpose

The purpose of this subchapter is to implement the requirements set forth in 59 O.S.§ 1118.

252:710-7-2. Requirements

A municipality, sewer improvement district, water or sewer public trust, rural water or sewer district, consortium of small publicly owned water supply or wastewater systems, substate planning district or the Oklahoma Rural Water Association may hire or contract an operator or operators to provide services for one or more small system(s) if the following requirements are met:

(1) the operator has a Class C or greater certification;

(2) a Public Water Supply System using disinfection, the operator must be at the Public Water Supply System a minimum of five (5) days per week to ensure proper operation, and can only operate three (3) systems;

(3) a Public Water Supply System not using disinfection or a wastewater system, the operator must be at the Public Water Supply or wastewater system a minimum of two (2) days per week to ensure proper operation, and can only operate five (5) systems total;

(4) the operator(s) must operate the small system(s) in compliance with all Federal and State statutory and regulatory requirements;

(5) the operator, municipality, sewer improvement district, water or sewer public trust, rural water or sewer district, consortium of small publicly owned water supply or wastewater systems, substate planning district or the Oklahoma Rural Water Association and the small system must enter into a written agreement, that at a minimum shall:

(A) explicitly state the duties of the operator;

(B) explicitly state who is responsible for repairs to the Public Water Supply or wastewater system;

(C) explicitly state compensation for the operator, including, but not limited to, salary, transportation, insurance and administration costs; and

(D) consider and approve recommendations of the operator for upgrades and/or improvements to the system.

(6) an operator shall only provide services to a facility located in the county of his or her residence or place of employment and any adjacent county.

APPENDIX A. CLASSIFICATION OF COMMUNITY AND NONTRANSIENT NONCOMMUNITY WATER SYSTEMS, WASTEWATER SYSTEMS AND LABORATORIES [REVOKED]

APPENDIX A. CLASSIFICATION OF COMMUNITY AND NONTRANSIENT NONCOMMUNITY WATER SYSTEMS, WASTEWATER SYSTEMS AND LABORATORIES [NEW]

Classes	Laboratories	Waterworks	Wastewater works
Class A	Optional for laboratories using gas chromatography, mass spectrometry and atomic absorption or similar instrumentation plus requirements for Class B and C.	(1) Water treatment plants, distribution systems, or chlorinated groundwater systems serving populations greater than 50,000; and (2) All water treatment plants classified as an "A" facility by complexity by the Operator Certification Section of the Department.	(1) Wastewater works and/or collection systems serving populations greater than 50,000; and (2) All wastewater works classified as an "A" facility by complexity by the Operator Certification Section of the Department.
Class B	Required for supervision of bacteriological testing plus requirements for Class C.	(1) Water treatment plants, distribution systems or chlorinated groundwater systems serving populations between 15,000 and 50,000; and (2) All water treatment plants classified as a "B" facility by complexity by the Operator Certification Section of the Department.	(1) Wastewater works and/or collection systems serving populations between 15,000 and 50,000; and (2) All wastewater works classified as a "B" facility by complexity by the Operator Certification Section of the Department.
Class C	Required for supervision of process control testing. (1) Wastewater: BOD, TSS, pH, Residual Chlorine, COD, DO, Ammonia, Oil and Grease; (2) Water: pH, Residual Chlorine, Turbidity, Alkalinity, Hardness, Stability and Fluoride	(1) Water treatment plants, distribution systems, and chlorinated or nonchlorinated groundwater systems serving populations greater than 1,500 and less than 15,000; (2) Surface water treatment plants serving a population of 15,000 or less; and (3) Groundwater systems utilizing any form of chemical treatment other than chlorination for disinfection only; and (4) All water treatment plants classified as a "C" facility by complexity by the Operator Certification Section of the Department.	(1) Wastewater works and/or collection system facilities serving populations between 1,500 and 15,000; and (2) Discharging wastewater facilities serving 15,000 or less; and (3) All wastewater works classified as a "C" facility by complexity by the Operator Certification Section of the Department.
Class D	None	Distribution systems or chlorinated groundwater systems serving populations of 1,500 or less.	Total retention lagoons and/or collection systems serving populations of less than 1,500.

[OAR Docket #07-979; filed 5-9-07]

TITLE 270. OKLAHOMA FIREFIGHTERS PENSION AND RETIREMENT SYSTEM CHAPTER 10. FIREFIGHTERS PENSION AND RETIREMENT PLAN

[OAR Docket #07-902]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
270:10-1-5. [AMENDED]
270:10-1-9. [AMENDED]
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Board of Trustees of the Oklahoma Firefighters Pension and Retirement System; O.S. Title 11, Section 49-100.7 (B)
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ANALYSIS:
Section 270:10-1-5 establishes the medical conditions that may or may not preclude a candidate from performing the essential functions of a firefighter, which determine if a candidate is eligible for entrance into the pension system. The revisions are made to reflect the changes in National Fire Protection Standard 1582, which is the standard utilized for the development of the System's medical conditions. Section 270:10-1-9 establishes the procedures for purchasing credited service from other state retirement systems and applying the credited service to the firefighter's pension. The revisions are made to be in compliance with IRS regulations.
CONTACT PERSON:
Herb Bradshaw, Assistant Director, Oklahoma Firefighters Pension and Retirement System, (405) 522-4600

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JUNE 11, 2007:

270:10-1-5. Medical conditions affecting ability to safely perform essential job functions

(a) Medical conditions that can affect a candidate's ability to safely perform essential job functions shall be designated either Category A or Category B.

(b) Candidates with Category A medical conditions shall not be certified as meeting the medical requirements for entrance into the System.

(c) Candidates with Category B medical conditions shall be certified as meeting the medical requirements for entrance into the System only if they can perform the essential job functions without posing a significant safety and health risk to themselves, members, or civilians.

(1) Head.

(A) Category A medical conditions shall include the following:

(i) Defect of skull preventing helmet use or leaving underlying brain unprotected from trauma.

(ii) Any skull or facial deformity that would not allow for a successful respiratory facepiece fit test.

(iii) Any head condition that results in a person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:

(i) Deformities of the skull such as depressions or exostoses.

(ii) Deformities of the skull associated with evidence of disease of the brain, spinal cord, or peripheral nerves.

(iii) Loss or congenital absence of the bony substance of the skull.

(iv) Any other head condition that may result in a person not being able to safely perform essential job functions.

(2) Neck.

(A) Category A medical conditions shall include the following:

(i) Any neck condition that results in a person not being able to safely perform essential job functions.

(ii) Reserved

(B) Category B medical conditions shall include the following:

(i) Thoracic outlet syndrome

(ii) Congenital cysts, chronic draining fistulas, or similar lesions.

(iii) Contraction of neck muscles.

(iv) Any other neck condition that may result in a person not being able to safely perform essential job functions.

(3) Eyes and Vision.

(A) Category A medical conditions shall include the following:

(i) Far visual acuity less than 20/40 binocular, corrected with contact lenses or spectacles or far visual acuity less than 20/100 binocular for wearers of hard contacts or spectacles, uncorrected.

(ii) Color perception. Monochromatic vision resulting in inability to use imaging devices.

(iii) Monocular vision.

(iv) Any eye condition that results in a person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:

(i) Diseases of the eye such as retinal detachment, progressive retinopathy, or optic neuritis.

(ii) Ophthalmological procedures such a radial keratotomy, Lasik procedure, or repair of retinal detachment.

(iii) Peripheral vision in the horizontal meridian of less than 110 degrees in the better eye or any condition that significantly affects peripheral vision in *both* eyes.

(iv) Any other eye condition that may result in a person not being able to safely perform essential job functions.

(4) Ears and hearing.

(A) Category A medical conditions shall include the following:

(i) Chronic vertigo or impaired balance as demonstrated by the inability to tandem gait walk.

(ii) On audiometric testing, average hearing loss in the unaided better ear greater than 40 decibels (db) at 500 Hz, 1000Hz, 2000 Hz, and 3000 Hz when audiometric device is calibrated to ANSI Z24.5.

(iii) Any ear condition (or hearing impairment) that results in a person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:

(i) Unequal hearing loss.

(ii) Average uncorrected hearing deficit at the test frequencies 500Hz, 1000 Hz, 2000 Hz, and 3000 Hz greater than 40 decibels (db) in *either* ear.

(iii) Atresia, stenosis, or tumor of the auditory canal.

(iv) External otitis.

(v) Agenesis or traumatic deformity of the auricle.

(vi) Mastoiditis or surgical deformity of the mastoid.

(vii) Mèniérés syndrome, labyrinthititis, or tinnitus.

(viii) Otitis media.

(ix) Any other ear condition (or hearing impairment) that may result in a person not being able to safely perform essential job functions.

(5) Dental.

(A) Category A medical conditions shall include the following:

(i) Any dental condition that may result in a person not being able to safely perform essential job functions.

(ii) Reserved.

(B) Category B medical conditions shall include the following:

(i) Diseases of the jaw or associated tissues.

(ii) Orthodontic applicances.

(iii) Oral tissues, extensive loss.

(iv) Relationship between the mandible and maxilla that interferes with satisfactory post-orthodontic replacement or ability to use protective equipment.

(v) Any other dental condition that may result in a person not being able to safely perform essential job functions.

(6) Nose, oropharynx, trachea, esophagus, and larynx.

(A) Category A medical conditions shall include the following:

(i) Tracheostomy.

(ii) Aphonia.

(iii) Any nasal, orpharyngeal, esophageal, or laryngeal condition that results in a person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:

(i) Congenital or acquired deformity.

(ii) Allergic rhinitis.

(iii) Epistaxis, recurrent.

(iv) Sinusitis, recurrent.

(v) Dysphonia.

(vi) Anosmia.

(vii) Tracheal stenosis.

(viii) Nasopharyngeal polyposis.

(ix) Any other nasal, orpharyngeal, esophageal, or laryngeal condition that may result in a person not being able to safely perform essential job functions.

(7) Lungs and chest walls.

(A) Category A medical conditions shall include the following:

(i) Active hemoptysis.

(ii) Empyema.

(iii) Pulmonary hypertension.

(iv) Active tuberculosis.

(v) Obstructive lung diseases (e.g., emphysema, chronic bronchitis, asthma, etc.) with an FEV_1/FVC <0.75, with both FEV_1 FVC below normal (<0.80%) as defined by the American Thoracic Society.

(vi) Hypoxemia - Oxygen saturation <90% (exercise testing indicated when resting oxygen is <94% but >90%). Evaluate VO^2 max as described by the American College of Sports Medicine (ACSM).

(vii) Asthma - Reactive airways disease requiring bronchodilator or corticosteroid therapy in the previous 2 years. ~~A candidate who has required these medications but who does not believe he/she has asthma shall demonstrate a normal response to cold air or methacholine (PC20 greater than 16mg/ml). To be safely administered this test shall be performed by a qualified specialist and~~

~~to be valid the candidate shall be off all anti-inflammatory medications for at least 4 weeks and off bronchodilators the day of testing. A negative challenge test [as described by the American Thoracic Society (ATS)], along with no recent episode of bronchospasm off medication shall be considered evidence that the candidate does not have clinically significant airways hyperactivity or asthma.~~ A candidate who has in the past required bronchodilator, corticosteroid, or anti-inflammatory therapy for asthma but who does not believe he/she has asthma shall be evaluated by a pulmonologist or other expert in asthmatic lung diseases such as an allergist to determine the following:

(I) Asthma has resolved without symptoms off medications for 2 years.

(II) If allergic, allergen avoidance or desensititzation has been successful.

(III) Spirometry demonstrates adequate reserve (FVC and FEV_1 greater or equal to 90 percent) and no bronchodilator response measured off all bronchodilators on the day of testing.

(IV) Normal or negative response (less than 20% decline in FEV_1) to provocative challenge using cold air, exercise (12 METS), or methacholine. (PC_{20} greater than 8 is considered normal, as response at dose greater than 8mg might not be clinically significant.

(V) Challenge testing shall be performed off all anti-inflammatory medications for 4 weeks preceding the test and off all bronchodilators on the day of testing.

(B) Category B medical conditions shall include the following:

(i) Pulmonary resection surgery, chest wall surgery, and
Pneumothorax.

(ii) Pleural effusion.

(iii) Fibrothorax, chest wall deformity, and diaphragm abnormalities.

(iv) Interstitial lung disease.

(v) Pulmonary vascular diseases or history of pulmonary embolism.

(vi) Bronchiectasis.

(vii) Infectious diseases of the lung or pleural space.

(viii) Cystic fibrosis.

(ix) Central or obstructive apnea.

(x) Any other pulmonary condition that may result in a person not being able to safely perform essential job functions.

(8) Heart.

(A) Category A medical conditions shall include:

(i) Corornary artery disease, including a history of myocardial infarction, angina pectoris, coronary artery bypass surgery, coronary angioplasty, and similar procedures.

(ii) Cardiomyopathy or congestive heart failure, including signs or symptoms of comprised left or right ventricular function, including dyspnea, S3 dallop, peripheral edema, enlarged ventricle, abnormal ejections fraction, and/or inability to increase cardiac output with exercise.

(iii) Acute pericarditis, endocarditis, or myocarditis.

(iv) Syncope, recurrent.

(v) A medical condition requiring an automatic implantable cardiac defibrillator or history of ventricular fibrillation due to ischemic or valvular heart disease, or cardiomyopathy.

(vi) Third-degree atrioventricular block.

(vii) Cardiac pacemaker.

(viii) Idiopathic hypertrophic subaortic stenosis.

(ix) Any cardiac condition that results in a person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:

(i) Valvular lesions of the heart, including prosthetic valves.

(ii) Recurrent suprventricular or atrial tachycardia, flutter or fibrillation.

(iii) Left bundle branch block.

(iv) Second-degree atrioventricular block in the absence of structural heart disease.

(v) Sinus pause >3 seconds.

(vi) Ventricular arrhythmia (history or presence of multi-focal PVC's or non-sustained ventricular tachycardia on resting EKG with or without symptoms; history or presence of sustained ventricular tachycardia with or without symptoms.

(vii) History of congenital abnormality.

(viii) History of congenital abnormality.

(ix) Chronic pericarditis, endocarditis, or myocarditis.

(x) Any other heart condition that may result in a person not being able to safely perform essential job functions.

(9) Vascular System.

(A) Category A medical conditions shall include the following:

(i) Hypertension with evidence of end organ damage or not controlled by approved medications.

(ii) Thoracic or abdominal aortic aneurysm.

(iii) Carotid artery stenosis or obstruction resulting in >50 percent reduction in blood flow.

(iv) Peripheral vascular disease resulting in symptomatic claudication.

(v) Any other vascular condition that results in a person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:

(i) Vasopastic phenomena such Raynaud's phenomenon.
(ii) Thrombophlebitis and varicosities.
(iii) Chronic lymphedema due to lymphadenopathy or venous valvular incompetency.
(iv) Congenital or acquired lesions of the aorta or major vessels.
(v) Circulatory instability as indicated by orthostatic hypotension, persistent tachycardia, and peripheral vasomotor disturbances.
(vi) History of surgical repair of aneurysm of heart or major vessel.
(vii) Any other vascular condition that may result in a person not being able to safely perform essential job functions.

(10) Abdominal organs and gastrointestinal system.
(A) Category A medical conditions shall include the following:
(i) Presence of uncorrected inguinal/femoral hernia regardless of symptoms.
(ii) Any gastrointestinal condition that results in a person not being able to safely perform essential job functions.
(B) Category B medical conditions shall include the following:
(i) Cholecystitis.
(ii) Gastritis.
(iii) GI bleeding.
(iv) Acute hepatitis
(v) Hernia including the following:
(I) Uncorrected umbilical, ventral, or incisional hernia if significant risk exists for infection or strangulation.
(II) Significant symptomatic hiatal hernia if associated with asthma, recurrent pneumonia, chronic pain, or ulcers.
(III) Surgically corrected hernia >3 months after surgical correction.
(vi) Inflammatory bowel disease or irritable bowel syndrome.
(vii) Intestinal obstruction.
(viii) Pancreatitis.
(ix) Diverticulitis.
(x) History of gastrointestinal surgery.
(xi) Peptic or duodenal ulcer of Zollinger-Ellison syndrome.
(xii) Asplenia.
(xiii) Cirrhosis, hepatic or bilary.
(xiv) Chronic active hepatitis
(xv) Any other gastrointestinal condition that may result in a person not being able to safely perform essential job functions.

(11) Reproductive System.
(A) Category A medical conditions shall include the following:
(i) Any genital condition that results in a person not being able to safely perform essential job functions.
(ii) Reserved
(B) Category B medical conditions shall include the following:
(i) Pregnancy, for its duration.
(ii) Dysmenorrhea.
(iii) Endometriosis, ovarian cysts, or other gynecologic conditions.
(iv) Testicular or epididymal mass.
(v) Any other genital condition that may result in a person not being able to safely perform essential job functions.

(12) Urinary system.
(A) Category A medical conditions shall include the following.
(i) Renal failure or insufficiency requiring continuous ambulatory peritoneal dialysis (CAPD) or hemodialysis.
(ii) Any urinary condition that results in a person not being able to safely perform essential job functions.
(B) Category B medical conditions shall include the following:
(i) Diseases of the kidney.
(ii) Diseases of the ureter, bladder, or prostate.
(iii) Any other urinary condition that may result in a person not being able to safely perform essential job functions.

(13) Spine an Axial Skeleton.
(A) Category A medical conditions shall include the following:
(i) Scoliosis of thoracic or lumbar spine with angle >40 degrees.
(ii) History of spinal surgery fusion of two or more vertebrae or rods that are still in place.
(iii) Any spinal or skeletal condition producing sensory or motor deficit(s) or pain due to rediculopathy or nerve root compression.
(iv) Any spinal or skeletal condition causing pain that frequently or recurrently requires narcotic analgesic medication.
(v) Cervical vertebral fractures with multiple vertebral body compression greater than 25 percent; evidence of posterior element involvement, nerve root damage, disc involvement, dislocation (partial, moderate, severe), abnormal exam, ligament instability, symptomatic, and/or less than 6 months post injury or 1 year since surgery.
(vi) Thoracic vertebral fractures with vertebral body compression greater than 50 percent; evidence of posterior element involvement, nerve root damage, disc involvement, dislocation (severe-with or without surgery), abnormal exam, ligament instability, symptomatic, and/or less than 6 months post injury or 1 year since surgery.
(vii) Lumbosacral vertebral fractures with vertebral body compression greater than 50 percent; evidence of posterior element involvement, nerve

root damage, disc involvement, dislocation (severe-with or without surgery), abnormal exam, ligament instability, symptomatic, and/or less than 6 months post injury or 1 year since surgery.

(viii) Any spinal or skeletal condition that results in a person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:

(i) Congenital or developmental malformations of the back.

(ii) Scoliosis with ange >40 degrees.

(iii) Arthritis of the cervical, thoracic, or lumbosacral spine.

(iv) Facet atrophism, high lumbosacral angle, hyperlordosis, Schmorl's nodes, Scheuermann's disease, spina bifida occulta, spondylolisthesis, spondylolysis, or transitional vertebrae.

(v) History of infections or infarcts in the spinal cord, epidural space, vertebrae, or axial skeletal joints.

(vi) History of laminectomy or diskectomy or vertebral fractures.

(vii) Any spinal or skeletal condition that may result in a person not being able to safely perform essential job functions.

(14) Extremities.

(A) Category A medical conditions shall include the following:

(i) Bone hardware such as metal plates or rods supporting the bone during healing.

(ii) History of total joint replacement.

(iii) Amputation or congenital absence of upper extremity limb (hand or higher).

(iv) Amputation of either thumb proximal to the mid-proximal phalanx.

(v) Amputation or congenital absence of lower extremity limb (foot or above).

(vi) Chronic nonhealing or recent bone grafts.

(vii) History of more than one dislocation of the shoulder without surgical repair or with history of recurrent shoulder disorders within the last 5 years with pain or loss of motion, and with or without radiographic deviations from normal.

(viii) Any extremity condition that results in a person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:

(i) History of shoulder dislocation with surgical repair.

(ii) Significant limitation of function of shoulder, elbow, wrist, hand, or finger, due to weakness, reduced range of motion, atrophy, unequal length, absence, or partial amputation.

(iii) Significant lack of full motion of hip, knee, ankle, foot, or toes due to weakness, reduced range of motion, atrophy, unequal length, absence, lr partial amputation.

(iv) History of meniscectomy or ligamentous repair of knee.

(v) History of intra-articular, malunited, or nonunion of upper or lower extremity fracture.

(vi) History of osteomyelitis, septic, or rheumatoid arthritis.

(vii) Any other extremity condition that may result in a person not being able to perform essential job functions.

(15) Neurological disorders.

(A) Category A medical conditions shall include the following.

(i) Ataxias of heredo-degenerative type.

(ii) Cerebral arteriosclerosis as evidenced by a history of transient ischemic attack, reversible ischemic neurological deficit, or ischemic stroke.

(iii) Hemiparalysis or paralysis of a limb.

(iv) Multiple sclerosis with activity or evidence of progression within previous 3 years.

(v) Myasthenia gravis with activity or evidence of progression within previous 3 years.

(vi) Progressive muscular dystrophy or atrophy.

(vii) Uncorrected cerebral aneurysm.

(viii) ~~All epileptic conditions to include simple partial, complex partial, generalized, and psychomotor seizure disorders other than those with complete control during previous 5 years. A candidate shall also have normal neurological examination without structure abnormality on brain imaging, normal awake and asleep EEG with photic stimulation and hyperventilation, as well as definitive statement from a qualified neurological specialist. A candidate with epilepsy shall not be cleared for firefighting duty until he or she has completed 5 years without a seizure on a stable regimen or 1 year without a seizure after discontinuing all anti-epileptic drugs.~~ A candidate with epileptic conditions shall have had complete control during the previous 5 years and to be medically qualified a candidate shall meet all of the following:

(I) No seizures for 1 year off all anti-epileptic medication or 5 years seizure free on a stable medical regimen.

(II) Neurologic examination is normal.

(III) Imaging (CAT or MRI scan) studies are normal.

(IV) Awake and asleep EEG studies with photic stimulation hyperventilation are normal.

(V) A definitive statement from a qualified neurological specialist that the candidate meets the specified above and that the candidate is neurologically cleared for firefighting training and the performance of essential job functions.

(ix) Dementia (Alzheimer's and other neuro-degenerative diseases) with symptomatic loss of function or cognitive impairment (e.g., <28 on Mini-Mental Status Exam.

(x) Any neurological condition that results in a person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:

(i) Congenital malformations.

(ii) Migraine.

(iii) Clinical disorders with paresis, dysco-ordination, deformity, abnormal motor activity, abnormality of sensation, or complaint of pain.

(iv) History of subarachnoid or intraparenchymal hemmorage.

(v) Abnormalities from recent head injury such as severe cerebral contusion or concussion.

(vi) Any other neurological condition that may result in a person not being able to safely perform essential job functions.

(16) Skin.

(A) Category A medical conditions shall include the following:

(i) Metastatic or locally extensive basal or squamous cell carcinoma or melanoma.

(ii) Any dermatologic condition that would not allow for a successful respiratory facepiece test.

(iii) Any dermatologic condition that results in a person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:

(i) Skin conditions of a chronic or recurrent nature (eszema, cysticacne, psoriasis) that cause skin openings or inflammation or irritation of the skin surface.

(ii) Surgery or skin grafting.

(iii) Mycosis fungoides.

(iv) Curanious lupus erthematosus.

(v) Raynaud's phenomenon.

(vi) Scleroderma (skin).

(vii) Vasculitic skin lesions.

(viii) Atopic dermatitis/eczema.

(ix) Contact or seborrheic dermatitis.

(xi) Albinism Dariers Disease, Ichthyosis Marfan's Syndrome, Neurofibromatosis, and other genetic conditions.

(xii) Folliculitis, Pseuro-folliculitis, Miliaria, Keloid folloculitis.

(xiii) Hidradenitis suppurativa, Furuncles, Carbuncles, or Grad IV acne (cystic).

(xiv) Mechano-Bullous Disorders (Epidermolysis Bullosa, Hailey Pemphigus, Porphyria, Pemphigoid.

(xv) Urticaria or Angiodema.

(xvi) Any other skin condition that may result in a person not being able to safely perform essential job functions.

(17) Blood and blood-forming organs.

(A) Category A medical conditions shall include the following:

(i) Hemorrhagic states requiring replacement therapy.

(ii) Sickle cell disease (homozygous).

(iii) Clotting disorders.

(iv) Any other hematological condition that results in a person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:

(i) Anemia.

(ii) Leukopenia.

(iii) Polycythemia vera.

(iv) Splenomegaly.

(v) Any other hematological condition that results in a person not being able to safely perform essential job functions.

(vi) History of thromboebolic disease.

(18) Endocrine and metabolic disorders.

(A) Category A medical conditions shall include the following:

(i) ~~Diabetes mellitus, which is treated with insulin.~~ Type 1 diabetes unless a candidate meets all of the following criteria:

(I) Is maintained by a physician knowledgeable in current management of diabetes mellitus on a basal/bolus (can include subcutaneous insulin fusion pump) regimen using insulin analogs.

(II) Has demonstrated over a period of at least 1 year the motivation and understanding required to closely monitor and control capillary blood glucose levels through nutritional therapyand insulin administration. Assessment of this shall take into consideration the erratic meal schedules, sleep disruptions, and high aerobic and anaerobic workloads intrinsic to firefighting.

(III) Has dilated retinal exam by a qualified ophthalmologist or optometrist that shows no higher grade of diabetic retinopathy than microaneurysms, as indicated on the International Clinical Diabetic Retinopathy Disease Severity Scale.

(IV) Has normal renal function based on a calculated creatinine clearance greater than 60mL/min and absence of proteinuria. (Creatinine clearance can be calculated by use of the Cockroft-Gault or similar formula. Proteinuria is defined as 24-hour urine excretion of greater than or equal to 300mg of protein or greater than or equal to 300mg of albumin per gram of creatinine in a random sample).

(V) Has no automatic or peripheral neuropathy. (Peripheral neuropathy is determined by diminished ability to feel the vibration of a 129 cps tuning fork or the light touch of 10-gram monofilament on the dorsum of the great toe proximal to the nail autohomic neuropathy might be determined by evidence of gastroparesis, postural hypotension, or abnormal tests of heart rate variability.)

(VI) Has normal cardiac function without evidence of myocardial ischemia on cardiac stress testing (to at least 12 METS) by ECG and cardiac imaging.

(VII) Has a signed statement from an endocrinologist knowledgeable in management of diabetes mellitus as well as the essential job functions and hazards of firefighting as described in Section 270:10-1-7 of the administrative rules that the candidate is (1) is being successfully maintained on a regimen consistent with (18) (i) (I) and (II), (2) has achieved stable control of blood glucose as evidenced by Hemoglobin A1C consistently less than 8 when monitored at least twice yearly and shall include evidence of a set schedule for blood glucose monitoring and a thorough review of the data from such monitoring (3) does not have an increased risk of hypoglycemia due to alcohol use of other predisposing factors (4) has had no episodes of severe hypoglycemia (defined as requiring assistance of another) in the preceding 1 year, with no more than one episode of severe hypoglycemia in the preceding 5 years and (5) is certified not have a medical contraindication to firefighting training and operations.

(ii) ~~Diabetes not treated by insulin, which is not controlled asevidenced by Hemoglobin A1C (HbA1C) measurement.~~ Insulin-requiringType 2 diabetes mellitus, unless a candidate meets all of the following criteria:

(I) Is maintained by a physician knowledgeable in current Management of diabetes mellitus.

(II) Has demonstrated over a period of at least 3 months the motivation and understanding required to closely monitor and control capillary blood glucose levels through nutritional therapy and insulin administration. Assessment of this shall take into consideration the erratic meal schedules, sleep disruption, and high aerobic and anaerobic workloads intrinsic to firefighting.

(III) Has a dilated retinal exam by a qualified ophthalmologist or optometrist that show no higher grade of retinopathy than microaneurysms, as indicated on the International Clinical Diabetic Retinopathy Disease Severity Scale.

(IV) Has normal renal function based on a calculated creatinine clearance greater than 60 mL/min and absence of proteinuria. (Creatinine clearance can be calculated by use of the Codroft-Gault or similar formula. Proteinuria is defined as 24-hour urine excretion of greater than or equal to 300mg protein or greater than or equal to 300mg of albumin per gram creatinine in a random sample).

(V) Has no autonomic or peripheral neuropathy. (Peripheral neuropathy is determined by diminished ability to feel the vibration of 128 cps tuning fork or the light touch of a 10-gram monofilament on the dorsum of the great toe proximal to the nail. Autonomic neuropathy can be determined by evidence of gastroparesis, postural hypotension, or abnormal tests of heart ratevariability.

(VI) Has normal cardiac function without evidence of myocardial ischemia on cardiac stress testing (to at least 12 METS) by ECG and cardiac imaging.

(VII) Has signed statement from an endocrinologist knowledgeable in management of diabetes mellitus as well as the essential job functions and hazards of firefighting as described in Section 270:10-1-7 of the administrative rules that the candidate is (1) maintained on a stable insulin regiment and has demonstrated over a period of at least 3 months the motivation and understanding required to closely monitor and control capillary blood glucose levels despit varied activity schedules through nutritional therapy and insulin administration, (2) has achieved stable control of blood glucose as evidenced by Hemoglobin A1C less than 8 when monitored at least twice yearly, which must include evidence of a set schedule for blood glucose monitoring and a thorough review of the data from such monitoring, (3) Doesnot have an increased risk of hypoglycemia due to alcohol use or other predisposing factors, (4) has had no episodes of severe hypoglycemia (defined as requiring assistance of another) in the preceding 1 year with no more than one episode of severe hypoglycemia in the preceding 5 years and (5) is certified not to have a medical contraindication to firefighting training and operations.

(iii) Any endocrine of metabolic condition that results in a person not being able to safely perform job functions.

(B) Category B medical conditions shall include the following:

(i) Diseases of the adrenal gland, pituitary gland, parathyroid gland, or thyroid gland of clinical significance.

(ii) Nutritional deficiency diseases or other metabolic disorder.

(iii) ~~Diabetes mellitus that is well controlled on diet, exercise, and/or oral hypoglycemic agents.~~ Diabetes mellitus, not on insulin therapy, but controlled by diet, exercise, and/or hypoglycemic agents unless all of the following are met:

(I) Has achieved a stable blood glucose as evidenced by Hemoglobin A1C level less than 8 during the prior 3 month period.

(II) If on oral hypoglycemic agents, has had no episodes of severe hypoglycemia (defined as requiring assistance of another) in the preceding year.

(III) Has dilated retinal exam by a qualified ophthalmologist or optometrist that shows no higher grade of diabetic retinopathy than microaneurysms, as indicated on the International Clinical Diabetic Retinopathy Disease Severity Scale.

(IV) Has normal renal function based on a calculated creatinine clearance greater than 60mL/min and absence of proteinuria. (Creatinine clearance can be calculated by use of the Cockroft-Gault or similar formula. Proteinuria is defined as 24-hour urine excretion of greater than or equal to 300mg protein or greater than or equal to 300mg of albumin per gram of creatinine is a random sample).

(V) Has no autonomic or peripheral neuropathy. (Peripheral neuropathy is determined by diminished ability to feel the vibration of a 128 cps tuning fork or the light touch of a 10-gram monofilament on the dorsum of the great toe proximal to the nail. Autonomic neuropathy can be determined by evidence of gastroparesis, postural hypotension, or abnormal tests of heart rate variability.

(VI) Normal cardiac function without evidence of myocardial ischemia on cardiac stress testing (to at least 12 METS) by ECG and cardiac imaging.

(iv) Any other endocrine or metabolic condition that may result in a person not being able to safely perform essential job functions.

(19) Systemic diseases and miscellaneous conditions:

(A) Category A medical conditions shall include the following:

(i) Any systemic condition that results in a person not being able to safely perform essential job functions.

(ii) Reserved

(B) Category B medical conditions shall include the following:

(i) Connective tissue disease, such as dermatomyositis, systemic lupus erythematosus, scleroderma, and rheumatoid arthritis.

(ii) History of thermal, chemical, or electrical burn injury with residual functional deficit.

(iii) Documented evidence of a predisposition to heat stress with recurrent episodes or resulting injury.

(iv) Any other systemic condition that may result in a person not being able to safely perform essential job functions.

(20) Tumors and malignant diseases.

(A) Category A medical conditions shall include the following:

(i) Malignant disease that is newly diagnosed, untreated, or currently being treated.

(ii) Any tumor or similar condition that results in a person not being able to safely perform essential job functions.

(B) Category B medical conditions shall include the following:

(i) Benign tumors.

(ii) History of CNS tumor or malignancy.

(iii) History of head and neck malignancy.

(iv) History of lung cancer.

(v) History of GI or GU malignancy.

(vi) History of bone or soft tissue tumors or malignancies.

(vii) History of hematological malignancy.

(viii) Any tumor or similar condition that may result in a person not being able to safely perform essential job functions.

(21) Psychiatric conditions.

(A) Category A medical conditions shall include the following:

(i) Any psychiatric condition that results in a person not being able to safely perform essential job functions.

(ii) Reserved

(B) Category B medical conditions shall include the following:

(i) A history of psychiatric condition or substance abuse problem.

(ii) Requirement for medications that increase an individual's risk of heat stress, or other interference with the ability to safely perform essential job functions.

(iii) Any other psychiatric conditions that may result in a person not being able to safely perform essential job functions.

(22) Chemicals, drugs, and medications.

(A) Category A medical conditions shall include the following:

(i) Narcotics, including methadone.

(ii) Sedative-hypnotics.

(iii) Drugs that prolong Prothrombin Time, Partial Thromboplastin Time or INR.

(iv) Beta-adrenergic blocking agents~~.~~, high dose diuretics, or central Acting antihypertensive agents (e.g., clonidine).

(v) Respiratory medications: Inhaled bronchodilators, inhaled leukotrienereceptor blockers/antagonists.

(vi) Any chemical drug, or medications that results in a person not being able to safely perform essential job functions.

(vii) Evidence of illegal drug use detected through testing, conducted in accordance with Substance Abuse and Mental Health Service Administration (SAMHSA), shall be a Category A medical condition.

(viii) Evidence of clinical intoxication or measured blood alcohol level that exceeds the legal definition of intoxication according to the AHJ at the time of medical evaluation shall be a Category A medical condition.

(ix) High dose corticosteroids for chronic disease.

(x) Anabolic steroids.

(B) Category B medical conditions shall include the following:

(i) Cardiovascular agents.

(ii) Simulants.

(iii) ~~Psychoactive agents~~ Psychiatric medications.

(iv) ~~Corticosteroids~~ Other than high dose corticosteroids.

(v) Antihistamines.

(vi) Muscle relaxants.

(vii) Any other chemical drug, or medication that results in a person not being able to safely perform essential job functions.

270:10-1-9. Purchase of transferred credited service

~~Effective January 15, 1991, all purchases of transferred credited service pursuant to 11 O.S. Section 49-117.2, shall be based on the actuarial cost of the incremental projected benefits to be purchased.~~ A paid member may purchase of to five years of credited service earned while a member of the Oklahoma Police Pension and Retirement System, the Oklahoma Law Enforcement Retirement System, the Teacher's Retirement System of Oklahoma and the Oklahoma Public Employees Retirement System, provided the member is not eligible to receive retirement credits or benefits from said service in any other public retirement System. Transferred credited service from such retirement system(s) shall not alter the member's normal retirement date or vesting requirements. Transferred credited service shall be added after the member reaches his or her normal retirement date. All purchases of transferred credited service pursuant to 11 O.S. Section 49-117.2, shall be based on the actuarial cost of the incremental projected benefits to be purchased.

(1) The actuarial cost and any tables formulated for the purposes of determining such cost during each calendar year, shall be based on the actuarial assumptions utilized in the actuarial valuation report as of the preceding July1.

(2) The actuarial value shall be based upon the member's age, salary, and service at the time of purchase, together with the earliest age for retirement and actuarially projected salary at the time of retirement. For the purposes of the actuarial cost, it is assumed that all members are married at the time of retirement. If no purchase is made within thirty (30) days the actuarial cost may increase.

(3) For the purpose of this actuarial cost, the member's age shall be rounded up or down to the nearest birthday.

(4) For the purpose of this actuarial cost, the mortality tables shall be formulated as unisex table as used in the actuarial valuation report of the preceding July 1.

(5) In the event a member who chooses to purchase service has been employed less than twelve (12) months, salary shall be annualized based upon the most current completed calendar months of payroll information.

(6) The purchase price for transferred credited service may be paid in installments as provided in 11 O.S. Section 49-117.3. In ~~lieu of installment payments (for a purchase where installment payments are otherwise allowed by Oklahoma state statutes), an active member may elect to make the payment of the actuarial purchase price, repayment of previous withdrawal, purchase of previous non-participating service, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System~~ the event that the member is unable to pay the purchase price by the end of the month immediately following the date of acceptance of his or her application to purchase transferred credited service, the State Board shall permit the member to amortize the purchase price over a period not to exceed sixty (60) months. Said payments shall be made by payroll deductions unless the State Board permits an alternate payment source. The amortization will include 7 $\frac{1}{2}$% interest compounded annually.

(7) ~~Effective January 1, 2002, in~~ In lieu of installment payments (for purchase where installment payments are otherwise allowed by Oklahoma state statutes), an active member may elect to make the payment of the actuarial purchase price, repayment of previous withdrawal, purchase of non-participating service, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System, ~~by use of a direct trustee to trustee transfer from a Code Section 403 (b) annuity, a governmental Code Section 457 plan, and/or a Code Section 401 (a) plan.~~through:

(A) a direct trustee-to-trustee transfer from a Code Section 403 (b) annuity or custodial account, a governmental Code Section 457 plan, and/or a Code Section 401 (a) plan, or

(B) a direct rollover of tax-deferred money from a Code Section 403 (b) annuity or custodial account, a governmental Code Section 457 plan, and/or a traditional or conduit Individual Retirment Account or Annuity (IRA). Monies in Roth IRA'S and Coverdell

Education Savings Accounts cannot be used to purchase transferred credited service. Tax-paid (after-tax) money cannot be used in a direct rollover. Any tax-paid money from aplan or traditional or conduit IRA must be paid to member and then the member may then write a personal check to the System.

(8) ~~Nowithstanding (6) and (7) of this subsection above, purchases may be made by a cash lump sum payment, installment payments (where otherwise allowed by Oklahoma state statutes), and/or by trustee to trustee transfer as described in (6) and (7) above.~~ After installment payments have begun, an active member may make a lump sum payment of the actuarial purchase price with interest due through the date of payment by:

(A) a direct trustee-to-trustee transfer from a Code Section 403 (b) annuity or custodial account, a governmental Code Section 457 plan, and/or a Code Section 401 (a) qualified plan, or

(B) a direct rollover of tax-deferred money form a Code Section 403 (b) annuity or custodial account, a governmental Code Section 457 plan, a qualified Code Section 401 (a) qualified plan, and/or a traditional or conduit Individual Retirement Account or annuity (IRA). Monies in Roth IRA's and Coverdell Education Savings Accounts cannot be used to purchase transferred credited service. Tax-paid (after tax) money cannot be used in a direct rollover. Any tax-paid money from a plan or traditional or conduit IRA must be paid to the member and the member may then write a personal check to the System.

(9) Notwithstanding (7) and (8) of this subsection above, purchases may be made by a cash lump sum payment, installment payments (where otherwise allowed by state statutes, trustee-to-trustee transfer, and/or a direct rollover of tax-deferred money as described in (7) and (8) above.

(10) If the member ceases to make payments, terminates, retires or dies before completing the payments, the member will receive prorated service credit for only those payments the member has made, unless the unpaid balance is paid by the member's estate or successor with interest within six (6) months after the member's death, termination of employment or retirement. The member shall not receive any retirement benefits until the balance is paid, unless his or her beneficiary or the member affirmatively waives the additional six (6) month period in which to pay the unpaid balance.

[OAR Docket #07-902; filed 4-30-07]

TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #07-882]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
360:1-1-1.5 [NEW]
360:1-1-2 [AMENDED]
360:1-1-2.1 [AMENDED]
360:1-1-2.2 [AMENDED]
Subchapter 3. The Board
360:1-3-2 [AMENDED]
360:1-3-3 [AMENDED]
360:1-3-6 [AMENDED]
360:1-3-7 [AMENDED]
360:1-3-8 [AMENDED]
360:1-3-8.1 [AMENDED]
360:1-3-9 [AMENDED]
360:1-3-12 [AMENDED]
Subchapter 5. Hearing Procedures
360:1-5-1 [AMENDED]
360:1-5-2 [AMENDED]
360:1-5-3 [AMENDED]
360:1-5-4 [AMENDED]
360:1-5-5 [AMENDED]
360:1-5-7 [AMENDED]
Subchapter 7. Declaratory Rulings
360:1-7-1 [AMENDED]
360:1-7-2 [AMENDED]
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CONTACT PERSON:
Gary Goff, Attorney, Assistant Administrator, (405) 717-8744

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 JANUARY 1, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

360:1-1-1.5. Definitions

(a) **"The Board"** means the eight [8] members designated by statute [74 O.S. §1303(1)].

(b) **"OSEEGIB"** means the Oklahoma State and Education Employees Group Insurance Board.

360:1-1-2. Rules, cumulative

~~The Board~~The Oklahoma State and Education Employees Group Insurance Board hereinafter "OSEEGIB" will, from time to time, adopt policies and procedures for the implementation of the ~~Rules~~rules set forth herein. Nothing in this chapter shall be read, interpreted, understood or applied so as to affect the validity and enforceability of any additional requirements, statutes, rules or regulations of any other governmental entity, public agency or instrumentality which may be otherwise applicable to those transactions, conduct and facilities regulated herein. The ~~Rules~~rules in this ~~Title~~title shall not be deemed cumulative and supplemental but shall replace all previously promulgated rules of this agency.

360:1-1-2.1. Rules in this title and benefit administration procedures or guidelines as adopted by the ~~Plan~~Board are controlling in all situations

The rules in this title and the benefit administration procedures or guidelines as adopted by the ~~Plan~~Board shall be controlling in all situations, without exception, and any and all written information contained in any handbook, summary or other document prepared by or for ~~the Board~~OSEEGIB shall be superseded and limited by the rules in this title and the benefit administration procedures or guidelines as adopted by the ~~Plan~~Board. ~~[74 O.S. §1321]~~

360:1-1-2.2. Disclaimer of conflicting information

In the event there appears to be a conflict between information contained in the rules in this title and the benefit administration procedures or guidelines as adopted by the ~~Plan~~Board, and any information contained within any handbook or any other written materials, including any letters, bulletins, notices, or any other written document, or oral communication, regardless of the source, such conflict shall always be resolved by a strict application of the rules in this title or the benefit administration procedures or guidelines as adopted by the ~~Plan~~Board, and no conflict will be resolved by application of the erroneous information contained within the handbook or other written document when the result would be contrary to the limitations set forth in the rules in this title, and the benefit administration procedures or guidelines as adopted by the ~~Plan~~Board. All erroneous, incorrect, misleading or obsolete language contained within any handbook or any other written document or oral communication, regardless of the source, shall be void from the inception, and of no effect under any circumstances. ~~[74 O.S. §1321]~~

SUBCHAPTER 3. THE BOARD

360:1-3-2. Special meetings

Special meetings may be called upon written notice of the Chairman or by agreement of any five [5] ~~Members~~members of the Board. Notice of a special meeting is to be delivered to all ~~Members~~members in person or by ~~R~~registered or ~~C~~certified ~~M~~mail not less than seven [7] days prior to the fixed date of the meeting, unless waived.

360:1-3-3. Open Meeting Act

All meetings and notices thereof shall be held in strict accordance with the Open Meeting Act [25 O.S. §§301 et seq., as amended].

360:1-3-6. Board records; release of information

All official records of the Board shall be public records open to public inspection under reasonable circumstances at any reasonable time during business hours by any person, but such records shall not be taken from the ~~Board's~~OSEEGIB office. Copies of public records may be obtained pursuant to the current fee schedule as adopted by the Board.

360:1-3-7. Minutes of the Board

A summary shall be made of all proceedings before the Board which shall show those members present and absent, all matters considered, all actions taken, and the vote of each member on any motion, and shall be ~~made public~~open to public inspection, as prescribed in 360:1-3-6.

360:1-3-8. Confidentiality of medical records

(a) All information, documents, medical reports and copies thereof contained in a member's insurance file held by ~~the Board~~OSEEGIB shall be confidential and shall not be reviewed by unauthorized parties, without written permission of the individual or provider, or by court order. The confidentiality of a member's information is maintained when the member's information held by ~~the Board~~OSEEGIB is utilized for health management and communicated among:

(1) ~~the Board~~employees of OSEEGIB;

(2) ~~the Board's~~OSEEGIB's contracted ~~T~~third ~~P~~party ~~A~~administrators and consultants;

(3) providers to the member and

(4) the member, according to statutory provisions for privilege and confidentiality or written agreements to protect the confidentiality and non-disclosure of the information.

(5) ~~The Board~~OSEEGIB will honor only medical releases signed by a covered employee or dependent within one hundred eighty [180] days of the date the release was signed.

(b) A member's health information is protected by this ~~R~~rule and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy regulations as codified in 45 Code of Federal Regulations Parts 160 and 164.

360:1-3-8.1. Participating entities/business associate protection of confidential health information

(a) The participating entity/business associate may only use and disclose the member's health information for the purposes of a member's treatment, to facilitate payment for Plan benefits or for participating entity/business associate business operations on behalf of the member. The participating entity/business associate may not use or further disclose a member's health information other than permitted by Board rules or described in a written contract between ~~the Board~~OSEEGIB and the participating entity/business associate.

(b) Participating entities/business associates shall protect a member's confidential health information according to the following guidelines. Participating entity/business associate shall:

(1) not use or disclose a member's health information other than permitted in these rules; described in a written contract with ~~the Board~~OSEEGIB or required by law,

(2) ensure that subcontractors or agents of the participating entity/business associate maintain confidentiality of any health information provided to its subcontractors or agents,

(3) not use or disclose confidential health information for employment related actions concerning the member, unless required by law,

(4) notify ~~the Board~~OSEEGIB within five [5] working days when the participating entity/business associate becomes aware of any use or disclosure of a member's health information that is inconsistent with this rule and make an accounting of these disclosures available for ~~the Board~~OSEEGIB and each member,

(5) allow a member to access and review health information on file with the participating entity/business associate and submit amending statements for inclusion in their health information file,

(6) establish procedures to protect a member's health information and account for disclosures not authorized by these rules,

(7) identify the participating entity/business associate employees who may access a member's health information and restrict access to those persons,

(8) return to ~~the Board~~OSEEGIB or destroy a member's health information when no longer required by the participating entity/ business associate, and if not feasible, limit the use or disclosure to the required purposes,

(9) ensure that proper security is in place to protect electronically stored health information and

(10) make internal practices, books and records concerning uses and disclosures of protected health information available for inspection by the appropriate authority. A written contract between ~~the Board~~OSEEGIB and participating entity/business associate shall not limit the participating entity/business associate protection of a member's health information to an extent less than described in this rule.

360:1-3-9. Authorization for release of medical records

Through the submission of claims, each member for whom coverage is applied authorizes, without further notice or consent, ~~the Board~~OSEEGIB to obtain from any provider of medical services, all records and information pertaining to that service which will aid in the proper payment of said claims. ~~The Board~~OSEEGIB is further authorized to use and release to third party payers any information and records so obtained. In all instances, the Rules of Confidentiality shall be applied without regard to the requirements of 360:1-3-8.

360:1-3-12. Application of retiree benefit allowance

When calculating premium rates for the retired population, ~~the Board~~OSEEGIB shall first apply in whole or in part, benefit allowances funded by the retirement systems to offset costs projected for the pharmacy portion of the health insurance plan. Remaining amounts, if any, will then be applied toward the medical coverage premium.

SUBCHAPTER 5. HEARING PROCEDURES

360:1-5-1. Access to Grievance Panel; request for hearing

(a) **Aggrieved covered member.** Any covered member aggrieved regarding the allowance and payment of claims, eligibility and provision of services may request a hearing before the Grievance Panel [hereinafter referred to as Panel] to determine the validity of the grievance. All requests for hearings must be filed within one [1] year from the date the member is notified of a denial of the claim, benefit or coverage. After more than one [1] year from the date the member was notified of a denial of a claim, benefit, or coverage, the matter shall be deemed finally resolved.

(b) **Aggrieved member covered by an HMO.** Any member covered by an HMO is entitled to a hearing before the Panel in the same manner as all other covered members. The member must exhaust the HMO's internal grievance procedure, except for an emergency or if the HMO fails to timely respond, before requesting ~~Board action~~a grievance panel hearing. The member must file, along with his request for hearing, a written certification from the HMO that the member has exhausted said procedure, or a detailed explanation of the emergency or of the HMO's failure to respond.

(c) **Submission of Request for Hearing.** The Request for Hearing shall be in writing on a form provided by ~~the~~

~~Board~~OSEEGIB for such purpose or in writing by the employee if in substantial compliance with the form and shall contain the following information:

(1) Name of employee, Social Security Number and address;

(2) Name of dependent for whom claim was submitted, if not the covered employee;

(3) Name of employee's employing entity, location, and identifying number;

(4) Nature of claim: Health, Dental, Life, Eligibility, Disability, HIPAA or HMO;

(5) Date claim submitted for payment, claim number;

(6) The reason given, if any, by the claims administration contractor for denying the claim in whole or in part; and

(7) A short statement as to the nature of the illness or injury giving rise to the claim.

(d) **Mailing address for submission of Request for Hearing.** The Request for Hearing shall be mailed or delivered to ~~the agency~~OSEEGIB to the attention of Attorney - Grievance Procedures, at 3545 N. W. 58th Street, Suite 110, Oklahoma City, Oklahoma 73112.

360:1-5-2. Notice of hearing

Upon receipt of a Request for Hearing form, a hearing number shall be assigned thereto and notice shall be forwarded to the claims administration contractor by mail at its closest office. The employee shall be notified of the hearing date by ~~C~~certified ~~M~~mail, return receipt requested. A copy of all Rules pertinent to the hearing shall be forwarded with the Notice, along with a statement of ~~C~~claimant's rights and the basis for denial.

360:1-5-3. Prehearing conference

The Attorney representing ~~the Board~~OSEEGIB, the ~~C~~claimant, or his attorney may request a pre-hearing conference to determine legal or factual issues. The Attorney representing ~~the Board~~OSEEGIB may conduct such a conference.

360:1-5-4. The grievance hearing

(a) **Witness list.** Each party must submit, in writing, at least forty-eight [48] hours prior to the date of a grievance hearing a complete list of witnesses he or she intends to call, along with a brief comment as to the nature of the testimony. Witnesses shall not be called to testify at the hearing unless notice has been given to the opposing parties.

(b) **Assignment of Panel and Chairman.** All hearings shall be held before a three-member Grievance Panel, as assigned by the Office of the Administrative Director of the Courts. All hearings shall be conducted in accordance with and be governed by the provisions of the Oklahoma Administrative Procedures Act, 75 O.S. §301-326. At each convening of the Panel, one member shall be designated to act as the Chairman.

(c) **Admissibility of evidence.** Rulings on admissibility of evidence shall be made by the Panel Chairman; provided, however, that the remaining members of the Panel may, by affirmative vote, overrule the Chairman's decision, on their own motion or upon motion of any party to the hearing.

(d) **Oaths and subpoena.** The Chairman of the Panel shall have the authority to administer oaths for obtaining testimony for the hearing; and any member of the Panel or the Attorney representing ~~the Board~~OSEEGIB shall have the authority to issue subpoenas for witnesses or subpoenas duces tecum to compel the production of books, records, papers and other objects for the hearing. Said subpoenas may be served by any duly qualified officer of the law, or any employee of ~~the Board~~OSEEGIB in any manner prescribed for the service of a subpoena in a civil action.

(e) **Court reporter.** The Attorney representing ~~the Board~~OSEEGIB shall cause a recording of the proceedings to be made by a certified court reporter at ~~the agency~~OSEEGIB's expense. If transcribed, such written transcript shall become a part of the official record of the hearing, and a copy shall be furnished to any other party having a direct interest therein at the request and expense of such party. The cost of preparing the written transcript of the hearing and providing a copy of the transcript to the other party shall be paid by the party on whose behalf the written transcript is requested.

(f) **Procedure.** In all hearings, opportunity shall be afforded the party or parties requesting same to respond and present evidence and argument on all issues involved. The hearing shall be conducted in an orderly manner. The party or parties requesting the hearing shall be heard first; those, if any, who oppose the relief sought by the requesting party shall next be heard. Each party shall have the opportunity to present closing arguments.

360:1-5-5. Continuance; disposition; Attorney representation

Any request for continuance may be granted by the Attorney representing ~~the Board~~OSEEGIB or the Panel if requested for any of the following reasons: illness or unavailability of the party requesting the hearing; unavailability or illness of a material witness; unavoidable conflict of schedule or other good cause. All parties to the hearing shall be notified of the continuance as soon as possible.

(1) Unless precluded by law, informal disposition may be made of any individual proceedings by stipulation, agreed settlement, consent order, or default.

(2) Any party shall at all times have the right to be represented by counsel at their own expense, provided such counsel is licensed to practice law by the Supreme Court of Oklahoma.

360:1-5-7. Final order; appeals

(a) **Final Order.** The Panel shall enter a Final Order in all cases heard. The Final Order shall separately state all Findings of Fact, Conclusions of Law and an Order approving or denying the claim.

(b) **District Court appeals.** The Panel's Final Order shall be considered a final decision of ~~the Board,~~OSEEGIB for purposes of appeal. Any party to the hearing has the right to appeal to District Court from Final Orders entered by the

Panel. This appeal shall be governed by the Administrative Procedures Act, 75 O.S. §301, et seq., and by other pertinent statutes such as 74 O.S. §1301, et seq.

SUBCHAPTER 7. DECLARATORY RULINGS

360:1-7-1. Petitions for declaratory rulings

Petitions for declaratory rulings as to the applicability of any rule or order of ~~the agency~~OSEEGIB shall be in writing and must be filed with ~~the Board~~OSEEGIB at least ten [10] days prior to the next regularly scheduled Board meeting. The petition must state with clarity the issues to be decided and any legal authority which may be applicable.

360:1-7-2. Final rulings

~~The Board~~OSEEGIB shall issue a written ~~F~~final ~~R~~ruling within sixty [60] days of hearing a petition for declaratory ruling. The ~~F~~final ~~R~~ruling shall be mailed to the person requesting the ruling and shall be kept on file in the ~~Board~~OSEEGIB office for public inspection.

360:1-7-3. Judicial review

Final declaratory rulings of ~~the Board~~OSEEGIB are subject to judicial review pursuant to the Administrative Procedures Act, in the same manner as individual proceedings.

[OAR Docket #07-882; filed 4-27-07]

TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD
CHAPTER 10. STATE AND EDUCATION EMPLOYEES HEALTH, ~~LIFE, AND~~ DENTAL, VISION AND LIFE PLANS

[OAR Docket #07-883]

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PERMANENT final adoption
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Subchapter 3. Administration of Plans
360:10-3-2 [AMENDED]
360:10-3-3 [AMENDED]
360:10-3-3.1 [AMENDED]
360:10-3-3.5 [AMENDED]
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360:10-3-6.1 [AMENDED]
360:10-3-7 [AMENDED]
360:10-3-13 [AMENDED]
360:10-3-17 [AMENDED]
360:10-3-20 [AMENDED]
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360:10-3-23 [AMENDED]
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Subchapter 5. Coverage and Limitations
Part 1. Policy Provisions
360:10-5-1 [AMENDED]
360:10-5-2 [AMENDED]
360:10-5-3 [AMENDED]
Part 3. ~~Health Benefit Plans~~the Plans
360:10-5-16 [AMENDED]
360:10-5-17 [AMENDED]
360:10-5-20 [AMENDED]
PART 5. LIFE BENEFITS
360:10-5-30 [AMENDED]
360:10-5-32 [AMENDED]
360:10-5-33 [AMENDED]
360:10-5-34 [AMENDED]
Part 7. Limitations and Exclusions for Life Plans
360:10-5-45 [AMENDED]
Part 9. Dental Benefits, Limitations, and Exclusions
360:10-5-56 [AMENDED]
360:10-5-61 [AMENDED]
Part 11. Medicare Supplement
360:10-5-75 [AMENDED]
360:10-5-76 [AMENDED]
360:10-5-77 [AMENDED]
360:10-5-79 [AMENDED]
Part 13. Coordination of Health and Dental Benefits
360:10-5-86 [AMENDED]
360:10-5-87 [AMENDED]
360:10-5-89 [AMENDED]
360:10-5-90 [AMENDED]
Part 15. Subrogation
360:10-5-100 [AMENDED]
Subchapter 7. Termination of Benefits
360:10-7-1 [AMENDED]
Subchapter 9. Cobra Health Insurance Continuation
360:10-9-1 [AMENDED]
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Changes to Chapter 10 clarify definitions, conform rules to recent benefit changes, clarify language, and clarify existing plan exclusions.
CONTACT PERSON:
Gary Goff, Attorney, Assistant Administrator, (405) 717-8744

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 JANUARY 1, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

360:10-1-2. Definitions

The following words and terms as defined by ~~the Insurance Board~~OSEEGIB, when used in this chapter, shall have the following meaning, unless the content clearly indicates otherwise:

"~~Active~~Current employee" means an employee in the service of a participating entity who receives compensation for services actually rendered and is listed on the payrolls and personnel records of said employer, as a current and present employee, including employees who are otherwise eligible who are on approved leave without pay, not to exceed twenty-four [24] months. An education employee absent from employment, not to exceed eight [8] years, because of election or appointment as local, state, or national education association officer who is otherwise eligible prior to taking approved leave without pay will be considered an eligible, ~~active~~current employee. A person elected by popular vote will be considered an eligible employee during his tenure of office. Eligible employees are defined by statute. [74 O.S. §1303 and §1315]

"Administrative error" occurs when the coverage elections the member makes are not the same as those entered into payroll for deduction from the member's paycheck. This does not include untimely member coverage elections or member misrepresentation. When such an administrative error results in underpaid premiums, full payment to ~~the Board~~OSEEGIB shall be required before coverage elected by the member can be made effective. If overpayment occurs, ~~the Board~~OSEEGIB shall refund overpaid funds to the appropriate party.

"Administrator" means the Administrator of the Oklahoma State and Education Employees Group Insurance Program or his designee.

"Allowable fee" means the maximum allowed amount that OSEEGIB may pay to a provider for a specific procedure, service or supply.

"Attorney representing ~~the Board~~OSEEGIB" means any attorney designated by the Administrator to appear on behalf of ~~the Board~~OSEEGIB.

"The Board" means the eight [8] members designated by statute [74 O.S. §1303(1)].

"Business Associate" shall have the meaning given to "Business Associate" under the Health Insurance Portability and Accountability Act of 1996, Privacy Rule, including, but not limited to, 45 CFR §160.103.

"Carrier" means the State of Oklahoma.

"Comprehensive benefits" means benefits which reimburse the expense of facility room and board, other hospital services, certain out-patient expenses, maternity benefits, surgical expense, including obstetrical care, in-hospital medical care expense, diagnostic radiological and laboratory benefits, providers' services provided by house and office calls, treatments administered in providers' office, prescription drugs, psychiatric services, Christian Science practitioners' services, Christian Science nurses' services, optometric medical services for injury or illness of the eye, home health care, home nursing service, hospice care and such other benefits as may be determined by ~~the Board~~OSEEGIB. Such benefits shall be provided on a copayment or coinsurance basis, the insured to pay a proportion of the cost of such benefits, and may be subject to a deductible that applies to all or part of the benefits as determined by ~~the Board~~OSEEGIB. [74 O.S. §1303 (14)]

"Cosmetic procedure" means a procedure that primarily serves to improve appearance.

"Custodial care" means treatment or services regardless of who recommends them or where they are provided, that could be given safely and reasonably by a person not medically skilled. These services are designed mainly to help the patient with daily living activities. These activities include but are not limited to: personal care as in walking, getting in and out of bed, bathing, eating by spoon, tube or gastrostomy, exercising, dressing, using toilet, preparing meals or special diets, moving the patient, acting as companion or sitter, and supervising medication which can usually be self-administered.

"Dependent" means the primary member's spouse (if not legally separated), including common law. Dependents also include a member's unmarried child up to the child's ~~nineteenth [19th]~~twenty-third [23rd] birthday, regardless of residence, provided that the member is primarily responsible for the child's support. This includes a stepchild or child who lives with the member in a regular parent-child relationship, or a child living with the member in a normal parent-child relationship where the member has adopted the child, or has been appointed guardian by a court. It also includes a stepchild who does not live with the member, when the primary member's spouse is covered by the Plan and has been ordered by a court to provide health insurance for his/her children, regardless of residence. ~~A child may be provided coverage up to the age of twenty-five [25] if the child is dependent upon the member for support and is enrolled as a full-time student at an accredited secondary school, college, university or institution of higher learning.~~ A child may also be covered regardless of age if the child is incapable of self-support because of mental or physical incapacity that existed prior to reaching age ~~nineteen [19]~~twenty-three [23]. Coverage is not automatic and must be approved with a review of medical information. A disabled dependent deemed disabled by Social Security does not automatically mean that this disabled dependent will meet the Plan requirements. [74 O.S. §-1303-(13)]. ~~A person cannot be enrolled as a principal insured and also as a dependent for any benefit options except dependent life.~~

"Durable medical equipment" means medically necessary equipment, prescribed by a provider, which serves a therapeutic purpose in the treatment of an illness or an injury. Durable medical equipment is for the exclusive use of the afflicted member and is designed for prolonged use. Specific criteria and limitations apply.

"Emergency" means a sudden and unexpected symptom that a prudent lay person, who possesses an average knowledge

of health and medicine, could reasonably expect that the absence of immediate medical attention would result in placing the health of the individual or others in serious jeopardy.

"Enrollment period" means the time period in which an individual may make an election of coverage or changes to coverage in effect.

"Facility" means any hospital, rehabilitation facility, skilled nursing facility, midwifery center, ambulatory surgical center, home health agency, infusion therapy entity, hospice program, durable medical equipment vendor, radiology facility, dialysis facility, or laboratory which is duly licensed under the laws of the state of operation, Medicare certified as applicable, and accredited by a nationally recognized accreditation organization that is approved by state or federal guidelines.

"Former participating employees and dependents" means eligible former employees who have elected benefits within thirty [30] days of termination of service and includes those who have retired, or vested through an eligible State of Oklahoma retirement system, or who have completed the statutory required years of service, or who have other coverage rights through Consolidated Omnibus Budget Reconciliation Act (COBRA) or the Oklahoma Personnel Act. An eligible dependent is covered through the participating former employee or the dependent is eligible as a survivor or has coverage rights through COBRA.

"~~Health benefit plans~~The Plan or Plans" means the self-insured Plans by the State of Oklahoma for the purpose of providing health benefits to eligible members and may include such other benefits as may be determined by ~~the Board~~OSEEGIB. Such benefits shall be provided on a coinsurance basis~~,~~ and the insured ~~to pay~~pays a proportion of the cost of such benefits.

"Health information" means any information, whether oral or recorded in any form or medium: (1) that relates to the past, present or future physical or mental condition of a member; the provision of health care to a member; or the past, present or future payment for the provision of health care to a member; and (2) that identifies the member or with respect to which there is a reasonable basis to believe the information can be used to identify the member.

"Home health care" means a plan of continued care of an insured person who is under the care of a provider who certifies that without the Home ~~H~~health ~~C~~care, confinement in a hospital or skilled nursing facility would be required. Specific criteria and limitations apply.

"Hospice care" means a concept of supportive care for terminally ill patients. Treatment focuses on the relief of pain and suffering associated with a terminal illness. Specific criteria and limitations apply.

"Initial enrollment period" means the first thirty [30] days following the employee's ~~entry on duty~~entry-on-duty date. A group initial enrollment period is defined as the thirty [30] days following the enrollment date of the participating entity.

"Insurance Coordinator" means Insurance/Benefits Coordinator for Education, Local Government, and State Employees.

"Maintenance care" means there is no measurable progress of goals achieved, no skilled care required, no measurable improvement in daily function or self-care, or no change in basic treatment or outcome.

"Medically necessary" means services or supplies which are provided for the diagnosis and treatment of the medical and/or mental health/substance abuse condition and complies with criteria adopted by ~~the Insurance Board~~OSEEGIB. Direct care and treatment are within standards of good medical practice within the community, and are appropriate and necessary for the symptoms, diagnosis or treatment of the condition. The services or supplies must be the most appropriate supply or level of service, which can safely be provided. For hospital stays, this means that inpatient acute care is necessary due to the intensity of services the member is receiving or the severity of the member's condition, and that safe and adequate care cannot be received as an outpatient or in a less intensified medical setting. The services or supplies cannot be primarily for the convenience of the member, caregiver, or provider. The fact that services or supplies are medically necessary does not, in itself, assure that the services or supplies are covered by the Plan.

"Members" means all persons covered by one or more of the group insurance plans offered by OSEEGIB including eligible current and qualified former employees of participating entities and their eligible covered dependents. ~~Qualified former employees include those who have retired or vested through an eligible State of Oklahoma retirement system, or who have completed the statutory required years of service, or who have other coverage rights through COBRA or the Oklahoma Personnel Act.~~

"Mental health and substance abuse" means conditions including a mental or emotional disorder of any kind, organic or inorganic, and/or alcoholism and drug dependency.

"Network provider" means a practitioner who or facility that is duly licensed under the laws of the state in which the "~~N~~network ~~P~~provider" operates and/or is accredited by a nationally recognized accrediting organization approved by state or federal guidelines, and has entered into a contract with ~~the Board~~OSEEGIB to accept scheduled reimbursement for covered health care services and supplies provided to members.

"Open enrollment period" means a limited period of time as approved by either the Board or the Legislature in which a specified group of individuals are permitted to enroll.

"Option period" means the time set aside at least annually by ~~the Board~~OSEEGIB in which enrolled plan members may make changes to their enrollments. Eligible but not enrolled employees may also make application for enrollment during this time. Enrollment is subject to approval by ~~the Board~~OSEEGIB.

"Orthodontia limitation" means an individual who enrolls in the Dental Plan without prior group dental coverage being in effect the day before Dental Plan coverage begins will not be eligible for any orthodontia benefits for services occurring within the first twelve ~~(12)~~[12] months after the effective date of coverage. Services continuing or occurring after the twelve ~~(12)~~[12] month waiting period will be paid by prorating or according to plan benefits.

"OSEEGIB" means the Oklahoma State and Education Employees Group Insurance Board.

"Other hospital services and supplies" means services and supplies rendered by the hospital that are required for treatment, but not including room and board nor the professional services of any provider, nor any private duty, special or intensive nursing services, by whatever name called, regardless of whatever such services are rendered under the direction of the hospital or otherwise.

"Participating entity" means any employer or organization whose employees or members are eligible to be participants in any plan authorized by or through the Oklahoma State and Education Employees Group Insurance Act.

"~~Pre-existing~~Preexisting provision" means a charge incurred while eligible for benefit coverage under the ~~Health Benefit Plan~~Plan which resulted from any injury or illness which was treated, diagnosed, or medication prescribed within a period of one hundred eighty [180] days prior to commencement of ~~Health Benefit Plan~~the Plan benefit coverage.

"Primary insured" means the member who first became eligible for the insurance coverage creating eligibility rights for dependents.

"Prosthetic appliance" means an artificial appliance that replaces body parts that may be missing or defective as a result of surgical intervention, trauma, disease, or developmental anomaly. Said appliance must be medically necessary.

"Provider" means a physician or other practitioner who is duly licensed or certified under the laws of the state in which the Provider practices and is recognized by this Plan, to render health and dental care services and/or supplies.

"Skilled care" means treatment or services provided by licensed medical personnel as prescribed by a provider. Treatment or services that could not be given safely or reasonably by a person who is not medically skilled and would need continuous supervision of the effectiveness of the treatment and progress of the condition. Specific criteria and limitations are applied.

SUBCHAPTER 3. ADMINISTRATION OF PLANS

360:10-3-2. Open enrollment period

The Board or the Legislature may, at its discretion, declare an open enrollment period during which time eligible individuals may enroll in optional coverage on behalf of themselves or eligible dependents.

360:10-3-3. ~~Insurance Coordinator~~Insurance/Benefits Coordinator for Education, Local Government, and State Employees

The appointing authority or governing body of each participating entity shall designate an ~~Insurance Coordinator~~Insurance/Benefits Coordinator and at least one [1] Alternate to properly enroll members of the entity. Any information given by an ~~Insurance Coordinator~~Insurance/Benefits Coordinator shall not supersede or modify the statutes, Rules in this title or any ~~Insurance Coordinator~~Insurance/Benefits Coordinator Guide governing the Group Insurance Plan. ~~Insurance Coordinator~~Insurance/Benefits Coordinator representing retirees may be provided by the retirement system from which the retiree is receiving benefits. It is the employee's duty to notify his ~~Insurance Coordinator~~Insurance/Benefits Coordinator of a change in eligibility for himself, his spouse or his dependents. It is the Coordinator's duty to notify ~~the Insurance Board~~OSEEGIB within ten [10] working days of the employee's notice of change. ~~The Insurance Board~~OSEEGIB is not obligated to accept untimely notifications of change, and may elect to refuse to permit said changes.

360:10-3-3.1. Right of recovery

(a) **Error in payment.** Any benefits paid erroneously by ~~the Board~~OSEEGIB are fully recoverable from the recipient. No such erroneous payment shall constitute waiver or estoppel or result in any equitable obligation by ~~the Board~~OSEEGIB to pay any benefits which are not specifically payable according to the rules in this title and the benefit administration procedures or guidelines as adopted by the ~~Plan~~Board. [74 O.S. §1321]

(b) **Excessive amounts.** Whenever payments have been made by ~~the Plan~~OSEEGIB with respect to ~~A~~allowable ~~E~~expenses in a total amount, at any time, in excess of the maximum amount of payment necessary at the time to satisfy the intent of this part, the Administrator shall have the right to recover such excess, from any person, organization or company with respect to whom such payments were made.

(c) **Right to Audit.** ~~The Board~~OSEEGIB reserves the right to audit any enrollment or ~~Insurance Election Form~~insurance change form and to require that supporting documentation showing the participant's eligibility, including (but not limited to) proof of a qualifying event, be provided. ~~The Board~~OSEEGIB may retroactively terminate coverage on any individual who was not eligible to be enrolled in the Plan and recover any claims paid on the individual's behalf.

360:10-3-3.5. Responsibility for premium payment

(a) **Participating entity premiums.** Employer and employee premiums for participating entities are due to ~~the Board~~OSEEGIB no later than the tenth ~~(10th)~~[10th] day of each month following the month of coverage. The first payroll deductions for insurance premiums of individuals paid bi-weekly will be withheld from the first pay period that extends into the month during which insurance coverage begins. It is ultimately the employing agency's responsibility to check and verify that premiums paid to ~~the Board~~OSEEGIB are a true and accurate accounting of the member's approved coverage selections. If premium for coverage selected by the employee differs from the amount deducted from the member's check, then the participating entity is responsible for payment to ~~the Board~~OSEEGIB for any deficiencies in premium for the member's coverage. Any shortage of premiums due and payable will result in suspension of benefits for Plan participants.

(1) An employee may continue coverage while on approved ~~L~~leave ~~W~~without ~~P~~pay status for up to twenty-four

~~(24)~~[24] months as long as the entity continues to remit premiums with the entity's monthly payment. The twenty-four ~~(24)~~[24] month limitation shall be extended to eight ~~(8)~~[8] years for education employees who are absent from employment because of election or appointment as a local, state, or national education association officer. Except as protected by federal statute, employees on leave whose premiums are not remitted in a timely manner shall have their coverage terminated at the end of the month for which last payment was received. If coverage is terminated for non-payment all coverage is terminated. Upon return to work, the employee may re-enroll. All Plan limitations apply and evidence of insurability is required to re-enroll in any life coverage.

(2) Provided that if a State employee is on leave without pay due to an injury or illness arising out of the course of his employment, the employee may continue the insurance during the maximum period of the time allowed by law, and the employing agency shall pay the entire employee premium.

(3) An employee may continue coverage while on suspension without pay for up to ninety ~~(90)~~[90] days following the date of suspension or the duration of the administrative appeals process, whichever is greater, as long as premiums are remitted by the entity for the coverage.

(4) Collecting any employee share from an employee on leave without pay or suspension without pay is the responsibility of the entity.

(b) **Premiums remitted by retirement systems.** Any State of Oklahoma retirement system establishing a withholding system for its retired employees shall forward the retirement contribution and employees' withholding to ~~the Board~~OSEEGIB by the tenth [10th] of the month following the month for which payment is due. This same time frame also applies to members receiving disability benefits.

(c) **Premiums remitted by former employees, COBRA participants or survivors.** Premiums are due by the twentieth ~~(20th)~~[20th] day of the month of coverage. When a former employee begins to receive retirement benefits, all premiums due, in excess of the retirement system contributions, shall be paid by the member and deducted from the retirement check. If the total monthly premium for a retired member is the same as or greater than the retirement benefit, the member shall remit the entire amount due directly to ~~the Board~~OSEEGIB.

360:10-3-4. Cancellation of coverage

After notice and opportunity for a hearing according to the Oklahoma Administrative Procedures Act and these rules, coverage may be cancelled.

(1) **Cancellation of coverage due to non-payment of premium.** If payment is not received by the end of the month in which the payment is due, coverage shall be canceled effective the end of the month for which the last premium was received. ~~The Board~~OSEEGIB may reinstate coverage within sixty [60] days after the date ~~the Board~~OSEEGIB canceled coverage, if it is shown that the failure to pay premiums was not due to the member's negligence, subject to payment of any required premiums. The employee shall be notified in writing by ~~the Board~~OSEEGIB of cancellation of coverage and provided an opportunity for a hearing.

(2) **Cancellation of coverage due to insufficient funds.** In the event the member's payment is returned or refused due to insufficient funds or closed account, coverage may be cancelled unless the check is returned due to no fault of the member.

(3) **All coverage canceled.** If coverage is canceled for either of the reasons listed above all coverage will be terminated. When the employee is eligible to re-enroll, all Plan limitations apply and evidence of insurability is required to enroll in any life coverage.

(4) **Cancellation of coverage for Medicare members.** ~~Cancellation of coverage for Medicare members.~~ If payment is not received by the twentieth [20th] of the month, Medicare members will be notified of the delinquency and given thirty [30] days to make the payment. If payment is not made within the thirty [30] day grace period, coverage will be terminated effective the first [1st] day of the following month.

360:10-3-6.1. Underpaid premiums

When premiums are underpaid for coverage which has been selected and provided, future payments will first be applied to the shortage and the shortage will be rolled forward. Employees may not choose to retroactively cancel coverage that was selected. The full amount of the underpaid premium shall be submitted within sixty [60] days after the date ~~the Board~~OSEEGIB notifies the insured or the insured's employer of the error. When the underpayment occurs because an employee has entered into a salary reduction agreement pursuant to the Internal Revenue Code, and the insured's employer has erroneously failed to withhold and submit the proper premiums to ~~the Board~~OSEEGIB, the insured's employer shall be solely responsible for the payment of outstanding underpaid premiums to ~~the Board~~OSEEGIB. Failure to submit premiums could result in loss of coverage in accordance with 360:10-7-1(a)(3).

360:10-3-7. Refunds for overpayment

Any refund of payment for any premium overpayment shall be made only when ~~the Board~~OSEEGIB is notified in writing no later than sixty [60] days after the actual date of the overpayment, unless lack of notification is beyond control as determined by ~~the Board~~OSEEGIB.

(1) Refunds for overpayment due to administrative error, as limited and defined in the rules in this ~~Title~~title, of the ~~Insurance Coordinator~~Insurance/Benefits Coordinator or the payroll clerk for ~~the agency~~OSEEGIB, shall be made at one hundred percent [100%].

(2) Refunds on behalf of employees shall be paid to the entity. In order to receive a refund the entity must have a credit balance.

360:10-3-13. Payment of health, dental and life benefits

(a) Life insurance benefits are payable to the beneficiary designated by the employee. Premiums due and payable at the time of the insured's death may be withheld from life insurance benefits. Life proceeds are not assignable, except a beneficiary may assign proceeds in an amount equal to the decedent's burial expenses. If no beneficiary form is on file ~~at the Board~~with OSEEGIB, benefits will be paid to the decedent's estate.

(b) Health and dental benefits are payable to the employee or the provider. If any health or dental benefits remain unpaid at the employee's death, ~~the Board~~OSEEGIB, may at its option, pay the benefits to the employee's estate or to any one or more relatives such as follows: spouse, father, mother, children, brothers or sisters. Any such payment will constitute complete discharge of ~~the Board's~~OSEEGIB's obligation to the extent of the amount paid.

(c) If a minor or person otherwise legally incapable of giving a valid receipt of discharge of any payment is selected as a beneficiary, a guardian must be appointed by a court of competent jurisdiction before benefits shall be paid.

360:10-3-17. Examination

~~The Board~~OSEEGIB reserves the right and opportunity to examine the person whose injury or sickness is the basis of a claim as often as may be reasonable during the ~~pendency~~pending of the claim.

360:10-3-20. Rights of eligible former employees to continue in the Group Health, ~~and~~ Dental, and Vision Insurance ~~Program~~ Plan

(a) Health, dental and vision coverage may be elected as determined by State Statute or retained at the time of termination of employment from an employer who participates in that health, dental or vision coverage, if such election to continue in force or begin is made within thirty [30] days from the date of termination of service, and if the following conditions are met:

(1) The former employee either retires or has a vesting right with a State funded retirement plan, or has the requisite years of service with an employer participating in the Plan.

(2) The election must be received by ~~the Board~~OSEEGIB no later than thirty [30] days after the date of termination of service.

(3) Group coverage must be continuous in order to waive the ~~pre-existing~~preexisting conditions or orthodontia limitations when retaining or electing coverage.

(b) If an eligible former employee does not elect coverage at the time of termination of employment, or subsequently drops the coverage that was elected:

(1) The coverage may not be reinstated at a later date, except as permitted for former State employees exercising insurance retention rights available through a reduction in force (RIF) severance agreement.

(c) A participating eligible former employee cannot add dependents to coverage after termination of employment, except as follows:

(1) During an ~~O~~open ~~E~~enrollment ~~P~~period; or

(2) If the dependent is newly acquired. New dependent[s] or additional dependent coverage must be added within thirty [30] days after acquiring the new dependent[s]. For a new spouse/dependent who is Medicare eligible, the spouse/dependent may be added to coverage at the first ~~O~~option ~~P~~period after the marriage.

(3) If the dependent has lost other group health or dental insurance coverage and notice has been given to ~~the Board~~OSEEGIB within thirty [30] days after the loss of the other coverage. In this situation, coverage will begin without penalty for ~~pre-existing~~preexisting conditions and orthodontia limitations, provided group coverage was in effect and there is no break in coverage.

(d) During an ~~O~~option ~~P~~period, covered former employees may make changes to their existing benefits but not add additional benefits with the exception of vision coverage.

(e) If an eligible former employee has a spouse who is participating in ~~the Program~~the Plan as an employee of a participating entity, the former employee may transfer his or her health, dental and vision coverage to be dependent coverage under the spouse at any time, so long as the following conditions are met:

(1) Coverage must remain continuous; and

(2) All eligible dependents must be insured unless they have other verifiable group coverage.

(3) The eligible former employee, at a later date, may defer or transfer his or her insurance coverage from dependent status back to former employee status if coverage with ~~the Program~~the Plan has remained continuous, and the former employer of the eligible former employee continues to participate in ~~the Program~~the Plan.

(f) An individual who has retained health, dental or vision coverage who is returning to ~~active~~current employment for a participating entity and meets the eligibility criteria for ~~an active~~a current employee is entitled to transfer his present coverage to that employer as long as the employer is a participant in the benefit transferred. The employee may retain his present life coverage and may add life coverage so long as the total amount of life coverage does not exceed the guaranteed issue amount. Evidence of insurability must be submitted and approved for any amount exceeding guaranteed issue or the amount previously held in retirement, whichever is greater.

(g) An eligible former employee who has retained any coverage and is returning to work for a participating entity but does not meet the eligibility criteria for ~~an active~~a current employee is not entitled to coverage through that employer.

(h) In the event an otherwise eligible former employee returns to ~~active~~current employment who did not retain health coverage upon termination of employment, ~~he must meet~~ the eligibility requirements of a new employee must be met in order to obtain coverage through the employer. Such individuals must work for three [3] years in order to qualify for retaining any benefits not previously elected upon ceasing ~~active~~current employment when they re-retire. This includes members who

terminated from employers not participating in the ~~Insurance Program~~Group Plans authorized by the Oklahoma State and Education Employees Group Insurance Act [74 O. S. §1301] when they originally ended employment.

360:10-3-20.1. Coverage for eligible non-vested employee~~employee.~~

A non-vested employee must apply for continuation of coverage thirty [30] days after the date of termination of employment. Coverage must be continuous and eligibility to continue must be based upon the length of service required by statute. [74 O.S. §1316.2; 74 O.S. §1316.3]

360:10-3-22. Effective dates of coverage for ~~active~~current employees

An employee other than an education employee is eligible to participate if not classified as seasonal or temporary and whose actual performance of duties normally requires one thousand [1,000] hours per year or more. An education employee who is a member of or eligible to participate in the Oklahoma Teacher's Retirement System and working a minimum of four [4] hours per day or twenty [20] hours per week may participate in ~~the plan~~the Plan. Part-time education employees are those who meet the requirements of a half-time employee as defined by the Oklahoma Teachers Retirement System. Eligible employees shall be covered on the first [1st] day of the month following the month in which the employee is ~~employed~~ in an eligible status.

(1) If an employee is absent due to accident or illness on the date the employee coverage would normally become effective, benefits shall not be payable until the employee returns to the job. If the employee is absent from work because of a holiday, vacation or nonscheduled working day and the employee was on the job on a scheduled working day immediately preceding the effective date, this effective date will not be changed. An employee coming to work during the latter part of a payroll period who is not able to complete an ~~Insurance Election Form~~insurance change form should be placed on the appropriate plans on the first [1st] day of the following month with employee only coverage, so that the employee life, dental and health will be in effect. Members may add optional coverages within the member's initial thirty [30] day enrollment period to be effective the first [1st] day of the month following the date the member enrolled for optional coverages.

(2) Participating entities shall forward members' enrollment information and any changes to enrollment information during the initial enrollment period to the Administrator within ten [10] days after the last day a member may enroll.

(3) If an employee leaves a participating entity and is hired by another participating entity within the following thirty [30] day period, premiums must be forwarded to ~~the Board~~OSEEGIB to avoid a break in coverage.

(4) An enrolled member who terminates employment or is in ~~L~~leave ~~W~~without ~~P~~pay status and whose spouse is also an enrolled employee may transfer coverage to their spouse to be insured as a dependent. The health, dental, vision and basic life may be transferred. The employee's basic life amount will transfer to a dependent spouse amount. If there are dependent children, they must also be insured unless they have other verifiable group coverage.

(5) An employee that terminates from a participating employer and is hired by another participating employer shall be entitled to be treated as a new employee with new health, dental, vision and life benefit options available. A rehired employee returning to a former employer has new health, dental and vision benefit options only after a thirty [30] day break in coverage and may be subject to ~~pre-existing~~preexisting and orthodontia limitations.

(6) Except as provided by statute, an individual employee may choose ~~to~~ not to be enrolled in the health or dental plans or may disenroll from these plans because of other group health or dental coverage or by reason of eligibility for military or Indian health services within thirty [30] days after the date the employee becomes eligible for the other group health or dental coverage. Such employees who subsequently lose the other group coverage or eligibility for military or Indian health services may enroll in the corresponding health or dental plans offered through ~~the Board~~OSEEGIB if the election is made no later than thirty [30] days ~~following~~after the date of ~~the~~ loss of the other coverage. At the insured's option, in order to avoid a break in coverage and the application of the ~~pre-existing~~preexisting condition exclusion or dental limitation, coverage under this Plan shall become effective on the first [1st] day of the month during which the insured actually lost the previous group coverage, provided the insured pays the full premium for that month. Otherwise, coverage shall become effective under this Plan on the first [1st] day of the month following the election of health and/or dental coverage, and any break in coverage shall result in the application of the ~~pre-existing~~preexisting condition exclusion or dental limitations.

360:10-3-23. Participating entities

(a) **Participation in plans offered by ~~the Board~~OSEEGIB.** Entities electing to participate in the dental, life, vision, or disability plans offered by ~~the Board~~OSEEGIB must participate in the health plan, unless the Administrator grants a waiver. Coverage offered by ~~the Board~~OSEEGIB to eligible education employees will also be offered to all elected members of the school board for that entity.

(b) **Enrollment in group term life benefits.** An entity may elect to participate in the group term life coverage offered by ~~the Board~~OSEEGIB. This includes basic and optional supplemental life coverage for the employee and dependent life coverage. Entities electing to participate in the life plan offered by ~~the Board~~OSEEGIB must participate in the health plan, unless the Administrator grants a waiver.

(c) **Non-participating entities in other group plans.** The group plans offered by ~~the Board~~OSEEGIB shall not be offered to any entity which is participating in any other group insurance program, regardless of the percentage or number of

employees eligible to enroll, unless the Administrator grants a waiver.

(d) **Right of Board to approve or deny applications for coverage.** ~~The Board~~OSEEGIB shall retain the right to approve or deny any employer group applications for coverage. Upon approval, coverage will become effective at 12:01 a.m. on the first [1st] day of the month following the month in which approval is granted unless a subsequent month is requested and approved in advance.

(e) **Coverage without ~~pre-existing~~preexisting conditions.** When an entity enrolls~~,~~ all employees of the new entity are covered without penalty for ~~pre-existing~~preexisting conditions, if they had prior group health insurance coverage which can be verified by ~~the Board~~OSEEGIB.

(f) **Enrollment of all individuals presently insured.** Upon the group initial enrollment of an institution of higher education, all individuals presently insured by the institution's previous group health plan may become enrolled. If any such individual does not meet the eligibility requirements of this plan, they are eligible for coverage only for the remaining period of the institution's contractual liability. The institution must provide written proof of its contractual liability at the time of said individual's enrollment.

360:10-3-24. Dependents

Eligible dependents may be enrolled by new employees with their coverage effective concurrently with the employee's coverage if the member has signed the ~~Insurance Election Form~~insurance change form requesting such coverage within the member's initial thirty [30] day enrollment period. Dependent coverage not elected at that time shall not become available until the next enrollment period. Dependents are not eligible for any coverage in which the member is not enrolled. When one eligible dependent is covered, all eligible dependents must be covered for all elected coverage. The spouse or dependent may elect not to be covered when the spouse or dependent is covered by other verifiable group health, dental or vision coverage, or for religious beliefs. The spouse may elect not to be covered provided a statement signed by the employee and the spouse is submitted to the ~~Insurance Coordinator~~Insurance/Benefits Coordinator. Dependent's benefits shall only be covered under one primary insured except in the case of dependent life.

(1) In order for an employee to obtain coverage at birth for his or her own newborn child, a completed ~~Insurance Election Form~~insurance change form and any appropriate premium for the month of birth must be furnished the ~~Insurance Coordinator~~Insurance/Benefits Coordinator within thirty [30] days after the date of birth of the newborn. Claims may not be processed or paid for the newborn until the newborn has been properly enrolled in the Plan.

(2) If optional coverage is not selected until after the employee's effective date, but within the member's ~~I~~initial thirty [30] day ~~E~~enrollment ~~P~~period, the optional coverage will be effective the first [1st] day of the month following the date the optional coverage was selected.

(3) In the event a dependent is hospital confined on the day his health coverage would otherwise become effective, health coverage for that dependent is not effective until the day following his or her final discharge from the hospital.

(4) Eligible dependents who lose other group health, dental or vision insurance coverage may be added to the equivalent health, dental or vision coverage offered through ~~the Board~~OSEEGIB within thirty [30] days after the loss of other group insurance coverage without penalty for ~~pre-existing~~preexisting conditions or orthodontia limitations if those dependents have been continuously covered by other group insurance, or have been eligible for treatment at military or Indian health facilities. Notice and proof of the loss of other coverage and termination date of other coverage must be submitted within thirty [30] days after the loss of the other coverage. At the insured's option, in order to avoid a break in coverage and the application of the ~~pre-existing~~preexisting condition exclusion or orthodontia limitations, coverage under this Plan shall become effective on the first [1st] day of the month during which the insured actually lost previous coverage, provided the insured pays the full premium for that month. Otherwise, coverage shall become effective under this Plan on the first [1st] day of the month following notice of the loss of other coverage, and any break in coverage will result in the application of the ~~pre-existing~~preexisting condition exclusion and orthodontia limitations.

(5) Newly acquired dependents may be added if the election is made within thirty [30] days after the qualifying event, or during the annual enrollment period as established by ~~the Board~~OSEEGIB. Documentation proving the qualifying event may be required. The effective date of coverage will be the first [1st] day of the month following notification to ~~the Board~~OSEEGIB of the qualified event except for newborn or adopted dependent children.

(6) Provided all other eligibility requirements are satisfied, newly born or adopted eligible dependent children, eligible children for which guardianship has been newly granted to the insured or the insured's spouse, or eligible children of which the insured has been newly granted physical custody pending adoption, guardianship, or other legal custody, may be covered from the first [1st] day they are placed in the insured's physical custody, only upon payment of the full monthly premium for that individual, not prorated, and only after written notice has been given to ~~the Board~~OSEEGIB within thirty [30] days after obtaining physical custody. Copies of all documents relating to the matter are also required.

(7) At the insured's option, coverage for eligible dependent children newly placed in the insured's physical custody may become effective on the first [1st] day of the second month following placement, if written notice is provided within thirty [30] days after the date of ~~following~~ placement, or at the next ~~O~~option ~~P~~period as established by ~~the Board~~OSEEGIB.

(8) If the spouse of a member is insured by this Plan as a dependent and such spouse has been ordered by a court to provide health insurance for his children, such children

may be insured when they meet all requirements of and provide positive evidence in accordance with Board policy within thirty [30] days after the official filing date of the court order.

(9) In the absence of a court order indicating adoption, guardianship, legal separation or divorce, an insured may apply for coverage on other minor children living with the insured provided: (1) the insured submits a copy of his most recent federal income tax return showing the child was listed as the insured's dependent for income tax deduction purposes; and (2) if the last federal income tax form requested above does not list the child, the insured shall be required to provide ~~an~~a Declaration of Dependency form prescribed by the Plan; and (3) coverage, when approved, shall begin on the first [1st] day of the month following approval, and will never apply retroactively; and (4) all other applicable eligibility requirements must be satisfied; and (5) all necessary premiums have been paid. ~~The Plan~~OSEEGIB shall have the right to verify the dependent's status, to request copies of the insured's federal income tax returns from time to time, and to discontinue coverage for such dependents if they are found to be ineligible for any reason.

360:10-3-25. Termination of dependent coverage

(a) **Waiting period of twelve [12] months.** If coverage is discontinued for dependents, the employee cannot reapply for the discontinued coverage for any dependents again for at least twelve ~~(12)~~[12] months. Reinstated coverage shall be subject to penalty for ~~pre-existing~~preexisting conditions or orthodontia limitations.

(b) **Loss of other group health, dental, vision or life insurance coverage.** The twelve [12] month requirement does not apply when the dependent has lost other group health, dental, vision and/or life insurance coverage and is seeking reinstatement pursuant to Rule 360:10-3-24(4).

(c) **Dependent reaches age ~~nineteen (19)~~twenty-three [23].** Coverage will be terminated for dependents reaching age ~~nineteen (19)~~twenty-three [23] except disabled dependents who are incapable of self-support and who have been deemed eligible for coverage by OSEEGIB.~~unless a certificate of student status has been received. If at a later date, a student status letter is received, the dependent may be reinstated the first of the month following the month of notification of student status. If there is a break in coverage then pre-existing and orthodontia limitations may apply.~~

360:10-3-26. Withdrawal from plan; termination or loss of coverage

(a) **Withdrawal from plan.** Those eligible entities participating on a voluntary basis that elect to withdraw cannot re-enter ~~the Program~~the Plan for one [1] year following the date of withdrawal except for extraordinary circumstances. Notice of the election to withdraw must be provided to ~~the Board~~OSEEGIB thirty [30] days prior to the actual withdrawal date.

(b) **Termination of coverage due to insolvency of carrier.** Any eligible entities who have withdrawn and purchased other coverage, then have been notified by their other group health and/or dental insurance carrier that coverage is being terminated due to insolvency of the carrier may re-enroll within thirty [30] days after the loss of coverage by submitting a completed application form which must be approved by ~~the Board~~OSEEGIB prior to enrollment.

(c) **Individual member withdrawal and re-enrollment.** An individual employee who discontinues coverage on himself cannot re-enroll in any coverage for himself or his dependents for a period of twelve [12] months. Subsequent to the end of this twelve [12] month period, he may reapply for coverage offered by the Oklahoma State and Education Employees Group Insurance Board provided that he is eligible through a participating entity. The ~~pre-existing~~preexisting condition and orthodontia limitations will apply.

(d) **Loss of other group health, dental or life insurance coverage.** The twelve ~~(12)~~[12] month requirement does not apply when the individual member has lost other group health, dental and/or life insurance coverage and is seeking reinstatement pursuant to Rule 360:10-3-26(c).

360:10-3-27. Continuation of coverage for survivors

(a) The surviving dependents of a deceased employee who was on ~~active~~current work status or authorized leave at time of death, or of a participating retiree, or any person who has elected to receive a vested benefit under the Oklahoma Public Employees Retirement ~~s~~System, the Oklahoma Teachers Retirement System, the Uniform Retirement System for Justices and Judges, or the Oklahoma Law Enforcement Retirement system or is eligible to continue in force the life insurance coverage following retirement or termination of employment with the required minimum years of service with a participating employer, or who meets each and every requirement of the State Employees Disability Plan, may continue the health or dental benefits in force provided said dependents pay the full cost of such coverage and they were covered as eligible dependents at the time of such death. Such election must be made within sixty [60] days after death and coverage must be continuous. The eligibility for said benefits shall terminate for the surviving children when such children cease to qualify as dependents under the provisions of this plan.

(b) The surviving spouse of a deceased employee who was on active work status or authorized leave at time of death, or a surviving spouse of a participating retiree, or surviving spouse of any person who has elected to receive a vested benefit under the Oklahoma Public Employees Retirement System, the Oklahoma Teachers Retirement System, the Uniform Retirement System for Justices and Judges, or the Oklahoma Law Enforcement Retirement system or is eligible to continue in force the life insurance coverage following retirement or termination of employment with the required minimum years of service with a participating employer, or who meets each and every requirement of the State Employees Disability Plan, and who had elected the optional dependent life benefit prior to his or her death, may continue the dependent life coverage for the surviving spouse and children that were covered as dependents

on the date of deceased employee's death, provided the surviving spouse pays the full cost of such coverage and the surviving spouse and children were eligible dependents on the date of the deceased employee's death. Such election must be made within sixty [60] days after the date of the deceased employee's death and coverage must be continuous. The eligibility for life benefits shall terminate for the surviving spouse's children when the children cease to qualify as dependents under the provisions of this plan.

(1) Upon the death of the surviving spouse, life benefits granted under this paragraph are payable to the beneficiary designated by the surviving spouse.

(2) Upon the death of any covered dependent children under this paragraph, life benefits are payable to the surviving spouse.

(3) The amount of life insurance coverage elected by the surviving spouse shall not exceed the amount elected by the deceased employee prior to the date of the employee's death.

(4) Coverage for all dependent children of the surviving spouse, if any, terminates simultaneously with the death of the surviving spouse or termination of the surviving spouse's life insurance coverage.

360:10-3-27.1. Mid-year benefit election changes

(a) Mid-year elections will be allowed in accordance with and under those circumstances stated within Title 26, Section 125 of the Internal Revenue Code. The determination of Title 26, Section 125, Internal Revenue Code compliance for the ~~active~~current employee will be through certification from the employer.

(b) ~~The Board~~OSEEGIB will accept any change for any ~~active~~current employee certified as being compliant by the employer of that ~~active~~current employee so long as the notification of change is received by ~~the Board~~OSEEGIB within thirty [30] days of the employee's mid-year plan election. The employer must further certify that the documentation supporting compliances is available to ~~the Board~~OSEEGIB and will be provided upon written request.

(c) For all other members not on ~~active~~current employee status or whose employer does not operate his employee benefit plan under a Section 125 plan, the rules for mid-year changes will be subject to the Section 125 guidelines.

(d) In all cases, mid-year election changes will only be considered in the event of a qualifying status change as described within Title 26, Section 125 of the Internal Revenue Code. All other changes not in conjunction with a qualifying event can only be made during the annual Option Period.

360:10-3-28. Corrections to benefit elections

Members shall review their confirmation of coverage statement to ensure that the coverage elected is correct. Any corrections shall be submitted to the member's ~~Insurance Coordinator~~Insurance/Benefits Coordinator and ~~the Board~~OSEEGIB within sixty ~~(60)~~[60] days of the election. Errors reported after the sixty ~~(60)~~[60] days shall be effective the first [1st] day of the month following the notification of the error.

360:10-3-29.1. Double coverage prohibited

An eligible person shall not be insured as a primary insured and also as a dependent for any benefit options except dependent life, nor can any dependent be covered simultaneously by more than one primary insured. Double enrollment, whether it occurs intentionally or by error, shall be deemed void from the inception, and OSEEGIB reserves the right to decide which form of single enrollment coverage to allow, whether primary or dependent.

360:10-3-33. Basic disclosure plan for Medicare beneficiaries

(a) The following words and terms as defined by ~~the Board~~OSEEGIB, when used in this section, shall have the following meaning: "Medicare beneficiary" means individuals eligible for HealthChoice Medicare plan coverage who are also entitled to Medicare benefits as designated by the United States Social Security Administration.

(b) In order to assure Medicare beneficiaries with an understanding of the medical and pharmacy benefits provided by, and the operation of, the HealthChoice Medicare plans; ~~the Oklahoma State and Education Employees Group Insurance Board (hereinafter the Board~~OSEEGIB~~)~~ shall maintain, adopt, and implement a basic disclosure plan for Medicare beneficiaries. This basic disclosure plan includes but is not limited to informational materials such as:

(1) A Medicare beneficiary benefits handbook providing a summary of medical and pharmacy benefits available under ~~the Board's~~OSEEGIB's Medicare HealthChoice plan. Such handbooks shall be updated when material benefits or covered services change, or when reductions occur. A separate notification of material changes will be sent to all Medicare beneficiaries in a timely fashion prior to the updating of the Medicare beneficiary benefits handbook.

(2) A pre-enrollment package which shall be provided to all plan eligible Medicare beneficiaries. The pre-enrollment package shall, within a reasonable person's determination, be written in clear and understandable language providing the Medicare beneficiary detailed and necessary information upon which to make a selection of coverage for an upcoming plan year.

(3) A confirmation of benefit coverage form which will be distributed in a timely fashion after enrollment of a Medicare beneficiary, and by which HealthChoice shall notify the Medicare beneficiary of the plan coverage ~~he will be covered under,~~ for the upcoming year. The confirmation of benefit form shall further detail any identified ~~pre-existing~~preexisting exclusions, and provide a description of an appeal process.

(4) An explanation of benefit determination letter explaining the outcome of each medical or pharmacy claim processed for payment or denial. In the case of denial the explanation of benefit determination letter shall provide

information of the appeals process available to the Medicare beneficiary.

(5) Material which provides all Medicare beneficiaries with basic disclosure information on special enrollment rights, medical child support orders, and any Medicare service or benefit that ~~the Board~~OSEEGIB by law has been directed to provide.

SUBCHAPTER 5. COVERAGE AND LIMITATIONS

PART 1. POLICY PROVISIONS

360:10-5-1. Selection of health plans

(a) **Requirements for selection of HMO.** Eligible employees may select either the ~~S~~state's ~~C~~comprehensive ~~H~~health ~~P~~plan (HealthChoice) or an HMO option. In order to select an HMO option, the employee must reside or be employed within the selected HMO's service area. The HMO election will apply not only to the employee, but also to all covered dependents. Eligible retirees, vested, non-vested, COBRA or survivor members and eligible dependents must reside within the selected HMO's service area to participate in the HMO.

(b) **Selection of HMO during enrollment period.** A choice of ~~C~~comprehensive ~~B~~benefits or the HMO may be made on an annual basis by the member during the enrollment period as set by ~~the Board~~OSEEGIB. The eligibility requirements set by ~~the Board~~OSEEGIB as applied to the ~~C~~comprehensive health plan will apply to the HMO. Eligible members in all cases~~,~~ will retain eligibility for ~~D~~dental, ~~B~~basic ~~L~~life and AD&D. Selection of the ~~C~~comprehensive health plan or the HMO option will not affect eligibility for ~~L~~life and AD&D, ~~D~~dependent ~~D~~dental, or ~~D~~dependent Life.

360:10-5-2. Schedule of ~~B~~benefits and benefit administration procedures or guidelines as adopted by ~~the Plan~~OSEEGIB

All benefits for plans offered through ~~the Board~~OSEEGIB as described in the rules in this title shall be paid according to the ~~S~~schedule of ~~B~~benefits and benefit administration procedures or guidelines as adopted by ~~the Plan~~OSEEGIB. The ~~S~~schedule of ~~B~~benefits and benefit administration procedures or guidelines as adopted by ~~the Plan~~OSEEGIB shall be available for inspection by the public during regular office hours at 3545 N. W. 58, Suite 110, Oklahoma City, Oklahoma 73112.

360:10-5-3. Approval for emergency treatment by non-network providers

Members may have benefits available for medical emergencies when non-network services occur. Notification to ~~the Plan~~OSEEGIB is required.

PART 3. ~~HEALTH BENEFIT PLANS~~THE PLANS

360:10-5-16. Plan limits

(a) **Deductible.** Covered members or dependents may be required to meet a calendar year deductible. Only covered charges will apply to the deductible.

(b) **Family deductible.** The family deductible is met when covered family medical expenses combined exceed the Plan's specified amount. No further deductible will be required from any covered participant for the remainder of the calendar year.

(c) **Out-of-pocket expenses.** Per person and family maximum calendar year out-of-pocket expenses are limited under HealthChoice to the percentage based coinsurance only. Copayments which have been established at specific dollar amounts will continue to apply after the out-of-pocket percentage based coinsurance maximum has been met.

(d) **Network out-of-pocket maximum.** ~~The plan~~When the member or dependent exceeds the specified out-of-pocket calendar year maximum OSEEGIB will pay one hundred percent [100%] of ~~eligible charges~~the allowable fee for treatment provided by a network provider.~~, once the member or dependent exceeds the specified out-of-pocket calendar year maximum.~~ The one hundred percent [100%] payment of ~~eligible charges~~the allowable fee will be made by ~~the plan~~HealthChoice for the remainder of the calendar year. Network out-of-pocket maximum accumulations also apply to the non-network out-of-pocket maximum.

(e) **Non-network out-of-pocket maximum.** ~~The plan~~The Plan will pay one hundred percent [100%] of ~~eligible charges~~the allowable fee for treatment provided by a non-network provider, once the member or dependent exceeds the specified out-of-pocket calendar year maximum. The one hundred percent [100%] payment of ~~eligible charges~~the allowable fee will be made by ~~the plan~~the Plan for the remainder of the calendar year. Non-network out-of-pocket accumulations also apply to the network out-of-pocket maximum. Unlike network providers, non-network providers have no contractual obligation to limit members' financial responsibility after HealthChoice has paid the claim. HealthChoice processes claims based on limited allowable fees to network and non-network providers. Allowable fees are not the same as charges billed by providers. Network providers have agreed with HealthChoice to write off the remainder of their fees after all payments from HealthChoice and the member's deductible, copay and coinsurance have been determined. However, non-network providers have no write-off agreement with HealthChoice, which means the member remains responsible for paying all outstanding billed costs for treatment which have not been paid by HealthChoice. In most cases, this leaves the member responsible for paying a substantial out-of-pocket fee for treatment by the non-network provider.

(f) **Lifetime maximum benefit.** There is a lifetime maximum benefit that will be paid by ~~the plan~~the Plan for a member or dependent, with regard to pharmacy benefits.

(g) **Treatment by non-network providers.** Any treatment at a non-network provider will remain subject to the fee schedule or any other form of maximum claim payment limitation. Claims paid pursuant to the benefit administration procedures or guidelines as adopted by ~~the Plan~~OSEEGIB at any non-network hospital or provider are subject to the limited maximum

allowable fee in every case, regardless of the reason why the member sought and received treatment at the non-network provider, and will usually result in substantial out-of-pocket expenses to the insured. Exceptions allowed by Statute at 74 O.S. §§1304(12) and (13) may be made, when appropriate.

360:10-5-17. Covered charges

Items which will be considered for payment under the ~~S~~state's comprehensive health plan (HealthChoice) will be referred to as ~~C~~covered ~~C~~charges that are medically necessary and are as follows:

(1) **Hospital services.** Charges made by a hospital for:

(A) Semi-private room and board;

(B) Other hospital services and supplies used for treatment;

(C) Charges for use of ~~I~~intensive ~~C~~care ~~F~~facility, ~~C~~coronary ~~C~~care ~~F~~facility and other special care facilities;

(D) Outpatient expense ~~[~~incurred within twenty-four [24] hours of a surgical operation or injury~~]~~.

(2) **Provider's services.** Charges for the services of a duly qualified provider for:

(A) Performing a surgical procedure;

(B) In-hospital medical treatment by a provider other than the surgeon;

(C) Care and treatment of an illness;

(D) Approved preventive medical treatment.

(3) **Skilled Nurse facility expense.** Coverage for facility expenses applies only when the skilled nursing care to be provided is medically necessary as evidenced by a written statement from the attending provider and approved by the managed care vendor. The maximum number of days per benefit period shall be no greater than one hundred [100] days.

(4) **Skilled Nurse care.** Skilled Nurse care that is rendered in the home must be medically necessary as evidenced by a written order and treatment plan from the attending provider and approved by the ~~Health Care Management Unit~~Health Care Management Division. Services must be provided by an agency that is Medicare certified as applicable, and accredited by a nationally recognized accreditation organization that is approved by state or federal guidelines. The maximum number of visits per benefit period shall be according to the benefit administration procedures or guidelines as adopted by ~~the plan~~OSEEGIB.

(5) **Dentist's or oral surgeon's services.** Charges made by a duly qualified dentist or oral surgeon for treatment of fractures and dislocations of the jaw, and for cutting procedures and treatment covered under the ~~O~~oral ~~S~~surgery ~~B~~benefit. Dental services by network providers shall be covered by HealthChoice for oral surgeries and related expenses which are covered medical benefits.

(6) **Oral surgery.** Reimbursement for oral surgeries for removal of exostosis, tumors, or cysts when medically necessary; for surgical correction of prognathism, retrognathism, hyperplasia, temporomandibular joint dysfunction, dysfunctional mandibular disorder. Hospital confinement and related ancillary services [including anesthesia] for dental surgery when the confinement is necessary for illness, severe disability, a minor eight [8] years of age or under, or other health conditions, even though the surgery itself may not be covered.

(7) **Rehabilitative care.** Charges for medical care that are considered primarily rehabilitative will be covered under the Plan. Out-of-hospital care must be prescribed by a provider and must begin within twelve [12] months after the onset of the condition being treated. Inpatient care must be rendered in a facility Medicare certified as applicable, and accredited by a nationally recognized accreditation organization that is approved by state or federal guidelines. Both inpatient and outpatient care must be approved.

(8) **Outpatient expense.** This coverage includes services and supplies provided by the hospital or licensed surgical center, or any center duly licensed for performing certain other surgical procedures, within twenty-four [24] hours following and in connection with a surgical procedure. The limit for ~~O~~outpatient ~~E~~expense incurred for any one surgery is stated in the benefit administration procedures or guidelines as adopted by ~~the Plan~~OSEEGIB.

(9) **Hospice care.** Professional services provided by personnel recognized by this Plan as practitioners of the healing arts will be reimbursed according to the benefit administration procedures or guidelines as adopted by ~~the Plan~~OSEEGIB. Specific criteria and limitations apply.

(10) **Approval of exceptional claims.**

(A) The ~~Health Care Management Unit~~Health Care Management Division may recommend exceptions to the benefits administration plan for situations which would otherwise, be denied or subject to limited coverage.

(B) Each request for exception must be reviewed by the ~~Health Care Management Unit (HCMU)~~Health Care Management Division on an individual basis. All responsibility for providing the documentation necessary to complete the review falls to the member. Recommendations will then be given to the Medical Director and Administrator who must both review and approve in writing all such exceptions. Any such approval of exceptions shall not establish a precedent for future requests. All requests shall confirm that the requested exception is:

(i) medically necessary, and

(ii) within the standards of the community, and

(iii) cost effective, and/or

(iv) in compliance with all criteria as established by the Medical Director or designee.

360:10-5-20. Health plan limitations and exclusions

For the health plans provided by ~~the Board~~OSEEGIB, there is no coverage for expenses incurred for or in connection with any of the items listed below:

(1) Expenses incurred, within one hundred eighty [180] days following the effective date of any employee's or a dependent's coverage under the Plan, resulting from

or in any way related to a bodily injury, sickness or condition for which the covered member received treatment or incurred expenses during the one hundred eighty [180] day period immediately preceding the effective date of their coverage. This paragraph shall not apply to any member continuously covered under a previous group health insurance plan, or eligible to use military medical facilities, or was eligible to use Indian health services medical facilities. The employee is responsible to furnish ~~the Board~~OSEEGIB with satisfactory written evidence of such other coverage or eligibility and its termination date.

(2) Expenses incurred prior to the effective date of an individual's coverage, or for expenses incurred during a period of confinement which had its inception prior to the effective date of an individual's coverage hereunder.

(3) Injury or any sickness which is covered under an "~~E~~extended ~~B~~benefits" provision of the previous group health coverage, until such time as such individual has exhausted all extended benefits available thereunder.

(4) Hospitalization or other medical treatment furnished to the insured or dependent after coverage has terminated.

(5) Confinement to a facility unless approved by ~~the Board~~OSEEGIB or its designee.

(6) Medical and surgical services and supplies which are in excess of the fee schedule for such service and supply.

(7) Expenses to the extent that the insured person is reimbursed or is entitled to reimbursement; or is in any way indemnified for such expenses by or through any public program, State or Federal, or any such program of medical benefits sponsored and paid for by the Federal Government or any agency or subdivision thereof.

(8) Bodily injury or illness arising out of or in the course of any employment not specifically excluded by 85 O.S. §2.1 or 2.6 (of the Workers' Compensation Act).

(9) Any treatment or procedure considered experimental or investigational. This restriction will also apply to any facility, appliance, device, equipment or medication.

(10) Medical and/or mental health treatment of any kind, including hospital care, medications, or any medical care or medical equipment which is excessive or where medical necessity has not been proven.

(11) Medications available for purchase without a written prescription.

(12) Medical care and supplies for which no charge is made or no payment would be requested if the insured individual did not have this coverage.

(13) Complications from any non-covered or excluded treatments, items or procedures.

(14) Any medication, device, or procedure, not FDA approved for general use or sale in the United States.

(15) Surgical procedures or treatment performed for cosmetic or elective reasons unless such procedure is specifically included as a ~~C~~covered ~~C~~charge or is necessary as a result of an accident. Coverage must have been continuous from the date of the accident to the date of corrective surgery.

(16) Dental expenses unless incurred as the result of an accidental bodily injury to natural teeth or gums while the coverage is in effect. Coverage must have been continuous from the date of the accident to the date of corrective surgery. Broken or lost artificial teeth, bridges or dentures, are not eligible.

(17) Illness, injury, or death as a result of committing or attempting to commit an assault or felony, including participation in a riot or insurrection as an aggressor.

(18) Intentionally self-inflicted injury, or for attempted suicide whether sane or insane except when the injury results from a physical or mental medical condition covered under the health plan.

(19) Wrongful act or negligence of another when an employee or dependent has released the responsible party. However, this exclusion may be waived in individual cases, at ~~the Plan's~~OSEEGIB's option, for good cause, or if circumstances are such that refusal to pay the claim would create an extreme financial hardship on the employee or dependent.

(20) All other conditions, services, procedures, treatments, expenses, items, and supplies excluded by ~~the Board's~~OSEEGIB's ~~B~~benefit ~~G~~guidelines.

PART 5. LIFE BENEFITS

360:10-5-30. Term life coverage

(a) **Group Term Life Benefits.** A former employee who is reemployed by the same participating employer within twenty-four ~~(24)~~[24] months after the date of termination of previous employment shall not be enrolled for a greater amount of life insurance than the individual had at the time of termination of previous employment with the employer, unless the individual provides satisfactory evidence of insurability. The amount of coverage provided by the employer is specified in the benefit administration procedures or guidelines as adopted by ~~the Plan~~OSEEGIB. In the event of death, the proceeds of this coverage are payable to the beneficiary listed on the most recently signed beneficiary designation subject to the limitations in Title 15. [15 O.S. ~~§~~§178] If no beneficiary form is on file at ~~the Board~~OSEEGIB, benefits will be paid to the decedent's estate.

(b) **Unlimited contestability period.** There shall be no time limitation imposed upon ~~the Board~~OSEEGIB, during which coverage based on evidence of insurability submitted to ~~the Board~~OSEEGIB can be contested, if it is found that materially erroneous, false, inaccurate, or misleading information was provided in order to obtain optional or supplemental coverage in excess of any guaranteed amounts of coverage. In the event ~~the Board~~OSEEGIB determines coverage was granted based upon erroneous, false, inaccurate or misleading information, and that such information was material to ~~the Board's~~OSEEGIB's providing any optional or supplemental coverage, ~~the Board~~OSEEGIB shall extinguish its liability by tendering a refund of premiums paid to the insured or the beneficiary.

360:10-5-32. Optional dependent life coverage

~~Active~~Current employees. ~~Active~~Current employees may select life insurance coverage for eligible dependents if the employee is enrolled in basic life. This coverage does not include ~~A~~accidental ~~D~~death or ~~D~~dismemberment benefits. This benefit is available even if the dependent is a participating employee.

360:10-5-33. Optional supplemental life coverage for eligible employees

(a) **Supplemental life coverage.** Supplemental life coverage is available for eligible employees who are covered by the ~~B~~basic ~~T~~term ~~L~~life ~~C~~coverage until their termination of employment.

(b) **Enrollment.** At the time of ~~I~~initial ~~E~~enrollment, ~~S~~supplemental ~~L~~life may be requested up to the pre-established level set forth in the benefit administration procedures or guidelines as adopted by ~~the Plan~~OSEEGIB, without submitting ~~E~~evidence of ~~I~~insurability. All ~~S~~supplemental ~~L~~life insurance requested which exceeds the pre-established level will require ~~E~~evidence of ~~I~~insurability. Coverage selected in the ~~S~~supplemental ~~L~~life insurance program begins on the first [1st] day of the month following the date of employment. Optional coverages not selected within the member's ~~I~~initial ~~E~~enrollment ~~P~~period may be added only during the next enrollment period. Members who waive or do not select ~~S~~supplemental ~~L~~life insurance coverage shall be required to obtain approval of current ~~E~~evidence of ~~I~~insurability to obtain coverage at a later date. Coverage obtained under this provision will be subject to certain additional restrictions as adopted by ~~the Plan~~OSEEGIB. Individuals who waived this coverage because they were covered by other group life insurance coverage will be allowed to enroll without being subject to these additional restrictions if they request the coverage in writing and supply proof of the loss of other group coverage within thirty [30] days following the loss of the other group life coverage.

(c) **Changes in levels of coverage.** Increases or reductions in coverage limits (except termination of coverage) are only accepted during the ~~O~~option ~~P~~period. Beneficiary changes may be made at any time, but must be communicated to ~~the Plan~~OSEEGIB in writing. All changes in coverage levels will be subject to the benefit administration procedures or guidelines as adopted by ~~the Plan~~OSEEGIB.

(d) **Waiver of life insurance premiums.** In the event the employee becomes disabled, life insurance premiums may be waived for employee and dependent life insurance coverage. Provider certification shall be required, as specified by ~~the Plan~~OSEEGIB, and premium waiver shall start on the first [1st] day of the month after the employee has been disabled for thirty [30] consecutive days, and shall continue for as long as the employee remains disabled. The waiver shall terminate on the earliest of the following events: the employee has been found to be able to return to ~~active~~current duty in any capacity by any provider; the employee returns to any active duty for any period of time; the employee changes in status to ~~inactive~~former or retired; the employee notifies ~~the Plan~~OSEEGIB in writing that life insurance coverage is to be terminated; the employee is terminated for any reason, including, but not limited to resignation or discharge from his or her position; any termination of life insurance coverage occurs as set forth in 360:10-7-1.

(e) **Accidental Death and Dismemberment and loss of sight benefit.** The basic term life and the first twenty thousand dollars [$20,000] of the ~~S~~supplemental ~~L~~life coverage includes the ~~A~~accidental ~~D~~death and ~~D~~dismemberment and loss of sight benefit and will pay a scheduled benefit in the event of accidental death and dismemberment or loss of sight injury within ninety [90] days after the date of accident or accidental injury. Death must be a direct result of the accidental bodily injury independent of all other causes.

360:10-5-34. Rights of retired and vested employees to continue life insurance coverage

(a) **Continuation of coverage.** Any person who retires or who has elected to receive a vested benefit under the provisions of the Oklahoma Public Employees Retirement System, the Oklahoma ~~t~~Teachers Retirement System, the Uniform Retirement System for Justices and Judges, or the Oklahoma Law Enforcement Retirement system or is eligible to continue in force the life insurance coverage following retirement or termination of employment with the required minimum years of service with a participating employer, or who meets each and every requirement of the State Employees Disability ~~Program~~Plan, or the spouse or dependent of any such employee, may continue in force life benefits purchased prior to severance in a face amount of no less than one-fourth [1/4] of the basic life coverage amount in five thousand dollar [$5,000.00] increments, and the full amount of any additional life insurance that was in effect prior to the date of retirement. Said individual shall pay actuarially determined cost of such coverage and shall make such election within thirty [30] days following the date of severance. Said election to continue coverage becomes effective on the first [1st] day of the month following termination of ~~active~~current employment.

(b) **Decrease or termination of coverage.** Coverage may be decreased or terminated after severance from ~~active~~current employment, but shall not be increased or reinstated after severance, except as permitted by rule or statute.

(c) **Unavailability to retirees, vested or eligible non-vested members or dependents.** ~~A~~accidental ~~D~~death and ~~D~~dismemberment and ~~L~~loss of ~~S~~sight ~~B~~benefits are not available to retired, vested, or eligible non-vested members or dependents.

PART 7. LIMITATIONS AND EXCLUSIONS FOR LIFE PLANS

360:10-5-45. Limitations and exclusions for life plans

For the life plans provided by ~~the Board~~OSEEGIB, there is no coverage for expenses incurred for or in connection with any of the items listed below:

(1) There is no coverage for ~~E~~employee ~~L~~life or ~~D~~dependent ~~L~~life ~~B~~benefits during the first twenty-four

[24] months of coverage when death is the result of suicide. The twenty-four [24] month exclusion for death by suicide will begin on the effective dates of all elective increases in coverage, and will apply to all increased amounts of coverage which have been in effect for less than twenty-four [24] months on the date of the act causing the insured's death.

(2) There is no coverage for ~~A~~accidental ~~D~~death and ~~D~~dismemberment ~~B~~benefits or ~~L~~loss of ~~S~~sight ~~B~~benefits when such occurs as a result of the following:

(A) Suicide, attempted suicide or intentional self destruction, or intentionally self-inflicted injury while sane or insane,

(B) Committing an assault or felony, including participation as an aggressor in a riot or insurrection,

(C) Wholly or partly, directly or indirectly, by disease, physical or mental, or by medical or surgical treatment or the diagnosis of any of the foregoing,

(D) Wholly or partly, directly or indirectly by bacterial infection, other than septic infection of and through a visible wound sustained solely through external and accidental means,

(E) Any narcotic, drug, poison, gas or fumes, voluntarily taken, administered, absorbed or inhaled, unless prescribed for the exclusive use of the deceased, or administered by a licensed provider for a legal purpose,

(F) Hang gliding, sky diving and flying experimental aircraft.

PART 9. DENTAL BENEFITS, LIMITATIONS, AND EXCLUSIONS

360:10-5-56. Plan limits

(a) **Deductible.** The ~~D~~deductible ~~A~~amounts are the out-of-pocket expenses for a class of benefits incurred by the employee for himself or on behalf of a covered dependent during each calendar year.

(b) **Family deductible.** During any benefit period, ~~the Plan~~OSEEGIB will pay a percentage of the ~~C~~covered ~~C~~charges incurred which exceed the family ~~D~~deductible ~~A~~amount, if applicable.

(c) **Maximum benefits.** The dental plan has a maximum benefit on a calendar year basis as established by the Board. The ~~M~~maximum ~~B~~benefit ~~D~~during ~~L~~lifetime ~~O~~orthodontia is the maximum amount that may be paid for covered expenses incurred by the member or dependent during his or her lifetime.

360:10-5-61. Dental ~~Limitations~~limitations and exclusions

For the dental plans provided by ~~the Board~~OSEEGIB, there is no coverage for expenses incurred for or in connection with any of the items listed below:

(1) Dental care and supplies for which there are no charges made or no payment would be required if the insured individual did not have coverage.

(2) Charges incurred after the covered individual's benefit ends.

(3) Dental care or supplies which are furnished in a facility operated under the direction of or at the expense of the U.S. Government [or its Agency] or by a provider employed by such a facility.

(4) Dental care or supplies to the extent that they are payable under other provisions of the policy.

(5) Charges for any dental services and supplies which are in excess of the fee schedule and deductible for such services and supplies.

(6) Adult orthodontics without a diagnosis of temporomandibular joint dysfunction.

(7) Cosmetic procedures.

(8) Medical expenses for the treatment of temporomandibular joint dysfunction.

(9) Medical services treating an oral condition.

(10) Dental care or supplies resulting from taking part in committing or attempting to commit an assault or felony.

(11) Dental care or supplies due to sickness or injury covered by Workers' Compensation, occupational disease law or similar laws.

(12) Dental care or supplies as a result of Act of War declared or undeclared, Insurrection, or release of nuclear energy.

(13 Expenses relating to an intentionally self-inflicted injury, except when the injury results from a physical or mental medical condition covered under the health plan.

(14) Charges for treatment of accidental injury to natural teeth or gums.

(15) All other conditions, services, procedures, treatments, expenses, items, and supplies excluded by ~~the Board's Benefit guidelines~~OSEEGIB's benefit guidelines.

(16) Late enrollees in the dental plan have a one (1) year waiting period before being eligible for orthodontic benefits.

PART 11. MEDICARE SUPPLEMENT

360:10-5-75. Medicare Supplement and Medicare Part D Prescription Drug Plan (PDP)

~~Participants in the State and Education Employees Group Health Plan who are retired, vested or in any of the other non-active categories, and their covered dependents~~ Members who are eligible for Medicare will be assumed to ~~have~~be enrolled in both Parts A and B of Medicare. Benefits payable under the Medicare Supplement will be determined in accordance with this assumption. The Medicare Supplement is either connected with a Medicare Part D Prescription Drug Plan or contains pharmacy benefits that are considered creditable coverage by Medicare.

360:10-5-76. Primary insurer of ~~active~~current employees

~~The State Plan~~The health plan(s) offered through OSEEGIB may ~~will~~ be primary for ~~active~~current employees

eligible for Medicare and their eligible covered dependents as set forth in the Federal statutes governing Medicare.

360:10-5-77. Limitations of Medicare ~~s~~Supplement

The Medicare ~~s~~Supplement health coverage is a supplement to the coverage provided by Medicare.

(1) This ~~s~~Supplement applies only after Medicare benefits are determined.

(2) Coverage is limited to Medicare's scheduled amount.

360:10-5-79. Enrollment in Medicare Supplement

(a) **Medicare Supplement coverage enrollment required regardless of age.** All covered individuals who are eligible for Medicare, except ~~active~~current employees as addressed in 360:10-5-76, must be enrolled in a Medicare Supplement Plan, offered through ~~the Board~~OSEEGIB, regardless of age.

(b) **Effective date of Medicare Supplement coverage.** Medicare Supplement coverage shall become effective on the first [1st] day of the month following the date ~~the Plan~~OSEEGIB receives actual notice of the member's eligibility for Medicare. There shall be no refund of premiums for prior months during which the member was eligible for Medicare, and written notice was not provided to ~~the Plan~~OSEEGIB. An exception shall be made for individuals who are retroactively awarded Medicare coverage by the Social Security Administration, when written notice of the retroactive award is provided to ~~the Plan~~OSEEGIB within thirty [30] days after the member's notification of the Social Security Administration award. A member's sixty-fifth [65th] birthday is considered automatic notification of Medicare eligibility.

(c) **Non-Medicare eligible individuals.** Nothing in the rules in this chapter prohibits individuals who are not eligible for Medicare from being enrolled in ~~the Board's~~OSEEGIB's regular health plan; however, individuals eligible to purchase Medicare coverage are excluded.

PART 13. COORDINATION OF HEALTH AND DENTAL BENEFITS

360:10-5-86. Definitions

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

"Allowable expense" means any medically necessary item of expense at least a portion of which is covered under at least one of the ~~Plans~~plans covering the person for whom the claim is made except where a statute requires a different definition. An expense or service, or a portion of an expense or service that is not covered by ~~the Board's~~OSEEGIB's medical and or dental plan is not an allowable expense. The maximum liability under ~~the Board's~~OSEEGIB's medical and or dental plan as a secondary or subordinate payor is the member's actual liability under any coordinating plan or ~~the Board's~~OSEEGIB's standard benefit, whichever is less. However, items of expense under coverage such as, but not limited to~~,~~ dental care, vision care, prescription drug or hearing aid programs may be excluded from the definition of allowable expense. A plan which provides benefits only for any such items of expense may limit its definition of allowable expense to like items of expense. When a ~~Plan~~plan provides benefits in the form of services rather than cash payments, the reasonable cash value of each service rendered shall be deemed to be both an ~~A~~allowable ~~E~~expense and a benefit paid. The difference between the cost of a private hospital room and the cost of a semi-private hospital room shall not be deemed to be an ~~"A~~allowable ~~E~~expense~~"~~, except for the period of time during which the patient's confinement to a private hospital room is deemed medically necessary in terms of generally accepted medical practice.

"Plan" means the following:

(A) "Plan" means any plan providing benefits or services for or by reason of medical or dental care or treatment, which benefits or services are provided by:

(i) group, blanket or franchise insurance coverage,

(ii) service plan contracts, group practice, individual practice and other prepayment coverage,

(iii) any coverage under labor-management trustee plans, union welfare plans, employer organization plans, or employee benefit organization plans, and

(iv) any coverage under governmental programs, and any coverage required or provided by any statute.

(B) The term "Plan" shall be construed separately with respect to each policy, contract, or other arrangement for benefits or services and separately with respect to that portion of any such policy, contract, or other arrangement which reserves the right to take the benefits or services of other ~~Plans~~plans into consideration in determining its benefits and that portion which does not.

(C) Individually underwritten and issued contracts which provide a contractual right to renewal regardless of membership in or connection with any particular organization or group shall not be considered group-type contracts, irrespective of the mode or channel of premium payment and regardless of any reduction in premium the covered person may receive by virtue of such method of premium collection.

(D) The definition of a "Plan" within the coordination of benefits provision of group contracts enumerates the types of coverage which the insurer may consider in determining whether other insurance exists with respect to a specific claim. Such definition:

(i) May not include individual or family policies, or individual or family subscriber contracts, except as provided in ~~(2)~~(ii) of this part and in ~~(e)~~(E) of this definition.

(ii) May include all group or group subscriber contracts as well as such group-type contracts as are not available to the general public and can be

obtained and maintained only because of the covered person's membership in or connection with a particular organization or group. Group-type contracts answering this description may be included in the definition, at the option of the insurer and its policyholder client, whether or not individual policy forms are utilized and whether the group-type coverage is designated as "franchise" or "blanket" or in some other fashion.

(E) The definition of "Plan" may include both group and individual automobile "no fault" contracts but, as to the traditional automobile "fault" contracts, only the medical benefits written on a group or group-type basis may be included.

(F) Interpretation of the definition of a "Plan" may not include group or group-type hospital indemnity benefits (written on a non-expense incurred basis) of thirty dollars [$30] per day or less unless they are characterized as reimbursement type benefits but are designed to administer so as to give the insured the right to elect indemnity type benefits, in lieu of such reimbursement type benefits at the time of the claim. In any event, the amount of group and group-type hospital indemnity benefits which exceed thirty dollars [$30] per day may be construed as being included under the definition of "Plan".

(G School accident type coverages, written on either an individual, blanket, group or franchise basis should not be taken into consideration in coordination of benefits. In this context, school accident type coverages are defined to mean coverage covering grammar school, middle school, and high school students for accidents only, including athletic injuries, either on a twenty-four [24] hour basis or "to and from school" for which the parent pays the entire premium.

(H) If "Medicare" or similar governmental benefits are included in the definition of "Plan", such benefits may be taken into consideration without expanding any of the definitions of this provision beyond the hospital, medical, and surgical benefits which may be provided by the governmental program.

(I) A ~~Plan~~plan may not coordinate or design benefits so that the benefits payable are altered solely on the basis that:

(i) another plan exists; or

(ii) except with respect to Part B of Medicare, that the claimant is or could have been covered under another ~~Plan~~plan; or

(iii) the claimant has elected an option under another ~~Plan~~plan providing a lower level of benefits than another option for which the claimant was eligible.

(J) With regard to plans offered by OSEEGIB an eligible person shall not be insured as a primary insured and also as a dependent for any benefit options except dependent life, nor can any dependent be covered simultaneously by more than one primary insured. Double enrollment, whether it occurs intentionally or by error, shall be deemed void from the inception, and OSEEGIB reserves the right to decide which form of single enrollment coverage to allow, whether primary or dependent.

"This Plan" means that portion of the benefits that are subject to this part.

360:10-5-87. Effect on benefits

(a) **Determining benefits.** This section shall apply in determining the benefits as to a person covered under the ~~Plan~~plan for any claim determination period if, for the allowable expense incurred as to such person during such period, the sum of:

(1) the benefits that would be payable under this ~~Plan~~plan in the absence of this provision, and

(2) the benefits that would be payable under all other ~~Plans~~plans in the absence therein of provisions of similar purpose to this provision would exceed such ~~A~~allowable ~~E~~expenses.

(b) **Claim determination period.** As to any claim determination with respect to which this section is applicable, the benefits that would be payable under this ~~Plan~~plan in the absence of this provision for the allowable expenses incurred as to such person during such claim determination period shall be reduced to the extent necessary so that the sum of such reduced benefits and all the benefits payable for such allowable expenses under all other ~~Plans~~plans, except as provided in (c) of this section, shall not exceed the total of such allowable expenses. Benefits payable under another ~~Plan~~plan include the benefits that would have been payable had claim been duly made therefore.

(c) **Coordination of benefits.** The benefits of ~~anther Plan~~another plan will be ignored for the purpose of determining the benefits under this ~~Plan~~plan if:

(1) the other ~~Plan~~plan which is involved in (b) of this section and which contains a provision coordinating its benefits with those of this ~~Plan~~plan would, according to its rules, determine its benefits after the benefits of this plan have been determined, and

(2) the rules are set forth in (d) of this section would require this ~~Plan~~plan to determine its benefits before such other ~~Plan~~plan.

(d) **Order of benefit determination.** For the purpose of (c) of this section, the rules establishing the order of benefit determination are:

(1) The benefits of a ~~Plan~~plan which covers the person on whose expenses claim is based other than as a dependent shall be determined before the benefits of a ~~Plan~~plan which covers such person as a dependent.

(2) The following guidelines apply with respect to claims regarding dependent children:

(A) Except for cases of a person for whom claim is made as a dependent child whose parents are separated or divorced, the benefits of a plan which covers the person on which expenses claim is based as a dependent of a person whose date of birth, excluding

year of birth, occurs earlier in a calendar year, shall be determined before the benefit of a ~~Plan~~plan which covers such person as a dependent of a person whose date of birth, excluding year of birth, occurs later in a calendar year. If either ~~Plan~~plan does not have the provisions of this paragraph regarding dependents, which results either in each ~~Plan~~plan determining benefits before the other or in each ~~Plan~~plan determining its benefits after the other, the provisions of this paragraph shall not apply, and the rule set forth in the ~~Plan~~plan which does not have the provisions of this paragraph shall determine the order of benefits.

(B) In the case of a person for whom claim is made as a dependent child whose parents are separated or divorced and the parent with custody of the child has not remarried, the benefits of a ~~Plan~~plan which covers the child as a dependent of the parent with custody of the child will be determined before the benefits of a ~~Plan~~plan which covers the child as a dependent of the parent without custody.

(C) In the case of a person for whom claim is made as a dependent child whose parents are divorced and the parent with custody of the child has remarried, the benefits of a ~~Plan~~plan which covers that child as a dependent of the stepparent, and the benefits of a ~~Plan~~plan which covers that child as a dependent of the stepparent will be determined before the benefits of a ~~Plan~~plan which covers that child as a dependent of the parents without custody.

(D) In the case of a person for whom claim is made as a dependent child whose parents are separated or divorced, where there is a court decree which would otherwise establish financial responsibility for the medical, dental or other health care expenses with respect to the child, then, notwithstanding (B) and (C) of this paragraph, the benefits of a ~~Plan~~plan which covers the child as a dependent of the parent with such financial responsibility shall be determined before the benefits of any other ~~Plan~~plan which covers the child as a dependent child.

(3) When (1) and (2) of this subsection do not establish an order of benefit determination, the benefits of a ~~Plan~~plan which has covered the person on whose expenses claim is based for the longer period of time shall be determined before the benefits of a ~~Plan~~plan which has covered such person the shorter period of time, provided that:

(A) the benefits of a plan covering the person on whose expenses claim is based as a laid-off or retired employee, or dependent of such person, shall be determined after the benefits of any other ~~Plan~~plan covering such person as an employee, other than a laid-off or retired employee, or dependent of such person; and

(B) if either ~~Plan~~plan does not have a provision regarding laid-off or retired employees, which results in each ~~Plan~~plan determining its benefits after the other, then the provisions of (A) above shall not apply.

(4) When a claim under a ~~Plan~~plan with a coordination of benefits provision involves another ~~Plan~~plan which also has a coordination of benefits provision, the carriers involved should use the rules in (1) through (3) of this subsection to decide the order in which the benefits payable under the respective plans will be determined. Note:

(A) In determining the length of time an individual has been covered under a given Plan, two successive ~~Plans~~plans of a given group shall be deemed to be one continuous ~~Plan~~plan so long as the claimant concerned was eligible for coverage within twenty-four [24] hours after the prior ~~Plan~~plan terminated. Thus, neither a change in the amount of scope of benefits provided by a ~~Plan~~plan, a change in the carrier insuring the ~~Plan~~plan, nor a change from one type of ~~Plan~~plan to another, (e.g. single employer to multiple employer ~~Plan~~plan, or vice versa, or single employer to a Taft-Hartley Welfare Plan) would constitute the start of a new ~~Plan~~plan for purposes of this paragraph.

(B) If a claimant's effective date of coverage under a given ~~Plan~~plan is subsequent to the date the carrier first contracted to provide the ~~Plan~~plan for the group concerned (employer, union, association, etc.), then, the absence of specific information to the contrary, the carrier shall assume, for purposes of this paragraph, that the claimant's length of time covered under that plan shall be measured from claimant's effective date of coverage. If a claimant's effective date of coverage under a given ~~Plan~~plan is the same as the date the carrier first contracted to provide the ~~Plan~~plan for the group coverage, then the carrier shall request the group concerned to furnish the date the claimant first became covered under the earliest of any prior ~~Plans~~plans the group may have had. If such date is not readily available, the date the claimant first became a member of the group shall be used as the date from which to determine the length of time his coverage under that ~~Plan~~plan has been in force.

(5) A ~~Plan~~plan with order of benefit determination rules which complies with this section (herein called a Complying Plan) may coordinate its benefits with a ~~Plan~~plan which is "excess" or "always secondary" or which uses order of benefit determination rules which are inconsistent with those contained in this section (herein called a Noncompliance Plan) on the following basis:

(A) If the Complying Plan is the Primary Plan, it shall pay or provide its benefits on a primary basis.

(B) If the Complying Plan is the Secondary Plan, it shall, nevertheless, pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the Complying Plan were the Secondary plan. In such a situation, such payment shall be the limit of the Complying Plan's liability.

(C) If the Noncompliance Plan does not provide the information needed by the Complying Plan to determine its benefits within a reasonable time after it is requested to do so, the Complying Plan shall assume that the benefits of the Noncompliance Plan are

identical to its own, and shall pay its benefits accordingly. However, the Complying Plan must adjust any payments it makes based on such assumption whenever information becomes available as to the actual benefits of the Noncompliance Plan.

360:10-5-89. Facility of benefit payment

Whenever payments which should have been made under this ~~Plan~~plan in accordance with this section have been made under any other ~~Plans, the Board~~plans, OSEEGIB shall have the right, exercisable alone and in its sole discretion, to pay over to any organizations making such other payments any amounts it shall determine to be warranted in order to satisfy the intent of this section, and amounts so paid shall be deemed to be benefits paid under this ~~Plan~~plan and, to the extent of such payments, ~~the Board~~OSEEGIB shall be fully discharged from liability under this plan.

360:10-5-90. Right of recovery

Whenever payment has been made by ~~the Board~~OSEEGIB with respect to allowable expenses in a total amount, at any time, in excess of the maximum amount of payment necessary at that time to satisfy the intent of this section, ~~the Board~~OSEEGIB shall have the right to recover such payments, to the extent of such excess, from among one or more of the following, as ~~the Board~~OSEEGIB shall determine:

(1) any persons to or for or with respect to whom such payments were made;

(2) any other insurers; or

(3) service plans or any other organizations.

PART 15. SUBROGATION

360:10-5-100. Right of subrogation

~~The Board~~OSEEGIB reserves the right to recover any payments made on behalf of an employee or dependent for injury caused by a third party's wrongful act or negligence, subject to the following conditions:

(1) The act of submitting claims by an employee or dependent constitutes acceptance of ~~the Plan's~~OSEEGIB's right of recovery against the third party.

(2) An employee~~Employee~~ or dependent will not take any action to~~which would~~ prejudice ~~the Plan's~~OSEEGIB's right of subrogation, such as settlement of the claim without giving notice of ~~the Plan's~~OSEEGIB's subrogation rights to the responsible party or his liability insurer.

(3) The employee or dependent will cooperate in doing what is reasonably necessary to assist ~~the Plan~~OSEEGIB in any recovery.

(4) Subrogation will exist only to the extent of ~~Plan~~plan benefits paid because of that injury.

(5) Claims submitted after an employee or dependent has released the responsible party may be refused at the option of ~~the Plan~~OSEEGIB, by written notice to the employee, dependent, or their attorney.

(6) If a claim is submitted and paid by ~~the Plan~~OSEEGIB after the employee or dependent has released the responsible party, and the employee or dependent has failed to inform ~~the Plan~~OSEEGIB of the release, ~~the Plan~~OSEEGIB, at its option, may require reimbursement from the employee, dependent or provider.

SUBCHAPTER 7. TERMINATION OF BENEFITS

360:10-7-1. Termination of benefits

(a) **Termination of coverage.** The coverage under this ~~Plan~~plan will terminate at the earliest time stated below:

(1) On the last day of the calendar month in which employment terminates.

(2) When the ~~Plan~~plan is discontinued.

(3) When any required premiums cease to be paid.

(4) The individual does not begin or continue coverage ~~upon changing to inactive~~as an eligible participating former employee and/or dependent.~~ status.~~

(5) For a dependent when said dependent becomes ineligible for coverage.

(6) A participating entity ceases to participate in this plan.

(b) **Submission of inaccurate or erroneous information.** If inaccurate or erroneous information is submitted by or on behalf of a member on any form or application for insurance coverage, coverage obtained pursuant to information provided on that form will be rescinded retroactive to the effective date.

(c) **Dependent termination of coverage.** In addition to (a) and (b) of this section, the coverage terminates with respect to an individual dependent on the last day of the calendar month in which such person ceases to be an eligible dependent. If a covered individual is found to be ineligible, coverage will be terminated effective on the first [1st] day of the month the coverage of the ineligible person was discovered by ~~the Board~~OSEEGIB. ~~The Board~~OSEEGIB reserves the right to recover any claims paid on behalf of an ineligible person.

SUBCHAPTER 9. COBRA HEALTH INSURANCE CONTINUATION

360:10-9-1. Procedures and implementation

Notice of right to continue coverage. Each agency or employer participating in the State and Education Employees Group Insurance ~~Plan,~~Plan shall advise each covered employee of his right to continue coverage under Federal COBRA provisions.

360:10-9-2. COBRA administration

(a) **COBRA coverage is identical to coverage provided at date of the qualifying event.** The coverage elected shall be identical to the coverage provided at the date of the qualifying event, unless a beneficiary moves outside an HMO's service

area. In that event, coverage is continued under ~~the State plan~~HealthChoice, OSEEGIB's self-insured plan.

(b) **Payment of back premiums.** All back premiums from the termination of coverage to the election and approval of continuation must be paid before coverage is effective. Coverage will then be retroactive to provide continuous coverage. All time limits are mandatory and cannot be waived under any circumstances.

(c) **Responsibility of qualified beneficiary to inform ~~the Board~~OSEEGIB of ineligibility.** It is the responsibility of the qualified beneficiary to provide timely notice if he is not eligible for any reason. Failure to do so will result in cancellation of COBRA insurance coverage, retroactive to the time of ineligibility.

(d) **Federal regulations.** Federal regulations regarding COBRA extension of coverage shall be controlling in all situations where applicable.

[OAR Docket #07-883; filed 4-27-07]

TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD
CHAPTER 15. THE DISABILITY ~~PROGRAM~~PLAN

[OAR Docket #07-884]

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PERMANENT final adoption
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CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JANUARY 1, 2008:

360:15-1-2. Definitions

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

"Base compensation" means the rate of earnings in effect on the date disability begins. Base compensation does not include overtime, commissions, bonuses, longevity pay, salary increases, productivity enhancement program payments and all other extra compensation.

"Benefit period" means the first [1st] day of the benefit period will be the day benefits commence as defined at 360:15-1-4(a) and (b). The end of the benefit period will be the last day of eligibility as defined at 360:15-1-11(d). A recurrent disability as defined at 360:15-1-7 will not alter the beginning date of the benefit period.

"The Board" means the eight [8] members designated by statute [74 O.S. §1303(1)].

"Disability" means a person is considered to be disabled when he is unable, as a result of injury or illness, to perform the material duties of his own occupation. Disability will be considered to have commenced on the date the employee first receives treatment or advice from a physician after his last date worked and said disability is expected to last thirty-one [31] consecutive days or longer. After the first twenty-four [24] months of disability, disability will be defined as inability to perform each of the material duties of any gainful occupation for which a person is or may become reasonably qualified by training, education or experience. None of the classes of disability used in other plans or programs such as temporary, permanent, total, or partial, etc., are to be used to limit or define this plan's disability criteria, whether or not the terms are used in medical or legal documents supplied as proof of disability under this plan. Uses of such terms are intended to be disregarded by this plan. Determinations rendered by or for workers

compensation or social security are not considered prima facie evidence of disability for this plan.

"Eligibility period" means the first thirty-one [31] consecutive calendar days of employment. No benefit is payable for this period. For employees with less than one [1] year of service, proof of continuous presence at the regularly assigned work place and verification by the appointing authority that the employee was performing all of the material duties of the employee's regular occupation continuously during the eligibility period shall be required as conditions of satisfaction of the eligibility period.

"Elimination period" means the first thirty [30] consecutive calendar days of disability. No benefit is payable for this period.

"Employee" means, for purposes of this chapter only, the term employee includes but is not limited to persons who are currently drawing disability benefits under this Disability ~~Program~~Plan or who meet each and every requirement of this Disability ~~Program~~Plan.

"Furlough" means a nonscheduled working day, in addition to regular nonscheduled working days requested by the employer.

"Illness" means sickness or disease, including pregnancy and complications of pregnancy. Disability resulting from the illness must begin while the employee is participating in the ~~program~~Plan.

"Injury" means bodily injury resulting directly from an accident, independent of all other causes. The resulting disability must occur while the employee is participating in the ~~program~~ Plan.

"OSEEGIB" means the Oklahoma State and Education Employees Group Insurance Board.

"Participation" means participation in the Disability ~~Program~~Plan shall be limited to employees who have been employees for a period of not less than one [1] month prior to the onset of the disability and to employees of other entities and counties which have adopted a resolution to join the Disability ~~Program~~Plan. The employee must have been continuously employed by the employer for a period of not less than one [1] month, and must have satisfied the requirements of the eligibility period as defined herein. For the purposes of this chapter, one [1] month shall mean thirty-one [31] consecutive days.

"Physician" means a person licensed to practice medicine and surgery, osteopathy, chiropractic, podiatry, optometry, or dentistry and legally qualified as a medical practitioner under the insurance statutes of the State of Oklahoma, and operating within the scope of his license. An employee or an employee's spouse, child, father, mother, sister, or brother will not be included in this definition.

"~~Pre-existing~~Preexisting condition" means, for the purposes of this chapter only, an illness or injury for which the employee received medical care, diagnosis, consultation, treatment or took prescribed drugs or medicines during the ninety [90] day period immediately preceding his/her ~~entry on duty[EOD]~~entry-on-duty (EOD) date. The term "~~pre-existing~~preexisting condition" shall also include any condition which is related to such injury or illness.

"Years of service" means time spent as an active employee performing full-time duties for remuneration with an entity participating in the ~~insurance~~Disability Plan. Time on partial disability or leave (with or without pay) after an established disability date will not be counted toward years of service for disability benefit purposes. Time on leave without pay status after an established disability date will also not be counted toward years of service for disability benefit purposes. Under no circumstances will time for which an insured receives disability benefits under this Plan be counted toward years of service.

360:15-1-3. Gender ~~reference.~~reference

All references to "he" or "his" are not intended to be gender related, but shall apply equally to both sexes.

360:15-1-4. Absence on eligibility date

(a) **Eligibility date for disability.** If an employee is absent from work because of a furlough, holiday, vacation or nonscheduled working day and he was on the job or on paid leave other than for injury, illness, or unpaid leave, on a scheduled working day immediately preceding the eligibility date, the eligibility date for disability benefits will not be altered.

(b) **Release from physician for determination of eligibility.** If an employee is absent from work because of injury or illness on the date he would normally become eligible for disability coverage, he shall not become eligible until he obtains an unconditional release from his physician, and returns to the job for five [5] ~~full-time~~full-time consecutive work days, performing all of his normal duties.

(c) **Unpaid leave.** If an employee is absent from work because of other unpaid leave, he is not eligible for coverage until he returns to the job for five [5] consecutive work days.

360:15-1-7. Recurrent disability

(a) **Recurrent disability.** A recurrent disability is a disability related to or due to the same cause of a prior disability for which the employee received a monthly benefit:

(1) A recurrent disability is treated as part of the prior disability if:

(A) the employee returns to his regular occupation ~~full-time~~full-time for less than six months, and

(B) performs all the material duties of his occupation.

(2) If the employee returns to his regular occupation ~~full-time~~full-time for six months [6] or more, a recurrent disability will be treated as a separate disability.

(b) **Lump sum settlement.** The recurrent disability provisions do not apply in the event of a lump sum settlement payment.

360:15-1-8. Partial disability

(a) **Partial disability.** If a person is performing at least one, but not all, of the material duties of any occupation, and is earning less than eighty percent [80%] of pre-disability base

compensation, that person is considered to be partially disabled. The partial disability must result from the same cause as the disability. Proof of partial disability must be received within thirty-one [31] days after the end of a period during which disability benefits were paid in order to be eligible for monthly partial disability benefits.

(b) **Payment of benefits for partial disability.** Partial disability benefits are payable, after total disability, for up to twenty-four [24] months, or until recovery, or until maximum benefit limits as set out at 360:15-1-11(d) are met as defined, or until employee's gross rate of compensation reaches eighty percent [80%] of pre-disability base gross rate of compensation, whichever occurs first. Partial disability benefits are also subject to offsets described at 360:15-1-12.

360:15-1-8.5. ~~Pre-existing~~Preexisting conditions

(a) **Unavailability of benefits due to ~~pre-existing~~preexisting conditions.** No benefits are payable for any disability caused by a ~~pre-existing~~preexisting condition.

(b) **Non-applicability of ~~pre-existing~~preexisting conditions.** A condition will no longer be considered ~~pre-existing~~preexisting after the disabled person has been actively at work at his usual job for five [5] consecutive days following the expiration of:

(1) A one hundred eighty [180] day period following the EOD date during which the employee has not received medical care, diagnosis, consultation or treatment, or taken prescribed drugs or medicines for the ~~pre-existing~~preexisting condition, or

(2) A three hundred sixty [360] day period following the EOD date.

360:15-1-10. Proof of claim

(a) **Notice.**

(1) Written notice of claim for disability benefits must be given to ~~the Board~~OSEEGIB within sixty [60] days after the date disability starts. For good cause shown, ~~the Board's~~OSEEGIB's Administrator may waive the sixty [60] day requirement. If that is not possible, ~~the Board~~OSEEGIB must be notified as soon as it is reasonably possible to do so.

(2) No claim may be reopened when request is made more than one [1] year after benefits have ended for any reason.

(b) **Proof.**

(1) Proof of the claim, as specified by ~~the Board~~OSEEGIB, must be given to the third party administrator no later than one year after the start of disability. Proof must cover the severity and extent of the disability and the reasons the employee is unable to perform the duties of his/her position.

(2) The employee must provide proof of continued disability and regular attendance of a physician within thirty [30] days following the request for proof. Regular care of a physician means appointments with the physician at least once per month. Less frequent appointments may be approved by ~~the Board~~OSEEGIB.

360:15-1-11. Duration and amounts of benefits

(a) **Determination of monthly disability benefits.** To determine monthly disability benefits:

(1) Multiply the employee's base compensation by sixty percent [60%], subject to short-term and long-term benefit maximums as established by the Board.

(2) Deduct any benefit offsets.

(3) Monthly benefit will be (1) minus (2), subject to any minimum long-term disability benefit as established by the Board.

(b) **Prorating of benefit for part of a month.** Any benefit that is payable for part of a month will be prorated using the number of days in that month as the denominator and the number of days of disability during that partial month as the numerator.

(c) **Cooperation required.** Continued benefits shall be contingent upon cooperation and participation in the rehabilitation program herein.

(1) In order to remain eligible for long-term benefits, the insured must make application for Social Security benefits by the seventh [7th] month of disability and continue pursuing Social Security benefits until the appeals process is exhausted. Refusal to appeal denial of Social Security benefits through the entire appeals process is grounds for termination of benefits. Exceptions may be granted by ~~the Board~~OSEEGIB in certain cases where application for Social Security benefits is not practical due to the type of disability.

(2) If, after twenty-four [24] months of disability, the Social Security Administration has not deemed the insured eligible for Social Security disability benefits, the insured will no longer be eligible for benefits from this plan.

(3) Exceptions to (c), (1), and (2), above may be granted by ~~the Board~~OSEEGIB on a case-by-case basis.

(d) **Mental health and substance abuse.** Disability claims due to mental health disorders or substance abuse are limited to twenty-four [24] months per disability.

(1) Provided, however, if the employee is confined in a hospital, as defined in 360:10-1-2, of these Rules, at the end of the twenty-four [24] month period, benefits will be paid for the length of that confinement. If the employee continues to be totally disabled upon discharge from the hospital, the monthly benefit will be payable for a period not to exceed ninety [90] days. If the insured employee is reconfined during this recovery period for at least fourteen [14] consecutive days, the monthly benefit will resume during that confinement and one additional recovery period not to exceed ninety [90] days.

(2) Provided, also, that each employee shall have a lifetime maximum of no greater than sixty [60] months of disability benefits for all mental or substance abuse disorders; however, other maximums apply, and in no event shall benefits exceed the maximums listed in 360:15-1-11 of this section.

(e) **Payment of benefits monthly.** Benefits are paid monthly subject to the maximums listed below. These maximums apply to all disabilities, but are subject to (b) and (d)

of this section. These maximums are computed from the first [1st] day~~date~~ of disability.

(1) Less than one year of service: 6 month maximum coverage

(2) From one to five years of service:

(A) Under age 66 at disability - 24 month maximum coverage

(B) at age 66 at disability - 21 month maximum coverage

(C) at age 67 at disability - 18 month maximum coverage

(D) at age 68 at disability - 15 month maximum coverage

(E) at age 69 or over at disability - 12 month maximum coverage

(3) More than five years of service:

(A) Under age 60 at disability - coverage to age 65

(B) at age 60 at disability - 60 month maximum coverage

(C) at age 61 at disability - 48 month maximum coverage

(D) at age 62 at disability - 42 month maximum coverage

(E) at age 63 at disability - 36 month maximum coverage

(F) at age 64 at disability - 30 month maximum coverage

(G) at age 65 at disability - 24 month maximum coverage

(H) at age 66 at disability - 21 month maximum coverage

(I) at age 67 at disability - 18 month maximum coverage

(J) at age 68 at disability - 15 month maximum coverage

(K) at age 69 or over at disability - 12 month maximum coverage

360:15-1-12. Benefit offsets

(a) **Offset by benefits received from other sources.** The disability benefit due from this plan shall be offset by benefits received from other sources. These sources are:

(1) Any sick leave benefits for which the employee is eligible.

(2) Social Security benefits as follows:

(A) Any amount of primary disability benefits provided under the United States Social Security Act for which the employee is eligible because of this disability; and

(B) Any amount of primary and/or family retirement benefits provided under the United States Social Security Act which the employee receives.

(C) The following benefits under the Social Security Act are not to be considered offsets under this program:

(i) Social Security benefits effective prior to the established date of disability, unless awarded as a result of the same disability;

(ii) Social Security widow's/widower's benefits not connected to the claimant's disability; and

(iii) Benefits awarded under the Supplemental Security Income Program.

(3) Any benefits received under the provisions of State of Oklahoma or county retirement systems, except those benefits which began prior to onset of disability.

(4) Benefits related to the ~~D~~disability provided by another group plan, including Veteran's Administration (VA) benefits. Such benefit becomes due as a result of the disability and not by a voluntary election to receive the benefit. This does not include:

(A) plans funded entirely by employee contribution;

(B) plans where payment of these benefits reduce the benefit the claimant would be due at a normal retirement age; or

(C) payments for conditions established one [1] year or more, prior to the established date of this disability claim. This does not include a profit-sharing plan, a 401K, a thrift plan, an Individual Retirement Account, stock ownership plan, tax sheltered annuity or any benefits from a non-qualified deferred compensation plan.

(5) Benefits related to this disability that are provided under any state's Worker's or Workman's Compensation Law, any occupational disease law, or any other similar act or law.

(6) Any salary, wages, holiday pay, commissions or similar earnings the employee receives from any gainful employment, including salary increases as well as shared or annual leave payment~~[s]~~. Neither longevity pay nor one-time bonuses are considered offsets.

(7) Subrogation (loss of earnings for employee only).

(8) ~~50%~~Fifty percent [50%] of any earnings while partially disabled or during rehabilitative employment prior to final release.

(9) Any overpayment of previous disability payments.

(10) Any unemployment compensation benefits.

(b) **Non-reduction of benefits due to increases in other benefits.** Once a disability benefit begins, monthly benefits will not be further reduced due to any statutory or cost of living increases payable from pension or pension disability programs, Social Security or Workers' Compensation.

(c) **Lump sum payments.** If any benefits from the sources mentioned in (a) of this section are paid in a lump sum, ~~the Board~~OSEEGIB will prorate the benefits on a monthly basis, either over the period for which the benefit is established or over the actuarially expected life time of the employee, if no time period is established.

(d) **Payment of any overpayment or underpayment.** Benefits will be estimated if they have not yet been awarded, have not been denied or have been denied and the denial is being appealed. Any overpayment or underpayment that results from estimating these benefits will be repaid by the responsible party after the actual benefit is determined.

360:15-1-14. Payment of benefits

(a) **Payment of benefits to employee only.** All benefits due to the employee from the disability ~~program~~plan are payable only to the employee. If the benefit is payable to an employee who is a minor or who is not competent, ~~the Board~~OSEEGIB may only pay the court-appointed guardian or conservator. In the event of the employee's death, payment of any benefits still outstanding shall be made to the designated beneficiary or to the employee's estate.

(b) **Payment of benefits to another party other than the employee.** If ~~the Board~~OSEEGIB pays benefits to a party other than the employee as specified in (a) of this section or as required by law, ~~the Board~~OSEEGIB shall be deemed to have discharged its full responsibility with respect to those benefits.

(c) **Rehabilitation services.** Documented expenses payable for rehabilitation services may be paid directly to the provider~~[s]~~ of such services or reimbursed to third party administrator; these payments shall not reduce the monthly disability benefits mentioned at 360:15-1-12.

(d) **Benefits are not assignable.** These benefits are not assignable.

360:15-1-15. Lump sum settlement

~~The Board~~OSEEGIB may authorize a lump sum settlement of a disability claim if mutually agreed upon by the employee and ~~the Board's~~OSEEGIB's Administrator. Such agreement shall preclude the employee from receiving any future benefits for the disability for which the lump sum settlement is made.

360:15-1-16. Examination

~~The Board~~OSEEGIB, at its own expense, with travel reimbursement as set out by statute, will have the right and opportunity to have an employee whose injury or sickness is the basis of a disability claim examined by a physician or vocational expert of its choice. This right may be used as often as reasonably required.

360:15-1-17. Rehabilitation

(a) **Participation by any person in rehabilitation services.** Any person submitting a claim under the ~~d~~Disability ~~program~~Plan shall be required to cooperate fully with all aspects of the rehabilitation services provided herein as a condition of receiving disability benefits.

(b) **Disabled employee receiving long-term benefits.** A disabled employee who is receiving long-term disability benefits may be able to return to work on a limited basis. To encourage a return to productive employment, ~~the Board~~OSEEGIB will pay the employee his/her regular monthly long-term disability benefit, reduced by only fifty percent [50%]~~ percent~~ of the income from rehabilitation employment, subject to partial disability provisions as set out at 360:15-1-12(8). If the employee becomes totally disabled again, while receiving partial disability benefits, his/her regular long-term disability benefit will resume without a new eligibility period, except as limited by 360:15-1-7 and 360:15-1-8.

360:15-1-18. Suspension or termination of benefits

After notice and opportunity for a hearing according to the Oklahoma Administrative Procedures Act and these rules, disability benefits may be suspended or terminated for failure to:

(1) Fully cooperate with or implement the rehabilitation plan;

(2) Submit to examination by a physician selected by ~~the Board~~OSEEGIB;

(3) Supply recertification by a physician;

(4) Cooperate in the repayment of overpayments; or

(5) Otherwise comply with the requirements of this plan.

360:15-1-19. Termination of benefits

(a) **Termination of benefits.** Disability benefits will cease on the occurrence of the earliest of the following events:

(1) The date the disability ends;

(2) The date the employee dies;

(3) The end of the maximum benefit period;

(4) As provided at 360:15-1-17 and 360:15-1-18.

(b) **Participation in the Disability Plan~~plan~~ ends when employee's ~~active~~current employment ceases.** An employee's participation will end when ~~active~~current employment ceases. Coverage may be continued in case of layoff or leave of absence as described in the section on ~~E~~eligibility ~~D~~date. ~~The Board~~OSEEGIB will operate ~~the program~~the plan according to the provisions outlined so as not to discriminate unfairly among employees.

360:15-1-20. Termination of coverage

Employees cease to be insured under the ~~d~~Disability Plan~~program~~ on the earliest of the following dates:

(1) The date the Disability Plan terminates;

(2) The date employment terminates. Cessation of active employment will be deemed termination of employment, except:

(A) The insurance will be continued for a disabled employee during the period during which the employee remains disabled.

(B) ~~The Board~~OSEEGIB may continue the employee's insurance, subject to the following:

(i) Insurance may be continued for the time shown in the policy specifications for an employee on furlough or temporarily laid off; or

(ii) ~~The Board~~OSEEGIB shall act so as not to discriminate unfairly among employees in similar situations.

360:15-1-21. Termination of ~~program~~plan

Termination of the disability ~~program~~plan under any conditions will not prejudice any payable claim which occurs while this ~~program~~plan is in force.

360:15-1-22. Retention of other insurance

(a) **Authorization for deduction of premiums.** If eligible, the employee may elect to continue participation in the

Oklahoma State and Education Employees Group Insurance ~~Program~~Plan by authorizing deduction of premiums due. In the event the premium is more than the benefits being received by the employee, or in the event the benefits are suspended, ~~the Board~~OSEEGIB may accept remittance from the employee for the premium due. All premiums shall be at the rate and under such conditions as established by ~~the Board~~OSEEGIB.

(b) **Disabled employee not receiving disability benefits.** Dependent Health coverage will be continued for disabled employees during any period of time the employee is qualified as disabled but not receiving disability benefits. [74 O.S. §1332.1(D)]

(c) **Deduction of premiums.** All dependent health premiums due and owing shall be deducted by ~~the Board~~OSEEGIB from the first retroactive disability benefit payment and each payment thereafter. [74 O.S. §1332.1(E)]

360:15-1-23. Recovery of FICA contributions

~~The Board~~OSEEGIB is hereby authorized to recover FICA contributions from the employer, when appropriate.

360:15-1-25. ~~Insurance coordinator~~Insurance/Benefits Coordinator

Any entity participating in the Disability ~~Program~~Plan shall appoint an ~~Insurance Coordinator~~Insurance/Benefits Coordinator to explain the benefits to the employee and aid the claimant in providing the necessary information for claims to be processed.

[OAR Docket #07-884; filed 4-27-07]

TITLE 375. OKLAHOMA STATE BUREAU OF INVESTIGATION
CHAPTER 8. RECORDS RETENTION AND DESTRUCTION

[OAR Docket #07-879]

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PERMANENT final adoption
RULES:
Subchapter 13. Criminalistic Records
375:8-13-1 [AMENDED]
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N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
This rule amendment changes the period of time for which criminalistic records must be kept "in office" (as defined by administrative rule) before it is eligible to placed in permanent storage (as defined by administrative rule) from ten (10) to five (5) years. The rule amendment does not result in, or authorize the destruction of any criminalistic records
CONTACT PERSON:
Jimmy Bunn Jr., Legal Counsel, OSBI, 6600 N. Harvey, Oklahoma City, OK., 73116, 405-879-2605

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2007:

SUBCHAPTER 13. CRIMINALISTIC RECORDS

375:8-13-1. Criminalistic records

All records generated by or pertaining to forensic laboratory services provided by the Criminalistic Services Division of the OSBI shall be retained in office for a minimum of ~~ten (10)~~ five (5) years then permanently stored for perpetuity

[OAR Docket #07-879; filed 4-26-07]

TITLE 375. OKLAHOMA STATE BUREAU OF INVESTIGATION
CHAPTER 15. OKLAHOMA REWARD SYSTEM

[OAR Docket #07-880]

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PERMANENT final adoption
RULES:
375:15-1-2 through 375:15-1-4 [AMENDED]
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ANALYSIS:
The proposed amended sections amend the procedure by which crimes may be nominated for rewards through the OSBI. It also amends the procedure by which the panel designated by rule designates cases for rewards, determines the amounts of the reward, designates eligible recipients, and pays such rewards. The amendments also change the titles of various members of the reward panel to accurate reflect present titles within the OSBI. Finally, the proposed rule removes references to rewards for missing person cases as no such authority was provided in the statute authorizing the reward system
CONTACT PERSON:
Jimmy Bunn Jr., Legal Counsel, OSBI, 6600 N. Harvey, Oklahoma City, OK., 73116, 405-879-2605

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2007:

375:15-1-2. Nomination of crimes ~~or missing persons cases~~

(a) Crimes ~~or missing person cases~~ may be nominated ~~as fitting subjects~~ for a reward by any head of a law enforcement agency in the State of Oklahoma.

(b) The submitting agency must include information about the case in its application, including:

(1) A copy of the official police report.

~~(2) A list of names and addresses of persons who have provided information up to the date of submittal (if confidential informants are involved, only the substance of information they provided need be included, not their identity).~~

(2) A summary of the investigative efforts to date.

(3) A specific list of facts concerning the case ~~which~~ that may be released to the public in advertising the reward.

(4) A statement as to what difficulties the agency has encountered in investigating the case and how offering a reward may assist.

(5) A list of other rewards pending, their amount, their expiration, and from whom they have been offered.

375:15-1-3. Panel to designate cases and amount of reward

(a) A panel comprised of the ~~Chief Inspector~~ Assistant Director of the Investigative Services Division, the ~~Fiscal Officer~~ Assistant Director of the Administrative Services Division, the Public Information ~~Officer~~ Director, and the ~~Legal Officer~~ Chief Legal Counsel of the Oklahoma State Bureau of Investigation will determine the specific cases for which rewards will be offered.

(b) The panel will review the facts provided by the submitting agency.

(c) ~~A unanimous vote~~ Unanimous approval of the panel ~~Chief Inspector, the Fiscal Officer, and the Public Information Officer~~ is required before a reward will be offered in any case. The ~~Legal Officer~~ Chief Legal Counsel will not ~~vote~~ approve or disapprove, but will advise the other members of the panel of relevant legal issues.

(d) Ultimate approval of any decision made by the panel must be made by the Director prior to the offering, refusal to offer, payment, or refusal to make payment of any reward.

(e) The panel will determine the amount of the reward. Such reward is not to exceed ten thousand dollars ~~($10,000.00)~~ nor to extend past ninety ~~(90)~~ days.

375:15-1-4. Eligible recipients; payment of reward

(a) The panel will determine the eligible recipient, if any, using established criteria. If there are multiple applicants, the panel may determine which, if any, of them are eligible. If more than one applicant is eligible, the panel may disburse the reward to each eligible applicant in proportion with his or her contribution to the case.

(b) Each person who seeks to collect a reward must provide the following information to the panel within ~~one month~~ six months of the ~~arrest or~~ conviction of the criminal~~, or location of the missing person~~.

~~(1) For crimes:~~

(~~A~~ 1) The crime committed.

(~~B~~ 2) The name of the victim.

(~~C~~ 3) The name of the person arrested ~~or~~ and convicted.

(~~D~~ 4) The name of the law enforcement agency with which the applicant cooperated.

(~~E~~ 5) A written statement from the head of that law enforcement agency providing details of the extent of the applicant's cooperation, and certifying the reward offer was the proximate cause for the receipt of the information and cooperation.

(~~F~~ 6) A certified copy of the judgement and sentence of the criminal.

~~(2) For missing persons:~~

~~(A) The name of the missing person.~~

~~(B) The location in which the person was found.~~

~~(C) The name of the law enforcement agency with which the applicant cooperated.~~

~~(D) A written statement from the head of that law enforcement agency providing details of the extent of the applicant's cooperation.~~

(c) The panel may require additional information from the applicant and the law enforcement agency, and the panel may seek information from independent witnesses before making a recommendation as to eligibility or disbursement of the reward.

(d) The written approval of the Director of the recommendation of the panel as to the crimes for which rewards will be

offered, the amount of the reward, and the manner of disbursement of the reward, shall be final for purposes of the Oklahoma Administrative Procedures Act.

[OAR Docket #07-880; filed 4-26-07]

TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FOR ~~NURSING HOME~~ LONG TERM CARE ADMINISTRATORS CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #07-932]

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RULES:
Subchapter 1. General Provisions
490:1-1-1. Purpose [AMENDED]
490:1-1-2. Definitions [AMENDED]
Subchapter 3. Oklahoma State Board of Examiners for ~~Nursing Home~~Long Term Care Administrators
490:1-3-1. Organization [AMENDED]
490:1-3-2. Officers and committees [AMENDED]
490:1-3-3. Meeting of the Board [AMENDED]
490:1-3-6. Continuing Education Programs and Training Programs [REVOKED]
490:1-3-7. Administrator University [REVOKED]
490:1-3-8. Executive Director [NEW]
490:1-3-9. Waiver of one administrator per facility rule [NEW]
Subchapter 5. ~~Complaints/Referrals~~Investigative Procedures
490:1-5-2. Receipt of ~~Complaints/Referrals~~complaints [AMENDED]
490:1-5-2.1. Receipt of referrals [NEW]
490:1-5-3. Investigation of ~~complaints/referrals~~ complaints [AMENDED]
490:1-5-4. Preparation of investigative report [AMENDED]
490:1-5-5. Board decision [AMENDED]
490:1-5-6. Notice [AMENDED]
490:1-5-7. Hearing [AMENDED]
490:1-5-7.1. Administrative fines [NEW]
490:1-5-8. Reporting [AMENDED]
Subchapter 6. Administrator Registry
490:1-6-1. ~~Administrator Registry~~General provisions [AMENDED]
Subchapter 7. Fees and Deposits
490:1-7-1. Fees and Deposits [AMENDED]
490:1-7-2. Schedule of fees [NEW]
Subchapter 9. Continuing Education [NEW]
490:1-9-1. General provisions for continuing education programs [NEW]
490:1-9-2. Criteria for continuing education programs [NEW]
490:1-9-3. Approval of continuing education programs [NEW]
490:1-9-4. Continuing education requirements [NEW]
490:1-9-5. Auditing of continuing education hours [NEW]
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ANALYSIS:
The proposed amendments in Subchapter 1, General Provisions, are intended to update definitions.

Subchapter 3, Oklahoma State Board of Examiners for Long Term Care Administrators, amendments modify the date for election of Board officers to July 1 of each year, provide the Board with authority to appoint a recording secretary and describe the duties of the Executive Director. A new section is being added that move the requirements for waiving the one administrator per facility rule from Chapter 10. Minor revisions are being made to these requirements.

Subchapter 5, Investigative Procedures, is being amended to differentiate complaints from referrals and to make minor revisions to the hearing process. A new section is being added that establishes criteria for the imposition of administrative fines. Reporting requirements are being revised to include additional entities and are more clearly stated in the proposed amendments.

Grammatical errors are being corrected in Subchapter 6, Administrator Registry, and the requirement that the results of the criminal background check be entered into the Administrator Registry is being removed.

The Schedule of Fees is being removed from Chapter 10 and more appropriately placed in Subchapter 7, Fees and Deposits. The amendments impose a new application fee, increase the fee for inactive status, and provide for a convenience fee to be charged to administrators who renew their license online.

A new Subchapter 9, Continuing Education, is being added to incorporate all requirements for continuing education into one subchapter.

Throughout this Chapter, amendments are being made to implement the provisions of Enrolled Senate Bill No. 1850 of the 2006 Regular Session and to reposition sections and revise language to improve readability of the document.
CONTACT PERSON:
Roger Lanier, Executive Director, Oklahoma State Board of Examiners for Long Term Care Administrators, 2401 N. W. 23rd Street, Suite 62, Oklahoma City, Oklahoma 73107, (405) 522-1616.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

490:1-1-1. Purpose

~~The rules of this~~ This Chapter ~~have~~ has been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S.~~,~~ Sections 301 et seq. This Board, known as the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long Term Care Administrators, carries out statutory authority for developing, imposing and enforcing standards that must be met by individuals in order for them to receive, maintain, or renew a ~~nursing home~~ long term care administrator's license. These rules are written to ~~carry out~~ execute the aforementioned statutory responsibilities for licensing administrators ~~in Nursing and Specialized Facilities (which includes Intermediate Care Facilities for the Mentally~~

~~Retarded) as defined in the Nursing Home Care Act.~~ serving in the following facility types:

(1) Nursing facilities and specialized facilities licensed pursuant to 63 O.S. Section 1-1901 et seq., including but not limited to specialized facilities for persons with mental retardation, developmental disabilities or Alzheimer's disease; and

(2) The nursing care service of a continuum of care facility licensed pursuant to 63 O.S. Section 1-890.1 et seq.

490:1-1-2. Definitions

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

"Accredited college or university" means a college or university that is accredited by the North Central Association of Colleges and Secondary Schools, the Southwest Association of Colleges and Schools, the Western Association of Schools and Colleges, the Council on Higher Education Accreditation or an accrediting body approved by the Board.

"Administrator-In-Training" ~~**(AIT)**~~ **or "AIT"** means a person serving a Board approved ~~Internship~~ internship within a ~~nursing home~~ nursing or specialized facility under the supervision of a Board approved preceptor.

"Administrator of Record" means a ~~nursing home administrator~~ Long Term Care Administrator, licensed by the ~~state~~ State of Oklahoma, who is in charge of a facility and given essential and necessary authorization from the owner and/or governing body and responsibility to comply with all pertinent promulgated rules and state statutes, and who is responsible for hiring, maintaining, and directing a team of professionals whose goal is to attain and maintain the highest practicable level of physical, mental, and psychological well-being of each resident, client, or patient.

"Adverse action" means revocation or suspension of a license, reprimand, censure or probation; any other loss of the license, or the right to apply for, or renew a license; voluntary surrender in lieu of discipline, non-renewal (excluding non-renewals due to non-payment of fees, retirement, or change to inactive status); administrative fines and any other negative action or finding by the Board ~~that is publicly available information~~.

"Assisted Living Center" ~~means any home or establishment offering, coordinating or providing services to two (2) or more persons who:~~

~~(A) are domiciled therein;~~

~~(B) are unrelated to the operator;~~

~~(C) by choice or functional impairments, need assistance with personal care or nursing supervision;~~

~~(D) may need intermittent or unscheduled nursing care;~~

~~(E) may need medication assistance; and~~

~~(F) may need assistance with transfer and/or ambulation~~ shall have the same meaning as such term is defined in the Continuum of Care and Assisted Living Act, Title 63 O.S. Section 1-890.1 et seq.

"Board" ~~(OSBENHA)~~ means the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long Term Care Administrators.

"Coercion" means compelling, pressuring or otherwise improperly influencing the free will decisions made by a consumer or a potential consumer of a long term care facility served by a licensed long term care administrator or representative or affiliate.

"Complaint" means an allegation that an individual licensed as a nursing facility administrator has failed to comply with one or more of the established ~~standards~~ requirements for licensure as a ~~nursing~~ long term care facility administrator.

"Continuum of Care Facility" ~~means a home, establishment or institution providing nursing facility services as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes and one or both of the following:~~

~~(A) assisted living center services as defined in the Continuum of Care and Assisted Living Act; and~~

~~(B) adult day care center services as defined in Section 1-872 of Title 63 of the Oklahoma Statutes [63:1-890.2.4].~~shall have the same meaning as such term is defined in the Continuum of Care and Assisted Living Act, Title 63 O.S. Section 1-890.1 et seq.

"Inactive license" means the licensee has voluntarily relinquished his/her right to function in the capacity as a long term care administrator. The licensee retains his/her license, but must meet the conditions for reinstatement prior to resuming practice as a long term care administrator.

"Intermediate Care Facilities for the Mentally Retarded (ICF-MR)" means a facility whose primary purpose is to provide health and rehabilitative services for ~~mentally retarded individuals or persons with related conditions~~ persons with mental retardation or a related condition, using a plan of care that includes professionally developed and supervised activities, experiences, or therapies. The objective of the services offered is to maintain the optimal physical, intellectual, social, and/or vocational level at which the individual is presently or potentially capable of functioning.

"Intermediate Care Facilities for the Mentally Retarded 16 Beds and Less"(ICF/MR-16)" means small facilities serving ~~the mentally retarded~~ persons with mental retardation which provide residential accommodations and transitional living training to aid residents in adapting to live in the general society. Resident accommodations are limited to not more than 16 residents, plus any required "live-in" staff.

"License" means the written ~~permission~~ authorization of the Board ~~authorizing and~~ granting a person the privilege of serving as a ~~nursing home~~ long term care administrator for a specific period of time.

"Long Term Care Administrator" or "Administrator" means a person licensed by the State of Oklahoma under the provisions of 63 O.S. Sections 330.51 et seq. Administrator, Nursing Home Administrator, and Nursing Facility Administrator shall have the same meaning as such term is defined in Title 63 O.S. Section 330.51.

"National Association of Board of Examiners of Long Term Care Administrators" or "(NAB)" is composed of state boards or agencies responsible for licensing long term

care administrators. The basic objective of the Association is to assist these boards and agencies in carrying out their statutory and regulatory responsibilities in the licensure and re-licensure of long term care administrators. One of NAB's functions is the development of the national nursing home administrator examination.

"Nursing ~~facility~~ Home, Nursing ~~Home~~ Facility, Rest Home, Long Term Care Facility, Specialized Home, and Specialized Facility" shall have the same meanings as the term "Nursing Facility" as such term is defined in the Nursing Home Care Act, Title 63 O.S. Section 1-1901 et seq.

~~**"Nursing home administrator"** means a person licensed by the state of Oklahoma under the provisions of 63 O.S., Sections 330.51 et seq. Administrator and Nursing Facility Administrator shall have the same meanings as the term "Nursing Home Administrator" as such term is defined in 63 O.S., Section 330.51.~~

~~**"OSBENHA"** (Board) means Oklahoma State Board of Examiners for Nursing Home Administrators.~~

"Preceptor" means a ~~Board approved~~ person qualified by training and approved by the Board who is currently licensed as a ~~nursing home~~ long term care administrator in Oklahoma and is charged with coordinating the training of an ~~Administrator In Training~~ Administrator-in-Training (AIT).

"Provisional license" means the temporary authority to serve as ~~nursing home~~ a long term care administrator as granted by the Board to an individual of good character who meets appropriate conditions and requirements ~~as~~ prescribed by the Board.

"Referral" means ~~the statutory requirement for the Health Department to provide written notice of substandard quality of care findings from state Medicare/Medicaid surveys. In order to satisfy notification requirements, the state survey agency "refers" by letter, the name of the administrator and survey results to the Board.~~ an issue or concern regarding a long term care administrator that has been forwarded to the Board for a determination as to whether a violation has occurred.

"Residential Care Home" ~~means any establishment or institution other than a hotel, motel, fraternity or sorority house, or college or university dormitory which offers or provides residential accommodations, food service and supportive assistance to any of its residents or houses any resident requiring supportive assistance who are is not related to the owner or administrator of the home by blood or marriage. Said residents shall be ambulatory and essentially capable of managing their own affairs, but do not routinely require skilled nursing care or intermediate care~~ shall have the same meaning as such term is defined in the Residential Care Act, Title 63 O.S. Section 1-819 et seq.

"Revocation" is a sanction imposed upon a licensee by the Board that results in a complete loss of license and all privileges attendant thereto.

"Specialized facility" ~~means any facility which offers or provides inpatient long term care services on a twenty four hour basis to a limited category of persons requiring such services, including, but not limited to, a facility providing health or habilitation services for developmentally disabled persons, infants and/or children, or Alzheimer's and dementia residents~~ shall have the same meaning as such term is defined in the Nursing Home Care Act, Title 63 O.S. Section 1-1901 et seq.

"Suspension" is a sanction imposed upon a licensee by the Board. The licensee retains his/her license, yet he/she shall not function in the capacity as a long term care administrator until the Board determines that conditions responsible for the suspension no longer exist and requirements for restoration have been met.

"Uninvited Solicitation" means coercion or harassment of a ~~patient, resident or~~ client residing in a long term care facility for the purpose of attempting to persuade the ~~patient, resident or~~ client to change long term care facilities ~~without prior request of the patient, resident or client~~.

~~**"Waiver"** means the granting of an exemption from a State regulation under the provisions of 63 O.S., Sections 330.51 et. seq. et seq.~~

SUBCHAPTER 3. OKLAHOMA STATE BOARD OF EXAMINERS FOR ~~NURSING HOME~~ LONG TERM CARE ADMINISTRATORS

490:1-3-1. Organization

The members of the Board shall~~, as soon as a majority has been appointed and annually, thereafter,~~ elect from their membership a ~~president~~ chair, ~~vice president~~ vice-chair and secretary-treasurer to serve one (1) year terms beginning July 1 of each year.

(1) Nominations may be made by any member of the Board or a committee named by the ~~president~~ chair.

(2) Each member of the Board ~~shall~~ may cast one vote for each office for which an election is held.

(3) ~~Eight (8) members of the Board shall constitute a quorum.~~ Election shall be by majority vote of ~~the members present and voting~~ a quorum.

(4) Board officer vacancies shall be filled in ~~like~~ the same manner.

(5) Eight (8) members of the Board shall constitute a quorum.

490:1-3-2. Officers and committees

(a) The ~~president~~ chair shall be the Chief Executive Officer of the Board. The ~~president~~ chair shall call and preside at all meetings and shall be a member ex-officio of all committees. The ~~president~~ chair may act for the Board in such other matters as it may authorize.

(b) The ~~vice president~~ vice-chair, in the absence of the ~~president~~ chair, shall assume all of the ~~president's~~ chair's duties and have all of the ~~president's~~ chair's authority. The ~~vice president~~ vice-chair shall also perform such duties as may be assigned by the ~~president~~ chair.

(c) The secretary-treasurer shall keep accurate and complete minutes of all meetings (including minutes of executive sessions), attend to all correspondence, call meetings on order of the ~~president~~ chair, and maintain accurate and complete

records of all other business transactions and funds of the Board.

(d) The Board may appoint a recording secretary to assist in fulfilling the responsibilities of the secretary-treasurer. The recording secretary may be an employee of the Board.

(~~d~~e) The elected officers shall constitute the Executive-Committee of the Board and provide counsel to the ~~president~~ chair in situations requiring immediate attention and action. ~~The Executive Committee will act in strict compliance with the Oklahoma Open Meeting Act.~~

(~~e~~f) Standing and special committees may be appointed by the ~~president~~ chair and shall serve until their purpose is accomplished or until the date of the meeting at which the officers of the Board are elected. Such committees shall maintain a permanent record of all activities and shall report ~~same~~ at each regular meeting of the Board.

490:1-3-3. Meeting of the Board

(a) All proceedings of the Board shall be held and conducted in compliance with the ~~State~~ Oklahoma Open Meeting ~~Law~~ Act.

~~(b) The annual meeting of the Board for purpose of election of officers shall be the last meeting before the end of the calendar year, December 31.~~

(~~c~~b) Regularly scheduled meetings shall be held at a time and place designated by the ~~president~~ chair.

(~~d~~c) The secretary shall notify the membership of the time and place of all regularly scheduled meetings at least five (5) days prior to the date of said meeting.

(~~e~~d) Special meetings may be called at any time by the ~~president~~ chair and shall be called at the request of a majority of the members of the Executive Committee or at the request of a majority of the membership of the Board. ~~At any special meeting no business shall be transacted except that stated in the notice calling the meeting.~~ The secretary shall notify the Board of the time, place and business to be transacted at least forty-eight (48) hours in advance of the time set for the special meeting.

~~(f) Eight (8) members of the Board shall constitute a quorum for meetings.~~

490:1-3-6. Continuing Education Programs and Training Programs [REVOKED]

~~(a) In order to receive OSBENHA recognition and continuing education credit (CEU), continuing education programs shall be submitted to the Board for consideration prior to presentation as indicated under this Chapter. All continuing education programs submitted to the OSBENHA for recognition and continuing education credit hours will be submitted with a $55.00 per credit hour non refundable approval fee. Approval will be granted only for specific programs for specific dates of presentation. The Board shall not be bound to granting specific continuing education credit should subsequent information come to its attention that program content differed from that approved.~~

~~(b) Sponsors shall be responsible for obtaining satisfactory documentation of attendance.~~

~~(c) All programs approved by the National Association of Boards of Examiners of Long Term Care Administrators (NAB) that receive a NAB approval number will be accepted presumptively by OSBENHA for CEU credits.~~

~~(d) If the Board finds that programs of training and instruction conducted within the state are not sufficient in number or content to enable applicants for nursing home administrators' licenses and nursing home administrators to meet requirements established by this Board, it shall institute and conduct or arrange with others to conduct one or more such programs and shall make provision for their accessibility to citizens of this state. The Board may approve and conduct programs sufficient to meet educational and training requirements established by the Board.~~

~~(e) The Board reserves the right to monitor any or all approved programs.~~

~~(f) Criteria for Board program approval:~~

~~(1) Relevance of subject matter and adequate facilities:~~

~~(A) Must relate to Nursing Home Administration.~~

~~(B) Must be designed to promote continued knowledge, skills and attitudes consistent with current standards in nursing home administration.~~

~~(C) Assist administrators in the improvement of their professional competencies.~~

~~(D) Programs must be open and available to all qualified nursing home administrators in Oklahoma.~~

~~(E) Program location (facilities) must provide adequate space to accommodate potential attendees and have the ability to provide needed equipment, sound, projectors, etc.~~

~~(2) Faculty qualifications:~~

~~(A) Must have experience in long term care, supervision and administration or,~~

~~(B) Must have expertise in teaching and instructional methods suitable to subject presented or,~~

~~(C) Must have suitable academic qualifications and experience for subject presented.~~

~~(3) Learning objectives:~~

~~(A) Must be reasonable and clearly stated.~~

~~(B) Must be stated in behavioral terms, which define the expected outcomes for participants.~~

~~(C) Must demonstrate the consistency of content (objectives).~~

~~(D) Must identify mechanism by which learning objectives are shared with participants.~~

~~(4) Teaching methods:~~

~~(A) Must be clearly stated.~~

~~(B) Must be appropriate to subject matter, and allow suitable time.~~

~~(C) Must describe instructional aids and resource materials utilized.~~

~~(5) Sponsors must have expertise in the subject matter presented and should be from one of the following categories:~~

~~(A) Accredited educational institutions.~~

~~(B) Professional association and/or trade association.~~

~~(C) Private educational group.~~

~~(D) A state agency.~~

~~(6) Registration fee for programs:~~

~~(A) Must be published clearly on promotional material.~~

~~(B) Fees will be reviewed by OSBENHA.~~

~~(7) Evaluation of program:~~

~~(A) Sponsor must allow OSBENHA to evaluate program.~~

~~(B) OSBENHA will provide evaluation form for each program participant's responses.~~

~~(C) OSBENHA will provide a summary of evaluations for each program.~~

~~(D) Copies of actual evaluations will be provided to sponsor at additional cost upon request.~~

~~(8) Certification of attendance:~~

~~(A) Must state method to be used.~~

~~(B) To receive full credit, attendees must attend the full program. Partial credit with a minimum of two clock hours may be earned in a divisible program. Program content will be considered by the Board in determining whether partial credit will be granted.~~

~~(C) The maximum number of hours which can be earned shall be seven clock hours per day.~~

~~(D) Must provide list of participants to OSBENHA.~~

~~(9) Instructional hours:~~

~~(A) Must be based upon clock hours (60 minutes = 1 clock hour).~~

~~(B) Schedule must show registration, meal times (not included in credit hours), and breakdown of daily educational activities.~~

~~(10) Target group for programs:~~

~~(A) Nursing Home Administrators.~~

~~(B) Other disciplines related to long term care.~~

~~(11) OSBENHA reserves the right to evaluate any or all approved programs.~~

~~(g) Review process:~~

~~(1) All programs will be reviewed by the Education Committee.~~

~~(2) The Education Committee will make recommendations to the full Board for approval/or denial.~~

~~(3) Types of programs to be reviewed shall be appropriately designed for Nursing Home Administrators.~~

~~(4) Sponsors must submit program to OSBENHA 30 days in advance of program, provided however, that should the Board fail to meet through lack of a quorum or other circumstance, the application will be reviewed at the next meeting of the Board and if approved, hours will be awarded retroactively.~~

~~(5) If a program is disapproved, the sponsor shall be notified in writing including the reasons for rejection.~~

~~(6) If a program is disapproved, the sponsor has 30 days to appeal in writing. The appeal must include a copy of the original application package and any additional information which the sponsor feels is needed for further clarification.~~

~~(7) The committee may recommend approval of a submitted program content or a portion of the program content even though it has been determined that the same content or a portion of the program content has been previously approved by the Board during the current calendar year; however, licensed nursing home administrators who have attended and received credit for such previously approved program that falls into this category shall be denied credit for attending subsequent duplicate programs during the same calendar year.~~

~~(h) Programs which deal specifically with internal affairs of an organization do not qualify for credit.~~

~~(i) Programs from the Administrator University may qualify for continuing education hours at the discretion of the Board.~~

490:1-3-7. Administrator University [REVOKED]

~~(a) The Board is committed to providing learning opportunities to individuals interested in pursuing a career in nursing home administration, and enhancing the development of licensed administrators. To further this objective, the Board has directed the formation of an Administrator University with curriculum designed specifically to provide individuals with knowledge and skills necessary to be a successful administrator.~~

~~(b) Upon final approval from the Board and establishment of the University, individuals applying to become an administrator will be required to successfully complete the University prior to being admitted to the AIT program.~~

~~(c) Administrators who are already licensed in the State of Oklahoma may enter the University for enhanced training at their pleasure.~~

~~(d) At the Board's discretion, specific classes or the entire University curriculum may be imposed as a remedy for the violation of rules and/or standards established by the Board.~~

~~(e) A fee prescribed by the Board shall be submitted with the application form prior to admission to Administrator University.~~

490:1-3-8. Executive Director

The Board's Executive Director shall carry out administrative functions of the Board, including, but not limited to, issuing subpoenas and signing orders entered by the Board.

490:1-3-9. Waiver of one administrator per facility rule

(a) The Board may grant a waiver of OAC 490:10-13-2(b) after review of the required documentation.

(b) The owner of facilities requesting a waiver of the requirement that long term care administrators licensed by the Board shall not concurrently serve as the administrator of more than one nursing facility must show:

(1) an emergency and/or

(2) a public necessity and/or

(3) conditions evidencing undue burden upon the operations of the facility.

(c) The following conditions and requirements shall apply:

(1) Facilities named in the request must be in substantial compliance with state and federal requirements. Twenty (20) copies of all statement of deficiencies (CMS-2567) including Plans of Corrections issued within the last 15 months must be submitted for each of the facilities named in the request.

(2) Twenty (20) copies of the administrator's resume that includes details regarding current and previous positions held in a nursing or specialized facility must be provided.

(3) The request shall be submitted in writing to the Board office at least fourteen (14) days prior to the Board meeting at which the request will be presented.

(4) Location of the facilities in relation to each other named in the request will be reviewed and considered by the Board when rendering a decision.

(5) The administrator and the owner or owner representative must appear in person to present the waiver request to the full Board and to supply all appropriate documentation, such as financial information, efforts made to fill present position and any other information requested by the Board. Twenty (20) copies of all written documentation in the request must be submitted.

(6) The request must show the names and addresses of the facilities, the number of beds in each facility, the amount of time needed and justification for the requested time period.

(d) The following restrictions shall apply:

(1) The waiver shall be time limited and specific to the facilities and administrator.

(2) The Board shall determine the time limit for the waiver.

(3) The waiver shall be null and void:

(A) If the designated administrator changes positions; or

(B) If the facility changes ownership.

SUBCHAPTER 5. ~~COMPLAINTS/REFERRALS~~ INVESTIGATIVE PROCEDURES

490:1-5-2. Receipt of ~~Complaints/Referrals~~ complaints

~~The Board shall investigate and take appropriate action on any complaint/referral received, including those from the Department of Human Services or any other regulatory agency. The following requirements apply to complaints and referrals filed with the Board.~~

(~~1~~a) Any person may submit a complaint to the Board in writing, by phone, or in person. ~~Anonymous complaints will not be accepted. Complaints may be generated by the Board or staff as a result of information obtained from media, law enforcement agencies, or any other source. The Board shall reduce to writing a verbal complaint received by phone or in person.~~

~~(2) Referrals may be submitted by a State Agency, a State Licensing Board, or any other regulatory entity.~~

(b) Anonymous complaints shall not be accepted.

~~(3) If the complainant is a facility resident, the resident's personal or legal representative, or a current employee of the facility, the Board shall keep the complainant's identity confidential. For all other complainants, the Board shall ask the complainant's preference regarding confidentiality.~~

(c) A complaint shall be generated by the Board or Board staff when information obtained from the media, law enforcement, any regulatory agency, or any other source indicates a violation may have occurred.

(d) The Board shall reduce to writing a verbal complaint received by phone or in person.

(e) If the complainant is a facility resident, the resident's personal or legal representative, or a current employee of the facility, the Board shall keep the complainant's identity confidential.

490:1-5-2.1. Receipt of referrals

(a) The board shall review and may take appropriate action on any and all referrals received.

(b) A complaint shall be generated by the Board or Board staff when information obtained from the referral indicates a violation may have occurred.

490:1-5-3. Investigation of ~~Complaints/Referrals~~ complaints

Each ~~complaint/referral~~ complaint shall be thoroughly investigated by Board staff, or through contract with a state agency that has ~~been~~ qualified health professionals trained to conduct investigations of similar healthcare professionals or entities.

490:1-5-4. Preparation of ~~Investigative Report~~ investigative report

(a) ~~Upon receipt of the complaint/referral, a~~ A written investigative report shall be ~~compiled~~ prepared for each complaint that includes, but is not limited to, the following ~~information~~:

(1) The exact nature of the ~~complaint(s)/referral(s)~~ complaint(s);

(2) The identity of the administrator;

(3) A description of the investigation;

(4) The identity of the investigator;

(5) The identity of witnesses interviewed, unless the witness wishes to remain anonymous and is a current resident, a current staff member, or the personal or legal representative of a current resident;

(6) A description of documents or other tangible items examined in the course of the investigation;

(7) All evidence obtained that would directly or by reference establish the ultimate fact of the complained act or omission; and

(8) All evidence that would either explain or mitigate the ~~complained act~~ action or omission. ~~The investigative report shall be forwarded to the Board's legal counsel for preparation of the formal complaint.~~

(b) ~~At least five (5) working days prior~~ Prior to the Board meeting at which a decision ~~will~~ is scheduled to be made,

each member of the Board shall be furnished a copy of the ~~complaint/referral~~ complaint, and the investigative report.

(c) The investigative report furnished to the Board shall be considered a confidential investigation document until a motion to vote on the ~~complaint/referral~~ complaint is made, at which time, the report shall be ~~considered~~ a public record.

(d) After the vote upon the ~~complaint/referral~~ complaint is made and recorded, the Board shall maintain as a public record a full and complete copy of the investigative report indexed by docket number or similar internal reference.

490:1-5-5. Board ~~Decision~~ decision

(a) Any decision by the ~~OSBENHA~~ Board pursuant to a complaint ~~or referral~~ shall be voted upon by a quorum of the Board in an open meeting.

(b) Each ~~complaint/referral~~ complaint shall be acted upon pursuant to a motion after an opportunity for discussion by the Board. Following discussion of the evidence, any member of the Board may make a motion to continue the investigation in order to gather additional evidence or to make further inquiries.

(c) The investigation may be extended ~~for sixty (60) days~~ upon a finding of good cause ~~as provided for in the Chapter~~ pursuant to 63 O.S. Section 330.65.

(d) If the vote to extend the investigation fails, the Board shall vote upon the merits of the ~~complaint/referral~~ complaint.

(e) Each member of the Board shall vote based on the evidence presented in the report required pursuant to the provisions of this section.

(f) No recommendation on a ~~complaint/referral~~ complaint shall be made to the Board by a subcommittee or a staff member of the Board.

490:1-5-6. Notice

(a) Notice of ~~a Board decision issued~~ the Board's proposed action to ~~a nursing home~~ an administrator who is the subject of a complaint shall be issued in accordance with the provisions of Article II of the Administrative Procedures Act governing individual proceedings.

(b) Any request for a hearing by ~~a nursing home~~ an administrator regarding the proposed action of the Board shall be received by the Board within ten (10) days of the receipt of the notice of the Board decision ~~by the nursing home administrator~~.

(c) If no timely request for hearing is ~~given to~~ received by the Board ~~by the nursing home administrator~~, the Board decision shall become final.

490:1-5-7. Hearing

(a) ~~The~~ If a request for hearing is received by the Board within 10 days of the administrator's receipt of notification, the Board will set a date, time and place for the hearing and will inform the aggrieved licensee by registered mail, addressed to the licensee's ~~last known business or residence~~ address ~~as~~ contained in the records of the Board, of the scheduling of such hearing ~~at least thirty (30) days in advance of the date set for the hearing~~. ~~Attached to the notice will be the~~ The formal Complaint will be a part of the notice.

(b) Individual proceedings shall be conducted by the Board according to the provisions established ~~in the Oklahoma Statutes at Title 75, Section 309.et seq.~~ in 75 O.S. Section 309 et seq.

(1) All parties shall have an opportunity to respond and be represented by counsel at said hearings.

(2) All parties shall have a full opportunity to present evidence and argue all issues involved and to cross examine as may be required for a full and true disclosure of the facts.

~~(3) The decision of the Board shall be based exclusively on the evidence and matters noticed.~~

(3) Twenty (20) copies of all documents and motions submitted by the Administrator for Board consideration shall be provided to the Board.

~~(4) A record of the proceeding shall be produced and kept by the Board.~~

(4) The decision of the Board shall be based exclusively on the evidence and matters noticed at the hearing.

~~(5) The full proceedings of any hearing shall be transcribed on the request of any party. The fee for the reporter shall be paid by the party requesting the services of the reporter. The Board may require the requesting party to post a reasonable deposit to cover the cost of transcribing the full proceedings.~~

(5) An electronic recording of the proceeding shall be made by the Board, and a copy of the electronic recording shall be provided by the Board at the request of a party to the proceeding.

~~(6) All final orders in any individual proceeding shall be in writing. A final order shall include findings of fact and conclusions of law, separately stated.~~

(6) The full proceedings of any hearing may be transcribed. The party requesting the services of a court reporter shall make the arrangements for the transcription with the court reporter and pay the reporter's fee. That party shall notify the Board in advance of the meeting of the expected presence of a court reporter.

(7) All final orders in any individual proceeding shall be in writing. A final order shall include findings of fact and conclusions of law, separately stated.

(c) Any party aggrieved by a decision of the Board following a hearing may appeal directly to district court pursuant to the provisions of Section 318 of ~~title~~ Title 75 of the Oklahoma Statutes.

(d) The Board shall assess the costs of the hearing process, including attorney fees.

490:1-5-7.1. Administrative fines

(a) The Board may impose administrative fines, in an amount to be determined by the Board, against licensees who do not comply with provisions of the Oklahoma statutes relating to Long Term Care Administrators or rules adopted by the Board.

(b) Administrative fines shall not exceed One Thousand Dollars ($1,000.00) per violation.

(c) In assessing a fine, the Board shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the scope, severity and repetition of the violation and any additional factors deemed appropriate by the Board.

490:1-5-8. Reporting

~~(a) A monthly report will be compiled by the Executive Director detailing Board activity for the past month.~~

(a) The Board shall report final adverse actions to the Healthcare Integrity and Protection Data Bank (HIPDB) in accordance with requirements at Title 45, Code of Federal Regulations, Part 61.

~~(b) An annual report will be compiled by the Executive Director and submitted to the Board using a format approved by the Board.~~

(b) Disciplinary action taken against a licensee shall be reported on the registry as provided in OAC 490:1-6-1.

(c) If the Board has knowledge that the licensee is licensed as an administrator in any other state(s), the Board shall report disciplinary action taken against the licensee to all appropriate state licensing authorities.

(d) Investigations shall be referred to the proper law enforcement authorities, the state fraud and abuse authorities, or any licensing board, when deemed appropriate by the Board.

SUBCHAPTER 6. ADMINISTRATOR REGISTRY

490:1-6-1. ~~Administrator Registry (AR)~~ General provisions

(a) A registry of administrators shall be created and maintained by the Board. The registry ~~will~~ may include information such as name, license number, date first licensed, current facility of employment, history of facility employment, ~~results of criminal background check, notation if the individual is required to register pursuant to the Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act,~~ history of complaints registered against the individual, history of other referrals ~~received from OSDH~~, status as a preceptor~~;~~ or AIT, ~~or~~ status of license, and any other information deemed necessary by the Board. The ~~Administrator Registry~~ registry shall be created and maintained in both paper and electronic formats, and shall be available for public inspection.

(b) ~~Complaints/referrals~~ Complaints shall be initially entered into the registry upon receipt~~, but no later than two (2) working days after receipt~~.

(c) Board decisions and other data required to keep the ~~Administrator Registry~~ registry current shall be entered into the ~~Registry~~ registry ~~no later than three (3) working days after receipt~~.

(d) The registry shall be organized in both chronological order ~~both~~ by the date of the complaint or referral and by the name of the licensed administrator.

(e) The registry shall contain the nature of the complaint or referral; action, if any, taken by the Board; and the number of complaints and referrals made against an individual administrator.

SUBCHAPTER 7. FEES AND DEPOSITS

490:1-7-1. Fees and deposits

(a) All fees, ~~including the annual license fee, and other fees~~ fines and costs collected by the Board under the provisions of ~~this Chapter~~ 63 O.S. Sections 330.51 et seq. shall be deposited with the State Treasurer within twenty-four (24) hours of receipt, ~~who shall keep in special~~ in a fund to be known as the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long Term Care Administrators Revolving Fund~~,~~. ~~which~~ This fund may be used for the purposes of the Board as provided in the Statutes.

(b) ~~Funds~~ Fees, fines and costs received by the Board for any ~~purposes~~ purpose described herein shall become the exclusive property of the Board and shall not be refunded in whole or in part for any ~~reasons~~ reason or purpose without Board approval.

~~(c) The Board may impose a fee as determined by the Board for training or education program conducted or approved by the Board.~~

490:1-7-2. Schedule of fees

(a) Initial Long Term Care Administrator License - $200.00
(b) Annual Renewal License - $200.00
(c) Late Fee on Annual Renewal License - $100.00
(d) Application Fee - $100.00
(e) Provisional License (per application) - $200.00
(f) Inactive Status (annual) - $200.00
(g) Name Change (per request) - $25.00
(h) Endorsement Licensure Questionnaire (per request) - $50.00
(i) Replacement of Annual Card (per request) - $25.00
(j) Duplicate License (per request) - $25.00
(k) State Standards Review (per person) - $100.00
(l) State Standards Examination Packet - $50.00
(m) State Standards Examination - $100.00
(n) Board Sponsored Educational Workshop (per day) - $60.00 - $85.00
(o) Photocopies (per page) - $0.25
(p) Rules and Regulations (per copy) - $15.00
(q) Administrator-In-Training (AIT) Program (per person) - $350.00
(r) Continuing Education Program Approval Fee (per credit hour) - $55.00
(s) Mailing List on Plain Paper (per page) - $0.50
(t) Mailing List on Labels (per page) - $1.00
(u) Electronic Mailing List - $10.00
(v) Returned Check Fee - $30.00
(w) Late Fee for Failure to Provide Current Contact Information - $75.00
(x) Fee for Administrator University - Not to exceed $200.00 per day
(y) Convenience Fee for Online Licensure Renewal - Determined by Intermediary

SUBCHAPTER 9. CONTINUING EDUCATION

490:1-9-1. General provisions for continuing education programs

(a) In order to receive Board recognition and continuing education credit, continuing education programs shall be submitted to the Board for approval prior to presentation as indicated under this Chapter.

(b) All continuing education programs submitted to the Board for recognition and continuing education credit hours will be submitted with a $55.00 per credit hour non-refundable fee. Approval will be granted only for specific programs for specific dates of presentation.

(c) The Board shall withdraw approval for continuing education credit should subsequent information come to its attention that program content differed from that approved.

(d) Sponsors shall be responsible for obtaining satisfactory documentation of attendance.

(e) All programs approved by the National Association of Boards of Examiners of Long Term Care Administrators (NAB) that receive a NAB approval number will be accepted presumptively by the Board for continuing education unit credits.

(f) The Board may approve and conduct educational and training programs for continuing education credit if such programs meet the criteria established in this Chapter.

(g) The Board reserves the right to monitor any and all approved programs.

(h) Programs that deal specifically with internal affairs of an organization do not qualify for continuing education hours.

(i) Programs from the Administrator University may qualify for continuing education hours if they meet the criteria outlined in this Chapter and have been approved by the Board.

490:1-9-2. Criteria for continuing education programs

(a) In order for the Board to approve a program for continuing education hours, an application shall be completed by the sponsor and reviewed and approved by the Board.

(b) Sponsors shall submit their application to the Board 30 days in advance of the program, provided however, should the Board fail to meet through lack of a quorum or other circumstance, the application will be reviewed at the next meeting of the Board and if approved, hours will be awarded retroactively.

(c) The application shall contain documentation that certifies the following criteria are being met:

(1) The program shall relate to Long Term Care Administration and be designed to promote continued knowledge, skills and attitudes consistent with current standards in long term care administration.

(2) The program shall be designed to assist administrators to improve their professional competencies.

(3) The program shall be open and available to all long term care administrators in Oklahoma.

(4) The facility where the program will be conducted shall provide adequate space to accommodate potential attendees and have the ability to supply the needed equipment.

(5) The faculty must have experience in long term care supervision and administration, or have expertise in teaching and instructional methods suitable to the subject presented, or have suitable academic qualifications and experience for the subject presented.

(6) The learning objectives in the program must be reasonable and clearly stated in behavioral terms which define the expected outcomes for participants.

(7) The learning objectives must be consistent with the program content and the mechanism by which learning objectives are shared with participants must be identified.

(8) The teaching methods in the program must be clearly stated, must be appropriate to the subject matter, and must allow suitable time.

(9) Instructional aids and resource materials that will be utilized in the program must be described.

(10) Sponsors must have expertise in the subject matter presented and should be from an accredited educational institution, a professional association and/or trade association, a private educational group, or a state agency.

(11) The registration fee for a program must be published clearly on promotional material.

(12) Registration fees may be reviewed by the Board.

(13) The sponsor must allow the Board to evaluate the program.

(14) The sponsor must provide an evaluation form, approved by the Board, for each program participant's responses.

(15) Within 15 days after the conclusion of the program, the sponsor must provide to the Board a list of participants and a summary of the evaluations for each program.

(16) The application presented to the Board must state the method to be used in certifying attendance.

(17) To receive full credit, attendees must attend the full program.

(18) Partial credit with a minimum of two clock hours may be earned in a divisible program.

(19) Program content shall be considered by the Board in determining whether partial credit will be granted.

(20) Instructional hours must be based upon clock hours (60 minutes = 1 clock hour).

(21) The agenda must show registration, meal times (not included in credit hours), and a breakdown of the daily educational activities.

(22) The maximum number of hours that can be approved or earned shall be seven clock hours per day.

(23) The target group for programs shall be long term care administrators and other disciplines related to long term care.

490:1-9-3. Approval of continuing education programs

(a) In order to be approved, continuing education programs shall be appropriately designed for Long Term Care Administrators and shall meet the criteria outlined in this chapter.

(b) If a program is disapproved, the sponsor shall be notified in writing of the reasons for rejection within ten (10) days of the Board's decision.

(c) If a program is disapproved, the sponsor has 30 days to appeal in writing. The appeal must include a copy of the original application package and any additional information the sponsor feels is needed for further clarification.

(d) The Board may approve program content or a portion of the program content, even though the same content or a portion of the program content has been previously approved by the Board for the same calendar year. However, licensed administrators who have attended and received credit for such previously approved program content shall be denied credit for attending subsequent duplicate programs.

490:1-9-4. Continuing education requirements

(a) Each licensee shall be responsible for identifying his/her own continuing education needs, taking the initiative in seeking continuing professional education activities to meet those needs, and integrating new knowledge and skills into their duties.

(b) Individuals who are newly licensed or who are requesting reinstatement will be required to successfully complete continuing education hours equivalent to two (2) hours per month for each month the license is active from the month the license is issued to the renewal month.

(c) All other licensees shall be required to successfully complete twenty-four (24) clock hours of continuing education during each calendar year.

(d) Licensees are responsible for maintaining their own continuing education records.

(e) Carry-over of continuing education credit from one year to the next is not permitted.

(f) A licensee who cannot meet the continuing education requirement due to illness, emergency or hardship may apply to the Board in writing prior to the end of the renewal period for a waiver. The request shall explain why compliance is impossible, and include appropriate documentation. Waiver requests will be evaluated by the Board on a case-by-case basis.

(g) In the event a licensee fails to provide the Board with documentation that the continuing education requirements have been met, the licensee will be subject to non-renewal.

(h) A licensee suspended for disciplinary reasons is not exempt from the continuing education requirements.

(i) Continuing education hours are not required for a licensee who is inactive status.

490:1-9-5. Auditing of continuing education hours

(a) The Board will receive continuing education information from sponsors for audit purposes only and will not keep an individual record of continuing education hours for administrators.

(b) An annual audit of at least 5% of the total number of licensed administrators will be made to verify compliance with statements made on renewal forms. This percentage may be increased at the Board's discretion.

(c) Failure to provide verification of continuing education hours as requested by this audit shall result in disciplinary action as determined by the Board.

[OAR Docket #07-932; filed 5-8-07]

TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FOR ~~NURSING HOME~~ LONG TERM CARE ADMINISTRATORS
CHAPTER 10. ~~RULES AND REGULATIONS FOR NURSING HOME~~ LONG TERM CARE ADMINISTRATORS

[OAR Docket #07-933]

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RULES:

Subchapter 1. Licensing of ~~Nursing Home~~Long Term Care Administrators
490:10-1-1. Purpose [AMENDED]
490:10-1-2. Definitions [NEW]
490:10-1-3. ~~Personal qualifications of applicants~~Qualifications for initial licensure [AMENDED]
490:10-1-4. ~~Other qualifications for licensure of applicants~~Qualifications for licensure by reciprocity [AMENDED]
490:10-1-5. ~~Provisional license~~ Qualifications for a provisional license [NEW]
490:10-1-6. Administrator responsibilities [AMENDED AND RENUMBERED TO 490:10-13-2]
490:10-1-7. Waiver of rule [REVOKED]
490:10-1-8. Administrator code of ethics [AMENDED AND RENUMBERED TO 490:10-13-1]
490:10-1-9. Inactive license [NEW]
490:10-1-10. Requirements for reinstatement from inactive status [NEW]
490:10-1-11. Requirements for restoration from suspended status [NEW]
Subchapter 3. Application for Licensure
490:10-3-1. Application ~~process~~for initial licensure, reciprocity, or provisional license [AMENDED]
490:10-3-2. National examination [NEW]
490:10-3-3. State standards examination [NEW]
490:10-3-4. Admission to state and national examinations [NEW]
490:10-3-5. Application for licensure renewal [NEW]
490:10-3-6. Licensure term [NEW]
Subchapter 5. ~~Licensure Expiration, Renewal, Denial, Revocation and Suspension~~ Discipline
490:10-5-1. Expiration [AMENDED AND RENUMBERED TO 490:10-3-6]
490:10-5-2. Renewal [AMENDED AND RENUMBERED TO 490:10-3-5]
490:10-5-3. ~~Denial, revocation and suspension~~Disciplinary action [AMENDED]
490:10-5-4. Auditing of continuing education [REVOKED]
490:10-5-5. Summary suspension [NEW]
Subchapter 7. ~~Nursing Home Administrators School~~ Administrator University
490:10-7-3. General provisions [NEW]
Subchapter 8. Administrator-in-Training (AIT)
490:10-8-1. Training requirement [REVOKED]
490:10-8-2. Application [AMENDED]
490:10-8-5. Preceptor qualifications and agreement [AMENDED]
490:10-8-7. Module reports [AMENDED]
490:10-8-9. Preceptor's checklist [AMENDED]
490:10-8-13. AIT time on the job [AMENDED]
490:10-8-14. AIT exempt status [AMENDED]

490:10-8-15. Admission to national and state exams [AMENDED AND RENUMBERED TO 490:10-3-4]
490:10-8-16. Refusal to approve or renew preceptor or intern assignment [AMENDED]
490:10-8-17. Supervision of more than one AIT restricted [AMENDED]
Subchapter 9. License Status [REVOKED]
490:10-9-1. License status [REVOKED]
490:10-9-2. Reinstatement [REVOKED]
Subchapter 10. Fee Schedule [REVOKED]
490:10-10-1. Fee Schedule [REVOKED]
Subchapter 13. Standards for Administrators [NEW]
490:10-13-1. Administrator code of ethics [NEW]
490:10-13-2. Administrator responsibilities [NEW]

AUTHORITY:

Oklahoma State Board of Examiners for ~~Nursing Home~~Long Term Care Administrators; 63 O.S., Sections 330.51 et seq.

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ANALYSIS:

The proposed amendments in Subchapter 1, Licensing of Long Term Care Administrators, adds definitions to agree with those in Chapter 1, clarifies requirements for initial licensure and licensure by reciprocity. A new section is being added to provide criteria for a provisional license. The period an administrator's license can be in inactive status is being changed from 5 years to 2 years. New sections on reinstatement from inactive status and restoration from suspended status more clearly describe the conditions and requirements an administrator must meet.

Subchapter 3, Application for initial licensure, reciprocity, or provisional license, is being amended to more clearly describe the application process. The amendments require applicants to complete the application process within one year from the date of the application, whereas before, there was no expiration date on the application and some were being held for many years pending completion of the requirements. The proposed amendments also implement a non-refundable application fee. The remaining amendments in this subchapter are not new requirements, but have been pulled from other sections of the rules document and moved to this area so that all rules concerning application for licensure are together in one place.

Subchapter 5, Discipline, is being amended to include new and revised items that the Board may consider for disciplinary action. A finding of sexual abuse, falisification of records, improper use of the licensee's professional status, violation of a Board order, and failure to pay fees or fines established by the Board are being added as new items. The Board is also adding a provision for the use of a summary suspension in cases where a determination is made that the health, safety or welfare of the public is at risk and requires an emergency action.

The revocation of Subchapter 7 (formerly Nursing Home Administrators School) is being removed. The new Subchapter 7 is being titled Administrator University and a new section of general provisions are being added.

Minor grammatical changes are being made in Subchapter 8, Administrator-in-Training (AIT).

Subchapter 9, License Status, is being revoked. The requirements for inactive status and reinstatement are now located in Subchapter 3.

Subchapter 10, Fee Schedule, is being revoked. The fee schedule is now located in Chapter 1.

A new Subchapter 13, Standards for Administrators, is being added in the proposed amendments. This subchapter includes the Administrator Code of Ethics and Administrator responsibilities. Neither of these sections represents new requirements. They have simply been placed together for convenience.

Throughout this Chapter, amendments are being made to implement the provisions of Enrolled Senate Bill No. 1850 of the 2006 Regular Session and to reposition sections and review language to improve readability of the document.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2007:

SUBCHAPTER 1. LICENSING OF ~~NURSING HOME~~ LONG TERM CARE ADMINISTRATORS

490:10-1-1. Purpose

~~The rules of this~~ This Chapter ~~have~~ has been adopted for the purpose of complying with the provisions of the Administrative Procedures Act. This Chapter ~~outlines~~ implements the specific rules for licensing administrators serving in ~~Nursing and Specialized Facilities (which includes Intermediate Care Facilities for the Mentally Retarded) as defined in the Nursing Home Care Act. in Nursing and Specialized Facilities (which includes Intermediate Care Facilities for the Mentally Retarded) as defined in the Nursing Home Care Act.~~ the following facility types:

(1) Nursing facilities and specialized facilities licensed pursuant to 63 O.S. Section 1-1901 et seq., including but not limited to specialized facilities for persons with mental retardation, developmental disabilities or Alzheimer's disease; and

(2) The nursing care service of a continuum of care facility licensed pursuant to 63 O.S. Section 1-890.1 et seq.

490:l0-l-2. Definitions

Definitions set forth in Chapter 1 of this Title shall also apply to this Chapter.

490:10-1-3. ~~Personal qualifications of applicants~~ Qualifications for initial licensure

(a) Applicants shall not be less than twenty-one (2l) years of age at the time the license is issued.

(b) Each applicant must establish to the satisfaction of the Board that the applicant is of reputable and responsible character ~~as defined in Subchapter 5 of this Chapter~~.

~~(c) Each applicant must establish to the satisfaction of the Board that the applicant is in sound physical and mental health.~~

(c) Each applicant shall submit to a criminal background check. If the results of a criminal background check reveal that the applicant has been convicted of or pleaded guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude, the individual's application for licensure may be disapproved.

(d) Each applicant shall report any professional license revocation in any jurisdiction. The Board shall examine the reasons for revocation and may consider this information in granting or denying a license.

(e) In order to qualify for a license, each applicant must provide evidence satisfactory to the Board of the following:

(1) Successful completion of a four (4) year program and receipt of a bachelor's degree from an accredited college or university;

(2) Receipt of a passing score on the examination conducted by the National Association of Board of Examiners of Long Term Care Administrators;

(3) Receipt of a passing score on the current Oklahoma State Standards test;

(4) Successful completion of Administrator University;

(5) Successful completion of the Administrator-in-Training program; and

(6) Remittance of any and all required fees associated with obtaining a license.

(f) The Board may waive the requirement for Administrator University or the Administrator-in-Training requirement if the applicant has been previously licensed in Oklahoma as a long term care administrator and has been active in long term care for at least two (2) of the last five (5) years.

490:10-1-4. ~~Other qualifications for licensure of applicants~~ Qualifications for licensure by reciprocity

(a) ~~In order to qualify for a license, each applicant must provide evidence satisfactory to the Board of the following:~~ The Board has entered into a licensure endorsement agreement with the National Association of Board of Examiners of Long Term Care Administrators that permits licensure for candidates from other jurisdictions who have met the following minimum requirements.

(1) Successful completion of a four (4) year program and receipt of a bachelor's degree from an accredited college or university;

(2) ~~Receipt of a passing score on the examination conducted by the National Association of Board of Examiners of Nursing Home Administrators (NAB) if the applicant is requesting an initial license;~~ Submission to the Board of proof of initial licensure, including active NAB scores and proof that such license is in good standing;

(3) Receipt of a passing score on the current Oklahoma State Standards test;

(4) ~~Successful completion of all continuing education hours required by the Board;~~ Submission to the Board of evidence of licensure as a nursing home administrator of record full time for the past two consecutive years in a jurisdiction regulated by a licensing authority, or submission to the Board of evidence of licensure as a nursing home administrator who has been active in long term care for at least two (2) of the last five (5) years;

(5) ~~Successful completion of Administrator University, if applicable;~~ Submission to the Board of proof that any other administrator license granted to the candidate by all other states has not been suspended, revoked or otherwise restricted for any reason (other than nonrenewal or the failure to obtain the required continuing education credits in any states where the applicant is currently licensed but not engaged in the practice of nursing home administration), nor subject to any discipline or current investigation;

(A) The Board shall have discretion to assess the magnitude of any such discipline issued and determine the applicant's eligibility;

(B) The applicant shall report any professional license revocation in any jurisdiction. The Board shall examine the reasons for revocation and may consider this information in granting or denying a license.

(C) Documentation shall be provided directly by the state appointed authority; and

(6) Remittance of any and all required fees associated with obtaining a license~~; and~~.

~~(7) Successful completion of the Administrator in Training program if the applicant is requesting an initial license~~.

~~(b) Reciprocity may be granted to an applicant if he/she meets the minimum requirements set forth above and is a licensed administrator in good standing with two years experience in a supervisory position in a nursing facility in another state.~~

(b) An applicant for reciprocity shall submit to a criminal background check. If the results of a criminal background check reveal that the applicant has been convicted of or pleaded guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude, the individual's application for reciprocity may be disapproved.

490:10-1-5. ~~Provisional license~~Qualifications for a provisional license

(a) To fill a position of long term care administrator that unexpectedly becomes vacant, the Board may issue one provisional license for a single period not to exceed 6 months. The Board shall not issue another provisional license to fill a vacancy at the same facility for a period of one year after the provisional license is issued. The provisional license may be issued to a person who does not meet all of the licensing requirements established by the Board but who:

(1) Has successfully completed a four (4) year program and received a bachelor's degree from an accredited college or university;

(2) Has obtained the services of a currently licensed Oklahoma long term care administrator to act as an on-site consultant to the provisional licensee;

(3) Has submitted to a criminal background check and been found to have no convictions or pleas of guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude;

(4) Has reported any professional license revocation in any jurisdiction. The Board shall examine the reasons for revocation and may consider this information in granting or denying a provisional license.

(5) Has remitted any and all required fees associated with obtaining a license; and

(6) Meets any other appropriate conditions and requirements as may be prescribed by the Board for issuance of a provisional long term care administrator's license.

(b) A provisional licensee must successfully pass the Oklahoma State Standards test as soon as it is available, but no later than 60 days following the effective date of the provisional license.

(c) The consultant administrator to a provisional licensee must have been employed in a comparable long term care facility in Oklahoma a minimum of two (2) years.

(d) The consultant administrator to a provisional licensee shall:

(1) Provide direct supervision of the provisional licensee for at least eight (8) hours per week with no more than 10 days lapsing between consultant visits to the provisional licensee's facility; and

(2) Submit monthly evaluation reports on the provisional licensee to the Board no later than the tenth day of each month for the duration of the provisional license.

490:10-1-6. Administrator responsibilities [AMENDED AND RENUMBERED TO 490:10-13-2]

~~(a) Nursing home Administrators shall adhere to the Administrator Codes of Ethics as adopted by the Board.~~

~~(b) Nursing Home Administrators licensed by the Board shall not concurrently serve as the administrator of more than one nursing facility. The Board shall have the authority to grant a waiver of this restriction upon the showing of emergency, public necessity or other such conditions evidencing undue burden upon the operation of the facility. This restriction shall not apply to ICF/MR 16 beds and less.~~

~~(c) Every person licensed as a nursing home administrator and designated the "administrator of record" shall display such license in a conspicuous place in the office or place of business requiring such license.~~

~~(d) Failure of licensee to meet the continuing education requirement for licensure shall result in the license not being renewed or reactivated.~~

~~(e) Each licensed nursing home administrator shall notify the Board within fifteen (15) days following the relocation of either business or personal mailing address. The Board will assess a late fee if it is determined that the nursing home administrator failed to provide current contact information within this fifteen day requirement.~~

~~(f) Upon receipt of satisfactory evidence that a license has been lost, mutilated, or destroyed, the Board may issue a duplicate or replacement license upon payment of a fee as prescribed by the Board.~~

~~(g) Request for a change of name requires legal proof of the name change (e.g., copy of marriage certificate, divorce decree, etc.) before a replacement license can be issued.~~

~~(h) An administrator shall not knowingly initiate contact with a patient, resident or client currently residing in a long term care facility for the purpose of attempting to persuade a change to another long term care facility.~~

~~(i) An administrator shall not knowingly solicit or permit an employee to solicit patients, residents or clients for its long term care facility through coercion or harassment. If an administrator has knowledge of such actions by an employee, the administrator shall take such steps as are reasonable and necessary for such conduct to cease.~~

~~(j) Administrators shall self report any violation of OSBENHA rules to the Board within 24 hours of the violation. Self reporting or failure thereof shall be taken into consideration at the time any disciplinary action is considered.~~

~~(k) An Administrator, or applicant for Administrator licensure, in connection with a license application or an investigation conducted by the Board pursuant to OAC 490:1-5, or an investigation conducted by the Oklahoma State Department of Health, the Oklahoma Department of Human Services, the Oklahoma Health Care Authority, or any other agency of the state or federal government having regulatory responsibility over or relating to the delivery of care to persons in a facility operated or managed by the Administrator, shall not:~~

~~(1) knowingly make a false statement of material fact;~~

~~(2) fail to disclose a fact necessary to correct a misapprehension known by the Administrator or applicant for licensure to have arisen in the application or the matter under investigation; or~~

~~(3) fail to respond to a demand for information made by the Board or such government agency or any designated representative thereof, unless a request for a protective order has been first made to the Board pursuant to the provisions of OAC 490:1-5-5 (or OAC 490:1-5-7), in which case the Administrator or applicant may await the decision of the Board concerning the issuance or denial of a protective order before making any response.~~

490:10-1-7. Waiver of rule [REVOKED]

~~(a) The Board may grant a waiver of rule at 490:10-1-6.(a) after review of required documentation.~~

~~(b) The owner of facilities requesting a waiver of the requirement that nursing home administrators licensed by the Board shall not concurrently serve as the administrator of more than one nursing facility must show:~~

~~(1) an emergency and/or~~

~~(2) a public necessity and/or~~

~~(3) conditions evidencing undue burden upon the operations of the facility~~

~~(c) Conditions and/or Requirements:~~

~~(1) Facilities named in the request must be in substantial compliance with OSDH rules. Twenty (20) copies of all statement of deficiencies (CMS2567) including Plan of Corrections (POC) issued within the last 15 months, must be submitted for each of the facilities named in the request.~~

~~(2) Administrator must be in good standing with OSBENHA. A copy of the administrator's resume and all job titles, ie Administrator of Nursing Facility, Administrator of Assisted Living, DON, QMRP, etc. must be provided.~~

~~(3) Administrator must be familiar with the basic operations of the facilities named in the request, as indicated in the submitted resume and job titles.~~

~~(4) The request must be submitted in writing to the Board office in sufficient time to meet agenda posting requirements per Open Meetings Act and to allow members adequate time to properly review the request. Therefore, written requests and supporting documents must be received by the Board office of at least seven (7) calendar days prior to scheduled Board meeting date.~~

~~(5) Location of the facilities in relation to each other named in the request will be reviewed and considered in making a decision relating to the requests.~~

~~(6) The administrator and the owner or owner representative must appear in person to present the waiver request to the full Board and to supply all documentation; ie financial, efforts made to fill present position and any other information requested by the Board. Twenty (20) copies of all written documentation in the request must be submitted.~~

~~(7) The request must show the amount of time needed and must reflect reasons for the requested time period.~~

~~(d) Restrictions:~~

~~(1) The waiver is issued to a specific administrator and specific facilities for a limited period of time, ie three (3) months.~~

~~(2) The waiver expires if the wavered administrator changes positions, if the facilities change ownership or after specified time period has been reached.~~

490:10-1-8. Administrator code of ethics [AMENDED AND RENUMBERED TO 490:10-13-1]

~~(a) The Board is committed to ethical professional conduct and therefore adopts the following standards to establish and maintain a high degree of integrity and dignity in the profession and to protect the public against unprofessional conduct on the part of nursing home administrators.~~

~~(b) The American College of Health Care Administrators Code of Ethics is adopted in whole.~~

~~(c) Furthermore, the Board adopts the following as an addition to the OSBENHA code of ethics: Administrators have a fiduciary duty to the facility and cannot serve as guardian of the person or of the estate, or hold a durable power of attorney or power of attorney for any resident of a facility of which they are an administrator.~~

~~(d) Licensees shall place a copy of the Administrator Code of Ethics approved by the Board in a conspicuous location in a public area in the place of business requiring such license.~~

490:10-1-9. Inactive license

(a) A licensee may request his/her license be placed on inactive status, however, the licensee may not function in the capacity as a long term care administrator in Oklahoma until the license is reinstated.

(b) A licensee who is in inactive status will remain on the Board's mailing list, and is eligible for reinstatement as a licensed administrator as described in this Chapter.

(c) In order to place a license on inactive status, the licensee must, prior to the expiration date of the current license:

(1) submit a written request for inactive status, and

(2) submit the inactive status fee as prescribed by the Board at OAC 490:1-7-2.

(d) A licensee may remain on inactive status for a period not to exceed two years.

(e) A request for inactive status must be made each year during the renewal period.

(f) The inactive fee is charged each time inactive status is requested.

490:10-1-10. Requirements for reinstatement from inactive status

(a) A licensee who has been granted inactive status by the Board, and who otherwise meets the qualifications for active licensure, may apply for and be granted licensure as an active long term care administrator by providing evidence satisfactory to the Board of the following:

(1) Receipt of a passing score on the current Oklahoma State Standards test;

(2) Completion of continuing education hours and/or Administrator University modules as determined by the Board; and

(3) Payment of the current licensure fee as prescribed by the Board at OAC 490:1-7-2 and any unpaid fees or fines owed to the Board.

(b) A licensee who has been on inactive status shall not have been reported to the Board pursuant to 68 O.S. Section 238.1 for non-compliance with state income tax requirements.

(c) An individual applying for reinstatement from inactive status shall not be required to take the national examination if he/she has successfully passed it at another time.

(d) A licensee seeking reinstatement shall submit to a criminal background check. If the results of a criminal background check reveal that the licensee has been convicted of or pleaded guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude, the licensee's request for reinstatement may be disapproved.

490:10-1-11. Requirements for restoration from suspended status

(a) Individuals seeking restoration of a license that has been suspended must petition and appear, in person, before the Board to ensure the licensee has complied with all terms of the suspension.

(b) The Board, in its discretion, may restore a suspended license after the suspension time has elapsed, upon submission of evidence satisfactory to the Board that the conditions responsible for the suspension no longer exist and that no other reasons exist which warrant suspension.

(c) Evidence shall include complete documentation attested to under oath and by witnesses of facts that indicate that the

conditions responsible for the suspension no longer exist. Letters of recommendations from employees, officers of courts, or respected members of the individual's community may also be submitted.

(d) Petitioners who have been suspended may be required to complete continuing education hours (in addition to those required for license renewal), and/or specific Administrator University modules, and/or the entire Administrator University curriculum at the discretion of the Board.

(e) Petitioners shall not have been reported to the Board pursuant to 68 O.S. Section 238.1 for non-compliance with state income tax requirements.

(f) A licensee seeking reinstatement shall submit to a criminal background check. If the results of a criminal background check reveal that the licensee has been convicted of or pleaded guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude, the licensee's request for reinstatement may be disapproved.

(g) Petitioners must remit payment of the current licensure fee as prescribed by the Board at OAC 490:1-7-2, if renewal is required, and any unpaid fees or fines owed to the Board as a condition of restoration.

SUBCHAPTER 3. APPLICATION FOR LICENSURE

490:10-3-1. Application ~~process~~ for initial licensure, reciprocity, or provisional license

(a) Each applicant for licensure as a ~~nursing home~~ long term care administrator shall make a verified application ~~therefore~~ on a form furnished by the Board and remit a non-refundable application fee as prescribed by the Board at OAC 490:1-7-2.

(b) An application for initial license is valid for one year after the date of receipt by the Board.

(c) An applicant shall be deemed to have abandoned the application if he/she does not fulfill all requirements for licensure within one year from the date of application.

(d) An application submitted subsequent to the abandonment of a former application shall be treated as a new application and rules in force at the time of such new application shall apply.

(e) The Executive Director may, upon a showing of good cause, extend the application period for an additional six (6) months.

(~~b~~f) Upon receipt of an application for licensure, the Board shall request that a criminal history background check be performed on the individual requesting licensure. If the results of a criminal background check reveal that the ~~subject person~~ applicant has been convicted of or pleaded guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude, ~~any of the following offenses~~ the individual's application for licensure ~~shall not be approved~~ may be disapproved and no further action will be taken on the application.

~~(1) Assault, battery, or assault and battery with a dangerous weapon;~~

~~(2) Aggravated assault and battery;~~

~~(3) Murder or attempted murder;~~

~~(4) Manslaughter, except involuntary manslaughter, rape, incest or sodomy;~~

~~(5) Indecent exposure and indecent exhibition;~~

~~(6) Pandering;~~

~~(7) Child abuse;~~

~~(8) Abuse, neglect or financial exploitation of any person entrusted to the care or possession of such person;~~

~~(9) Burglary in the first or second degree;~~

~~(10) Robbery in the first or second degree;~~

~~(11) Robbery or attempted robbery with a dangerous weapon, or imitation firearm;~~

~~(12) Arson in the first or second degree;~~

~~(13) Unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act;~~

~~(14) Grand larceny; or~~

~~(15) Petit larceny or shoplifting within the past seven (7) years.~~

~~(c) The Board will conduct at least two licensure examinations within the calendar year. The application and supporting data and documents as may be required by the Board must be completed and on file at least thirty (30) days prior to the announced licensure examination date. Each applicant found to be eligible for the examination will be notified, by letter addressed to the address shown on the application, of eligibility for, and of the time and place of the examination, at least ten (10) days prior to the time designated.~~

~~(d) All licensure applicants, qualifying academically for initial licensure after promulgation of the rules of this Chapter, shall successfully pass the nursing home administrator examination offered by the National Association of Board of Examiners of Long Term Care Administrators (NAB) or other standard national tests as approved by the Board and the State Licensure Laws, Rules, Regulations and Standards examination offered by the Board, and complete a Board approved Administrator In-Training (AIT) program.~~

~~(e) Fees for the standard national examination, state standards examination, reviews and AIT program shall be in the amount as prescribed by the Board or standard national exam officials.~~

~~(f) Each applicant who fails the written examination may apply for re-examination at the next examination scheduled by the Board subject to compliance with the provisions of this chapter.~~

~~(g) Applicants accepted for licensure as a nursing home administrator either by examination or provision will pay a fee as prescribed by the Board. The fee is due and payable on notice of eligibility for licensure and license will not be issued until said fee is paid in full to the Oklahoma State Board of Examiners for Nursing Home Administrators. The certificate of license will be mailed to the applicant within seven (7) days of Board approval~~.

(g) An application shall be determined complete when:

(1) the criminal background check is received by the Board;

(2) all documentation requested in the application has been received by the Board; and

(3) the application fee prescribed by the Board at OAC 490:1-7-2 has been remitted.

~~(h) Candidates eligible for the State Standards Examination shall be notified in writing, no more than three times, of examination date for the opportunity to take said examination. Candidates who are unable to take this examination within the notification period shall be required to take appropriate review course before being qualified to take the State Standards examination.~~

(h) Once an application is determined complete, the applicant must then meet the remaining requirements found in this Chapter for an initial license, licensure by reciprocity, or a provisional license, as appropriate.

(i) Upon verification of compliance with all requirements, an applicant shall be eligible for licensure as a long term care administrator.

(~~i~~j) Applicants eligible for licensure shall pay a license fee as prescribed by the Board at OAC 490:1-7-2. The fee is due and payable on notice of eligibility for licensure. A license will not be issued until said fee is paid in full to the Board.

(k) Upon payment of the license fee, the applicant shall be presented to the Board for approval at the next Board meeting. Applicants are encouraged to attend the Board meeting.

(~~k~~l) The certificate of license shall be mailed to the applicant within seven (7) days of Board approval.

(~~l~~m) An applicant who is denied a license shall be notified in writing and may, within 10 days of receipt, file a request for a hearing before the Board.

490:10-3-2. National examination

(a) An individual applying for an initial license must receive a passing score on the examination administered by the National Association of Boards of Examiners of Long Term Care Administrators. The Board may waive this requirement if the applicant has successfully passed the national examination at another time.

(b) An individual applying for licensure by reciprocity or reinstatement from inactive status shall not be required to take the national examination if he/she has successfully passed it at another time.

(c) An individual applying for a provisional license shall not be required to take the national examination.

(d) An applicant who fails to pass the examination may re-take the examination.

(e) Fees for the national examination shall be in an amount prescribed by NAB officials.

490:10-3-3. State standards examination

(a) An individual applying for an initial license, licensure by reciprocity, a provisional license, or reinstatement from inactive status must take the state standards examination.

(b) The Board will conduct at least two licensure examinations within the calendar year.

(c) The application and supporting documents required by the Board must be completed and on file at least thirty (30) days prior to the announced examination date.

(d) At least ten (10) days prior to the scheduled examination, each applicant eligible to take the examination shall be notified of the time and place, by letter addressed to the address shown on the application.

(e) The board shall determine a passing score for the state standards examination, and shall apply such score uniformly to all persons taking the examination.

(f) To meet the requirements of the state standards examination, the applicant shall receive a passing score.

(g) An applicant who fails to pass the examination may re-take the examination once. An applicant who has failed the examination twice must petition the Board if he/she desires to pursue licensure.

(h) Fees for the state standards examination shall be in an amount prescribed by the Board at OAC 490-1-7-2.

490:10-3-4. Admission to state and national examinations

(a) Upon successful completion of Administrator University and the Administrator-in-Training program, applicants for initial licensure are eligible to take both the state and national examination.

(b) Applicants for licensure by reciprocity, a provisional license or reinstatement are eligible to take the state standards examination on the next scheduled testing date.

490:10-3-5. Application for licensure renewal

(a) Each applicant for a renewal of a license shall:

(1) File an application, as prescribed by the Board, at least thirty (30) days prior to the expiration date of the current license.

(2) Submit evidence, upon request, satisfactory to the Board that the applicant has successfully completed the required hours of continuing education within the period of the current license.

(3) Not have been reported to the Board pursuant to 68 O.S. Section 238.1 for non-compliance with state income tax requirements.

(4) Submit to a criminal background check. If the results of a criminal background check reveal that the licensee has been convicted of or pleaded guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude, the licensee's request for renewal may be disapproved.

(5) Remit the fee required for obtaining an annual license as prescribed by the Board at OAC 490:1-7-2 and ensure all outstanding fees and fines owed to the Board have been paid.

(b) Upon receipt of a complete application, the Board will, within ten (10) days of the expiration date of the current license, notify the applicant of its intention to renew, reject, or otherwise defer action on the renewal request.

(c) A suspended license shall be subject to expiration and shall be renewed as provided in this section. Renewal shall not entitle the licensee to engage in the practice until the suspension has ended, or is otherwise removed by the Board and the right to practice is restored by the Board.

(d) Failure to receive the renewal application from the Board shall not relieve the licensee of the responsibility of renewing the license prior to the expiration date of the current license.
(e) A late fee, as prescribed by the Board at OAC 490:1-7-2, will be paid by applicants who do not file for renewal at least 30 days prior to the expiration date of the current license.
(f) If the license is not renewed by the last day of the year, the licensee does not hold a valid license and shall not hold a position or function in the capacity as a long term care administrator in Oklahoma.
(g) Any licensee who has not renewed his/her license within ninety (90) days following its due date is deemed to have abandoned the practice of long term care administration and must re-apply and meet the current requirements for initial licensure as a long term care administrator.
(h) A licensee who practices after the expiration of his/her license is subject to disciplinary action as determined by the Board.
(i) A licensee who is denied a renewal license shall be notified in writing and may, within 10 days of receipt, file a request for a hearing before the Board.

490:10-3-6. Licensure term

A provisional license shall expire six months from the effective date of the provisional license and shall not be renewed. All other licenses shall expire on December 31 following issuance and may be renewed annually thereafter.

SUBCHAPTER 5. ~~LICENSURE EXPIRATION, RENEWAL, DENIAL, REVOCATION AND SUSPENSION~~ DISCIPLINE

490:10-5-1. Expiration [AMENDED AND RENUMBERED TO 490:10-3-6]

~~Each license, issued by examination, shall expire on December 31 following its issuance. Provisional license will expire six months from date of license.~~

490:10-5-2. Renewal [AMENDED AND RENUMBERED TO 490:10-3-5]

~~(a) Each applicant for a renewal of a license shall file an application as prescribed by the Board and shall provide such evidence of ability and competence to continue as a licensed nursing home administrator as may be required by the Board.~~
~~(b) Each applicant for a renewal of a license as a licensed Nursing Home Administrator shall submit evidence upon request satisfactory to the Board that the applicant has successfully completed twenty-four (24) clock hours of continuing education in nursing home administration subjects, approved by the Board, within the period of current license.~~
~~(c) Provisional license shall not be renewed. In order to receive original license holders of this license are required to successfully complete six (6) clock hours of continuing education, if offered during this time period.~~
~~(d) Each applicant for the renewal of a license shall file application at least thirty (30) days prior to the expiration date of current license. The Board will, within ten (10) days of the expiration date of the current license, notify the applicant of its intention to renew, reject, or otherwise defer action on the renewal request. A late fee as prescribed by the Board will be paid by applicants who do not file for renewal at least thirty (30) days prior to expiration date of current license.~~
~~(e) Failure to receive the renewal application shall not relieve the licensee of the responsibility of renewing the license by the expiration date.~~
~~(f) If the license is not renewed by the last day of the year, the licensee does not hold a valid license and shall not hold a nursing home administrator position in Oklahoma.~~
~~(g) Should the nursing home operated by a licensed nursing home administrator fail to comply with the Oklahoma State Department of Health requirements for licensure applicable to said facility, the Board may consider such information in determining whether the administrator is suitable for licensure renewal.~~
~~(h) All outstanding fees must be paid prior to license renewal.~~

490:10-5-3. ~~Denial, revocation and suspension~~ Disciplinary action

(a) The Board may deny an initial application; deny a renewal application; suspend or revoke a ~~nursing home~~ long term care administrator license, a provisional license, or an AIT training permit; warn; censure reprimand; impose administrative fines or probation or use other remedies that may be considered to be less than revocation and suspension~~; against currently licensed nursing home administrators~~ upon proof of any of the following:

(1) The obtaining or attempting to obtain a license by fraud, ~~or~~ deceit, or misrepresentation.

(2) Conviction of or a plea of guilty or nolo contendere to any felony or to any misdemeanor ~~a crime~~ involving moral turpitude. ~~A conviction of a felony or a conviction of a crime involving violation of any narcotic or drug control law. The record of a conviction or a certified copy thereof certified by the Clerk of the Court or by the Judge in whose Court the conviction is entered, is conclusive evidence of the conviction. OSBI criminal arrest checks indicating felony convictions may be used as grounds for denial.~~

(3) Habitual indulgence in the use of narcotic drugs or alcohol.

(4) Commitment to a mental institution or judicial determination of incompetence.

(5) Gross negligence, or negligence that constitutes a danger to the health, welfare or safety of the residents or the public ~~fraud, dishonesty, theft, malfeasance, misfeasance, physical or verbal abuse of a resident, or failure to report an allegation of physical or verbal abuse of a resident to appropriate state authorities, as required by law, cheating in the management of a nursing home or other conduct unbecoming to a person licensed or subject to licensure under this law when, in the judgment of the Board, such conduct is detrimental to the best interest of the nursing home profession and the public~~.

(6) Physical or verbal abuse of a resident or misappropriation of a resident's funds or property; failure to report an allegation of physical or verbal abuse of a resident or misappropriation of a resident's funds or property to appropriate state authorities as required by law.
(7) Fraudulent, deceptive or dishonest conduct in the management of a long term care facility, or other conduct unbecoming to a person licensed or subject to licensure under this law when, in the judgment of the Board, such conduct is detrimental to the best interest of the long term care profession and the public.
~~(8) Failure to uphold the "Administrator Code of Ethics" adopted by the Board.~~
(~~6~~8) Concurrently serving or acting as the administrator of more than one nursing home or exceeding the conditions placed on administrators of ICF/MR 16 beds or less facilities as stated in this Chapter.
(~~7~~9) Failure to comply with state or federal requirements applicable to the facility.
(10) Failure to comply with rules and requirements for administrators established by the Board, including the Administrator Code of Ethics and Administrator Responsibilities adopted by the Board.
(~~9~~11) ~~Upon evidence~~ Evidence that the administrator has paid, given, has caused to be paid or given or offered to pay or to give to any person a commission or other valuable consideration for the solicitation or procurement, either directly or indirectly, of nursing facility patronage.
(~~10~~12) Intentional retaliation or discrimination against any resident or employee for contacting or providing information to any state official.
(~~11~~13) Failure to provide verification of continuing education hours.
~~(12) Failure to comply with requirements for nursing home administrators established by the OSBENHA Board.~~
(14) Sexual abuse, sexual harassment, or sexual exploitation of any resident, employee, trainee, volunteer, consultant, or visitor to the facility in which the licensee practices.
(15) Falsification of any records relating to the operation of a long term care facility; falsification of records submitted to the Board or any other state or federal agency; falsification of a patient's records, or causing a patient's records to be falsified.
(16) Use of the licensee's professional status, title, position, or relationship as a long term care facility administrator to coerce, improperly influence, or obtain money, property, or services from a resident, resident's family member, employee, visitor, or any person served by or doing business with the facility that employs the administrator.
(17) Improperly interfering with, refusing to participate in, or impeding any investigation, inspection, or disciplinary proceeding authorized by statute.
(18) Violation of any disciplinary order, term of suspension, condition, stipulation, or limitation imposed on the licensee by the Board.
(19) Unlicensed practice by an applicant for licensure or practice on a revoked, suspended, delinquent, or inactive license.
(20) Failure to pay fees or fines established by the Board.

490:10-5-4. Auditing of continuing education [REVOKED]

~~(a) The board will receive continuing education information from sponsors for audit purposes only and will not keep an individual record of continuing education hours for administrators.~~
~~(b) An annual audit of 5% of the total number of licensed administrators will be made to verify compliance with statements made on renewal forms. This percentage may be increased at the Board's discretion.~~
~~(c) Failure to provide verification of continuing education hours as requested by this audit shall result in a revocation of license or other disciplinary action against the administrator as determined by the Board.~~

490:10-5-5. Summary suspension

(a) The Board may order a summary suspension of an administrator's license or an administrator-in-training permit, if, in the course of an investigation, it is determined that a licensee or AIT candidate for licensure has engaged in conduct of a nature that is detrimental to the health, safety, or welfare of the public, and which conduct necessitates immediate action to prevent further harm.
(b) The Board shall be charged with making the determination that an emergency suspension is necessary, and shall incorporate in its Order that public health, safety or welfare requires emergency action.
(c) Proceedings for revocation or other appropriate action shall be promptly instituted and determined.

SUBCHAPTER 7. ~~NURSING HOME ADMINISTRATORS SCHOOL~~ ADMINISTRATOR UNIVERSITY

490:10-7-3. General provisions

(a) The Board is committed to providing learning opportunities to individuals interested in pursuing a career in nursing home administration, and enhancing the development of licensed administrators. To further this objective, the Board has established an Administrator University with curriculum designed specifically to provide individuals with knowledge and skills necessary to be a successful administrator.
(b) Effective August 1, 2006, individuals applying to become an administrator shall successfully complete Administrator University prior to being licensed.
(c) Administrators who are already licensed in the State of Oklahoma may enter Administrator University for enhanced training.

(d) At the Board's discretion, specific classes or the entire Administrator University curriculum may be imposed as a remedy for the violation of rules and/or standards established by the Board.
(e) A fee prescribed by the Board at OAC 490:1-7-2 shall be submitted with the application form prior to admission to Administrator University.

SUBCHAPTER 8.
ADMINISTRATOR-IN-TRAINING (AIT)

490:10-8-1. Training requirement [REVOKED]
~~(a) On or after the date the Administrator University is established, each applicant for initial licensure shall successfully complete the Administrator University, unless exempt from this requirement.~~
~~(b) Each applicant for initial licensure shall complete an AIT program under the direction of a preceptor unless exempt from this requirement.~~
~~(c) Each applicant for a nursing home administrator's license who is qualified shall be granted admission to the program in accordance with the procedures of the Board.~~

490:10-8-2. Application
(a) The applicant ~~will~~ shall submit to the Board an application, which shall contain such information as name, education, employment history, ~~questions~~ information pertaining to moral character, any other information the Board ~~may feel it needs to be in the application~~ requires, and an affidavit stating that the applicant, if granted a license, will obey the laws of the state and the rules of the Board, and will maintain the honor and dignity of the profession.
(b) The applicant will supply a certified copy of each college transcript indicating the courses completed, ~~and~~ hours earned~~,~~ (specifying whether semester or quarter hours), and degree(s) conferred.
(c) The applicant will be subjected to a criminal background check as described in this Chapter prior to beginning the AIT program.
(d) A fee as prescribed by the Board at OAC 490:1-7-2 shall be submitted with the application.

490:10-8-5. Preceptor qualifications and agreements
(a) A licensed administrator wishing to be certified as a preceptor for the AIT program may apply to the Board by providing such information as the applicant's name, address, licensing history, education, experience, and other information which the Board deems necessary.
(b) To be certified as a preceptor, the applicant ~~must~~ shall:
(1) exemplify the highest ethical and professional standards as an administrator for at least twenty-four (24) months;
(2) be licensed and employed as ~~a~~ an Oklahoma ~~nursing home~~ long term care administrator for at least twenty-four (24) months;
(3) be the full time administrator or owner/administrator of a facility which is licensed by the Oklahoma State Department of Health as a ~~nursing~~ long term care facility ~~or be the Owner/Administrator~~;
~~(4) successfully complete a preceptor training seminar/course under the direction of the Board;~~
(~~5~~4) be an administrator or owner/administrator of a nursing facility which is currently in substantial compliance with the rules and regulations governing nursing homes;
(5) successfully complete a preceptor training seminar/course under the direction of the Board;
(6) have not been the subject of any action by any Board or licensing authority which resulted in formal reprimand, suspension or revocation of license, or in an administrative fine within the last twenty-four (24) months;
(7) agree to give the intern an opportunity to observe and take part in the managerial tasks of the preceptor, acquaint the intern with the organization and operation of all the various departments of the facility by permitting his/her observation and/or participation in department activities subject to the training program approved by the Board;
(8) hold an exit interview with the intern upon completion of an internship to point out noted strengths and weaknesses; and
(9) upon satisfactory completion of the program, provide the Board a letter certifying the completion of the required hours of internship.
(c) ~~If a substandard quality of care finding in a facility is upheld against an administrator, such administrator shall not be eligible to be certified as a preceptor for twenty-four (24) months from the date the finding is upheld.~~If the Board imposes a sanction against an administrator, such administrator may not be eligible to be certified as a preceptor for twenty-four (24) months from the date of the sanction.
(d) Preceptors shall be ~~certified~~ approved for a ~~24~~ twenty-four (24) month period and may be ~~renewed~~ re-approved at the discretion of the Board.
~~(e) If a preceptor is mentoring an AIT at the time their certification expires, the preceptor's certification period shall be extended through the conclusion of the AIT's training program.~~ There shall be an automatic extension of the certification period for any preceptor whose certificate expires while mentoring an AIT. The extension shall be granted to the end of the AIT's training period.

490:10-8-7. Module reports
(a) At the conclusion of each module of training, the preceptor will submit to the Board an evaluation of progress on a form approved by the Board for that purpose.
(b) Module reports must be received in the Board's office within 10 days of ~~the end of the reporting period~~ completion of the module.

490:10-8-9. Preceptor's checklist

(a) The preceptor will maintain a current program completion checklist in the facility on the AIT on a form approved by the Board to be reviewed by the Board upon request.

(b) The program completion checklist shall be submitted with the final report and evaluation.

490:10-8-13. AIT time on the job

(a) The AIT shall serve a 560 hour internship, unless in the opinion of the Board or preceptor, the AIT needs additional training or unless the internship period is reduced by the Board.

(b) An internship which has been discontinued by a period of military service shall be allowed to be completed within a year after that service.

(c) An internship which has been discontinued for any purpose other than military service cannot be completed if the absence exceeds one year from the date of discontinuance.

(d) Only one discontinuance is allowed.

(e) Internships shall be completed in not less than (14) weeks or more than twelve (12) months ~~of completion~~.

(f) This section shall be subject to the requirements of any other provisions of law.

(g) The AIT must complete the internship in a facility that is currently in substantial compliance with the rules and regulations governing nursing homes.

490:10-8-14. AIT exempt status

The Board may waive the AIT program requirement entirely, or portions thereof, for those applicants who show evidence of the following:

(1) ~~Successfully completes~~ Successful completion of an internship program which meets or exceeds Board requirements.

(2) A registered nurse or licensed practical nurse with a minimum of two (2) years experience in supervision in a nursing home~~,~~ may be exempt from the nursing department module.

490:10-8-15. Admission to national and state exams [AMENDED AND RENUMBERED TO 490:10-3-4]

~~The AIT candidate will be admitted to National Exam for NHA and the State Standards Exam upon successful completion of the AIT program. The AIT - Exempt candidate will be admitted to these examinations upon successful application.~~

490:10-8-16. Refusal to approve or renew preceptor or intern assignment~~.~~

~~(a)~~ The Board may, for good cause, refuse to approve or renew a preceptor designation or may refuse to approve an assignment of an intern to a preceptor.

~~(b) If a substandard quality of care finding in a facility is upheld against an administrator who is a certified preceptor, such administrator shall be de-certified as a preceptor for a period of twenty four months from the date the finding was upheld by the Board. A de-certified preceptor must reapply and be approved by the Board prior to being recertified as a preceptor.~~

490:10-8-17. Supervision of more than one AIT restricted

A preceptor ~~may~~ shall supervise no more than one (1) AIT.

SUBCHAPTER 9. LICENSE STATUS [REVOKED]

490:10-9-1. License status [REVOKED]

~~(a) "Active Status" means the individual holding the license has satisfied all requirements for licensure as a nursing home administrator and holds a current license.~~

~~(b) "Inactive Status" means the individual holding a license has chosen to enter a status where a reduced fee is paid for renewal and no CEUs are required. This individual will remain on the Board's mailing list, and is eligible for reactivation as a licensed administrator.~~

~~(c) Licensees may request his/her license be placed on inactive status; however, licensee may not function in a nursing home administrator capacity in Oklahoma until the license is reactivated.~~

~~(d) In order to place a license on inactive status, licensee must, prior to the expiration date of current license:~~

~~(1) submit a written request for inactive status, and~~

~~(2) submit the inactive status fee as prescribed by the Board.~~

~~(e) License may remain on inactive status for a period not to exceed five years and request must be made for Inactive Status annually.~~

~~(f) The inactive fee is charged each time inactive status is requested.~~

490:10-9-2. Reinstatement [REVOKED]

~~(a) A nursing home administrator who has been granted Inactive Status by the Board, and who otherwise meets the qualifications for active licensure, may apply for and be granted licensure as an active nursing home administrator upon satisfactory completion of a written examination covering current state standards, continuing education hours as determined by the Board, and the payment of the current licensure fee. A review course will be offered but not required for this examination. The fee for this review and examination shall be in the amount as prescribed by the Board.~~

~~(b) All fees must be current to be eligible for reinstatement.~~

~~(c) All individuals seeking restoration or reinstatement of a license that has been revoked or suspended must make application on forms approved and required by the Board and appear, in person, before the Board for presentation of facts relating to such request.~~

~~(d) The Board in its discretion may restore a revoked license after a period of two (2) years and may restore a suspended license after suspension time has elapsed, upon submission of evidence satisfactory to the Board that the conditions responsible for the suspension or revocation no longer exist and that~~

~~no other reasons exist which warrant suspensions or revocation. Evidence shall include complete documentation attested to under oath and by witnesses of facts which indicate that the conditions responsible for revocation or suspension no longer exist. Letters of recommendations from employees, officers of courts, or respected members of the individual's community shall also be submitted.~~

~~(e) Petitioners who are returned to active status as a nursing home administrator shall pay the current renewal license fee as prescribed by the Board for the year in which they are reinstated and shall complete continuing education and/or specific classes in Administrator University, and/or the entire Administrator University curriculum as determined by the Board as a condition of re-licensure.~~

SUBCHAPTER 10. FEE SCHEDULE [REVOKED]

490:10-10-1. Fee Schedule [REVOKED]

~~(a) Nursing Home Administrator License (original) - $200.00~~
~~(b) Nursing Home Administrator License (annual) - $200.00~~
~~(c) Provisional License (per application) - $200.00~~
~~(d) Inactive Status (annual) - $100.00 $200.00~~
~~(e) Name Change (per request) - $25.00~~
~~(f) Endorsement Licensure Questionnaire (per request) - $50.00~~
~~(g) Replacement of Annual Card (per request) - $25.00~~
~~(h) Duplicate License (per request) - $25.00~~
~~(i) State Standards Review (per person, original or inactive status) - $100.00~~
~~(j) State Standards Exam Packet - $50.00~~
~~(k) State Standards Exam (per person, original or inactive status) - $100.00~~
~~(l) Board Sponsored Educational Workshops (per day) - $60.00 - $85.00~~
~~(m) Late Fee on NHA Licensure Renewal (per person) - $100.00~~
~~(n) Photocopies (per page) - $.25~~
~~(o) Rules and Regulations (per copy) - $15.00~~
~~(p) Administrator In Training (AIT) Program (per person) - $350.00~~
~~(q) Training & Education Program Approval Fee - (per credit hour) - $55.00~~
~~(r) Mailing List (on plain paper)(per page) - $.50~~
~~(s) Mailing List on Labels (per page) - $1.00~~
~~(t) Electronic Mailing List - $10.00~~
~~(u) Return Check Fee - $30.00~~
~~(v) Late fee for failure to provide current contact information - $75.00~~
~~(w) Fee for Administrator University (not to exceed) $200.00 per day~~

SUBCHAPTER 13. STANDARDS FOR ADMINISTRATORS

490:10-13-1. Administrator Code of Ethics

(a) The Board is committed to ethical professional conduct and therefore adopts the following standards to establish and maintain a high degree of integrity and dignity in the profession and to protect the public against unprofessional conduct on the part of long term care administrators.

(b) The American College of Health Care Administrators Code of Ethics is adopted as follows:

(1) Preamble: The preservation of the highest standards of integrity and ethical principles is vital to the successful discharge of the professional responsibilities of all long-term health care administrators. This Code of Ethics has been promulgated by the American College of Health Care Administrators (ACHCA) in an effort to stress the fundamental rules considered essential to this basic purpose. It shall be the obligation of members to seek to avoid not only conduct specifically proscribed by the code, but also conduct that is inconsistent with its spirit and purpose. Failure to specify any particular responsibility or practice in this Code of Ethics should not be construed as denial of the existence of other responsibilities or practices. Recognizing that the ultimate responsibility for applying standards and ethics falls upon the individual, the ACHCA establishes the following Code of Ethics to make clear its expectation of the membership.

(2) Expectation I: Individuals shall hold paramount the welfare of persons for whom care is provided.

(A) Prescriptions: The Health Care Administrator shall:

(i) Strive to provide to all those entrusted to his or her care the highest quality of appropriate services possible in light of resources or other constraints.

(ii) Operate the facility consistent with laws, regulations, and standards of practice recognized in the field of health care administration.

(iii) Consistent with law and professional standards, protect the confidentiality of information regarding individual recipients of care.

(iv) Perform administrative duties with the personal integrity that will earn the confidence, trust, and respect of the general public.

(v) Take appropriate steps to avoid discrimination on the basis or race, color, sex, religion, age, national origin, handicap, marital status, ancestry, or any other factor that is illegally discriminatory or not related to bona fide requirements of quality care.

(B) Proscription: The Health Care Administrator shall not:

(i) Disclose professional or personal information regarding recipients of service to unauthorized personnel unless required by law or to protect the public welfare.

(3) Expectation II: Individuals shall maintain high standards of professional competence.

(A) Prescriptions: The Health Care Administrator shall:

(i) Possess and maintain the competencies necessary to effectively perform his or her responsibilities.

(ii) Practice administration in accordance with capabilities and proficiencies and, when appropriate, seek counsel from qualified others.

(iii) Actively strive to enhance knowledge of and expertise in long-term care administration through continuing education and professional development.

(B) Proscriptions: The Health Care Administrator shall not:

(i) Misrepresent qualifications, education, experience, or affiliations.

(ii) Provide services other than those for which he or she is prepared and qualified to perform.

(4) Expectation III: Individuals shall strive, in all matters relating to their professional functions, to maintain a professional posture that places paramount the interests of the facility and its residents.

(A) Prescriptions: The Health Care Administrator shall:

(i) Avoid partisanship and provide a forum for the fair resolution of any disputes which may arise in service delivery or facility management.

(ii) Disclose to the governing body or other authority as may be appropriate, any actual or potential circumstance concerning him or her that might reasonably be thought to create a conflict of interest or have a substantial adverse impact on the facility or its residents.

(B) Proscriptions: The Health Care Administrator shall not:

(i) Participate in activities that reasonably may be thought to create a conflict of interest or have the potential to have a substantial adverse impact on the facility or its residents.

(5) Expectation IV: Individuals shall honor their responsibilities to the public, their profession, and their relationships with colleagues and members of related professions.

(A) Prescriptions: The Health Care Administrator shall:

(i) Foster increased knowledge within the profession of health care administration and support research efforts toward this end.

(ii) Participate with others in the community to plan for and provide a full range of health care services.

(iii) Share areas of expertise with colleagues, students, and the general public to increase awareness and promote understanding of health care in general and the profession in particular.

(iv) Inform the ACHCA Standards and Ethics Committee of actual or potential violations of this Code of Ethics, and fully cooperate with ACHCA's sanctioned inquiries into matters of professional conduct related to this Code of Ethics.

(B) Proscription: The Health Care Administrator shall not:

(i) Defend, support, or ignore unethical conduct perpetrated by colleagues, peers or students.

(c) The Board adopts the following as an addition to the code of ethics: Administrators have a fiduciary duty to the facility and cannot serve as guardian of the person or of the estate, or hold a durable power of attorney or power of attorney for any resident of a facility of which they are an administrator.

(d) Licensees shall place a copy of the Administrator Code of Ethics approved by the Board in a conspicuous location in a public area in the place of business requiring such license.

490:10-13-2. Administrator responsibilities

(a) It is the responsibility of the long term care administrator, as the managing officer of the facility, to plan, organize, direct, and control the day-to-day functions of a facility and to maintain the facility's compliance with applicable laws, rules, and regulations. The administrator shall be vested with adequate authority to comply with the laws, rules, and regulations relating to the management of the facility.

(b) Long Term Care Administrators shall adhere to the Administrator Code of Ethics as adopted by the Board.

(c) Long Term Care Administrators licensed by the Board shall not concurrently serve as the administrator of more than one nursing facility. The Board has the authority to grant a waiver of this restriction as prescribed at OAC 490:1-3-9.

(d) A Long Term Care Administrator may serve as the administrator of more than one intermediate care facility for the mentally retarded with sixteen or fewer beds (ICF-MR/16), only if such facilities are located within a circle that has a radius of not more than fifteen (15) miles, and the total number of facilities and beds does not exceed six facilities and sixty-four beds.

(e) A long term care administrator must devote at least one-half (1/2) of such person's working time to on-the-job supervision of a long-term care facility; provided that this requirement shall not apply to an administrator of an intermediate care facility for the mentally retarded with sixteen or fewer beds.

(f) Every person licensed as an administrator and designated the "administrator of record" shall display such license in a conspicuous place in the office or place of business requiring such license.

(g) Each licensed administrator shall notify the Board within fifteen (15) days following the change of either his/her name, business or personal mailing address, or change in employment. The Board will assess a late fee as prescribed at OAC 490:1-7-2 if it is determined that the administrator failed to provide current contact information within this fifteen day period.

(h) Upon receipt of satisfactory evidence that a license has been lost, mutilated, or destroyed, the Board may issue a duplicate or replacement license upon payment of a fee as prescribed by the Board at OAC 490:1-7-2.

(i) To change his/her name on a license, the licensee must provide legal proof of the name change (e.g., copy of marriage certificate, divorce decree, etc.) before a replacement license can be issued.

(j) An administrator shall not knowingly initiate contact with a client currently residing in a long term care facility for the purpose of attempting to persuade a change to another long term care facility.

(k) An administrator shall not knowingly solicit, or permit an employee to solicit clients for his/her long term care facility through coercion or harassment. If an administrator has knowledge of such actions by an employee, the administrator shall take such steps as are reasonable and necessary to stop such conduct.

(l) An Administrator, or applicant for Administrator licensure, in connection with a license application or an investigation conducted by the Board or an investigation conducted by the Oklahoma State Department of Health, the Oklahoma Department of Human Services, the Oklahoma Health Care Authority, or any other agency of the state or federal government having regulatory responsibility over or relating to the delivery of care to persons in a facility operated or managed by the Administrator, shall not:

(1) knowingly make a false statement of material fact;

(2) fail to disclose a fact necessary to correct a misrepresentation known by the Administrator or applicant for licensure to have arisen in the application or the matter under investigation; or

(3) fail to respond to a demand for information made by the Board or such government agency or any designated representative thereof.

[OAR Docket #07-933; filed 5-8-07]

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

[OAR Docket #07-888]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 15. Time and Leave
Part 3. Annual and Sick Leave Policies
530:10-15-11 [AMENDED]
530:10-15-12 [AMENDED]
Part 7. Leave When Office Are Closed or Service Reduced
530:10-15-71 [AMENDED]
530:10-15-72 [REVOKED]
AUTHORITY:
The Administrator of the Office of Personnel Management: 74 O.S., §§ 840-1.6A and 840-2.20.
DATES:
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March 2, 2007
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March 2, 2007
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April 26, 2007
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SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 15. Time and Leave
Part 7. Leave When Offices Are Closed or Services Are Reduced
530:10-15-71 [AMENDED]
530:10-15-72 [REVOKED]
Gubernatorial approval:
December 29, 2006
Register publication:
24 OkReg 607
Docket number:
07-138
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
The proposed amendments to 530:10-15-11 and 530:10-15-12 are to reflect changes in the time period in which employees may use accrued leave. The time period will be changed from the beginning of the next month to the beginning of the following pay period. The proposed amendment to 530:10-15-71 is to reflect the Governor's change in policy to use administrative leave during the closure of state offices due to hazardous weather. Revocation of 530:10-15-72 is the result of the proposed change in hazardous weather policy in 530:10-15-71.
CONTACT PERSON:
Kara I. Smith, General Counsel, Office of Personnel Management, 2101 N. Lincoln, G-80, Oklahoma City, OK 73105, (405) 522-1736.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2007:

SUBCHAPTER 15. TIME AND LEAVE

PART 3. ANNUAL AND SICK LEAVE POLICIES

530:10-15-11. Annual leave

(a) Annual leave is intended to be used for vacations, personal business, and other time off work not covered by other paid leave or holiday provisions. An employee may charge family and medical leave, taken in accordance with 530:10-15-45, against annual leave accumulations.

(b) Eligible employees shall accrue annual leave based upon hours worked (excluding overtime), paid leave, and holidays [74:840-2.20] in accordance with 530:10-15-10 and the provisions in this subsection, not to exceed the total possible work hours for the month. The hourly rate is equal to the annual accrual divided by the number of work hours in the current year. Annual leave earned during one ~~month~~ pay period shall not be available for use until the beginning of the ~~next month~~ following pay period.

(1) Annual leave shall be applied for by the employee and shall be used only when approved by the Appointing Authority.
(2) Part-time employees shall accrue annual leave in an amount proportionate to that which would be accrued under full-time employment [74:840-2.20].
(3) Annual leave earned during a pay period shall be prorated based upon the number of hours (excluding overtime hours) an employee is on the payroll [74:840-2.20].
(4) An Appointing Authority may require an employee to take annual leave whenever in the administrative judgment of the Appointing Authority such action would be in the best interests of the agency; except that the employee shall not be required to reduce accrued annual leave below **5** days. An Appointing Authority shall not apply this rule in lieu of 530:10-11-120. Leaves of absence for internal investigatory purposes shall be administered according to 530:10-11-120.
(5) Unused accrued annual leave shall be accumulated for no more than the maximum leave accumulation limits specified in 530:10-15-10, except as provided in this paragraph. Employees may accumulate more than the maximum annual leave accumulation limits shown in the schedule, provided that such excess is used during the same calendar year in which it accrues or within twelve months of the date on which it accrues, at the discretion of the Appointing Authority. Employees shall not be paid for excess leave above the accumulation limit; such excess accumulations shall be used for leave purposes in the agency where it was accrued or, if an employee was transferred to an agency by statute or executive order, in the agency to which the employee was transferred regardless of where the leave was accrued, only while the employee is continuously employed.
(6) Annual leave shall not be taken in advance.
(7) An employee who transfers to another agency may have accrued annual leave transferred at the option of the Appointing Authority to which transferred, or such Appointing Authority may require that all or a portion of the annual leave be paid by the agency from which the employee is transferred before the transfer. The amount of annual leave paid by the agency from which the employee is transferred and the amount of annual leave transferred with the employee shall not exceed the accumulation limits established in Section 840-2.20 of Title 74 of the **Oklahoma Statutes.**
(8) Any employee who is separated from the state service shall be paid or shall have payment made to the employee's estate for any annual leave accumulated up to and including the accumulation limit except as otherwise provided in the Merit Rules. . At no time shall any employee resigning from one position to accept another position within the same agency be paid for accrued annual leave unless there has been a break in service of more than thirty days.
(9) Annual leave shall be charged against an employee's annual leave balance based on the amount of time an employee is absent from work during the employee's assigned work schedule. Holidays falling within a period of annual leave shall not be charged to annual leave.
(10) Any probationary or permanent employee who leaves the employ of an agency shall receive payment for the accrued number of hours of annual leave in accordance with the hourly rate. Payment may only be withheld pending settlement of a legal debt to the agency. If a person is reemployed by the State within a period of **30** calendar days from the date of separation, any portion of the accumulated annual leave which has not yet been paid may be reinstated.

530:10-15-12. Sick leave

Eligible employees shall accrue sick leave based upon hours worked (excluding overtime), paid leave, and holidays ~~[74:840-2.20(1)]~~ [74:840-2.20(A)(1)] according to 530:10-15-10 and this Section, not to exceed the total possible work hours for the month. The hourly rate is equal to the annual accrual divided by the number or work hours in the current year. Sick leave earned during one ~~month~~ pay period shall not be available for use until the beginning of the ~~next month~~ following pay period.

(1) Sick leave means a period when the employee cannot work because of sickness, injury, pregnancy, or medical, surgical, dental or optical examination, or treatment, or where the employee's presence at work would jeopardize the health of the employee or others. An employee may charge family and medical leave, taken in accordance with 530:10-15-45, against sick leave accumulations.
(2) An employee shall not use sick leave for annual leave.
(3) An employee shall not use sick leave before it is accrued.
(4) Immediately on return to work, an employee who has been absent on sick leave shall give the Appointing Authority a signed statement that the absence was due to reasons listed in (1) of this Section. If an absence exceeds **3** working days, the employee shall give the Appointing Authority a physician's statement unless the Appointing Authority waives it. For shorter absences, the Appointing Authority may require the employee to supply proof the absence was consistent with (1) of this Section. Sick leave shall not be granted until approved by the Appointing Authority. An Appointing Authority shall approve sick leave unless there are facts to show that an employee abused sick leave privileges or the employee failed to supply requested evidence of illness.
(5) Sick leave shall be charged against an employee's sick leave balance based on the amount of time an employee is absent from work during the employee's assigned work schedule. Holidays, or the scheduled days off for holidays, occurring within a period of sick leave shall not be charged to sick leave.
(6) Sick leave earned during a pay period shall be prorated according to the number of hours (excluding overtime) an employee is on the payroll ~~[74:840-2.20(1)]~~ [74:840-2.20(A)(1)].

(7) Part-time employees shall accrue sick leave in an amount proportionate to that which would have accrued under full-time employment ~~[74:840-2.20(1)]~~ [74:840-2.20(A)(1)].

(8) When an employee transfers from one agency to another, the Appointing Authority of the receiving agency shall give the employee credit for all unused sick leave accumulations.

(9) Employees shall not be compensated for accumulated sick leave when they separate from state service.

(10) If an absence because of illness or injury extends beyond the sick leave an employee has accumulated, the Appointing Authority may charge additional absence to the employee's annual leave accumulations.

(11) Unless it is against the law, an Appointing Authority shall approve sick leave when an employee is absent due to illness or injury and receiving Oklahoma State Workers Compensation benefits.

(12) If an employee leaves the state service on or after October 1, 1992, and is reemployed within a period of **2** years from the date of separation, the Appointing Authority may reinstate all or a part of the unused sick leave accumulated during the previous period of continuous employment with the state ~~[74:840-2.20(6)]~~ [74:840-2.20(A)(7)].

(13) There is no limit on sick leave accumulations.

PART 7. LEAVE WHEN OFFFICES ARE CLOSED OR SERVICES REDUCED

530:10-15-71. Leave when an office is temporarily closed due to unsafe working conditions or hazardous weather; or when services are temporarily reduced due to hazardous weather (paid administrative leave)

(a) If agency offices are closed because of an imminent peril threatening the public health, safety, or welfare of state employees or the public, or when state offices are temporarily closed or reduced due to hazardous weather conditions, the Appointing Authority shall place employees who are scheduled to work in the affected work ~~closed~~ ~~area~~ areas on paid administrative leave or, if applicable, shall assign them to work in another location. During their normal duty hours, employees on paid administrative leave due to unsafe working conditions are on stand-by or on-call status. Appointing Authorities may call employees to return to their normal duties or respond to the demands of the situation as necessary. [74:840-2.20A(A)]

(b) As used in this Section, paid administrative leave means leave granted to affected employees if offices of agencies are closed because of an imminent peril threatening the public health, safety, or welfare of state employees or the public, or when state offices are temporarily closed or reduced due to hazardous weather. Examples of reasons for temporarily closing an office due to unsafe working conditions are: leaks of toxic fumes in buildings; life threatening damage to building structures; or emergency operations which would be disrupted by the presence of the usual work force; or any other condition which poses a significant threat to the safety of the work force.

(c) Paid administrative leave shall be accorded to all affected employees only when a state office is temporarily closed or services are temporarily reduced due to hazardous weather in accordance with 530:10-15-70 and this Section. Upon its reopening, normal Merit Rules governing leave and agency procedures shall apply. The granting of administrative leave applies only to employees scheduled to work during the time period of the closure or reduced services. It does not apply to employees who are absent during the closure or reduction on any previously approved leave. Employees who are not eligible to accrue leave, such as temporary employees, shall not be granted administrative leave under this section when state services are *temporarily closed or* temporarily reduced due to hazardous weather conditions.

(d) *When the Governor or a designee of the Governor authorizes agencies or parts of agencies to maintain basic minimum services because hazardous weather conditions impede or delay the movement of employees to and from work, employees responsible for providing such basic minimum services shall report to work. Appointing Authorities of agencies shall be responsible for determining essential agency functions [basic minimum services] and ensuring that employees who staff such functions are so informed.* [74:840-2.20A(B)] Employees who are considered responsible for basic minimum services and who are required to work when state services are temporarily reduced due to hazardous weather conditions shall be entitled to accrue administrative leave on a straight-time basis up to eight hours per day for hours worked in their regularly scheduled work periods during such reduction. Administrative leave accrued under this provision must be taken within 180 days of its accrual or the employee shall be paid for the leave. An extension of the time period for taking the leave may be approved for up to an additional 180 days, providing the Appointing Authority submits a written request with sufficient justification to the Office of Personnel Management. Accrued administrative leave must be used before granting of any annual leave except when the employee may lose accrued leave under 530:10-15-10 and 530:10-15-11(b)(5).

(e) Employees who are responsible for basic minimum services who do not report to work have the following options to account for leave:

(1) Charge the absence to accumulated compensatory time;

(2) Charge the absence to accumulated annual leave;

(3) Make up lost time in a manner consistent with the FLSA, if the Appointing Authority determines that office hours and schedules permit.

(f) An employee who leaves earlier than a designated early dismissal time, or who arrives later than a designated late arrival time, shall be charged leave for the excess time.

530:10-15-72. Leave when services are temporarily reduced due to hazardous weather conditions (automatically allowed authorized absences) [REVOKED]

~~(a) **Policy.** *When the Governor or a designee of the Governor authorizes agencies or parts of agencies to maintain basic minimum services because hazardous weather conditions impede or delay the movement of employees to and from work, employees responsible for providing such basic minimum services shall report to work. Appointing Authorities of agencies shall be responsible for determining essential agency functions [basic minimum services] and ensuring that employees who staff such functions are so informed.* [74:840-2.20A(B)] Appointing Authorities shall grant authorized absences to classified and unclassified employees who are not responsible for staffing essential functions (basic minimum services) if the employees do not work while agency services are temporarily reduced due to hazardous weather conditions. Appointing Authorities shall give these employees the following options to account for time lost because of automatically authorized absences.~~

~~(1) Charge absence to enforced leave, if the employee does not exceed enforced leave limits.~~

~~(2) Charge absence to accumulated compensatory time balances.~~

~~(3) Charge absence to accumulated annual leave.~~

~~(4) Make up lost time, in a manner consistent with the FLSA, if the Appointing Authority determines that office hours and schedules permit it.~~

~~(b) An employee may use more than one leave option to account for an automatically authorized absence, but if the absence cannot be accounted for by exercising these options, the Appointing Authority shall record the absence as leave of absence without pay.~~

~~(c) Employees who are not eligible to accrue annual or sick leave (including enforced leave), such as temporary employees, shall not be paid for lost time unless it is made up.~~

~~(d) Automatically authorized absences for employees who are not responsible for providing basic minimum services in accordance with this Section will cease on the cancellation or expiration of an announcement of reduced services. Thereafter, normal Merit Rules governing leave and related agency procedures will apply to these employees.~~

[OAR Docket #07-888; filed 4-30-07]

TITLE 585. PUBLIC EMPLOYEES RELATIONS BOARD
CHAPTER 1. OPERATIONS

[OAR Docket #07-890]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [REVOKED]
585:1-1-1 through 585:1-1-5 [REVOKED]
Subchapter 3. Program Administration and Description
585:1-3-1 through 585:1-3-4 [REVOKED]
Subchapter 5. Procedures [REVOKED]
585:1-5-1 through 585:1-5-8 [REVOKED]
Subchapter 7. Certification Cases: Representation Petitions [REVOKED]
585:1-7-1 through 585:1-7-19 [REVOKED]
AUTHORITY:
Public Employees Relations Board; 11 O.S. § 51-101 et seq.; 75 O.S. § 302 et seq.
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ANALYSIS:
Revocation of these rules is necessary for the purpose of adoption of new permanent rules that will combine procedures and requirements for the administration of both the Fire and Police Arbitration Act, 11 O.S. § 51-101, et seq and the Municipal Employee Collective Bargaining Act, 11 O.S. § 51-200, et seq., by the Public Employees Relations Board. The new rules will ensure consistent and efficient administration of both Acts by the Board.
CONTACT PERSON:
Debbie Tiehen, Administrator, Public Employees Relations Board, 2401 north Lincoln Boulevard, Room 206, Oklahoma City, Oklahoma 73105, 405.522.6723

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

585:1-1-1. Purpose [REVOKED]

~~The rules of this chapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S., Section 250 et seq; and are intended as aids to the efficient operation of the Board and to the orderly administration of the Fire and Police Arbitration Act; and to provide meaningful avenues for realizing and enforcing statutory rights and obligations of certain public employees, public employee organizations, and the municipal employers of this state.~~

585:1-1-2. Statutory definitions [REVOKED]

~~Terms used in this Chapter shall have the same meaning as defined in the Act unless their context clearly indicates otherwise.~~

585:1-1-3. Additional definitions [REVOKED]

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

~~**"ACT"** or **"The Act"** means the Fire and Police Arbitration Act."~~

~~**"Board"** or **"PERB"** means the Public Employees Relations Board.~~

~~**"Hearing Officer"** means that individual designated by the Board to conduct a hearing.~~

~~**"Party"** means any person, employee organization or municipal employer named and participating in, or properly seeking and entitled by law to participate in, an individual proceeding; or whose motion to intervene has been granted by the Board.~~

~~**"Quorum"** means a simple majority of the Board.~~

585:1-1-4. Severability [REVOKED]

~~If any provisions of the rules of this chapter be held invalid, it shall not be construed to invalidate any of the other provisions of the rules of this chapter.~~

585:1-1-5. Liberal construction [REVOKED]

~~The rules of this chapter shall be construed liberally to effectuate the purposes and provisions of the Act.~~

SUBCHAPTER 3. PROGRAM ADMINISTRATION AND DESCRIPTION

585:1-3-1. PERB Board, description and powers; administrative officer [REVOKED]

~~(a) The Board is an administrative body created by 11 O.S. § 51-101 et seq., specifically § 51-104. The Board consists of three (3) members who are appointed by the Governor, and whose powers and duties are prescribed by the Legislature.~~

~~(b) The Board may appoint an administrative employee or officer to carry out administrative functions of the Board including, but not limited to, conducting representation elections or unfair labor practice charge hearings. All determinations of fact or conclusions of law shall be made only by action of the Board.~~

~~(c) The Board, on its own motion, may initiate actions when the Board determines that it is necessary to do so in order to accomplish the objectives and to carry out the duties prescribed by the Act.~~

585:1-3-2. Quorum [REVOKED]

~~Two members of the Board comprise a simple majority and shall constitute a quorum; and may transact any business or hold any hearing by a unanimous vote of the quorum. Any action of the Board shall require the affirmative vote of two members.~~

585:1-3-3. Location for information or for filing [REVOKED]

~~Any person may obtain information from, make submission to, or make a request of the Board by writing to the Chairperson, Oklahoma Public Employees Relations Board, 1140 N.W. 63rd Street, Oklahoma City, Oklahoma 73116, Telephone (405) 843-1181.~~

585:1-3-4. Public inspection of documents [REVOKED]

~~(a) The Board shall act at all times in accordance with the provisions of the Oklahoma Open Records Act, 51 O.S. 1991 and Supp. 1997, Sec. 24A.1 et seq.~~

~~(b) The public may obtain information relative to the operation of the Board by submitting written, telephonic facsimile or other form of requests to the Executive Secretary of the Board. All public records shall be available during normal business hours. A member of the Board's staff shall be available during normal business hours to receive and, as appropriate, respond to requests for record review and copying.~~

~~(c) All records of the Board shall be considered public records unless protected by a mandatory or permissive privilege of confidentiality. In the event a request is made for the release of records subject to a permissive privilege of confidentiality, the Executive Secretary of the Board shall determine whether or not disclosure shall be made.~~

SUBCHAPTER 5. PROCEDURES [REVOKED]

585:1-5-1. Filing of documents [REVOKED]

~~(a) All complaints, pleadings, submissions, petitions, reports, exceptions, briefs, memoranda, discovery requests, and other papers required to be filed with the Board shall be filed at the Board's office.~~

~~(b) Such papers may be sent by mail or hand carried to the Board's office within the time limit, if any, for such filing.~~

~~(c) The date on which the papers are actually received by the Board shall be deemed to be the date of filing.~~

~~(d) All papers must be signed in ink by the party, by a duly authorized officer of the party, or by its attorney. The signature of the person signing the document constitutes a certification that such person has read the document; that to the best of such person's knowledge, information, and belief every statement contained in the instrument is true and correct and no such statements are misleading; and that the document is not interposed for delay. If any document submitted is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may continue as though the document had not been served or filed.~~

~~(e) Unless otherwise specifically provided by a particular rule, regulation, or order of the Board, the original and five~~

~~copies of the papers, with certificate of service on all parties, shall be filed.~~

~~(f) The documents initiating any proceeding shall state on the first page thereof the name, mailing address, and telephone number of the person or persons who may be served with any documents filed thereafter in the proceeding.~~

~~(g) Documents not timely filed with the Board shall not be accepted by the Executive Secretary for filing unless specific permission for a late filing is granted by the Chairperson of the Board.~~

585:1-5-2. Docketing [REVOKED]

~~The Board shall maintain a docket of all proceedings and each proceeding shall be assigned a case number.~~

585:1-5-3. Computation of time [REVOKED]

~~The time within which an act is to be performed under the rules and regulations of this chapter shall be computed by excluding the first day and including the last. When the last day for the doing of an act required by the rules and regulations falls on a Saturday, Sunday or legal holiday then the required act may be performed on the next regular business day. The Board, for good cause shown, and with notice to all interested parties, may extend any time prescribed in the rules of this chapter.~~

585:1-5-4. Notice of hearing [REVOKED]

~~The Board shall issue and serve upon all affected parties a notice of hearing, following receipt of a complaint, petition, or application filed in conformity with the rules of this chapter. The notice shall set out the time and place for the hearing. Except by agreement of the parties, or for good cause shown, the hearing shall be scheduled, subject to the provisions of 585:15-3-2, at a time not less than twenty (20) days nor more than ninety (90) days, after service of the notice. A copy of the complaint, petition or application shall be served with the notice. If a response to the complaint, petition, application, or notice is required, the deadline for such response shall be set out prominently therein.~~

585:1-5-5. Pre-hearing conference [REVOKED]

~~(a) A pre-hearing conference shall be conducted in all proceedings set for hearing before the Board or a duly appointed hearing officer. The pre- hearing conference may be conducted by telephone when the mutual convenience of the parties so requires. The Board may designate a member, employee, or its legal counsel to conduct the pre- hearing conference, which may be held as soon as possible after the case is at issue, but in any event upon at least ten (10) days notice to the parties.~~

~~(b) Parties shall be represented by attorneys,unless appearing *pro se*,~~

~~(c) Prior to the pre-hearing conference, the parties shall confer and prepare a proposed pre-hearing conference order. It is the responsibility of the complainant to submit the proposed order. The parties shall submit to each other and enter into the proposed pre-hearing conference order:~~

~~(1) A list of witnesses anticipated to be called at the hearing and each witness' intended testimony;~~

~~(2) A list of exhibits anticipated to be introduced. Each party shall provide a copy of each exhibit to the opposing party or counsel;~~

~~(3) A statement of the issues to be resolved;~~

~~(4) Stipulations;~~

~~(5) The anticipated length of the hearing, and;~~

~~(6) The possibility of settlement.~~

~~(d) The parties may submit statements of facts of the case. The proposed pre-hearing conference order shall be compiled into a single document, which shall be filed at the offices of the Board no later than five (5) days prior to the pre-hearing conference. In addition, a copy of the order on computer disk, in a format compatible with the Board's software, shall be submitted no later than five (5) days prior to the hearing.~~

~~(e) At the pre-hearing conference, the parties shall cooperate to attempt to simplify or resolve issues, stipulate, determine if a hearing is necessary or if the matter can be resolved on briefs, settle the case or take other action in furtherance of the proper resolution of the case. Neither the hearing officer nor Board employee shall have the authority to make binding, substantive orders upon the parties, except as may be specifically authorized by these rules, but can refer any issue to the Board for resolution.~~

~~(f) The parties are encouraged to complete discovery, as authorized by the Administrative Procedures Act, prior to the pre-hearing conference. If discovery is complete, the proposed final pre-hearing conference order shall be issued and signed by the hearing officer. No amendments shall be made to the pre-hearing conference order except as agreed upon by the parties or to prevent injustice.~~

~~(g) If discovery is not complete, a schedule for the completion of discovery shall be established, to include deadlines for the exchange of final witness lists, the exchange of final exhibit lists, and discovery cut off. Subsequent to the completion of discovery but no more than ten 910) days prior to the hearing on the merits, the parties shall cooperate to prepare a final pre-hearing conference order, which shall be signed by the parties and submitted to the hearing officer for signature and submission to the Board as the final pre-hearing conference order.~~

~~(h) The failure to prepare and/or file a proposed pre-hearing conference order, the failure to appear at the pre-hearing conference, the failure to appear prepared at a conference or hearing, or the failure to participate in good faith may result in sanctions against the offending party, which may include the striking of a pleading, a preclusion order, staying the action, default judgment, removal of the party's attorney from the case, or other sanction appropriate to remedy the misconduct.~~

~~(i) During the pre-hearing conference, a hearing date shall be set for a hearing on the merits. In the event the parties agree to submit the action upon briefs, a briefing schedule shall be set. During the pre-hearing conference, a date for the filing of dispositive motions shall be set, which shall be made sufficient to allow a response to any such motion and to submit such motion and response to the Board in a timely manner.~~

585:1-5-6. Amicus curiae [REVOKED]

~~(a) A brief of an amicus curiae which is confined to the issues raised by the parties may be filed if it is accompanied by written consent of all the parties. If consent is denied by any of the parties, the amicus curiae may file a statement which concisely discloses the nature and extent of the applicant's interest, states any facts or questions of law which may not be presented adequately by the litigants, and the relevancy of these facts or questions of law to the disposition of the case. An original and five copies should be filed with the Board, with certificate of service upon all parties. If an objection is not filed within ten (10) days, consent shall be deemed to have been granted. If an objection is filed, the Board shall review the statement and the objections to determine whether to allow the filing of the amicus brief.~~

~~(b) The disposition of a case will not be delayed pending action on a motion for leave to file an amicus curiae brief or to await the filing of a brief amicus curiae. If the filing of an amicus curiae brief is allowed either by the consent of the parties or by the Board, it must be filed within the briefing schedule set for the party supported.~~

~~(c) Leave may be sought by any party in the case to file a response to the amicus curiae brief.~~

585:1-5-7. Transcripts [REVOKED]

~~The Board shall not arrange for a court reporter to be present at any hearing except upon the written request of a party after arrangements have been made by the requesting party to pay all costs therefore. The Board shall record hearings electronically, but shall not transcribe any hearing. A party shall be entitled to a transcript of the oral proceedings upon request, but shall be obligated to pay for the cost incurred in obtaining a transcript of the oral proceedings. Requests for transcripts should be made through the Board either on the record or in writing. That portion of a hearing constituting adjudicative or quasiadjudicative deliberations of the Board shall not be recorded.~~

585:1-5-8. Rights of parties at hearings [REVOKED]

~~Any party shall have the right to appear at any hearing in person or by counsel duly licensed to practice law in the State of Oklahoma, and any party and the Board shall have the power to call and examine witnesses, and to introduce into the record documentary and other evidence.~~

SUBCHAPTER 7. CERTIFICATION CASES: REPRESENTATION PETITIONS [REVOKED]

585:1-7-1. Hearings to be conducted by Board or hearing officer [REVOKED]

~~All hearings shall be conducted by the Board unless the Board finds it necessary or desirable to appoint a hearing officer to conduct a hearing. The Board may confer upon such hearing officer the necessary powers, subject to the Oklahoma Administrative Procedures Act, to conduct such hearing and/or any procedural matters related thereto.~~

585:1-7-2. Open hearings [REVOKED]

~~Hearings shall be open to the public unless otherwise AUTHORIZED PURSUANT TO THE Open Meetings Act. The Board shall comply with the Open Meetings Act in all hearings. The Board may enter executive session, in compliance with the Open Meetings Act, as appropriate.~~

585:1-7-3. Motions [REVOKED]

~~(a) The Board recognizes all those motions permitted under the Oklahoma Pleading Code, 12 O. S. Supp. 1986, §2001 et seq; as well as a party's motion requesting the Board to defer to either pending or completed grievance arbitration.~~

~~(b) All motions made during a hearing shall be made part of the record of the proceedings.~~

~~(c) All motions other than those made during a hearing shall be subject to the following:~~

~~(1) Such motions shall be made in writing to the Board, shall briefly state the relief sought, and shall be accompanied by affidavits and/or memoranda setting forth the grounds upon which they are based.~~

~~(2) The moving party shall, concurrently therewith, serve a copy of all motions and supporting documents on all other parties.~~

~~(3) Any response or objection to the motion shall be filed with the Board within fifteen (15) days of receipt of the motion, and shall be served on all parties.~~

~~(4) The Board may decide to hear oral argument or testimony thereon, in which case the Board shall notify the parties of such fact and of the time and place of such argument or the taking of such testimony.~~

~~(d) In the event the Board determines it lacks the jurisdiction or necessary legal authority to rule upon any filed motion, it shall promptly so advise the parties.~~

585:1-7-4. Appearances [REVOKED]

~~The provisions of Section 585:1-5-8 shall govern appearances at a hearing.~~

585:1-7-5. Witnesses [REVOKED]

~~Except when testimony or evidence is submitted by affidavit as authorized by the Administrative Procedures Act, witnesses shall appear in person and shall be examined under oath or affirmation.~~

585:1-7-6. Discovery [REVOKED]

~~Discovery may be conducted as authorized by the Administrative Procedures Act. Additional procedures for discovery may be undertaken as agreed upon by the parties. Parties shall cooperate fully and in good faith to comply with discovery requests. The Board may impose any sanction specified in 585:1-5-5(h) for the failure or refusal of a party to comply with a proper discovery request.~~

585:1-7-7. Subpoenas [REVOKED]

~~(a) **Issuance of subpoenas.** The Board may issue subpoenas to require the attendance of witnesses in this State and the production of books and papers at a hearing or deposition held pursuant to the rules of this chapter.~~

~~(b) **Application for subpoena.** Any party may file a written application for subpoenas with the Board before the hearing.~~

~~(c) **Motion to revoke subpoenas.**~~

~~(1) A motion to revoke or quash a subpoena may be filed with the Board not later than three (3) days from the date of service of the subpoena.~~

~~(2) The Board shall give notice of the filing of a motion to revoke or quash to the applicant for subpoena.~~

~~(d) **Ruling on motion to revoke or quash.**~~

~~(1) The Board may revoke or quash a subpoena on the ground that the subpoena does not reasonably relate to any matter under investigation, inquiry, or hearing; that the subpoena does not describe with sufficient particularity the evidence sought, or that the evidence sought from the witness is privileged under the law or the provisions of the rules of this chapter.~~

~~(2) The Board shall make a statement as to the basis for its ruling.~~

~~(3) An aggrieved party may request that the motion to revoke or quash a subpoena, the answer thereto, if any, and the Board's statement of the basis for its ruling be made part of the record.~~

~~(e) **Witnesses.**~~

~~(1) No person served with a subpoena issued by the Board shall refuse or neglect to appear, to testify, or to produce books and papers relevant to such investigation, inquiry, or hearing as commanded in such subpoena without the timely filing of a motion to revoke or quash a subpoena with the Board.~~

~~(2) A failure to comply with, or neglect of, a subpoena issued by the Board may be certified by the Board to a court of competent jurisdiction for an order of compliance.~~

585:1-7-8. Rules of evidence [REVOKED]

~~(a) In any proceeding before the Board, the Board shall not be bound by technical rules of evidence. The Board may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs.~~

~~(b) All irrelevant, immaterial, or unduly repetitious evidence shall be excluded.~~

~~(c) The Board shall give effect to the rules of privilege recognized by law.~~

~~(d) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available, provided that upon request parties shall be given an opportunity to compare the copy with the original.~~

~~(e) Each party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts and shall have the right to submit rebuttal evidence.~~

~~(f) The Board may take notice of judicially cognizable facts.~~

~~(g) The Board may take notice of generally cognizable technical or scientific facts within its specialized knowledge; however, parties shall be notified either before or during the hearing of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.~~

585:1-7-9. Refusal to respond to questions [REVOKED]

~~The refusal of a witness at any such hearing to answer any question which has been ruled to be proper may, in the discretion of the Board, be grounds for striding all testimony previously given by such witness on related matters.~~

585:1-7-10. Amendment of documents [REVOKED]

~~(a) Any document filed in a proceeding may be amended, in the discretion of the Board, at any time prior to the issuance of a final order thereon.~~

~~(b) If such document is not in substantial conformity with the applicable rules of the Board as to the contents thereof, or is otherwise insufficient, the Board, on its own initiative or upon motion of a party, may strike or dismiss such document, or require its amendment. A party moving for amendment of a document shall file a motion for leave to amend together with the proposed amended document.~~

~~(c) If amended, the document shall be effective as of the date of the original filing, if it relates to the same proceeding.~~

585:1-7-11. Retention of documents by the Board [REVOKED]

~~(a) All documents filed with or presented to the Board shall be retained in the files of the Board.~~

~~(b) The Board may permit the withdrawal of original documents upon submission of properly authenticated copies to replace such documents.~~

585:1-7-12. Substitution of parties [REVOKED]

~~Upon motion and for good cause shown, the Board may order substitution of parties, except that in the case of death of a party, substitution may be ordered without the filing of a motion.~~

585:1-7-13. Consolidation [REVOKED]

~~The Board, on its own initiative or upon motion, may consolidate for hearing or other purposes or may contemporaneously consider two or more proceedings which involve substantially the same parties or issues if it finds that such consolidation of proceedings or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.~~

585:1-7-14. Intervention in proceeding [REVOKED]

~~(a) **Intervention - representation.** Any third party having a legitimate interest in any representation proceedings may file~~

~~a petition of intervention setting forth facts sufficient to establish such interest. For the purpose of third party intervention, "legitimate interest" means the intervenor must be able to prove it is authorized to represent at least ten percent (10%) of the employees within a proposed bargaining unit. Any bargaining agent which has a signed, collective bargaining agreement encompassing the proposed bargaining unit, or any portion thereof, shall be considered to have a legitimate interest in any proceeding, upon presentation of the same.~~

~~(b) **Intervention in proceeding, other.**~~

~~(1) In any proceeding other than representation proceedings, a petition to intervene and become a party thereto shall be submitted in writing to the Board.~~

~~(2) The petition shall contain the following:~~

~~(A) Nature of petitioner's statutory or other right.~~

~~(B) Nature and extent of petitioner's interest.~~

~~(C) Effect of any decision in the proceeding on petitioner's interest.~~

~~(D) Other means available whereby petitioner's interest may be protected.~~

~~(E) Extent petitioner's interest may be represented by existing parties.~~

~~(F) Extent petitioner's participation can assist in development of a sound record~~

~~(G) Extent petitioner's interest in the proceeding differs from that of the general public.~~

~~(H) How the petitioner's intervention would serve the public interest.~~

~~(3) The original and five copies of the petition, with certificate of service on all parties, shall be filed with the Board. Any party objecting to the intervention shall file its written objection with the Board within five (5) days of receipt of the petition.~~

~~(4) Intervention shall not be granted except on averments which are reasonably pertinent to the issues already presented but do not unduly broaden them. If intervention is granted, the petitioner thereby becomes an intervenor and a party to the proceeding to the degree indicated by the order allowing intervention.~~

585:1-7-15. Agreed statement of facts [REVOKED]

~~In any proceeding an agreed statement of facts may be introduced into the record with respect to any issue. An agreed statement of facts may be accepted by the Board without a hearing. The parties to an agreed statement of facts may agree to a waiver of hearing. Such agreed statements of fact are especially encouraged when the parties have reason to believe that the primary issue(s) for decision by the Board are purely issues of law.~~

585:1-7-16. Burden of proof [REVOKED]

~~The charging party, in asserting a violation of § 51-102 (6) of the Act, shall have the burden of going forward and of proving the allegations by a preponderance of the evidence. The employer shall meet the same burdens when it requests a unit determination hearing. The party raising any subsequent issue shall have the burden of proving that issue by a preponderance of the evidence.~~

585:1-7-17. Argument, briefs, proposed findings [REVOKED]

~~(a) Any party shall be entitled, upon request made before the close of a hearing, to present oral argument.~~

~~(b) Any party shall be entitled, upon request made before the close of a hearing, to file a brief or proposed findings of facts and conclusions of law, or both, within such time as may be fixed by the Board.~~

~~(c) The Board may direct oral argument or the filing of briefs or proposed findings of facts, conclusions of law, or both, when it deems the submission of briefs or proposed findings, or both, is warranted by the nature of the proceedings or the particular issues therein.~~

~~(d) A request for extension of time within which to file a brief or proposed findings shall be made in writing to the Board at least three (3) days before the expiration of the required time for filing, and shall be accompanied by an affidavit setting forth the grounds upon which it is based and indicating the position of the other parties with regard to such request.~~

585:1-7-18. Decisions and orders of the Board [REVOKED]

~~(a) Every decision and order rendered by the Board shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party has filed proposed findings of fact, the Board shall incorporate in its decision a ruling upon each proposed finding so presented. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed to each party or to each party's attorney or representative, and shall be released for public information.~~

~~(b) Copies of such documents shall be available for public inspection in the office of the Board or may be obtained upon request and upon payment of costs, if any.~~

585:1-7-19. Unauthorized ex parte communications [REVOKED]

~~(a) Unauthorized ex parte communications are defined as private communications, other than those permitted elsewhere in the rules of this chapter, with members of the Board or counsel for the Board, as to the merits of a proceeding, i.e., any finding of fact or conclusions of law, with a view towards influencing the outcome of the case, except that the following classes of ex parte communications shall not be prohibited:~~

~~(1) Those which relate to matters which a Board member is authorized to dispose of on an ex parte basis.~~

~~(2) Requests for information with respect to the status of a proceeding.~~

~~(3) Those which all parties to the proceeding agree, or which the Board has formally ruled, may be made on an ex parte basis.~~

~~(4) Those with representatives of any news media on matters intended to inform the general public.~~

~~(b) No public employee, employee organization, public employer, or any other person or organization, whether or not a party to a proceeding before the Board, shall make any unauthorized ex parte communication about the proceeding to any member of the Board or to counsel for the Board.~~

[OAR Docket #07-890; filed 4-30-07]

TITLE 585. PUBLIC EMPLOYEES RELATIONS BOARD
CHAPTER 2. OPERATIONS UNDER THE FPAA AND THE MECBA

[OAR Docket #07-891]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [NEW]
585:2-1-1 through 585:2-1-5 [NEW]
Subchapter 3. Program Administration and Description [NEW]
585:2-3-1 through 585:2-3-9 [NEW]
Subchapter 5. Procedures [NEW]
585:2-5-1 through 585:2-5-11 [NEW]
Subchapter 7. Hearings [NEW]
585:2-7-1 through 585:2-7-16 [NEW]
AUTHORITY:
Public Employees Relations Board; 11 O.S. 2001 and Supp. 2006, § 51-101, *et seq.* and 11 O.S. Supp. 2006, § 51-200, *et seq.*; 75 O.S. § 302 *et seq.*
DATES: Comment period:
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January 16, 2007 through February 15, 2007
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GUBERNATORIAL APPROVAL:
March 15, 2007
LEGISLATIVE APPROVAL:
Failure of the Legislature to disapprove the rules resulted in approval on April 26th, 2007
FINAL ADOPTION:
April 26, 2007
EFFECTIVE:
June 11, 2007
SUPERSEDED EMERGENCY ACTIONS:
NOTE:
The Chapter 20 emergency rules identified below are being superseded by permanent rules in this filing for Chapter 2, as well as permanent rules in two other Chapters — 30 and 35. (The permanent rules for Chapters 30 and 35 are also published in this issue.)
Superseded rules:
Subchapter 1. General Provisions [NEW]
585:20-1-1. Purpose [NEW]
585:20-1-2. Matters Not Covered [NEW]
Subchapter 3. Procedures [RESERVED]
Subchapter 5. Prohibited Practice Charges [NEW]
585:20-5-1. Process [NEW]
585:20-5-2. Complaint [NEW]
585:20-5-3. Answer [NEW]
Subchapter 7. Representation Petitions [NEW]
585:20-7-1. Petition for election [NEW]
585:20-7-2. Petition for representation without an election [NEW]
585:20-7-3. Determination of collective bargaining unit [NEW]
Gubernatorial approval:
May 18, 2006
Register publication:
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Docket number:
06-1075
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rules are intended as aids to the efficient operation of the Public Employees Relations Board and to the orderly administration of the Fire and Police Arbitration Act and the Municipal Employees Collective Bargaining Act. They are also intended to provide meaningful avenues for realizing and enforcing statutory rights and obligations of certain public employees, public employee organizations, and the municipal employers of this state. The rules address information and procedures in one chapter to ensure consistent administration of both Acts.
CONTACT PERSON:
Debbie Tiehen, Administrator, Public Employees Relations Board, 2401 north Lincoln Boulevard, Room 206, Oklahoma City, Oklahoma 73105, 405.522.6723

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

585:2-1-1. Purpose

These rules have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S. §250 et seq. They are intended as aids to the efficient operation of the Public Employees Relations Board and to the orderly administration of the Fire and Police Arbitration Act (FPAA) and the Municipal Employees Collective Bargaining Act (MECBA). They are also intended to provide meaningful avenues for realizing and enforcing statutory rights and obligations of certain public employees, employee organizations, and the municipal employers of this state.

585:2-1-2. Statutory definitions

Terms used in this Chapter shall have the same meaning as defined in the FPAA and the MECBA unless their context clearly indicates otherwise.

585:2-1-3. Additional definitions

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

"Administrator" or "Administrator of the Board" means the program administrator of the Board appointed pursuant to 74 O.S., §51-104a.

"APA" means the Oklahoma Administrative Procedures Act, 75 O.S., §250, et seq.

"Arbitrator" means a person carried on the list of arbitrators maintained by the Federal Mediation and Conciliation

Service who is located in the region in which Oklahoma is located.

"Board" or **"PERB"** means the Public Employees Relations Board.

"FPAA" means the Fire and Police Arbitration Act, 11 O.S., §51-101, et seq.

"Hearing Officer" means that individual designated by the Board to conduct a hearing. This individual must meet the definition of "Hearing Examiner" set out in 75 O.S. §250.3.

"MECBA" means the Municipal Employees Collective Bargaining Act, 11 O.S., §51-20, et seq.

"Party" means any person, employee organization or municipal employer named and participating in, or properly seeking and entitled by law to participate in, an individual proceeding; or whose motion to intervene has been granted by the Board.

"Quorum" means two members of the Board comprise a majority and shall constitute a quorum and may transact any business or hold any hearing by a unanimous vote of the quorum. Any action of the Board shall require the affirmative vote of two members.

585:2-1-4. Severability

If any section or sections of these Rules are held by a court or by the Attorney General of the State of Oklahoma to be inconsistent with any Oklahoma statute or statutes as they presently exist or are hereafter amended, the partial or total invalidity of any such section or sections shall not affect the remaining valid sections of these Rules.

585:2-1-5. Liberal construction

The rules of this chapter shall be construed liberally to effectuate the purposes and provisions of the FPAA and the MECBA.

SUBCHAPTER 3. PROGRAM ADMINISTRATION AND DESCRIPTION

585:2-3-1. PERB Board, description and powers; hearing officer

(a) The Board is an administrative body created by 11 O.S., §51-104 and referred to in 11 O.S., §51-24. The Board consists of three (3) members who are appointed by the Governor, and whose powers and duties are prescribed by the Legislature. The Board has an Administrator to carry out certain designated functions of the Board, including, but not limited to, conducting representation elections.

(b) The Board may appoint a hearing officer to carry out functions of the Board including, but not limited to, conducting representation elections, unfair labor practice charge hearings and prohibited practices hearings.

(c) The Board, on its own motion, may initiate actions when the Board determines that it is necessary to do so in order to accomplish the objectives and to carry out the duties prescribed by the FPAA and the MECBA.

585:2-3-2. Quorum

Two members of the Board comprise a majority and shall constitute a quorum and may transact any business or hold any hearing by a unanimous vote of the quorum. Any action of the Board shall require the affirmative vote of two members.

585:2-3-3. Location for information or for filing

Any person may obtain information from, make submission to, or make a request of the Board by writing to the Administrator of the Board, Oklahoma Public Employees Relations Board, at the Board's address and telephone number as published by the State of Oklahoma.

585:2-3-4. Public inspection of documents

(a) The Board shall act at all times in accordance with the provisions of the Oklahoma Open Records Act, 51 O.S., §24A.1 et seq.

(b) The public may obtain information relative to the operation of the Board by submitting written, telephonic, facsimile or other form of requests to the Administrator of the Board. All public records shall be available during normal business hours. A member of the Board's staff shall be available during normal business hours to receive and, as appropriate, respond to requests for record review and copying.

(c) All records of the Board shall be considered public records unless protected by a mandatory or permissive privilege of confidentiality. In the event a request is made for the release of records subject to a permissive privilege of confidentiality, the Administrator of the Board shall determine whether or not disclosure shall be made.

585:2-3-5. Retention of pleadings or documents by the Board

(a) All pleadings and/or documents filed with or presented to the Board shall be retained and disposed of in accordance with the Department of Central Services Consolidated Records Disposition Schedule.

(b) The Board may permit the withdrawal of original pleadings or documents upon the submission of properly authenticated copies to replace such documents.

585:2-3-6. Forms and instructions

(a) The Board shall cause to be created forms and instructions related to bargaining unit determination, certification and decertification process; the filing of unfair labor practice and prohibited practice charges; Final Pre-Hearing Orders and for such other matters related to operations of the Board as deemed necessary by the Board. The parties shall use the appropriate forms and instructions created by the Board.

(b) Forms and instructions shall be maintained at the offices of the Board and shall be available to any person upon request.

585:2-3-7. Failure of Party to Comply with Statutes, Rules or Orders of the Board

Failure of any party to comply with the FPAA, the MECBA, these rules or orders of the Board may result in the Board dismissing a charge, striking a pleading, issuing a preclusion order, staying an action, entering default judgment or taking other appropriate action.

585:2-3-8. Petitions for rulemaking

(a) **General.** Any interested person may petition the Board in writing to promulgate, amend or repeal a rule.

(b) **Permanent docket of petitions for rulemaking.** The Board shall maintain a permanent docket concerning petitions for the promulgation, amendment or repeal of a rule. At the time such a petition is filed, it shall be numbered, and the number of the petition, the date of filing, the designation of the action sought, and the name and address of the person who filed the petition shall be shown. The address shall include the city, state, street number or post office box and zip code.

(c) **Petition filing requirements.** The petition must be filed with the Board in duplicate and shall be typewritten, except as may be waived by the Board upon written request.

(d) **Petition contents.** The petition shall contain the following information as applicable and except as may be waived by the Board:

(1) A statement of the legal authority and jurisdiction under which the petition is filed;

(2) The exact language of the proposed rule, amendment, or repeal requested;

(3) A statement and legal references which show that the requested rule, amendment or repeal is not in conflict with any existing rule, ruling, order or opinion of the Board or any policy or provision of the FPAA, the MECBA or the APA, or that any earlier rule, ruling, order or opinion should be set aside or modified;

(4) A statement of the purpose of the requested rule, amendment or repeal and at least one example or fact situation to which the rule, amendment or repeal will apply; and

(5) The name and address of the person who requested the rule, amendment or repeal. In the event the request is made by an association, the request shall also include the name and address of a contact person at said association who is able to provide meaningful information related to the request.

(e) **Petition study period.** The petition shall be submitted for study for a maximum period of ninety (90) days.

(f) **Additional information for consideration of petition.** The Board, on its own motion or upon the request of any other interested party, may require any petitioner to provide additional information, as may be specified by the Board, for use in the Board's consideration and disposition of a petition. The failure of a petitioner to provide additional requested information shall constitute grounds for the Board to take no action on a petition.

(g) **Public hearing.** Upon completion of the study period, the Board, during a regular or special meeting, shall hold a public hearing and consider the merits and proper disposition of the petition. Not less than ten (10) days prior to such meeting, the Administrator of the Board shall notify the petitioner in writing of the date, time, and place such petition shall be considered, and the Board may request petitioner's presence for purpose of argument or submission of other information related to the petition.

(h) **Hearing of proponents and opponents.** At the time and place designated for the public hearing, proponents and opponents of the proposed rule, amendment or repeal of a rule may be heard in the manner and order set forth by the Board at that time.

(i) **Board's decision.** At the conclusion of the public hearing, the Board shall render its decision on the petition. In the event the Board concurs with the action indicated in the petition, it shall take immediate steps to adopt, amend, or revoke the subject rule. In the event the Board does not concur with the requested action, it shall notify the petitioner of its nonconcurrence in writing, specifying the reason or reasons for nonconcurrence.

(j) **Rehearing, reopening or reconsideration of petition.** Dissatisfied parties may request a rehearing, reopening or reconsideration within ten (10) days from the date the action was taken by the Board in the manner allowed by the APA at 75 O.S., §317, or its successor statute.

(k) **Notice of proposed rule changes mailing list.** Any person who desires notice of proposed rule changes may contact the Board office for inclusion on a mailing list. Such persons shall be notified of the time and place of the public hearing.

585:2-3-9. Petitions for declaratory rulings

(a) **Request for declaratory ruling.** Any person who desires a ruling as to the application of any rule or order of the Board may file a petition with the Administrator of the Board, in writing, to request such ruling.

(b) **Issuance of declaratory ruling.** Unless the Board requests a formal opinion of the Attorney General, the Board shall issue its declaratory ruling on the matter. The declaratory ruling shall consist of:

(1) A restatement of the question posed in the petition;

(2) An answer to the question posed in the petition; and

(3) The reason or reasons for the answer given.

(c) **Notice of declaratory ruling.** A copy of the declaratory ruling shall be mailed to the person who requested the declaratory ruling immediately after its issuance by the Board.

(d) **Public inspection of declaratory ruling.** Copies of all declaratory rulings shall be placed in a permanent file at the offices of the Board for public inspection, copying and/or mechanical reproduction during regular business hours.

(e) **Notice by petitioning party.** The petitioning party shall make a good faith effort to notify all parties, and shall provide notice to all persons on the mailing list created by Subsection 585:2-3-8(k).

SUBCHAPTER 5. PROCEDURES

585:2-5-1. Filing of documents

(a) **General.** All complaints, pleadings, submissions, petitions, reports, exceptions, motions, briefs, memoranda, and other papers required to be filed with the Board shall be filed at the Board's office. Such documents shall be served on all other parties on the same day that they are filed with the Board. Such documents shall be served by the filing party on all other parties on the same day that they are filed with the Board.

(b) **Method of filing.** Such papers may be sent by mail or hand-delivered to the Board's office within the time limit, if any, for such filing.

(c) **Document filing date.** The date on which the papers are actually received by the Board shall be deemed to be the date of filing.

(d) **Execution of documents.** All papers shall be signed in ink by the party, by a duly authorized officer of the party, or by its attorney. The signature of the person signing the document constitutes a certification that such person has read the document; that to the best of such person's knowledge, information, and belief every statement contained in the instrument is true and correct and no such statements are misleading; and that the document is not interposed for delay. If any document submitted is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may continue as though the document had not been served or filed.

(e) **Number of copies to be filed.** Unless otherwise specifically provided by a particular rule or order of the Board, the original and six copies of the papers, with certificate of service on all parties, shall be filed.

(f) **Identification of person(s) to be served.** The documents initiating any proceeding shall state on the first page thereof the name, mailing address, and telephone number of the person or persons who may be served with any documents filed thereafter in the proceeding.

(g) **Late filing.** Documents not timely filed with the Board shall not be accepted by the Administrator of the Board for filing unless specific permission for a late filing is granted by the Chair of the Board.

585:2-5-2. Computation of time

The time within which an act is to be performed under these Rules shall be computed by excluding the first day and including the last. When the last day for the doing of an act required by these Rules falls on a Saturday, Sunday or state legal holiday then the required act may be performed on the next regular business day. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays and state legal holidays shall be excluded from the computation.

585:2-5-3. Requests for extensions of time

(a) The Board, for good cause shown, and with notice to all interested parties, may extend any time prescribed in these Rules. However, requests for extensions of time are not encouraged, and leave for additional time will not be freely given. All motions for extension of time shall be filed before the due date and shall state:

(1) the date the act is due to occur without the requested extension;

(2) whether previous motions for extensions have been made and the disposition of said requested extensions;

(3) specific reasons for such requested extension to include an explanation why the act was not done within the originally allotted time;

(4) whether the opposing counsel or party agrees or objects to the requested extension;

(5) the impact, if any, on the scheduled hearing or other deadlines; and

(6) the precise relief requested by the motion.

(b) All such motions shall be accompanied by a proposed order for the Board's use if such relief is granted. The proposed order, which shall not differ in any respect from the relief requested in the motion, shall state specifically the events being extended and the new dates for the deadlines.

585:2-5-4. Docketing

The Board shall maintain a docket of all proceedings and each proceeding shall be assigned a case number.

585:2-5-5. Filing of complaint and answer

Proceedings against a party alleging an unfair labor practice under the FPAA or a prohibited practice under the MECBA shall be commenced by filing a written charge with the PERB within six (6) months of the alleged violation, or knowledge thereof, and causing a copy of the charge to be served upon the accused party by certified mail, return receipt requested. The accused party shall have ten (10) days from the date of service to file with the PERB and serve on the complainant a written answer to the charge.

585:2-5-6. Scheduling of deadlines

(a) **Scheduling conference.** A scheduling conference shall be conducted in all proceedings alleging an unfair labor practice under the FPAA or a prohibited practice under the MECBA. The scheduling conference may be conducted by telephone when the mutual convenience of the parties so requires. The Board may designate the Administrator of the Board, a hearing officer, or its legal counsel to conduct the scheduling conference. Unless otherwise ordered, the Administrator of the Board shall conduct the scheduling conference.

(b) **Party representation.** Parties shall be represented by attorneys unless appearing pro se.

(c) **Written scheduling order.** At the scheduling conference, a written scheduling order will be prepared by the person conducting the conference addressing the following items:

(1) Date for discovery to be completed;

(2) Date for exchange of preliminary witness and exhibit lists;

(3) Date for filing Final Pre-Hearing Order (filed by Complainant's counsel five (5) days prior to the final pre-hearing conference);

(4) Date for completion of any mediation or other form of alternative dispute resolution (before date of final pre-hearing conference); and
(5) Date of final pre-hearing conference.

585:2-5-7. Final pre-hearing conference

(a) **Final pre-hearing conference.** A final pre-hearing conference shall be conducted in all proceedings alleging an unfair labor practice under the FPAA or a prohibited practice under the MECBA. The final pre-hearing conference may be conducted by telephone when the mutual convenience of the parties so requires. The Board may designate the Administrator of the Board, a hearing officer, or its legal counsel to conduct the final pre-hearing conference. Unless otherwise ordered, the Administrator of the Board shall conduct the final pre-hearing conference.

(b) **Party representation.** Parties shall be represented by attorneys unless appearing pro se.

(c) **Settlement; mediation or other alternative dispute resolution.** Prior to the final pre-hearing conference, each side shall confer with the client and discuss:
(1) the possibility of settlement; and
(2) the party's willingness to participate in mediation or some other form of alternative dispute resolution prior to the final pre-hearing conference.

(d) **Proposed Final Pre-Hearing Order.** Prior to the final pre-hearing conference, the parties shall confer and prepare a proposed Final Pre-Hearing Order. The complainant has the responsibility of submitting to the Board the proposed order not less than five (5) days before the scheduled pre-hearing conference. The proposed order shall include:
(1) a brief preliminary statement;
(2) a statement of relevant facts, to include facts to which the parties stipulate and facts in dispute;
(3) legal issues presented by each party, including defenses, and authority relied on;
(4) a final list of exhibits, including objections;
(5) a final list of witnesses, including addresses, telephone numbers and proposed testimony; and,
(6) the possibility of settlement.

(e) **Pre-hearing actions.** At the final pre-hearing conference, the parties shall cooperate to attempt to simplify or resolve issues, stipulate, determine if a hearing is necessary or if the matter can be resolved on briefs, settle the case or take other action in furtherance of the proper resolution of the case.

(f) **Discovery.** Discovery, as authorized by the Administrative Procedures Act, shall be completed prior to the final pre-hearing conference.

(g) **Deadlines for cases decided on stipulated facts.** At the pre-hearing conference, the person conducting the hearing will enter the following deadlines for cases decided on stipulated facts:
(1) date for filing statement of stipulated facts, list of exhibits stipulated to and six (6) copies of these exhibits;
(2) date Complainant's brief is due; and
(3) respondent's brief is due within eighteen (18) days of the filing with the Board of the Complainant's brief.

(h) **Deadlines for cases decided with disputed facts.** At the pre-hearing conference, the person conducting the hearing will enter the following deadlines for cases decided with disputed facts:
(1) Date for filing joint statement of relevant facts to which parties can stipulate [(10 days before hearing) See 585:2-7-14.];
(2) Date for each party to file a statement of relevant facts in dispute [(10 days before hearing) See 585: 2-7-14];
(3) Date for filing joint list of admissible exhibits [(10 days before hearing) See 585:2-7-14];
(4) Date for filing list of exhibits to which the parties can not stipulate and the opposing party's objections thereto [(10 days before hearing) See 585:2-7-14);
(5) Date for filing final witness lists [(10 days before hearing) See 585:2-7-14];
(6) Date for exchange of exhibits and for filing the original and six (6) copies of each exhibit [(7 days before hearing) See 585:2-7-14];
(7) Date for filing hearing briefs [(7 days before hearing) See 585:2-7-14];
(8) Date for filing any motions in limine [(7 days before hearing) See 585:2-7-14];
(9) Hearing date;
(10) Date for each party to refile its statement of disputed facts with citations to the record added for each disputed fact [(15 days after hearing) See 585:2-7-14]; and,
(11) Any other deadlines.

(i) **Final Pre-Hearing Order.** The Final Pre-Hearing Order shall be issued and signed by the person conducting the pre-hearing conference. The Final Pre-Hearing Order supersedes all pleadings and shall not be amended except by order of the Board.

(j) **Default.** Failure to prepare and/or timely file the proposed Final Pre-Hearing Order, failure to be prepared for the final pre-hearing conference, or failure to participate in or participate in good faith in the pre-hearing conference may result in sanctions. These sanctions may include:
(1) dismissing the charge;
(2) striking a pleading;
(3) issuing a preclusion order;
(4) staying the action;
(5) entering default judgment;
(6) removal of a party's attorney from the case; or,
(7) other sanctions appropriate to the misconduct.

585:2-5-8. Amicus curiae

(a) A brief of an amicus curiae which is confined to the issues raised by the parties may be filed if it is accompanied by written consent of all the parties.
(1) If consent is denied by any of the parties, the amicus curiae may file a motion, with certificate of service on all parties, which concisely discloses the nature and extent of the applicant's interest, states any facts or questions of law which may not be presented adequately by the litigants, and explains the relevancy of these facts or questions of law to its disposition of the case.

(2) If an objection to the motion is not filed within ten (10) days of its filing with the Board, consent to file the amicus brief shall be deemed to have been granted. If an objection is filed, the Board shall review the motion and the objections to determine whether to allow the filing of the amicus brief.

(b) The disposition of a case will not be delayed pending action on a motion for leave to file an amicus brief or to await the filing of an amicus brief. If the filing of an amicus brief is allowed either by the consent of the parties or by the Board, it must be filed within the briefing schedule set for the party supported.

(c) Leave may be sought by any party in the case to file a response to the amicus brief.

585:2-5-9. Transcripts

The parties shall schedule a court reporter to be present at the hearings, and the parties shall be responsible for the payment of the court reporter. The parties shall file a copy of the transcript with the Board, and this copy will become the official written transcript of the hearing.

585:2-5-10. Impasse arbitration

In the event of an impasse in negotiations under the MECBA, if the parties are unable to jointly agree on an arbitrator, they may request from the Board a list of seven (7) arbitrators as provided in 11 O.S., §51-214 and 585-2-1-3. The Board shall provide a list of seven (7) arbitrators as defined in 585:2-1-3.

585:2-5-11. Rights of parties at hearings

Any party shall have the right to appear at any hearing in person or by counsel duly licensed to practice law in the State of Oklahoma, and any party and the Board shall have the power to call and examine witnesses, and to introduce into the record documentary and other evidence.

SUBCHAPTER 7. HEARINGS

585:2-7-1. Hearings to be conducted by Board or hearing officer

All hearings shall be conducted by the Board unless the Board finds it necessary or desirable to appoint a hearing officer to conduct a hearing. The Board may confer upon such hearing officer the necessary powers, subject to the Oklahoma Administrative Procedures Act, to conduct such hearing and/or any procedural matters related thereto. This Subchapter does not apply to scheduling or pre-hearing conferences.

585:2-7-2. Open hearings

The Board shall comply with the Open Meeting Act in all hearings. The Board may enter executive session, in compliance with the Open Meeting Act, as appropriate.

585:2-7-3. Motions

(a) **Recognized motions.** The Board recognizes all motions permitted under the Oklahoma Pleading Code, 12 O. S., §201 et seq. as well as a party's motion requesting the Board to defer to either pending or completed grievance arbitration.

(b) **Recorded motions.** All motions made during a hearing shall be made part of the record of the proceedings.

(c) **Motion requirements.** All motions, other than those made during a hearing, shall be subject to the following:

(1) **General contents.** Such motions shall be made in writing to the Board, shall briefly state the relief sought, and shall be combined with a brief containing a statement of relevant facts and legal argument with citations to relevant legal authority.

(2) **Format; size; filing date of certain motions.**

(A) No combined motion/brief shall be submitted that is longer than fifteen (15) typewritten pages without leave of the Board.

(B) The print style, including footnotes, shall not be less than ten (10) characters to an inch (i.e., 12 pitch font), and margins shall be a minimum of one inch on the top, bottom, and sides.

(C) Oversized briefs are not encouraged, and leave to file oversized briefs will not be freely given.

(D) A motion to file a combined motion/brief in excess of fifteen (15) typewritten pages shall state the requested number of pages and shall be filed no later than three (3) days prior to the date the motion/brief is due.

(3) **Required appendix to motion/brief.** Each party shall attach to that party's motion/brief as an appendix a copy of significant legal authority cited in the brief not readily accessible by the Board such as federal statutes and court cases, NLRB cases, and treatises. The Board has ready access to Oklahoma statutes and cases decided by Oklahoma state courts and to previous Board decisions.

(4) **Affidavits.** Affidavits regarding factual matters may be attached to the motion/brief if necessary.

(5) **Deadlines.** Deadlines for filing motions are set in the Final Pre-Hearing Order.

(6) **Service of motion/brief by moving party.** The moving party shall, concurrently with filing with the Board, serve a copy of the motion/brief on all other parties.

(7) **Response or objection to motion/brief.** Any response or objection to the motion/brief shall be subject to the same requirements as motions/briefs, shall be filed with the Board within eighteen (18) days from the date the motion/brief was filed with the Board and shall be served on all parties.

(8) **Board hearing of oral argument or testimony.** The Board may decide to hear oral argument or testimony thereon, in which case the Board shall notify the parties of such fact and of the time and place of such argument or the taking of such testimony.

(d) **Board's lack of jurisdiction or necessary legal authority.** In the event that the Board determines that it lacks jurisdiction or necessary legal authority to rule upon any filed motion, it shall promptly so advise the parties.

585:2-7-4. Discovery

Discovery may be conducted as authorized by the Administrative Procedures Act. Additional procedures for discovery may be undertaken as agreed upon by the parties. The parties shall cooperate fully and in good faith to comply with discovery requests. The Board may impose sanctions for the failure or refusal of a party to comply with a proper discovery request.

585:2-7-5. Subpoenas

(a) **Issuance of subpoena by Board.** The Board may issue subpoenas to require the attendance of witnesses in this State and the production of books and papers at a hearing or deposition held pursuant to the rules of this chapter.

(b) **Application for subpoena.** Any party may file a written application for a subpoena and the proposed subpoena with the Board before the hearing or disposition. Any subpoena requested and issued by the Board shall be served by the applicant with the witness fees and mileage required by the Administrative Procedures Act.

(c) **Filing of a motion to quash.** No person served with a valid subpoena issued by the Board shall refuse or neglect to appear, to testify, or to produce books and papers relevant to such investigation, inquiry, or hearing as commanded in such subpoena without the timely filing with the Board of a motion to quash a subpoena. A motion to quash a subpoena may be filed with the Board not later than seven (7) days from the date of service of the subpoena. The movant shall serve a copy of the motion to quash on the applicant for the subpoena.

(d) **Quash of subpoena by Board.** The Board may quash a subpoena on the ground that the subpoena does not reasonably relate to any matter under investigation, inquiry, or hearing; that the subpoena does not describe with sufficient particularity the evidence sought; or that the evidence sought from the witness is privileged under the law or the provisions of these Rules. The Board shall make a statement as to the basis for its ruling. An aggrieved party may request that the motion to quash a subpoena, the response thereto, if any, and the Board's statement of the basis for its ruling be made part of the record.

(e) **Default.** A failure to comply with, or neglect of, a valid subpoena issued by the Board may be certified by the Board to a court of competent jurisdiction for an order of compliance.

585:2-7-6. Rules of evidence

(a) **Technical rules of evidence.** In any proceeding before the Board, the Board shall not be bound by technical rules of evidence. The Board may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs.

(b) **Exclusions.** All irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(c) **Rules of privilege.** The Board shall give effect to the rules of privilege recognized by law.

(d) **Documentary evidence.** Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available, provided that upon request parties shall be given an opportunity to compare the copy with the original.

(e) **Cross-examination.** Each party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts and shall have the right to submit rebuttal evidence.

(f) **Judicially cognizable facts.** The Board may take notice of judicially cognizable facts.

(g) **Cognizable technical or scientific facts.** The Board may take notice of generally cognizable technical or scientific facts within its specialized knowledge; however, parties shall be notified either before or during the hearing of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

585:2-7-7. Contemptuous conduct

The refusal of a witness at any hearing to answer any question which has been ruled to be proper may, in the discretion of the Board, be grounds for striking all testimony previously given by such witness on related matters.

585:2-7-8. Amendment of pleadings or documents

(a) **Proposed amendment of pleading or document.** Any pleading or document filed in a proceeding may be amended, in the discretion of the Board, at any time prior to the issuance of a final order thereon. A party moving for amendment of a pleading or document shall file a motion for leave to amend together with the proposed amended pleading or document.

(b) **Insubstantial conformity of pleading or document.** If a pleading or document is not in substantial conformity with the applicable rules of the Board as to the contents thereof, or is otherwise insufficient, the Board, on its own initiative or upon motion of a party, may strike or dismiss such pleading or document, or require its amendment.

(c) **Effective date.** If amended, the pleading or document shall be effective as of the date of the original filing, if it relates to the same proceeding.

585:2-7-9. Substitution of parties

Upon motion and for good cause shown, the Board may order substitution of parties, except that in the case of death of a party, substitution may be ordered without the filing of a motion.

585:2-7-10. Consolidation

The Board, on its own initiative or upon motion, may consolidate for hearing or other purposes or may contemporaneously consider two or more proceedings which involve substantially the same parties or issues if it finds that such consolidation of proceedings or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.

585:2-7-11. Intervention in proceeding

(a) **Petition to intervene.** Any third party having a legitimate interest in any representation proceeding may file a petition to intervene setting forth facts sufficient to establish such interest. (b)(b) **Contents of petition to intervene.** In any proceeding other than a representation proceeding, a petition to intervene and become a party thereto shall be submitted in writing to the Board. The petition shall contain the following:

(1) Nature of petitioner's statutory or other right;

(2) Nature and extent of petitioner's interest;

(3) Effect of any decision in the proceeding on petitioner's interest;

(4) Other means available whereby petitioner's interest may be protected;

(5) Extent petitioner's interest may be represented by existing parties;

(6) Extent petitioner's participation can assist in development of a sound record;

(7) Extent petitioner's interest in the proceeding differs from that of the general public; and

(8) How the petitioner's intervention would serve the public interest.

(c) **Filing of petition to intervene.** The original and six copies of a petition to intervene, with certificate of service on all parties, shall be filed with the Board. Any party objecting to the intervention shall file its written objection with the Board within five (5) days of service of the petition.

(d) **Granting of intervention.** Intervention shall not be granted except on averments which are reasonably pertinent to the issues already presented but do not unduly broaden them. If intervention is granted, the petitioner thereby becomes an intervener and a party to the proceeding to the degree indicated by the order allowing intervention.

585:2-7-12. Burden of proof

The charging party, in asserting an unfair labor practice under the FPAA or a prohibited practice under the MECBA, shall have the burden of going forward and of proving the allegations by a preponderance of the evidence. The party raising any subsequent issue shall have the burden of proving that issue by a preponderance of the evidence.

585:2-7-13. Cases decided on stipulated facts

At the pre-hearing conference, the parties shall notify the Board that they can stipulate to all relevant facts. A briefing schedule shall then be set, and the case shall be decided on stipulated facts as follows:

(1) **Deadlines for statement of stipulated facts and brief.** At the pre-hearing conference, the parties shall be given a deadline for filing the statement of stipulated facts. A list of exhibits stipulated to and six (6) copies of these exhibits shall also be filed with the statement of stipulated facts. At the pre-hearing conference, the Complainant shall be given a deadline for filing its brief with the Board and service on the Respondent.

(2) **Filing of response by Respondent.** The Respondent shall file with the Board and serve on the Complainant its response within eighteen (18) days of the filing with the Board of the Complainant's brief.

(3) **Contents; format; size; filing date of certain motions.**

(A) Each brief shall contain:

(i) a brief background of the case and the issues to be decided; and,

(ii) a legal argument with citations to relevant legal authority.

(B) No brief shall be submitted that is longer than fifteen (15) typewritten pages without leave of the Board.

(C) The print style, including footnotes, shall not be less than ten (10) characters to an inch (i.e., 12 pitch font), and margins shall be a minimum of one inch on the top, bottom, and sides.

(D) Oversized briefs are not encouraged, and leave to file oversized briefs will not be freely given. A motion to file a brief in excess of fifteen (15) typewritten pages shall state the requested number of pages and shall be filed no later than three (3) days prior to the date the brief is due.

(E) Each party shall attach to that party's brief as an appendix a copy of significant legal authority cited in the brief not readily accessible by the Board such as federal statutes and court cases, NLRB cases, and treatises. The Board has ready access to Oklahoma statutes and cases decided by Oklahoma state courts and to previous Board decisions.

(4) **Additional briefing.** Additional briefing may be requested by the Board. No oral argument will be heard on cases decided on stipulated facts unless specifically requested by the Board.

585:2-7-14. Cases decided on disputed facts

At the pre-hearing conference, the parties shall notify the Board that they can not stipulate to all relevant facts. The case shall then be set for hearing and shall be decided on disputed facts as follows:

(1) **Statement of relevant facts.** Ten (10) days before the hearing the parties shall jointly file a statement of relevant facts to which they can stipulate. At this time, each party shall also file a statement of relevant facts in dispute.

(2) **List of exhibits.** Ten (10) days before the hearing the parties shall stipulate to admissible exhibits and file a list of these exhibits. Exhibits stipulated to shall be admitted into evidence at the hearing. A list of the exhibits to which the party can not stipulate and the opposing party's objections thereto shall also be filed. The proponent of the exhibits shall ask for the Board's ruling on their admissibility at the hearing.

(3) **Witness list.** Ten (10) days before the hearing each party shall file its final witness list. This list shall include the address and telephone number and statement of anticipated testimony of each witness.

(4) **Exhibits.** Seven (7) days before the hearing each party shall exchange and file the original and six (6) copies of each exhibit.

(5) **Brief filing; contents; format; size; filing date of certain motions.**

(A) Seven (7) days before the hearing each party shall file a brief.

(B) Each brief shall contain:

(i) a brief background of the case and issues to be decided; and

(ii) a legal argument with citations to relevant legal authority.

(C) No brief shall be submitted that is longer than fifteen (15) typewritten pages without leave of the Board.

(D) The print style, including footnotes, shall not be less than ten (10) characters to an inch (i.e., 12 pitch font), and margins shall be a minimum of one inch on the top, bottom, and sides.

(E) Oversized briefs are not encouraged, and leave to file oversized briefs will not be freely given. A motion to file a brief in excess of fifteen (15) typewritten pages shall state the requested number of pages and shall be filed no later than three (3) days prior to the date the brief is due.

(F) Each party shall attach to that party's brief as an appendix a copy of significant legal authority cited in the brief not readily accessible by the Board such as federal statutes and court cases, NLRB cases, and treatises. The Board has ready access to Oklahoma statutes and cases decided by Oklahoma state courts and to previous Board decisions.

(6) **Motions in limine.** Seven (7) days before the hearing each party shall file any motions in limine.

(7) **Presentation time by parties at hearing.** At the hearing, each party will be given one (1) hour to present evidence and twenty (20) additional minutes that may be divided between opening and closing statements, unless otherwise extended by the Board. Requests for additional time shall be made at least seven (7) days before the hearing. Requests for additional time are not encouraged, and leave for additional time will not be freely given.

(8) **Refiling statement of disputed facts.** Within fifteen (15) days after the hearing, each party shall refile its statement of disputed facts with citations to the record added for each disputed fact. If a party briefs a legal issue(s) not previous briefed by the opposing party, within fifteen (15) days after the hearing, the opposing party may also file a response brief not to exceed five (5) pages in length.

585:2-7-15. Final agency orders of the Board

(a) Every final agency order rendered by the Board shall be in writing and shall include findings of fact and conclusions of law and may include an opinion. Parties shall be notified either personally or by certified mail, return receipt requested, of any final agency order and the order shall be released for public information.

(b) Copies of final agency orders shall be available for public inspection in the office of the Board or may be obtained upon request and upon payment of costs, if any.

585:2-7-16. Unauthorized ex parte communications

(a) Unauthorized ex parte communications are defined as private communications, other than those permitted elsewhere in these Rules, with members of the Board or counsel for the Board, as to the merits of a proceeding, i.e., any finding of fact or conclusion of law, with a view towards influencing the outcome of the case, except that the following classes of ex parte communications shall not be prohibited:

(1) Those which relate to matters which a Board member is authorized to dispose of on an ex parte basis;

(2) Requests for information with respect to the status of a proceeding;

(3) Those which all parties to the proceeding agree, or which the Board has formally ruled, may be made on an ex parte basis; and

(4) Those with representatives of any news media on matters intended to inform the general public.

(b) No public employee, employee organization, public employer, or any other person or organization, whether or not a party to a proceeding before the Board, shall make any unauthorized ex parte communication about the proceeding to any member of the Board or to counsel for the Board.

[OAR Docket #07-891; filed 4-30-07]

TITLE 585. PUBLIC EMPLOYEES RELATIONS BOARD
CHAPTER 10. UNFAIR LABOR PRACTICE CHARGES [REVOKED]

[OAR Docket #07-892]

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PERMANENT final adoption
RULES:
585:10-1-1 through 585:10-1-10 [REVOKED]
585:10-1-12 [REVOKED]
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Revocation of these rules is necessary for the purpose of adoption of new permanent rules that will combine procedures and requirements for the administration of both the Fire and Police Arbitration Act, 11 O.S. § 51-101, et seq and the Municipal Employee Collective Bargaining Act, 11 O.S. § 51-200, et seq., by the Public Employees Relations Board. The new rules will ensure consistent and efficient administration of both Acts by the Board.
CONTACT PERSON:
Debbie Tiehen, Administrator, Public Employees Relations Board, 2401 north Lincoln Boulevard, Room 206, Oklahoma City, Oklahoma 73105, 405.522.6723

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2007:

585:10-1-1. Purpose [REVOKED]

~~The rules of this chapter have been adopted for the purpose of providing information concerning the filing of Unfair Labor Practice charges, answers, counterclaims and motions, amended claims and answers, and informal disposition of such claims, pursuant to § 51-104b of the Act.~~

585:10-1-2. Statutory definitions [REVOKED]

~~Terms used in this Chapter shall have the same meaning as defined in the Act unless their context clearly indicates otherwise.~~

585:10-1-3. Additional definitions [REVOKED]

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

~~**"ACT"** or **"The Act"** means the Fire and Police Arbitration Act, 11 O.S., O.S. 1991 and Supp. 1997, Sec. 51-101, et seq.~~

~~**"Board" or "PERB"** means the Public Employees Relations Board.~~

~~**"Hearing Officer"** means that individual designated by the Board to conduct a hearing.~~

~~**"Party"** means any person, employee organization or municipal employer named and participating in, or properly seeking and entitled by law to participate in, an individual proceeding; or whose motion to intervene has been granted by the Board.~~

~~**"Quorum"** means a simple majority of the Board.~~

585:10-1-4. Complaint [REVOKED]

~~(a) **Filing of complaint.**~~

~~(1) A complaint that any person, organization, or municipal employer has engaged in or is engaging in an unfair labor practice under the Act may be filed by any person, employee organization or public employer. A complaint shall be in writing and signed in accordance with 585:1-5-1, and shall be in a form provided by the Board. The complaint and five copies shall be filed with the Board.~~

~~(2) A complaint shall be deemed untimely and shall be dismissed if filed with the Board more than three (3) years following the alleged violation.~~

~~(b) **Contents of complaint.** The complaint shall include the following:~~

~~(1) The name and address and organizational affiliation, if any, of the complainant, and the title of any representative filing the complaint.~~

~~(2) The name and address of the respondent or respondents and any other party named therein.~~

~~(3) A clear and concise statement of the facts constituting the alleged unfair labor practice, including the names of the individuals involved in the alleged act, the dates and places of the alleged occurrence, and the specific section or sections of the Act alleged to have been violated. The purpose of the complaint is to apprise the respondent fairly of the substance of the complaint against it. The sufficiency of a complaint may be challenged by motion, answer or responsive pleading, or at the pre-hearing conference.~~

585:10-1-5. Answer [REVOKED]

~~(a) **Responsiveness of answer.** A respondent shall file a written answer, or other responsive pleading permitted by these rules, to an unfair labor practice complaint within twenty (20) days after service of the complaint. One copy of the answer shall be served on each party, and the original and five copies, with certificate of service on all parties, shall be filed with the Board.~~

~~(b) **Contents of answer.** The answer shall contain the following:~~

~~(1) A specific admission, denial, or explanation of each allegation of the complaint, or, if respondent is without knowledge thereof, respondent shall so state and that statement shall constitute a denial. Admissions or denials may be made to all or part of the allegation, but shall fairly meet the substance of the allegation.~~

~~(2) A specific and appropriately detailed statement of any affirmative defense.~~

~~(3) A clear and concise statement of the facts and matters of law relied upon constituting any grounds of defense.~~

~~(4) All allegations of new matter in the answer shall be deemed denied without the necessity of a reply.~~

~~(c) **Amendment of answer.** The Board may permit the respondent to amend the answer subject to the limitations of Section 585:1-5-5.~~

~~(d) **Timeliness of pleadings.**~~

~~(1) If the respondent fails timely to file an answer or other permitted or required responsive pleading, such failure is subject to the sanctions set out in Section 585:1-5-5 (g).~~

~~(2) In extraordinary circumstances, as determined by the Board, the Board may extend the time within which the answer shall be filed.~~

585:10-1-6. Amendment of complaints and answers [REVOKED]

~~The Board may permit an amendment to an unfair labor practice complaint or to the answer, upon due notice to all parties, at any time and on such terms as it may determine, prior to the issuance of a final order thereon.~~

585:10-1-7. Informal disposition [REVOKED]

~~(a) Any unfair labor practice case commenced with the Board may be informally settled by stipulation, agreed settlement, consent order, default, or by any other method agreed upon by the parties in writing.~~

~~(b) Evidence of any proposed offer of settlement of an unfair labor practice complaint shall be inadmissible at the hearing thereon.~~

585:10-1-8. Violation of the Act [REVOKED]

~~Violation of this Act may result in enforcement pursuant to state statute.~~

585:10-1-9. Severability [REVOKED]

~~If any provisions of the rules of this chapter be held invalid, it shall not be construed to invalidate any of the other provisions of the rules of this chapter.~~

585:10-1-10. Liberal construction [REVOKED]

~~The rules of this chapter shall be construed liberally to effectuate the purposes and provisions of the Act.~~

585:10-1-12. Computation of time [REVOKED]

~~The time within which an act is to be performed under the rules and regulations of this chapter shall be computed by excluding the first day and including the last. When the last day for the doing of an act required by the rules and regulations falls on a Saturday, Sunday or legal holiday then the required act may be performed on the next regular business day. The Board, for good cause shown, and with notice to all interested parties, may extend any time prescribed in the rules of this chapter.~~

[OAR Docket #07-892; filed 4-30-07]

TITLE 585. PUBLIC EMPLOYEES RELATIONS BOARD
CHAPTER 15. CERTIFICATION CASES [REVOKED]

[OAR Docket #07-893]

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585:15-1-8 [REVOKED]
Subchapter 3. Representation Petitions [REVOKED]
585:15-3-1 through 585:15-3-9 [REVOKED]
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Revocation of these rules is necessary for the purpose of adoption of new permanent rules that will combine procedures and requirements for the administration of both the Fire and Police Arbitration Act, 11 O.S. § 51-101, et seq and the Municipal Employee Collective Bargaining Act, 11 O.S. § 51-200, et seq., by the Public Employees Relations Board. The new rules will ensure consistent and efficient administration of both Acts by the Board.
CONTACT PERSON:
Debbie Tiehen, Administrator, Public Employees Relations Board, 2401 north Lincoln Boulevard, Room 206, Oklahoma City, Oklahoma 73105, 405.522.6723

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

585:15-1-1. Purpose [REVOKED]

~~The rules of this chapter provide procedures for filing representation and decertification petitions; set out the requirements for the content of petitions and for show of interest; the responsibilities of corporate authorities; bars to an election; and unit determination; and other matters concerning representation petitions; pursuant to §51-103 of the Act.~~

585:15-1-2. Statutory definitions [REVOKED]

~~Terms used in this Chapter shall have the same meaning as defined in the Act unless their context clearly indicates otherwise.~~

585:15-1-3. Additional definitions [REVOKED]

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

~~**"ACT"** or **"The Act"** means the Fire and Police Arbitration Act.~~

~~**"Board" or "PERB"** means the Public Employees Relations Board.~~

~~**"Hearing Officer"** means that individual designated by the Board to conduct a hearing.~~

~~**"Party"** means any person, employee organization or municipal employer named and participating in, or properly seeking and entitled by law to participate in, an individual proceeding; or whose motion to intervene has been granted by the Board.~~

~~**"Quorum'** means a simple majority of the Board.~~

585:15-1-4. Severability [REVOKED]

~~If any provisions of the rules of this chapter be held invalid, it shall not be construed to invalidate any of the other provisions of the rules of this chapter.~~

585:15-1-5. Violation of the Act [REVOKED]

~~In any case wherein it is found, after a hearing, that the Act and the Rules of this chapter have been violated, and that any party has refused to comply with a final decision and order of the Board, the Board may institute proceedings in the District Court in the county in which the party resides or is situate for the enforcement of such order and for such appropriate temporary or final relief as may be necessary and proper to accomplish the objectives and to carry out the duties prescribed by the Act.~~

585:15-1-6. Liberal construction [REVOKED]

~~The rules of this chapter shall be construed liberally to effectuate the purposes and provisions of the Act.~~

585:15-1-8. Computation of time [REVOKED]

~~The time within which an act is to be performed under the rules and regulations of this chapter shall be computed by excluding the first day and including the last. When the last day for the doing of an act required by the rules and regulations falls on a Saturday, Sunday or legal holiday then the required act may be performed on the next regular business day. The Board, for good cause shown, and with notice to all interested parties, may extend any time prescribed in the rules of this chapter.~~

SUBCHAPTER 3. REPRESENTATION PETITIONS [REVOKED]

585:15-3-1. Petition filing and contents [REVOKED]

~~(a) **Who may file.** A representation or decertification petition may be filed with the Board by:~~

~~(1) A labor organization alleging that thirty (30%) percent of the firefighters or police officers in a municipality wish to be represented for collective bargaining by an employee representative; or~~

~~(2) A labor organization or a corporate authority alleging that thirty (30%) percent of the fire fighters or police officers in a municipality assert that the designated exclusive employee representative is no longer the representative of the majority of the employees in the unit; or~~

~~(3) An employer alleging that one or more labor organizations has presented to it a claim to be recognized as the exclusive employee representative in an appropriate unit.~~

~~(b) **Contents of petition.**~~

~~(1) **General.** A petition shall contain the following:~~

~~(A) A statement as to whether the petition is filed by a bargaining agent or by a corporate authority.~~

~~(B) The name and address of all other parties proper to the proceeding.~~

~~(2) **Filed by public employees.** When a petition is filed by a bargaining agent, the petition shall additionally contain:~~

~~(A) A description of the bargaining unit which the petitioner claims to be appropriate; and a statement that the petitioner is authorized to represent at least thirty percent (30%) of the employees within the claimed bargaining unit and has sufficient authorization cards or other evidence to substantiate it.~~

~~(B) The names and addresses of any other bargaining agents, known to the petitioner, who claim to represent any employees within the alleged appropriate unit.~~

~~(C) The number of employees in the alleged appropriate unit.~~

~~(D) The name, affiliation, if any, and the address of the petitioner.~~

~~(E) Any other relevant fact or facts.~~

~~(3) **Filed by corporate authorities.** When a petition for decertification is filed by a corporate authority, it shall contain:~~

~~(A) A brief statement setting forth that one or more bargaining agents claim to be the exclusive bargaining agent of all employees within the unit claimed to be appropriate;~~

~~(B) A description of such unit;~~

~~(C) The number of employees in the unit;~~

~~(D) A statement as to whether the petitioner agrees or disagrees as to the nature and scope of the bargaining unit claimed to be appropriate.~~

~~(E) The name or names, affiliation, if any, and addresses of the bargaining agent known to the petitioner making claims for recognition as an exclusive bargaining agent.~~

~~(F) A statement as to whether the petitioner has contracts with any bargaining agent, and, if so, the expiration date of the contract.~~

~~(G) Any other relevant fact or facts.~~

585:15-3-2. Bars to an election [REVOKED]

~~Notwithstanding the filing or pendency of an election petition, the Board shall conduct no representation election when one or more of the following conditions exist:~~

~~(1) **Election bar.** During the one (1) year period following the date of certification, decertification or noncertification subsequent to a valid representation election.~~

~~(2) **Existence of a collective bargaining agreement.** Whenever a collective bargaining agreement exists, provided such agreement is written and executed by the parties to it. This contract bar shall not apply to a representation election in a unit clarification case.~~

~~(3) **Decertification elections.** Petitions for decertification which are filed with the Board not less than one hundred eighty (180) nor more than two hundred forty (240) days prior to the stated expiration date of an otherwise valid collective bargaining agreement shall be processed by the Board notwithstanding the provisions of (2) of this subsection, and any election ordered by the Board pursuant to § 51-103, shall be conducted not more than one hundred eighty (180) nor less than one hundred fifty (150) days prior to the expiration of the collective bargaining agreement.~~

~~(4) **Disclaimer.** Notwithstanding the provisions of (3) of this subsection, the Board will process a valid decertification petition accompanied by an adequate show of interest as required by 585:15-3-1 at any time if the certified employee organization files a disclaimer of representation. A disclaimer of representation is a statement signed by an authorized representative of the certified employee organization, stating that the employee organization.~~

585:15-3-3. Evidence of representation or legitimate interest; authorization cards [REVOKED]

~~Evidence of representation or legitimate interest may be either by individual authorization cards, membership records, or by petition. In any case, the petition, membership records, or authorization cards must show the address and be signed and dated by the employee expressing an intent to be represented by a specific bargaining agent. Cards shall be considered valid if the dates thereon, and other evidence provided to the Board, indicate a regularity of continuing interest by the employees signing the petition or authorization cards.~~

585:15-3-4. Showing of interest; determination of adequacy [REVOKED]

~~The showing of interest submitted to the Board shall not be furnished to any of the opposing parties. The Board alone shall determine the adequacy of the showing of interest, and the Board's decision shall not be subject to collateral attack at a hearing before the Board.~~

585:15-3-5. Responsibilities of corporate authority [REVOKED]

~~The Corporate Authority shall furnish the Board, within twenty (20) days of receipt of a notice from the Board, an alphabetical list of names, addresses, departments and job titles of all employees within the proposed bargaining unit as described in the petition. The list of employees shall be as shown by the payroll for the period immediately preceding the date on which the petition for representation was filed with the Board. The corporate authority shall designate, by notation on the list, those persons it considers to be permanent, paid employees. Failure by the corporate authority to furnish such a list within the time allowed shall be deemed to be an admission of the sufficiency of the petitioner's showing of interest.~~

585:15-3-6. Determination of collective bargaining unit [REVOKED]

~~(a) The Board shall decide in each case before it, in which the issue is raised, the unit appropriate for the purpose of collective bargaining, and shall consider such factors as community of interest, wages, hours, and other working conditions for the employees involved, the history of collective bargaining for the proposed unit (if any), and the desires of the employees.~~

~~(b) For a unit of firefighters or police officers, the terms "firefighters" and "police officers" shall mean the permanent paid members of any fire department or police department in any city, town or municipality within the State of Oklahoma but shall not include the chief of police and an administrative assistant and the chief of the fire department and an administrative assistant. The administrative assistant shall be that person so designated by the chief of the police department and that person so designated by the chief of the fire department.~~

585:15-3-7. Investigation [REVOKED]

~~Subsequent to the filing of a petition for decertification, the Board may direct an investigation of all questions concerning representation, including, if applicable, whether the showing of interest requirement, as set forth in the Act, has been met; whether one or more bargaining agents seek to represent some or all of the employees in the allegedly appropriate unit, and whether there is an agreement among the parties as to the appropriateness of the unit.~~

585:15-3-8. Hearing [REVOKED]

~~The Board may direct a hearing following the filing of a petition for decertification, and any such hearing shall be conducted under the rules prescribed in Chapter 1 of this Title.~~

585:15-3-9. Petition for consent election [REVOKED]

~~(a) Where a question of representation exists, the parties involved may petition the Board to hold an election to determine the exclusive bargaining agent for such unit. The consent election shall be conducted under the direction and supervision of the Board. An election shall not be directed in any bargaining~~

~~unit or any subdivision thereof within which, in the preceding twelve-month period, a valid election has been held.~~

~~(b) Within seven (7) days of notice that an election has been set, the corporate authority shall furnish to the Board, and to each party to the proceedings, an alphabetical list of the names, addresses, departments and job titles of the permanent paid employees in the appropriate unit on the eligibility payroll date who were on the payroll on the date of the filing of the petition and who are on the payroll at the time of the submission of the list. Failure of the corporate authority to furnish the above described list shall be good cause for the Board to exercise its discretion in ordering that a free and untrammelled election cannot be conducted and certifying a bargaining agent as the exclusive bargaining agent for the appropriate unit.~~

~~(c) In cases of a Board ordered election, the eligibility payroll date shall be determined by the Board.~~

SUBCHAPTER 5. ELECTIONS [REVOKED]

585:15-5-1. Election procedure [REVOKED]

~~The following procedure shall be followed when conducting an election to determine the exclusive bargaining agent for a unit:~~

~~(1) **General.** All elections shall be by secret ballot, at times, places, and in such manner as the Board may direct, and may be conducted by a designated agent of the Board, whose determination of all questions arising shall be final, subject, however, to review by the Board.~~

~~(2) **Ballots.**~~

~~(A) Ballots shall be prepared and issued by the Board. The color of the ballot must not be disclosed to any of the parties prior to the opening of the polls. Ballots shall contain the name of each bargaining agent and a choice of "no representative" in inclusive elections.~~

~~(B) The places on the ballot shall be based on agreement among the parties if there is an agreement, and on chance if there is no agreement among the parties.~~

~~(C) In the case of a run-off election involving two bargaining agents, their position on the ballot shall be the same as their position on the ballot during the first election.~~

~~(3) **Observers.** Each party to an election shall be entitled to be represented by an equal number of observers at each polling place. Observers on behalf of a bargaining agent shall be employees eligible to vote or other appropriate employees not on the list of eligible voters, but excluding supervisors and administrative officials except in cases of a supervisory unit.~~

~~(4) **Polling area; electioneering.** Prior to the commencement of the election the agent of the Board shall designate the polling area and no electioneering of any kind shall be permitted within this area. Any violation of the rule by any party or its representative or agent may be grounds for setting aside the election.~~

~~(5) **Challenged ballots.** Any prospective voter may be challenged for cause. A challenged voter shall be permitted to vote but the ballot shall not be cast. It shall instead be sealed in a separate, unmarked envelope under the supervision of the agent of the Board, and then inserted in a special identifiable form envelope provided by the Board for that purpose, and then placed in the ballot box.~~

~~(6) **Pre-election conference.**~~

~~(A) A pre-election conference shall be held before the election to check the eligibility list. Labor organizations may examine the eligibility list, and raise any questions concerning listings or omissions. Names may be added or deleted from the list. Where a labor organization asserts that a name should be added and the corporate authority disagrees, the name shall not be added to the list, but it shall be understood that the individual may appear at the voting place to cast a challenged ballot. Where a labor organization contends that a name should be stricken from the list, but no agreement is reached, the organization's observer may challenge the voter when s/he appears to vote.~~

~~(B) After the list has been checked, all parties should initial the list, and the initialed list will be the official eligibility list. Initialing is not to be construed as a waiver of the right of challenge.~~

~~(7) **Majority.** In all elections, a majority of the valid votes cast shall determine the exclusive bargaining agent designated or selected by the employees in the defined appropriate unit; or the determination that no representative has been designated.~~

~~(8) **Canvass.** Each party to the election shall be permitted to observe the canvass of the ballots.~~

~~(9) **Objections.** All objections to any party's conduct during an election, and all exceptions to the Board's conduct of an election, shall be filed within five (5) working days of the closing of the polls with copies of the same being mailed to all parties in the proceeding, with postage prepaid thereon. The Board shall take such action as is reasonably calculated to accomplish the objectives and to carry out the duties prescribed by the Act.~~

~~(10) **Run-off election.** The Board shall conduct a run-off election when an election in which the ballot provides for not less than three (3) choices, i.e., at least two representatives, and the election results in no choice receiving a majority of the valid ballots cast. The ballot in the run-off election shall provide for a selection between the two choices receiving the largest number of votes. The Board shall conduct the run-off election expeditiously.~~

585:15-5-2. Certification of election results [REVOKED]

~~(a) If the challenged ballots are insufficient in number to affect the result of an election to determine an exclusive bargaining agent, and if no run-off election is to be held, the Board shall forthwith issue to the parties a certification of the results of the election, including certification of an exclusive bargaining agent, where appropriate.~~

~~(b) The Board's certification as to the result of the election and the exclusive bargaining agent shall be final, subject only to being modified, revoked, or sustained in a hearing on any objections to the conduct of the parties or conduct of the Board. Time for appeal shall not commence to run until such time as the Board issues an order on any objections filed as to the conduct of the parties or conduct of the Board.~~

~~(c) The Board may also certify a labor organization as the exclusive bargaining agent if it determines that a free and untrammeled election cannot be conducted because of the employer's unfair labor practice.~~

[OAR Docket #07-893; filed 4-30-07]

TITLE 585. PUBLIC EMPLOYEES RELATIONS BOARD
CHAPTER 30. UNFAIR LABOR PRACTICE AND PROHIBITED PRACTICE CHARGES

[OAR Docket #07-894]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
585:30-1-1 through 585:30-1-8 [NEW]
AUTHORITY:
Public Employees Relations Board; 11 O.S. 2001 and Supp. 2006, § 51-101, *et seq*. and 11 O.S. Supp. 2006, § 51-200, *et seq*.; 75 O.S. § 302 *et seq.*
DATES: Comment period:
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March 2, 2007
GUBERNATORIAL APPROVAL:
March 15, 2007
LEGISLATIVE APPROVAL:
Failure of the Legislature to disapprove the rules resulted in approval on April 26, 2007
FINAL ADOPTION:
April 26, 2007
EFFECTIVE:
June 11, 2007
SUPERSEDED EMERGENCY ACTIONS:
NOTE:
The Chapter 20 emergency rules identified below are being superseded by permanent rules in this filing for Chapter 30, as well as permanent rules in two other Chapters — 2 and 35. (The permanent rules for Chapters 2 and 35 are also published in this issue.)
Superseded rules:
Subchapter 1. General Provisions [NEW]
585:20-1-1. Purpose [NEW]
585:20-1-2. Matters Not Covered [NEW]
Subchapter 3. Procedures [RESERVED]
Subchapter 5. Prohibited Practice Charges [NEW]
585:20-5-1. Process [NEW]
585:20-5-2. Complaint [NEW]
585:20-5-3. Answer [NEW]
Subchapter 7. Representation Petitions [NEW]
585:20-7-1. Petition for election [NEW]
585:20-7-2. Petition for representation without an election [NEW]
585:20-7-3. Determination of collective bargaining unit [NEW]
Gubernatorial approval:
May 18, 2006
Register publication:
23 Ok Reg 2120
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rules are intended as aids to the efficient operation of the Public Employees Relations Board and to the orderly administration of the Fire and Police Arbitration Act and the Municipal Employees Collective Bargaining Act. They are also intended to provide meaningful avenues for realizing and enforcing statutory rights and obligations of certain public employees, public employee organizations, and the municipal employers of this state. The rules address information and procedures in one chapter to ensure consistent administration of both Acts.
CONTACT PERSON:
Debbie Tiehen, Administrator, Public Employees Relations Board, 2401 north Lincoln Boulevard, Room 206, Oklahoma City, Oklahoma 73105, 405.522.6723

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2007:

585:30-1-1. Purpose

The rules of this chapter have been adopted for the purpose of providing information concerning the filing of unfair labor practice charges and prohibited practice charges, answers, counterclaims and motions, and the informal disposition of such claims, pursuant to Section 51-104b of the FPAA and Section 51-29 of the MECBA.

585:30-1-2. Statutory definitions

Terms used in this Chapter shall have the same meaning as defined in the FPAA, the MECBA and these Rules unless their context clearly indicates otherwise.

585:30-1-3. Additional definitions

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

"Administrator" or "Administrator of the Board" means the program administrator of the Board appointed pursuant to 74 O.S., §51-104a.

"APA" means the Oklahoma Administrative Procedures Act, 75 O.S., §250, et seq.

"Arbitrator" means a person carried on the list of arbitrators maintained by the Federal Mediation and Conciliation Service who is located in the region in which Oklahoma is located.

"Board" or **"PERB"** means the Public Employees Relations Board.

"FPAA" means the Fire and Police Arbitration Act, 11 O.S., §51-101, et seq.

"Hearing Officer" means that individual designated by the Board to conduct a hearing. This individual must meet the definition of "Hearing Examiner" set out in 75 O.S. §250.3.

"MECBA" means the Municipal Employees Collective Bargaining Act, 11 O.S., §51-20, et seq.

"Party" means any person, employee organization or municipal employer named and participating in, or properly seeking and entitled by law to participate in, an individual proceeding; or whose motion to intervene has been granted by the Board.

"Quorum" means two members of the Board comprise a majority and shall constitute a quorum and may transact any business or hold any hearing by a unanimous vote of the quorum. Any action of the Board shall require the affirmative vote of two members.

585:30-1-4. Complaint

(a) **General.** A complaint that any person, organization, or municipal employer has engaged in or is engaging in an unfair labor practice under the FPAA or a prohibited practice under the MECBA may be filed by any person, employee organization or municipal employer. See 585:2-5-5.

(b) **Execution; format.** A complaint shall be in writing and signed in accordance with 585:2-5-1, and shall be in a form authorized by the Board.

(c) **Number of copies.** The complaint and six (6) copies shall be filed with the Board.

(d) **Required contents.** The complaint shall include the following:

(1) The name and address and organizational affiliation, if any, of the complainant, and the title of any representative filing the complaint.

(2) The name and address of the respondent or respondents and any other party named therein.

(3) A clear and concise statement of the facts constituting the alleged unfair labor practice or the prohibited practice, including the names of the individuals involved in the alleged act, the dates and places of the alleged occurrence, and the specific section or sections of the FPAA or the MECBA alleged to have been violated. The purpose of the complaint is to apprise the respondent fairly of the substance of the complaint against it. The sufficiency of a complaint may be challenged by motion, answer or other responsive pleading.

585:30-1-5. Answer

(a) **Filing; filing time limit.** A respondent shall file a written answer, or other responsive pleading permitted by these rules, with certificate of service, to an unfair labor practice complaint filed under the FPAA or to a prohibited practice complaint filed under MECBA within ten (10) days after service of the complaint.

(b) **Contents.** The answer shall contain the following:

(1) A specific admission, denial, or explanation of each allegation of the complaint, or, if respondent is without knowledge thereof, respondent shall so state and that statement shall constitute a denial. Admissions or denials may be made to all or part of the allegation, but shall fairly meet the substance of the allegation.

(2) A specific and appropriately detailed statement of any defense.

(3) A clear and concise statement of the facts and matters of law relied upon constituting any grounds of defense.

(c) **Default.** If the respondent fails timely to file an answer or other permitted or required responsive pleading, such failure is subject to the sanctions set out in 585:2-3-7. In extraordinary circumstances, as determined by the Board, the Board may extend the time within which the answer shall be filed.

585:30-1-6. Informal disposition

(a) Any unfair labor practice case or prohibited practice case commenced with the Board may be informally settled by stipulation, agreed settlement, consent order, default, or by any other method agreed upon by the parties in writing.

(b) Evidence of any proposed offer of settlement of an unfair labor practice complaint or prohibited practice complaint shall be inadmissible at the hearing thereon.

585:30-1-7. Violation of the FPAA and the MECBA

Violation of the FPAA or violation of the MECBA may result in enforcement pursuant to state statute.

585:30-1-8. Liberal construction

The rules of this chapter shall be construed liberally to effectuate the purposes and provisions of the FPAA and the MECBA.

[OAR Docket #07-894; filed 4-30-07]

TITLE 585. PUBLIC EMPLOYEES RELATIONS BOARD
CHAPTER 35. CERTIFICATION CASES

[OAR Docket #07-895]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions [NEW]
585:35-1-1 through 585:35-1-5 [NEW]
Subchapter 3. Representation Petitions Under the FPAA [NEW]
585:35-3-1 through 585:35-3-9 [NEW]
Subchapter 5. Representation Petitions Under the MECBA [NEW]
585:35-5-1 through 585:35-5-8 [NEW]
Subchapter 7. Elections [NEW]
585:35-7-1 through 585:35-7-2 [NEW]

AUTHORITY:
Public Employees Relations Board; 11 O.S. 2001 and Supp. 2006, § 51-101, *et seq.* and 11 O.S. Supp. 2006, § 51-200, *et seq.*; 75 O.S. § 302 *et seq.*

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Failure of the Legislature to disapprove the rules resulted in approval on April 26, 2007
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NOTE:
The Chapter 20 emergency rules identified below are being superseded by permanent rules in this filing for Chapter 35, as well as permanent rules in two other Chapters — 2 and 30. (The permanent rules for Chapters 2 and 30 are also published in this issue.)
Superseded rules:
Subchapter 1. General Provisions [NEW]
585:20-1-1. Purpose [NEW]
585:20-1-2. Matters Not Covered [NEW]
Subchapter 3. Procedures [RESERVED]
Subchapter 5. Prohibited Practice Charges [NEW]
585:20-5-1. Process [NEW]
585:20-5-2. Complaint [NEW]
585:20-5-3. Answer [NEW]
Subchapter 7. Representation Petitions [NEW]
585:20-7-1. Petition for election [NEW]
585:20-7-2. Petition for representation without an election [NEW]
585:20-7-3. Determination of collective bargaining unit [NEW]
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ANALYSIS:
The proposed rules are intended as aids to the efficient operation of the Public Employees Relations Board and to the orderly administration of the Fire and Police Arbitration Act and the Municipal Employees Collective Bargaining Act. They are also intended to provide meaningful avenues for realizing and enforcing statutory rights and obligations of certain public employees, public employee organizations, and the municipal employers of this state. The rules address information and procedures in one chapter to ensure consistent administration of both Acts.
CONTACT PERSON:
Debbie Tiehen, Administrator, Public Employees Relations Board, 2401 north Lincoln Boulevard, Room 206, Oklahoma City, Oklahoma 73105, 405.522.6723

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

585:35-1-1. Purpose

The rules of this chapter provide procedures for filing representation and decertification petitions; set out the requirements for the content of petitions and for show of interest; the responsibilities of corporate authorities; bars to an election; unit determination; and other matters concerning representation petitions; pursuant to 11 O.S., §51-103 of the Fire and Police Arbitration Act (FPAA) and 11 O.S., §51-211 and §51-212 of the Municipal Employees Collective Bargaining Act (MECBA).

585:35-1-2. Statutory definitions

Terms used in this Chapter shall have the same meaning as defined in the FPAA, the MECBA and these Rules unless their context clearly indicates otherwise.

585:35-1-3. Additional definitions

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

"Administrator" or "Administrator of the Board" means the program administrator of the Board appointed pursuant to 74 O.S., §51-104a.

"APA" means the Oklahoma Administrative Procedures Act, 75 O.S., §250, et seq.

"Arbitrator" means a person carried on the list of arbitrators maintained by the Federal Mediation and Conciliation Service who is located in the region in which Oklahoma is located.

"Board" or **"PERB"** means the Public Employees Relations Board.

"FPAA" means the Fire and Police Arbitration Act, 11 O.S., §51-101, et seq.

"Hearing Officer" means that individual designated by the Board to conduct a hearing. This individual must meet the definition of "Hearing Examiner" set out in 75 O.S. §250.3.

"MECBA" means the Municipal Employees Collective Bargaining Act, 11 O.S., §51-20, et seq.

"Party" means any person, employee organization or municipal employer named and participating in, or properly seeking and entitled by law to participate in, an individual proceeding; or whose motion to intervene has been granted by the Board.

"Quorum" means two members of the Board comprise a majority and shall constitute a quorum and may transact any business or hold any hearing by a unanimous vote of the quorum. Any action of the Board shall require the affirmative vote of two members.

585:35-1-4. Violation of the FPAA and the MECBA

Violation of the FPAA and the MECBA may result in enforcement pursuant to state statute.

585:35-1-5. Liberal construction

The rules of this chapter shall be construed liberally to effectuate the purposes and provisions of the FPAA and the MECBA.

SUBCHAPTER 3. REPRESENTATION PETITIONS UNDER THE FPAA

585:35-3-1. Petition filing and contents

(a) **Filing.** A representation or decertification petition may be filed with the Board by:

(1) A labor organization alleging that thirty percent (30%) of the firefighters or police officers in a municipality wish to be represented for collective bargaining by an employee representative;

(2) A labor organization or an employee in the bargaining unit alleging that thirty percent (30%) of the firefighters or police officers in a municipality assert that the designated exclusive employee representative is no longer the representative of the majority of the employees in the unit; or,

(3) An employer alleging that one or more labor organizations has presented to it a claim to be recognized as the exclusive employee representative in an appropriate unit.

(b) **Contents.** Contents of a petition shall contain the following:

(1) A statement as to whether the petition is filed by a bargaining agent, by a corporate authority, or by an employee in the bargaining unit;

(2) The name and address of all other parties proper to the proceeding; and

(3) Any other relevant fact or facts.

(c) **Petition filed by bargaining agent; additional contents.** When a petition is filed by a bargaining agent, the petition shall additionally contain:

(1) A description of the bargaining unit which the petitioner claims to be appropriate and a statement that the petitioner is authorized to represent at least thirty percent (30%) of the employees within the claimed bargaining unit and has sufficient authorization cards or other evidence to substantiate it;

(2) The names and addresses of any other bargaining agents, known to the petitioner, who claim to represent any employees within the alleged appropriate unit;

(3) The number of employees in the alleged appropriate unit;

(4) The name, affiliation, if any, and the address of the petitioner; and

(5) Any other relevant fact or facts.

(d) **Petition for decertification filed by employee; additional contents.** When a petition for decertification is filed by an employee in the bargaining unit, the petition shall additionally contain:

(1) A statement setting forth that thirty percent (30%) of the firefighters or police officers in a municipality assert that the designated exclusive employee representative is no longer the representative of the majority of the employees in the unit;

(2) A description of the unit and the number of employees in the unit;

(3) The name, affiliation, if any, and the address of the petitioner; and

(4) Any other relevant fact or facts.

(e) **Petition for decertification filed by corporate authority; additional contents.** When a petition for decertification is filed by a corporate authority, the petition shall additionally contain:

(1) A brief statement setting forth that one or more bargaining agents claim to be the exclusive bargaining agent of all employees within the unit claimed to be appropriate;

(2) A description of such unit;

(3) The number of employees in the unit;

(4) A statement as to whether the petitioner agrees or disagrees as to the nature and scope of the bargaining unit claimed to be appropriate;

(5) The name or names, affiliation, if any, and addresses of the bargaining agent known to the petitioner making claims for recognition as an exclusive bargaining agent;

(6) A statement as to whether the petitioner has contracts with any bargaining agent, and, if so, the expiration date of the contract; and,

(7) Any other relevant fact or facts.

585:35-3-2. Bars to an election

Notwithstanding the filing or pendency of an election petition, the Board shall conduct no representation election when one or more of the following conditions exist:

(1) **Election bar.** During the one (1) year period following the date of certification, decertification or noncertification subsequent to a valid representation election.

(2) **Existence of collective bargaining agreement.** Whenever a collective bargaining agreement exists, provided such agreement is written and executed by the parties to it. This contract bar shall not apply to a representation election in a unit clarification case.

(3) **Decertification elections.** Petitions for decertification which are filed with the Board not less than one hundred eighty (180) nor more than two hundred forty (240) days prior to the stated expiration date of an otherwise valid collective bargaining agreement shall be processed by the Board notwithstanding the provisions of (2) of this subsection, and any election ordered by the Board pursuant to 11 O.S., §51-103, shall be conducted not more than one hundred eighty (180) days nor less than one hundred fifty (150) days prior to the expiration of the collective bargaining agreement.

(4) **Disclaimer of representation.** Notwithstanding the provisions of (3) of this subsection, the Board will process a valid decertification petition accompanied by an adequate show of interest as required by 585:35-3-1 at any time if the certified employee organization files a disclaimer of representation. A disclaimer of representation is a statement signed by an authorized representative of the certified employee organization, stating that the employee organization wishes to disclaim representation of the employees in the certified bargaining unit.

585:35-3-3. Evidence of representation or legitimate interest; authorization cards

Evidence of representation or legitimate interest may be either individual authorization cards, membership records, or petition. In any case, the petition, membership records, or authorization cards must show the address and be signed and dated by the employee expressing an intent to be represented by a specific bargaining agent. Cards shall be considered valid if the dates thereon, and other evidence provided to the Board, indicate a regularity of continuing interest by the employees signing the petition or authorization cards. Such evidence of interest shall be presumed if the cards or other evidence of interest are signed within 180 days of the filing date.

585:35-3-4. Showing of interest; determination of adequacy

The showing of interest submitted to the Board shall not be furnished to any of the opposing parties. The Board alone shall determine the adequacy of the showing of interest, and the Board's decision shall not be subject to collateral attack at a hearing before the Board.

585:35-3-5. Responsibilities of corporate authority

The corporate authority shall furnish the Board, within twenty (20) days of receipt of a notice from the Board, an alphabetical list of names, addresses, departments and job titles of all employees within the proposed bargaining unit as described in the petition. The list of employees shall be as shown by the payroll for the period immediately preceding the date on which the petition for representation was filed with the Board. The corporate authority shall designate, by notation on the list, those persons it considers to be permanent, paid employees. Failure by the corporate authority to furnish such a list within the time allowed may be deemed to be an admission of the sufficiency of the petitioner's showing of interest.

585:35-3-6. Determination of collective bargaining unit

(a) The Board shall decide in each case before it, in which the issue is raised, the unit appropriate for the purpose of collective bargaining, and shall consider such factors as community of interest, wages, hours, and other working conditions for the employees involved, the history of collective bargaining for the proposed unit, if any, and the desires of the employees.

(b) For a unit of firefighters or police officers, the terms "firefighters" and "police officers" shall mean the permanent paid members of any fire department or police department in any city, town or municipality within the State of Oklahoma but shall not include the chief of police and an administrative assistant and the chief of the fire department and an administrative assistant. The administrative assistant shall be that person so designated by the chief of police and that person so designated by the chief of the fire department.

585:35-3-7. Investigation

Subsequent to the filing of a petition for decertification, the Board may direct an investigation of all questions concerning representation, including, if applicable, whether the showing of interest requirement, as set forth in the FPAA, has been met; whether one or more bargaining agents seek to represent some or all of the employees in the allegedly appropriate unit; and whether there is an agreement among the parties as to the appropriateness of the unit.

585:35-3-8. Hearing

The Board may direct a hearing following the filing of a petition for decertification, and any such hearing shall be conducted under the rules prescribed in Chapter 2, Subchapter 7 of this Title.

585:35-3-9. Petition for consent election

(a) Where a question of representation exists, the parties involved may petition the Board to hold an election to determine the exclusive bargaining agent, if any, for such unit.

(1) The consent election shall be conducted under the direction and supervision of the Board.

(2) An election shall not be directed in any bargaining unit or any subdivision thereof within which, in the preceding twelve-month period, a valid election has been held.

(b) Within seven (7) days of notice that a consent election has been set, the corporate authority shall furnish to the Board, and to each party to the proceedings, an alphabetical list of the names, addresses, departments and job titles of the permanent paid employees in the appropriate unit on the eligibility payroll date who were on the payroll on the date of the filing of the petition and who are on the payroll at the time of the submission of the list. Failure of the corporate authority to furnish the above described list shall be good cause for the Board to exercise its discretion in ordering that a free and untrammeled election cannot be conducted and certifying a bargaining agent as the exclusive bargaining agent for the appropriate unit.

(c) In cases of a Board-ordered election, the eligibility payroll date shall be determined by the Board.

SUBCHAPTER 5. REPRESENTATION PETITIONS UNDER THE MECBA

585:35-5-1. Petition for bargaining unit determination

(a) A petition for Board determination of an appropriate bargaining unit shall be filed by an employee organization.

(b) The petition shall state the name of the organization seeking unit determination and the description of the unit. The petition shall be accompanied by written evidence of interest defined as submission of cards indicating interest from at least thirty (30%) percent of the employees in the proposed unit.

(c) Petitions to determine a separate bargaining unit from a unit previously certified by the Board shall follow the same procedures as set out herein.

585:35-5-2. Petition for certification or decertification

(a) **Filing.** A certification or decertification petition may be filed with the Board by:

(1) A municipal employee or employee organization alleging that at least thirty (30%) percent of the non-fire and police municipal employees in an appropriate bargaining unit wish to be represented for collective bargaining by an employee organization; or

(2) A municipal employee or employee organization alleging that fifty (50%) or more percent of the municipal employees in an appropriate bargaining unit assert that the designated exclusive employee organization no longer represents the majority of the municipal employees in the unit.

(b) **Petition for certification with an election contents.** A petition for certification with an election shall contain the following:

(1) The name, affiliation, if any, telephone number and address of the petitioner;

(2) A statement as to whether the petition is filed by an employee organization or by a municipal employee;

(3) The names and addresses of all other parties proper to the proceeding;

(4) A description of the bargaining unit which the petitioner claims to be appropriate;

(5) Written evidence that the bargaining agent is authorized to represent at least thirty percent (30%) of the employees within the claimed bargaining unit;

(6) The number of employees in the alleged appropriate unit;

(7) The names and addresses of any other employee organizations, known to the petitioner, who claim to represent any employees within the alleged appropriate unit; and

(8) Any other relevant facts.

(c) **Petition for certification without an election contents.** A petition for certification without an election shall contain the following:

(1) The name, affiliation, if any, telephone number and address of the petitioner;

(2) A statement as to whether the petition is filed by a bargaining agent or by a municipal employee;

(3) The name and address of all other parties proper to the proceeding;

(4) A description of the bargaining unit which the petitioner claims to be appropriate;

(5) Written evidence that the bargaining agent is authorized to represent a majority of the employees within the claimed bargaining unit;

(6) The number of employees in the alleged appropriate unit;

(7) The names and addresses of any other employee organizations, known to the petitioner, who claim to represent any employees within the alleged appropriate unit; and

(8) Any other relevant fact or facts.

(d) **Petition for decertification.** A petition for decertification shall contain a description of the bargaining unit subject to the petition and a statement, accompanied by written evidence that fifty percent (50%) of the employees [within the claimed bargaining unit] do not want to be represented by the exclusive bargaining representative or seek certification of a different employee organization.

(e) **Board's notice of receipt of petition.** The Board shall give reasonable notice of the receipt of the petition to all municipal employees, employee organizations, and municipal employers named or described in such petitions or interested in the representation question.

585:35-5-3. Bargaining unit determination

(a) The Board shall determine whether the cards received establish interest from at least thirty (30%) percent of the employees in the proposed unit. If the petitioner and the municipal employer agree on the organizational structure of the appropriate unit but disagree as to which employees are included in the appropriate unit based on the duties of the individual employee(s) (such as, but not limited to, supervisory, confidential, or management official designations), the Board shall first determine the appropriate bargaining unit and then determine whether the cards received establish interest from at least thirty percent (30%) of the employees in the unit.

(b) If the dispute as to which employees are included in the appropriate unit does not affect the petitioner's majority status, the Board shall issue a certification without an election and then determine if the challenged employees are included in the appropriate unit. If the bargaining unit dispute affects the employee organization's majority status, the Board shall determine the appropriate bargaining unit and subsequently determine majority status.

585:35-5-4. Disposition

(a) If the Board does not receive a claim for representation accompanied by a thirty percent (30%) showing of interest from a rival employee organization within fifteen (15) days of the filing of the initial petition, it shall issue a certification of representation upon validating that a majority of employees in an appropriate bargaining unit have authorized the employee organization to represent them for purposes of collective bargaining.

(b) If the Board receives a valid claim for representation by a rival employee organization within the fifteen (15) day period, it shall consider the initial petition for certification without an election as a petition for a representation election.

(c) Whenever a petition for an election is filed by an employee or employee organization with evidence of representation or legitimate interest of at least thirty percent (30%) of the municipal employees in an appropriate bargaining unit, or with evidence of representation or legitimate interest of at least fifty percent (50%) of the municipal employees in an appropriate unit in the case of decertification, the Board shall conduct a secret ballot representation election to determine whether the municipal employees in the appropriate bargaining unit wish to be represented by an exclusive bargaining representative.

585:35-5-5. Bars to an election

Notwithstanding the filing or pendency of an election petition, the Board shall conduct no representation election when either of the following conditions exist:

(1) **Election bar; existence of collective bargaining agreement.** A petition for decertification or certification of an exclusive bargaining representative shall not be considered by the Board for a period of one (1) year from the date of the certification or noncertification of an exclusive bargaining representative or during the duration of a collective bargaining agreement unless the petition for decertification is filed not more than ninety (90) days prior to the expiration of the collective bargaining agreement; or

(2) **Disclaimer of representation.** Notwithstanding the provisions of (1) of this subsection, the Board will process a valid decertification petition accompanied by an adequate show of interest as required by 585:35-5-2 at any time if the certified employee organization files a disclaimer of representation. A disclaimer of representation is a statement signed by an authorized representative of the certified employee organization, stating that the employee organization wishes to disclaim representation of the employees in the certified bargaining unit.

585:35-5-6. Evidence of representation or legitimate interest; authorization cards

Evidence of representation or legitimate interest may be by individual authorization cards, membership records, or by petition. In any case, the petition, membership records, or authorization cards must show the address and be signed and dated by the employee expressing an intent to be represented by a specific bargaining agent. Cards shall be considered valid if the dates thereon, and other evidence provided to the Board, indicate a regularity of continuing interest by the employees signing the petition or authorization cards. Such evidence of interest shall be presumed if the cards or other evidence of interest are signed within 180 days of the filing date.

585:35-5-7. Showing of interest; determination of adequacy

The showing of interest submitted to the Board shall not be furnished to any of the opposing parties. The Board alone shall determine the adequacy of the showing of interest and the Board's decision shall not be subject to collateral attack.

585:35-5-8. Responsibilities of municipal employer

The municipal employer shall furnish the Board, within twenty (20) days of receipt of a notice from the Board, an alphabetical list of names, departments and job titles of all employees within the proposed bargaining unit as described in the petition. The list of employees shall be as shown by the payroll for the period immediately preceding the date on which the petition for representation was filed with the Board. Failure by the municipal employer to furnish such a list within the time allowed may be deemed to be an admission of the sufficiency of the petitioner's showing of interest.

SUBCHAPTER 7. ELECTIONS

585:35-7-1. Election procedure

The following procedure shall be followed when conducting an election to determine the exclusive bargaining agent for a unit:

(1) **General.** All elections shall be by secret ballot, at times, places, and in such manner as the Board may direct, and may be conducted by the Administrator of the Board or a designated agent of the Board, whose determination of all questions arising shall be final, subject, however, to review by the Board.

(2) **Ballots.**

(A) Ballots shall be prepared and issued by the Board. The color of the ballot must not be disclosed to any of the parties prior to the opening of the polls. Ballots shall contain the name of each bargaining agent and a choice of "no representative" in inclusive elections.

(B) The places on the ballot shall be based on agreement among the parties if there is an agreement and on chance if there is no agreement among the parties. In the case of a run-off election involving two bargaining agents, their position on the ballot shall be the same as their position on the ballot during the first election.

(3) **Observers.** Each party to an election shall be entitled to be represented by an equal number of observers at each polling place. Observers on behalf of a bargaining agent shall be employees eligible to vote or other appropriate employees not on the list of eligible voters, but excluding supervisors and administrative officials except in cases of a supervisory unit.

(4) **Polling area; electioneering.** Prior to the commencement of the election, the agent of the Board shall designate the polling area and no electioneering of any kind shall be permitted within this area. Any violation of the rule by any party or its representative or agent may be grounds for setting aside the election.

(5) **Challenged ballots.** Any prospective voter may be challenged for cause. A challenged voter shall be permitted to vote but the ballot shall not be cast. It shall instead be sealed in a separate, unmarked envelope under the supervision of the agent of the Board, and then inserted in a special identifiable form envelope provided by the Board for that purpose, and then placed in the ballot box.

(6) **Pre-election conference.**

(A) A pre-election conference shall be held before the election to check the eligibility list.

(i) Employee organizations may examine the eligibility list, and raise any questions concerning listings or omissions.

(ii) Names may be added or deleted from the list.

(I) Where an employee organization asserts that a name should be added and the municipal employer disagrees, the name shall not be added to the list, but it shall be understood

that the individual may appear at the voting place to present a challenged ballot.

(II) Where an employee organization contends that a name should be stricken from the list, but no agreement is reached, the organization's observer may challenge the voter, but it shall be understood that the individual may appear at the voting place to present a challenged ballot.

(B) After the list has been checked, all parties should initial the list, and the initialed list will be the official eligibility list. Initialing is not to be construed as a waiver of the right of challenge.

(7) **Majority.** In all elections, a majority of the valid votes cast shall determine the exclusive bargaining agent designated or selected by the employees in the defined appropriate unit; or the determination that no representative has been designated.

(8) **Canvass.** Each party to the election shall be permitted to observe the canvass of the ballots.

(9) **Objections.** All objections to any party's conduct during an election and all exceptions to the Board's conduct of an election, shall be filed within five (5) days of the closing of the polls with copies of the same being mailed to all parties in the proceeding, with postage prepaid thereon. The Board shall take such action as is reasonably calculated to accomplish the objectives and to carry out the duties prescribed by the FPAA and the MECBA.

(10) **Run-off election.** The Board shall conduct a run-off election when an election in which the ballot provided for not less than three (3) choices, i.e., at least two representatives, resulted in no choice receiving a majority of the valid ballots cast. The ballot in the run-off election shall provide for a selection between the two choices receiving the largest number of votes. The Board shall conduct the run-off election expeditiously.

585:35-7-2. Certification of election results

(a) If the challenged ballots are insufficient in number to affect the result of an election to determine an exclusive bargaining agent, and if no run-off election is to be held, the Board shall forthwith issue to the parties a certification of the results of the election, including certification of an exclusive bargaining agent, where appropriate.

(b) If the challenged ballots are sufficient in number to affect the results of an election, the Board shall determine the adequacy of the challenged ballots. Once the Board has made a ruling on the challenged ballots, they shall be counted accordingly and the Board shall then certify the results of the election.

(c) The Board's certification as to the result of the election and the exclusive bargaining agent shall be final, subject only to being modified, revoked, or sustained in a hearing on any objections to the conduct of the parties or conduct of the Board. Time for appeal shall not commence to run until such time as the Board issues an order on any objections filed as to the conduct of the parties or conduct of the Board.

(d) The Board may also certify a labor organization as the exclusive bargaining agent if it determines that a free and untrammeled election cannot be conducted because of the employer's unfair labor practice or prohibited practice.

[OAR Docket #07-895; filed 4-30-07]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #07-980]

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Subchapter 7. Relationships with Department Established by Law
612:1-7-3 Relationship with state boards: ex officio representation from the Department [AMENDED]
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The proposed change to Chapter 1 corrects the name from State Rehabilitation Council to Oklahoma Rehabilitation Council.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JULY 1, 2007:

612:1-7-3. Relationships with state boards: ex officio representation from the Department

(a) **State Rehabilitation Council.** Sections 101 and 105 of the Rehabilitation Act requires the State Rehabilitation Agency establish a ~~State~~Oklahoma Rehabilitation Council. The Council membership is appointed by the Governor, and is to be composed of at least one representative of the Statewide Independent Living Council; at least one representative of a parent training and information center; at least one representative of the Client Assistance Program; at least one rehabilitation counselor serving as an ex officio member; at least one representative of community rehabilitation program service providers; four representatives of business, industry and labor; representatives of disability advocacy groups; and current or former applicants for, or recipients of, rehabilitation services. The Director of the Department of Rehabilitation Services serves as an ex officio member of the Council. Refer to Section 105 of the Rehabilitation Act for membership qualifications. The Council reviews, analyzes, and advises the Department regarding the performance of its responsibilities under the Rehabilitation Act; helps develop the State Plan; and performs other functions as specified in Section 105 of the Rehabilitation Act.

(b) **Statewide Independent Living Council.** Section 705 of the Rehabilitation Act requires the State establish a Statewide Independent Living Council. Membership of the Council is appointed by the Governor. The membership is composed of at least one director of a center for independent living chosen by the directors of centers for independent living within the State; a representative from the Department of Rehabilitation Services serving as an ex officio member; representatives from other state agencies that provide services to individuals with disabilities who also serve as ex officio members. Other members are appointed as appropriate, and may include other representatives from centers for independent living; parents and guardians of individuals with disabilities; advocates of and for individuals with disabilities; representatives from private business; representatives from organizations that provide services for individuals with disabilities; and other appropriate individuals. Refer to Section 705 of the Rehabilitation Act for qualifications of members. The Council develops and submits, in conjunction with the Department, the State Plan as described in Section 704 of the Rehabilitation Act. The Council also monitors, reviews, helps develop and evaluates the implementation of the State Plan.

[OAR Docket #07-980; filed 5-9-07]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 10. VOCATIONAL REHABILITATION AND VISUAL SERVICES

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Subchapter 1. General Provisions
612:10-1-2. Definitions [AMENDED]
612:10-1-6. Due process [AMENDED]
Subchapter 3. Client Participation in Cost of Services
612:10-3-5. Basic living requirements [AMENDED]
Subchapter 7. Vocational Rehabilitation and Visual Services
Part 1. Scope of Vocational Rehabilitation and Visual Services
612:10-7-4. Basic eligibility requirements for vocational rehabilitation services [AMENDED]
612:10-7-8. Order of selection [AMENDED]
Part 3. Case Processing Requirements
612:10-7-20. Case recording [AMENDED]
Part 9. Actions Requiring Review and Approval
612:10-7-88. Actions requiring field coordinator's approval [AMENDED]
Part 15. Training
612:10-7-161. Public vocational schools [AMENDED]
612:10-7-166. Tutorial training [AMENDED]
Part 17. Supported Employment Services
612:10-7-182. Competitive work for supported employment clients [AMENDED]
Part 23. Self-employment Programs and Other Services
612:10-7-230. Self-employment programs [AMENDED]
612:10-7-230.1. Definitions [AMENDED]
612:10-7-230.2. Self-employment Guidelines [AMENDED]
612:10-7-230.3. Self-Employment/Business Plans [AMENDED]
Subchapter 9. Rehabilitation Teaching Services
Part 1. General Provisions
612:10-9-2. Client rights [AMENDED]
612:10-9-3. Rehabilitation of the Blind Specialist's role [AMENDED]
Subchapter 11. Independent Living Services for Older Individuals Who Are Blind
Part 1. Scope of Services
612:10-11-1. Purpose [AMENDED]
612:10-11-2. Basic eligibility requirements [AMENDED]
612:10-11-6. Client participation in cost of OB Services [AMENDED]
612:10-11-7. Administrative review [AMENDED]
Part 3. Case Processing
612:10-11-27. Inter-program transfers [AMENDED]
Part 5. Provision of Services
612:10-11-39. Physical restoration services [AMENDED]
612:10-11-41. Transportation [AMENDED]
612:10-11-42. Interpreter services [AMEMDED]
612:10-11-44. Orientation and mobility services (O&M) [AMENDED]
612:10-11-49. Referral services [AMENDED]

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ANALYSIS:

The proposed changes to Chapter 10 involve updating language and adding some new definitions. It changes "State Rehabilitation Council" to "Oklahoma Rehabilitation Council" and adds Field Coordinator approval for Cochlear Implants. It removes direct client payments for Vo-Techs, lists necessary skills for tutoring our clients, and adds agency ability to help retain businesses for our self-employed clients.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JULY 1, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

612:10-1-2. Definitions

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

"Act" means the Rehabilitation Act [29 USC 701 et seq.].

"ADL" Activities of Daily Living often refer to the routine activities carried out for personal hygiene and health (including bathing, dressing, feeding) and for operation of a household.

"Applicant" means an individual who has completed and signed an agency application form or has otherwise requested vocational rehabilitation services; who has provided information necessary to initiate an assessment to determine eligibility and priority for services; and who is available to complete the assessment process.

"Assistive technology" means technology designed to be utilized in an assistive technology device or service.

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

"Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.

"Authorized Representative" means a client's or applicant's parent, guardian, advocate (i.e. Client Assistance Program) or other person designated by the client or applicant as the individual authorized to deal with the Department on behalf of the client or applicant, consistent with provisions of the Act. Authorized representative does not include an employee of the Department of Rehabilitation Services, another state agency, or vendor of the Department unless the person is actually the parent, guardian, or is serving in the capacity of guardian (for example: court appointed).

"Blind" means persons who are blind within the meaning of the State Law relating to Vocational Rehabilitation. Legal blindness means a visual acuity of 20/200 or less in the better eye with best correction, or a visual field of 20 degrees or less.

"Client/Consumer" means an individual found eligible and receiving services under the Act.

"Clubhouse model" means a psychosocial and vocational approach to work adjustment for people with mental illness. The work-ordered day is a core element of the clubhouse, which focuses on strengths, talents and abilities. Work in the clubhouse helps members develop appropriate social skills and gain self worth, purpose, and confidence. The clubhouse enables members to return to paid work through Transitional Employment, Supported Employment and independent employment.

"Community rehabilitation program" (CRP) means a program that directly provides or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and provides singly or in combination, services for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement.

"Comparable benefits" means services and/or funding available through any other programs and/or resources which will meet in whole or in part the cost of rehabilitation services provided to an eligible individual. For the purposes of this definition, the term "resources" does not include client assets as determined under 612:10-3-1 through 612:10-3-7.

"Compensatory training" means training required before the client can enter a formal training program or employment, such as pre-vocational or personal adjustment training.

"Competitive employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and for which the individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who do not have disabilities.

"Consumer Independence Support Services" (CISS) are defined as providing independent living assessment, intensive counseling, community integration, and housing modifications to further assist consumers with severe disabilities in achieving independence.

"Continuity of Services" means once an individual is selected for services in accordance with policy, regardless of the priority category from which the individual was selected, the individual will receive the necessary purchased services, including post-employment services.

"Core Independent Living Rehabilitation (IL) services" is defined as information and referral services; independent living skills training; peer counseling; and individual and systems advocacy.

"Core Vocational Rehabilitation (VR) services" means services which substantially reduce the impact of functional limitations on employment outcomes. Physical and mental restoration services are examples of core VR services. Supportive services such as maintenance and transportation do not fall within the definition of core Vocational Rehabilitation services.

"Counselor" means the qualified rehabilitation professional, who is an employee of the designated state unit, and who has primary responsibility for the management of an individual's rehabilitation services case record, including determination of eligibility, service planning and management, and determination of successful or unsuccessful rehabilitation. Counselor is equivalent to such terms as VR/VS Specialist, VR/VS Coordinator, and Rehabilitation Teacher who manage Visual Services cases with Homemaker goals.

"Department" unless otherwise indicated in the text, means the Department of Rehabilitation Services as constituted in 74 O.S., Section 166.1 et seq.

"DRS" means the Department of Rehabilitation Services.

"Durable Training Supplies" means general training supplies which are not consumable, and are required for any student taking a particular course of study at an institution of learning, or required by a client as a reasonable accommodation for training. In general, any training supply which a client could not continue to use past successful rehabilitation, or which could not be used by other clients in future terms of training, would not meet the definition of "durable training supply".

"DVR" means the Division of Vocational Rehabilitation.

"DVS" means the Division of Visual Services.

"Eligibility" or "Eligible" means:

(A) when used in relation to an individual's qualification for Vocational Rehabilitation services, a determination that the individual has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; can benefit in terms of an employment outcome from rehabilitation services; and requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment;

(B) when used in relation to an individual's qualification for Supported Employment services, a determination that the individual is eligible for Vocational Rehabilitation services; is an individual with the most severe disabilities (priority group one); and

(i) for whom competitive employment has not traditionally occurred; or

(ii) for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(iii) who, because of the nature and severity of their disability, need intensive supported employment services, and extended services after the transition from intensive supported employment services, in order to perform such work;

(C) when used in relation to an individual's qualification for Rehabilitation Teaching services, certification that the individual is legally and/or functionally blind or has a rapidly progressive condition and may have secondary disabilities; the individual has identifiable deficiencies in independent living due to disabilities; and it is expected services will improve the individual's independence in the home and community;

(D) when used in relation to an individual's qualification for Independent Living Rehabilitation services, certification that the individual has a severe physical or mental disability; the disability results in a substantial limitation or inability to function independently in the family or community or to continue in employment; and a reasonable expectation that independent living services will significantly assist the individual improve his/her ability to function independently.

"Employment and Retention" (E&R) means short-term job coach support for individuals with severe disabilities who require assistance preparing for, obtaining, and maintaining employment.

"Employment outcome" means, with respect to an eligible individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market to the greatest extent practicable; supported employment; or any other type of employment (including self-employment, telecommuting, or business ownership) that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

"Extended employment" means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act and any needed support services to an individual with a disability to enable the individual to continue to train or otherwise prepare for competitive employment, unless the individual through informed choice chooses to remain in extended employment.

"Extended period of time" means when appropriate services are provided in a timely and orderly manner, completion of the Individualized Plan for Employment (IPE) will be expected to require a minimum of 6 months.

"Extended services" means ongoing support services provided to individuals with the most severe disabilities after the time-limited vocational rehabilitation services have been completed and job stabilization has been achieved. They consist of specific services, including natural supports, needed to maintain the supported employment placement. Extended services are paid from funding sources other than DRS and are specifically identified in the IPE.

"Extreme medical risk" means a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditiously.

"Functional capacities" means a client's assets, strengths, and resources which maintain or increase the individual's ability to work. Functional capacities include mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.

"Functional limitations" means physical or mental conditions, emergent from a disability, which impair, interfere with, or impede one or more of an individual's functional capacities.

"Higher education" means universities, colleges, community/ junior colleges, vocational schools, technical institutes, or hospital schools of nursing.

"Highly challenged" describes a client receiving supported employment services who, due to the nature of the

disability, requires a greater level of support from the job coach to achieve and maintain employment.

"Homemaker" means a person whose primary work is performance of duties related to upkeep and maintenance of a home.

"IEP" means Individualized Education Program as required by the Individuals with Disabilities Education Act.

"Individual with a disability" means an individual having one or more physical or mental conditions which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

Individual with severe disability" means an individual with a significant disability, as used in the Rehabilitation Act amendments of 1998, and an individual:

(A) who has a physical or mental impairment seriously limiting one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, mental retardation, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

"Individual with the most severe disability" means an individual with the most significant disability as used in the Rehabilitation Act amendments of 1998, and an individual with physical or mental disabilities:

(A) who has a severe physical or mental disability that seriously limits three or more major life activities in terms of an employment outcome;

(B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, mental retardation, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

"Integrated setting" means:

(A) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals.

(B) With respect to an employment outcome, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(C) A job site where the individual with severe disability works in a group of not more than eight workers with disability and interacts regularly in performance of job duties with non-disabled co-workers and/or members of the general public.

(D) Interaction with individuals who provide ongoing supported employment services at the job site does not satisfy the integration requirement.

"Intercurrent (acute) conditions" means an illness or injury occurring during the actual course of an individual's rehabilitation which, if not cared for, will complicate or delay achievement of the client's employment outcome as identified in the client's IPE.

"IPE" means the Individualized Plan for Employment.

"Job Club" is a structured learning experience for a client to build skills in self-assessment, resume development, job search and research strategies, and interview techniques to assist the person to enter a career of their choice.

"Job Coach/Employment Training Specialist" means a qualified individual providing support services to eligible individuals in supported employment and employment and retention programs. Services directly support the eligible individual's work activity including marketing and job development, applied behavioral analysis, job and work site assessment, training and worker assessment, job matching procedures, and teaching job skills.

"Long-term treatment" means medical or psychological treatment that is expected to last more than three months.

"Maintenance" means a supportive service provided to assist with the out-of-ordinary or extra expenses to the individual resulting from and needed to support the individual's participation in diagnostic, evaluative, or other substantial services in the IPE. Activities of Daily Living (ADL) expenses are not eligible for maintenance payments.

"Milestones" means a payment system that reimburses a vendor based on incentives and outcomes. The vendor is paid when the client completes pre-defined checkpoints on the way to a desired employment goal.

"Multiple services" means the counseling and guidance provided as a routine part of case management plus two or more core VR services. Comparable benefits and/or services can count toward meeting the definition of multiple services. Services routinely provided as a package do not count as multiple services for the purpose of determining the presence of a severe disability, even if two or more core services are included in the package. Core services include:

(A) **Restorative.** Services including surgery, hospitalization, medical treatment, anesthetic, psychiatric treatment, psychological counseling, nursing, medication;

(B) **Auxiliary.** Services including prosthetics, orthotics, hearing aids, wheelchairs, other durable medical equipment, physical therapy, speech therapy, optics;

(C) **Assistive technology.** Services including accommodations, sensory aids, telecommunication devices, low vision aids, assessment, training, modification, and specialized adaptive equipment;

(D) **Specialized.** Services for individuals who are blind, deaf or severely disabled may include rehabilitation teaching, orientation and mobility training, reader services, interpreter services, personal attendant services, and personal adjustment training;

(E) **Training.** Services including college and university training, occupational and vocational training, on-the-job training, remedial training, job readiness training, work adjustment training, work site learning, all other training;

(F) **Selective placement.** Services including job coaching, job duty and workstation analysis, job duty and workstation adaptation, supported employment, vocational technician services, and employment and retention services; and/or

(G) **Intensive counseling.** Services including therapeutic or adjustment guidance and counseling, such as counseling that is directed toward the acceptance of disability.

"Natural supports" means any assistance, relationships or interactions that allow a person to maintain employment in ways that correspond to the typical work routines and social interactions of other employees. Natural supports may be developed through relationships with people or put into place by the adaptation of the work environment itself, depending on the support needs of the person and the environment.

"Occupational license" means any license, permit, or other written authority required by a state, city or other governmental unit to be obtained in order to enter an occupation.

"Ongoing support services" means services specified in the IPE according to individual need, which support and maintain an individual with the most severe disabilities in supported employment. Sponsored ongoing support services are provided from the time of placement until the individual is stabilized on the job. Ongoing support services are provided by one or more extended services providers, or by natural supports, following transition throughout the individual's term of employment. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

"Package of services" means several services which are usually provided together for the same purpose. The services in a package are usually, but not always, from the same category of core services (see definition of multiple services, this section). Examples include, but are not limited to: surgery, anesthesia, and hospitalization; or personal computer, software, and peripheral equipment.

"Personal assistance services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability.

"Physical and mental restoration services" means services which are necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive, within a reasonable period of time.

"Physical or mental disability" means a physical or mental condition which, if not corrected, materially limits, contributes to limiting or will result in limiting an individual's activities or functioning.

"Referral" means information provided to agency staff regarding an individual who may need vocational rehabilitation services; information or direction provided to an individual regarding services and resources available from other agencies or service providers; or information and direction provided to an individual regarding opportunities for employment. A referral may include arranging for appointments on behalf of the individual.

"Rehabilitation Act" means the Rehabilitation Act [29 USC 701 et seq.].

"Related factors" means those factors which are not directly attributable to the impediment to employment, but which have impact on the potential for successful rehabilitation. They frequently become evident only from an assessment of the person's social, vocational, educational, and environmental circumstances.

"Section 504 Plan" is a plan designed as a protection for students with disabilities who may not be considered eligible for special education under IDEA in compliance with Section 504 of the Rehabilitation Act of 1973 as amended.

"Small business enterprises" means a small business operated by blind or other individuals with severe disabilities under the management and supervision of the state DRS. Such businesses include only those selling, manufacturing, processing, servicing, agricultural, and other activities which are suitable and practical for the effective utilization of the skills and aptitudes of individuals who are blind or individuals who have severe disabilities. Small business enterprise provides substantial gainful employment or self-employment commensurate with the time devoted by the operators to the business, the cost of establishing the business and other factors of an economic nature.

"Stabilization" means the period of time when job coach support is reduced to the long-term maintenance level while the individual retains employment, and personal satisfaction with the job, as well as employer satisfaction with the person's

job performance. Stabilization must include appropriate individualized supports, including a minimum of two employee contacts and one employer contact per month.

"Substantial impediment to employment" means that a physical or mental disability (in the light of related medical, psychological, vocational, educational, cultural, social or environmental factors) that impedes an individual's occupational performance, by preventing his/her obtaining, retaining, or preparing for a gainful occupation consistent with his/her capacities and abilities.

"Supported employment" (SE) means competitive work in integrated work settings, or employment in integrated work settings in which individuals are working toward competitive work, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most severe disabilities who meet the eligibility criteria for supported employment. This term includes transitional employment for persons who are individuals with the most severe disabilities due to mental illness (see the definition for "transitional employment").

"Supportive services" means vocational rehabilitation services provided so eligible individuals may derive the full benefit of core services being provided under an IPE.

"Transitional employment" (TE) means, when referring to the Supported Employment Program, a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most severe disabilities due to mental illness.

"Transportation" means a supportive service provided to assist with the costs of travel, including instruction in the use of public transportation vehicles and systems, which result from and are needed to support the individual's participation in diagnostic, evaluative, or other substantial and necessary VR services.

"Unpaid family worker" means a person who works without pay on a family farm or in a family business, operated by a family member who is related by blood or marriage.

"VR" means the Division of Vocational Rehabilitation, or the more general term vocational rehabilitation services, depending upon the context.

"VS" means the Division of Visual Services, or the more general term visual services, depending upon the context.

612:10-1-6. Due process

(a) **Notification of rights to due process.** Any applicant or client of DVR or DVS dissatisfied with a determination that affects the provision of vocational rehabilitation services may request a timely review of the determination. Each applicant or client, or as appropriate, the individual's authorized representative will be informed of:

(1) the right to get decisions regarding the individual's case reviewed by an impartial hearing officer;

(2) the right to pursue mediation on decisions regarding the individual's case;

(3) the names and addresses of individuals with whom requests for mediation or due process hearings may be filed;

(4) the manner in which a mediator or impartial hearing officer may be selected; and

(5) the availability of assistance from the client assistance program.

(b) **When notification of rights to due process is required.** The notifications specified in (a) shall be provided in writing, and in appropriate accessible format:

(1) at the time an individual applies for VR services;

(2) at the time an individual is assigned to the State's order of selection;

(3) at the time the Individualized Plan for Employment is developed; and

(4) upon reduction, suspension, or cessation of VR services for the individual.

(c) **Client Assistance Program (CAP).** The purpose of the Client Assistance Program (CAP) as described in this Section is to provide assistance with informing and advising clients and applicants of all available benefits under the Rehabilitation Act. When requested by clients and applicants, CAP will assist them in their relationships with projects, programs, and Community Rehabilitation Programs providing services to them under the Act.

(1) The Oklahoma CAP has the authority to pursue legal, administrative and other appropriate remedies to ensure the protection of the rights of individuals with disabilities who are receiving treatment, services or rehabilitation under the Act within the State.

(2) Vocational Rehabilitation agencies are required by Federal statute to advise all clients and applicants of the existence of CAP, the services provided by the program, and how to contact the program. A brochure is provided to each individual at the time of application and development of the IPE.

(3) Counselors must assure clients and applicants have access to CAP without fear of reprisal and are not pressured against or otherwise discouraged from using CAP services.

(4) The CAP staff members will provide the following services:

(A) Helping clients or applicants to understand rehabilitation service programs under the Act;

(B) Advising clients or applicants of benefits available to them through rehabilitation programs authorized under the Act and their rights and responsibilities in connection with those benefits;

(C) Otherwise assisting clients and applicants in their relationships with projects, programs, and Community Rehabilitation Programs providing rehabilitation services under the Act;

(D) Helping clients or applicants by pursuing or assisting them in pursuing legal, administrative, and other available remedies when necessary to ensure the protection of their rights under the Act;

(E) Advising State and other agencies of identified problem areas in the delivery of rehabilitation services to individuals with disabilities and suggesting methods and means of improving agency performance; and

(F) Providing information to the public concerning the CAP and Title I of the ADA.

(5) Clients may be referred to CAP by any one of the following:

(A) The client's counselor;

(B) Other DRS representative;

(C) Office of Handicapped Concerns' Hotline;

(D) Self;

(E) Any other interested party.

(6) Every client or applicant has the right to protection of information provided by him/her from unauthorized or indiscriminate disclosure. DVR and DVS will provide CAP officials information regarding an individual's case in accordance with 612:10-1-5 and applicable Federal law and regulations.

(7) The CAP staff will make periodic field visits to facilitate CAP's availability to clients or applicants who cannot travel to Oklahoma City.

(d) **Supervisory review.** DVR and DVS use a supervisory review process to resolve disagreements as close to the field service delivery level as possible. The objective of the supervisory review process is a timely resolution of disagreements, and is not to be used to delay or deny a fair hearing before a hearing officer or the services of an impartial mediator. The supervisory review of a counselor determination starts the 60 day time period established under (f)(5) of this Section. The request for a fair hearing is submitted at this time in accordance with (f)(2) of this Section.

(1) The supervisory review is usually conducted by the program manager. If the program manager was involved in the disputed determination, the field coordinator conducts the administrative review. If the field coordinator was involved in the disputed determination, the division administrator conducts the administrative review.

(2) The decision that results from the administrative review will be stated in a letter to the individual, or to the individual's representative, with copies to the case record, the program manager, and the hearings coordinator. The letter will identify the individual, case number, caseload, and office location. The body of the letter will state the reason for the administrative review and the decision resulting from that review. If the administrative review resolves the disagreement, the Withdrawal of Request for Hearing form must be submitted with the copy of the letter that is sent to the hearings coordinator.

(e) **Mediation.** Whenever a fair hearing is requested under this Section, mediation shall be offered as an option to resolve a disputed decision. DRS uses the voluntary mediation services of the Oklahoma Supreme Court. The supervisor will arrange for a mediator with the Early Settlement Center that is most convenient to the consumer upon receipt of a request for mediation. DRS will bear the cost of the mediation. The mediation session will be scheduled in a timely manner. An agreement reached by the parties to the dispute in the mediation will be set forth in writing. Discussions that occur during the mediation process will be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. Should the dispute be resolved through mediation, a withdrawal of request for hearing must be submitted to the hearings coordinator. The parties to the mediation may be required to sign a confidentiality pledge prior to commencement of the process. Nothing in this Subsection shall be construed to preclude the parties from informally resolving the dispute. The Departmental representative attending the mediation must be the individual who has final decision making authority for the question in dispute. The mediation:

(1) must be entered into voluntarily by all parties;

(2) is not used to deny or delay the hearing or any other right; and

(3) Is conducted by a qualified and impartial mediator.

(f) **Fair hearing process.** The fair hearing process will be conducted in accordance with (1) through (10) of this Subsection.

(1) **Services under IPE to continue.** No services being provided under the IPE shall be stopped, delayed, or reduced by the Department pending a final resolution of a requested hearing unless so requested by the individual or individual's authorized representative; or the service was obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual with disabilities.

(2) **Request for a fair hearing.** The individual has 30 calendar days following the date on the notice of the adverse decision to request a fair hearing.

(A) The individual requesting a fair hearing, may submit it to the local office, or may send it directly to the hearings coordinator in State Office. DVR and DVS staff will assist the individual in completing this form and with preparation of evidence from the case record in conformance with 612:10-1-5, if so requested.

(B) DVR and DVS staff will immediately notify their supervisor of the request for a fair hearing so that the administrative review can be started by the appropriate staff person. The completed Hearing Summary form, a copy of the notice of the adverse decision, and all supporting materials to be used in the hearing must be sent to the hearings coordinator as soon as possible. If a request for a fair hearing is submitted to the local office, staff will immediately forward it with the other materials.

(C) Prior to the actual fair hearing, the hearings coordinator will provide copies of materials the agency will use in the fair hearing to the individual and/or the individual's representative in conformance with 612:10-1-5.

(3) **Withdrawal of request for a fair hearing.** The individual, or the individual's representative, may submit a withdrawal of request for hearing any time following the submission of a request for a fair hearing up to the time the hearing is actually held. If the issue is resolved prior to the fair hearing, the individual, or the individual's representative, must submit a Withdrawal of Request for Hearing to end the fair hearing process.

(4) **Selection of impartial hearing officer.** The hearings coordinator will select an impartial hearing officer

from a list of qualified impartial hearing officers maintained and identified by the State unit. Once selected, the impartial hearing officer will assume responsibility for arranging and conducting the fair hearing with the assistance of agency staff as necessary. The hearings coordinator will be apprised of events in the hearing process, and will be provided copies of all correspondence.

(A) Selections will be made randomly; or by agreement between the director of the designated State unit and the applicant or eligible individual or, as appropriate, the individual's representative; from the list of available impartial hearing officers. The hearings coordinator will forward all relevant materials to the assigned impartial hearing officer.

(B) The impartial hearing officer will send written notice of the fair hearing to all parties involved. The written notice of the fair hearing will include the name, address, and a brief vita of the impartial hearing officer.

(C) The individual may request a different impartial hearing officer based upon presented evidence that a conflict of interest exists consistent with Section 7 (16) of the Rehabilitation Act and 34 CFR 361.5(b)(25). A request for a different impartial hearing officer must be made within five days of receiving the fair hearing notice.

(5) **Scheduling of the fair hearing.** The fair hearing must be held within 60 calendar days from the date the request for a fair hearing is received, unless the issue is resolved prior to the 60th day or the parties agree to a specific extension of time. The administrative review must be conducted and concluded within the same 60 days. Delays or continuances will not be given for the purpose of extending the provision of services. Any agreement to an extension of time must be formalized in writing.

(6) **Consumer's participation in hearing.** At a fair hearing, the individual, or the individual's representative, is afforded the opportunity to:

(A) present additional evidence, information, and witnesses to the impartial hearing officer;

(B) be represented by counsel or other advocate selected by the applicant or eligible individual; and

(C) examine all witnesses and other relevant sources of information and evidence.

(7) **Agency staff attendance.** Professional staff involved in the disputed determination will appear at the hearing to provide appropriate information and evidence and testimony. Other staff will appear as directed.

(8) **Order of proceedings in the fair hearing.** The Impartial Hearing Officer will conduct the fair hearing in accordance with State laws regarding conduct of individual proceedings before an agency, and applicable Federal laws and regulations. Although the order of proceedings is at the discretion of the Hearing Officer, generally, the fair hearing follows this order of proceedings:

(A) presentation, arguments, and disposition of all preliminary motions and matters;

(B) opening statements;

(C) information and evidence presented by the agency;

(D) evidence presented by the grievant;

(E) rebuttal by either or both sides;

(F) closing statements by the grievant;

(G) closing statements by the agency; and

(H) rebuttal by grievant.

(9) **Decision.** The hearing officer makes a decision based on the provisions of the approved State Plan, the Act, Federal vocational rehabilitation regulations, and State regulations and policies that are consistent with Federal requirements and on whether or not the counselor properly applied rules. The hearing officer does not have the authority to rule upon the legality of DRS rules that are consistent with Federal requirements. A decision made after a fair hearing shall be final, unless a party to the fair hearing requests a review under Paragraph (10) of this Subsection. The hearing officer provides the individual, or the individual's representative, and the hearings coordinator a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing. The hearings coordinator will immediately forward the decision to the Director of DRS. The impartial hearing officer may make one of several decisions, which include, but are not limited to:

(A) finding in favor of the grievant;

(B) upholding the determination or action of the agency;

(C) accepting a withdrawal of the appeal confirmed in writing signed by the grievant, or the grievant's representative; or

(D) accepting a settlement of the issues agreed to by the grievant and the agency which must include a written withdrawal of request for a hearing.

(10) **Review of impartial hearing officer's decision.** Any party involved in a fair hearing may request an impartial review of the impartial hearing officer's decision within 20 calendar days of that decision. This review will be conducted by the Governor or the Governor's designee to whom DRS is assigned. The review will be conducted in accordance with the standards in (A) through (E) of this paragraph:

(A) The Governor or the Governor's designee will not delegate responsibility for this review to any officer or employee of DRS.

(B) The Governor or the Governor's designee will provide an opportunity for the submission of additional evidence and information relevant to a final decision concerning the matter under review.

(C) The Governor or the Governor's designee will make a final decision within 30 days of the request for administrative review. The decision will be provided to all parties, and/or to the parties' authorized representatives, in writing. The written decision will include a full report of the findings, and the grounds for the decision.

(D) The Governor or the Governor's designee cannot overturn or modify a decision, or part of a

decision, made by an impartial hearing officer that supports the position of the individual unless the Governor or the Governor's designee concludes, based upon clear and convincing evidence, that the decision of the hearing officer is clearly erroneous on the basis of being contrary to the approved State plan, the Act, Federal vocational rehabilitation regulations, or State regulations and policies that are consistent with Federal requirements. The Governor or the Governor's designee will apply the standards presented in (i) through (iii) of this Subparagraph when conducting the review of the hearing officer's decision.

(i) The hearing officer's decision shall not be arbitrary, capricious, an abuse of discretion, or otherwise unreasonable.

(ii) The hearing officer's decision shall be supported by substantial findings of fact.

(iii) In reaching the initial decision, the impartial hearing officer shall correctly apply Federal and State law, regulation, agency policy, and the approved State Plan as they pertain to the specific issue in question.

(E) A decision made under this Paragraph shall be final unless a party involved in the hearing brings a civil action.

(g) **Civil proceedings.** Any party aggrieved by a final decision of an impartial hearing officer, or by the Governor or the Governor's designee, may bring a civil action for review of the decision. The action may be brought in any State court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy. If a party brings a civil action, the final decision of the impartial hearing officer, or of the Governor or the Governor's designee, shall be implemented pending review by the court. In any action brought under this Subsection, the court:

(1) shall receive the records relating to the hearing, and the records relating to any review conducted under (f)(10), if applicable;

(2) shall hear additional evidence at the request of a party to the action; and

(3) basing the decision of the court on the preponderance of the evidence, shall grant such relief as the court determines to be appropriate. [29 USC 722]

(h) **Standards for impartial hearing officers.** In addition to qualifications required in a contract with the Department, an impartial hearing officer must meet the standards set forth in (1) through (6) of this Subsection:

(1) cannot be an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher learning);

(2) cannot be a member of the ~~State~~Oklahoma Rehabilitation Council;

(3) has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(4) must have knowledge of the delivery of vocational rehabilitation services, the State plan required under Section 101 of the Act, and the Federal and State rules governing the provision of such services and training with respect to the performance of official duties;

(5) must have no personal, professional or financial interest that would be in conflict with the objectivity of the impartial hearing officer; and

(6) must have successfully completed impartial hearing officer training presented by DRS.

(i) **Standards for impartial mediators.** In addition to qualifications required in a contract with the Department, an impartial mediator:

(1) will be trained and certified or licensed in effective mediation techniques;

(2) will not be an employee of a public agency (other than an Administrative Law Judge, hearing examiner, employee of a State Office of Mediators, or employee of an institution of higher education);

(3) will not be a member of the ~~State~~Oklahoma Rehabilitation Council;

(4) must be knowledgeable in laws and regulations relating to the provision of VR services;

(5) has not been involved previously in the vocational rehabilitation of the applicant or eligible individual; and

(6) must have no personal, professional or financial interest that would be in conflict with the impartiality of the mediator.

SUBCHAPTER 3. CLIENT PARTICIPATION IN COST OF SERVICES

612:10-3-5. Basic living requirements

(a) A basic living requirement has been established for different size family groups. A family member is an individual who either (A) is a relative or guardian of an applicant or eligible individual; or (B) Lives in the same household as an applicant or eligible individual and has a substantial interest in the well-being of that individual and whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome. Basic living requirements are based on 150% of the Federal poverty level adjusted annually for family size. The standard is intended to cover only the necessities of food, shelter, utilities, clothing, transportation, and incidentals to give the counselor some criteria by which to measure the financial status of a client. To qualify as independent from the family group, the client must meet one of the following criteria:

(1) Beneficiary of Titles II (federal old age, survivors, and disability insurance benefits) or XVI (SSI)~~SSDI, SSI, or Title III Adult Dependent Child Survivor Benefits~~;

(2) At least 24 years of age;

(3) A ward of the court and in custody of DHS;

(4) Married and maintaining a separate household;

(5) Meets the criteria for temporary housing as described in 612:10-3-5(c) or;

(6) The counselor verifies the client has the financial resources to demonstrate self-sufficiency and the client declares no family contributions are available.

(b) Verification of family membership should be based upon whatever available information most accurately documents family membership according to the definition given in this Subsection. Examples of acceptable verification include the latest Federal income tax return, payroll information, insurance policies, client report, and/or counselor observation.

(c) An eligible adult individual whose disability has resulted in the need to live with family or friends temporarily, and as appropriate the individual's spouse and dependent children, will be considered as a separate household regardless of living arrangements.

SUBCHAPTER 7. VOCATIONAL REHABILITATION AND VISUAL SERVICES

PART 1. SCOPE OF VOCATIONAL REHABILITATION AND VISUAL SERVICES

612:10-7-4. Basic eligibility requirements for vocational rehabilitation services

(a) An individual is eligible for vocational rehabilitation services under the Rehabilitation Act through the State Department of Rehabilitation Services if the individual:

(1) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment;

(2) can benefit in terms of an employment outcome from vocational rehabilitation services; and

(3) requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment.

(b) An individual who has a disability or is blind as determined pursuant to Titles II (federal old age, survivors, and disability insurance benefits) or XVI (SSI) ~~Title II or Title XVI of the Social Security Act [42 U. S. C. 401 et seq. and 1381 et seq.], or Title III Adult Dependent Child Survivor Benefits (based on the individual's disability that began prior to age 22)~~ shall be:

(1) considered to have a severe disability under the order of selection; and

(2) presumed to be eligible for vocational rehabilitation services, (provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual) unless clear and convincing evidence demonstrates that the individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the individual's disability.

(c) Determinations by other agencies, particularly education agencies, regarding whether an individual has an impairment or is an individual with a severe disability are to be used to the extent appropriate, available and consistent with the Rehabilitation Act.

(d) Every person must be evaluated individually regarding history, prognosis and functional limitations to determine if the individual can benefit from rehabilitation services in terms of an employment outcome.

(e) Some conditions have unique criteria that must be considered when determining eligibility.

(1) **Alcoholism/Drugs.** Eligibility documentation for vocational rehabilitation services requires both medical and psychological records. Clients who are accepted on the basis of alcoholism and/or drug dependency, whether a primary or secondary disability, must be enrolled in a treatment or maintenance program and be willing to undergo random alcohol/drug screening. DRS does not pay for detoxification or replacement drug treatment. DRS will not provide services to individuals who abuse drugs and/or alcohol. The client must provide the agency with supportive documents from qualified Drug and Alcohol treatment professionals that the client is presently substance-free, maintaining sobriety, actively participating in a treatment or maintenance program, and ready to engage in vocational rehabilitation services. Those individuals who are alcohol/drug free for two or more years will not be eligible on a primary disability of alcoholism/drug dependency.

(2) **Allergies/Asthma.** Only the most serious allergies/asthmatic condition requiring continuous medical intervention will be considered eligible for services.

(3) **Deafness and Hearing Loss.** The rehabilitation professional will base eligibility determination upon one of the measurement methods listed below. The case record must document the method chosen provides the most accurate evaluation of functional hearing level for the individual.

(A) **Eligibility criteria.** Eligibility criteria for each method of measurement are listed in (i) through (iv) of this Subsection. An individual will also be considered to have a qualifying disability when documentation indicates the hearing loss is progressive and the progression is substantial enough to result in an impediment to employment.

(i) **Average hearing loss.** Average hearing loss, which is determined by computing average of the pure tone thresholds for each ear at 1000Hz, 2000Hz, 3000Hz and 4000Hz. An individual is considered to have a qualifying disability based upon average hearing loss when:

(I) The hearing loss in one ear is profound (91 dB or greater) and the hearing loss in the better ear is at least 15 dB; or

(II) The hearing loss in the better ear is 30 dB or greater.

(ii) **Speech recognition threshold (SRT).** An individual is considered to have a qualifying disability when:

(I) the speech reception threshold in one ear is 91 dB or greater and is at least 15 dB in the better ear; or

(II) the speech reception threshold in the better ear is 30 dB or greater.

(iii) **Speech discrimination or word recognition score.** An individual is considered to have a qualifying disability when the speech discrimination or word recognition score is 70% or less.

(iv) **Articulation index.** An individual is considered to have a qualifying disability when the articulation index is 70% or less.

(B) **Severity of Hearing Loss.** All individuals who qualify as having a severe hearing loss will be referred to a Rehabilitation Counselor for the Deaf and Hard of Hearing (RCD). Relevant information provided will include copies of the initial interview narrative recording, medical information, eligibility data entry form, Individualized Plan for Employment, pertinent copies of case narratives and DRS application form. On receipt of a referral, the RCD will contact the client and make a determination of potential for Deaf and Hard of Hearing services. The referring counselor will be informed in writing of the RCD's findings.

(i) **Severe Hearing Loss.** Average hearing loss, as calculated above, is considered severe when:

(I) The hearing loss in one ear is profound (91 dB or greater) and the hearing loss in the better ear is at least 31 dB; or

(II) The hearing loss in each ear is 55 dB or greater.

(ii) **Severe Speech Recognition Threshold (SRT).** An individual is considered to have severe disability when;

(I) The SRT in one ear is 91 dB or greater and the SRT in the better ear is at least 31 dB; or

(II) The SRT in each ear is 55 dB or greater.

(iii) **Severe Speech Discrimination or word recognition score.** An individual is considered to have a severe disability when the speech discrimination or word recognition score is 59% or less.

(C) **Evaluation of need for visual examination.** Clients with a disability of deafness or hearing loss will be offered a visual exam annually unless adequate existing records are available.

(4) **Diabetes:** The individual must require prescribed medication to control the condition. Those persons whose diabetes is controlled by diet and exercise alone will not be considered eligible. Eligible clients will be required to undergo a visual exam by a licensed ophthalmologist at least once a year. All insulin dependent diabetics are required to attend diabetic education training as part of their IPE. This can be provided by a consumer's personal physician, in coordination with the VR specialist. If diabetic education is provided, a separate intermediate objective addressing this service must be included on the IPE.

(5) **Facial and Disfigurement Conditions.** Treatment of any of these conditions may also be provided under intercurrent illness policy. Treatment may be provided when:

(A) it is necessary to correct or substantially modify a condition which is stable or slowly progressive;

(B) such correction or modification may reasonably be expected to eliminate or reduce the impediment to employment within a reasonable length of time.

(6) **Learning Disabilities.** Individuals must meet **one** of the following three criteria to be identified as learning disabled:

(A) Have a marked discrepancy between verbal and performance intellectual level;

(B) Be diagnosed or identified as having a specific learning disability from the local educational system; or

(C) When the individual's achievement on individually administered, standardized test in reading, mathematics or written expression is substantially below that expected for age, schooling and level of intelligence (DSM IV).

(7) **Mental Disorders:** Treatment must be incorporated as a service in the IPE for individuals with a diagnosis of mental disorder. Comparable benefits will be used when available.

(8) **Mental Retardation.** To be eligible, individuals having an I.Q. of 69 or below and substantially limited adaptive functioning, as measured by an individual intelligence test, will be considered to have a substantial disability. For individuals eligible under IDEA with an I.Q. level higher than 69 may be considered to have a substantial impairment provided the documentation used by the school in determining eligibility under IDEA, in the counselor's judgment, confirms the individual is functioning in the mentally retarded range of ability. Individuals not enrolled in public school special education classes with an I.Q. higher than 69 may be considered to have a substantial impairment provided appropriate documentation confirms the individual is functioning in the mentally retarded range of ability.

(9) **Height.** To be eligible, a person's stature must constitute or result in a substantial impediment to employment.

(10) **Obesity.** To be eligible, a person must be 100% over normal weight using the designated weight chart and unable to participate in activities of daily living. Any radical surgery i.e., bypass or stapling of the stomach, treatment plans are beyond the scope of VR services. Any vocational plan for a person who is obese must include some type of treatment plan. A licensed dietician or a physician skilled in weight reduction must monitor any treatment program authorized by the agency.

(11) **Visual.** The individual must be found to have at least a 25% loss of total visual efficiency with best correction, or there must be evidence the condition is progressive and will soon reach the visual loss described above. Any one or all of the following factors may be used to determine whether a 25% loss of total efficiency exists.

(A) **Central visual acuity (Snellen method or equivalent).** Acuity of 20/60 or less in the better eye

after best correction (in the case of difference of acuity between reading and distance use the greater loss).

(B) **Loss of depth perception or stereopsis.**

(i) **Eligibility on the basis of depth perception loss.** When defining eligibility based on depth perception alone, it is generally accepted a total loss of depth perception would not constitute a 25% loss of visual efficiency. Other factors to consider include: Is the client's loss of depth perception acute? Did the client recently lose his or her depth perception? Did the client's past vocational experience require good depth perception? If the client is currently working, does his/her present vocation require good depth perception? After considering these factors the counselor will determine if there are functional limitations to the extent the individual would be prevented from obtaining, retaining or preparing for employment.

(ii) **Eligibility based on loss of stereopsis.** Stereopsis is defined as the blending into one-picture two images of an object seen from slightly different points of view so as to produce the impression of relief and solidity. This type of loss usually results from suppression of vision in one eye due to alternating exotropia, esotropia, hypertropia or a difference in the refractive power of the two eyes so great that separate images cannot be fused. When determining eligibility based on lack of stereopsis the counselor will take into account most of the factors used in determining eligibility based on loss of depth perception. One major difference is stereopsis cannot be learned. In other words, if an individual does not have binocular vision, it is impossible for the individual to have stereopsis. From a functional standpoint, stereopsis is considerably different from depth perception. The individual can still do many jobs with various degrees of depth perception yet these same jobs may have certain steps that require acute stereopsis. Thus an employee losing the stereopsis part of his visual function would be at risk for injuring himself or other workers or might be considered as a target for termination.

(iii) **Limited peripheral vision.** This is restriction of visual fields by 25% or more as documented by a formal visual field examination. The examination should report the qualitative percentage of visual field loss and/or remaining percentage of visual efficiency.

(iv) **Diplopia (Double Vision).** There are different degrees of double vision. The type of double vision most disabling is the type that manifests itself in the primary direction of gaze.

(v) **Aphakia.** In cases of binocular Aphakia the central visual efficiency of the better eye will be accepted at 75% of its value (25% loss of visual efficiency) and in monocular Aphakia the central visual efficiency will be accepted at 50% of its value (50% loss of visual efficiency). Individuals with intraocular lens implants are not considered to have a visual disability as a result of an aphakic condition.

(vi) **Color deficiency.** When total absence of color discrimination or red-green deficiency exists it will be considered a disability. Supervisory approval is necessary for establishing an impediment to employment when the disabling condition is a red-green deficiency.

(12) **Hearing evaluation.** Individuals who have been identified as "legally blind" will be carefully evaluated regarding the need for a hearing evaluation. When a hearing deficit is indicated by a medical examination report, statement of the client and/or family, or observation of one of the professional staff members working with the individual, it is noted in the case record. The counselor will make arrangements for a hearing examination unless existing records are adequate and appropriate for this assessment.

(13) **Re-evaluation.** Individuals with chronic disabilities that can be removed with little or no residual limitations will not be eligible for purchase of services other than those related to the required treatment.

612:10-7-8. Order of selection

(a) **Need for order of selection.** The Department, in consultation with the ~~State~~Oklahoma Rehabilitation Council, has determined, due to budgetary constraints or other reasoned limitations, that it cannot serve all individuals who are determined eligible for DVR and DVS services. The Department consults with the ~~State~~Oklahoma Rehabilitation Council regarding the:

(1) need to establish an order of selection, including any re-evaluation of the need;

(2) priority categories of the particular order of selection;

(3) criteria for determining individuals with the most severe disabilities; and

(4) administration of the order of selection.

(b) **Priority groups.** It is the policy of DRS to provide vocational rehabilitation services to eligible individuals under an order of selection. Under the order of selection, the Department has established three priority groups on the basis of serving first those with the most severe disabilities. Every individual determined to be eligible for DVR and DVS services is placed in the appropriate priority group based upon the documentation used to determine eligibility and/or vocational rehabilitation needs. Selection and placement in a priority group is based solely upon the severity of the eligible individual's disability, and is not based upon the type of disability, geographical area in which the individual lives, projected type of vocational outcome, age, sex, race, color, creed, religion, or national origin of the individual. The priority groups are:

(1) **Most Severe (MS).** Eligible individuals with the most severe disabilities. A most severe disability is a severe mental or physical disability resulting in serious limitations in three or more functional capacities and requiring multiple services over an extended period of time.

(2) **Severe (S).** Eligible individuals with severe disabilities resulting in serious limitations in at least one, but not more than, two functional capacities and requiring multiple services over an extended period of time.

(3) **Non-Severe (NS).** Eligible individuals with disabilities not meeting the definition of individual with a severe disability.

(c) **Implementation.** Prior to the start of each fiscal quarter, or when circumstances require, the DRS Director will determine in which priority groups new Individualized Plans for Employment will be written and initiated. The Director may restrict the writing and initiation of new Individualized Plans for Employment within a priority group to cases having application dates falling on or before a specified date providing that all consumers in higher priority groups are being served. Considerations in making this determination will include, but not be limited to, the projected outcomes, service goals, expenditures, and resources available for each priority group. Projected costs and resources for each priority group will be based upon costs of current Individualized Plans for Employment, anticipated referrals, availability of financial resources, and adequacy of staffing levels. The Director will implement actions under the order of selection through written notice to DVR and DVS staff. The written notice will specify the implementation date of the action and direct DVR and DVS staff on how to handle cases by priority group and application date. DVR and DVS staff will inform each eligible individual on their caseloads:

(1) of the priority groups in the order of selection;

(2) of the individual's assignment to a priority group; and

(3) of the individual's right to appeal that assignment.

(d) **Closing and opening priority groups.** When all or part of a priority group is closed, designated cases within that priority group without a written IPE will be placed on a waiting list after the individual has been determined to be eligible. No IPE will be written for cases on the waiting list. Staff will continue to take applications, diagnose and evaluate all applicants to determine eligibility and vocational rehabilitation needs, find the individual eligible when documentation supports such a decision, then place each eligible individual's case in the appropriate priority group. If an eligible individual is placed in a closed priority group, his or her case will go on the waiting list and no IPE will be written or initiated. The DRS Director will notify DVR and DVS staff in writing when all or part of a closed priority group is opened. When this directive includes new applicants who are found eligible, individuals already on the waiting list within that same priority group will be given priority over new applicants. When all or part of closed priority groups are opened, staff will contact individuals on the waiting list to develop and implement their Individualized Plans for Employment using the priorities in Paragraphs (1) - (3) of this Subsection:

(1) contact individuals within the highest open priority group first, Most Severe being the highest of all priority groups;

(2) within each opened priority group, staff will contact individuals on the waiting list in order of application date, earliest application date first; then

(3) staff will contact individuals whose cases will remain on the waiting list to explain how their cases will be handled.

(e) **Continuity of services.** Any individual with an IPE that existed prior to the date all or part of that individual's priority group was closed will continue to receive services as planned. Such an IPE may be amended if the changes are necessary for the individual to continue progress toward achieving an appropriate employment outcome, or are otherwise necessary within policy. Persons requiring post employment services will also be provided the necessary services regardless of priority group assignment.

(f) **Information and referral services.** Information and referral services will remain available to eligible individuals who are not in an open priority group. No IPE will be written to provide such services to these individuals.

PART 3. CASE PROCESSING REQUIREMENTS

612:10-7-20. Case recording

A case record will be established and maintained on each individual who applies for and/or receives vocational rehabilitation services. Narrative recordings of activities are mandatory at application, at eligibility, the development of the plan, program/financial reviews, ~~progress reviews, status changes,~~ and case closure. An action in any case is not considered effective until all required approvals have been obtained in accordance with Department policy. Documentation must be factual and conform to ethical and professional standards.

PART 9. ACTIONS REQUIRING REVIEW AND APPROVAL

612:10-7-88. Actions requiring field coordinator's approval

Field coordinator approval is requested by written memorandum from the counselor, accompanied by a written recommendation from the supervisor. The field coordinator gives his or her approval in a written memorandum to the counselor, with a copy going to the supervisor. Verbal approval may be given when circumstances warrant, but must be followed immediately by written approval. The field coordinator must approve:

(1) all IPE's which include DVR and DVS funding of training beyond the bachelor's degree level;

~~(2) all IPE's which include the purchase of housing modifications costing more than $2,500;~~

(~~3~~2) delegation or substitution for supervisory approval in case of supervisor's prolonged absence or similar circumstances.

(~~4~~3) dental services during active job search.

(~~5~~4) dental services requiring hospitalization.

(~~6~~5) self-employment funding over $15,000.00.

(~~7~~6) vehicle or home modifications over $2,500.00.
(7) purchase of Cochlear implants.

PART 15. TRAINING

612:10-7-161. Public vocational schools

(a) The State Department of Career and Technology Education has established vocational training schools at various sites across the state. These schools offer vocational training in a wide variety of areas. Every area vocational technical school with a valid written purchasing agreement is listed in the computerized contract file. ~~Home counselors will authorize directly to the client for training services when the client is attending Moore/Norman Technology Center or Pontotoc Technology Center.~~

(b) Continued eligibility of a client in training at a public vocational school will be based on the client's performance in respect to grades, progress and attendance. The minimum standards used by the training facility for satisfactory progress in respect to grades and attendance will be utilized by DVR and DVS staff in determining the progress of the client.

(1) DVR and DVS sponsored clients attending public vocational technical schools who withdraw or fail course work will be required to pay for like credit or clock hours during the following enrollment period.

(2) A client who fails to meet agency sponsorship guidelines for training at public vocational technical schools may continue to receive services not requiring client participation in cost of services.

(3) A client failing to meet agency sponsorship guidelines may be approved by the home counselor if there are extenuating circumstances.

(4) A client failing to meet agency sponsorship guidelines will be contacted as soon as appropriate to complete a program review to determine if a change in services, vocational goal or objective is needed. A client failing to meet chosen goals will not have her/his case closed until the counselor has provided counseling and guidance and has determined that a change in the IPE is inappropriate. The counselor should investigate the need for further vocational and/or educational evaluation to explore alternative employment goals.

612:10-7-166. Tutorial training

(a) Counselors may provide tutorial training for clients with severe disabilities who cannot receive training by another method or who may need assistance to complete a formal training course satisfactorily.

(b) Persons chosen to provide tutorial training for clients must have the necessary skills to provide assistance to the client and be willing to provide the training at a time and place suitable to the client. Examples of proof of necessary skills are the following:

(1) Letter of recommendation from college or university
(2) Teaching certificate
(3) Transcripts

PART 17. SUPPORTED EMPLOYMENT SERVICES

612:10-7-182. Competitive employment for supported employment clients

Competitive employment for supported employment clients is performed on a full-time or part-time basis in an integrated setting, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual. The individual is compensated at or above minimum wage, but not less than the customary or usual wage paid by the employer for the same or similar work performed by individuals who are not disabled. This will in no way preclude services to individuals who are unable to work up to this guideline before the "Stabilization" Milestone. Counselors will review the cases of individuals working less than 20 hours per week no less than every 90 days and document the appropriateness of the existing weekly goal until transition to extended services. The ~~closure amendment~~counselor will document any significant differences in the ultimate work week achieved as compared with the predicted goal.

PART 23. SELF-EMPLOYMENT PROGRAMS AND OTHER SERVICES

612:10-7-230. Self-employment programs

Self-employment programs may be divided into Small Business Enterprises, and the Business Enterprise Program.

(1) **Small Business Enterprise.** Small Business Enterprise refers to a small business operated by an individual with a disability. Such businesses must include suitable and practical work activities for the most effective utilization of the skills and aptitudes of the person with disabilities. It will provide employment commensurate with the client's time, cost, and other economic factors. Plans ~~including services~~ of this nature in excess of $10,000 require supervisory approval. Services of this type may be provided if the criteria in (A) ~~through (C)~~ and (B) of this Paragraph are met.

~~(A) It is determined suitable employment is not available for the individual in his or her locale;~~

(~~B~~A) The client has the proper skills and managerial ability to succeed in the trade or occupation for which the services are provided; and

(~~C~~B) The client has adequate resources available for the proper maintenance and upkeep of the required tools, equipment, and stocks. The client~~, or client's family or authorized representative as appropriate,~~ is responsible for the maintenance and repair of any tools, equipment, and stocks.

(2) **Business Enterprise Program.** The Business Enterprise Program refers to those services available to establish vending facilities for persons who are blind or visually impaired through the Randolph-Sheppard Act as described in OAC 612:25.

612:10-7-230.1. Definitions

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

"Contract Labor" Employment is contract labor when the client has a contract or ongoing business with a company or person to provide a specific product or service for a fee. The service or product is produced to meet that vendor's specifications and needs. The purchasing company often supervises the work.

"Self-Employment" Self-Employment is defined as follows: The consumer owns, manages and operates a business selling goods or services for the purpose of making a profit. Self-employment ranges from sole proprietorships and independent contractors to multi-employee companies and independent franchise operations.

"Self-employment costs" The cost of starting and maintaining or retaining the business as addressed in the business plan. This ~~but~~ does not include training, business plan development, ~~or~~ assistive technology, or disability related job site or vehicle modifications, which are addressed as separate services in the Individualized Plan for Employment.

"Small Business" DRS defines small business as any approved business plan under $100,000.00

612:10-7-230.2. Self-Employment Guidelines

(a) **Agency Role.** The role of the VR Agency is not to become the funding source for self-employment endeavors. DRS may participate in partially funding small business start-up or the retention of an existing consumer owned and operated business, but does not have a capital or loan program for the establishment or retention of businesses. These investment resources must come from other sources. DRS will assist the consumer in making informed decisions, reduce or eliminate the barriers created by the disability(ies), training regarding small business development/self-employment, and assisting the individual in identifying possible funding resources.

(b) **When to Consider Self-employment.** The counselor may consider self-employment as an employment goal when all of the following guidelines have been met.

(1) The income derived from a self-employment plan is to be the primary source of support.

(2) It is the consumer's informed choice consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities and interests.

(3) When a consumer expresses interest in self-employment, the individual will be required to participate in a vocational assessment with focus on self-employment potential.

(4) The counselor will document, as appropriate, in the comprehensive assessment that the client has the academic, communication and managerial skills to manage their own business and the resources to demonstrate a likelihood of success.

(c) Once it has been determined that self-employment is a feasible goal, the counselor will follow DRS Policy regarding self-employment/business plans.

612:10-7-230.3. Self-Employment/Business Plans

(a) Each individual, requesting Agency assistance with self-employment, is required to complete and submit a business plan that details at a minimum the following:

(1) Complete description of the proposed business.

(2) Business objectives.

(3) Ownership.

(4) Market Analysis.

(5) Marketing Plan.

(6) Financial Management Plan including personal finance sheets, projected expenses and income for at least 2 years.

(7) Specific listing of needed start-up costs and equipment.

(8) Specific listing of the type and amount of assistance the consumer is requesting from the State VR Program.

(9) Information regarding cost and coverage of insurance policies to cover liability, inventory, and equipment.

(b) Counselors will refer individuals to the local Small Business Development Center for assistance in developing a business plan. As appropriate the counselor may utilize other technical assistance services to aid the consumer in developing the business plan.

(c) If the individual has submitted a viable business plan and the cost of the business plan to the agency, is $10,000.00 or less the counselor may approve the request. If the agency's cost will exceed $10,000 the counselor will refer the request to their immediate supervisor for approval.

(d) Certain individuals may require on-going supports or services for a business plan to be successful. The counselor will assist the individual in identifying and securing these support services. DRS cannot be responsible for funding these supports following successful employment outcomes.

SUBCHAPTER 9. REHABILITATION TEACHING SERVICES

PART 1. GENERAL PROVISIONS

612:10-9-2. Consumer rights

(a) **Rights.** Each person applying for services will be given full consideration of his/her needs as they relate to the Rehabilitation Teaching Program. No one will be denied services based on his/her age, race, sex, creed, color, or national origin. ~~The consumer has the right to participate in the development of the IRP and all subsequent amendments. An IRP will be written for each consumer determined eligible for services.~~ Each consumer determined eligible for services through any Rehabilitation Teaching Program has the right to participate in the development of the Individualized Plan for Employment (IPE) or the Individualized Rehabilitation Program (IRP as outlined in Section 612:10-11, Older Blind Program) as well as all subsequent amendments.

(b) **Right of appeal.** The consumer has the right to appeal the decision of the ~~teacher~~Specialist. If a meeting with the Programs Manager is requested by the consumer, a time and

place convenient for the consumer will be selected. The results of the conference will be placed in writing and a copy placed in the case folder. The rehabilitation ~~teacher~~Specialist is required to advise the consumer of the Client Assistance Program (CAP) and adhere to 612:10-1-6. The Rehabilitation ~~Teacher~~Specialist will provide copies of such brochures in consumer's chosen format.

612:10-9-3. Rehabilitation of the Blind Specialist's role

The primary goal of the Rehabilitation of the Blind Specialist is to provide evaluation, instruction, and guidance to assist individuals who are legally blind to live more independently with their loss of vision. Services through the Rehabilitation Teaching Program can be provided through Title I as a homemaker case or as a joint case with the Rehabilitation Counselor or through the Older Blind Program outlined in Section 612:10-11.

(1) **Relationship to Programs Manager.** The specialist is directly responsible to his/her Programs Manager on all casework and office procedures. The Programs Manager will consult with the Coordinator of Instructional Services on the ~~teacher's~~specialist's progress or needs. When a problem or situation arises needing attention, but is not within the scope of the ~~teacher's~~specialist's area of responsibility, the ~~teacher~~specialist must bring it to the attention of the Programs Manager.

(2) **Coordinator of instructional services.** The specialist may need to consult with the Coordinator of Instructional Services for advice and/or assistance in providing services to clients. Special areas of consultation will include:

(A) Services to the deaf-blind.
(B) Services to the aging-blind.
(C) Teacher supplies
(D) Braille or taped material.
(E) Program evaluation.
(F) In-service training.
(G) Orientation and mobility.
(H) Reviews.

(3) **Case transfers.** When it has been determined a consumer has moved from one specialist's area to another and a transfer is in the best interest of the consumer and agreed upon by the consumer, specialist and Programs Manager, the case will be transferred. All cases must be reviewed and signed by the sending specialist's Programs Manager prior to transfer.

(4) **Confidentiality.** All consumer information is confidential and will be treated according to instructions in 612:10-1-5.

SUBCHAPTER 11. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

PART 1. SCOPE OF SERVICES

612:10-11-1. Purpose

(a) Older Blind Independent Living Services ~~(OL)~~(OB) is a formalized program of services with the purpose of enhancing the ability of an individual with severe vision loss to live independently and function within his/her family and community. Older persons who have vision loss remain more independent when they learn new skills to help them adjust to blindness and make the most of their remaining vision. Through one-on-one instruction, they remain independent or reach this goal which increases confidence, self-esteem and quality of life.

(b) Personal adjustment services through ~~OL~~OB is defined as services that allow control of one's life based on the choice of acceptable options which minimize reliance on others in decision making and in performing every day activities.

612:10-11-2. Basic eligibility requirements

(a) There are three basic criteria for eligibility for ~~OL~~OB services:

(1) the consumer's primary disability is defined as legal blindness;

(A) Legal blindness is defined as a Visual Acuity of 20/200 or less in the better eye with best correction, or a visual field of 20 degrees or less. Best correction means the best visual acuity that can be obtained with normal prescription lenses. If there is a difference in near and distance acuity, the worse acuity is used for determination of eligibility.

(B) Documentation of legal blindness should be obtained from an eye care physician. If only a general medical report is available stating legal blindness or if documentation is unobtainable, a functional assessment consisting of a detailed explanation of how the consumer functions with distance and near acuity will be provided.

(2) the age of the individual is 55 years or older; and

(3) a reasonable expectation that ~~OL~~OB services will significantly assist the individual to improve his/her ability to function independently.

(b) Eligibility must be determined within 60 days of the date an application for services is submitted. An individual is considered to have submitted an application when the individual, or the individual's authorized representative, as appropriate:

(1) has completed and signed an application form or has verbally requested services;

(2) has provided information necessary to initiate an assessment to determine eligibility; and

(3) is available to participate in the assessment process.

(c) The minimum information necessary to initiate an assessment to determine eligibility consists of:

(1) individual's name;

(2) reported disability;

(3) individual's address, with finding directions when needed;

(4) individual's social security number, if available;

(5) availability of documentation of the reported disability;

(6) agreement between individual and staff person taking application on the next steps to be taken in the application process; and
(7) the age of the individual is 55 years or older.

612:10-11-6. Client participation in cost of ~~OL~~OB services

~~OL~~OB services are available to individuals who are determined eligible for services and who have shown need for multiple rehabilitation teaching services and are not required to participate in their cost. If the consumer wishes to participate in the cost of case service, such expenditures can be negotiated.

612:10-11-7. Administrative review

Any individual who is an applicant or client of ~~OL~~OB services must be advised of his/her right to request a timely review or a re-determination of any action taken by DRS staff. The review will be conducted by the Administrator for Visual Services or his/her designee, who shall respond to the applicant or client in writing with the findings and conclusions of the review.

PART 3. CASE PROCESSING

612:10-11-27. Inter-program transfers

Cases cannot be transferred in the usual manner between the DRS traditional services program and the ~~OL~~OB services program.

PART 5. PROVISION OF SERVICES

612:10-11-39. Physical restoration service

Physical restoration service available to individuals eligible for ~~OL~~OB service is provision of prescriptive eye glasses where correction does not improve above the legal blindness level.

612:10-11-41. Transportation

(a) Transportation is considered to be incidental to the provision of other ~~OL~~OB services. Transportation is a supportive service provided in conjunction with one or more other ~~OL~~OB services necessary to achieve the goals established in the ~~IRP~~IPE. It is never provided as the sole service.
(b) When transportation is required, it will be provided by the most economical source available after all other resources have been exhausted. Authorization may be made directly to the client or to the individual who provides the transportation.

612:10-11-42. Interpreter services

(a) Interpreter services including tactile interpretation for individuals who are deaf-blind may be purchased for clients who are deaf and hearing impaired when necessary to enable them to benefit from ~~OL~~OB services. Rate of pay will be determined by rates adopted by the commission for Rehabilitation Services.
(b) Special telecommunications services and devices for the hearing impaired are also available.
(c) Interpreter services may also be provided to individuals who do not speak English and/or who have a speaking impairment. The rate of pay for interpreter services of this type will be determined by the DRS commission.
(d) Interpreter services are authorized directly to the individual who will provide the service.

612:10-11-44. Orientation and Mobility services (O&M)

O&M services assist consumers to adjust to their surroundings and learn to move around safely in one's home or community. ~~OL~~OB consumers can be referred for evaluation and training.

612:10-11-49. Referral services

The Department will refer individuals as appropriate to other sources for assistance when the required service is beyond the scope of the ~~OL~~OB services or the service can best be provided by another agency. Referrals will be made in a timely manner and followed to determine the results of the referral. Such referrals can assist in connecting the consumer with other agencies/organizations within the vision field and outside the field such as agencies serving the elderly, the health system, and home health care.

[OAR Docket #07-981; filed 5-9-07]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 10. VOCATIONAL REHABILITATION AND VISUAL SERVICES

[OAR Docket #07-982]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
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ANALYSIS:
These changes involve converting our computer system from Oklahoma Rehabilitation Management Information System (ORMIS) to Accessible Web-based Activity and Reporting Environment (AWARE). The new system will not accept status numbers so the numbers are being dropped.
CONTACT PERSON:
Larry Bishop, Policy Development Administrator, Department of Rehabilitation Services, 3535 N.W. 58th, Suite 500, Oklahoma City, OK 73112 (405) 951-3408

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2007:

SUBCHAPTER 3. CLIENT PARTICIPATION IN COST OF SERVICES

612:10-3-4. Services exempt from client participation in service costs

(a) DVR and DVS clients who have income and assets above the basic living requirements will be required to apply surplus resources to the cost of rehabilitation services~~, including status 06,~~ except for the following services which do not require a determination of financial status:

(1) services provided to assess eligibility and rehabilitation needs (services which would require the individual's participation in cost under an IPE will also require the individual's participation in cost during an evaluation of the individual's ability to benefit from VR services);
(2) counseling, guidance, referral, and other services provided directly by DVR and DVS staff;
(3) on-the-job training;
(4) personal or work-adjustment training;
(5) reader services;
(6) interpreter services;
(7) personal assistance services;
(8) job placement;
(9) compensatory training;
(10) job coaching services (i.e., supported employment, employment and retention, transitional employment); or
(11) library services.

(b) Recipients of Social Security benefits under Titles II (federal old age, survivors, and disability insurance benefits) or XVI (~~SSDI and~~ SSI) of the Social Security Act do not have to participate financially in the cost of their rehabilitation program.

~~(c) Recipients of SSDI (Social Security Disability Insurance) Adult Dependent Child Survivor Benefits Title IIIII Sec. 202 (d)(1)(C) and 223 (d) of the Social Security Act do not have to participate financially in the cost of their rehabilitation program.~~

SUBCHAPTER 7. VOCATIONAL REHABILITATION AND VISUAL SERVICES

PART 1. SCOPE OF VOCATIONAL REHABILITATION AND VISUAL SERVICES

612:10-7-2. ~~Counselor's~~ Field Office responsibilities

(a) The counselor is responsible for contacting each referral within 30 days of receipt of the referral information. The counselor is responsible for completing a contact by telephone or in person. The counselor is responsible for providing interpreter services to applicants who are deaf or non-English speaking.

(b) The rehabilitation counselor is responsible for the determination of an individual's eligibility to receive services from DVR or DVS. Individuals who are legally blind are to be referred to the appropriate rehabilitation teacher for determination of eligibility for the rehabilitation teaching program. In cases where the counselor has difficulty in making an eligibility determination, the counselor will consult with the supervisor. For further clarification, the case will be reviewed by the field coordinator for a decision. All cases referred must be accompanied by all available medical information and sufficient social and vocational information. The rehabilitation teacher is responsible for the determination of an individual's eligibility to receive services from the Rehabilitation Teaching Program. The counselor will apply eligibility criteria to all applicants in an equitable manner, without regard to race, age, sex, color, creed, national origin or disability type.

(c) The counselor always considers the primary and basic vocational rehabilitation service as counseling and guidance with job placement. Any service beyond this must be justified as necessary to compensate, correct or circumvent an impediment to employment. Every IPE must include a plan of counseling and guidance services. Regular documentation of counseling sessions will be included in every DVR and DVS case.

(d) The rehabilitation counselor is to ensure that the client is a full participant in the decisions that are made concerning his or her vocational rehabilitation. This responsibility is carried out by providing the individual with as much relevant information as is available so that the individual, and/or the individual's authorized representative, can exercise informed choice consistent with the Department's policies. The minimum information concerning service choice to be supplied includes:

(1) service cost;
(2) available service providers;
(3) service accessibility;
(4) expected duration of services;
(5) consumer satisfaction with the services in question, to the extent that such information is available;
(6) qualifications of potential service providers;

(7) the types of services offered by the potential service providers;

(8) the degree to which services are provided in integrated settings; and

(9) outcomes achieved by individuals working with the service provider, to the extent such information is available.

(e) The individual will be notified in writing of any adverse determination made by professional staff concerning that individual's case. This notification will be made in a timely manner, and in a manner that supports the individual's right to due process.

(f) The counselor will complete a financial status determination form prior to the provision of any service (other than exempt services listed in 612:10-3-4) to determine if the client will be required to participate in the cost of services.

(g) ~~An individual must be in status 06, 16 through 24 or 32 before any non-diagnostic service is authorized.~~ A non-diagnostic service authorization will not be issued until after the service has been included in the IPE or ~~amendment~~ in a plan for extended evaluation or trial work experience.

(h) All Department authorizations are made in compliance with the state purchasing policy under legal authority of the Director or by an employee to whom the Director has delegated such authority. The counselor will verify the client has received any tools, equipment, or durable medical goods purchased with DVR and DVS funds and, when appropriate, complete the Receipt for Equipment and Title Agreement.

(i) The counselor will inform each individual of his or her rights and responsibilities as an applicant or client of DVR and DVS. Cross reference 612:10-7-150

(j) The Department of Rehabilitation Services (DRS) has an obligation under state and federal law to provide services in a fair and impartial manner. State Ethics Commission Rules state that the proper operation of state government requires that the state employee be independent and impartial; that state employees not use state office to obtain private benefits; that a state employee must avoid action which creates the appearance of using state office to obtain a private or inappropriate benefit; and that state employees exercise their powers without prejudice or favoritism.

(k) The counselor is limited in determining eligibility for services for friends or relatives. At the time of application or referral, if in the counselor's judgment, the individual is familiar to the point of friendship, the counselor must immediately disclose this relationship to their supervisor in writing and obtain approval before determining eligibility. If the applicant is related by blood or marriage, the counselor must immediately refer the case to another counselor, if available. If no other counselor is available, the counselor must notify their supervisor immediately for appropriate case assignment. The counselor should also disclose the potential conflict of interest to the applicant and explain the reason for the potential delay of eligibility determination. The counselor must not only be impartial in the determination of eligibility but also act so that there can be no question of impartiality. The technician must also disclose to the counselor any relationship with the applicant that might create a conflict of interest. The counselor will then contact the Program Manager to see if the case can be worked without partiality or transferred to another counselor.

(l) The counselor will assess the stability of an individual's disability throughout the case to evaluate their ability to achieve their vocational objective and successfully achieve an employment outcome. If the goal is determined to be no longer realistic, the counselor must re-evaluate the IPE in order to make necessary and appropriate changes with the client. Provision of services must be aimed at removing, substantially modifying or compensating for restrictions, limitations, or impediments.

612:10-7-6. Assessment for determining eligibility

(a) To determine whether an individual is eligible for vocational rehabilitation services :

(1) the counselor will use to the maximum extent possible and appropriate existing information that is current as of the date of the determination of eligibility or of the development of the IPE (for the purposes of this Section, current means that there has been no appreciable change in the individual's condition as described in the obtained documentation); and

(2) to the extent necessary provide appropriate assessments, including provision of goods and services during the assessment, to obtain additional documentation necessary to make the determination of eligibility and priority group assignment. The counselor will carefully evaluate the need to provide assistive technology devices and services or worksite assessments.

(b) The counselor will determine whether an individual is eligible for vocational rehabilitation services within a reasonable period of time, not to exceed 60 days after the individual has submitted an application for services. This time period may be extended only when unforeseen and exceptional circumstances beyond the control of the Department preclude completing the determination of eligibility within the 60 days and the individual agrees a specific extension of time is warranted as documented on the Need for Extension of Time to Determine Eligibility form; or a trial work period or an extended evaluation is needed to determine the individual's ability to benefit from VR services.

(c) The counselor must carefully assess the usefulness of any records obtained based upon the nature of the disability; the relevance and completeness of information contained in the records; and the nature and outcome of treatment, or other services, received by the client.

(d) Documentation that the individual has a disability which constitutes or results in an impediment to employment must come from professionals qualified in accordance with State law to diagnose the reported disability, except as provided in 612:10-7-4(b).

(e) Diagnosis and evaluation are to be provided only for determination of eligibility for VR services, priority group placement, and determination of VR service needs. DVR and DVS funds are not to be used to assist an individual in establishing eligibility for other programs.

(f) When necessary, diagnostic evaluations may be purchased at any time during the life of the case. Diagnostic

procedures that require hospitalization must be approved by the program manager.

(g) If an individual is determined eligible, the VR counselor will notify the individual in writing. If the individual is determined to be ineligible, counselor will close the case ~~using the Notification of Case Closure form~~.

(h) A qualified rehabilitation professional can proceed with an assessment of eligibility if there is an obvious and/or observable disability. An interim decision based on an observable disability must be followed up with medical records.

PART 3. CASE PROCESSING REQUIREMENTS

612:10-7-35. Processing of referrals and the information and referral system

(a) **Processing incoming referrals.** All referrals to DVR and DVS will be contacted by the VR counselor and appropriate action taken within 30 days, after receipt of the referral information. The counselor is responsible for completing a contact by telephone or in person. The counselor is responsible for providing interpreter services to referrals who are deaf or non-English speaking. In situations where the individual cannot be personally contacted, correspondence will be mailed to the individual for informational purposes. All attempts to contact the referral must be documented fully in the case record.

(b) **When a referral becomes an application.** If a referral requests services in accordance with 612:10-7-47, the individual's case is placed in ~~status 02~~ application status.

(c) **Referrals to rehabilitation teachers.** All individuals who are legally blind, whether being served by a DVR counselor or a DVS counselor, will be referred to a rehabilitation teacher on the Special Services Referral form. Relevant information will include copies of the Initial Interview narrative recording, medical information, Eligibility Data Entry form, Individualized Plan for Employment, pertinent copies of Case Narratives and Vocational Rehabilitation and Visual Services Application form. On receipt of a referral from a rehabilitation teacher, the counselor will contact the referral and make a determination of potential for counselor services. The teacher will be informed in writing of the counselor's findings.

(d) **Information and referral system.** DVR and DVS staff will ensure that individuals with disabilities are provided accurate vocational rehabilitation information and guidance, using appropriate modes of communication. This information and guidance will be used to assist the individual in preparing for, securing, retaining, or regaining employment. Staff will also ensure that individuals with disabilities are appropriately referred to Federal and State programs, including other components of the workforce investment system. An appropriate referral shall:

(1) be to the Federal or State program(s) best suited to address the specific employment needs of the individual; and

(2) include, for each involved program, provision to the individual of:

(A) a notice of the referral from DVR or DVS to the agency responsible for the program;

(B) information identifying a specific point of contact within the agency responsible for the program; and

(C) information and advice regarding the most suitable services to assist the individual.

PART 5. CASE STATUS AND CLASSIFICATION SYSTEM

612:10-7-45. Case statuses and case flow

(a) ~~As a case moves through the rehabilitation process the major activities being conducted at any given time are reflected by the status classification system. Under this system, there are 16 statuses.~~ The case management system is comprised of a logical flow from one status to another as a customer progresses through the rehabilitation process. This system covers the life cycle of a case from referral and application through eligibility, plan, employment, closure, and post employment services.

(1) ~~02 applicant~~Application

(2) ~~06 trial work experience to determine ability to benefit from VR services~~ Trial Work Experience and Extended Evaluation

(3) ~~08 closed not accepted (from statuses 02 or 06)~~ Closed ineligible from application status

(4) ~~10 accepted for services and IPE under development~~ Eligibility: accepted for services; plan development phase

(5) ~~12 IPE completed but not initiated~~ IPE developed

(6) ~~14 counseling, guidance and placement~~ Services completed and ready for employment

(7) ~~16 physical and mental restoration~~ Employed

(8) ~~18 training~~ Closed, rehabilitated, Successful employment for at least 90 consecutive days

(9) ~~20 ready for employment~~ Closed, not rehabilitated after IPE initiation

(10) ~~22 in employment~~ Closed, not rehabilitated before IPE initiation

(11) ~~24 services interrupted~~ Post employment services

(12) ~~26 closed rehabilitated~~ Post employment services completed

~~(13) 28 closed not rehabilitated after IPE initiation (from statuses 14-24)~~

~~(14) 30 closed not rehabilitated before IPE initiation (from statuses 10 or 12)~~

~~(15) 32 post employment services~~

~~(16) 33 post employment services completed~~

~~(b) Changes in case status are documented in the case record and the client information system is updated to reflect what has been documented in the record. The designated status of a case will reflect the major activity occurring in the process at the time.~~

(~~c~~b) ~~Any~~No case action~~, including status change,~~ is ~~not~~ effective until all required approvals have been obtained in accordance with policy. The effective date of any case action

~~status change~~, including closures, is the date the last required ~~signature or other form of~~ approval is obtained in accordance with policy.

612:10-7-47. ~~Status 02 - applicant~~Application Status

(a) **Application for services.** ~~Referrals will be placed in status 02 as soon as the individual submits an application with the Department.~~ An individual is considered to have submitted an application when the individual, or the individual's authorized representative, as appropriate:

(1) has completed and signed an application form or has otherwise requested services (includes, but is not limited to requests made verbally, by telephone, in writing, by facsimile, etc.);

(2) has submitted the application form, or other documentation meeting the requirements of paragraphs (a) & (b), to the receiving office where it will be date-stamped;

(3) has provided information necessary to initiate an assessment to determine eligibility and priority for services; and

(4) is available to complete the assessment process.

(b) **Necessary information.** The minimum information necessary to initiate an assessment to determine eligibility and priority for services consists of:

(1) individual's name;

(2) reported disability;

(3) individual's address, with finding directions when needed;

(4) individual's social security number, if available; and

(5) availability of documentation of the reported disability.

(c) **~~Use of status 02~~Application Status.** While the client is in this status, the counselor will secure sufficient information to make a determination of eligibility and priority group assignment, determine ineligibility for vocational rehabilitation services, or to make a decision to ~~put the client into status 06~~conduct a Trial Work Experience or an Extended Evaluation. The VR Professional will determine whether an individual is eligible for vocational rehabilitation services within a reasonable period of time, not to exceed 60 days from the date of application. [612:10-7-6]

(d) **Case recording requirements - initial interview.** One of the significant steps in the case process is recording the initial interview. Pertinent information is recorded on the client information sheet and in a narrative recording. This assists the counselor in summarizing the significant information known about the client. The client information sheet will indicate the available background information such as social, vocational, psychological, medical and educational data; as well as the basis for application. The narrative recording includes factors affecting the individual's rehabilitation needs and goals, counselor's impressions, and counselor/teacher and client plans. The counselor will address such significant factors as client's appearance, social skills, attitudes, communication skills, etc. Counselor will also include any impressions concerning potential eligibility and other significant environmental factors that may have impact on the planning and provision of services. Outline the next steps to be taken in the vocational rehabilitation process, including time frames and specific responsibilities.

(1) The record must document that the applicant or representative was provided an explanation of his/her rights and responsibilities and given a copy of the CAP brochure and a "A Personal Directory: Your Rights and Responsibilities as an Applicant or Client for Vocational Rehabilitation or Visual Services."

(2) The counselor's perceptions are extremely important during the initial interview since most of the information, attitudes, and impressions gathered during the initial interview will have a major impact on the rehabilitation process.

612:10-7-48. ~~Status 06 - trial work experience~~Trial Work Experience and Extended Evaluation

(a) **Use of ~~status 06~~trial work experience and extended evaluation.** A case may not be closed because the severity of the individual's disability makes the person incapable of benefiting in terms of an employment outcome unless trial work experience or extended evaluation is done and provides clear and convincing evidence that the individual cannot benefit in terms of an employment outcome. ~~The trial work experience shall be provided in the most integrated setting possible, consistent with the individual's informed choice, and shall be of sufficient variety and duration to determine the eligibility of the individual or to determine the existence of clear and convincing evidence that the individual is incapable of benefiting from VR services in terms of an employment outcome. Cases may not remain in this status more than 18 months. An assessment of the individual's progress is required as frequently as necessary but at least once every 90 days. The assessment will include periodic reports from the institution, facility or person providing the services to determine the results of the provision of such services and to ascertain whether the individual may be determined to be eligible or ineligible. The assessment summary will be recorded on a case narrative form. The trial work experience is to be stopped at any point during the 18 months if there is clear and convincing evidence that the individual is incapable of benefitting from vocational rehabilitation services in terms of an employment outcome, or the individual is determined to be eligible for VR services.~~

(b) The trial work experience shall be provided in the most integrated setting possible, consistent with the individual's informed choice, and shall be of sufficient variety and duration to determine the eligibility of the individual or to determine the existence of clear and convincing evidence that the individual is incapable of benefiting from VR services in terms of an employment outcome. Cases may not remain in this status more than 18 months. An assessment of the individual's progress is required as frequently as necessary but at least once every 90 days. The assessment will include periodic reports from the institution, facility or person providing the services to determine the results of the provision of such services and to ascertain whether the individual may be determined to be eligible or ineligible. The assessment summary will be recorded on a case narrative form. The trial work experience is to be stopped at

any point during the 18 months if there is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome, or the individual is determined to be eligible for VR services.

(c) Extended evaluation is available for individuals with the most significant disabilities who cannot take advantage of trial work experiences or if the options for trial work experiences have been exhausted before DVR or DVS is able to conclude, by clear and convincing evidence, whether the applicant is able to benefit from vocational rehabilitation services due to the severity of their disabling condition(s). Trial work experiences remain the first option by which to assess an individual's ability to benefit from VR service. Extended evaluation is not meant to be a routine alternative to trial work experiences, but is to be used only as a last resort and under limited circumstances. An individual may be determined unable to take advantage of a trial work experience if there is a need for substantial restoration services prior to entering a work environment. Extended evaluation involves the development of a written plan which provides only those services necessary to make a determination of eligibility.

(~~b~~d) **Case recording requirements.** The counselor will document the case record according to the criteria and recording standards in (1) - (5) of this Subsection.

(1) **Justification that a trial work experience or an extended evaluation is required.** It shall be presumed that an individual can benefit in terms of an employment outcome from vocational rehabilitation services unless clear and convincing evidence demonstrates otherwise. The use of trial work experiences or extended evaluations is to be limited solely to those extraordinary situations in which the preponderance of evidence obtained in the normal manner is sufficient to challenge the presumption of benefit due to the severity of the disability. Documentation and case recording must clearly support the determination that this preponderance of evidence exists, and that trial work experience is necessary to make the eligibility determination.

(2) **Plan for trial work experiences or extended evaluations.** Services related to the trial work experience or extended evaluation will be planned by the counselor and individual, or the individual's authorized representative~~, in an agreement letter~~. The ~~agreement letter~~ trail work experience or extended evaluation plan will describe the services necessary to obtain clear and convincing evidence concerning the presumption of benefit. The document will include the purpose and rationale for the plan, the list of services to be provided, the chosen service providers, the payment sources for the services, and the criteria and schedule for evaluating progress. ~~Each service is to be listed in a separate statement which will state the service, service provider, payment source for the service, and the duration of the service.~~ The ~~agreement letter is a~~ plan ~~of services, and~~ will require the signature of the individual, or the individual's authorized representative, and the counselor. Other administrative approvals may also be necessary. The individual will be given a copy of the plan. The progress review conducted at least every 90 days is summarized on a case narrative form.

(3) **Termination of trial work experience or extended evaluation - eligible.** When an individual is determined to be eligible for services, process the case according to 612:10-7-4 through 612:10-7-6, and 612:10-7-50.

(4) **Termination of trial work experience or extended evaluation - ineligible.** ~~When an individual is determined to be ineligible for services, a Notification of Case Closure form is executed.~~ The trial work experience or extended evaluation must provide clear and convincing evidence that the individual cannot benefit from vocational rehabilitation services in terms of an employment outcome to close the case as ineligible because the individual's disability is too severe. When closing a case as ineligible, the counselor will follow all procedures presented in 612:10-7-49 and 612:10-7-7.

(5) **Amendments.** An amendment to the ~~agreement letter~~ plan is made stating all new decisions, facts, and planned services not already covered in the original trial work experience or extended evaluation plan.

612:10-7-49. ~~Status 08 - closed not accepted (from statuses 02, or 06)~~Closed - Not Accepted for Services

(a) **~~Use of status 08~~Not accepted for services.** ~~Status 08 has been provided to have a means for identifying all persons~~ This status is used for closing cases in which the individual is not accepted for vocational rehabilitation services, whether closed from applicant status ~~02~~ or ~~status 06~~ from an extended evaluation or a trial work experience status. There are two major categories of closure ~~into status 08~~:

(1) **Closure due to ineligibility.**

(A) Disability too severe (from ~~06~~ Trial Work Experience or Extended Evaluation only) or unfavorable medical prognosis.

(B) No disabling condition.

(C) No impediment to employment.

(D) Rehabilitation services are not required for an employment outcome.

(2) **Closure due to other reasons.**

(A) Unable to locate.

(B) Moved out of state.

(C) Refused services or further services.

(D) Death.

(E) Client institutionalized.

(F) Transfer to another agency.

(G) Failure to cooperate.

(H) Transportation not feasible or available.

(I) Client did not meet order of selection criteria.

(J) Other reasons.

(b) **Personal contacts.** Personal contacts are made with all persons closed in this status ~~08~~, if possible, and the results of those contacts are recorded in ~~the~~a case narrative. If the applicant cannot be contacted, all attempts to contact are recorded.

Contacts are not required if the individual has refused to participate, is no longer a resident of Oklahoma, whereabouts are unknown, or the condition is rapidly progressive or terminal.

(c) **Case recording requirements.** ~~Closure into status 08 is made on Notification of Case Closure form. All significant information obtained since the date of referral will be summarized on this form. The summarizations will include the results of counseling activities, efforts made to encourage the applicant, other resources to which the applicant was referred, and the basis on which the decision was made to close the case in this status.~~ All applicants whose cases are closed in this status should be notified in writing, with the exceptions noted in sub-paragarph (b). A case is closed ~~in status 08~~ due to ineligibility only with full participation of the applicant, the applicant's parent, guardian, or other representative unless the individual has refused to participate, is no longer a resident of Oklahoma, whereabouts are unknown, or the condition is rapidly progressive or terminal. The rationale for the ineligibility decision is recorded on the ~~form~~ closure letter including the views of the applicant or appropriate representative. A copy of the ~~form~~ letter is given to the applicant or appropriate representative with a detailed explanation of the services available from the Client Assistance Program no matter the reason for closure. It is presumed an individual can benefit from rehabilitation services in terms of an employment outcome. Evidence to the contrary can only be obtained through trial work experience or extended evaluation. Procedures for annual review of ineligibility are to be explained to the applicant or appropriate representative in an understandable form. ~~If a case has been closed from any status, with or without a previous period of trial work experience, it may be reopened for an additional period of trial work experiences. The case must meet all of the requirements listed in 612:10-7-47 and 612:10-7-48.~~

612:10-7-50. ~~Status 10~~Eligibility - accepted for services and IPE under development

(a) **~~Use of status 10~~ Use of Eligibility Status.** An active case is defined as one which has been accepted as meeting the basic eligibility requirements ~~and placed in one of the statuses 10 through 24~~. An individual who is placed in an order of selection priority group that is not currently being served will be placed ~~in status 10~~ on a waiting list and held there pending further directives from the Director concerning opening or closing of priority groups. ~~While an individual is in status 10~~ Once an individual is determined eligible, the comprehensive assessment is completed to provide a basis for the formulation of the client's IPE. The comprehensive assessment is used to determine the client's employment goal, and the scope and nature of services to be provided to accomplish the ~~vocational objective~~ employment goal of the client. The counselor records activities during this period by individual entry or by summary recording at regular intervals ~~on the~~ in case ~~narrative form~~ narratives. Copies of pertinent case information will be shared with all DVR or DVS professionals involved in the case. Pertinent case information will also be shared with contracted vendors, when appropriate, with a release signed by the client. During the provision of services, the counselor and teacher will share pertinent information including narrative recording. If an IPE cannot be developed during this period, the client's case is closed ~~in status 30~~ with a full explanation to the client and documentation as to the reason for closing the case. This documentation will be completed on ~~the Notification of Case Closure form~~ a closure letter and a copy given to the client. The counselor may not find an individual ineligible for supported employment services because a resource for providing extended services cannot be identified. In this instance, the counselor will:

(1) accept the individual as eligible for VR services;

(2) plan VR services as appropriate, including the expected availability of extended services; and

(3) seek out and/or help in developing the needed extended services resource.

(b) **Case recording requirements.**

(1) **Notification of eligibility.** The VR counselor will discuss eligibility with the individual, and provide a written notification of eligibility and priority group placement to the individual.

(2) **Comprehensive assessment.** A comprehensive assessment will be done in every case. It is conducted once the individual has been accepted as eligible for VR services. Additional assessments may be obtained for the comprehensive assessment to the extent information additional to that already obtained is necessary to determine the vocational rehabilitation needs of the individual and to develop the IPE. Existing information, and information supplied by the individual, or the individual's authorized representative, is to be used for the comprehensive assessment to the maximum extent possible. Rehabilitation technology will be used in the comprehensive assessment when necessary to assess and/or develop the capacities of the individual to perform in a work environment. The results of the comprehensive assessment and the VR Counselor's analysis of them will be recorded in a case narrative titled "Comprehensive Assessment". This case narrative will contain reasonable justification of the employment goal and services that will be provided in the IPE, considering the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual. For individuals who find selection of a vocational objective difficult because of unsuccessful or limited exposure to work, the counselor may refer the client to a Community Rehabilitation Provider (CRP) or an Independent Living (IL) provider for additional assessments to establish a vocational goal. Employment and Retention (ER) contracts offer standardized, commercial assessments, work skills assessments, as well as short-term situational assessments in community settings. Employment and Retention contractors also provide job readiness services through work experience programs or Job Clubs, as well as benefits analysis to assure the individual understands the effect of work on public benefits.

(3) **The comprehensive assessment for supported employment.** In supported employment cases, the record must document, in a case narrative titled "Comprehensive

Assessment", the counselor's determination that the client is an individual:

(A) for whom competitive employment has not traditionally occurred; or

(B) for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(C) who, because of the nature and severity of the disability, needs intensive supported employment services, and extended services after the transition from intensive supported employment services, in order to perform such work.

(4) **Referral.** The counselor refers the client to a supported employment provider to gather the information necessary to complete the comprehensive assessment, and authorizes the "Assessment and Career Planning" milestone. The provider will conduct situational assessments in community settings based on client choice and negotiations with the counselor, and in accordance with their contract requirements. Results of the assessments will assist the client and counselor in establishing a vocational goal.

(c) **Development of the Individualized Plan for Employment.** The VR counselor will provide the eligible individual, or the individual's authorized representative, in writing and in appropriate mode of communication, with information on the individual's options for developing the IPE.

(1) The required information will include the following:

(A) information on the availability of assistance, to the extent determined to be appropriate by the eligible individual, or authorized representative, from a qualified VR counselor in developing all or part of the IPE, and the availability of technical assistance for this purpose;

(B) a description of the required content of the IPE;

(C) as appropriate:

(i) an explanation of agency requirements for client participation in cost of services;

(ii) additional information requested by the individual or authorized representative;

(iii) information on the availability of assistance in completing DVR/DVS forms required in developing the IPE;

(iv) For cases involving Alcoholism/Drugs, Mental Disorders and Obesity, treatment must be incorporated as a service in the IPE (See 612:10-7-4(e)(1), (7) and (10) respectively).

(D) a copy of a DRS publication addressing client's rights and responsibilities.

(2) For cases in an open priority group, the IPE must be completed and signed as soon as possible, consistent with the needs of the individual, but not more than 90 calendar days following the eligibility determination, unless the individual or the authorized representative and the VR or VS counselor jointly agree to an extension of time of a specific duration. The 90-day time frame for development of the IPE will be applied from the date a closed priority group is reopened.

(d) **Vocational objective.** The primary purpose in providing vocational rehabilitation services is to assist an eligible individual obtain appropriate competitive employment in an integrated setting consistent with the individual's informed choice. The choice of a vocational objective for an individual receiving vocational rehabilitation services must be based primarily upon the individual's strengths, resources, priorities, concerns, abilities, and capabilities.

(1) **Informed choice.** The vocational objective is to be chosen with the full participation of the client. The client's interests and informed choice determine his or her vocational goal to the extent these factors are consistent with the client's strengths, resources, priorities, concerns, abilities, and capabilities.

(2) **External conditions.** Factors such as the local labor market or local economy must also be taken into consideration. However, in most cases these factors cannot be used as the only basis upon which to determine whether a vocational objective is appropriate.

(3) **Currently employed individuals.** When post-employment is not appropriate, the individual's functioning in current employment must be judged against the basic eligibility criteria for vocational rehabilitation services. Services may be provided to an eligible individual who is employed when:

(A) the employment is not consistent with the individual's strengths, resources, priorities, concerns, abilities, and capabilities; and

(B) vocational rehabilitation services are required to assist the individual to obtain an employment outcome consistent with the individual's strengths, resources, priorities, concerns, abilities, and capabilities.

(e) **Non-competitive vocational objectives.** The primary mission of DVR and DVS is to help eligible individuals achieve competitive employment in an integrated work setting. Therefore, careful consideration and planning are required when services are to be provided to achieve a long term goal of non-competitive employment.

(1) **Homemaker.** A homemaker is defined as a person whose primary work is performance of duties related to the upkeep and maintenance of a home. This work takes place in the individual's own home, without remuneration.

(A) The IPE can have a vocational objective of homemaker only when services will directly and substantially improve the individual's ability to perform the primary homemaking work activities for their home.

(B) Self-care activities are not sufficient to meet the definition of gainful occupation. The individual must not be receiving any type of assistance in performing primary homemaking duties.

(C) A vocational objective of homemaker can be established for only one person within the same household.

(2) **Unpaid family worker.** A vocational objective of unpaid family worker is appropriate when services will enable the individual to perform work without pay on a family farm or in a family business operated by one or more members of the client's family. The record must document how the services will substantially improve the productivity of the client and his/her contribution to the family farm or business.

612:10-7-51. ~~Status 12 - IPE completed but services not initiated~~ Individualized Plan for Employment

(a) ~~**Use of status 12.** A case is placed in status 12 following determination of eligibility, placement in an order of selection priority group currently being served, completion of the comprehensive assessment and the Individualized Plan for Employment (IPE) until services are actually initiated.~~ The initial plan is a starting point subject to amendments as a result of changes (health, financial, etc.), availability of DVR and DVS funds, openings at facilities and schools, possibility of a delay in a phase of the plan or changes in Federal and/or State regulations. ~~Only authorizations for diagnosis or evaluation may be issued in Status 12.~~ Diagnosis related to eligibility or the IPE can be provided at any time it is necessary during the life of the case. An IPE is not considered in effect until all required approvals have been obtained in accordance with Department policy.

(b) **General requirements for the Individualized Plan for Employment.**

(1) The IPE documents the client's chosen employment goal, and the planning of vocational rehabilitation services which ~~will lead to achieving the client's chosen vocational goal~~ are necessary to achieve a successful employment outcome. The client will be a full participant in the development of the IPE or any amendments consistent with Federal and State regulations, laws, and statutes. The eligible individual must be given the opportunity to exercise informed choice in selecting an employment outcome, the specific VR services to be provided under the plan, the service providers, and the methods for service delivery. For cases in an open priority group, the IPE must be agreed to and signed by the eligible individual or authorized representative, ~~d~~ approved by a VR counselor and, as appropriate, other administrators employed by DVR or DVS within 90 days of determination of eligibility, unless the individual or the authorized representative of the individual and the VR or VS counselor jointly agree to an extension of time of a specific duration. To the maximum extent possible, the IPE is to be provided in the native language or mode of communication of the individual or, as appropriate, of a parent, family member, guardian, advocate, or authorized representative. It is also required the client receive a copy of the plan and any subsequent amendments.

(2) The IPE is subject to continuous development and change. Substantial changes to the IPE are documented as amendments. A substantial change is broadly defined as any change in the plan affecting or changing the long range goal, or an addition or deletion of a service.

(3) Plan reviews are comprehensive reviews of the entire IPE. A plan review can be done at any time, but must be done at least annually. The client must be given the opportunity to review the plan and, if necessary, participate in its redevelopment and agree to its terms. A financial status determination will be completed at the time of plan review when the IPE includes services based upon client's financial status.

(4) The IPE is to be amended anytime there is a significant change in the employment objective, or in service needs or available resources not accounted for in the original IPE, or existing amendment(s). Available resources include client participation in cost, comparable benefits, and/or DVR/DVS funds. The amount of any client participation in the cost of a service will be based upon the determination of client's financial status completed at the time the relevant IPE or amendment is written, and is to be stated in the IPE or amendment. If services based upon financial status are included in the original IPE and/or in the amendment, a new Financial Status Determination form will be completed when the IPE is amended ~~except for closure amendments~~. A copy of any Amendment to an Individualized Plan for Employment will be given to the client, or client's authorized representative, as appropriate.

(c) **Case recording requirements for the Individualized Plan for Employment.** The required content of the Individualized Plan for Employment consists of:

(1) a description of the specific employment outcome that is chosen by the client consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the client, and to the maximum extent appropriate, results in competitive employment in an integrated setting, and the estimated timeframe for the achievement of the employment outcome;

(2) a description of the specific VR services that are:

(A) needed to achieve the employment outcome including as appropriate, the provision of assistive technology services and devices, and personal assistance services, including training in the management of such services;

(B) provided in the most integrated setting that is appropriate for the service involved and is consistent with the informed choice of the client; and

(C) ~~beginning and ending dates for each service;~~ timelines for the achievement of the employment outcome and for the initiation of services.

(3) a description of the service provider chosen by the client or authorized representative, and the methods of services delivery;

(4) a description of the criteria that will be used to evaluate progress toward achieving the employment outcome;

(5) the terms and conditions of the IPE including as appropriate:

(A) the responsibilities of DVR or DVS;

(B) the responsibilities of the client, including:

(i) the client's responsibilities for the employment outcome;

(ii) the client's participation in paying the cost of VR services; and

(iii) the client's responsibility to apply for, accept, and use comparable services and benefits to defray in whole or in part the cost of VR services.

(6) for an IPE that includes supported employment services, information identifying:

(A) the extended services needed by the client; and

(B) the source of the extended services, including natural supports, or an explanation concluding there is a reasonable expectation a source will become available; and

(C) the weekly work goal.

(7) if it appears they will be necessary, a statement of needed post-employment services.

612:10-7-52. ~~Status 14 - counseling, guidance and placement~~ Provision of Services

(a) ~~**Use of status 14.** Status 14 is intended to be used for those cases having an IPE which specifies counseling, guidance and placement as the only services required to prepare the client for employment. A case will be placed in this status only when it has been determined substantial counseling and guidance will be needed for the successful rehabilitation of the client. A case may be moved into this status from another service status if a program amendment is completed to show counseling, guidance, and placement are the only services to be provided. Interpreter services may be included in the counseling program while the case is in status 14 if it is required for the client to communicate effectively in counseling sessions. This status is not intended to include those persons who receive counseling during program development or provision of other services.~~ **Overview of service provision.** Vocational rehabilitation services are provided as specified in the approved IPE. Only the service providers included in the IPE may be used. Services are to be provided using the service delivery methods, and within the time frames, specified in the IPE. Authorizations may be issued only for those services for which DRS is specified as the responsible pay source in the approved IPE. New service needs must be included in an approved IPE amendment before they are authorized. All authorizations for payment of services will be made in accordance with applicable DRS purchasing policies.

(b) **Case recording requirements.** Regular case recording which reflects the provision of vocational rehabilitation services in accordance with the approved IPE is required. Regular recording of counseling, guidance, and job placement services by DVR and DVS staff is critical to the documentation of the client's progress in achieving the established employment goal. Routine case management narratives are also important as they ensure the continuity of service provision when other staff will be required to work with the case. The Counselor is to record the analyses of progress reports from outside sources in light of the client's progress toward achieving the chosen employment goal. If progress toward achieving the chosen employment goal has been interrupted, case recording must reflect the Counselor's and client's efforts to resume progress. Regular recording is most important in cases placed in status 14 since the documentation of counseling and guidance is the only way to show substantial services are being provided. The following activities must be present in every counseling situation. They are descriptive of the framework within which counseling may be considered as a substantial service.

(1) Assistance in selecting suitable and realistic vocational goals.

(2) Assistance in understanding the client's capacities, aptitudes and interests based upon the data secured during the case study.

(3) Providing information about occupations, education, health and other community services and facilities.

(4) Planning a program for attainment of selected goals.

(c) **Counseling session.** A counseling session will be conducted and documented not less than once a month. Recording must document counselor initiated efforts to guide the client toward the specific vocational goal. Lack of substantial recording in status 14 will indicate a lack of substantial services.

612:10-7-53. Status 16 - physical and mental restoration [REVOKED]

~~(a) **Use of status 16.** Cases are placed in status 16 when the major services being provided are aimed at physical or mental restoration. These services may include psychological or psychiatric treatment and medical or surgical treatment. Cases will be placed in this status even if the services included in the IPE are being provided by another resource.~~

~~(b) **Case recording requirements.** Recording in status 16 includes events happening during and immediately following provision of physical or mental restoration services. Particular attention will be paid to documentation on the IPE of agreements with clients regarding participation in costs. Problems regarding provision of services and results of the services will be recorded in the case record.~~

612:10-7-54. Status 18 training [REVOKED]

~~(a) **Use of status 18.** Cases are placed in status 18 when the major services being provided are training in a public or private school, on-the-job training in a commercial or industrial establishment under employment conditions or personal adjustment or other training. Cases remain in this status until the client has completed or otherwise terminated the training. Cases can be placed in status 18 if an individual chooses to participate in extended employment for the purposes of training or otherwise preparing for employment in an integrated setting through supported employment or other programs. Cases will be placed in this status even if the services are being provided by comparable services and benefits and they are the major services.~~

~~(b) **Supported employment.** Cases are placed in status 18 at the "Job Placement" Milestone, when the supported employment provider places the client on the job and the employment training specialist begins on-the-job training. If the client started working in a job at less than minimum wage, the client's wage must have increased to minimum wage or greater before~~

~~training is completed. Job placement is complete when the individual has completed the third day of work. Job site training is considered complete when the individual has completed the "Eight Weeks Job Support" Milestone. The contracted service provider will identify and negotiate necessary job accommodations with the employer and discuss any need for assistance with the counselor. Only weeks in which hours exceed 40% of the weekly work goal and in which training and supports are provided will be counted towards training weeks.~~

~~(c) **Employment and retention.** Cases are placed in status 18 at the "Job Placement" Milestone, for those individuals who require the "Four Weeks Job Support" Milestone to maintain successful employment. On and off job site supports are provided during this time to assist the client in adjusting to the demands of the job.~~

~~(d) **Case recording requirements.** Recording of client contacts during a training period will vary in frequency depending upon the location and type of training. There will be documentation of counselor contacts with the client to discuss general progress of the training. A program review is required at least annually. When services requiring client participation in service costs are being provided, a financial status review is required at least annually. Program amendments will be made when appropriate. Periodic reviews and evaluations as set forth on the IPE will be documented in the case record.~~

612:10-7-55. ~~Status 20 - ready for employment~~ Job Ready

(a) **Use of Job Ready status ~~20.~~** ~~Status 20~~ This status is used when services incidental to placement are the only services being provided. ~~Placement must be in connection with at least one other service.~~ Placement is a joint responsibility of the client and counselor. The client has the responsibility for seeking employment through all available channels. The counselor has the responsibility to maintain a familiarity with all of the placement resources in the area and utilize those resources to the maximum extent for the benefit of the client.

(b) **Supported employment.** Cases are placed in Job Ready status ~~20~~ at the beginning of the "Job Stabilization" Milestone. The purpose of the stabilization period is to assure the employer is satisfied with the client as an employee and the client has learned the job, is satisfied with the job, and will be able to retain it once supports are reduced to a maintenance level. The "Job Stabilization" Milestone is complete when the client has reached the minimum number of weeks of employment required in the contract, is working the minimum work hours set in the weekly work goal defined in the IPE, and all other requirements of the contract are met.

(c) **Case recording requirements.** ~~Status 20 indicates the client has completed services to the extent that he or she is ready for employment.~~ Case recording in this status must document ~~the efforts of the counselor to fulfill~~ that the client is ready for employment, the fulfillment of the counselor's responsibility to assist the client with placement, and the client's efforts to obtain employment as described in 612:10-7-232. ~~The placement activities of the client and counselor will be documented in the case record in narrative form.~~

612:10-7-56. ~~Status 22 - in employment~~ Employment

(a) **Use of ~~status 22~~ Employment status.** A case is placed in this status ~~22~~ when the client begins employment. The client must be followed in employment for a minimum of 90 days after the completion of services and prior to being closed ~~in status 26~~ to ensure the adequacy of the employment in relation to the needs and limitations of the client.

(b) **Supported employment.** Cases are placed into employment status ~~22~~ after the requirements have been met for completion of the "Stabilization" Milestone, and the client is ready to begin the final milestone, "Successful Rehabilitation". During this milestone, the provider must continue ongoing supports for a minimum of 90 days before the case can be closed ~~in status 26~~.

(c) **Employment and Retention.** Cases are placed into employment status ~~22~~ when the individual has completed the third day of work ("Job Placement" Milestone), or after completion of "Four Weeks Job Support" Milestone if short term job coach training or support is needed. The client must be followed in employment for a minimum of 90 days prior to being closed ~~in status 26~~.

(d) **Case recording requirements.** At the time planned services are completed and the client has entered employment, it is the client's responsibility to provide the counselor with employment and salary information. When an individual is placed in employed status, case recording will document:

(1) Beginning date of employment;
(2) Name and address of the employer;
(3) Client's wages or salary;
(4) Suitability of the employment [612:10-7-58]; and
(5) How the job was obtained. If the information is obtained from a source other than the client, the source of the information will be identified.

(e) **Contact.** When a client is placed in employed status, contact is maintained and documented until it is determined the employment is satisfactory and the case can be closed. This determination that the employment outcome is satisfactory will be made with the full participation of the ~~individual~~ client.

612:10-7-57. Status 24 - services interrupted [REVOKED]

~~(a) **Use of status 24.** A case is placed in status 24 when services are interrupted. The case remains in status 24 until it returns to a service or closure status. A status 24 case will be reviewed every 90 days to determine if action can be taken to resume the program.~~

~~(b) **Case recording requirements - status 24.** When services are interrupted, case recording must document efforts to resolve problems causing interruption of services, and efforts to resume the program, or initiate an amended program.~~

612:10-7-58. ~~Status 26 - closed rehabilitated~~ Closed Rehabilitated

(a) **Use of Closed Rehabilitated status ~~26.~~** A case is ~~placed in status 26 when being~~ closed as rehabilitated because the client has achieved an employment outcome as a result of vocational rehabilitation services. Cases closed as rehabilitated

must as a minimum meet the requirements in (1) through (5) of this Subsection:

(1) the provision of services under the individual's IPE has contributed to the achievement of the employment outcome;

(2) the employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(3) the employment outcome is in the most integrated setting possible, consistent with the individual's informed choice;

(4) the individual has maintained the employment outcome for a period of at least 90 days; and

(5) at the end of the appropriate period under Paragraph (4) of this Section, the individual and the VR Counselor consider the employment outcome to be satisfactory and agree that the individual is performing well on the job.

(b) **Out of state.** Clients who move out of state after services have been completed are closed in rehabilitated status ~~26~~ if the requirements in Subsection (a) of this Section can be met. If those requirements cannot be met the case will be closed ~~in status 28~~, not rehabilitated.

(c) **Successful closure prior to completion of IPE.** If employment is secured before completion of the IPE, a counselor must document the conditions of substantial services and suitable employment were met. If planned services are interrupted prior to achieving the originally planned vocational goal, and services provided have directly contributed to the employment outcome for the individual or to job retention, an IPE amendment is not needed to revise the vocational goal prior to closure. A plan amendment is required when there is a substantial deviation from the original employment goal.

(d) **Cases closed from supported employment.** An individual with the most severe disabilities who is receiving supported employment services is considered to be successfully rehabilitated if the individual maintains a supported employment placement for a minimum of 90 days beyond stabilization. In addition to the criteria for "suitably employed", the counselor must document, the individual has met or has made substantial progress toward meeting the weekly work goal defined in the IPE, the client is satisfied with the job, the employer is satisfied with the client's job performance, extended services are in place, all supported employment requirements have been met, and the case is ready for closure. The closure ~~amendment~~ documentation will address any significant differences in the ultimate work week achieved as compared with the predicted goal.

(e) **Cases closed from employment and retention.** An individual with severe disabilities who is receiving employment and retention services is considered to be successfully rehabilitated when the client maintains employment for a minimum of 90 days after placement, or for a minimum of 4 weeks plus 90 days if the individual required the "4 Weeks Job Support" Milestone.

(f) **Cases closed as homemakers.** A homemaker is defined as a person whose primary work is performance of duties related to the upkeep and maintenance of a home. This work takes place in the individual's own home, without remuneration.

(1) For homemaking to be considered as a gainful occupation, primary work activities must be performed by the individual and benefits derived from DVR and DVS services must have improved the client's ability to function in these tasks. Homemaking activities must render a significant contribution to the home.

(2) Self-care activities are not sufficient to meet the definition of gainful occupation. The individual must not be receiving any type of assistance in performing primary homemaking duties.

(3) Multiple homemaking closures within the same household are prohibited.

(4) Suitable employment, substantial services and significant contribution of services to vocational adjustment must be documented ~~on the closing amendment to the IPE~~ in the case record. This documentation must be very explicit when the individual's vocational objective is changed to homemaking during the rehabilitation process or there could be a question as to whether the homemaking activities render a significant contribution to the home.

(g) **Cases closed as unpaid family worker.** A case may be closed as rehabilitated when the individual is performing work without pay on a family farm or in a family business operated by one or more members of the client's family. The case recording ~~on the closing amendment to the IPE~~ must include the same documentation as in the case of any other rehabilitated closure but particular attention is to be given to the description of the client's work activities and their regularity. The record must confirm the productivity of the client and his/her contribution to the family farm or business.

(h) **Case recording requirements.** ~~Closure in status 26 is accomplished by amending the IPE on a Closing Amendment to IPE form.~~ The client, or the client's authorized representative as appropriate, will be a full participant in the decision to close the case. The last discussion of the closure decision with the client, or the client's authorized representative, will be held within 30 days of the closure, and will be documented in a case narrative. ~~The client will also be given a copy of the amendment~~ The client will be notified in writing of the closure and advised of the availability of Post-Employment Services. The documentation ~~on~~ in the ~~amendment~~ case record will specifically address the substantiality of the services provided, how they contributed to the client's suitable employment and type of employment, the name and address of the employer, and the client's wages. The need for post-employment services will be reassessed prior to closure. ~~The form must include the results of this reassessment.~~

612:10-7-59. ~~Status 28 - closed~~ Closed not rehabilitated, after IPE initiation ~~(from statuses 14-24)~~

(a) **Use of Closed not rehabilitated status ~~28~~.** Cases closed in this status ~~28 must~~ have progressed to ~~an in-service~~ service status and for some reason the IPE could not be completed. The decision to close the case in this status is made only after the client is given the opportunity to fully participate in

the decision and after all factors have been considered. Clients who choose to remain in extended employment as a goal, without pursuing competitive employment in an integrated setting through supported employment or other programs, will not be considered as having achieved an employment outcome. A case is closed in this status ~~28~~ due to ineligibility only with full participation of the client, client's parent, guardian, or other representative unless the individual has refused to participate, the individual is no longer a resident of Oklahoma, the individual's whereabouts are unknown, or the individual's condition is rapidly progressive or terminal. The rationale for the ineligibility decision is ~~recorded on the Notification of Case Closure form~~ documented in the case record, and in a letter written to the client, including the views of the client or appropriate representative. A copy of the letter is given to the client or appropriate representative with a detailed explanation of the services available from CAP. Procedures for annual review of ineligibility are to be explained to the client or appropriate representative in an understandable form. When appropriate, a ~~Referral~~ referral is made to other agencies ~~and facilities including, when appropriate, the Department's Independent Living Program~~.

(b) **Case recording requirements.** ~~When a case is closed in status 28, the closure is recorded as an amendment to the IPE.~~ The client, or authorized representative, must be given an opportunity to participate fully in the closure decision. A copy of the ~~Notification of Case Closure~~ closure notification letter will be given to the client. The recording on the case ~~Notification of Case Closure form~~ will summarize the services provided, explain why the IPE could not be completed, referral to any other appropriate programs, and contain the client's views of the closure decision, when appropriate.

612:10-7-60. ~~Status 30 - closed~~ Closed not rehabilitated, before IPE initiation ~~(from statuses 10 or 12)~~

(a) **Use of Closed not rehabilitated, before IPE initiation status ~~30.~~** Cases closed in this status ~~30~~ are those which, although accepted for vocational rehabilitation services, did not progress to the point where services were actually initiated.

(b) **Case recording requirements.** When a case is closed ~~in status 30~~ under these circumstances, the closure is ~~recorded on form Notification of Case Closure. If an IPE was developed, the closure will be made as an amendment to the IPE,~~ documented in the case record and on a closure notification letter to the client and the client will be given the opportunity to fully participate, and to express his/her views of the decision. A copy of the closure ~~form~~ letter will be given to the client, or as appropriate, the client's representative.

612:10-7-61. Ineligibility reviews ~~(statuses 08, 28, 30)~~

The individual, or the individual's authorized representative, may request a review of a determination that an individual is not, or is no longer, eligible for vocational rehabilitation services based on a finding that the individual is incapable of achieving an employment outcome. This review will be done within 12 months of the determination and annually thereafter, if requested by the individual, or the individual's authorized representative. The review will be documented on the Review of Ineligibility form.

612:10-7-62. ~~Status 32 - post-employment~~ Post-Employment services

(a) **Use of ~~status 32~~ Post-Employment services.** Post-employment services may be provided to assist rehabilitated clients to retain, regain, or advance in employment. Planning for and provision of post-employment services is one of the more important elements of the agency's service. The need for post-employment services will be assessed at initiation of the IPE. Ongoing assessment continues during case services, is documented as needed, and is reassessed just prior to case closure. Counseling and guidance is the core service around which all other post-employment services are provided. Post employment services can be provided to individuals who receive Supported Employment Services if such services are needed to maintain the supported employment placement and those services are not available from an extended services provider. Some examples of post employment services are maintenance of assistive technology, job station redesign, and replacement of prosthetic and orthotic devices. Post employment services are not to be used in instances of underemployment when extensive retraining is needed. Cases reopened on a post-employment basis do not require re-establishment of eligibility. New diagnosis is needed only if there has been a change in the client's physical or mental condition. Any vocational rehabilitation service or combination of services necessary to assist the individual retain, regain, or advance in employment may be provided if the service(s) does not involve a complex or comprehensive effort unrelated to the original IPE. If comprehensive services are indicated, a new application is taken. Federal regulations forbid the setting of arbitrary time limits on the provision of post-employment services. If the client has been employed for a long period of time, the counselor must carefully review the client's situation before making the decision to provide post-employment services as opposed to opening a new case.

(b) **Other considerations.** Other considerations in determining a client's eligibility for post-employment services are:

(1) **Financial Status.** A new financial status determination must be made if services requiring consideration of client participation in the cost of services are to be provided.

(2) **Emergency conditions.** Treatment of an emergency condition will not be considered as a post-employment service.

(3) **Upgrading.** Post-employment services are not provided to upgrade an individual's financial status. Post-employment services are provided to help the individual advance in employment only when the nature of the individual's impediment to employment makes advancement the most appropriate post-employment outcome consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(c) **Transfer of cases.** Clients needing post-employment services who have moved to another area of the state will have their cases transferred. When a rehabilitant who has moved out of state requests post-employment services, the counselor will refer the individual to the rehabilitation program in the state where the individual resides. Upon receipt of a release signed by the client, copies of the requested information from the closed case record will be forwarded to the receiving state agency. If an individual who was a rehabilitant in another state requests post-employment services from our state, information must be requested from the state where services were previously provided. All requests must include a specific release of confidential information signed by the applicant. The case will be processed as a new referral, but will be served and documented as a post-employment case.

(d) **Criteria for terminating post-employment services.** Decisions to terminate post-employment services must be made on an individual basis in consultation with the client and will be recorded in the ~~Closing Amendment to the IPE~~ case. The counselor will need to work with the individual to achieve a satisfactory level of self sufficiency independent of post-employment support.

(e) **Case recording requirements.** ~~Status 32~~ Post-employment services is the same as any other service status. ~~An IPE and a narrative program summary on a case narrative form are developed in the same manner as prescribed under 612:10-7-51.~~ The same principles of client involvement are required in the IPE for Post-Employment Services as are required under any other IPE. Case recording will be made at significant times during the process, including assessment of progress, and the results achieved at the completion or termination of services.

~~(f) **Closure status.** All cases terminated from status 32 will be closed in status 33.~~

612:10-7-63. ~~Status 33 - post-employment~~ Post-Employment services completed

(a) **Use of ~~status 33~~ Post-Employment services completed.** ~~Only those cases terminated from status 32 can be closed in status 33.~~ The case can be closed as soon as the services in the Post-Employment Services amendment have been completed insofar as possible and the client has been consulted regarding the closure decision.

(b) **Case recording requirements.** The documentation of closure in post-employment status ~~33~~ is ~~done on the Closing Amendment to IPE form~~ documented in the case and in a closure letter to be given to the client. The recording takes into account the following factors:

(1) The problem which required post-employment services is remedied.

(2) The client has attained sufficient independence to function without continuing services, or in the counselor's professional judgment, services should be discontinued.

(3) Employment appears secure and is at a suitable level in relation to the particular locality and labor market.

(4) The circumstances become such that further services of a post-employment nature cannot help the client maintain employment.

~~(c) **Closure.** As with all amendments to the IPE, the client will be given a copy of the closure amendment as appropriate.~~

PART 9. ACTIONS REQUIRING REVIEW AND APPROVAL

612:10-7-87. Actions requiring supervisor's approval

The supervisor indicates approval by signing the appropriate documentation or form in the case, or by memorandum when necessary. Verbal approval may be given when circumstances warrant, but must be followed immediately by written approval. The supervisor may delegate approval authority for designated duties to a Specialist IV. The Specialist IV may assume responsibilities for approval when absolutely necessary because of prolonged absence of the supervisor or similar reasons, and when arrangements cannot be made for another supervisor to perform duties for the absent supervisor. The appropriate field coordinator's approval must be obtained for any such substitution or delegation.

(1) All actions of a newly employed counselor/teacher. The newly employed counselor/teacher will remain under intensive supervision until the counselor/teacher has reached a sufficient level of competence to work under general supervision as documented by the program manager. The release from intensive supervision will be given to the counselor/teacher in writing with a copy to the field coordinator. A counselor or teacher can be returned to intensive supervision when documentation or observation indicates he or she is no longer at a level of competence to work under general supervision. This decision will be given to the counselor/teacher in writing with a copy to the field coordinator.

(2) All IPE's or amendments when the total of the planned DVR and DVS expenditures for the entire case exceed $15,000.

(3) Purchase of hospitalization for diagnostic purposes.

(4) Release of confidential information in instances not covered in 612:10-1-5.

(5) ~~All case closures except Status 08 and Status 30 closures~~ All case closures in which an IPE was developed and services initiated.

(6) Transfer of cases from one counselor/teacher caseload to another outside the sending supervisor's unit (signed by the supervisor of the sending counselor or teacher).

(7) All IPE's which include purchase of physical or mental restoration services, prescription drugs or prescribed medical supplies lasting more than three months.

(8) Maintenance for job search services beyond 1 (one) month. (Specialist IV may approve)

(9) Clothing expenses in excess of $400.00 (Specialist IV may approve)

(10) Small Business plan in excess of $10,000.00.

SUBCHAPTER 9. REHABILITATION TEACHING SERVICES

PART 3. CASE PROCESSING AND RECORDING

612:10-9-15. Case status

(a) As a case moves through the rehabilitation teaching process the major activities being conducted at any given time are reflected by the status classification system. Under this system there are ~~7 statuses~~ 9 classifications:

(1) ~~status 02 - application signed~~ Application Status;

(2) ~~status 08 - closure from application~~ Closure from Application Status;

(3) ~~status 10 - case accepted~~ Eligibility Status;

(4) ~~status 22 - services initiated~~ Service Status;

(5) ~~status 24 - interrupted services~~ Successful Closure Status;

(6) ~~status 26 - successful closure; and,~~ Unsuccessful Closure Status after IPE Initiation;

(7) ~~status 28 - unsuccessful closure.~~ Closed from Eligibility Status;

(8) Post Employment Services; and,

(9) Closure from Post Employment Services Status.

(b) Changes in case status are documented by case narrative.

612:10-9-17. ~~Status 02 - applicant~~ Application Status

(a) A case is placed in Application Status ~~status 02~~ when the individual submits an application with DVR and DVS. An individual is considered to have submitted an application when the individual, or the individual's authorized representative, as appropriate:

(1) has completed and signed an application form or has otherwise requested services;

(2) has provided information necessary to initiate an assessment to determine eligibility and priority for services; and

(3) is available to complete the assessment process.

(b) The minimum information necessary to initiate an assessment to determine eligibility and priority for services consists of:

(1) individual's name;

(2) reported disability;

(3) individual's address, with finding directions when needed;

(4) individual's social security number, if available;

(5) availability of documentation of the reported disability; and

(6) agreement between individual and staff person taking application on the next steps to be taken in the application process.

(c) A decision of eligibility or ineligibility must be made within 60 days of the completed application unless unforeseen and exceptional circumstances beyond the control of the Department indicate the need for an extension as documented on the Need for Extension of Time to Determine Eligibility form. The consumer must agree an extension of time is warranted after full consultation.

(d) The Rehabilitation of the Blind Specialist will conduct an initial interview and document it in a narrative summary. The consumer and/or representative will be given an explanation of consumer rights and responsibilities and information about the Client Assistance Program and mediation procedures in a medium which is understandable to the individual and in their preferred medium. The specialist will document this in the case record (See 612:10-1-6 Due Process). The consumer will be offered the opportunity to register to vote at time of application and/or time of address change.

612:10-9-18. ~~Status 08 - closure from application~~ Closure from Application

A case will be closed ~~in status 08~~ from Application Status when it has been determined an applicant is ineligible for rehabilitation teaching services, ~~fails~~ if they fail to cooperate, move out of state, refuse services, die, cannot locate, or if all services are being provided through other resources. The specialist will document in the case recording the decision for closing the case.

612:10-9-19. ~~Status 10 - case accepted~~ Eligibility Status

(a) The case is moved into ~~status 10~~ Eligibility Status when the individual is certified as eligible. The ~~teacher~~ specialist will evaluate the case information and determine if the consumer meets the criteria given in (1) -(3) of this Subsection.

(1) Consumer is legally and/or functionally blind or has a rapidly progressive condition which is expected to result in legal blindness. If there is a difference in near and distance acuity, the worse acuity is used for determination of eligibility.

Legal blindness is Visual Acuity of 20/200 or less in the better eye with best correction, or a visual field of 20 degrees or less. Best correction means the best visual acuity that can be obtained with normal prescription lenses.

(2) Consumer has identifiable deficiencies in ~~independent living~~ homemaking skills due to ~~disabilities~~ severe vision loss.

(3) It is expected services will improve the consumer's homemaking skills and independence in ~~the home and~~ their community.

(b) The specialist is responsible for making a determination of eligibility on each consumer requesting rehabilitation ~~teacher~~ specialist services within 60 days of application and a letter of determination of eligibility will be provided in the consumer's preferred format. ~~A narrative entry will be made documenting the change in status.~~ A certification of legal blindness signed by a physician ~~or optometrist~~, a comprehensive functional assessment provided by the Rehabilitation Specialist, ~~such as the~~ or certificate of eligibility for talking book services, can be used to document eligibility for the Rehabilitation Teaching Program.

(c) While in ~~acceptance~~ eligibility status, the ~~Comprehensive Assessment~~ comprehensive assessment ~~Form~~ is completed to provide a basis for the formation of the consumer's ~~IRP~~ IPE. The Comprehensive Assessment is used to determine the scope and nature of services to be provided to accomplish the consumer's objectives. The specialist will address the consumer's

diagnosis as reported by documented medical and psychological report or as determined by specialist's evaluation. The specialist will identify the specific functional limitations which prevent the individual from functioning in the home or community. The specialist will describe the consumer's strengths, weaknesses and how proposed services will increase the consumer's ~~chances for improved independence~~ potential to achieve their goal of homemaker.

(d) After the consumer has been determined eligible, the specialist starts the process of developing the Individualized ~~Rehabilitation Program (IRP)~~ Plan for Employment (IPE). In the development of the program, the specialist will make a determination of the consumer's present level of adjustment and his/her physical and emotional capacities for acquiring specific adaptive skills. This evaluation of consumer's needs will be documented on the Rehabilitation Specialist's Comprehensive Assessment ~~for Independent Living and Rehabilitation Teaching Services~~ form. ~~Through consultation with the consumer, the specialist will make a determination of the services needed to achieve a higher level of independence and/or self-sufficiency.~~

(1) The specialist with the consumer's participation will develop an ~~IRP~~IPE establishing ~~an independent living~~ a homemaking objective. The ~~independent living objective~~ goals, objectives and services provided directly or indirectly will be included in the ~~IRP~~ IPE. A homemaker is defined as a person whose primary work is performance of duties related to the upkeep and maintenance of a home. This work takes place in the individual's own home, without remuneration.

(A) The IPE can have a vocational objective of homemaker only when services will directly and substantially improve the individual's ability to perform the primary homemaking work activities for their home.

(B) The individual must not be receiving assistance from organizations or entities that would remove the barriers of performance of homemaking duties thereby eliminating the need for vocational rehabilitation services; e.g. meals on wheels, Medicaid home care, or other assistance that would preclude the individual from performing homemaking duties.

(C) A vocation objective of homemaker can be established for only one person within the same household.

(2) The narrative recording will include documentation of the consumer's participation in the development of the ~~IRP~~ IPE and all pertinent information. A copy of the ~~IRP~~IPE will be provided to the consumer in their preferred reading medium.

(3) The IPE must be completed and signed as soon as possible, consistent with the needs of the individual, but not more than 90 calendar days following the eligibility determination, unless the individual or the authorized representative and the Rehabilitation Specialist jointly agree to an extension of time for a specific duration.

612:10-9-20. ~~Status 22 - services initiated~~ Service Status

(a) Cases remain in ~~status 22~~ Service Status as long as program services are being provided to the ~~client~~ consumer. While in this status, periodic narrative recordings will be entered in the case file describing services being provided and the specialist's involvement. After development of the ~~IRP~~ IPE, the specialist will begin instructional services to address the identified objectives. The consumer should expect continual instructional services until it is agreed upon by the specialist and consumer that the goals have been achieved or mutual agreement for case closure.

(b) In some cases, due to an alteration in the consumer's situation or needs, it may be necessary to amend the original program. Program amendments are only necessary when there has been a substantial change in the program effecting client services. Such amendments will be developed with consumer participation and a copy of the amendment will be provided the consumer in their preferred reading medium.

612:10-9-21. ~~Status 26 - successful closure~~ Successful Closure

(a) A successful closure ~~(Status 26)~~ is when the planned program of services has been completed and/or the consumer has achieved his/her ~~independent living~~ homemaking goal.

(b) The client, or the client's authorized representative as appropriate, will be a full participant in the decision to close the case. The last discussion of the closure decision with the client, or the client's authorized representative, will be held within 30 days of the closure, and will be documented in a case narrative. The client will also be given a copy of the closure letter in their preferred reading format and advised of the availability of Post-Employment Services. The closure narrative will substantiate the services provided and how they contributed to the client's function as a homemaker.

612:10-9-22. ~~Status 28 - unsuccessful closure~~ Unsuccessful Closure after IPE Initiation

An unsuccessful closure is when it has been determined that services cannot be successfully completed. The consumer or his/her representative must be informed as to the reason for case closure.

612:10-9-23. Status 24 - services interrupted [REVOKED]

~~(a) **Use of status 24.** A case is placed in status 24 when services are interrupted and progress toward the chosen goal is not being made. The case remains in status 24 until it returns to a service or closure status. Status 24 cases will be reviewed every 90 days to determine if action can be taken to resume the program.~~

~~(b) **case recording requirements - status 24.** The case record will contain documentation regarding the reasons for interruption of services and the steps being taken to resume the services.~~

612:10-9-24. Closed from Eligibility Status

(a) Cases closed from Eligibility Status are those which, although accepted for Rehabilitation Teaching services, did not progress to the point where services were actually initiated.

(b) When a case is closed from Eligibility Status, closure is recorded in the case record and a letter written to the client. The client will be given the opportunity to fully participate and to express his/her views of the decision. A copy of the closure will be given to the client, or as appropriate, the client's representative in the consumer's preferred reading format.

612:10-9-25. Post-Employment Service Status

(a) Post-Employment services may be provided to assist rehabilitated clients to retain, regain, or advance in independence. These services must continue to follow the guidelines delineated for homemaking services.

(b) Planning and provision of the need for post-employment services will be assessed at initiation of the IPE. Ongoing assessment continues during case services, is documented as needed, and is reassessed just prior to case closure. Counseling and guidance is the core service around which all other post closure services are provided. Cases reopened on a post closure basis do not require re-establishment of eligibility. Any homemaking service or combination of services necessary to assist the individual to retain, regain, or advance in independence, may be provided if the service(s) do not involve a complex or comprehensive effort unrelated to the original IPE. If comprehensive services are indicated, a new application is taken. Federal regulations forbid the setting of arbitrary time limits on the provision of Post-Employment services. If the original case has been closed for a long period of time, the Agency must carefully review the client's situation before making the decision to provide Post-Employment services as opposed to opening a new case.

(c) Criteria for terminating Post-Employment services must be made on an individual basis in consultation with the client and will be recorded in the case record. The Agency will need to work with the individual to achieve a satisfactory level of self-sufficiency independent of post closure support.

(d) Post-Employment services might include limited adapted equipment, limited assistive technology, repair of adaptive equipment for which the agency maintains title, adapted equipment for a newly established additional disability and limited instructional services.

(e) Post-Employment Service Status is the same as any other service status. An IPE and a narrative program summary are developed in the same manner as prescribed in 612:10-9-19. The same principles of client involvement are required in the IPE for Post-Employment services as are required under any other IPE. Case recording will be made at significant times during the process, including assessment of progress and the results achieved at the completion of termination of services.

(f) All cases terminated form Post-Employment Service Status will be closed in Post Employment Closure status.

612:10-9-26. Post Employment Closure Status

(a) Only those cases terminated from Post-Employment Service status can be closed in this status. The case can be closed as soon as the services in the Post-Employment services amendment have been completed insofar as possible and the client has been consulted regarding the closure decision.

(b) Documentation of closure of Post-Employment Services is recorded into the case record and a letter written to the client.

SUBCHAPTER 11. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

PART 3. CASE PROCESSING

612:10-11-17. Case processing

To provide an orderly manner for progression of an ~~OL~~ OB services case through the process from referral to closure, a status classification system has been developed. This system has been developed so the status will tell at what stage in the process a case is at a given time. The statuses are:

(1) ~~02~~ Application ~~signed~~Status
(2) ~~08~~ Closure From ApplicationStatus
(3) ~~10~~ Eligibility Status
(4) ~~22 Services Initiated~~ Service Status
(5) ~~26~~ Successful Closure
(6) ~~28~~ Unsuccessful Closure
(7) ~~32~~ Post ~~OL~~ OB Services
(8) ~~33~~ Post ~~OL~~OB Services Completed

612:10-11-19. ~~Status 02 application~~ Application Status

(a) A case will be opened in Application status ~~02~~ when an individual submits an application with DVS. An individual is considered to have submitted an application when the individual, or the individual's authorized representative, as appropriate:

(1) has completed and signed an application form or has verbally requested services;
(2) has provided information necessary to initiate an assessment to determine eligibility and priority for services; and
(3) is available to participate in the assessment process.

(b) The minimum information necessary to initiate an assessment to determine eligibility consists of:

(1) individual's name;
(2) reported disability;
(3) individual's address, with finding directions when needed;
(4) individual's social security number, if available;
(5) availability of documentation of the reported disability;
(6) agreement between individual and staff person taking application on the next steps to be taken in the application process; and
(7) the age of the individual is 55 years or older.

~~(c) Any applicant or client of OL services who is dissatisfied with any decision in regard to the provision of services must be advised of his/her right to request a timely review or a re-determination of any action taken by DRS staff.~~

~~(d) While an applicant is in status 02, all necessary information will be gathered to make a determination of eligibility or ineligibility within 60 days of application.~~

~~(e) All individuals seeking or receiving services must be advised about the availability of the Client Assistance Program, the purposes of the services provided by the program, and how to contact the program.~~

(c) A decision of eligibility or ineligibility must be made within 60 days of the completed application unless unforeseen and exceptional circumstances beyond the control of the agency indicate the need for an extension as documented on the Need for Extension of Time to Determine Eligibility form. The consumer must agree an extension of time is warranted after full consultation.

(d) The Rehabilitation of the Blind Specialist will conduct an initial interview and document it in a narrative summary. The consumer and/or authorized representative will be given an explanation of consumer rights and responsibilities, information about the Client Assistance Program, and mediation procedures in a way which is understandable to the consumer and in their preferred format. The specialist will document this in the case record (See 612:10-1-6 Due Process).

612:10-11-20. ~~Status 08 - closure from application~~ Closure from Application Status

An individual's case record is closed from Application ~~in~~ status ~~08~~ when it is determined the individual does not meet the basic eligibility criteria for ~~OL~~OB services or there are other reasons why an IRP cannot be developed such as failure to cooperate, moved out-of-state, refused services, died, unable to locate, or if all services are provided through other resources. The specialist will document the decision for closing the case in the case recorded on the case letter. ~~The reasons for ineligibility will be stated on the Case Closure for Rehabilitation Teaching Program form. The certification is made only after full consultation with the individual or, as appropriate, his/her parent, guardian, or other representative, or after giving a clear opportunity for this consultation. In this case, the individual is notified in writing of the action taken and of his/her rights, and the means by which he/she may seek remedy for any dissatisfactions, including procedures for administrative review.~~

612:10-11-21. Eligibility Status ~~10 - case accepted~~

Cases of individuals who have been certified as meeting basic eligibility criteria will be placed in Eligibility status ~~10~~. While the case is in this status the ~~Department~~ Specialist will complete a Comprehensive Assessment and, with the participation of the individual, jointly develop the individual's IRP.

(1) A Certification of Eligibility for Rehabilitation Teaching Services will be completed on each individual determined eligible. Each certification will analyze information obtained in the preliminary diagnostic study in terms of the effect on the individual's ability to function in the home or community.

(2) The eligibility certification must also describe how the provision of ~~OL~~ OB services are expected to improve the individual's ability to function in such areas as self care, activities of daily living, using public transportation, shopping, housekeeping, communication, or to minimize reliance on others in decision making and performing every day activities.

612:10-11-22. ~~Status 22 - services initiated~~ Service Status

(a) An individual's case is placed in Service status ~~22~~ when the client's Individualized Rehabilitation Program (IRP) for Older Blind is completed and services are initiated. The IRP is designed to formalize case planning and management. The client and the ~~Department~~Specialist establish both a long term goal and objectives with time frames. The long-term goal of personal adjustment will include intermediate objectives which include, but are not limited to:

(1) improvement in ability to perform activities of daily living;

(2) living independently in the client's own home;

(3) decreased dependence on family members; and/or

(4) decreased need for supervision of activities of daily living~~.~~; and/or

(5) improve quality of life.

(b) The IRP is to be developed jointly by the client and the ~~Department~~Specialist. Each IRP amendment must be signed by the client~~, or as appropriate, parent, guardian,~~ or authorized representative. A copy is given to the client, or ~~as appropriate, parent, guardian, or~~ authorized representative ~~and if possible~~ in the consumer's preferred format.

(c) Each IRP will be reviewed at least annually and the results of the review will become part of the case record. The client will receive a copy of any amendments to the original IRP and if possible in consumer's preferred format.

(d) The ~~Department~~Specialist will make regular contact with the client while the case is in this status to provide needed instructional services and to evaluate progress of the client toward the goal established with the client in the IRP.

612:10-11-24. ~~Status 26 - successful closure~~ Successful Closure Status

~~(a) To successfully close an IRP of OL services in status 26, a client must have:~~

~~(1) been certified as eligible;~~

~~(2) participated in development of an IRP;~~

~~(3) completed the IRP insofar as possible;~~

~~(4) been provided counseling and one or more other older blind services; and~~

~~(5) been determined to have shown substantial improvement in the ability to function more independently in the home or community for a period of 60 days, which is substantiated by a documented client contact within 30 days of closure.~~

~~(b) The Department will prepare a Case Closure form which will include information regarding:~~

~~(1) closure status;~~
~~(2) living status;~~
~~(3) completed objectives;~~
~~(4) were planned services accomplished;~~
~~(5) were planned services completed; and~~
~~(6) how did services enhance independence.~~

A successful closure is when the planned program of services has been completed and/or the consumer has achieved his/her goal for independence. The client, or the client's authorized representative as appropriate, will be a full participant in the decision to close the case. The last discussion of the closure decision with the client, or the client's authorized representative, will be held within 30 days of the closure, and will be documented in a case narrative. The client will also be given a copy of the closure letter in their preferred format and advised of the availability of Post Closure Services. The documentation will specifically address the substantiality of the services provided, how they contributed to improving the client's level of functioning. The need for post closure services will be reassessed prior to closure. The closure letter must include the results of the reassessment.

612:10-11-25. ~~Status 28 - unsuccessful closure~~ Unsuccessful Closure Status

(a) Cases are closed in Unsuccessful status ~~28~~ when services have been initiated, but have not resulted in the client gaining greater independence. A case may be closed in this status only after full consultation with the client, his/her guardian, or other representative, or after there has been opportunity provided for full consultation.

(b) ~~The~~A Case Closure ~~form~~letter must explain the reason for closure, document consultation with the client and describe plans for referral to other agencies. The client, guardian or other representative as appropriate, will be given a copy of the ~~closure document~~ letter in their preferred format.

(c) Cases are also closed in this status ~~28~~ due to the death of the client.

612:10-11-26. Previously closed cases

(a) A new application can be taken on a case closed as successful ~~(status 26)~~ when the client is in need of additional multiple services of a complex nature to remain independent, or to become more independent. No more than one case can be closed ~~as~~ in successful Status ~~(status 26)~~ on the same client in the same fiscal year.

(b) A new application can be taken on a case closed as unsuccessful ~~(status 08, 28)~~ when there is indication the client can benefit from ~~OL~~OB services.

612:10-11-28. ~~Status 32 - post-OL services~~ Post OB Service Status

(a) Use of Post OB Service Status ~~status 32, post-OL services,~~ may be provided to assist rehabilitated clients to retain, regain, or advance in independence. These services must continue to follow the guidelines delineated by the Older Blind Program.

(b) Planning for and provision of the need for post-~~OL~~OB services will be assessed at initiation of the IRP. Ongoing assessment continues during case services, is documented as needed, and is reassessed just prior to case closure. Counseling and guidance is the core service around which all other post-OL services are provided. Cases reopened on a post-~~OL~~OB basis do not require re-establishment of eligibility. Any Older Blind service or combination of services necessary to assist the individual retain, regain, or advance in independence may be provided if the service(s) does not involve a complex or comprehensive effort unrelated to the original IRP. If comprehensive services are indicated, a new application is taken. Federal regulations forbid the setting of arbitrary time limits on the provision of post-~~OL~~OB services. If the original case has been closed for a long period of time, the ~~Department~~Specialist must carefully review the client's situation before making the decision to provide post-~~OL~~OB services as opposed to opening a new case.

(c) Criteria for terminating post-~~OL~~OB services must be made on an individual basis in consultation with the client and will be recorded in the ~~Closing Amendment to the IRP~~ case record and on a closure letter to be provided to the client, and/or their authorized representative in their preferred format. The ~~Department~~Specialist will need to work with the individual to achieve a satisfactory level of self-sufficiency independent of post-OL support.

(d) Post ~~OL~~OB services might include limited adapted equipment, limited assistive technology, repair of adaptive equipment for which the agency maintains title, adapted equipment for a newly established additional disability and limited instructional services.

(e) ~~Status 32~~ Post OB Service Status is the same as any other service status. An IRP and a narrative program summary ~~on a case narrative form~~ are developed in the same manner as prescribed in 612:10-7-51. The same principles of client involvement are required in the IRP for post-~~OL~~OB services as are required under any other IRP. Case recording will be made at significant times during the process, including assessment of progress, and the results achieved at the completion or termination of services.

(f) All cases terminated from Post OB status ~~32~~ will be closed in Post OB Closure status ~~33~~.

612:10-11-29. ~~Status 33 - Post-OL services completed~~ Post OB Closure Status

(a) **Use of Post OB Closure status ~~33~~.** Only those cases terminated from Post OB Service status ~~32~~ can be closed in this status ~~33~~. The case can be closed as soon as the services in the post-~~OL~~ OB services amendment have been completed insofar as possible and the client has been consulted regarding the closure decision.

(b) **Case recording requirements.** The documentation of closure in Post OB Service status ~~33~~ is done ~~on the Closing Amendment to IRP form~~ forming the case record and in a closure letter. The recording takes into account the following factors:

(1) the problem which required post-~~OL~~OB services is remedied;

(2) the client has attained sufficient independence to function without continuing services;

(3) independence appears secure and is at a suitable level in relation to the particular skills and abilities of the consumer; and

(4) the circumstances become such that further services of a post-~~OL~~OB nature cannot help the client maintain independence.

~~(c) **Closure.** As with all amendments to the IRP, the client will be given a copy of the closure amendment as appropriate and if possible in their preferred format.~~

[OAR Docket #07-982; filed 5-9-07]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 20. SPECIAL SCHOOLS

[OAR Docket #07-983]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
612:20-1-3. Appendices [REVOKED]
Appendix A. Application for Admission [REVOKED]
Appendix B. Application for Services [REVOKED]
Appendix C. Authorization for Medical Care of a Minor - OSB [REVOKED]
Appendix D Authorization for Medical Care of a Minor - OSD [REVOKED]
Appendix E. Notice of Right to File a Grievance [REVOKED]
Appendix F. Student Dormitory Permission Sheet [REVOKED]
AUTHORITY:
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The changes to Chapter 20 remove outdated appendices.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JULY 1, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

612:20-1-3. Appendices [REVOKED]

~~These are the appendices which apply to this Chapter:~~

~~(1) Appendix A: Application for Admission. This appendix is used to apply for admission to the Oklahoma School for the Blind.~~

~~(2) Appendix B: Application for Services. This appendix is used to apply for admission to the Oklahoma School for the Deaf.~~

~~(3) Appendix C: Authorization for Medical Care of a Minor - OSB. This appendix is used to obtain parental/guardian authorization for the school to secure medical treatment for a student.~~

~~(4) Appendix D: Authorization for Medical Care of a Minor - OSD. This appendix is used to obtain parental/guardian authorization for the school to secure medical treatment for a student.~~

~~(5) Appendix E: Notice of Right to File a Grievance. This appendix is used to document that the student and student's parents or guardian have been notified of their right to file for a fair hearing on any grievance.~~

~~(6) Appendix F: Student Dormitory Permission Sheet. This appendix is used to obtain specific approval of allowed activities for students living in dormitories at OSB or OSD.~~

APPENDIX A. APPLICATION FOR ADMISSION [REVOKED]

APPENDIX B. APPLICATION FOR SERVICES [REVOKED]

APPENDIX C. AUTHORIZATION FOR MEDICAL CARE OF A MINOR - OSB [REVOKED]

APPENDIX D. AUTHORIZATION FOR MEDICAL CARE OF A MINOR - OSD [REVOKED]

APPENDIX E. NOTICE OF RIGHT TO FILE A GRIEVANCE [REVOKED]

APPENDIX F. STUDENT DORMITORY PERMISSION SHEET [REVOKED]

[OAR Docket #07-983; filed 5-9-07

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #07-905]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
710:1-1-2 [AMENDED]
Subchapter 3. Public Policy
Part 1. General Provisions
710:1-3-2 [AMENDED]
Part 11. Public Records
710:1-3-72 [AMENDED]
Subchapter 5. Practice and Procedure
Part 5. Administrative Proceedings Related to Tax Protests
710:1-5-42 [AMENDED]
Part 8. Settlement of Tax Liability
710:1-5-88 [AMENDED]
710:1-5-89 [AMENDED]
710:1-5-91 [AMENDED]
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ANALYSIS:
Section 710:1-1-2 has been amended to delete obsolete references and update information in order to provide a complete and accurate list of the various areas of taxation and licensing for which the Commission is responsible.

Section 710:1-3-2 has been amended to delete obsolete language and to notify taxpayers regarding an additional source for Oklahoma income tax forms - the Commission's website.

Section 710:1-3-72 has been amended to include the new street address for the Administrative Proceedings Section.

Section 710:1-5-42 has been amended to conform to current statutory authority regarding appeals from Oklahoma Tax Commission orders. **[68:225]**

Section 710:1-5-88 has been amended to clarify policies regarding the scope of a proposed Settlement Agreement, compliance of professional license holders in an application for a Settlement Agreement and the requirements for a tax lien release when the amount abated in the Settlement Agreement exceeds $10,000.00. **[68:219/68:219.1]**

Section 710:1-5-89, dealing with Settlement Agreements has been amended to notify taxpayers seeking settlement of outstanding state tax liabilities of procedures regarding the treatment of payments made pursuant to proposed Settlement Agreements that are subsequently rejected or withdrawn.

Section 710:1-5-91 has been amended to clarify policy of requiring a taxpayer to make full and accurate disclosures regarding the taxpayer's financial resources in the application for a Settlement Agreement. **[68:219/69:219.1]**

CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

710:1-1-2. General Description of the Oklahoma Tax Commission

(a) **History.** The Oklahoma Tax Commission, from its inception in 1931, has been responsible for the collection and administration of various tax sources and the apportionment of these revenues to state funds which provide monies for education, transportation, recreation, social welfare, and the myriad of other services provided for the citizens of Oklahoma.

(b) **Composition.** The Tax Commission is comprised of three members (Chairman, Vice Chairman, and Secretary-Member) who are appointed by the Governor with the advice and consent of the State Senate and serve terms of six years each. The Commission appoints an Administrator who is the Administrative Officer of the Commission and manages the activities of its employees.

(c) **Duties.** It is the Commission's responsibility to supervise the administration and enforcement of state tax laws and the collection of a majority of all state-levied taxes and fees. The Commission directs the collection and distribution of the tax and license sources under its administration and, by statute, is responsible for apportioning such tax revenues to the various state funds. In addition, the Oklahoma Tax Commission allocates directly to local units of government certain state-collected levies earmarked to counties, school districts and municipalities. On a contract basis with individual municipalities and counties, the Tax Commission is involved with the administration, collection and distribution of city and county sales taxes and city use taxes.

(d) **Areas of administration.** The public may make submissions and requests to the Commission in the following areas of taxation and licensing:

(1) Admission Tax
(2) Aircraft Excise
(3) Aircraft License
~~(4) Alcoholic Beverage Identification Stamps~~
(~~5~~4) Alcoholic Beverage Tax
(~~6~~5) Alternative Fuels Surcharge
(~~7~~6) Amateur Radio Operators License
(~~8~~7) Beverage Tax & License
(8) Bingo Tax
~~(9) Boxing Event Assessment~~
(~~10~~9) Charity Games Tax
(~~11~~10) Cigarette Tax & License
(~~12~~11) Coin Device Decals and Distributor Permits
~~(13) Conservation Excise Tax~~
(~~14~~12) Controlled Dangerous Substances Tax Stamps
(13) County Clerk Fees
(~~15~~14) Diesel Fuel Excise Tax
(~~16~~15) Documentary Stamp Tax
(~~17~~16) Driving Record Fee
(~~18~~17) Energy Resources Assessment
(~~19~~18) Estate Tax
~~(20) Exempt Organization Fee~~
(~~21~~19) Farm Implement Tax Stamp
(~~22~~20) Fireworks License
(~~23~~21) Franchise Tax
(~~24~~22) Freight Car Tax
(~~25~~23) Gasoline Excise Tax
(~~26~~24) Gross Production Tax
(25) Horsetrack Gaming Fees
(~~27~~26) Income Tax
(~~28~~27) Indigent Health Care
(~~29~~28) Marginal Well Fee
(~~30~~29) Mixed Beverage Gross Receipts
~~(31) Motor Fuel Special Assessment Fee~~
(~~32~~30) Motor Vehicle Collections
(31) Multiple Injury Fund
(~~33~~32) Non-Game Wildlife Improvement
(~~34~~33) Occupational Health & Safety Tax
(~~35~~34) Oklahoma Tax Commission Reimbursement
(35) Organ Donor Program
~~(36) Out-of-State Audit Fees~~
~~(37) Oversize Truck Permits~~
(~~38~~36) Pari-Mutuel Tax
(~~39~~37) Pari-Mutuel Exotic Wager Tax
(~~40~~38) Petroleum Excise Tax
(~~41~~39) Pick Six Tax
(40) Public Services Penalties
(~~42~~41) Rural Electric Co-op License
(~~43~~42) Sales Tax
(~~44~~43) Sales Tax Permits
(~~45~~44) Sales Tax Vendor's Lists
(~~46~~45) Salvage Dealers License
(47~~46~~) Special Fuel Decals
(~~48~~47) Special Fuel Use Tax
~~(49) Special Indemnity Fund~~
(~~50~~48) Special License Plates
(~~51~~49) Special Printing Account
~~(52) Surplus Sales~~
(50) Storage Leakage Fund
(~~53~~51) Telecommunications for the Hearing-Impaired Surcharge
(~~54~~52) Tobacco Products Tax & License
~~(55) Tourism Gross Receipts Tax~~
(~~56~~53) Transport & Reclaimer License Fees
(~~57~~54) Tribal Cigarette & Tobacco Payments
~~(58) Trucking Industry Self-funded Res. & Dev.~~
~~(59) Unclaimed Property~~
(~~60~~55) Unclassified Receipts
(~~61~~56) Use Tax
(~~62~~57) Vehicle Revenue Tax Stamps
(~~63~~58) Veterans Affairs Improvement Fund
(~~64~~59) Warrant Release Filing Fee
(~~65~~60) Waste Tire Recycling Fee
(~~66~~61) ~~Workers~~ Workers' Compensation

(e) **Main offices.** The main offices of the Oklahoma Tax Commission are located at: M. C. Connors Building, 2501 Lincoln Boulevard, Oklahoma City, Oklahoma 73194 ~~(405)521-4321~~ (405)521-3160

SUBCHAPTER 3. PUBLIC POLICY

PART 1. GENERAL PROVISIONS

710:1-3-2. Required forms and where available

(a) The Oklahoma Tax Commission utilizes a wide variety of forms in the administration of the tax laws. The forms are subject to frequent change because of changes in the law and for administrative reasons. The Commission attempts to make a wide distribution of the commonly used forms needed by taxpayers for which there is a current, valid mailing address

available, such as: Sales Tax permit holders, businesses registered under Income Tax Withholding provisions, and business entities licensed under Franchise Tax provisions.

(b) Current Oklahoma Income Tax forms are available from Taxpayer Assistance Division, at the main offices of the Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City and may be accessed through the Tax Commission website at http://www.oktax.state.ok.us. ~~More commonly used Federal Income Tax forms are also made available as a courtesy by the Internal Revenue Service at that location.~~

(c) The Commission maintains a Forms Catalog containing sample taxpayer forms required by the Oklahoma Tax Commission in the administration of the various tax levies. The Forms Catalog may be viewed in the Communications Division, M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma, during normal business hours).

PART 11. PUBLIC RECORDS

710:1-3-72. Decisions of the Oklahoma Tax Commission

(a) **Decision defined.** A **"decision"** of the Oklahoma Tax Commission means a final determination in an adversarial hearing on an individual tax protest or claim, including a Commission order in writing which is made, entered, and mailed to a taxpayer pursuant to the provisions of the Uniform Tax Procedure Code (68 O.S. § 201, et seq.). Decisions initially rendered from individual tax hearings are considered confidential records. However, decisions from individual tax hearings are available to the public under the grant of authority set out in 68 O.S. § 221(g) and the mandate of Section 302(A)(4) of Title 75 of the Oklahoma Statutes (Administrative Procedures Act).

(b) **Confidentiality.** To protect the identity of individuals, the Decisions of the Oklahoma Tax Commission available for examination by the public utilize fictitious names or have had names and identifying features removed, leaving intact the factual statement, the statement of applicable law, the findings of the Commission, and the disposition of the protest or claim.

(c) **Applicability.** Decisions of the Oklahoma Tax Commission may be broadly categorized into two groups: Precedential and Non-precedential. A Precedential decision is one in which the findings are applicable to a broad spectrum of taxpayers and in which the interpretation of law embodied in the holding may appropriately be relied upon prospectively by the Commission and by the public. A non-precedential decision is generally one in which the rule of law expressed is unique to the fact situation of the particular case.

(d) **Availability.** Decisions are available from the Administrative Proceedings Section, ~~M. C. Connors Building, 2501 North Lincoln Boulevard,~~ 3700 North Classen Boulevard, Suite 260, Oklahoma City, Oklahoma, during normal business hours and may be accessed through the Tax Commission website at http://www.oktax.state.ok.us.

SUBCHAPTER 5. PRACTICE AND PROCEDURE

PART 5. ADMINISTRATIVE PROCEEDINGS RELATED TO TAX PROTESTS

710:1-5-42. Appeals to the Supreme Court of Oklahoma from orders of the Oklahoma Tax Commission

If a taxpayer is aggrieved by the order of the Tax Commission, he may~~, within ten (10) days of the mailing of the order, file with the Secretary of the Tax Commission an intent to~~ appeal therefrom directly to the Oklahoma Supreme Court. The appeal must be perfected within thirty (30) days of the mailing of the order by filing a petition in error with the clerk of the Supreme Court of the State of Oklahoma and by filing a designation of the record with the Secretary of the Tax Commission at the same time the petition in error is filed.

PART 8. SETTLEMENT OF TAX LIABILITY

710:1-5-88. Effect of a Settlement Agreement

(a) **Effect of pending Settlement Agreement.**

(1) Filing an application for settlement does not constitute the filing of a protest of a proposed assessment, or extend the time to protest a proposed assessment. Filing an application for settlement does not constitute the taking of an appeal to the Oklahoma Supreme Court, nor extend the time to take an appeal to the Supreme Court. Filing an application for settlement does not place a taxpayer in compliance for purposes of renewing a professional license.

(2) If taxpayer is on an existing repayment plan, the taxpayer must continue to make payments until the application for a Settlement Agreement is either accepted or denied. Payments made pursuant to an existing repayment plan will not be considered a part of the amount offered in the agreement.

(3) Collection activities may continue during the review process, however, the Commission may suspend its collection efforts if the interests of the State will not be compromised. If there is any indication that the taxpayer filed the settlement offer simply to delay collection of the tax or that the delay would interfere with collecting the tax, the Commission will immediately resume collection efforts.

(4) Interest and penalty will continue to accrue on any unpaid tax debt while the settlement is being considered.

(b) **Effect of accepted Settlement Agreement.**

(1) A Settlement Agreement relates to the entire liability of the taxpayer ~~with respect to the period and type of tax for which the application is submitted,~~ and all questions of such liability are conclusively settled thereby.

(2) Neither the Commission nor the taxpayer shall, upon acceptance of the proposed Settlement Agreement, be permitted to revise the agreement except by reason of the following:

(A) Falsification or concealment of facts or assets by the taxpayer; or

(B) Mutual mistake of a material fact concerning the basis for a Settlement Agreement; or

(C) Assets were fraudulently transferred prior to the agreement or were liquidated during the review process; or

(D) Taxpayer failed to comply with the terms of the agreement.

(3) Settlement of a civil liability does not constitute a settlement of a criminal liability concerning the tax period in question.

(4) Tax liens will be released only after an application for a Settlement Agreement is accepted and the amount offered is paid in full. If the amount of the tax liability to be abated exceeds Ten Thousand Dollars ($10,000.00), the taxpayer is also required to provide to the Commission a certified copy of Oklahoma County District Court approval of the Settlement Agreement before tax liens will be released.

710:1-5-89. Payment

(a) No payment is required to be paid when the Settlement Agreement Application is submitted to the Commission.

(b) Full payment of the amount offered in settlement of the tax liability must be made within thirty (30) days from date of notification that the proposed Settlement Agreement has been accepted. Payment of the accepted settlement amount by cash, cashier's check, money order, or charged to an approved credit card must be made by the payment due date indicated on the acceptance notice. [**See: www://oktax.state.ok.us/oktax/gn-payopt.html or Call: 1-800-2PAY-TAX**]

(c) Any payment made with the application will~~, if directed by the Applicant,~~ not be returned to Applicant, even if the Settlement Agreement is declined or withdrawn. ~~Interest will not be paid on any returned payment~~. The retained payment will be applied to Applicant's outstanding tax liability in accordance with Section 710:1-3-46 of this Chapter.

(d) In appropriate circumstances, the Commission may consider proposed Settlement Agreements that provide for payments to be made over a period of time based on future income.

(e) The Settlement Agreement becomes void if taxpayer defaults on payment under the agreement.

(f) The Settlement Agreement becomes void if the agreement was obtained by fraud or misrepresentation of a material fact.

710:1-5-91. Return of Settlement Agreement Application

The Commission may reject the Settlement Agreement Application as not processible for any of the following reasons:

(1) The applicant is not adequately identified (name, address, ID#, etc.) or required signatures are not provided.

(2) The settlement offer includes an amount already collected or subject to refund.

(3) The tax liability is not adequately identified.

(4) The Settlement Agreement Application does not show a reason or a statement supporting the reason for the settlement offer has not been provided.

(5) Financial statements or other documentation have not been included, or are incomplete or do not present a complete and accurate representation of the taxpayer's financial condition.

(6) The Commission's records indicate noncompliance with filing of required returns.

(7) The applicant is currently under bankruptcy court jurisdiction.

(8) Power of Attorney Form (if indicated) has not been included.

[OAR Docket #07-905; filed 5-2-07]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 25. COIN OPERATED VENDING DEVICES

[OAR Docket #07-906]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
710:25-1-9 [AMENDED]
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68 O.S. §§ 203 and 1504; Oklahoma Tax Commission
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section 710:25-1-9 has been amended to clarify the Commission's policy on refunds for coin operated vending device decals. Unused decals may be returned to the Commission for a refund if, at the time of purchase, the applicant provided to the Commission a list of all devices owned by applicant and the location of each device.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2007:

710:25-1-9. Application for decals; affixing decals; refunds

(a) **Application.** The application for a coin operated vending device decal is to be filed with the Commission on forms prescribed by the Commission and shall include ~~owners'~~ owner's name, sales tax permit number, number and location of devices and payment of fees.

(b) **Affixing Decal.** When a coin-operated device is placed into operation, a decal shall be firmly affixed to the device and plainly visible and readable by the public. [**See:** 68 O.S. §1504 and 710:25-1-1(b)]

(c) **Refunds.** Unused decals may be returned to the Commission for a refund if, at the time of purchase, the applicant provided to the Commission a list of all devices owned by applicant and their location.

[OAR Docket #07-906; filed 5-2-07]

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

[OAR Docket #07-919]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Establishing Other Service Credits
715:10-5-4.1 [NEW]
715:10-5-32 [AMENDED]
715:10-5-35 [AMENDED]
Subchapter 13. Contributions for Membership Service
715:10-13-3.1 [AMENDED]
Subchapter 15. Service Retirement
715:10-15-7.2 [AMENDED]
AUTHORITY:
Teachers' Retirement System; 70 O.S. Section 17-101, et seq., especially Section 17-106; Board of Trustees
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SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Establishing Other Service Credits
715:10-5-4.1 [NEW]
715:10-5-32 [AMENDED]
715:10-5-35 [AMENDED]
Subchapter 13. Contributions for Membership Service
715:10-13-3.1 [AMENDED]
Subchapter 15. Service Retirement
715:10-15-7.2 [AMENDED]
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October 31, 2006
Register publication:
24 OkReg 220
Docket number:
06-1409
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
715:10-5-4.1 is a new rule. It provides for contribution deficit payments for the Education Employees Service Incentive Plan (EESIP).

715:10-5-32 is being amended to allow contribution deficit payments for the EESIP to be made through roll-overs from other qualified plans or conduit IRAs.

715:10-5-35 is being amended to allow employer pickup of contribution deficit payments for the EESIP, as well as to let TRS members use installment payments and payroll reduction to make EESIP contribution deficit payments.

715:10-13-3.1 is being amended to address increasing employer contributions by TRS remitting entities other than comprehensive and four-year regional universities, as required by legislation enacted in 2006. The employer contribution rate for TRS remitting entities other than comprehensive and four-year regional universities will increase through June 30, 2009, if appropriation levels to each of the affected remitting entities are increased so that the additional employer contribution obligation is funded.

715:10-15-7.2 is a new rule providing a benefit calculation formula for TRS members retiring under provisions of the Education Employees Service Incentive Plan.
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 JUNE 11, 2007:

SUBCHAPTER 5. ESTABLISHING OTHER SERVICE CREDITS

715:10-5-4.1. Payment of Contribution Deficit for Education Employees Service Incentive Plan

(a) A member whose Regular Annual Compensation, as defined in 70 O. S. § 17-101, was greater than $40,000 during the school years 1987-88 through 1994-95, must make an additional contribution based on his or her Regular Annual Compensation in excess of $40,000 to qualify for the provisions of OAC 715:10-15-7.2. A member who chooses not to make the additional contribution payment will not qualify for the EESIP formula.

(b) The payment required for any school year between 1987-88 and 1994-95 is the contribution rate in effect for each

year applied to the difference between the member's total Regular Annual Compensation and the amount contributed by or on behalf of the member during the school year. This may include compensation in excess of $25,000, when the member elected not to contribute on earnings between $25,000 and $40,000 for these school years or when the school failed to contribute on the member's total compensation up to $40,000 for any school year during this period. In addition to the contribution balance, compound interest of ten percent (10%) per annum will be included in the balance due for each year. The interest rate will be applied from June 30 of the school year to the date payment is made to the Teachers' Retirement System.

(c) To qualify for the movement of the first two (2) years of service credits performed before July 1, 1995, the member must make any payment due for the 1993-94 and 1994-95 school years. To qualify for the next two (2) years of service performed prior to July 1, 1995, the member must make any payment due for the 1991-92 and 1992-93 school years. Payment for additional years of service performed prior to July 1, 1995, will be required in descending order back to the 1987-88 school year.

(d) Payment must be made in accordance with existing Internal Revenue Service regulations in effect at the time of payment. TRS will accept after-tax contributions and pre-tax direct or indirect rollovers and transfers from 401(a), 401(k), 403(b), 457 and IRA plans, when allowed by IRS regulations, and installment payment arrangements as provided under OAC 715:10-5-35. Payments may be a combination of any of the available payment methods. (Also see OAC 715:10-5-32. Roll-overs from other qualified plans or conduit IRAs.)

(e) Any payment balance(s) required for a member to qualify for the EESIP formula must be completed at least thirty (30) days before the member's retirement date.

(f) TRS staff will calculate each member's contribution deficit for any year(s) based on payroll records as reported by the employing school. When existing payroll records are not sufficient to accurately determine the member's contribution deficit, TRS has the right to request additional information from the member and/or the employing school. If additional records are required, it is the member's responsibility to obtain or cause records to be forwarded to TRS from the employing school.

(g) If a member retires on or after July 1, 2006, and before June 30, 2007, the member will be required to pay 50% of the total contribution deficit balance.

(h) If a member retires on or after July 1, 2007, and before June 30, 2008, the member will be required to pay 75% of the total contribution deficit balance.

(i) If the member retires on or after July 1, 2008, the member will be required to pay 100% of the total contribution deficit balance.

(j) TRS will accept EESIP contribution deficit payment(s) from the member at any time prior to the member's retirement. However, if at retirement it is determined that an additional balance is due, the member will be required to make the additional payment, including interest, before his or her first retirement benefit payment is due. If it is determined the member has paid more than the required balance, any difference will be refunded to the member, but no interest will be paid by TRS on the deposits, regardless of the length of time such deposits have been held by the Teachers' Retirement System.

715:10-5-32. Roll-overs from other qualified plans or conduit IRAs

Credit for past service, including redeposits of withdrawn Oklahoma service, defined in this subchapter, contribution deficit payments provided for by 70 O.S. § 17-116.2C or balances due as authorized under 70 O.S. § 17-116.2, may be purchased with roll-overs from another retirement plan if allowed by the Internal Revenue Code. This includes "conduit IRAs" which have been established with funds received from a 401(a) plan distribution for the purpose of holding the funds separate until a rollover can be consummated, traditional IRAs, 403(b) tax-deferred annuity plans, 401(k) and 457 deferred compensation plans. For a roll-over payment to be accepted by Teachers' Retirement the following conditions must be met:

(1) The member should contact Teachers' Retirement to obtain a billing statement for the service to be purchased and convey the intent to make total or partial payment by a roll-over.

(2) The member must obtain written documentation from the originating institution verifying the amount of the distribution and that the monies came from a qualified plan under the Internal Revenue Code.

(3) The roll-over check from the qualified plan must be made payable to the Oklahoma Teachers' Retirement System, For Benefit Of and the member's name. The member must deliver the check to Teachers' Retirement with the required documentation and the billing statement for the service to be purchased. Teachers' Retirement will only accept payment for the amount of the billing statement. If the distribution from the originating institution is greater than the billing, the originating institution must be willing to generate a check payable to Teachers' Retirement for the exact amount of the billing statement. If the distribution from the originating institution is less than the billing, a personal check or cashier's check must accompany the roll-over proceeds, or the member may pay the balance through an installment payment plan. Payments in excess of the billing will not be accepted.

(4) A receipt for the payment will be issued after Teachers' Retirement has determined all documentation and the appropriate amount of funds have been received.

(5) Roll-overs must comply fully with the Internal Revenue Code and applicable Internal Revenue Service regulations.

715:10-5-35. Employer pick-up of purchase of service credit

(a) The purpose of OAC 715:10-5-35 is to provide a pick-up of employee contributions by participating employers under Section 414(h)(2) of the Internal Revenue Code of 1986 for contributions that are made for the purpose of purchasing service credit or re-establishing withdrawn service under Chapter

10, Subchapter 5 of these Rules~~.~~, and for contribution deficit payments provided for by 70 O.S. § 17-116.2C or balances due as authorized under 70 O.S. § 17-116.2, Employers may elect to participate in the pick-up of employee contributions made for the purpose of purchasing service credits, or re-establishing withdrawn service by a resolution adopting the provisions of this regulation.

(b) An active member of the Teachers' Retirement System (employed by a participating employer) who elects to purchase or re-establish service credit under any applicable provision of Chapter 10, Subchapter 5 of these Rules, or to make contribution deficit payments provided for by 70 O.S. § 17-116.2C or balances due as authorized under 70 O.S. § 17-116.2 through installments in accordance with a schedule established by the Board of Trustees, may elect to do so through a binding, irrevocable payroll reduction authorization.

(c) An active member of the Teachers' Retirement System, having executed a binding, irrevocable payroll reduction authorization with respect to any such contributions, shall not be entitled to any option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the Teachers' Retirement System. Such contributions shall be remitted to the Teachers' Retirement System and credited to the member in the same manner as all other employee contributions. Such contributions, although designated as employee contributions, will be paid by the employer in lieu of contributions by the employee. The contributions so assumed shall be treated as tax-deferred employer "pick-up" contributions pursuant to the United States Internal Revenue Code Section 414(h)(2), ~~subject to~~ as authorized in a favorable letter ruling by the Internal Revenue Service.

(d) An active member of the Teachers' Retirement System may elect to pay all or part of any contribution to purchase or re-establish service credit or to make contribution deficit payments provided for by 70 O.S. § 17-116.2C or balances due as authorized under 70 O.S. § 17-116.2 through such payroll reduction. The amount by which an employee's compensation will be reduced and the duration of the reduction shall be specified on the authorization form prescribed by the Board of Trustees and the amounts and duration shall be irrevocable and binding once made. Prepayment of amounts covered by the authorization is not permitted. However, nothing herein shall prevent a member from paying any amounts not covered by the authorization with after-tax dollars, provided that any such after-tax payments by an employee of a participating employer shall be paid directly by the employee to the Teachers' Retirement System, as opposed to being paid to or withheld by the participating employer. An employee of non-participating employer may purchase service credit or re-establish withdrawn service by making after-tax payments directly to the Teachers' Retirement System.

(e) No such payroll reduction shall begin unless and until the member executes the payroll reduction authorization described below on a form prescribed by the Board of Trustees. The Board of Trustees will send such form to the treasurer or other disbursing officer of the participating employer. After receiving the binding, irrevocable payroll reduction authorization, the treasurer or other disbursing officer of each participating employer shall reduce the member's regular annual compensation by the authorized amount and remit these contributions to OTRS, in addition to (but separate from) the mandatory contributions from the member's regular annual compensation pursuant to 70 O.S., §17-116.2 and OAC 715:10-13-3. The participating employer shall continue to make such reductions for the number of months specified on the form and shall treat these reductions as picked-up contributions.

(f) All such payroll reductions, including the amounts and the duration specified, shall be binding and irrevocable upon the member's execution of the prescribed form.

(g) Notwithstanding the above, such reductions will cease only after the authorization has expired by its terms or upon any of the following events:

(1) The member's death. In the event of a member's death, the designated beneficiary shall have the option of paying the remaining amount owed (using after-tax dollars) within six (6) months of the member's death. If the balance is not paid, the beneficiary shall be entitled to prorated credit for that portion of the additional contributions actually made for service purchases prior to the member's death. If there is any remaining amount owed with respect to a redeposit of contributions, the designated beneficiary will be reimbursed for those redeposits which had already been paid at the time of the member's death. A beneficiary may not make payments for a purchase of service credit or a re-deposit of contributions if such a purchase or re-deposit had not been initiated by the member prior to the member's death.

(2) The termination of the member's employment. In this event, the member shall have the right to pay the remaining amount owed (using after-tax dollars) within six (6) months of the member's termination of employment, but payment must be completed one (1) month prior to the effective retirement date of the member. If the member retires and does not pay the entire remaining amount, the member shall be entitled to prorated service credit for those payments actually made for service purchases. If there is any remaining amount owed with respect to a redeposit of contributions, the member shall be reimbursed for those redeposits which had already been paid at the time of the member's termination. In the situation where a terminated member becomes employed by another employer participating in OTRS, the member may elect to reinstate or not reinstate his authorization with the new employer.

(3) For purposes of (1) and (2) above, after-tax contributions shall only be received to the extent allowed by section 415 of the Internal Revenue Code.

(h) In no event shall the member receive a return of the payroll reductions made hereunder, except as a refund together with all other contributions, as provided in OAC 715:10-11-1 et seq. or as a refund of a redeposit of contributions as provided in subsection ~~(g)(2)~~ g.(2) herein.

(i) Payroll reductions and installment agreements hereunder shall last no longer than sixty (60) months.

SUBCHAPTER 13. CONTRIBUTIONS FOR MEMBERSHIP SERVICE

715:10-13-3.1. Employer contribution rates

(a) Beginning July 1, 1998, through June 30, 2000, the local employer shall pay four and eight-tenths percent (4.8%) of the regular annual compensation of the member, up to the member's applicable maximum compensation level.

(b) Beginning July 1, 2000, through June 30, 2001, the employer shall pay five and eight-tenths percent (5.8%) of the regular annual compensation of the member up to the member's applicable maximum compensation level

(c) Beginning July 1, 2001, through June 30, 2002, the employer shall pay six and eight-tenths percent (6.8%) of the regular annual compensation of the member up to the member's applicable maximum compensation level.

(d) Beginning July 1, 2002, the employer shall pay seven and five-hundredths percent (7.05%) of the regular annual compensation of the member up to the member's applicable maximum compensation level. In addition to the contribution rate of 7.05% on each active member's applicable regular annual compensation, the employer shall pay seven and five-hundredths percent (7.05%) of the regular annual compensation of any retired member as defined in OAC 715:10-17-1 and 715:10-17-5.

(e) Beginning January 1, 2007, through June 30, 2007, all remitting entities other than comprehensive and four-year regional universities, shall pay seven and six-tenths percent (7.6%) of the regular annual compensation of the member not in excess of any applicable maximum compensation level of the member.

(f) Beginning July 1, 2007, through June 30, 2008, all remitting entities other than comprehensive and four-year regional universities, shall pay seven and eighty-five hundreds percent (7.85%) of the regular annual compensation of the member not in excess of any applicable maximum compensation level of the member.

(g) Beginning July 1, 2008, though June 30, 2009, and for each fiscal year thereafter, all remitting entities other than comprehensive and four-year regional universities, shall pay eight percent (8%) of the regular annual compensation of the member not in excess of any applicable maximum compensation level of the member.

(h) The employer contribution rate increase provided in subsections e, f and g of this section shall not become effective unless appropriation levels to each of the affected remitting entities are increased so that the additional employer contribution obligation is funded.

SUBCHAPTER 15. SERVICE RETIREMENT

715:10-15-7.2. Retirement formula for members retiring under provisions of the Education Employees Service Incentive Plan ("EESIP")

(a) Legislation enacted during the Special Session of the 2006 Legislature modified the standard retirement formula for TRS members employed by remitting entities other than comprehensive and regional four-year universities. A member must have been employed by a participating remitting entity for at least one full school year (twelve months) immediately prior to termination of employment or retirement to qualify for this section.

(b) A TRS member who was employed prior to July 1, 1995, may have service credits performed prior to July 1, 1995, calculated in the member's retirement formula used for service performed after July 1, 1995, when the member's average salary at retirement is greater than $40,000, and the member works beyond the year in which he or she reaches normal retirement age. (The terms "average salary" and "normal retirement age" are defined in 70 O. S. § 17-101.)

(c) A retiring member who works one year beyond the school year in which he or she reaches normal retirement age may move two (2) years of service performed prior to July 1, 1995, to the retirement formula used to calculate service performed after July 1, 1995. For each additional year the member works beyond normal retirement age, he or she may move two (2) additional years of service credit performed prior to July 1, 1995.

(d) For members who retire on or after July 1, 2006, and before June 30, 2007, the maximum average salary that can be used to calculate the benefit for service credits that qualify to be moved under this section is $60,000. During this one-year period, a member whose average salary at retirement is greater than $60,000 shall have benefits calculated in three steps: 2% x $40,000 for service performed prior to July 1, 1995, that does not qualify as moved service; 2% x $60,000 for service performed prior to July 1, 1995, that qualifies as moved service; and 2% x the member's average salary for service performed on or after July 1, 1995. (Note: The retirement date for each retiring member is always the first day of the month. [See OAC 715:10-15-4.])

(e) For members who retire on or after July 1, 2007, and before June 30, 2008, the maximum average salary that can be used to calculate the benefit for service credits that qualify to be moved under this section is $80,000. During this one-year period, a member whose average salary at retirement is greater than $80,000 shall have benefits calculated in three steps: 2% x $40,000 for service performed prior to July 1, 1995, that does not qualify as moved service; 2% x $80,000 for service performed prior to July 1, 1995, that qualifies as moved service; and 2% x the member's average salary for service performed on or after July 1, 1995. (Note: The retirement date for each retiring member is always the first day of the month. [See OAC 715:10-15-4.])

(f) For members who retire on or after July 1, 2008, the average salary used to calculate the benefit for service credits that qualify to be moved under this section is the member's average salary at retirement. The member's retirement benefit will be calculated as follows: 2% x $40,000 for service performed prior to July 1, 1995, that does not qualify as moved service; and 2% x the member's average salary for service performed prior to July 1, 1995, that qualifies as moved service and for

service performed on or after July 1, 1995. (Note: The retirement date for each retiring member is always the first day of the month. [See OAC 715:10-15-4.])

(g) A member whose Regular Annual Compensation was greater than $40,000 during the school years 1987-88 through 1994-95 must make an additional contribution to qualify for movement of service provided for in this section. [See OAC 715:10-5-4.1. Payment of contribution deficit for Education Employees Service Incentive Plan]

(h) A member reaches Normal Retirement Age during the school year he or she reaches age 62, or when the member's age and total service equal 80 or more for those members those official TRS membership date is prior to July 1, 1992, and when the member's age and total service equal 90 or more for those members whose official TRS membership date is on or after July 1, 1992.

(i) For this section, credit a member may receive for having 120 or more days of unused sick leave at retirement will be used in determining the school year in which a member reaches Normal Retirement Age.

(j) For this section, a member who reaches Normal Retirement Age by the tenth of July of any school year will be considered to have reached Normal Retirement Age at the beginning of that school year. A member who reaches Normal Retirement Age after the tenth of July of any school year will be considered to have reached Normal Retirement Age at the beginning of the next school year in which the member is employed.

(k) To qualify for a year of service beyond Normal Retirement Age, OAC 715:10-3-2 and OAC 715:10-3-3 will be used to determine credited service. However, a fractional year of service performed after reaching Normal Retirement Age cannot be combined with a fractional year of service performed prior to reaching Normal Retirement Age to qualify for a year of service credit under this section.

(l) The provisions of subsections e and f of this section become effective only if additional employer contributions are funded as required by Enrolled House Bill 1179xx.

[OAR Docket #07-919; filed 5-4-07]

TITLE 720. STATE TEXTBOOK COMMITTEE
CHAPTER 10. TEXTBOOK SELECTION

[OAR Docket #07-929]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 3. Bidding Procedures
720:10-3-7. Free Materials [AMENDED]
AUTHORITY:
Article XIII, section 6 of the Oklahoma Constitution and 70 O.S. - § 16-118; State Textbook Committee
DATES:
Comment period:
January 2, 2007 through February 2, 2007
Public hearing:
February 8, 2007
Adoption:
February 9, 2007
Submitted to Governor:
February 16, 2007
Submitted to House:
February 16, 2007
Submitted to Senate:
February 16, 2007
Gubernatorial approval:
March 15, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 12, 2007.
Final adoption:
April 12, 2007.
Effective:
July 2, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Changes were made to 720:10-3-7 to help regulate the free materials offered to schools. Many companies bidding in the State Textbook Adoption were giving away computers, media carts, projectors, and other technology equipment as an incentive to purchase their programs. However, these offers were unfair to small school districts, which could never order enough books and materials to meet the minimum requirements to receive the equipment. As a result, the only districts benefitting from these free materials were the large districts in the state. The equipment was only an incentive and was not guaranteed for workmanship or replacement by the publishers who offered them. There was a temptation for districts and teachers to focus on what materials they might receive free instead of on the actual content of the programs the State Textbook Committee reviews. Schools receive other monies with which they may buy quality technology equipment. They do not receive other funds with which they can buy more state- adopted textbooks. It is imperative that these monies remain separate so that the quality of instructional materials does not suffer and so that schools do not make choices of textbooks, software, etc., based on the free items that accompany their purchases.
CONTACT PERSON:
Paige Phillips, (405) 521-3456

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 2, 2007:

SUBCHAPTER 3. BIDDING PROCEDURES

720:10-3-7. Free Materials

(a) Free materials must be listed on the Free Materials Form of the Bid and additionally labeled, "Free Material not reviewed or approved by the State Textbook Committee".

(b) ~~All materials in any medium which a publisher intends to make available without cost for use with textbooks, as noted on bid forms.~~ Free Material will not be submitted to the State Textbook Committee for consideration for adoption purposes. Samples of any items listed on the Free Materials Form shall be listed at the same time and in the same manner as the textbooks which they accompany. Materials listed as give free items must not be from another bid area. Materials listed as free items must be for the duration of the contract period.

(c) All items that are not listed on the bid form as given free cannot be provided free. Doing so may jeopardize the textbook contract.

(d) Comprehensive teacher materials will be furnished free to school districts based upon a minimum ratio of one (1) teacher set to 20 textbooks purchased by the district and will be submitted with bids for review.

(e) Items that are integral to the educational material may be offered free as part of the bid. These include software that supplements, complements, or is a digital version of the textbook; consumables or kits that are essential to the use of the educational material, teacher manuals, test banks, study guides, and supplementary material.

(f) Nonessential items that shall not be offered free include: lab equipment such as microscopes, carts, and other hardware; standard electronic equipment such as DVD players, overhead projectors, phone/music/data transmitting and listening devices, cameras, televisions, computers, media carts, calculators; educational materials that are not related to the subject areas of the items that are offered in the bid.

[OAR Docket #07-929; filed 5-8-07]

TITLE 730. DEPARTMENT OF TRANSPORTATION
CHAPTER 10. DEPARTMENT PROGRAMS

[OAR Docket #07-887]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 23. County Improvements for Roads and Bridges Program [NEW]
730:10-23-1 through 730:10-23-9 [NEW]
AUTHORITY:
Transportation Commission; 69 O.S., §§ 303, 304 and 4002, 69 O.S., 2006 § 507
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Public hearing:
n/a
Adoption:
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March 5, 2007
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April 2, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 27, 2007
Final adoption:
April 27, 2007
Effective:
June 11, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 23. County Improvements for Roads and Bridges Program [NEW]
730:10-23-1 through 730:10-23-9 [NEW]
Gubernatorial approval:
October 20, 2006
Register publication:
24 Ok Reg 224
Docket number:
06-1422
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Department has been directed to promulgate rules for the administration of the process and the development of criteria for establishing the level of priority of projects for the expenditure of funds apportioned to the "County Improvements for Roads and Bridges Fund." This new program was established in HB1178 during the second special session of the 50th Legislature with an effective date of July 1, 2007.
CONTACT PERSON:
Mary C. Brewington (405) 522-6002

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2007:

SUBCHAPTER 23. COUNTY IMPROVEMENTS FOR ROADS AND BRIDGES PROGRAM

730:10-23-1. Purpose and Authority

The purpose of the County Improvements for Roads and Bridges Program (CIRB) is to construct or reconstruct county roads or bridges on the county transportation system that are of the highest priority as defined by the Transportation Commission as established by the provisions in Title 69 O.S. Section 507.

730:10-23-2. Funding Source

The County Improvements for Roads and Bridges Fund is financed by a dedicated portion of vehicle licensing and registration fees, taxes and penalties. Funding for this program may be augmented, as provided by law, with federal funds and funds from other sources which may be available for county roads and bridges.

730:10-23-3. Allocation of Funds

The funds apportioned to the County Improvements for Roads and Bridges Fund shall be distributed in equal amounts to the various Transportation Commission Districts.

730:10-23-4. Use of Funds

(a) Funds available to the County Improvements for Roads and Bridges Program may only be expended on high priority projects included in a fiscally constrained five-year construction work plan cooperatively developed, maintained and updated annually by the Circuit Engineering Districts and the Department of Transportation and to be used for the following purposes as approved by the Department:

(1) Construction projects to replace or reconstruct structurally deficient, functionally obsolete, destroyed or unusable bridges on the county transportation system in accordance with Department established design and construction requirements.

(2) Construction projects for the improvement of county roads in accordance with Department established design and construction requirements.

(3) Matching other funds available for county road or bridge construction projects, provided it can be substantiated that the applicable funds will be available at the time of a qualifying and scheduled project expenditure.

(4) Project engineering costs including those identified in paragraph (8) of this section.

(5) The cost of right-of-way, the costs of relocation of utilities from the right-of-way so acquired, and the costs of employing or contracting with qualified individuals to assist a county or counties in properly acquiring and clearing the right-of-way.

(6) The cost of reconstruction or replacement of roadway structures which may be less than twenty (20) feet in length.

(7) The expense and related costs of employing or contracting with qualified individuals to assist a county or counties in carrying out the environmental clearance, design, contract administration and the inspection of construction, including the reimbursement of project related expenses incurred by the county's engineer or Circuit Engineering District.

(b) Funding may accumulate for a period of up to five (5) years for a specific project with Transportation Commission approval. Such funding is to be held by the Transportation Commission to the credit of the project.

730:10-23-5. Project eligibility and approval

Projects shall be considered and approved for inclusion in the five year construction work plan annually by the Department of Transportation on the basis of specific project evaluation criteria. These criteria shall generally consider factors including the ability of the county to effect the improvements through the utilization of other resources and funding mechanisms, the priority of the project as established by the Circuit Engineering District, project feasibility and cost including the ability of the county to participate, existing phase of project development, anticipated safety and mobility benefits realized by the traveling public and commerce, and the extent the project will improve the overall level of service and longevity of the county transportation system in the area.

730:10-23-6. Request for funds

Funds made available through the County Improvements for Roads and Bridges Program shall be allocated to requesting counties on the basis of the formal submission of a request for projects to the coordinating Circuit Engineering District for further consideration. Each project request shall be prepared in a uniform format cooperatively developed by the Circuit Engineering Districts and the Department of Transportation and shall be submitted in accordance with the notifications and deadlines established to meet the Department's annual programming schedule requirements.

730:10-23-7. Project selection

Upon determination of the conformance of a proposed project with the intent of the program and the project evaluation criteria, the coordinating Circuit Engineering District will compile a prioritized list of recommended projects occurring within the District to be transmitted for further consideration by the Department of Transportation. In the absence of an acceptable project recommendation from any CED, the Department reserves the authority to select and recommend projects to the Transportation Commission as determined appropriate.

730:10-23-8. Programming of projects

Acceptance by the Department of the coordinating Circuit Engineering District's prioritized list of recommended projects does not constitute a commitment of funds for the requested projects. The Department shall have the responsibility for considering the recommended projects from each Circuit Engineering District, formulating a project recommendation to the Transportation Commission and for the subsequent development and maintenance of the County Improvement for Roads and Bridges Program 5 Year Construction Work Plan. Upon the annual Transportation Commission approval of the Construction Work Plan, the Department shall notify the Circuit Engineering District of the acceptance of projects. Projects which are excluded on the basis of non-availability of funds may be resubmitted by the Circuit Engineering District for future consideration.

730:10-23-9. Implementation of projects

Projects will be placed under agreement, scheduled, developed, designed and let to contract in accordance with the Department's regular and normal project development processes and all applicable laws, rules and regulations. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

[OAR Docket #07-887; filed 4-30-07]

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

1:2007-18.

EXECUTIVE ORDER 2007-18

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the authority vested in me by Sections 1 and 2 of Article VI of the Oklahoma Constitution and 63 O.S. §§ 683.1 et seq., hereby declare that because there is a state of emergency existing in State of Georgia due to wildfires occurring in that state, it is necessary to assist and expedite all efforts of wildfire suppression. In order to accommodate this need and to provide assistance to the citizens of Georgia in this extraordinary situation, I hereby order the temporary suspension of the following as they apply to vehicles used in the support efforts:

1. The requirements for special permits for use of overweight/oversized vehicles under Title 47;

2. The requirements for licensing/operating authority as required by the Oklahoma Corporation Commission;

3. The requirements for licensing/registration as required by the Oklahoma Tax Commission;

4. The requirements contained in the Motor Carrier Safety Regulations, CFR 49, Parts 390-399 under the authority of CFR 49, Part 390.23. All other regulations in CFR 49 shall apply.

This temporary order shall end at the end of 30 days.

This executive order shall be forwarded to the Oklahoma Corporation Commission, the Oklahoma Tax Commission and the Commissioner of Public Safety, 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, this 30th day of April, 2007.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #07-908; filed 5-2-07]

1:2007-19.

EXECUTIVE ORDER 2007-19

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the authority vested in me by Sections 1 and 2 of Article VI of the Oklahoma Constitution, in recognition of Peace Officers Memorial Day, direct that appropriate steps be taken to fly all American flags and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Tuesday, May 15, 2007, to honor Federal, State and local officers killed or disabled in the line of duty.

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 this 1 day of May, 2007.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #07-909; filed 5-2-07]

1:2007-20.

EXECUTIVE ORDER 2007-20

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the authority vested in me by Sections 1 and 2 of Article VI of the Oklahoma Constitution, hereby designate Lieutenant Governor Jari Askins as Oklahoma's Small Business Advocate. The purpose of this position is to assist in every possible manner available the small businesses of Oklahoma, which are the backbone of our economy.

Because many of the businesses in Oklahoma have less than one hundred employees, it is appropriate to recognize the need of small businesses to have an advocate when dealing with the numerous state regulatory agencies. It is important for both the rural and urban areas to assist the small business entrepreneur so that he or she is able to operate, grow and succeed in today's competitive marketplace.

This executive order shall be forwarded to all members of the Governor's Cabinet 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 7 day of May 2007.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #07-964; filed 5-8-07]

1:2007-21.

EXECUTIVE ORDER 2007-21

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

1. Tornadoes, severe storms and flooding beginning May 4, 2007, and continuing, have caused extensive damage to public and private properties within the State of Oklahoma; and said damages have caused an undue hardship on the citizens of this State.

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

3. There is hereby declared a disaster emergency caused by the tornadoes, severe storms, and flooding in the entire State of Oklahoma that threatens the lives and property of the people of this State and the public's peace, health and safety.

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

5. State agencies, in responding to this disaster emergency, may make necessary emergency acquisitions to fulfill the purposes of this proclamation without regard to limitations or bidding requirements on such acquisitions.

6. This Executive Order shall terminate at the end of thirty (30) days.

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

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 7 day of May, 2007.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #07-984; filed 5-9-07]

1:2007-22.

EXECUTIVE ORDER 2007-22

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the power vested in me by Section 2 of Article VI of the Oklahoma Constitution, and 63 O.S. §§ 683.1 et seq., hereby declare that because there is a state of emergency existing in The State of Kansas due to catastrophic weather occurring statewide, it is necessary to assist and expedite all efforts of relief. In order to accommodate this need and to provide immediate assistance to the citizens in this extraordinary situation, I

hereby order the temporary suspension of the following as they apply to vehicles used in the support efforts:

1. The requirements for special permits for use of overweight/oversized vehicles under Title 47;

2. The requirements for licensing/operating authority as required by the Oklahoma Corporation Commission;

3. The requirements for licensing/registration as required by the Oklahoma Tax Commission;

4. The requirements contained in the Motor Carrier Safety Regulations, CFR 49, Parts 390-399 under the authority of CFR 49, Part 390.23. All other regulations in CFR 49 shall apply.

5. The requirements established by Title 47 and Oklahoma Administrative Code 530 concerning days of week and curfew restrictions with the exception that lighted escorts will be utilized after sunset both forward and aft of the involved load.

6. This Executive Order is temporary and shall terminate at the end of thirty (30) days.

This executive order shall be forwarded to the Oklahoma Corporation Commission, the Oklahoma Tax Commission and the Commissioner of Public Safety, 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, this 9 day of May, 2007.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:
Kathy Jekel
Acting Assistant Secretary of State

[OAR Docket #07-988; filed 5-10-07]